

6 Tips for Leveraging Gender Stereotypes in Negotiations

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Attorneys are constantly negotiating—with other parties, with prospective and current clients, and with colleagues within organizations. While lawyers are trained in the law, most have no formal training or exposure to the personal and process skills required to conduct a successful negotiation. Yet, most clients desire a workable solution to a problem more than they value analyzing the facts and the law. Reaching that workable solution will likely involve some negotiation.

Women attorneys face an additional layer of complexity in our negotiations. Unfortunately, persistent gender stereotypes may negatively impact how women are perceived at the negotiating table. For instance, if a man becomes angry during negotiations, his outburst may appear strategic, while a woman who gets angry is likely to be viewed as irrational. Moreover, research has shown that when a woman makes assertive demands for herself, observers tend to penalize her (the "backlash effect"), while male negotiators suffer no such penalty. Based on these gender-skewed perceptions, women attorneys may need to consider different techniques than their male counterparts.

But there is good news. Scholarly research has found that certain stereotypically "female" traits lead an opponent to be more responsive in a negotiation. For example, women stereotypically are thought to demonstrate a greater concern for relationships, and they are expected to be helpful to others. In one study, this focus on relationships proved to make women more adept at resolving disputes. In addition, women are stereotypically viewed as organized and prepared. Women attorneys who harness these gender stereotypes can tip the negotiation in their favor.

Research reveals a number of strategies to capitalize on positive gender stereotypes and an opponent's expectations.

- **Nurturing caregiver:** Women avoid the "backlash effect" when we are seen as making requests on someone else's behalf. This is encouraging for women attorneys who, naturally, are advocating on our clients' behalf. In practical terms, we can frame our demands in a way that demonstrates we are attending to our clients' needs. Even using "we" and "they" instead of "I" can be helpful in setting up for a successful outcome.
- **Community oriented:** As women are often expected to be community oriented, women attorneys can frame a negotiation as solving a mutual problem in a way that benefits all parties. They can cultivate the perception that, through the negotiation, they can help solve an opponent's problem, as well as solve their own client's problem.

- Always prepared: Some elements of preparation are obvious: Evaluate the ultimate goal and determine a bottom line before coming to the negotiating table. Then, gather evidence to support the demands. But in addition to this logistical preparation, women especially benefit from mental preparation. When women remind themselves of moments in which they felt powerful, a study found they tend to reach a more successful outcome in a negotiation.

In addition to capitalizing on gender stereotypes, women can find additional success through influencing the "shadow negotiation," the game that begins even before the players get to the table. As described by Deborah M. Kolb and Judith Williams in their groundbreaking book, "The Shadow Negotiation: How Woman Can Master the Hidden Agendas that Determine Bargaining Success," this process determines how the negotiation will unfold. What will the tone be? How will the adversaries interact? While all negotiators will benefit by paying attention to the shadow negotiation, women have an extra incentive to set the context, allowing them to capitalize on stereotypical strengths.

Women attorneys can influence the shadow negotiation through a combination of "power moves," "process moves," and "appreciative moves." Power moves are strategies to gain control over a stalled negotiation. For example:

1. Offer incentives. Make clear to your opponent that the benefits to negotiating now. For example, explain how the current market conditions faced by an opponent make it optimal to complete the deal or settle the lawsuit. Showing concern for the opponent's needs is a good way for women attorneys to harness gender stereotypes.

2. Raise the cost of not negotiating. Make the status quo less appealing. For example, point out that all the money a client spends to continue to defend a lawsuit is money lost to the opponent's client in a negotiated settlement. The opponent will be more likely to see the value of persisting in negotiating.

Once an opponent is ready to approach the negotiating table, women attorneys can use process moves to increase receptiveness to demands. These moves influence the logistics of the negotiation.

3. Control the agenda. Much ink has been poured in recent years over the fact that women are frequently tasked with administrative tasks, such as circulating an agenda. In negotiations, this "busy work" provides a great opportunity to set the agenda, controlling the groundwork and the order in which ideas and people are heard.

4. Reframe the process. If negotiations follow a pattern that seems to shutout a woman's voice, it may be necessary to alter the structure. Thoughtfully changing the way the discussion unfolds may provide a remedy. For example, suggest an opponent take three minutes to explain his position on a legal issue and then take three minutes to explain yours.

Finally, to foster positive communication, negotiators may find it helpful to use appreciative moves, which are intended to build trust and encourage dialogue. These moves play into the stereotype of women as relationship builders.

5. Help others save face. "Face" refers to those qualities people value in themselves, as well as the qualities they want others to perceive in them. Most negotiators will want to preserve face, and being sensitive to this need lays the groundwork for trust—while conceding nothing. For example, simply acknowledge to your opponent that you understand how difficult it will be for him to go back to his client with an offer that is less than desired.

6. Solicit new perspectives. When an opponent seems stuck on a certain position, it can be helpful to draw out his perspective to better understand his motivations. The information learned can be both new and unexpected, and it may help break a stalemate.

In sum, when negotiating, women attorneys should be mindful of the fact that gender stereotypes can influence their opponents' perception of their actions and demands. Through the use of deliberate strategies, women can harness these stereotypes to their advantage, leading to a successful resolution that benefits their clients.

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