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Exploring Gender Bias in College Mock Trial

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Exploring Gender Bias in College Mock Trial

A thesis submitted in partial fulfillment of the requirements for the degree of Bachelor of Arts
with an Honors Endorsement

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The role of gender has long been discussed in the legal profession. From the documented discrimination Supreme Court Justice Ruth Bader Ginsburg faced as a female attorney to varying expectations regarding how male versus female attorneys should dress and conduct themselves, gender biases, norms, and expectations have impacted female litigants both in and outside of the courtroom. This thesis contributes to research on the nature of gender bias and how it manifests and perpetuates itself in modern society. Drawing on a series of semi-structured interviews with current mock trial competitors and coaches, this research focuses on the role of gender in the field of law by examining its presence and impact on future attorneys before they attend law school. Specifically, this research explores the perceived presence of patterned gender bias in undergraduate college mock trial. It finds that both mock trial coaches and competitors believe patterned gender bias does exist within both the college mock trial and conventional legal setting, but in college mock trial, coaches and student leaders' opinions on how to address this issue vary significantly.

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Chapter 1. Introduction

The role of gender has long been discussed in the legal profession. From the documented discrimination Supreme Court Justice Ruth Bader Ginsburg faced as a female attorney to varying expectations regarding how male versus female attorneys should dress and conduct themselves, gender biases, norms, and expectations have impacted female litigants both in and outside of the courtroom.

This thesis contributes to research on the nature of gender bias and how it manifests and perpetuates itself in modern society. To do this, this research focuses on the role of gender in the field of law by examining its perceived presence and impact on future attorneys before they attend law school. My primary research interest was to explore if mock trial competitors and coaches believe patterned gender bias exists in college mock trial, and if so, if it impacts the way competitors are evaluated during competition. I also researched how these expectations impact the competitive decisions made by mock trial programs, including roster assignments. Additionally, I explored what conversations mock trial competitors and coaches have about the relationship between gender, mock trial, and the conventional legal profession.

This research primarily draws on a series of semi-structured interviews conducted with current mock trial competitors and coaches. Analyzing these interviews found coaches and competitors both acknowledge they believe patterned gender bias exists in mock trial. However, contrary to my expectations, the vast majority of participants who stated they believe patterned gender bias is present also stated their programs' coaches and student leaders do not take specific actions to make sure female competitors conform to these preferences.¹

¹ Specific preferences could include making roster adjustments based on the gender of competitors or telling female competitors to adjust their demeanor based on judges' preferences for how female competitors should conduct themselves in the courtroom. This is explored in greater detail in Chapters 5, 6, and 7.

This thesis proceeds as follows. Chapter 2 begins with an explanation of the college mock trial process and a definition of key terms. This is followed by a description of the methods used in this research (Chapter 3) and a review of relevant literature (Chapter 4). Then, I present the results of my interviews. I begin Chapter 5 by briefly explaining the binary nature of gender in college mock trial and offer an overview of how implicit factors, including gender, can impact mock trial competition.

Then, Chapters 5 and 6 discuss how current mock trial coaches and competitors believe patterned gender bias influences college mock trial. Specifically, Chapter 5 discusses trials where coaches and competitors recall judges making verbal and written comments about the *attire* of female competitors. Chapter 6 discusses trials where coaches and competitors recall judges making verbal and written comments about the *demeanor* of female competitors. Chapter 6 also lists other comments mock trial judges have made to female competitors because of their gender, and it explores whether current mock trial competitors and coaches believe judges' preferences regarding how female competitors should dress and conduct themselves influence how they are *evaluated* during competition.

In Chapter 7, I explore a discrepancy between my expected and actual research findings. I hypothesized that if mock trial coaches and student leaders believe patterned gender bias negatively influences how female competitors are evaluated, then they would instruct female competitors to dress and present themselves in a manner which conforms to judges' gendered preferences. However, even if current competitors and coaches believe patterned gender bias puts female competitors at a competitive disadvantage, most programs' leadership do not instruct female competitors to conform to judges' preferences.

I offer two explanations, based on my interview findings, to reconcile the discrepancy between my expected and actual research findings (Chapter 7). First, although mock trial coaches and student leaders may believe patterned gender bias exists in college mock trial, many do not believe the vast majority of mock trial judges act on gendered preferences they may possess, and even if they do, patterned gender bias does not determine which team would win the mock trial.

Second, even if mock trial coaches and student leaders believe patterned gender bias frequently puts both female competitors and their respective teams at a competitive disadvantage, many believe that instructing female competitors to conform to judges' gendered preferences directly contradicts other mock trial values and lessons they believe are more important at the college level.

Although not based on my interview findings, I also explore other explanations that may account for this lack of specific instruction. First, it is possible that mock trial coaches and student leaders do not direct female competitors to meet judges' gendered expectations because female competitors are informally conforming to these preferences on their own. It is also possible that given the sensitive nature of gender in the classroom as well as the courtroom, informal directions are more likely to be offered than explicit instructions by coaches and student leaders, especially when considering Title IX and sexual harassment concerns on campus. Second, it is possible that the manner and sequence taken by interviews influenced interview responses. During interviews, coaches and competitors described instances in which they believed female competitors were victims of patterned gender bias. If participants felt, later in the interview, that they were being asked if they endorsed and contributed to what they had previously described as a negative aspect of the mock trial experience, it would be extremely

unlikely that they would acknowledge providing any form of explicit instructions to conform to judges' gender preferences.

Chapter 8 concludes this thesis by exploring the implications of perceived patterned gender bias in college mock trial and the conventional legal setting. I outline the "gendered constraint" female competitors face in both the college and conventional courtroom, constraint which offers men a competitive advantage. I explore the ethical implications of this, discussing if, due to the legal principle of zealous advocacy, mock trial coaches and student leaders should instruct female competitors to conform to judges' patterned gender preferences so, as future attorneys, they can better serve their clients. Finally, I discuss the limitations of this thesis and offer suggestions for areas of future research.

Chapter 2. Definitions of Key Terms

A. College Mock Trial

In mock trial competitions, students simulate the proceedings that would occur in a United States district court trial. Students portray the roles of attorneys and witnesses in the trial, which follows the same protocol (although expediated) as a formal trial; competitors give opening and closing statements, conduct direct and cross examinations, and make applicable objections during the simulated trial proceedings.

Each mock trial team consists of six individuals: three attorneys, and three witnesses.² During a trial, each attorney conducts a direct examination with one witness (this witness is on the same team as the attorney). After each direct examination, one attorney on the opposing side will cross-examine the witness. As a result, each attorney will direct and cross-examine one witness, and each witness will be directed and cross-examined by one attorney. Two attorneys per team will also give statements; one attorney per team offers an opening statement, and one attorney per team delivers a closing statement.

Each attorney and witness is scored on a scale of 1-10 (1 being the worst, 10 being the best) for each direct, cross-examination and statement they perform. These scores are provided by mock trial “judges;” generally practicing attorneys or law school students, these judges are supposed to evaluate the performance quality of each portion of a mock trial. For example, judges evaluate competitors on their presentation of their case theory, how well they understand the mock trial rules of evidence, and how well they are able to work together as a team.

At the conclusion of a mock trial, these scores given by a judge are totaled for each team. Whichever team has the highest combined score wins this judge’s “ballot.” Generally, two

² In college mock trial, each team must call three witnesses to the stand. Each team also must have three attorneys compete in each competition.

judges evaluate competitors each round, and over the course of a mock trial tournament, teams compete in four total trials. As a result, they have the opportunity to “win” a total of eight ballots over the course of a given tournament. These ballots contribute to a team’s overall record; for example, a team that wins six ballots and loses two would have an overall record of 6-2. It is these records that determine how teams are ranked at the end of the tournament; if 6-2 is the best record at the end of the weekend, then the team with a record of 6-2 would win the tournament.

Individual rankings are also provided by judges, independently of scores. Judges are asked to rank the top four attorneys and top four witnesses in each trial. Competitors with the highest average ranks receive individual awards at the end of the tournament. These awards do not contribute to team’s record; only the scores provided for examinations and statements do this. (For additional information, see the ballot provided in Appendix A.)

To prepare for these trials, teams are assigned a “case packet” of fictional affidavits, relevant case law, and evidence by the American Mock Trial Association (AMTA), which serves as the “governing body for intercollegiate mock trial competition.”³ Using this information, teams create plaintiff/prosecution and defense cases.⁴ They assign witness roles based on those offered in the case packet, create their examinations and statements, and compete against other schools in trial simulations. According to AMTA, in 2017-2018, over 5,300 students from approximately 600 teams competed in mock trial competitions.⁵ It is in this preparation phase that coaches impact the mock trial process; they will help competitors create case theories for subsequent trials, learn the rules of evidence, etc. Coaches do not compete in mock trial competitions, but they help train competitors during practices and scrimmages.

³ American Mock Trial Association, “History of AMTA,” accessed April 20, 2019, <http://www.collegemocktrial.org/about-amta/history-/>.

⁴ Every year, AMTA alternates between criminal and civil cases.

⁵ American Mock Trial Association, “History of AMTA.”

For many undergraduates interested in law school, mock trial is their first exposure to litigation, and, while simulated, the objections, examinations, and statements conducted in these competitions provide a realistic model of the trial process. When it began in the late 1900s, political science professors lauded mock trial as an exceptional tool for experienced-based learning. Some professors even argued the competitions caused an increase in litigation interest, because for many undergraduates, these simulations were students' first exposure to the trial process.⁶

B. Patterned Gender Bias

For the purposes of this thesis, the term “patterned gender bias” is used to describe specific preferences and expectations individuals have for people based on their gender.⁷

It is important to note that patterned gender bias is not necessarily the same as “sexism,” which refers to the often explicit and offensive prejudices and stereotypes people, generally men, have about women. Rather, patterned gender bias extends beyond sexism. In this thesis, patterned gender bias considers any factors, implicit or explicit, which could cause a judge to exhibit preferences for how competitors should conduct and present themselves on the basis of gender. This includes perceived gender norms and expectations.⁸

These norms can manifest themselves in many forms. For example, if a judge believes a female attorney should wear a skirt instead of a pantsuit, this would illustrate an example of a patterned gender preference a judge possesses. This judge could have this preference because they have observed patterned gender norms (i.e. that female attorneys in the conventional legal

⁶ John Vile and Thomas Dervort, “Revitalizing Undergraduate Programs Through Intercollegiate Mock Trial Competition,” *Political Science and Politics* 24, no. 4 (December 1994): 712–175.

⁷ For the purposes of this research, “gender bias” is defined as an abbreviated form of “patterned gender bias.”

⁸ See “Transmitting and Reinforcing Unconscious Bias” in Chapter 4.

profession wear skirts), thus causing them to believe this norm should be reflected by attorneys in college mock trial.

However, a judge who simply believes that a female attorney should wear a skirt does not meet the definition of patterned gender bias. In order to represent bias, the judge must *act* based on these preferences, implicitly or explicitly. An example of an explicit action could be telling a female attorney after a trial she should wear a skirt. An example of an implicit action could be a judge scoring a female attorney lower because she did not wear a skirt, even if the judge does not consciously recognize this is the reason they are evaluating the competitor more negatively.⁹

⁹ This represents an example of “unconscious bias” which is explored in Chapter 4.

Chapter 3. Methods

This thesis investigates whether mock trial coaches and competitors believe patterned gender bias exists in college mock trial. Additionally if coaches and competitors believe patterned gender bias is present, I wanted to know whether these expectations impact the competitive decisions made by mock trial programs, including if coaches and student leaders instruct female competitors to dress a certain way, or if they make roster decisions (e.g. deciding who should be an attorney or a certain witness) based, at least in part, on competitors' gender.

The primary research material used in this thesis is a series of semi-structured interviews of current mock trial competitors and coaches.¹⁰ To combat my lack of interview experience, I first completed the University of Vermont's human subjects' protocol for the qualitative research process. This helped me learn how to elicit important information from interview participants in a way which minimizes psychological distress.¹¹ I began the interview process by emailing every mock trial organization that hosted an invitational tournament in the 2018-2019 academic year (65 programs).¹² The American Mock Trial Association's website annually posts a list of

¹⁰ Interviewing coaches, competitors, and judges is also important because there is virtually no available data on mock trial competitions. When writing this thesis proposal, in addition to conducting interviews, I hoped to compare the scores of male and female attorneys at various mock trial tournaments during the 2017-2018 competitive season. This would have allowed me to evaluate whether there was gender-based discrimination in judges' formal, scored evaluations of competitors. However, while The American Mock Trial Association does publish overall team records from mock trial competitions, these data do not include individual competitor scores or ranks, nor are judges' comments included. As a result, I was unable to conduct this quantitative analysis. Interviews, however, provided an, although different, academically acceptable substitute. Interviewing mock trial participants allowed me to explore the impact perceived gender bias has on mock trial competitors and coaches; this helped me explore how program leadership reacts to patterned gender bias they believe they have experienced. Finally, conducting semi-structured interviews allowed me to gain information on the verbal comments judges have made to competitors, information I would not have gained by examining mock trial ballots.

¹¹ Discussing gender associations and biases could trigger memories of traumatic incidents for certain participants. In addition to ensuring participants were aware of resources they could consult if they experienced psychological distress, I learned how to ask interview questions which minimized the psychological stress a participant would experience. I also conducted a number of voluntary practice interviews with current members of UVM's mock trial program. These interviews helped me enhance my interviewing technique to obtain as much information as possible while asking questions in a psychologically safe manner.

¹² Invitational tournaments are weekend mock trial tournaments hosted by individual schools in preparation for the national competitions that are hosted by AMTA. Although these tournaments do not impact team rankings, they

invitational tournaments being hosted by college mock trial programs. These posts include a brief paragraph describing each tournament as well as a contact email address.¹³ This list was especially useful because it consisted of universities from across the country. This helped create a sample which represented programs from across the United States. In conducting this research, one variable I theorized could impact interview participants' perceptions of the role of gender in mock trial is where in the country programs competed. Judges in New England, for example, could have different expectations for how female competitors should dress and present themselves than judges in the South.

The first email I sent to programs was, by design, very general in nature; it simply articulated I was an undergraduate at the University of Vermont hoping to interview mock trial participants on a voluntary basis about their mock trial experiences. I wanted to avoid alerting interview subjects to the nature of my study, knowing that such knowledge might skew both respondent identities and the content of their responses. Asking general questions consequently prevented interview participants from being primed to the subject of gender in college mock trial. I asked these points of contact, if comfortable, to forward this email to the other current competitors and/or coaches of their respective programs for their consideration, writing that interested participants should call or email me to schedule an interview. At no point during these emails did I indicate I was interested in exploring the subject of gender association or bias in mock trial. I sent a total of 65 e-mails at this stage.

follow the same format as the AMTA-sponsored competitions that are held every spring. Teams host invitationals to offer practice tournaments in preparation for national competition.

¹³ American Mock Trial Association, "Invitational Tournaments," accessed April 20, 2019, <http://www.collegemocktrial.org/tournaments-/invitational/>.

If participants indicated they would be interested in volunteering to be interviewed, I then emailed them an IRB-approved information sheet further describing the interview process.¹⁴ Thirty potential participants responded at this preliminary stage.¹⁵ If participants were still interested in participating, we scheduled a time for a phone interview. Most interviews lasted between 40 minutes and one hour. Additional interview volunteers were solicited through snowball sampling. All told, I conducted 26 interviews, between November 21, 2018 and March 26, 2019, 18 with current mock trial competitors, and eight with current mock trial coaches. Thirteen of the current competitors interviewed were female, and five were male. Of the eight coaches I interviewed, two were female and six were male.

Snowball sampling is a sampling method in which researchers “initially select a few research participants and ask them if they know others who might meet the criteria of the research and who might be interested to participate.”¹⁶ According to Pranee Liamputtong in *Qualitative Research Methods*, snowball sampling can be especially useful in research populations whose “members are difficult to locate.”¹⁷ There is no centralized database of contact information for different mock trial programs, let alone individual coaches and competitors, that I could access. The only initial point of contact I had was the tournament listing described above. However, this list is not comprehensive. Consequently, beginning with this list and then using snowball sampling helped expand my participant population to programs who would otherwise not be included.

¹⁴ See Appendix B.

¹⁵ Eight participants indicated they were interested in being interviewed, but never responded after I emailed them the IRB-approved information sheet.

¹⁶ Pranee Liamputtong, *Qualitative Research Methods* (New York: Oxford University Press, 2009), 14.

¹⁷ Liamputtong, *Qualitative Research Methods*, 14.

All interviews were conducted over the phone, and they were semi-structured in nature, following a rough template of about thirty prepared questions.¹⁸ Interviews were not recorded, but I took typed notes during the interview; participants were aware of this.¹⁹ Each interview would begin with a series of background questions about participants' mock trial programs. I would then ask questions about the mock trial competition process, asking how programs taught their competitors to prepare for various aspects of competition, including how to address and read mock trial judges, dress for competition, and adapt to the variation present in the mock trial setting (See Chapter 5.). If a competitor began to discuss gender as a factor they considered when giving or receiving these instructions, I would move the interview in this direction, asking for examples of such instructions and why participants believed they were or were not necessary.

Qualitative interviews have been successfully included in a number of published senior honors theses from the University of Vermont. In 2014, UVM political science senior Alexander Jones interviewed seven attorneys as part of his research on the legal strategies of the marriage equality movement.²⁰ In 2016, UVM senior Michelle Sloss also relied on qualitative interviews for her research: Sloss interviewed “prominent environmental attorneys, professors of law, and activists in and around New Orleans” as part of her research on legal strategies for wetland

¹⁸ See Appendix C.

¹⁹ A number of academic articles based on qualitative interviews have reliably utilized typed or handwritten notes as opposed to recorded transcripts of interviews. See, e.g., Vicki Lens, “Confronting Government after Welfare Reform: Moralists, Reformers, and Narratives of (Ir) Responsibility at Administrative Fair Hearings,” *Law & Society Review* 43, no. 3 (2009): 563–92; Jennifer Carlson, “The Hidden Arm of the Law: Examining Administrative Justice in Gun Carry Licensing,” *Law & Society Review* 51, no. 2 (2017): 346–78; Issa Kohler-Hausmann, “Misdemeanor Justice: Control without Conviction,” *American Journal of Sociology* 119, no. 2 (September 1, 2013): 351–93, <https://doi.org/10.1086/674743>. “Rights Restoration and the Entanglement of US Criminal and Civil Law: A Study of New York’s ‘Certificates of Relief.’”

²⁰ Alexander Jones, “‘Dual Track Advocacy:’ Legal Strategies, Political Strategies and Their Intersection in the Marriage Equality Movement,” *University of Vermont*, May 13, 2014.

protection in Louisiana.²¹ Sloss's thesis also utilized snowball sampling as part of her qualitative interview process.²²

For research of this nature, interviews are preferable to other sources of qualitative information, including surveys and questionnaires, for a number of reasons. As Pranee Liamputtong explains in *Qualitative Research Methods*, semi-structured interviews are especially valuable for researching topics where limited research exists.²³ Most data from mock trial competitions are not stored, and few studies have been conducted on college mock trial. Additionally, unlike questionnaires or surveys, qualitative interviews provide an especially useful synthesis of structure and flexibility: because the interview flows more like a conversation than the standard question-and-answer format found on questionnaires, the clarifying questions that can be asked in interviews provide greater opportunities to explore participant responses in greater detail. Liamputtong states that although-specific follow-up questions can be asked, the conversational nature of qualitative interviews allows greater flexibility depending on the participant's experience and comfort.²⁴

It is also important to note the limitations of semi-structured interviews. According to Liamputtong, the greatest limiting factor of the interview process is the experience of the researcher. Without proper training and experience, it can be challenging to properly "elicit in-depth information from participants."²⁵

It is also important to note the limiting factor of the "interviewer effect," which is inherent in semi-structured interviews. The interviewer effect refers to the influence that the

²¹ Michelle Maguire Sloss, "Defending the Coast: An Analysis of Best Litigation Strategies for Protecting Louisiana's Wetlands," *University of Vermont*, 2016,15.

²² Sloss, "Defending the Coast," 15.

²³ Pranee Liamputtong, *Qualitative Research Methods*, (New York: Oxford University Press, 2009), 61.

²⁴ Pranee Liamputtong, *Qualitative Research Methods*, (New York: Oxford University Press, 2009), 61.

²⁵ Pranee Liamputtong, *Qualitative Research Methods*, (New York: Oxford University Press, 2009), 61.

interviewer can have on the responses provided by participants. From the type of questions asked by an interviewer to the interviewer's tone of voice, gender, and race, interviewers can impact responses provided by interview participants.²⁶

To minimize the impact of the interviewer effect, I attempted to ask open-ended questions to allow interview participants to respond freely. Additionally, to avoid priming participants to the subject of gender, this topic was not discussed in any communication prior to the interview. I began interviews by discussing the specifics of participants' mock trial programs, not the role of gender in mock trial. Also, as discussed above, I would move into the subject of gender as it was discussed at the participant's prompting, not my own. I did, however, disclose to participants at the end of interviews that I was researching the role of gender bias in mock trial. Participants were, at this point, offered the opportunity to strike any and/or all comments they had made from the publication and presentation of this research.

To effectively analyze these interviews, this research adopts a modified grounded theory approach. Grounded theory refers to the identification of patterns and generation of conclusions and theories from a set of qualitative information.²⁷ This method of analysis is especially useful when little existing data on a research subject currently exists, as is the case this research.²⁸

The best grounded theory research utilizes text-based coding of transcribed interviews, a practice used by leading sociologists, anthropologists, and other ethnographic and social science

²⁶ JJ Hox, "Hierarchical Regression Models for Interviewer and Respondent Effects," *Sociological Methods and Research* 22, no. 3 (February 1, 1994): 300–318.

²⁷ Barney G. Glaser and Anselm L. Strauss, *The Discovery of Grounded Theory: Strategies for Qualitative Research*, 4. paperback printing (New Brunswick: Aldine, 2009).

²⁸ Grounded theory has been used by scholars before. For example, in their research on the stigmas associated with criminal records, Simone Ispa-Landa of Northwestern University and Charles Loeffler of the University of Pennsylvania utilized grounded theory analysis of qualitative interviews with 53 expungement-seekers to come to their conclusions. See Simone Ispa-Landa and Charles E. Loeffler, "Indefinite Punishment and the Criminal Record: Stigma Reports among Expungement-Seekers in Illinois," *Criminology* 54, no. 3 (August 2016): 387–412, <https://doi.org/10.1111/1745-9125.12108>. 394.

researchers. Because my interviews were not recorded, they could not be effectively coded in the same manner. However, I emulated the core methods of this approach. Although I could not examine interview transcripts, I was able to take detailed notes during each interview that I could later review and compare. I also asked certain similar questions in each interview. This allowed me to compare these responses to search for the same patterns and themes in the way that grounded-theory scholars with access to recorded and coded interviews do.

To help ensure qualitative information is analyzed properly, grounded theory involves a continuous process of re-evaluating and updating initial hypotheses. Researchers begin by formulating hypothesis about the nature of the data they collect. After conducting semi-structured interviews, as they code their content, they challenge, re-examine, and update these initial hypotheses, searching for patterns and variables which can help explain similarities and differences between expected and actual findings.

While I could not code interview transcripts, I still utilized this same process of challenging and updating initial hypotheses. I initially hypothesized that current mock trial competitors and coaches believe that patterned gender bias exists in college mock trial, and that as a result, they instruct female competitors to conform to judges' gendered preferences by dressing and acting in a manner consistent with these preferences. As I reviewed my detailed notes, I updated these hypotheses, finding that although interview participants do believe mock trial judges exhibit patterned gender preferences which can negatively impact the scores and rankings of female competitors, most programs' leadership do not explicitly instruct female competitors to conform to these preferences.

Mock trial competitors and coaches are especially attractive interview subjects for this research because they offer an important bridge between collegiate mock trial and the

conventional legal profession. Many mock trial competitors are undergraduate students interested in attending law school and becoming practicing attorneys. Additionally, many coaches are not only former mock trial competitors, they are also often current law school students or practicing attorneys. As described in Chapter 4, substantial scholarly research documents the presence of implicit gender associations in the conventional legal setting. Exploring these implications allows this research to explore connections between college mock trial and the field of law, as discussed in Chapter 8.

Chapter 4. Literature Review

As discussed in Chapter 2, patterned gender bias can manifest itself as a consequence of implicitly and explicitly perceived norms of how men and women should behave. This chapter begins by exploring available research on how human beings make subconscious associations on the basis of gender, associations which can cause us to possess unconscious preferences. Studies analyzing the transmission of these associations and preferences are then discussed, followed by research on the presence of patterned gender bias in the conventional legal profession and college mock trial setting.

Implicit Associations and Gender

A 2004 study by Fritz Strack and Roland Deutsch of the University of Würzburg created a “double-processed model” to analyze the neurological systems which guide our actions, behaviors, and assumptions.²⁹ In the “reflective system,” individuals make decisions by consciously processing information and ideas. This reasoning is deliberate and explicit. In the “impulsive system,” however, decisions are made through unconscious conceptual links.³⁰ These links are not deliberately, consciously made, and they are known as “implicit associations.”³¹ Because these associations are not deliberately recognized and processed, it is possible to make unconscious associations, and ultimately, decisions, based on these implicit assumptions. These implicit associations are often linked to gender, and they can result in biased outcomes.³²

²⁹ Fritz Strack and Ronald Deusch, “Reflective and Impulsive Determinants of Social Behavior,” *Personality and Social Psychology Review* 8, no. 3 (n.d.): 220–47.

³⁰ Fritz and Deusch, 222.

³¹ Fritz and Deutsch, 223.

³² Substantial research on the impact of implicit associations has been conducted by “Project Implicit.” Founded by Tony Greenwald of the University of Washington, Mahzarin Banaji of Harvard University, and Brian Nosek of the University of Virginia, the organization works to analyze the impact of implicit associations on American culture, politics, and research. This organization has created the “Implicit Association Test,” which tests the presence of implicit associations between numerous demographic and cultural factors. For example, one test utilizes a series of

Perceived cultural norms have influenced implicit associations regarding gender. These associations, when applied in the career setting, often result in gender bias in social settings including the workplace. An August 2017 report completed by the International Labour Organization (ILO) found that implicit gender associations negatively impact women's careers. This creates an "unconscious bias" in the employment setting. According to the ILO:

"Unconscious gender bias is defined as unintentional and automatic mental associations based on gender, stemming from traditions, norms, values, culture and/or experience. Automatic associations feed into decision-making, enabling a quick assessment of an individual according to gender and gender stereotypes."³³

A 2007 study conducted by Shelly Correll, Stephen Benard, and In Paik of Cornell University examined the cultural norms and implicit associations between motherhood and employment. In the study, participants were shown job application materials for equally-qualified candidates of the same gender. Although applicants' genders and qualifications were the same, their parental statuses differed. Study participants were instructed to make evaluations including whether a candidate should be hired, and if so, how much he or she should be paid. The authors found that in the study, participants "penalized" applicants who were labeled as mothers in a number of ways, even though, again, with the exception of their parental status, their qualifications and demographics were identical to other applicants. Mothers were perceived as less-qualified applicants, and when hired, they were often offered a lower starting salary than their female, non-mother colleagues. In contrast, equally-qualified male candidates who were designated as fathers received no penalties compared to non-father male applicants.³⁴ The

questions to illustrate a "relative link between family and females and between career and males." Further information can be found at <https://implicit.harvard.edu/implicit/index.jsp>.

³³ International Labour Organization, "Breaking barriers: Unconscious gender bias in the workplace," ACT/EMP: August 2017, 3, https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---act_emp/documents/publication/wcms_601276.pdf.

³⁴ Shelley J. Correll, Stephen Benard, and In Paik, "Getting a Job: Is There a Motherhood Penalty?," *American Journal of Sociology* 112, no. 5 (March 2007): 1297–1339, <https://doi.org/10.1086/511799>.

authors argued that these different evaluations were not made because the participants consciously believed that mothers were bad workers; rather, the study illustrates that individuals possess *implicit* preferences which can influence the decisions they made. In this case, study participants implicitly associated motherhood with inferior performance and qualifications, consequently evaluating them more harshly.

Transmitting and Reinforcing Unconscious Bias

How are these unconscious, impulsive biases transmitted and reinforced? It is true that progress has been made to mitigate forms of gender bias and stereotypes; female education and participation in the workplace, for example, has increased significantly. Yet although certain progress has been made, implicit biases continue to place women at a disadvantage; they are still paid less than men, on average, and they receive fewer leadership and career opportunities.³⁵

It is especially important to note the importance of pre-existing structures of inequality when considering the perpetuation and transmission of unconscious gender bias. As articulated by Strack and Deutsch, implicit links between gender and inequality are not consciously made – again, the participants in the Cornell University employment study did not consciously believe mothers were less-qualified applicants, but societal norms and expectations had created this unconscious bias.³⁶ These norms can be found in all aspects of life, starting with childhood.

In a 2018 working paper, Alex Eble and Feng Hu outlined the impact of “intergenerational transmission of gender bias” between parents and children, specifically studying the impact of this link on children’s performance in mathematics. Although the family setting differs significantly from that of college mock trial, this study still offers powerful

³⁵ International Labour Organization, “Breaking barriers: Unconscious gender bias in the workplace.”

³⁶ Corell, Benard, and Paik, “Getting a Job: Is There a Motherhood Penalty?,” 1298.

insights into the transmission of gender bias. In this study, the authors compared boys' and girls' math test scores with their parents' beliefs on boys' and girls' ability to solve math problems. The authors found that boys whose parents believed boys were better at math performed better on the math tests than parents who did not believe boys were better at math. Additionally, girls whose parents believed boys were better at math performed worse than girls whose parents did not hold this belief.³⁷ In other words, perceptions created by gender bias perpetuated a performance gap between male and female students.

The authors also outlined two primary ways this bias is transmitted across generations: Peer belief, and parent-to-child relationships. The greater the exposure of a student to people who believe boys are better at math than girls, the greater the likelihood the student will also adopt this belief. Additionally, the personal beliefs of a student's parents were more influential than the beliefs of their peers.³⁸ In this manner, gendered norms and biases can perpetuate themselves across generations. If individuals are exposed to biased beliefs, especially by their parents, they are more likely to subsequently adopt those beliefs. This creates a vicious cycle of implicit and explicit bias, handed-down from generation to generation.

Studies have documented that patterned gender bias and norms continue to exist in the workplace. For example, the ILO reported that men are afforded significant advantages over women in leadership development opportunities based on existing corporate structures. Leadership development is a principal prerequisite to promotion in the corporate setting, and a critical component of leadership development is regular interaction between an employee and senior leaders within a company. However, corporate norms suggest that men are afforded

³⁷ Alex Eble and Feng Hu, "The Sins of the Parents: Persistence of Gender Bias across Generations and the Gender Gap in Math Performance," n.d., 39, <https://cgeg.sipa.columbia.edu/sites/default/files/cgeg/WP53.pdf>.

³⁸ Eble and Hu, "The Sins of the Parents".

greater access to these senior leaders, and, consequently, greater assistance in leadership development. According to the ILO, 51 percent of women reported they were able to interact with a senior leader at least once per week. Conversely, 62 percent of men reported they enjoyed this level of access.³⁹ With this unequal level of access, men are afforded more opportunities for leadership development, leading to a greater proportion of men in leadership positions. With the influence of unconscious bias continuing to reinforce these norms, and with fewer women with the power and ability to change them, this unequal structure continues to reinforce itself.

The norms which perpetuate patterned gender bias are also present in the legal setting. As described by legal scholar Judith Resnik, one can see the perpetuation of gender bias in the practice of law by examining the “history and the jurisprudence of the federal courts.” Until recent years, legal documents failed to describe women at all, let alone the problems and challenges female litigants face when navigating a courtroom setting historically dominated by men. Traditional legal education further illustrated the male-oriented nature of the profession; law school textbooks rarely described female attorneys or litigants; instead, they “assumed the absence of women,” reinforcing this norm when law school graduates entered the profession themselves.⁴⁰ Until the mid-to-late 1900s, it was assumed women did not belong in the legal profession. Women were not supposed to be attorneys; certainly not partners.

Like the rest of the workplace, an imbalanced male-female power divide, combined with historical assumptions and norms associated with male dominance, continues to reinforce gender bias in the legal profession. As described in the following section, these biases have not only perpetuated themselves, they have also been manipulated at times by legal actors.

³⁹ ILO, “Breaking Barriers,” 5.

⁴⁰ Judith Resnik, “Gender Bias: From Classes to Courts,” *Stanford Law Review* 45, no. 6 (1993): 2195–2209, <https://doi.org/10.2307/1229145>.

Patterned Gender Bias in the Legal Profession

Implicit bias has been well-documented within the legal profession. From an article of clothing to someone's tone of voice to the color of their skin, people often make instant, subconscious interpretations of people they interact with based on norms and stereotypes. Processed through one's impulsive system, these stereotypes can be extremely implicit.⁴¹ These biases have also been documented in the field of law, both in and outside of the courtroom.

Much research into implicit bias's effect on legal institutions has focused on race. A December 2005 study found that jurors exhibit small, yet significant racial bias when making returning verdicts, bias that has been found, depending on the severity of the crime committed, to impact verdicts and sentencing in the courtroom.⁴² In 2012, Professors Robert J. Smith and Justin D. Levinson argued that implicit bias "likely affects police, judicial, and juror decision-making."⁴³ Smith and Levinson stated that implicit associations and bias impact multiple aspects of the judicial system: This subconscious bias contributes to decisions including if an individual is charged, and if so, how serious the charges are.⁴⁴ Additionally, Smith and Levinson found that prosecutors will undertake deliberate legal strategies to manipulate racial bias; for example, some "egalitarian-minded prosecutors" have been found to "disproportionately strike black

⁴¹ For example, a 2005 study discovered that exposure to a genre of music can prime implicit bias-based stereotypes. In the study, the authors found that people who listened to rap music were more likely to apply stereotypes against black men and women when describing a scenario, they were presented with than people who had instead listened to popular music. See Laurie Rudman and Matthew Lee, "Implicit and Explicit Consequences of Exposure to Violent and Misogynous Rap Music," *Group Processes & Intergroup Relations* 5, no. 2 (2002): 133–50.

⁴² Tara Mitchell, "Racial Bias in Mock Juror Decision-Making: A Meta-Analytic Review of Defendant Treatment," *Law and Human Behavior* 29, no. 6 (December 2005): 621–37.

⁴³ Robert Smith and Justin Levinson, "Symposium on Racial Bias and the Criminal Justice System I: The Impact of Implicit Racial Bias on the Exercise of Prosecutorial Discretion," *The Seattle Law Review*, 35, no. 75 (2012).

Following this study, the authors have since published a book on this topic. For additional information, see Robert Smith and Justin Levinson, *Implicit Racial Bias Across the Law* (New York: Cambridge University Press, 2012).

⁴⁴ Smith and Levinson, "Symposium on Racial Bias."

jurors.”⁴⁵ Prosecutors also, according to Smith and Levinson, have deliberately phrased certain closing arguments to take advantage of racial bias. For example, in the case *Darden v. Wainwright*, the prosecution referred to a minority defendant as an “animal” that “shouldn’t be let out of his cell unless he has a leash on him and a prison guard on the other end of that leash.”⁴⁶

Patterned Gender Bias in the Legal Profession

Patterned gender bias continues to exist within the legal profession. At the end of the 1990s, a number of circuit and state supreme courts instructed task forces to investigate the prevalence of gender bias against female attorneys and judges. These studies demonstrated that discrepancies do exist; the Ninth Circuit Court of Appeals, for example, found significant discrimination occurs against female attorneys and judges in career placement and advancement opportunities. The American Bar Association, meanwhile, found that in Illinois, both male and female attorneys and judges acknowledge that gender bias exists in the courtroom.⁴⁷ As one male attorney commented in a survey created by the University of Illinois at Chicago in partnership with the American Bar Association, “female attorneys are treated by both litigants and judges as a step below male attorneys. They are not allowed on the ‘inner circle.’”⁴⁸

More recent research illustrates that gender bias continues to exist within the legal profession. In 2016, the Florida Bar Association created a special committee to administer a “2016 Gender Equality in the Legal Profession Survey.”⁴⁹ The survey’s results illustrated evidence of unequal treatment in the legal profession between male and female attorneys. For

⁴⁵ Smith and Levinson, “Symposium on Racial Bias.”

⁴⁶ *Darden v. Wainwright*, No. 477 U.S. 168, 180 n.11 (1986).

⁴⁷ Deborah Hensler, “Studying Gender Bias in the Courts: Stories and Statistics,” *Stanford Law Review* 45, no. 6 (July 1993): 2187–93.

⁴⁸ Stephanie Riger and Pennie Foster-Fishman, “Gender Bias in Courtroom Dynamics,” *Law and Human Behavior* 19, no. 5 (October 1995), 471.

⁴⁹ Mike J Garcia, “Results of the 2016 Gender Equality in the Legal Profession Survey,” n.d., 43.

example, 29 percent of female lawyers surveyed commented that they had been addressed through informal titles like “honey” by other attorneys. Less than one percent of male respondents reported experiencing the same treatment. Additionally, 19 percent of female respondents reported that during proceedings, they were consistently interrupted or cut off because of their gender. Just six percent of male respondents agreed.⁵⁰

This survey also illustrates differences regarding perceptions of gender bias between male and female attorneys. In the survey, 54 percent of female respondents reported that they believe female lawyers have to work harder than male lawyers to achieve the same results; only 12 percent of male respondents agreed with this assessment. An additional 47 percent of female attorneys surveyed stated they receive less compensation than male attorneys for the same work, whereas just six percent of male respondents thought this was true.⁵¹

Gender bias has also been manipulated in the conventional legal setting. For example, an article written by a female attorney reported that in certain scenarios, when hiring an expert witness, attorneys should consider the witness’s gender. Although current research is not entirely conclusive, it suggests that male experts are viewed as more credible than female experts in subject areas implicitly associated with men (i.e. weapons technology). Neither expert, however, appears to be viewed as more credible if the subject matter is implicitly associated with women. Additionally, female experts’ credibility, unlike male experts’, often depends more than if witnesses is experienced, possesses the proper educational background, etc.; it also depends on if the female expert is viewed as “relatable.”⁵² In describing this trait, the author argued that, “the

⁵⁰ Garcia, "Results of the 2016 Gender Equality in the Legal Profession Survey," 44.

⁵¹ Garcia, "Results of the 2016 Gender Equality in the Legal Profession Survey," 5.

⁵² Nicole D. Galli and Marta L. Villarraga, “Does Your Expert’s Gender Matter? Explicit and Implicit Bias in the Courtroom,” *Woman Advocate* 22, no. 4 (Summer 2017): 13–17, http://link.galegroup.com.ezproxy.uvm.edu/apps/doc/A507825296/LT?u=vol_b92b&sid=LT&xid=5c080f6f.

extent to which an expert is perceived by the fact finder as relatable – appears to be especially important for women experts as compared to men.”⁵³ This implies that in order to be as compelling as possible to a jury, female experts need to consider factors independent of their academic and professional expertise. Men do not need to come across as relatable – they simply need to appear academically and professionally qualified.

Accounts of Patterned Gender Bias in College Mock Trial

Some mock trial participants have alleged that gender bias exists in mock trial competition. For example, many mock trial competitors and coaches are active in an online Facebook group called “Mock Trial Confessions.” In this platform, individuals can anonymously comment on various aspects of their mock trial experiences throughout the competitive season. Through this platform, gender bias against female attorneys has often been reported. On April 19th, 2018, for example, a mock trial participant commented on the difference between comments made to male and female competitors at a recent tournament:

“The behavior of quite a few judges at the Central Islip ORCs this past weekend was concerning. Mock trial is, at its core, a very subjective activity. However, for countless judges to make comments about the attire of female attorneys and witnesses and to berate and insult mockers for performing in a style slightly different from their own goes against the spirit and diversity of AMTA. While professional attire is an important aspect of mock trial, it would be nice to have judges that give female mockers the same level and depth of feedback that they give to male mockers.”⁵⁴

Certain mock trial participants have even provided anecdotes of their schools’ programs taking deliberate action to conform to judges’ gendered preferences for how female competitors

⁵³ Galli and Villarraga, “Does Your Expert’s Gender Matter?”

⁵⁴ Mock Trial Confessions, “#16905,” Facebook, April 19, 2018, 2:21 p.m., <https://www.facebook.com/Mock-Trial-Confessions-490521017721224/>.

should dress and present themselves during competition. Lily Foss, a former mock trial competitor at Scripps College, vividly recalls the “courtroom dress” talk a student leader in her program gave before Foss’s first competition:

- “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.”⁵⁵

Foss’s anecdote demonstrates that her university has specifically instructed female competitors to dress in a manner which conforms to judges’ preferences. However, few studies have been conducted on the subject of gender bias in relation to mock trial competition.

In a 2011 study, Lynnette Noblett, Sara Zeigler, and Miranda Westbrook analyzed mock trial ballots in an attempt to determine if male versus female judges evaluate mock trial competitors differently. Specifically, the authors attempted to determine if judges of different genders evaluate competitors differently because of a competitor’s gender.⁵⁶ This study, however, was only concerned with how a judge’s gender impacts how they evaluate mock trial competitors. Unlike this thesis, the 2011 study is not focused on the perceived impact of these biases on female competitors, nor does it explore if mock trial programs’ coaches and student leadership take actions to conform to judges’ gendered expectations.

⁵⁵ Lily M Foss, “Mocking Equality: Reproduction of Gender Hierarchy In Collegiate Mock Trial,” 2013, 49.

⁵⁶ Lynnette S. Noblitt, Sara L. Zeigler, and Miranda N. Westbrook, “Bias on the Bench: Sex, Judges, and Mock Trial Simulations,” *Feminist Teacher* 21, no. 2 (2011): 124–38, <https://doi.org/10.5406/femteacher.21.2.0124>, 127.

Additionally, while the study did find evidence of gender bias through means including increased judges' comments on aggression against females, it examined ballots provided voluntarily by just four college mock trial programs.⁵⁷

It is important to note the 2011 study argued college mock trial can be used as an experimental framework to analyze trends in the professional legal setting. This illustrates that mock trial and the professional legal setting share a number of similarities, enough for the authors to state that college mock trial creates “an environment that mimics the one in which female attorneys will operate” once they are future attorneys.⁵⁸

A 2010 study found that by the time they have entered law school, students have already become predisposed to gender bias. Specifically, the study found that law school students implicitly associate men with attorneys and women with paralegals.⁵⁹ This research illustrates that gender bias against female litigants is reinforced before they enter the legal profession. It highlights the importance of investigating the sources of gender bias within the legal profession. While in some instances, these biases may manifest and perpetuate themselves due to the norms and actions which occur in and outside of the courtroom, in other instances, this study illustrates people may be predisposed to these biases before entering the field of law.

⁵⁷Noblitt, Zeigler, and Westbrook, “Bias on the Bench: Sex, Judges, and Mock Trial Simulations,” 130.

⁵⁸Noblitt, Zeigler, and Westbrook, “Bias on the Bench: Sex, Judges, and Mock Trial Simulations,” 127.

⁵⁹Justin Levinson and Danielle Young, “Implicit Gender Bias in the Legal Profession: An Empirical Study,” *Duke Journal of Gender Law and Policy* 18 (2010): 1–33.

Chapter 5. Mock Trial Judges and Patterned Gender Bias – Dress

The following two chapters describe mock trial competitors' and coaches' perceptions of whether or not mock trial judges exhibit patterned gender bias. This chapter specifically addresses comments judges have made towards female competitors based on their attire. It also briefly explores whether interview participants believe that judges who exhibited gender-based preferences evaluate female competitors based on these perceptions.

This chapter begins by briefly describing the binary nature of gender presentation in college mock trial. This is followed by a section describing general variability that exists in in the mock trial process. This variability is then specifically considered on the basis of attire, describing interview participants' perceptions of the importance of dressing properly for college mock trial competition. I then outline comments judges have made to female competitors regarding how they dress, comments that are usually not made to male competitors. Finally, I explore whether participants believe these comments and perceptions they have reported impact how female competitors are evaluated by mock trial judges.

Gender Presentation in College Mock Trial

Collegiate mock trial adheres to binary gender norms. Although the American Mock Trial Association works to create gender neutral names (the plaintiff party representative's name in this past year's case, for example, was Alex Grace), these witnesses are still designated along male/female gender divides. For example, although teams can decide the gender of the witnesses they are calling during a Captains' Meeting which occurs before each trial, the Captains'

Meeting Form they subsequently complete lists only male/female options for witnesses; no other gender options are provided.⁶⁰

The following chapters will consequently describe competitors with strictly male/female distinctions. I do so because this will more accurately represent how competitors must present themselves for competition. I did speak with one mock trial competitor from a New England liberal arts college who identified themselves with they/them pronouns. However, this competitor reported they “presented [themselves] as female” because of the binary nature of college mock trial. Consequently, describing competitors along male/female distinctions more accurately represents the manner in which these competitors present themselves to judges, allowing for more accurate conclusions on how patterned gender bias influences judges’ perceptions in the mock trial courtroom.

General Variability in Mock Trial Program Structures

It is important to briefly note that the mock trial competitors and coaches I interviewed come from a variety of different programs with different practices and structures. Although each program navigates the same national tournament process in the spring semester,⁶¹ the processes by which programs prepare for competition vary significantly. Some mock trial competitors receive college credit for competing. Mock trial, for these students, functions similarly to a college class in terms of workload, and competitions are often used as examinations. For other

⁶⁰ American Mock Trial Association, “Captains Meeting Form,” Accessed March 23, 2019, <http://www.collegemocktrial.org/2.%20Captains%20Form%2022419.pdf>.

⁶¹ The national mock trial competition is centered around three stages of national competition: Regionals, the Opening Round of Championship Series (ORCS), and the National Championship Tournament (NCT). Every school which pays a registration fee is assigned to compete at a regional tournament in the month of February. From each regional, the top six to eight teams qualify for the next round of competition, ORCS. These tournaments occur during two weekends in the month of March. From here, the top five teams at each ORCS qualify for the National Championship Tournament, which occurs every April.

programs, mock trial is a college club or organization where students compete simply for experience and for fun, receiving no college credit for their efforts.

The leadership structure of these programs is often different as well. Although not separated along strict credit/no credit divides, there are two general types of mock trial programs: coached and student-run. Like club sports programs, coached programs are run by one or more coaches, who are generally practicing attorneys, professors and/or former mock trial competitors. These individuals generally make decisions including which tournaments teams attend, which roles students are offered, etc. Conversely, in student-run programs, these decisions are made by the students themselves, often by elected officers like a program's president or team captain.

Many competitors I interviewed said they came from hybrid programs of these two systems. While these programs are run by a coach, program officers and team captains work with coaches to make decisions including role selections. In some programs, if there is disagreement, the coach has the final say, while in other programs, the students had the ultimate authority to make these types of decisions.

These differences in program structures highlight the variability that is inherent in college mock trial. From how teams prepare to the tournaments they are able to attend, a school's unique program structure can impact how students compete in and understand the mock trial process. Additionally, the leadership structure of a program can impact the preparations it undertakes to prepare for competition. When considering the impact of gender, this is especially important. For example, an older mock trial coach may not feel comfortable discussing the attire of a female college student, while a student competitor may feel more at-ease with this type of a discussion. Furthermore, a mock trial coach who is also a practicing attorney may better understand the presence of patterned gender bias in the legal profession than an undergraduate student leader.

These factors could influence if programs explicitly discuss the role of gender in college mock trial and if, as a result, they undertake actions to conform to judges' gendered preferences.

General Variability in Mock Trial Competition

Independent of questions about implicit association and bias, current mock trial competitors and coaches universally agree that mock trial is a subjective activity which contains a large degree of variability. One of the first questions I asked interview participants is what sort of instructions they give or receive that are not specific to the legal aspects of mock trial.⁶² In other words, what do competitors prepare for besides case theory, and learning the rules of evidence/case law? Each of the 18 competitors and eight coaches I interviewed said they prepare for competition factors that change from trial to trial. For example, one student described cross-examinations and witness selection as a key component of trial variability. In mock trial, while each side presents a total of three witnesses during their respective case-and-chiefs, they have a total of approximately six witnesses they can choose from. This means that competitors do not know until a few minutes before a trial which witnesses they will be competing against. This forces mock trial competitors, especially mock trial attorneys, to react to the variation they will inevitably experience in competition. Variation is especially present when considering judges, whose ideas and preferences form a critical component of the competitive mock trial process.

⁶² In this context, "legal" instructions refer to the case-theory creation aspect of college mock trial. It involves students learning the rules of evidence and case law that is applied in mock trial, creating direct and cross examinations, etc.

Judge Variation – From Round to Round

Every single competitor I interviewed told me they experienced judge variability during mock trial competition. In this context, judge variability refers to the differing expectations and preferences different mock trial judges have. These preferences can be exhibited towards both attorneys and witness. One female attorney from a northeast university highlighted the importance of following specific instructions certain judges give. For example, judges often have different preferences about whether attorneys should ask permission to approach the bench during a trial. As this student noted, “if you’re going to ask the judge about their preferences, you *have* to follow their instructions afterwards.” Judge preferences towards attorney behavior can also be less explicit. For example, this same competitor told me that some judges want attorneys to object at every possible moment; other judges believe attorneys should rarely object. Competitors, this student argued, often need to learn to identify these judge preferences through judges’ tone, facial expressions, and previous rulings. The team that identifies these preferences first can have a substantial advantage in a competition. For this reason, when I asked students what they thought the most important skill in mock trial was, “learning to read the judge” was a very common answer. As one female competitor from the Northeast stated, there are “two or three categories of judges” you have to learn to read when making objections. First, there are “judges who don’t follow most of the aspects of mock trial.” These judges make their own decisions on what evidence should or shouldn’t be entered, regardless of the rules specific to mock trial or if an attorney has made a compelling argument. For these judges, it is important to “follow their lead;” object if you believe the judge will agree with you – otherwise, don’t. According to this student, the second kind of judge will “let you talk;” they want attorneys to object and justify their objections, but the arguments must be strategic and well-thought-out.

With these judges, it is important to strategically object and defend yourself. The third type of judge is “over-the-top;” they want to hear “every single argument possible;” as a result, you should object whenever you possibly can.

This student further commented that she had to learn how to “read” which type of judge she was facing in a trial and react accordingly. If she had a “type one” judge; then she wouldn’t make an objection she knew was legally correct if the judge wouldn’t agree. With a “type three” judge; she’d do the opposite, making an objection she knew she should lose based on her legal argument, but one she knew that this type of judge would support as long as she “assertively advocated” for herself.

A female attorney from a college in the Southeast agreed. She said it was vital attorneys and witnesses in mock trial “learn to read the judge;” you have to “act more or less dramatic depending on the judge.” A competitor from a northeastern college bluntly outlined the importance of how judges viewed competitors: “In mock trial, you have to make sure the judges *like you.*”

Each of the eight coaches I interviewed also agreed that it was important to understand how judges’ preferences vary. After asking a female coach from the Midwest how her team prepares their case theory for competition, I asked what else she prioritized teaching to her students. “Learning to read the judge,” she quickly replied. “They all want different things.” A male coach, also from the Midwest, agreed: “Reading the judge is *very important,*” he stated, emphasizing the final two words, “and it’s hard. It’s easy to see what certain judges specifically want when you’re sitting in the audience or talking about it in practice. It’s hard to do during a trial.” “I work a lot with witness on their character,” commented another coach. “It’ll hit or miss

depending on the judge, so they have to learn to read them and respond accordingly.” “Answer the specific question the judge asked, not the one the judge in the last trial asked,” he continued.

Another coach responded that because judges’ preferences vary, besides teaching competitors to read the judge, it’s also important to control for factors which will always be present in competition, such as portraying yourself in a positive manner to a judge. “You need to be likable,” she commented. “Judges always want to like you.”

Three coaches further discussed this unpredictability by emphasizing the importance of adapting: As a coach from the South remarked, “our big thing this year was focusing on the skill of adapting. It didn’t matter if round one didn’t go well or something mid-round didn’t go as we planned, it’s important in mock trial to learn to bounce back.” A male coach from the Midwest reinforced this sentiment. “Don’t make a face if you don’t win an objection,” he said. “Keeping a poker face in competition is huge,” agreed a coach from the Northeast. “Act like things are going your way.”

Judge preference variation also extends to witnesses as well. Many participants commented that judges’ opinions of witness characters can vary significantly from trial-to-trial. One first-year witness from a midwest university noted that during his first tournament of the year, judges rewarded witnesses who played more dramatic characters with higher scores. In contrast, in the second tournament this student attended, witnesses who played more dramatic characters received lower scores from judges – these judges preferred “realistic” characters over dramatic ones. “Some judges like witnesses with costumes,” stated a sophomore witness. “Others don’t.” Another student from the Northeast said her program is explicitly aware of judges’ varying preferences towards witnesses. “If we call a witness we know will be

controversial, we have to be able to adapt in the room,” she said. “We *have* to make sure the team is aware of the different views different judges will have,” she emphatically stated.

Two coaches agreed. “Mock trial standards are more universal for attorneys than witnesses,” said a coach in the Midwest. “Some judges like character. Some judges don’t really care about the witnesses at all.” “Some judges like characters and find experts boring,” continued a male coach from the Midwest. Others prefer witnesses to be “over-the-top.”

While not specific to gender, these decisions highlight the influence of judge variability on mock trial preparation and competition. Teams are aware that different judges possess different preferences, and they work to identify these preferences in a way which maximizes their ability to score well during competition.

The Importance of Dress in College Mock Trial:

Before interviewing mock trial students and coaches, I hypothesized that both groups would believe courtroom attire could impact mock trial performance. I also hypothesized interview participants would believe that judges’ perceptions of what is appropriate mock trial attire could be influenced by the competitor’s gender. Consequently, female competitors who failed to conform to these preferences could be scored or ranked lower than male competitors who were not subjected to these expectations.

Every single competitor and coach I interviewed noted dress is an important component of college mock trial. This finding was expected; mock trial is a competitive activity that mimics the proceedings of a conventional trial, and members of the legal profession are expected to enter the courtroom in professional attire. For this reason, it is unsurprising that mock trial coaches and competitors stressed the need for students to wear professional attire when competing.

I found, however, that the gender of a competitor significantly impacts whether or not they are likely to be evaluated based on their attire. Specifically, interview subjects said that the way female competitors dress impacts judges' evaluations of their performance much more than the way male competitors dress.

Standard Professional Dress in College Mock Trial is less Uniform for Female Competitors

According to a senior female competitor from the Northeast, there is a level of variability surrounding how female attorneys can dress for mock trial that men do not have to concern themselves with. "Men," this student asserted, "can wear a suit and be fine;" judges assume and expect a male attorney to wear a suit. The same is not true for female competitors; while they are expected to dress professionally, there are a number of different types of outfits these competitors can wear that could still be considered professional attire, depending on the judge. This female competitor, for example, commented she would "bring a skirt suit and a dress" to each tournament.

Eight students specifically commented on the different ways female competitors can dress for mock trial. A female competitor from a New England university stated that attorneys in mock trial must dress "business formal. Men wear a suit, and women wear a skirt or pantsuit." Another student from the Midwest commented that female attorneys "have to wear skirts or dresses." She added, "if you're an attorney, you have to wear a skirt." A female competitor from a different university in the Midwest stated that "girls can wear pants or skirts" in competition. "Men wear suits," she added. "I've worn pantsuits and 'skirt-suits'" continued a female competitor from a college in the South. As a male student from a northeastern program added, "I think it's very easy for men. I just wear a suit. It's harder for women because it's not as laid-out."

“It’s more standard for men,” said a male competitor from the Southeast. “We don’t, for example, have to decide if we want to wear heels or not.” Another male competitor added, “Men wear suits, shirts, and ties. Our dress conversations are pretty generalized, but women have a bit more flexibility. They can wear a pantsuit or a skirt.” “We just tell everyone on the team to wear business attire,” said a male team captain from New England. “But I think the variability for women’s attire can open the door for gendered opinions.”

Two coaches also explicitly discussed the different ways female competitors can dress for mock trial.⁶³ A male coach from the Midwest stated that “female attorneys can wear skirts or pantsuits, but I don’t force them to wear one over another.” “There’s less variability for how men can dress compared to women,” continued a male coach from the South. “But our program has no ‘women must wear skirts’ policy,” he added.

Judges Possess Specific Preferences for How Female Competitors Should Dress

Interview participants explained that different judges have different expectations for how female competitors should dress for mock trial competition. These different preferences are illustrated by specific judge comments, oral or written, that participants recalled during their interviews. Of the 18 students interviewed, 11 provided me with examples of comments judges have made regarding female competitors’ attire. Nine students said judges made comments about female attorneys and skirts. Four competitors said judges told them or another competitor to wear a skirt instead of a pantsuit. Five competitors reported judges commented, to them, another competitor, or both, that a female competitor’s skirt was “too short.”

⁶³ Other coaches did discuss that judges can have specific opinions of how female competitors should dress. These are discussed in the following section.

Of the eight interviewed coaches, five reported comments made by judges relating to female competitors and their attire. Of these five, one specifically reported judges commented that a female attorney's skirt was too short, one stated a judge told a female competitor to wear heels, and three coaches said judges have told their female attorneys to wear skirts instead of pantsuits.

One female competitor from a northeastern university reported that a judge told a female attorney on the opposing team that her skirt was "too short;" she needed to "cover more up."⁶⁴ According to this student, the attorney's skirt was "rather long," but it had "ripped slightly, and [the attorney's] tattoo was visible" as a result. This student reported that in another trial (not at the same tournament), a female teammate was told by a judge that the dress she was wearing was "too revealing/tight." She disagreed; according to her, it "wasn't particularly revealing." A senior attorney from the Northeast described a trial where her teammate, a female attorney, was "marked down for wearing a shorter skirt."⁶⁵ A student from a college in the southeastern United States told me that after a trial she competed in, a judge told her she "should have worn a different outfit." At the time, this student was wearing a pantsuit. A student from the South said that judges have commented that "wearing a pantsuit isn't 'ladylike' in the courtroom," and [she] should have worn a different outfit." A competitor from New England described a trial where one of her teammates was told by a judge that "her heels were too high." Conversely, a different teammate was "told to wear heels." She also said she's been told "[her] skirts are too long, and [she] shouldn't wear pantsuits." Another competitor, the president of a program from the Northeast said "some female competitors have worn skirts that were too short. Judges have

⁶⁴ In this instance, the judge comment was verbal, not written. After mock trials are over, judges will often give general or specific (depending on the judge) comments in front of both teams about what the judge thought went well and poorly in the trial. It was during this time these comments were made.

⁶⁵ In this context, being "marked down" refers to receiving a lower score from a judge.

commented on it before.” A male competitor from the Northeast described a comment made by a judge to a female competitor who was wearing a pantsuit. “You should be wearing a skirt,” he recalled the judge saying. A different male competitor said that “dress length is an issue judges have brought up before.”

I spoke with another student, a sophomore, female attorney from a midwest university. She didn’t provide a specific example of a time where she was told to dress differently. This student thought this hadn’t happened to her before because she received specific instructions from her coach regarding how to dress for mock trial competition. In this program, dress is very specifically discussed by the coach, especially with the female attorneys. Female attorneys “[have] to wear skirts or dresses,” and men have to wear a suit with a tie that is the same color as their witness’s outfit. Female attorneys have to wear a “white blouse” with their skirts/dresses, and for footwear, they wear “black heels with no toes showing.” This student has a pierced nose, and although she wore it once as a witness (they had decided the piercing matched the witness’s character), she always removed it if she is an attorney. I asked this student, “Do you know why your coach gives you such specific dress instructions?” The student replied that the coach explicitly tells her students, especially the female attorneys, that “gender bias exists in mock trial, so we have to dress this way.” I asked the student if she felt the same way. “100 percent,” she replied.

I was able to interview this coach as part of my research. A former competitor and current law student, the coach confirmed that she had specific conversations with her female attorneys about what “they should and shouldn’t be wearing.” This coach remarked that as a competitor, she had been told by her coach, who came from a program which had won the

National Championship Tournament before, that all female attorneys “were going to be wearing skirts.” According to this coach:

“I was upset at first, but I didn’t want to be scored lower because of my attire. In mock trial, we’re supposed to be ‘representing a client.’ And that means we need to dress as professionally as possible.”

College mock trial mimics the legal proceedings of a conventional jury trial. As a result, each side has an imaginary client. In this context, the coach is describing the objective of a mock trial; teams are supposed to advocate for and represent their imaginary client as effectively as possible. This helps prepare students for client representation in the legal profession. To this coach, attorneys, in both a real and mock trial, should take every action they can to represent their clients as effectively as possible. This includes dressing professionally. For this reason, this coach instructs her female attorneys to dress the same way she did as a competitor and does now as a law student: Wear a skirt that isn’t too short, with a jacket and white blouse underneath, and black heels. Females’ hair doesn’t need to be styled in a specific way, but it needs to “look professional.”

I asked this coach if the subject of dress, gender, and the legal profession is ever raised at law school, where she is a current student. She told me that she has “never seen a female attorney in law school wear anything but a skirt.” Her professors further reinforce this expectation of dressing in a very specific manner for the courtroom: they have told this coach that “the law is a more conservative profession,” and female attorneys need to “earn [their] respect” by dressing with “closed-toed heels, conservative colors, and conservative skirt lengths.”

This coach also said that how men dress is important as well. She said the male coach at the university “handles the male professional dress conversations.” (I was not able to interview this coach.)

Some participants also commented about the importance of dress for witnesses. When describing how witnesses should or should not dress, competitors almost universally acknowledged that witness attire is more “flexible” than attorneys’ is, male or female. Witnesses, while they have to look professional, are expected to dress according to their character. A witness described as a makeup artist, for example, may be expected, according to survey participants, to wear a more colorful outfit than a scientific expert, for example. As one student commented, witnesses are “given a little more leeway because they’re expected to dress to reflect their character.” Because these characters differ, so does how they dress. As one coach agreed, “we try to ‘costume’ our witnesses while keeping them professionally-dressed.” While many interview participants commented on how mock trial attorneys dress, none described a judge making any comments, gendered or not, on how witnesses specifically should dress.

To search for reasons different judges commented on how female competitors should dress for the mock trial courtroom, I asked participants what types of judges typically make these comments. Are they older, white, male judges; are they current law school students or practicing attorneys; do they have previous mock trial experience; are they from a specific region of the country? Responses did not suggest such comments are patterned based on the age, gender, experience, of judges, nor is region these judges came from a primary factor. One student from a northeastern university said she was told by an “old, white, male attorney” to wear different shoes because her current ones exposed a tattoo on her foot. Another student from the Northeast said that judges have told members of her team that their skirts are “too short,” a comment that was echoed by student at a college in the Southeast and a coach in the Midwest. Another student was told by a female judge that she should wear a blouse that is “a different color” to look more professional. Some participants believe practicing attorneys are more likely to make these types

of comments, while others believe AMTA-sanctioned judges in the national tournaments are more likely to make gendered comments about dress.

While 11 out of 18 students and five out of eight coaches recalled experiences where judges made comments to female competitors based on their attire, six competitors and three coaches commented they had not observed any overt judge comments relating to dress. One student, a junior from a college in the South, said she did not believe judges preferred female competitors wear a specific type of professional attire. “I’ve worn skirts and pantsuits, and I haven’t any difference in my scores or my comments,” she remarked.

It should be noted that the specific comments made by this student are the exception, not the norm in this study; of the other six students who did not describe experiencing any instances of gendered judge comments based on dress, three of them are first-year competitors, and one of them is a sophomore. In other words, only three juniors or seniors out of the ten I interviewed, including the student described above, did not recall any trials where judges commented on the attire of female competitors.

Because mock trial programs spend a significant amount of time working to maximize how they perform in competition, I expected coaches and students who believe judges exhibit preferences about how women should dress would explicitly direct female competitors to dress in a manner which conforms to these gendered preferences. As described above, eleven out of eighteen students and five out of eight coaches said they have observed judges give gender-based comments based on attire. However, only two students and one coach said their programs outline explicit instructions regarding how female attorneys in mock trial should dress (e.g., to wear a

skirt instead of a pantsuit).⁶⁶ This discrepancy between records of gendered dress comments and explicit instructions to minimize them was a surprising result. Why, if these participants have observed incidents where female competitors' attire is discussed, potentially in a negative way, do they not take explicit steps to make sure female competitors didn't receive these types of comments? Consider the following exchange I had with a current mock trial coach:

This person is coaching an undergraduate mock trial team at the university where he is currently a law student. He was a mock trial competitor for four years at a large undergraduate university in the South. Both programs have qualified for the National Championship Tournament before. However, each program provides female competitors with different instructions on how to dress for competition.

Leadership in this coach's undergraduate program annually presented a PowerPoint to all members on how to dress for competition. Female attorneys at this school were required to wear skirts, and from the type of shoes they wore to the colors of their blouses, their specific dress code was "mandated by the program." Men were required to wear a suit, but because, as this coach commented, "there was less variability" in how men dressed; their instructions were less explicit.

At the school where this individual now coaches, members, female attorneys specifically, are simply instructed to dress professionally. "We do not make women wear skirts," this coach proclaimed. This comment surprised me; five minutes earlier, this individual, who still coaches at a university in the South, had made the following statement:

"It's unfair, but especially in the South, the appearance of attorneys, rather than their skill... there's been so much attributed to this."

⁶⁶ Although I was told this by three different individuals, because one of the students and coaches were part of the same program, I only found two programs which outlined explicit instructions for how female mock trial attorneys should dress.

Only one coach remarked she provided specific instructions to female competitors regarding how they should dress. Four coaches, including the one described above, reported that although they had recalled incidents where judges commented on the attire of female competitors, they still decided against telling their female competitors exactly how to dress.

There are a couple of explanations which can account for this discrepancy. First, although mock trial coaches believe that although some judges do have gendered preferences for how female competitors should dress, as explored in Chapter 7, fewer judges may possess and act on these preferences than the incidents interview participants described may suggest. Three of the eight coaches interviewed said that “less than one” judge per tournament is likely to exhibit these preferences. The highest estimate provided by a coach was one in six.⁶⁷ With these relatively low percentages, it is possible coaches and student leaders do not believe conforming to the perceived preferences a few judges possess regarding how female competitors should dress is the most efficient use of their time as they prepare for competition.

Second, there is a difference between observing patterned gender bias (in this case, patterned gender preferences for how female competitors should dress) and instructing female competitors to conform to these norms. As discussed in Chapter 7, nine competitors stated their programs “refused” to tell female competitors specifically how to dress (i.e. wear a skirt, not a pantsuit) in order to conform to judges’ preferences. Coaches are even more adamantly against this. To these coaches, not only is explicitly instructing female competitors to dress to conform to judges’ preferences inappropriate at the college setting, it also contrasts with the emphasis on skill-building and values that defines their programs. As one coach commented, for example,

⁶⁷ See Chapter 7 for greater detail.

“[The other coach in the program] and I have a plan for how we like to operate. We teach the skills, not conforming to the judges.”

This chapter illustrates that some judges possess preferences for how female competitors should dress for college mock trial competition. These preferences, through comments given by the judges, have been observed by the majority of the competitors and coaches I interviewed. The following chapter explores whether or not mock trial judges possess similar preferences regarding the *demeanor* of female competitors.

Chapter 6. Mock Trial Judges and Patterned Gender Bias – Demeanor, Other Factors, and Performance Evaluation

This chapter begins by reporting interview participants' perceptions of the importance of a competitor's demeanor in mock trial competition. I then explore whether or not judges have different expectations for how male versus female competitors should conduct themselves in the courtroom. I specifically highlight the different expectations judges have regarding how aggressive female competitors can be compared to male competitors. I then explore other gendered comments interview participants reported before concluding with a discussion on whether mock trial coaches and competitors believe these gendered comments and perceptions impact how female competitors are scored and ranked.

Before conducting interviews, I expected that as with dress, mock trial coaches and competitors would believe that the demeanor of competitors, especially attorneys, can impact their performance in competition. In this thesis, demeanor is defined as the outward actions and behaviors exhibited by competitors in a mock trial competition. This includes the tone of voice and inflection used by competitors during competition and their use of hand signals, body movements, and posture.⁶⁸ I also hypothesized interview participants would believe that judges' perceptions of what is and is not appropriate demeanor could be influenced by a competitor's gender.

The Importance of Demeanor in Mock Trial:

Every competitor and coach that was interviewed noted demeanor is an important component of mock trial. Interview participants stressed the importance of making sure both

⁶⁸ To ensure participants understood this definition, I would ask them specific questions about the different components of demeanor described above (e.g. the tone of voice of competitors and their body language.).

attorneys and witnesses understand how to properly address the judge, interact with competitors on the other team, and conduct themselves during a mock trial. This was expected; because mock trial adopts many of the proceedings of a conventional trial, it is expected competitors' demeanor imitates expectations regarding how attorneys should conduct themselves that are present in the legal profession. According to every coach and competitor, mock trial judges expect the demeanors of competitors to reflect these norms and procedures, and they train their members to conduct themselves in a manner consistent with these norms. "Etiquette is very important, especially for a party representative," said a competitor from the Midwest. "You always have to address the judge as 'Your Honor,'" continued a student from the Northeast. "We're big on acting professional." Another competitor from the Northeast agreed. "Keep it professional," he said. "Don't be aggressive with the judge, but be confident." "It's important to speak slowly and loudly, unless you're a sympathetic witness," commented a coach from a New England program. "And always act like things are going your way." Another coach added that "it's important for competitors to learn to be courteous, especially along the bench. Be deferential to the bench without looking like a toad."

Participants reported that judges' preferences on what is acceptable demeanor in the courtroom varies from judge-to-judge, and they have different expectations for male versus female competitors. Sixteen of the 18 students and six of the eight coaches interviewed reported female members of their programs have received gendered comments on their courtroom demeanor.⁶⁹ Meanwhile, only four participants (two competitors, two coaches) said that male members of their programs have received comments from judges about their demeanor.

⁶⁹ In this chapter, "gendered comments" refers to specific comments judges made to female attorneys or witnesses that these competitors reported were not given to male competitors. For example, a gendered comment would include a judge telling a female attorney she was being "too aggressive" during a cross examination. It should be

Female Attorneys and Aggressiveness

The most frequent comment students reported when discussing gender and demeanor involved female attorneys being told they were too “aggressive,” especially during cross-examinations. Eight female students I interviewed reported they had been told by judges that they were too aggressive during cross-examination.⁷⁰ A senior from New England recalled a trial where a judge told her she “was coming on too strong [and she] was too aggressive.” A competitor from the Midwest said she had been told by a judge she “had to be less dramatic.” Other judges had also told her that her “style was too aggressive.” A male competitor in the Northeast said that “women who come across as confident are seen as aggressive. They have less of a line to walk,” he continued.

One senior from a program in the northeast said she’s been told on “multiple occasions” by different judges that her crosses are too aggressive. She recalled that in one trial, a judge told her that “it’s not appropriate for a woman to be anything but quiet in the courtroom.”⁷¹ Although she struggled to give specific examples to reinforce her claim, this student said that in certain trials, female attorneys had been “scored down for being combative on a cross.” In other words, judges would evaluate these female competitors more harshly because they associated a more aggressive female attorney with a poorer performance. After asking this competitor how

noted these comments cannot be completely isolated to gender; however, comments were only included if the interview respondent believed they were made because of the gender of the competitor.

⁷⁰ A cross-examination refers to an attorney asking a series of questions to a witness who was called to the stand by the opposing party. Questions are generally asked in a “yes-no” format. In this thesis, “cross” is an abbreviated form of the legal term “cross-examination”

⁷¹ To provide context, this judge was telling the competitor she needed to speak with a soft, quiet tone of voice, not that she should not speak during a trial.

she knew this correlation existed, she responded that she's noticed "more aggressive comments coupled with lower scores for women versus men, even if both attorneys acted the same way."⁷²

Six coaches also responded that they have noticed women being told by judges they were too aggressive, especially during cross-examinations. A coach from a northeastern program said that at a tournament his team attended this year, he heard a judge criticize a female attorney on his team for "being shrill" during her cross-examination. Recalling the incident, the coach said, "I watched the male attorneys in that round too, and they were acting similarly [to the female attorney the judge said was shrill]." This coach reported he had observed a difference between how more aggressive male and female attorneys are evaluated in mock trial. Not only are female attorneys often criticized by judges for adopting an aggressive style, this coach said, but "an aggressive male attorney can be rewarded" for acting in this manner. In summation, many interview subjects reported that men can be rewarded for acting aggressively, but for women, they are more likely to be penalized for acting in this manner.

A coach from the Midwest recalled that "[she] was aggressive as an attorney, and [she] was blamed for it" by judges. Now, as a coach, she's noticed that judges "pick up on a more aggressive female" and not a more aggressive male. Another coach from the Midwest said that "judges consider stereotypes we associate with lawyers, and we associate lawyers with men." He continued, "This puts women at a disadvantage. They're not expected to be aggressive. A man is."

As with dress, students and coaches offered differing opinions for what descriptive factors among judges align with these preferences. One student told me she generally received

⁷² This competitor was referring to the relationship between scores and comments of aggressiveness she had noticed over her four years in mock trial. Specifically, when she experienced a written or verbal comment from a judge that a female attorney was too aggressive during a cross, she noticed this competitor would, on average, receive lower scores for that cross than other attorneys in the trial, male or female.

comments about her aggressive style from “white, old, practicing attorneys.” A coach from the Midwest, however, noted it is not just male judges who criticize female attorneys’ aggressive demeanor; female judges do it too. To illustrate this point, the coach provided the following example:

In a trial, a female attorney was cross-examining a male witness. There were three judges present: two of them were male; one was female. Recalling the cross-examination, the coach commented that the female attorney “[took] him apart; it was an incredible cross.” After looking at the attorney’s scores for the cross, the coach noticed two of the judges had awarded her a “perfect” score⁷³ The third judge, however, “scored [the cross] very low.” The two judges who gave the perfect scores were men, whereas the judge who gave the lower score was a woman. According to this coach, after the trial, when discussing the cross with the attorney, the female judge said, “you can’t speak to a man like that.”

This was not an isolated incident. A coach from a program in the South remembered a trial where a female judge told a student in his program that her cross “was great, but [she] needed to tone it down.” This coach explicitly stated that the judge only made this comment because of gender. “We know as coaches that these students aren’t being more aggressive,” he continued. “It’s because they’re female attorneys.”

Three competitors and one coach also commented that regional variation can influence if judges say female attorneys’ demeanor was too aggressive. A student from a university in the Midwest told me she experienced no negative comments on her “more aggressive” style when competing in the Midwest. However, her team traveled to a tournament in Alabama, where she experienced a “culture shock.” Here, she was told by judges her crosses were too aggressive.

⁷³ In mock trial, crosses are scored on a scale of 1-10, with 10 being the highest. In this case, consequently, a perfect score is a 10.

Another student from a university in New England echoed this sentiment; when her team traveled to a tournament in Florida, she noticed “stylistic differences with these judges” in terms of how aggressive they thought female attorneys could be. These judges, this student reported, were “big on politeness,” and to them, aggressive female crosses failed to meet this norm.⁷⁴

Another student said comments on female aggressiveness can reinforce how male and female attorneys act in future rounds. To illustrate this point, this student described a post-trial conversation a judge had between the two competing teams:⁷⁵

Following the trial, the judge commented that he “didn’t like the way [the female attorney] was treating” a male attorney during objection battles. To this judge, she was being “too aggressive.” According to this student, after the judge made this comment, the male attorney “laughed about it, agreeing with the judge.” This student said that in her opinion, both attorneys’ demeanors were “exactly the same.” “These comments,” she asserted, give male competitors an “unconscious green light to act in certain ways.”

By criticizing female attorneys for their demeanor and rewarding male attorneys for acting the same way, these judges are reinforcing gendered preferences. Male attorneys can continue to act aggressively and be rewarded for it, but, as this student argues, female attorneys are “constrained” to either act aggressively and risk being criticized by certain judges, or change their demeanor. In this manner, male attorneys have more flexibility on how they can act in mock trial than female attorneys.

⁷⁴ It should be noted that many mock trial programs lack the financial resources to travel to tournaments in different regions of the country. Although only two students told me regional variation impacted judge comments on female attorney aggressiveness, it is possible that if more programs had the opportunity to travel to different parts of the country, these types of comments would have been more frequently discussed in interviews.

⁷⁵ After mock trials are finished, competitors and judges must remain in the trial room and wait for tournament officials to make sure the scoring ballots from the trial were filled out properly by the judges. During this period, many judges will give verbal comments to both teams. It was during this waiting period that the conversation described by this student occurred.

It is important to note that four interview participants, two students and two coaches, reported that judges have criticized male attorneys for being too aggressive against specifically female witnesses. One coach told me, for example, that a judge once told a male attorney that “yelling at a female witness just looks bad.” A student also reported that a “taller” male competitor on her team was told by a judge to stand farther away from a female witness because he “looked too intimidating.” However, these were the only four comments on male aggressiveness which were reported in the 25 interviews that were conducted, whereas 13 participants described incidents where female attorneys were considered more aggressive. This suggests that female attorneys are more likely to receive comments on aggressiveness than men are. The nature of these comments also suggests that these men are specifically being criticized because of their treatment of female witnesses. They have to act less aggressively not because being an aggressive male attorney is a bad thing, but because in this instance, a female witnesses has to be *protected* from an aggressive man.

Although eight students and five coaches reported that judges told female attorneys in their program their demeanor was too aggressive, no interview participant said their programs made any specific adjustments based on these comments. No participants said they instructed female attorneys to change their demeanor in response to these comments, nor did they reassign these attorneys to different roles. As one coach from a Midwest university stated emphatically, “We would never change a person’s role because we were worried about gender bias.” Similarly to programs’ lack of specific instructions regarding how female competitors should dress, programs’ lack of action to mitigate comments on the demeanor of female competitors was surprising. Explanations for why these actions might not be taken were briefly explored in Chapter 5, and they are explored in greater detail in Chapter 7.

A female competitor from the Midwest said that how loudly female competitors speak can impact how judges evaluate them. “Guys can get away with raising their voices more,” she said. A competitor from the South commented that “men can stand more casually than women during trials.” If a female competitor stands more casually, then she is viewed as “less professional.” Finally, a male attorney from a program in the South told me that female attorneys have been told “to smile more” by judges. In contrast, “men haven’t.”

Witnesses, Gender, and Demeanor

While no competitor or coach said their programs instructed female attorneys to change their demeanor based on judges’ comments, participants reported their programs did make adjustments based on the demeanor and genders of their witnesses. Every coach and student I interviewed said that, generally speaking, judges exhibit general preferences regarding the characters of their witnesses.

In college mock trial, witness roles are also portrayed by students. These witnesses are selected based on a “case packet” of affidavits⁷⁶ provided by the American Mock Trial Association. Using these affidavits, teams create their own direct examinations, which are then presented during a mock trial. Each team calls three witnesses to the stand during their case-in-chief, but teams have a number of witnesses they can choose from, adding a level of variability to each mock trial. There are numerous witness types, including character witnesses (e.g. a janitor who was at the scene of the crime), party representatives (e.g. a defendant), and expert witnesses (e.g. a fingerprint expert). Teams can decide what information they want to elicit

⁷⁶ An affidavit is a sworn statement written by a witness.

during their direct examination, but they cannot make up additional information⁷⁷, nor can they contradict any information in their affidavit. In this manner, teams are able to craft unique case theories and tell stories through their witnesses, stories which other teams respond to with case theories and arguments of their own.

Mock trial judges evaluate witnesses as well as attorneys, and the scores witnesses receive contributes to a team's overall score. Witnesses are scored for factors including their character, their knowledge of their affidavit/deposition, and how they respond to the opposing team's cross-examination (every witness in mock trial is cross-examined). A further description of how witnesses (and attorneys) are evaluated is provided in the attached mock trial ballot in Appendix A.

Five students and two coaches reported that judges preferred certain characters to be performed by certain genders. One female competitor, a first-year student from a university in the Northeast, said she started the year competing as Danny Kosack, the defendant in the 2018-2019 civil case. A male student on her team also played this role at varying tournaments. At the regional competition, the first stage of the national competition, this student reported that, "although it wasn't the only factor, gender did influence our decision to have [the male student] play Kosack." In justifying this, the student told me that "judges prefer emotional male characters, if they're done properly," and they were portraying this defendant as an emotional witness. Interestingly, this student commented that although they made a key witness selection in part because of gender, she also said that "gender wasn't a consideration with attorney [roles]."

⁷⁷ For some witnesses (generally party representatives), AMTA provides depositions instead of affidavits. Unlike an affidavit, a deposition is a list of questions an attorney has asked a witness prior to the trial. While witnesses cannot contradict information listed in their deposition, they can make up additional information that was not described, unlike witnesses with affidavits.

Another student told me that “for some witnesses, there’s a lot of ‘gendered stuff’ that goes into [their] portrayal of that witness.” For example, this student played the role of Alex Grace, this year’s plaintiff party representative, in the beginning of the semester.⁷⁸ As Grace, he acted as a “sarcastic” witness, a representation of the witness he considered “realistic.” The student said his scores and comments from judges were favorable – the character “worked well for [him].” When he became an attorney, however, he had a female on his team take over the role. This witness, as the student described her, was “fantastic.” She could not, however, adopt the same sarcastic tone because “the judges didn’t like it.” Consequently, they adjusted the witness for regionals, making her character “less sarcastic.” I asked the student if these types of decisions were the exception or the norm in his program. He replied, “we’ll definitely tweak the witness demeanor based on gender.”

Mock Trial Judges on Gender and Passiveness

Three students reported judges have told female attorneys in their programs they are too passive in the courtroom. As one student reported, “every new female attorney” in her program has been told by a judge, in a verbal or written comment, that she “lacked confidence.” In contrast, this student told me there is “50-50” chance a male attorney would be told this. This student also told me she had heard female members of her program be told by judges they were too aggressive. To this student; female attorneys consequently had to walk a fine line of portrayed confidence. To do this, she “always tried to be as formal as [she] could.” When describing how female competitors could act, a male competitor echoed this sentiment: “Be confident, but don’t be too confident,” he chuckled.

⁷⁸ This student told me he competed at regionals as an attorney, and gender didn’t impact this switch in roles.

Other Judges' Comments on Gender

One coach from the Midwest also reported the number of female attorneys on a team can impact judges' preferences.⁷⁹ According to this coach, if a team's attorney table is composed of six female attorneys, this can impact judges' perceptions of the team's performance. He said that his team "lost one crucial ballot because a judge didn't like a team with six females." This was the only scenario where the coach said he would make roster decisions based on gender.

However, for this decision to be made, the six attorneys must be of "equal skill;" if they were, then he would stack them based on gender considerations. However, the coach added, "that's the only way we would do it;" if three women were the best three attorneys in the program, then, they would be on the same team. Two female competitors from the Northeast agreed with the coach's assessment on the impact of all-female and all-male benches. "I definitely think it matters," said one competitor. "A judge will reward an all-male bench and penalize a team that has three female attorneys."⁸⁰ A competitor from the Midwest also discussed the impact of all-male verses all-female rosters. This competitor said, "We were going to have an all-female attorney team, but we didn't because judges don't like it." Furthermore, it was the coach's suggestion that the team make this roster change. I was not able to interview this coach.

A competitor from New England said that although her program doesn't require it, some female members of her team straighten their hair before competition. She said they do this because a member was told by a judge that her curly hair was "unruly." Another female competitor, this one a junior from the Midwest, said she was once told by an "older male judge" that she should "wear a ring to look engaged." After describing this comment, the student curtly reported she has not followed this judge's advice.

⁷⁹ In a college mock trial, each team has three attorneys compete.

⁸⁰ In this context, by "penalize," this competitor was talking about the attorneys receiving lower scores and/or ranks.

A third-year competitor from a college in the Northeast said that at times, judges appear “more willing to listen” to male attorneys over female attorneys. “There have been times,” she stated, “where I’m crossing a witness and the judge [was] clearly more willing to hear the argument of the male attorney doing the direct than me doing the cross. The same has been true when I’m doing the direct and the man is doing the cross.” She remarked that this prioritization of a male attorney’s perspective is even more clear during objection battles. “There was on incident where I made an objection, and [without listening to my argument], the judge told me to ‘sit down.’ This didn’t happen to the guy. He objected, and the judge let him stand up and make his argument.”

Coaches also described comments judges made to competitors they believed were made because of their gender.⁸¹ One coach from the Midwest said that during a post-trial comment period, a female witness was told by a judge that her “accent gave him cancer.” At the 2018 Opening Round of Championship Series (ORCS), this coach said one judge told a female witness that she “looked like a prostitute.”⁸² A male coach, also from the Midwest, said that at a certain invitational tournament he “knows of a judge that’s more likely to cut women off” than men. A different coach said female competitors on his team have been “told by judges that they shouldn’t cross their legs. Men aren’t told that,” he continued. A female coach said that as a competitor and a practicing attorney, she’s “had judges call [her] ‘sweetie.’” She didn’t report this happening to any female competitors in her program, however.

The Impact of Patterned Gender Bias on how Female Competitors are Evaluated

⁸¹ Comments in this paragraph were only included if the coach said they believed they were made because of the competitor’s gender.

⁸² This is the coach who stated she explicitly instructs her female attorneys to dress in a specific manner: Black skirt, heels, white blouse, etc.

If mock trial competitors and coaches described comments judges made towards female competitors that they believe were made because of their gender, then I would ask them if they believe these judges formally evaluate female competitors differently because of their gender. Specifically, participants were asked if female competitors' scores or ranks would be different because of their gender.⁸³ Of the 26 participants interviewed (18 competitors, eight coaches), sixteen of them (11 competitors, five coaches) stated that some mock trial judges will score and/or rank female competitors differently because of their gender.

As described in Chapter 5, a female competitor from New England stated that female competitors have been "marked-down," or scored lower because of the length of their skirts. A competitor from the South agreed. "We have to tell newer female attorneys that they won't score as well as the men in the beginning" especially, she noted. "The score gap lessens as [the female competitors] improve, but newer male attorneys are definitely scored better than female attorneys." A female attorney from the Northeast stated that score differences are especially noticeable if a female attorney shared a bench with two men. "If there's a bench with all guys but you," she said, "the guys will get 9s, and the girl will get 8s." A male competitor from the South stated that "I have noticed that judges score attorneys and/or witnesses better when they reflect that judge themselves a little."⁸⁴ In other words, judges prefer witnesses and attorneys who reflect their demographic characteristics. Gender "[is] part of this." According to this competitor, because judges are "mostly men," they'll often score better as a result.

⁸³ In college mock trial, judges' comments don't impact which team wins a trial. Rather, their scores determine the overall team winners, and the individual rankings made by judges impacts which competitors receive individual awards at the end of the tournament.

⁸⁴ In this context, this competitor was arguing that judges preferred attorneys and witnesses who possess the same demographic characteristics as the judge. For example, a female judge would prefer a female attorney or witness.

A male competitor, a sophomore from New England, agreed that men can be scored better than women in college mock trial because of their gender. He recalled a trial where he gave an opening statement for his team, and a female attorney gave the opening statement for the opposing team. “She did better than me, but I still beat her,” he said. “I just know this was wrong,” he continued. “There’s no way you can say I was better. At a *minimum*, we were matched.”

A competitor from the Northeast said that a female attorney or witness “will be scored down for being combative during cross.⁸⁵ This is something I’ve seen with some of the female members,” she continued. “More aggressive comments are coupled with lower scores for women versus men, even if they act the same.” This competitor continued, saying she’s seen “most of the bias in the ranks, not the scores.”

Other competitors agreed that gender can impact how female competitors are ranked. The same male competitor who described the scores on his opening statement above said that “female attorneys often rank lower than men.” Describing a senior female attorney on his team, he said, “[she] ranked below me at a number of trials, even though she closed and did better.”⁸⁶ A female competitor from the Midwest stated that “guys *dominate* the rankings in the courtroom.” She said this has become an unspoken expectation in her program; men “are expected to rank higher.” A competitor from the Northeast agreed. “Gender impacts rankings more than scores,” she asserted. “Rankings can be very biased,” added a different competitor from the Midwest. “It

⁸⁵ In this context, “combative” refers to witnesses on cross refusing to directly answer an attorney’s questions. For attorneys, it means asking extremely pointed questions, standing closer to the witness during cross, and adopting a more aggressive demeanor and tone of voice.

⁸⁶ In college mock trial, closing statements are informally considered the most challenging aspect of being an attorney in college mock trial. Generally, if an attorney delivers a strong closing statement, he or she ranks higher than the other attorneys in the trial.

happens quite a lot,” she stated. “Male attorneys will rank higher. They won’t score higher, but they’ll rank higher.”

Five coaches agreed that judges sometimes score and/or rank female competitors differently based on their gender. The coach from the Midwest who said she explicitly tells female competitors how to dress for mock trial competition said she does this because it can impact their score. “I don’t want them to be scored lower because of how they dress,” she said. A male coach in the Midwest agreed. “Gender can definitely impact individual scores and rankings,” he stated. However, he added, “if we deal with our own business, then that shouldn’t determine a ballot.” In this context, the coach was referring to controlling other factors which impact scores in mock trial, such as knowledge of the case, rules of evidence, etc. To this coach, even if individual scores and rankings are damaged by patterned gender bias, if the team prepared properly, then it should still score well enough win the trial.

A male coach from the Northeast said that gender is a “subconscious factor” that impacts judges when the score and rank competitors. Another coach said that female scores and ranks were not always lower than male’s, but they were *inconsistent*. “Judges would always agree on the male attorney rankings,” he continued. “They didn’t on the female [sic].”⁸⁷ “Judges,” concluded a female coach in the Midwest, “are like all people, walking bags of bias. Many will score competitors for other reasons, even if it’s actually sexism.”

⁸⁷ This coach also said race can impact the scores of competitors. To illustrate this, he described how expert witnesses were evaluated by judges: ““For example, African American experts score less than white experts,” he stated.

Men and Gendered Expectations

Although my research primarily focused on how female competitors face patterned gender bias in college mock trial, it is important to note that at certain points in mock trial competition, male competitors are also subjected to specific expectations regarding how they should present and conduct themselves. As discussed above, two students and two coaches reported that judges had criticized male attorneys for being too aggressive against female witnesses. One coach said, for example, that a judge once told a male attorney that “yelling at a female witness just looks bad.” A student also reported that a “taller” male competitor on her team was told by a judge to stand farther away from a female witness because he “looked too intimidating.” A different competitor stated that men in her program had been told to make sure their clothes “fit properly;” although men are expected to wear a suit in mock trial competition, it is also expected, according to this competitor, that those clothes aren’t too loose or too tight.

I also spoke with a male coach from the Midwest who stated that a male attorney in his program was criticized by a judge for wearing a tie that was “too bold.” At the time, the competitor was wearing a pink tie. Although these types of incidents were less frequent than comments about female competitors, they do suggest that men in mock trial also must conform to certain expectations. . Wearing a pink tie, for example, suggested, at least to that judge, a failure to conform to gendered preferences. Such incidents illustrates that men still face a pressure to conform to certain gendered expectations regarding how they should conduct and present themselves in the courtroom.

Chapter 7. Expected and Actual Findings

The following chapter describes how mock trial competitors and coaches said their programs respond to the incidents of patterned gender bias they described in the previous chapters. Of the interview participants who said that they believe patterned gender bias both exists in college mock trial and impacts how female competitors are evaluated by judges, most programs do not instruct female competitors to change their attire, demeanor, or performance to conform to these preferences. Possible reasons why program leadership do not instruct female competitors to conform to mock trial judges' patterned gender expectations is then explored.

It was expected that mock trial coaches and competitors would believe that variability is an inherent component of college mock trial. As discussed in Chapter 5, this was true; every participant that was interviewed (18 students, 8 coaches) reported that the mock trial process involves a level of variability. From the specific witnesses that take the stand to the individual preferences of the judges present in the trial, competitors and coaches stated they have to train their competitors to be prepared to react to the factors that vary from trial to trial.

Before conducting interviews, I also hypothesized participants would believe that some judges would have different expectations for male verses female competitors. Specifically, these preferences would put female attorneys and witnesses at a competitive disadvantage. This expectation was in Chapters 5 and 6: Eleven students and five coaches reported that judges made comments to female attorneys based on how they dressed. Six participants recalled trials where judges commented on the length of a female competitor's skirt, and seven described comments made by judges that female attorneys should wear skirts, not pantsuits. Additionally, 16 students and six coaches recalled trials where judges commented on the demeanor of female competitors. Specifically, eight students and five coaches recalled trials where judges told female attorneys

their demeanor was too aggressive. Furthermore, 16 participants (11 competitors and five coaches) reported that these preferences affect the scores and ranks of competitors; if a mock trial judge possesses these preferences of patterned gender bias, then female competitors can score and rank worse than male competitors because of their gender.

If mock trial competitors believe female attorneys will receive lower scores and ranks from certain judges because of gendered factors including how competitors dress and act, it seemed reasonable to expect that competitors and coaches would consequently take actions to conform to these gendered preferences. This would happen for two specific reasons.

First, as with any competitive activity, teams want to maximize their performance; simply put, they want to win. If judges score female competitors lower because of gendered preferences for how they should dress and conduct themselves, then it follows that programs would want female competitors to conform to these preferences to maximize the scores their team can receive, thus maximizing their chances of winning.

Second, many undergraduates who compete in college mock trial do so because they are interested in attending law school and becoming practicing attorneys. Consequently, students at the undergraduate level compete in mock trial not just for fun; they also compete to gain skills and perspectives that can help them become more effective lawyers in the future. For this reason, due to the legal concept of “zealous advocacy,” I expected coaches and student leaders who believe patterned gender bias exists in mock trial will consequently instruct female competitors to train themselves to conform to these preferences now so they can better serve their clients in the future.

Zealous Advocacy

Zealous advocacy is a concept that an attorney possesses an “obligation [to zealously] protect and pursue a client's legitimate interests, within the bounds of the law”⁸⁸ In other words, attorneys must always prioritize the needs of their clients, and *every* action they take, within reason, must be taken with their clients’ best interests as the primary concern.⁸⁹ An attorney can pursue many different strategies of zealous advocacy; for example, they can file an unnecessary number of motions to delay a proceeding, similar to a filibuster in the Senate, or they can attempt in a trial (again, within reason) to select jury members who would be more sympathetic to their client’s case.

In his book *Just Mercy*, author and attorney Bryan Stevenson describes the following interaction he had in a courtroom:

Once I was preparing to do a hearing in a trial court in the Midwest and was sitting at counsel table in an empty courtroom before the hearing. I was wearing a dark suit, white shirt, and tie. The judge and prosecutor entered through a door in the back of the courtroom laughing about something.

When the judge saw me sitting at the defense table, he said to me harshly, “Hey, you shouldn’t be in here without counsel. Go back outside and wait in the hallway until your lawyer arrives.”

I stood up and smiled broadly. I said, “Oh, I’m sorry, Your Honor, we haven’t met. My name is Bryan Stevenson, I am the lawyer on the case set for hearing this morning.”

The judge laughed at his mistake, and the young prosecutor joined in. I forced myself to laugh because I didn’t want my young client, a white child who had been prosecuted as an adult, to be disadvantaged by a conflict I had created with the judge before the hearing.⁹⁰

⁸⁸ “Model Rules of Professional Conduct: Preamble & Scope,” American Bar Association, accessed April 20, 2019, https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_preamble_scope/.

⁸⁹ “Within reason” refers to actions which still follow the appropriate laws and norms of American society. To offer an extreme example, zealous advocacy does not authorize an attorney to murder an expert witness testifying against their client.

⁹⁰ Bryan Stevenson, *Just Mercy: A Story of Justice and Redemption* (New York: Spiegel & Grau, 2014), 300.

Bryan Stevenson is one of the most brilliant attorneys in the country, and he is also a black man. Although Stevenson is not experiencing patterned gender bias in this instance, this experience highlights the discrimination that exists in the courtroom based on preconceived norms and expectations. This judge did not perceive Stevenson as an attorney because of the color of his skin.

But Stevenson's response is especially powerful. Although this was almost undoubtedly not his first experience with racial stereotyping in the legal profession, when it occurred in this courtroom, with the judge who would be presiding over his client's case later that day, Stevenson chose to smile and laugh off racial bias and discrimination. He was a zealous advocate. He served his client.

By extension, a "zealous advocacy" approach would suggest that female attorneys should conform to gender norms if they believe doing so will help their clients. They should dress and conduct themselves in a manner consistent with judges' preconceived expectations. It does not matter if these expectations are biased, or if these actions perpetuate a legal profession where men are afforded advantages and opportunities. The needs of the client are more important than the needs of the attorney.

Literature illustrates that firms have discriminated against their female attorneys in order to better represent their clients. As articulated by former Yale Law School student Elina Tetelbaum, at times, attorneys and firms "seek to do whatever necessary to minimize the harm that racism, sexism, homophobia, xenophobia, anti-Semitism, and other bigotry can cause to [their] clients."⁹¹ This includes requiring female attorneys conform to biased gender norms in the

⁹¹ Elina Tetelbaum, "Check Your Identity-Baggage at the Firm Door: The Ethical Difficulty of Zealous Advocacy in Bias-Ridden Courtrooms," *Texas Journal on Civil Liberties & Civil Rights* 14, no. 2 (Spring 2009): 261–89.

courtroom, and at times, it includes selecting male attorneys to represent clients because they believe male representation in a gender biased legal profession would better serve the client.⁹²

Chapter 4 illustrates that norms in the legal profession continue to perpetuate patterned norms of gender bias against female litigants. By extension, it seems likely that mock trial coaches, part of whose job is to help these students prepare for a career in the legal profession, would feel an *obligation* to discuss how gender impacts female attorneys' performance in the field of law and *instruct* them to conform to judges' and jury's gendered preferences so they can serve their future clients more effectively.

For this reason, I hypothesized that if programs were composed of participants, coaches and students alike, who believed patterned gender norms and bias can negatively impact how female attorneys are evaluated by judges, then they would discuss concepts of patterned gender bias within the program. To minimize their chances of experiencing patterned gender bias, they would then instruct female attorneys and witnesses to dress and conduct themselves in a manner which conforms to judges' patterned gender preferences.

Interview results, however, suggests this kind of direct instruction is extremely rare. Only four participants stated that their programs took specific actions to dress and act in a manner consistent with judges' gendered expectations. Only two competitors and one coach stated that their programs' dress policies contained explicit instructions on how female attorneys should dress for competition (i.e. wear a skirt, not a dress.) Zero participants said female attorneys in their programs were instructed to change their demeanor because of judges' patterned gender

⁹² The ethical disputes regarding zealous advocacy are discussed in Chapter 8.

bias.⁹³ Only one program in the participant population changed female attorneys' roles because of norms of patterned gender bias.⁹⁴

Based on my interview findings, I offer two explanations that may explain while gender-based differences in judging expectations were widely reported, extremely few programs took explicit steps to conform female attire and behavior to these preferences.

First, although many students and coaches reported situations where mock trial judges exhibited gendered preferences for how female attorneys should behave, some participants stated these preferences were exhibited only on rare occasions. Others responded that even if a judge appeared to have gender-based preferences for how female attorneys should conduct themselves in the courtroom, they were not significant enough to determine which team would win the trial. In other words, the frequency and impact of these comments and evaluations was not significant enough for programs to conform to these preferences. While these incidents were widely remembered and reported by interview participants, when comparing their frequency to the number of mock trials conducted every year, these incidents may have been less frequent than participants' recollection suggests.

Second, perhaps although participants agree zealous advocacy would dictate attorneys conform to patterned gender preferences if doing so would benefit their client, they do not believe attorneys in college mock trial, because they are not representing a real client, should conform to these preferences. Some participants articulated that other values including skill-

⁹³ While no participants said their programs mandated female attorneys adjust their demeanor in response to judges' comments and evaluation of their performance, three female competitors did note they adopt a more formal, and as one competitor remarked, "conservative" style to attempt to mitigate the frequency of these comments. One taller male attorney also stated that he makes sure he stands farther away from witnesses he is cross-examining than the other attorneys on his team do because of his height.

⁹⁴ It is important to note that five students and one coach articulated their programs do make roster decisions based on the genders of their *witnesses*. The following sections, however, discuss why these actions were not taken when considering gender and female *attorneys*.

development, teamwork, and a genuine interest in learning about the law, are more important than winning a ballot. In other words, participants might recognize that when representing a real-life client, attorneys should take any action that is legally permissible to prioritize the needs of their clients, including conforming to gender-based preferences and expectations judges, juries, and other legal actors may possess. However, in college mock trial, where there is no real client, other values matter more than conforming to patterned gender preferences.

Additionally, it is possible that mock trial coaches and student leaders do not instruct female competitors to conform to judges' gendered expectations because female competitors are informally conforming to these preferences on their own. In his book *Covering*, Kenji Yoshino articulates that women in the courtroom are subjected to "reverse-covering" demands –women encounter situations where they must adopt a feminine disposition to conform to gendered preferences and expectations. Yoshino lists traits offered by female attorneys that fit this description, including: "I wear makeup. I do not wear my hair too short. I am gentle. I am soft-spoken."⁹⁵ These descriptions describe gendered preferences female litigants are expected to conform to.⁹⁶

If female competitors in college mock trial recognize that judges possess gendered expectations for how they should conduct themselves in the courtroom, it is entirely possible that they will conform to these preferences without any explicit instruction by coaches or student leaders. Such discussions would not be needed because female competitors were already conforming to these expectations. I did not ask interview participants specific questions about whether female competitors independently conform to judges' gendered preferences, but I did speak with one student, a female competitor from the South, who commented that she would act

⁹⁵ Kenji Yoshino, *Covering* (New York: Random House, 2006), 153.

⁹⁶ Yoshino, *Covering*, 154.

“more or less dramatic” depending on the preferences of a given judge. This could be happening more frequently than my initial interview results may suggest, and it could be occurring based on specific gendered preferences.

Additionally, given the sensitive nature of gender in the classroom as well as the courtroom, it is possible that informal directions are more likely to be offered than explicit instructions by coaches and student leaders. This could be especially true when considering interactions between male coaches and female competitors. I spoke with one male coach from the Northeast who said that he is “careful” when discussing courtroom attire with students in his program, “especially across gender lines.” “Dress conversations,” this coach commented, “can be misconstrued as sexual harassment quickly.” For this reason, he is very careful when discussing dress with competitors, and he does not provide female competitors with specific instructions on how they should dress based on their gender.

With the gender discrimination implications Title IX⁹⁷ could have on coaches who provide gender-specific instructions, it seems likely that coaches would strive to avoid offering gender-specific instructions out of fear of being accused of gender discrimination and/or sexual harassment. Additional interviews on this specific subject would be useful.

It is important to note that the order in which I asked these questions could have helped lead to such responses. Over the course of these interviews, coaches and competitors described instances in which they believed female competitors were victims of patterned gender bias. As demonstrated above, they regularly described instances where female competitors were placed at a competitive disadvantage because of their gender or given instructions about their appearance

⁹⁷ Part of the 1972 Education Amendments Act, Title IX states that "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

or demeanor – directions that coaches or competitors found objectionable. It is possible that after discussing the subject of gender bias in this negative frame, they felt my questions about their own conduct were the equivalent of asking them if they endorsed or encouraged gender bias in college mock trial. With this negative framing, it is unsurprising participants widely reported they did not provide these types of direct instructions.

Explanation #1: Instances of Patterned Gender Bias in College Mock Trial Occur Infrequently and/or Have a Minimal Impact on the Results of a Trial

The Perceived Frequency of Patterned Gender Bias in College Mock Trial

If a competitor or coach stated during an interview that they believed patterned gender bias exists in college mock trial, I would ask them to estimate the percentage of mock trial judges they believed had gendered preferences that would manifest themselves during a trial. After conducting my third interview (all three had been student interviews), I rephrased this question by providing participants with the following hypothetical scenario:

Let's say you are competing in/coaching at a mock trial tournament with 30 judges.⁹⁸ Of the 30, how many of them do you believe would exhibit the types of gender bias you just discussed?⁹⁹

Interview participants gave responded very differently to this question. Table 1 illustrates the frequency range (out of 30) given by both competitors and coaches:

⁹⁸ Although the number of teams competing at a mock trial tournament varies, often, 30 teams compete at a given mock trial tournament, meaning there are 15 trials occurring during each round of competition. With two judges per trial (which is standard for most mock trial competition), 30 judges would be present at a standard 30-team competition.

⁹⁹ This question was always asked after a competitor/coach articulated gender bias is present in mock trial and provided examples of what they believed was gender biased behavior. These include the comments, scores, or ranks discussed in Chapters 5 and 6.

Table 1.

Frequency Range	Number of Competitor Responses	Number of Coach Responses	Total Responses (Competitors and Coaches)
Less than 1	1	3	4
1-5	1	3	4
6-10	4	0	4
11-15	2	0	2
16-20	2	0	2
21-25	2	0	2
26-30	0	0	0
“No Idea” ¹⁰⁰	4	2 ¹⁰¹	6
Total	16	8	24

As illustrated by the table, coaches believed fewer judges exhibited patterned gender bias than all except two competitors. One coach stated that at a 30-judge tournament, five judges would evaluate competitors’ performance in part because of their gender. Every other coach who provided a frequency indicator (as noted in the table, two coaches indicated they had “no idea” how many judges exhibited patterned gender bias). Although this sample is too small to support generalized analysis, the *highest* estimate provided by a coach I interviewed was that 5/30, or 1/6 of judges at a tournament exhibit gender-biased behaviors. A program competes in four trials per weekend, and with two different¹⁰² judges per round, or eight per tournament, it is consequently likely that a program will be evaluated by a maximum of one judge who evaluates competitors on the basis of gender.

One of the two coaches who stated their program provides female attorneys with specific dress instructions (wear a skirt, heels, etc.) is the coach who said that 5 of the 30 judges in the

¹⁰⁰ When asking this question, four students and two coaches told me that they didn’t believe they could fairly estimate the number of judges who exhibited patterned gender bias in college mock trial.

¹⁰¹ One of these coaches stated he had “no idea how many judges exhibited patterned gender bias in mock trial, but he also stated he believed it was “less than half” of the judges present at a tournament.

¹⁰² It is generally mandated in mock trial tournaments that no team can be evaluated by the same judge in more than one round.

hypothetical tournament would exhibit signs of patterned gender bias. Of course, a single respondent offers only suggestive evidence, but it is possible that if coaches believe a greater percentage of judges consider gender when evaluating the attire, demeanor, and performance of competitors, then more programs would instruct female competitors to dress and perform in a way which conforms to these preferences.

Competitors' responses vary more significantly than coaches. Of the 12 competitors who provided frequency indicators, six believe more than one-third of the judges present at the hypothetical tournament would exhibit patterned gender bias in mock trial competition. However, because coaches are more likely to make roster decisions and provide instructions on how competitors should perform, it is less likely students' perceptions would result in changes in how female competitors dress and performed.

One student, a junior from a university in New England, also told me she believes that fewer judges exhibited these preferences during the 2018-2019 competitive season than during the 2016-2017 season, when she was a first-year. "I really don't think [gender bias in mock trial] is as bad as people think," she stated. "My freshman year, a bunch of women on my team said judges would comment on things like how many bracelets they wore or how short their skirts were, but that hasn't happened lately." What was fascinating about this student's response is that earlier in the interview, she had told me that during her sophomore year, her team started providing explicit instructions for how female attorneys should dress. These instructions included what skirt length was considered acceptable. This student, however, did not attribute these instructions to the smaller frequency of comments from judges.

The Perceived Impact of Patterned Gender Bias in College Mock Trial

Two coaches also responded that even if gender bias was present in a trial, it was unlikely to affect which team won the trial. As a coach from a college in the Midwest stated, ten percent of a college mock trial is impacted by “subjective things about expectations” different judges can have. These can include preferences judges have for how male verses female competitors should present themselves. “There are gender biases, not doubt,” this coach continued, “but “90 percent of mock trial is within your control. The great teams are the ones who handle what they can control.” According to this coach, if a program controls the 90 percent of a trial which is influenced by factors including case theory, knowledge of objections, and other substantive factors present in mock trial, then, regardless of if female competitors conform to a judge’s preferences, the team will still win the trial. “I know those implicit biases are there, but I’ve never left a round where I thought that’s why we lost.”

Another coach from the Northeast agreed. This coach stated that all judges possess individual preferences, and these preferences can include gender. To combat this, he instructs his team to “Act like CBS;” they work simply to present the facts, to “hit the right notes and check the right boxes.” By acting in this manner, the coach argued his team “casts the widest net possible,” helping them win ballots without satisfying judges’ gender-based preferences. The comments from these two coaches suggest that to some mock trial coaches, if a program outperforms another team in the aspects of mock trial that are predictable (i.e. having a stronger command of the rules of evidence and case law), then failing to conform to gendered preferences does not prevent a team from winning.

Explanation #2: Even if Patterned Gender Bias Exists in College Mock Trial, Coaches and Competitors do not Believe Female Mock Trial Competitors Should Conform to These Preferences at the Undergraduate Level

Of the 18 competitors I interviewed, nine of them explicitly stated their programs refuse to instruct female competitors to, by adjusting their attire and/or demeanor, to conform to perceived gender norms for how female attorneys should conduct themselves in the courtroom. Many of these students were adamant that mock trial is not the type of activity where female competitors to conform to these types of gender norms. In one interview, a female president of her school's mock trial program began discussing her team's process for making attorney roster adjustments. "If judges consistently score an attorney less [than everyone else], we evaluate the reason why this has been happening. We can change the person's role as a result of this. But gender is never a reason we do it." "We teach our members to be professional," said a student from a college in the Northeast, when talking about her program's dress code. "We tell them, 'if you wouldn't wear it for your parents, then don't wear it in the courtroom.' But we don't tell women to wear skirts over pants because of sexist judges. I could not care less about what a bunch of stickler old men think."

Two other students stated their programs don't make female competitors conform to gender norms to increase their performance because it defies other values they believe are more important to mock trial. "Mock trial's not all about winning the ballots," remarked a student from a university in the Midwest. "It's about learning to think on your feet, conduct yourself in the courtroom, and make a great group of friends. I personally don't care about the judges."

After a sophomore from a program in the Northeast told me he believed “[one in every six¹⁰³]” judges possess preferences for how females should compete. After he said this, I asked, “Do you prepare female competitors to deal with this?” After he responded, “no,” I asked, “should you?” In response, the student said, “I think it depends on priorities. Is your goal to make it to nationals? Or is it to be competitive but also to give people public speaking and courtroom experience and enjoy a fantastic experience with an incredible group of people?” This student’s program prefers the latter option.

Seven of the eight coaches that were interviewed explicitly stated their programs do not instruct female competitors to, by adjusting their attire and/or demeanor to conform to perceived gender expectations on how female attorneys should conduct themselves. These coaches, even more than the students I interviewed, emphatically stated they chose not to do so because their programs were concerned with teaching skills and values rather than conforming to gender preferences. One coach proudly described the number of “service projects” her team conducts throughout the year, including hosting two high school tournaments, where the college students act as mentors. This coach stated her program never holds tryouts so “everyone has a chance to learn and compete,” and she said that as a coach, she insists that her students create 100 percent of the material they use in competition.¹⁰⁴ “Our number one focus,” this coach stated, “is on developing life skills.” For this reason, she said gender never influences any roster decisions she makes or instructions she gives to students. Another coach from the Midwest agreed. “[The other coach in the program] and I have a plan for how we like to operate. We teach the skills, not conforming to the judges.” This coach highlighted the importance of “building skills for the legal

¹⁰³ His original statement was “five in every 30,” responding to the frequency indicator hypothetical discussed earlier. For the purposes of simplicity, I reduced the fraction to one in six.

¹⁰⁴ In some coached mock trial programs, coaches write portions of the students’ material for them. This can include direct and cross-examination scripts.

profession.” Although he conceded that gender bias can impact the conventional legal profession, he said his program instead focuses on teaching students to “build a narrative, create an argument, and present it.” To provide an example, he discussed how he instructs his students to dress. “I tell people to dress appropriately for the profession, not the preference of a person in the room. We have no requirement that females must wear skirts”

This coach also discussed other values he said are important in the legal profession, including teamwork and trust. When I asked him if he stacks his rosters for the national tournaments,¹⁰⁵ he said he does, but he does not simply consider competitors’ skills and the team’s chances of winning. He also said he considers “effort, and team chemistry – things like trust and empathy with one-another.”

Another coach said he values “accessibility” over winning; he would prefer his students have the opportunities to compete in diverse roles and capacities rather than be restricted because of factors including gender. This coach said he lobbied to turn his program into a credited course at his university because “I want to make [mock trial] accessible to all students.” When I asked why, he said that as a former practicing attorney, he believes mock trial is an important way for students to develop their legal skills and interests. “I wanted to create a classroom experience that would expose [students] to the basic skills they need for the trial courtroom.” In this manner, factors including teaching students how to “argue and debate” matter, as do working to reduce

¹⁰⁵ In this context, “stacking” refers to providing students with roles which maximize the team’s chances of winning a trial. For example, this can include putting the strongest attorneys and strongest witnesses on the same team and the weaker competitors on another. Often, at the beginning of the year, teams don’t stack their rosters so newer members have a chance to be mentored by more experienced members. It also provides members with the opportunity to try other roles. As the national competition in the spring approaches, teams begin to tack their rosters with the intent of creating the most competitive teams possible.

the financial barriers that can be associated with competing in mock trial.¹⁰⁶ Gender preferences, and instructing female attorneys to conform to them, do not matter compared to these factors.

The mock trial coaches I interviewed almost universally agree that gender is not a factor which should influence the types of instructions they give their students. When I asked coaches if they make roster decisions based on gender considerations, two of them almost appeared offended that I even thought they might consider the possibility. “[Our] program would *never* change a person’s role because we were worried about gender/race bias” said one coach from the Midwest. “No, never,” another coach curtly responded when asked the same question.

¹⁰⁶ Depending on the program, mock trial can be a very costly activity. Schools vary on the level of financial assistance offered to students for the registration and travel fees which are required to compete in a mock trial tournament. Additionally, mock trial competitors do wear professional attire, something some students may not own or be able to afford.

Chapter 8. Conclusions

Mock Trial and “Gendered Constraint”

The information gathered in this thesis illustrates that mock trial coaches and competitors believe patterned gender bias is present in the mock trial setting. As illustrated by the semi-structured interviews discussed in this research, mock trial coaches and competitors acknowledge that some mock trial judges possess gendered expectations for how female competitors should dress and conduct themselves in the courtroom. In this manner, female competitors face a level of “gendered constraint;” if they conform to judges’ preferences, then they reduce their risk of being discriminated based on their gender. However, by conforming to judges’ preferences, female attorneys could be disadvantaging themselves in a different way: They could be presenting themselves in a manner which contradicts their natural skillset.

One male coach from the Northeast stated that “certain people have skillsets that others don’t.” For this reason, according to this coach, the “style” and demeanor of different attorneys should be flexible; it should depend on the person’s character, strengths, and unique skillset. Some people, male or female, speak faster than others. Some mock trial attorneys naturally speak more formally, while other competitors, whether they are delivering a cross-examination or a closing argument, speak in a more aggressive and combative manner. According to this coach, competitors should adopt the style which comes naturally to them to be the most effective attorney; they should “play to their strengths.”

If judges exhibit implicit expectations towards how male versus female competitors can conduct themselves, however, then if a female competitor’s natural demeanor follows an aggressive style, she is forced to make a difficult choice: She can either play to her natural skillset and portray herself in a more aggressive manner, or she can train herself to adopt a more

passive demeanor. Adopting the first choice causes her to play to her strengths based on her natural abilities and tendencies, but adopting the latter decreases her chances of being criticized and scored lower by a judge who prefers less aggressive female attorneys.

Male attorneys do not have to make this choice. If a male's courtroom demeanor is naturally aggressive, then he can act more aggressively in a trial and not be criticized by a judge like a female attorney would be. As one female competitor commented, "guys can get away with raising their voices more." A male attorney I spoke with agreed with this assessment. "Men," he asserted, "can interrupt witnesses on cross much more easily than women can." In this manner, patterned gender bias creates a no-win situation for female attorneys. Because of their gender, they are constrained to conform to judges' preferences, or they will be penalized and discriminated against. But if they do so, they may be naturally handicapping themselves.

But even if female attorneys conform to judges' and juries' patterned gender preferences, they are still at a disadvantage compared to male attorneys. In *Covering*, Kenji Yoshino discusses the additional gendered constraint female attorneys face. "Women are uniquely situated," he asserts, because "men have long valued 'feminine' traits women are supposed to hold, such as warmth, empathy, and nurture."¹⁰⁷ However, these traits are not valued in the courtroom. Because the courtroom has been associated with men, it has assumed masculine characteristics and expectations. Men are rewarded for acting in this manner, but women are penalized because acting this way defies how women are expected to act. But if women conform to gendered preferences for how they are supposed to act, they cannot effectively compete with men who can act more aggressively, raise their voices, and interrupt witnesses.

¹⁰⁷ Kenji Yoshino, *Covering* (New York: Random House, 2006), 147.

Gendered constraint in the legal profession reveals impressive implications. It illustrates female attorneys may struggle to succeed in the legal profession because patterned gender norms and bias force them to present and conduct themselves in a constrained manner, one which puts them at a disadvantage. Without facing this problem, men can continue to hold the majority of the powerful positions within the legal profession, they can, implicitly or explicitly, continue to reinforce these norms that hobble female attorneys, perpetuating this vicious cycle.

Zealous Advocacy in College Mock Trial and the Legal Profession

If patterned gender bias continues to perpetuate itself through norms and preferences regarding how female attorneys should conduct and present themselves, how should law firms respond to this? Should they instruct female attorneys to conform to these preferences when it is beneficial, and at times, even hire male attorneys in their place? If an attorney and/or firm fully commits to the principle of zealous advocacy, then in a world where patterned gender bias still exists and manifests itself in the courtroom, the answer is yes. Just like Stevenson did in *Just Mercy*, female attorneys should conform to judges' preferences. They should wear white blouses, black skirts, and black, covered heels. They should speak softly and make sure their tone is formal, respectful, and "confident, but not too confident." They should conform to preconceived, biased expectations regarding how women should conduct themselves in the courtroom. They should serve their clients.

The ethics of zealous advocacy are contentious, and they continue to be debated today. In "Check Your Identity-Baggage at the Firm Door: The Ethical Difficulty of Zealous Advocacy in Bias-Ridden Courtrooms," Elina Tetelbaum argues that zealous advocacy considerations cannot extend to the point of condoning gender discrimination in the name of effective client

representation. If this happens, then female attorneys will continue to be systematically denied employment and client representation opportunities. This, Tetelbaum argues, would “likely stratify the legal profession” in a manner where male attorneys are able to increasingly dominate the profession, a consequence Tetelbaum believes would be harmful to the public good.¹⁰⁸ However, in the legal profession, attorneys and firms must prioritize the needs of their clients. For this reason, Tetelbaum argues firms will continue to discriminate against female attorneys in the name of zealous advocacy as long as they are allowed to. Tetelbaum asserts that consequently, regulations must be created to limit gender and identity discrimination on the basis of zealous advocacy.¹⁰⁹

If gender norms continue to exist in the courtroom, however, others argue firms and attorneys must acknowledge and conform to these preferences. This is especially important if a firm is representing a client in a trial with important legal implications. Shouldn’t a firm select a male attorney to represent a client if this would make a judge more likely to dismiss a case against their client? If a female attorney does represent a client, then shouldn’t she wear a skirt and speak softly if doing so increases the likelihood that a jury will acquit her client?¹¹⁰

This ethical debate is further complicated by the challenging nature of collecting empirical data on judge and jury decisions. Employment statistics can be studied, and interviews and surveys can be offered, but, as Tetelbaum argues, it is very challenging “to know definitively the extent to which biases against an attorney [factor] into jury verdicts.”¹¹¹ Attorneys, firms, and scholars, consequently, are forced to speculate, further fueling the debate.

¹⁰⁸ Tetelbaum, “Check Your Identity-Baggage at the Firm Door,” 280.

¹⁰⁹ Tetelbaum, “Check Your Identity-Baggage at the Firm Door.”

¹¹⁰ Others also argue through the “statistical discrimination argument” that there are rational, justifiable reasons law firms will discriminate against their female attorneys. For example, this argument asserts that statistically speaking, it is assumed more women than men will take extended leaves of absence from work if they have children. If this occurs, the firm would need to cover for this employee’s absence.

¹¹¹ Tetelbaum, “Check Your Identity-Baggage at the Firm Door,” 278.

Zealous Advocacy and College Mock Trial

The ethics of zealous advocacy are further complicated when considering the nature of patterned gender bias in college mock trial. Although college programs are not representing real clients, they are training future attorneys who will be representing future clients. If patterned gender bias exists in both college mock trial and the legal profession, shouldn't these students be prepared now for the reality they will face when the stakes are real?

I did not specifically ask this question to interview respondents, although I did ask them what they thought the relationship between college mock trial and the conventional legal profession was. Two participants, one student and one coach, argued that zealous advocacy considerations should involve gender in the conventional legal profession, but again, because mock trial is about teaching other skills valuable to the courtroom setting (e.g. public speaking), conforming to gender norms should not occur in college mock trial. When I asked a coach in the Midwest why he did not instruct female competitors to dress in accordance with judges' expectations, he replied, "if this was a law firm, we're wearing whatever we thought would help our case. But this is mock trial." A student from New England made a similar statement when he explained why his program didn't encourage all-male benches or discourage all-female benches: "If this was a real-life trial, that might have to be a consideration. Especially if someone's life was on the line. But it's not."

Decreasing Patterned Gender Bias in College Mock Trial

If most college mock trial coaches and student leaders do not believe female competitors should be instructed to conform to judges' patterned gender preferences, then could this issue be addressed by decreasing the frequency of patterned gender bias in college mock trial? Through a

more rigorous judge selection process and greater attention offered to educating mock trial judges on the issue of patterned gender bias, could its frequency be reduced?

The judge instructions written on mock trial ballots (See Appendix A) identify specific criteria for scoring mock trial competitors (e.g. one attorney instruction is to evaluate if they make “timely objections and [avoid] specious objections.”) However, these instructions do not specifically dictate judges ignore gender considerations when providing comments, scores, and rankings.

But in some regards, explicit steps to counter patterned gender bias do exist in college mock trial have been taken. One coach from the Northeast described an anti-bias seminar a tournament host provided to all of the people who would be judging at the tournament.¹¹² Three coaches also stated they will “report” judges who give gendered comments or appear to exhibit patterned gender bias. After reporting the names of these judges to tournament hosts and AMTA, these judges are generally not allowed to judge at future tournaments.

Better screening mock trial judges is also challenging in the current mock trial competition format. Judges are recruited by the universities which host tournaments, and currently, judges are not paid for the time they volunteer during competitions. This makes it hard for schools to recruit enough judges to run a tournament, let alone screen them. As one competitor commented, “We often have to have other teams bring judges for the tournament to be run. We get to the point where we want to pull people off the streets.” Another student agreed: “It’s hard to get enough judges for a tournament – they’re not paid. Sometimes you have to just get bodies in the room.”

¹¹² This occurred at an invitational tournament, and it was ran and sponsored by the tournament host university, not AMTA.

Research Limitations and Recommendations for Further Study

What, if any steps, should be taken to decrease the frequency of patterned gender bias in college mock trial? Based on the interviews I conducted, it is clear that mock trial competitors and coaches believe certain judges possess specific preferences for how female competitors present and conduct themselves in the mock trial courtroom. If they fail to conform to these preferences, then their scores and ranks can be negatively impacted. But it is also clear patterned gender bias persists beyond the mock trial courtroom.

This study was not able to identify the extent to which patterned gender bias impacts performance in college mock trial. As discussed in Chapter 3, I was not able to conduct any quantitative analysis over the course of my research because after competitions are completed, the scores, ranks, and comments in mock trial ballots are not recorded; ballots are simply given to teams for their consideration. Consequently, no centralized data on how judges comment, score, and rank male and female mock trial competitors can be analyzed.

To understand the extent to which patterned gender bias persists in college mock trial, these data must be recorded. As the organization which facilitates the Regional, ORCS, and NCT competitions that occur every year, the American Mock Trial Association has the ability to collect these data. If they do so, then over the next few years, scholars, from social scientists and professors to mock trial competitors writing honors theses, can code and compare these data in a way I could not.

Additionally, further interviews with mock trial coaches and competitors would help better illustrate the nature of patterned gender bias in college mock trial. While I was able to interview a number of coaches and competitors from various programs across the country, because this sample was based on volunteer participation, it does have its limitations. For

example, most of my student participants were women (13 women to five men), but most of the coaches I interviewed were men (six men to two women). I do not know if these proportions properly represent current mock trial gender demographics. Additionally, although I reached out to organizations across the country to attract as geographically diverse of a participant population as possible, I received no responses, despite repeated email attempts, from any programs in the western United States.

One way to improve the participant population may be to create a mandatory survey programs must complete to compete in the national mock trial competitions. This is already done by AMTA following each national tournament; they submit a brief google form to programs regarding their opinions on how the tournament was conducted that weekend, and if teams do not fill out this survey, they are not allowed to receive their ballots from the weekend. AMTA could also mandate programs complete a survey on the role of gender in college mock trial.

Although I communicated with numerous programs about the possibility of interviewing mock trial judges, I was ultimately not put in contact with any current judges. Interviewing judges would be especially helpful in examining how the current format of college mock trial either encourages or discourages patterned gender bias. This information could be used to help reduce its frequency.

Finally, the role of gender in college mock trial should be more explicitly discussed by mock trial coaches and student leaders. The results of this thesis illustrate that mock trial participants believe patterned gender bias exists in both the mock and real courtroom. While this thesis illustrates there are both positive and negative consequences to adopting a zealous advocacy approach and instructing female competitors and future attorneys to conform to judges' gendered preferences, this debate must continue, and it must begin at the college level.

Although college mock trial can reinforce patterned gender bias if not discussed, there is also hope that addressing this issue at the college level can help reduce gender bias in both mock trial and the conventional legal profession. As one coach from the South commented, I think this will shift as better AMTA alumni grow up;” mock trial competitors, aware of how gender norms in the courtroom negatively impact female attorneys, can become mock trial judges and attorneys, and over time, they can work to change these norms. As one female competitor commented, “If we can mitigate [gender bias] at the undergraduate level, we have hope for a more inclusive environment down the road.”

But before this can occur, the issue must be openly discussed. I hope this thesis draws attention to the potential presence of patterned gender bias in college mock trial and highlights the importance of considering this issue *before* students enter law school. If we can openly discuss gender bias and recognize its presence and its impact, then we can work to better address it.

Appendix A: College Mock Trial Ballot

AMERICAN MOCK TRIAL ASSOCIATION BALLOT

1



This is a pressure form. Please write firmly with ballpoint pen to make a copy.
Do not put the ballots on top of each other when you write on them.

PL./PROS. TEAM # _____ DEFENSE TEAM # _____

ROUND 1 2 3 4 — JUDGE'S NAME _____
(Please Print)

INSTRUCTIONS

Thank you for taking the time to educate and evaluate these students. Please read the following guidelines to provide a consistent assessment of the students' skills. Each function of the trial is scored, and each counts toward the overall team points that will determine a win or loss. Please mark the score on the **SCORE/SPEED SHEET** (page 5) at the appropriate spot. Use spaces to write comments, as the forms will be given to students after the tournament. **NOTE: All areas for DEFENSE are shaded.**

All students should follow AMTA guidelines on objecting, impeaching witnesses, and admitting exhibits. You should not deduct points because those procedures differ from those used in your practice. The AMTA board has voted to eliminate bench conferences, so if there is a dispute, have the presiding judge make a ruling and move on.

Students in attorney roles should be judged on the basis of their knowledge of the law, court procedure, and grasp of the case. In addition, consider their organization, poise, clarity, and ability to focus your interest. Students in witness roles should be judged on the basis of their convincing portrayal of their characters, including consistency with facts in the affidavit, poise, clarity, and ability to focus your interest. Please use the full range of the 10-point scale below to distinguish outstanding performances from those that are good, average, or weak. Please **DO NOT** put scores on pages 1-4. Ballots are not graded and any and all notes should be included on the ballots as the trial progresses. Judges will **NOT** have time to transfer notes made on a legal pad or scrap paper to the ballot. Your comments are an important learning tool for the students, and we appreciate your efforts to provide them with feedback. Additional comments that won't fit in a given student space can be made on page 4.

10	9	8	7	6	5	4	3	2	1
Excellent					Average				Poor

We want to encourage the student participants to engage in the following behaviors, so please consider them in evaluating the students:

ATTORNEYS

- Made timely objections and avoided specious objections
- Demonstrated understanding of legal procedure/reasoning, could "think on feet"
- Direct examination was well-structured, coherent
- Controlled witness on cross-examination
- Articulate and professional in presentation, with minimal use of notes
- Impeached witnesses to delineate discrepancies between testimony and affidavit
- Opening statement established theory of the case
- Closing argument addressed strengths of own case, weaknesses of opponents' case
- Worked well with other team members
- Displayed appropriate decorum to team members, judges, and opposing team throughout the round
- Spoke loudly and clearly enough to be heard, understood

WITNESSES

- Dress and demeanor appropriate for witness being portrayed
- Maintained portrayal of character throughout trial, even when not on stand, without relying on notes
- Showed emotion appropriate to role
- Avoided impeachment
- Gave responses that helped team, without inventing material facts on direct examination
- Responded well to unanticipated questions on cross examination
- Knew part cold, believable performance
- Maintained poise during cross examination, did not become inappropriately flustered or uncertain
- Worked well with other team members
- Displayed appropriate decorum to team members, judges, and opposing team throughout the round
- Spoke loudly and clearly enough to be heard, understood

PL./PROS. OPENING STATEMENT NAME _____

DEFENSE OPENING STATEMENT NAME _____



AMERICAN MOCK TRIAL ASSOCIATION BALLOT

2

This is a pressure form. Please write firmly with ballpoint pen to make a copy.
Do not put the ballots on top of each other when you write on them.

PL./PROS. TEAM # _____ DEFENSE TEAM # _____

ROUND 1 2 3 4 _ JUDGE'S NAME _____
(Please Print)

PL./PROS. WITNESS #1 Character Name _____

DIRECTING ATTORNEY'S NAME

WITNESS'S NAME

CROSSING ATTORNEY'S NAME

PL./PROS. WITNESS #2 Character Name _____

DIRECTING ATTORNEY'S NAME

WITNESS'S NAME

CROSSING ATTORNEY'S NAME

PL./PROS. WITNESS #3 Character Name _____

DIRECTING ATTORNEY'S NAME

WITNESS'S NAME

CROSSING ATTORNEY'S NAME



AMERICAN MOCK TRIAL ASSOCIATION BALLOT

3

This is a pressure form. Please write firmly with ballpoint pen to make a copy.
Do not put the ballots on top of each other when you write on them.

PL./PROS. TEAM # _____ DEFENSE TEAM # _____

ROUND 1 2 3 4 _ JUDGE'S NAME _____
(Please Print)

DEFENSE WITNESS #1 Character Name _____

DIRECTING ATTORNEY'S NAME

WITNESS'S NAME

CROSSING ATTORNEY'S NAME

DEFENSE WITNESS #2 Character Name _____

DIRECTING ATTORNEY'S NAME

WITNESS'S NAME

CROSSING ATTORNEY'S NAME

DEFENSE WITNESS #3 Character Name _____

DIRECTING ATTORNEY'S NAME

WITNESS'S NAME

CROSSING ATTORNEY'S NAME



AMERICAN MOCK TRIAL ASSOCIATION BALLOT

4

This is a pressure form. Please write firmly with ballpoint pen to make a copy.
Do not put the ballots on top of each other when you write on them.

PL./PROS. TEAM # _____ DEFENSE TEAM # _____

ROUND 1 2 3 4 _ JUDGE'S NAME _____
(Please Print)

PL./PROS. CLOSING ARGUMENT NAME _____

DEFENSE CLOSING ARGUMENT NAME _____

PL./PROS. REBUTTAL (AMTA rules allow, but do not require, a pl./pros. rebuttal. If used, your score for the closing argument should include this speech.)

The space below may be used for additional comments to the teams, such as the round's highlights, major accomplishments, areas for general improvement, reactions to case strategies, or reasons for the decision on the merits.



AMERICAN MOCK TRIAL ASSOCIATION BALLOT

5

This is a pressure form. Please write firmly with ballpoint pen to make a copy. Do not put the ballots on top of each other when you write on them.

PL./PROS. TEAM # _____ DEFENSE TEAM # _____

ROUND 1 2 3 4 _ JUDGE'S NAME _____ (Please Print)

SCORE SUMMARY/SPEED SHEET

Please fill out this sheet and hand it in IMMEDIATELY after the trial, before you consult with the other judges or offer any oral critique. The prompt completion of this sheet is important to the timeliness of the next round and the efficiency of the entire tournament. Thanks for your cooperation. (Please DO NOT use decimals or fractions in judging performances.)

PLAINTIFF/PROSECUTION

_____ Opening statement

PL./PROS. CASE-IN-CHIEF

_____ Direct exam of π #1

_____ Witness #1 direct

_____ Witness #1 cross

_____ Direct exam of π #2

_____ Witness #2 direct

_____ Witness #2 cross

_____ Direct exam of π #3

_____ Witness #3 direct

_____ Witness #3 cross

_____ Cross exam of Δ #1

_____ Cross exam of Δ #2

_____ Cross exam of Δ #3

_____ Pl./Pros. closing argument

DEFENSE

_____ Opening statement

_____ Cross exam of π #1

_____ Cross exam of π #2

_____ Cross exam of π #3

DEFENSE CASE-IN-CHIEF

_____ Direct exam of Δ #1

_____ Witness #1 direct

_____ Witness #1 cross

_____ Direct exam of Δ #2

_____ Witness #2 direct

_____ Witness #2 cross

_____ Direct exam of Δ #3

_____ Witness #3 direct

_____ Witness #3 cross

_____ Defense closing argument

OUTSTANDING ATTORNEYS AND WITNESSES

Each judge should rank the top four attorneys and witnesses where rank #1 represents the best performance. Please indicate which side the nominees represent by circling P or D. Use the student's name, not the character's name - look at pages 2 and 3 if in doubt.

ATTORNEYS

- 1. _____ P D
2. _____ P D
3. _____ P D
4. _____ P D

WITNESSES

- 1. _____ P D
2. _____ P D
3. _____ P D
4. _____ P D

Appendix B: IRB Interview Information Sheet

Consent to Participate in Research

Title of Research Project:	The Process of Preparing for and Competing in College Mock Trial Competition
Principal Investigator:	Eric Tucker
Faculty Advisor:	Alec Ewald
Sponsor:	University of Vermont Political Science Department

Introduction

You are being invited to take part in this research study because you have participated in mock trial programs as a student/coach. This study is being conducted by the University of Vermont.

We encourage you to ask questions and take the opportunity to discuss the study with anybody you think can help you decide whether or not to participate in this study.

Key Information to Help You Decide Whether or Not This Study Is Right for You

- You have participated in mock trial as a student competitor, coach, and/or judge.
- You understand the scope of this research, and you have relevant information you would like to contribute.
 - This study asks you to describe your experiences in your respective school's mock trial program.
- During the interview, you will be asked a series of questions about your role in your school's mock trial program and your experiences during team preparation and participation in mock trial competitions.
- The interview will last approximately twenty minutes.
- **Participation in this research is voluntary during the entirety of the interview.**
 - **If you do not want to be interviewed, you do not have to.**
 - **If you do not want to answer a question, you do not have to.**
 - **You may stop the interview at any time.**
 - **You may contact the researcher at any time and have your responses withdrawn from publication and presentation.**
- Some interview questions could cause you to recall stressful and/or traumatic events you may have experienced.

The information above is only a brief summary of the study. If you are interested in learning more, it is important to read the following pages for additional detailed information about the study. If you decide to take part in the research, you will be asked to provide written consent at the end of this document.

Why is This Research Study Being Conducted?

The purpose of this study is to examine the explicit and subjective factors that contribute to mock trial competition preparation and participation.

November 12, 2018

1

How Many People Will Take Part In The Study?

About 30 people will be interviewed in the study.

What Is Involved In The Study?

Study participation will take a total of approximately twenty minutes.

During the study, you will be asked questions about your involvement and experiences in collegiate mock trial, including experiences that may have occurred at tournaments and/or during team meetings and practice sessions. Some sample questions include:

1. How long have you been a part of your college's mock trial program?
2. Have you ever assumed any leadership roles in the club?
3. Does your program have a coach?

Questions will also ask for you to reflect on more subjective factors both within and outside of the mock trial setting. Sample questions include:

1. What sort of interactions do you generally have with judges at tournaments during competition?
2. Is this behavior consistent from judge to judge?

All study procedures will take place at the University of Vermont, the university you attend, or through a conversation on a telephone or internet-based platform like Skype.

If you decide to participate in this study, we will include the answers that we collected from your interview in your research record.

What Are The Benefits of Participating In The Study?

There is no direct benefit to you anticipated from participating in this study. However, it is hoped that the information gained from the study will help professionals in this field better understand the factors that contribute to mock trial competition perpetration and participation.

What Are The Risks and Discomforts Of The Study?

The following foreseeable risks or discomforts may occur as a result of participation:

- Risk of emotional discomfort from being asked about or discussing sensitive issues.
- Identification from accidental loss of privacy.

It is important that you promptly tell the researcher, Eric Tucker, if you believe that you have been injured because of taking part in this study. You can tell the researcher in person or call him at 802-282-7637.

What Other Options Are There?

The only viable alternative option would be to decide to not participate in this research.

Are There Any Costs?

There are no monetary costs associated with this research.

What Is the Compensation?

You will not be paid to participate in this study.

Can You Withdraw or Be Withdrawn From This Study?

November 12, 2018

2

You may discontinue your participation in this study at any time. If you wish to cease participation, all physical and electronic documentation of your participation will be destroyed, including your responses to this interview. None of the information you provided in this study will be included in publication or presentation of this research, and it will not be discussed or shared with any parties.

The researcher may choose to discontinue your participation in this study at any time. If this occurs, then all physical and electronic documentation of your participation will be destroyed, including your responses to this interview. None of the information you provided in this study will be included in publication or presentation of this research, and it will not be discussed or shared with any parties.

What About Confidentiality?

Your study data will be handled as confidentially as possible. If results of this study are published or presented, individual names and other personally identifiable information will **not** be used.

To minimize the risks to confidentiality, we will:

- Keep this consent form and any pen-and-paper notes taken during the interview in a locked file cabinet. Your data will not be reproduced.
- Refrain from electronically uploading this information to prevent potential cyber breaches of confidentiality. The only electronic information this study are the initial emails you were sent asking if you would like to participate in this study.
- Remove identifying characteristics from the publication or presentation of this research. You will either be referred to as a participant and only identified by your mock trial role and approximate region.
 - For example, if you were a competitor from the University of Vermont, you may be described as “a student from a northeast college or university.”

The faculty advisor to this research, the University of Vermont’s Institutional Review Board, and regulatory authorities will be granted direct access to your original research records for verification of research procedures and/or data.

If your record is used or disseminated for government purposes, it will be done under conditions that will protect your privacy to the fullest extent possible consistent with laws relating to public disclosure of information and the law-enforcement responsibilities of the agency.

We will destroy the notes/ study records at the end of this study. Interviews will not be taped or recorded.

Contact Information

You may contact Mr. Eric Tucker, the Investigator in charge of this study, at 802-282-7637 for more information about this study. If you have any questions about your rights as a participant in a research project or for more information on how to proceed should you believe that you have been harmed as a result of your participation in this study you should contact the Director of the Research Protections Office at the University of Vermont at 802-656-5040.

Statement of Consent

You have been given and have read or have had read to you a summary of this research study. Should you have any further questions about the research, you may contact the person conducting the study at the address and telephone number given below. Your participation is voluntary, and you may refuse to participate or withdraw at any time without penalty or prejudice.

You agree to participate in this study and you understand that you will receive a copy of this form.

Name of Principal Investigator: Eric Tucker
University of Vermont
Telephone Number: 802-282-7637
Name of Faculty Sponsor: Alec Ewald
Department of Political Science, University of Vermont

Committee on Human Research
Date Approved 11-13-18
CHRMS# 19-0209

November 12, 2018

4

Appendix C: Competitor and Coach Interview Questions

Eric Tucker
DATE
Honors Thesis Interview Questions
Competitor –
Start:
End:

Mock Trial Current Competitors:

Hello, and thank you again for taking the time to speak with me. Before we begin the interview, I'd like to remind you that your personal and school identities will be kept completely confidential; your name, the college you study at, and other personalized information will not be included in the publication or presentation of this research, and it will not be discussed with anyone outside faculty associated with this research. **The remarks you make in this interview will in no way, shape, or form, be connected to you.**

The confidentiality of this research is further detailed in the research consent form you read and signed earlier. Before we begin, would you like to review this form, either with me or by yourself? Do you have any questions about it?

If at any time you would either like to refrain from answering a question, please let me know. You can choose to end the interview at any point, and you may also withdraw any answers you have given from the publication and presentation of this research.

Do you have any questions or concerns before we begin?

Name –
Gender –
School –

- Could you please talk a little about your involvement in your school's mock trial program?
 - How long have you been a part of the program?
 - Approximately how many tournaments have you attended?
 - What roles have you assumed (attorney, witness, or both)?
 - Have you assumed any leadership roles within the program?
 - If yes, could you please describe them?
- Does your team have a coach?
 - If not, then how is your club run?
 - i.e. Are you entirely student-run?
 - Do you have a faculty advisor?
 - Has this changed at all since you've been a member?

- How are roles assigned?
 - How is case theory created?
 - Among the team, or certain leadership members make the decisions?
 - If yes:
 - What is the role of your coach?
 - Do they assign roles?
 - If not, who does?
 - Do they stack teams (if you have more than one)?
 - If not, who does?
 - Do they create case theory?
 - If not, who does?
- I'd like to move on now and talk about your team's preparation for tournaments, be it invitationals, regionals, ORCS, etc.
- Do you hold tryouts at the beginning of each year?
 - Who determines who stays on the team? Coaches, seniors, leadership?
 - Do you know how members are selected?
 - If yes, would you mind telling me?
 - Once you have your team, how often do you practice per week?
 - How often do you practice each week, and for how long?
 - Where do you meet?
 - What is the organization of a typical meeting like?
 - Does this change throughout the year?
- I'd like to segue from here and ask you about some of the tournament instructions you receive. This could be from your coach, your club's leadership, or it could be advice you give to your fellow members.
- Aside from case theory, what sort of instructions are you given?
- In general, do you talk about the importance your demeanor and how you present yourselves and come across to others, especially judges?
- Specifically, do you talk about how to dress for mock trial competition?
- Can you think of a typical instruction you might have received, or an example of a time when you thought that kind of instruction was particularly needed, or important?
- Do you talk about hair style and jewelry?
- Again, what might be a typical conversation you might have, or an example of a time when you thought that kind of instruction was particularly needed, or important?
- Do you talk with students about decorative piercings – that is, other than earrings?
- What about the types of shoes you should wear in the courtroom?

- Do you talk specifically about your vocal tones, vocal mannerisms, and accents?
- Do you talk specifically about the facial expressions you should and should not make in competition?
- Do you talk about the way you walk, your posture, your movements and gestures?
 - Again, what might be a typical conversation you have, or an example of a time when you thought that kind of instruction was particularly needed, or important?
 - What instructions are attorneys given that witnesses are not?
 - What about different attorneys?
 - Experts vs character attorneys
- Who gives you this advice?
- What, if any, role does gender play in these discussions you have?
- Do you think judges, juries, and other observers in the mock trial setting have different expectations for male and female attorneys?
- If so, how are they different?
 - Do you think there is more pressure, or higher expectations, in the courtroom setting, on female attorneys, in areas like demeanor, physical presentation, and dress, than there is for male attorneys?
 - If so, how do you prepare for that?
- What sort of interactions do you generally have with judges at tournaments during competition?
 - How do they treat you during directs, crosses, statements?
 - Is this behavior consistent from judge to judge?
 - If not, what are the differences?
 - Do judges generally treat each attorney/witness the same?
 - If not, what are the differences?
 - Have you ever observed judges treat attorneys with different genders differently?
 - If so, what sort of differences in treatment are there?
- What sort of conversations have you had with your fellow competitors about the ways judges treat mockers during competition?
- Have you talked with your coach (if applicable) about judge behavior?
- Has your coach ever talked about making team adjustments based on judge behavior?
 - For example, have any of your teammates been moved from one role to another because your coach or leadership believed that some aspect of this person's performance, demeanor, etc. came across to the judge in a way you thought might hurt the team's chances?

- Can you recall an example?
- Of course, many students in mock trial are set on attending law school after college, and practicing law. A lot of people say that the legal profession generally, and the courtroom specifically, is a place where gender bias is still really prevalent.
 - If that's so, what do you think is the best way to prepare mock trial participants for that aspect of practicing law?

If student has begun to discuss gender bias and believes it is present in mock trial:

- *What conversations have you had with your fellow students about the role of gender bias in mock trial?*
 - *Are there any differences in conversations between male and female students?*
 - *What about with coaches or leadership?*
- *How does it impact the decisions and adjustments made in your club?*
 - *Assigning roles*
 - *Dress*
 - *Courtroom demeanor*
- Is there anyone (coaches or competitors) you know who might be willing to speak with me about this subject?
- Is there anything else you would like to discuss with me?

Eric Tucker
DATE
Honors Thesis Interview Questions
Mock Trial Coaches
NAME
SCHOOL
Gender:
Start:
End:

Mock Trial Coaches:

Hello, and thank you again for taking the time to speak with me. Before we begin the interview, I'd like to remind you that your personal and school identities will be kept completely confidential; your name, the college you study at, and other personalized information will not be included in the publication or presentation of this research, and it will not be discussed with anyone outside faculty associated with this research. **The remarks you make in this interview will in no way, shape, or form, be connected to you.**

The confidentiality of this research is further detailed in the research consent form you read and signed earlier. Before we begin, would you like to review this form, either with me or by yourself? Do you have any questions about it?

If at any time you would either like to refrain from answering a question, please let me know. You can choose to end the interview at any point, and you may also withdraw any answers you have given from the publication and presentation of this research.

Do you have any questions or concerns before we begin?

- Could you please talk a little about your involvement in your school's mock trial program?
 - How long have you been a part of the program? _____
 - Approximately how many tournaments have you attended? _____
 - Did you compete in mock trial before becoming a coach? _____
 - If yes, in what capacity?

- Now, before we go into any more detail about your role as a coach, I'd like to talk to you a little about your school's program.
 - How many teams compete at your school?
 - Do you hold tryouts to determine membership?
 - Who decides who makes the team?
 - If it's the coach, ask what standards they use to determine this

- Once you have finished with tryouts, how does your team prepare for tournaments?
 - How often do you meet?
 - Who runs meetings?

- How are roles selected?
 - If you (the coach) selects them, what process do you use?
- I'd like to segue here into some questions about the tournament instruction you give your students.
 - Aside from case theory, what sort of instructions do you give your "mockers?"
- In general, do you talk with mockers about the importance of thinking about how they present themselves, their demeanor, and how they come across, in the courtroom setting
 - The importance of weighing how others see them and hear them?
- Specifically, do you talk with students about how to dress for mock trial competition?
 - Can you think of a typical instruction you might give, or an example of a time when you thought that kind of instruction was particularly needed, or important?
- Do you talk with students about hair style and jewelry?
 - Again, what might be a typical conversation you might have, or an example of a time when you thought that kind of instruction was particularly needed, or important?
- Do you talk with students about decorative piercings – that is, other than earrings?
- Do you talk with students specifically about their vocal tone, vocal mannerisms, and accents?
- Do you talk with students specifically about their facial expressions they make in competition?
- Do you talk with students about the way they walk, their posture, their movements and gestures?
 - Again, what might be a typical conversation you might have, or an example of a time when you thought that kind of instruction was particularly needed, or important?
 - What instructions are attorneys given that witnesses are not?
 - What about different attorneys?
 - Experts vs character attorneys
- Have you ever directed a competitor / mocker to change something about their appearance because you thought doing so would help the team's chances?
- What, if any, role does gender play in these discussions you have?
- Do you think judges, juries, and other observers in the mock trial setting have different expectations for male versus female attorneys?
- If so, how are they different?

- Do you think there is more pressure, or higher expectations, in the courtroom setting, on female attorneys, in areas like demeanor, physical presentation, and dress, than there is for male attorneys? What about vice versa?
 - If so, how do you prepare female attorneys for that?”
- At tournaments, are you able to observe the trials your team(s) compete in?
 - How do judges generally interact with your students?
 - How consistent is this from judge to judge?
 - Do judges generally treat each attorney/witness the same?
 - If not, what are the differences?
- What conversations have you had with fellow coaches about these behaviors?
- What conversations have you had with your students about this behavior?
- Have these behaviors ever impacted the coaching decisions you make?
 - For example, have you ever moved a competitor from one role to another because you believed that some aspect of the way they came across in the courtroom to the judge would hurt the team’s chances?
 - Can you recall an example?
- Of course, many students in mock trial are set on attending law school after college, and practicing law. A lot of people say that the legal profession generally, and the courtroom specifically, is a place where gender bias is still really prevalent.
 - If that’s so, what do you think is the best way to prepare mock trial participants for that aspect of practicing law?

If coach has begun to discuss gender bias and believes it is present in mock trial:

- *What conversations have you had with your students about the role of gender bias in mock trial?*
 - *Are there any differences in conversations between male and female students?*
 - *Is this something you feel obligated to discuss with your students?*
- *How does it impact the decisions and adjustments you make as a coach?*
 - *Assigning roles*
 - *Dress*
 - *Courtroom demeanor*
- Is there anyone (coaches or competitors) you know who might be willing to speak with me about this subject?
- Is there anything else you would like to discuss with me?

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