THE WOMAN ADVOCATE
SECTION OF LITIGATION

Fall 2017, Vol. 23, Issue 1

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The Woman Advocate
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ARTICLES

Steel Magnolias and Velvet Hammers: The Power of Quiet Persuasion

By Peggy Smith Bush – November 21, 2017

Law is not my first career—or even my second. Having been what some refer to as a nontraditionally aged law student, by the time I headed out to court to cover my first hearing, I was in my late (late!) thirties. I had been "out in the real world" for about 17 years and had worked almost exclusively in historically male-dominated industries. Raised in the South, I was used to being called a "steel magnolia" and picked up the nickname "velvet hammer" in law school. In other words, I was comfortable that it was obvious I am a strong woman with a soft style. I was, therefore, reasonably taken aback by the apparent expectation that I had zero experience, let alone ability, to navigate difficult situations and negotiations. At first, I thought it was because I was new to the practice of law—after all, I was considered (albeit briefly) a "young" lawyer. And I don't discount that was part of it. But I soon realized that it was also, and perhaps mainly, because I often was the only woman in a room full of male attorneys and, physically, I almost always was the smallest. I am naturally soft spoken, and being raised in Alabama, I have an easily recognizable and often commented upon "southern belle-ish" accent. Putting all of that together could have been a recipe for being crushed in an industry where people argue for a living. But in my experience, loud does not mean stronger, and you don't have to be argumentative to argue your position. There is power in quiet persuasion.

A colleague once likened me to a chainsaw wrapped in a marshmallow, and I like it! I bring my "steely soft" personality with me to the negotiating table (as well as the courtroom) and use it to my advantage. One example from early in my legal career came when, as a junior attorney on a contentious case, I was tasked with working out day-to-day discovery disputes with a much-seasoned (and irascible) male attorney. Opposing counsel was dismissive of my attempts to work out disputes telephonically, saying I did not know how things work "in the real world" and he would "see [me] in court." It seemed to irritate him to no end when he raised his voice but I did not follow suit. On our way into the judge's chambers to argue our dispute in person, opposing counsel asked me how long I had practiced and complimented me on my briefcase, noting "it sure looks brand new." (I expect he thought it was my first briefcase, not knowing I had completely worn out a very nice one during my pre-law-school career.) Once we were settled in and I made my case for why my client was entitled to better discovery responses, opposing counsel was so obviously confident that the judge would rule in his favor—because, according to him, this was how he conducted discovery in all his cases—that his tone was indignant and dismissive. His position, as we say in the South, was "let's lock the door and all get on to home in time for supper."

While I cannot, after all these years, remember my rebuttal verbatim, I recall asking the judge in very plain words for relief regardless of what happened in counsel's other cases. I acknowledged that opposing counsel might well be right in his general approach as applied to other cases, but in this one instance, it made sense that my client was entitled to more information based on the supporting (though minimal) case law I had cited. By acknowledging my opponent was not wrong all the time—just this time—I used his shotgun, "this is the way I always do it" approach to my advantage: showing that in the big picture, I was asking for something very narrow and reasonable; why, I was barely asking for anything at all. When the judge granted my motion, opposing counsel asked, "What just happened here?" I remember with great amusement his face when the judge responded, "She just ate your lunch, counselor." (I still have that briefcase.)

Opposing counsel incorrectly assumed that because I did not raise my voice and fight with him, I was intimidated. When he hung up on me and I did not rush to call him right back to confront him, he assumed (again, incorrectly) I was avoiding confrontation. It was only after the hearing was long over that he realized I was neither. How I handled the situation was not coy; my position was the same in front of the judge as it had been during our conversations. The only difference was that opposing counsel mistook my softer style as weakness, whereas the judge actually listened to what I said.

What I've Learned from Like Situations

Loud does not mean strong—it just means loud. If you take a "hell no" stance to everything, you lose valuable credibility. Be pleasant and cooperate when you can; then, when you take a strong position, people will take note and be more apt to agree with you. You do not have to match comment for comment; in fact, sometimes it is best to say nothing at all. It is true that some of the things we learned in elementary school serve us well throughout life: If you owe someone an apology, do it promptly and nicely. Apologizing when appropriate is not a sign of weakness, and people will appreciate that you stepped up. As a bonus, the next time something happens and you do *not* offer an apology, most people will recognize that this time *they* should apologize to *you*. If they do not, politely point it out. Depending on the situation, you may find taking a light tone is enough to reset the conversation. Other times, it may be important to use what my then preteenage niece called, "Aunt Peggy's big girl lady lawyer voice": professional, even-toned, but firm. After all, you may be nice, but you are not a nice doormat.

Quietly persuading does not mean taking less than that to which you are entitled. If you don't ask for what you really want and/or need, you probably will not get it. I cannot count on both hands the number of times I have watched as attorneys implicitly negotiate against themselves by failing to simply ask for what they really want. There are times when we have to "demand" something—and that is fine. But I find that in most negotiations, starting by asking nicely, when possible, sets a much more cooperative tone.

Do not be afraid to show your personality; simply use your judgment as to the appropriateness in each situation. Showing appropriate emotion is not the same as showing all of your cards, and nobody likes to negotiate with someone who is robotically going through the motions. For example, if you are defending a case involving somber facts such as the death of a child, showing compassion is entirely appropriate. You can express compassion through a kind word, a warm handshake, and a genuine acknowledgment that you have been brought together to resolve a case arising from emotional and difficult circumstances without admitting liability or weakening your position. Conversely and much more enjoyably, I have found that a sense of humor is one of my greatest assets in negotiations. I certainly do not recommend that you laugh *at* anyone. However, we do not live in a perfect world, and all of us stumble sometimes, literally and figuratively; so do not take yourself or others so seriously that you lose an opportunity to share a laugh, lighten the mood, regroup, and move forward.

"Kill Them with Kindness and Don't Forget You May Have to Just Talk Them to Death"
This technique does not work for everyone, and it certainly is not the only method I use. However, you may find that it has a place in your negotiating toolbox. The first time someone used this phrase to describe my negotiating style was after I bought my first car. I had already gone to one dealership at which the price of the vehicle I wanted was actually pretty good. So good, in fact, that I would have bought the car for the asking price but left after the salesman suggested that I call my husband so we could "finish up this deal." Instead of calling my husband (who later laughed at the thought), I took the lowest asking price from the first salesman, subtracted several thousand dollars for my trouble, and went to another dealership.

To this day I remember how, in response to my initial offer, the salesman got a gleam in his eye and began talking to me in that very slow manner usually reserved for folks who one believes are unable to really comprehend what is being said. "That is what we call a low-ball offer," he said so slowly that he added additional syllables to several of the words. He even volunteered that he just happened to have a gold sedan on his lot that was "really pretty"—yes, he was sure that would be the perfect vehicle for me. I saw that as his opening demand, smiled my sweetest smile, and four hours later drove off the lot in the silver SUV for which I had come. I loved that car, including the sunroof, upgraded wheels, and leather seats that he threw in for free just to make me stop talking to him. I have sometimes wondered if the salesman was being sarcastic or honest when he handed me the keys and told me he thought he should just quit his job and do something else. Because I had just signed off on the paperwork for a price well below the lowest price at the first dealership and barely above my initial offer, I really could not disagree with his self-assessment. I never even asked for the upgraded wheels. Did I mention the free oil changes? Throughout the negotiations I had smiled, was pleasant, and told him that I really appreciated his bringing the "really pretty" sedan to my attention. But, before I could make a decision between the gold sedan and silver SUV, I really needed him to explain more about what a "low-ball offer" was so we were on the same page.

Halfway through the negotiations, he realized that we were no longer discussing the sedan at all. A little while later, he finally saw a pattern. Each time he explained an added benefit of the SUV, I responded that if *he* thought it was really worth a few hundred dollars more, then, yes, I would take *his* advice and do that. He had invested well over three hours of his time, had happily gotten his manager's approval on various aspects of the bargain, and the deal was done. The salesman made the mistake of accepting the negotiating arena as the amount of money he thought I was willing to pay. Again, I was not coy in my negotiations. I told him from the very beginning that I wanted a certain car and that I wanted to buy it that day. For the majority of the negotiations, he assumed that because I had started with such a low number, anything he obtained above the amount of money I said I was willing to pay was a "win." In other words, I convinced him that if he wanted me to pay him anything above my initial offer that he had to "earn" it, and he accepted that as the parameter of the negotiation.

I am the first to acknowledge that my "softer" negotiating style may not work for others, and my intent with this article is not to suggest there are cookie-cutter solutions for all. My suggestion is, rather, that we each are most successful when we bring our genuine selves to the table. If your personality is naturally more introverted and you are more of a listener than a talker, then that may be your negotiating superpower. In your own words, repeat back what you thought was the most important thing the other person asked for. That shows you were listening and actually heard what he or she had to say. When you explain your position as to why you cannot agree to what he or she wants, but can offer an alternative (i.e., less), the other person is more likely to listen to you. Make the effort to really think through your strengths and how you can use them in negotiating.

In conclusion, I believe women advocates bring a very special perspective to every table at which we sit. Some of us are naturally loud when passionately negotiating, and that is not a bad thing. But if your style is softer, like mine, remember that you still can be heard, loud and clear, without ever raising your voice.

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Negotiating in the Workplace, with Advice from Renowned Women Attorneys

By Valerie Samuels and Catherine Lombardo – November 21, 2017

Study after study shows that when negotiating on their own behalf, women either forgo a seat at the table or leave the table with crumbs rather than a full meal. Even when they manage to eat their fill, women are chastised for taking their fair share.

Researchers have found that women consistently concede more quickly than men when negotiating their own compensation. The stakes in these negotiations are high for individual women and for women as a group. It is well documented that ineffective salary negotiations contribute to the gender pay gap and leave women with significant lifetime wage deficits relative to their male peers. Moreover, although women generally recognize when they are making concessions and have some awareness that women as a group are leaving money on the table, women consistently give too much ground when negotiating on their own behalf.

To gain some insight into why this is and how to remedy it, we interviewed three accomplished attorneys to discuss the challenges women face negotiating in the workplace, strategies women can use when advocating on their own behalf, and what law firms and in-house departments can do to remove gender barriers. Our interviewees are:

Lauren Stiller Rikleen is the founder and president of the Rikleen Institute for Strategic Leadership. She is an attorney, author, and expert on workplace issues and an advocate for women's advancement, speaking, consulting, and training on these issues around the country. Her first book, *Ending the Gauntlet: Removing Barriers to Women's Success in the Law*,analyzed institutional impediments to women's advancement. Her newest book, *Ladder Down: Success Strategies for Lawyers from Women Who Will Be Hiring, Reviewing, and Promoting You*, offers practical advice for women and men building legal careers. Rikleen sees the work-life integration expectations of millennials as driving a more gender-neutral need for workplace change, and analyzes this in her book, *You Raised Us, Now Work with Us*.

Shari Claire Lewis is a litigation partner at Rivkin Radler LLP, and her particular expertise is the intersection of law and technology. Among other activities, she is a bimonthly columnist for the *New York Law Journal* on Internet and social media law, and frequently lectures and publishes on issues including cyber liability, data breach, and e-discovery. Lewis noted that while things have changed significantly over the course of her career, she remembers when people assumed that a female attorney was the secretary or stenographer, and clients said openly they did not want women representing them.

Nancy S. Shilepsky is a partner at Sherin & Lodgen LLP, where she chairs the firm's Employment Department. She is a fellow of the Litigation Counsel of America (LCA), an honorary society composed of less than 0.5 percent of American lawyers, and has been a fellow of the College of Labor and Employment Lawyers since 2000. She has received numerous professional accolades and media mentions, and she graciously agreed to be interviewed for this article even though, in her words, she prefers to fight rather than settle.

What Challenges Do Women Face When Negotiating in the Workplace?
For some time, women were assumed to be ineffectual self-advocates because they do not initiate—i.e., women don't ask for what they want. In recent years, however, an important caveat has emerged. Studies show that when women endeavor to negotiate on their own behalf, they consistently are perceived as being self-interested, greedy, and "not a team player." This is, in part, because gender stereotypes influence our expectations for how women and men should act. Men are expected to be aggressive, self-confident, direct, and competent, while women are expected to be unselfish, caring, and sensitive. It is expected that men will self-advocate; but that often is not the case with women. When a woman acts in her self-interest, she may be viewed as stepping outside the acceptable range of feminine behavior. Further, both men and women often are less willing to promote, mentor, and even work with women who advocate robustly for themselves. Our interviewees provided examples of this troubling dynamic.

Lewis recalled negotiating the salary for her first legal job. Her request for a raise initially was rejected because the company was paying her "enough" already. When asked what salary she wanted, she responded with a "modest" amount because she was intimidated by the initial rejection and the combative way in which her superior handled the negotiation. She ultimately secured a meager raise and began looking for a position elsewhere. When she left her job for a better position with a far more competitive salary, her superiors were indignant she had the audacity to leave after being given the raise she had "asked for." The hostility surprised Lewis because her position was a stepping stone and she had observed several male peers leave for better offers without any negative pushback. Lewis was criticized for having the temerity to self-advocate and castigated for doing what was in her best interest.

Shilepsky has encountered gender bias at many stages of her career and noted that, simply put, when women assert themselves and seek to be treated commensurate with their worth, they run the risk of being labeled the "B word." She noted that women often have to insist on recognition of their value, whereas male lawyers often are accorded that recognition as a matter of course—whether it be higher compensation, a better office, or a more impressive title. Even when women negotiate successfully for such recognition, they may be punished for doing so. When Shilepsky moved her practice to a new firm many years ago, she was able to secure favorable terms and some high-end office furniture. Thereafter, a male partner stormed

into her office and angrily pointed out that he "owned" that office furniture and she did not; and he subsequently refused to work with her.

Rikleen noted that unconscious bias plays a critical and largely unacknowledged role in hindering women's career development. Women frequently are penalized for self-promotion and self-advocacy. Yet both are required to advance, and this unacknowledged penalty is one of a number of reasons why female representation in law firm management and compensation committees remains dismal. When a woman is unable to advance, it negatively affects both the woman's career development and the organization itself. For example, women frequently leave law firms because of long-standing frustration with continued gender pay disparities. The high attrition rate, particularly of more senior women, damages the firm's bottom line.

How Can Women Be Effective Self-Advocates?
While the pushback women face for negotiating and self-promotion is real, it is not inevitable. Studies show women may use a variety of techniques to minimize negative perceptions, such as framing requests as good for the organization to minimize perceptions of greed and self-interest.

As we already noted, employing stereotypical male negotiation techniques often backfires because it draws attention to the fact that women are acting inconsistently with traditional gender expectations. Each of the interviewees indicated that women should be encouraged to act in a way that feels genuine to them. Lewis in particular noted that women would not succeed in any phase of their careers if they gave into the expectations of others and only personified others' expectations of how a female attorney should act.

How can women overcome these barriers to get what they deserve? Our interviewees offer advice for women to effectively self-advocate:

- Gather as much information as possible. Understand the metrics that matter to your institution and use those metrics to provide a strong basis for your request.
- Prioritize the needs of the institution. Frame your demands in terms of the benefits they will have on the institution as a whole, rather than on yourself.
- Emphasize what you bring to the institution. Make a habit of tracking your successes and do your best to estimate the value your efforts bring. Let management know of your successes.
- Think about your role broadly. Women tend to take on more tasks which, while important for the institution to function, are not necessarily tracked by management (i.e., are not promotable tasks), like spearheading a committee or overseeing implementation of a new filing system. When tracking success, think outside the box and do not limit yourself to mere hours billed or business generated.

- Do not assume that anyone is aware of your efforts in the workplace; make them aware and express your efforts in terms that will be meaningful to your audience.
- Be authentic. Do not attempt to personify someone else, do not get derailed worrying about stereotypes, and do not get caught up in what people think about you generally as long as your behavior is respectful and appropriate to the situation.
- Confidence begets respect. Use your experience and age to your advantage if you are older.
- Be respectful, but also direct. Resist the urge to minimize or otherwise undermine your request with qualifying language. Do not apologize for asking.
- Prioritize forging relationships with key workplace allies who support your career development.
- If the situation is one where you are inclined to ask permission, consider whether you really need to do so. Ask yourself if your male peers would feel entitled to act without asking for permission.

As to that final point, Shilepsky recalled a situation where both male and female attorneys in a firm became parents at around the same time. The female lawyer negotiated a four-day work week with a commensurate reduction in pay, even though she worked from home on her "day off." As to her male colleague, sometime later (after he made partner), it was discovered he had been taking off one day per week to work from home. The takeaway: men (more than women) benefit from knowing that the "rules" don't always apply.

What Should Institutions Do to Improve the Power Imbalance for Women?
Women cannot shoulder sole responsibility for changing stereotypical workplace dynamics, nor should they. Institutions must take conscious control in order to effectuate change. Moreover, women continue to be viewed as having primary (often sole) responsibility for children and elder care. This may minimize their apparent value to law firms and in-house departments. Institutions should use a more nuanced lens and create highly flexible work environments for lawyers (male and female) who care for children and elders. Technology can diminish concerns about working parents and eliminate the stigma mothers face for being "less committed" than their male counterparts, which should result in better parity for women. There are a number of things law firms and in-house departments can do to remove barriers for women. Here are some suggestions from our interviewees:

- Commit to identifying and then removing gender barriers in your institution that block women's leadership and advancement opportunities.
- Retain an experienced consultant to examine existing practices and policies with the goal of determining where practices and policies may unconsciously be biased against women.

- Remove subjectivity from the evaluation process. This is not a popularity contest. Rely instead on objective criteria that are neither consciously nor unconsciously biased against women.
- Set goals, create metrics to track change, and hold leaders accountable—e.g., create a plan to address existing gender pay gaps and a strategy to avoid future gaps. Institute a system for the equitable transfer of clients so women are not disadvantaged. Devise a strategy to support women in generating business.
- Encourage those in senior roles to mentor and sponsor women in meaningful ways, and ensure that such mentoring and sponsorship is built into the accountability structure for compensation.
- Mandate an increased presence of women in leadership roles. Studies show that leadership diversity results in better decisions and a stronger bottom line.

Conclusion

Too often, female lawyers remain in the precarious position of advancing their careers while garnering social approval closely tied to expectations of how women "should" behave in the workplace. While gender expectations are shifting slowly, women, men, and the institutions for which they work should implement strategies to remove barriers to full and equal female participation in the law. It is well past time for women to take their rightful place at the table.

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The Girlfriend's Guide to Negotiating: Stop Self-Sabotaging Behaviors

By Amy M. Stewart - November 21, 2017

Over the years, I have assisted my girlfriends in navigating their way to professional success. Throughout this journey, I have observed many self-sabotaging behaviors women—no matter their profession, years of experience, or age—partake in that undermine their negotiation abilities. This article focuses on three such behaviors and how women can change course to reach their full potential.

Success-Sabotaging Behavior 1: "No Seriously, I Am Not Qualified"
One afternoon, I was talking to one of the most brilliant attorneys I know. We were discussing this new career opportunity. She already had interviewed for one position inside a corporate legal department, but after the interview, the company offered her two additional opportunities to consider. I was ecstatic for my friend. But after our squeals of elation, she said: "But I am not qualified for that position. I have never done that before. I need to tell them . . ."

At the risk of being impolite, I had to interrupt this budding self-sabotaging behavior with three leading questions: You provided your resume, right? You told the recruiter about your experience before you were selected for the interview, right? You spent hours interviewing with in-house counsel who obviously understood the company's business model and the qualifications of the open positions better than you, right? My girlfriend blurted out laughing because she recognized what she was doing—she was talking herself out of a wonderful opportunity! This highly accomplished attorney with over 20 years of professional experience could not complain that someone was undermining her qualifications or opportunities. She realized in real time that she was sabotaging herself!

Here is another example to consider: I was told by a colleague that a male associate at her firm decided he wanted to become an expert in a certain specialty. So, this ambitious young man started on a journey to become an expert by writing a book. You read that correctly, he was going to write a book about others' legal acumen and work product so he could market himself as an expert in the field. His book is now the "go to" resource in that field, and he is recognized as the expert. Kudos to him for his hard work, dedication, and focus to become a specialty expert. Yet this story generated a "chicken and the egg" question for me that I believe as women we all need to consider: Would we consider ourselves an expert *after* writing a book about what others accomplished or only after garnering years of experience in the trenches *and then* writing the book?

We normally identify this self-sabotaging behavior when we talk ourselves out of applying for a transfer or new position. Many women have created this unreachable definition of "qualified" that requires us to not only meet, but surpass, every single prerequisite identified on a job description with an expert level of experience before we even consider applying for the position. For ourselves and our girlfriends, we need to support one another and put an end to this self-sabotaging behavior that ultimately undermines our ability to lead.

It's a simple fix: Send the job description to a trusted advisor and ask her if you are qualified for this position. Have a colleague walk you through the prerequisites and ask you to identify direct and indirect work experiences related to the position's tasks. Identify transferrable skills that are relevant and can compensate for areas where you may not have experience. Only then can you make an educated decision as to whether this is the right career move for you.

Success-Sabotaging Behavior 2: "I Accepted the [First] Offer"

I have been across the table from some fierce women negotiators when they are advocating for their clients. However, even for me, the pressure rises when our personal interests are at stake. Statistics establish that women do not opt to negotiate as much as men, and some articles actually suggest that women should not negotiate because it goes against societal norms and negatively impacts our future coworkers' perceptions of us as we transition into the new role. Other theories say that women who are not good at negotiating do not participate, and if they were forced to, they would not necessarily nab the same career gains as men. *That is like telling a woman she should not play basketball until she can dunk*. Our daughter should not try out for the school play unless there is a guarantee she will get the lead role. Would we ever tell our son not to try out for the baseball team unless he could become the starting pitcher? Absolutely not.

We need to take the two following oaths to put an end to this self-sabotaging behavior of being grateful and accepting the first offer with no questions asked. First, agree that you will negotiate some terms of your next job offer. There is always some part of the package to negotiate—salary, title, yearly bonuses, benefits, signing bonus, start date, business development opportunities, office space, parking, additional training to be certified in a particular area, or political support to be named to a local organization. When you receive your next offer, take your time to analyze it. Talk to your colleagues (male and female) whom you trust to give you sage advice on the counteroffer you should submit. There are no perfect offers, and there is always room for improvement.

Like you do before presenting your opening statement at trial, practice reciting your counteroffer out loud, over and over again. Be measured in your approach in delivering your counteroffer because this is not an adversarial exercise and requires finesse. Be wary of falling into the trap some women do of over-explaining, for example, why she has earned a signing

bonus or why she needs to push her start date out a few weeks. Those behaviors are just as undermining. Instead, stand in the moment and confidently make your counteroffer. Then stop talking so your employer can respond. Remember, this is probably your employer's first opportunity to see the strong negotiation skills you will bring to the table for your clients. Make it count.

The second oath is for you to be there for your girlfriends through this process. It is truly uncomfortable at first because you feel vulnerable when you step out and tell someone what you want. When you hear your girlfriend is interviewing for a new position and receives an offer, promise that you will advise her to evaluate the offer and submit a counteroffer. Have her practice saying the counteroffer out loud until she owns it. Then, be ready for the best part—celebrating her success!

Success-Sabotaging Behavior 3: "I Trust You Will Take Care of It"
Sometimes, we blindly hand our career decisions over to others we trust because we believe they have our best interests at heart. For example, we believe our purported supporters are fighting for us behind the scenes in those secret partner meetings or during the legal department's succession planning meeting. Then, we look up years later and we have been passed up again for that salary increase, promotion, opportunity to sit first chair at trial, or making partner at the firm. We all know these stories.

In these instances, it is easy to point the finger at others when our career goes off course. But you are responsible for negotiating your career path. Our personal "board of directors," "sponsors," "lifters," and "mentors" can provide advice and counsel, but in the end, the tough decisions are ours to make. When you are chartering your own career course, you will eventually be called to step out of your comfort zone to reach a level of success that you never anticipated. When those opportunities arise, you will be ready to handle the self-sabotaging behaviors identified in this article so you can negotiate your own path to success.

Conclusion
We all can become better negotiators with a little practice. The first step is abolishing the self-sabotaging behaviors standing in the way of reaching new heights of success that are out there waiting for us.

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"The Art of the Deal": Exploring President Trump's Negotiation Style

By Joan Stearns Johnsen – November 21, 2017

"The art of the deal" is President Trump's touted personal formula for winning at negotiation. President Trump campaigned as the consummate negotiator singularly qualified to "fix it." Some say it is precisely his business and negotiation acumen that qualify him for the presidency. Others disagree, citing his numerous business bankruptcies and his legislative and diplomatic failures to demonstrate that the emperor wears no clothes. Rather than judge his negotiation ability as either good or bad, this article seeks to explore his style of negotiation from a theoretical standpoint. In other words, based on his first 10 months in office, what kind of negotiator is President Donald J. Trump?

Most people gravitate to the style that best suits their personality. Some people are naturally collaborative. Others, called avoidant, eschew the conflict and the gamesmanship of the back and forth. (This discussion of style is based largely from definitions contained in the book *Bargaining for Advantage* by Professor G. Richard Shell of the Wharton School.) Still others—compromisers or accommodators—consider the needs of their adversary in working toward agreement. And then there are the competitive negotiators. Competitive negotiators view negotiation as a win/loss paradigm. And competitive negotiators like to win. The competitive style is the polar opposite of the win/win or interest-based bargaining approach. President Trump would appear to be a purely competitive negotiator.

Not everyone uses the same style all the time. Some change unconsciously and others adapt strategically. Strategic negotiators are skilled at adapting their negotiation style to suit the situation. They will consider the relative leverage and power balance of all concerned and adapt their approach accordingly. Strategic negotiators adjust to accommodate the particular type of negotiation—whether the negotiation is as a "principal" on their own behalf (e.g., for a salary) or as an "agent" (e.g., on behalf of a client). Others are less flexible. President Trump's style thus far has been unchanging. He is consistently competitive regardless of the situation, his leverage, or his counterparty's approach.

A competitive bargainer tends to lead off with somewhat extreme positions and requires his adversary to make significant concessions. In this way, the competitive bargainer can claim victory. The competitive bargainer conveys strength and gets to victory or impasse quickly. When the competitive bargainer has leverage, he tends to use that leverage as a cudgel to force his adversary to make concessions. This is apparent in Trump's negotiations with his campaign

workers. Trump weaponized his dispute resolution clause by utilizing a unilateral arbitration clause—i.e., his employees had to arbitrate while he could require them to litigate in court. His campaign workers were required to waive their right to a jury, to appeals, and to depositions. Trump, on the other hand, could sue his employees in court and subject them to invasive and expensive depositions and appeals.

As president, President Trump has only enhanced his superior power and leverage. Yet his approach has not consistently produced the desired deals. This is true because even though there are advantages to a purely competitive approach, there are also disadvantages. For example, competitive bargainers take extreme positions. They tend to focus on winning rather than on the merits of the deal they are negotiating. They will prefer impasse to losing, even when the alternative is undesirable. When two competitive negotiators engage, neither wants to be the loser, and there is a greater likelihood that neither will capitulate and the negotiation will result in an impasse.

This is the situation presented by President Trump's negotiation with Kim Jong-un of North Korea. Clearly, the alternative—nuclear war—is undesirable for both. President Trump has the greater leverage. It is uncontroverted that the United States ultimately would win any nuclear engagement. But for each leader, the need to prevail over his adversary appears paramount. Neither is willing to accept defeat. This sort of a negotiation is a purely win/lose exercise. It is a high stakes game of chicken. Capitulating, in the eyes of these negotiators, means losing status and respect. Both continue to hurl insults at one another in an attempt to force the other to back down. Even though both presumably would prefer to avoid nuclear war, conceding to the other is not currently in either party's negotiation vocabulary. The inevitable result is impasse (or worse), unless one or both leaders adjust their negotiation style.

A powerful currency in any negotiation is trust and rapport. When there is trust, mutual respect, and rapport, a negotiator may make representations of fact or of future conduct and be believed. He or she may call on the strength of that mutual respect as a means of breaking impasse and returning to the bargaining table, or in order to obtain fairness in a future negotiation when the balance of power has shifted. When relying on power and leverage in a "one-off" negotiation, rapport and trust may be unnecessary. The aggressively competitive bargainer may successfully use his power to prevail. However, very few negotiations are one-off, and good reputations, relationships, and trustworthiness—once destroyed—are very difficult to resurrect.

President Trump has shown minimal focus on building rapport even among those in his own party or administration. Instead, he has repeatedly questioned the good faith, competence, or intelligence of individuals whose agreement and cooperation he may at some point need (such

as Senate Majority Leader Mitch McConnell, Senator John McCain, Senator Bob Corker, Secretary of State Rex Tillerson, or Attorney General Jeff Sessions). While these gentlemen may refrain from retaliating publicly, the approach President Trump has taken is unlikely to engender good will. He appears to rely exclusively on his leverage as a means to force compliance. Should the leverage or the power shift, there may not be much good will to draw upon. Based on how these individuals view their own leverage at any given point and in any given negotiation, they may be more willing to use that leverage than they otherwise might have been.

A reputation for trustworthiness is equally important for an effective negotiator. President Trump as an aggressively competitive bargainer has not sought to build a reputation as a trustworthy adversary. He has reneged on the Paris Climate Accord and the Trans-Pacific Partnership. He has threatened to withdraw from NATO, UNESCO, and NAFTA. Further, the facts asserted by President Trump in support of his recent decision not to certify Iran's compliance with the Iran Nuclear Agreement have been publicly challenged. As the Iranian foreign minister Mohammad Javad Zarif observed on CBS's Face the Nation: "[T]he United States is a permanent member of the Security Council. And if it's not going to uphold a resolution, that not only it voted for but it sponsored, then the credibility of the institution that the United States considers to be very important would be at stake. Nobody else will trust any U.S. administration to engage in any long-term negotiation because . . . the duration of any commitment from now on with any U.S. administration would be the remainder of the term of that president."

In the first 10 months of his presidency, President Trump's negotiation style has consistently been that of a competitive bargainer. This style can be successful in the right circumstances, especially when one has the better bargaining position (e.g., his obtaining the advantage over his campaign workers by requiring a unilateral arbitration clause). However, there are risks to using this style (e.g., in recent exchanges with North Korea), and it is not the most effective technique in all circumstances. Whether President Trump will adjust his negotiation style to fit future negotiations is a question still to be answered.

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Negotiating Your Own Family or Maternity Leave: Set Yourself Up for Success!

By Rosa Aliberti and Alex Berke – November 21, 2017

Lawyers negotiate for a living, but even the strongest litigator may struggle with negotiating for herself during pregnancy or upon returning to work from family leave. Approaching these negotiations as you would a client's is important if you are thinking about career advancement, job protection, and remaining competitive. Many large companies are finding they must offer generous leave policies to hire competitively and that offering more leave time saves money in decreased turnover costs as happier employees return to work. Use these employer incentives and applicable laws to negotiate the best deal for your leave and post-leave return to the workplace.

Due Diligence: Determine How Much Leave to Expect and Whether It Will Be Paid

A good lawyer knows she must do her due diligence before taking on a client, responding to an adversary, or going to the negotiating table. Some legal employers may have robust leave policies—though employees may be discouraged or dissuaded from taking full advantage of them—and other employers might not even have an employee handbook. You need to know what basic terms of leave your employer offers before negotiating added benefits. A good first step is to consult your handbook, if you have one, to see if you have parental leave, a short-term disability policy, or are eligible for the federal Family and Medical Leave Act (FMLA). Handbooks are not always up to date, so it's also useful to check if you are eligible for any paid family leave under a local law. A Better Balance maintains a website with state-based and local family leave and other accommodation laws. You also should seek out information from trusted coworkers who have taken leave—whether for the birth of a child, to care for a loved one, for their own illness, or even to go to school—about their experiences with your employer. An employee's right to leave during pregnancy and to take care of a newborn depends on a number of factors, including: the size of the employer, how long the employee has been employed, local laws, and the employer's policies.

After doing your research, highlight questions that remain unanswered, such as whether paid time off accrues during leave and whether you are expected to pay insurance premiums while you are out, or whether paid time off needs to be taken concurrently with other types of leave. Become informed and educated about the options available to you, so when you are ready to speak to your employer, you can ask good questions and be an active negotiator.

Be Creative about Reasonable Accommodation Requests

Pregnant women are protected from discrimination under various federal, state, and local laws, but they can be fired for legitimate business reasons. Too often, pregnancy discrimination is masked as a performance issue. Luckily, many of the laws provide for reasonable accommodations in the workplace for pregnancy or disabilities resulting from childbirth, if employees can perform the essential functions of their job with a little assistance. While employers are not required to provide reasonable accommodations that impose an undue burden on them, in some places, such as New York City, employers are at least required to engage in a conversation with pregnant employees about accommodations. There are no hard or fast rules on accommodations, so you can get creative in proposing suggestions that bring a comfort level to both you and your employer (such as proposing to shift your work hours so you come in later due to morning sickness, requesting a different chair to help with back pain, or working from home on doctor's orders). Requesting a reasonable accommodation can be a tool to protect your job and ensure that challenges you face at work are addressed and attributed to a change in circumstance, instead of performance.

Know Your Value

When negotiating for more time, more pay, or accommodations, it's useful to know what the law provides, but it's also practical to root your arguments in the value you bring to your employer—after all, whether a law firm or a nonprofit, the organization has a financial bottom line. Although employers may be reluctant to have an employee out of the office for a long period of time, the costs of hiring and training new staff are significant and worth avoiding. Employers also know good employees are hard to find. If you want to negotiate for more leave or a nontraditional work arrangement, show your employer you are too valuable to lose. Gather the facts to make the case of your value to your employer: gather evidence of recent successes, document praise you've received from clients and coworkers, and keep track of times you've gone above and beyond.

Negotiate

A good negotiator is informed, listens, and knows there is a give and take. When negotiating with your employer for more leave or a nontraditional work arrangement, highlight your successes and the work you do for your employer, and give them a reason to keep you happy. You can back up your "ask" with the data you have collected, including your legal rights and professional successes. Do not be afraid to suggest trial periods to see if your employer is comfortable with any alternate arrangement. Be prepared to be flexible and know when to settle.

Conclusion

Pregnancy is an exciting time, but communicating about it with your employer can be stressful and challenging. Preparing for negotiations using the tips above hopefully will alleviate some

stress and improve your ability to negotiate for the leave you need to be a productive parent and employee.

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How to Get the Most Out of Mediation

By Shari L. Klevens and Alanna Clair - November 21, 2017

Mediation is a popular alternative for clients who are concerned about exposure and the rising cost of litigation. Studies vary, but most agree that more than 90 percent of all litigations settle. Many do so with the assistance of a third party, such as a mediator. Based on these statistics, it is understood that litigators will spend many more hours in mediation than they will at trial. However, attorneys do not always prepare for mediations with the same diligence and strategic analysis as they would for trial.

Part of this may stem from the fact that while there are many different accepted styles employed by trial lawyers, attorneys in mediations sometimes adopt the same posture. Some people even equate success in mediation with adopting characteristics that are traditionally considered aggressive, such as bluffing, threatening to walk out, or bullying.

Attorneys should make the most of mediation. It can be an extremely effective way to meet client goals with a more nuanced approach. Like many other litigation tasks, it can (and should) be handled with methodical analysis and preparation. Here are some tips for how attorneys can maximize their negotiation skills at mediation and increase the likelihood of a good result.

Be Prepared

Even though attorneys are significantly more likely to attend mediation than trial, undertake sufficient preparations preparation for mediation. Some attorneys view mediation as an informal process and believe they can just show up and hear the other side out—shooting from the hip in response to offers and demands. Even if this is an appropriate negotiation tactic for the mediation, attorneys may find themselves at a disadvantage if they have not adequately prepared.

Experienced attorneys may spend two to three full days preparing for a single-day mediation. Preparing means being up to speed on the case itself—the facts, the procedural history, and the coming deadlines—as well as preparing to build up one's armor. Practitioners should know the weaknesses of their case and should prepare their responses for when the other side raises those weaknesses. Many of these are predictable. When the opposing party takes a position on settlement based on a weakness in your case, it can go a long way to anticipate that issue and be prepared with a strong, well thought out response that is supported by the evidence.

Develop a Strategy

As noted above, it is a mistake for attorneys not to do their due diligence to prepare for

mediation. Part of this is to develop a strategy and adopt a clear plan. What are the goals of the mediation: settlement at any cost? A walk-away? A defined amount of damages?

Some attorneys will prepare a decision tree to use as a guidepost for the mediation. Define the other side's pressure points. Decide whether it is beneficial to have the parties meet together or offer opening statements. Give some thought to who should make the first move at the mediation. Should you make an opening offer or wait? Each mediation is unique. An attorney who "always" handles mediations the same way may not be maximizing her results.

Mediation strategy also can focus on *non*merits issues that may impact settlement or valuation. Consider the personalities of the other parties and attorneys. Will attorneys feel an impetus to "perform" in front of their clients? Are there concerns external to the mediation—such as adverse publicity, concurrent litigation, or financial pressures—that may be relevant? After identifying these issues, attorneys can strategize about how best to use or minimize those pressures to reach their ultimate goals.

Practitioners also are well served by giving some thought to the theme of their presentation and the tone they want to set at mediation. A precise and unified theme can be revisited throughout the day and conveyed to the mediator in a digestible manner.

When dealing with bullying conduct, consider how to take charge of the room in the face of the bully: for example, by speaking calmly, demurring their accusations, and refocusing on the issue at hand. It may be that there is some truth in the opposing side's accusation if there have been adverse orders or discovery disputes, but reclaiming and maintaining power often involves remaining calm and direct in the face of a blustery storm.

It can be easy to get caught up in an opposing party's rhetoric or aggression, but that rarely serves client goals (or reflects well on the attorney). Rather, by using their demeanor and opening remarks to set the tone, attorneys can begin to shape the course of the mediation from the first moments. Taking command of the room does not require an attorney to be the loudest, the angriest, or the rudest.

Don't Bluff

The mediation room is not a place for playing poker. Although attorneys are well skilled in spin, it can be quite detrimental to the overall process for attorneys to bluff. Experienced practitioners typically state that they will never threaten a course of action—whether to terminate the mediation or file suit or something else—unless they fully intend to follow through.

This does not mean that every participant has to be open and candid at all times about their goals, their bottom line, or their internal monologue. It also does not mean that parties are stuck with their positions and cannot adapt or respond to developments in the room. Rather, this reflects that the mediation room requires trust and belief in each party's good faith.

A party who threatens to storm out with no intention to do so, or who fibs about whether he or she is willing to pay money, decreases the level of trust in the room, increases the parties' hostility toward one another, and diminishes the likelihood of a settlement. Many experienced practitioners view such bluffing as amateurish and may not take their opponent as seriously thereafter.

Rely on Your Mediator

Perhaps the most important premediation task is selecting a good mediator. Strong mediators are those who try to get to the right answer in light of all factors and evaluate the issues candidly. Mediators who are compelled to push a settlement at any cost, regardless of the merits or other external factors, may create more frustration for the parties. The stereotypical used car salesperson approach ("What do I have to do to get you fine people in a car this afternoon?") often results in dissatisfied clients and attorneys.

Mediation is an excellent opportunity to determine the true value of a case in light of all relevant factors. In identifying a mediator, attorneys can determine how they want to use the mediator. Will you tell your mediator your bottom line? Will it be the mediator's job to push all parties to consider their weaknesses and potential exposure?

The best mediator is one on whom you can rely and who is truly neutral. The attorney can decide how candid to be with the mediator, but it behooves the attorney to be direct with the mediator when the attorney decides to share. A mediator who feels you have misrepresented the facts (or, per the above, believes you have been untruthful about your goals) may be less likely to support your efforts or side with you on disputed issues.

Conclusion

Mediation does not always get the respect it deserves as an alternative to trial. Further, when practitioners do not take the proper steps to prepare, mediation can be a powder keg of posturing, insults, and storm outs. Such demonstrations are rarely productive or effective. However, by considering the ultimate goals and putting in the legwork, attorneys can use mediation to stand out among other practitioners.

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A Woman's Guide to Negotiation: Using Your Innate Strengths to Get the Best Deal

By Angela A. Turiano and Nichole D. Atallah - November 21, 2017

Women who negotiate in their practices are used to seeing a familiar scene. The seats are often filled by men, and everyone becomes keenly aware that the only woman has entered the room. The male banter quiets a bit, they ask about her family, or they don't talk to her at all. Perhaps she is wondering whether the men at the table are taking her seriously or whether they are willing to put less on the table because of their perceptions of her. Or perhaps she is thinking, "it doesn't have to have an outcome like this" and is frustrated by the process. These concerns are not without merit. While women make up almost 50 percent of associates, only about 18 percent of partners and about 20 percent of general counsels are women, according to data as of January 2017. *See* Comm'n on Women in the Profession, Am. Bar Ass'n, A Current Glance at Women in the Law (2017). Chances are, whether negotiating for yourself or on behalf of a client, you frequently will find yourself negotiating with men in an environment cultivated by men. Even if your adversary is a woman, the same issues may exist because she likely was trained in this male-dominated environment and may subscribe to the same problem-solving techniques as her male peers.

As women in a field overwhelmingly dominated by men, it is our—the authors'—personal experience that characteristics often seen in women can be used to advantage in professional as well as personal negotiations. It's all about finding a personal style and being unafraid to embrace it.

Negotiating on Behalf of Clients

In our experience, attorneys often feel the need to emulate the negotiation styles of those who trained them, or to use approaches demonstrated by others. But certain styles of negotiating—such as intimidation, threats, and bluster—do not always play to the strengths of female attorneys. Women (in comparison with their typical male counterparts) tend more often to seek collaboration over confrontation, exhibit empathy, find creative solutions (as opposed to just pushing numbers across the table), and develop trust among colleagues. These "feminine" traits are incredibly useful in negotiations and can help you take the day if you embrace them.

As an example, there is a common formula in labor negotiation—a field where men permeate the labor and management sides of the table. Step 1: review the proposal together; step 2: insert dramatic scenes from both sides exhibiting outrage. But is this type of outrage necessary? Or is it just showmanship for the benefit of clients who have been conditioned to expect it? Consider another approach. Try preparing clients to expect—but not be fazed by—

outbursts and fist-thumping from opposing counsel, and ask for their patience as you refrain from reciprocating. Explain that this type of restraint should demonstrate that you and your client are listening and have come to the table with an open mind. This approach can completely change the tone of the conversation and refocus everyone on the end goal: compromise. Negotiating is about finding the areas where we can reach agreement and cultivating an environment with space to develop creative solutions.

Even if you're a woman to whom collaboration, problem solving, and empathy don't come so naturally, don't fret. As often has been said, perception is reality. In other words, if you are *perceived*by your male adversary as having certain traits, you do, for all intents and purposes, have those traits, because that's the truth in his mind. Thus, to the extent you are able, you should use these preconceived notions to your benefit.

Specifically, male adversaries may perceive you as nicer, more reasonable, and generally easier to deal with than your male counterparts (with the caveat that a poll of our male colleagues, true or not, suggests that certain women can be perceived as more difficult than men because they may be trying too hard to overcome the very perceptions discussed in this article). Again, if the circumstances permit, use this to your advantage. Develop trust. You may be surprised how much trust can be won in a short time and can continue to grow over time as you develop relationships in your practice area. This is especially true in niche practice areas where you repeatedly face the same opposing counsel. This type of trust is invaluable in negotiating settlements—whether directly or through a mediator or other intermediary. This fact has been confirmed to us by many well-respected mediators. If you are (or even are just perceived as) a reasonable straight shooter who wants to cooperate and "work things out," settlements not only may come much easier, *but also can yield more favorable results for your client*. First, your adversary may be more likely to "play nice" because of the trust you developed; and second, he (or she) may be more likely to believe you are being reasonable and less likely to keep pushing for more.

Of course, embracing a more "womanly" negotiation style may not be that easy, especially if you were taught to practice against your instinct. The first step is to recognize when you are using a format that isn't particularly effective. Practice your new and true approach at home or in the office with partners, spouses, parents, friends, or colleagues in everyday bargaining situations until you gain the confidence to deploy your skills professionally. Give yourself latitude to try out a few techniques and find the style that works best for you. Don't try to be someone you're not, or to conduct yourself in a way that is outside your comfort zone. That being said, there is nothing wrong with modifying your style as you learn from your experiences and develop into a better attorney. Building a reputation is a marathon, not a sprint. It may take some time, as it does for both men and women, but if you use your skills effectively, your reputation as an effective negotiator will accelerate your career.

Negotiating for Yourself

So often, women are focused on getting the most for others; but when it comes to their own needs and desires, women can find it difficult to negotiate in their own best interest. Many of us don't like confrontation with others in our personal lives, but live with it and accept it professionally. There is no question that negotiating for yourself (e.g., for a promotion or a raise) is critical for your career. Unfortunately, most women are reluctant to advocate for themselves even when it is most important.

In fact, one of the most common explanations for the gender wage gap is that women don't ask for higher salaries, while men do. Indeed, studies have shown that men initiate negotiations about four times more often than women. *See* Linda Babcock & Sara Laschever, Women Don't Ask: Negotiation and the Gender Divide (2004). Babcock and Laschever's book notes that 2.5 times more women than men said they feel very apprehensive about negotiating—comparing the task to a trip to the dentist. By contrast, men compared negotiation to winning a ballgame and a wrestling match. This is often because women feel that if they are being too aggressive and acting outside of female social norms, their attempt at self-promotion will not be well received. In fact, women are not off base in this regard. Research has shown that bosses, whether male or female, tend to penalize women (far more than men) who speak up and ask for more.

We, the authors, each have experienced this cultural phenomenon. In one instance, when negotiating a salary offer at a midsize firm, the hiring partner responded: "This is entirely inappropriate—I am rescinding our offer." This was dumbfounding. Although this was the early 2000s, not much has changed. In another instance in 2011, a recruiter advised against negotiating the starting salary for a new job, likely setting back the overall salary trajectory. While the gap between men's and women's earnings has been steadily narrowing for the past quarter century, we still have a long way to go. Across industries, white females make about 79 cents to the white male's dollar, while black women make 66 cents and Hispanic women make just 59 cents.

The good news? Women are starting to recognize this trend and change it. It starts with gathering the courage and confidence to ask for what you deserve. Don't hesitate to advocate for yourself just as you would for a client. Here are some tips:

Be yourself. Again, there is no need to be someone you are not. Find a way to ask for that promotion, raise, etc., in a way you feel comfortable—i.e., that is consistent with your character. There is no need to be aggressive and demand a raise. Rather, start with an inquiry ("the foot in the door approach," if you ever took a psychology class). For example, "I was wondering if I could speak to you about my compensation." Or, simply: "Do you have a few minutes to talk with me about something?"

Look for the right opportunities. Choose your approach wisely. It may make sense to negotiate the support of others and work behind the scenes to make the negotiation go smoothly. Also, make sure the environment is conducive to a conversation—e.g., your boss is not in the middle of preparing for a trial or otherwise busy or having a bad day—and that you budget the right amount of time for the discussion.

Be prepared. We do not mean simply practice what you are going to say the day before. Rather, know the strengths and weaknesses in your proposal. Determine your standing at the firm and establish a timeline for promotion and/or salary increase, etc. A great way to keep track of your accomplishments and contributions is by having a business plan—which you also can use as part of the referenced "foot in the door approach." In other words, go into the meeting to discuss your objectives and goals as set forth in your plan and see where it leads. Then anticipate your follow-up.

Know what you are going to say and what your limits are. Here, we *do* mean practice what you are going to say the day before (not verbatim, but generally). In preparing, it is critical that you understand what you are willing to negotiate and what the consequences will be if you do not get your minimum ask. Do not threaten to quit, whether you want to or not. But do understand what your action plan will be.

Be proactive. If you do not get the desired outcome, find out what you need to do to get there—*and do it*.

Importantly, none of the steps suggested herein in the context of either personal or business negotiation require aggressive or "pushy" behavior, unless of course that is your style. Rather, we encourage you to view negotiation as a conversation. You, as the great female collaborator, are working with a team of people to resolve a conflict or concern, with the goal of best advancing the interests of your client, your firm, and, don't forget, yourself.

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PRACTICE POINTS

Being a Working Mom is Good for Your Children

By Emily J. Bordens – November 3, 2017

In a recent article from *Theglasshammer.com*, author Aimee Hansen opines that being a working mother is not only good for your children but also promotes gender equality in the workplace. (Hansen Article). This is good news for working mothers like me. Indeed, as a full-time attorney in a busy Northeast law firm with two young children, and the daughter of a full-time working mother, growing up in the 80s, I was thrilled to read this. Certainly, I am not immune to the "working-mom" guilt that I suppose every working mother feels from time to time and, without question, there are days I wish I could clone myself to be in two places at once. That being said, I truly enjoy my job and the opportunity to help clients navigate legal minefields. Thus, I can only hope that the author is right, that through my choices I am being a good role model for my son and my daughter and helping them to succeed as adults.

And I am happy to report that Hansen's conclusions are well-founded. Hansen discusses a recent Harvard Business School study of over 30,000 adults exploring how having a working mother as a child affects educational, economic, and social outcomes as an adult. In this study, a "working mother" is defined as a mother who ever worked outside the home in any capacity before the child was 14 years old. Interestingly, the study found that daughters of working mothers completed more education and ultimately became employed in supervisory roles, earning higher incomes than daughters of non-working mothers. Likewise, sons of working mothers also benefit in that they perform more household chores and caretaking responsibilities as adults than sons of non-working mothers. Citing lead researcher Dr. Kathleen McGinn, Hansen writes that the study's results, "[are] as close to a silver bullet as you can find in terms of helping reduce gender inequalities, both in the workplace and at home."

Hansen describes how the study examined the impact of alternative parental role models, specifically, how the working mother's conduct demonstrates to her children that women can work both inside and out of the home. In other words, showing daughters that it is okay and normal for women to go to work and for sons to see that everyone works together at home for the good of the family.

Ultimately, Hansen explains, the study reveals that there is no one path for parenting and that this research hopes to dispel the notion that being raised by a working mother is bad for children. Specifically, the research reveals that respondents with working mothers themselves were less negative about the notion of working mothers. In the end, Hansen suggests that there is no "right" or wrong choice for parenting: the study does not mean that mothers **should** work

outside the home; rather, it demonstrates that there are benefits to the alternative role modeling. This is music to this non-clonable, working-mom's ears.

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How to be and Remain Confident in the Face of Adversity

By Angela A. Turiano – November 13, 2017

As lawyers, we have chosen a profession that is high-stress with a small margin for error. And as we face the daily challenges that our chosen professions hands us, big and small, it is almost inevitable that something will go wrong—an oversight, a miscommunication, an error in judgment. The vast majority of the time we, as quick-thinking, competent professionals, fix the problem and move on with our day/week/year. But what about the other times, when the issue can't be resolved and a mistake "blows up." Indeed, the most minor mistakes can be exacerbated by external factors beyond your control and lead to disaster. In these situations, even the most confident among us can be brought to our knees. While true, the phrases "everyone makes mistakes" and "things happen" only go so far.

Thus, when "disaster strikes," how do you keep going and remain confident, or at a minimum, continue to convey confidence? Lisa Iarkowski attempts to answer this question in her article published on glasshammer.com entitled "How to be Confident (even if you are not)."

Ms. Iarkowski begins by stating that "[c]onstant change and complex challenges at work can test the self-confidence of even the most accomplished of us. So how can we keep our confidence going strong, amidst the changes and challenges we're facing?"

The answer, the author concludes, lies in what social psychologists call "self-efficacy" or our belief in our ability to accomplish a specific future task. Essentially, when you believe in yourself, you are better able to take action, overcome obstacles and adversity, and produce optimum results. Ms. Iarkowski discusses effective practices that experts opine will help us to "strengthen our self-efficacy and build confidence for taking on future challenges." These practices can be synthesized as follows:

Act – Learn – Succeed – Repeat
The key is to learn from your experiences. The more you take action resulting in successful outcomes the more you increase self-efficacy and thereby confidence. According to mindset expert Carol Dweck, effort, learning, and persistence are far more powerful pathways to success than innate talent or ability. In other words, with every given situation where there is a negative outcome, focus on what you learned and how to avoid making the same or similar mistakes again. By doing so, you can transform a personal defeat into a "lesson learned for improvement."

To that end, the author suggests employing the "STAR" strategy or asking yourself the following questions:

- What was the **S**ituation (what, who)?
- What **T**ask (intention, goal) were you trying to accomplish?
- What **A**ctions did you take (what worked, what could work better)?
- What were your **R**esults (how do the outcomes compare with your initial intent)?

Learn from Others

Follow the lead of role models you have identified for yourself and become someone else's role model by acting as a mentor. To identify an appropriate role model, look for individuals who are similar to you and who have succeeded in areas you want to succeed. Then, identify the steps they took to achieve their goals and try to emulate those. Basically, if she (who is just like me) can do it, so can I! Equally as valuable is becoming a mentor. Erin Geiger, a vice president of business development at Hackbright Academy in San Francisco, who spoke to the glasshammer.com of the crucial role of mentoring for building confidence in women engineers entering a competitive, male-dominated field (for both mentor and mentee), stated, "[b]ecome a role model and mentor. Let's take an introvert. They may not think of themselves as a role model, but that confidence pushes out to others and it's mutual."

Manage Your State

The author's final suggestion is to identify the reason(s) for your self-doubt. As we are all likely aware, (and experts confirm), negative emotional and physical states, like stress or exhaustion, can have an overwhelmingly negative effect on our performance. This is because under these circumstances, we lose faith in our abilities, which weakens our self-efficacy and confidence. Thus, Ms. Iarkowski suggests following the advice of self-efficacy pioneer Albert Bandura, who proposes that when you are feeling insecure and doubting your abilities, think about why you are feeling that way. Are you overly stressed, not focused or merely overtired or sick? Regardless of whether it is a physical or emotional trigger, take these factors into consideration and take steps to reduce them. Only then should you revisit your situation and move forward, taking note if your level of confidence has increased. It is more than likely that you will have found new perspective and be better able to achieve optimal results.

Bandura's advice, I think, is also applicable in situations where it is obvious that the reason for your loss of confidence is the stress of a "big mistake." This is because this kind of stress can be exacerbated by varying external factors such as a lack of sleep or negative commentary directed your way. Whatever the trigger, identify it and take a step back before moving forward. Take some time to reduce the additional stress in whatever way that works best for you, whether that be going for a run, taking some time off, hugging your child or having a drink with a friend.

While I am no expert, my personal suggestion on how to remain confident, both generally and, even more so, after your confidence has been shaken, is to give yourself a pep talk. While this may sound trite, it can be a very effective technique. It has worked for me. This is because the failure to believe in yourself can become a self-fulling prophecy. Thus, a reminder of why you should believe in yourself can be very effective. Think of all of your academic achievements and other successes to date and then tell yourself that you are just as smart, if not smarter, than those around you—that you are in the position you are in for a reason. These positive thoughts can reverse feelings of self-doubt and provide the confidence boost you need to proceed and excel.

It is inevitable that we will face many challenges throughout our career. When faced with such challenges, we can simply lose all self-confidence and hide in the shadows, or face the challenges, learn from the mistakes, and move forward to become a better lawyer and a stronger person who is able to navigate whatever challenges *we know* lie ahead. The choice is yours to make.

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WORDS OF WISDOM

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