



# PUSH FORWARD REPORT

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Push Forward Subcommittee

## REPORTS

<b>SPEAKING WITH INFLUENCE .....</b>	<b>2</b>
<b>WORK-LIFE BALANCE – IMPACT ON TALENT REVIEWS AND ATTORNEY DEVELOPMENT .....</b>	<b>8</b>
<b>VAGUE FEEDBACK .....</b>	<b>11</b>

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# Speaking with Influence

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*Materials:* [Speaking with Influence Slides](#)

## **Summary**

Women are under-represented in Science, Technology, Engineering, and Mathematics (STEM) fields, including in the ranks of patent and licensing attorneys. This is true at all levels, but particularly in upper management. In addition, women who are in STEM fields may have less influence than their male counterparts. Upper management may systematically discount contributions of women, perhaps unintentionally. Women may be reluctant to voice an opinion for fear that their voices will be ignored or drowned out, or that they may be unable to find a way into the conversation. This discounting and speaking-up double bind harms organizations by depriving them of valuable ideas and preventing women from fully contributing to their workplaces.

In order to help organizations recognize and value the contributions of women, the focus of this paper is to:

- I. Provide recommendations for what companies/law firms can do to support women in speaking with influence*
- II. Recognize women's communication styles and biases and understand the factors associated with the behavior*
- III. Work on strengthening the communication style of women*

## **I. Recommendations for What Companies/Law Firms Can Do to Support Women in Speaking with Influence**

- Facilitate Informal Interactions - informal interactions are where relationships are developed, nurtured, and supported.

- Take time to get to know co-workers, superiors, and clients. The more women push themselves to create deeper relationships, the better these relationships will work for them.
- Create other informal settings for men and women to interact (e.g., lunch) to discuss business issues in a more relaxed setting, helping women and men share perspectives and hash out issues so when both reach the conference room there's a shared sense of support and more well-rounded solutions as decisions are made.
- Stop an interrupter and speak up to say something like:
  - “I want to hear what she is saying” or “I’d like her to be able to finish her point,” as a polite way to point out the behavior while showing support for a female colleague that can bolster her confidence.
- Instituting a no-interruption rule while anyone — male or female — has the floor.
- Adopt practices that focus less on the speaker and more on the idea. For example, allow employees to submit suggestions and solutions to problems anonymously. Proposals can be evaluated, feedback can be given to participants, and then the best plans can be implemented. This can encourage women to present their ideas without the fear of interruption or having their ideas publicly dismissed.
- Include women in the discussion by asking them - “What do you think?” Suggestions also include asking for feedback as opposed to dictating. The Shine a Light process- pioneered by the White House staff and other organizations-offers practical tools for leaders who want to validate and support contributions of women.

## **II. Recognize Women’s Communication Styles and Biases and Understand the Factors Associated with the Behavior**

- Gender differences in communication styles and influence tactics have created stereotypical gender roles, and some of these stereotypes have even had negative effects

on women's behaviors and perceptions in the workplace. These negative effects can have consequences ranging from unequal pay to lack of promotions.<sup>1</sup>

- Socially constructed gender stereotypes are learned and engrained at a very young age and are reinforced through socialization throughout our lives. Boys learn to display their abilities and knowledge and emphasize their status, while girls learn to downplay ways their achievements in order to build rapport.
- Stereotypical gender roles continue into adulthood and can also act as guidelines for workplace conduct as they subconsciously dictate how a person is expected to communicate and act based on their gender.<sup>2</sup>
  - Common Stereotypes of Women: emotional, friendly, sympathetic, sensitive, cheerful, irrational, collaborative
  - Common Stereotypes of Men: dominant, forceful, aggressive, self-confident, rational, unemotional
- There is a perception that women tend to speak up less, apologize more, downplay their achievements, and often weaken their statements using hedges and questions to soften the words' impact - all of which impact their career success.<sup>3</sup> Examples of these include:<sup>4</sup>
  - *Softening approach (aka asking for permission)* – “When you get a chance, will you please draft and send me the document at your convenience” versus “Please draft and send me the document by tomorrow;” other verbal patterns include: “I think”, “Can I”, “If you don't mind”. Tentative communication may signal that the speaker feels uncertain or is lacking in confidence. Colleagues are likely to discount what they have to say after such a lead-in, no matter how brilliant the follow-up analysis.<sup>5</sup>

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<sup>1</sup> <http://www.todaysworkplace.org/2006/12/01/gender-stereotyping-in-the-workplace-and-the-discrimination-it-creates-danica-dodds/>.

<sup>2</sup> “Women ‘Take Care’, Men ‘Take Charge’: Stereotyping of U.S. Business Leaders Exposed”, Catalyst, 2005, Table 1.

<sup>3</sup> <http://blogs.the-ceo-magazine.com/guest/5-ways-women-sabotage-their-communication-workplace>.

<sup>4</sup> <http://blogs.the-ceo-magazine.com/guest/5-ways-women-sabotage-their-communication-workplace>.

<sup>5</sup> <http://files.mwe.com/info/pubs/Kramer-WBAIFall2011.pdf>.

- *Downplaying achievements* – To avoid the fear of self-promotion, a woman may use the term “we” when referring to an achievement when they really mean “I.” A study by the Montana State University found that women are reluctant to talk about their own accomplishments because cultural norms promote modesty. And society disapproves of women who are perceived to be bragging about themselves.<sup>6</sup> Women can receive the proper recognition by being specific about their contributions, while giving appropriate credit to the team.
- *Apologizing more* – Women tend to apologize more than men and have a lower threshold for what warrants an apology. For example, women may apologize for situations that are not their fault or out of their control, or for voicing an opinion that don’t merit an apology to begin with. Women may start an email with, "I’m sorry to bother you, but..." Constantly apologizing can have negative side effects, from giving the appearance of incompetence to annoying colleagues. The most detrimental and lasting side effect of over-apologizing is how it corrodes a woman’s self-image.<sup>7</sup> As women, we need to find another phrase besides “I’m sorry,” to express sympathy and connection.<sup>8</sup>
- Such conduct may be perceived as a lower self-confidence in what they are saying or a fear of being wrong, which can contribute to their perceived inferior status to male managers in the workplace.
- Gender differences in communication styles put women at a disadvantage when interacting with others, thus leaving the impression that men are more confident and capable as leaders.

### III. Work on Strengthening the Communication Style of Women

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<sup>6</sup> <http://www.montana.edu/news/12368/bragging-rights-msu-study-shows-that-interventions-help-women-s-reluctance-to-discuss-accomplishments>.

<sup>7</sup> <http://www.forbes.com/sites/melodywilding/2016/09/06/stop-over-apologizing-how-to-quit-saying-sorry-so-much/#5ca63b796c49>.

<sup>8</sup> <http://files.mwe.com/info/pubs/Kramer-WBAIFall2011.pdf>.

- Be prepared – come to the meeting armed with key discussion points. Rather than focus on “what am I going to say,” consider “what does the audience need to hear?”
- Pay attention to delivery – it is not so much what women say as how they say it.
  - Speak using statements. As noted in the previous section, women have a tendency to couch their input. This mitigates the effect of what they are saying and actually works against them by weakening their legitimate points. Women can also speak in a strong voice even when they don’t feel confident, concisely explaining the factual reasons behind their ideas and decisions.<sup>9</sup> Be clear, direct, and compelling about achievements and then ask for what you want. Women cannot assume that your supervisors and colleagues know their accomplishments unless they tell them.<sup>10</sup>
  - Use active, authoritative words and statements when voicing and owning their opinions. For example, instead of saying, "Well, what if...," try saying, "I strongly suggest..." or instead of, "I tend to agree..." try, "That is absolutely right, and here’s why..." A woman assigning a project is likely to say, “You might want to consider reviewing the XYZ line of cases.” A man is more likely to be more direct, “Be sure to include an analysis of the XYZ line of cases.” The difference, and the dangerous difference for the woman, is that worker may interpret the statement: “You might want to consider ....” as a mere suggestion, rather than an instruction.<sup>11</sup> A woman giving assignments to men needs to remember: be clear, direct, and unambiguous about what you want to see when the work product comes back to you.<sup>12</sup>
- Get to the point – women can over-explain when participating in discussions. By doing so, they lose their audience’s attention and their own authority. A powerful presentation stays on message.

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<sup>9</sup> <http://www.quickbase.com/blog/workplace-confidential-real-gender-differences-in-communication>.

<sup>10</sup> <http://files.mwe.com/info/pubs/Kramer-WBAIFall2011.pdf>.

<sup>11</sup> <http://files.mwe.com/info/pubs/Kramer-WBAIFall2011.pdf>.

<sup>12</sup> <http://files.mwe.com/info/pubs/Kramer-WBAIFall2011.pdf>.

- Drop the defensiveness – responding defensively when decisions are questioned is generally an attempt to protect authority; however, it will actually make women come across as less confident and less in charge.

# Work-Life Balance – Impact on Talent Reviews and Attorney Development

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*Materials:* [Work-Life Balance Slides](#)

## **Summary**

Work-life balance is a wide-ranging topic that includes various issues including impact on talent reviews and attorney development, competitive and economic impact, diversity impact, explicit and implicit biases, health impact, social impact, *etc.*

We have decided to focus on one aspect – how work-life balance considerations may impact talent reviews and attorney development. For example, many companies have written policies relating to leave, and flex time unwritten policies intended to reflect the culture of the company, such as allowing attorneys to work from home. However, during performance reviews and development discussions, work-life balance considerations may, consciously or unconsciously, influence ratings and outcomes, including development opportunities.

Recently, U.S. Supreme Court Justice Ruth Bader Ginsburg chided law firms for not taking more steps to improve the balance between home and work.<sup>13</sup> This problem is most often inaccurately viewed as solely a women’s issue, and even more narrowly viewed as a women with children issue. By making alternative work schedules available to only women, law firms perpetuate this stigma and potentially create resentment among other attorneys who may want to work fewer hours for reasons other than child care, or for men who want to work alternative schedules for child care, or other reasons.<sup>14</sup>

## ***Suggestions for Addressing the Issue - Employers***

- Provide written policies for working outside the office or working different hours in the office so that everyone is aware of the policy and all employees, both men and women,

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<sup>13</sup> <http://www.nationallawjournal.com/home/id=1202767401884/Ginsburg-Urges-Law-Firms-to-Make-Balanced-Life-Easier-for-Lawyers>

<sup>14</sup> [http://www.worklifelaw.org/pubs/worklife\\_retention\\_FINAL.pdf](http://www.worklifelaw.org/pubs/worklife_retention_FINAL.pdf)



both with kids and without, have the opportunity to select these arrangements. Focus on retaining good employees rather than on work schedules or other arrangements.

- Before starting evaluations, outline the specific criteria being relied upon to evaluate individuals and behaviors that would demonstrate mastery of their job. During evaluations, only discuss these criteria. Focus on factors such as skills, knowledge, professional maturity, judgment, results, relationships with clients/others, and business development potential. Do not discuss an employee's decision to work remotely or on a different schedule.
- Assign a staff member to work closely with employees who are working on an alternative schedule to monitor utilization, workloads, work assignments, and skill development to ensure that these employees are able to advance and grow. This staff member should help avoid assignment disparity between those working on alternative work schedules and other employees.

### ***Suggestions for Addressing the Issue - Employees***

- Be clear with your employer about the hours you will be available in the office and outside the office so they know when you are working.
- Know the specific criteria that will be relied upon to evaluate your work and what will demonstrate mastery of your job. Be specific in your own self-evaluation and show that you have met these criteria.
- Throughout the year, clarify expectations and get them in writing, if possible. This will provide a roadmap to get you where you want to be and will allow you to show you met the expectations at your review.

### ***Suggestions for Exploring Further***

- Is there a perception that those who want work-life balance are not as serious about their careers or as ambitious as those who are willing to put in face time or be available around

the clock? If so, are these attorneys missing out on opportunities, including work assignments; promotions; higher talent ratings/bonuses?

- Should a law firm designate an individual to be responsible for monitoring assignment delegation and ensuring that delegation is fair and allows all attorneys to develop the necessary skills for advancement?
- Examine whether male employees are also disadvantaged by perceptions about work schedules, either by feeling the need to forgo flexible schedules or by sacrificing opportunities to advance if they choose flexible schedules.
- Is the issue of work-life balance treated differently at law firms and companies? Where is the issue most acute?
- Is there anything that we can stand to learn from the United States Patent and Trademark Office (USPTO) in terms of examples of work-life balance? Many patent and trademark attorneys tend to leave private practice and sometimes in-house positions to take positions at the USPTO. Why is that? What advantages does the USPTO offer in terms of work-life balance that law firms and companies could model?
- Consider a survey of Women in IP Committee Members. Have they experienced any of the issues ultimately identified in bullet no. 1, or, been part of discussions where they have observed this? Do their companies (law firm or otherwise) have flexible schedule programs and, if so, are they limited based on gender or circumstance? If there are flexible schedules/programs, is there a negative perception of or effect on those using them? Get details on how such policies are implemented.
- Review whether there is research on the chosen topics. If not, consider reaching out to consulting firms or resources such as UC Hastings – Work Life Law Clinic, to ask for additional resources. Then, determine if other studies might be helpful - *e.g.*, are there gaps in the research?

## Vague Feedback

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### ***Summary***

Vague feedback is feedback that is not tied to outcomes but includes general statements. Examples of general statements include “you are too aggressive” or “you had a good year.”

A recent Harvard Business Review study<sup>i</sup> suggests that vague feedback can specifically hold women back. This study was conducted across three high-tech companies and one professional services firm, and, in evaluations that conveyed both praise and criticism, feedback to men was full of granular detail and “actionable” advice whereas feedback to women was blanketed in stereotypes and uselessly vague. This study suggests these trends may result from unconscious bias. It further suggests that stereotypes about women’s capabilities mean that reviewers are less likely to connect women’s contributions to business outcomes or to acknowledge their technical expertise. It also suggests that stereotypes about women’s caregiving abilities may cause reviewers to more frequently attribute women’s accomplishments to teamwork rather than team leadership.

### ***Suggestions for Addressing the Issue - Evaluators***

- Before starting evaluations, either written or verbal, outline the specific criteria being relied upon to evaluate individuals. Articulate the specific results or behaviors that would demonstrate mastery of their job. Use the same criteria for all employees at the same level.
- Set a goal to discuss about three to five specific business outcomes with all employees. If the evaluator cannot think of a few specific outcomes for a particular employee, ask the employee or peers to provide more details.

- Systematically tie feedback — either positive or developmental — to business and goals outcomes. If the evaluator gives feedback without tying it to outcomes (e.g., “People like working with you”), consider further and tie the feedback to specific results (e.g., “You are effective at building team outcomes. You successfully resolved the divide between the engineering team and the product team on which features to prioritize in our last sprint, leading us to ship the product on time.”).<sup>ii</sup>
- When evaluating people in similar roles, equalize references to technical accomplishments and capability. Notice when detail is lacking for a particular employee and make an extra effort to determine whether something, either a skill or a developmental need, has been missed.<sup>iii</sup>
- Strive to write reviews of similar lengths for all employees. This helps ensure a similar level of detail — and therefore of specifics — for everyone.<sup>iv</sup>
- Women tend to fall into a pitfall of assuming that people will notice their good work and reward them for it.<sup>v</sup> Employee performance reviews should be a two-way conversation and review would be helpful if employees have the opportunity to weigh in and promote-themselves. Have all employees complete a self-review of their performance. This would allow the employee to highlight specific accomplishments achieved during the year that the evaluator may have forgotten about or not known about.
- Reduce Unconscious Bias
  - Most people tend to develop biases-often unconsciously- based on past experiences and cultural stereotypes. They must first recognize bias before they can overcome it. Tools such as Harvard’s Implicit Association Test<sup>vi</sup> can show managers what biases they have.
  - One way to reduce unconscious bias is to develop a program for easy documentation. List the expectations and goals for a role before filling the position, and stay consistent with that list when reviewing performance. Anonymous surveys can also uncover bias.
  - Develop a Performance Review Checklist.

- “You had a great year” is one example of vague feedback found on women’s performance reviews, the study said.<sup>vii</sup> A checklist could require managers to include three pieces of positive feedback and three pieces of constructive feedback, and require each one to be supported with a specific example or business outcome.
- For example, telling an employee she needs to work on project management fails to be constructive if the feedback lacks a specific example of a time she underperformed. Reminding her of a project for which she missed a deadline because she failed to communicate allows her to examine the root cause and know what to do differently next time.
- Similarly, positive feedback also needs to be specific.
- Train Managers to Give Constructive Feedback
  - Constructive feedback is not the same as negative feedback. Constructive feedback assumes that the person providing the feedback has a plan, and expects performance to improve based on the feedback. The first rule of constructive feedback is to not go in without a plan and expected result. Many performance reviews are shifting towards forward-thinking conversations rather than backward-looking reviews for this reason.<sup>viii</sup>
  - A common fear with constructive feedback is that it will upset the employee. Researchers in the Harvard Business Review study<sup>ix</sup> call this out regarding gender: “When giving critical feedback to women, male managers may be especially worried about how the feedback will be received. This ‘protective hesitation’ — the failure to give feedback due to worry that the recipient might be upset — is a critical barrier in having conversations necessary to advance women’s careers.”<sup>x</sup>
  - Yet, bad experiences in feedback conversations are not a result of the feedback itself, but how it was delivered.<sup>xi</sup>

***Suggestions for Addressing the Issue - Those Being Evaluated***

- Be specific in your own self-evaluation. Include specific examples of projects that you are proud of, specific skills you excel at and how you have implemented those skills, and specific career goals that you have.
- Prior to annual evaluations, approach your supervisors and express interest in obtaining specific feedback in your evaluation.
- In an evaluation, ask for specific examples when given vague feedback, whether positive or constructive. To avoid sounding defensive, offer something along the lines of “I really want to understand your feedback because I value it. Can you please provide some examples?”
- Clarify expectations and get them in writing. If you want a promotion next year, work with your evaluator to determine exactly what you need to do to make that happen. This will provide a roadmap to get you where you want to be and will avoid vague feedback if you don’t get the promotion.
- Since women tend to be promoted on accomplishments more than potential, maintain detailed records of what you have done and achieved. This way you will not miss any of your successes achieved at the beginning of the year.

### *Suggestions for Exploring Further*

- Is vague feedback common in the legal profession? If so, to what extent?
- Is there any recognition in the legal profession that vague feedback can be detrimental – to both men and women?
- Are any organizations besides the United States Patent and Trademark Office (USPTO) spearheading feedback processes/evaluations that are specifically clear and detailed? If so, how and what led them to changes in their feedback processes/evaluations?
- Is there any interest in generating a model evaluation system that results in clear and detailed feedback? Can the USPTO’s detailed evaluation system be used as a model?

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- <sup>i</sup> <https://hbr.org/2016/04/research-vague-feedback-is-holding-women-back>
- <sup>ii</sup> <https://hbr.org/2016/04/research-vague-feedback-is-holding-women-back>
- <sup>iii</sup> <https://hbr.org/2016/04/research-vague-feedback-is-holding-women-back>
- <sup>iv</sup> <https://hbr.org/2016/04/research-vague-feedback-is-holding-women-back>
- <sup>v</sup> <https://www.ellevatenetwork.com/articles/6544-set-yourself-up-for-success-at-your-performance-review>
- <sup>vi</sup> <https://implicit.harvard.edu/implicit/takeatest.html>.
- <sup>vii</sup> <https://hbr.org/2016/04/research-vague-feedback-is-holding-women-back>
- <sup>viii</sup> <https://www.linkedin.com/pulse/3-ways-avoid-giving-women-vague-feedback-performance-dani-fankhauser>
- <sup>ix</sup> <https://hbr.org/2016/04/research-vague-feedback-is-holding-women-back>
- <sup>x</sup> <https://www.linkedin.com/pulse/3-ways-avoid-giving-women-vague-feedback-performance-dani-fankhauser>
- <sup>xi</sup> <https://www.linkedin.com/pulse/3-ways-avoid-giving-women-vague-feedback-performance-dani-fankhauser>