NEGOTIATION, LAW AND POLICY: MANAGING CONFLICT IN PUBLIC CONTEXTS

Spring, 2020
Sanford M. Jaffe

3crs.Index #:02368
Linda Stamato
Graduate level course
34:833:572:01, T 1:10-3:50, CSB 113
Maximum enrollment: 18
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.


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**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](http://academicintegrity.rutgers.edu)

Two regularly scheduled classes (February 25, 2020 and April 7, 2020) 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 4, 2020. (Rm. 112)**

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), Alexander Library online or at Canvas site. Course number is: 34:833:572:01 Sp’20.

**Semester written requirements:**

1. **Reflections:** A paragraph or two—no more—on one or more of the week’s assigned readings or recommended readings (we expect 5-6 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. (These papers are required but are not graded).

2. 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: [https://rutgers.primo.exlibrisgroup.com/discovery/jsearch?query=any,contains,Negotiation%20journal.&tab=jsearch_slot&vid=01RUT_INST:01RUT&offset=0&journal](https://rutgers.primo.exlibrisgroup.com/discovery/jsearch?query=any,contains,Negotiation%20journal.&tab=jsearch_slot&vid=01RUT_INST:01RUT&offset=0&journal))
3. Prepare a briefing papers for either a governor, a legislative committee, a mayor, or an agency director that will recommend “a conflict resolution process” in a proposed executive or agency order or legislation (e.g. siting hazardous waste facilities; or 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 24, 2020.) The final briefing paper—no more than 4 double-spaced pages—is due on April 28, 2020.

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).

Sample papers are available on our Canvas site.

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% (reflections are not graded but count as “participation”).

Required Reading:


Recommended Reading:


Visit Consensus Building Institute website: [www.cbuilding.org](http://www.cbuilding.org) (you may want to subscribe to CBI’s blog as well).

**Note:** Required reading(s) other than in the text will be either copied and distributed or will be accessible on the Canvas 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 the Alexander Library on College Avenue, 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).


Class Schedule:

January 21, 2020  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:


Recommended Reading:


January 28, 2020  Positional and Interest-Based Negotiation: Applying Concepts and Skills

Required reading:


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 4, 2020  Barriers to Effective Negotiation (and Implementation)

Required Reading:

    pp. 53-65; 75-102 (3rd edition).


Recommended Reading:


February 11, 2020  Group Negotiation and Third Party Interventions that Assist Negotiation (Mediation; Facilitation and Collaboration)

Required Reading:


Weise, Karen, “A compromise Between Ranchers and Conservationists to Save Wolves in Washington State is a Real-life Fable with a Moral That Might Just Solve America,” Bloomberg Newsweek, December 26, 2016, pp. 54-61.


United Nations Report on Mediation (peruse the report)

Recommended Reading:

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


February 18, 2020 Third Party Interventions (continued); Regulatory Negotiation

Required Reading:


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 25, 2020 No Class (Cancelled to allow for Saturday session on April 4, 2020)

March 3, 2020 Collaboration and Bargaining in Public Contexts

Required Reading:


Woodhouse et.al., The Contemporary Conflict Resolution Reader, pp. 287-296.


Lewicki et.al., Essentials of Negotiation, (Irwin, 1st edition, 1997, chp. 9, “Multiparty

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

Recommended Reading:


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


March 10, 2020  Collaboration and Bargaining in Public Contexts (continued)

ARTICLE REVIEW/CRITIQUE DUE

Required Reading:


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 17, 2020  SPRING RECESS: NO CLASS

March 24, 2020  Intra-institutional Disputes

BRIEFING PAPERS TOPIC/ OUTLINES DUE

Required Reading:
Alfini (text): Review March 5\textsuperscript{th} reading.


\textbf{Recommended Reading:}

Princeton University, “Fairness Review Process”

A.A.A., “Smart Solutions”


\textbf{March 31, 2020 \hspace{0.5cm} Policy Dialogues and Organizing Facilitation in Policy and Planning Domains}

\textbf{Required Reading:}


Recommended Reading:


April 4, 2020  Saturday: Complex Mediation in a Public Context (9:30 a.m.-4:30 p.m.)
   Double Session (replacement for the classes on February 25th and April 7th)

April 7, 2020  No Class (Cancelled to allow for Saturday session on April 4, 2020)

April 14, 2020  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.)

   **STUDENT PRESENTATIONS**

Required Reading:

Alfini et. al. (text): Chapter 10, “Institutionalization of Mediation in the Courts,” pp.517-527; 543-555 (2nd edition); Chapter 9, 463-473; 492-503 (3rd edition).


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 21, 2020 Decision-making in Public Domains/Overview

STUDENT PRESENTATIONS

Required Reading:

Chrislip, David D and Larson, Carl E., Collaborative Leadership: peruse book and read selections on Canvas 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).


April 28, 2020 STUDENT PRESENTATIONS

FINAL BRIEFING PAPER DUE

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.cncr.rutgers.edu

www.cbuilding.org (Consensus Building Institute)


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 - a site that offers a broad range of information on dispute resolution.

www.mediate.com – everything you want to know about mediation including interesting blogs.
www.adr.gov - federal government’s Alternative Dispute Resolution (ADR) Working Group

http://www.crinfo.org - 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.

CRInfo which is a part of Moving Beyond Intractability, has an extensive database on conflict resolution research and practice. It 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

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


https://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 - Conflict Resolution Quarterly