NEGOTIATION, LAW AND POLICY: MANAGING CONFLICT IN PUBLIC CONTEXTS

Spring, 2015
3crs.Index #:03191
Graduate level course
Maximum enrollment: 20
Sanford M. Jaffe
Linda Stamato
34:833:572:01, T 1:10-3:50, CSB 113
Public Policy Program

Gaining agreement on public policy issues is often difficult, indeed, more often than not, the policy-making process is fraught with such contentiousness that considerable amounts of time and energy are invested in reaching decisions and managing conflicts that arise in respect of them. The court system is clogged with litigation over a myriad of governmental regulatory and civil matters; administrative agencies, federal and state, are burdened with disputes; the development and implementation of regulatory policy is mired in legalistic and adversarial rule-making processes. Objectives can be lost in the process.

The last several decades has witnessed the growth of less costly and time-consuming ways to deal with disputes in order to reduce their incidence, and, to improve decision-making. These initiatives rest on consensual rather than adversarial models. In the public policy arena, negotiation, mediation and facilitated collaboration predominate as processes that can produce stable, practical and lasting solutions to policy needs.

The basic purpose of this course is to acquaint students with these developments, loosely referred to as “conflict resolution,” and their relationship to planning and policy-making. Understanding the legal context is critical to recognizing the value of alternatives to litigation. Accordingly, students will come to understand that context, the relationship of law to policy, the limits of law and legal process, and the place that negotiation and conflict resolution occupy in that universe. Students are introduced to problem-solving scholarship and case studies that illustrate collaborative, creative and responsive methods for meeting public needs.

Practitioners of conflict resolution use analytical and intervention skills to address organizational, policy and legislative concerns in areas as diverse as the workplace, the community, government regulatory practice and international relations. Increasingly, they build on innovations in negotiation, mediation, organizational development and communication to design systems to improve decision-making and to manage conflict. Accordingly, the focus of the course is also experiential; emphasizing the construction of knowledge and skill development, it provides students with opportunities to apply concepts and practice negotiation and intervention skills in hypothetical and factual policy and planning contexts.
Course Requirements:

Class participation: Attend all classes prepared to participate knowledgeably in discussions and exercises by reading assignments in advance. While there are some lectures, the majority of class time is spent in discussing readings, engaging in exercises and role-plays and debriefing those experiences. Participation is likely to be advanced by reading newspapers and magazines, listening to radio and watching television and, of course, surfing the WEB, to find cases/reports/articles that suggest “conflict resolution potential” that may be relevant to class discussion and bringing these references to the attention of the class. Students are strongly encouraged to participate in this way.

Academic Integrity: Please visit the following link at the start of the semester to be sure you are fully aware of the University’s requirements with respect to academic integrity:

http://academicintegrity.rutgers.edu

Two regularly scheduled classes (March 24, 2015 and April 7, 2015) are canceled in order to arrange for a longer single session to engage in a complex mediation role-play. This session is mandatory: Saturday, April 11, 2015. (Rm. 113)

Bi-weekly assignments: A paragraph or two—no more—on one or more of the week’s assigned readings or recommended readings (we expect 7-8 of these brief assignments over the 16 weeks of the course). Relating the readings to a news item, where that may be possible to do, is encouraged (e.g., impasse in trade negotiations; siting an unwanted facility in a community; allocating water resources; landlord/tenant dispute; land use policy) or, of course, to an experience of your own.

All assigned readings are either in the text you have purchased or appear in one of several articles or texts that are either “on reserve” for your use in our offices (4th Floor) or at Sakai site. Course number is: 34:833:572:01 Sp’15

Semester written requirements:

1. Review and comment briefly on an article that you will select from the Negotiation Journal, Conflict Resolution Quarterly or Mediation Quarterly, Journal of Dispute Resolution, or the Ohio Journal on Dispute Resolution. (A small collection is available at CNCR; you can access Negotiation Journal online at this link: http://www.libraries.rutgers.edu/rul/rr_gateway/ejournals/ejournals.shtml—select the Full A-Z list link, search for Negotiation Journal, enter into Wiley Online Library link). The paper should be no more than two double-spaced pages and is due on March 3, 2015.

2. Prepare briefing papers for either a governor, a legislative committee, a mayor, or an agency director that will recommend incorporating “conflict resolution” in a proposed executive or agency order or legislation (e.g. siting hazardous waste facilities; setting insurance rates; altering child custody policy) or a collaborative process to use for either a specific siting issue, say siting a facility for recovering substance abusers or a marijuana distribution center, or for a matter of major controversy or complexity (e.g. halfway house; group home; development of a downtown business district; or an issue relating to education, for example, or transportation, the environment or welfare policy).
An outline, to be submitted for review and approval, should indicate what is being proposed (to whom and in what capacity) along with a rationale for the recommendation. (Due date for the paper proposal is March 31, 2015) The final briefing paper—no more than 3 double-spaced pages—is due on April 28, 2015.

In evaluating written assignments, we will consider the following dimensions: comprehensiveness (how thoroughly topics are covered and concepts from the course are demonstrated); validity (how well descriptive data is used to support concepts); organization (how clearly and professionally the report/review/briefing is written and presented) and creativity (how well the assignment is executed, i.e., in form and style).

Semester oral requirement:
Prepare and deliver (to the class) a 6-8 minute presentation on the subject of your briefing paper. You will want to persuade the class to act on the process you are recommending for the issue you’ve identified.

Grading: Briefing paper and oral presentation: 50%; Critique: 25%; Class Participation: 25% (bi-weekly paragraphs are not graded but must be completed).

Required Reading:

Recommended Reading:


Kolb, Deborah and Williams, Judith, Everyday Negotiation, (Jossey Bass, 2003).


Visit Policy Consensus web site: www.policyconsensus.org and subscribe to receive “Policy Consensus E-news”.

Note: Required reading(s) other than in the text will be either copied and distributed or will be accessible on the Sakai site.

Additional Reading: Selections from some of the readings below may be assigned either as required or recommended readings. Several copies of hardcover books are in our offices as are some journals, and in RU library as well.
Other references listed, while not required or recommended for specific class topics, may be of interest nonetheless.

Arrow, Kenneth; Mnookin, Robert H.; Ross, Lee; Tversky, Amos; and Wilson, Robert, eds., *Barriers to Conflict Resolution*, (W.W. Norton, 1995).


Folger, Joseph P. and Jones T.S., eds., *New Directions in Mediation: Communication and Perspectives*, (Sage, 1994).


Shields, Venessa E. and Baldwin, Nicholas D. J., Beyond Settlement, (Fairleigh Dickinson University Press, 2008)


Vasquez, John A.; Johnson, James T.; Jaffe, Sanford; and Stamato, Linda, Beyond Confrontation, (University of Michigan Press, 1995).

Class Schedule:

January 20, 2015 Negotiation: Understanding Theory and Process

The first several sessions will focus on negotiation, a basic understanding of which is essential for making group decisions and managing conflicts. Negotiating is a critical skill but it is not easy. Consider the derivation of the word from Latin (neg (not)+otium (leisure). Negotiation is the art and science of securing and not securing agreements between two or more interdependent parties and it may well involve more emotional and difficult encounters than any individual bargainer may appreciate at the start of the semester or at the start of any particular class session.

Required Reading:

Alfini et. al. (text) “Historical Context and Conceptual Framework,” pp. 1-34.

Recommended Reading:
January 27, 2015  Positional and Interest-Based Negotiation: Applying Concepts and Skills

Required reading:

Alfini et. al. (text) “Negotiation,” pp. 35-61.


http://www.nytimes.com/2013/10/12/business/media/when-our-news-is-gerrymandered-too.html

Recommended Reading:

Fisher and Ury, Getting to Yes, Parts I and II.


February 3, 2015  Barriers to Effective Negotiation (and Implementation)

Required Reading:

Alfini et. al. (text) “Negotiation,” pp. 61-69; 85-105.


Recommended Reading:


February 10, 2015  Group Negotiation and Third Party Interventions that Assist Negotiation (Mediation; Facilitation and Collaboration): Introduction

Required Reading:


Guiora, Amos N. “Negotiating implementation of a Peace Agreement: Lessons Learned from Five Years at the Negotiating Table,” (Cardozo Journal of Conflict Resolution, Vol. 11:411) pp. 411-436


Recommended Reading:

Folger, Joseph P. and Jones, T.S., eds., New Directions in Mediation: Communication and Research Perspectives, Part IV.


February 17, 2015  Third Party Interventions (continued); Regulatory Negotiation

Required Reading:
Alfini (text): “Diversity, Power, and Fairness,” pp. 339-375; and peruse the following:


Susskind and Cruikshank, pp. 35-55.


Recommended Reading:


For those interested in the legal issues in mediation, such as confidentiality, enforcement and good faith and for those interested in further information on mediator qualifications and standards of conduct, see pp. 205-338 in the Alfini text.

February 24, 2015  Collaboration and Bargaining in Public Contexts

Required Reading:


Forester, John. Dealing with Differences: Dramas of Mediating Public Disputes, chapter
one, “Discovery, Creativity and Change in the Face of Conflict,” pp. 3–16.


Peruse these websites:
http://ruckelshauscenter.wsu.edu/eNewsFall2013.html
http://www.scottlondon.com/articles/oncollaboration.html

Recommended Reading:


Herman, Margaret, ed., Resolving Conflict: Strategies for Local Government, Part III.


March 3, 2015 Collaboration and Bargaining in Public Contexts (continued)

ARTICLE REVIEW/CRITIQUE DUE

Required Reading:

Alfini et. al. (text): pp. 567 (introduction), pp. 609-633; (peruse remainder of chapter 11)

Bingham, Gail, Resolving Environmental Disputes, chapter 1, pp. 13-57.

Singer, Linda, Settling Disputes, chp.1.

Recommended Reading:

Bingham, Gail, Resolving Environmental Disputes: A Decade of Experience, Part I.

March 10, 2015  Intra-institutional Disputes

Required Reading:


Recommended Reading:

- Princeton University, “Fairness Review Process”
- A.A.A., “Smart Solutions”

March 17, 2015  Spring Recess (no class)

March 24, 2015  No Class (Cancelled to allow for Saturday session on April 11, 2015)

March 31, 2015  Policy Dialogues and Organizing Facilitation in Policy and Public Domains

**BRIEFING PAPER PROPOSALS DUE**

Required Reading:


Recommended Reading:


April 7, 2015 No Class (Cancelled to allow for Saturday session on April 11, 2015)

April 11, 2015 Saturday: Complex Mediation in a Public Context (9:30 a.m.-4:30 p.m.) Double Session (replacement for the classes on March 24th and April 7th)

April 14, 2015 Lessons learned and Arbitration

Oral Presentations

Required Rreading:

Susskind and Cruickshank, pp. 175-178.

Singer, pp. 25-29.

Additional readings may be assigned.
April 21, 2015    Institutionalizing Negotiation and Mediation in Public Domains

(Guest Speaker: John Weingart, former Assistant Commissioner of the New Jersey Department of Environmental Protection, Director of state’s Low-Level Radioactive Waste Disposal Facility Siting Board. Weingart is Associate Director of the Eagleton Institute of Politics at the University.)

Oral Presentations

Required Reading:

Alfini et. al. (text): “Institutionalization of Mediation,” pp. 517-527; 543-555.

Brock, Jonathan and Cormick, Gerald, “Can Negotiation Be Institutionalized or Mandated? Lessons from Public Policy and Regulatory Conflicts” in Kressel and Pruitt, Mediation Research, chp. 7.


Goldberg, Rogers, and Sander, Dispute Resolution, chp. 11, “Institutionalization”.


Peruse websites for: The Policy Consensus Institute (policyconsensus.org); Consensus Building Institute (cbuilding.org); and Center for Negotiation and Conflict Resolution: (www.CNCR.rutgers.edu).

Recommended Reading:


Collaborative Competencies for Public Managers and Planners. (Draft).


“States Mediating Solutions to Environmental Disputes” in “The Policy Consensus Initiative” (CNCR Library).

April 28, 2015  Decision-making in Public Domains/Overview

FINAL BRIEFING PAPER DUE

Oral Presentations

Required Reading:


Chrislip, David D and Larson, Carl E., *Collaborative Leadership*; peruse book and read selections on Sakai site: preface and pp. 1-36; 107-123.

Stamato, Linda and Jaffe, Sanford M., “To End and Prevent Wars Between States: Negotiate, Don’t Litigate,” *Alternatives*, (Vol. 27, No.8, September 2009).


BIBLIOGRAPHY

ADDITIONAL READINGS IN PUBLIC POLICY CONTEXTS


Bingham, Gail, *Resolving Environmental Disputes*, Part III.


Gray, Barbara, *Collaborating*, Part II.


ADDITIONAL READINGS IN PLANNING CONTEXTS

Dotson, A. Bruce; Godschalk, David and Kaufman, Jerome, The Planner as Dispute Resolver, (National Institute for Dispute Resolution, 1989), Part I.


Gray, Collaborating, Part III.


Herman, Margaret, ed., Resolving Conflict: Strategies for Local Government, Intro and Part IV.


Susskind, Lawrence and Cruikshank, Breaking the Impasse, chps. 4, 5.

ADDITIONAL READINGS IN THEORY AND PRACTICE


Kang, Suhgho, McDonald, John W., Bae, Chinsoo, eds., Conflict Resolution and Peace Building, (Northeast Asian History Foundation, April 7, 2009)


WEB SITES

www.cncre.rutgers.edu

www.cbuilding.org (Consensus Building Institute)

www.internationalpeaceandconflict.org - an online initiative to bring together professionals, academics and students involved in Conflict Resolution, Human Rights, International Development, Democratization, Social Entrepreneurship and related fields. It is a Free
www.acrnet.org - Association for Conflict Resolution (ACR) is a professional organization dedicated to enhancing the practice and public understanding of conflict resolution.

www.policyconsensus.org - builds and supports networks that provide states with leadership and capacity to achieve more collaborative governance.

www.mediation.com and - a site that offers a broad range of information on dispute resolution.


www.adr.gov - federal government's Alternative Dispute Resolution (ADR) Working Group

http://www.crinfo.org - the The Theory to Practice Institute’s on-line lists major publications (free copy without charge).

www.beyondintractability.org – this is the website the Intractable Conflict Knowledge Base Project. This system, which focuses on society's most difficult and dangerous conflicts, includes over 3000 pages of material written with the help of more than 250 experts. Currently available resources include:

1. **350+ Essays/Articles** - succinct, readable, executive summary-type articles describing key conflict dynamics and intervention options. Broad topics covered include, for example:
   - Causes of Conflict,
   - Conflict Dynamics,
   - Culture, Power, and Justice,
   - Peace Processes (Peacekeeping, Peace Making, Peacebuilding)

2. **70+ Conflict Expert Interviews** - with over 100+ hours of online audio, plus searchable transcripts.

3. **300+ Book and Article Summaries** - providing quick introductions to key publications.

4. **Annotated Conflict Cases** - instructive accounts of typical intractable conflicts, with abundant links to interpretive materials.

5. **Comprehensive Search System** - simple and advanced tools for finding information

6. **Checklists** - suggestions of things for people in different roles to think about as they struggle to deal with difficult conflict situations.

7. **Group Projects** - a quick primer for students wishing to limit the conflicts that often undermine the success of group projects.

8. **Guide to Working with Strong Emotions in the Classroom** - offers useful suggestions for discussing the difficult issues that lie at the core of intractable conflict.

9. **Student Contributor Program** - providing advanced students with an early opportunity to make a lasting contribution to the field.

10. **Build-Your-Own-Text Module** - allowing instructors to quickly and easily craft (and revise) primary and secondary "virtual text(s)," focused on immediate student interests and needs.
11. **Special Editions** focused on a variety of topics, including: post-conflict reconstruction and peacebuilding, civil rights mediation, conflict/peace journalism, and Bill Ury's "Third Side."

These, and many other, resources are available from the [Beyond Intractability home page](http://www.beyondintractability.org). To make things a little easier to find, a special version of the home page has been created to highlight, by number, links to the items listed above: [http://www.beyondintractability.org/index-brochure1.jsp](http://www.beyondintractability.org/index-brochure1.jsp)

**www.beyondintractability.org/education-brochure.jsp** - free educational resources for those who are interested in exploring more constructive approaches to intractable social conflicts.

**www.CRInfo.org** - extensive database on conflict resolution research and practice.

CRInfo is a clearinghouse, or “super site” which provides links to, and information about, almost 5,000 websites, books, articles, organizations, programs, events, scholars, job and career opportunities, education and training programs, and lists of practitioners working in the field. All of this information is annotated and coded, making it searchable with a variety of specialized browse and search tools.

In addition to the main edition, which highlights the full range of conflict topics and processes, users can access special topic editions which contain all the resources of the main edition, but highlight articles on specific topics. Current editions focus on business, interpersonal, intergroup, international and environmental/public policy conflicts, and legal ADR (alternative dispute resolution). Users can also design their own edition focusing on topics of their choice. For more information go to [http://www.crinfo.org](http://www.crinfo.org) or contact the project co-directors, Guy Burgess and Heidi Burgess at [burgess@crinfo.org](mailto:burgess@crinfo.org).

Some journals provide online access, in some cases free and in some cases for a fee – some examples follow:

[http://www.springerlink.com/content/1571-9979/](http://www.springerlink.com/content/1571-9979/) - Negotiation Journal

[http://moritzlaw.osu.edu/jdr/index.html](http://moritzlaw.osu.edu/jdr/index.html) - Ohio State Journal on Dispute Resolution

[http://www3.interscience.wiley.com/cgi-bin/jhome/97519532?CRETRY=1&SRETRY=0](http://www3.interscience.wiley.com/cgi-bin/jhome/97519532?CRETRY=1&SRETRY=0) - Conflict Resolution Quarterly