

Negotiation, Gender Triggers and Female Lawyers

By

Delee Fromm¹

Most men and women view and approach negotiation differently due to divergent values, attitudes, perceptions and beliefs. This has been revealed by numerous studies of corporate men and women as well as business students and academics. Research has shown that two and a half times as many women as men feel "a great deal of apprehension" about negotiating and a full 20% say they avoid it completely! Only 14% of successful women said that negotiation made them feel powerful and assertive.

²Gender differences have also been shown in the types of negotiation approaches chosen by men and women; most men prefer competitive negotiation while most women prefer cooperative strategies.

Lawyers Negotiating Professionally

So what about lawyers – does gender matter for our profession? Studies looking at differences between male and female lawyers when they negotiate professionally show no differences. That is, they negotiate equally well when they negotiate as agent for others. This equal performance may be explained by a situational trigger that creates an advantage for women – when negotiating on behalf of others, women get better results than men. Women say they feel empowered and energised when they negotiate for family members, colleagues, and clients, and the findings support this. Female executives negotiating as a mentor for another person, negotiated salaries 18% higher than when they negotiated for themselves. ³ This increased performance was not shown by men. A university teaching colleague, after hearing me talk about this particular trigger, told me that this information allowed him to finally figure out something that had puzzled him for years. At a large aeronautics company where he worked the only female manager was paid the least of all the managers but her team received the highest compensation of all the teams. And now he finally knew the reason. She negotiated the highest salaries for her team but not for herself! Recent unpublished research provides support for this advantage – female family lawyers in Greece showed better results than their male counterparts when negotiating for clients. ⁴

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² Babcock, L. and Laschever, S, *Women Don't Ask: Negotiation and the Gender Divide* (Princeton, NJ: Princeton University Press, 2003).

³ Patel D. Pradel, H. R Bowles and K. L. McGinn, "When Does Gender Matter in Negotiation?" (2005) Harvard Negotiation Newsletter November issue at 4.

⁴ A. Tsaoussis, "Female Lawyers as Pragmatic Problem Solvers: Negotiation and Gender Roles in Greek Legal Practice" (2007) Available at <http://ssrn.com/abstract=968005>.

My experience with teaching negotiation skills to lawyers and law students for over 25 years confirms that when lawyers negotiate for others there are no gender differences in approach, performance or results. For example, their preference and ability to use competitive strategy is the same. However there are gender differences shown by lawyers in negotiation and the ramifications of such differences can be quite significant.

Gender Differences Shown By Lawyers

Lawyers show the same gender triggers as others when they negotiate for themselves. Most men tend to ramp up when they negotiate for themselves as well as when they self-promote. This is consistent with the reported exhilaration that men report during competitive negotiation. As a result they negotiate to promote their self-interests far more often than women do. In direct contrast most women, including female lawyers, feel uncomfortable negotiating for themselves and they do it far less often. Another consequence of this difference is that in ambiguous situations, where it is not clear what the parameters are, women set their aspirations lower. This has been suggested as a basis for the huge gender gap in wages in the general population. This trigger may also be related to the exceedingly low numbers of women lawyers in leadership positions in law firms compared with percentage of women in law school. This mirrors what is seen in corporations with the low numbers of women at the C-level and on corporate boards.

These gender differences in attitude, beliefs, approach and assumptions are clearly demonstrated in survey results we have collected over the past 6 years from hundreds of corporate women and female lawyers. The results are amazing and consistent with what is disclosed in seminars. For example 78% of corporate women, 65% of female lawyers, and 17% of men say *they give in or compromise in order to maintain the connection they have with others*. When asked *if they accept the terms of a new assignment or project rather than negotiate them*, 66% of corporate women, 55% of female lawyers and 27% of men say they usually take what is offered to them. As for value creation in negotiation, 100% of female lawyers, 95% of corporate women and 89% of men said *they tried to create value for themselves and others in a negotiation*. Interestingly while most female lawyers show no difference from male lawyers in their preference for using competitive strategy, similar to other women female lawyers don't like the gamesmanship involved. Seventy-six percent of female lawyers, 62% of corporate women and 38 % of men indicate that *when others push too hard for what they want it affects their relationship with the other party*.

Tips for Harnessing Negotiation Strengths

So how does one become a better negotiator by harnessing negotiation strengths and mitigating challenges? Here are 7 suggestions:

1. **Recognize Your Gender Triggers:** It can be complicated and not all individuals respond the same way to situational triggers. Become aware of those situations that cause you to ramp up your negotiation prowess and those that may cause you to stumble. Awareness, experience and training can mitigate the effects of socialized habits.
2. **Discover Your Preferred Style:** By knowing your preferred style you can avoid responding automatically by conscious selection a strategy that is most appropriate in the circumstances. Online assessment using the Thomas Kilmann

Response to Conflict Mode Inventory ® will quickly tell you those strategies you overuse and underuse.

3. **Don't be afraid to ask.** To negotiate you have to be aware that the possibility exists. Even with peremptory decisions there usually is room for a bit of give and take. Before going along with imposed solutions and shutting down your options, try to discover the reasons behind the decision. To uncover them you have to get the discussion going – so don't be afraid to ask!
4. **Learn how to use collaborative strategy.** This is the most sophisticated negotiation strategy as it maximizes both relationship and outcome. It is also a natural fit for most women's negotiation approach and attitude. Using this type of strategy, the interests of the parties are explored so that the best solution for both parties can be obtained. It also is a great basis for asking.
5. **Don't Fold Your Tents Too Early.** One law student I taught explained how she got a plum assignment working for a professor. The other students asked 3 times – she asked 6 times.
6. **Attend Seminars or Take Coaching.** To better understand gender differences and develop negotiation skills to harness your particular strengths, take a negotiation seminar or some coaching sessions.
7. **Practise, Practise, Practise.** Use your knowledge and awareness to develop your skills. And never pass up an opportunity to negotiate!

DELEE FROMM, who is both a lawyer and a psychologist, has taught and coached to critical acclaim for over 25 years. She is a former partner of McCarthy Tetrault LLP, the largest law firm in Canada, where she practiced commercial real estate for 17 years. Prior to her career in law she was a neuropsychologist at a large psychiatric hospital and published extensively on the brain and behaviour. In 2003 she left the practice of law to start her consulting firm Fromm & Goodhand. (www.frommandgoodhand.com)

She is a recognized leading expert in the arena of negotiation and has designed and facilitated workshops on negotiation, leadership, conflict resolution and gender dynamics for international corporations, banks and organizations. Due to her extensive experience as a lawyer she has provided services to law firms in Canada and the US, to a vast array of Canadian legal organizations, and to both the Ontario and federal government.

She teaches in virtual reality; her firm's course women and negotiation recently went global through IBM. She is currently co-director of the course Lawyer As Negotiator at Osgoode Hall Law School, York University with approximately 70 students each year and is a faculty member of the LL.M. program in ADR at Osgoode Professional Development.

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