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Negotiated Investment Strategy

Carl M. Moore

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NEGOTIATED INVESTMENT STRATEGY*

CARL M. MOORE**

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I. INTRODUCTION

The Negotiated Investment Strategy (NIS) was created by the urban affairs program at the Kettering Foundation as a vehicle for cities to shape their own future.¹ The creators of the NIS, in the late 1970's, observed that while

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1. See Kunde & Berry, *Adjusting to Resource Scarcity: New Options for Urban Revitalization*, COMMENTARY 15-19 (Oct. 1979); Kunde & Berry, *Restructuring Local Economies through Negotiated Investment Strategies*, 10:2 POL'Y STUD. J. 365-79 (1981); SUBCOMMITTEE ON REVITALIZING AMERICA'S CITIES OF THE COMMITTEE FOR

most major cities needed help, such help was hard to come by. Three reasons account for this. First, the assistance that was available to cities, particularly from the federal government, was often in the form of categorical grants, and it was difficult to tailor the assistance to the particular needs of the city. Second, there was a great deal of duplication of existing programs and a lack of coordination between them. Finally, cities had not discovered how they might capitalize upon their own assets, particularly: the facilities that were in place, the city's infrastructure, and the commitment to the city by people from both the public and private sectors.

Therefore, the urban affairs staff at Kettering—primarily Jim Kunde, Dan Berry, and Jim Shanahan, along with certain consultants who had worked with them in the development of their thinking—primarily Jim King and Dick Eckfield, recommended that a process be put in place that would: (1) get the assistance to where it was needed, (2) do a better job of coordinating the delivery of services, and (3) capitalize upon the city's assets. They believed that this could be accomplished if all parties who had an interest in the future of the city met together in order to negotiate a long-range investment plan. It was hoped that such a plan would set forth coherent, coordinated strategies to guide and target the investment of time and resources by all public and private interests.²

My role in the development of the NIS has included three stages. First, I was responsible, along with James Guthrie Coke, for the conceptual development of what came to be called the NIS model.³ This model was in response to seven critical questions that had to be answered before the NIS approach could be implemented.⁴ Of the seven, the question James Coke and I were

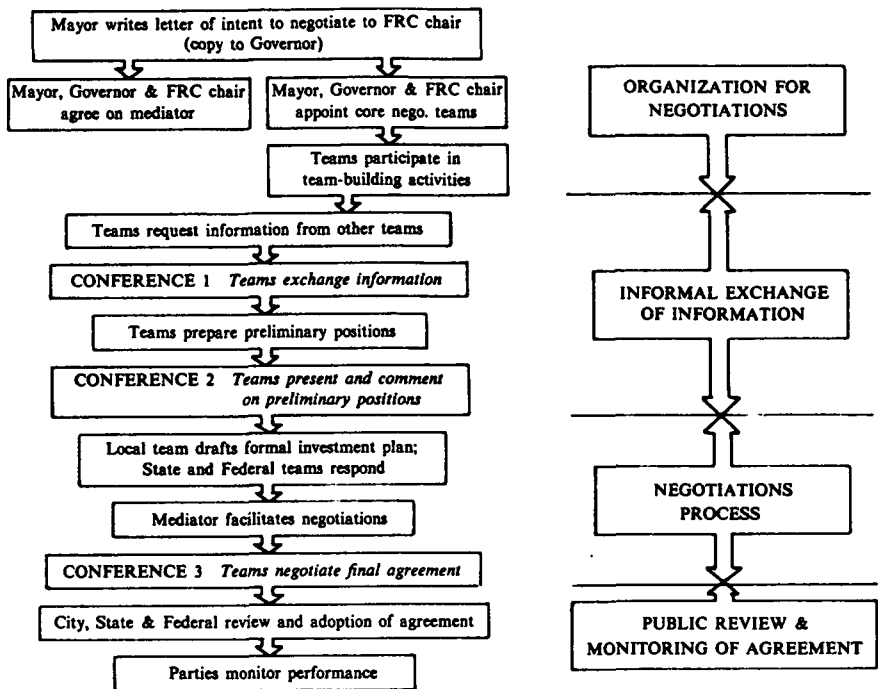
ECONOMIC DEVELOPMENT, *THE NEGOTIATED INVESTMENT STRATEGY: A REVIEW OF THE CONCEPT AND ITS IMPLICATIONS FOR REVITALIZING CITIES* (1980); KETTERING FOUNDATION, *WHERE DOES ALL THE MONEY GO?* (1980).

2. See Berry, Kunde, & Moore, *The Negotiated Investment Strategy: Improving Intergovernmental Effectiveness by Improving Intergroup Relations*, 10:2 J. INTER-GROUP REL. 42-57 (1985); Carlson, *Negotiated Investment Strategy: Applying Mediation to Intergovernmental Conflict*, 63:4 NAT'L F. PHI KAPPA PHI J. 28-29 (1983); C. MOORE, *NEGOTIATED INVESTMENT STRATEGY* (1982).

3. See Coke & Moore, *Experiments will Test the Procedure*, Nation's Cities Weekly, Nov. 26, 1979, at 38-40; J. Coke & C. Moore, *NIS Negotiations Model (and a few lessons)* (Kettering Foundation 1978)(unpublished paper); C. Moore, *The Negotiated Investment Strategy (NIS): Essential Elements and Model: Initially, as Modified, and some Lessons* (Kettering Foundation 1981) (unpublished paper).

4. The seven questions, articulated by Jim Kunde, were: (1) Who speaks for the federal government? (2) How does the federal government determine its priorities for cities, and what are those priorities? (3) Who speaks for a state government? (4) How does a state determine its priorities for cities, and what are those priorities? (5) Who can effectively represent a city? (6) How does a local area marshal its resources for negotiations with representatives of state and local governments? (7) When state, local and federal teams are ready to negotiate, what do they do?; Kunde, *Moving From*

specifically asked to answer was, "When state, local and federal teams are ready to negotiate, what do they do?" Figure 1 is a schematic of our original NIS model.



Second, I was part of an iterative evaluation team, charged with the responsibility of improving the process (if necessary) so that the initial applications (often referred to as experiments or tests) would be as successful as we could make them. We did not presume to be objective, free-standing evaluators. Another evaluation team was charged with the responsibility of conducting a summary evaluation of the NIS, to determine whether it worked better than the status quo.⁵ In my iterative evaluation role, I observed most of

Concepts to Tests, Nation's Cities Weekly, Nov. 26, 1979, at 26.

5. See T. Chmura, *Analysis of the Negotiated Investment Strategy: Summary Prepared for NIS Evaluation Panel Meeting* (Menlo Park, CA: SRI International, Mar. 11, 1981) (unpublished paper); D. Henton, *Evaluation of the Negotiated Investment Strategy Experiment: A Concept Paper* (Menlo Park, CA: SRI International, Mar. 1980) (unpublished paper); D. Henton, *Evaluation of the Negotiated Investment Strategy Experiment: A Proposed Research Approach* (Menlo Park, CA: SRI International, Mar. 1980) (unpublished paper); D. Henton, *Rethinking Urban Governance: An Assessment of the Negotiated Investment Strategy* (Menlo Park, CA: SRI International, 1981) (unpublished paper); S. Waldhorn, *Assessment of the Negotiated Investment Strategy: Summary of SRI's Assessment with Evaluation Panel Perspectives*

the negotiation sessions for the first four applications of the NIS: St. Paul, MN, Columbus, OH,⁶ Gary, IN,⁷ and the State of Connecticut.⁸ Table 1 arrays the first eleven applications of the NIS.

(Menlo Park, CA: SRI International, June, 1981) (unpublished paper).

6. See Hamilton, *The Negotiated Investment Strategy in Columbus, Ohio*, 5:4 NEW ENG. J. HUM. SERV. 22-26 (1985); D. Bertsch, *Negotiated Investment Strategy (NIS): An Evaluation of the Columbus, Ohio Experiment* (prepared for the Kettering Foundation; photocopied Ohio State University, 1982) (unpublished paper); L. Susskind & F. Keefe, *A Negotiated Investment Strategy for Columbus, Ohio: The Negotiations Process* (1980) (unpublished paper).

7. See Isidore, *Plan Modernizes Downtown Gary*, Gary Post-Tribune, July 12, 1987, at 1, col. 1; J. Laue & R. Patton, *The Gary Negotiated Investment Strategy: Status of the Agreement after the First Year* (St. Louis, MO: Center for Metropolitan Studies, University of Missouri, St. Louis, MO 1981) (unpublished paper).

8. J. BANTELL, *CONNECTICUT NEGOTIATED INVESTMENT STRATEGY EXPERIMENT: CASE HISTORY* (1983); J. BANTELL, *CONNECTICUT NEGOTIATED INVESTMENT STRATEGY EXPERIMENT: USER'S GUIDE* (1983); Stanfield, *For Connecticut, the Reagan Revolution Means More Creativity and More Uncertainty*, 15 NAT'L J. 12-13 (1983); *Connecticut Negotiates the Social Services Block Grant* 8:4, 9:1 INTERGOVERNMENTAL PERSP. 38 (Winter, 1983); Heintz, *Dividing Scarce Dollars: Competing Social Service Interests Can Be Negotiated*, 43:3 PUB. WELFARE 19-23 (1985); Office of Policy & Management, *A Negotiated Approach to Allocation of the Social Services Block Grant: A Brief Description of the Process* (Hartford, CT: 1983); Office of Policy and Management, *The Negotiated Investment Strategy and the Social Services Block Grant* (Hartford, CT: 1983); E. Armentrout, *Evaluation of the Connecticut NIS Experiment* (1983) (unpublished paper); S. Watts, *A Description and Assessment of the Connecticut NIS Experiment* (Harvard Law School Center for Negotiations, 1983) (unpublished thesis).

PLACES (In Order)	DATE OF COMPLETION	PARTIES	PRIMARY FOCUS
St. Paul, MN	1979	City State Fed. Govt.	Physical Development Projects
Columbus, OH	1980	City State Fed. Govt.	Policy, Eco. and Physical Development
Gary, IN	1980	City State Fed. Govt.	Econ. & Physical Development
Connecticut	1982	State Municipal Non-Profit	Allocation of Social Services Bloc Grants
Charleston, SC	1983	County Municipal Citizens	County Parks and Recreation Plan
Malden, MA	1984	City Private Citizens	Eco. Develop. and Other Community Issues
Oregon	1984	State Local Providers	Mental Health
Oregon	1984	State Local Providers Advocates	Elderly Services
Massachusetts	1985	State Recipients Providers	Allocation of Some Social Service Funds
Mississippi	1985	State Office of Planning 3 Related Depts. Gov's Task Force (Citizens)	Allocation of Social Services Bloc Grant
	1986		
Oregon	1985	Judges, County Commissioners, Governor's Task Force on Juv. Serv.	Juvenile Services

Third, I have served as the facilitator/mediator for a few different NIS applications. Of the applications listed in Table 1, I was responsible for the 1985 and 1986 Mississippi NIS. More recently, I have facilitated an NIS-like application in Bridgeport, CT, that developed strategies for educating and em-

ploying recipients of public assistance, and one in Arapahoe County, CO, that developed guidelines for annexations and incorporations, criteria to guide land use development, and an ongoing advisory mechanism. Table 2 briefly outlines each of my NIS experiences.

**TABLE 2
NIS-LIKE APPLICATIONS**

PLACE	Mississippi (January 1985)	Mississippi (January 1986)
PURPOSE	Allocate social services bloc grant.	Same as 1985; primary emphasis to set priorities.
PARTIES	4 state agencies, oversight agency, citizen task force.	Same as 1985.
PROCESS	4 state agency teams developed preliminary product; 3 teams, representing the state agencies. Oversight agency, and citizen task force, produced the final product.	6 teams produced the final product.
PRODUCT	Program definitions, priorities, allocation principles.	Same as 1985; substantial development of criteria (for making priorities) and levels of priority.

NIS-LIKE APPLICATIONS

PLACE	Bridgeport, CT (Sept. 1986 - Apr. 1987)	Arapahoe County, CO (August 1987 - Feb. 1988)
PURPOSE	Develop strategies for educating and employing persons on public assistance.	Develop guidelines for annexations and incorporations, develop criteria to guide land use development.
PARTIES	City, state, business community, community providers.	County, city, village, homeowners, business, and commercial interests (developers).
PROCESS	4 teams produced the final product.	5 teams participated initially; 3 teams produced the final product.
PRODUCT	Plan that stipulates commitments and process for achieving goals.	Guidelines for annexations and incorporations, criteria for landuse decisions, infrastructure priorities, mechanism (county "priority board") for enhanced communication and access to decision-making.

The purpose of this article is to share what my experience with the NIS has revealed about large-scale, collaborative problem-solving. To provide a context for my "Findings," I will describe the essential features of the NIS and explicate two NIS applications.

II. NIS: THE ESSENTIAL FEATURES

While the NIS was designed initially to address the needs of American cities, Table 1 indicates that it has not been restricted to that focus. In the NIS, parties with appropriate resources and a stake in the result are convened to deal with a problem in a comprehensive manner. Mediated negotiations are used to resolve disputes, settle disagreements, and build consensus around a comprehensive set of actions. Those actions are outlined in a written agreement setting forth each party's roles and commitments. The agreement is reviewed and adopted by each party. The agreement provides for subsequent monitoring, to assure that commitments are carried out.⁹

NIS assumes that decisions about the allocation and use of public resources can be arrived at more productively *if* the following four elements exist. First, all parties likely to be affected by an outcome participate in the decision-making process. Second, the interests of the parties are represented by negotiating teams. Third, the differences among the teams are identified through face-to-face negotiation. Finally, the teams are assisted by a mediator (throughout the process) in reaching agreement.¹⁰

A typical NIS goes through four stages:

1. *Organizing for negotiations*, the period between the decision to conduct an NIS and the first negotiation session.
2. *Informal exchange of information*, the period immediately prior to and including the first negotiation session.
3. *Negotiations process*, the period between the first negotiation session and the signing of the agreement.
4. *Public review & monitoring of agreement*, the period following the signing of the agreement.¹¹

These stages are illustrated in further detail in the APPLICATIONS section of this article, which discusses brief descriptions of the use of NIS in the city of Gary, Indiana, and the state of Connecticut. Following these illustrations is

9. See *MEDIATION AND NEW FEDERALISM: PROCEEDINGS OF A ROUNDTABLE ON THE NEGOTIATED INVESTMENT STRATEGY* (1981); D. SACARTO, *ECONOMIC DEVELOPMENT CONFLICTS: MODEL PROGRAMS FOR DISPUTE RESOLUTION* (1985); Warren, *National Implications of a Negotiated Approach to Federalism*, Kettering Exploratory Notes (Kettering Foundation, 1981) (unpublished pamphlet).

10. C. Moore & C. Carlson, *Public Decision Making: Using the Negotiated Investment Strategy* (Dayton, OH: Kettering Foundation, 1984) (unpublished pamphlet).

11. *Id.*

the principle section of the article, entitled FINDINGS, which is a description of some of the things I have learned as a result of my participation in the NIS.

III. APPLICATIONS

A. Gary, IN

In the late 1970's, Gary was a city with a number of urban problems. As such, it was selected by the Chicago Federal Regional Council, which represented the major federal agencies, to be one of the three midwestern cities to try the experimental NIS process.¹²

The Negotiated Investment Strategy agreement, signed in Gary, December 10, 1980, was the result of an eight-month effort that secured and coordinated commitments of money and actions to produce a comprehensive strategy for improving life in Gary. The agreement called for nearly \$250 million in commitments to develop the city's downtown commercial district and adjacent residential neighborhoods, to improve transportation facilities, to create adequate housing, and to establish medical treatment and preventive health care facilities.¹³

The NIS was initiated by the Federal Regional Council and cautiously agreed to by the city. The NIS began after the state of Indiana joined the effort. While it was clear that teams from the city, state, and federal governments were needed to effectively deal with Gary's problems, the mediator made a major effort to enlist participation of the city's most influential local industry, U. S. Steel. The company agreed to join the discussions as an "observer." In addition, the mediator helped expand the state team to include people who could secure the governor's commitment to the negotiated agreement.

Selection of team members was relatively easy, since a single authority was responsible for appointing each of them. The mayor appointed the city team, the governor appointed the state team, and the head of the Federal Regional Council appointed the federal team. Each included "core teams" for the face-to-face negotiations at the table and "expanded teams" which provided advice and counsel to the core teams before and during the negotiation

12. See Gage, *Federal Regional Councils: Networking Organizations for Policy Management in the Intergovernmental System*, PUB. ADMIN. REV. (Mar./Apr. 1984); King, *The Federal Regional Council: One Voice for Diverse Interests*, Nation's Cities Weekly, Nov. 26, 1979 at 30-31; J. King, *The Role of the Chicago Federal Regional Council in the Experimental Application of the Negotiated Investment Strategy: Lessons from St. Paul, Columbus, and Gary* (Palo Alto, CA: PMC Ass'n) (unpublished paper).

13. *The City of Gary, Indiana, A Negotiated Investment Strategy: A Joint Agreement on Objectives and Responsibilities for the Future of Gary, Indiana* (Dec. 10, 1980) (unpublished paper); *The City of Gary, Indiana, A Negotiated Investment Strategy: Supporting Documents* (Dec. 10, 1980) (unpublished paper).

sessions.

All three teams approved as mediator James Laue who was recommended by the Kettering Foundation. He, in turn, appointed three assistants to help perform the various mediation tasks. The teams established rules of procedure covering the role of the mediator and team chairpersons, communications between teams, record-keeping, team composition, access of the press, time constraints, meeting location, and the opening of the meetings to the public.

Actual negotiations began when the mediator met with each of the teams separately. Prior to the meetings, the city team issued a proposed draft with their conception of a Negotiated Investment Strategy for Gary. Although modified somewhat, this draft served as the focus throughout negotiations.

Each team worked with consultants and staff to raise questions, develop information, and prepare positions and responses. The initial negotiating session, held in Gary, was used to request and exchange information. Preliminary positions were prepared, presented, and responded to by each of the teams. Two additional negotiating sessions were held. The teams drafted formal positions, resolved their differences over the formal positions, and eventually reached an agreement.

During the negotiating sessions, caucuses were held among key team members away from the negotiating table. The caucuses were particularly productive in resolving differences. Indeed, all formal sessions were strategically scheduled to last several days each to allow time for such informal caucuses. The negotiating sessions were held at two-month intervals, so much work was performed by subcommittees between the formal sessions to devise language for agreements and iron out details.

The final agreement was signed at a large community meeting. Signers included the mayor of Gary, the governor of Indiana, and the chairman of the Region V Federal Regional Council. The captains of the three negotiating teams and the mediator signed as well. For each of the objectives listed in the agreement, the responsibilities of each team were identified. The agreement contained specific steps for implementing the agreement and monitoring the performance of the parties.

Under the agreement, team captains were to work together on implementation, assisted by the mediator. That arrangement, however, proved unworkable due to changes in the national and state administrations. Nevertheless, through the working relationships developed during the NIS process and with periodic assistance from the mediator, progress on implementing the agreement continued.¹⁴

“Six years later,” according to a recent (1987) article in a Gary newspaper, “the face of Gary’s downtown is significantly different, in large part because of the agreement, known as the Negotiated Investment Strategy

14. See J. Laue & R. Patton, *supra* note 7.

(NIS)."¹⁵ The same newspaper article also points out that "[t]he Genesis Convention Center, Benjamin Transportation Center, Hudson-Campbell Sports Complex, and Broadway exit for the Indiana Toll Road are all results of the agreement. The Hotel Gary, once a vacant and decaying structure, has been renovated into the Genesis Towers to provide housing for senior citizens."¹⁶

But not all of the outcomes were buildings. Rather, as David Marr, a city official for Gary has noted, "[NIS] was the beginning of a whole new relationship with the state. Everything the state has committed to has been done. The relationship among the different bureaucracies greatly improved. And the relationship with the private sector has continually developed."¹⁷

Not everything called for in the agreement has been realized. "Cutbacks in federal government programs under the Reagan administration such as the Urban Development Action Grants (UDAG) and lack of money from the private sector ha[ve] prevented some of the more notable programs from advancing."¹⁸

B. Connecticut

While the goal in Connecticut was more clear-cut, the road to it was strewn with political pitfalls. The problem was the allocation of the state's federal block grant for social services at a time when scarce resources had become scarcer. Fierce competition was expected among government and private social-service agencies, and political leaders were facing the sort of "no-win" situation they like to avoid.

Steve Heintz, then Under Secretary of Connecticut's Office of Policy and Management, saw the NIS process as a creative new way out of the political dilemma.¹⁹ Governor William O'Neill committed himself in advance to accepting and recommending the results of the negotiation process to the state legislature.²⁰ When the negotiations were completed, the Connecticut legislature approved the NIS agreement in the form that it was sent to them.

Team formation in Connecticut posed a different set of problems than in Gary. At first, the state considered inviting all groups who received social service moneys to participate as a single team, but abandoned this approach as unwieldy. Eventually, it was determined that the two largest groups of users—the municipalities and the nonprofit service providers—would form two

15. Isidore, *supra* note 7.

16. *Id.*

17. *Id.*

18. *Id.*

19. Personal conversation between Steven Heintz and James Kunde of the Kettering Foundation (1980).

20. Personal conversation between the author and Howard Rifkin, then Deputy Director of the Office of Policy & Management and Special Assistant to the Governor (1982).

teams, with the state as the third.

Selection of five team members for each of the teams was also more complicated. The state represented eighteen different departments, boards, and offices. The cities and towns decided to depend on two municipal associations to provide a team. The non-profit service providers formed a statewide steering group to select their team members and to keep informed about, and have input in, the negotiations.

Mediator selection was done by representatives of the three teams, who interviewed four prospects recommended by the Kettering Foundation, and chose one on whom they all agreed. Joseph (Josh) B. Stulberg of New York City served as mediator with assistance from J. Michael Keating and Ernest Osborne.

The state team was the first to outline many of the issues, but all teams were active in identifying the issues to be negotiated. Virtually all the negotiations were conducted during five intensive negotiating sessions, held between October and December of 1982.

The Connecticut agreement consists essentially of definitions, criteria, and guiding principles. The agreement identifies the services to be funded by the block grant, the monies to be allocated to each service, and the procedure and criteria to be used in selecting the service providers. All implementation steps remain the responsibility of state government. Provision for the other teams to oversee that implementation was made by establishing a Tripartite Committee to monitor execution of the agreement and to provide for continuing negotiations.²¹ The Tripartite Committee was appointed by the Governor and chaired, initially, by Ernest Osborne, who assisted the mediator during the negotiation sessions.²²

In summarizing the agreement, Connecticut's Governor O'Neill has said that:

[it] was and is my belief that the NIS is the kind of creative response which Connecticut must make to meet its new responsibilities and burdens. . . . By bringing together state agencies, municipalities, and private nonprofit human service providers, the broad picture of human service needs and resources could be viewed. . . . As one who has long believed that those who are critically affected by government decisions should have some say in how those decisions are made, I truly feel that the NIS has opened up the decision-making process in a democratic manner.²³

21. See *A Negotiated Investment Strategy: A Joint Agreement on Principles, Priorities, Allocations, and Plans for the Social Services Block Grant, October 1, 1983 to September 30, 1984* (State of Conn., 1983) (unpublished paper).

22. See R. Sussman, *The Impact of Implementor Participation on Public Policy Decision Making* (Yale Univ., 1987) (unpublished dissertation).

23. C. Moore & C. Carlson, *supra* note 10.

IV. FINDINGS

The following conclusions and recommendations are predicated on Aristotle's maxim that "for the things we have to learn before we can do them, we learn by doing them." While we read the literature on conflict resolution before recommending the model that guided the first NIS applications, the truth is we did not learn very much from that body of writing. We received far more useful advice from meeting with and tapping the knowledge of those who had experience in a variety of negotiation contexts, particularly those who had experience with the then emerging field of environmental negotiations; it involved multiple parties and focused on complex policy decisions. Most useful has been direct experience facilitating NIS applications.

These findings are divided into the four stages of negotiations (from Figure 1) and organized around a series of questions. Do not forget that you are reading someone who feels at least partially responsible for the process and, consequently, is not fully objective.

A. Stage 1: Organization for Negotiations

1. Why do people participate in large-scale collaborative problem-solving if they are not required to do so?

People have a sense that their community is not as good as it can be. They want to live in a better place, but believe that the current processes, particularly the system of electoral politics and government, is not likely to improve things. Therefore, many of us are open to better ways of bringing people together in order to "build community." We are led by those who see opportunities for making things better or who feel the pain of the status quo.

Some individuals or groups participate in such processes because they want power or access to power. The principle motivation for the not-for-profit team to participate in the Connecticut NIS was to influence, for the first time, the distribution of funds. The NIS provided them with a unique opportunity to be involved in a set of activities that affected them profoundly. The city of Gary welcomed the opportunity to improve the assistance they received from the state and federal governments. Some people, apparently, would like to circumvent the traditional paths to power. They participate so they can acquire governmental authority without having to run for office; they want a short-cut.

2. How do you get people to participate in such processes?

People will be reluctant to enter into new ways of doing business, especially those who are well-served by the status quo. The paradox is that those whose participation is most critical to the success of the process, who have the power to effect a change, are most likely to resist participating. To get people to participate in large-scale collaborative processes, it is necessary to provide them with a sense of what they have to gain, of what a successful outcome looks like. The primary, and perhaps exclusive, motivation for some potential participants to come to the table is a sense of what can be achieved. They need

to have a vision of an outcome that serves their interest.

3. Who should be responsible for getting people/parties to participate? Who provides them with a vision of an outcome that serves their interest?

One of the reasons for having a facilitator/mediator from the outset, particularly someone with experience handling similar issues in other places, is so that they can provide such a vision. But, theirs is a limited vision, usually emphasizing the process gains.

Each NIS I have been involved with had a catalyst, someone with sufficient authority to persuade her/his peers to act and who had a compelling reason to try a different way of conducting business. Steve Heintz, from Connecticut, is a good example of such a catalyst. This lesson suggests that if a new place needs to be educated about what they can gain from doing business differently, you would be well-served to bring in one of their peers who has a sense of what s/he and her/his community gained from using such a process.

4. What, if anything, can be done to circumvent resistance to doing work a different way?

It took eighteen months, on the average, to get the initial NIS applications under way. Can that be sped up? Our experience with the NIS in Arapahoe County suggests one strategy.

We were called in to conduct a study of the local situation. Data for the study (primarily interviews of a large number of key individuals) was gathered in a timely manner—six interviewers conducted almost eighty interviews in two and a half days, and the report was issued within two weeks of the data collection. Less than three months from the start of the data collection, the mediated process was under way. Our assumption is that those who would have resisted the process did not have time to block it. Or, at least, key political actors did not mobilize resistance. Moreover, there was a sustained momentum on the part of the interested parties to move to action.

5. Why ask people to function in teams? When do you ask people to participate as a team, rather than as individuals?

It is appropriate and effective to conduct negotiations with teams when the teams are necessitated by the political (need for representation) and substantive (need for wisdom) complexity of the issues. If teams are utilized, usually there is a need for various capacities on the team, such as experience with negotiations, to complement the political and substantive criteria. An added benefit of teams is that they can help groups to organize and articulate a community position. One obvious example is the participation of the nonprofit service providers in Connecticut, who were not organized previous to the NIS.

6. How do you develop effective community participation?

It is difficult to achieve meaningful citizen participation. Often the way this is done is by having token representation on one of the other teams, such as the city team. If there is a full community team, the problem is that typically they are not sufficiently sophisticated about the issues or process to participate on an equal footing with the other teams.

Our experience with Bridgeport was quite satisfying. We wanted a team to represent the welfare community, welfare users as well as those who served that population. A comprehensive list was compiled of the various agencies that served the welfare community and all of them were invited to a meeting. A small group attended the meeting. We explained what was being attempted, what the potential gain was from participating, and asked who was not there that should be there. We invited the original list plus the new suggestions to a second meeting. After again explaining the project, as well as soliciting new names, we announced that at a third meeting the community team would be selected. And that is what happened. At the third meeting the group established criteria for what would constitute an effective community team and proceeded to make the selections. It was a bit awkward at first, but they made tough decisions that served them well. Technical assistance was provided for the community team to help them conduct research, identify their interests, and participate in the face-to-face negotiation sessions. In the Bridgeport NIS, the community team made an active, intelligent contribution to the process and product.

7. Who should be responsible for sponsoring such events?

If possible, a neutral party. If that is not possible, distribute responsibility. Do not allow one party to "foot the bill." It is acceptable, however, to allow uneven contributions. One of the parties may pay the largest share of the cost, but the others contribute to the cost. For example, one party's contribution may be to provide for their own technical assistance. One party might contribute "sweat equity" by assisting the facilitation team or hosting meetings in their facilities. Have a clear understanding of how each will contribute. The facilitator/mediator cannot afford to have a single client.

Those responsible for initiating the process (a company, a key individual such as a mayor or governor, or a state agency) are likely to be impatient that something concrete is done; their investment (usually in time, dollars, and political capital—others are participating because of their influence) demands that the process produce results. Such sponsors are likely to trust the process but are not willing to risk failure.

The best way to illustrate this "fear of failure" is to provide a rare example where it was not true. During the Columbus NIS, the Mayor felt strongly that the principle gain would be the increased interaction within and between the participating teams, even if the city did not realize substantial new gains in aid from the federal government or the state.²⁴ More typical is the reaction of the sponsors of the Bridgeport NIS who pressed to be sure that the process was moving toward concrete results, even before, in my judgment, such a focus was warranted.

8. What is the role of the mediator/facilitator? Can a neat distinction be

24. Personal conversation between the author and Thomas Moody, Mayor of Columbus, Ohio (1979).

made between process and substance, so that the mediator only needs to have skill in the process of dispute resolution? Is it necessary for her/him to know about the substance of the dispute?

First of all, notice that I refer to a bifurcated "facilitator/mediator." In my judgment, the role is much more like that of a facilitator than a mediator, but some people better understand "mediator" and even resist the notion of a "facilitator." The original NIS model referred to a "facilitator," but the head of the Chicago Federal Regional Council thought that sounded too "California."²⁵ At the final summary evaluation meeting for the original three experimental NIS's, he concluded that the role was more like a facilitator than a mediator.²⁶

If the facilitator/mediator contributes a great deal of knowledge about the substance of the dispute, it can have an adverse effect. The primary risks are that too much of the solution comes from the mediator (so that the participants do not "own" the final product), the participants become dependent upon the mediator, rather than developing the mechanisms or relationships themselves that are necessary to produce data and positions, and the mediator loses the opportunity to function as a neutral inquirer. However, I do not believe in the process-substance dichotomy. To be effective, the mediator must be smart about the problem, the people and the landscape. Sometimes the need to be smart is why there should be a mediation/facilitation team.

9. Is the traditional assumption correct, that a third party should be called in when the parties cannot resolve a dispute on their own? When, if ever, should a third party participate from the outset? What conditions need to be satisfied?

It is desirable for a facilitator/mediator to participate from the outset when the parties do not have a tradition for working together and when the complexity of the dispute warrants the cost. Put another way, when are the parties not willing to incur the cost of not remedying the ill?

10. Should there be one mediator or a mediation team?

A mediation team is appropriate if there should be a division of labor, defined by the skills of the facilitator and the needs of the circumstances. If there is such a team, one person should facilitate the joint sessions; it is easier for people to focus on a single group leader. Joint facilitation is possible if the facilitators are very experienced and have complimentary styles.

Our recent experience with the NIS in Arapahoe County offers an illustration of this theme, as well as a response to the question of whether a facilitator/mediator can contribute to the substance of a dispute. One member

25. Personal conversation between James Guthrie Coke, co-developer of the NIS model, and Douglas Kelm, Chair of the Chicago Federal Regional Council (1978).

26. Remarks by Douglas Kelm, Chair of the Chicago Federal Regional Council at Final Summary Evaluation Meeting for the NIS, sponsored by the Kettering Foundation (Sept. 1980).

of our team was asked to consider handling the "dispute" for a number of reasons: he represented the Kettering Foundation (perceived to be neutral and experienced in solving complex intergovernmental problems), was a former city manager, was from out of town (but working in the area), and was known, at least by reputation, by a few advisors to the county commissioners. Moreover, he had considerable knowledge about the substantive issues. He was principally responsible for guiding the study that recommended a facilitated problem-solving process, developing the teams that eventually participated in the NIS, and helping the teams to establish the ground rules that guided that process.

When the face-to-face negotiation sessions began, I facilitated the deliberations. The first person, who was so involved in the development of the process, was formally viewed as the "manager" of the process. He was available to assist in the facilitation, but everyone understood that he was primarily responsible for arranging the sessions, working with external groups, helping the teams to prepare for the sessions, and was available to contribute to the substance of the deliberations. He did not abuse that permission, offering few suggestions, and then only when the parties seemed at an impasse.

11. *What are organizational keys to the success of a large-scale collaborative process?*

There are three such "keys." *Staff* to the process, especially to provide the necessary data/information and to assist the mediator/facilitator if s/he is from a distance. A *steward* of the product, someone (probably not just one person) who ultimately will be responsible for implementation. It is desirable to determine at the outset who that might be and to involve them as much as possible in all stages of the process. At the very least, they should be kept informed about the process. *Ground rules* to guide the process, that provide the vehicle for initiating the process, orienting the participants to their role, motivating participation by providing a vision of an outcome, and providing permission for the facilitator/mediator to act (by defining the role).

B. Stage 2: Informal Exchange of Information

1. *Why is this one of the stages of the process?*

The reason we included this stage in the original design of the NIS model was because we assumed that it would provide a relatively non-contentious way to begin face-to-face deliberations. Indeed, we assumed that it might delay the formation and hardening of positions. At the very least, it provides time for the parties to get to know each other in a risk-free environment. Moreover, if the parties have an opportunity to learn about critical information together, they are more likely to use that information to create an outcome that serves their mutual interests.

2. *How much data is enough?*

Seldom is there enough data. It is not possible to anticipate all of the information needs. Also, it is not possible to know everything before moving to

deliberations. At some point, the search has to be concluded so that agreements can be reached.

Typically, I overestimate how much people know. In the Bridgeport NIS, we had the first two sessions and then had to make the third session an information session when it became increasingly clear that the parties were not sufficiently familiar with the workings of the status quo. While the information session was productive and helped move us toward resolution of the issues, such a session should have been held earlier. It would have been the first session if we knew how much the participants did not know.

One way to learn about the limits of knowledge is to interview each of the participants in advance of the negotiations. Such interviews also help prepare the facilitator/mediator to perform her/his role. Since this personal contact is made with each of the participants, facilitation of the sessions is likely to be wiser.

C. *Stage 3: Negotiations Process*

1. *Can you allow some teams to participate differently from the others?*

While ideally it would be nice to hold to a single standard, that cannot always be the case. Sometimes you have to allow for differences in participation. In the Bridgeport NIS, all of the parties knew that the team representing the business interests was critical to the success of the negotiations and was not likely to enter into the negotiations with the same level of participation as the other teams. They sent representatives, rather than participate actively themselves, and only made ceremonial appearances. But, they were well-informed about the deliberations and able to deliver the commitments that were key to a final agreement. The same generally holds true for elected political leaders; that is, they are not likely to participate in lengthy deliberations and will prefer to be represented by others.

2. *What are strategies for facilitating more productive inter-group outcomes?*

Move the meeting place. Large-scale problem-solving is not the normal way of doing business. It is necessary to trick the controls. If the setting is normal, the behavior will be normal.

Focus. Give careful consideration to how choices are presented to groups. There are well-defined limits to how many items an individual can be clear about at any one time. One way I choose to reduce complexity is by focusing on pairs. For example, if the goal of the group is to set priorities among twelve choices, ask them whether A is a higher priority than B, whether B is a higher priority than C, and so forth, comparing each to each other.²⁷ Such a procedure enhances the group's ability to focus and to engage in productive deliberations. Also, with the group's permission, remove from consideration items

27. See C. MOORE, *GROUP TECHNIQUES FOR IDEA BUILDING* (1987).

that have less importance so that the group can give due consideration to the items of real concern.

Use the walls. By keeping a "group memory," i.e., recording the group's work on newsprint and taping the sheets of newsprint on the walls (in their view), you can allow people to let go of their concerns, in the knowledge that the idea has been captured. Use the "group memory" to keep them focused on their ideas, and even to deal with disruptive group members.²⁸ Caution: excessive, non-strategic use of "group memory" is counterproductive.

Emphasize "frameworks," rather than outcomes (or, at least in addition to outcomes). It is often better to develop criteria for a good decision—or bases for establishing priorities—then it is to make the decision or establish the priority. Eventually the decision will be made, but the framework will have utility beyond the particular decision. The group will have shared and agreed to commonly-held values that provide the bases for future decision making.

Allow groups to learn together and to educate each other. Groups act on what they learn together, not on what is known by each of the separate parts. As I suggested earlier, this is the principle reason for stage 2, informal exchange of information.

Make the mess. The facilitator/mediator may have to allow the problem to become even larger than initially conceived, so that all aspects are addressed and all interests can be identified and represented. Premature narrowing of the problem may result in a less satisfying outcome. Allowing the "mess" to be made is one way of helping groups to learn together.

Find the fight. Another reason for making the mess is to help find the fight; that is, to identify points of conflict that have to be addressed if the group is to discover a mutually satisfying outcome. Another way to find the fight is to create an environment wherein the parties are comfortable expressing their self-interest. Everyone acts out of self-interest, but we work hard to camouflage our true interests.

Appreciate that the parties with the least at stake can play a different role than the other parties. In the Mississippi NIS, one of the teams historically had a small share of the social services block grant and had no reason to expect a larger share. They were able to ask tough, probing questions of the other teams without fear of retribution.

Help the parties: (1) to become aware of their interdependence; they would not be negotiating if they were not interdependent, (2) to want something; power is always ill-distributed. Unless all parties want to achieve something there is little chance of working out a mutually satisfying outcome—I am most suspicious when someone says that they really do not want anything, just to help the others, and (3) to see the importance of keeping their organization abreast of the deliberations. Negotiations do not occur in a vacuum. It is much more efficient to keep your organizational colleagues abreast of what

28. *Id.*

is happening during the negotiations than it is to try and sell them a *fait accompli* once the negotiations have been completed.

The mediator/facilitator is as limited as are the people who participate in the process. No process (or facilitation) is any better than the people. You cannot make people smarter than they already are by using a particular technique. You can, however, enhance their creativity. If needed, you can help educate them about options or bring different people and perspectives to the group.

D. *Stage 4: Public Review and Monitoring of Agreement*

1. *Is a process outcome—one that clarifies how a final agreement will be reached—sufficient?*

A process outcome, at least in part, is probably the norm. Most agreements stipulate what will be done, as well as how the parties will continue to work together. That was true in Gary and in Connecticut. The problem, if there is one, is when there is very little or no agreement on what will be the commitments of the various parties, only on how they will continue to work together beyond the mediated process. If that is all that could be achieved, the gain is that the parties will be continuing to work together. The outcome would be considered insufficient if the parties could have achieved more and quit prematurely.

2. *What can be done to assure a mutually satisfying outcome which does not merely replace one distasteful bureaucracy with another?*

There is probably not a general answer for this question, because each agreement is so situational. For example, a serious criticism of the Connecticut NIS is that the Tripartite Committee became a burdensome mechanism. Although by no means a panacea, one orientation that has served me well in the past is to always try and define the demise of an organization, particularly an *ad hoc* organization, at the time of its creation. That way, the group is clear about when something should go out of business. Unfortunately, that does not mean we will always abide by such a decision. Most organizations outlive their usefulness.

3. *How important is consensus?*

Consensus and collaboration should not always be the goal. Consensus may not be a realistic goal because it may not be achievable in a realistic time frame. Building community takes time; often it is not something that can be managed, no matter how good the facilitation. Focusing on consensus may not serve the interests of some of the parties. Put another way, it may serve the interests of some (one?) more than others. In the enthusiasm for accord, systemic problems can be avoided.

V. CONCLUSION

The creation and development of the Negotiated Investment Strategy has

been both informative and influential. Some of the "findings" should be useful with a variety of groups, even if they are not utilizing mediated negotiations to address complex issues.

Jim Laue, who was the mediator in Gary, believes that the NIS is primarily responsible for the relatively recent interest²⁹ in the use of mediation to address complex public policy issues.³⁰ While there are a variety of influences on the increased use of mediated negotiation of such disputes, it is reasonable to conclude that the NIS is an important and influential episode in the recent history of alternative dispute resolution.

29. The professional interest in the use of mediation to address public policy disputes has surfaced primarily in the 1980's, in the wake of the NIS. Two recent full-length treatments of the subject are L. SUSSKIND & J. CRUIKSHANK, *CONSENSUAL APPROACHES TO RESOLVING PUBLIC DISPUTES* (1987), and S. CARPENTER & W.J.D. KENNEDY, *MANAGING PUBLIC DISPUTES* (1988).

30. Personal conversation between the author and James Laue, Senior Consultant, Conflict Clinic, Lynch Professor of Conflict Resolution, George Mason University, during the first National Conference on Peacemaking and Conflict Resolution, Athens, Georgia (1983).