
PLAN 254: DEVELOPMENT DISPUTE RESOLUTION: SPRING 2005

Monday/Wednesday 3:30-4:45
Room 102, New East Building

Roberto Quercia, Professor



This is a course for those interested in building their skills in negotiation and bargaining for the resolution of development disputes. These public disputes involve government and private sector actors locked into interdependent situations, where each must trade with the other in order to reach agreement over development issues. Because it is a hands-on skill-building course, students play active roles in discovering, applying, reflecting on, and critiquing the styles and techniques of conflict resolution that work in different types of disputes.

THEORY & PRACTICE

The context and rationale for resolving conflicts between the public and private sectors have changed dramatically during the past two decades. To compare traditional adversarial or distributive (win/lose) bargaining with the new alternative dispute resolution (win/win) theory and practice, we review cases of successful and unsuccessful development and environmental negotiation. Students take part in, and analyze, a simple two party exercise.

- WE 1/12 INTRODUCTION: EVOLUTION OF THE CONFLICT MANAGEMENT FIELD
1. Susskind and McKearnan (1999) "The Evolution of Public Policy Dispute Resolution." *Journal of Architectural and Planning Research* 16:2 (summer), 96-115.*
(* Indicates required reading for recitation)

MONDAY 1/17 MARTIN LUTHER KING, JR. HOLIDAY

- WE 1/19 NEGOTIATED DEVELOPMENT IN PRACTICE
(Start Multi-Rater Survey: Personal Conflict Profile)
1. Paterson (1999) "Negotiated Development: Best Practice Lessons from Two Model Processes," *Journal of Architectural and Planning Research* 16:2 (summer), 133-148.*
 2. Rivkin (1977) *Negotiated Development: A Breakthrough in Environmental Controversies*, pp. 4-14.*
 3. Policy Consensus Institute. 2000. *Building Consensus: Transportation Rule Making in Oregon*. (14 minute video)
- MO 1/24 NEGOTIATION VS LITIGATION (McDonald's & Cane Creek Cases)
1. Godschalk et al. (1994) *Pulling Together: A Planning and Development Consensus-Building Manual*, Chapel Hill Restaurant (McDonald's) case, pp. 119-124.*
 2. Oregon Dept. of Land Conservation and Development (1996) *Collaborative Approaches to Decision Making and Conflict Resolution for Natural Resource and Land Use Issues*, Ch. 2-3, pp. 5-24.*
 3. Lewicki, Saunders, Barry, and Minton (2004) *Essentials of Negotiation*, Ch. 1, "The Nature of Negotiation," pp. 1-24.*

- WE 1/26 **EXERCISE 1, BLUEBELL REDEVELOPMENT (2 PARTIES, 1 ISSUE)**
 1. Lewicki, Saunders, Barry, and Minton (2004) *Essentials of Negotiation*, Ch. 2, "Negotiation: Strategizing, Framing, and Planning," pp. 25-58.*
- MO 1/31 **DISTRIBUTIVE BARGAINING MODEL (Debrief Bluebell)**
 1. Raiffa (1982) *The Art and Science of Negotiation*, pp. 35-51.*
 2. Lewicki, Saunders, Barry, and Minton (2004) *Essentials of Negotiation*, Ch. 3, "Strategy and Tactics of Distributive Bargaining," pp.59-94.*
- WE 2/2 **POLITICS AND CONSTITUENCIES: NEGOTIATION VS PARTICIPATION**
 1. Innes and Connick (1999) "San Francisco Estuary Project," Case. 5 in *The Consensus Building Handbook*, Susskind, McKernan, and Thomas-Larmer, eds, pp. 801-827.*
 2. Lowry, Adler, and Milner (1997) "Participating the Public: Group Processes, Publics, and Planning," *Journal of Planning Education and Research* 16: 177-187.*

STRATEGY & TACTICS

Negotiation process dynamics make the difference between win/lose and win/win outcomes. After analyzing their present ways of dealing with conflict, students are introduced to different types of negotiation strategies and tactics. They learn the principles of integrative (principled) negotiation, techniques of stakeholder analysis, use of efficiency frontiers for assessing outcomes, and methods of information exchange. They test these approaches in three exercises of increasing complexity.

- MO 2/7 **PERSONAL ASSESSMENTS: CONFLICT STYLES AND ETHICS**
 (Debrief Multi-Rater Survey)
 1. Lewicki, Saunders, Barry, and Minton (2004) *Essentials of Negotiation*, Dual Concerns Model, pp. 19-21; Ch. 7, "Ethics in Negotiation," pp. 179-200.*

 Optional. Pruitt (1983) "Strategic Choice in Negotiation," *American Behavioral Scientist* 27:2, pp. 167-193.
- WE 2/9 **EXERCISE 2, MAP EXERCISE (2 PARTIES, 1 ISSUE)**
- MO 2/14 **PRINCIPLED NEGOTIATION –GUEST SPEAKER ANDY SACHS, ORANGE DISPUTE SETTLEMENT CENTER**
 (Debrief Map exercise)
 1. Fisher, Ury & Patton (1991) *Getting to Yes: Negotiating Agreement Without Giving In*, Ch.1-5, pp. 1-94.* (Skim rest)
- WE 2/16 **PRINCIPLED NEGOTIATION IN PRACTICE (Rural Buffer case)**
 1. Godschalk (1992) "Negotiating Intergovernmental Development Policy Conflicts: Practice-Based Guidelines," *APA Journal*, Summer, pp. 368-378. (Rural Buffer case)*
 2. Lewicki, Saunders, Barry, and Minton (2004) *Essentials of Negotiation*, Ch 4, "Strategy and Tactics of Integrative Negotiation," pp. 95-120.*
- MO 2/21 **STAKEHOLDER ANALYSIS (Snow cards)**
 1. Levitt & Kirlin, eds. (1985) *Managing Development Through Public/Private Negotiations*, Ch. 6, pp. 49-62.*
 2. Bryson and Crosby (1992) *Leadership for the Common Good*, pp. 141-145, 363-367.*

 Optional. McCreary et al. (2001) "Applying a Mediated Negotiation Agreement to Integrated Coastal Zone Management," *Coastal Management* 29: 183-216.
- WE 2/23 **EXERCISE 3, FARMLAND CONVERSION (3 PARTIES, 1 ISSUE)**

- MO 2/28 THE BARGAINING POWER MODEL (Debrief Farmland Conversion)
1. Lewicki, Saunders, Barry, and Minton (2004) *Essentials of Negotiation*, Ch. 6, "Finding and Using Negotiation Leverage," pp. 147-178.*

Optional. Goldman (1991) *Settling for More: Mastering Negotiating Strategies and Techniques*, Ch. 1-3, pp. 3-32, 46-86.

WE 3/2 COMMUNICATING AND ACTIVE LISTENING

1. Lewicki, Saunders, Barry, and Minton (2004) *Essentials of Negotiation*, Ch 5, Perception, Cognition, and Communication," pp. 121-146.*
2. Johnson (1993) "Listening Actively," in *Negotiation Basics*, pp. 30-32.*
3. Tannen (1990) "Community and Contest: Styles in Conflict," Ch. 6 in *You Just Don't Understand: Women and Men in Conversation*, pp. 149-187.*

MO 3/7 FRAMING AND REFRAMING

1. Kaufman and Smith (1999) "Framing and Reframing in Land Use Conflicts," *Journal of Architectural and Planning Research* 16:2 (summer), 164-180.*
2. Smith (1998) "The Catron County Citizens Group: A Case Study in Community Collaboration," Ch. 13 in *The Consensus Building Handbook*, Susskind, McKernan, and Thomas-Larmer, eds, pp. 985-1009.*

WE 3/9 **EXERCISE 4**, EPA V RIVERSIDE (2 PARTIES, MULTIPLE ISSUES)

1. Susskind, Levy, and Thomas-Larmer (2000) Part 1, "The Mutual Gains Approach," in *Negotiating Environmental Agreements*, pp. 17-40.*

SPRING BREAK 3/11--3/21

MO 3/21 PURSUING THE EFFICIENT FRONTIER (Debrief EPA/Riverside)

1. Raiffa, *The Art and Science of Negotiation*. Ch. 10, pp. 131-147.*

ASSISTED NEGOTIATION

The role of the neutral third party is introduced in this part of the course. Guest practitioners discuss their experiences as facilitators and mediators. Single text creation, computer-assisted negotiation, and dispute resolution system design are explored. Students take part in two complex exercises involving difficult issues of community value conflicts.

WE 3/23 CONSENSUS BUILDING (Single Text; Power Point recording)

1. Raiffa, *The Art and Science of Negotiation*. Ch. 14, 205-217. (Camp David).*
2. Innes and Booher (1999) "Consensus Building and Complex Adaptive Systems," *APA Journal*, 65:4, pp. 412-423. Autumn.*

Optional. Straus (1999) "Managing Meetings to Build Consensus," Ch. 7 in *The Consensus Building Handbook*, Susskind, McKernan, and Thomas-Larmer, eds, pp.287-323.

MO 3/28 FACILITATION: GUEST SPEAKER--ROGER SCHWARZ, SCHWARZ AND ASSOCIATES

1. Schwarz (1995) "Groundrules for Effective Groups," *Popular Government*, 1-8.*
2. Schwarz (1994) "A Consumer's Guide to Hiring and Working with a Group Facilitator," *Popular Government*. Spring. pp. 12-18.*

Optional. Schwarz (1994) *The Skilled Facilitator*, Ch. 1-2, pp. 3-41.

WE 3/30 **EXERCISE 5**, MENEHUNE BAY (MULTIPLE PARTIES & ISSUES, FACILITATED)

1. Kaner (1996) *Facilitator's Guide to Participatory Decision-Making*. Ch. 4 Facilitative

Listening Skills, and Ch. 5 Facilitating Open Discussion, pp. 41-67.*

- MO 4/4 PLANNING ROLES IN CONFLICT MANAGEMENT (Debrief Menenune Bay)
1. Forester (1996) *Making Mediation Work: Profiles of Community and Environmental Mediators*, Institute for Dispute Resolution, University of Victoria. pp. 1-36.*
 2. Forester (1987) "Planning in the Face of Conflict: Negotiation and Mediation Strategies in Local Land Use Regulation," *APA Journal* 53:3, pp. 303-314.*
- WE 4/6 FACILITATING THE COKER DISPUTE. GUEST SPEAKER-DAVE GODSCHALK
1. Howe (2002) "Smart, or Not So Smart: Large-scale, Mixed-use Infill Fails the IQ Test in Raleigh," *Planners Casebook*, No. 40, Spring, pp. 1-8.*
 2. Lewicki, Saunders, Barry, and Minton (2004) *Essentials of Negotiation*, Ch 9, "Managing Difficult Negotiations: Individual Approaches," pp. 226-248*
- Optional. Godschalk et al. (1994) *Pulling Together*. Ch. IV-VII, pp. 23-89 and Appendices, pp. 132-138.
- MO 4/11 MEDIATION
1. Moore (1996) *The Mediation Process: Practical Strategies for Resolving Conflict*. Ch. 2, pp. 41-77, and caucuses, pp. 319-326.*
 2. Oregon Dept. of Land Conservation and Development (1996) Ch. 6, pp. 45-67.*
 3. *Mediation: An Introduction*. Video, 20 minutes.
 4. American Arbitration Assoc. *Mediation: Negotiating Settlement*. Video. 33 minutes.
- WE 4/13 **EXERCISE 6** MANAGING GROWTH IN ROCKVILLE (MEDIATED)
1. Susskind, van der Wansem, and Ciccarelli (2000) *Meditating Land Use Disputes: Pros and Cons*. Lincoln Institute of Land Policy. Pp. 1-40.*
- MO 4/18 COMPUTER ASSISTED DISPUTE RESOLUTION (Debrief Rockville)
1. Godschalk et al. (1992) "Using GIS for Computer-Assisted Dispute Resolution," *Photogrammetric Engineering and Remote Sensing* 58, July.*
- Optional. Nagel (1980) "Multicriteria Dispute Resolution through Computer-Aided Mediation," in Mills ed. *Conflict Resolution and Public Policy*, pp. 179-200.
- Optional. Ozawa (1999) "Making the Best Use of Technology," Ch. 10 in *The Consensus Building Handbook*, Susskind, McKernan, and Thomas-Larmer, eds, pp. 401-434.

DEVELOPMENT DISPUTE CASES

Students present their analyses of development disputes, including descriptions of the issues, stakeholders, and outcomes, as well as recommendations for more effective dispute resolution. These analyses are based on primary data drawn from interviews, observations, and other sources.

WE 4/20 STUDENT CASE PRESENTATIONS

MO 4/25 STUDENT CASE PRESENTATIONS

WE 4/27 STUDENT CASE PRESENTATIONS **Term papers due.**

COURSE REQUIREMENTS

Each student will be required to:

1. Participate in six **negotiation exercises**, including preparation of a brief (2 page) individual post-exercise evaluation for each exercise. (60% of total grade) These are graded on *both* exercise performance and demonstration in the written post-exercise evaluation of learning from the negotiation and the readings. Due in the class following exercise.

2. Prepare a **term paper** describing and analyzing a development dispute, and present your findings in class at the end of the semester. Include a chronology of actions, a stakeholder analysis, and your recommendations for an improved outcome. Team papers are encouraged. (35% of total grade) **Topic and outline due on March 9**, prior to spring break. **Final paper due on last day of class.**

3. Participate actively in **class activities**. Complete assigned readings, attend class sessions (since this course relies on in-class exercises to a great extent, regular attendance is critical, and any absences must be cleared with instructor in advance), and actively discuss and critique the readings in the context of class discussions. At a minimum, students are expected to be able to discuss readings indicated with asterisk (*) on the date assigned. (5% of total grade)

READINGS

All readings are on reserve in the Planning Library. Readings (other than those in the assigned texts) are also duplicated in loose-leaf format. A course pack with required readings is available for purchase at Student Stores.

Two texts are recommended. Both are available for purchase at Student Store.

- Lewicki, Roy J., David M. Saunders, Bruce Barry, and John W. Minton (2004) **Essentials of Negotiation**. Irwin McGraw-Hill. Third Edition. Paperback
- Fisher, Roger, and William Ury. (1991) **Getting to Yes: Negotiating Agreement Without Giving In**. 2nd edition. Penguin Books. Paperback.

Supplemental Resources

Web sites on conflict resolution:

Association for Conflict Resolution (ACR) www.acrnet.org
Community Building Institute www.communitytools.net
Consensus Building Institute www.cbi-web.org
International Association of Facilitators www.iaf-world.org
International Association for Public Practitioners www.iap2.org
National Association for Community Mediation (NAFCM) www.nafcm.org
National Civic League www.nci.org
Policy Consensus Initiative www.policyconsensus.org

State Offices and Programs

California Center for Public Dispute Resolution www.csus.edu/ccpdr
Florida Conflict Resolution Consortium <http://consensus.fsu.edu>
Georgia Consortium on Negotiation and Conflict Resolution <http://law.gsu.edu/CNCR>
Hawaii Matsunga Institute for Peace <http://ww2.soc.hawaii.edu/peace>
Indiana Conflict Resolution Institute www.spea.indiana.edu/icri
Maryland Mediation and Conflict Resolution Office www.courts.state.md.us/adr.html
Massachusetts Office of Dispute Resolution www.state.state.ma.us/modr
Michigan Community Dispute Resolution Program www.courts.michigan.gov/scao/dispute
Montana Consensus Council www.discoveringmontana.org
Nebraska Justice Center www.connectfremont.org/COMSER/mediation.htm
North Carolina Mediation Network www.mnnc.org
North Dakota Consensus Council www.agree.org
Ohio Commission on Dispute Resolution and Conflict Management www.state.oh.us/cdr
Oregon Public Policy Dispute Resolution Program www.odrc.state.or.us/ppdrp.htm
Texas Center for Public Policy Dispute Resolution www.tnrcc.state.tx.us
Virginia Environmental Institute for Negotiation www.virginia.edu

Federal Offices and Programs

Interagency ADR Working Group www.usdoj.gov/adr

US Institute for Environmental Conflict Resolution www.ecr.gov
US EPA Public Involvement www.epa.gov/publicinvolvement

Newsletters and journals dealing with dispute resolution

Consensus.

International Journal of Conflict Management

Journal of Dispute Resolution

Negotiation Journal

The Justice System Journal

Dispute Resolution Forum

Journal of Conflict Resolution

Mediation Quarterly

Resolve