

Nice Is Not a Strategy: Women and Negotiations

By Diane Rosen

For most women, the prospect of negotiations will invoke feelings and expectations, from business as usual to anxiety or even trepidation. Reactions to negotiating will have a lot to do with the who, what, when, where, why and how of the situation. Negotiating salary may feel different than negotiating a settlement or complex transaction. Facing senior male partners on the other side of a case or deal may be challenging for a young lawyer but routine for a more experienced lawyer. Whatever the content or context of, and parties to the negotiation, preparation and maintaining one's equanimity in the face of a potential conflict are key to optimizing the outcome.

A negotiation is a conversation with an intention. Negotiations can be formal or informal, complex or simple, congenial or adversarial. In all cases, each party is seeking its version of an acceptable outcome. All participants have objectives, interests and positions, with respect to which they may be aware or less so. The negotiation process involves collecting information, making decisions and adjusting course as data is gathered and interpreted. Strategy shifts as concessions are made or denied. When the parties are not aligned and cannot move toward agreement, the negotiations may become difficult or heated, or fall apart altogether.

What are successful negotiations? My view is that a negotiation has succeeded if the parties can get to a result that the parties can live with (whether acceptance is gracious, grudging, or resigned), where the outcome, all things considered, is sufficiently acceptable to move forward and is good enough. This view is contrary to the "win-win" or "win-lose" formulations advanced by various scholars and practitioners, nor is it about game theory or first mover or leveraging risk—or loss-aversion. Those are tactics that have varying degrees of utility in given circumstances. If negotiations are part of everyday life, managing them requires triage, evaluating the stakes involved and determining the time and effort allocable depending on the importance of the outcome to you and other relevant stakeholders.

So in what way is this relevant for women, and particularly women lawyers? The 2019 Law360 Glass Ceiling Report reminds us that notwithstanding gains being made across the profession, women lawyers in the aggregate remain unrepresented in leadership roles in their organizations and equity partnership in firms. Women as a group continue to be subject to gender bias ranging from inappropriate interpersonal behavior to lack of pay equity and failure to be given full credit for revenue generation. Some sobering statistics from the ABA 2019 Women in the Law report provide additional context to

the status of women in the law: globally, male equity partners are paid 27% more than women; in 2018, women lawyers earned 80% of the weekly salary of male counterparts: 30% of Fortune 500 and 23.8% of Fortune 501-100 general counsel are women; and 36.8% of federal appeals courts and 34% of circuit court judges are female.



Diane Rosen

With this backdrop, becoming an excellent negotiator is a critical skill for women both for advancement at work and with clients and counterparties in law practice. There is a great deal of literature that explores whether men are better negotiators than women, and if so, why. A 2015 meta-analysis of studies on gender differences in negotiations¹ posits that women are still subject to persistent negative stereotypes that they are ineffective, emotional conflict avoiders, while men are seen as tough, rational and comfortable pursuing their own self-interest. However, such stereotypes fail to value qualities that show that women are actually quite effective negotiators with traits including verbal acuity, listening skills, goal setting abilities, valuing relationships (leading to the ability to build trust for long term success in negotiations over time) and modeling ethical standards. Research by Kray and Thompson² notes that while masculine traits are identified with being successful at negotiations and that women may succumb to stereotypes about their ability to perform well in negotiations, women can also acknowledge and exploit those stereotypes in their own self-interest and excel at negotiations.

Although women may have to deal with ingrained stereotypical expectations about their negotiating prowess, there is no reason to be limited by others' perceptions of our negotiating skills and talents. To the contrary, being aware of who is on the other side of the table can be an advantage. Whether negotiating with men or other women, getting good outcomes in negotiations is a factor of increasing one's self-awareness and other-awareness. That means initiating or pursuing negotiations with composure and confidence and sharpening one's skills

to better read the room and understand the dynamics of situation.

As you prepare for and participate in negotiations of all types, here are some practical tips to enhance your negotiating presence:

- Distinguish between interests and positions. Positions are wants, interests are needs. The position may be framed as a dollar amount; the need may be respect or acknowledgement.
- Lead with curiosity. Ask, don't assume—you will learn much more from a dialogue than a download. Defer problem solving and control and make room for learning. Asking questions will reveal more information as to motives and what really matters to the other party (notwithstanding their stated positions).
- Nice is not a strategy, it is an affect. Being nice does not persuade another party to listen, make concessions or agree. It can play into gender stereotypes and be counter-productive. Stay on strategy and you can be perfectly delightful in affect.
- Pay attention. It is natural to organize your response while the other person is talking. But that means you are not listening. Better to listen so your response can be thoughtful and deliberate.
- Perfection is not the relevant standard. The best negotiators are agile and flexible, ready to consider alternatives and reprioritize. Being competent and capable leaves room for growth, development and creativity while perfectionism can impede progress.
- Prepare, prepare, prepare! Know your material and be ready with responses to counter arguments. If you don't know something, better to acknowledge than pretend and get it wrong.
- Placeholders. It is easy to get flummoxed when faced with an unanticipated reaction. Maintaining equanimity is crucial. Having some neutral words or expressions ready can give you a moment to organize your thoughts and emotions. Examples: 'That's an interesting point, I would like to think about it,' 'I would prefer not to respond right now.' Sounds (hmmm, ohhh, etc.) also work to give you a moment to organize your thoughts.

- Respond, don't react. This requires self-regulation and not taking things personally. Keeping an emotional distance from inappropriate, heated or antagonistic remarks intended to bait or provoke a reaction is a useful tool and can de-escalate disagreements.
- Set your goals for the negotiation but be ready to be flexible and open to alternatives you had not considered.
- Silence is a good thing. Women tend to want to fill silences with words. Silence can be used to reset the temperature, quietly consider options and change the pace of a negotiation.
- Winning is not necessarily the point—sometimes progress is better than victory. Consider all factors such as maintaining a relationship, opening the door for future negotiations, being gracious with respect to less important points to build trust, and taking a long view.

Being a good negotiator is most definitely a skill that can be cultivated and developed. And no matter how good you may be, there is always room for growth and expansion.

DIANE ROSEN is a practicing lawyer and mediator, conflict/executive coach and author. She is a principal of Compass Consultants LLC (www.compassconsultants.net), a consulting firm focused on workplace excellence, performance management, executive and leadership coaching, conflict resolution, mentoring program design; communication skills and resilience.

Diane also maintains a private mediation practice and has been of counsel to Ortolí Rosenstadt LLP since 2013, where she focuses on real estate and corporate transactions, non-profit governance and copyright. She was a 2013 American Arbitration Association Higginbotham Fellow.

Endnotes

1. Kennedy, J. A. and Kray, L.J (2015). *A pawn in someone else's game?: The cognitive, motivational and paradigmatic barriers to women's excelling in negotiation*, Research in Organizational Behavior 35, pp 3-28.
2. Kray, L.J. and Thompson, L. (2005). *Gender stereotypes and negotiation performance*, Research in Organizational Behavior 26, pp. 103-182.

If you like what you're reading, join our section! <https://nysba.org/yfs/>