

Negotiation Workshop C

Winter/Spring 1992

# Workshop Readings

**Roger Fisher**

**Bruce Patton**

**Frank Sander**

***Metamagical Themas: Questing for the  
Essense of Mind and Pattern***

**The Prisoner's Dilemma:  
Computer Tournaments and the  
Evolution of Cooperation**

**Douglas R. Hofstadter**

**Why we have included this reading:** The Oil Pricing Exercise is an example of a situation known as a "social trap" or a "prisoner's dilemma," because it seems that "rational" decision-making by each individual leads to outcomes relatively undesirable for all. Social traps are common--indeed, Lax and Sebenius define negotiation itself as a social trap, and present significant challenges to negotiators and to society. For that reason among others, game theorists have spent much time analyzing social traps. Their conclusions provide much food for thought, including how and to what extent these results apply to interactions between real people.

**What it's about:** This article summarizes the work of Robert Axelrod, who ran a variety of computer tournaments among different strategies for dealing with multi-round prisoner's dilemmas (again, like Oil Pricing) and found a strategy known as "Tit-for-Tat" the overall winner. Axelrod suggests four key attributes that characterize successful strategies, and draws explicit strategic conclusions for people and governments from his results.

**Questions you may wish to pursue (in your Journal or elsewhere):** How have you and others in your experience responded to social traps? Do you vote? Litter? Change lanes in heavy traffic (the number one cause of slowdowns)? Under what kinds of circumstances might a Tit-for-Tat strategy *not* make sense? In what ways might the differences between people and computer programs make a difference?

## Moral Questions Chart

Roger Fisher

**Why we have included this reading:** This is a tool to help think through what seems the right thing to do in a given situation.

**What it's about:** In this chart Roger Fisher proposes a simple procedural tool to help think about moral choice.

**Questions you may wish to pursue:** Are there no moral absolutes? Is that view the ultimate product of a legal education? Indeed, are there even right and wrong answers in *particular* situations? How do you find them? Critical Legal Studies makes a strong case that logic (at least logic *alone*) will be insufficient. What is left? Natural law? Is an incessantly process approach to difficult questions itself a moral statement? Of what?

## ***Social Psychology: People in Groups***

### **Three Social Psychologists Bet That the World Will Not End**

**Bertram H. Raven and Jeffrey Z. Rubin**

**Why we have included this reading:** The theory of cognitive dissonance holds that people will interpret and screen information so as to minimize conflict with prior beliefs. It is a powerful and pervasive perspective in social psychology. To the extent it's true, the theory has significant implications for how we should negotiate with others and the obstacles we may have to overcome in persuading them to test or change their current views.

**What it's about:** The theory of cognitive dissonance was first articulated by Leon Festinger and two other social psychologists. They sought to test their theory in a natural experiment focused on a group of people who believed that the world was going to end. This excerpt tells the story of their endeavor and its aftermath.

**Questions you may wish to pursue:** Does this theory fit with your experience? What alternative explanations might there be for the psychologists' and your own observations? Which explanation(s) best meet the test of Occam's Razor (the simplest explanation consistent with the data should take precedence)? What are the implications of this theory for negotiation? How, for example, should it influence the way you prepare for a negotiation?

## ***The Psychology of Imprisonment: Privation, Power, and Pathology***

**P. Zimbardo, et al.**

**Why we have included this reading:** How people see their role often has a significant impact on how they negotiate in a given context, such as the Oil Pricing Exercise. Are they acting as an agent or for themselves? If they see themselves as an agent, is it with wide discretion or limited authority? Are they a hired gun, or a wise counsellor? Following orders without question or thinking for themselves? An adversary or a colleague? Competing or problem-solving? This piece suggests how powerful (and self-fulfilling?) role assumptions can be, and hints at how they can be challenged or changed.

**What it's about:** This is the report of a psychological research project studying people's response to roles as prison guards and inmates in a mock prison set up in the basement of the Stanford psychology building. The experiment was scheduled to last two weeks, but was halted after three days because of the results. Questions have been raised about the experimental design of this study, but its commentary on people's ability to adopt roles and exhibit behavior in conflict with their expectations and espoused values remains powerful and profound.

**Questions you may wish to pursue:** What effect might the experimenters' own conscious or unconscious signals have had on the other participants' behavior. How might that affect your conclusions from the study? Do you doubt your own ability to have acted like one of the students? Why or why not? Do you have past experience of your own behavior to support your feeling? Hannah Arendt entitled a book on the trial of Adolph Eichmann, master planner of the Nazi "Final Solution," *Eichmann in Jerusalem: A Report on the Banality of Evil*. What arguments would support such a conclusion? What counter-arguments can be made? If there is at least some validity to the argument, how can we protect a society from slipping into banal evil? What militates against such approaches? Would you like *your* children to be taught systematically to think for themselves? To question assumptions about authority, rules, and their role? How would you do this as a teacher? (How would you live with it as a parent?)

Additional reading on Stanley Milgram's experiments at Yale on obedience to authority is available on request.

## ***The Prince***

### **Whether Princes Ought to Be Faithful to Their Engagements**

**Niccolo Machiavelli**

**Why we recommend this *optional* reading:** When is lying appropriate? This is a basic question negotiators should think about.

**What it's about:** Machiavelli's thinking (anticipating somewhat Sissela Bok) on the complicated ethics of telling the truth as a representative official.

**Questions you may wish to pursue:** When should your responsibility to yourself outweigh any duty to others? What consequences should follow from such a decision? How should you proceed in such a situation? Do you announce your decision? If so, how and when? How can such concerns be avoided by advance planning or creative problem-solving? What questions/procedures can you formulate for yourself to help you avoid such uncomfortable conflicts?

## ***The Art and Science of Negotiation***

### **How Much Is a Company Worth?**

**Howard Raiffa**

**Why we have included this reading:** How much are your perceptions of "fairness" and your BATNA influenced by where you sit? The answer seems often to be "a lot," raising questions about how that insight might change your preparation for or conduct in a negotiation.

**What it's about:** In this excerpt Raiffa summarizes the results of an experiment in which people with identical information but assignments to opposite sides of a potential acquisition reported (1) their assessment of a "fair" valuation for the target company, (2) their walkaway price, and (3) their opening proposal. He also elaborates briefly on how the BATNA's of each side can affect the fair division problem raised in the earlier excerpt on dividing \$1000 between a rich man and a poor man.

**Questions you may wish to pursue:** Assuming that you are as likely as Raiffa's subjects to see your case in a favorable partisan light, what might you do to combat that tendency and get a more realistic self-assessment? What checklist of questions might help you be more systematic in your own BATNA evaluations?

Raiffa reports that the Magnus-AIL negotiators' reached their assessments by concentrating on *different* criteria (e.g., price-earnings ratios, earnings, market value, book value), although he is not clear about whether they started with the criteria or the target figures. Expecting this, how would *you* prepare for the negotiation, and how would you try to conduct it? How would you frame your questions; what would you talk about? Would you start with a high figure, with your high criteria, with a range of criteria and a discussion of why some are more appropriate? By now you have probably tried all these approaches. Which would you recommend, and why?

Raiffa says his widely divergent range of results recurs however experienced the negotiators. Do you think that ought to happen among *skilled* negotiators? Why or why not?

At the end of his parable, Raiffa shows how his quite realistic distributive bargaining example can easily (and perhaps even more realistically) be seen as a more integrative situation. Does this make the problem easier to negotiate? If in practice it would seem easier, is that just because it would be easier to fudge your reasoning? Or does the more integrative formulation invite a less adversarial mindset that results in better problem-solving and more satisfaction from the result and the outcome? This seems a complex, but crucial inquiry.

***Experience, Expertise, and Decision Bias in Negotiation:  
The Role of Strategic Conceptualization***

**Margaret A. Neale and Gregory B. Northcraft**

**Why we have included this reading:** The Workshop's main focus is on the best general or *all-purpose* advice we can give a negotiator. To make sophisticated use of such advice, however, a negotiator should consider additional factors: (1) possible (even likely) perceptual biases and errors of reasoning in the negotiator's own thinking, and (2) how similar attributes of another party's thinking might affect the negotiator's choice of strategy or assessment of likely outcomes. These considerations are important whether the negotiator seeks individual or joint gain or both.

**What it's about:** This article briefly surveys research on the operation of such cognitive biases in negotiation and some of the factors that make them more or less likely to affect outcomes.

**Questions you may wish to pursue:** How can you manage yourself as a negotiator to avoid the kinds of unwise decisions discussed in this article? Some of the factors explored in this article help to explain how some individuals consistently do well in negotiations, seemingly without regard to objective merits. To what extent would you like to master similar techniques? To what extent would you not? Is widespread focus on such approaches likely to affect the general climate for negotiations in our society? How? (Is there a commons problem?) If so, how would you factor that into your thinking about your own approach?

***Dealing with Difference Issues  
in the Negotiation Workshop***

**Gina M. Torielli**

**Why we have included this reading:** A significant number of people in past Workshops have reported that issues of difference (e.g., gender, race, sexual preference) and context were important to their thinking and experiences in the Workshop, but not as easy to share and work on with others as they would have liked. We would like to make an effort toward increased openness to and inclusion of discussion of such issues. We believe that on both conscious and unconscious levels these issues are significant in a great many interactions. We would like participants to consider that belief, to think some about possible implications for their future behavior, and to practice coping with such difficult situations as they think may be likely to arise. This paper gives some background and some suggestions. It is excerpted from a longer piece written to benefit the teaching staff of the Workshop.

**Reactions, comments, and suggestions** are welcome.

***Bargaining in the Shadow of the Law:  
The Case of Divorce***

**Robert H. Mnookin and Lewis Kornhauser**

**Why we have included this reading:** What is the relevance of legal precedent in legal negotiations? This article presents a theory of how the formal legal system affects out-of-court negotiations. The *Ellsworth* negotiation raises this issue directly. The article also surveys the legal issues (including ethical issues) raised by divorce negotiations such as *Ellsworth v. Ellsworth*.

**Questions you may wish to pursue:** How does this article affect your strategy for *Ellsworth*? Do you have any general conclusions (however tentative) about the relevance of precedent in legal negotiations? Some participants have argued that there are in practice so many potentially appealing objective criteria that they are irrelevant. Do you agree? Why or why not? What has been your experience so far? How else could it be explained?

## ***In a Different Voice***

**Carol Gilligan**

The entire book is recommended reading, but a shorter selection might include the following: Introduction, Chapter 1, Chapter 2 through page 45, pp. 103-105, and pp. 173-175.

**Why we recommend this reading:** Major patterns of how people think about and deal with conflict and negotiation are important for a good negotiator to understand, recognize, and incorporate into her or his strategic thinking. Most people are also interested in moral choice, and different conceptions of morality might therefore affect their approach to negotiation. Gilligan's work addresses both these interests.

**What it's about:** Gilligan argues that human experience offers two inconsistent but compelling approaches to moral choice. One formulates rules for equal treatment and for choosing the more important among competing values. The other focuses on crafting an equitable response to each particular case in light of one's obligations to other people within a social community. Gilligan cites research to suggest that most people use each approach in some contexts, but usually only one approach at a time, and further that men are somewhat more likely to favor the first approach and women the second. Gilligan argues that those with the highest moral development embrace the dialectic of these inconsistent approaches.

**Questions you may wish to pursue:** Gilligan rejects the common (usually gender-linked) distinction between logic and empathy as explaining her two voices. She cites recent research to suggest that each voice or "frame" has its own logical rules for sifting information and framing decisions, and argues that it is our one-sided cultural background that makes the logic of the caring voice less obvious and familiar. What might be the key elements of a logic of caring? How would it suggest a society deal with crime? Is the distinction consequences vs. consistency? But isn't it a "consequences" argument that lies behind a deterrence theory for punishing crimes? Is it a subjective vs. objective distinction? But what is being measured? Guilt? Intention? Responsibility? Potential for future harm? Need for comfort and healing? Does the efficacy of a caring or justice approach all depend on underlying cultural attitudes? How are such attitudes inculcated, and how could they be changed? Do you buy Gilligan's argument about the dialectic as the highest stage of moral development? Why or why not? If not, do you have an alternative?

## Reassessing Aspiration Levels in Negotiation

Carol Ann Umhoefer

**Why we recommend this reading:** The Neale and Northcraft piece does a good job of exploring decision biases in the abstract, but understanding is often furthered with concrete examples.

**What it's about:** This paper summarizes how aspiration levels in a simple negotiation were arrived at quite arbitrarily by six volunteer negotiators, some of which were taking the Negotiation Workshop. Despite this arbitrariness, these aspirations levels were largely determinative of the outcomes of these three negotiations and had major impacts on their processes. It is a sobering reminder that knowing what you *should* do is different from *doing* it reliably.

**Questions you may wish to pursue:** To what extent are you subject to the same mistakes? This paper studies only three negotiations. Do you think its conclusions are generally applicable? Do they fit with other negotiations you have observed or know about? Can you think of counterexamples?

## ***International Conflict for Beginners***

### **Making Threats Is Not Enough**

**Roger Fisher**

**Why we have included this reading:** There are many factors to consider in trying to understand how someone else sees their choice(s) in a conflict situation. This chapter from *International Conflict for Beginners* lays out a useful matrix of considerations. It also argues that people focus too much and unrealistically on the use of threats to influence others. While set in an international context, the arguments set forth here are equally applicable in other settings.

**Questions you may wish to pursue:** Would you add or modify anything in Fisher's arguments about the use of threats? Are there factors to consider in thinking about someone's choice that do not fit easily in Fisher's matrix?

***Getting Together:  
Building Relationships As We Negotiate***

**Roger Fisher and Scott Brown**

**Why we have included this reading:** As it says in *Getting to YES*, "Negotiators are people first." The nature of their relationship as people will likely have a lot to do with what kind of transactions and outcomes they achieve. Most negotiations occur among those who have a continuing relationship. Therefore it may be helpful to look at the larger framework of how patterns of negotiating interaction are established and maintained or changed. This perspective may prove useful in understanding even the dynamics of a "one-shot" relationship.

**What it's about:** Not surprisingly, a great deal has been written about human relationships, but this is the only book we know of to concentrate on the aspects of a relationship that affect its participants' ability to deal effectively with differences. Further, the book argues that the ability to deal with differences is in fact a critical element of every working relationship, whether among individuals, businesses, or nations, and whether in the context of affection or getting things done.

**Questions you may wish to pursue:** Do you really think it is possible for individuals to have a good working relationship when they disagree on fundamentals? Are individuals and nations different in this? If so, how and why? If you think agreement *is* required for a good relationship, how should distrustful (pre-Gorbachev, if you prefer) superpowers interact? Should Afghanistan, Olympic participation, grain sales, and so on be linked? How? What about postal arrangements or air traffic routes? Landing rights? What, if any, are the distinctions, and *what is their intended purpose and theory of operation* (refer back to the first reading from *International Crises and the Role of Law: Points of Choice*)?

## ***The Art and Science of Negotiation***

### **[Dividing \$1000 Between a Rich Man and a Poor Man]**

**Howard Raiffa**

**Why we have included this reading:** Fairness is not a simple concept. We wanted to include something to stimulate your thinking on where it comes from and what it means.

**What it's about:** Howard Raiffa has said quite a bit about fairness and analytic approaches to the concept, especially in *The Art and Science of Negotiation*. In this excerpt Raiffa suggests some of these rigorous approaches through a dialog between a negotiation analyst and an arbitrator about how the arbitrator should settle a dispute between a rich man and a poor man over how to divide \$1000 they jointly found.

**Questions you may wish to pursue:** Which criteria seem better? Why? What others might more likely be the basis for your decision if you were in the arbitrator's shoes? Would you rule the same or differently as the arbitrator? Do you agree that it all depends on the context? Do you really think it should? If so, what significant drawbacks, if any, do you feel exist with the ad hoc approach? Can they be mitigated, and if so, how? To what extent do you think the examination of objective criteria can help even if the parties to a negotiation cannot agree on the "best" criterion?

## *The Manager as Negotiator*

### **Chapter 9--Changing the Game: The Evolution of Negotiation**

**David A. Lax and James K. Sebenius**

**Why we have included this reading:** One powerful move a negotiator can make is to question the "givens" of the context: who is a party, what are the issues, what's at stake, and so on. Of course it is often hard even to recognize the assumptions you are making, let alone to formulate previously unthought of alternatives.

**What it's about:** This chapter provides something of a checklist of key assumptions to question and some tactical options for doing so.

**Questions you may wish to pursue:** If people have a variety of interests, some of which are probably inconsistent, and which seem to be at stake and their relative priorities in any given negotiation are matters subject to change in the course of further thought and discussion, then we should be wary of any theory of how to negotiate that assumes interests are fixed and tangible. This is especially so given our observation that how one is treated in a negotiation is often a crucial interest. How does this indeterminacy affect Lax and Sebenius' argument about an unavoidable tension between creating and claiming value? What other implications might there be?

## ***The Appraisal Interview: Three Basic Approaches***

### **Three Methods with Specific Objectives**

**N. R. F. Maier**

**Why we have included this reading:** As you think about giving feedback, it may help to compare your ideas with common models of performance appraisals from research on managers.

**What it's about:** This article discusses the "Tell and Sell," "Tell and Listen," and "Problem-Solving" approaches to performance appraisals, explaining why people use them, the skills and circumstances needed for their successful use, the difficulties that they may lead to, and when they make most sense.

**Questions you may wish to pursue:** Which of these approaches seems most natural to you? When do you think each might be appropriate? Are there other approaches you can think of that might make more sense in some common situations?

## ***He Who Pays the Piper***

**Roger Fisher**

**Why we have included this reading:** Litigation is an expensive and cumbersome form of dispute resolution, but one that finances a significant portion of the legal profession. In light of the previous article by Raiffa on partisan perceptions, it seems appropriate to look more closely at the advice clients are given on litigation. How accurately do lawyers assess a client's litigation and other alternatives, including negotiated solutions? This is the subject of this piece.

**What it's about:** This is Fisher's advice to businessmen on dealing with their outside counsel to avoid unnecessary litigation expense, extract good information on the strength of the client's case, and track the outside counsel's performance. The implication is that current legal practices discourage such results, rewarding associates and partners for high billable hours over efficiency, allowing lawyers to give probability estimates in ambiguous terms such as "a good chance," and creating few or no records of expense and success predictions with no retrospective performance reviews.

**Questions you may wish to pursue:** To what extent do Fisher's charges comport with your own experience in law firms? What obstacles might there be for a CEO or General Counsel trying to follow Fisher's advice, and how would you advise them to negotiate to overcome such resistance? Are there rules or reporting procedures that the legal profession could institute to promote the kind of self-analysis that Fisher suggests?

## ***Valuing Litigation***

**David Gold**

**Why we recommend this *optional reading*:** Figuring out whether litigation is a sensible BATNA can be quite complex. There are likely to be many uncertainties about witnesses, precedent, timing, judges, costs, and potential recoveries. A systematic analytic method is needed. While you may not become a litigator and may never need to master the mechanics of litigation analysis well enough to do them yourself, we believe that every lawyer--and those dealing with lawyers--should understand the theory and central concepts of the process, so that you can ask sensible questions of those who do make the calculations.

**What it's about:** This is a step-by-step explanation of how to apply the (quantitative) techniques of decision analysis to the question of whether or not a case should be litigated.

**Questions you may wish to pursue:** What important factors, if any, does this kind of analysis overlook? How should they be factored into your counsel to a client? What difficulties might keep you from going through such an analytic process in a real case? How could you minimize the chance that these obstacles would succeed in deterring you?

## ***Quantifying Preferences***

**David Gold**

**Why we recommend this *optional* reading:** Decision and litigation analysis is a fairly straightforward technique for thinking about easily quantifiable economic priorities. In most negotiations, however, the parties also have important intangible interests. What "counts" cannot always be easily counted. In theory, however, there are techniques for considering such interests and ranking priorities more concretely.

**What it's about:** This short piece by a graduate of the Workshop who has also worked closely with Howard Raiffa of the Harvard Business School gives a brief overview of techniques for quantifying intangible preferences.

**Questions you may wish to pursue:** When might using these techniques be useful? When not? Even if it does not seem useful to apply these ideas rigorously in a particular case, is there still qualitative value in the concepts themselves? What dangers might there be to using these techniques? Do they adequately take into account the possibility that people may have multiple conflicting interests whose priorities are subject to change, perhaps as a function of who the other side is or how they interact with them? Might they limit creativity? If so, could this problem be prevented in some way?

## ***Social Psychology: People in Groups***

### **Mohandas K. Gandhi and the Salt March**

**Bertram H. Raven and Jeffrey Z. Rubin**

**Why we have included this reading:** Any discussion of negotiation "power" should look to the real world for examples and, especially, counterexamples. Far too often such "discussions" are carried on in a tone of moral righteousness at a high level of unillustrated abstraction with underlying assumptions about human behavior and likely reactions unarticulated and therefore untested (by other than the speaker). Gandhi is certainly a counterexample to many common theories of "naked force" as the "sole basis" of "real power."

**What it's about:** This is just a short synopsis from a social psychological perspective of one famous negotiation between Gandhi and British colonial authorities in India. Note that it occurred many years before independence, and was only one small step in that direction.

**Questions you may wish to pursue:** What difference, if any, do you think such a transaction makes? How and why? Should it make a difference, and, if so, to whom and why? What were the ingredients of Gandhi's success? How might you go about harnessing similar tools in a more mundane negotiation? What might limit the efficacy of this approach? In limiting contexts, are there other approaches that might work better? Which ones, and exactly how might they work differently?

***That's Not What I Meant!  
How Conversational Style Makes or Breaks Relationships***

***You Just Don't Understand:  
Women and Men in Conversation***

**Deborah Tannen**

**Why we recommend this reading:** A great number of the difficulties people get into in negotiation arise from miscommunication. Conversely, careful and effective attention to getting in synch with the communication style of those with whom you negotiate can greatly aid your efforts. Many people feel that these difficulties/opportunities can be especially acute in cross-gender transactions.

**What it's about:** The first book is an accessible summary of empirical research on common conversational styles and the difficulties that different approaches can cause when they are unrecognized or when nothing is done to compensate for them. The second book expands these general themes in light of research and thinking about gender differences in communication.

**Questions you may wish to pursue:** To what extent does your own experience offer examples of the kinds of difficulties Dr. Tannen describes. How about counter-examples? The evidence for the kinds of gender correlations discussed in the second book remains somewhat weak, although belief in such correlations is widespread. To what extent might our perceptions about that be biased? Test yourself: Make a gender-linked statement about communication style. Then try to think of friends of the opposite sex who embody just the characteristics you have ascribed. What implications should all this have for our behavior in negotiation?

## **International Business Negotiation: The Cottonburger Case**

**Gerald R. Williams**

**Why we have included this reading:** Familiarity with this information will help you evaluate the performance of the negotiators in the videotape we will watch of the "Cottonburger" negotiation. Bring these pages with you to class on January 8.

**What it's about:** These are the confidential instructions given to each lawyer and an outline of the facts for quick reference.

**Questions you may wish to pursue:** Follow the instructions in the Syllabus as to whether you should consider yourself representing either the buyer or the seller in this case. Ask yourself in advance what strategies you might pursue in representing that side. How should you choose among these strategies? You might want to write out some useful tactical moves consistent with an approach you think appropriate, and next to them some illustrative sentences you might use in implementing these tactics.

## ***A Code of Negotiation Practices for Lawyers***

**Roger Fisher**

**Why we have included this reading:** Ethical considerations have been important in the Workshop since the *Oil Pricing Exercise* on the first day, and we return to the question of negotiation ethics again here at the Workshop's end. In the absence of provisions governing negotiation ethics in the Code of Professional Responsibility, lawyers face a possible conflict of interest in eschewing some negotiation strategy because it conflicts with their personal ethics. How should you address--if at all--the question of your negotiating tactics with your clients?

**What it's about:** This article proposes a solution to the potential ethical dilemma in the form of a letter to your client requesting informed consent to your negotiating approach.

**Questions you may wish to pursue:** We return to our basic ethical question: Should a lawyer do things for a client that the lawyer would not do for herself? Anything? Nothing? Is Fisher's letter a realistic solution? What if the client says no? What alternatives can you suggest to this approach?

What standards, substantive or procedural, will guide you in your future negotiations? If you are unable to articulate standards, how do you justify that to yourself? If you can, what caveats do you place on your approach? How will you learn from experience?

***Getting Past No:  
Negotiating with Difficult People***

**William L. Ury**

**Why we recommend this reading:** Many ideas that are simple in theory require considerable sophistication and skill to put into practice. In our view, principled negotiation falls into that category, especially when you are dealing with strong personalities accustomed to a different approach.

**What it's about:** In this book Bill Ury breaks out and walks through the steps of what *Getting to YES* refers to as "negotiation jujitsu," giving many detailed examples. Particularly helpful, he explores the thinking of people who may be giving you a hard time.

**Questions you may wish to pursue:** If you have difficulty making successful use of a negotiation technique that others believe can be useful, how should you judge whether the difficulty is in the technique, the context, or your own lack of skillful implementation? Ury does not promise success. Can you think of situations where you think other approaches are more likely to succeed? Why?

***Divorce Bargaining:  
The Limits on Private Ordering***

**Robert H. Mnookin**

**Why we recommend this reading:** Claims are often made that disputants have unequal bargaining power. What exactly does this mean? What are the sources of inequality? Are there ways that legal institutions can be changed to eliminate such inequalities?

**What it's about:** This article analyzes, in the context of divorce negotiations, the question of whether inequalities in bargaining power should affect the way in which and the extent to which the disputants should be encouraged to resolve their differences through negotiation.

**Questions you may want to consider in your Journal or elsewhere:** What are your thoughts on the questions above?

## ***A Brief Outline of the Mediation Process***

**Bruce Patton**

**Why we have included this reading:** We believe that practice in looking at negotiation from the point of view of a third party intervenor trying to improve the process without taking sides can later help you avoid unconstructive processes when you are negotiating. The overall mechanics of the process are less important in this context than experiencing a mediator's perspective and experimenting with different techniques for dealing with the parties. We thus present the basic mechanical steps with little comment.

**What it's about:** This is an overview of a typical mediation process for cases like those you will be mediating. It covers the standard steps and some basic guidelines.

**Questions you may wish to pursue:** What questions do you have that are *not* answered here? We would like to know, so that we can cover them in a future revision.

**MEDIATION:**  
***A Transferable Process for the Prevention  
and Resolution of Racial Conflict in  
Public Secondary Schools;  
A Partial Case Study with Analysis***

**William F. Lincoln**

**Why we have included this reading:** Seeing or hearing about other people doing something often suggests ideas on how you would do it. This is a case study of a mediation in a highly charged multiparty context.

**What it's about:** Some students have complained about the writing style in this case study, but it tells a good (and true) story about the mediation of a racial dispute in a Boston public school at the beginning of the court-ordered busing program, a time when hysteria and violence were common. It shows a good mediator in good form, and is easy to read.

**Questions you may wish to pursue:** Do you think mediator's like this should be widely available? If yes, how would you state their mission and ground rules? If not, why not? Lincoln talks about resource overload. There are few accreditation procedures for mediators. How can we avoid unconstructive, poorly trained mediators trying to involve themselves in disputes? Could similar procedures be appropriately applied to negotiators? Should negotiation be an accredited legal specialty? How would you judge?

***The Life of the Mediator:  
To Be or Not to Be Accountable?***

**Stephen B. Goldberg, Eric D. Green, and Frank E. A. Sander**

**Why we have included this reading:** Lord McCarthy argued in his article that it was often not helpful for a mediator to inject "community standards" into a private dispute, and questioned what business a mediator might have in doing so. This issue, framed as the appropriate degree of a mediator's accountability for the *substantive result* of a mediation, remains hotly debated, and somewhat polarized between mediators in labor contexts (where mediation has long been an integral part of collective bargaining processes) and other contexts, such as divorce, family, and environmental disputes. Both because lawyers are increasingly involved in mediation and because the fundamental issue of the professional's role in a societal context is relevant to all professionals, it seems appropriate to raise this question here.

**What it's about:** This article lays out the various arguments in the form of a dialogue between a practicing mediator and a professor who teaches mediation. (The dialogue is in response to a published debate between Lawrence Susskind, a mediator in public disputes, and Joshua Stulberg, a mediator with a strong labor background.)

**Questions you may wish to pursue:** Where do you come out? If you think it depends, is the relative balance of power between the parties to a mediation the only significant factor that affects how you come out on this issue? If not, what else makes a difference and how so? Can you generalize your feelings on the issue to the question of when a lawyer should act against a client's interests in the service of some broader societal interest?

***A Hypothetical Speech to a Hypothetical  
Audience About a Very Real Problem***

**Howard Raiffa**

**Why we have included this reading:** In this reading Raiffa lays out a classic approach to a difficult problem, one that combines tremendous firmness on a basic principle with highly creative problem-solving to turn a bitter dispute into a potential joint gain. This is the kind of open thinking that epitomizes many of the best negotiators.

**What it's about:** This is a hypothetical speech to a town meeting of a town that is being considered as the site of a hazardous waste dump. The speaker is an independent expert on negotiation hired by the company that would run the dump, whose contract specifies that he is free to say whatever he wants to the townspeople.

**Questions you may wish to pursue:** Could this kind of approach be used in other public disputes? What obstacles exist to its general implementation? How might they be overcome in time? What steps would help in the short run that you might be able to put in train? What are the limits of this kind of approach? How might they be mitigated, or can they?

## ***Black Managers: The Dream Deferred***

**Edward W. Jones, Jr.**

**Why we have included this reading:** Problems of discrimination and stereotyping are pervasive in our society, and what to do when encountering such problems seems to be of interest to many participants in the Workshop. This piece lays out some data on the impact of racial stereotypes in the American workplace in professional and managerial jobs, and suggests explanations for this data.

**What it's about:** This is a follow-up article on racism in American business. It discusses statistics on and hurdles to black advancement as executives in business.

**Questions you may wish to pursue:** What strategies can an individual pursue if faced with subtle discrimination? What remedies can be pursued societally? What are the dilemmas in confronting racism and sexism for the victim? What can observers do? What is their obligation--what do you think one *should* do if you suspect you are witnessing discrimination?

***The Id, the Ego, and Equal Protection:  
Reckoning with Unconscious Racism***

**Charles R. Lawrence III**

**Why we have included this reading:** Many people dismiss racism as irrelevant to their lives, because they are not overtly racist and don't see what they can do about those who are. This article makes a strong case against that view, explaining how racism does not have to be consciously imbued with bad intent. It holds our behavior to a much higher standard.

**What it's about:** In legal circles, a debate is framed around what will be required to trigger strict scrutiny of the constitutionality of legislation under the doctrine of equal protection. The expansive view argues that the standard should be discriminatory *impact*; the conservative view is that the test should be manifest discriminatory *intent*, to avoid restricting otherwise legitimate actions of the state. Lawrence argues that the implementation of the latter standard is flawed, because it currently assumes that intent must be conscious. He argues that most racism is much more subtle and pervasive, operating as a part of our culture about which we are largely unaware, and from which we can escape only with great difficulty.

**Questions you may wish to pursue in your Journal or elsewhere:** Do you buy Lawrence's argument that the most common kind of racism (and perhaps the most destructive overall) is *unconscious*? Why or why not? If to some degree, prejudice does exist in us outside our conscious choice, what should we be morally obligated to do about it? What *can* we do about it? How does one go about changing one's own or another's implicit attitudes and unquestioned assumptions? How can this process be encouraged on a societal level?

***Gays/Justice:  
A Study of Ethics, Society, and Law***

**Gay Basics: Some Questions, Facts, and Values**

**Richard Mohr**

**Why we have included this reading:** Discussion of, sensitivity to, and countermeasures against homophobia at the law school and in society at large lag far behind that for other forms of prejudice and discrimination. This suggests that the problems facing gay and lesbian people in confronting discrimination may be different and call for different negotiation strategies.

**What it's about:** This piece offers some basic facts about gay people, addresses commonly expressed concerns, and highlights various double standards that are applied to gays and lesbians.

**Questions you may want to consider in your Journal and elsewhere:** In what ways does prejudice against Asians seem similar, and in what ways does it seem different, from prejudice against other groups in America? What implications might your observations have for what might be done to combat or eradicate such prejudice?

## ***Victims of Groupthink***

**Irving L. Janis**

**Why we have included this reading:** Meetings, group planning, and group decision-making are important parts of modern society. Yet from the prevalence of jokes and complaints about wasted time, aimless discussions, and results that turn horses into camels, one has the sense that meetings are often not handled well. Since meetings often represent multi-party negotiations and frequently are part of the preparation for important negotiations, it seems important to know something about why they often fail and how to improve the chances for success.

**What it's about:** This influential book focuses on the group dynamics aspects of meetings and how psychological needs for consensus and cohesion can overcome logic and common sense. The whole book is recommended sometime when you have the time, but these excerpts cover some of the main points of the analysis and prescriptive conclusions.

**Questions you may wish to pursue:** If you find Janis' argument unpersuasive, try to figure out why precisely. If you like it, what can you do to make yourself less susceptible to the phenomenon? What factors besides groupthink may contribute to unproductive meetings? What prescriptive rules of thumb can you formulate for yourself for when to have a meeting, how to run them, and how you should behave in them? How do these rules of thumb vary in different contexts? What are the key contextual variables?

## ***Culture, Negotiation, and the Eye of the Beholder***

**Jeffrey Z. Rubin and Frank A. E. Sander**

**Why we have included this reading:** Culture is often cited as an increasingly important factor in negotiation. What it is and how it works, however, is much more complicated than simple stereotypes.

**What it's about:** This article briefly surveys some of the research related to cross-cultural attitudes and negotiation and offers some advice for intercultural negotiations.

**Questions you may wish to pursue:** How can stereotypes be both useful and not? What role, if any, should they play in *your* thinking? What *is* culture and where does it come from? When is it likely to make a difference, and when not? What can you do to manage these effects?

## ***Making Meetings Work***

**Michael Doyle and David Straus**

**Why we recommend this reading:** Meetings almost always involve negotiations, and often ones for which people tend not to prepare. The consequences can be severe, as you may discover in the upcoming group negotiations.

**What it's about:** This book explores a variety of ways to design effective meetings to fit your purpose, the number of participants, and so on.

**Questions you may wish to pursue:** How well do these ideas fit with your own experience of meetings? Can you think of effective meetings you have participated in that were run according to different principles? What might explain that success? How can you increase the chances that meetings *you* participate in work well? If you are the convenor? If you are not?

## ***Negotiating Group Decisions***

**Jeanne M. Brett**

**Why we have included this reading:** As always, it helps to know not only what processes you would *advise* for a group negotiation, but also something about the approaches that others are likely to take.

**What it's about:** This article attempts to describe and categorize different approaches to group negotiations (within organizational settings).

**Questions you may wish to pursue:** What do you think of the strategies presented here and their categorization? How might they affect your thinking about group negotiations up to this point?

***The Art and Science of Negotiation***  
**Risk Sharing and Insecure Contracts**

**Howard Raiffa**

**Why we have included this reading:** A common negotiation problem is dealing with contingencies and risk. Another is the difficulty of making commitments that you are unsure can or will be fulfilled as agreed. (This can be thought of as negotiating with representatives of limited authority.) These issues are raised in both the *Photo-Surveillance* and *Ellsworth* negotiations.

**What it's about:** This chapter of Raiffa's book discusses how to make fair and workable agreements even when they are unenforceable, and also says something about how to deal with completely unprincipled negotiation.

**Questions you may wish to pursue:** Does Raiffa's approach make sense to you? What obstacles would there be to using it in practice? Can they be overcome? How, if at all, would you differ with his conclusions about unprincipled negotiations?

***Negotiating Inside Out:  
What Are the Best Ways to Relate  
Internal Negotiations with External Ones?***

**Roger Fisher**

**Why we have included this reading:** One of the central problems in any negotiation is that it represents only one of several linked negotiations with yourself, with teammates, and/or with constituents, with those at the table and those who are not. Coordinating these related negotiations can be a major challenge.

**What it's about:** Professor Fisher offers four diagnoses of problems that arise in this context and advice for overcoming them.

**Questions you may wish to pursue:** What other approaches can you imagine to this challenge? What might be their relative advantages and disadvantages?

## ***Reassessing Getting to YES and Principled Negotiation***

**Bruce Patton**

**Why we have included this reading:** Afterthoughts by the authors of "principled negotiation" as a labeled system seem in order at this time.

**What it's about:** This is an early paper by Patton cataloging difficulties encountered in teaching principled negotiation (when that was basically the only system Fisher and Patton were teaching). It considers lack of clarity, inadequate theory, and students' vested interest in not reexamining the assumptions underlying how they deal with conflict and other people as possible explanations. In each case it suggests ameliorative changes to the theory or its presentation, many of which have, in theory, been incorporated into this workshop (or at least earlier incarnations).

**Questions you may wish to pursue:** This paper fundamentally accepts principled negotiation as the best overall negotiation strategy. Do you, at this point, agree? Why or why not, specifically? What is currently your own chosen variation or alternative? What questions would you like to explore further?

## Further References on Negotiation and Related Processes

### Harvard Negotiation Project

**Why we have included this reading:** Should you want to pursue further reading on the subject of negotiation and dispute resolution, we provide here a bibliography and some guidance. In order, with some notion of useful quality, we might suggest:

Goldberg, Sander, and Rogers, *Dispute Resolution*  
Raiffa, *The Art and Science of Negotiation*  
Fisher, *International Conflict for Beginners*  
Lax and Sebenius, *The Manager as Negotiator*  
Williams, *Legal Negotiation and Settlement*  
Rubin and Brown, *The Social Psychology of Bargaining and Negotiation*  
Schelling, *The Strategy of Conflict*  
Zartman, *The 50% Solution*  
Lewicki and Litterer, *Negotiation*  
Rubin, ed., *Dynamics of Third Party Intervention: Kissinger in the Middle East*  
Pruitt and Rubin, *Social Conflict: Escalation, Stalemate, and Settlement*

## FURTHER REFERENCES ON NEGOTIATION AND RELATED PROCESSES

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Fisher, Ury, and Patton, *Getting to YES: Negotiating Agreement Without Giving In*,  
Second Edition (1991)

Fisher, *Improving Compliance with International Law* (1981)

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### Books and Articles by Others

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- Maggiolo, *Techniques of Mediation in Labor Disputes*
- Mather, Some Determinants of the Method of Case Disposition: Decision-making by Public Defenders in Los Angeles, 8 Law & Soc'y Rev. 187 (1974).
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### **Some Case Studies**

Campbell, *Successful Negotiation: Trieste 1954*.

Newhouse, *Cold Dawn: The Story of SALT*.

Rubin, J., et al., *Dynamics of Third Party Intervention: Kissinger in the Middle East* (1981).

Zartman, *The 50% Solution* (series of case studies; contains excellent bibliography).

### **Other Bibliographies**

Gould and Barkun, *Social Sciences Literature: A Bibliography for International Law*, viz. especially section on "Negotiation and Bargaining," pp. 445-484.

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