

The MIT-Harvard Public Disputes Program

*The First Ten Years
1979-1989*

Affiliated with:

The MIT Department of Urban Studies and Planning
The Program on Negotiation at Harvard Law School
The MIT Center for Technology, Policy, and
Industrial Development

Lawrence E. Susskind, Director

The mission of the Public Disputes Program is to explore the proposition that mediated negotiation can enhance the fairness, efficiency, stability, and wisdom of public sector decisionmaking. To that end, PDP tests and amplifies theoretical concepts through action-research involving the full spectrum of groups that have a stake in public policy decisions. PDP develops theory, devises practical approaches to resolving actual disputes, creates curriculum and training materials, and shares the results of these efforts through training, networking, and publications.

Public Disputes Program Staff



Lawrence E. Susskind,
Director



Eileen Babbitt,
Associate Director



Maria Hortaridis,
Administrative Assistant



Teresa Hill,
Editor,
Environmental Impact
Assessment Review



J. William Breslin,
Director of Publications,
Program on Negotiation
at Harvard Law School

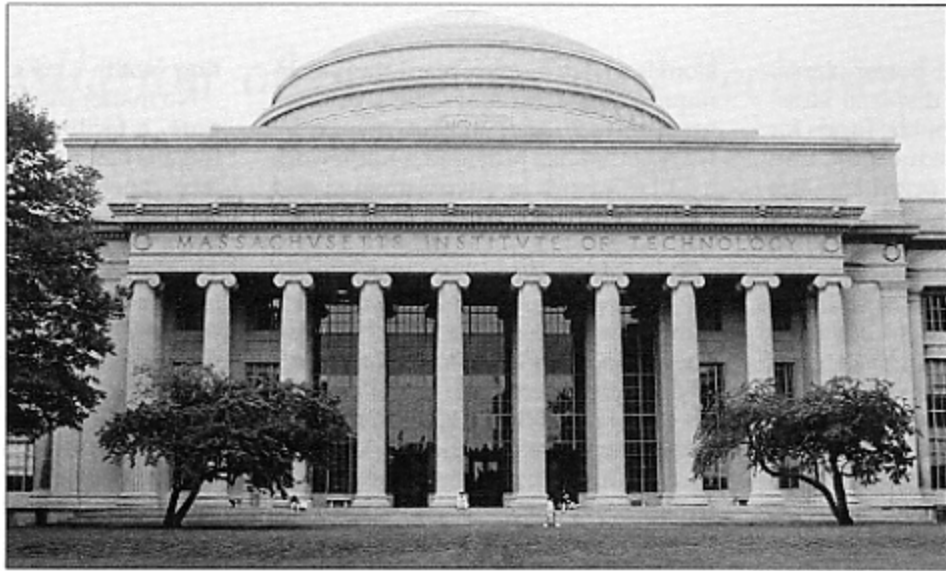
Contents

Overview	3
Mediating Scientific and Technical Disputes	5
Negotiating Public Policy	8
Programs to Promote Public Dispute Resolution	11
Agenda for the Future	13

Sponsoring Foundations

The Kendall Foundation
William and Flora Hewlett Foundation
Lincoln Institute of Land Policy
General Electric Foundation
Edna McConnell Clark Foundation
National Institute for Dispute Reso-
lution
Ford Foundation
The German Marshall Fund of the
United States
The Goethe Institute
The Dana McLean Greeley Foundation
for Peace and Justice
Charles F. Kettering Foundation

This publication was written and edited by Donna L. McDaniel, with the assistance of J. William Breslin.
Photographs: Donald T. Young and the MIT News Office.
Typesetting and printing: Office of the University Publisher, Harvard University.
December 1989.



From its earliest days a decade ago, the MIT-Harvard Public Disputes Program has emerged as an internationally-known action-research center committed to a whole new way of thinking about and resolving disputes in the public sector.

Put most simply, the Public Disputes Program (PDP) exists to replace "win-lose" outcomes with "all-gain" solutions in the highly-charged, complex arena of public policymaking. All-gain solutions can be achieved through assisted or unassisted negotiation. The goal is to reach agreements that are fair, efficient, stable, and wise — agreements that *all* parties prefer.

"Hands-on" mediation, research, teaching, and theory building form the cornerstones of the Public Disputes

Program. These four activities have been the focus of scores of journal articles, newspaper reports, books, and other publications by PDP faculty or about PDP activities over the past ten years. In effect, PDP has served as a catalyst to reshape the way government officials, private sector leaders, and public interest groups work to resolve their differences, showing how negotiation and consensus-building offer better ways to deal with conflict.

Specifically, PDP has initiated, managed, documented, and evaluated dozens of new approaches to resolving disputes between government, citizens and business — at every level of government. These multi-party, multi-issue conflicts have erupted over the siting of facilities such as airports,



shopping malls, nuclear power plants, and hazardous waste disposal sites; the allocation of scarce public funds for social service projects, education, and other human service priorities; the preservation and use of natural resources; the determination of rates charged by public utilities; and establishment of public health and safety standards.

Curriculum development efforts accompanying these demonstration projects have produced a wide range of simulations that are currently used in graduate schools of planning, public policy, and public management, as well as in professional training throughout the world.

This booklet provides an overview of the Public Disputes Program's first ten years and a preview of a new agenda for the coming years that promises to be every bit as exciting and productive.

A Brief History

The beginnings of the Public Dispute Program can be traced to 1979, when the William and Flora Hewlett Foundation awarded a two-year grant to support the formation of MIT's Environmental Dispute Resolution Program. Initially affiliated with MIT's Department of Urban Studies and Planning, in 1982 the program became one of the component projects of the Program on Negotiation at Harvard Law School. To signify its expanded mission, the program's name was changed to the Public Disputes Program — or, more commonly, PDP.

MIT's *Environmental Impact Assessment Review* began publication at about the same time as PDP was being formed. It was in the earliest issues of this journal that a then-revolutionary idea was first proposed: Environmental decision-making could — and should — be considered as a negotiation process through which political and scientific considerations are balanced. The *Review*, which is edited by Teresa Hill, continues to offer a lively forum for that perspective.

In the early days, MIT faculty members Lawrence Susskind, Lawrence Bacow, and Michael Wheeler were among those who took the lead in encouraging environmental profes-

sionals to use dispute resolution techniques. Susskind and Connie Ozawa formulated an "action-research" agenda that has provided a framework for PDP's work in environmental and public policy dispute resolution over the years.

Knowledge gained from scores of PDP research projects led to the 1987 publication of *Breaking the Impasse: Consensual Approaches to Resolving Public Disputes* (New York: Basic Books). In this book, Susskind and Jeffrey Cruikshank present the rationale for consensual approaches to public policy dispute resolution and illustrate their advantages and disadvantages. In many respects, the book codifies the experience and knowledge gained through the first decade of PDP activities.

In addition, more than 20 books have been published in two Plenum Publishing Company series during Susskind's tenure as general editor for the Environment, Development, and Public Policy series and as series editor for the Environmental Policy and Planning series.

As the number of successful consensus-building efforts grew over the years, so too did the demand for PDP's mediation services. Given those demands and the academic program's intention to remain focused on theory-building, several PDP faculty have affiliated with a private national firm, Endispute, Incorporated, to provide public dispute resolution services in the United States, and with Environmental Resources, Limited, to provide these services in Europe.

In 1989, PDP formed the "Public Disputes Network" which publishes a quarterly newspaper, *Consensus*, distributed to more than 25,000 public officials throughout the United States.

Building A New Theoretical Framework

PDP's experience and research indicate that negotiation assisted by a neutral facilitator is the best approach to addressing the legitimate concerns of those with a stake in public issues, be they issues of land development, environmental protection, human services, the siting of facilities, or set-

ting health and safety standards.

No matter the focus or locus of a dispute, a facilitator or mediator guides the parties through informal face-to-face meetings, joint factfinding and collaborative problem-solving to agreements that may even be self-enforcing.

If the conflict is heavily scientific or technical, the neutral assists the parties in understanding the sources of disagreement, clarifying issues, and searching for common ground.

In conflicts arising over the siting of facilities or over the large-scale commercial development, negotiations can generate arrangements to compensate the parties and the community and even lead to shared management of a facility.

Administrative agencies have been successful in building consensus before promulgating regulations. Several states have legislation that removes some of the barriers to initiating the consensus-building process.

Courts, too, are finding that mediation narrows the range of issues they must address and is speedier than multiple appeals. Federal and state judges have appointed special masters to mediate highly complex cases for which the judicial process is too constrained.

Selected Publications

American Behavioral Scientist. Special Issue on Negotiation. Edited by Lawrence Susskind and Jeffrey Rubin. November 1983.

Carpenter, Susan, and W.J.D. Kennedy, *Managing Public Disputes: A Practical Guide to Reaching Agreements*. San Francisco: Jossey-Bass, 1988.

Forester, John, *Planning in the Face of Power*. Berkeley and Los Angeles: University of California Press, 1989.

Susskind, Lawrence, "Mediating Public Disputes," *Negotiation Journal* 1 (1), January 1985.

_____. "Mediating Public Disputes: A Response to the Skeptics," *Negotiation Journal* 1 (2), April 1985.

Susskind, Lawrence, and Jeffrey Cruikshank, *Breaking the Impasse: Consensual Approaches to Resolving Public Disputes*. New York: Basic Books, 1987.

The Mediation of Scientific and Technical Disputes

Across the country, efforts to provide for the disposal of hazardous and nuclear waste, build facilities to supply energy, dispose of solid waste, treat wastewater, or clean up "Superfund" sites have met with political protest, endless litigation, and costly delays.

These highly technical public policy disputes entail conflicts not only over the scientific issues, but also focus attention on the sharp political differences dividing the groups involved. Thus, attempts to reach resolution simply by appealing to experts and finding the "right" information often prove futile. A balanced resolution must incorporate the best scientific judgments, as well as political considerations.

Selected Publications

Bacow, Lawrence, "The Technical and Judgmental Dimensions of Impact Assessment," *EIA Review*, 1 (2), 1978.

McGovern, Francis, "Toward A Functional Approach for Managing Litigation," *University of Chicago Law Review* 53, 1986.

Ozawa, Connie, *Consensual Procedures and the Role of Science in Public Decisionmaking*. Newbury Park, Calif.: Sage Publications, forthcoming.

Susskind, Lawrence, "Court-Appointed Masters as Mediators," *Negotiation Journal* 1 (4), 1985.

Susskind, Lawrence and Connie Ozawa, "Mediating Science-intensive Public Policy Disputes," *Journal of Policy Analysis and Management* 5 (1), 1985.

Videotape

Mediating Public Disputes. A case study of a scientific/technical dispute in New Jersey is used by Lawrence Susskind to discuss the role and function of a court-appointed special master serving as a mediator.

Disputes over Environmental Policy

Partisan, political action is not a productive method for developing long-term environmental policies. Rather, only when the parties work together is it possible to design solutions that all can support. To be willing to commit themselves, the participants must perceive the solutions as lasting and firm yet flexible

enough to accommodate modifications as new information unfolds.

And there are other special difficulties in environmental policymaking. Ecological effects are irreversible and the costs are not easily calculated or compensated. That so many groups, often self-appointed, claim to represent the "public interest" also complicates the debate.

Nevertheless, environmental disputes are amenable to solution through negotiation processes.

One of the earliest environmental dispute resolution efforts in the eastern United States involved plans to extend the "Red Line" portion of Boston's mass transit system and construct new facilities in a wetlands area. During 14 months of negotiations, a PDP facilitator-mediator used intensive problem solving, brainstorming, role playing and collective image building to clarify concerns and analyze differences among the parties, eventually developing a package acceptable to all.

Another example of this kind of innovative dispute resolution involved a proposed regional sewage treatment plant in Camden County, New Jersey, construction of which had been tied up in various courts by different local, regional and state governments for 14 years. Acting as a court-appointed mediator in the case, PDP Director Susskind helped the officials to use negotiation techniques to develop an acceptable strategy for allocating costs of the pollution cleanup, thereby ending a marathon court battle.

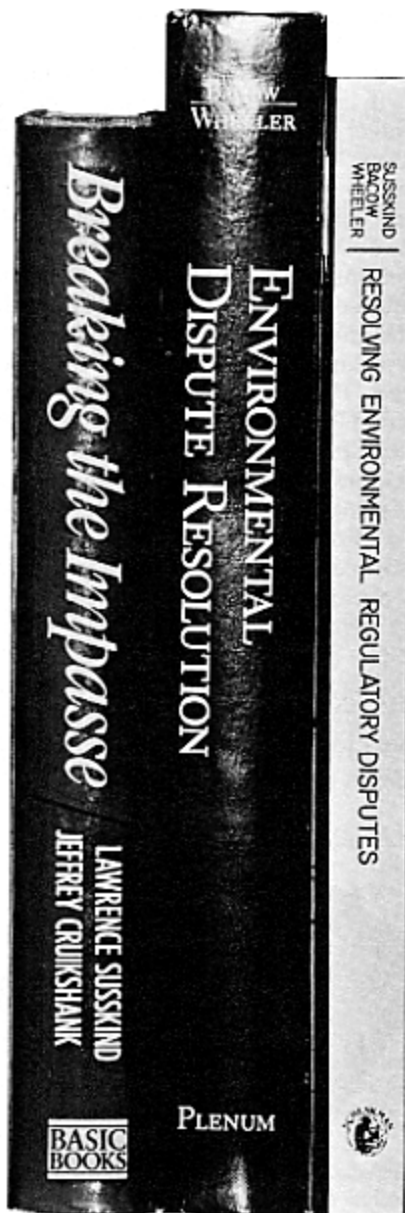
At the request of the state judges in Vermont, PDP presented a two-day "judicial college" exploring the problems of handling the scientific and technical aspects of complex civil litigation. The simulation, "Lake Wasota Fishing Rights," was used to illustrate the negotiation process.

Working with the New York Academy of Sciences, PDP designed a model joint factfinding process to secure multi-state and multi-party agreements on how best to clean up PCBs in New York Harbor.

Other environmental issues that have been mediated by PDP affiliates over the last ten years include the use of federal lands, rules for the national park system, off-shore oil exploration, and fishing rights.

A PDP study of major conflicts for the Environmental Protection Agency solidly confirmed the need for alternative methods of resolving disputes facing that agency.

Internationally, PDP faculty and staff have been consultants for the development of environmental impact assessment laws in The Netherlands and



have been involved with developing risk assessment capabilities in that country.

The first in a series of programs on international environmental negotiation will be offered by PDP in 1990 at the Salzburg Seminar in American Studies in Austria.

Selected Publications

Bacow, Lawrence and Michael Wheeler, *Environmental Dispute Resolution*. New York: Plenum Publishers, 1984. (Awarded the Center for Public Resources' first prize for scholarship in 1985.)

Bidwell, Robin, Frans Evers, Paul deJongh, and Lawrence Susskind, "Public Perceptions and Scientific Uncertainty: The Management of Risky Decisions," *EIA Review* 7 (1), 1985.

Gusman, Sam and Andy Sachs, "Policy Dialogue for Environmental Dispute Resolution." Cambridge, Mass.: Program on Negotiation Working Paper, 1987.

McCreary, Scott, *Resolving Science-Intensive Public Policy Disputes: Lessons from the New York Bight Initiative*. Unpublished doctoral dissertation. Department of Urban Studies and Planning, School of Architecture and Planning, MIT, 1989.

Sobel, Gregory, *Alternative Dispute Resolution in the U.S. Corps of Engineers: Opportunities and Barriers*. Unpublished Master's thesis. Department of Urban Studies and Planning, School of Architecture and Planning, MIT, 1988.

Susskind, Lawrence, "Citizen Participation and Consensus-Building in Land Use Planning: A Case Study," in Judith deNeufville, editor, *The Land Use Debate in the U.S.* New York: Plenum Publishing, 1980.

_____, "The Uses of Negotiation and Mediation in Environmental Impact Assessments," in Alan Porter and Fred Rosini, *Integrated Impact Assessment*. Boulder, Colo.: Westview Press, 1983.

Susskind, Lawrence, Lawrence Bacow, and Michael Wheeler, *Resolving Environmental Regulatory Disputes*. Cambridge, Mass.: Schenkman Publishing Co., 1983.

Susskind, Lawrence and Alan Weinstein, "How to Resolve Environmental Disputes out of Court," *Technology Review*, January 1982.

_____, "Towards A Theory of Environmental Dispute Resolution," *Boston College Environmental Affairs Law Review* 9 (311), 1980.

Wondolleck, Julia, *Public Lands Conflict and Resolution: Managing National Forest Disputes*. New York: Plenum, 1988.

Simulations

Harborco. A consortium of development, industrial, and shipping concerns wants to

construct a deep water port. By Denise Madigan, Thomas Weeks, Lawrence Susskind, and David Lax. (Teaching notes.)

Lake Wasota Fishing Rights. Dispute among Indians, tribes, fishing interests, and government agencies over the control of fishing on a great lake. By Denise Madigan and Tod Loofbourrow. (Teaching notes.)

Teaching Notes

Bargaining, Negotiation and Dispute Resolution in The Public Sector. A collection of teaching notes for many of the simulations in this brochure (denoted by "teaching notes"). By Lawrence Susskind and Eileen Babbitt. Available through the Program on Negotiation Clearinghouse.

Hazardous Substances: The Superfund and Other Issues

Using joint problem-solving rather than the government's inherent authority has proven to be more effective in earning the cooperation needed to meet objectives for cleaning up pollution. Although the circumstances tend to be adversarial when government agencies work with potentially responsible polluters, a good working relationship is much more likely to produce an agreement that is intelligent and realistic to implement.

Working with Endispute, Incorporated, PDP found that the Environmental Protection Agency was actually being hindered in carrying out its "Superfund" cleanup projects by adopting very rigid settlement rules and procedures. With the agency's resources consumed by adversarial proceedings, very few sites were actually being cleaned up. PDP demonstrated how to save time and money by using a more flexible approach. The EPA subsequently revised its procedures to encourage negotiated settlements in line with PDP

recommendations and with its assistance.

PDP has helped train staff at Clean Sites, Inc., a nonprofit organization set up by industry and major environmental organizations to mediate "Superfund" disputes.

The National Institute for Chemical Studies and PDP sponsored a training that led to the "Jefferson Hazardous Waste Negotiation," a simulation in which government, industry, and environmental groups develop cleanup policy. The game was used in Virginia, where, with Union Carbide a major employer, hazardous waste issues are especially sensitive.

Another simulation, this one commissioned by the Department of Energy, has been shown to be effective in teaching cooperative problem solving as a technique for managing siting conflicts involving low-level nuclear waste.

Currently, PDP is organizing a workshop to assist the EPA in integrating mediated negotiation into Superfund settlements.

Selected Publications

Cassell, Scott, "Negotiating Better Superfund Settlements: Prospects and Protocols," *Pepperdine Law Review* 16 (S5), 1989. (This work won honors from the Center for Public Resources as the best student paper on negotiation in the country.)

Konkel, Steven, "Risk Management in the United States: Three Case Studies," *EIA Review* 7 (1), March 1987.

Konkel, Steven, and Lawrence Susskind, editors, *Risk Management: Developing A Research Agenda*. Proceedings of the MIT Faculty Seminar on Risk Management, MIT Center for Technology, Policy, and Industrial Development, 1989.

Risk Assessment, Risk Management, and Environmental Decision Making. A special issue. *EIA Review* 7 (1), March 1987.

Susskind, Lawrence and Jonathan Marks, "Negotiating Better Superfund Settlements: Recommendations for the Future," *EIA Review* 8 (2) June 1988.

Toward Better Superfund Settlements. A special issue. *EIA Review* 8 (2), June 1988.

Simulations

DEC v. Riverside. The EPA has filed suit against a pulp manufacturer for polluting a river. By David Lax, James Sebenius, Lawrence Susskind, and Thomas Weeks. *Jefferson Hazardous Waste Negotiation*. Formulating a statewide hazardous waste policy. By Vicki Arroyo and Lawrence Susskind.



Interactive Computer Game

DIPLOMAT. The EPA has filed suit against a pulp manufacturer for polluting a river. An interactive computer game. By Lawrence Susskind and Tod Loofbourrow.

Facility Siting

Promoting the use of negotiation to break the virtual deadlock in the siting of new energy or disposal facilities around the country is a major commitment for PDP. In contrast to the government's too-frequent use of the "Decide-Announce-Defend" approach in siting facilities that are regionally necessary but locally noxious, PDP has for more than a decade worked to encourage consensus-building.

Representative is Massachusetts' hazardous waste siting legislation that creates a unique siting process incorporating innovative conflict resolution techniques and providing for compensation and effective community involvement. The law, which PDP staff were instrumental in helping to develop, spells out steps involved in formalizing a negotiated agreement and gives such agreements the force of law. Staff have continued to be involved with improving the Massachusetts siting process, as well with studying the issues that have produced virtual gridlock in the siting of facilities in Greater Boston.

In a project in Jacksonville, Florida, PDP has focused on ways to generate equitable siting by spreading different types of facilities over different neighborhoods.

PDP worked with the New York Academy of Sciences to mediate a 1984 dispute over dioxin emissions from New York City's proposed refuse plants. The mediator brought in national experts to address the data, provided summaries of technical information and facilitated panels and discussions. The process served to define scientific opinion on key issues and narrow the gap between conflicting points of view.

A PDP analysis of the failure of a similar effort in Philadelphia underscored the importance of working with a broad representation of stakeholders, of tackling scientific questions in joint factfinding, and of trusting the government's commitment to the process.

PDP has served as a consultant to government agencies on the issues of low-level radioactive waste disposal



A group of distinguished German scholars, public officials, and businesspeople toured an economically-depressed section of Boston (where they were also introduced to urban Afro-American art) during a four-day conference on uses of mediation in resolving regional economic development disputes. The conference was sponsored by the German Marshall Fund of the U.S., the Goethe Institute, and PDP.

and siting nuclear waste facilities.

Professionals from around the country will attend the 1989-90 National Workshop on Facility Siting to develop public policy prescriptions to assist public officials.

Selected Publications

Bacow, Lawrence and James Milkey, "Overcoming Opposition to Hazardous Waste Facilities: The Massachusetts Approach," *Harvard Environmental Law Review* 6 (2), 1982.

Bacow, Lawrence, Michael O'Hare, and Debra Sanderson, *Facility Siting and Public Opposition*. New York, Van Nostrand, 1983.

Elliott, Michael, *Coping with Conflicting Perceptions of Risk in Hazardous Waste Facilities Siting Disputes*. Unpublished doctoral dissertation. Department of Urban Studies and Planning, School of Architecture and Planning, MIT, 1984.

Nash, Jennifer and Lawrence Susskind, "Mediating Conflict over Dioxin Risks of Resource Recycling: Lessons from A Flawed Process," *EIA Review* 7 (1), 1987.

O'Hare, Michael, "Not on My Block You Don't — Facilities Siting and the Strategic Importance of Compensation," *Public Policy* 25 (4), 1977.

Rundle, Wendy, "Teaching Negotiation Skills: A Simulation Game for Low Level Radwaste Facility Siting," *EIA Review* 6 (3), 1986.

_____, *Low Level Radwaste Siting Simulation Games: A Case Study in Learning About Negotiation*. Unpublished

master's thesis. Department of Urban Studies and Planning, School of Architecture and Planning, MIT, 1985.

Susskind, Lawrence, "The Siting Puzzle: Balancing Economic and Environmental Gains and Losses," *EIA Review* 5 (2), 1985.

Susskind, Lawrence, and Stephen Cassella, "The Dangers of Preventive Legislation: The Case of LNG Facility Siting in California," *EIA Review* 1 (1), 1980.

Susskind, Lawrence and Michael Wheeler, "Analysis of Siting Regulations: Their Impact on Negotiation," report prepared for the Massachusetts Department of Environmental Quality Engineering, 1984.

Simulations

Dioxin-Resource Recovery. Dispute over the siting of a waste-to-energy plant. By Denise Madigan, Steve Foster, and Lawrence Susskind. (Teaching notes.)

Humboldt. Economic and environmental tradeoffs in a regional development dispute in Europe. By Lawrence Susskind. (Teaching notes.)

Radwaste I. Developing siting criteria for a low-level radioactive waste disposal facility. By Lawrence Susskind, Denise Madigan, Wendy Rundle, Douglas Rae, and Tod Loofbourrow. (Teaching notes.)

Radwaste II. Negotiating an agreement on a specific site for disposing of low-level radioactive waste. By the same authors. (Teaching notes.)

Negotiating Public Policy

Government decisions on controversial issues frequently produce a host of adversaries, court cases, and years of delay. To counteract this ineffective process on the national, state, and local levels, PDP advocates and tests the use of consensus-building in the formulation of new public policies and regulations, ratesetting, and the allocation of public resources.

Selected Publication

Susskind, Lawrence, and Michael Elliott, *Paternalism, Conflict, and Coproduction: Learning from Citizen Action and Citizen Participation in Western Europe*. New York: Plenum Press, 1983.

Negotiated Investment Strategy

The goal of a Negotiated Investment Strategy, or NIS, is to bring public and private parties together as partners — not adversaries — to establish funding priorities, formulate public policy, or chart long-term goals regarding housing, education, industry, or human services. PDP has launched NIS projects at both the local and state level. In an NIS, "stakeholders" —

everyone with a legitimate interest — are represented in face-to-face negotiations with an independent mediator. The process separates politics from goal-setting. And, because the stakeholders negotiate solutions rather than deal with imposed policies, the NIS process promotes commitment to and enforcement of the agreements.

The promise of this concept, initiated by the Charles F. Kettering Foundation, has led to successful PDP projects in Columbus, Ohio, Malden, Mass., and the states of Connecticut and Massachusetts. In Columbus, two-thirds of its NIS recommendations were carried out in a single year and in the financially-pressed city of Malden, Mass., a PDP mediator worked with teams representing the government, the business community, and citizens to produce an "action plan" regarding public education, economic development, human services, finances, public safety, and city pride.

At the state level, the NIS process produced Massachusetts' "4-P" Public-Private Partnership Program — a statewide public policy negotiation affecting the allocation of nearly \$50

million in social service funds. Over 100 different interests participated in this PDP project.

At the urging of the Kettering Foundation, Connecticut local and state officials and private groups concerned about human service programs used the NIS process to develop a statewide consensus on how to invest public and private money. PDP also helped to document this negotiation.

The NIS process was used by Endispute, Incorporated, to negotiate fair share allocations of affordable housing for communities in the Hartford and Bridgeport regions. This Connecticut work is the topic of two January, 1990 seminars sponsored by the Lincoln Institute of Land Policy on both the east and west coasts.

"Housing in Fair City," a PDP-developed game and video for state officials and housing advocates negotiating public housing policy, has been used to train California officials in a program at the UCLA School of Public Policy.

Selected Publications

Moore, Carl and Christine Carlson, *Public Decision Making: Using the Negotiated Investment Strategy*. Dayton, Ohio: Kettering Foundation, 1984.

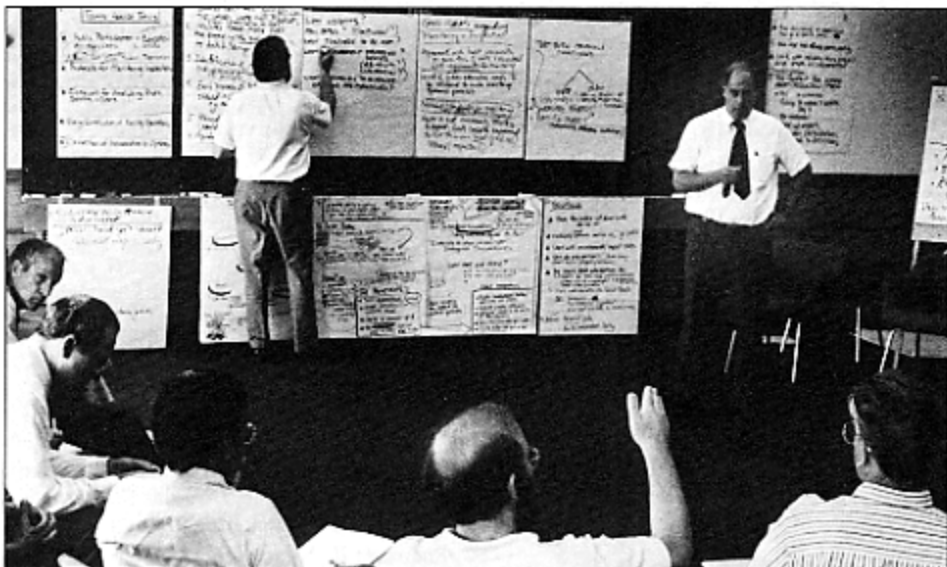
Cook, Anne, *Two Models for Citizen Participation: Copley Place, Boston, and Negotiated Investment Strategy, Malden, Mass.* Unpublished master's thesis. Department of Urban Studies and Planning, School of Architecture and Planning, MIT, 1984.

Lambert, Sandra, *Malden's Negotiated Investment Strategy: One Year Later, Program on Negotiation*, 1985.

Madigan, Denise, Gerard McMahon, Lawrence Susskind, and Stephanie Rolley, *New Approaches to Resolving Local Public Disputes*. Washington, D.C.: National Institute of Dispute Resolution, 1990.

Susskind, Lawrence, *Final Report: Agreement Reached by the Partnership Forum for Social Service Priorities*, prepared for the Massachusetts Department of Social Services, 1985.

Susskind, Lawrence and Frank Keefe, *Report of the Columbus, Ohio, Negotiated Investment Strategy Project, Vols. 1 and 2*. Dayton, Ohio: Charles F. Kettering Foundation, 1980.



Typical of a session where participants work to get out all the issues is this scene from the conference, "Incineration: Confronting the Sources of Disagreement," sponsored by MIT's Hazardous Substances Management Program. HSMP Director Dr. John Ehrenfeld (right) and Dr. Lawrence Susskind (at board) led this June 1988 session for spokespeople on all sides of the question.

Susskind, Lawrence and Denise Madigan, "New Approaches to Resolving Disputes in the Public Sector," *The Justice System Journal* 9 (2), 1984.

Watts, Sylvia, *The Connecticut NIS: The Uses of Mediation in Intergovernmental Negotiation*. Unpublished Master's thesis. Department of Urban Studies and Planning, School of Architecture and Planning, MIT, 1983.

Zimmerman, Karita, *Negotiated Investment Strategies: A New Approach to Public-Private Partnership*. Unpublished master's thesis. Department of Urban Studies and Planning, School of Architecture and Planning, MIT, 1984.

Videotape

Negotiating A State Affordable Housing Policy. An actual mediation with Lawrence Susskind as mediator.

Simulations

Future of Rental Housing in Fair City. Mediation of a statewide affordable housing policy. By Lawrence Susskind.

Negotiated Development in Redstone. Trade-offs regarding neighborhood vs. city-wide interests in downtown development. By Lawrence Susskind and John Forester. (Teaching notes.)

Neighborhood Care, Inc. Community dispute over the siting of a facility for the mentally retarded. By Lawrence Susskind and Bruce Patton.

Social Services. Non-profit social service providers compete for state funding. By Denise Madigan.

Westville: Mediation Strategies in Community Planning. Facilities for the homeless. By John Forester. (Teaching notes by J. Forester and D. Stitzel.)

Negotiated Development

For several decades, developers, government officials, and citizen groups have been working toward a more flexible system of land use regulation, including the transfer of development rights and downtown linkage programs. "Linkage" refers to agreements between developers and municipal officials that tie the approval of housing or commercial developments to the developers' contribution of fees or in-kind contributions to municipal services or facilities.

In collaboration with the Lincoln



Institute of Land Policy, in 1986 PDP studied negotiated development, with a particular focus on "linkage" programs, in six cities around the country. Based on these case studies, PDP made recommendations for improving the process, namely that the use of city-wide "linkage" formulas be replaced with a joint factfinding and give-and-take, project-by-project negotiations that focus on mitigation of adverse impacts. Appropriate compensations, not just fees, should be spelled out in the agreements.

The application of basic negotiation skills in the real estate context is being taught in an interactive video developed at MIT's Real Estate Development Center. This is the first major use of this format in negotiation training.

Selected Publications

Diamond, Susan, *The Office/Housing Program: Social Policy Underwritten by Private Enterprise*. Unpublished master's thesis, Department of Urban Studies and Planning, School of Architecture and Planning, MIT, 1983.

McMahon, Gerard, Lawrence Susskind, and Stephanie Rolley, "Resolving Development Disputes: A Briefing Paper." Cambridge, Mass.: Program on Negotiation Working Paper, 1987.

Sullivan, Timothy, *Resolving Development Disputes Through Negotiation*. New York: Plenum Publishing, 1984.

Susskind, Lawrence, "Negotiating Better Development Agreements," *Negotiation Journal* 3, January 1987.

_____, "The Prospects for Negotiating Development Agreements." Honolulu, Hawaii: Program on Conflict Resolution Occasional Paper, 1987.

Susskind, Lawrence, Gerard McMahon, Ellen Tohn, Stephanie Rolley, and John Rustin, "Reframing the Rationale for Downtown Linkage Programs: New Approaches to Negotiated Development." Cambridge, Mass.: Program on Negotiation Working Paper, 1986.

Wheeler, Michael, "A Handbook for Reaching Consensus For Affordable Housing." Cambridge, Mass.: Program on Negotiation Working Paper, 1988.

Wheeler, Michael, "Resolving Local Regulatory Disputes and Building Consensus for Affordable Housing." Cambridge, Mass.: MIT Center for Real Estate Development, 1987.

Simulations

Bradford Development - Negotiating A Linkage Agreement. Payments toward city services or housing by a developer. By Michael Wheeler.

Cape Development Case. Negotiations between two developers to pursue cluster

zoning. By Michael Wheeler.

Contract Negotiation in the Building Trades. Negotiations among three building trade unions and their contracting associations. By Lawrence Susskind. (Teaching notes.)
Development Dispute at Menehune Bay. Environmental dispute effecting native rights and commercial development in Hawaii. By Lawrence Susskind, Thomas Dinell, and Vicki Shook.

Interactive Videodisc

Hawkins Development Corporation and Discount Marketplace. Using negotiation skills in a real estate context. By Daniel Burnstein, Sandra Lambert, Catherine Gross, and William Schein. Produced jointly by the Harvard Law School and the Lincoln Institute of Land Policy with the MIT Center for Real Estate Development.

"Reg Neg": Negotiated Rulemaking

Negotiated rulemaking, or "reg neg," is aimed at restoring political legitimacy to the regulatory arena by broadening ownership of the process leading to the promulgation of rules. Here's how the process works at the federal level: An agency issues a regulation and the parties with a significant stake in the rule participate in facilitated, face-to-face interactions. These negotiations occur *before* the rule is published in the *Federal Register* and *before* the conventional review process. Thus, the consensual approach frequently produces rules that are more pragmatic and generally more acceptable to all sides and in less time, at lower cost, and with less litigation.

With a grant from the General Electric Foundation, PDP has documented "reg neg" experiments in the Environmental Protection Agency and other federal agencies. For the EPA, which has undertaken the most elaborate tests of the concept, PDP reviewed and analyzed successful negotiations regarding financial penalties for truck engine manufacturers slow to meet the

"Clean Air Act" and another for granting emergency exemptions for the use of certain pesticides.

The EPA uses "Dirty Stuff," a simulation of the "reg neg" process developed by PDP, in its training program for people about to participate in rulemaking procedures.

A dozen "reg neg" processes are now underway in various federal agencies. Legislation that would put more negotiations regarding regulations in place and which PDP has helped shape is pending before Congress.

Selected Publications

Baldwin, Nancy, *Negotiated Rulemaking: A Case Study of Administrative Reform.* Unpublished master's thesis. Department of Urban Studies and Planning, School of Architecture and Planning, MIT. 1983.

Susskind, Lawrence and David Kronenberg, *Documentation of EPA's Pesticide Exception Regulatory Negotiation Demonstration*, July 1985.

Susskind, Lawrence and Gerard McMahon, *Documentation of EPA's Non-Conformance Penalties and Negotiated Rulemaking Demonstration*, January 1985.

_____. "The Theory and Practice of Negotiated Rulemaking." *Yale Journal on Regulation* 3 (1) 1985.

Susskind, Lawrence and Laura Van Dam, "Squaring Off at the Table, Not in the Courts", *Technology Review*, July 1986.

Simulation

Dirty Stuff. Rulemaking negotiations to formulate a regulation governing the presence of a toxic substance in the workplace. By Lawrence Susskind. (Teaching notes.)

Negotiated Rulemaking for Electric Utilities. Working with a facilitator to build a consensus among parties affected by proposed regulations. By Jonathan Raab.

Negotiated Rate-Setting

Traditionally, the process for setting public utility rates is adversarial, and thereby often fails to address the legiti-

mate balance of the interests among consumers, investors, government, and the public-at-large. PDP promotes efforts to use processes similar to "reg neg" as an alternative to the current procedures which frequently result in litigation.

In 1985 and 1986, PDP worked with a national "Negotiation Task Force" created by the Edison Electric Institute, representing major electric utility companies, and national consumer organizations. The Task Force, with PDP's assistance, set in motion consensus-building processes in Colorado, New Mexico, and Massachusetts where citizen/consumer/environmental interests, industry managers, and the regulatory agency staff worked out informal agreements, in turn subject to the usual review and comment process.

The Task Force's Final Report stimulated more interest in these techniques across the country, prompting PDP to develop a two-day institute in which the spectrum of groups with an interest in rate-setting explore negotiated approaches. The first of these training institutes was offered in November, 1989, in Cambridge.

Selected Publications

Susskind, Lawrence and Allan Morgan, "Improving Negotiation in the Regulatory Process," *Electric Perspectives*, Spring 1986.

_____. *The Uses of Mediation in Electric Utility Regulatory Negotiation: The Results of Three Demonstrations*, prepared for the Edison Electric Institute Task Force on Negotiation, 1986.

Simulations

Least-Cost Planning in the Electric Utility Industry. Using joint factfinding to decide on the best way to meet future electricity demand. By Clint Andrews.

Monroe Energy Assistance Game. Creation of a statewide energy assistance plan for low income residents. By Allan Morgan and Lawrence Susskind.

Programs to Promote Public Sector Dispute Resolution

One of PDP's major goals is to promote the use of dispute resolution by officials on all levels of government. To that end, PDP has developed models that public officials may use to resolve the myriad of problems they face in their own work and has been instrumental in creating Offices of Mediation in a number of states. PDP has also mediated policy dialogues on health care, prison conditions, and other issues, and is a vigorous participant in programs aimed at defining and clarifying the mediator's responsibility and accountability.

State Offices of Mediation

The cause of public dispute resolution has advanced significantly with the establishment of a growing number of state Offices of Mediation, an idea which PDP was instrumental in developing. These new agencies play a central role in promoting the use of mediation.

The major task of state offices is not to mediate, but to inform disputants about their options. They maintain a roster of mediators and, when disputants are willing, match "dispute-havers" with "dispute-resolvers."

PDP worked closely with the National Institute of Dispute Resolution to develop the concept, assisting in the design and organization of NIDR-supported offices in Massachusetts, New Jersey, Minnesota, and Hawaii. Several other states are using the initial NIDR-funded programs as models in forming their own state offices.

PDP Director Susskind maintains an advisory role and is active in twice-yearly meetings of the Association of the Directors of State Offices convened by NIDR.

Selected Publications

National Institute for Dispute Resolution, "Statewide Offices of Mediation: Experiments in Public Policy," *Dispute Resolution Forum*, December 1987.

Susskind, Lawrence, "NIDR's State Office of Mediation Experiment," *Negotiation Journal* 2 (4), October 1986.

Impact 2½: The Proposition 2½ Monitoring Project

The value of offering neutral ground and objective data to defuse a charged political atmosphere is illustrated in a project created at MIT immediately following the 1980 passage of "Proposition 2½" — the Massachusetts property tax limitation legislation.

The Proposition 2½ Monitoring Project allowed the university to play a neutral role, not by trying to mediate an outcome, but by functioning as a clearinghouse for municipal fiscal data and by helping local officials generate ways to cope with complex public problems.

The project served as a meeting ground for those with key roles in state and local finance and, in a unique series of informal meetings, brought together local and state leaders and representatives of all concerned parties, including the sponsors of the legislation, to ease tensions and stimulate discussion.

A twice-monthly newsletter, *Impact: 2½*, was circulated to nearly 10,000 municipal and state officials, researchers, and media in and outside of Massachusetts.

The project was principally supported by the Lincoln Institute of Land Policy of Cambridge.



PDP is currently working with M.I.T.'s Center for Technology, Policy, and Industrial Development to continue this model of the university as neutral ground in other areas of public policy.

Selected Publications

Nash, Jennifer, *The University as Mediator: A New Model for Service*. Unpublished master's thesis. Department of Urban Studies and Planning, School of Architecture and Planning, MIT, 1988.

Susskind, Lawrence and Cynthia Horan, "Proposition 2½: The Response to Tax Restrictions in Massachusetts," in C. Lowell Harriss, editor, *The Property Tax and Local Finance*. New York: The Academy of Political Science, 1983.

Susskind, Lawrence and Jane Serio, *Proposition 2½: Its Impact on Massachusetts*. Cambridge, Mass.: Oelgeschlager, Gunn & Hain, 1983.

Promoting Mediator Professionalism

PDP staff, notably Ozawa and Susskind, have addressed the professional role of public sector mediators, a question which has provoked some controversy among mediation professionals.

In PDP's view, the mediator in environmental disputes must take an activist role, accepting responsibility for the outcome. To that end, the mediator does not forsake neutrality but presses the parties to focus attention on the attributes essential to producing an agreement that is viewed as fair, efficient, wise and stable. Correspondingly, the mediator should have substantive knowledge of the context and content of what is being worked on, not to be partisan, but to fulfill his role as a resource for the participants.

A series of articles by Susskind and Ozawa contributed to the adoption of a code of ethics for environmental mediators by the Society of Professionals in Dispute Resolution in 1989.

Selected Publications

Forester, John and David Stitzel, "Beyond Neutrality: The Possibilities of Activist

Mediation in Public Sector Conflicts," *Negotiation Journal* 5 (3), July 1989.

Ozawa, Connie and Lawrence Susskind, "Mediated Negotiation in the Public Sector: Mediator Accountability and the Public Interest Problem," *American Behavioral Scientist* 27 (2), November/December 1983.

_____, "Mediated Negotiation in the Public Sector: The Planner as Mediator," *Journal of Planning, Education and Research*, 1984.

Susskind, Lawrence. "Defining the Common Issues in Dispute Resolution," *EIA Review* 6 (1), 1986.

_____, "Environmental Mediation and the Accountability Problem," *Vermont Law Review* 6 (1), 1981.

_____, "Power, and Power Imbalances, in Dispute Resolution," *Removing the Barriers to the Use of Alternative Methods of Dispute Resolution*, Proceedings of a conference sponsored by the Vermont Law School Dispute Resolution Project, 1984.

Wheeler, Michael, "Protocols for Debriefing Practitioners." Cambridge, Mass.: Program on Negotiation Working Paper, 1985.

Searching for Solutions to Prison Overcrowding

With support from the Edna McConnell Clark Foundation and the National Institute of Criminal Justice, PDP has developed innovative negotiation training programs to help corrections officers resolve disputes over prison overcrowding. PDP's "New Crimea Prison Overcrowding" is a simulation in which participants analyze the various options (including alternatives such as construction, other means of incarceration or probation, and automatic release of prisoners when populations exceed a certain number). The simulation, written under the auspices of the Wharton School of the University of Pennsylvania, has been used in the Clark Foundation's program on alternatives to prisons and has been adopted by the "Leadership New Jersey Program," a state training organization.

Simulation

New Crimea Prison Overcrowding Simulation. Development of comprehensive

statewide policy to alleviate prison overcrowding. By Susan Podziba and Lawrence Susskind. Teaching notes by S. Podziba.

Training Probation Officers

Another grant from the Clark Foundation has supported PDP's development of training materials for Massachusetts probation officers. The simulations and teaching notes are now distributed around the country by the National Institute for Criminal Justice.

Simulations

Probation Games. A set of three simulations to train court probation officers in negotiating techniques. "School," working with a 14-year-old truant; "Agency," developing an optimal program for a client with drug and psychological problems; and "Family," assisting a destitute single mother convicted of forgery. By Susan Podziba and Lawrence Susskind. Teaching notes by S. Podziba.

Training Hospital Administrators

In cooperation with the Leonard Davis Institute for Health Administration at the Wharton School, PDP has developed games to train hospital administrators in dispute resolution techniques. One such project involved the use of negotiation in issues between management and labor or hospital professionals. A second focused on developing protocols for introducing experimental drugs into the hospital environment.

Simulations

Negotiating Budget Cuts at Newtowne Hospital. Cutback planning and labor relations. By Lawrence Susskind.

Williams Medical Center. Negotiating a policy for administering experimental drugs in a hospital. By Eileen Babbitt and Lawrence Susskind.

Agenda for the Future

While much of PDP's work is of a continuing nature, a number of new and rewarding opportunities to extend the use of alternative dispute resolution techniques in the public sector are on the Program's schedule for the 1990s.

The National Workshop on Facility Siting

PDP Director Susskind is co-chair (with Professor Howard Kunreuther of the Wharton School's Center for Decisions) of a two-part national workshop that will bring together some of the most experienced facility siting analysts in the country to examine the next round of conceptual problems in siting disputes. The central question revolves around the fact that opposition to facilities appears to be greater than ever, despite new laws promoting negotiation processes. The goals of the workshops are to formulate a diagnosis of the most important conceptual problems and to develop public policy prescriptions to assist government officials in siting facilities.

An Energy Policy for the Nation

PDP is applying public dispute resolution techniques successful on the

local and state levels to the national arena. This project, with the American Energy Assurance Council and supported by the National Institute of Dispute Resolution and the Hewlett Foundation, seeks to forge consensus on a national energy strategy for the United States.

The Council, a board representing more than 100 organizations, called in PDP Director Susskind to design the process by which the full spectrum of interested parties would be able to agree on national energy policy.

In 1989, the Public Broadcasting System filmed major national figures participating in the "National Energy Game" at Leesburg, Virginia. The broadcast was seen nationally on the Public Broadcasting System's "Search for Common Ground" series.

PDP will run a series of mediated work sessions aimed at finding areas of agreement on factors that make up a national energy policy. Overall, this is a two-year, \$1.5 million project that, if successful, will be a dramatic demonstration of the use of dispute resolution in the development of public policy.

Simulation and Videotape National Energy Policy Simulation. Develop-

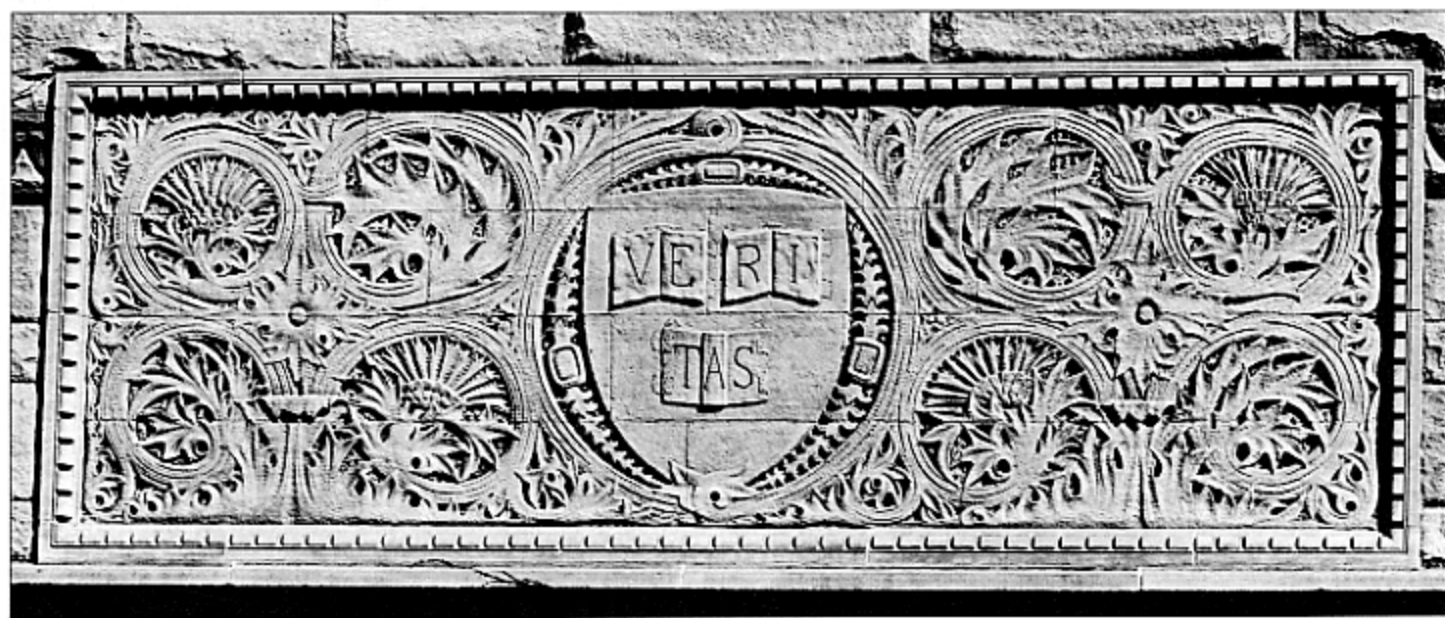
ing a national consensus on a strategy for reducing America's energy vulnerability. By Lawrence Susskind, Eric Jay Dolin, and Daniel Greenberg. Videotape of the simulation and teaching notes are also available.

Reforming Electric Utility Rate Setting

In early 1990, PDP will offer a two-day institute, "Strategies for Reducing the Cost of Litigation and Administration in Today's Adversarial Regulatory Environment." The institute has been designed to bring together the broad range of groups who typically argue with each other across the table — regulators, consumers, and utility representatives — to explore the advantages of new consensus-building approaches to least-cost planning, rulemaking, and rate setting. The participants will learn techniques for avoiding escalating confrontations, economically unfeasible outcomes, or politically expedient but technically unsound solutions.

Superfund Settlements

Spring 1990 workshops will assess ways in which mediated negotiation can be integrated into current "Superfund" work, especially in developing voluntary cleanup plans. PDP recom-



mends that EPA bring representatives of environmental organizations, industry, and public officials, together to assess the cleanup problems and build political support for applying these ideas.

Consensus and the PDP Network

PDP will continue to publish *Consensus*, the quarterly first published in 1989, to spotlight cases of successful dispute resolution around the country and promote understanding and use of alternative dispute resolution techniques. Similarly, PDP will continue its key role in the Public Disputes Network that links academicians, practitioners, and public officials to foster the use of dispute resolution techniques in the public sector.

The Salzburg Seminar on International Environmental Negotiation

PDP Director Susskind is Faculty Chair for a 1990 Seminar to be offered in Austria by PDP and the Salzburg Seminar in American Studies. The seminar, the first in a PDP series on international environmental negotiation, will bring together distinguished scholars and mid-career diplomats, government officials at the highest levels, and other prominent professionals.

The first seminar will focus on resolving the obstacles to environmental agreements among countries and building a worldwide network of senior policymakers committed to improving international environmental negotiation.

Project: A Global Agenda

In cooperation with the Greeley Foundation, PDP is launching a four-phase project known as "A Global Agenda: Environmental Decision-Making for the Twenty-First Century" to develop new processes and negotiating structures that condense timelines and overcome traditional obstacles to multi-lateral agreements. Leaders from the international political, business, and scientific communities will be involved in wide-ranging activities from creating new ideas through marketing breakthrough concepts at the highest possible levels.



Salzburg Seminar Fellows at the Schloss Leopoldskron in Austria, where Public Disputes Program faculty will lead a series of sessions focusing on the global environment.

Teaching and Curriculum Development

PDP devotes a substantial amount of its resources to teaching, training, and developing curriculum. Foremost among its goals is the integration of mediation and negotiation courses into university planning and public policy curricula. PDP curriculum materials, simulations, and case studies are made available to all who are interested.

University and Professional Education Programs

PDP faculty have taught literally thousands of graduate level students at MIT, Harvard, Tufts, and other Boston-area schools. In addition, countless professionals in and outside of the dispute resolution field and from both the public and private sectors have benefited from the scores of special workshops, seminars, and short courses led by PDP over the last decade.

Representative of these are two MIT

courses, *Environmental Dispute Resolution*, developed by Bacow and Wheeler and now a model for similar courses at universities around the country, and Susskind's course, *Bargaining, Negotiation, and Dispute Resolution in the Public Sector*.

At MIT's Hazardous Substances program, PDP staff teach *Chemicals in the Environment: Management and Policy*, a course that helps engineers and scientists to see that hazardous waste issues are as much political as technical.

Bargaining and Negotiation, a week-long summer seminar, taught by Susskind and Professor Max Bazerman of the J.L. Kellogg Graduate School of Management at Northwestern University, offers professionals from all fields the opportunity to improve their ability to handle conflict effectively. The intensive program, which covers key elements of principled negotiation theory through lectures and gaming exercises, has attracted an international audience for seven years.

The Public Disputes Program Affiliates and Staff 1979-1989

Associated Practitioners:

Peter Adler
Howard Bellman
Gail Bingham
Susan Carpenter
Thomas Colosi
Don Connors
John Ehrmann
John Folk-Williams
Sam Gusman
William Humm
Ken Kearns
Frank Keefe
W.J.D. Kennedy
Chris Kirtz
Tod Loofbourrow
John Marks
John McGlennon
James McGuire
Carl Moore
David O'Connor
Peter Schneider
Raymond Shonholtz
David Straus
Eric Van Loon
Anna West

Foundation Officers:

Robert Allen,
The Kendall Foundation
Robert Barrett,
William and Flora Hewlett Foundation
Christine Carlson,
Charles F. Kettering Foundation
Madeline Crohn and William Drake,
National Institute of Dispute Resolution
Mariana Ginsburg,
The German Marshall Fund of the United States
Ruth Salinger and Warren Salinger,
The Dana McLean Greeley Foundation for Peace and Justice
Richard Tibbetts,
General Electric Foundation

Research Assistants:

Clint Andrews
Vicki Arroyo
Nancy Baldwin
Heidi Burgess
Scott Cassell
Steve Cassella
Anne Cook
Norman Dale
Susan Diamond
Eric Jay Dolin
Michael Elliott
Diane Fish
Steve Foster
David Gilmore
Daniel Greenberg
Kate Hildebrand
Stephen Hill
Diane Hoffman
Berndt Holznagel
Cynthia Horan
John Horberry
Barbara Ingram
Alexander Jaegerman
Karl Kim
Ron Kirtsner
Jennifer Knapp-Stumpp
Steve Konkel
Ida Koppen
David Kronenberg
Sandra Lambert
Scott McCreary
James Milkey
Jennifer Nash
Anna Otto-Hallensleben
Charles Perry
Sebastian Persico
Susan Podziba
Jonathan Raab
Douglas Rae
Stephanie Rolley
Wendy Rundle
John Rustin
Andrew Sachs
Debra Sanderson
Vicki Shook
Douglas Smith
Greg Sobel
Ellen Tohn
Krag Unsoeld
Sylvia Watts
Thomas Weeks
Alan Weinstein

Julia Wondelleck
Karita Zimmerman
Ken Zimmerman

Faculty Associates:

Lawrence Bacow
Max Bazerman
Richard Cowart
Thomas Dinell
Bruce Dotson
John Ehrenfeld
John Forester
David Godschalk
Sandy Jaffee
James Laue
David Lax
Francis McGovern
Daniel Nyhart
Michael O'Hare
Howard Raiffa
Ric Richardson
Linda Stamato
Bruce Stiffler
Timothy Sullivan
Michael Wheeler

PDP Staff:

Lawrence E. Susskind, Director
J. William Breslin
Eileen Babbitt
Jeffrey Cruikshank
Wendy Fishbeck
Lavinia Hall
Teresa Hill
Maria Hortaridis
Denise Madigan
Donna McDaniel
Gerard McMahon
Allan Morgan
Connie Ozawa
Jane Serio

The MIT-Harvard
Public Disputes Program

Room 512, Pound Hall
Harvard Law School
Cambridge, Massachusetts 02138
617-495-1684
FAX 617-495-7818

Room 3-411
Massachusetts Institute of Technology
77 Massachusetts Avenue
Cambridge, Massachusetts 02139
617-253-2026
FAX 617-253-7402