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**IS IT REALLY A MAN’S WORLD? USING REAL-LIFE
NEGOTIATIONS TO REFRAME THE NEGOTIATION GENDER GAP**

MICHAEL CONKLIN*, ROYA CHOUPANI** & ERDOĞAN DOĞDU***

In business, you don't get what you deserve, you get what you negotiate.

-Chester Karrass

ABSTRACT

Much has been written regarding the gender negotiation gap. However, the existing literature frequently involves only hypothetical negotiations where the participants do not experience the effects of the negotiation as one would in real life. This first-of-its-kind study utilizes a dataset of over 1,000 negotiations from the television show Pawn Stars to analyze the role gender plays in negotiations. Negotiation best practices analyzed in this study include the willingness to walk away from the negotiation, use of a counteroffer, use of objective language, and the implementation of cognitive anchoring by making extreme initial offers. The results shed light on traditional notions of the gender negotiation gap, gender-based negotiation advice, and future research on the subject.

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INTRODUCTION

The ability to obtain favorable outcomes in a negotiation is a highly advantageous skill. A preferable initial salary negotiation and preferable annual salary negotiations can result in hundreds of thousands of dollars of extra pay over the course of a career.¹ Additionally, considering the term “negotiate” in a broad sense, the ability to acquire favorable negotiated outcomes can affect not only income and the price paid for houses and automobiles but also outcomes involving disagreements with coworkers, neighbors, professors, state authorities, or a spouse. Therefore, the gender negotiating gap has the potential to inflict discriminatory outcomes in nearly every facet of life.

This first-of-its-kind study utilizes a dataset of over 1,000 negotiations from the television show *Pawn Stars* to analyze the role gender plays in negotiations. The results call into question commonly accepted beliefs about the negotiation gender gap. For example, most studies on the negotiation gender gap consist of hypothetical negotiations in which participants do not experience the real-life consequences of their negotiated outcomes. As the findings of this study attest, drawing conclusions about real-world negotiations from such hypothetical negotiations is problematic. By using a dataset of real-world negotiations, this study provides a valuable framework from which to analyze negotiations and gender bias. The far-reaching ramifications of this study call into question the use of hypotheticals in negotiation studies, proposed solutions to the gender pay gap, how people negotiate differently depending on the gender of their opponents, and negotiation advice specifically offered to women. The methodology for this study allows for further analysis into how men and women negotiate in a real-world setting, such as willingness to walk away from the negotiation, use of a counteroffer rather than accepting a first offer, use of objective language, and implementing cognitive anchoring through an extreme initial offer. Additionally, this study analyzes an aspect of gender discrimination research that is often overlooked—the possibility of counterbalancing gender biases that produce seemingly gender-neutral results. Finally, the findings of this study help rebut the notion that the gender pay gap is simply the result of men’s superior negotiation ability and proclivity to engage in the practice.

1. Katie Shonk, *Women and Negotiation: Narrowing the Gender Gap in Negotiation*, HARV. L. SCH. PROGRAM ON NEGOT. (Aug. 17, 2023), <https://www.pon.harvard.edu/daily/business-negotiations/women-and-negotiation-narrowing-the-gender-gap/> [https://perma.cc/338U-ES4B] (“If men ask for and receive slightly higher starting salaries than women, for example, and continue to negotiate more assertively for themselves over the course [of] their careers, the gender gap can add up to millions of dollars over time.”).

LITERATURE REVIEW

Extensive research has been conducted regarding gender and negotiations dating back over fifty years.² Generally, this research finds that, absent formal training, male negotiators produce better negotiated outcomes when compared to their female counterparts.³ A 2009 study using first-year law students found that male students obtained significantly better results in negotiating a hypothetical employment discrimination claim.⁴ This was likely due to how male participants set higher targets and were better at uncovering their opponents' reservation values.⁵ A 2016 study found that male law students were able to negotiate significantly better results for both plaintiffs and defendants in a hypothetical personal injury case.⁶

A 2003 study regarding a hypothetical starting salary negotiation found that male subjects received higher salaries compared to female subjects.⁷ This was likely due to how men produced a higher initial salary request and reported higher levels of self-worth.⁸ A study involving recent graduates of the Carnegie Mellon Business School found that while fifty-seven percent of graduates negotiated their starting salary, only seven percent of female graduates did.⁹ A later study was conducted on a Carnegie Mellon Business School graduating class that received training on negotiating.¹⁰ This resulted in male and female graduates negotiating their starting salaries at nearly an equivalent rate, which produced a corresponding decrease in the gender wage gap in graduates.¹¹

The explanation for why women consistently receive disproportionately worse negotiated results than men is likely multifaceted and the result of systemic gender stereotypes. Gender stereotypes are often cited as a primary

2. Jens Mazei et al., *A Meta-Analysis on Gender Differences in Negotiation Outcomes and Their Moderators*, 141 PSYCH. BULL. 85, 85 (2015) (“Gender differences are among the most enduring issues in negotiation research.”). For multiple journal articles published in 1973—over fifty years ago—see Laura J. Kray & Leigh Thompson, *Gender Stereotypes and Negotiation Performance: An Examination of Theory and Research*, 26 RSCH. IN ORGANIZATIONAL BEHAV. 103, 114 (2005).

3. Shonk, *supra* note 1 (“Men tend to achieve better economic results in negotiation than women, negotiation research studies have found overall.”).

4. Russell Korobkin & Joseph Doherty, *Who Wins in Settlement Negotiations?*, 11 AM. L. & ECON. REV. 162, 166, 191 (2009).

5. Charles B. Craver, *Formal Training Does Not Always Eliminate Gender-Based Negotiation Differences*, 18 CARDOZO J. CONFLICT RESOL. 1, 2 (2016).

6. *Id.* at 15.

7. Lisa A. Barron, *Ask and You Shall Receive? Gender Differences in Negotiators' Beliefs About Requests for a Higher Salary*, 56 HUM. RELS. 635, 642 (2003).

8. *Id.* at 642-43.

9. Craver, *supra* note 5, at 3.

10. *Id.*

11. *Id.*

cause of the gender negotiation gap.¹² Behaviors perceived as stereotypically masculine include being confident, assertive, and braggadocious, while behaviors perceived as stereotypically feminine include being soft-spoken and sensitive.¹³ While the latter traits may be laudable in many instances, they are not ideal during a negotiation. And there are many other gender stereotypes that, if embodied, would likely contribute to the gender negotiation gap. Women are more transparent and less deceptive.¹⁴ Women are more risk averse.¹⁵ Women are more modest.¹⁶ Women are more eager to settle.¹⁷ Women use less dominant physical signaling.¹⁸ Women are more likely to be honest about their doubts.¹⁹ Women are more trusting than men.²⁰ Women are less competitive and more passive.²¹ Women are more likely to be negatively disposed to the negotiation process.²² Women are often perceived as being less confident because they use less assertive language and often preface statements with disclaimers such as “you know” and “I think.”²³ Women are more likely to behave in accordance with a communal, interdependent worldview, striving to achieve fairness for all, not just the best deal for themselves.²⁴ These gender stereotypes also likely affect negotiation outcomes because people generally act in accordance with ingrained stereotypes.²⁵ Additionally, people who think of themselves as effective negotiators are more likely to make ambitious requests, which is more likely to result in favorable outcomes through cognitive anchoring.²⁶

12. Shonk, *supra* note 1 (“Deeply ingrained societal gender roles lie at the root of the gender gap in negotiated outcomes, researchers have concluded.”).

13. *Id.*

14. Sean Valentine et al., *Gender and Ethics: Ethical Judgments, Ethical Intentions, and Altruism Among Healthcare Professionals*, 24 GENDER MGMT. 112, 114-15 (2009).

15. Daniel Del Gobbo, *The Feminist Negotiator's Dilemma*, 33 OHIO ST. J. DISP. RESOL. 1, 17 (2018).

16. Craver, *supra* note 5, at 12.

17. Gobbo, *supra* note 15, at 17.

18. *Id.*

19. *Id.* at 18.

20. *Id.* at 30.

21. Craver, *supra* note 5, at 13.

22. Gobbo, *supra* note 15, at 19.

23. Craver, *supra* note 5, at 11; Linda L. Carli, *Gender and Social Influence*, 57 J. SOC. ISSUES 725, 730 (2001).

24. Alison Crossley, *Clash of Independence and Interdependence Creates Conflict, Fuels Gender Inequality*, STAN. CLAYMAN INST. FOR GENDER RSCH. (May 29, 2014), <https://gender.stanford.edu/news-publications/gender-news/clash-independence-and-interdependence-creates-conflict-fuels-gender> [<https://perma.cc/3RTR-NWAF>]; Catherine Eckel et al., *Gender and Negotiation in the Small: Are Women (Perceived to Be) More Cooperative than Men?*, 24 NEGOT. J. 429, 441 (2008).

25. Madeline E. Heilman, *Gender Stereotypes and Workplace Bias*, 32 RSCH. ORGANIZATIONAL BEHAV. 113, 124 (2012).

26. Michael Conklin, *Combating Arbitrary Jurisprudence by Addressing Anchoring Bias*, 97 WASH. U. L. REV. ONLINE 1, 1 (2019).

Unfortunately, gender stereotypes do not just contribute to the gender negotiation gap because stereotypically male attributes are more likely to be beneficial in a negotiation. If this were the case, women could simply embody these stereotypically masculine traits and negotiate on equal grounds. But women who attempt to embody these stereotypically masculine behaviors are viewed as inappropriately straying from gender norms.²⁷ This “damned if you do, damned if you don’t” double standard whereby women who embody feminine traits are viewed negatively for producing subpar outcomes and women who embody male traits are viewed negatively as violating gender norms is well established and referred to as the female negotiators’ “double bind.”²⁸

In addition to the two previously mentioned problems women face regarding gender stereotypes, there is a third. Gender stereotypes in negotiations are not merely descriptive; they are also injunctive, affecting the predicted result of negotiating with a man compared to negotiating with a woman.²⁹ In other words, gender stereotypes may affect negotiated outcomes by affecting expected outcomes.³⁰ If a car salesman believes that men are better negotiators than women, then he is likely to enter into a negotiation with a woman expecting a better outcome than with a man. These expectations will likely result in more of a willingness to compromise with the male than with the woman, as the car salesman believes that the woman will be more willing to settle for a suboptimal deal.

This phenomenon is supported by empirical evidence. For example, a 2001 study measured gender differences in the ultimatum game.³¹ Both male and female subjects made lower offers when the opposing party was a woman, and both male and female subjects chose higher minimum acceptable offers when the opposing party was a woman.³² This strongly implies that both men and women believe that a woman is more likely to settle for a subpar outcome than a man.³³ Consequently, these gendered expectations resulted in men obtaining

27. Maria Konnikova, *Lean Out: The Dangers for Women Who Negotiate*, NEW YORKER (June 10, 2014), <http://www.newyorker.com/science/maria-konnikova/lean-out-the-dangers-for-women-who-negotiate>; Catherine H. Tinsley et al., *Women at the Bargaining Table: Pitfalls and Prospects*, 25 NEGOT. J. 233, 236-37 (2009); Mazei et al., *supra* note 2, at 86; Kristin Wong, *A Woman's Guide to Salary Negotiation*, N.Y. TIMES, <https://web.archive.org/web/20230128011318/https://www.nytimes.com/guides/working-womans-handbook/salary-negotiation-woman/> (last visited Oct. 22, 2023) (“Agreeable women are compensated less. . . . But when women trade their agreeableness for assertiveness, they can be viewed as unlikeable and demanding.”).

28. Gobbo, *supra* note 15, at 14-15; Mazei et al., *supra* note 2, at 86.

29. Mazei et al., *supra* note 2, at 86.

30. *Id.* at 87.

31. Sara J. Solnick, *Gender Differences in the Ultimatum Game*, 39 ECON. INQUIRY 189, 191 (2001).

32. *Id.* at 199.

33. *Id.*

better negotiated outcomes than women with men negotiating against women providing the most disproportionate result.³⁴

In addition to universal negotiation best practices, various types of advice targeted at women have been proffered for how women can best minimize the gender negotiation gap. Because of the stereotype that women are more community-oriented and less likely to engage in self-promotion, they are sometimes advised to conduct an “out-of-body” negotiation in which they imagine they are negotiating on behalf of someone else, when they are really negotiating for themselves.³⁵ Similarly, some experts suggest women view the task of negotiating less as something they are doing for themselves and more of something they are doing for all women, because by doing so, the behavior of women negotiating becomes more normalized.³⁶

Some experts suggest that women perform best when they are negotiating for something they are particularly passionate about.³⁷ Because people are unlikely to be passionate about getting an extra one or two percent in an annual raise, women may find it more advantageous to focus on a different aspect of their job that they are passionate about such as flexible work hours.³⁸ Some experts advise women to develop stereotypically male characteristics for the negotiation such as being assertive, confident, and unapologetic.³⁹ Conversely, other experts encourage women to use their feminine traits to their advantage and “negotiat[e] like a woman.”⁴⁰

METHODOLOGY

This study utilizes a dataset of 1,099 negotiations collected from *Pawn Stars*, a television show documenting the transactions of a pawn shop in Las Vegas, Nevada. The structure of the interactions on the show are largely consistent. A seller will come into the pawn shop with an item to sell and explain to the buyer what the item is. The buyer will then ask the seller how much he or she is looking to get for the item. At this point, either a negotiation over price

34. *Id.*

35. Craver, *supra* note 5, at 16.

36. Wong, *supra* note 27.

37. Mary Sharp Emerson, *Women Negotiation Skills: How Women Can Get What They Want in a Negotiation*, HARV. DIV. CONTINUING EDUC. (July 28, 2022), <https://professional.dce.harvard.edu/blog/women-negotiation-skills-how-women-can-get-what-they-want-in-a-negotiation/> [<https://perma.cc/SR8B-Y38B>].

38. *Id.*

39. Melanie Haniph, *7 Negotiation Tips for Women*, TOPRESUME (Oct. 15, 2021), <https://www.topresume.com/career-advice/8-negotiation-tips-for-women> [<https://perma.cc/5FA7-L53H>].

40. *See, e.g.*, Suzanne de Janasz & Victoria Mattingly, *Negotiate Like a Woman*, DUKE CORP. EDUC. (Dec. 2020), <https://www.dukece.com/insights/negotiate-like-a-woman/> [<https://perma.cc/TA5Z-EP99>].

follows or an expert is brought in to provide an assessment of the item's value after which a negotiation over price follows. The appraiser almost never hears the seller's initial offer before rendering his appraisal. The buyers consisted entirely of three males working for the pawn shop. The appraisers consisted of various subject matter experts, both male and female. After deleting forty-four rare encounters when the seller did not make the first offer, the dataset contained 1,045 negotiations.

Producing a formula to measure whether a seller received a good deal or not on an item that he or she sold to the pawn shop is difficult, as each item is unique. Using the deviation from the seller's or buyer's initial offer is problematic because perhaps the initial offer was abnormally high or low.⁴¹ Another option is to assume that, in the aggregate, the true value of the items brought in by women and men would average out and therefore it can be determined which group got the best deals by simply averaging all of the final prices for each group and stating that the group with the highest average final price got better deals on average. Such a methodology would fail to produce any meaningful results, as differences in lifestyles would naturally result in men and women having different items to sell. Additionally, there is a great variance in value among the items sold. In the dataset, final prices range from \$10 to \$700,000.

Fortunately, the structure of the negotiations in this dataset allows for another, far superior option to measure whether men or women are receiving better deals from these negotiations. The difference between the neutral expert's appraisal of the item and either the final negotiated price or, in the absence of an agreement, the highest offer from the seller is the best available proxy for negotiated outcome quality. A simple regression analysis was performed to measure whether there is a correlation between gender and this measure of a favorable negotiated outcome.

Further analyses were run on the data regarding other variables to measure additional, potential gender differences that could affect the end result. These variables include item size, willingness to walk away, the use of objective factors in the offer, reluctance to accept a first offer, and whether the initial offer asked for a relatively high amount.

To document how easy each item was to move,⁴² a simple 0-2 Likert scale was used, with 0 being roughly one cubic foot and under, 1 being up to four

41. To illustrate the problem with this method, imagine a woman who asked for \$1,000 and ended up settling for \$800. Then imagine a man with the same item asking for \$1,500 and settling for \$900. Simply measuring the deviation from the initial offer would make it appear as if the woman received the better deal, as she only came down 25%, while the man came down 67%. This is of course incorrect, as the man objectively got the better deal, having sold the same item for \$100 more. Attempting to measure how good of a deal the seller got by measuring the final price deviation from the buyer's initial offer is problematic for the same reason.

42. It was hypothesized that men would be more likely to bring in large items for sale and women would be more likely to bring in small items. This would mean that men, on average, would

cubic feet, and 2 being anything over four cubic feet. Because the point of measuring item size is to determine how motivated the seller likely was to not have to transport the item back home and continue storing it, logistically problematic features such as extreme fragility and the necessity of storing the item in a climate-controlled environment were also considered.

The willingness of the seller to walk away from the negotiation was measured to determine if gender differences exist in this area that could help explain potential gender differences in negotiated outcomes. To measure this, a record was created every time a seller walked away from a buyer's offer, and a simple ratio for how often men and women walked away from the negotiation was calculated.⁴³

The seller's proclivity for using objective factors in the negotiation was measured to determine if there exist gender differences in the use of this negotiation best practice to help explain the negotiated end results. This was measured by documenting whether the seller used objective language in his or her offer. For example, a seller who only stated "I'm asking for \$300" or "I think it's worth \$700" would be classified as subjective, while a seller who stated "I found one that recently sold at auction for \$800, so I'm asking for \$700" would be classified as objective. Simply stating the original price paid by the seller or stating an exact dollar amount needed for some reason unrelated to the item's value, while technically objective, is classified as subjective, as it does not align with the reasoning behind the best practice of using objective figures.⁴⁴

The seller's reluctance to accept a first offer and his or her willingness to ask for more in a counteroffer was measured to determine if there exist gender differences in the use of this negotiation best practice to help explain the negotiated end results. This was measured by documenting whether each seller accepted the buyer's initial offer or not. If a seller simply walked away from the buyer's initial offer without a counteroffer (did not accept the offer), that was

likely be more desperate to sell their item, as the logistics of taking the item back home and storing it is highly unappealing. Therefore, if the negotiated outcomes of men and women were equally beneficial and if men on average started from a worse negotiation position because of their disproportionately large items, one could still maintain that the male negotiators received better deals.

43. Instances in which the buyer was not interested and made no offer are not included in this calculation, as such an occurrence would not have provided the seller the opportunity to walk away. However, a seller who provided a counteroffer to a buyer's offer and then walked away from the negotiation after the buyer declines to accept the seller's counteroffer is considered to have walked away from the negotiation, because he or she walked away from the buyer's previous offer.

44. For example, stating "I'm asking \$600 for this item because that's exactly how much I owe in back taxes" is technically an objective statement. The amount owed in back taxes is something that is a universal truth and not subject to personal opinion. However, it is also irrelevant to the value of the item. The point of using objective statements is that they are relevant to the value of the item and, because they are objective, they produce agreement between the parties.

recorded as not offering a counteroffer. Note that this is related to, but distinct from, the willingness to walk away, which is a factor also analyzed.

Extensive research has shown that, through cognitive anchoring, the more a seller initially asks for, the more he or she is likely to receive.⁴⁵ To measure the propensity to ask for a high amount, three calculations were utilized. In the first, the seller's initial offer was compared to the expert's appraisal (which comes after the seller's initial offer chronologically in these negotiations). In the second, the expert's appraisal was compared to the seller's post-appraisal offer.⁴⁶ After discovering how skewed the results were due to some extreme outliers, a third calculation was conducted, measuring how many sellers' initial offers were equal to or less than the expert appraisal. While anchoring strategy is somewhat subjective, the overwhelming evidence suggests that an ideal initial offer would be at least above the expert appraisal, not at or below.⁴⁷

RESULTS

The primary analysis in this study produced no relationship between seller gender and favorable negotiated outcome. Not only was there no statistically significant gender difference, but the results were nearly perfectly split between genders, with males averaging a final price of 64.09% of the appraised value and women averaging 63.99%. Not surprisingly, this produced an incredibly small R^2 of 0.000002 and an incredibly high P-value of 0.98.⁴⁸

When analyzing the data for whether men were more likely to bring in large items compared to women, no statistically significant result was found. Averaging the results on this 0–2 Likert scale, with 0 being small items and 2 being large items, men averaged 1.34, and women averaged 1.31. This was far from statistically significant, with an R^2 of 0.0003 and a P-value of 0.56.

When analyzing the data for gender differences in the willingness to walk away from a buyer's offer, results approached statistical significance. Males walked away from a buyer's offer 33.5% of the time, and females walked away

45. Conklin, *supra* note 26, at 2.

46. Recall that the sequence of events in these negotiations is 1) seller's initial offer, 2) expert appraisal, 3) seller's post-appraisal offer, and 4) buyer's counteroffer. A different sequence of events occurs in negotiations that do not involve an expert appraisal, but for the purposes of measuring anchoring, a neutral measure was needed, so only negotiations with an expert appraisal were utilized.

47. Conklin, *supra* note 26, at 5.

48. R^2 range from 0 to 1 and describe how well the regression model explains the observed data. A high R^2 , such as 0.7, would mean that 70% of the negotiated results are explained by seller gender. P-values range from 0 to 1 and describe the probability of observed differences being the result of random chance. The lower the P-value, the more likely observed differences are not due to chance. Therefore, the incredibly low R^2 of 0.000002 and incredibly high p-value of 0.98 mean it is highly unlikely that the gender of the seller is affecting the negotiated result.

from a buyer's offer 26.6% of the time. The data here produced an R^2 of 0.003 and a P-value of 0.11.

When analyzing the data for whether men or women were more likely to use objective language in the negotiation, no statistically significant results were found. Males used objective language 8.7% of the time, while females used objective language 6.6% of the time. This did not reach statistical significance, with an R^2 of 0.0008 and a P-value of 0.35.

When analyzing the data for whether men or women were more likely to utilize a counteroffer in the negotiation, no statistically significant results were found. Males used a counteroffer 79.7% of the time, while females used a counteroffer 76.4% of the time. This did not reach statistical significance, with an R^2 of 0.0009 and a P-value of 0.38.

When analyzing the data for gender differences in higher initial offers, the results were highly disparate based on gender, and there were great variances within each gender as well. For the first measure, males averaged an initial offer that was 26.52 times greater than the expert appraisal, while women averaged 4.41 times greater than the expert appraisal. For the second measure, males averaged a post-appraisal offer that was 18.94 times greater than the expert's appraisal, while women averaged 4.03 times greater. For the third measure, 26.06% of the initial offers from males were at or below the expert's appraisal, while 32.85% of women's initial offers were.

DISCUSSION

The primary finding of this research—that seller gender was not a factor in negotiated outcome—elicits discussion predominantly for how counterintuitive it was. The existing literature on negotiations and gender strongly support the conclusion that, on average, women receive worse outcomes than men.⁴⁹ There is evidence to suggest that after women receive negotiation training these differences are largely mitigated,⁵⁰ but this is irrelevant to the present study, as there is no reason to believe that the female sellers availed themselves of such negotiation training. One potential explanation for this counterintuitive result involves the difference between a hypothetical negotiation and a real-world negotiation. Most studies that purport to demonstrate a negotiation gender gap involve a purely hypothetical exercise.⁵¹ Under such a methodology, there is no incentive for participants to negotiate well, because whether they negotiate a great outcome or a poor outcome, they do not experience the benefits or costs of this result. But in a real-life negotiation, there is great incentive to reach a favorable result. Perhaps women are simply responding logically to the

49. *See supra* notes 2-11 and accompanying text.

50. *See supra* notes 9-11.

51. Kray & Thompson, *supra* note 2, at 128-34 (overviewing various studies involving negotiation tactics, such as surveys, simulations, puzzles, scenarios, and games).

incentives put before them and choose to only negotiate aggressively when real money is on the line. This would be consistent with how women report they do not like to negotiate, compared to men.⁵² Meaning, since men are more likely to enjoy negotiating, they would naturally be more likely to invest fully into a hypothetical negotiation than a woman.

The differences between a hypothetical negotiation and a real-world negotiation may also affect the other side of the negotiation gender gap equation. Perhaps in real-life negotiations, participants are more likely to be focused on the bottom line and therefore pay less attention—consciously or otherwise—to irrelevant factors, such as gender. For example, perhaps a man negotiating against a woman in a hypothetical negotiation with no consequences would be more likely to allow a bias against women to affect the negotiation process. Conversely, perhaps in a real-world negotiation, this same man would be more likely to focus his efforts on the bottom line, largely ignoring gender.

While analysis of real-world negotiations, such as that of this study, have the advantage of participants who experience the consequences of their negotiation, there are also some disadvantages when compared to a study using a purely hypothetical survey. For example, the utilization of a survey allows for variables to be more easily controlled for. One survey version may refer to negotiating with a female, while another version refers to negotiating with a male while keeping all other variables constant. This is simply not possible when analyzing real-world negotiations, such as in this Article. Each person had a different item, used different language and tone during the negotiation, came in on a different day or at least a different time of day, and had different motivations for selling their items.

Despite not being able to measure as many variables as research utilizing a hypothetical survey, this study was able to analyze some additional variables. The size of the item, willingness to walk away from the negotiation, objective nature of language used, willingness to respond with a counteroffer, and willingness to present a high offer at the beginning were all measured. The results provide further information regarding gender differences in negotiations and help potentially explain the counterintuitive results of this study.

The size of the item negotiated for was documented in this study because this could affect the seller's motivation to sell. While someone who brings in a rare coin may have no problem rejecting a low offer and trying to sell elsewhere, someone who brings in an antique bicycle may be less inclined, due to the logistical hassle of transporting it back home, storing it, and transporting it to other potential sellers. It was initially hypothesized that men would be more

52. Gobbo, *supra* note 15, at 19.

likely than women to try to sell large items.⁵³ This would be relevant because if there were no ultimate gender differences in negotiated outcomes and men were more likely to be desperate to sell due to the size of their item, this would mean that it could still be argued that men got the “better” outcome.⁵⁴ However, this hypothesis must be rejected since no significant gender difference was found regarding item size.

The willingness of the seller to walk away from the negotiation was measured in this study because this is an important aspect of negotiating.⁵⁵ Here, while the threshold of statistical significance was not reached, a descriptive difference was found. Men were over 25% more likely to walk away from the buyer’s final offer than women. This result is of limited value, however, because while the willingness to walk away at a certain point is a valuable negotiation skill, it is impossible to assess whether the men or women in this study implemented best practices regarding walking away. Perhaps the men walked away from offers that they should have accepted. Perhaps the women accepted offers they should have walked away from. Perhaps the greater proclivity of men to walk away was picked up on by the buyer and therefore resulted in better deals in certain instances. The present study does not allow for definitive answers to these potential scenarios.

Negotiators are encouraged to use objective standards in communicating their offers.⁵⁶ This study documented in how many instances men and women demonstrated this negotiation best practice. While slightly more men in this dataset used objective language in their offer, the results did not approach statistical significance.

This study recorded whether sellers responded to the buyer’s initial offer with a counteroffer. The results showed that men were slightly more likely than women to make a counteroffer, but the results did not approach statistical significance. It is important to note that if a seller simply walked away from the buyer’s initial offer without a counteroffer, that was recorded as not offering a counteroffer. One could attempt to criticize including these instances on the grounds that it is not universally a bad negotiation strategy to immediately walk away from a buyer’s first offer. For example, if someone has an item he or she

53. In hindsight, this was perhaps based on the author’s gender stereotypes whereby women would be selling jewelry and fine china whereas men would be more inclined to bring in large, unwieldy items.

54. In other words, if men could obtain the same negotiated outcomes as women, despite negotiating from a relatively weaker position, then given the circumstances, they could be said to have obtained a better negotiated outcome.

55. *5 Signs It’s Time to Stop Negotiating and Walk Away*, SPIRO (May 19, 2022), <https://spiro.ai/blog/5-signs-its-time-to-stop-negotiating-and-walk-away/> [<https://perma.cc/Q3DA-YV3G>].

56. Rodney Jones et al., *Negotiation Strategies*, OKLA. ST. U. (Feb. 2017), <https://extension.okstate.edu/fact-sheets/print-publications/agec/negotiation-strategies-a.pdf> [<https://perma.cc/M9LK-5W7R>] (“Negotiate on the basis of objective criteria.”).

believes to be worth \$10,000 and the buyer informs him or her that it is only worth \$20, if the seller nevertheless values the item at \$300 for sentimental reasons, it would be futile to counter with, say, \$500 in the hopes of meeting somewhere in the middle. However, excluding instances in which the seller walked away from a buyer's initial offer without a counteroffer would mean many instances of a poor negotiation practice would be ignored. For example, if a seller has a hard \$200 walkaway point and the buyer offers \$100, immediately walking away is a poor strategy. This is because the option of walking away always remains an option at any point, so other strategies might as well be attempted first. In this hypothetical, for example, perhaps by better demonstrating the value of the item to the buyer, the seller could get him up to \$200.

The principle of starting out with an extreme first offer—extremely high for the seller and extremely low for the buyer—is another standard negotiation principle. Studies generally show that this results in a more advantageous counteroffer and ultimately a better final negotiated outcome.⁵⁷ This is due to the powerful effect of cognitive anchoring.⁵⁸ People become “anchored” to these numbers, and it is hard for them to deviate too far from them.⁵⁹ The effects of cognitive anchoring apply to numerous situations outside of negotiations as well. In the legal context, for example, mock jury studies demonstrate how the plaintiff's attorney simply asking for money results in significantly higher juror awards.⁶⁰ Likewise, criminal trial judges appear to be heavily anchored to the prosecutor's sentence request, whereby the longer sentence they request, the longer sentence the defendant receives.⁶¹ The anchoring effect is so powerful that it even appears to affect juror outcomes when the anchor is very subtle.⁶²

57. Katie Shonk, *Negotiation Advice: When to Make the First Offer in Negotiation*, HARV. L. SCH. PROGRAM ON NEGOT. (Aug. 24, 2023), <https://www.pon.harvard.edu/daily/negotiation-skills-daily/when-to-make-the-first-offer-in-negotiation/> [<https://perma.cc/B8KW-WG2K>].

58. Conklin, *supra* note 26, at 1.

59. *Id.*

60. Allan Raitz et al., *Determining Damages: The Influence of Expert Testimony on Jurors' Decision Making*, 14 L. & HUM. BEHAV. 385, 387 (1990) (reporting the findings of a mock jury study in which the only variable change was whether the plaintiff's attorney asked for \$10,000, \$75,000, \$150,000, or a request for “substantial compensation” and the mock juror results averaged \$18,000, \$62,800, \$101,400, and \$74,600, respectively).

61. Birte Englich & Thomas Mussweiler, *Sentencing Under Uncertainty: Anchoring Effects in the Courtroom*, 31 J. APPLIED SOC. PSYCH. 1535, 1538-40 (2001) (reporting the findings of a survey administered to judges in which the hypothetical prosecutor either asked for a two-month sentence or a thirty-four-month sentence; the former resulted in an 18.78 month average, and the latter resulted in a 28.7 month average).

62. Conklin, *supra* note 26, at 4 (describing the results of a study in which mock jurors read a narrative about a suspect that either contained subtle references to low numbers like First Street, March second, and being apprehended in three minutes, or high numbers like Eighty-First Street, March thirty-first, and being apprehended forty-five minutes later; the former group sentenced the

This anchoring effect also causes one to assess negotiation success based on how far he or she was able to get the other side to deviate from its initial offer.⁶³ For example, a buyer is more likely to believe \$500 is a good final price if the seller's initial offer was \$900 rather than \$550.⁶⁴ Additionally, in instances with a low-information opponent, one may presume—subconsciously or otherwise—that such an extreme initial offer must in some way be indicative of the true value.⁶⁵ This is especially true if the extreme initial offer is a precise number, such as \$4,860, and not a round number, such as \$5,000.⁶⁶ The practice of starting out with an extreme offer is also consistent with the previously mentioned basic principle of never accepting a first offer. Meaning, if one's opponent is unlikely to accept the first offer and is instead going to counteroffer, one should start off with an extreme initial offer so that there is ample room to negotiate down or up to the inevitable counteroffer.

However, there is some evidence to suggest that an initial offer can be so extreme as to be counterproductive to the negotiated outcome. For example, one study found that while extreme initial offers do result in more advantageous final agreements, they also increase the likelihood of the other side walking away or ultimately reaching an impasse.⁶⁷ The present study consistently found that men acted according to the general practice of starting out high as a seller. Men used higher initial offers compared to the value of the item, used higher offers after hearing the appraised value of the item, and were more likely to respond to the appraiser's assessment with an offer that was higher than the assessed value.

While not always approaching statistical significance, it is a notable finding of the present research that men acted in accordance with negotiation best practices better than women in every metric measured. They were more willing to walk away from the negotiation, more likely to use objective language in their offer, more likely to counteroffer, and more likely to implement an extreme initial offer. Nevertheless, the men did not receive any better negotiated outcomes than the women. This is an intriguing result because, absent any gender bias, one would expect that—through the more frequent use of negotiation best practices—the men would ultimately receive better negotiated outcomes than the women. This peculiar finding could be explained in different ways. Perhaps the people negotiating on behalf of the pawn store were

hypothetical defendant to 7.4 months, while the latter group sentenced the hypothetical defendant to 9.7 months).

63. Michael Conklin, *Precise Punishment: Why Precise Punitive Damage Requests Result in Higher Awards Than Round Requests*, 10 MICH. BUS. & ENTREPRENEURIAL L. REV. 179, 180-81 (2021).

64. *Id.*

65. *Id.* at 181-82.

66. *Id.* at 183-184.

67. Martin Schweinsberg et al., *Starting High and Ending with Nothing: The Role of Anchors and Power in Negotiations*, 48 J. EXPERIMENTAL SOC. PSYCH. 226, 226 (2012).

exercising a slight bias against the male sellers—or in favor of the female sellers. Perhaps, because the people negotiating on behalf of the pawn shop were experienced negotiators, tactics such as high asking prices and objective language were rendered ineffective.

The dataset used for this study consisted entirely of negotiations set in a pawn shop. This means that the buyers were always experienced negotiators. The sellers, however, were likely inexperienced negotiators for the most part. This seller–buyer experience disparity may affect how gender disparities manifest. For example, perhaps the experience of the people negotiating on behalf of the pawn shop means that they were better able to focus on the bottom line and not be distracted by irrelevant details such as the gender of the seller. There is evidence to suggest that familiarity helps reduce other cognitive biases,⁶⁸ so perhaps it reduces gender bias as well.

The pawn shop setting also may introduce another interesting disparity between buyer and seller—that of a disparate power dynamic. The level of motivation to sell on behalf of someone who enters a pawn shop is likely higher than that of an average seller. Just the fact that the seller has taken affirmative steps to go to the pawn shop and ask if the shop wants to buy his or her item demonstrates eagerness to sell before the buyer has ever expressed an interest to buy. Simply put, the sellers in this dataset likely needed the money far more than the pawn shop needed one additional item. But it is difficult to imagine exactly how the existence of this power dynamic would affect negotiated outcomes based on gender. Perhaps in more equal negotiations without an extreme power dynamic, negotiators are disposed to view women as less formidable opponents and therefore are more reluctant to concede ground. But with the negotiations in this dataset, all of the sellers were viewed as desperate to sell, and therefore that aspect of gender was effectively removed from the equation. This would help explain the results of why women generally acquire worse results than men in most of the literature (studies designed to measure negotiation outcomes are generally crafted to create a fairly equal power dynamic), while women produced similar results to men in the present study.

68. Yi Zong & Xiaojie Guo, *An Experimental Study on Anchoring Effect of Consumers' Price Judgment Based on Consumers' Experiencing Scenes*, FRONTIERS PSYCH. (Feb. 8, 2022), article no. 794135 (“Consumers who have purchasing experience or are more familiar with the question to be judged make more rational price estimates, and they rely on their own experience with little information processing, while consumers without background knowledge are more likely to be influenced by information like prices, cognition degrees, emotions, etc. when making purchase decisions.”); Mark W. Bennett, *Confronting Cognitive “Anchoring Effect” and “Blind Spot” Biases in Federal Sentencing: A Modest Solution for Reforming a Fundamental Flaw*, 104 J. CRIM. L. & CRIMINOLOGY 489, 509-10 (2014) (comparing two anchoring studies that found bankruptcy judges [specialists] demonstrated less anchoring bias than magistrate judges [generalists]. However, the difference between these two groups was slight).

As described in the methodology section, measuring the relative advantageousness of the negotiated outcome by comparing the appraised value to the final price (or, in the event an agreement was not reached, comparing the appraised value to the buyer's highest offer) is unquestionably the best method available with this dataset. However, there are still potential problems with using this metric, as there remain numerous variables that could affect the advantageousness of the negotiated outcome. Perhaps this particular pawn shop just happened to have less desire to acquire the items of one gender over that of the other. Or perhaps the appraisers' estimates tended to favor one gender over the other. Since the sellers came in on different days and at different times of the day, perhaps random variations in seemingly trivial factors such as buyer level of hunger, weather, or recent performance of a local sports team could affect results, as all of these factors have been shown to significantly affect judgement.⁶⁹

Note that gender differences are the result of a combination of factors. Therefore, just because this study did not produce a net gender difference does not mean that no gender differences and no gender discrimination was at play. This is because there could have been counterbalancing gender differences at play. For example, perhaps the appraisers produced estimates biased against female sellers but the pawn shop buyers had similar biases in favor of the female sellers. In such an instance, the end result would be neutral, despite multiple levels of gender discrimination at play.

Similar to the consideration of potential counterbalancing factors, the presence of just one aspect of the negotiation that disproportionately favored female sellers means that, without the existence of that factor, female sellers would have received worse negotiated outcomes. For example, imagine that the buyers just happened to be more interested in the items presented to them by female sellers compared to the items brought in by male sellers. Perhaps the buyers viewed the items from male sellers as more likely to lose value, harder to sell, more difficult to maintain, or similar to items they already have at the store. If true, this would mean that there likely exist some offsetting gender differences that disadvantage female sellers. Otherwise, the female sellers—with their more in-demand items—would average better results.

The gender negotiation gap is widely cited as a leading cause for the gender pay gap.⁷⁰ But unfortunately for women, explanations for the gender pay gap

69. See, e.g., Michael Conklin, *The Alford Plea Turns Fifty: Why It Deserves Another Fifty Years*, 54 CREIGHTON L. REV. 1, 4 (2020) (“Variables such as the makeup of the jury, officer errors in gathering evidence, jurisdiction where the [incident] occurred, and quality of legal representation all affect legal outcomes. Even factors as trivial as how hungry the judge is, the recent performance of a local sports team, and the weather affect trial outcomes.”).

70. See, e.g., *Women Don't Ask: Negotiation and the Gender Divide*, U.C. DAVIS ADVANCE, <https://ucd-advance.ucdavis.edu/post/women-dont-ask-negotiation-and-gender-divide> [<https://perma.cc/3BV3-55EZ>]; Shonk, *supra* note 1; Harwant Khush, *Gender Pay Disparity: Women Don't*

likely go beyond just differences in negotiation propensity and ability. Even if female new hires did negotiate with the same frequency and techniques as men, there is evidence to suggest they would nevertheless receive disproportionately unequal outcomes. As previously discussed, women find themselves in a double bind when negotiating because female traits can be viewed as poor negotiation strategy but adopting masculine traits can result in being punished for violating gender norms.⁷¹ Also previously discussed, just the expectation that women are not skilled negotiators may result in more of an unwillingness to offer concessions to them during a negotiation, thus resulting in suboptimal negotiating results compared to their male counterparts.⁷² Additionally, the ability to effectively negotiate is an essential skill for some high-paying professions, such as an attorney.⁷³

The issue of gender stereotypes covered in the literature review may also play a role in the gender pay gap independent of gender disparities in the propensity to negotiate salary. This is because stereotypically masculine traits are more likely to be viewed as desirable than female traits for many high-paying professions.⁷⁴ For example, studies show that both males and females prefer male attorneys.⁷⁵ This is likely due to stereotypical notions that women are less confrontational and assertive, two traits that are largely inconsistent with successful legal representation.⁷⁶ And indeed, in jobs that more closely mirror stereotypically feminine traits, the gender pay gap is largely mitigated.⁷⁷ For example, there is an inverse gender pay gap—where women make more than men—in professions such as event planner, social worker, home health aide, medical office secretary, and occupational therapy assistant.⁷⁸

The results of this study should not be interpreted to mean that the gender negotiation gap is a moot point unworthy of further discussion. To the contrary, the findings of this research point to the need for future analysis regarding the novel issues raised. For example, this study found that males were more likely to adhere to negotiation best practices. This indicates that more formal training in negotiation is needed in standard curriculum. Such instruction provides

Negotiate!, TERO INT'L, INC., <https://www.tero.com/articles/gender-pay-disparity-women-dont-negotiate.php> [<https://perma.cc/52D5-AJA2>].

71. Gobbo, *supra* note 15, at 14-15.

72. *See supra* notes 29-34 and accompanying text.

73. Craver, *supra* note 5, at 19.

74. *Id.* at 12-13.

75. Shari V.N. Hodgson & Burt Pryor, *Sex Discrimination in the Courtroom: Attorney Gender and Credibility*, 71 *WOMEN LAWS. J.* 483, 483-86 (1985); Michael Conklin, *The Effects of Race and Gender on Attorney Selection*, 20 *RUTGERS RACE & L. REV.* 1, 6 (2018).

76. Conklin, *supra* note 75, at 7.

77. Evan Thompson, *10 Jobs Where Women Earn More than Men*, *BEST COLLS.* (June 24, 2022), <https://www.bestcolleges.com/careers/jobs-where-women-earn-more-than-men/> [<https://perma.cc/Z65P-ULGJ>].

78. *Id.*

numerous benefits to women. Not only does it likely lead to better negotiated outcomes in financial transactions but also better outcomes in social interactions when the art of persuasion is needed.⁷⁹ Additionally, negotiation instruction helps women become more comfortable with rejection, which in turn helps build confidence.⁸⁰ It helps women become more comfortable with constructive conflict and more comfortable voicing dissent.⁸¹ The improved confidence from negotiation training would also likely help reduce the raw gender pay gap by instilling the confidence in women to apply for promotions at a higher rate.⁸² A recent study suggests that negotiation instruction among women produces long-term benefits such as lower drop-out rates and higher attendance in academic settings.⁸³ Finally, negotiation training would likely produce a meta-benefit in that it would help eradicate harmful gender myths, such as believing that women are inherently inferior at negotiating.⁸⁴ This would greatly benefit women applying for jobs because negotiation and persuasion skills are a vital aspect of many jobs. If women are viewed as inferior to men in these areas, this significantly hurts their chances of acquiring these jobs.

Negotiation training is particularly important in law schools, as lawyers are constantly engaging in the practices of negotiating and persuading. This includes convincing opposing counsel to accept a settlement offer, an appellate court to take a case, a judge to dismiss or allow a piece of evidence, a jury to rule for one's client, and even a client to reject a deeply ingrained false notion about the legal system.⁸⁵ Negotiation training in law school also helps students move

79. Amanda Dodge, *Why Your Students Need Strong Negotiation Skills*, OZOBOT (Oct. 29, 2019), <https://ozobot.com/why-your-students-need-strong-negotiation-skills/> [<https://perma.cc/JP9D-67BJ>].

80. *Id.*

81. Anthony P. Ammeter et al., *The Impact of a Collegiate Course in Bargaining and Negotiation on Students' Perceptions of Their Own and Others' Attitudes and Behaviors: An Exploratory Study*, 4 AM. J. BUS. EDUC. 31, 37 (2011).

82. Tara Sophia Mohr, *Why Women Don't Apply for Jobs Unless They're 100% Qualified*, HARV. BUS. REV. (Aug. 25, 2014), <https://hbr.org/2014/08/why-women-dont-apply-for-jobs-unless-theyre-100-qualified> [<https://perma.cc/BQT4-5XWQ>] (explaining that, on average, men will apply for a position when they only meet 60% of the qualifications but women will only apply if they meet 100% of the qualifications. Therefore, by building confidence and teaching women to be more comfortable with making bold requests, negotiation instruction would likely help embolden women to apply for more promotions).

83. David Evans, *Want to Keep Girls in School? Teach Them to Negotiate*, WORLD BANK BLOGS (June 4, 2018), <https://blogs.worldbank.org/impac evaluations/want-keep-girls-school-teach-them-negotiate> [<https://perma.cc/ZL5D-469G>].

84. Instruction on negotiation would result in more business leaders (the people who do the hiring) who understand women are just as capable as men at negotiating.

85. John Lande, *Negotiation*, INST. FOR ADVANCEMENT AM. LEGAL SYS., <https://iaals.du.edu/educating-tomorrows-lawyers/projects/resources/negotiation> [<https://perma.cc/5MM2-9JW9>] (“Law schools need to do an especially good job of teaching negotiation; it is a significant part of the work of virtually all practicing lawyers, regardless of whether they handle civil or criminal

beyond the practice of simply applying the law to the facts and into the more pragmatic aspects, such as the inherently subjective nature of the legal system.⁸⁶

CONCLUSION

The findings of this study are particularly timely, as society appears to be at a critical juncture regarding a convergence of factors in the gender pay gap. More women are entering elite roles in which their salaries are largely the result of a negotiation process and not a uniform amount.⁸⁷ The steady decline of unions means that more and more workers are responsible for negotiating their own salaries and benefits.⁸⁸ The increased rate of job turnover also increases the importance of salary negotiation.⁸⁹ Finally, there currently exists uncertainty regarding the ability to use negotiation ability as a “factor other than sex” affirmative defense under the Equal Pay Act.⁹⁰

This study provides a valuable framework for addressing the above issues. The findings support the conclusion that the gender pay gap is not just the result of men being better negotiators. They also emphasize the importance of not using hypothetical surveys to draw conclusions about real-world negotiation outcomes. The far-reaching ramifications call into question the use of hypotheticals in negotiation studies, proposed solutions to the gender pay gap, how people negotiate differently depending on the gender of their opponent, and negotiation advice specifically offered to women. The possibility of counterbalancing gender biases to produce seemingly gender-neutral results is also discussed.

matters or whether they do litigation or transactional work. Faculty can help students develop professional identities through simulated experiences showing how negotiations fits into legal practice.”).

86. *Id.*

87. Jo Constantz, *Women More Likely to Be Offered \$100,000 Jobs than Men*, BLOOMBERG L. (Mar. 14, 2023), <https://news.bloomberglaw.com/social-justice/women-more-likely-to-be-offered-100-000-jobs-than-men> [<https://perma.cc/ZPE7-WKWM>].

88. Deborah A. Small et. al., *Who Goes to the Bargaining Table? The Influence of Gender and Framing on the Initiation of Negotiation*, 93 J. PERSONALITY & SOC. PSYCH. 600, 600 (2007).

89. *Id.*

90. See, e.g., Alice H. Wang, *Salary Negotiation Can Provide Affirmative Defense to Equal Pay Act Claim as “Factor Other Than Sex”*, LITTLER (Dec. 9, 2021), <https://www.littler.com/publication-press/publication/salary-negotiation-can-provide-affirmative-defense-equal-pay-act-claim> [<https://perma.cc/F3SF-QD2P>]; see also *The Paycheck Fairness Act: Closing the “Factor Other Than Sex” Loophole to Strengthen Protections Against Pay Discrimination*, NAT’L WOMEN’S L. CTR. (Mar. 2019), <https://nwlc.org/wp-content/uploads/2019/03/PFA-Closing-the-Loophole-v2.pdf> [<https://perma.cc/PTT6-RYZ4>].

