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"Female Lawyers as Pragmatic Problem-Solvers: Negotiation and
Gender Roles in Greek Legal Practice"
(February 2007), online: SSRN <<http://ssrn.com/abstract=968005>>,
footnotes omitted

*The movement of women into the legal profession is one
of the great under-noticed revolutions of our time.*

Epstein (2001: 733)

*Differences in perception and in treatment based on gender
impede the educational and professional progress of women.*

Krauskopf (1994: 312)

Introduction

Over the past two decades there has been a surge of scholarly interest in alternative dispute resolution (ADR) as a viable alternative to the traditional adversarial paradigm. The delays and costs of adversary proceedings, the loaded court dockets, the revealed shortcomings and biases that plague the court system have all contributed to the impetus of ADR as a flourishing scientific field. A main strand in the now voluminous negotiation literature centers on sex-based differences, categorizing the disparate bargaining experiences of groups or individuals along the lines of gender. A sizeable body of theoretical and empirical work already exists, which demonstrates that in a variety of settings, men and women negotiate differently, because they reason differently, argue differently, and behave differently. Explaining these differences has led researchers down two divergent paths: one locates the source of all differences to be biological and innate, while the other stresses the impact of gender socialization and socially constructed gender roles.

The traditional stereotypical view of women being less confrontational than men has been used to explain pervasive prejudice in a variety of markets, from retail car sales to kidney transplantation (Ayres 2001). In the work place, women's negotiating style has been identified as a main reason accounting for their lower salaries. For example, Barron (2003) shows that when they negotiate, women are much less likely than men to use self-promoting tactics; they also make fewer offers and counteroffers. As a result, they end up with lower salaries when they compete with men for the same job. Even in simple competitive environments, as in experiments where women and men were asked to perform under competitive tournament schemes, women were found to shy away from competition, while men were drawn to it (Niederle and Vesterlund 2005: 39). According to the findings of Kaman and Hartel (1994), men get more because they ask for more, are more confident of success, and employ a more active strategy than do women. Men's greater "urge to win" has also been discussed as one of the reasons accounting for the low numbers of women in top managerial positions.

Using the classroom as a laboratory setting, we analyzed the outcomes of simulated negotiating games conducted in the context of a graduate course on Negotiation, offered

to two different classes: lawyers and business students. We also collected information from questionnaires that were distributed to these two different sets of students and juxtaposed the findings with data collected from a control group population. Drawing our conclusions from the observation of negotiation behavior and the negotiators' self-assessments of their negotiating style, we found that the performance of female lawyers as negotiators is not as influenced by the widely-held societal expectations of gender-appropriate behavior as a sizeable part of the literature suggests. Rather, the most successful female negotiators in our sample displayed goal-oriented negotiating behavior that was determined primarily by individual characteristics and secondarily by the group norms that dominate the Greek legal culture, which fully embraces the traditional adversarial model.

All the lawyers in our sample, regardless of gender, were of Greek ethnic origin. This particular population was also homogeneous with respect to age, race, and socio-economic status. The average age of lawyers in our sample was 27 years old. Their common demographic background made their negotiating interactions "culturally homogeneous." In practical terms, cultural homogeneity has two implications: (a) true differences in negotiating style may be harder to discern and categorize and (b) differences in gender may be more easily identified and explained, since the ethnicity and/or culture variable has been *de facto* isolated. To put it differently, since the participants all come from similar backgrounds, one can more effectively observe and document the impact of gender and professional norms.

Our findings suggest that in simulated legal negotiations, the negotiator's personality is a stronger determinant of successful performance than his or her biological sex. We advance the thesis that a lawyer's sex is becoming less important, as the norms of the legal profession adapt to a more gender-neutral model of lawyering. The legal profession in Greece has been increasingly populated by women, with more accelerating rates in the past fifteen years. Over 60% of graduates from the country's Law Schools (which are all integrated in the public university system) are women. This makes Greece an interesting case study, because it constitutes an example of an environment that is deeply stratified along gender lines, but inversely. In recent years, a "power culture" has developed among young female law practitioners. Our work attempts to tap into this new social reality, as all indications show that young women lawyers do not appear to be disempowered by their gender.

Gender Differences in Negotiating Style: Some Findings

Sex differences in negotiation have been extensively explored over the last three decades. However, this research has continued to yield contradictory findings, with some studies suggesting little or no difference between male and female negotiators (Walters et al. 1998; Stuhlmacher and Walters 1999) and others documenting significant differences between male and female negotiators (Stamato 1992; Whitaker and Austin 2001; Miller and Miller 2002; Babcock and Laschever 2003).

The two major meta-analyses that were published in the late 1990s (Walters et al. 1998 and Stuhlmacher and Walters 1999) suggest fewer gender differences in negotiation behavior than would be expected. The first study (Walters et al. 1998) examined the results of 62 research reports on the relationship between gender and competitive behavior in dyadic bargaining interactions. The authors found that women were significantly more

competitive than men when competing against an opponent who pursued a “tit-for-tat” bargaining strategy. Men were found to be more competitive than women as measured by their offers and verbal exchanges. The second study indicated that women reached less favorable negotiation outcomes compared to men, but factors such as the relative power between the negotiators and the mode of communication moderated that effect.

Although the study of gender in simulated negotiation settings is an area that has only recently attracted research attention, it has already begun to yield fruitful results suggesting that there is less of a gender split in negotiation performance than it was earlier believed. Craver and Barnes (1999) have found that while women and men may not perform identically in negotiation settings, there is no factual basis for assuming that women are weaker or less capable negotiators.

In this strand of research, we set out to capture the gender differences in the negotiating behavior of male and female lawyers in a classroom setting. Drawing from the typology of Fisher and Ury (1991) and Shell (1999), we designed a questionnaire in order to assess the impact of style on the lawyers’ negotiating performance. The questionnaire was distributed during the first session of the Negotiations course to two different populations of graduate students: the first was composed exclusively of lawyers, and the second was composed of graduate business students. The questionnaires were distributed during the first class session, with the aim of capturing the instinctive or intuitive negotiating styles of both men and women respondents, before knowledge of the negotiating process “informed” their responses to specific questions.

We also observed the simulated negotiating games conducted in the context of the graduate course on “Negotiations for Lawyers” and then analyzed their outcomes. Nearly all of the games were role-play exercises, where lawyers negotiated in pairs that were selected at random, each in an assigned role. Half of the games involved single issue, zero-sum game negotiations and the other half were multi-issue negotiations, with potential for joint gains. In the single-issue negotiations, the lawyers negotiated in the role of buyer or seller, or of an employee negotiating for a raise in his or her salary. In the multi-issue games, they played the role of legal representative (e.g. acting as legal counsel for a client in a contract such as the sale of a house or the break-up of a company). To resolve disputes effectively, the lawyers in our sample were directed to systematically apply an interest-based approach (see Shell 1999, Lax and Sebenius 1986) and attempt to create value. Only one of the games was a group exercise calling upon the lawyers to claim value but to do so by working together in small groups and making strategic decisions ...

Our main findings are presented in the sections that follow. We will first discuss the results which may indicate gender differences in negotiating style. Next we identify those areas where gender lines are erased and factors like individual personality traits come into play. We will attempt to explain the negotiating behavior of male and female lawyers by reference to the competitive in-group norms of the legal profession.

The Lawyers

We identified three distinct negotiating approaches: hard (or competitive); soft (or cooperative); and contextual (depending on the circumstances). More specifically, the results are as follows:

Table One Basic Negotiating Personality (Lawyers)

	Male Lawyers	Female Lawyers
Hard negotiators	57%	35%
Soft negotiators	29%	40%
Depending on the circumstances	14%	25%

Reading Table One, we observe that a little over one-third of women lawyers described their negotiating style as hard, as opposed to close to two-thirds of men lawyers. Roughly one-third of all male lawyers described themselves as soft negotiators.

We found that the self-perceptions of female lawyers in terms of their negotiating style were initially influenced by socially-constructed expectations of appropriate gender roles. In the questionnaires that were distributed, 40 percent of all female respondents described their negotiating personality as “soft” or “cooperative.” In the class discussion that followed the completion of the questionnaires, soft negotiators of both sexes were identified and explained why they adopted a cooperative negotiating personality. Because of the small class size, it was easy to observe and “keep track” of these negotiators’ behaviors during the games. Observing their in-class negotiation behavior indicated yielded an interesting finding: 30% to 50% of these self-proclaimed “soft” negotiators actually used abrasive bargaining tactics in the simulated games. This suggests a real divide between self-perceptions and actual negotiator behavior. One explanation is that the self-expectations of female lawyers were initially informed by the dominant stereotypes—but during the games, their behavior was shaped by their attempted alignment with the group norms of their profession. The role-playing exercises acted as a powerful trigger that made them identify with their role-as-advocate and activated more assertive responses on their part. Investigating the interplay between gender and representation role, Bowles et al. (2005) also found that women acting as an agent for someone else intended to be more assertive in their requests than women acting on their own behalf.

There is empirical evidence to suggest that gender affects only self-expectations and not negotiation behavior. In 1994, Watson (1994) analyzed eight studies on negotiation and concluded that gender affected participants’ feelings: women felt less confident when negotiating, and, even when they displayed the same negotiation behavior as men, felt less successful than the men did. The manner in which gender stereotypes are activated in the minds of negotiators has been identified as a situational variable that impacts bargaining outcomes (Kray et al. 2001).

Finally, 25 percent of women lawyers and 14 percent of male lawyers submitted a self-assessment of “neither hard nor soft” negotiator, clarifying that they feel negotiating style is highly dependent on the negotiating setting. These self-assessments cannot be properly categorized as hard or soft, since they constitute a third, distinct category that has been explored in the literature (see e.g. Savage et al. 1989, who developed a model for the selection of negotiation strategy that depends on different responses to relational and substantive concerns). There are two possible ways to interpret this finding: one is to say that the negotiators who refused to fall into the trap of the “either soft or hard” dichotomy were well on their way to becoming effective negotiators, since they had intuitively grasped

that thinking in a flexible and contextual manner is key to problem-solving. In this light, women lawyers proved to be more flexible than their male colleagues. The other way to approach the result is to infer that these negotiators were less clear about their negotiating style, less assertive and self-aware than the majority of respondents—and so responded in a manner that eschewed the dichotomy out of puzzlement and not a higher degree of self-awareness.

The respondents were then called upon to clarify how they applied their basic negotiating personality in situations of professional and personal conflict. They were given four options to choose from, as can be seen from the table below:

Table Two Negotiating Style in Situations of Professional and Personal Conflict (Lawyers)

	Male Lawyers	Female Lawyers
Hard in professional conflict/soft in personal conflict	71%	50%
Hard in both professional and personal conflict	14%	15%
Soft in professional conflict/hard in personal conflict	15%	20%
Soft in both professional and personal conflict	0%	10%
I don't know (undecided)	0%	5%

These findings demonstrate that men are just as sensitive to the distinction between professional and personal negotiations as women. But they are also more steadfast about adopting a hard negotiating style in professional conflicts relative to women. This is a finding that has consistently come up in the empirical investigation of gender in negotiation.

The fourth question of the second part of the questionnaire checks for the impact of gender socialization. It asks respondents to think back to their childhood and provide an assessment of their behavior in group games, either in the school yard or in the neighborhood. The responses are plotted in the tables that follow:

Table Three Behavior in Group Games during Childhood (Female Lawyers)

	Hard Negotiators	Soft Negotiators	Contextual Negotiators
Highly competitive	29%	0%	20%
Rather competitive	57%	62.5%	20%
Indifferent about winning or losing	14%	25%	0%
Cooperative	0%	12.5%	20%
Other	0%	0%	40%

We notice that the female lawyers who had previously replied that they are either hard or soft “depending on the circumstances” are similarly undecided when it comes to identifying their behavior as children. These women, who make up a small percentage of the overall sample, are more comfortable describing rather than identifying their negotiating style.

But the most interesting finding here is the following: regardless of their self-assessment in terms of their negotiating style, the overwhelming majority of women lawyers describe themselves as “rather competitive” in group games. This finding explains their choice of profession—but it must be combined with a reading of the responses given by the male lawyers before more tenable conclusions can be reached.

Table Four Behavior in Group Games during Childhood (Male Lawyers)

	Hard Negotiators	Soft Negotiators	Contextual Negotiators
Highly competitive	25%	0%	0%
Rather competitive	75%	50%	0%
Indifferent about winning or losing	0%	0%	0%
Cooperative	0%	0%	75%
Other	0%	50%	25%

The findings from the male lawyers confirm that a self-description of “rather competitive” behavior is the most popular answer across the board. Half of all male lawyers who characterize themselves as soft negotiators were rather competitive as children. Moreover, it is quite interesting that most male lawyers who were cooperative in childhood group games grew up to become contextual negotiators, possessing greater flexibility and subtlety in their adult bargaining behavior.

The fifth question that called upon the respondents to turn in a more refined self-assessment of their negotiating style is even more revealing: 75 percent of all female lawyers who described themselves as hard negotiators specified that they were “hard in situations of professional conflict and soft in situations of personal conflict.” However, it would be inaccurate to say that these tough female negotiators adopted “a masculine sex role orientation,” as proposed by Greenhalgh and Gilkey (1986). First, because this characterization fails to capture the behavior of tough female negotiators in games where they were distinctly called upon to apply integrative bargaining techniques. Second, because the exact same percentage of male lawyers who described themselves as “hard negotiators” also turned in the same response. This finding clearly shows that most “tough” lawyers, regardless of sex, identify with the norms of their profession, yet are careful to draw the line between their professional and personal life.

The Business Students

The questionnaires were also distributed to the students attending the full-time Master’s of Business Administration program. The class was composed predominantly of young business professionals, working in various executive positions. We distributed a total of 40 questionnaires, but received only 34 valid completed questionnaires. The male respondents outnumbered the female respondents by a narrow margin (18 males as opposed to 16 females).

It was interesting to observe that most female respondents in the MBA Program class and roughly one-third of all male respondents characterized their personal negotiating

style as neither soft nor hard, but “depending on the circumstances.” But the most striking finding was that close to 40% of male graduate business students gave a self-description of “soft negotiator.” The results appear analytically below:

Table Five Basic Negotiating Personality (MBA Students)

	Male MBA students	Female MBA students
Hard negotiators	28%	19%
Soft negotiators	39%	38%
Depending on the circumstances	33%	43%

If we juxtapose these results with those from the lawyers’ sample, we will notice that lawyers of both sexes are significantly more competitive negotiators than MBA students of both sexes. The number of female lawyers who described themselves as hard negotiators is nearly double the number of female MBA students who turned in the same self-assessment. When asked to be more specific about their negotiating style, the responses were as follows:

Table Six Negotiating Style in Situations of Professional and Personal Conflict (MBA Students)

	Male MBA students	Female MBA students
Hard in professional conflict/soft in personal conflict . . .	83%	50%
Hard in both professional and personal conflict	6%	13%
Soft in professional conflict/hard in personal conflict . . .	0%	31%
Soft in both professional and personal conflict	11%	6%

Under the same lens, we conclude that lawyers who are tough negotiators report significantly higher numbers of tough bargaining behavior in both their professional and personal lives compared to the business executives. Also, the number of female business executives who report being soft negotiators in their professional conflicts is a lot higher than the relevant number of female lawyers.

Table Seven Behavior in Group Games during Childhood (Female MBA Students)

	Hard Negotiators	Soft Negotiators	Contextual Negotiators
Highly competitive	0%	0%	22%
Rather competitive	55%	40%	45%
Indifferent about winning or losing	15%	20%	0%
Cooperative	30%	20%	22%
Other	0%	20%	11%

Table Eight Behavior in Group Games during Childhood
(Male MBA Students)

	Hard Negotiators	Soft Negotiators	Contextual Negotiators
Highly competitive	20%	29%	33%
Rather competitive	40%	57%	33%
Indifferent about winning or losing	20%	0%	17%
Cooperative	0%	14%	0%
Other	20%	0%	17%

We observe that most male MBA students (surprisingly, even the ones who describe themselves as soft negotiators) were rather competitive in their childhood years. The same holds true for female MBA students. What is most important for our research is that lawyers of both sexes clearly surpass the business professionals in terms of competitiveness: the percentages of female and male lawyers who were highly competitive in group games as children are quite larger than the relative percentages of the business students.

The Control Group

We tested the findings in a non-lawyer and non-MBA population, comprised mainly of bank employees and insurance company employees of different ranks. To minimize heterogeneity, we limited the sample to young adults (aged 20-30). We received 40 fully completed and valid questionnaires in total, with a near-even male to female ratio (21 female respondents and 19 male respondents).

Table Nine Basic Negotiating Personality (Control Group)

	Males	Females
Hard negotiators	11%	33%
Soft negotiators	78%	57%
Depending on the circumstances	11%	10%

Table Ten Negotiating Style in Situations of Professional
and Personal Conflict (Control Group)

	Males	Females
Hard in professional conflict/soft in personal conflict . . .	22%	14%
Hard in both professional and personal conflict	17%	9%
Soft in professional conflict/hard in personal conflict . . .	5.5%	29%
Soft in both professional and personal conflict	50%	48%
I don't know (undecided)	5.5%	0%

Women lawyers as a group are “tougher” negotiators than both the business students and the general population. Over half of the females in the control group described themselves

as soft negotiators. Even more important assessments can be made by contrasting Tables Two and Ten: nearly 50% of all females in the control group assert that they are soft in handling conflicts that arise in their professional relationships, as opposed to only 10% of female lawyers. The similar percentage for the male lawyers is even more impressive: over two thirds of all male lawyers describe themselves as hard negotiators.

Do these findings confirm the obvious fact that inherently competitive people of both sexes are drawn to competitive professions? Or is it the prevailing norms of legal culture that shape inherently soft or accommodating people into fierce competitors? We aim to show that although biological inclinations undoubtedly play a role, the norms of the profession are stronger determinants of negotiation behavior.

Gender-Neutral Behavior at the Negotiating Table

Recent theoretical explanations of gender in social behavior predict that gender differences will arise only under certain circumstances and increasingly look for situational variables that may trigger these “gender effects” (see Deaux and Major 1987; Kray et al. 2001; Riley et al. 2003). Perhaps the greater number of women lawyers in the classroom (replicating the sex ratio of the actual lawyer population in Greece), combined with the negotiators’ own “gender-appropriate” expectations, acted as a trigger for some of the “gender-based” differences that we observed ...

Men and women seemed to be equally imbued with the values of individualism that have come to define the legal profession. In one particular group game (*Oil Pricing*), which mimics the strategic decisions made by duopolies and involves two teams in a price-bidding war under time constraints, the competitive ethics of the profession clashed with the norms of group decision-making. In this game, making the “right” strategic moves involves clarifying issues of representation and reconciling competing subjective preferences. In our lab setting, both male and female lawyers experienced a tension between empathy and assertiveness (*cf.* Mnookin et al. 1996). One characteristic outcome was that “troublemakers” were ostracized—minority voters were opinionated, “tough” negotiators in most games. Penalties included the refusal to nominate them for the role of representative and to preclude all team members from developing lengthy oral argumentation (most commonly by using the game rule of the four-minute deadline for placing bids between rounds). This was the team’s way of ensuring in-group cooperation and minimizing the costs associated with allowing these troublemakers to play a leading role during negotiations.

The two most complex simulated games of the course called upon the players to resolve conflicts with high stakes in situations where an amicable future relationship is very important. In the first (“*The Bowling Ball Manufacturer*”) they had to negotiate the provisions of a long-term supply contract and in the second (“*PowerScreen*”), they had to settle a dispute over ownership rights on a particular product with the goal of continuing a long-standing business partnership. We found that when role-playing in these games, men and women were *equally* likely to exhibit the following traits:

- taking initiatives
- being assertive
- exhibiting confidence

- brainstorming different options
- resolving differences by overcoming problems of perception
- asking questions to reveal underlying interests
- setting high goals
- searching for areas of shared interest
- ability to engage in “dovetailing” (Fisher and Ury 1991: 73)
- drafting “yes-able” propositions

These characteristics were shown to be common to both sexes. Taken together, they fit the profile of the “cooperative antagonist,” to use Howard Raiffa’s classification (1982). Although each one of these attributes merits special attention, for the purposes of this paper we will focus on the ability to build a collaborative relationship, because it lies at the very heart of the debate concerning women’s alleged proclivity to “connect.” The bulk of the literature from the social sciences suggests that women are inclined to emphasize relational needs and men individual criteria in their dealings with other people (see generally Gilligan 1982). According to Kolb and Williams (2003: 174), “connection itself is often linked to a ‘softer’ feminine approach,” something they characterize as a common misperception.

We found that the ability to connect was a personality trait that greatly increased the chances of a successful outcome for negotiators of both sexes. Observing the negotiating behavior of individual lawyers at the table and evaluating the agreements they reached, we found that both sexes were equally adept at creating value, i.e. at reaching mutually beneficial (*positive-sum game*) agreements. Of course the participants were expressly directed to be attentive to both the relationship issues and the substantive goals of the negotiation.

Furthermore, in our lab setting, the soft approach could in no way be identified with women’s negotiating style. Again, behaving like an “accommodator” at the negotiating table (see e.g. Shell 1999: 10-11) manifested itself as a personality trait rather than a psychological tendency associated with either sex. Observing the outcomes of different negotiating pairs, the few men and women in our sample who were “soft” realized early on that accommodating bargainers who are willing to give in for the sake of peace get a smaller piece of the pie while role-playing in claiming-value games. Accommodation became a handicap for negotiators of both sexes, as it translated into unilateral concessions. Most negotiators in our sample eventually learned to protect themselves by using the principled method.

The Role of Personality: The Lawyer as Pragmatic Problem-Solver

Individual personality, together with economic status, political orientation, gender, family history, communication and language skills, and mood all contribute to a person’s bargaining behavior (see generally Sebenius 2002). In recent years, considerable research has been conducted on the effects of personality variables in negotiation (see e.g. Gilkey and Greenhalgh 1986). Standardized personality tests like the Myers-Briggs test have been refined and their use in business settings has proliferated. However, the findings on the impact of individual differences on negotiating outcomes remain inconclusive. Some argue that the structural variables in negotiation (for example, the power imbalance between the two negotiating parties and/or the pressure exerted by constituencies) may override the effects of personality variables ...

Our findings confirm the pivotal role of personality and style in negotiating performance. Although all negotiating pairs in our sample were given the same set of facts and instructions, the results reached by each negotiating pair varied widely. In exercises that involved agreement on a distributive issue (e.g. deciding on a mutually satisfactory salary, as in the simulated exercise of *Sally Soprano*), the figure that the pairs agreed upon covered a wide bargaining range. This reflects the imprint of individual characteristics on negotiating outcomes.

What's more, the most successful negotiators in our sample all possessed a moderate to high degree of individualism. Each one brought a different mix of skills to the negotiating table: for some, the prominent trait was integrity, while for others it was a confident attitude. But every one of these effective negotiators was a highly rational, goal-oriented player with advanced problem-solving skills. If we were required to group them together on the basis of a single shared characteristic, then we would characterize the successful negotiators of our sample as "pragmatic problem-solvers."

Pragmatism has distinct scientific connotations and as such is usually linked to the American intellectual tradition. Analyzing the American view of negotiation, Stempel (2002) suggests that intellectual diversity and a pragmatic approach to negotiation are American hallmarks. In our analysis, we adopt a broader view of pragmatism, in its core essence of a practical and matter-of-fact way of assessing situations or of solving problems.

Pragmatic problem-solvers are negotiators who are consistently goal-driven and results-oriented. Goal-oriented rationality in the Weberian sense is well in tune with the pragmatist doctrine of looking to an idea's observable practical consequences. Regardless of the orientation they employ, these negotiators strike a very good balance between maintaining a good relationship with the other side and aiming to cover the substantive items on their negotiating agenda. They negotiate expecting tangible rewards, but they do care about the reputational costs of harming the amiable climate of their bargaining interactions. The negotiating behavior of these pragmatic problem-solvers was in many aspects similar to what Rackham (1980 [2003]) has termed "superior" negotiating behavior in his widely-influential study of labor relations negotiators.

The most pronounced personality traits shared by the pragmatic problem-solvers in our sample were the following:

Figure 1 Personality Traits of Pragmatic Problem-Solvers

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- a heightened level of rationality (that allowed them to maintain better control over their emotions);
 - a highly developed ability to inquire effectively and to listen actively;
 - greater flexibility (that allowed them to remain assertive without damaging the relationship);
 - greater ability to take the other side's perspective (to empathize);
 - greater commitment to professional integrity (as they perceived it in the context of the situations described in the simulated games);
 - greater openness to adopting an integrative bargaining approach

All of the aforementioned personality traits constitute important variables that influence many different aspects of the negotiation. To begin with, enhanced cognitive skills have been

identified by negotiation experts as a key factor associated with excellent performance in legal and business negotiations. For example, Watkins (2002) describes business negotiations in terms of four tasks: diagnosis, shaping, process management, and assessment. These tasks assume special significance during the preparation stage of negotiations, which we were not in a position to assess empirically. In-class observation was our main methodological tool, so we could only make well-reasoned estimates regarding both cognitive skills and perspective-taking ability during the planning stage. The amply-documented fact that better preparation leads to more successful negotiating was confirmed: the lawyers who had solidified their line of argumentation on the basis of objective standards were confident enough to invite the other side to explore areas of shared interests at the negotiating table.

The ability to inquire effectively and to engage in active listening was more easily manifested during face-to-face bargaining. As in other laboratory-setting studies, effective negotiators stand out by what they avoid doing rather than by what they actually do. Problem-solvers avoided engaging in tactics like defend-attack spirals and irritators. They resisted the temptation of “flaunting” their offers. They also asked more questions, especially to test understanding at all steps leading towards agreement. They used clarifying and open-ended questions to summarize the progress made in the negotiation. Finally, successful negotiators were willing to invest more time in looking for areas of common ground.

Simulated bargaining games confirm our deeply held intuitions about real-world negotiations. Personal ability is the single most important factor behind negotiating successful real-life business deals. When negotiating across national boundaries, negotiators with advanced skills are better able to overcome cultural differences. Lawyers and executives who possess sophisticated personality traits can use their personal influence in all stages of negotiating, but especially during planning and gaining commitment ...

Female Lawyers as Pragmatic Problem-Solvers

An interesting finding was that the overwhelming majority of pragmatic problem-solvers in our study were women. These negotiators effectively engaged “in a dynamic kind of relationship building that is inextricably yoked to successful advocacy” (Kolb and Williams 2003: 175). They viewed their involvement in the problem-solving process as an integral part of their lawyering skills. In the laboratory setting, they were able to reach wise and efficient agreements in a favorable climate of respect for their negotiating partner (Ury 1991: 73-75).

The ability to engage more effectively in problem-solving is crucial both in the classroom and in real-life negotiations. It has also been connected to a “feminine” style of lawyering. Davis (1991: 1677) has demonstrated that the feminine style represents both attention to a broader range of client concerns and participation in problem-solving, whereas the masculine style represents a “relatively narrow interpretation of the expert’s role in problem-solving” (*id.*). However, in our study, the connection of this ability to women lawyers may be in great part explained by the overrepresentation of women in the particular lawyer populations. This is the reason why we would be very hesitant to attach a gender tag to successful lawyering.

It is our understanding that the principled negotiation method appealed to women lawyers because it allowed them to turn their “feminine” attributes from handicaps to advantages. When applying the method, inherently competitive women were able to channel their drive into more constructive paths, whereas inherently cooperative women drew

strength from the wide applicability of objective standards. It seems that the use of a method solves the negotiator's dilemma between adherence to the profession's competitive ideals and following one's own unique negotiating style, which is more "other-directed" than the one dictated by group norms. Women lawyers seem to be particularly troubled by this dilemma, which is two-pronged: the legal arena expects them to be tough and outspoken, but the senior partners in their law firms expect them to be deferential and courteous. Not surprisingly, a number of them experience some degree of what we could call "gender-disassociation" when applying tough bargaining tactics in their legal practice.

Observing how lawyers played the simulated games, it was obvious that the greatest obstacle in establishing cooperative relationships was the lack of trust. Although in theory all lawyers agreed that trust is the building block which forges long-lasting alliances, joint ventures and networks, in practice it was particularly difficult for them to assume the risk of "trusting first." This was hardly surprising, as an important sub-set of group norms in legal practice are rooted in "mistrust" or else, a type of "inbred conservatism" that is part innate and part "learned" when students are still in their years of basic legal studies. Here once more, the influence of occupational norms was more direct than the impact of cultural homogeneity which would be seen as inducing cooperation.

To sum up, we should keep in mind that outside a laboratory setting, a woman lawyer's decisive tone, confident attitude or assertive negotiating personality could be easily labelled as authoritative, harsh or domineering. It is easier for a man to tolerate or admire leadership qualities in a woman when these are confined to a classroom. Kolb et al. (2004: 6) point out that the image of the effective leader is still cut from masculine cloth: behavior perfectly acceptable in a male leader can seem discordant in a woman—overly harsh, too aggressive, uncaring.

In the world of business, research has consistently shown that women often lack the presumption of credibility and competence when they assume a leadership role (see esp. Rhode 2003). Despite the greater than ever numbers of women among the executive ranks, Americans—male and female—still prefer to have a male boss (Simmons 2001). Kolb and Putnam (1997) argue that most negotiations in organizations are modeled on a "masculine" paradigm, and they challenge human resource professionals to develop processes that are more inclusive, creative, and empowering.