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UNDER-CONFIDENT WOMEN AND OVER-CONFIDENT MEN: GENDER AND SENSE OF COMPETENCE IN A SIMULATED NEGOTIATION

Sandra R. Farber†
Monica Rickenberg††.†††

I. INTRODUCTION

"I am saving up for a tea set," said Frances. "I am saving all my allowances."

"This is the best kind to get," said Thelma. "It is plastic, and it has red flowers on it."

"That is not the kind I want," said Frances. "I want a real china tea set with pictures on it in blue . . . . I used to have that kind of tea set. But all I have now is part of the teapot. The rest of it is broken."

"That is why that kind of tea set is no good," said Thelma. "The cups break and the saucers break . . . and then the set is all gone. My tea set has red flowers and it does not break unless you step on it."

"Well," said Frances, "I am saving up for the other kind."

"How much have you saved up?" said Thelma.

"Two dollars and seventeen cents," said Frances.

"How much does the tea set cost?" said Thelma.

"I don't know," said Frances.

"I am sure they cost a lot," said Thelma. "It will take you a long time to save up all that money."

"I know," said Frances, "and I wish I had a tea set now."

"Maybe I will sell you mine," said Thelma.

"I don't want yours," said Frances. "I want a real china one with


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pictures on it in blue."

"I don’t think they make them anymore," said Thelma. "I know a girl who saved up for that tea set. Her mother went to every store and could not find one. Then the girl lost some of her money and spent the rest on candy. She never got the tea set . . . ."

"If I buy yours, I will have a tea set," said Frances.

"You said you didn’t want it," said Thelma. "And anyhow, I don’t want to sell it now."

"Why not?" said Frances.

"Well," said Thelma, "it is a very good tea set. It is plastic and does not break. It has pretty red flowers on it. It has all the cups and saucers . . . . It is almost new, and I think it cost a lot of money."

"I have two dollars and seventeen cents," said Frances. "That’s a lot of money."

"I don’t know," said Thelma. "If I sell you my tea set, then I won’t have one anymore."

"We can have tea parties at my house then," said Frances. "And you can use the money for a new doll."

"Well, maybe," said Thelma. "Do you have your money with you?"

"I’ll run home for it," said Frances.

"All right," said Thelma. "I will think about it while you run home for your money."

Our careers as negotiators start early; students enter law school with years of experience in the art. It was therefore surprising to us that many of our students in the Lawyering Program at New York University School of Law seemed to feel inadequate after conducting a simulated negotiation. In this exercise, students were cast as attorneys for either a homeowner or for a contractor in a dispute over a botched construction project, and were instructed to resolve the matter. In teaching the exercise, we were repeatedly struck by a jarring sense of disjunction between our perceptions of students’ success in planning for and executing the negotiation and their own success in these matters. Some students appeared to be consistently self-deprecating, although their work was usually adequate and often exemplary. Our impression was that this group was predominantly comprised of women. We thought that other students, usually men, seemed inordinately satisfied with performances that we found lacking in important respects; often students in this latter group had overlooked entire dimensions of planning or conducting the negotiation, and did not expect to learn appreciably from the critique process that followed the performance phase. The gender split among the students appeared to be more prominent in this

negotiation simulation than in other work that students did during the course of the year, including client interviewing and counseling, advocating in informal and formal settings, and presenting evidence to a tribunal.

Members of each of these two groups of students—those who were overly self-deprecating, and those who were unrealistically self-confident—were, we feared, limited in their ability to learn from critiques of their work and would face distinct risks to their long term professional development. While many students who consistently underrated their performance seemed quite willing to engage in self-criticism, those who were convinced that they had done poorly because of their immutable shortcomings saw little possibility of improvement. These students might, as lawyers, avoid certain types of work that they would otherwise have found meaningful for fear of failure. To the extent that they could not avoid tasks that they felt ill-equipped to handle, their low expectations might prevent them from performing according to their potential. Colleagues, supervisors, and clients might be influenced by, and unwittingly come to agree with, these students' low estimation of their work.

All in all, persistently lacking a sense of competence could lead to

2. Studies demonstrate that school children who perceive themselves as lacking in abilities tend to attribute mistakes to poor ability, become distressed, give up attempts to avoid errors, and avoid challenging tasks. See generally Elaine S. Elliot and Carol S. Dweck, Goals: An Approach to Motivation and Achievement, 54 J. PERSONALITY & SOC. PSYCHOL. 1, 5 (1988); see also Sylvia Beyer, Gender Differences in Self-Perception and Negative Recall Biases, 38 SEX ROLES 103 (1998) (describing the implications of inaccurate self-perceptions and citing studies demonstrating the impact of negative self-evaluations on motivation, performance, willingness to take on challenges, and mental health generally) (hereinafter Beyer, Gender Differences in Self-Perception). Beyer also found that women made inaccurately low self-evaluations on tasks perceived as "masculine" and on "gender-neutral" tasks with which they were unfamiliar. They had correspondingly low expectations for performance on similar tasks in the future. See Sylvia Beyer, Gender Differences in the Accuracy of Self-Evaluations of Performance, 59 J. PERSONALITY & SOC. PSYCHOL. 960, 966-68 (1990). She believed that women were thus adopting a stance of learned helplessness which inhibited their future performance. See id. at 967.

3. The research of social psychologist Claude Steele and his colleagues has illustrated the relationship between expectations and performance, showing that test performance is negatively affected when test takers are aware that their ability is being measured in an area in which members of their social group are thought to perform poorly. Steele has termed this phenomenon "stereotype threat." See Claude M. Steele & Joshua Aronson, Stereotype Threat and the Intellectual Test Performance of African Americans, 69 J. PERSONALITY & SOC. PSYCHOL. 797, 810 (1995).

4. This "illusory correlation" also affects self-appraisals, particularly those of women. Cf. Susan A. Basow et al., The Effect of Satisfaction and Gender on Self-Evaluations of Task Performance, 20 SEX ROLES 413, 414 (1989) (describing a "halo effect," where those viewed as satisfied with their job are seen as achieving high performance). This "illusory correlation" also affects self-appraisals, particularly those of women. See id.

5. See MAGGIE MULQUEEN, ON OUR OWN TERMS: REDEFINING COMPETENCE AND FEMININITY 6-19 (1992). The author distinguishes the sense of competence from the objective display of competence, pointing out that the two are not necessarily identical and that the former is more important to self-esteem and "greatly influences what we will or will not attempt to do." Id. at 6. Her analysis of the developmental evolution of the sense of competence is informative for legal as well as other educators:

As a child we try things, seeking to find out what we can and cannot do, but as we grow older we make judgments about what we are capable of doing based on past experience, the response we receive from others, and our capacity to deal with failure. This process has consequences for the direction one's competence development will take. It is important for people to determine those areas in which they wish to develop their competence and those in which they will spend little energy. Such decisions are based in part on the reception individuals receive from the environment for their attempts to demonstrate competence.
disaffection from the professional self, poor career choices, and, ultimately, short-lived legal careers.

On the other hand, students who seemed unjustifiably pleased with their work might face a different set of risks. These students often had difficulty engaging in the self-reflection that lies at the heart of the clinical teaching method. Students who were resistant to examining alternative ways of conceptualizing, planning, or executing at least some aspect of the task might have difficulty learning from experience in their future endeavors as students and lawyers. Those disinclined to engage in self-criticism might also have trouble listening closely to clients and colleagues, especially when the latter expressed contrary—or simply unexpected—views.

We decided to look more closely at these issues in the context of our participation in Workways, a collaboration of law teachers and social scientists who are “devoted to study of the varieties of work necessary to effective and socially responsible lawyering and to the design of pedagogies that will foster balanced development of those varieties of work.” Workways participants develop and implement curricular and pedagogical modifications in the Lawyering Program, as well as in other courses, and study the effects of these reforms. The modifications are intended to emphasize and integrate skills and abilities that we believe to be necessary to effective lawyering but that receive scant attention in traditional legal education. Workways’ goal is to improve legal education for all students and to reduce alienation and stress among students who are stronger in, or more comfortable with, ways of working that are generally undervalued in law school—a group that we believe to be disproportionately comprised of women, students of color, gay and lesbian students, and members of other subordinated groups.

Accordingly, in addition to examining gender differences in students’ sense of

Id. at 7.


8. We recognize that the alienation and loss of sense of competence that we describe are not the exclusive province of women law students, but tend to be shared by members of other disempowered groups. See, e.g., Mari J. Matsuda, When the First Quail Calls: Multiple Consciousness as Jurisprudential Method, 11 WOMEN’S RTS. L. REP. 7, 7-10 (1989). Indeed, we also recognize that many majority students share aspects of this distress. See, e.g., Stephen B. Shanfield & G. Andrew H. Benjamin, Psychiatric Distress in Law Students, 35 J. LEGAL EDUC. 65, 68-69 (1985) (finding, based on a study at the University of Arizona, that law students had a higher rate of psychiatric distress than either a contrasting normative population or a group of medical students); Phyllis W. Beck & David Burns, Anxiety and Depression in Law Students: Cognitive Intervention, 30 J. LEGAL EDUC. 270 (1979) (recognizing that almost all students show a high degree of stress and proposing intervention by the “faculty-friend” for those who display incapacitating anxiety and depression). We have focused here on gender because the number of students of color and other minorities among our respondents was too small to yield significant data.
competence, our research has looked at how the Workways innovations may have affected those differences.

This Article describes that research. In Part II we introduce the context in which the research is situated; the study looks at students' self-assessments in relation to a particular exercise in negotiation, which is itself part of a fairly unusual and richly-developed first-year clinical law school course. In Part III we set forth our research questions in light of existing literature on the impact of gender in negotiation. In Part IV we describe our research methodology. In Part V we report our results, and in Part VI we set forth our conclusions.

II. CONTEXT

Other, more general, research supports our perception that many of our women students had a more difficult time with the assigned exercise than did many of the men. A number of researchers have found that women more often than men tend to suffer alienation and disempowerment in law school;9 much of the literature describes a profound distress among women law students that exceeds any corresponding discomfort suffered by their male classmates.10

9. See generally Berger et al., supra note 7. In reviewing the findings and conclusions of recent studies on women and legal education, Workways members Sarah Berger, Angela Olivia Burton, Peggy Cooper Davis, Elizabeth Ehrenfest Steinglass, and Robert Levy have developed a typology of institutional responses to diversification—a set of typical responses that institutions such as law schools manifest when people who are seen as different begin to join the community in substantial numbers. See id. at 1026-33. The categories of responses include “exclusion,” an attitude now repudiated by law schools; “quantitative diversity,” in which a certain number of those previously excluded are deliberately included as a relatively mechanical way of repudiating the former attitude; “retooling the newcomers,” a means of assimilating those seen as “different” so that they may better “fit in;” “taking perspective on exclusion,” in which more careful thinking about the nature and causes of difference is aimed at understanding prior discrimination; “taking perspective on difference,” in which exclusion is revisited as difference, with a “new ability to distinguish differences that are healthy from those that are malignant;” and, finally, “qualitative diversity,” in which both the majority and the minority groups become “motivated to integrate the new strengths of their community,” recognizing that the newcomers bring unique value to that community and making cultural transformation possible. Id. at 1028-31. The authors apply this typology to the findings and analysis of a number of the studies of women in law school discussed here, concluding that

law schools are on the brink of constructive and far reaching change . . . a substantial proportion of law students—many, but by no means all of them, women students—experience frustration, or alienation, or both, because of law schools’ failure to engage and develop the full range of intellectual capacities necessary to successful and responsible practice. These students perceive gaps and deficiencies in legal education that seem to coincide with practitioners’ and scholars’ perceptions . . . that decry the lack of fit between legal education and legal practice. Increasingly large and overlapping groups of scholars, practitioners, students, women, and members of cultural minority groups argue persuasively that legal education must be broadened and deepened to encompass neglected but important aspects of the intellectual work that legal professionals do.

Id. at 1025.

10. See, e.g., Lani Guinier et al., Becoming Gentlemen: Women’s Experiences at One Ivy League Law School, 143 U. PA. L. REV. 1, 2-6 (1994). This extensive empirical look at women students at the University of Pennsylvania Law School led the authors to conclude that the law school was deeply stratified along gender lines. See id. at 2. Women were more alienated by the pedagogical method and reported lower rates of class participation than did men; they suffered from the feeling that their voices had been “stolen” from them during the first year. See id. at 2-6; see also Taunya Lovell Banks, Gender Bias in the Classroom, 38 J. LEGAL EDUC. 137, 146 (1988) (reporting on a study of five law schools that confirms that many women students suffer feelings of alienation and participate less frequently in class than do men, and concluding
Women law students often suffer a dramatic loss of their sense of competence. For example, a broad-based study of 29,000 first-year law students indicated that women suffered a lack of confidence about their performance relative to their male colleagues, even though the women's performance equaled or surpassed that of the men. This was so despite the fact that the women in that study tended to enter law school with undergraduate credentials that exceeded those of their male classmates.

A few researchers, however, have reached different conclusions. For example, a study of graduates of the University of New Mexico found no significant gender differences in work performance or levels of satisfaction. The authors suggest that these results might be due to contextual factors such as a proportionally large percentage of female and minority enrollment at the law school, relative diversity among the faculty, a low faculty/student ratio, and a greater than usual commitment to clinical legal education.

Results such as those in the New Mexico study "point us toward a complex and contextual view of students' responses to law school teaching that considers the different shape of . . . discourse in the hands of different teachers, and the differing responses of men and women depending in part on time, place and other aspects of context." We agree that the effect of gender and other differences among students, and the role of those differences in shaping students' sense of competence, depend greatly on context. We have been aware throughout the course of this study of some of the risks of that "women are silent because the law school classroom environment, structure, and language tend to exclude women or make them feel inferior"); Suzanne Homer & Lois Schwartz, Admitted But Not Accepted: Outsiders Take an Inside Look at Law School, 5 BERKELEY WOMEN'S L.J. 1, 33 (1989-90) (finding, in a study of students at Boalt Hall, that women's responses to questions designed to measure students' feelings about themselves were more negative than those of men by about 20%); Joan M. Krauskopf, Touching the Elephant: Perceptions of Gender Issues in Nine Law Schools, 44 J. LEGAL EDUC. 311, 312, 331-38 (1994) (concluding, based upon a study of nine Ohio law schools, that "differences in perception and in treatment based on gender impede the educational and professional progress of women," that a substantial number of women experienced less self-confidence than men, that women often felt less intelligent and articulate than they did before law school, and that women participated less in class than did men). Id. at 312.

11. See Linda F. Wightman, Law School Admission Council, Women in Legal Education: A Comparison of the Law School Performance and Law School Experiences of Women and Men 55 (1996). Wightman found that, when asked to assess traits including academic ability, competitiveness, public speaking ability, self-confidence in academic situations, and writing ability, men rated their abilities higher than women did both upon entering law school and after the first year. See id. at 55.

12. See id. at 14. Wightman compared undergraduate grade point averages of women and men among her subjects, and found that "women earned GPAs that are significantly higher than those earned by the male students in their first-year law school class." Id. at 15. She also matched women's and men's undergraduate major areas, and found that women entered law school with "significantly higher records of academic performance" than men, but that women "did not continue that pattern in law school." Id. at 17.

13. See Lee E. Teitelbaum et al., Gender, Legal Education, and Legal Careers, 41 J. LEGAL EDUC. 443, 457-63 (1991); see also Janet Taber et al., Gender, Legal Education, and the Legal Profession: An Empirical Study of Stanford Law Students and Graduates, 40 STAN. L. REV. 1209, 1241 (1988) (finding that although male graduates reported greater satisfaction with their law school performance than did their female classmates, there was no comparable significant gender difference among current students).

14. See Teitelbaum et al., supra note 13, at 461-63.

15. Elizabeth Mertz et al., What Difference Does Difference Make?: The Challenge for Legal Education, 48 J. LEGAL EDUC. 1, 24 (1998) (explaining a 1974-75 survey of students at two national law schools in which women reported responding more positively to the Socratic method than did men).
focusing on gender, which is but one of many aspects of the social context in which law students and law teachers are situated. These risks are manifold: By creating a statistical image of "women" and "the experience of women law students," we may unintentionally have reinforced the gender norms that we seek to critique. At the same time, we risk excluding from that image those women who may not identify with our statistical norm; who may, because their sense of identity hinges not only or primarily on gender, but also includes such other facets of self as race, ethnicity, sexual identity, age, or disability, feel excluded or silenced by this image of a unitary "women's experience." These risks are particularly salient in a statistical sample such as ours, in which the numbers of women of color were too small to provide meaningful statistical results. The creation of such stereotypes, and the resulting alienation, would be divisive and contrary to our purpose, which is to understand the teaching and learning processes so that all students may more fully benefit from them.

Although the statistical analysis could not take into account racial, ethnic, age, disability, or sexual orientation differences among students, our research findings nevertheless illustrate the importance in this exercise of some aspects of context in addition to gender. For example, as discussed in Part V.C infra, students' self-assessments were affected by teaching strategies that were designed to enhance the value placed on a wide range of abilities rather than on the narrow band of talents traditionally prized in law schools.

A. New York University's Lawyering Program

Lawyering, a required course designed by Professor Anthony Amsterdam for first year students at New York University School of Law, encompasses instruction in legal research and writing and simulation exercises in interviewing and counseling, negotiation, informal advocacy, preparation and presentation of trial witnesses, and oral argument. These exercises are designed to advance students' thinking about fact development, legal analysis, law-fact interplay, the nature of the client-attorney relationship, problem-solving and strategy concerns, and ethical issues. Rather than aiming to make students proficient in any particular lawyering activity, the course emphasizes issues concerning the attorney's role and strategic thinking that are common to the work of most, if not all, lawyers.

The Lawyering Program provides an ideal arena in which to study gender differences in students' perceptions of their work. Student activities in Lawyering more closely resemble the work of lawyers than does the rest of

16. We thank our Lawyering Program colleague Dianne Dixon and Professor Carol Gilligan for their insights into these complex and important questions.

17. For a description of the Lawyering course at New York University School of Law and an analysis of one of the other exercises that is part of the curriculum, see Peggy C. Davis, Contextual Legal Criticism: A Demonstration Exploring Hierarchy and "Feminine" Style, 66 N.Y.U. L. Rev. 1635, 1655 (1991).
the first-year curriculum. It is in this course that students first work with clients and make arguments to adversaries and judges, albeit in simulated exercises; thus, students' attitudes about their work may provide insight into their emerging professional identities. In addition, because large numbers of students work on the same problems under very similar conditions, the Lawyering Program provides a relatively controlled environment suitable for research.

B. The Workways Project

Workways is a multi-disciplinary group of scholars, led by Professor Peggy Cooper Davis, that seeks to improve legal education by exploring ways of working that are essential to effective and responsible lawyering but that have traditionally not been recognized or valued in law schools. This work is premised on the belief that the range of intellectual capacities and abilities that is generally developed through legal education is narrower than those capacities required to do the work of lawyers. Those students who habitually work in ways that are outside this narrow band of capacities are at particular risk of alienation and disengagement; we believe that women, students of color, and members of other socially disempowered or “out” groups are disproportionately represented in this category. The project aims to broaden the spectrum of cognitive processes that are seen as relevant to the work of lawyers and are explicitly valued in the law school classroom, and to integrate the teaching of these processes with the teaching of doctrinal analysis.\(^{18}\)

In exploring the range of intellectual capacities implicated by lawyers’ work, Workways has drawn on the writing of psychologist Howard Gardner suggesting that human intelligence is not a unitary phenomenon, but rather a set of multiple capacities that are innate and independent of each other.\(^{19}\) Gardner has delineated seven such intelligences: logical-mathematical, linguistic, spatial, kinesthetic, musical, interpersonal, and intrapersonal.\(^{20}\)

Our premise that there is no uniform approach to legal problem solving also finds support in the literature on moral reasoning. For example, Lawrence Kohlberg proposed that such reasoning progresses along a universal, set continuum.\(^{21}\) According to Kohlberg, at the earliest stages, a child follows rules when they serve his or her interests; as the child progresses, he or she is motivated to follow rules out of the recognition that they benefit a larger group. At the highest level, he or she uses logic and the ability to see other


\(^{19}\) See generally HOWARD GARDNER, FRAMES OF MIND: THE THEORY OF MULTIPLE INTELLIGENCES (1983).

\(^{20}\) See id. at 59-73.

\(^{21}\) See LAWRENCE KOHLBERG, MORAL STAGES: A CURRENT FORMULATION AND RESPONSE TO CRITICS (1983).
perspectives to recognize underlying values even where no rule exists.\textsuperscript{22} Kohlberg's scheme has been criticized because of its cultural bias: On his measures of moral development, white middle-class males tend to score higher than women and members of other cultures and classes. In contrast, Carol Gilligan found that many of the girls and women whom she interviewed about moral problems focused on the needs and relationships of the people involved rather than on the principles of justice that Kohlberg emphasized.\textsuperscript{23} Referring to these concerns as "care," Gilligan defined a series of developmental stages parallel to Kohlberg's.\textsuperscript{24} Also in contrast to Kohlberg's decontextualized view of moral reasoning, Norma Haan saw that process as a dialectic one that was influenced by individuals' ego processes and their functioning in a given situation.\textsuperscript{25} In other words, according to Haan, moral problem-solving is not only a function of the ability to reason one's way through an abstract problem, but also of one's emotional response to a situation and one's interactions with other involved individuals.\textsuperscript{26}

We have also relied on psychological research, such as the work of Claude Steele, that has demonstrated the impact of stress on learning and, in particular, the role of stress related to membership in a subordinated group. Steele observed that when a student took a test that measured an ability in which his or her group was stereotypically weak, the student worried about conforming to that stereotype, and this worry in itself could interfere with performance.\textsuperscript{27} Steele found that on a difficult math test, men outperformed women, even though students were matched in preparation and ability. However, when subjects were told that men and women performed equally well on the test, the performance differential between equally qualified students disappeared.\textsuperscript{28} Similarly, Steele found that white students outperformed equally able African-American students on a verbal test when subjects were told that the test was a measure of verbal ability, but not when subjects were told that test performance was unrelated to ability. In another experiment, Steele found that stereotype vulnerability was triggered when subjects were asked to provide some background information, including race, immediately before taking the test. As a result, the white students outperformed their African-American counterparts, even though all subjects were told that the test was unrelated to ability. However, when the question of

\textsuperscript{22} See id.
\textsuperscript{23} See \textit{Carol Gilligan, In a Different Voice: Psychological Theory and Women's Development}, 159-61 (1982).
\textsuperscript{24} See \textit{id.} at 97-98, 125-26.
\textsuperscript{26} See \textit{id.} at 272.
\textsuperscript{27} See Steele & Aronson, supra note 3; see also Claude M. Steele, \textit{A Threat In the Air: How Stereotypes Shape Intellectual Identity and Performance}, \textit{52 AM. PSYCHOLOGIST} 613, 622 (1997) [hereinafter Steele, \textit{A Threat in the Air}].
\textsuperscript{28} See Steele, \textit{A Threat in the Air}, supra note 27, at 620.
race was excluded, the differential disappeared.\(^2\) Thus, the messages that trigger and ameliorate the inhibiting anxiety could be manipulated, at least in some testing situations.

We believe that the discourse prevalent in most law school classrooms is similar to the decontextualized, principle-based reasoning emphasized in Kohlberg's scheme. The prevalent law school discourse calls on a narrow range of the multiple intelligences that Gardner has defined, and it frequently triggers the kind of inhibiting anxiety that Steele has described. We fear that this approach alienates many students, particularly women and members of other subordinated groups, and gives all students a distorted view of how legal decisions are reached. In contrast, the Lawyering course, with its use of experiential learning, teaches a broad range of skills and ways of thinking and working that lawyers may use in various contexts. The program thus provides fertile territory for Workways participants to analyze the processes involved in lawyering. More explicitly, it allows them to emphasize and integrate multiple ways of thinking and working, including those that are undervalued in traditional law school courses, and to study these curricular and pedagogical modifications. In 1995-1996, the year in which we collected our data, Workways made modifications to the Lawyering curriculum to further these goals in four Lawyering sections containing a total of 72 students out of the class of over 400. The remaining 328 students were in non-Workways Lawyering sections. We describe in detail below the changes that we made in the negotiation exercise in the Workways sections.

C. The Negotiation Exercise

1. The Simulation\(^3\)

As we have said, this exercise focused on the planning and conduct of a negotiation. Students, in their role as attorneys, were assigned to represent either Kelly, the homeowner, or Roberts, the contractor, to settle a dispute over the construction of a swimming pool. After various delays and other failures to meet contract specifications, the pool was not finished, the swimming season was fast approaching, and both parties wanted the problem resolved.

As with all of the Lawyering exercises, we conducted the exercise in three phases: planning, performance, and critique. Students were assigned to work with a teammate in the planning phase, and each member of the team negotiated individually with a member of an opposing team. Included in the written materials upon which students based their planning were two in-role

\(^2\) See id. at 797.

\(^3\) What follows is a description of the negotiation exercise as it was taught in 1995-96. The rest of the Lawyering faculty subsequently adopted some of the modifications that Workways made to the exercise, described infra Part I.C.2.
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memos from a senior partner describing the matter and urging the associate to attempt to settle it so as to avoid the risks of arbitration, the construction contract, several cases about the standard of judicial review of arbitration decisions, and readings about negotiation planning and strategy. The students submitted an in-role memo to the partner describing their plan for the negotiation. They attended separate planning classes for Kelly and Roberts attorneys, following which they interviewed their clients, role-played by second and third year law students, and submitted a final planning memo.

In the performance phase of the exercise, students conducted a forty-five-minute videotaped negotiation. Immediately after the negotiation, students reported in writing to the senior partner on the outcome of the negotiation.

Finally, in the critique phase, students used a written set of guidelines that posed detailed questions about their planning and the negotiation session. They also received questionnaires completed by their client reporting on the effectiveness of the interview. Along with their planning teammate, students viewed and analyzed the two sets of videotaped negotiations. The two pairs of teammates and their opponents then met with a faculty member for an extensive critique.

2. Workways' Modifications to the Simulation

In keeping with our goal of emphasizing those capacities that we consider to be generally undervalued in law school, in modifying the exercise we focused on narrative and interpersonal abilities because of their importance to negotiation. By stressing the relevance of these abilities in virtually all aspects of negotiation planning and performance, we hoped to engage and increase the confidence of students who might tend to feel more competent in these areas and less competent in other aspects of the factual, doctrinal, and numerical work involved in the exercise. Toward these ends we created a new plan for the pre-negotiation class, enriched the factual scenario, and had students communicate directly with their clients after the negotiation.

We instructed students to meet in groups and to prepare to report in the pre-negotiation class on their preliminary planning and strategy regarding one of the following areas: the parties' history and present conflict, the law, the numbers representing the various costs incurred and estimates of repair work, and the anticipated negotiation dynamics. Students were asked to develop narratives regarding their legal topic—stories from the perspective of their client as well as that of the opposing party—that they might alter depending on what they were told during the negotiation or during an arbitration following an unsuccessful negotiation. In-class discussion of these topics

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31. For example, our instructions to the students assigned to develop narratives regarding the law included the following:

Construct the strongest legal argument possible for your client. Then construct the strongest legal argument available to the other party. In addition to the factors courts use to determine
called students' attention to the interconnectedness among the categories. We believed this approach would help those students who might otherwise have tended to ignore a particular dimension to see the importance of that dimension and to feel more comfortable working in it. For example, some students felt comfortable telling the story of what happened between the parties but were anxious about working with the numbers. The discussion helped to show them that numbers were not only an important part of the story but could be seen from different points of view and presented in different ways, or as parts of different stories, in much the same way that other facts could be used. Similarly, students who underestimated the importance and complexity of the interpersonal aspects involved took heed when they saw the relationship of those issues to the effectiveness of legal and factual arguments. We hoped that by making students "experts" in certain areas and asking them to guide their classmates, they would come to feel more competent to participate in the planning and to conduct the negotiation.

This approach thus differed from the teaching in the non-Workways Lawyering sections, which tended to focus more on the process of determining one's settling point—that is, the most disadvantageous settlement that was still preferable to deadlocking and facing arbitration—and on constructing alternative "packages," or combinations of work items to be completed and payment to be made. Planning work in the other sections thus tended to draw more heavily on students' mathematical abilities. Students in these sections may have felt that success in the upcoming negotiation depended to a large degree on mathematical skill.

We also sought to increase the narrative possibilities of the exercise by adding details to the factual scenario. Students generally tended to see Roberts, the contractor, as in the wrong, and Kelly, the homeowner, as an innocent victim. Therefore, we tried to level the playing field by, for example, having Roberts opt voluntarily to use some materials superior to those specified in the contract and having Kelly interfere with the contractors' work and thus cause some of the delay.

Finally, we encouraged students to attend to narrative and interpersonal work by having students communicate the result of the negotiation by e-mail directly to the client instead of writing a memo to the senior partner summarizing the outcome of the negotiation. The clients reported on their satisfaction both with the outcome and with how it was communicated to them. We hoped that students would thus focus more on their relationship with the client and less on how their outcome compared to their classmates'

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whether a contract has been substantially performed and what the appropriate remedy is, consider the purpose of the doctrine. You may be able to characterize the development of the law on substantial performance in a way that is favorable to your client . . . . Consider the purpose of legal argument in negotiation (as opposed to in court or arbitration). How do you plan to use legal argument in the negotiation? Consider how your legal argument might blend with the story you will tell about the facts and the numbers.
expectations. Students saw that client satisfaction turned on more than just the bottom line. It also turned on the story that the student lawyers told about the negotiation and the story that the lawyer and client had constructed together at their earlier meeting regarding the history of the conflict, the equities involved, and the client's expectations.

By stressing some of these traditionally undervalued aspects of negotiation and integrating the more traditionally visible ones, we believed that women might come to feel more competent and perhaps to perform better. We hoped that the modifications would both increase the level of engagement of all students, and particularly of women students, and help all students learn more about negotiation.

III. RESEARCH QUESTIONS

A. Do Women Leave the Negotiation Exercise Feeling Less Competent than Men Do?

We began by exploring the differences between women and men in how competent students felt as professionals completing the exercise. Research indicates that gender differences in perceptions of success are context sensitive, depending on the nature of the task. Women have tended to feel less confident than men when the assigned task was perceived as drawing on "male" abilities, but not when the task was more "feminine" in nature. It seems that the area in which women's sense of competence has most consistently trailed men's was math. Generally, in "feminine" and neutral...
areas, there were no gender differences in sense of competence, though, when the task involved interpersonal work in a traditionally "feminine" area such as "comforting," women's confidence has been found to surpass men's. Further, research suggests that men and women have tended to attribute their successes and failures to different causes, with men more likely than women to construct explanations that enhanced their sense of competence. Studies by Kay Deaux and her associates have found that men were more likely than women to attribute their successes to ability, while women tended to emphasize the role of luck. Deaux cautioned, however, that this finding was context-dependent; the differential broke down when the task performed was perceived as "feminine."

With respect to the Lawyering negotiation exercise in particular, we hypothesized that women would suffer a reduced sense of competence compared with men. The literature on negotiation indicates that women have tended to feel less competent than men in conducting negotiations. Moreover, this particular negotiation problem required students to work with financial estimates of costs of repairs, devaluation of the pool due to the deviations from contract specifications, and loss of revenue to the contractor. Because math was the area most powerfully associated with "masculine" abilities, the task as thus defined was one in which we expected to find that women suffered a reduced sense of competence. Further, if students saw the negotiation as requiring them to impose their will on their opponent, bluff, and withhold information while ferreting out facts from their opponent, the task could appear to an even greater degree as one that drew on "masculine" skills. This conception of negotiation was essentially one of combat, an

34. See Deaux, supra note 32, at 108.
35. See Ruth Anne Clark, Men's and Women's Self-Confidence in Persuasive, Comforting, and Justificatory Communicative Tasks, 28 SEX ROLES 553, 562 (1993). Many studies that have found women to be less confident than men did not measure the objective accuracy of the subjects' judgments, so it is difficult to know whether it is men, women or both who are unrealistic in their self-appraisals. See Mary Lundberg et al., Highly Confident But Wrong: Gender Differences and Similarities In Confidence Judgment, 86 J. EDUC. PSYCHOL. 114, 120 (1994) (finding that in certain subjects, women's confidence more often correlated to their correctness, whereas men were overconfident, especially when they were incorrect).
36. See Deaux, supra note 32, at 106-07.
37. See id. at 106-07, 110-15.
38. See id. at 110-11.
39. In her review of ten studies on negotiation, Carol Watson found that women felt less confident and less successful than did their male peers even where there were no gender differences in negotiation behavior or outcomes. See Carol Watson, Gender Versus Power as a Predictor of Negotiation Behavior and Outcomes, 10 NEGOTIATION J. 117, 123-24 (1994).
40. See supra note 33.
41. Social psychologist Sandra Bem has developed a widely used system of classification of personality traits as "masculine" or "feminine" known as the Bem Sex Role Inventory ("BSRI"). Workways theory resonates with Bem's work because, rather than seeing "masculinity" and "feminity" as opposite poles of a single spectrum, Bem developed separate scales for each, believing that individuals could measure high or low on both scales and that to develop both sets of attributes was advantageous. See Sandra Bem, The Measurement of Psychological Androgyny, 42 J. CONSULTING & CLINICAL PSYCHOL. 155, 156 (1974). "Aggressive," "dominant," "forceful," "competitive," and "willing to take risks" are masculine traits according to the BSRI. "Gullible" and "yielding" are feminine items on the BSRI. See id. at 156.
activity with which the stereotypical male is more comfortable and at which he is more adept than the stereotypical female. In teaching the exercise, we stressed the importance to the negotiation process of some other lawyerly abilities that might be considered “feminine” skills, such as the abilities to communicate, establish rapport, construct stories, and solve problems.

B. Do Men Actually Out-Perform Women in the Negotiation Task?

Because some research on gender and overall law school performance has indicated that women do not perform as well as men, and, moreover, that women do not perform up to their potential, we thought it important to look

42. The notion that boys and men are more aggressive than girls and women is deeply rooted in our culture. Some sociobiologists have seen male aggression as an outgrowth of the drive to produce as many offspring as possible and to fight off competitors for potential female mates. See, e.g., EDWARD O. WILSON, ON HUMAN NATURE 112-120, 125 (1978). Acceptance of the notion that males are innately more aggressive than females is by no means limited to evolutionists or those committed to maintaining existing gender stereotypes. For example, feminists Maccoby and Jacklin have concluded that males are more aggressive than females in virtually all cultures and that aggression is related to the level of sex hormones. See ELEANOR EMMONS MACCOBY & CAROL NAGY JACKLIN, THE PSYCHOLOGY OF SEX DIFFERENCES 243-47 (1974). Our culture does not seem to be rejecting these ideas; on the contrary, there is currently a great deal of attention given to the “natural” differences between boys and girls in the popular child-rearing literature, postulating, for example, that greater levels of testosterone in boys cause them to be more aggressive and more independent than girls. See, e.g., MICHAEL GURION, THE WONDER OF BOYS 6-10 (1996).

43. Women have long been seen as more nurturing than men—more caring, more attuned to others’ feelings, better able to communicate and compromise. These qualities have been attributed to women’s role in child-rearing and have often been used to justify the subordination of women. For example, it has been argued that educating women would inhibit their ability to reproduce. See EDWARD H. CLARKE, M.D., SEX IN EDUCATION 139-42 (J.R. Osgood 1972) (1873). The view that women are as a group more nurturing than men has also been embraced by some feminist theorists, who view women’s disposition to attend to others’ needs as highly desirable rather than as evidence of inferiority. See, e.g., GILLIGAN, supra note 23. Psychoanalytic theorists have offered explanations for the female tendency to nurture based on a perceived greater intimacy between mothers and daughters than between mothers and sons. See NANCY CHODOROW, THE REPRODUCTION OF MOTHERING: PSYCHOANALYSIS AND THE SOCIOLOGY OF GENDER 7, 109-110, 201 (1978). Or it may be that women’s tendency to attend to the feelings of others is largely strategic, a coping mechanism employed by members of other subordinated groups as well. For example, in one study, subjects were cast as either teacher or student in pairs learning finger spelling. Those cast as students were found to be more sensitive to the feelings of those cast as teachers than vice-versa, regardless of the gender makeup of the pair. The results suggest that, at least in some settings, it is having power rather than being male that correlates with a relative lack of sensitivity. See Sara E. Snodgrass, Women’s Intuition: The Effect of Subordinate Role on Interpersonal Sensitivity, 49 J. PERSONALITY & SOC. PSYCHOL. 146 (1985).

44. These “feminine” abilities are similar to a number of traits qualified as “feminine” on the BSRI: “sensitive to the needs of others,” “warm,” “understanding,” “sympathetic,” “compassionate,” and “eager to soothe hurt feelings.” Bem, supra note 41.

45. Guinier, Fine and Balin found “strong academic differences between graduating men and women” at the University of Pennsylvania Law School. “Despite identical entry-level credentials, this performance differential between men and women is created in the first year of law school and maintained over the next three years. By the end of their first year in law school, men are three times more likely to women to be in the top 10% of their law school class.” Guinier et al., supra note 10, at 3.

46. See WIGHTMAN, supra note 11. While this study found a slightly lower mean first-year grade point average for women than men, the difference was modest in magnitude. Wightman believed that her results indicated that women were performing competitively and that “differential academic performance is not an issue.” Id. at 11. But she did find a consistent and cumulative set of data supporting the hypothesis that women tend to underperform academically in law school relative to their previous academic achievement. Importantly, these data in no way suggest that women are unable to perform adequately in
at actual results in the context of this particular exercise in negotiation. Whether women are more or less effective in negotiation than men is related in part to the question of whether there is a difference in negotiation behavior, a question that our study did not address and that is itself a subject of some dispute. Early research suggested that women were "softer" negotiators than men and that their interest in being accommodating and fair overrode their drive to gain substantive advantage, rendering them weak and ineffective.

In the 1980s, some feminist writers took the perspective that women tended to frame and conduct negotiations in an "alternative" manner that was distinct from, rather than subordinate to, the previously dominant male model. Women had relatively recently entered the legal profession in large numbers, and scholars speculated as to whether and how women, said to have a more relational and affiliational concept of self than did men, would affect the way lawyering tasks were performed. Some features of this "women's voice" in negotiation purportedly included a relational view of others, an understanding of control through empowerment, and an inclination to engage in problem-solving through dialogue. Carrie Menkel-Meadow proposed a new model of legal negotiation, denominated "problem-solving" as opposed to the traditional "adversarial" or "zero-sum" approach. The problem-solving

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law school. In fact, the data support the reality that many women are able to excel academically in law school. But the data also suggest that law school is not an environment that nurtures the academic development of women.

Id. at 26.

47. See MULQUEEN, supra note 5, at 7. For example, in a study using undergraduate subjects who negotiated over the price of appliances, men reported expecting to be more competitive than did women, and after the negotiation women said they felt less powerful than did men, and felt more trustful of their adversary than did men. However, the researchers found no gender differences in negotiating behavior or outcomes. See Dean Pruitt et al., Gender Effects in Negotiation: Constituent Surveillance and Contentious Behavior, 22 J. EXPERIMENTAL SOC. PSYCHOL. 264 (1985). This distinction between perception and actual performance, or sense of competence and the objective display of competence, is reflected in our research results. See infra Part IV. In some situations, though, women may fare less well regardless of negotiation behavior. For example, in a study of negotiations to buy cars, white women and people of color may have paid more than white men purely because of the seller's behavior, not their own. See Ian Ayres, Fair Driving: Gender and Race Discrimination in Retail Car Negotiations, 104 HARV. L. REV. 817, 827-41 (1991).

48. For a description of this early research, see Watson, supra note 39.

49. See DEBORAH M. KOLB & GLORIA G. COOLIDGE, HER PLACE AT THE TABLE: A CONSIDERATION OF GENDER ISSUES IN NEGOTIATION (Program On Negotiation Working Paper Series No. 88-5, 6-7, on file with Harvard Law School, 1988) (suggesting that women use collaborative, empowering, relationship-based bargaining, in part because they have less power and status than male counterparts).

50. Empirical support exists for the proposition that women and men have at least been perceived as differing in negotiation styles. In a study involving a computer-mediated negotiation task, when no information was given about the other negotiator, there were no gender differences in expectations or perceptions. But when the other negotiator's gender was known, women were perceived as more cooperative and less exploitative than men. See Kimberly Matheson, Social Cues in Computer-Mediated Negotiations: Gender Makes a Difference, 7 COMPUTERS HUM. BEHAV. 137, 141-42 (1991).

model sought to demonstrate how negotiators could more effectively accomplish their goals by “focusing on the parties’ actual objectives and creatively attempting to satisfy the needs of both parties, rather than by focusing exclusively on the assumed objectives of maximizing individual gain.” A number of writers subsequently reacted to what they perceived as the essentialism of this thinking, fearing that “valorizing women’s differences would legitimate discriminatory treatment of women’s difference and assign women to conventional domestic, maternal, and other ‘caring’ roles.”

Differences in negotiation outcome that have been perceived as gender-based may in fact have resulted from the parties’ being differently situated. However, some studies have found differences in outcomes even in laboratory settings where the negotiators were similarly situated. Writers who have emphasized the importance of context in interpreting gender differences have suggested consideration of such factors as the meaning of conflict to the various parties, the nature of the parties’ relationships, the gender of the negotiators or representatives as distinct from the principals, the parties’ relative social status or perceived power, their expectations, and their feelings about third parties such as mediators, lawyers, or other professionals.

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52. Menkel-Meadow, Toward Another View of Legal Negotiation, supra note 51, at 758.
54. Carol Watson has proposed that the relative power of the negotiating parties is a better predictor of negotiating behavior and outcomes than is gender alone: “[H]igh-power negotiators tend to compete whereas low-power negotiators tend to cooperate . . . . Because women . . . are more likely to be found in low-power positions and occupations than men, we may have been misled into assuming that observed differences in the way men and women negotiate are due to gender when, in fact, they result from status and power differences.” Watson, supra note 39, at 119.
55. Compare Wesley King & Thomas Hinson, The Influence of Sex and Equity Sensitivity on Relationship Preferences, Assessment of Opponent, and Outcomes in a Negotiation Experiment, 20 J. MGMT. 605 (1994), and Kimmel et al., Effects of Trust, Aspiration, and Gender on Negotiation Tactics, 38 J. PERSONALITY & SOC. PSYCHOL. 9 (1980) (suggesting that men achieved better outcomes than did women in simulated buyer/seller negotiations using undergraduates as subjects), with Joseph N. Scudder, The Influence of Power upon Powerful Speech: A Social-Exchange Perspective, 5 COMM. RES. REP. 140, 144 (1988), and Pruitt et al., supra note 47, at 264 (concluding, in similar studies, that there were no gender-based differences in outcome).
56. See Linda Stamato, Voice, Place, and Process: Research on Gender, Negotiation, and Conflict Resolution, 9 MEDIATION Q. 375 (1992). Gender differences seem to play out differently depending on the nature of the dispute. For example, in a study of mediation, women mediators were more successful than men (measured by the number of agreements reached that were not broken), especially in disputes involving people with close ongoing relationships. See David Maxwell, Gender Differences in Mediation Style and Their Effect on Mediation Effectiveness, 9 MEDIATION Q. 353 (1992). Whether negotiators are acting on their own behalf or as agents for others may also be significant. Women generally fared less well than men in negotiating for salaries, and particularly for starting salaries. See Barry Gerhart & Sara Rynes, Determinants and Consequences of Salary Negotiations by Male and Female MBA Graduates, 76 J. APPLIED PSYCHOL. 256, 259-60 (1991). This may be because women had lower expectations or were less inclined to engage in negotiating tactics such as asking for more than they expect to get. See Vicki S. Kaman & Charmine E.J. Hartel, Gender Differences in Anticipated Pay Negotiation Strategies and Outcomes, 9 J. BUS. & PSYCHOL. 183 (1994). It may be that in these settings women were less likely to be perceived, or to perceive themselves, as having legitimacy, or, in Deborah Kolb’s words, as having and conveying “agency.” See KOLB & COOLIDGE, supra note 49, at 8-11.
Motivation and engagement have also seemed to be important factors.57

Because there was no structural gender-based power imbalance in our controlled setting, and no apparent reason why men’s and women’s motivation would vary, we did not expect to see differences in the actual outcome of the negotiation.

C. Were the Teaching Interventions Developed by Workways Effective in Reducing Gender-Based Differences in Sense of Competence?

We expected that a pedagogy explicitly emphasizing abilities that are usually underemphasized in law school would build an enhanced sense of competence in students who are, and believe they are, strong in those areas. In this case, the gender-based gap in self-assessment should be reduced. As we have discussed in detail in Part I, Workways faculty emphasized some “feminine” ways of working, such as stressing the construction of narratives and attention to interpersonal work, in addition to the importance of manipulating the numbers and understanding the law of substantial performance of construction contracts. These emphases are consistent with Workways’ goal, which is to provide contexts in which students can learn fundamental legal concepts, develop intellectual versatility, learn to use the range of their intellectual capacities across the range of lawyering tasks, and develop a critical consciousness about their professional role . . . . Although men and women come to law school with unpredictable mixes of intellectual strengths and preferred working styles, it is a fact of our culture that certain intelligences (e.g., logical-mathematical and categorizing) are associated stereotypically with men, while others (e.g., interpersonal and intrapersonal) are associated stereotypically with women. We have found that the intelligences typically neglected in law school pedagogy are stereotypically female intelligences . . . . [W]omen perform with more anxiety when they feel called upon to perform exclusively or primarily in domains in which men, rather than women, are thought to excel. When, in the course of providing broader and more effective training for work in the legal profession, we have balanced and integrated stereotypically male and stereotypically female capacities, we have found that many women work more comfortably and that men and women learn to be more versatile in their approach to legal problems.58

57. In one study in which male undergraduates bested their female counterparts in negotiations over the price of appliances, a post-negotiation questionnaire revealed that women were less interested in the task. See Kimmel et al., supra note 55.
58. Berger et al., supra note 7, at 1062-63.
We hypothesized that these teaching innovations would boost women’s sense of competence and that all students would come to value more, and to develop versatility in, the abilities that we sought to reinforce.

IV. METHODOLOGY

A. Subjects

We administered questionnaires to approximately 220 students, roughly half of the students in the Lawyering course. We received responses from 163 students, 60 of whom were in the Workways group. Students were randomly assigned at the beginning of the year to Workways sections or regular Lawyering sections.

The questionnaires were coded to ensure student confidentiality. We devised a system by means of which, without being aware of each respondent’s identity, we knew the gender, race, and age of each member of the negotiating pair, which role each respondent played (attorney for homeowner or contractor), and to which section the respondent belonged (Workways or non-Workways).

The subjects included eighty-five women and seventy-eight men. Their average age was 24.7 years. Information from the Law School’s Admissions Office indicated that there were three Chicanos/Mexican Americans in the group of subjects, nine African Americans, four Hispanics and nineteen Asian/Pacific Islanders. The race of the remaining 128 students was not specified by the Admissions Office.

B. Measurement of Student Attitudes

In order to look at students’ perceptions of their performance and outcome, we administered two sets of questionnaires, one before and one immediately after the negotiation. The first questionnaire was distributed several days after the students had received the materials for the exercise, but before the planning class. Thus, most students had some familiarity with the legal and factual dimensions of the conflict that they would negotiate, but had not thought deeply about the problem or begun to map out a strategy. The questionnaire asked students to rank eight potential goals of the negotiation in order of importance, and to rank eight abilities in order of their

59. These negotiation goals were: (1) the other negotiator feeling that she or he got a fair deal; (2) creation of solutions that benefit both parties; (3) attaining an outcome that will satisfy the client; (4) obtaining every concession possible from your adversary; (5) attaining an outcome that conforms with your sense of fairness, independent of the client’s expectations; (6) conducting the negotiation in a pleasant manner; (7) attaining an outcome that places your client in a better position than s/he would have been in if a settlement had not been reached; (8) other goals — to be specified by the respondent.

60. These abilities were: (1) to be a good listener; (2) to develop a compelling story about why your client deserves the settlement you seek; (3) to manipulate the numbers; (4) to persuade the other negotiator
importance to being an effective negotiator. We distributed three versions of the questionnaire, randomly mixing the order of the inquiries and the items to be ranked.

We distributed the second questionnaire immediately after the negotiation session. It asked students to rate their satisfaction with their performance in the negotiation and with the outcome they achieved. It asked students to evaluate their preparation for the negotiation, their abilities, a number of situational factors that played a role in the negotiation, the impact each of these factors had on the outcome, and the anticipated usefulness of the critiques. We administered two versions of this questionnaire, presenting the topics in different orders and randomly mixing the order of items within each topic.

C. Measurement of Actual Outcomes

We evaluated students’ actual outcomes in relation to each other by analyzing their in-role reports—directed either to their senior partner or to their client—of the outcomes of the negotiation. Because the exercise required students to report the outcomes of their negotiations, we had in our possession some objective measure against which to compare students’ perceptions of their success. While the students’ outcome reports were not designed for the purpose of evaluating their success, and interpreting them required some subjective judgments, these reports did provide some baseline for gauging students’ relative effectiveness in the negotiation. To minimize the unreliability of self-reporting, we compared reports of the negotiating pairs.

Each settling pair agreed on two sets of issues: the repairs the contractor would make to the swimming pool and the amount of the outstanding balance the homeowner would pay to the contractor. We evaluated the homeowner’s outcome by subtracting the amount of the promised payment from the cost of

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61. Employing a seven-point Likert scale (that is, asking students to rate their answers on a scale of 1 to 7) the questionnaire asked students to rate three propositions about their preparation: (1) I was well-prepared for the negotiation; (2) I collaborated effectively with my teammate in planning; (3) I mapped out my strategy.

62. Using the same seven-point scale, students were asked to rate the following abilities: (1) to listen to and pick up on others’ concerns; (2) to work with the numbers; (3) to present the law effectively; (4) to bluff; (5) to argue persuasively; (6) to develop rapport with colleagues; (7) to think on your feet; (8) to present a compelling story.

63. The situational factors were: (1) my client’s legal position was strong; (2) my client’s situation was sympathetic; (3) the other negotiator made many mistakes; (4) the other negotiator was fair; (5) the other negotiator displayed weakness; (6) the other negotiator displayed empathy for my client’s difficulties.

64. Students were asked to rate the role of preparation, their abilities, and the situational factors in influencing the outcome of this particular negotiation. Here, the scale ranged from -4 for extremely negative to 4 for extremely positive.

65. Students rated the anticipated usefulness of reviewing the videotape and participating in the critique with their colleagues and a faculty member. See infra Part III.B.
the promised repairs. We evaluated the contractor's outcome by subtracting the cost of repairs from the amount of the promised payment. The cost of the repairs was given as part of the simulation—that is, the attorneys for the contractor had obtained this information, or could have obtained it, from their client; many attorneys for the homeowner obtained this information from their opponents in the course of the negotiation. A few students agreed to intangible items such as a payment schedule. We developed a second outcome measure by assigning a numerical value to those items. Finally, to be able to compare all respondents' outcomes, we reduced these numbers to a standard score.

We followed a similar process with the students' planning memos, submitted before they conducted the negotiation. These memos yielded a number roughly representing the students' bottom line or "settling point"—the point at which they planned to break off negotiations and arbitrate the dispute rather than compromise further. Comparison of the settling point with the actual outcome served as an alternative rough measure of the students' success.

V. FINDINGS AND DISCUSSION

A. Women Emerged from the Negotiation Feeling Less Competent than Did Their Male Counterparts

We asked students to rate themselves on eight abilities. Overall, women rated their abilities lower than did men. Of the eight individual abilities, the largest differences were in men's and women's ratings of their ability to work with numbers and to bluff.

Using the Bem Sex Role Inventory as a guideline, we grouped the ability items into "masculine" and "feminine" composites. We found that men rated themselves higher on the "masculine" abilities than women. We found no

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66. Because it was impossible to determine what dollar amount the clients would place on the intangibles, and our assignment of values to these items was therefore somewhat arbitrary, we worked with two outcome measures, one that included the intangibles and one that did not.

67. See infra Table I.

68. See supra note 62 for a list of the abilities.

69. See infra Table I.

70. We calculated the "masculine" composite as an average of the following abilities: working with numbers, bluffing, and thinking on one's feet. What we termed the "feminine" composite was an average of the abilities to listen to others' concerns and to develop rapport. Our identification of certain abilities as stereotypically "masculine" and others as stereotypically "feminine" is in accord with research on gender stereotypes. See Bem, supra note 41, at 156. The perception that the ability to work with numbers and to bluff is "masculine" is widespread. See supra notes 33, 41-44. We see the ability to think on one's feet also as a "masculine" trait because the ability to process and use information quickly requires confidence, self-assurance, and a willingness to assert a proposition before having fully considered its risks or faults. These traits are associated with "masculine" traits on the BSRI: makes decisions easily, willing to take risks, assertive, independent, acts as a leader. Our "feminine" composite also consists of traits considered "feminine" on the BSRI. See Bem, supra note 41.

71. See infra Table I.
gender difference in students' ratings of their "feminine" abilities. This finding is consistent with research indicating that women's confidence has lagged behind men's in traditionally masculine areas but was equivalent in traditionally feminine domains.

**TABLE**

<table>
<thead>
<tr>
<th>Ability Items</th>
<th>Men</th>
<th>Women</th>
</tr>
</thead>
<tbody>
<tr>
<td>Listen to others</td>
<td>5.21</td>
<td>5.10</td>
</tr>
<tr>
<td>Work with numbers</td>
<td>5.05</td>
<td>4.19***</td>
</tr>
<tr>
<td>Present law effectively</td>
<td>4.62</td>
<td>4.45</td>
</tr>
<tr>
<td>Bluff</td>
<td>4.42</td>
<td>3.70**</td>
</tr>
<tr>
<td>Argue persuasively</td>
<td>4.97</td>
<td>4.74</td>
</tr>
<tr>
<td>Develop rapport</td>
<td>5.24</td>
<td>5.36</td>
</tr>
<tr>
<td>Think on your feet</td>
<td>4.88</td>
<td>4.67</td>
</tr>
<tr>
<td>Present a compelling story</td>
<td>5.00</td>
<td>4.73</td>
</tr>
<tr>
<td>&quot;Male&quot; composite</td>
<td>4.79</td>
<td>4.19***</td>
</tr>
<tr>
<td>&quot;Female&quot; composite</td>
<td>5.22</td>
<td>5.24</td>
</tr>
<tr>
<td>Total abilities composite</td>
<td>4.93</td>
<td>4.62**</td>
</tr>
</tbody>
</table>

*   p < .05
**  p < .01
*** p < .001

B. Actual Outcomes of the Negotiation: Men and Women Achieved Equal Results

The gender gap in students' perceptions of their competence was not borne out by any corresponding difference in their achievements. Women and men achieved comparable outcomes in the negotiation; we found no significant gender differences in the raw or normalized outcome data. This result was consistent among students in the Workways sections and the others, and among students assigned to represent the homeowner and the contractor.

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72. See id.
73. See supra note 32 and accompanying text.
74. There were 85 women and 78 men. M = the mean ratings (1 = least satisfied, 7 = most satisfied) for each ability item in our questionnaire. We performed t-tests to compare the means between men and women. We considered a difference significant if the p-value was less than .05. A p-value is the probability of making a Type I error. A Type I error is the probability of rejecting the null hypothesis when in fact the null hypothesis is true. The null hypothesis for each ability item is that there is no difference between men and women. Thus a p-value of .05 or less means that there is less than a 5% chance that one found a significant difference when in fact no difference existed.
75. Although we used the negotiation outcome as a measure of students' success, we recognize that other measures may in fact be equally or more relevant, depending on the context and the goals of the negotiators. Increasing client satisfaction, or creating or maintaining a harmonious relationship between the parties, may be more important than the negotiated outcome. In some instances, getting the "best deal" may lead to the worst failure—aggravated conflict and broken promises.
There were no gender differences in the settling points that students constructed. Also, there was no relationship between the outcomes that students achieved and their satisfaction with either their overall performance in the negotiation or with the outcomes.

In juxtaposing these actual outcomes with the gender gap in students' assessments of abilities, our data do not enable us to determine whether men overestimated their competence and performance, women underestimated their competence and performance, or both. A lack of realism in either direction poses problems.\textsuperscript{76} Those who approach the task with an excess of confidence may happily settle on an initially appealing plan without considering a full range of options and therefore fail to choose the most advantageous route, or they may set their sights unrealistically high and therefore be unable to reach an agreement.\textsuperscript{77} On the other hand, those who have an unjustifiably low view of their competence might set unnecessarily low goals, be too quick to make concessions, or unwittingly communicate their lack of confidence to clients or opponents.

We were also concerned about students' willingness or ability to engage in the post-negotiation critique, and specifically that students who overestimated their abilities would not benefit fully from that process. We found a relationship between students' perceptions of their abilities and their beliefs about how useful the post-simulation critique would be, although it was a different relationship for men than for women. Among male students, those who expressed greater self-confidence appeared to value the critique phase of the exercise less, while the reverse was true of women. When we examined the correlation between students' confidence, as measured by the mean responses to the ability questions, and their openness to learning, as measured by the mean of their responses to the questions about the anticipated usefulness of the critique of the exercise, we saw no relationship (r = .07, p = .38).\textsuperscript{78} However, for the men in our study, as self-evaluations of abilities increased, expectations about learning decreased (r = .24, p = .05). Thus, for some men in the group, it seems that over-confidence may have resulted in an unwillingness to engage in the kind of self-examination valued in the Lawyering course.

\textsuperscript{76} See supra notes 2-4 and accompanying text.

\textsuperscript{77} In a study involving a diadic negotiation, the researchers found that the entire group of subjects overestimated their positive qualities and abilities and their performance in the negotiation compared to others, and that these self-enhancing tendencies were most powerful among subjects with high self-esteem. While the authors found no correlation between self-esteem and actual performance, they noted that the tendency of subjects with high self-esteem to see themselves as better than others, to feel overly optimistic entering the negotiation, and to feel satisfied with the outcome despite having left potential areas of gain untouched, could interfere with their ability to negotiate effectively. See Kramer et al., Self-Enhancement Biases and Negotiator Judgment: Effects of Self-Esteem and Mood, 56 ORGANIZATIONAL BEHAV. & HUM. DECISION PROCESSES 110, 124-28 (1993).

\textsuperscript{78} r is the Pearson product moment correlation which is the standardized degree of relationship between two factors. A correlation ranges between zero and one, with zero indicating no relationship and one indicating a perfect relationship. We tested the significance of r using a t-test. We considered a p-value of .05 or less a significant finding.
C. Workways Interventions Reduced the Gender Gap in Ratings of Abilities\textsuperscript{79}

We found a significant interaction between Workways participation and students' ability ratings.\textsuperscript{80} Women in the Workways sections did not rate themselves significantly lower than men in the mean of the eight abilities, the "male" composite abilities, or the ability to bluff.\textsuperscript{81} The women in the regular Lawyering sections rated their abilities lower than men overall on the "male" composite abilities, and on the ability to bluff.\textsuperscript{82} With regard to the ratings of particular abilities, we found two significant interaction effects for gender and section: women in the Workways sections rated their ability to develop rapport significantly higher than did men, whereas in the other sections there was no significant gender difference in the rating of this ability.\textsuperscript{83} Regarding ability to think on one's feet, the men in the non-Workways sections rated themselves significantly higher than the women, whereas there was no significant difference in the Workways sections.

\textsuperscript{79} Evaluating the success of Workways interventions in teaching students to negotiate effectively is beyond the scope of this study. As discussed above, our only objective measure of success was the outcome achieved. \textit{See supra} note 66. Because students negotiated against students in their own section, and outcome was measured almost entirely in a zero-sum competition, we would not expect any difference in outcome between Workways and other sections.

\textsuperscript{80} We used a two-way analysis of variance (ANOVA) to test the hypothesis that gender differences existed in non-Workways but not Workways sections.

\textsuperscript{81} \textit{See infra} Table II.

\textsuperscript{82} \textit{See id.}

\textsuperscript{83} \textit{See id.}
<table>
<thead>
<tr>
<th>Ability Items</th>
<th>Workways Men</th>
<th>Workways Women</th>
<th>Non-Workways Men</th>
<th>Non-Workways Women</th>
</tr>
</thead>
<tbody>
<tr>
<td>Listen to others</td>
<td>5.20</td>
<td>5.20</td>
<td>5.21</td>
<td>5.07</td>
</tr>
<tr>
<td>Work with numbers</td>
<td>4.93</td>
<td>4.13</td>
<td>5.13</td>
<td>4.22*</td>
</tr>
<tr>
<td>Present law effectively</td>
<td>4.66</td>
<td>4.57</td>
<td>4.60</td>
<td>4.33</td>
</tr>
<tr>
<td>Bluff</td>
<td>4.37</td>
<td>3.87</td>
<td>4.46</td>
<td>3.62**</td>
</tr>
<tr>
<td>Argue persuasively</td>
<td>4.80</td>
<td>4.70</td>
<td>5.08</td>
<td>4.76</td>
</tr>
<tr>
<td>Develop rapport</td>
<td>4.97</td>
<td>5.60</td>
<td>5.42</td>
<td>5.24</td>
</tr>
<tr>
<td>Think on your feet</td>
<td>4.43</td>
<td>4.83</td>
<td>5.17</td>
<td>4.58**</td>
</tr>
<tr>
<td>Present a compelling story</td>
<td>4.87</td>
<td>4.77</td>
<td>5.08</td>
<td>4.71</td>
</tr>
<tr>
<td>&quot;Male&quot; composite</td>
<td>4.58</td>
<td>4.28</td>
<td>4.92</td>
<td>4.14***</td>
</tr>
<tr>
<td>&quot;Female&quot; composite</td>
<td>5.08</td>
<td>5.40</td>
<td>5.31</td>
<td>5.15</td>
</tr>
<tr>
<td>Total abilities composite</td>
<td>4.78</td>
<td>4.71</td>
<td>5.02</td>
<td>4.56***</td>
</tr>
</tbody>
</table>

* p < .05
** p < .01
*** p < .001

We also found that the Workways interventions may have succeeded in narrowing the gap in perceptions of ability among those who felt they performed poorly (i.e., those who rated their abilities as a "4" or less). In this group, there were three significant interaction effects: (1) on the ability to develop rapport, women rated themselves higher in the Workways group while men scored higher in the non-Workways group; (2) on the ability to think on one's feet, there was no significant difference in the Workways group, but men rated themselves significantly higher than women in the non-Workways group; (3) on the ability composite there was no significant difference for the Workways group, but men rated themselves significantly higher in the non-Workways group.

---

84. There were 30 men and 30 women in the Workways section and 48 men and 55 women in the non-Workways section. M = the mean ratings (1 = least satisfied, 7 = most satisfied) for each ability item in our questionnaire. We performed a two-way ANOVA in order to test whether there was an interaction effect between gender and section assignment (Workways vs. Non-Workways sections). We considered an interaction significant if the p-value was less than .05. See supra note 74. The null hypothesis for each ability item is that there is no interaction between gender and section assignment.
As Tables II and III indicate, women in the Workways sections tended to rate their abilities slightly higher than women in the other sections and men in the Workways sections tended to rate their abilities lower than their male counterparts in the other sections. The Workways interventions had a somewhat larger impact among those students who felt that they had performed poorly, both in the relative elevation of Workways women’s ratings and in the depression of Workways men’s ratings.

Thus, the Workways modifications, which emphasized interpersonal and narrative work, seemed to boost slightly women’s sense of competence and to depress slightly men’s sense of competence. Although these findings may suggest the possibility that in our effort to engage one group of students we might inadvertently have negatively affected the self-perceptions of another, we do not believe that to be the case. While we do not have a comprehensive measure of student engagement, questions concerning students’ expectations about the critique phase of the exercise provide some information.

85. Students who rated their performance as a “4” or less were considered to have rated their performance as “poor.” Of the students who rated their performance as a “4” or less, there were 17 men and 20 women in the Workways section and 26 men and 34 women in the non-Workways section. \( M \) = the mean ratings (1 = least satisfied, 7 = most satisfied) for each ability item in our questionnaire. We performed a two-way ANOVA on the group of students who rated their performance as a “4” or less in order to test whether there was an interaction between gender and section assignment (Workways vs. non-Workways sections). We considered an interaction significant if the \( p \)-value was less than .05. See supra note 74. The null hypothesis for each ability item is that there is no interaction between gender and section assignment.

86. See supra Table II.

87. See supra Table III.

88. See supra note 79.
According to the mean of the three critique questions, men in the Workways sections more strongly believed that they would learn from the critique phase than did the other men (M for non-Workways = 2.51, M for Workways = 3.02, p = .08). Thus, the relative depression in male Workways students’ sense of competence does not seem problematic, as it may simply indicate that the men in the Workways sections became more realistic and accurately self-reflective than did their male counterparts in the other sections. We do not know if the observed gender difference in self-assessment resulted from men being overconfident or women being under-confident, and, as we have said, we believe that both sorts of inaccurate self-perceptions can interfere with students’ learning and performance.

The Workways modifications to the exercise may have narrowed the gender gap in students’ sense of competence by influencing their perceptions of the negotiation task. As a result of the emphasis on narrative and interpersonal work, students in the Workways sections may have seen negotiation as a more “feminine” endeavor and may have felt that “feminine” attributes were more highly valued. The data provide some support for this theory. It seems that, in general, students did not feel that the stereotypically “feminine” abilities played a very important role in the negotiation. In statistical terms, a stepwise multiple regression revealed that self-assessment of the “masculine” abilities was a significant predictor of satisfaction with performance, while the “feminine” abilities did not specifically improve predictions of performance after the “masculine” abilities were entered into the model. It appears, however, that Workways may have succeeded in increasing students’ appreciation of these somewhat undervalued “feminine” abilities. The composite of “feminine” abilities had a significant positive correlation with performance for women in the Workways group (r = , p = .03).

D. Other Contextual Factors Also Influenced Students’ Self-Assessments

It appears that a number of contextual factors, in addition to teaching

89. See supra notes 77-79.
90. See Jeffrey Burnett et al., Gender Roles and Self-Esteem: A Consideration of Environmental Factors, 73 J. COUNSELING & DEV. 323, 325 (1995) (finding that students whose sex-role orientation was low in masculinity had lower self-esteem when they reported that their environment valued masculine characteristics, and that this effect was particularly strong for women).
91. We did not see this pattern in students’ responses to the first questionnaire, which we administered before students undertook the negotiations. Students ranked the importance of the listed abilities in the following order: to persuade the other negotiator that the law favors your client, to develop a rapport with the other negotiator, to develop a compelling story about why the client deserves the settlement you seek, to be a good listener, to show some understanding for the other party’s concerns, to ask convincingly for more than you think is fair and not appear to back down, to argue persistently, to manipulate the numbers. It may be that, in answering these direct questions, students were supplying the “politically correct” responses, but that the more indirect measures of their priorities discussed above revealed their true beliefs, and/or that the experience of negotiating changed their views of what was important.
92. See supra note 78 for an explanation of r and p-values.
strategies, may have affected the disjunction between men's and women's self-perceptions and the reality of their achievements. The role students were assigned to play—attorney for Roberts, the contractor, or Kelly, the homeowner—is one such factor: women's self-assessments were lower than men's among students representing the contractor than among students representing the homeowner. Additionally, the data indicate that students' attitudes were shaped by whether their planning partner was a man or a woman and whether they negotiated with a man or a woman.

1. The Gender Gap in Students' Sense of Competence Varied with the Role Students Played in the Negotiation

The gender gap in students' sense of competence was pronounced among students representing the contractor, Roberts, but was hardly apparent among students representing Kelly, the homeowner. The mean of male Roberts attorneys' ratings of their own abilities was much higher than was their female counterparts' ratings, while there was no statistically significant difference among Kelly attorneys.93 In the assessments of individual abilities, the only gender difference among Kelly attorneys was in the rating of the ability to work with numbers.94 Roberts attorneys also displayed a gender difference in ratings of that ability.95 Men in this group also rated their ability to bluff higher than did women.

93. See infra Table IV.
94. See id.
95. See id.
TABLE IV - GENDER DIFFERENCES BASED ON ROLE PLAYED IN NEGOTIATION EXERCISE

<table>
<thead>
<tr>
<th>Ability Items</th>
<th>Role of Roberts</th>
<th></th>
<th>Role of Kelly</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Men</td>
<td>Women</td>
<td>Men</td>
<td>Women</td>
</tr>
<tr>
<td>Listen to others</td>
<td>5.47</td>
<td>5.08</td>
<td>5.02</td>
<td>5.16</td>
</tr>
<tr>
<td>Work with numbers</td>
<td>5.31</td>
<td>4.23</td>
<td>4.87</td>
<td>4.14*</td>
</tr>
<tr>
<td>Present law effectively</td>
<td>4.75</td>
<td>4.23</td>
<td>4.53</td>
<td>4.65</td>
</tr>
<tr>
<td>Bluff</td>
<td>4.31</td>
<td>3.33</td>
<td>4.50</td>
<td>4.19**</td>
</tr>
<tr>
<td>Argue persuasively</td>
<td>4.78</td>
<td>4.54</td>
<td>5.11</td>
<td>5.00</td>
</tr>
<tr>
<td>Develop rapport</td>
<td>5.25</td>
<td>5.27</td>
<td>5.24</td>
<td>5.49</td>
</tr>
<tr>
<td>Think on your feet</td>
<td>4.94</td>
<td>4.63</td>
<td>4.85</td>
<td>4.73</td>
</tr>
<tr>
<td>Present a compelling story</td>
<td>4.72</td>
<td>4.54</td>
<td>5.20</td>
<td>4.97</td>
</tr>
<tr>
<td>“Male” composite</td>
<td>4.85</td>
<td>4.06</td>
<td>4.74</td>
<td>4.35**</td>
</tr>
<tr>
<td>“Female” composite</td>
<td>5.36</td>
<td>5.18</td>
<td>5.13</td>
<td>5.32</td>
</tr>
<tr>
<td>Total abilities composite</td>
<td>4.94</td>
<td>4.48</td>
<td>4.92</td>
<td>4.81*</td>
</tr>
</tbody>
</table>

*  \( p < .05 \)
** \( p < .01 \)
*** \( p < .001 \)

The reason for the differences in self-assessment among Roberts and Kelly attorneys may have to do with students' perception of Kelly as having the moral and legal high ground. Although faculty have tended to see the simulation as involving parties on roughly equal footing, students seemed to feel with some consistency that Kelly was in the more powerful position. Responses to our second questionnaire confirmed this impression. Kelly attorneys tended to agree with the statements “My client's legal position was strong” (M = 5.06) and “My client's situation was sympathetic” (M = 5.24), while Roberts attorneys tended to disagree (M = 3.80 and 3.96 respectively) on both questions.

Our objective measures also indicated that Kelly held more power than Roberts. For Kelly attorneys, the settling point was correlated with the outcome, whether the outcome measure included intangibles (r = .37, \( p = .0004 \)) or not (r = .44, \( p = .0001 \))\(^97\), while there was no significant correlation for Roberts attorneys. In other words, it appears that the Kelly attorneys' expectations going into the negotiation determined where the parties ultimately settled, a strong indication that the attorneys for the homeowner

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\(^96\) There were 45 men and 37 women who played the role of Kelly and 32 men and 48 women who played the role of Roberts. M = the mean ratings (1 = least satisfied, 7 = most satisfied) for each ability item in our questionnaire. We performed a two-way ANOVA to test whether there was an interaction effect between gender and role assignment (Kelly vs. Roberts). We considered an interaction significant if the p-value was less than .05. See supra note 74. The null hypothesis for each ability item is that there is no interaction between gender and role assignment.

\(^97\) See supra note 78 for an explanation of r and p-values.
wielded more power than the attorneys for the contractor.

It may be that women in less powerful positions tended to feel less confident than their male counterparts, but that this difference disappeared when women were in relatively powerful positions. A related possibility is that women's sense of competence trailed men's when they did not feel that their client was in the right. Because students tended to believe that Roberts was quite undeserving, advocating for him required them to bluff, and women ranked themselves very low in the ability to bluff compared to men.

The gender of the client may also have had an impact on the students’ attitudes, although the precise role of that factor was difficult to discern. The students’ instructions referred to Kelly and Roberts in gender-neutral terms. A day or two before the negotiation, after having received the instructions, students met their client, role-played by a second or third year student. Although roughly half of the students we surveyed actually represented a female contractor, by the time the students met her, most may have already formed a mental picture of a male contractor. In the videotaped negotiations, Roberts attorneys often referred to their client as if she were a man even though they had met and discussed the case with a woman client. Similarly, students tended to create a female homeowner regardless of the gender of the student who actually played Kelly. Though we are not sure exactly how, we think that the students’ perceptions of the parties’ genders, along with their perceptions of the equities of the situation, may have affected their motivation and sense of competence.98

2. Student Attitudes About Their Performance and Abilities Varied Depending on Whether They Worked in Same-Gender or Mixed-Gender Pairs in Planning for and Conducting the Negotiation

The gender of both the planning teammate and the negotiation opponent played a role in students’ self-assessments. For women who worked with other women, satisfaction with performance was correlated with “collaboration with teammate” ($r = .54, p = .0002$). For these women, satisfaction with performance was also highly correlated with “ability to work with numbers” ($r = .59, p = .0001$). It may be that when two women collaborated fruitfully, they felt better able to handle the mathematical aspects of the problem.

Men’s attitudes were influenced in a different way depending on whether they planned with another man or a woman. Satisfaction with performance

98 One study found that both male and female negotiators were influenced by the gender of their principals. When observed by a female principal, the negotiators were less contentious than when observed by a male principal. According to the authors, the negotiators behaved this way in an effort to meet their perceptions of the principal’s preferences. When they were not observed by the principal, those negotiators representing women were more contentious than those representing men, suggesting, according to the authors, a “chivalry effect.” The gender of the negotiator did not affect these findings. See Pruitt et al., supra note 47, at 264-75.
was positively correlated with "strength of client’s position" (r = .35, p = .05) and "client’s situation was sympathetic" (r = .47, p = .002) for male respondents who worked with women, and negatively correlated for male respondents who worked with men (r = -.34, p = .05; r = -.26, p = .05). This finding suggests that when men planned with women their feelings of success were linked to their feeling they were on the "right" side, but when planning with other men it was the challenge or gamesmanship aspects of the representation that made them feel successful.

The data indicate that students perceived negotiation counterparts of the same gender as being more fair and competent, perhaps attributing different motivations to their adversaries’ behavior depending on their gender. There were significant interaction effects for two of the situational variables between gender and gender of opponent. Both women and men more strongly agreed with the statement, “the other negotiator made many mistakes” when negotiating with a member of the opposite gender. Both women and men also more strongly agreed with the statement “the other negotiator was fair” when negotiating with a member of the same gender.

There was also a significant interaction effect for ratings of the “feminine” ability composite (the composite of abilities to develop rapport with colleagues and to listen to and pick up on others’ concerns). Both men and women rated these abilities higher after negotiating with someone of the same gender. Thus, it appears that men and, to a lesser extent, women felt better able to relate to someone of their own gender.

These findings suggest that people share greater trust and communicate more effectively with others of their own gender. Such findings are consistent with research demonstrating that people self-segregate into same-gender groups throughout their lives, beginning as young as 33 months. Perhaps, as some have suggested, this phenomenon is due to differences in male and female styles of interacting,100 which are discernible from early childhood.101

99. See Eleanor Maccoby, Gender and Relationships: A Developmental Account, 45 AM. PSYCHOLOGIST 513, 515 (1990). The author pointed out girls’ aversion to interacting with boys who, unlike other girls, were unresponsive to them; she noted that while girls were influenced by both other girls and boys, boys tended to be influenced by other boys but not girls. See id. at 515.

100. For an interpretation of differences between “feminine” and “masculine” styles of interacting based on another exercise in the Lawyering Program, see Davis, supra note 17. Based on a close reading and analysis of the transcripts of two client counseling sessions, Davis has illustrated two quite different models of lawyering. The “feminine” model “represents attention to a broader range of client concerns; participation in problem-solving, broadly defined; and less certain or quick resort to conceptual frames associated with expertise.” Id. at 1677. The “masculine” model, in contrast, “represents early reliance upon the conceptual frames associated with expertise; thorough attention to facts made relevant by reference to those frames; and a relatively narrow interpretation of the expert’s role in problem-solving.” Id. Though each style has its virtues, she argues, the feminine model is “not only conducive of cooperative problem solving, but also conducive of representation by which the client’s voice ‘signifies’ in the conceptualization of legal issues and in the mediation of legal norms.” Id.

101. See Maccoby, supra note 99, at 514.
VI. CONCLUSION

We have shown that women and men achieved comparable actual outcomes in this negotiation exercise, and that there were no gender differences in students’ perceptions of their outcomes and of their overall performance. Results indicate that women performed as well as men in this exercise, and did not perceive themselves to be less successful in the negotiation than did men.

When we explored further, however, a more complex picture emerged. Women and men obtained equivalent results, but women left the exercise feeling less confident than did their male peers. The gap between women’s and men’s ratings of their abilities was especially great among students who felt that they had performed poorly. Yet these disparities in self-perception were not as great as we had feared they would be, based on what we had heard from our students. It may be that our female students’ self-deprecating comments, made in critique sessions in the presence of other students and faculty, did not reflect their true feelings – that those comments were a form of what Deborah Tannen has called “ritualistic speech.” Perhaps our women students felt freer to reveal their self-confidence on an anonymous questionnaire than in front of their peers and a teacher.

It appears that the teaching strategies developed in Workways may have begun to address the gender-based disparities in the negotiation exercise. Our data demonstrate that women in the Workways section assessed their abilities higher than women in the non-Workways sections. Perhaps this was because Workways has created a pedagogical environment expressly aimed at valuing some traditionally invisible capabilities like interpersonal work and narrative construction. Moreover, there is evidence that the relatively lower self-assessments of some men in Workways, compared to the men in other sections, may have been accompanied by an increased focus on the self-reflection that enhances learning. These results suggest that Workways may be helping all students to develop more realistic self-assessments upon which to build their professional identities.

Our study entailed a comparison of the self-assessments of students in Workways with those of other students in the Lawyering Program. These two programs are more similar in the salient features of their pedagogy than they are different. We predict that even greater differences in students’ assessments of their abilities might emerge if the kinds of teaching interventions that we

102. See generally GENDER AND CONVERSATIONAL INTERACTION (Deborah Tannen ed., 1993).
103. In another example of “ritualistic speech,” a study of male and female first-year college students’ self-assessments revealed that, though grade point averages did not differ, women predicted their grades more accurately than did men, who overestimated their performance when predictions were made out loud to the examiner and subjects were told that predictions would be shared with the other participants. However, there were no significant differences in predictions when subjects gave the predictions in writing and were told that they would be kept confidential. See Kimberly A. Daubman et al., Gender and the Self Presentation of Academic Achievement, 27 SEX ROLES 187, 197-98 (1992).
have described were practiced in more traditional, large-class Socratic law classrooms. For example, future study might examine the consequences for students of teaching that emphasizes strategic, narrative, interpersonal, and ethical concerns compared to teaching in traditional law school classrooms.

Finally, our results are consistent with previous research findings that, while an examination of the category "gender" alone may not reveal large differences among students' attitudes, "[t]here are certain important ways in which gender is implicated in social behavior—ways that may be obscured or missed altogether when behavior is summed across all categories of social partners."104 We found that students' experiences varied depending on whether they were working with someone of the same or different gender, both in planning and in conducting the negotiation. Students more easily trusted someone of the same gender. The influence of the partner's gender may not have been the same for men and women, and may have been complicated by other factors, such as the presence or absence of the Workways teaching strategies and whether the student was assigned to represent the contractor or the homeowner.

We were surprised by the degree to which students' experiences and attitudes were shaped by which party they represented in the negotiation. For reasons that are not clear to us, women's sense of competence was significantly affected by whether they represented the homeowner or the contractor, while men's sense of competence remained constant across both groups. This finding suggests several areas of further inquiry: how does the client's gender influence the negotiator's sense of competence, and is this influence different for men and women? Does the strength of the client's moral and legal position affect men's and women's confidence differently? Thus, our inquiry has answered certain important questions regarding the factors that affect women's and men's perception of their own competence, but, like all empirical studies, it has also left a great number of relevant questions unanswered. Study of the contextual factors that affect women's and men's perceptions of their own competence is an important and as yet only superficially understood realm of inquiry.

104. See Maccoby, supra note 99, at 513.