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# 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.<sup>1</sup> 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 limit 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

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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.<sup>2</sup> 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 the 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-

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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.<sup>3</sup>

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.<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup> 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

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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.<sup>7</sup>

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.<sup>8</sup>

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 I, 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 unbalanced 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 I—in public sector conflicts, there may well be yet other affected parties whose lack of organization,

**TABLE 1**  
**Mediation Strategies in the Face of Power**

	<b>Power Balanced</b>	<b>Power Unbalanced</b>
<b>Neutral Mediator</b>	Fair process Impartiality Affected parties assumed to be represented? Legitimation of outcome by process	Fair process Impartiality Exclusion of affected interests, thus unstable? Legitimation of outcome by process Power imbalances perpetuated
<b>Activist Mediator</b>	Balances information and participation Seeks representatives for any affected parties not present Possible perception of bias Can mediator maintain role?	Balances information and participation Seeks representatives for affected parties not present Possible perception of bias Can mediator maintain role? Can mediator empower weaker party?

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?”<sup>9</sup>

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.<sup>10</sup>

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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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.<sup>11</sup> 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?<sup>12</sup> This is not only a pressing ethical question, but a strategic and practical one as well.

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Notice that the first and fourth of these goals—to protect relationships with the parties and to help the parties reach better agreements—are typically central concerns of mediators. Without attention to maintaining relationships, mediators cannot do their work, and improving agreements is presumably a mediator's fundamental purpose. But goals two and three—to serve particular needs and the interests of political authorities—are goals that only an activist mediator can serve, if activist mediation is possible at all.

In the Westville case, if planner Goldsmith is to mediate the conflict between Hutter and Wood and worry about all of these goals at the same time, Goldsmith must work as an activist mediator. But activist mediation is controversial in theory and in practice, as we have seen. By using the Westville exercise in the classroom or the laboratory, we can explore whether and how activist mediation is possible. In this exercise, we score not only the parties but the planner-mediator too.

The central questions are to be asked of the planners, those in Goldsmith's role, once the scores of the parties—in this case, Hutter and Wood—are posted for all to see. How did the planner-mediators try to serve the mandate they had? Did they try to balance their sympathies toward particular constituencies with the desire to protect their relationships with the parties? The single most important product of the Westville exercise is the comparison of strategies that can be employed in an activist planner-mediator (i.e., Goldsmith's) role.

### **Managing the Activist Mediation Role**

How can planners manage the conflicting tasks they confront? Can they do better than “just compromise” between the goals of maintaining relationships and serving substantive interests? Can they find integrative ways to do both? In an experimental trial, for example, one planner-mediator took the following strategy: He used his concern for the mayor's mandate (about timing) to counterbalance his apparent support for Hutter, the task force representative, in the eyes of Wood, the neighborhood representative. As a result, both Hutter and Wood took this quite interested, even biased, Goldsmith to be even-handed, apparently “neutral.”

This suggests that *the planner has an internal strategic negotiation to perform* between the service of conflicting goals, and he or she can do it in various ways, well or poorly. The debriefing of the Westville exercise can call attention then to two negotiations: one between the parties, primarily between Hutter and Wood; and one within the planner, as the planner is thrust into the position of being an activist mediator.

But there are problems here, of course. The Westville exercise is a negotiation about a shelter “for the homeless,” but the homeless are nowhere to be seen.<sup>13</sup> The very structure of the exercise has precluded the direct participation of the homeless, and it has said very little about who these people are—by age, gender, race, health, and so on. The structure of the game, then, presumes that the planner participates in a planning process that may only *represent* affected people. And of course that representation can be flawed.<sup>14</sup> Why should we assume that Hutter and the task force truly represent the homeless, rather than an uneasy compromise of social service providers and local activists? The planner here works to see shelter beds provided—not just to serve the task force's goals, but to serve people in need of shelter.

But what if providing such shelters is not a very good solution, a necessary evil under existing conditions perhaps, but all in all a poor idea? In that case should the planner not help the task force get more beds, but instead try to lobby the mayor or the city council president, or others? Should planner Goldsmith work to protect single-room-occupancy hotel rooms, or perhaps work to support housing subsidies of various kinds? Planner-mediator Goldsmith badly needs a theory of intervention here, whichever way she or he is to go—a theory with immediately practical implications.

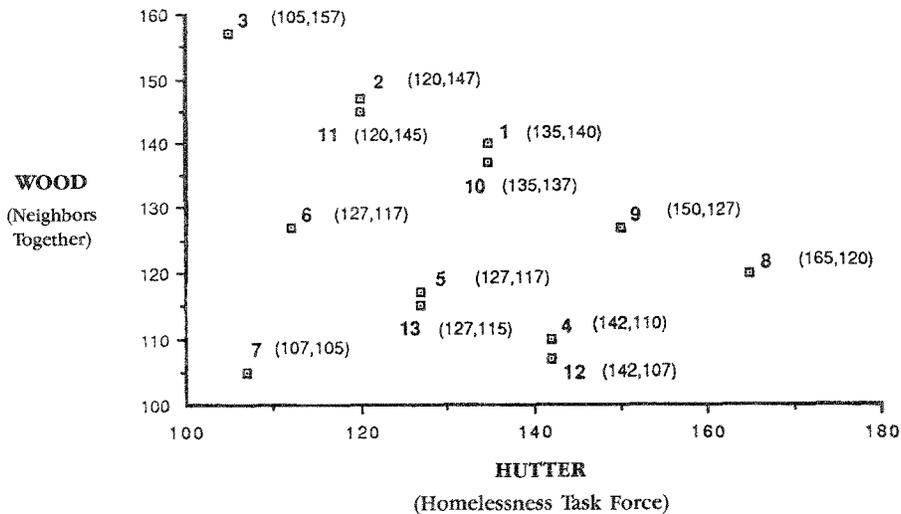
Should Goldsmith go ahead with the negotiation in the absence of greater direct participation of the homeless? If not, how should the participatory process be designed? If so, who shall represent whom? Even if a representative process is assumed, the question remains, “What will serve the needs of people without shelter?” One strategy is to serve the task force and seek shelter beds at the old service center site—as the Westville exercise encourages planner Goldsmith to do. But *another* strategy is to lobby for the protection of the local housing stock, and to lobby against condominium conversions and related sources of displacement.

Clearly, the planner-mediator’s strategy requires a theory of practice: (a) to be “neutral,” helping the parties now organized and presently in dispute to get the best agreement possible; or (b) to be an activist mediator with a conception of how to serve particular needs, e.g., with beds or subsidies.

But the apparently contrasting position of neutrality turns out not really to be “neutral” at all; “agnostic” may be more apt. Consider the space of possible agreements in the Westville negotiation as represented in Figure 1: thirteen possible agreements satisfy the constraints operating on Hutter, Wood, and Goldsmith.

Mediation makes good sense precisely because Hutter and Wood run the risk of settling at agreement #5, a relatively poor compromise, when many other

**FIGURE 1**  
**Possible Agreements in Westville**



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agreements that are better for both parties are still possible. But notice: Agreement #8 is much better for Hutter and a bit better for Wood relative to #5, while #1 is much better for Wood relative to #5, and also somewhat better for Hutter. Should a “neutral” mediator be indifferent between the two, or push instead for #9? What about numbers 2 and 11, which are even better than #1 for Wood but somewhat worse for Hutter? Should the mediator stop if Wood’s refusal to settle at #9 pushes Hutter to accept #1? Or should the mediator resist (calling it perhaps “premature closure”?) and seek an agreement in the neighborhood of #9, which seems better for both Hutter and Wood than #5, but which is not as lopsided as numbers 1, 2, 10, 11, or 8? What is the mediator’s responsibility in this situation? What does the mediator’s “responsibility to help the interested parties (do better)” mean?

“Neutrality” here is a label that confuses more than it explains or clarifies. It is an ambiguous promise at best and not an accurate description of any practice. Mediators may seek procedural neutrality—allowing each party the same “air time,” the same opportunities to ask questions, for example—but they still have crucial practical judgments to make about what to ask and what not to ask, about what previous bits of information to reintroduce or to leave aside, about what mentioned but unaddressed issues to recall or forget. With every such judgment a mediator opens up possibilities for creating new options or helps to foreclose them. With every such judgment a mediator also takes a stance on what is “enough” or “premature” or “too hasty” or “ill-considered” or “too narrow,” and so on. Thus mediators must make judgments all the time about the outcomes that lie within reach. How mediators share, manage, or withhold information is itself substantively important, for their judgments here shape the parties’ possibilities of realizing joint gains and trading across issues for mutual benefit.

This lack of real neutrality brings good and bad news. The bad news is that a refuge for apolitical professional practice seems no longer available (that in itself might actually be good news, of course). The good news is that if even supposedly neutral mediators must make judgments that will affect substantive outcomes, then the viability of “interested,” activist mediators who do the same thing may be less radically called into question. *Activist mediation is not as different as it may seem to be, because the supposedly “neutral” traditional mediation role was never nearly as neutral as it claimed to be.*

## Conclusion

In sum, “neutrality” might suggest a good deal but mean very little. It might mean “nonpartisanship,” that the mediator has no personal stake in the satisfaction of any one particular party. But it promises symbolically so much more than that, and so much less honestly. It hides hundreds of strategic judgments that must be made—each of which can practically affect the benefits achieved by any party. It hides the normative judgments that a mediator must make about what are good and bad agreements under the practical circumstances at hand. And it suggests a technical objectivity, an absence of responsibility, a “good guy” image of the mediator that actually *obscures* not only issues of power and representation, but the mediator’s own active influence on the outcomes that may be achieved.

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The promise of gains for both parties as a result of mediation is a real one, but it too often simply becomes self-congratulatory and covers up the inevitable politics—of both creating and claiming value—that mediation involves (Lax and Sebenius, 1987). Public sector mediation in its whitewashed, nonactivist form is skewed democratic politics disguised by another name. It does far more to obscure than to illuminate a democratic politics and its possibilities of equality, participation, and voice (Barber, 1984). The supposedly neutral, nonactivist mediator's truncated vision—help the organized parties, forget the rest—reflects a particularly interested negotiating position itself, the ostrich's position, a position of willful neglect of affected public interests.

Mediators thus need strategic and normative theories whether they are interested in being "neutral" or "activist." So the dismissal of activist mediation for jeopardizing the necessity of "trust" can be quite deceptive; it seems willfully and too conveniently oblivious to the richness and ethical complexity of the real judgments required in mediation practice. Mediators may indeed tell the parties that they have no personal stake in their interests. But they are fooling the parties, and possibly themselves, *if they deny* that in the process of mediating they must make judgments that can deeply affect the outcomes the parties may achieve and the interests that those outcomes may satisfy. But what if they do not deny the point, but simply remain silent? That's convenient surely, but it may have less to do with building trust than with manipulating it.

The mediator's claim to neutrality, then, promises far more than it delivers. At best it means that the mediator will not collude with either party. But it promises presumed virtues of value-freedom and disinterestedness that have deep symbolic significance in our professional culture, even though these qualities are impossible to achieve. The claim to neutrality is not simply wrong, it is ethically and morally deceptive, a self-serving and self-legitimizing, but only semi-professional, falsehood.<sup>15</sup>

These problems of neutrality haunt the mediation community. They are continually alluded to, but rarely discussed in detail and evaluated. The failures of neutrality have been mediation's "guilty secret," in part because students of mediation have not confronted the problem of activist mediation directly. Our discomfort with the claims of neutrality remind us of Mark Twain's observation about our discomfort with the weather. Twain is reputed to have said (to paraphrase), "Everyone complains about the weather, but no one ever does anything about it!" In the mediation community, everyone complains about the problems of non-neutral mediation, but few analysts have done anything about it. The Westville exercise allows us to explore in the laboratory and the classroom how interested, even biased, activist mediators can effectively do their work: to protect relationships with the parties, to seek joint gains, to protect outside political interests, and to promote substantive interests as well.

Properly understood, theoretically and practically, mediation promises not neutrality but "both gain" outcomes for disputing parties. How those joint gains are to be distributed, and how mediators might influence that distribution, remain central ethical and practical questions for all those interested in mediation to address. But we will never learn about the possibilities of real, non-neutral, activist mediation if we do not carefully investigate the skillful work of mediators in practice—in the laboratory, the classroom, and the field.

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## NOTES

We wish to thank the Department of City and Regional Planning at Cornell University and the National Institute for Dispute Resolution for their support of the development of the Westville exercise and its related teaching notes (Forester and Stitzel, 1988). We would also like to thank Beth Meer and Charles Hoch for their critical comments. We remain solely responsible for the argument.

1. For a recent indication of the salience of these issues in the dispute resolution community, see the March 1987 issue of *Dispute Resolution Forum*, "SPIDR's Ethical Standards of Professional Conduct (Six Leading Practitioners Discuss Their Meaning, With Introduction by Gail Padgett)." Washington D. C.: National Institute for Dispute Resolution. To the question, "Are there important ethical issues that these standards do not address?" James Laue replied, in part, "'Neutrality' as used in this document is, I believe, the wrong term. 'Neutral' is not an adequate term to describe who a third party is or what he or she does. . . . What we are doing in this field is process advocacy—not 'neutral' intervention or value-free do-goodism. . . . Power and power disparities are not addressed in these standards. New and perhaps even experienced mediators may unwittingly put the weaker party at a disadvantage. If one party has never negotiated before and is in a dispute with a powerful, experienced institution, that is an inherently unfair situation which no mediator should promote."

2. For a discussion of mediation and its promises and problems, see Folberg and Taylor, 1984; Moore, 1986; Susskind and Cruickshank, 1987.

3. For a discussion of planners now working as interested mediators, see Forester, 1987 and 1989. For a discussion of the alternative ways in which environmental mediators might be paid, see Bacow and Wheeler, 1984. For a more general discussion of the conflict-ridden roles of community planners, see e. g., Needleman and Needleman, 1974.

4. See, e. g., the analysis of Zartman and Touval (1985) which "examines mediation as an exercise in which the mediator has interests and operates in a context of power politics and cost-benefit calculation." Zartman and Touval report cases in which "a mediator intervenes because of its interest in the conflict or in obtaining an outcome." In addition to characterizing three roles that such mediators can play—as communicators, formulators, and manipulators—the authors argue that in the cases they studied, an interested mediator can be "accepted by the parties *not because of its neutrality* but because of its ability to produce an attractive outcome. The mediator's power, or leverage, comes from the parties' need for a solution, from its ability to shift weight among parties, and from side payments" (1985, p. 27) [emphasis ours].

5. The force of this argument holds for planners working in between a range of conflicting groups, whether those parties are various neighborhood associations, public agencies, members of local boards, elected or appointed officials, other agency staff, or still others. The example used here in the text—developers vs. local neighbors—is particularly appropriate in communities where the development market is "hot," where developers have great incentives to build and where neighborhood organizations not only exist and are well-organized, but also may have the power to resist development efforts. Yet planners can play mediating roles between these and other parties in a wide range of communities.

6. For related discussion, see Pruitt, 1981; Smith, 1985; Touval, 1985 and 1975; Honeyman, 1985 and 1986.

7. This is Colosi's worry in an article paired with Susskind and Ozawa's (1983). For an elaboration of the issues involved here, see Laubich, 1987. Also, compare with Touval (1985), who, writing about mediation in international cases, suggests that neither mediator interestedness nor bias renders mediation impossible: in addition to the parties' perception of mediators' interestedness "the additional perception of bias strengthens the mediator's leverage, since the party that considers itself favored by the mediator will seek to preserve its good relations and prevent rapprochement between the third party and the adversary. The party that views the mediator as favoring its antagonist will seek to reverse the relationship and win the mediator's sympathy. Thus real bias, and not mere interest, plays an important role in the mediation process" (Touval, 1985, p. 376).

8. But one wonders about those unrepresented yet affected groups *who are not likely to develop the political muscle to threaten agreements made in their absence*. Susskind and Ozawa's rationale for the activist mediator does not yet address the problem of representing those interests

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effectively. Public sector mediation that ignores those weaker groups threatens to degenerate into a real-politik of organized and powerful groups making deals with planners fully present, deals that exclude the weak and can hardly be dignified as being participatory, voluntary, or in any "public interest." For a discussion of related problems, see Amy (1987), its failure to be equally wary of environmental litigation notwithstanding. Lindblom's brilliant "Science of Muddling Through" defended incrementalism as a desirable strategy of action, but it did so with a caveat—that affected interests had "watchdogs" to represent them. In public sector planning disputes, such watchdogs are all too often asleep or in the pound, and planners who mediate conflicts between the powerful might help those powerful groups make "both gain" deals, but affected yet unrepresented publics stand to lose here, not to gain, unless, of course, the planners themselves somehow effectively represent those interests. Just how possible is that?

9. For the debate, see e. g., Stulberg (1981), Susskind (1981), Bacow and Wheeler (1984); see Colosi (1983) as noted on the issue of trust.

10. See, for example, a recent discussion, "Focus on Issues in ADR" in the newsletter of the University of Minnesota Conflict and Change Center, March 1988. (Thanks to Terrie Northrup for bringing this to our attention.) On the strategic importance of caucusing and "shuttle diplomacy" in planning practice, see Forester (1987).

11. Raiffa (1982), Fisher and Ury (1983), Susskind and Cruickshank (1987), and Lax and Sebenius (1987) discuss "joint gains" in simple and compelling terms. When the parties fail to make trades they would willingly make (one would prefer to do more cooking and the other would prefer to do more dishwashing), both parties can suffer—and suffer when joint gains, a better-for-both or "both-gain" agreement was possible. Again, a powerful reason to involve third-party help is to facilitate the discovery of trades or joint gains that two disputants left to their own devices might fail to discover and achieve.

12. The Westville training exercise allows us to explore this question in the laboratory and the classroom. Observational and interview research would allow us to begin to explore the same question in current practice of planning practitioners.

13. For arguments critical of providing temporary shelters as short-term expedients which may exacerbate problems of homelessness rather than alleviate them, see for example the recent discussion in *The Nation* (April 2, 1988). See also Hoch and Slayton (1989).

14. Honeyman (1985: 146-7) notes that mediation may "submerge minority interests in general. The pressure to obtain an agreement which will get a majority vote within . . . opposing groups, combined with the customary emphasis on secrecy, can leave a dissident faction boxed in with little ability to keep effective contact with the opposing party or its own constituency."

15. If a mediator told each party that he or she would have to make judgments about staying with or pushing on past agreements #4, 5, 6, 12, and 13 in Figure 1, would the parties call her or him a neutral? What would the parties call this mediator? How would they feel—before and after mediation? Should mediators not tell? If they do not, is the consent of parties (well-?, fully-?, mis-?) informed? These questions need to be explored in further research.

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