Negotiation and Dispute Resolution in the Public Sector

Spring 2021
Class #18
Debriefing

- What outcomes did each group achieve?

- What were the most significant barriers to reaching agreement, and how did your group try to overcome them?

- Did the mediator help? Would you have reached an agreement without the help of the mediator? Would parties have been equally satisfied with the result, if a mediator had not been involved?
What are the most important lessons from this game?
The accountability problem

- To whom and how should environmental mediators be held accountable?
- What makes public sector (e.g. environmental) disputes so different from more traditional conflicts (e.g. labor issues)?

What criteria can we use for evaluating these mediation efforts?
The accountability problem

- Who represents *diffuse and inarticulate interests*?

- What has changed in public sector mediation in the last 30 years?
  - Professional association
  - Legal framework
  - Agency buy-in and public awareness
Principled negotiation

• Results must appear fair to the community
• Results are Pareto optimal
• Results are consistent with principles reflecting pre-existing practice
• Agreement sets a good precedent
• Agreement reached quickly and at low cost
• Improves rather than worsens relationships among parties
• Parties readily accept the outcomes and stand by their commitments
Activist mediation

- What does it mean to take an activist mediation approach?
- What might be some of the problems associated with taking an activist approach?
- How might these problems be overcome?
- How should we decide whether a power imbalance requires an activist approach, and when not?
- What does it mean to be neutral when taking an activist mediation approach?
- Can planners act as effective mediators? Why or why not?
- What other professionals might serve as activist mediators?
# Activist mediation

<table>
<thead>
<tr>
<th>Neutral Mediator</th>
<th>Power Balanced</th>
<th>Power Unbalanced</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fair process</td>
<td>Fair process</td>
<td>Fair process</td>
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<tr>
<td>Impartiality</td>
<td>Impartiality</td>
<td>Impartiality</td>
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<tr>
<td>Affected parties</td>
<td>Exclusion of affected interests, thus unstable?</td>
<td>assumed to be represented?</td>
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<tr>
<td>assumed to be represented?</td>
<td>Legitimation of outcome by process</td>
<td>Legitimation of outcome by process</td>
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<tr>
<td>Legitimation of outcome by process</td>
<td>Power imbalances perpetuated</td>
<td>Power imbalances perpetuated</td>
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<table>
<thead>
<tr>
<th>Activist Mediator</th>
<th>Balances information and participation</th>
<th>Balances information and participation</th>
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</thead>
<tbody>
<tr>
<td>Seeks representatives for any affected parties not present</td>
<td>Seeks representatives for affected parties not present</td>
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<tr>
<td>Possible perception of bias</td>
<td>Possible perception of bias</td>
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<td>Can mediator maintain role?</td>
<td>Can mediator maintain role?</td>
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<tr>
<td>Can mediator empower weaker party?</td>
<td>Can mediator empower weaker party?</td>
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Forester and Stitzel (1989), Pg.256

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Activist mediation

Figure 1: Possible Agreements in Westville

Forester and Stitzel (1989), Pg.259

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