

PHYSICAL ATTRACTIVENESS AND FEMININITY: HELPFUL OR HURTFUL FOR FEMALE ATTORNEYS

*Peggy Li**

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I. INTRODUCTION

When you are representing a client in court, don’t wear bright red lipstick. Don’t wear colorful clothes. Don’t try to be fashionable. Don’t wear too much make-up. Don’t wear colorful nail polish—actually, don’t even wear nail polish. Judges don’t like it.

This was the advice I received from a female attorney during my first year of law school. I was told that judges would react negatively to

* Peggy Li is a Staff Attorney at Legal Services of Northern California (LSNC) working primarily with seniors on elder, housing, and public benefits. Peggy is also a coordinator of LSNC’s Race Equity Project conducting research and providing trainings. Peggy received her B.A. in Mass Communications from the University of California, Los Angeles and her J.D. from the University of California, Berkeley School of Law. She is licensed to practice law in the State of California. At Berkeley Law, Peggy was a William K. Coblentz Civil Rights Endowment Student Research Fellow at the Haas Institute for a Fair and Inclusive Society, a Managing Editor for the Berkeley Journal of Employment and Labor Law, and the President of the Berkeley Law Student Chapter of the American Constitution Society.

my femininity and that this would hurt not only me, but also my clients. It was best for me to be conservative, plain, and blend in. I have heard similar advice from other female attorneys. The advice, though, is often conflicting. Some say that it is safest to wear a skirt-suit since skirts are perceived as “conservative.” Others recommend wearing pantsuits, to blend in with your male counterparts. Others argue to be feminine—“be proud of your womanhood.” As a young woman in the legal profession, I have learned that everyone has an opinion on what I should wear and how I should look in court, in the office, in academic settings, and around clients.¹

Commentary about a woman’s achievements often includes statements about her physical appearance, fashion sense, or femininity. Recently, California Attorney General Kamala Harris was the victim of such attention. The focus on Harris shifted from her work, accomplishments, and intelligence to her physical attractiveness as a result of a comment made by President Barack Obama on April 4, 2013: “You have to be careful to, first of all, say she is brilliant and she is dedicated and she is tough, and she is exactly what you’d want in anybody who is administering the law, and making sure that everybody is getting a fair shake. She also happens to be by far the best-looking attorney general in the country.”² President Obama’s comment about Harris’ looks conveys a multitude of messages. It reflects our society’s obsession with policing women’s appearances. By focusing on her beauty, President Obama shifted the attention away from her accomplishments, thereby undermining her credibility and decreasing the significance of her work.³ This comment also reflects the double bind that women must overcome to be successful in a man’s world.⁴ Women in traditionally male-dominated professions must be “sufficiently masculine to be perceived as competent and sufficiently feminine to be perceived as likeable.”⁵ A woman must be able to do a

1. See Kashmir Hill, *Fashion Dos and Don'ts from the Windy City (If You Have a Tramp Stamp, It May Already Be Too Late)*, ABOVE THE LAW (Apr. 12, 2010, 12:12 PM), <http://abovethelaw.com/2010/04/fashion-dos-and-donts-from-the-windy-city-if-you-have-a-tramp-stamp-it-may-already-be-too-late/>. See also Catherine Hakim, *Attractive Forces at Work*, TIMES HIGHER EDUCATION (Jun. 3, 2010), <http://www.timeshighereducation.co.uk/411840.article>.

2. Naomi Schoenbaum, *Kamala Harris, Sheryl Sandberg, and a Double Bind for Working Women*, SLATE, Apr. 9, 2013, http://www.slate.com/blogs/xx_factor/2013/04/09/kamala_harris_comments_by_obama_sheryl_sandberg_remarks_reveal_a_double.html.

3. See *id.*; Josh Richman, *Obama Calls Comment on Kamala Harris a 'Teaching Moment'*, MERCURY NEWS, Apr. 17, 2013, http://www.mercurynews.com/nation-world/ci_23046958/obama-comment-kamala-harris-was-teaching-moment.

4. See Schoenbaum, *supra* note 2.

5. See *id.*

man's job, but also still be feminine, pretty, and attractive.⁶ Harris has an impressive record that can likely overcome these gendered comments about her appearance; nevertheless, these comments reinforce the belief that women are not qualified or aggressive enough to succeed in traditionally male-dominated professions.⁷

While I have since developed my own personal professional style, the attorney's advice, to "tone down" my femininity, has stuck with me in the back of my mind. It reflects the hierarchy and stereotypes inherent in the legal profession, a traditionally male-dominated profession, which makes it difficult for women to gain recognition and respect. The barriers that female attorneys face are evident in their underrepresentation in the top echelons of the legal industry. In private practice, women make up 46.3 percent of summer associates and 45 percent of associates, yet make up only 19.9 percent of partners.⁸

This paper aims to use social science research to explore how a woman's perceived physical attractiveness and femininity affects how others perceive her competence, skills, and abilities in male-dominated professions and in the law specifically. I will use the terms attractiveness and femininity interchangeably since women who are judged as being more attractive are typically seen as more feminine and women who are viewed as being more feminine are typically viewed as being more attractive. In Part II, I discuss the "Beauty is Good" and "Beauty is Beastly" stereotypes and their effects on women in male-dominated professions. In Part III, I discuss how physical attractiveness and femininity can lead to discrimination against women in the law. In Part IV, I discuss what can be done to ensure that women are judged not by their physical appearances but by their merit. Lastly, in Part V, I conclude by identifying areas for future research.

II. SOCIAL SCIENCE RESEARCH: PHYSICAL ATTRACTIVENESS AND FEMININITY STEREOTYPES

The human mind categorizes stimuli on the basis of available social and physical cues in order to simplify the task of "receiving, interpreting, encoding, and retrieving infinite amounts of information."⁹ Objects and

6. *See id.*

7. *See* Richman, *supra* note 3.

8. American Bar Association- Commission on Women in the Profession, *A Current Glance at Women in the Law*, 2 (Feb. 2013), www.americanbar.org/content/dam/aba/marketing/women/current_glance_statistics_feb2013.pdf.

9. Kathleen A. Bergin, *Sexualized Advocacy: The Ascendant Backlash Against Female Lawyers*, 18 *YALE J. L. & FEMINISM* 191, 214 (2006).

people are categorized into groups that are attributed with distinct and broad generalizations.¹⁰ This categorization occurs subconsciously and guides human interaction.¹¹ This information processing system allows us to make decisions, pass judgment, and interact with our environment efficiently and quickly.¹² A side-effect of this system is the creation of stereotypes.

Stereotyping is automatic, subconscious, and unintentional.¹³ Once individuals have been categorized, expectations and generalizations associated with the selected category are primed.¹⁴ The target individual is thus judged based on these expected characteristics, traits, and generalizations.¹⁵ People draw inferences and make judgments about others on the basis of very little information.¹⁶ While sometimes these stereotypes may contain some truths, often, stereotypes bias information processing and lead us to draw inaccurate conclusions about others.¹⁷

Physical appearances, attractiveness, sex, and gender are areas vulnerable to stereotyping.¹⁸ Stereotyping based on sex and gender has created barriers for the advancement of women, particularly in traditionally male-dominated professions.¹⁹ Women are implicitly seen as possessing traits associated with social skills, such as emotional sensitivity, warmth, and compassion.²⁰ In contrast, men are implicitly seen as possessing traits associated with competence, such as being assertive, active, objective, and rational.²¹ When women behave in ways that are typically seen as masculine, they are disliked and seen as socially unacceptable as compared to men who engage in the same behavior or women who behave in feminine, sex-stereotypic ways.²² Similarly, physical attractiveness has implications for how individuals

10. *Id.*

11. *Id.*

12. *Id.*

13. Sally D. Farley et al., *Stereotypes About Attractiveness: When Beautiful Is Not Better*, 13 J. SOC. BEHAV. PERSONALITY 479, 479 (1998).

14. Megumi Hosoda et al., *The Effects of Physical Attractiveness on Job-Related Outcomes: A Meta-Analysis of Experimental Studies*, 56 PERS. PSYCHOL. 431, 433 (2003).

15. *Id.*

16. R.C. Chia et al., *Effects of Attractiveness and Gender on the Perception of Achievement-Related Variables*, 138 J. SOC. PSYCHOL. 471, 471 (1998).

17. Farley et al., *supra* note 13, at 479.

18. *See id.* at 480.

19. *See* Hosoda et al., *supra* note 14, at 435.

20. *See* Midge Wilson et al., *The Attractive Executive: Effects of Sex of Business Associates on Attributions of Competence and Social Skills*, 6 BASIC & APPLIED SOC. PSYCHOL. 13, 14 (1985).

21. *See id.*

22. Madeline E. Heilman & Tyler G. Okimoto, *Why Are Women Penalized for Success at Male Tasks?: The Implied Community Deficit*, 92 J. APPLIED PSYCHOL. 81, 81 (2007).

are perceived and judged. Attractive people are perceived to be more socially skilled, more intelligent, and possess more socially desirable qualities than unattractive people.²³ The benefits of beauty in a professional setting may depend on the type of job and the gender of the individual. While there appears to be a “Beauty is Good” stereotype, many have argued that there is a complementary “Beauty is Beastly” effect for women in male-dominated professions, such as the legal profession.

A. The “Beauty is Good” Stereotype

Studies have shown that individuals perceived as being attractive are preferred over individuals perceived as being unattractive and seen as more socially competent.²⁴ These positive beliefs about attractive individuals exemplify the “Beauty is Good” stereotype. Attractive individuals have social advantages over unattractive individuals.²⁵ Physically attractive individuals are seen as more likely to succeed and more hireable as managers; receive higher starting salaries, performance evaluations, and voter ratings when running for public office; receive better offers when bargaining; and have more favorable judgments at trial.²⁶ They are also assumed to have better personalities, be morally good, and be more intellectually competent than their less attractive peers.²⁷ These effects are greatest when no information about competence is provided.²⁸ Research has shown that these preferences have physical manifestations in brain activity. For example, activity in the medial orbitofrontal cortex (“OFC”), the region of the brain associated with processing positive emotions, stimuli, and reward, increases as a function of both attractiveness and moral goodness

23. See Farley et al., *supra* note 13, at 480; Wilson et al., *supra* note 20, at 15.

24. See Maria Elizabeth Grabe & Lelia Samson, *Sexual Cues Emanating from the Anchoress Chair: Implications for Perceived Professionalism, Fitness for Beat, and Memory for News*, 38 COMM’N RES. 471, 475 (2011); Angela M. Griffin & Judith H. Langlois, *Stereotype Directionality and Attractiveness Stereotyping: Is Beauty Good or Ugly Bad?*, 24 SOC. COGNITION 187, 188 (2006).

25. See Griffin & Langlois, *supra* note 24, at 188.

26. See Stefanie K. Johnson et al., *Physical Attractiveness Biases in Ratings of Employment Suitability: Tracking Down the “Beauty is Beastly” Effect*, 150 J. SOC. PSYCHOL. 301, 301-02 (2010).

27. Takashi Tsukiura & Roberto Cabeza, *Shared Brain Activity for Aesthetic and Moral Judgments: Implications for the Beauty-is-Good Stereotype*, 6 SCAN 138, 138 (2011); Linda A. Jackson et al., *Physical Attractiveness and Intellectual Competence: A Meta-Analytic Review*, 58 SOC. PSYCHOL. Q. 108, 116 (1995).

28. Jackson et al., *supra* note 27, at 114.

ratings.²⁹ Similarly, activity in the insular cortex, a region of the brain associated with processing negative emotions and pain, increases as a result of unattractiveness and negative goodness ratings.³⁰ These findings are consistent with the belief that the “Beauty is Good” stereotype is bidirectional: beauty is good and unattractiveness is bad. Similarly, another study found that beauty was good and unattractiveness was bad for women, a bidirectional pattern, in judgments of sociability.³¹ The study also found that unattractive women were at a disadvantage relative to moderately attractive or attractive women in judgments of altruism and intelligence, a single-directional pattern.³²

The effects of unattractiveness may vary for men and women. In a study testing the relationship between physical attractiveness and inferences on an individual’s academic performance, achievement-related traits, intelligence, and initiative, the highest ability was attributed to unattractive men while the lowest ability was attributed to unattractive women.³³ This makes sense in light of the fact that women are subjected to increased social pressure to conform to higher standards of beauty.³⁴

Similarly, the positive effects of attractiveness vary for men and women. Physical attractiveness had stronger effects on the perception of intellectual competence for men than for women.³⁵ The perceived high status of attractiveness combined with the perceived high status of being male resulted in attractive males being perceived as the most intellectually competent.³⁶ In a study testing preferences for business partners in a sex-neutral industry, participants preferred men over women, attractive males over unattractive females, and had equal preference for attractive women and unattractive men.³⁷ This suggests that either being male compensated for being unattractive or that being attractive compensated for being female.³⁸ This is consistent with the perception that personality traits necessary to succeed in business are

29. Tsukiura & Cabeza, *supra* note 27, at 143-44.

30. *Id.* at 145.

31. Griffin & Langlois, *supra* note 24, at 201.

32. *Id.*

33. Chia et al., *supra* note 16, at 475-76.

34. Lihi Segal-Caspi et al., *Don't Judge a Book by Its Cover, Revisited: Perceived and Reported Traits and Values of Attractive Women*, 23 PSYCHOL. SCI. 1112, 1112 (2012).

35. Jackson et al., *supra* note 27, at 117.

36. *Id.*

37. T. Kushnir, *Business Partnerships: Sex and Attractiveness Stereotypes*, 10 SOC. BEHAV. & PERSONALITY 125, 127 (1982).

38. *Id.*

often perceived as masculine or unfeminine.³⁹

Physical attractiveness impacts employment decisions by increasing the likelihood that physically attractive individuals are hired over unattractive individuals.⁴⁰ One study found that physical attractiveness benefitted job candidates who were the opposite sex of their evaluators, but disadvantaged them to less attractive evaluators of the same sex.⁴¹ This discrimination by less attractive same-sex evaluators may be caused by intrasexual competition.⁴² Since the upper echelons of the legal industry are predominantly male, physically attractive female candidates will likely not be evaluated by a female.⁴³ Under this reasoning, physically attractive female attorneys would be less likely to be discriminated against on account of their perceived attractiveness.

B. The “Beauty is Beastly” Stereotype

Research has shown that beauty can also be beastly for women in traditionally male sex-typed jobs. When relying on stereotypes to make inferences about an individual in an employment setting, we compare stereotyped inferences of the individual to the characteristics we perceive are necessary for success for the job; a mismatch or a poor fit between the individual’s stereotypic traits and the perceived requirements for a job creates a bias and an expectation for failure.⁴⁴ Prejudice can arise when individuals see women actually or potentially occupying leadership roles.⁴⁵ For example, when evaluators see an inconsistency between the communal qualities they typically associate with women and the agentic qualities they believe are necessary to succeed as a leader.⁴⁶ Physical attractiveness exaggerates this sex-typing—attractive men are believed to have more traditionally masculine qualities than unattractive men, while attractive women are perceived to

39. See *id.* at 126.

40. See Comila Shahani-Denning, *Physical Attractiveness Bias in Hiring: What Is Beautiful Is Good*, HOFSTRA HORIZON 14, 14 (2003), available at http://www.hofstra.edu/pdf/orsp_shahani-denning_spring03.pdf.

41. Maria Agthe et al., *Don’t Hate Me Because I’m Beautiful: Anti-Attractiveness Bias in Organizational Evaluation and Decision Making*, 47 J. EXPERIMENTAL SOC. PSYCHOL. 1151, 1153 (2010).

42. *Id.* at 1154.

43. See American Bar Association Commission on Women in the Profession, *supra* note 8, at 2.

44. Hosoda et al., *supra* note 14, at 435.

45. Alice H. Eagly & Steven J. Karau, *Role Congruity Theory of Prejudice Toward Female Leaders*, 109 PSYCHOL. REV. 573, 574-75 (2002). See also Elizabeth J. Parks-Stamm, *Anticipate and Influence Juror Reactions to Successful Women*, 20 JURY EXPERT 8, 8 (2008).

46. Eagly & Karau, *supra* note 45, at 574-75. See also Parks-Stamm, *supra* note 45, at 8.

have more feminine qualities than less attractive women.⁴⁷ Therefore, attractiveness can be a liability for women in stereotypically masculine jobs since attractiveness makes a woman appear to have more feminine traits, which are seen as unsuitable for masculine sex-typed jobs.⁴⁸ When applying for managerial or traditionally male-dominated positions, attractive women are evaluated less favorably than unattractive women.⁴⁹ In contrast, attractive women are evaluated more favorably than unattractive women when applying for non-managerial and traditionally female-dominated positions.⁵⁰ This effect was not shown for men.⁵¹

Like physical attractiveness, being perceived as dressing in a sexual manner exaggerates sex-typing and can be a liability for women in traditionally male-dominated roles. Participants in a study reacted negatively to a female manager, but not a receptionist, if they see her dressing in a sexy versus neutral manner.⁵² They also rated the receptionist as equally competent regardless of whether she was dressed in a sexy or neutral manner.⁵³ In contrast, managers were seen as less competent when dressed in a sexy manner rather than a neutral or conservative manner.⁵⁴

The perception of a female manager was strongly influenced by the sexiness of her outfit and personal grooming, while the perception of a female receptionist did not change in response to this manipulation in clothing and personal grooming.⁵⁵ Sexiness had severe costs for female managers since the stereotype of a sexy woman did not coincide with the stereotypic traits of a high-status, traditionally male-dominated career, thereby generating negative emotions and evaluations for the sexy

47. Hosoda et al., *supra* note 14, at 435.

48. *Id.* See also Eagly & Karau, *supra* note 45, at 574-75; Sabine Sczesny & Ulrich Kühnen, *Meta-Cognition About Biological Sex and Gender-Stereotypic Physical Appearance: Consequences for the Assessment of Leadership Competence*, 30 PERSONALITY & SOC. PSYCHOL. BULL. 13, 20 (2004) (“[P]hysical appearance as part of a global, multifaceted gender stereotype influences the attribution of leadership competence.”).

49. Eagly & Karau, *supra* note 45, at 582.

50. *Id.* See, e.g., Grabe & Samson, *supra* note 24, at 490 (“among male audience members, sexual attractiveness in a female anchor boosts perceptions of her professionalism... Yet, when it comes to assessments of specific competencies for reporting on masculine news topics (e.g., war and politics), sexualization emerges as a detrimental factor.”).

51. Eagly & Karau, *supra* note 45, at 588.

52. Peter Glick et al., *Evaluations of Sexy Women in Low- And High- Status Jobs*, 29 PSYCHOL. WOMEN Q. 389, 392 (2005).

53. *Id.* at 393.

54. *Id.*

55. *Id.* at 394.

female manager.⁵⁶ Sexiness is distinct from physical attractiveness, but is included here because women are often perceived as dressing sexy, despite their efforts to avoid this perception. Sexiness is subjective since it is dependent on the views of the beholder. As such, the discussion regarding the perception of a “sexy woman” is pertinent here since it is closely linked to the discussion regarding the perception of a physically attractive woman in regards to male-dominated industries.

Even when a woman conforms to the traits stereotypically identified as masculine, she is still disadvantaged. Effective female leaders violate gender norms when they display masculine traits and fail to express feminine traits.⁵⁷ As a result, women who violate perceived gender roles may be evaluated unfavorably and elicit negative reactions.⁵⁸ They are seen as cold and unlikeable.⁵⁹ The mere knowledge that a woman has succeeded in a male-dominated profession produces negative evaluations and an assumption that she must have engaged in stereotype-violating behavior.⁶⁰

Women in traditionally male-dominated positions are thus caught in a Catch-22. Women who conform to traditional gender roles are perceived as lacking the qualities necessary for their jobs, while women who adopt a masculine role are also penalized for violating their gender role.⁶¹ To prove themselves in a male-dominated industry, women must clearly demonstrate their high level of competence and outperform men in their industry.⁶² Because violating gender norms can lead to negative evaluations for women, they must also demonstrate communal and gender-stereotypic traits.⁶³ Women in traditionally male-dominated positions must be both agentic enough to be perceived as competent, yet feminine and communal enough to be likeable.⁶⁴

C. Is Beauty Good, Beastly, or Both?

Can beauty be both good and beastly? Research on whether beauty

56. *Id.* See also Melissa L. Wookey et al., *Effects of a Sexy Appearance on Perceived Competence of Women*, 149 J. SOC. PSYCHOL. 116, 118 (2009) (“sexiness is associated with social ability in low-status jobs, but when a woman is in a position of power, sexiness may be viewed as dysfunctional and inappropriate.”).

57. Eagly & Karau, *supra* note 45, at 575.

58. *Id.* at 575-76.

59. Parks-Stamm, *supra* note 45, at 8.

60. Heilman & Okimoto, *supra* note 22, at 81-82.

61. Eagly & Karau, *supra* note 45, at 576.

62. *Id.* at 583.

63. *Id.* at 590; Heilman & Okimoto, *supra* note 22, at 85.

64. Eagly & Karau, *supra* note 45, at 590.

is good, beastly, or both good and beastly has been inconsistent. In one study, researchers found that the most attractive individuals in their study did not always receive the most positive ratings.⁶⁵ While the most attractive individuals were perceived as the most socially skilled, they were also perceived as less competent than moderately attractive individuals.⁶⁶ The research participants believed that the attractive individuals had gotten their positions because of their social skills rather than their competence.⁶⁷ Consistent with other research, unattractive individuals were seen as being low in social skills.⁶⁸

Another study found that physical attractiveness was *always* an asset for *both* men and women, regardless of the sex-type of their job.⁶⁹ This research provides support for the “Beauty is Good” stereotype, but not the “Beauty is Beastly” effect.⁷⁰ The researchers found that attractiveness was just as important for men and women with respect to various job-related outcomes, but that any sex differences in attractiveness may be domain specific.⁷¹

In response to these inconsistent research findings, Johnson, Podratz, Dipboye, and Gibbons conducted a study to determine in what context beauty may be detrimental for women.⁷² Consistent with the “Beauty is Good” stereotype, they found that attractiveness was beneficial for both men and women applying for most jobs.⁷³ They also found that attractiveness was equally beneficial for men in both masculine and feminine jobs, thereby demonstrating that there is no “Beauty is Beastly” effect for men.⁷⁴ While they did find that attractiveness was more beneficial for women applying for feminine sex-typed jobs than masculine sex-typed jobs, they did not find a “Beauty is Beastly” effect for attractive women applying for masculine sex-typed jobs, *unless* physical appearance was perceived to be unimportant in that

65. Wilson et al., *supra* note 20, at 20.

66. *Id.*

67. *Id.*

68. *Id.*

69. Hosoda et al., *supra* note 14, at 447.

70. *Id.* at 451.

71. *Id.* at 453 (While the researchers found that attractiveness was just as important for men and women, other researchers have found stronger attractiveness effects for men than for women in terms of their intellectual competence. The researchers indicated that these sex differences in attractiveness may be domain specific.). *See also* Shahani-Denning, *supra* note 40, at 16 (stating that “being physically attractive is an advantage when applying for a job” and that there is “little support for the ‘beauty is beastly’ effect.”).

72. Johnson et al., *supra* note 26, at 302.

73. *Id.* at 313.

74. *Id.*

job.⁷⁵ An attractive woman applying for a masculine sex-typed job where physical attractiveness is important may not fit in terms of her femininity, but does fit in terms of her attractiveness.⁷⁶ If physical attractiveness is unimportant for the masculine sex-typed job, an attractive woman would fit in less with the job since she is a woman.⁷⁷ As a result, a “Beauty is Beastly” effect may still exist, but only in limited circumstances where attractive women are applying for masculine sex-typed jobs where physical appearance is unimportant.⁷⁸ Physical appearances *are* important in the legal industry, since the legal industry is a service industry. Therefore, a female attorney’s physical attractiveness should not be detrimental to her prospects of finding a job in the legal industry.

Nevertheless, focusing on a woman’s appearance, regardless of whether she is physically attractive or not, can be detrimental for women. Research has shown that a woman is perceived as less competent when one is focusing on her appearance.⁷⁹ Perceptions of humanness are closely tied to perceptions of warmth, morality, and competence; as such, objectifying a woman by focusing on her appearance reduces perceptions of her warmth, morality, and competence.⁸⁰ Studies have shown that focusing on a woman’s appearance has these detrimental effects for women.⁸¹ In contrast, the same focus on a man’s appearance does not appear to have the same detrimental effects of promoting objectification and a diminished perception of competence, warmth, and morality.⁸² Women are evaluated on the basis of their physical appearance more often than men are and suffer unique detrimental consequences as a result of this focus on physical appearances, thereby leading to a reduced perception of humanness for women, including a reduced perception of competence, warmth, and morality.⁸³

75. *Id.* at 314.

76. *Id.*

77. *Id.*

78. *Id.* at 316.

79. Nathan A. Heflick, et al., *From Women to Objects: Appearance Focus, Target Gender, and Perceptions of Warmth, Morality, and Competence*, 47 J. EXPERIMENTAL SOC. PSYCHOL. 572, 573 (2011).

80. *Id.* at 578.

81. *Id.* at 578-79.

82. *Id.*

83. *Id.* at 580.

III. PHYSICAL ATTRACTIVENESS IN THE LEGAL PROFESSION

Social science has shown that attractiveness, femininity, sexiness, and a focus on a woman's appearance can affect a woman's perceived competence for a job.⁸⁴ This research has profound relevance for women in the legal field—a masculine sex-typed profession. Physical attractiveness is an important aspect of the legal industry; therefore, physically attractive individuals should be perceived more positively than less attractive individuals.⁸⁵ While physical attractiveness can be helpful in the legal profession, a focus on appearances can nevertheless hurt female attorneys by decreasing their perceived competence, morality, and warmth.⁸⁶

A. Backlash Against Female Attorneys Perceived as Sexy

Unlike physical attractiveness, which has generally been shown to privilege both male and female workers, being perceived as sexy can have detrimental effects for women in high-power professions, such as the legal field.⁸⁷ Being perceived as physically attractive, sexy, or dressed appropriately is dependent on *both* the perception of the viewer and the intent of the woman; therefore, female attorneys whose intent is to dress in a professional and modest manner may nevertheless be perceived as sexy and engaging in sexualized advocacy, the use of sexuality to advocate for a client.⁸⁸ This is troublesome for female attorneys since some employers, judges, and juries may conflate femininity with sex appeal. This puts female attorneys in a difficult situation. A woman who dresses in a masculine, unattractive manner may be hurt by the “Beauty is Good” stereotype. If she is perceived as physically attractive, she will likely benefit from the “Beauty is Good” stereotype. But, if she is perceived as sexy, she will likely be exposed to harassment, hostility, and retaliation. As demonstrated in Glick, Larsen, Johnson, and Branstiter's study, participants react more negatively to a woman who is dressed in a sexy manner if they are told that she has a masculine sex-typed job.⁸⁹ They also saw her as less competent.⁹⁰ Being perceived as sexy can also discount and discredit female attorneys

84. See Johnson et al., *supra* note 26, at 301-02; T. Kushnir, *supra* note 37, at 127; Glick et al., *supra* note 52, at 394; Heflick et al., *supra* note 79, at 580.

85. See Johnson et al., *supra* note 26, at 316.

86. Heflick et al., *supra* note 79, at 578.

87. Bergin, *supra* note 9, at 212.

88. *Id.* at 206.

89. Glick et al., *supra* note 52, at 392.

90. *Id.* at 393.

because others may perceive her as engaging in sexualized advocacy. For example, when there is a favorable judgement for a female attorney and that attorney is perceived as sexy, one may attribute her success to an “unfair” sexual advantage rather than to her skills, work ethic, and talents.⁹¹ Sexiness is subjective and this is evident from the inconsistent advice given to female attorneys regarding skirt-suits. While some argue that a tasteful skirt-suit conveys conservatism and deference to the court, others may perceive the exposure of skin as sexual.⁹² This inconsistency makes it difficult for women to dress in an attractive manner, taking advantage of the “Beauty is Good” stereotype, while avoiding the pitfalls of being viewed as sexy.

B. Women in the Legal Profession: Employment Discrimination and Sexual Harassment

Title VII of the Civil Rights Act of 1964 (“Title VII”) makes it unlawful for employers to discriminate against an individual because of his or her race, color, religion, sex, or national origin.⁹³ The terms “because of sex” includes adverse action taken because of an individual’s nonconformance with sex-based stereotypes.⁹⁴ Therefore, an employer cannot discriminate against a woman for failing to conform to feminine stereotypes.

Title VII also provides that “it shall *not* be an unlawful employment practice for an employer to hire and employ employees . . . on the basis of his religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise.”⁹⁵ Nevertheless, a bona fide occupational qualification based on sex must be narrowly interpreted.⁹⁶ Labeling a job a “woman’s

91. Bergin, *supra* note 9, at 221.

92. *See id.* at 209-11.

93. “It shall be an unlawful employment practice for an employer— (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin; or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s race, color, religion, sex, or national origin.” 42 U.S.C.A. § 2000e-2(a) (West 2013).

94. Price Waterhouse v. Hopkins, 490 U.S. 228, 250-51, 258 (1989). *See also* U.S. Equal Employment Opportunity Commission, *Sex-Based Discrimination*, <http://www.eeoc.gov/laws/types/sex.cfm> (last visited May 6, 2013).

95. 42 U.S.C.A. § 2000e-2(e) (emphasis added) (West 2013).

96. 29 C.F.R. § 1604.2 (a) (West 2013).

job” or a “man’s job” tends to unnecessarily deny employment opportunities to one sex and not the other. A bona fide occupational qualification based on sex is not warranted if it is based on “assumptions of the comparative employment characteristics of women in general” or “stereotyped characterizations of the sexes.”⁹⁷ Individuals must be considered on the basis of their individual, actual capacities, rather than stereotypes attributed to their social group.⁹⁸

Many of the stereotypic reasons against having women in the legal profession can be seen in *Bradwell v. State of Illinois*.⁹⁹ In this case, the Supreme Court found that, under coverture, a married woman could not practice law in the State of Illinois since a “married woman would be bound neither by her express contracts nor by those implied contracts which it is the policy of the law to create between attorney and client.”¹⁰⁰ Under coverture, a married woman’s identity was subsumed into that of her husband upon marriage; she lacked the capacity to contract, vote, sue, or be sued.¹⁰¹ The Court relied on stereotypic views of women in making this decision. For example, the Court stated that: “God designed the sexes to occupy different spheres of action, and that it belonged to men to make, apply, and execute the laws.”¹⁰² In Justice Bradley’s concurrence, he stated that the “natural and proper timidity and delicacy” of women makes them unfit for many of the occupations of civil life.¹⁰³ He also argued that women adopting a “distinct and independent career from that of her husband” are not only repugnant to the family institution, but also unnatural.¹⁰⁴

Gender stereotypes about women in male-dominated professions came before the Court’s attention again in *Price Waterhouse v. Hopkins*.¹⁰⁵ Plaintiff Ann Hopkins was a senior manager at Price Waterhouse, a nationwide professional accounting partnership.¹⁰⁶ Hopkins was proposed as a candidate for partnership, but her application was held for reconsideration the following year.¹⁰⁷ Hopkins had a very

97. 29 C.F.R. §§ 1604.2(a)(1)(i)-(ii) (West 2013).

98. See 29 C.F.R. §§ 1604.2(a)(1)(ii) (West 2013).

99. *Bradwell v. Illinois*, 83 U.S. 130 (1872).

100. *Id.* at 131-32.

101. Encyclopaedia Britannica, *Coverture*, <http://www.britannica.com/EBchecked/topic/141184/coverture> (last visited April 11, 2015).

102. *Bradwell*, 83 U.S. at 132.

103. *Id.* at 141.

104. *Id.*

105. *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989), *superseded by statute on other grounds*, 42 U.S.C. §2000e-2(m) (West 2013).

106. *Price Waterhouse*, 490 U.S. at 231-2.

107. *Id.* at 233.

impressive record at Price Waterhouse—none of the other candidates for partnership had a comparable record in terms of successfully securing major contracts.¹⁰⁸ Hopkins was seen as a hard worker and “extremely competent, intelligent,” “strong and forthright, very productive, energetic and creative.”¹⁰⁹ She was also seen as “overly aggressive, unduly harsh, difficult to work with and impatient with staff.”¹¹⁰ The Court noted that some of the partners reacted negatively to Hopkins’ personality because she was a woman—because she was violating gender norms.¹¹¹ A partner described her as macho, while another suggested that she was trying to overcompensate for being a woman.¹¹² Another partner stated that she needed to take a course at a charm school.¹¹³ In order to improve her chances for partnership, Hopkins was told that she needed to “walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled, and wear jewelry.”¹¹⁴ In deciding whether Price Waterhouse discriminated against Hopkins and denied her partnership on the basis of her gender, the Court reversed the Court of Appeals’ judgment against Price Waterhouse stating that the lower court erred in its determination of the defendant’s burden of proof.¹¹⁵ The Court remanded the case with instructions on the proper burden-shifting mechanism for mixed motive cases.¹¹⁶

In this case, Hopkins was clearly evaluated in sex-based terms and was punished for violating gender-based stereotypes. Hopkins was a female working in a male-dominated profession.¹¹⁷ She exhibited stereotypical male traits, such as aggressiveness, assertiveness, and a lack of communality.¹¹⁸ As a result of violating gender norms, she was evaluated unfavorably and elicited negative reactions from her coworkers and evaluators.¹¹⁹

Hopkins also suffered from the “Beauty is Good” stereotype. Hopkins was told that if she walked, talked, dressed, groomed, and acted more feminine, she would have a better chance at obtaining

108. *Id.* at 234.

109. *Id.*

110. *Id.* at 235.

111. *Id.*

112. *Price Waterhouse*, 490 U.S. at 235.

113. *Id.*

114. *Id.*

115. *Id.* at 258.

116. *Id.*

117. *Id.* at 233.

118. *Price Waterhouse*, 490 U.S. at 234-35; *See also* Eagly & Karau, *supra* note 45, at 575.

119. Eagly & Karau, *supra* note 45, at 575-76.

partnership.¹²⁰ As stated earlier, femininity is closely related to the perception of physical attractiveness. Appearing less feminine or more masculine is also equated with being less physically attractive for a woman. As discussed earlier, in measures of sociability, physical attractiveness was beneficial for women, while unattractiveness was bad.¹²¹ Unattractive women were also seen as less altruistic and less intelligent than more attractive women.¹²² By displaying masculine traits, working in a masculine sex-typed industry, failing to conform to gender stereotypes, and failing to display more feminine traits, Hopkins was clearly judged not by her skills, but by her appearance and lack of adherence to sex stereotypes. Her leadership skills, professionalism, competence, strength, and creativity were overshadowed by Price Waterhouse's perception of her failure to adhere to gender norms.

Even with the increase of women in the legal profession, discrimination against female attorneys for failing to conform to gender stereotypes still occurs, as demonstrated through the recent charges against Greenberg Traurig LLP ("GT").¹²³ GT "settled a proposed \$200 million employee gender bias class action" lawsuit with Francine Griesing, a former partner at GT, for GT's alleged discrimination against its female shareholders, including failure to pay and promote women at the same rate as comparably qualified men.¹²⁴ As alleged in Griesing's complaint, GT has a closed-compensation system, where all partner promotion and pay decisions are made by GT's male CEO, with input from his Compensation Committee, which consists of four male high-ranking shareholders.¹²⁵ Shareholders are assigned to different levels with 300 being the lowest and 1,000 being the highest.¹²⁶ An

120. *Price Waterhouse*, 490 U.S. at 235.

121. Griffin & Langlois, *supra* note 24, at 201.

122. *Id.*

123. See Bob Van Voris, *Ex-Greenberg Traurig Lawyer Files \$200 Million Bias Suit*, BLOOMBERG, Dec. 3, 2012, <http://www.bloomberg.com/news/2012-12-03/ex-greenberg-traurig-lawyer-files-200-million-bias-suit.html>; see also Lisa van der Pool, *Big Law Firms Wrestle with Gender Discrimination Suits*, BOSTON BUSINESS JOURNAL, Feb. 15, 2013, <http://www.bizjournals.com/boston/print-edition/2013/02/15/big-law-firms-wrestle-with-gender.html?s=print>; The Legal Intelligencer, *Greenberg Traurig Facing Potential Gender Bias Class Action Filed by Former Female Shareholder*, AMERICAN LAWYER, Dec. 3, 2012, <http://www.americanlawyer.com/PubArticleFriendlyTAL.jsp?id=1354449775408#>.

124. David McAfee, *Greenberg Traurig Settles Atty's \$200M Gender Bias Action*, LAW360, May 24, 2013, <http://www.law360.com/articles/445037/greenberg-traurig-settles-atty-s-200m-gender-bias-action>; Van Voris, *supra* note 123.

125. Class Action Complaint at 3, *Griesing v. Greenberg Traurig LLP*, 12-cv-8734 (S.D. N.Y. Dec. 3, 2012), available at <http://www.scribd.com/doc/115366870/Complaint-Griesing-v-Greenberg-Traurig>.

126. Class Action Complaint, *supra* note 125, at 7; Van Voris, *supra* note 123.

employee's level determines his or her compensation, access to development and growth opportunities, access to clients, and leadership opportunities.¹²⁷ According to an EEOC letter, Griesing was assigned to the 300 level, while comparable males were assigned to the 500 level; the 500 level made \$50,000 more in base pay than the 300 level.¹²⁸ As alleged in the complaint, GT routinely assigned female shareholders to lower levels while assigning comparable or less qualified men to higher levels.¹²⁹

In her complaint, Griesing stated that the Compensation Committee had openly expressed animus toward female shareholders.¹³⁰ For example, Griesing stated that the CEO told her that female shareholders were "worthless" while a member of the Compensation Committee told female attorneys that only "tall, male, Jewish" attorneys generated business for the firm.¹³¹ Women were allowed to stay at the firm only because the regional operating shareholder "liked to keep them around."¹³² The firm also allegedly used gender-based assumptions to justify paying men more than women.¹³³ For example, GT justified its compensation decisions on the assumption that men needed the money more since they were responsible for financially supporting their families.¹³⁴

Griesing's complaint alleged that women who either engaged in intimate sexual relationships with leaders in the firm or acquiesced to sexualized stereotypes by openly flirting with firm leaders, were exempt from the general practice of denying female shareholders development opportunities.¹³⁵ Griesing stated that she and other female shareholders worked in an environment where male shareholders would freely comment on their physical appearances.¹³⁶ As such, women were expected to engage in intimate relationships and sexualize their professional relationships in order to move up at GT.¹³⁷

In this case, gender-based stereotypes were used to treat women unequally. Based on Griesing's complaint, women were perceived as

127. Class Action Complaint, *supra* note 125, at 7; Van Voris, *supra* note 123.

128. Van Voris, *supra* note 123; Class Action Complaint, *supra* note 125, at 8.

129. Class Action Complaint, *supra* note 125, at 8.

130. *Id.* at 4.

131. *Id.*

132. *Id.*

133. *Id.* at 10.

134. *Id.*

135. Class Action Complaint, *supra* note 125, at 15, 23.

136. *Id.* at 16.

137. *Id.* at 15.

less competent, useful, and valuable at GT, based on traditional gender-based stereotypes about a woman's capabilities in a masculine sex-typed industry.¹³⁸ Similarly, stereotypes about a "woman's place" were used to justify paying men more than women. Men were assumed to be breadwinners and thus needed the increased pay more than women.¹³⁹ Based on the alleged work environment, where "male shareholders freely commented on the physical appearance of female shareholders," and the statements allegedly made by leaders at GT, it seems that a woman's role at GT was to flirt and engage in sexual relationships with firm leaders.¹⁴⁰ As stated in Griesing's complaint, women were expected to acquiesce to sexualized stereotypes in order to increase development opportunities.¹⁴¹ Violating these gender-based stereotypes led to negative employment action for female employees.¹⁴²

In the future, we should continue to closely examine the role physical attractiveness, femininity, sexiness, and the "Beauty is Good" stereotype plays in cases such as the GT case.

IV. POSSIBLE SOLUTIONS

The cases above demonstrate how gender-based stereotypes interact with masculine sex-typed jobs and physical attractiveness to effect women in the legal profession. Despite the significant strides women have made in the legal field, women are still largely underrepresented in the upper echelons of the industry. Gender stereotypes surrounding how a woman should act, dress, groom, or talk, and what jobs they should occupy are still prevalent in our society. Women need to be judged on their merits, rather than their physical appearance.

There are two ways to approach this problem. First, we can try to assist women who are struggling to thrive in male-dominated professions. Second, we can try to eradicate the root of the problem: an unjust and unequal society that privileges males over females.

Under the first solution, we can educate women and equip them with the skills to move up in the legal profession. We can provide implicit bias trainings to women so that they can be better informed of how gender, physical attractiveness, and the sex-type of their profession can interact to create obstacles for them in the workplace. These

138. *See id.* at 4.

139. *See id.* at 10.

140. *See id.* at 4, 15-16, 23.

141. *See id.* at 15.

142. *See Class Action Complaint, supra* note 125, at 16.

trainings will not only increase awareness of the mechanisms that lead to discrimination, but also provide advice on how to overcome these barriers. For example, women in male-dominated professions must be perceived as not only highly competent, but also communal to achieve success—they have to be smart and likeable. Sheryl Sandberg's recent book, *Lean In* is a good example of this method. Sandberg, the Chief Operating Officer of Facebook, provides stories and advice to empower women to achieve their full potential in the workplace.¹⁴³ In her book, Sandberg states that “[Women] hold [themselves] back in ways both big and small, by lacking self-confidence, by not raising [their] hands, and by pulling back when [they] should be leaning in.”¹⁴⁴

While these tips are helpful for women in the short term, they do not address the root of injustice in our society. They also put the onus on women to change rather than on the government or on the business sector to create a more equitable work environment. This assumption, that a woman can find success in a man's world so long as they change, not only fails to take into account the struggles facing single mothers, low-income families, and women of color, but also shifts the attention away from societal inequality by blaming a woman's oppression on her own inability.¹⁴⁵ While potentially providing short-term assistance to women in male-dominated professions, this advice reinforces rather than combats the status quo.

Instead, we need to address the unequal treatment of women in our society. Individuals have the capability to recognize, understand, and overcome their own implicit biases. Therefore, trainings should be developed to raise awareness of and begin to remove the structural inequalities that prevent women from reaching their full potential in the legal industry. These trainings will educate employers and leaders in the legal field and help them better recognize when they are using gender stereotypes, physical attractiveness, or gender expectations when making employment decisions.

In addition, hiring decisions could also be made blindly—without the use of photographs or physical descriptions—to ensure that women are judged by their merits and not their appearances, physical attractiveness, or femininity. Studies of orchestral auditions were used

143. *Product Description: Lean In*, Amazon, <http://www.amazon.com/Lean-In-Women-Work-Will/dp/0385349947> (last visited April 11, 2015).

144. SHERYL SANDBERG, *LEAN IN: WOMEN, WORK, AND THE WILL TO LEAD* 8 (2013).

145. See Daniel Lefferts, *Review Roundup: “Lean In,” by Sheryl Sandberg*, USA TODAY, Mar. 29, 2013, <http://www.usatoday.com/story/life/books/2013/03/29/lean-in-sheryl-sandberg-reviews/2026285/>.

to demonstrate that the use of a screen to prevent judges from seeing the musician increased the likelihood that a woman would be selected to advance to the next round.¹⁴⁶ The use of a blind procedure ensured that judges were impartial in making their decisions.¹⁴⁷ Similarly, interviewers assessing the qualifications of a female attorney could conduct their interviews over the phone, use a screen when conducting in-person interviews, or turn their back to the applicant to avoid looking at the applicant during the interview. In person, face-to-face interviews should only be conducted once employers have job-relevant information about the applicant, since this information can reduce the degree that judges rely on an individual's physical attractiveness.¹⁴⁸ More research should be done to examine other possible solutions to ensure that a female attorney's physical appearance, femininity, or gender conformance does not hinder her ability to obtain gainful employment.

V. CONCLUSION AND FUTURE RESEARCH

This paper examined the effect of physical attractiveness and femininity on a female attorney's perceived intelligence and competence in the legal profession. Social science research demonstrates the existence of a "Beauty is Good" stereotype where attractive individuals receive social advantages and are viewed more favorably than less attractive individuals. Being physically attractive can be helpful for applicants in the legal industry by making them appear more sociable and successful than their less attractive counterparts. In contrast, the "Beauty is Beastly" stereotype conveys that physical attractiveness can be detrimental for women working in masculine sex-typed professions since it emphasizes the poor fit between a woman's stereotypic traits and the perceived traits needed for success in a masculine sex-typed job. This incongruity creates a bias against women in traditionally male-dominated industries. Studies have shown that a "Beauty is Beastly" effect may exist, but only in masculine sex-typed professions where physical attractiveness is unimportant. Based on this study, the "Beauty is Beastly" effect should not be observed in the legal profession since physical attractiveness is an important factor in the legal industry.

These stereotypes have had and continue to have a significant effect on female attorneys in the legal field today. The recent discrimination

146. Claudia Goldin & Cecilia Rouse, *Orchestrating Impartiality: The Impact of "Blind" Auditions on Female Musicians*, 90 AM. ECON. REV. 715, 738 (2000).

147. *Id.*

148. Hosoda et al., *supra* note 14, at 452.

lawsuit against Greenberg Traurig demonstrates the prevalence of gender stereotyping not only in the legal profession, but also in our society. These stereotypes create a glass ceiling for women and prevent women from obtaining high-level leadership and management positions.

Given the prevalence of this problem, future research should focus on the effects of physical attractiveness on minorities and people of color. Almost all of the studies referenced in this paper examined the effects of physical attractiveness for White individuals. Replicating these studies to determine if these findings are consistent for people of color is especially important given that the United States will be a majority-minority nation by 2043.¹⁴⁹ Similarly, these studies should also be replicated to see whether and how the “Beauty is Good” stereotype applies to women of color. In addition, more surveys and field studies should be conducted, in addition to lab research, to ensure external validity for the stereotyping theories mentioned in this paper. Much of the research on the “Beauty is Good” and “Beauty is Beastly” stereotypes were conducted on college students in lab settings. Research on the impact of physical attractiveness is incredibly informative and can provide insights on how to not only succeed in a “man’s world,” but also create a more just society.

While the advice from a female attorney to downplay my femininity may not have been sound, given the “Beauty is Good” stereotype, the advice nevertheless sheds light on the many questions female professionals must ask themselves every day: Will this outfit, makeup, hairstyle, and jewelry make me appear less professional, competent, and intelligent? Will I be taken less seriously? Will my appearance help me or hurt me at work?

149. Associated Press, *Census: Whites No Longer a Majority in U.S. by 2043*, CBS NEWS, Dec. 12, 2012, http://www.cbsnews.com/8301-201_162-57558742/census-whites-no-longer-a-majority-in-u.s-by-2043/.