

Making Negotiation Theory More Helpful for Practitioners

Southeastern Conference on Conflict Management

Lipscomb University

College of Leadership and Public Service

Institute for Conflict Management

Nashville, Tennessee

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Presenters

- **Rishi Batra, Texas Tech University**
- **Heather Heavin, University of Saskatchewan**
- **Michaela Keet, University of Saskatchewan**
- **John Lande, University of Missouri**

Process

- We will elicit and disseminate knowledge from this program
- Notetaker will type answers without your names
- We will post summary on indisputably.org blog
- If you don't want your statements to be included, let notetaker know
- Questions?

Let's Learn About You

By show of hands, do you (or did you):

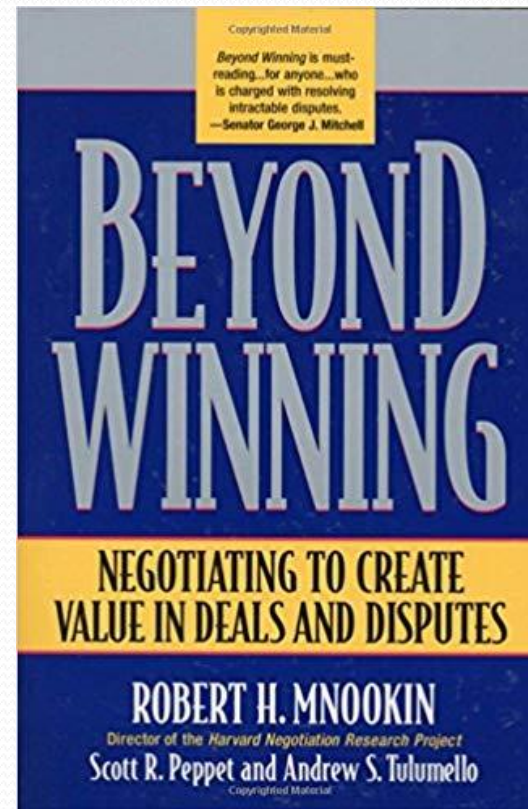
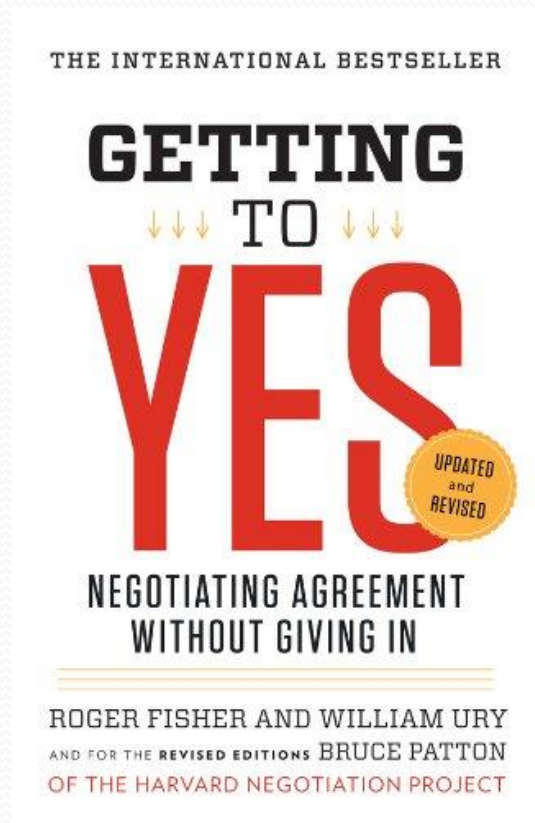
- **Represent clients**
- **Mediate**
- **Arbitrate**
- **Sit as a judge**
- **Other?**

What Types of Cases Do You Handle?

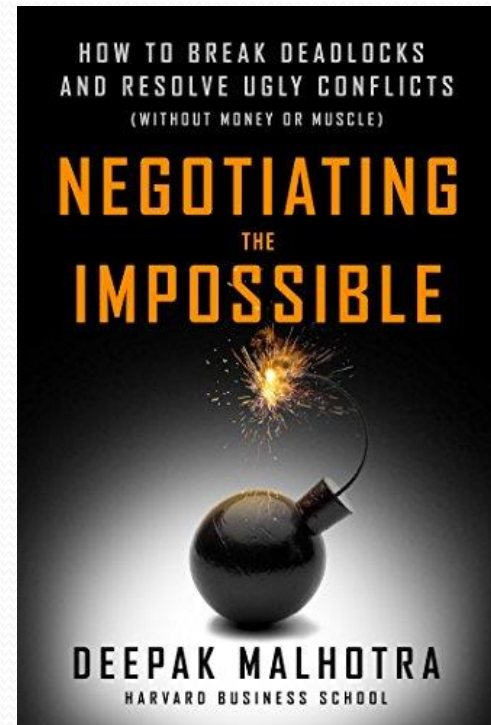
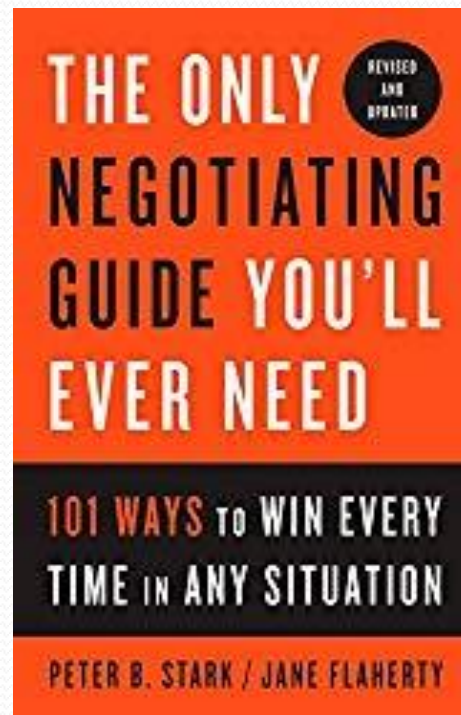
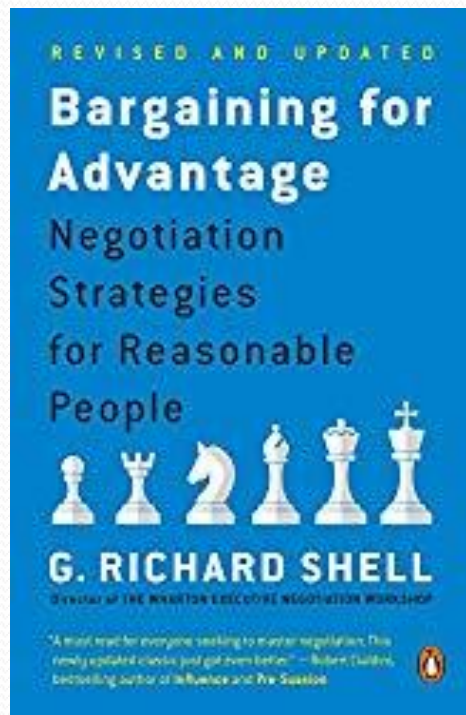
By show of hands, in the past year, did more than 10% of your cases involve:

- Torts
- Business
- Civil Rights
- Family
- Other Civil
- Criminal
- Other?

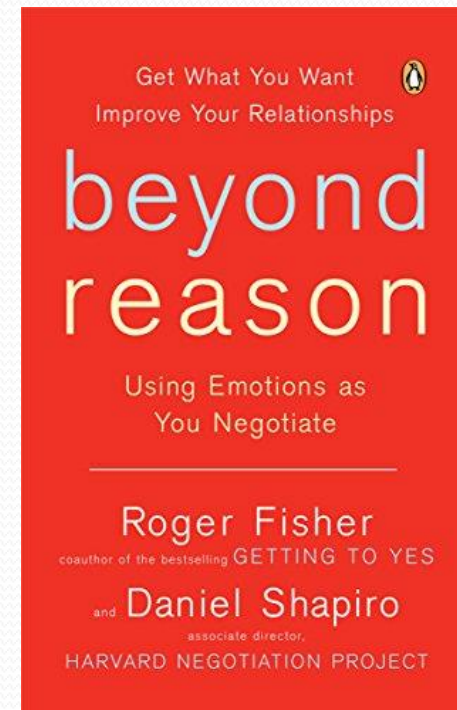
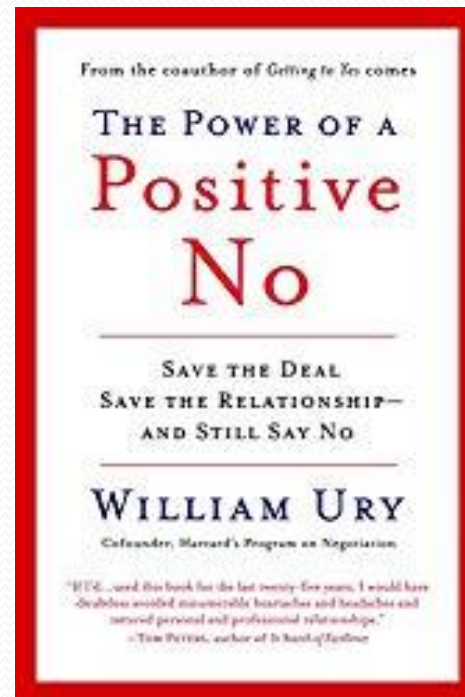
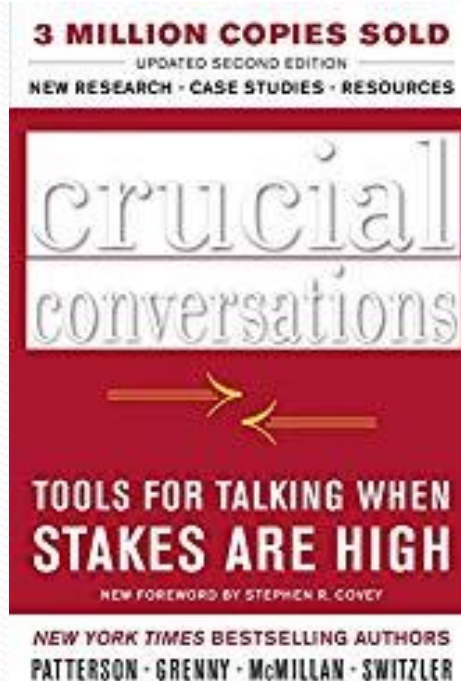
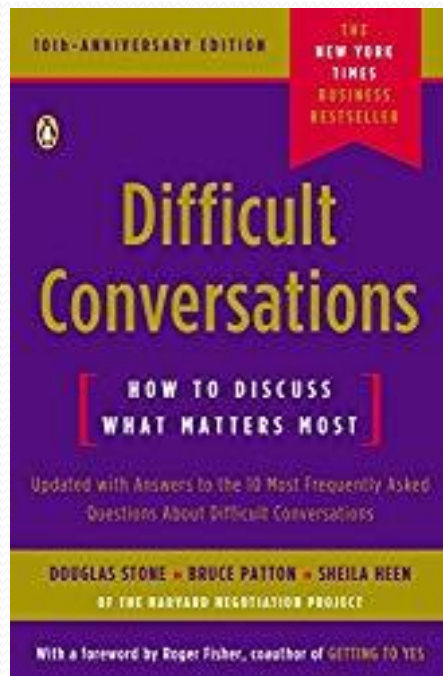
Theoretical Concepts – Frameworks



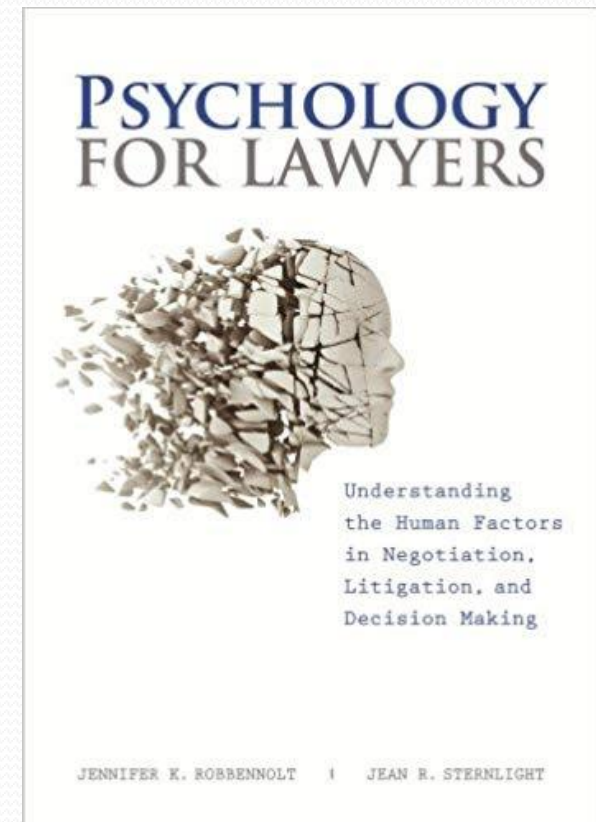
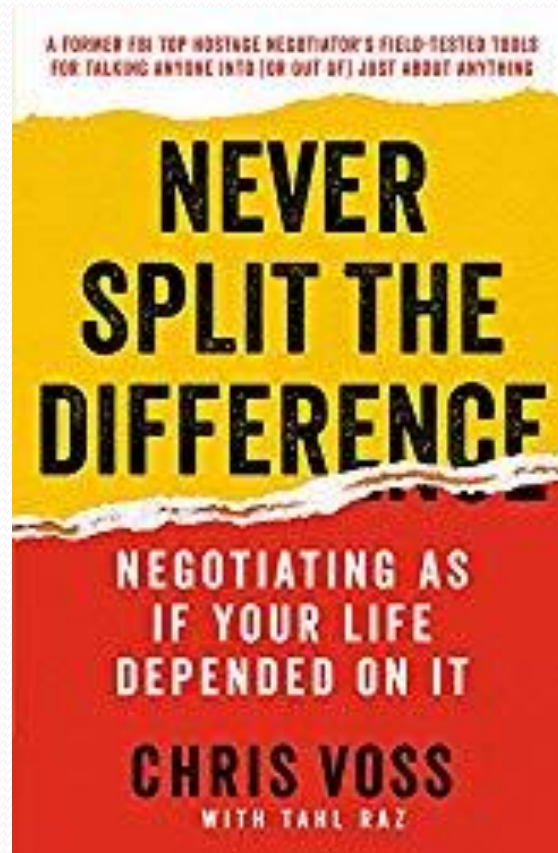
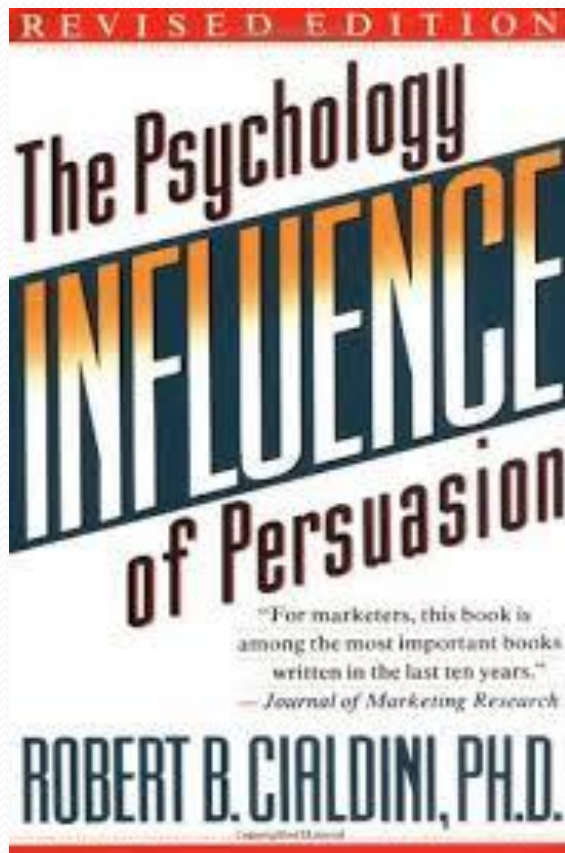
Theoretical Concepts - Strategy



Theoretical Concepts – Communication and Relationship



Theoretical Concepts - Psychology



Negotiation Practice: What is Wrong?

- Decision-making biases
- Poor communication
- Ignoring process interests
- Miscalculating BATNAs

Biases Tainting Decisions

Biases that influence our perceptions and judgments



Language Describing Risk

Very likely

Quite unlikely

Some possibility

Very good possibility

Reasonably likely

Fighting chance

Almost a sure thing

Remote possibility

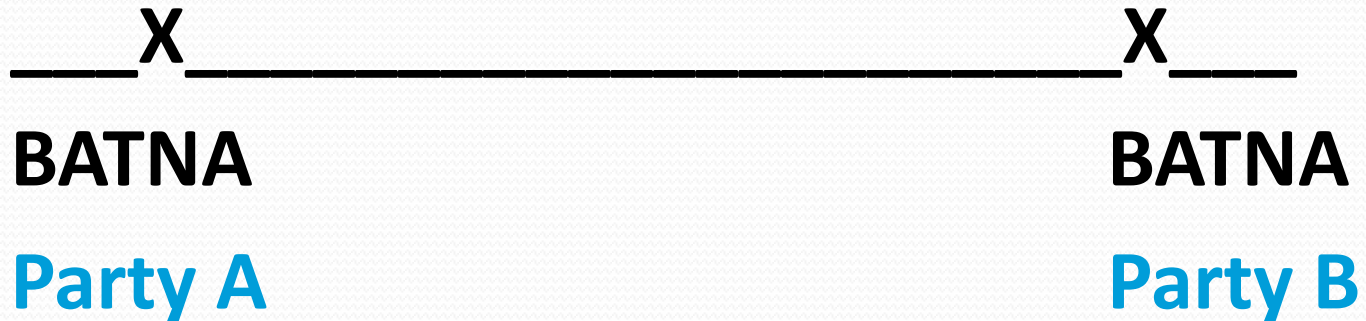
Getting it Wrong

Randall Kiser, *Beyond Right and Wrong*:

- 61% of plaintiffs and 24% of defendants rejected settlement offers and got worse results at trial
- Not always “decision error,” but often is

Why do so many people get it wrong?

Zone of Potential Agreement (ZOPA):



Litigation Interest & Risk Assessment (LIRA)

- **Identify strengths and risks in your case**
- **Break down complexity**
- **Use analysis not just intuition**
- **Good attorney-client communication**
- **Informed decision-making**

Net Expected Value of Court Outcome

Expected value of court outcome

- Tangible costs**
- Intangible costs**

= Net expected value of court outcome

Two-Stage Process

Stage One: Determine the Expected Value of Court Outcome

- Step 1: Estimate Risks Regarding Liability
- Step 2: Estimate Damages
- Step 3: Determine Expected Value of Court Outcome:
Multiply Probability of Liability by Amount of Est. Damages

Stage Two: Calculate the Net Expected Value of Court Outcome

- Step 4: Estimate Value of Tangible and Intangible Costs of Proceeding to Trial
- Step 5: Calculate the Net Expected Value of Court Outcome:
Deduct Est. Costs From Expected Value of Court Outcome

Intangible Costs of Litigation

Personal:

Litigation stress

Financial goals and stability

Relationships, family, community

Health and wellness

Business:

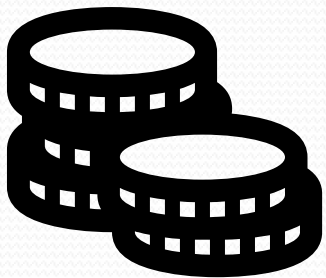
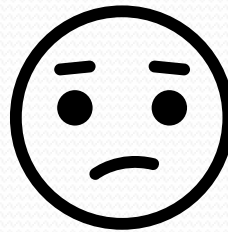
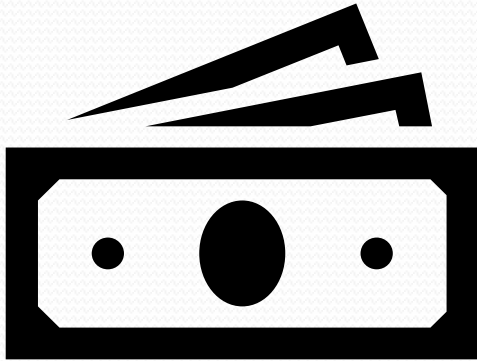
Opportunity costs

Reputational / brand costs

Psychological costs

Employee morale

Estimate Costs to Get Net Expected Value



Tangible

- Legal Fees
- Disbursements
- Enforcement Costs

Intangible

- Opportunity Costs
- Reputational Costs
- Personal Costs

Psychological Cost: Client Resiliency

- People respond to *legal process* -- distinct from *outcome of process*
- Some experience “cost” intensely (eg, people with mental / emotional vulnerabilities or where “identity” and core matters at stake)



Stressful Aspects of Litigation

- **Adversarial nature of process**
- **Delay**
- **Intensity**
- **Meetings with lawyers & other professionals**
- **Depositions and testifying in court**

Costs to Organizations

- **Loss of opportunity**
- **Reputation costs and public perception**
- **Psychological health of the organization**



Use of LIRA in Litigation and Negotiation

- **Identify weaknesses to work on**
- **Net expected value of court outcome is real value of BATNA to particular clients**
- **Can be used in any approach to negotiation**
- **Useful in setting bottom line – “tripwire” to end negotiation**



Thank you very much!