

The following comments from colleagues touch on a few topics about whether the mediation effort was “a failure”

Please read and offer your thoughts to me, stephens@sog.unc.edu. I plan to add comments and eventually offer a synthesis.

Highlights

1. Success/failure – or relative value of an effort – extends beyond reaching an agreement to implementation steps
2. Disputants may be pressured into an agreement, but the conflict continues; or they may end the mediation without agreement, but soon thereafter resolve the issues.
3. Instead of success/failure the better focus is on “movement toward resolution”
4. Mistakes, or lack of positive outcome, can have value for teaching new people about a field (comparison to hostage negotiation)

Individual entries

With light editing for clarity, and to excise some extraneous, personal notes. Emails via the ENVNEG listserv, February 2007

Lightly edited by Stephens – February 2009

John,

At the risk of imposing my reply on others, but hoping instead to spark a dialogue... I'm curious what your definition is of failure. It's something that we all talked about in the past, but I haven't been part of any such conversations recently. Is reaching an agreement a success or failure, if not implemented or if implemented but relationships are worse or if implemented but parties "left value on the table"? Is not reaching an agreement a failure, if the eventual policy that was decided benefited from new ideas generated?

Gail Bingham

P.S. -- my 1986 book -- Bingham, Gail. (1986). Resolving Environmental Disputes: A Decade of Experience. Washington, D.C.: The Conservation Foundation -- included "failures" in the statistics but not in the appendices of case descriptions (per the request of those I interviewed).
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Gail and all:

I responded to John off-line w/ a similar query, but would love to read what others think about what constitutes "success", and "failure" in mediation.

I'm not someone who thinks much in these kinds of dualities: right/wrong, success/failure. Personally, I'm much more interested in *movement* than in agreement. I don't think in terms of whether a process "succeeded" or "failed", but whether the parties themselves found it to be useful.

One of the challenges of the kind of long-term processes that many of us work on is that parties are very likely to respond very differently to this question at different stages of the process.

Cindy Cook

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REPLY FROM STEPHENS

Failure = they wanted to reach agreement and didn't. My lack of skills (or misapplication) is one of the three hypotheses.

Gail - thanks for the speedy reply.

To be brief, the two elected boards (we had to do some interesting steps to satisfy the open meetings law) wanted to reach an agreement and avoid the city pulling out of the cooperative arrangement on water supply. There were other issues, possibly for swapping. The mediation ended without an agreement.

My lack of skills (or misapplication) is one of the three hypotheses for why the outcome was no agreement. Steve Smutko is one of the co-investigators.

So, there was no agreement to "not implement."

I know there are the other dimensions/potential benefits of mediation

- clarity of communication
- increase understanding of issues
- exploration of alternatives
- better understanding of BATNAs
- better understanding of ramifications (likely actions) of not reaching agreement.

Thanks for the detail on your book.

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Because most of my research has been in crisis negotiation (where the subject may or may not have a hostage; i.e., an ex-husband holding his ex-wife hostage, or a potential suicide on a bridge), I'm not sure my comments will add much to the discussion, because the definitions of success and failure in this field are pretty stark: whether someone lives or dies, and there are not many nuances in that.

That being said, in my reading and interviews and training with crisis and negotiators, I have seen one constant theme in dealing with situations where people survived and in those where it all went down. And that is the absolute necessity of debriefing – case review. These don't involve – as they did in my training in the '80s -- the satisfaction of the parties, the value of their being listened to, etc., but (1) a step-by-step focus on what went wrong and what went right; and (2), ongoing support for the primary negotiator. A sudden misunderstanding, an unintended escalation in the negotiator's tone, a mismatch with the subject's frame of mind, can trigger a catastrophe. The trauma of feeling responsible for a death can have severe repercussions on the negotiator.

Knowing that there are so many factors out of a negotiator's control, case review (i.e., the debriefing) comes as soon as possible and its focus is on a step-by-step analysis involving the team. Many negotiations are audiotaped and transcribed so that techniques can be refined. The life and death elements of success and failure are so important that many law enforcement agencies send transcripts or reports to the FBI national database of cases (HOBAS) where themes and similarities, warning signs, new discoveries, etc., can be examined and used for teaching.

I've done mediations where I was upset at myself for not having done this or that, and some of those mistakes have stayed with me for years. But crisis negotiators are thrown straight into a state of trauma if someone shoots the hostage or the suicide jumps. If someone dies, the question of personal failure is huge. Senior negotiators constantly teach that the negotiation may have failed, but the negotiator did not: there were turning points which may have influenced a better outcome, but there are many factors, (such as in the Asheville case, perhaps) that are beyond the control of the negotiator, "suicide by cop" being one of them, where the subject is determined to die, but arranges it so that he will be shot.

One point that interested me: decades ago hostage negotiators realized that the hostage taker was also in a state of emotional crisis, and began to gear their trainings toward understanding how to successfully connect with emotionally disturbed persons. Their techniques now have something in common with the facilitative mediator: they attempt to match the person's frame of reference, get a clear understanding of his perceptions and then weave a theme of common interest. Having clarified these and getting the subject's trust, the negotiator is better able to match the perceptions of the subject and the negotiator (or in mediations, opposing parties) and offer the possibility of a good outcome.

The transcripts and case evaluations have assumed greater importance since 9/11: as one negotiator put it, "We're in a whole new world. Things have changed: many of the old assumptions and techniques just don't apply anymore." Success and failure are more harshly defined by such incidents as a hostage-taker in schools. Does the negotiation team stand by knowing that students are being hurt, or do they do an all-out assault, and risk killing them all? Which is the success, and which the failure? What new understandings do we now have to understand in order to deal with this?

Lynne Kinnucan

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John (and all) - Interesting thread, success and failure. A family member had a custody case get an agreement in mediation following a forced "you should do this" process by the mediator, but both parties were back in court a few months later once that forced agreement broke down. I once mediated a divorce case that broke off without an agreement, but a follow-up call a few weeks later found that the couple had worked the remaining issues out themselves.

The famous Buckle and Thomas-Buckle study from the mid-80's (Placing environmental mediation in context: lessons from 'failed' mediations, Environmental Impact Assessment Review 6(1), pp. 55-60) showed the considerable value to parties of mediations that failed to reach agreement. I always promise my clients that I will not seek (much less guarantee) agreement, but will ensure that they are better able to make informed judgments about choices based upon improved understanding of their and others' views.

That research might help you identify a research protocol for your case.

Of course, all my cases end with happy parties, strong agreements and sustainable solutions, so I wouldn't know how to look at failure anyways... (wink)

Frank Dukes

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Thanks, John Stephens – March 2009