

# IN MEMORIAM: ROGER FISHER

BY

ROBERT C. BORDONE  
DANNY ERTEL  
MARTHA MINOW  
ROBERT H. MNOOKIN  
BRUCE PATTON  
JAMES K. SEBENIUS  
WILLIAM URY

Reprinted from  
HARVARD LAW REVIEW  
Vol. 126, No. 4, February 2013

Copyright © 2013  
THE HARVARD LAW REVIEW ASSOCIATION  
Cambridge, Mass., U.S.A.

*James K. Sebenius\**

For some months in 1978, my dissertation advisor, Howard Raiffa, had urged me to meet Bill Ury, an anthropology graduate student working closely with Roger Fisher. When Bill and I finally connected, our sunny afternoon conversation in my shabby Putnam Avenue apartment continued long after dusk had darkened the room. Each of us mirrored aspects of our respective intellectual mentors: mathematically inclined, I was taken with decision analysis and game theory while Bill twiggied to the relational and cultural.

Yet while our lenses differed, each of us had somehow developed a fascination with negotiation, not only as an intrinsically intriguing academic subject but also as a field in which theory might truly serve practice. Each of us had tasted practice: in my case, serving on the U.S. delegation to the Law of the Sea negotiations, and in Bill's, working on conflict resolution projects in the Middle East and a Kentucky coal mine. As Ph.D. students, we now sought to learn and develop prescriptive theory that would genuinely help negotiators with their toughest challenges.

Through Bill and Howard, I met and began to interact regularly with Roger Fisher, who directed the Harvard Negotiation Project (HNP). Soon, guided by our mentors and a wider group of remarkable senior faculty,<sup>1</sup> Bill and I were among the eager graduate student go-phers who helped build on HNP's foundation to launch the broader Program on Negotiation (PON).<sup>2</sup> PON continues to thrive as an inter-university consortium based at Harvard Law School, with widespread, active faculty and student participation from various Harvard professional schools (especially the Business and Kennedy Schools), MIT, the Fletcher School of Law and Diplomacy at Tufts, Brandeis, Simmons College, and others.

When I succeeded Roger as Director of HNP a few years ago, I began to reflect on what I'd learned over the years from this intense, opinionated, confident, and optimistic law professor, whose tall, slen-

---

\* Gordon Donaldson Professor of Business Administration, Harvard Business School; Director, Harvard Negotiation Project; Vice-Chair, Program on Negotiation; and prior board member of the (former) Conflict Management Group, which was founded and chaired by Roger Fisher. Contact the author at [jsebenius@hbs.edu](mailto:jsebenius@hbs.edu).

<sup>1</sup> Though the roster of actively involved senior faculty rapidly expanded over time, beyond Roger and Howard, initial and early members included Frank Sander from Harvard Law School, Larry Susskind from MIT's Department of Urban Studies and Planning, Robert McKersie from MIT's Sloan School of Management, David Kuechle from Harvard's Graduate School of Education, and Jeff Rubin from Tufts University's Psychology Department and Fletcher School.

<sup>2</sup> Bill Ury's and my close counterparts at the time included Bruce Patton, a longtime protégé of Roger's at HNP, and David Lax, a post-doctoral fellow under Howard.

der frame and ageless features personified *Getting to Yes*.<sup>3</sup> With his passing in 2012, the many valuable lessons Roger taught, directly and by example, have sharpened. From Roger, I learned not only about negotiation but also about how an academic career, especially in a professional school such as law or business, could make an important, positive difference in the world. Of course, Roger's way is but one of many, but what I, at least, take as some of its key precepts bear serious consideration by those individuals developing their careers. Some examples:

*Get your hands dirty.* It takes courage and chutzpah for an academic to wade into real-world challenges throughout his or her career. Always exhibiting these qualities, Roger's relentless engagement — whether in South Africa, at Camp David, on the Peruvian-Ecuadorian border, or elsewhere — gave him a first-hand sense of the issues as negotiators actually experienced them, not as they might be portrayed in the literature. By staying close to the phenomenon itself, he was able to ask better questions and to formulate more valuable answers. And of course, Roger's notable success in high-profile situations greatly enhanced his credibility and that of his work. Moreover, by involving students and junior colleagues in some of these engagements, Roger saw himself as creating the law school equivalent of a teaching hospital specializing in resolving disputes constructively. The real trick, however, is to combine real experiences with theory to generate new and useful intellectual capital, which I see Roger as having undertaken in at least three ways, encapsulated below as further precepts.

*Collaborate across disciplines.* Roger's books often drew on insights from other disciplines, especially the behavioral; from the beginning, his work made heavy use of concepts such as partisan perceptions, basic human needs, active listening, and effective brainstorming. Yet when Roger's HNP joined forces with several other faculty efforts — on public disputes, labor relations, business and organizational negotiations, mediation, and so on — to create the larger "umbrella" PON in 1983, the sustained mutual engagement and cross-pollination of lawyers, psychologists, economists, game theorists, urban planners, statisticians, anthropologists, and others greatly enriched each person's understanding and insights — albeit with occasional frictions and frustrations. With the phenomenon of negotiation as a common point of reference, respectfully confronting sharp differences in perspective and approach — exemplified by the mathematically oriented Raiffa and the informal Fisher — proved quite valuable to all involved.

*Envision your work as an evolving project, with others.* Looking over a sampling — hardly all! — of Roger's work, two salient charac-

---

<sup>3</sup> ROGER FISHER, WILLIAM URY & BRUCE PATTON, *GETTING TO YES* (3d ed. 2011).

teristics jump out. First, the corpus is much better understood as a long-term evolving *project* around a unifying theme rather than as a series of one-off products. Second, *coauthorship with a remarkable series of mostly younger colleagues* served a powerful mentoring role and further developed the core project, both directly and through independent works by Roger's collaborators.

After Roger alone wrote *International Conflict for Beginners* in 1969, a slim volume illustrated with informative cartoons by Robert Osborne, he joined forces with William Ury to coauthor the blockbuster *Getting to Yes* (GTY), which appeared in 1981; Bruce Patton joined Roger and Bill as a third coauthor in later editions. GTY can be understood as a win-win, problem-solving antidote to traditional win-lose, positional bargaining. While GTY stressed the importance of relationships, this element of negotiating longer-term deals became the subject in 1988 of *Getting Together: Building Relationships as We Negotiate*, coauthored with Scott Brown. Refocusing on international conflict with a refined GTY methodology, a 1994 collaboration among Roger, Elizabeth Kopelman (Borgwardt), and Andrea Kupfer Schneider produced *Beyond Machiavelli*. Actually putting GTY principles into practice was the subject of *Getting Ready to Negotiate* in 1995, a preparation workbook written with Danny Ertel. A scant few years later, in 1998, Roger worked with Alan Sharp and John Richardson to write *Getting It Done: How to Lead When You're Not in Charge*, which addressed the challenge of lateral leadership inside organizations, generally via negotiation. Over the years, various users and critics of GTY had charged that its methodology was too cool, "rational," and didn't take account of emotions. It should hardly be surprising that a collaboration with young psychologist Daniel Shapiro in 2005 generated *Beyond Reason: Using Emotions as You Negotiate*.

This rushed tour through some of Roger's books should highlight their organic evolution as a *project* on the theme of problem-solving, GTY-style negotiation, successively refining and expanding the core conception. It also suggests the wide range of Roger's junior coauthors, most of whom have continued on with impressive careers that frequently entail a strong element of negotiation. And Roger's mentees themselves have independently furthered his core project in singular and important ways, notably against the challenges of dealing with hard bargainers (Ury's 1991 *Getting Past No*), saying "no" while enhancing relationships (Ury's 2007 *The Power of a Positive No*), and communicating constructively on tough issues (Douglas Stone, Bruce Patton, and Sheila Heen's 1999 *Difficult Conversations*).

*Express powerful truths simply, concisely, and memorably.* As with the books of his mentees, Roger's works are blessedly brief, plainspoken, and example filled. They derive much power from their tight organization, ruthlessly edited around a few, carefully crafted, pithy pieces of advice. As a canonical example, take the core prescriptions

that structure *GTY*: "Separate the people from the problem." "Focus on interests, not positions." "Invent options for mutual gain." "Insist on using objective criteria." "What if they are more powerful? (Develop your BATNA — Best Alternative to Negotiated Agreement.)"

With my intellectual background that valued nuance, logical consistency, and precision, *GTY*'s general, aphorism-laden approach initially drove me crazy — even though I had given positive feedback to Bill and Roger on countless drafts. As a young professor, I sometimes gave exam questions in negotiation classes asking students to ponder *GTY* and critically evaluate its advice: "*Under what conditions* should you (*and should you not*) separate the people from the problem, focus on interests, not positions, or develop your BATNA even when they are *not* more powerful, etc.? Suggest counterexamples." (It is easy to find negotiations in which the problem *is* the person, where positional bargaining may trump an interest-based approach, or when both sides have equal power but improving your BATNA will beat any feasible deal.<sup>4</sup>)

Yet a few realizations came to temper my early intellectual indignation. First, I had had my students read *GTY* very carefully and critically engage with its approach. Even if flawed in some respects, its main message was compelling to many and could not be easily ignored in the world of negotiation, as is the great bulk of academic work, including much of my own. And much as Roger's friend, John Kenneth Galbraith, had provocatively served up a creative new agenda about the real structure of the industrial economy to his economist colleagues, Roger's work stimulated many a further scholarly investigation.

Second, not only did people actually *read* the books of the *GTY* project, but they also *remembered* the essence of the advice. After all, most of us can recall only a few key elements of any book; elaborate argumentative and evidentiary structures tend to quickly blur and fade.

Third, and perhaps most important, I came to appreciate that various forms of intellectual capital can be valuable depending on one's purpose. By far, the most familiar to social science are deductive propositions supported by experimental and observational evidence,

---

<sup>4</sup> Indeed, two of my books, coauthored with David Lax — *The Manager as Negotiator* (1986) and *3D Negotiation* (2006) — conditionally embrace but sharply critique the approach of *GTY* and its progeny while systematically extending analysis and advice to vital aspects of negotiation downplayed in Roger's work (for example, the tight links between competitive moves to "claim value" individually and cooperative moves to "create value" jointly, wide classes of moves "away from the table" to set up the negotiation in the most promising fashion, etc.).

but many other forms of knowledge can also be valid and useful.<sup>5</sup> For example, Roger and his colleagues constructed frameworks of aphorisms that, on average, (1) respond to widely felt practitioner needs and (2) systematically direct negotiators' focus to aspects of the situation that will generate helpful prescriptions. Midlevel frameworks and generalizations that reliably meet these two criteria while genuinely respecting the intended audience are valuable indeed and really hard to construct. (Compare *GTY* with the deservedly obscure fate of much dumbed-down scholarship intended to be "popular" to an audience the authors may paternalistically regard as none-too-bright.)

To offer but one example from *GTY*'s maxims: even if, strictly speaking, one should not always focus on interests rather than positions, it is hard to think of a negotiation in which one would not want to make this distinction; deeply understanding the full set of perceived interests of all parties — as distinct from their stated positions — is essential to virtually all negotiation analysis. Though Roger and his colleagues were hardly the first to notice the importance of underlying interests versus bargaining positions, *GTY* and its progeny made interests the centerpiece of their project — and of many people's subsequent approach to negotiation. To this day, the disparate faculty from different intellectual traditions associated with PON largely characterize their approach as "interest-based" — thanks, largely, to Roger.

It sobered me to realize that, as Bill Ury recently reminded me, when the two of us had our initial conversation in the late 1970s, Roger Fisher and Howard Raiffa were a few years younger than we are at this writing. Yet Bill, I, and our many colleagues inhabit a much richer world of negotiation than when we launched our careers. The eight million copies of *GTY* sold in more than 30 languages have helped to put PON on the map and to raise the salience of negotiation as a field of scholarship and teaching. From being a relative rarity in 1980, negotiation is now consistently one of the most popular courses in professional schools.

And whenever I undertake an intellectual initiative, especially with my long-time coauthor, David Lax, we quietly ask ourselves questions drawn from long exposure to Roger Fisher and his work: Is this initiative driven by the real phenomenon that we have seen up close or of which we have had direct experience? Does it appropriately draw on the benefits of collaboration? Does it contribute to a larger, coherent project? Do we foresee ourselves as ultimately being able to express

---

<sup>5</sup> This argument is developed at length in my 2006 memorandum "Professional Schools and Academic Departments," which can be downloaded at <https://www.dropbox.com/s/ixebp76kxeg249j/Profv.Acadv1.8.doc>.

the truths we seek in simple, concise, and memorable form? If our answers are mostly "yes," I'm deeply reassured.