

# AGEISM AND SEXISM IN COURT

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## INTRODUCTION

How are plaintiffs, defendants, witnesses, jurors, clients, attorneys, and judges impacted? We will review real-life examples and film clips of ageism and sexism in the courtroom, as well as explore the advantages and disadvantages faced by many in the legal system based on their age or sex. The problems encountered, the reaction by the bar, public, and judiciary, and potential resolutions and responses, will be discussed and explored.<sup>1</sup>

## EXPLICIT AND IMPLICIT BIAS

Bias can be explicit or overt, or it can be implicit. In the past, bias was often-times explicit. Today, our biases may be hidden, unseen, and many times unrecognized. Implicit bias is even harder to address. We all have certain attitudes and stereotypes that affect our actions and decisions. These can be favorable and unfavorable. Most people have inherent biases against people that are unlike them which can include: gender, ethnicity, age, sexual orientation, etc. These biases cause us to have feelings and attitudes about others based on these characteristics. They develop over time through life experiences and messages we receive. It is sometimes displayed in the reaction you have to a person before you ever meet them. It may be an assumption that our brain makes about a person based on very little that is known about them at the time.

In the legal field, we would all like to think that getting ahead and doing well is based on merit and objective criteria. But, the playing field is not level. It still may change based on gender, age, or ethnicity. Inherent bias still plays into decisions about hiring, compensation, elevation, guilt or innocence, winning or losing, judicial decisions, etc.

Here are some statistics on sexism:<sup>2</sup>

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<sup>1</sup> There are other forms of bias, discrimination and harassment including that based on race, marital status, sexual orientation, religion, disability, etc.

<sup>2</sup> Bass, Hilarie, "Implicit Bias in the Workplace" (February 14, 2017).

In 2014, women working full time were paid 79% of the wages paid to men for the same job.

Women in the legal field work an average of 8 hours more per week than men and receive 80% of the compensation paid to men.

Women may be labeled as greedy, aggressive and not team-driven when asking for a raise/bonus while men are viewed as strong and good negotiators.

In 2015, 43% of Florida's young female bar had encountered one or more instances of discrimination, including gender bias, harassment, and pay differentials.

With every passing year of attorney development, the number of women decline. The entering class of new associates is 40-45% women but that number declines to 25% of new partners, and drops to 18% of equity level partners.

Mothers are penalized in pay and promotions while fathers get raises to help the "bread-winners."

And more statistics:

Law school graduation rates for males and females are nearly equal, but fewer than 19% of law firm partners are women, fewer than 6% racial minorities, and fewer than 2% are female minorities.<sup>3</sup>

70.4% of women attorneys surveyed indicate that they experienced gender bias in the courtroom.<sup>4</sup>

And, some statistics on aging:<sup>5</sup>

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<sup>3</sup> "Law Firm Diversity Demographics Slow to Change – Minority Women Remain Particularly Scarce in Law Firm Partnership Ranks," *The National Association for Legal Professionals*, Press Release (October 10, 2008).

<sup>4</sup> "A Career in the Courtroom: A Different Model for the Success of Women Who Try Cases," *DRI – The Voice of the Defense Bar* (2004).

<sup>5</sup> Wong, "Book Review: Elders on Trial: Age and Ageism in the American Legal System," *Marquette Elder's Advisor* (2005).

Fifty years ago, 12.4 million people over the age of sixty-four constituted 8.1% of the population. By mid-2004, the number of elders tripled to 36 million. By 2030, 70 million older adults or 20% of the population are estimated to be in this group.

Ageism will affect everyone, unlike other forms of discrimination.

Derogatory terms include: “old bag” “fossil” “old timer” “dead wood” “geezer.”

We have more older litigants, judges, jurors, attorneys, and witnesses than ever before.

Areas of particular concern to the older generation are: discrimination, guardianships, elder abuse, asset transfer and reimbursement, and nursing home torts.

Misconceptions or biases:

Older witnesses are less reliable.

Older attorneys are not as sharp.

Older attorneys can get away with more.

Older attorneys are more experienced in an area of law.

Older attorneys are more likely to misbehave and not follow the rules.

Younger attorneys are more patronizing to older clients and don't listen to them well.

Older judges are not as competent and are set in their ways.

Older jurors and judges are more conservative.

Older attorneys, judges and jurors know nothing about technology.

## **WHO IS AFFECTED**

- Jurors
- Plaintiffs and Defendants
- Attorneys

- Clients<sup>6</sup>
- Judges and Other Decision Makers<sup>7</sup>
- Society

### REAL-LIFE EXAMPLES – IN THE PAST

- In 1869, Myra Bradwell was refused a license to practice law in Illinois. The United States Supreme Court upheld the action on the grounds that “the paramount destiny and mission of women are to fulfill the noble and benign offices of wife and mother.”
- A law firm memo on how to deal with “Lady Lawyers” from 1956:<sup>8</sup>

“The firm desires to be candid about its preferences for male applicants and yet not unnecessarily discourage the distaff side of our profession. We have hired women lawyers in the past and we currently employ one woman who is outstanding in the blue sky field.”

“It is, however, also true that the firm does not rate a **girl** applicant on equal terms with the **men** applicants.”

“If the paper records are the same, the **man** is given preference, barring some **personality defect**, on the grounds that being a **man**, he has probably had extra-curricular experience in the business world which will be of greater use to the firm than the experience open to most **girls**.”

“Where grades disqualify a lady applicant it is preferable and quickest to terminate the interview on this ground. If, however, except for her sex the applicant deserves an “8” or better, the firm’s preference for man should be candidly faced...”

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<sup>6</sup> This is a two-way street. Some lawyers report that they have been harassed by or discriminated against by clients. Some male clients have refused to work with female attorneys. Some female clients refuse to work with male attorneys. Some clients feel that they have been treated unfairly by attorneys of the opposite sex.

<sup>7</sup> Judges are just as susceptible to bias as jurors. Greeley, Ann, “Gender and Racial Bias in the Courtroom,” DecisionQuest, State College PA, ABA Section of Litigation (April 2012).

<sup>8</sup> Rubino, Kathryn, BIGLAW, Women’s Issues, “You Won’t Believe This Infuriatingly Sexist Law Firm Memo From The 1950’s”, abovethelaw.com (March 2017).

“Next, an **option** should be given to the lady applicant either to proceed further with the knowledge that she must overcome a preference for male associates or to withdraw and use her valuable time where such a preference may not apply.”

“The firm will probably not suffer its preference for men if the desire to be candid so as to be fair to lady applicants is stressed along with the fact that the firm does not give a final “no” to lady applicants because it wants to stay flexible from year to year and review its position in the light of each outstanding lady applicant who appears. After such an applicant has seen one or two partners, the responsible associate should get them to decide what further disposition is in order.”

Things to note other than the obvious:

Males are “men” and females are often times “girls.”

There is a “preference” for men because they are men.

Women are given a “choice” or “option” to quit the process.

Who is to blame: Society at the time. The old men in charge.

What had to be done: Women had to work twice as hard to break through these barriers and show that they were equal, or at times, even more qualified.

### **REAL-LIFE EXAMPLES – IN THE NOT SO DISTANT PAST**

- In 1987, male summer associates went to lingerie lunch while the female associates were invited to the tea room.
- In 1989, a Florida judge denied a wife’s petition for alimony stating that: “You’ve got to go out and get another guy.” “The singles bars are full of them. I’ve been there. I’m a single man. There are all kinds of bimbos in those places...There are whacky brain surgeons out there – you go and find one...because you’re going to end up making five dollars an hour

the rest of your life unless you have a guy..." The judge then allowed the wife to live in the marital home but prohibited her from cohabitating with any man saying: "No live-in boyfriend is to come into that house." "I don't want her all of a sudden taking up with some nice, sweet little blonde from Norway." The wife's lawyer objected arguing that the restrictions were sexist. The judge stated: "What do you mean sexist? It's not a sexist thing." The judge then proceeded to state that the husband, since it was his house, could "take up with the Miami Dolphins cheerleaders there if he wants to."

- In 1993, an Ohio judge sentenced a man convicted of beating his wife and daughter. The man had a record for murder, rape, and armed robbery. The mandatory sentence was 3 to 15 years. The judge released the defendant after serving 7 months stating: "The guy walked into his house with his wife in his bed with another guy. It's enough to blow any guy's cool if he's any kind of man."
- In 1994, a Tennessee judge released a man without supervision pending a hearing after he was found not guilty of rape by reason of insanity but stopped going to his counseling sessions. The defendant claimed that voices in his dreams told him to rape. The judge stated: "I don't think he needs [a guardian], really. I think what he needs is a girlfriend, because if he doesn't get one, he's going to have bad dreams again." The judge then told his counsel: "We'll let you arrange a dating service or something."
- *Weeks v Baker & McKenzie*, 63 Cal. App. 4<sup>th</sup> 1128 (1998)

A jury awarded nearly \$7 million dollars to a former secretary who filed a discrimination case against the firm and a partner. The partner had sexually harassed her and other female employees for a number of years. He had made gestures as if cupping her breasts and asked her about the wildest thing she had ever done. Several women complained and quit their jobs. This case appears to be a turning point for recognition that sexual harassment is an issue in the legal workplace.

- Marcia Clark and the OJ Simpson Trial: It appears that it was Marcia Clark and not OJ that didn't get a fair trial.

A focus group ranked the court players. OJ received 8's and 10's while Clark received a 4. Nicole Brown scored even lower – she was labeled a gold-digger.

The media focused on Marcia's hair, suits, jewelry, and pending custody battle.

When Marcia advised the court that she could not stay late one day due to child care obligations (remember she was in a custody battle), Johnny Cochran accused Marcia of using child care as a ruse to delay the testimony of a defense witness.

Many of the attorneys, witnesses, jurors, and court staff had children at home. Only Marcia's children became an issue as she was the only female attorney involved in the case.

Topless photos of Marcia were released to the press during the trial.

- In a 1995 trial involving rape, sodomy and murder, Nancy Grace was the prosecutor in Atlanta. The defense filed a motion to enjoin her from wearing skirts that were over so many inches above her knees, a blouse that was too low cut, and from bending over in front of the jury. The motion was part of the public record and reporters from all over the country descended upon the courtroom for argument on the motion. The judge cut the defense lawyer off in the midst of his argument, overruled the motion stating: no discussion, no dramatics, call your first witness.

### **REAL-LIFE EXAMPLES - TODAY**

- An accomplished, international human rights lawyer delivered a speech to the United Nations concerning ISIS genocide and the growing number of Islamic State rapes and kidnappings – a serious topic by a powerful lawyer. However, here are some headlines concerning the speech:<sup>9</sup>

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<sup>9</sup> Schmidt, Samantha, *The Washington Post*, "A lawyer named Amal Clooney gave a poserful speech at the U.N. Some only saw her baby bump." (March 10, 2017).



“Amal Clooney is a vision in yellow as she shows off hint of baby bump in chic dress.”

“Amal Clooney Stuns in Yellow While Delivering Passionate Speech at the United Nations.”

“Amal Clooney Shows Off Her Baby Bump at the United Nations.”

“Amal Clooney was all business on International Women’s Day. The mom-to-be (who also happens to be married to George Clooney) stepped out outside the United Nations headquarters in New York City on Wednesday, showing off her baby bump...”

“Amal Clooney Shows Baby Bump in What Could be the Ultimate International Women’s Day Poster.”

“Amal Clooney Puts Her Growing Baby Bump on Display In Chic Yellow Dress for U.N. Speech.”

The focus was on:

1. Her baby bump
2. Her daffodil-yellow dress and matching coat
3. Her husband – George Clooney

What did not make the headlines:

1. She is a Barrister representing clients before international and domestic courts.
2. She has served as an advisor to a United Nations envoy to Syria and counsel to a British inquiry on the use of armed drones.
3. She has served on a team of experts concerning preventing sexual violence in conflict zones.
4. She studied at Oxford and has a Masters in Law.
5. Her client, a young woman enslaved and raped by Islamic State militants, was with her at the UN speech.

6. She talked about human rights, not Hollywood, her famous husband, or her pregnancy. She urged Iraq's Prime Minister to send a letter to the UN Security Council so it can vote to begin investigating crimes by Islamic State militants in Iraq.

What should or could have been done differently: Media reports.

- A female attorney was in a heated mediation with opposing counsel who was a 65-year-old white male. He began to “mansplain” to her why her position was wrong and concluded with an analogy that he said he hoped a “woman lawyer could understand.” The female lawyer took a deep breath, kept her cool and looked directly at him and stated: “And, counselor, it is 2017. They don’t call us “woman attorneys” anymore. They just call us attorneys.”<sup>10</sup>
- A Florida Judge said that blacks should “get back on a ship and go back to Africa.” This same judge used the C-word and B-word to refer to a staff attorney, and demeaned female staff attorneys by saying they were like cheerleaders who talk during the national anthem. The day before his impeachment hearing, he resigned.
- The Women’s Committee of the Clifford Chance firm distributed a five-page memo entitled “Presentation Tips for Women”:<sup>11</sup>

“‘Like’ You’ve got to Lose ‘Um’ and ‘Uh,’ ‘You Know,’ ‘OK,’ and ‘Like.’”

“Use a relaxed, open throat, breathe from the abdomen & keep your mouth open.”

“Think Lauren Bacall, not Marilyn Monroe.”

“Don’t giggle; Don’t squirm; Don’t tilt your head.”

“Practice hard words.”

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<sup>10</sup> This real-life example was send to me in an email by a colleague earlier this year.

<sup>11</sup> Zaretsky, Staci, “Biglaw Memo From Top Firm Advises That Women ‘Don’t Giggle,’ ‘Don’t Show Cleavage,’” [abovethelaw.com](http://abovethelaw.com) (October 24, 2013).

“Wear a suit, not your party outfit.”

“No one heard Hillary the day she showed cleavage.”

- Loyola Law School’s externship director issued a memo entitled “Ethics, Professionalism and Course Requirements for Off Campus Externs”:<sup>12</sup>

“Absorb the culture, dress and demeanor of the lawyers in your workplace.”

“Resist the temptation to inappropriately socialize or fraternize with office paraprofessionals or support staff. It often doesn’t end well for you if the relationship goes south and the support staff you socialize with talks to your supervising attorney.”

“I really don’t need to mention that cleavage and stiletto heels are not appropriate office wear (outside of ridiculous lawyer TV shows), do I? Yet I’m getting complaints from supervisors...”<sup>13</sup>

- An attorney was forced to bring her baby to work after a routine continuance was denied.<sup>14</sup>

An attorney petitioned an Atlanta court to move an immigration hearing because she would be on maternity leave and, since she was a solo practitioner, she did not have a coworker to cover the hearing. The judge held that there was “no good cause” and denied her request with just a week’s notice. As her husband was at work, she had no family in the area, and daycare would not accept infants under six weeks, she took the baby to court with her. The judge was outraged and scolded her for bringing the child. The judge questioned the fact that daycare did not accept young infants, questioned her mothering skills, and stated that her pediatrician must be appalled that she was exposing the infant to so many

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<sup>12</sup> Zaretsky, Staci, “Law School Sends Memo About Inappropriate Student Cleavage, Hooker Heels,” [abovethelaw.com](http://abovethelaw.com) (March 19, 2014).

<sup>13</sup> As the commentator wrote: “These are just a few of the reasons why the ladies of Loyola shouldn’t dress like the job they want is underneath a partner’s desk or a judge’s robes.”

<sup>14</sup> Faircloth, Kelly, “Judge forces Lawyer to Bring Her Baby to Court, Calls Her a Bad Parent,” October 15, 2014).

germs in court. The attorney filed a judicial complaint stating that apparently, her clients did not deserve to be represented by counsel of their choice if they happened to be a pregnant woman and that apparently pregnant women should not be litigating attorneys due to their “condition.” She went on to state that child birth is no minor inconvenience and rightfully calls for a six-week absence from work.

- A male attorney representing a medical group kept interrupting opposing counsel. She told him to stop interrupting her. He replied: “don’t raise your voice at me... it’s not becoming of a woman.” A federal judge sanctioned the attorney and required him to donate to a women lawyers’ professional group noting that the attorney’s comments “endorsed the stereotype that women are subject to a different standard of behavior than their fellow attorneys.”
- It even happens in the United States Supreme Court. Justice Sotomayor was reportedly interrupted by her male colleagues 57 times.<sup>15</sup>
- Judge Taylor in Tennessee issued a special dress code for women appearing in his courtroom and told them to leave “suggestive garments” at home. A female attorney commented in response saying: “Some ladies are dressing in a manner that should be bothersome to other lady lawyers who strive to be professional.” Another Tennessee judge wrote: “I have advised some women attorneys that a jacket with sleeves below the elbows is appropriate or a professional dress equivalent.”
- Judge Kopf, a federal district judge, wrote on his personal blog about how women dress in court, suggesting legal clerks refer to some attorneys as “ignorant sluts.”
- A female attorney had to substitute-in for her male counterpart as he was ill. When she explained this to the arbitrator, the arbitrator stated: “Oh well, you’re much better looking than him.” The arbitrator later stated, “Wow, she’s not only better looking than so-and-so, she’s smarter too. She’s got brains and beauty.”

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<sup>15</sup>

See Empirical SCOTUS.

- A judge in Michigan refused to let divorcing mothers change their married name back to their maiden name stating mothers shouldn't have different last names than their children.
- A federal judge ordered a male attorney to pay \$1,000 to his female opposing counsel for a comment made by the male lawyer during a deposition. The female lawyer complained that the room was hot. The male lawyer said in front of 14 other lawyers: "You're still hot? You're not getting menopause, I hope." He was also ordered to take a course on professionalism.

### **ADVANTAGES AND DISADVANTAGES AND STEROTYPES**

Some feel female attorneys have more advantages over judges, jurors, and witnesses because they are more attractive.

Some feel women attorneys are at a disadvantage because people are more critical of their attire and demeanor.

Women attorneys may have an advantage over their male counterparts when it comes to emotional crimes, crimes involving children, sex crimes, medical malpractice cases involving women and children, sexual harassment claims, and the like.

Older attorneys may be viewed as more experienced and more believable. Or just the opposite for witnesses – they may not be deemed as reliable.

Older jurors are more committed and conservative, while younger jurors may be more impassioned, not as reliable, or liberal.

Female attorneys are not as committed to the profession if they have children or are married.

Male attorneys that are married are more stable and reliable. They are the bread winners.

You can't teach an old dog new tricks – or technology.

## **WHO IS TO BLAME**

- The media
- Television and Film
- Educators
- Lawmakers
- Politicians
- Society
- Lawyers<sup>16</sup>

## **WHAT HAS BEEN DONE**

The ABA Commission on Women in the Profession published a handbook in 2002 entitled “Sex Based Harassment: Workplace Policies for the Legal Profession.”

Various state ethics rules and Rules of Professional Conduct are changing and recognizing that it is not ethical to harass, discriminate, etc.

The ABA Model Rules of Professional Conduct now provide that it is professional misconduct to discriminate against or harass opposing counsel, or anyone else, in the course of practicing law. The ethics rule now forbids comments or actions that single out someone on the basis of race, religion, sex, disability and other factors.

Some conduct is now more openly discussed and even treated (without past stigma) by mental health professionals.

Professional organizations and states are conducting surveys and implementing policies to address the issues.<sup>17</sup>

## **WHAT IS BEING DONE**

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<sup>16</sup> Law firms may be a breeding ground for inappropriate conduct due to the number of hours spent at the firm, sometimes late at night, away for one's family. Attorneys also many times have big egos and feel superior to others, including those who may work in “inferior” roles.

<sup>17</sup> See for example: The Initiative on the Advancement and Retention of Women in Law Firms – Women Lawyers of Utah, “The Twin Elephants in the Room: Sexual Harassment & Sex Discrimination.

The American Bar Association is undertaking a research project – *Ladders, Labyrinths and Leaders: A First Look at the Life Cycles and Long-term Careers of Women Lawyers*. The aim is to bring national attention to the need to retain women lawyers and reverse damaging attrition.

The National Association of Women Lawyers conducts annual surveys that provide insight and guidance.

Research has been conducted on the participation of women lawyers as lead counsel and trial counsel in litigation.<sup>18</sup> It was determined that: in civil cases women appeared less often than men and were less likely to be designated lead counsel; men appeared more as lead counsel in contract, labor, tort and intellectual property cases; women appeared more in real property, social security, and civil rights cases; women appeared more as lead counsel in cases involving the government and men appeared more often as lead counsel representing businesses; men and women appeared equally for plaintiffs and defendants; men appeared more as lead counsel in class actions; more men appeared in criminal cases than women.

The ABA has formed a Commission on Women in the Profession.

Our legal leaders are changing. We have had the first African American President. Our United States Supreme Court has been made up of women, an African American, and a Latino. There are many women in the Senate and Congress as well as in cabinet positions. Our federal judges consist of women and minorities. Our state court judges include women, people of different ethnicity and faith, and racial minorities.

Our educators are more diverse. Law school professors include women, minorities, and people of different faiths and sexual orientation. Women minority law students are encouraged to pursue whatever career path they choose. Law school organizations have been established to help and encourage female and minority law students. Alumni mentoring programs have been instituted.

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<sup>18</sup> Scharf & Liebenberg, *First Charis at Trial – More Women Need Seats at the Table*

Local and state bar associations and professional associations are creating sections and programs for women and minorities, providing mentors, and creating unique networking opportunities.

Businesses and clients are creating more opportunities for women and minorities to network and obtain new business.

Judges are being instrumental in appointing women and minorities as lead counsel, MDL steering committee counsel, receivers, trustees, guardian ad litem, special masters, mediators, arbitrators, pro tems, etc.

Women and minorities are seeking leadership roles, applying to be judges, aggressively marketing, mentoring others, teaching, speaking, training, and being excellent role models.

TV and film portray lawyers differently. TV-watching jurors now see judges and lawyers that are women and minorities in strong leadership roles instead of just *Legally Blonde* or *Ally McBeal*.

### **WHAT CAN BE DONE**

- We must accept that we have explicit and implicit biases and choose to overcome them.
- We must stop and evaluate decisions that may be affected by implicit bias.
- Speak out when you see others making decisions affected by biases.
- Spread the word to help reduce bias at work, home and your community.
- Speak up when you hear comments and jokes based on age, race, ethnicity, sexual orientation, or gender.
- Question the recommendations of others when they may be based on bias.
- Openly discuss these issues.
- Look at resumes without names and photos.
- Use standardized questionnaires and evaluations for interviews.
- Provide leadership opportunities for minorities, women, the younger attorneys, and include the elder lawyers.
- Network and mentor.



- Be a leader in the workplace, bar, and community.
- Implement awareness and prevention programs in the workplace, including law firms, courts, and corporations.
- Provide training for employees and law firm/corporate leaders.
- Take an implicit bias test and learn more about yourself. Take the Implicit Association Test (IAT) created by Harvard University. Go to <https://implicit.harvard.edu/implicit/>.

### **CAN I DO THAT?**

- A male attorney works late on a project with a female lawyer. The next morning, as a joke, he sends her a dozen red roses with a card that says: “Thanks for last night.”
- A senior partner is attending a legal conference with a young associate. While doing some sightseeing, the young female associate sees an item in a store that she admires very much but cannot afford. The senior male partner buys it for her and says: “I want you to have this – you have worked very hard this year.”
- A law firm throws baby showers and wedding showers for all female attorneys but does not do the same for male attorneys.
- A judge asks female attorneys if he should refer to them as “Mrs.” “Miss” or “Ms.”
- A supervising lawyer suggests to a female associate that she not participate in an out-of-state document review since she is seven months pregnant.
- A law firm specifies mandatory retirement at age 70. Courts impose mandatory retirement at the same age.
- A male supervising partner tells a young female associate that he understands that although she says she will return to work six weeks after the baby is delivered that she may choose to stay home as that is what his wife did.

- You are frequently mistaken as the court reporter at depositions because you are female and carry a rolling briefcase.
- The judge refers to the female attorney as Sue and the male attorney as Mr. Smith.
- During small-talk about football at mediation, the male attorney turns to the female attorney and says: “Sorry, does it make you feel left out when the men are talking about sports?”
- As you are trying to make a point, you shake your finger and state your point. Opposing counsel states: “Don’t shake your finger at me little lady.” Oh, this was in mediation in federal court in front of the Magistrate Judge.
- Male lawyers are referred to as “strong” “advocates” “tough” “bull dogs.” Female lawyers are referred to as “bitch” “shrill” “hysterical”.

### **A LITTLE HUMOR IN CLOSING**

- When referred to as a “girl”, the female attorney responded – no, I am a woman. The difference between girls and women is that girls still think that men are smart and know everything. Women know differently.
- The judge referred to the female attorney as “young lady.” She responded by calling him “old man.” The judge told her that she was in contempt. To which she responded, “I’m not the one who introduced age and sex into this trial.”
- The male attorney told his female colleague that he wished that her blouse was transparent. She responded that she wished that his pants were transparent as she could use a good laugh.
- An older female witness in the courthouse parking lot yelled to the young female attorney putting a box of exhibits in her trunk: “I wouldn’t bend over in that short skirt if I were you.” She replied: “With an ass like yours, you shouldn’t wear a short skirt like this.”