Beyond Neutrality:
The Possibilities of Activist Mediation in Public Sector Conflicts

John Forester and David Stitzel

The ideal of neutrality in public sector mediation obscures more than it clarifies. Worse still, it distracts our attention from the skillful, ethical judgments every mediator must make in practice. To explore the political and ethical influence mediators inevitably exert as they manage dispute resolution processes, we have designed a scorable three-party mediation exercise for teaching and research, "Westville: Mediation Strategies in Community Planning," that allows us to investigate activist, non-neutral mediation strategies (Forester and Stitzel, 1988).

We begin here by identifying a community planning negotiation dilemma whose perverse outcomes lead us to consider seriously the adoption of mediation roles by planners. We turn next to controversial questions regarding power, representation, and neutrality that challenge both the desirability and the viability of planner-mediator roles. To explore these questions concretely, we consider a composite case in the fictional town of Westville, the subject of our teaching and laboratory simulation designed expressly to investigate non-neutral mediation strategies. If planners typically work for governments and have agendas of their own, as in Westville, can they nevertheless help to resolve public sector disputes as activist, non-neutral mediators? We wish to argue the affirmative case: activist mediation is a viable, practical and ethically desirable strategy.

A Community Planning Negotiation Dilemma

Consider the problem in Westville. Hutter, the representative of the Westville Homelessness Task Force, hopes to turn the old social service center into a shelter for Westville's homeless. Wood, who represents a local community

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organization, Neighbors Together, is worried about the shelter’s impact on the neighborhood: what will this do to property values? Goldsmith, a member of the Westville City Planning staff, has been asked by the mayor to act as a mediator to help Hutter and Wood come up with an agreement they can live with—before the city council plunges ahead and decides what form the shelter will take on its own. Goldsmith, Hutter, and Wood have three issues on the negotiation table: the number of beds to go into the shelter, the scope of services to be offered, and the date the shelter is to open.

Representing the Homelessness Task Force and Neighbors Together respectively, then, Hutter and Wood have a problem. They suspect one another’s motives. They don’t trust each other. What’s more, they each regard the other as being somewhat selfish and insensitive to the needs of the city as a whole. Consider what would be likely to happen if they were to meet as negotiators on their own.

From the point of view of the task force, Hutter sees a continuum between two options. At one extreme, Hutter could be open about the needs and problems of the task force, be honest about what they would settle for, and explain clearly what’s most important to the task force and what’s less important. At the other extreme, Hutter could withhold most of this information to avoid the possibility of being exploited. After all, the thinking may be, if I disclose what I really want (beds), the neighborhood organization’s Wood will make me give up everything on services and time in exchange for just a few beds. But if I keep my priorities to myself, I’ll be able to give up something on services and time and make it look like a real concession to them—so I can get what I want, a substantial number of beds!

From the point of view of the neighborhood representative, Wood, things look much the same. Hutter and the task force are a clear and present danger. The strategies available to Wood seem to run from the relatively risky, providing more information about what neighborhood members want and would settle for, to the apparently safe, withholding that information so Hutter won’t exploit it. If Wood discloses that the Neighbors Together members know that a shelter is coming in one form or another, and that the extent of services at the shelter is now their main concern—even more than the number of beds—then Wood won’t be able to appear to “give” on time or beds as a concession to limited services.

What does this mean for the meeting of the task force and neighborhood representatives? Each party fears the other’s exploitation. Each party may well think, “Why should I disclose my priorities if the other side is just going to take advantage of me? If I keep my information to myself, I may do well even if they are somewhat open. The more open they are, the better I’ll do. But if they’re not open, keeping things to myself is by far the best way to go. So I better not say much about what my group’s really willing to settle for—or we’ll never do any better than that.”

But of course when each side takes this position, then each side misrepresents their priorities, withholds information about possibilities, and covers up issues on which they’d be willing to give in order to gain more on others. Acting on the fear of exploitation and vulnerability, both parties can unwittingly lock themselves into a trap: they can create a situation in which together they only do poorly. What seems individually rational for each party can lead to a societally a “win-win” situation.
to a socially irrational outcome. Each hopes individually to gain, but they both lose. If they were both willing to share or intimate information about their different priorities, and so indicate their willingness to trade on certain issues, both parties might be able to gain. The task force's Hutter, after all, would like to give on "extent of services" in order to get more beds, and Wood, representing the neighborhood, would similarly like to give on the number of beds to get an agreement on service limits. But their mutual suspicions, distrust, and fear can lead them in a deceptively rational way to an agreement, a collective outcome, that's a good deal worse than both (1) what they want, and (2) what they could agree to together if they traded across priorities. Hutter and Wood both seem to be reasonable in this scenario, but their apparent rationality threatens to drive them into the trap of the so-called "negotiator's dilemma" (Lax and Sebenius, 1987).

In public sector planning disputes, whether local, regional, state or federal, the perverse logic of the negotiator's dilemma encourages neighborhood organizations, private developers, public agencies, and citizens' groups to come to settlements in which everyone does poorly. Everyone feels they might have done better, and the common feeling that results is a mixture of frustration and resentment rather than satisfaction. Everyone senses that better agreements must have been possible, but they couldn't figure out how to reach them. Their resentment suggests they know they've been trapped, even if they don't know quite how it's happened.

One way to counteract the danger of this negotiator's dilemma is to involve a third party helper, a mediator. Mediators can help conflicting parties bring relevant issues into a negotiation when those issues might otherwise have been left aside. Mediators can help parties avoid the traps of escalating threats. They can also help parties explore alternatives that no single party is willing to consider alone. But mediators, of course, have traditionally been thought of as "neutrals." Mediators who had the interests of any one party as their own, the conventional wisdom holds, would hardly be welcomed by any other party. But this conventional wisdom is more conventional than it is wisdom, as we shall see below.

Mediating Roles for Planners?

When conflicting parties in community planning processes meet each other, surely it makes good public sense for them to try to avoid the traps of the negotiator's dilemma. To achieve better outcomes for all parties, to avoid the tragedies of the commons in which everyone will suffer, the disputants should be able to employ the help of third party mediators. Naturally this thought has occurred to planning educators, and planning schools across the country are now offering courses in negotiation and mediation in the context of public sector disputes (Dinell and Goody, 1987; Johnson, 1986; Susskind and Ozawa, 1983). For if planners can act as mediators and help conflicting parties "do better" than they would by acting from positions of "rational" distrust, then everyone would seem to gain.

Consider the problem from the point of view of community members. As citizens, shouldn't we want our representatives (whether Wood from Neighbors Together or Hutter from the Homelessness Task Force) to work with skilled mediators, rather than run the risks of the collective irrationality of the nego-
tiator's dilemma? In public sector disputes, aren't city and regional planners, who are familiar with the issues and the range of affected parties, reasonable candidates to look to for mediation assistance (Madigan et al., forthcoming; Susskind and Ozawa, 1983; Forester, 1987 and 1989)? The very idea, however, leads to a question: What makes us think that planning staff could actually play mediator-like roles?

First, planners surely are not neutrals; they typically work for the city, state, or federal government. They are subject to political pressures. They can have their own agendas, even if (or because) they are reasonably familiar with the community disputes at hand. These planners could not be "mediators" in any strictly neutral sense of the word. Nevertheless, city planners already work as quasi-mediators because their jobs force them to do so. They often work with several parties in conflict with one another: different neighborhood groups, local appointed and voluntary boards, private firms and developers, politicians and agency directors and staff, and so on. However much the theory of mediation implies that planners cannot work as mediators and be on public payrolls at the same time, many planners still do work in ways that very much resemble the mediation of local planning disputes.

Second, consider the public responsibility of planners who work in the face of local conflicts when the parties involved are not equally powerful. Many planners serve public mandates to improve the quality of public participation, but surely this does not mean enabling the strong simply to continue to walk upon the weak. To be neutral in the face of inequalities of power promises not indifference to outcome, but acquiescence to the perpetuation of power imbalances, to the perpetuation of a status quo of power inequalities. Does it make sense, then, to recommend that planners play mediating roles when they are faced with conflicts characterized by severe imbalances of power at the same time that their very job descriptions mandate their concern with the quality of public participation? If planners play the role of " neutrals" here, they become like referees in a boxing match in which one antagonist has a fist tied behind his or her back. The lure of its promise aside, neutrality has its problems.

But what if mediators need not be strict " neutrals"? A growing literature on international conflict suggests that mediators can function effectively even when they are not neutral. In local planning conflicts, for example, developers and neighbors may both wish to meet with planning staff to ask for their help—not because they think the planners have no agendas of their own, but because they each need the help the staff can give, even if the planners do have definite interests in the case at hand. In such instances, planning staff can play both negotiating and mediating roles at once, even though the main negotiation remains that between the neighbors and the developer.

Indeed, when planners have legal, traditional, and political mandates to serve, their mediation activities may be difficult to characterize as "neutral." Planners may be "interested mediators" instead. But this, of course, gives us a label and not yet an answer to the practical problem: Just how can planners be interested parties and yet act effectively as mediators at the same time?

Neutral or Activist Mediation?

Thomas Colosi argues that an activist conception of public sector mediation is a recipe for disaster: activist mediators will lose the trust essential to do their...
jobs, and thus they will never be welcome to mediate a second time, even if they do somehow manage to achieve a settlement the first time around.\footnote{7}

Well aware of the charge, Susskind and Ozawa (1983) counter with a pragmatic argument of their own: the mediator who does not ensure the representation of affected but excluded parties (most likely, less organized and less powerful parties) risks generating an agreement that will be unstable, short-lived, and subject to being torpedoed by the unrepresented groups. What good is an agreement that won’t last?

Colosi defends neutrality as the only practical alternative. Susskind and Ozawa disagree. Appealing to the special character of public sector conflicts, they defend non-neutrality and an activist conception of mediation as both the practical and the ethically desirable way to go.\footnote{8}

To explore these arguments, we should consider two questions. First, how feasible is it for planners to work as mediators in non-neutral ways? Is activist mediation simply an impossible role to perform, as Colosi suggests? Second, if planners could adopt more or less activist mediating roles, what difference would this make in the face of power imbalances between conflicting parties?

If we array these two questions against each other, we can consider the four cells of Table 1, which orders the basic choices mediators face when they confront questions of the relative power of the disputants.

Consider each of these cells—each of these possibilities of mediation practice—briefly. The traditional argument for mediation is represented in the first, upper left, quadrant: the relative power of the disputants is equated with their interdependence and so assumed to be equal; they both need to settle, after all. All affected parties are represented. The role of the mediator is to ensure procedural fairness and evenhandedness, to avoid needless escalation, to attend to information or issues of concern that might otherwise be lost, and so on (Raiffa, 1982; Folberg and Taylor, 1984). The promise of evenhandedness presumably wins the parties’ trust of the mediator, and whatever the outcome agreed to, the fact of procedural fairness can be taken to legitimate the outcome.

When the mediator seeks to play a neutral role but the power of the parties is imbalanced substantially, we have the situation represented in the upper right quadrant. Here the mediator’s neutrality has the somewhat perverse outcome of reproducing the very inequality that the disputants bring to the negotiating table. Such mediation raises the classical problems of equal opportunity provisions: when two sprinters face an equally open track, but one is well-fed and rested while the other is burdened by weights, the result of the race is all too predictable. The affluent one wins, the burdened competitor loses, and the appeal to the equally open track facing both contestants can easily sound like a false promise if not a very grim joke. To maintain an appeal to mediator neutrality in the face of substantial imbalances of disputants’ power not only instills confidence where little is justified, it promises a good deal more than it can deliver.

When the power of disputants is imbalanced, or when affected people are not even parties to the negotiation at hand, we must consider a practical posture of activist mediation, as Susskind has defended it (Susskind and Ozawa, 1983; Susskind and Cruikshank, 1987). Even when disputants have equal power—as in the third, lower left quadrant of Table 1—in public sector conflicts, there may well be yet other affected parties whose lack of organization,
or notice, has left them without a representative to the negotiations. Susskind has argued that public sector mediators, and city planners who might play those roles in particular, should work to bring appropriate representatives of affected interests to the table. That suggestion led to a storm of protests, variations on the themes of “How could any planner-mediator possibly make such judgments?” and “Who’ll ever trust such an activist mediator to act effectively as a third party helper?”

But the activist mediation plot thickens, for when the parties who are organized and present are hardly equals, the activist mediator needs to think not only about ensuring representation for affected persons but also about empowering the weaker parties at the table. Although discussions with mediators reflect a fascinating richness of strategies used to balance power differences in the course of actual mediation practice, mediation theory is remarkably and sadly silent on the issue of empowering parties.

A crucial set of questions for research and practice, then, includes the following: When disputants’ power is substantially unbalanced, and when any party’s lack of alternatives makes their participation in negotiations a good deal

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### TABLE 1

**Mediation Strategies in the Face of Power**

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<thead>
<tr>
<th>Neutral Mediator</th>
<th>Power Balanced</th>
<th>Power Unbalanced</th>
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<tbody>
<tr>
<td>Fair process</td>
<td>Fair process</td>
<td></td>
</tr>
<tr>
<td>Impartiality</td>
<td>Impartiality</td>
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</tr>
<tr>
<td>Affected parties</td>
<td>Exclusion of affected interests, thus unstable?</td>
<td></td>
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<td>assumed to be represented?</td>
<td>Legitimation of outcome by process</td>
<td></td>
</tr>
<tr>
<td>Legitimation of outcome by process</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>
</tr>
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<tbody>
<tr>
<td>Seeks representatives for any affected parties not present</td>
<td>Seeks representatives for affected parties not present</td>
<td></td>
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<tr>
<td>Possible perception of bias</td>
<td>Possible perception of bias</td>
<td></td>
</tr>
<tr>
<td>Can mediator maintain role?</td>
<td>Can mediator maintain role?</td>
<td></td>
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<tr>
<td>Can mediator empower weaker party?</td>
<td>Can mediator empower weaker party?</td>
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less than "voluntary," what sort of non-neutral, activist roles can planner mediators play? When public sector conflicts promise to affect parties not yet sufficiently organized to participate in the negotiations taking place now, can planner mediators act to assure their representation in some fashion? If activist mediation should be considered for broad ethical and political reasons, can it be practiced in fact?

**Westville: A Training Simulation**

**For the Classroom and Laboratory**

The Westville exercise explores just these questions about mediator neutrality, activist mediation, and power imbalances. In particular, it helps us to assess the strategic choices that face planners who wish to work as activist mediators, taking into consideration both procedural issues of participation and process and substantive issues of political-economic outcomes. Planners work, of course, with conflicting parties and with complicated mandates. Consider the typical pressures they may face:

First, they must protect their future working relationships with today's disputants, for tomorrow comes. In Westville, Goldsmith surely needs to maintain working relationships with both Hutter of the Homelessness Task Force and Wood, the representative of Neighbors Together.

Second, planners must serve needs in the city as they interpret them and judge that they can respond effectively to them. As a member of the Westville City Planning staff, Goldsmith has worked for many years to expand the supply of affordable housing. Now Goldsmith hopes to help the Homelessness Task Force get the shelter operating as one small step toward meeting Westville's substantial housing problem.

Third, planners must serve the political interests of elected representatives. In Westville, not only has the city council declared its interest in the shelter issue, but the mayor has an agenda of his own: if the shelter opens too quickly, the mayor will appear insensitive to the neighborhood, but if the shelter opens too late, the mayor will look incompetent. As the planner, Goldsmith hopes to see shelter beds provided, to respond to the neighbors' concerns, and to protect the mayor as well.

Fourth, planners must help conflicting parties arrive at agreements that are better than weak compromises: planners hope to help parties achieve joint gains when they are possible. In Westville, Goldsmith wishes to help Hutter and Wood reach an agreement that will respond to the interests of both the task force and the neighborhood organization. Goldsmith must work to provide beds in the shelter in a timely way and to protect the neighborhood too. Experience suggests that there are better and worse ways to do that. The challenge is to help Hutter and Wood reach an agreement that will serve both of their interests and so avoid the trap of the negotiator's dilemma.

In the Westville case and more generally, we suggest, planners may thus have four goals to balance: protecting relationships, serving needs, serving political interests, and achieving joint gains. But these goals can and do conflict. How can planners resolve these conflicting demands of their practice? This is not only a pressing ethical question, but a strategic and practical one as well.