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GENDER AND NEGOTIATION PERFORMANCE

By Charles B. Craver*

Generally, men are described by a series of traits that reflect competence, rationality, and assertiveness. Men, for example, are viewed as independent, objective, active, competitive, adventurous, self-confident, and ambitious. Women are seen as possessing the opposite of each of these traits. They are characterized as dependent, subjective, passive, not competitive, not adventurous, not self-confident, and not ambitious. (Deaux, 1976, at 13)

INTRODUCTION

When men and women negotiate with people of the opposite gender – and even the same gender – stereotypical beliefs influence their interactions. Many men and women assume that males are more likely to be highly competitive, manipulative, win-lose negotiators who want to defeat their opponents. Females are expected to be more accommodating, win-win negotiators who seek to preserve existing relationships by maximizing the joint return achieved by negotiating parties. If these stereotypical assumptions are correct, we might reasonably expect male lawyers and business persons to achieve better results when they negotiate than female attorneys and business persons.

This article will examine data from the Legal Negotiation course I have taught at George Washington University over the past sixteen years to determine whether male students obtain results on class negotiation exercises that differ from the results achieved by female students on the identical exercises. Before we evaluate my course data, however, I will explore real and perceived gender-based differences and explain how those differences might affect negotiation

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exercise performance. I will then explain my course methodology and statistical findings.

REAL AND PERCEIVED GENDER-BASED DIFFERENCES

Many persons think that men and women behave in stereotypically different ways when they interact (Burrell, et al., 1988, at 453). Various traits are attributed to males, while other characteristics are attributed to females. While some of these gender-based beliefs may reflect real – *i.e.*, empirically established – behavioral traits, others have no scientifically established bases. Whether or not these distinctions are real or imagined, they may influence the way men and women interact when they negotiate, because the participants *expect* these factors to affect their dealings.

Men are thought to be rational and logical, while women are considered emotional and intuitive (Deaux, 1976, at 13). Men are expected to emphasize objective fact, while women focus more on the maintenance of relationships (Gilligan, 1982). As a result, men are expected to define issues in abstract terms and try to resolve them through the application of abstract reasoning (Project, 1988, at 1227).

Men are expected to be dominant and authoritative, while women are supposed to be passive and submissive (Maccoby & Jacklin, 1974, at 228, 234). When men and women interact, males tend to speak for longer periods of time and to interrupt more often than women (Project, 1988, at 1220; Tannen, 1994, at 53-77). Men usually exert more influence over the topics being discussed. They employ more direct language, while women tend to exhibit tentative and deferential speech patterns (Smith-Lovin & Robinson, 1992, at 124-26). This male tendency to dominate male-female interactions could provide men with an advantage during bargaining encounters, by allowing them to control the agenda and direct the substantive discussions.

During personal interactions, men are more likely than women to employ “highly intensive language” to persuade others, and they tend to be more effective using this approach (Burgoon, et al., 1983, at 284, 292). Women, on the other hand, are more likely to use less intense language during persuasive encounters, and they are inclined to be more effective behaving this way. Females tend to employ language containing more disclaimers (“I think”; “you know”) than their male cohorts (Smeltzer & Watson, 1986, at 78), which may cause women to be perceived as less forceful.

Formal education diminishes the presence of gender-based communication differences (Burrell, et al., 1988, at 453). This factor explains why male and female lawyers tend to employ similar language when they endeavor to persuade others. Nonetheless, even when women use the same language as men, they may be perceived as being less persuasive (Burrell, et al., 1988, at 463). This gender-based factor is counterbalanced, however, by the fact that women continue to be more sensitive to nonverbal signals than their male cohorts (Hall, 1984, at 15-17).

Gender-based stereotypes cause many people difficulty when they interact with attorneys and business people of the opposite gender (Kolb & Williams, 2000; Kolb, 2000). Men often expect women to behave like “ladies” during their negotiation interactions. Overt aggressiveness that would be considered vigorous advocacy if employed by men may be characterized as offensive and threatening when used by women. This is especially true when females employ foul language and loud voices. Male negotiators who would immediately counter these tactics by other men with quid pro quo responses frequently find it difficult to adopt retaliatory approaches against “ladies.” When men permit such an irrelevant factor to influence and restrict their use of responsive tactics, they provide their female opponents with an inherent bargaining advantage.

Some men also find it difficult to act as competitively against female opponents as they would against male opponents. Male negotiators who are afraid to behave as competitively toward female opponents as they would against male adversaries give further leverage to their female opponents.

Despite their hesitancy to behave as competitively toward female opponents as they would toward male adversaries, I have noticed an interesting phenomenon that might affect male-female interactions in my Legal Negotiation class. A number of men have privately expressed a fear of losing to female opponents. As a result, several have indicated that they would prefer the negative consequences associated with non-settlements than risk the embarrassment of being defeated by women. While this factor could increase the probability of non-settlements when men and women interact, it should not affect comparative negotiation results since both male and female participants would be equally disadvantaged by the resulting non-settlements.

Male attorneys and business people occasionally make the mistake of assuming that their female opponents will not engage in as many negotiating “games” as their male adversaries. Even many women erroneously assume that other females are unlikely to employ the Machiavellian tactics stereotypically associated with members of the competitive male culture. Men and women who expect their female adversaries to behave less competitively and more cooperatively often ignore the realities of their negotiation encounters and give a significant bargaining advantage to women who are actually willing to employ manipulative tactics.

Some male negotiators attempt to obtain a psychological advantage against aggressive female bargainers by casting aspersions on the femininity of those individuals. They hope to

embarrass those participants and make them feel self-conscious with respect to the approach they are using. Female negotiators should never allow adversaries to employ this tactic. They have the right to use any techniques they think appropriate, regardless of the stereotypes those tactics may contradict. To male opponents who raise specious objections to their otherwise proper conduct, they should reply that they do not wish to be viewed as “ladies,” but merely as participants in bargaining encounters in which their gender should be irrelevant.

Female negotiators who discover that gender-based stereotypes are negatively affecting their bargaining interactions may wish to directly raise the issue to diminish the impact of negative stereotyping (Schneider, 1994, at 112-13). They may ask opponents if they find it difficult to negotiate against female adversaries. While most male opponents will immediately deny any such beliefs, they are likely to internally reevaluate their treatment of female opponents. Once both parties acknowledge, internally or externally, the possible impact of stereotypical beliefs, they can try to avoid group generalizations and focus on the particular individuals with whom they must currently interact.

Empirical studies indicate that men and women do not behave identically in competitive situations. Females tend to be initially more trusting and trustworthy than their male cohorts, but they are usually less willing to forgive violations of their trust than are men (Rubin & Brown, 1975, at 171-73). People interacting with female negotiators who exhibit verbal and nonverbal signals consistent with such female expectations may be able to establish trusting and cooperative relationships with them so long as they do not engage in conduct of an untrusting nature.

When men and women interact in different settings, they both engage in some untruthful

behavior. Males tend to lie on a self-oriented basis to enhance their own images (“braggadocio”), while women tend to engage in other-oriented deception intended to make others feel better (“I love that new outfit”; “you made a great presentation”) (DePaulo, et al., 1996, at 986-87). This difference would probably cause males to feel more comfortable than women when they employ deceptive behavior during bargaining encounters to advance their own interests, because such conduct would be of a self-oriented nature.

One observer has suggested that “women are more likely [than men] to avoid competitive wishes, and not likely to do as well in competition.” (Stiver, 1983, at 5) Many women are apprehensive regarding the negative consequences they associate with competitive achievement, fearing that competitive success will alienate them from others (Gilligan, 1982, at 14-15). Males in my Legal Negotiation course tend to be more accepting of extreme results obtained by other men than by such results achieved by women. Even female students tend to be more critical of women who attain exceptional results than they are of men who do so.

Males tend to exude more confidence than women in performance-oriented settings. Even when minimally prepared, men think they can “wing it” and get through successfully (Goleman, 1998, at 7). On the other hand, no matter how thoroughly prepared women are, they tend to feel unprepared (Evans, 2000, at 84-85; McIntosh, 1985). I have often observed this difference among my Legal Negotiation students. Successful males think they can achieve beneficial results in future settings, while successful females continue to express doubts about their own capabilities. I find this frustrating, because the accomplished women are as proficient as their accomplished male cohorts.

Male and female self-confidence is influenced by the stereotypical ways in which others

evaluate their performances. Men who perform masculine tasks no more proficiently than women tend to be given higher evaluations than their equally performing female cohorts (Foschi, 1991, at 185). When men are successful, their performance tends to be attributed to intrinsic factors such as hard work and intelligence; when women are successful, their performance is likely to be attributed to extrinsic factors such as luck or the assistance of others (Deaux, 1976, at 30-32). This phenomenon enhances male self-confidence by enabling them to receive credit for their accomplishments, while it undermines the self-confidence of successful women by diminishing the personal credit they deserve for their efforts.

Men and women often differ with respect to their view of appropriate bargaining outcomes. Women tend to believe in “equal” exchanges, while men tend to expect “equitable” distributions (Lewicki, et al., 1994, at 330). These predispositions may induce female negotiators to accept equal results despite their possession of greater bargaining strength, while male bargainers seek equitable exchanges that reflect relevant power imbalances.

Gender-based competitive differences may be attributable to the different acculturation process for boys and girls (Menkel-Meadow, 2000, at 362-64). Parents tend to be more protective of their daughters than their sons (Marone, 1992, at 42-45). Most boys are exposed to competitive situations at an early age (Evans, 2000, at 12-13; Tannen, 1990, at 43-47). They have been encouraged to participate in little league baseball, basketball, football, soccer, and other competitive athletic endeavors. These activities introduce boys to the “thrill of victory and the agony of defeat” during their formative years (Harragan, 1977, at 75-78). “Traditional girls’ games like jump rope and hopscotch are turn-taking games, where competition is indirect since one person’s success does not necessarily signify another’s failure.” (Gilligan, 1982, at 10). By

adulthood, men are more likely to have become accustomed to the rigors of overt competition than women. While it is true that little league and interscholastic sports for women have become more competitive in recent years, most continue to be less overtly competitive than corresponding male athletic endeavors (Evans, 2000, at 80).

LEGAL NEGOTIATION COURSE METHODOLOGY

Since 1986, I have regularly taught a Legal Negotiation course at George Washington University. During the first half of the semester, the class explores theoretical and practical concepts pertaining to the negotiation process. Students are assigned chapters from my book (Craver, 2001). The impact of verbal and nonverbal communication and such psychological factors as anchoring, gain-loss framing, and commitment escalation upon the negotiation process is studied. The cooperative/problem-solving and competitive/adversarial bargaining styles are evaluated. The manner in which the personal needs of the clients and attorneys and the different types of legal problems and relationships involved affects bargaining encounters is considered. The various stages of the negotiation process (preparation, preliminary, information, distributive, closing, and cooperative) are examined, along with the different techniques negotiators are likely to encounter. The way in which cultural differences and gender role expectations affect bargaining interactions is also contemplated. Specific issues pertaining to such topics as telephone negotiations, the enhancement of weaker positions, and the use of mediation to assist negotiating parties are explored.

While the negotiation process is being formally explored, the students are required to engage in three or four negotiation exercises. Class members are divided into groups of two or

four. The groups are each instructed to negotiate the resolution of the identical legal problem. At the conclusion of each exercise, the various results are disclosed and individual negotiations are evaluated to determine which techniques were successfully and unsuccessfully employed. I try to integrate the theoretical concepts with the students' simulated exercises. The results of these practice negotiations do not affect student grades.

During the second half of the semester, class members engage in five negotiation exercises that count towards two-thirds of course grades. One or two are distributive exercises that only involve the payment and receipt of money, while the others are multiple-item exercises that are intended to encourage cooperative bargaining designed to maximize the joint return achieved by the negotiating parties.

Each problem is structured in a duplicate bridge format. Everyone receives the same "General Information" describing the specific issues that have to be resolved. All of the individuals on the same side are provided with the identical "Confidential Information" apprising them of their client's goals and the manner in which they will be evaluated if they achieve a settlement or fail to do so. The less complicated exercises are conducted on a one-on-one basis, while the more complicated exercises are done on a two-on-two basis. I give the students partners for the more complex exercises to assist them with the more complicated issues and scoring information, and to demonstrate the fact the lawyers not only negotiate with opponents but also with their own clients. For each exercise, participants are assigned different opponents (and different partners where relevant).

The results of each exercise are rank-ordered from high to low for each side based on the team's results measured against the confidential scoring information provided prior to the

exercise. This ordering scheme is used to grade each team's performance. If there are ten groups of four, the highest group on each side receives ten placement points, the next highest group nine, and so forth. If there are twenty groups of two, the highest person on each side receives ten placement points, the second highest 9.5, the third highest nine, etc. The half-steps are used for the one-on-one exercises to be sure they are given placement points comparable to those given the two-on-two exercises. Students are also required to prepare ten to fifteen page papers analyzing their negotiation experiences based on the concepts explored throughout the term. This paper accounts for one-third of course grades.

The environment in my Legal Negotiation course is quite competitive. Each group is evaluated solely by its performance vis-a-vis the other groups representing the same side of the problem. Although opposing parties are encouraged to maximize their joint return through cooperative bargaining, students realize that it is their own respective point totals that will determine their group placement and, ultimately, their individual grades. This direct impact on their course grades causes the students to take the exercises seriously.

STATISTICAL RESULTS

Since I have not observed any differences in the negotiation results achieved by male and female students, my Null Hypothesis is that there is no difference between men and women with respect to performance on the negotiation exercises. My Alternative Hypothesis is that there is a gender-based difference between men and women with respect to performance on the negotiation exercises. My database included negotiation results from sixteen Legal Negotiation classes at George Washington University. Because I was only comparing male and female negotiation achievement, only the student negotiation scores were used. I did not consider the scores earned

by students on their course papers. The mean negotiation scores were calculated for males and females in each of the sixteen classes. A t-test was then performed for each class to determine if there was a statistically significant difference between the male and female means for any class. T-test probability values of 0.10 or lower would establish statistical significance at the 0.10 level, while t-test probability values of 0.05 or lower would demonstrate significance at the 0.05 level (Barnes & Conley, 1986, at 306-08). Since I hypothesized that no statistically significant differences would be found and had no reason to suspect that if any difference was found it would favor males or females, two-tailed t-test probability values were calculated. The relevant data are set forth in Table 1.

Table 1

T-Test Comparisons of Gender-Based Means

Year	N	Male Negot. Mean	Female Negot. Mean	Difference in Means	p-value
1986	45	29.67	30.39	-0.71	.76
1988	55	38.67	38.79	-0.12	.96
1989	58	41.23	40.40	0.83	.77
1990	58	42.30	37.96	4.33	.14
1991	61	41.29	39.90	1.39	.61
1992	48	35.15	37.64	-2.49	.37
1992.5	59	40.15	40.32	-0.17	.95
1993	59	39.85	40.52	-0.67	.84
1994	62	40.75	37.50	3.26	.31
1995	56	32.23	26.14	6.09	.01
1996	51	34.53	36.47	-1.94	.49
1997	40	28.14	25.37	2.77	.19
1998	46	34.64	31.60	3.04	.19
1999	48	32.26	30.77	1.49	.60
2000	41	28.09	25.57	2.52	.31
2001	35	24.67	26.19	-1.52	.52

A review of the data set forth in Table 1 suggests the absence of any correlation between gender and negotiation performance. For only a single year (1995) was a statistically significant correlation discerned. For the other fifteen years, not a single statistically significant correlation was obtained at even the 0.10 level. For nine of the sixteen years (1989, 1990, 1991, 1994, 1995, 1997, 1998, 1999 & 2000) the male mean was slightly higher than the female mean, while for the other seven years (1986, 1988, 1992, 1992.5, 1993, 1996 & 2001) the female mean was slightly higher than the male mean. These findings clearly support acceptance of the Null Hypothesis suggesting the absence of any statistically significant correlation between gender and negotiation performance.

FINDING IMPLICATIONS

Over the past sixteen years, I have discovered that both practicing attorneys and law students of both genders permit gender-based stereotypes to influence their negotiating interactions with persons of the opposite gender – and even people of the same gender. Many individuals assume that men are highly competitive and manipulative negotiators who always seek to obtain maximum results for themselves. Female negotiators, on the other hand, are expected to be more accommodating and less competitive interactants who try to maximize the joint return achieved by the parties.

On those occasions in my Legal Negotiation class when two women have been paired against two other women, they have often allowed stereotypical beliefs to influence their interaction. They have regularly expressed the preliminary view that their interaction will be more pleasant due to the absence of the overt win-lose competitiveness they attribute to their male cohorts. Once their bargaining encounters have commenced, however, they have generally

behaved as competitively as their male classmates.

This empirical study was undertaken to test the validity of practicing attorney and student assumptions regarding the impact of gender upon negotiation performance. Based upon my prior course observations, I hypothesized that there was no difference with respect to the negotiation outcomes obtained by male and female bargainers. The sixteen years of data warrant acceptance of the Null Hypothesis. The t-test calculations disclosed no statistically significant differences between the mean results obtained by male and female negotiators.

The absence of any statistically significant differences between the results obtained by male and female students on my Legal Negotiation course exercises should not be surprising. Law students are a self-selecting group of intelligent and competitive individuals. I would surmise that similar results would be obtained with respect to negotiation exercise results among business school students who are also bright and competitive persons. It is thus possible that an analogous study of the results achieved by undergraduate or high school students on negotiation exercises might generate some gender-based differences.

It would be beneficial for people who teach clinical negotiation courses in business schools, undergraduate schools, and high schools to engage in similar empirical studies to determine whether they would find any statistically significant gender differences. It would also be informative for teachers of other clinical skills courses, such as trial practice, mediation, and client counseling, to compare the performances of their students to ascertain the presence or absence of any gender-based distinctions.

Negotiating teachers should also evaluate our own gender-based beliefs to ensure that we are not subconsciously encouraging male and female students to behave differently. We should

be careful not to permit individuals to suggest that female negotiators cannot achieve substantive results as beneficial as those obtained by their male cohorts. We should also try not to judge male and female negotiating behavior by different standards based upon the gender of the persons being evaluated.

Legal practitioners and business firm officials should acknowledge the impact that gender-based stereotypes may have upon negotiation interactions. Male attorneys who think that female opponents will not be as competitive or manipulative as their male colleagues will provide women adversaries with an inherent advantage. They will let their guards down and behave less competitively against female opponents than they would toward male opponents. Female negotiators must also reject gender-based stereotypical beliefs with respect to both male and female opponents. Women who conclude that adversaries are treating them less seriously because of their gender should not hesitate to take advantage of the situation. The favorable bargaining outcomes achieved by these women should teach chauvinistic opponents a crucial lesson.

CONCLUSION

Sixteen years of data have demonstrated the absence of any statistically significant differences pertaining to the negotiation results achieved by male and female law students. This finding should cause students, practitioners, and teachers to reassess the validity of their stereotypical beliefs concerning the behavior of men and women in competitive interactions. There is no reason to believe that female negotiators cannot obtain outcomes as beneficial as those obtained by their male counterparts in any bargaining encounter.

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