CHAPTER TWENTY-TWO

Consensus Building and ADR

Why They Are Not the Same Thing

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My interest is in complex multiparty, multi-issue disputes—particularly those that arise in the public arena. Should there be a new oil refinery off the coast? How should a city address the problem of affordable housing? Questions like these sometimes devolve into lawsuits. Advocacy groups, developers, industry groups, individual corporations, and even governmental agencies sometimes choose to enter (or are dragged into) the realm of litigation. Yet a courtroom is usually not the right setting to bring all the relevant stakeholders together to talk through their differences on such complex issues.

What is perhaps surprising to proponents of alternative dispute resolution (ADR) is that court-connected dispute resolution efforts are not likely to represent much of an improvement over the traditional forms of litigation once complex public issues reach the courthouse. Both in litigation and in most forms of court-connected dispute resolution, participation is limited to the named parties. Courts sometimes give formal recognition or intervenor status to certain outside groups, but such groups appear at the table only if they are self-starting, self-funded, and well-organized enough to put forward a claim. Thus all the relevant stakeholders are often not at the table. Furthermore, in most forms of court-connected ADR, all parties are hyperconscious of the fact that they will be heading back to court if settlement negotiations break down. As a result, they tend to give priority to the narrow set of questions that got the case into court.[1]

Consciousness of the prospect of a return to the courthouse also tends to cause the parties to work hard to keep secret any information that might hurt them in subsequent litigation. In court-connected ADR, parties rarely demonstrate a commitment to invest in joint fact finding to establish a shared scientific basis for decision making. And because many forms of court-connected ADR offer the parties some degree of confidentiality, the process is unlikely to generate legitimacy in the public eye.

What is required in many public disputes is some other way of bringing representatives of all key groups together, in a nonpartisan, problem-solving mode, to work out an informed agreement that not only satisfies the parties but serves the public interest as well.[2] Such policy dialogues or dispute resolution efforts usually require the assistance of a highly trained mediator. In this respect, they may look, in part, like court-connected ADR. However, an ideal approach to consensus building would take place before any litigation has been filed, allowing the ultimate goal of the process to be the "best possible agreement" rather than to "do better than each side would in court." ADR as it is typically practiced is not likely to succeed in the context of complex, public disputes.

In this chapter, I will describe the key steps in consensus building and show how it works in the public disputes context. I will describe how public dispute mediation is initiated, describe why the differences between two-party and multiparty negotiation are important, and explain how and why consensus building and court-connected ADR are not the same thing.

THE ADR CONTINUUM

Many authors writing about ADR think in terms of a continuum with court at one end and negotiation at the other. At the court end, the parties give up control over both the design of the procedure for resolving their dispute and the outcome in particular applications of that procedure. At the negotiation end, the parties retain complete control over both. Mediation, in this model, falls somewhere on the negotiation side of the continuum because the parties retain the ability to make the final decision on outcome. Arbitration, with its third-party-imposed outcomes, falls closer to the court end of the continuum. Depending on their design, hybrid approaches such as the minitrial, the summary jury trial, or med-arb fall somewhere between these common ADR methods on the process continuum.[3]

This image of a process-based continuum is enticing, but inaccurate. Instead, I suggest that we should think in terms of a continuum with court-related activities on one half and non-court-related activities on the other. Mediation used in the context of court-connected dispute resolution belongs on the court half

of the continuum. Mediation used before a lawsuit is even contemplated belongs on the other. As will be clear in the following, it is the reference to what will happen or might happen if a disagreement goes to court that is most important, not the choice of a dispute resolution mechanism.

THE KEY STEPS IN THE CONSENSUS-BUILDING PROCESS

Public disputes arise in several different forms. The most common are siting disputes—decisions about whether to locate facilities in particular places. For example, should there be a new wind farm in the federal waters off the coast of Massachusetts? A second type of dispute focuses on policy disagreements. For example, how should a community respond to a state mandate that municipalities take steps to ensure the affordability of housing in their area?[4] These and related disputes typically arise in response to legislative, administrative, or even judicial action. A city council might vote to rezone land so that an offshore facility has nowhere to bring its power lines ashore. A state agency might refuse to grant a license for a proposed energy facility on the grounds that it will have unacceptable impacts of various kinds. A court might declare an existing zoning or property tax system unconstitutional because it precludes equal access to the housing market for certain protected groups.

Both types of disputes—siting disputes and policy disagreements—can and sometimes do end up in court. In fact, however, they are political battles that ought to be resolved in the public policymaking arena. Framing such disputes as due process or equal protection questions that require legal adjudication sidesteps the fact that any resolution will require complex political trade-offs. Such trade-offs ought not to be made by judges who do not stand for election. The perceived fairness, efficiency, stability, and wisdom of public policy choices depend more on the extent to which the stakeholders have a chance to speak their mind directly, share information, and otherwise engage in a problem-solving process than they do on the intricacies of how legal issues are resolved. Despite the numerous democratic channels through which groups can express their pleasure (or displeasure!) with the actions of their elected and appointed officials, these channels sometimes do not produce political acceptance of public policy trade-offs.

Thus, new consensus-building strategies have begun to supplement traditional representative, democratic decision-making techniques. These are not alternatives to court adjudication of disputes as much as they are methods of supplementing traditional legislative and administrative procedures. They bring specially selected representatives of all stakeholding groups together for face-to-face conversations, managed by professional neutrals who take on different roles from their counterparts in court-connected ADR systems.[5]

The goal in consensus building is to generate creative deals that allow everyone involved to come out better off than they otherwise probably would *and* that meet the broader public interest as well. Consensus-building efforts do not promise that everyone will get everything they want—that may be impossible. Instead, the objective is to bring more people into a disciplined, problem-solving process to generate trades or "packages" that create as much "value" as possible for all stakeholders and to confront difficult trade-offs in a completely transparent way.

In the following section I will use a facility-siting case to illustrate the five steps in the consensus-building process and to highlight the ways in which such efforts differ from ADR practice. The five steps are (1) *convening* all the relevant parties, (2) *clarifying the responsibilities* of the participants and the ad hoc assembly as a whole, (3) *deliberating* in a way that generates intelligently crafted "packages" that meet the needs of all the relevant stakeholders, (4) *making decisions* of a sort that generate near-unanimous agreement, and (5) *implementing agreements* on all informally negotiated commitments.

Convening

Convening occurs at the outset of a consensus-building process. Typically, a convenor—an elected or appointed official with an interest in generating an informed consensus—brings in a mediation team to prepare a written assessment. The most important product of a conflict assessment is an appraisal of the prospect of reaching agreement made by a professional neutral.[6] If the odds of reaching agreement are not high and key players are unwilling to participate, consensus building will not work. Prior to convening the parties in a consensus-building process, therefore, assessing these factors is key.

In the context of a lawsuit, getting the "right" parties to the table is a nonissue because the litigation process resolves (narrowly) the question of who is involved in the dispute. It is much more difficult to figure out who all the stakeholders are and who should represent them in an informal problem-solving forum when there is no limit on the number of parties. For this, consensus builders use a technique called conflict assessment.[7] Conflict assessment involves off-the-record interviews with widening circles of potential parties to help map the conflict. Consensus builders formulate not only a list of stakeholders who ought to be invited but also an agenda, a timeline, ground rules, and a budget.

In a facility-siting case, for example, a mediation team might meet early on with neighbors who are ardently opposed to the building of a new energy plant in their community. The conflict assessors might also fan out and try to meet with energy users who may be worried that without the new plant, energy supplies might be dangerously limited. And the assessment would not be complete until the neutrals meet with groups such as environmental advocates and

fishermen concerned about the coastal impact of a new generating facility. In some cases, potential stakeholder groups might not have been paying any attention to the budding controversy. When approached, however, after considering what is at stake, these groups could become important players in a consensus-building process. Although court-connected ADR practitioners have no responsibility to seek out additional parties, conflict assessors are obligated to seek out all potential stakeholders.

Clarifying Responsibilities

Once the identified parties have agreed to participate (typically in response to a formal invitation from a convenor), their first task is usually to clarify the role and responsibilities of the ad hoc assembly of which they are a part. Consensus-building groups that operate in the public arena produce only proposals, not decisions. Groups' proposals must then be approved by those with the formal statutory power to do so. The parties, once assembled, jointly decide whether the mediator who did the assessment should stay on to assist with the process. They also begin by initialing the written timetable and ground rules. Public officials operate under "sunshine laws," meaning that in virtually all cases the public must be given notice of and access to the meetings. Although the group can go into "executive session" in the same way a public body does when contracts or personnel matters arise, a great deal of work gets done between meetings as the mediator moves back and forth among the parties, checking reactions to various proposals (using a single-text procedure).[8] Once a consensus-building process is convened, the parties jointly define the ground rules by which they will operate; clarify the scope and timing of the work they will undertake; and specify the roles and responsibilities of the neutral, the representatives of each stakeholder group, and the overall limits on the product of their collaborative efforts.

Returning to the facility-siting example, a state or regional energy regulatory body or licensing agency might invite a group of twenty-five to thirty stakeholder representatives to come together with a mediator based on the results of a conflict assessment. The role of the ad hoc assembly, clarified in the procedural ground rules each participant would sign, would be limited to producing a package of recommendations that would be passed along to the agency.

Deliberating

The main reason consensus building works is that the agenda reflects the interests of the parties. Consensus building assures parties that the issues that are most important to them will be discussed and that they will have an opportunity to make trades across issues they value differently. By exploring such trades, the parties can work until they produce a package that leaves everyone better off than they would likely be if there were no agreement. Parties engage in a face-to-face exchange of views, information, and arguments. On occasion, this

exchange leads people to change their views. Because the dialogue is very public, arguments made on their merits (as opposed to self-interested demands) receive greater attention. Secret deals that cannot be justified from the standpoint of the public interest at large are not likely to win support. The product of such conversations is a written agreement, often with contingent commitments tied to certain milestones being reached or events occurring. Unlike a typical public hearing, the dialogue in a consensus-building process—managed by a trained mediator—aims to achieve a resolution. It does not, however, lead to a vote.

In a facility-siting dispute, the parties might take several months to jointly commission appropriate environmental impact or risk-assessment studies. Because these studies are produced by experts chosen collaboratively, neither side is as likely to dismiss the results. This stands in stark contrast to the manner in which parties treat each other's expert witnesses in the context of litigation. The dialogue in a consensus-building process is likely to examine alternative sites and technologies rather than focusing only on the "right" of the proponent to build the facility. It will undoubtedly explore ways in which the facility, if built, might exceed existing pollution control mandates through voluntary actions of the proponent. It might also consider compensatory payments to abutters, even if they are not required by law.

Making Decisions

While some people define consensus as unanimity, most processes of the sort I am describing aim to achieve unanimity but settle for overwhelming agreement as long as two conditions are met. First, each participant must be asked, in person and out loud, whether he or she can "live with" the draft of a final agreement generated by the mediator, in an effort to capture the key points of agreement during the deliberations. If participants say no, they must be given an opportunity to explain their opposition and to suggest further modifications that would render the agreement acceptable to them but no worse for any of the other participants. Second, all the parties must decide together that every reasonable effort has been made to meet the concerns of the "holdouts." At that point, consensus will have been reached. If a key party—one whose support is necessary for implementation—still opposes the agreement, then there is a consensus that no agreement is possible. Typically, parties are asked to sign a written document indicating their support, but only after they have had an opportunity to take the penultimate version of the agreement back to their constituency for review.

Implementing Agreements

Mediated agreements of the sort I describe here are not independently enforceable, in part because they are created by ad hoc representatives of informally organized stakeholding groups. As mentioned, the point of most consensus-building efforts in the public arena is simply to produce a clearly stated proposal that can then be submitted to the relevant elected or appointed bodies for action.

When decision-making bodies commit to the terms of a negotiated agreement, it then becomes enforceable.

Even after an ad hoc dialogue produces an agreement, a convenor may still decide to hold hearings on the group's proposal. The convenor may ultimately decide to modify the proposal, perhaps in response to concerns missed by the consensus-building group. If the convenor modifies the agreement in any substantial way, of course, the consensus may dissipate. Modifications to a consensus proposal frequently produce political backlash and often result in litigation. Alternatively, if the convenor accepts and adopts the informally negotiated agreement (pursuant to the formalities of its statutorily defined decision-making powers), it can reasonably claim to have protected the public interest.

MEDIATORS WITHIN THE CONSENSUS-BUILDING PROCESS

Mediators play a critical role in the consensus-building process, but they differ considerably from their counterparts practicing in court-connected mediation. Their roles in convening are different, and their power over the process is different. They take on different responsibilities, bring their knowledge to the table in different ways, and assume different roles during implementation. Mediators in consensus-building processes even operate with a different set of overarching duties.

Mediators in a consensus-building process play an important role in getting the "right" parties to the table. Using conflict-assessment techniques, the mediator (or mediation team) must make a judgment regarding not only who the relevant stakeholders are but also which group or individual would best represent each stakeholder. In some circumstances, a mediator may even seek to identify a surrogate of some kind to stand in for a hard-to-represent group. Mediators in court-connected processes would rarely undertake such an effort.

In the course of completing several dozen not-for-attribution interviews with potential stakeholders, the mediator(s) in a consensus-building process try to push the parties to clarify their interests; urge them to think realistically about what might happen if they fail to reach a negotiated settlement; help them contemplate the interests of the other likely stakeholders; and imagine the kinds of information that might cause them, as well as others, to alter their judgments about key questions before the group. Some mediators in court-connected ADR might do some of these things some of the time. In a consensus-building process, a mediator must do all of them all of the time (or dramatically increase the odds of failure).

The mediators in a consensus-building process influence whether the process advances to the problem-solving stage. Using the results of their conflict assessments, the mediators recommend to the convenor whether or not to proceed

with the consensus-building process. Their recommendation to proceed usually hinges on the key parties having indicated that they will come to the table, reasonably good prospects of finding either common ground or mutually beneficial trades, and a sense that the parties are ready to negotiate in good faith as long as the agenda, ground rules, and behaviors of others seem reasonable. In court-connected ADR, mediators have the ability to withdraw from the mediation process, but in contrast to the consensus-building process, the decision to proceed is primarily in the hands of the disputants.

During the problem-solving stage of a consensus-building process, parties (many of whom may not be directly represented by counsel) often ask the mediator to propose possible settlements. This sometimes occurs in court-connected ADR procedures, particularly in what is called "evaluative mediation."[9] Suggesting substantive outcomes is much more complicated, however, in a multiparty situation. Further, when there are more than two parties outside a court context, coalitions almost always emerge. Depending on the decision rule chosen by the participants (for example, unanimity or overwhelming agreement), the mediator must be very careful in these situations not to interfere with the efforts of a potential "winning coalition" to build sufficient consensus for an agreement that it favors.[10] One of the key elements of consensus building that draws both powerful and relatively powerless parties to the table is the commitment to seek unanimity and the promise to settle for nothing less than overwhelming agreement. This means that weaker groups cannot be ignored or that more powerful groups cannot throw their weight around. The promise to search for consensus is what makes the entire process so appealing (even though it sometimes requires a larger commitment of time and effort than might otherwise be expected). Because mediators in court-connected contexts generally need not concern themselves with coalitional obstacles, mediators in consensus-building processes have more complicated responsibilities.

Mediators in consensus-building processes need to know a great deal about the substantive questions being discussed, if only to keep from impeding the dialogue with trivial questions or requests for explanation. The complex matters of public policy raised in these cases rarely hinge primarily on matters of legal interpretation. Instead, mediators in consensus-building processes are often selected because they have a great deal of technical knowledge about the subject of the dispute. Mediators in court-connected contexts, by contrast, are sometimes selected for their problem-solving or group-management skills.

In consensus-building situations, particularly in the public arena, mediators have responsibilities to parties who are not at the table. That is, they have a responsibility to help the stakeholders achieve an implementable agreement by taking account of the likely political reactions to whatever settlement is reached. At the same time, any agreement that fails to meet the interests of the public-at-large—at least as that is defined by the convenor or other actors with relevant

interests and responsibilities—is not likely to be implemented. Thus, the mediator is often called upon to suggest ways of ensuring that negotiated agreements resulting from a consensus-building process respond to the public interest. In some instances, this requires the mediator to take the lead in meeting with the press or making public statements on behalf of the consensus-building process.[11]

There are even instances in which a mediator in a consensus-building process is called upon to help with the implementation of a negotiated agreement. In some cases, mediators will monitor the parties' ongoing performance of the agreement, gauging whether they are meeting the commitments they made during the settlement process. In other cases, mediators will reconvene the stakeholders if assumptions on which a negotiated agreement was based turn out to be wrong. Public disclosure of ongoing consensus-building efforts is important to the legitimacy of the final outcome. Thus, someone has to handle media relations. None of the parties can likely take on this role, as any party would undoubtedly be seen by the press as making comments that are self-serving. The mediator, however, can represent all the participants in a consensus-building process and take the initiative to reconvene the group if one party feels that another has not lived up to its commitments. Many consensus-building agreements address the dilemmas of implementation by including a reconvening clause. According to the terms of the clause, anyone dissatisfied with implementation is obligated to ask the mediator to reconvene the group before that party is entitled to discontinue his or her own efforts to follow though on the promises he or she made. Although similar monitoring and reconvening could be part of the scope of responsibility of neutrals involved in court-connected ADR, they rarely are.

KEY DIFFERENCES BETWEEN TWO-PARTY AND MULTIPARTY NEGOTIATIONS

I have already mentioned the importance of the coalitions and coalitional behavior that seem to take hold as soon as the number of parties involved in a settlement negotiation increases from two to three. Each side moves to find a partner (in a two-against-one game) to help him or her form a winning coalition. At the same time, each player looks for "blocking partners" to aid him or her in deflecting any agreement to which he or she is opposed.

In the context of public disputes, the number of parties can grow very large. While not as complex as global treaty negotiations (in which almost two hundred countries send large official delegations to participate in negotiations over complex documents), consensus-building efforts in the public arena often involve more than fifteen parties.[12] Add the prospect of counsel and technical advisers for each party, and the process of managing a problem-solving conversation becomes complex. Furthermore, as the number of issues (or the technical

complexity of issues) increases, a mediator may be called on to summarize work done by subcommittees (between full group meetings) or by consultants to the process.[13] In sum, process management is often a major preoccupation of mediators involved in consensus-building efforts and sometimes requires a team of mediators.

In dialogues involving large numbers of participants in science-intensive policy disputes, neutrals are often called upon to facilitate joint fact finding. Consistent with the consensus-building process, independent scientific inquiries run parallel to the group's discussion of policy questions.[14] Increased scientific uncertainty may require more complex agreements that specify the obligations of each party under different sets of circumstances. Such agreements, in turn, often require a mediator to be called on to monitor events during implementation. While contingent agreements in court-connected ADR processes aim to spell out specific terms of a final settlement,[15] consensus-building proposals commonly specify a schedule of possible next steps depending on what occurs.

In multiparty agreements in the public arena, stakeholders often commit to take actions no existing rules and regulations could require them to take. For instance, in many facility-siting disputes, as mentioned earlier, the final agreement can include voluntary commitments on the part of the industry seeking to build the facility. Perhaps they will make compensatory payments to the community or install pollution-control devices that go well beyond what is mandated by law. As long as these commitments are voluntary, public agencies rarely object. The challenge with such commitments is ensuring compliance. The relevant convenor cannot insist that a regulated entity do more than the law requires. However, voluntarily negotiated commitments growing out of a public consensus-building process can be included as "orders of condition" attached to a formal license or permit issued by a regulatory agency. Implementation of the negotiated agreement thus becomes the domain of the licensing agency. Getting agreements in writing is not the end result in most consensus-building efforts. Rather, finding a way to link the informally negotiated agreement with a formal binding mechanism is necessary. In court-connected ADR efforts, the court offers a relatively simple means of redress for those who feel that the other side is not living up to the terms of a settlement. Consensus building requires a different level of creativity to design nearly self-enforcing agreements.

DESPITE THE SIMILARITIES, CONSENSUS BUILDING IS NOT ANOTHER FORM OF ADR

For the most part, consensus building does not take place "in the shadow of the law" in the same way court-connected ADR does. This makes consensus building much harder to initiate, since it is not obvious who ought to be involved

and there are no a priori agreements regarding the rules of engagement. The process differences—described earlier—between consensus building and court-connected ADR suggest that the same mediator might not be appropriate in both contexts. The training, substantive background, and skills required in each setting diverge. While many successful court-connected mediators have legal training, public dispute consensus builders tend to come from the public policy or planning fields.

In a consensus-building process, the parties have to write their own rules and impose their own negotiating structure. Deciding who should be at the table in a consensus-building process is not always clear, and getting the appropriate parties to the table is not always easy. Indeed, mediators in these settings often spend a significant portion of their time at the outset of a dispute resolution effort convincing key parties that it is in their interests to participate. Parties have a clearer set of expectations about the mediation process in a court-connected ADR context, making their participation decision much more straightforward. Court-connected mediators are rarely expected to meet with a reluctant party to convince him or her to get involved. Indeed, in many court-connected circumstances, the parties do not even choose a mediator until they have all agreed to enter the process.

Consensus building, especially in the public arena, requires greater transparency than most court-related ADR procedures. Because a significant portion of the exchange among parties takes place in the public eye, the mediator is generally required to manage interactions with the public—especially the media. Operating in the public eye creates a variety of challenges. When should the mediator go into and come out of private caucuses? Which displays of emotion are genuine and which are merely efforts to play to the audience, and how should each be addressed? What and when should the press hear about the process? How can the mediator manage the process in ways that do not compromise the strategies or interests of any of the parties?

In the consensus-building context, there is a much greater burden on the parties to invent nearly self-enforcing agreements (that is, agreements that contain within them both the incentives and the mechanisms to ensure implementation). A mediator in a consensus-building process seeks out those who are implicated in the emerging agreement, working on behalf of the group to secure appropriate buy-in. Neither the participants nor the mediator in court-connected ADR have such a burden.

To ensure that the public interest is met, a mediator in a consensus-building process must worry about the interests of parties who are not at the table. Public dispute resolution is a form of public policymaking and as such, it is usually held to the same standards of openness, effectiveness, and fairness that apply to other kinds of agency decision making. Convenors, who are the ultimate decision makers, will be held accountable at the end by groups who were not

represented in the consensus-building process—even if those groups chose not to participate. At the very least, therefore, consensus-building processes must take account of interests that may not be directly represented.

CONCLUSIONS

The differences between court-connected ADR and consensus building suggest several conclusions. First, moving a dispute into a court-connected ADR process may preclude the possibility of achieving the fairest, most efficient, wisest, and most stable agreement.[16] Court-connected ADR certainly offers no guarantee that the public interest will be met. Second, the neutrals involved in two-party ADR are unlikely to have the skills, experience, or substantive background needed to be effective in larger consensus-building efforts—especially those in the public arena. Finally, the implementation of consensus-based agreements requires many parties to reach near-unanimous accord on complex packages of issues, many of which are framed in nonlegal terms.

While court-connected ADR has its uses, it is not helpful to blur the distinctions between ADR and consensus building, or even worse, to think of them as the same thing. Mediation, arbitration, and other forms of dispute resolution take on a particular form in a court-related setting. In contexts when no lawsuit has yet crystallized or when picking a winner and a loser on legal grounds is inappropriate, consensus building operates quite differently. While there may be some overlap in the application of basic dispute resolution theory and methods that make them look similar, the differences between these two contexts are extremely important. Mediators in both contexts may push the parties to search for "all gain" rather than win-lose solutions, but the demands of litigation can get in the way of maximizing value creation or joint gains. Furthermore, the process management skills required in a multiparty context in which coalitional behavior is to be expected—especially when technical complexity is involved—are quite special. Thus, the idea of an ADR continuum with court at one end, negotiation at the other, and mediation in the middle is misleading. What is more useful is to think in terms of a continuum with one end labeled court-related dispute resolution mechanisms and the other titled non-court-related dispute resolution mechanisms. Mediation and related techniques should appear on both sides, but their use and the prerequisites for success should be understood as distinct.

Notes

1. For more on the mechanisms by which the litigation process narrows disputes in ways that may hinder creative problem solving, see M. L. Moffitt, "Pleadings in the Age of Settlement," *Indiana Law Journal*, 2005, *80*, 727–771.

2. See L. E. Susskind and J. Thomas-Larmer, "Conducting a Conflict Assessment," in L. E. Susskind, S. McKearnen, and J. Thomas-Larmer (eds.), *The Consensus Building Handbook* (Thousand Oaks, Calif.: Sage, 1999).
3. For more on the use and applicability of hybrid dispute resolution mechanisms, see Sander and Rozdeiczer, Chapter Twenty-Four, this volume.
4. See L. E. Susskind, *Breaking the Impasse: Consensus Building Approaches to Resolving Public Disputes* (New York: Basic Books, 1987).
5. See M.L.P. Elliott, "The Role of Facilitators, Mediators, and Other Consensus Building Practitioners," in Susskind, McKearnen, and Thomas-Larmer (eds.), *The Consensus Building Handbook,* 1999.
6. D. A. Straus, "Designing a Consensus Building Process Using a Graphic Road Map," in Susskind, McKearnen, and Thomas-Larmer (eds.), *The Consensus Building Handbook,* 1999.
7. See Susskind and Thomas-Larmer, "Conducting a Conflict Assessment," 1999.
8. See S. McKearnen and D. Fairman, "Producing Consensus," in Susskind, McKearnen, and Thomas-Larmer (eds.), *The Consensus Building Handbook,* 1999.
9. See L. L. Riskin, "Understanding Mediators' Orientations, Strategies, and Techniques: A Grid for the Perplexed," *Harvard Negotiation Law Review,* 1996, *1,* 7–42.
10. See L. E. Susskind, R. H. Mnookin, B. Fuller, and L. Rodeiczer, "Teaching Multiparty Negotiation: A Workbook," paper presented at the Teaching Multiparty Negotiation Conference, Cambridge, Massachussetts, May 2003.
11. See L. E. Susskind and P. Field, "The Media," in L. E. Susskind and P. Field, *Dealing with an Angry Public* (New York: Free Press, 1996); and L. E. Susskind, "Environmental Mediation and the Accountability Problem," *Vermont Law Review,* 1981, *6,* 1–47.
12. See L. E. Susskind, *Environmental Diplomacy: Negotiating More Effective Global Agreements* (New York: Oxford University Press, 1994).
13. See L. E. Susskind, P. F. Levy, and J. Thomas-Larmer, *Negotiating Environmental Agreements: How to Avoid Escalating Confrontation, Needless Costs, and Unnecessary Litigation* (Washington, D.C.: Island Press, 2000).
14. See J. R. Ehrmann and B. L. Stinson, "Joint Fact-Finding and the Use of Technical Experts," in Susskind, McKearnen, and Thomas-Larmer (eds.), *The Consensus Building Handbook,* 1999.
15. For more on the use of contingent agreements, see M. L. Moffitt, "Contingent Agreements, Agreeing to Disagree About the Future," *Marquette Law Review,* 2004, *87,* 691–696.
16. Susskind, *Breaking the Impasse,* 1987, p. 21.