

CONDUCTING A CONFLICT ASSESSMENT

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Organizing and launching a consensus building process can be a daunting task, especially when there are a great many parties involved. The person convening the process must first determine whether there is a reasonable chance of succeeding. And because each conflict is different, and there are no hard-and-fast rules about when consensus building is likely to work, it is difficult to make this determination before the fact. If a consensus building effort seems likely to succeed, the convenor must ascertain who the stakeholders are and whether or not they will agree to participate. Decisions must also be made about how to frame the issues to be negotiated, how many meetings to hold, how to share the costs of the process, and so on. All of these determinations must be made carefully, because the ultimate success of every consensus building process depends on these early “design” decisions.

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The convenor's best bet for sorting through these decisions is to hire a professional neutral (an *assessor*) to conduct a *conflict assessment* (sometimes called an *issues assessment*). A conflict assessment is an information-gathering exercise that produces recommendations regarding

- who has a stake in a conflict or proposed consensus building effort;
- what issues are important to those stakeholders;
- whether or not it makes sense to proceed, given the institutional, financial, and other constraints; and
- if so, under what circumstances the key parties will agree to participate.

An assessment prepared as part of an effort to resolve a state-level regulatory dispute in Delaware provides a good example of how this tool can be used. The Department of Natural Resources and Environmental Control (DNREC) is the Delaware state agency responsible for enforcing the Coastal Zone Act (CZA), a powerful environmental and zoning law prohibiting heavy industry from locating new facilities in the state's coastal region. Although the CZA had been on the books in Delaware for 25 years, regulations implementing it had never been successfully promulgated. (The law had been enforced by DNREC on a case-by-case basis rather than under the guidance of overarching rules.) As a result, industry and environmental groups battled for years over the implementation of the law. At one point, DNREC convened a group of stakeholders to try to develop regulations, but the effort failed. In fact, that failure only heightened the distrust and acrimony among the parties. In December 1995, DNREC decided, once again, that regulations had to be drafted and that a consensus building effort should be convened. Given the long history of conflict among the parties, however, DNREC officials weren't sure that a consensus building process would be feasible. If it did go ahead, the agency wanted to make sure the process had a good chance of succeeding. So DNREC hired a team of neutral assessors to conduct a conflict assessment.

The assessors conducted one-on-one, in-person, confidential interviews with 53 stakeholders, including representatives of industry, environmental organizations, and government. The list of interviewees was constructed by first noting everyone who had

taken a public position on the issue, and then asking those people to name others who should be involved. Based on the interviews, the assessors determined that a consensus building process would only be feasible if a limited agenda of issues was discussed and certain preconditions were met. Their report suggested a six-month work plan. The consultation process enabled the assessors—who went on to mediate the process—to become fully aware of the issues at stake and to build a rapport with the parties involved.

DNREC, as the convenor, accepted the assessors' recommendations and, in October 1996, convened the first meeting of the consensus building group. By early 1998, the group had successfully completed its mission, allowing DNREC to formally enact CZA regulations without any objection. In retrospect, it is clear that the conflict assessment was instrumental in ensuring the group's success.

This chapter describes exactly what is involved in conflict assessment. The first section discusses assessments in general: how the concept developed, variations on its use, why it is essential, and who is best prepared to produce a credible assessment report. The second section provides prescriptive advice for those conducting conflict assessments. It explains how to identify stakeholders, arrange and conduct interviews, design a work plan, write a summary report, and use the report as a springboard to convening a consensus building process. The third section addresses some of the debates surrounding the practice of conflict assessment, including its educative potential, conflict-of-interest questions, problematic relationships between assessor and convenor, the need to deal with the media, and the costs involved. The fourth and final section looks at the likely future of conflict assessment in the dispute resolution field.

■ *The Practice of Conflict Assessment*

Conflict assessment, as practiced today, probably derived from the custom in two-party mediations in which a neutral party meets with each "side" separately before meeting with them together. Consensus building, however—particularly when a situation has not reach loggerheads—requires a more elaborate premeeting process, since it is often unclear who should participate and what set of questions should be discussed.

Assessments have been used in public dispute resolution since the field's inception in the early 1970s (H. Bellman, personal communication, April 27, 1998). Gerald Cormick (1976) describes undertaking an assessment-like process in 1973 before mediating a dispute over a proposed dam on the Snoqualmie River in Washington—a dispute that he says was perhaps “the first formal effort to apply the mediation process to an environmental conflict” (p. 219).

In the early 1980s, the assessment idea was formalized in the context of prospective negotiated rulemaking. A 1982 article in the *Georgetown Law Journal* outlined a conflict assessment procedure for such cases (Harter, 1982, pp. 72-75), and in 1990, the Administrative Conference of the United States formally recommended that assessments be conducted for all prospective negotiated rulemakings (Pritzker & Dalton, 1990, pp. 98-103).

In the late 1980s, Moore (1986) and Carpenter and Kennedy (1988) suggested that neutrals conduct assessments in a broad range of dispute resolution settings. And in 1997, the Society for Professionals in Dispute Resolution, a professional association of mediators and consensus builders, adopted a set of *best practices* for government agencies that included guidelines for conducting conflict assessments (“Best Practices,” 1997, p. 5). Conflict assessments are now common practice for many types of consensus building and dispute resolution processes.

Groups and organizations that meet and work together permanently—for example, school committees and teams within corporations—do not usually use outside assessors to conduct formal assessments such as those described in this chapter. However, conflict assessments can be very useful (and have been used) in cases in which established groups want to design a new process for dealing with a particularly difficult problem or need help untangling a messy internal dispute. Thus, the approach to conflict assessment described in this chapter applies equally well to permanent organizations and groups, although they are not likely to go through all the steps most of the time.

Differing Approaches to Conflict Assessment

Although most dispute resolution practitioners agree that some sort of assessment should be conducted at the outset of a

convening effort, they differ on exactly what needs to be done and what to call the process. Although it's true that some approaches may be more appropriate than others in certain situations, the overall objective is always the same: to identify stakeholders and key issues, analyze the feasibility of moving forward, and design a work plan for proceeding.

Most practitioners agree that an assessment should be carried out by a neutral party who will protect stakeholder confidentiality. Some, however, advocate for convening a small group of key stakeholders, assisted by a process consultant, to do much of the work of identifying participants and designing the process. (See Chapter 3 for details on this approach.)

Many practitioners prefer the term *conflict assessment* to describe the process. Others use the terms *issues assessment*, *situation assessment*, *convening assessment*, *conflict analysis*, or *stakeholder analysis* (McKearnan, 1997, p. 9). Some call the product of the conversations a *conflict assessment report*, as we do. Others refer to it as a *convening report* (S. Podziba, personal communication, December 18, 1997; C. Pou, personal communication, December 11, 1997).

It is the word *conflict* that creates the disagreement. Some practitioners feel the term should not be used because stakeholders may not see themselves as in conflict or because the use of the word may inflame the situation (P. J. Harter, personal communication, April 22, 1998). We have—in cases in which parties were clearly not (yet) in conflict or that were particularly sensitive—substituted the term *issues assessment*.¹

Practitioners also disagree on how formal or thorough these before-the-fact conversations need to be. Some practitioners prefer a “quick and dirty” approach, in which they speak to a few influential stakeholders on the phone to get a general sense of things. Others prefer to conduct in-depth, in-person interviews with all stakeholders, if possible. Some assessors prefer to make a brief oral report to the convenor when they are finished. Others write a detailed document that is distributed in draft to the convenor and all stakeholders for review (McKearnan, 1997, p. 9). Later in this chapter we discuss the pros and cons of each approach and describe the method we think is most effective.

Why Conflict Assessments Are Essential

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A conflict assessment enables the assessor—and thereby the convenor—to identify the relevant stakeholders, map their substantive interests, and begin to scope areas of agreement and disagreement among them. It also allows the assessor to explore the parties’ incentives and willingness to negotiate in good faith. All of this information is crucial to deciding whether a consensus building effort should proceed and, if it does, how it should be structured (what issues should be on the agenda, how many meetings should be held over what time period, what technical assistance will be required, what the final product should be, etc.).

A conflict assessment also creates an opportunity for the assessor to educate the stakeholders about what it takes to bring a consensus process to a successful conclusion. The assessor can answer questions and address concerns in private, so that each potential participant can make an informed decision about whether or not to participate.

Relationship building is another important side benefit of these before-the-fact conversations. The individual who conducts them often goes on to mediate the group conversation, if it goes forward. One-on-one, confidential interviews allow the assessor to get to know each stakeholder individually. The stakeholders can also “assess the assessor” and gauge whether that person is likely to be impartial and effective as a mediator.

Finally, the conflict assessment report, with its detailed analysis of the issues, provides the parties with an impartial map of the underlying conflicts that will need to be addressed. Seeing their own interests described in print often helps each party feel heard and understood. Reading about other parties’ interests provides everyone with an accurate portrait of opposing views and the prospects for agreement. The report can also be used to explain to the community at large what the consensus building process is setting out to do and add legitimacy to the procedures by which participants are selected.

The Pitfalls of Proceeding without a Conflict Assessment

Some convenors argue that a conflict assessment is unnecessary or that they have no time “to waste” on such preliminaries. They may think that before-the-fact interviews are too expensive

or believe that the key issues and stakeholders are self-evident. Convenors often forget that everyone does not share their perspective. A neutral party can canvass the views of all stakeholders, smoke out difficulties and reluctant participants, and help set credible ground rules.

The greatest danger of proceeding without a conflict assessment is leaving out a key stakeholder. Just one party, inadvertently overlooked, may later undermine the legitimacy of the effort by publicly criticizing it as noninclusive. A conflict assessment conducted for a community consensus building process in Maine (addressing concerns about pollution-related cancer risks), for example, turned up an important organization that had not been involved in previous attempts to address the matter: the Maine Bureau of Health (BOH). Representatives from BOH proved to be crucial to the agreement that was reached; they provided all of the public health data that allowed the group to come to grips with the problem they were facing. (See Case 2.)

Another danger of proceeding without a conflict assessment is that an assessor may design a consensus building process that does not address the right issues. If key issues are left off the agenda, the credibility of the effort could be challenged. Or the group could try to address the question in a way that is too difficult to handle. A conflict assessment offers an opportunity for all important topics and perspectives to be considered.

The Delaware assessment revealed one issue that the assessors decided should not be included in the ensuing consensus building process. The issue involved whether local power-generating plants should be classified as "heavy industry" or "manufacturing." (Only heavy industry would be covered by the new regulations.) The conflict assessment report stated that "this issue . . . threatens to consume a great deal of any group's energies without a great likelihood of reaching consensus." The assessors recommended that the topic be handled separately (Consensus Building Institute, 1996, p. 46).

Finally, a conflict assessment can reveal that a consensus building effort should not be initiated at all. A key stakeholder may admit during a confidential interview that he or she is unwilling to accept consensus as a goal, or has an attractive alternative to agreement that makes the process entirely unattractive. The assessor might also discover that a stakeholder has reason to actively undermine any agreement reached. A process that is sure to fail is not worth starting.

The Delaware assessment uncovered several possible pitfalls and recommended moving forward only if they could be addressed. For example, a number of interviewees said their interests might best be met by lobbying the legislature or the executive branch. So the report recommended that a group be convened only if leaders in the state's executive and legislative branches publicly endorsed the effort. The assessors believed that the right endorsements would "signal to all the interested parties that an 'end run' around the negotiation process would not be fruitful" (Consensus Building Institute, 1996, p. 39). Ultimately, these endorsements were received, and the process was successful.

Who Should Conduct a Conflict Assessment

Most assessments are conducted by dispute resolution professionals (i.e., mediators) who expect to facilitate the consensus process that follows. They may come from private or nonprofit organizations or from state offices of dispute resolution. Not all conflict assessments, however, are carried out by mediators. A court-appointed special master or an ombudsman could play this role, as could an individual with special standing in a community (but no special training), such as a member of the clergy or a tribal elder.

A conflict assessment must be conducted by someone who will be perceived by all stakeholders as impartial. An assessor should not have a stake in the conflict nor can he or she be perceived as partisan in the debate. An assessor must also have some knowledge of the issues at stake, although extensive experience in the given field is not required. Experience in the practice of consensus building is preferred, because educating stakeholders about consensus building is easier if the proponent has firsthand experience. The assessor must also be an effective interviewer. He or she must know how to elicit direct answers, ask for elaboration, request clarification, summarize comments, and read facial expressions and body language (Moore, 1986, pp. 90-95). Finally, an assessor must be able to "connect" with the stakeholders. The more comfortable an interviewee feels, the better the interview. Age, gender, race, education, and professional status can contribute to the connection between interviewee and interviewer, and thus, how much information is elicited (Carpenter & Kennedy, 1998, p. 78; Moore, 1986, p. 82). For example, a recent college graduate would probably not be the best choice to assess a conflict over

a proposed senior citizens center. Sometimes, conflict assessment teams are most appropriate.

In addition to the requisite knowledge, skill, and background, an assessor should have a mandate from a convenor to conduct a conflict assessment. The assessor's mandate should be contained in a contract signed by the assessor and the convenor. The assessor-convenor relationship gives the assessor the authority to go forward. Without a mandate, an assessor is essentially engaged in marketing—trying to drum up business by meeting with people and trying to convince them to undertake a consensus building effort. The conflict assessment process described in this chapter is not meant to be a marketing tool.

■ *How to Conduct a Conflict Assessment*

So where does the assessor begin? Who should be interviewed? What should they be asked? How should the answers be interpreted? Each assessment will vary, of course, but most include (1) introductions, (2) information gathering, (3) analysis, (4) process design (if appropriate), (5) report writing, and (6) report distribution. This section offers advice on how to handle each phase of the process.

Phase 1: Introductions

An assessor must get a clear mandate from a convenor and then gather preliminary information about the conflict or situation. The remainder of the introductory phase involves preparing to interview stakeholders. The assessor must work with the convenor to draft a letter of introduction to potential interviewees, identify the parties to be interviewed, schedule the interviews, and prepare an interview protocol (i.e., a list of questions).

Preliminary Work

The assessor should begin by clarifying his or her mandate. To do this, the assessor and the convenor should prepare a contract (or “letter of agreement”) outlining the terms of the relationship, the product to be delivered, the expected cost, and the deadline for delivery. (See the section “The Cost of a Typical Conflict Assessment” later in this chapter for a discussion of

reasonable costs.) The contract should ensure that the assessor operates autonomously; that is, he or she should make recommendations based only on his or her best judgment. The assessor must be allowed to keep confidential statements confidential, even from the convenor. Also, the convenor should not try to influence the assessor's recommendation. The contract should make it clear, too, that the assessor's role will change if he or she becomes the mediator later on. The assessor usually works for the convenor or a group of key parties identified by the convenor. During an actual consensus building process, however, the mediator works for all the stakeholders.

Next, the assessor should collect background information. The convenor should be able to provide a preliminary list of likely stakeholders, as well as documentation regarding the relationships among the parties, the history of the conflict, the issues at stake, and the language stakeholders tend to use to characterize their views. The convenor should also provide relevant reports, letters, press releases, and the like. The assessor should search the Internet and the local library for news reports about the issues under discussion.

The assessor should work with the convenor to draft a letter of introduction to all stakeholders that introduces the assessor, describes the assessment process, promises confidentiality, and requests each recipient's participation. These letters should be sent on the convenor's letterhead to all potential interviewees. (Figure 2.1 is the letter of invitation used in the DNREC case.)

Identify the Parties to Be Interviewed

“We think of the process of identifying stakeholders to interview as ‘moving outward in concentric circles.’ ”

The assessor must decide whom to interview. The stakeholders on the preliminary list provided by the convenor should be contacted first. Each should be asked (when arranging an interview) to suggest others who might have a stake in the conflict. The individuals named, if they aren't already on the preliminary list, can be thought of as a “second circle” of stakeholders. The first circle might number 40 or so, and the second circle 20 more, in a typical community-based situation. We think of the process of identifying stakeholders to interview as “moving outward in concentric circles.” This ensures that all possible interests are included.

Dear _____ :

I am writing to encourage your participation in an important initiative. The Governor's Office and the Department of Natural Resources and Environmental Control are eager to move ahead with the preparation of revised regulations that will enable us to implement the Delaware Coastal Zone Act. We have asked a team from the Consensus Building Institute (CBI), a nonprofit organization in Cambridge, Massachusetts, to design, with your help, a consensus building process to prepare these regulations. The CBI team of facilitators will include [names listed here].

The first step is for the CBI team to conduct a series of confidential interviews with all affected stakeholders. Because we want to be sure your viewpoint is included, we invite you to talk with the CBI facilitators during this "assessment" process.

From the results of the interviews, CBI will

- Identify all relevant stakeholders and their concerns;
- Highlight points of agreement and disagreement;
- Identify the key sections of the draft regulations (approved and adopted in 1993 by the Coastal Zone Industrial Control Board) that need to be renegotiated;
- Assess the willingness of key stakeholders to work collaboratively, despite their differences, to achieve a consensus;
- Suggest ground rules for consensus building;
- Identify any joint fact-finding procedures we ought to follow; and
- Propose a work plan for proceeding with a consensus building process.

The Governor and I believe that this conflict assessment procedure will help us design an informal consensus building plan that will work. We hope you will take time out of your schedule to discuss this important matter with the CBI team. You will be contacted soon to arrange an interview.

Sincerely,

Christophe A. G. Tulou, Secretary
 Department of Natural Resources
 and Environmental Control

Figure 2.1. Letter of Invitation Sent to Prospective Interviewees in the DNREC-Convened Consensus Building Process (modified)

Often, a stakeholder will urge the assessor to contact a particular organization, but the stakeholder may not know who the appropriate individual is within that group. In such instances, it's best to approach someone at or near the top of the organization and let him or her to decide who should be interviewed.

The assessor may also find that some groups with a stake in a conflict may not be aware of what's going on, or may not be organized in a way that makes it easy to identify an appropriate spokesperson. For example, residents living near a farm may not know that the farmland was recently purchased by a developer, that the developer has asked the municipality to rezone, or that the town might be considering a consensus building process to formulate new land use guidelines for the area. In such cases, the assessor may need to take a number of extra steps to find appropriate interviewees. For example, the convenor and the assessor might decide to organize a public meeting to explain the situation and assist residents in choosing representatives to be interviewed. (See Chapter 6 for more on “unorganized” stakeholders.)

The total number of people to be interviewed will vary widely depending on the conflict. Not everyone needs to be interviewed. Those who hold positions of authority in relevant organizations or who are seen as leading players in the debate because of their special knowledge of or history of involvement in the conflict are all good candidates. The assessor should talk with people from the full range of interests, including everyone on the preliminary list and as many as possible from the second circle. Another rule of thumb is that the assessor should interview everyone whose name is mentioned by two or more people.

In the Delaware case, the facilitators interviewed 53 individuals from three categories of stakeholders: business and industry, environmental organizations, and government. Recall that the conflict concerned the preparation of guidelines to protect the state's coastal area. The breakdown of people interviewed is shown in Table 2.1. This breakdown is fairly typical for a public sector conflict that concerns environmental and economic trade-offs, although it should not be viewed as a precise formula for what should be done in other, similar situations.

Call the Interviewees

Once the convenor has sent the letters of introduction, the assessor should call each person to schedule an interview. In this first call, the assessor should explain once again why the assessment is being done, who is sponsoring it, and why it is important for all stakeholders' views to be heard.

TABLE 2.1 Breakdown of Interviewees for the Delaware Conflict Assessment

<i>Interest Represented</i>	<i>No. of People Interviewed</i>
Business and industry	
Business	16
Power generators	5
Ports	1
Labor	2
Environmental interests	
Organizational	5
Individual	10
Government	
Natural resource agencies	7
Economic development agencies	2
Legislature	4
Local government	1
Total	53

A promise of confidentiality should also be offered. Confidentiality in this case means that comments made by the interviewee will not be attributed to that person by name, title, or organization in either discussions with others or in the report that is prepared. A list of all interviewees will be made public, however, and comments will be grouped by stakeholder category and paraphrased in the report.

Prospective interviewees should be assured that being interviewed does not oblige them to participate in a subsequent consensus building process. They may be invited to participate—and, indeed, they may be asked during the interview to attend a first meeting—but the assessment is fundamentally separate from any dialogue that may follow.

Stakeholders are generally amenable to providing their views on issues they feel are important. Occasionally, however, stakeholders will be reluctant to be interviewed. They may not trust the convenor or may feel their true concerns will somehow work against them. The assessor may need to offer a sample conflict assessment report so that it is clear how comments will be summarized without attribution. If an oral promise of confidentiality is not enough, a written agreement can be drafted and signed by the assessor and the interviewee.

Assessors will need to accommodate the schedules of others, perhaps offering to talk on the phone during evening hours. A prospective interviewee may insist that he or she is not sufficiently involved or knowledgeable to have anything to offer. If this is the case, the assessor should explain that mere perceptions are important. If the interviewee is still reluctant, it may be best to find another person with similar interests. If the reluctant party is a key player, pointing out that the “opposition” will control the way the “story” unfolds is usually enough to elicit an interview.

Prepare the Interview Protocol

The assessor should draft an interview protocol—a list of questions to be asked—before proceeding. The protocol should be available in written form prior to the interviews.

The questions will depend on the conflict and the information needed to design a consensus building process. All interviews, however, should include some variation on the following questions.

- What is the history of the conflict?²
- What issues relating to the situation are important to you, and why?
- What other individuals or organizations have a stake in the situation?
- What are the interests and concerns of those individuals or organizations, as you see them?
- Would you be willing to engage in a consensus building effort designed to address this situation?

Note that all but the last question are open-ended; that is, they are designed to encourage interviewees to talk at some length about whatever they feel is important. Open-ended questions “allow interviewees to share their perception of reality . . . without the imposition of an alien framework of analysis” (Moore, 1986, p. 93). Most questions should be open-ended to elicit detailed responses unaffected by the assessor’s perspective, knowledge, or bias.

Closed-ended questions—those designed to elicit a short, specific response—can be used as well. Indeed, the last question

above is a closed-ended question. An assessor may use questions of this sort to clarify a point, probe a topic, or raise an idea the interviewee hadn't mentioned.³

Protocols should be designed so that interviews can be completed in 30 minutes or less, and they should be pretested before they are used.

Phase 2: Information Gathering

Dispute resolution practitioners use a variety of interview formats and techniques. Those that we have found to be most useful are described in this section.

Arrange the Interviews

Stakeholders should be interviewed in person, individually. The eye-to-eye contact possible in an in-person interview (as opposed to a telephone interview) is important for both gathering accurate information and building rapport. In-person interviews allow the assessor to observe each interviewee's facial expressions and mannerisms, revealing the depth of emotion and, sometimes, a clearer sense of the person's status within his or her organization. In-person interviews also allow assessors to communicate understanding and empathy, thereby fostering trust.

Individual interviews are preferable to group interviews because they encourage more candor. Group interviews do save time and money, and if such interviews must be conducted, only groups of stakeholders with very similar interests should be interviewed together (e.g., a group of labor union representatives).

In general, interviews should not last much more than 30 minutes each, and all interviews should be scheduled within a two- to three-day period. This minimizes costs when the assessor has to travel to the area. It will only work, of course, when stakeholders live within a relatively well-defined region and can come to a central location to be interviewed. For statewide or regional conflicts, interview sessions may need to be scheduled in more than one location (e.g., one day of interviews in a state capitol and another day in another large city). For national-level dialogues, in which stakeholders are spread over a large geographic area, phone interviews are probably the only option.

Key stakeholders—those central to the dispute or most senior in their organizations—should be interviewed during the second half of the interviewing period. This enables the assessor to adjust the protocol, if necessary, based on ideas that emerge early on. It also gives the assessor time to become more comfortable conducting the interviews (Moore, 1986, pp. 84-85).

Interviews should be conducted in a neutral location in private meeting rooms, thereby creating a “safe” atmosphere, encouraging candid conversations, and enabling the assessor to project the most “neutral” image possible. Meeting in the convenor’s office, for example, may give the impression that the assessor is biased in favor of the convenor.

Some dispute resolution practitioners advocate meeting in each interviewee’s office, so that the assessor can get a better idea of the person’s status within his or her organization (McKearnan, 1997, p. 9). While useful information can be gained this way, it is more time-consuming and expensive.

During each interview, two assessors should be present: one to ask questions and one to take notes (in writing or on a computer). The lead assessor can concentrate on what the interviewee is saying—following up on the answers, watching facial expressions, and so on—and not worry about writing down what is said. Costs can be minimized by having the note-taker be an intern or lower-level staff person.

If an assessor must work solo, he or she should concentrate more on interacting with the interviewee than on taking notes, and should write (or type) more detailed information from memory immediately after each interview is completed. An assessor who takes elaborate notes while a person is speaking gives the impression of not listening.

We do not recommend tape-recording interviews. Taping often makes interviewees uneasy, and it can be complicated by technical problems: Tapes run out, batteries wear down, and so on. In addition, tape transcription takes much longer than the interview itself. If a tape recorder is used, it should be as a backup only, and permission should be obtained beforehand.

Conduct the Interviews

During the interviews, the protocol should be followed, but not too strictly. The assessor must strike a balance between

adhering to the protocol and allowing the conversation to take its own course, which may reveal important and unanticipated information. In general, it is important to ask each interviewee the main set of questions, but assessors should feel free to request clarification and ask follow-up questions as well. How far afield an interview goes is up to the assessor and may be a function of the time available.

Interview protocols usually need to be edited and supplemented with new questions as interviews proceed. The earliest interviews will often reveal information that was not anticipated. When this happens, the assessor begins to formulate an idea about how the consensus building process might be designed. Later interviewees should be given a chance to react to these ideas.

At the end of each interview, the interviewee should be asked if there is anything more he or she would like to add. The assessor should also thank everyone for their time and participation. A written summary of the highlights of the interview should be sent to each participant, to be certain that nothing has been misunderstood.

The note-taker should aim to capture the main points, in the interviewee's own language when possible. Complete, verbatim quotes, however, are not needed. It is important to record the answers to the main questions (e.g., What are your main concerns? Who are the other key players?) as well as additional, related information, such as

- the interviewee's exact involvement in the conflict,
- what the interviewee thinks of the other parties,
- what the interviewee doesn't think is important,
- the names and organizational affiliations of people mentioned by the interviewee,
- whether the interviewee thinks the media are interested in the issues,
- acronyms explained,
- concerns expressed about the convenor or the assessment process,
- the person's status within his or her organization, and
- information about nonwork affiliations.

Other information that should be written down can be gained by observation alone: level of comfort with the interview process,

nonverbal cues, and so on (Carpenter & Kennedy, 1988, pp. 82-83).

Phase 3: Analysis

By the time the interviews are complete, the assessor should have a good idea of who the central players are, what concerns them, and whether or not a consensus building process is likely to succeed. It's important that the assessor sort through the accumulated information in a methodical way, to confirm these impressions and to generate a complete report. In the analysis phase, the assessor must (1) summarize the findings, (2) map the areas of agreement and disagreement, and (3) assess the feasibility of moving forward.

Summarize the Findings

The first step in analyzing the results is to read through the interview notes and draft a summary of the concerns and interests of everyone involved. These "findings" will be included in the written assessment. They should be organized by stakeholder category (e.g., business/industry, state government, environmental advocates). Each type of stakeholder forms a heading, and the key concerns form the subheadings, under which the primary opinions of those stakeholders should be summarized. In the Delaware conflict assessment, for example, under the heading "Business and Industry" there was a subheading "What Is at Stake in the Debate." Under that subheading was this item, summarizing the thoughts of a number of the business leaders interviewed: "The future of continued heavy industry in Delaware is at stake. Plants must be allowed to expand and change in order to stay competitive and adjust to a rapidly changing marketplace" (Consensus Building Institute, 1996, p. 6).

When the findings are organized by stakeholder categories, it is easy to preserve confidentiality. No attribution is needed; the opinions and ideas are simply reported. Even if the findings are organized differently, it's important that the summary not attribute ideas or opinions to specific individuals or organizations. The summary should never include statements such as "Jane Johnson of ABC Chemicals is concerned that . . ." or even "A representative from ABC Chemicals believes that . . ." At most, the assessor could say, "Industry representatives expressed con-

cern that” This makes for inelegant writing, but it preserves confidentiality.

It is also important not to indicate which ideas or opinions represent a majority view. The purpose of the assessment is simply to set forth the range of ideas, not to polarize the debate by gauging whose views are dominant.

Map Areas of Agreement and Disagreement

Once the findings have been summarized, the assessor should make note of issues on which there is disagreement. One way to do this is with a matrix. On one axis are listed the issues in contention; on the other are the stakeholder groups. The assessor can place either Xs (indicating that the issue is a primary concern for a stakeholder group) or numbers from 1 to 5 (indicating the relative importance of the issue to the group). Matrixes are helpful to the assessor and can be included in the written assessment. Stakeholders may not agree with the priorities indicated in the matrix because not all stakeholders within a stakeholder group agree with each other. (See Figure 2.2 for a sample matrix showing the key concerns of interest groups in a hypothetical landfill-siting case.)

The assessor should also make note of potential opportunities for *mutual gain*, were the parties to enter negotiations. The concept of mutual gains is described in detail in Chapter 8, but the basic premise is this: Because stakeholders generally differ regarding which issues are of greatest importance to them, they can “trade” across those issues to create gains for each other in the negotiated agreement. In the Delaware case, for example, it may appear that there was no room for agreement because the industry groups and the environmental groups held such sharply differing opinions on almost every issue. But they did, in fact, have different priorities. Industry was most concerned that any CZA regulations provide them with the flexibility to make changes, as needed, in their manufacturing processes and products. The environmental groups, on the other hand, were most concerned that there be continuous improvement in the environmental health of the coastal zone. The final agreement gave industry the flexibility to make changes as needed, while requiring them to offset any environmental impacts from new projects

	Groundwater Contamination	Aesthetics (incl. odor)	Remediation (after closure)	Gas Leaks	Truck Traffic	Property Values	Economic Development	Tipping Fees	Profitability	Transportation Costs
State environmental regulators	X		X	X	X					
County officials	X		X			X	X			
Host town officials	X		X		X	X	X	X		
Nearby town officials	X							X		
Abutting residents	X	X	X	X	X	X				
Other county residents	X	X			X			X		
Local environmental group	X		X	X						
County businesses							X	X		
Landfill developer	X							X	X	X
Waste-hauling company	X							X	X	X

Figure 2.2. Sample Matrix of Issues of Significant Concern to Stakeholders Regarding the Siting of a New Landfill: A Hypothetical Case

with environmental improvements, either at their facility or elsewhere in the coastal zone. (The improvements had to be “worth more” than the impacts, as measured by agreed-on environmental indicators.) Each side got what it felt was most important, while giving away something of lesser importance. By mapping stakeholder interests with a matrix, the assessor may be able to spot potential trades such as this.

The assessor should also note potential obstacles to reaching agreement. These might include issues on which mutual gain does not seem possible (i.e., strongly held, mutually exclusive opinions on the same high-priority issue), deeply entrenched positions leading to illogical stubbornness, insufficient incentive to come to agreement, lack of financial support for a consensus process, and so on.

Assess the Feasibility of a Consensus Building Process

An analysis of disagreements can help to determine whether or not a consensus building process should proceed. In general, consensus building efforts are *not* likely to succeed if any of the following conditions hold.

- There are few if any areas of potential agreement among stakeholders and no obvious opportunities to trade across issues valued differently.
- One or more key stakeholders refuses to participate or has good reasons not to negotiate.
- An unrealistic deadline for reaching consensus has been imposed on the parties.
- There is a better option available (i.e., stakeholders can count on meeting their interests through other channels).
- The convenor is incapable of granting the neutral facilitator the autonomy he or she requires (or wants to control the process and the outcome solely for its own gain).
- Huge power imbalances exist among the stakeholders.
- There is no way to fund the consensus building effort.
- There is no pressure to form a consensus building process (i.e., there is no deadline, no political mandate, and no interest on the part of key stakeholders).

If just one of these conditions exists, it can usually be overcome, and a qualified recommendation to proceed may still be appropriate. For example, if a key stakeholder refuses to participate, the assessor can recommend going forward *only if* that stakeholder or someone with similar views can be convinced to take part.

“Stakeholders’ skepticism regarding the potential success of an effort is not a reason to recommend against proceeding.”

Stakeholders’ skepticism regarding the potential success of a consensus building effort is not a reason to recommend against proceeding. Most people have not been involved in consensus building efforts before and have difficulty judging whether or not such an effort is likely to be successful. Nor is the lack of a legislative or regulatory mandate sufficient reason to call a halt; most consensus building processes can operate without one.

If an assessor determines that a consensus building process is likely to be productive, the next step is to suggest the best way to proceed (Phase 4, below). If it doesn’t make sense to move forward, the assessor should write a report that explains why (Phase 5).

Phase 4: Process Design

If the assessor believes a consensus process is feasible, the next step is to produce a preliminary process design. This should take the form of a *recommendation* to be included in the conflict assessment report. The recommendation may be modified based on suggestions from interviewees after they review the draft conflict assessment. Also, the elements of a proposed process should be discussed and modified (as necessary) at the first meeting of the full group. Ultimately, a consensus building group must take “ownership” of the process in which it is involved. The inclusion of a proposed process design in the assessment report provides a starting point for discussion.

There is no analytical process that can produce the “proper” design of a consensus building effort. It is not difficult, however, to describe the elements of a typical process design and list the primary questions that need to be answered. In general, recommendations should be made regarding (1) the goals of the consensus building effort, (2) the agenda of issues to be discussed, (3) procedures for selecting the appropriate stakeholder representatives, (4) the time frame and schedule for meetings, (5)

ground rules, (6) the relationship of the process to other decision-making efforts, and (7) funding.

Goals

The assessor should suggest an appropriate mission for the consensus building effort (e.g., formulate policy recommendations, design a cleanup plan, determine a fair allocation of funds). The convenor probably has such an objective in mind, so the assessor should decide whether that objective is feasible. The assessor should suggest a modification if those goals are not appropriate given the results of the assessment. In other cases—particularly those in which a group has already begun to meet and is unclear about its purpose—it is important that the assessor recommend clear, reachable goals.

Issues to Be Discussed

The richer the array of issues on the table, the greater the possibility of negotiating mutually advantageous “packages.” This principle, of course, has its limits. Some issues may be too complex to handle in a single forum. A discussion about the quality of elementary education, for example, probably wouldn’t be appropriate in a collaborative effort aimed at cleaning up a toxic waste site next to an elementary school. In other circumstances, an issue may be too contentious to make much progress. For a policy dialogue on endangered species protection, for example, the assessors determined that it would be more productive to discuss the narrow issue of “incentives for private landowners to protect endangered species” than to take on other, highly contentious issues related to the Endangered Species Act (Keystone Center, 1995). The assessor should suggest an agenda that will allow for simplicity of discussion, and present it in the report.

Participation

In recommending who should participate, the assessor should think about inclusion and balance. All categories of stakeholders should be identified, and an approximately equal number of representatives from each major category should be determined. Ideally, the resulting mix should not be skewed toward one interest or another (i.e., a group should not include 12 industry

representatives and 1 environmentalist). The assessor's recommendations about who should be included must build on the suggestions of the interviewees as well as the assessor's judgment about the issues likely to be covered. (A newly formed consensus building group should also review representation at its first meeting and be sure that all appropriate interests are adequately represented at the table.)

Dispute resolution practitioners hold varying opinions about how large a consensus building group can be and still be productive. We will not add to the debate by suggesting an optimal group size, because we have seen groups of widely varying sizes (ranging from 5 to 100) successfully forge consensus agreements.

Time Frame and Schedule of Meetings

The assessor will be expected to make a recommendation regarding how many meetings are likely to be needed to cover the items on the agenda, when they should be held, and the order in which issues should be addressed. Meetings should be spaced at regular intervals, with adequate time between each to draft or review documents, undertake joint fact-finding, or complete other tasks. The total amount of time needed to complete a consensus building process will vary widely, depending on (among other factors)

- outside pressures constraining or driving the timeline (e.g., a statutory deadline);
- whether the situation is acute or chronic (e.g., an imminent public health threat that must be addressed or an abandoned junkyard that could be cleaned up);
- the level of interest, initiative, and energy shown by the participants;
- whether the situation is contained within a small geographic area in which people live near each other and can meet often, or a regional or national issue for which people will have to travel to meetings; and
- the level of joint fact-finding or original research needed to generate answers to the group's questions.

For a conflict that involves an acute situation, contained in a single community, for which there is a high level of interest, three

or four 4-hour meetings, spaced at weekly intervals, may be sufficient. For a conflict that involves a chronic problem, at a national level, requiring a great deal of joint fact-finding, a series of 10 or more daylong sessions over a two-year period may be required.

Ground Rules

The assessor should make preliminary recommendations regarding the ground rules that should govern the dialogue. In general, ground rules should address the following.

- How group decisions will be made (i.e., how consensus is defined).
- The roles and responsibilities of participants, the mediator(s), the convenor, and the public.
- How participants should interact with each other.
- How media inquiries will be handled.
- How working groups or subcommittees will be used and their work integrated into the efforts of the plenary.
- How draft documents will be circulated and reviewed.
- Confidentiality (if the process is not public).

In addition, ground rules should address other issues about which stakeholders might be concerned. For example, a multi-stakeholder group in Connecticut had been meeting for several months, without making much progress, when a dispute resolution practitioner was hired to conduct a conflict assessment. The assessment revealed that many stakeholders were angry that an important meeting had been canceled and rescheduled with only one day's notice. Many stakeholders missed the meeting, at which several key decisions were made. The assessor thus recommended that the group adopt a ground rule outlining a better procedure for rescheduling meetings (S. McKearnan, personal communication, May 28, 1998). (See Figure 2.3 for the ground rules used in the DNREC-convened process in Delaware.)

(text continues on page 127)

I. Purpose

The purpose of the Coastal Zone consensus-based negotiation process is to build agreement among all the stakeholding groups regarding regulations for implementing the Coastal Zone Act, 70 Delaware Code, Chapter 7. The process shall provide the Secretary of the Department of Natural Resources and Environmental Control (DNREC) clear and detailed guidance to assist the Secretary in proposing effective and long-lasting regulations to the Coastal Zone Industrial Control Board consistent with DNREC's policy goals and the Coastal Zone Act. While the process will be advisory, it is the stated intent of the Secretary to adhere to the intent of the guidance in proposing regulations if consensus is reached.

II. Representation

A. *Selection*

Members and alternates of the Coastal Zone Act Regulatory Advisory Committee are appointed by the Governor. The membership is as follows. [*Members listed here*]. Upon convening of the first full meeting of this Committee, the members will consider whether essential stakeholders are missing and if so, may nominate additional members to the Governor.

B. *Role of Members*

Members are expected to fully participate in all meetings of the Committee and to articulate their views and the views of their constituencies. They are also expected to keep constituencies informed about the deliberations and to actively seek their input. To this end, members should make an effort to stay in contact with all relevant individuals and groups with regard to the subject and the results of each meeting.

C. *Role of Alternates*

If a member is unable to attend a Committee meeting, then the member's designated alternate will sit at the table and participate in the discussion. To the extent that time permits, alternates may address the group on a particular issue under discussion. If working groups are formed, alternates may participate fully in the discussions. Alternates will be on the mailing lists and will receive copies of all meeting summaries, reports, handouts, and other documents necessary to keep informed of the process so that they will be ready at any time to participate. They are encouraged to attend all meetings in order to keep informed about the progress of the consensus group's deliberations.

D. *Role of Advisers*

Members and alternates may actively seek out the support and input of advisers who can aid them in expressing their concerns and interests and provide members the information necessary to make decisions. Advisers will not be allowed to speak for members or alternates at the table. However, they may confer with members by speaking to them away from the table during negotiations, at breaks, or when members call for caucuses with their advisers and/or constituents during the deliberations.

E. *Role of Other Members of the Public*

Meetings are open to the public, and interested citizens are invited and encouraged to attend for the purpose of observing the proceedings. Observers will be seated separately from the members, away from the negotiating table. They will not be permitted to interrupt the discussion taking place at the table. At designated times during meetings, members of the public will be invited to address the Committee.

III. Primary Responsibilities of Members and Alternates

Members and alternates agree to

1. Attend all of the regularly scheduled meetings.
2. Arrive at each meeting fully prepared to discuss the issues on the agenda. Preparation will include reviewing meeting summaries, technical information, and drafts of single-text documents distributed in advance of each meeting.
3. Present their own views and the views of the members of their constituencies on the issues being discussed and be willing to engage in respectful, constructive dialogue with other members of the group.
4. Strive throughout the process to bridge gaps in understanding, to seek creative resolution of differences, and to commit to the goal of achieving consensus.

IV. Decision Making

The purpose of the process is to share information, discuss concerns and viewpoints, and build consensus. The group will operate by consensus, and every effort will be made to meet the interests of all the participating stakeholder groups.

A. *Definition of Consensus*

Consensus means that there is no dissent by any member. There will be no formal votes taken during deliberations. No one member can be outvoted. Members should not block or withhold consensus unless they have serious reservations with the approach or solution that is proposed for consensus. If members disagree with the approach or solution selected by the rest of the group, they should make every effort to offer an alternative satisfactory to all stakeholders. Members should remain at the table during deliberations to hear the full discussions in order to make informed judgments when decision making occurs. Willful absence will be equivalent to not dissenting. Any consensus achieved on a specific issue will be tentative pending an agreement on all the issues being considered by the group.

B. *Interaction with the Secretary of DNREC*

The goal of the process is to develop written guidelines to inform the Secretary, who must promulgate a set of regulations under the Coastal Zone Act. Upon receipt of a consensus set of guidelines, the Secretary will draft the regulations. The draft regulations will be circulated to Committee members for a review for consistency with the guidance.

C. *Dispute Resolution Mechanism*

If any member, after conferring with his or her constituency, believes that any portion of the regulations has not met the intent of the consensus guidelines, the member shall contact the facilitators. Subsequently, the facilitators will assist the Secretary and the Committee members in an effort to resolve whatever differences have emerged. If a satisfactory solution cannot be achieved through informal discussion, then members may call for the reconvening of the process. As needed, the facilitators will reconvene a single meeting of the consensus-based advisory group within six weeks of the issuance of the draft regulations. All members will work with the Secretary at this meeting to resolve any and all outstanding issues. Upon acceptance of the draft regulations, or upon completion of this dispute resolution meeting (if necessary), the Secretary will forward the draft regulations to the Coastal Zone Industrial Control Board to initiate the formal promulgation process as required by law.

D. *Support for the Consensual Agreement*

If the process generates a consensus on the guidelines, members agree to support and advocate for the agreement within their own organizations and stakeholder groups as well as with the public. If consensus is reached, members agree to refrain from commenting negatively on the agreement. To the extent that the process does not reach a final consensus on some or all issues, members shall retain the right to comment negatively on those aspects of the agreement that are not based on a final consensus.

V. Communication

Participation in discussions will be restricted to the members seated at the table, unless the facilitator sets aside time on the agenda for others to speak. In order to facilitate an open and collaborative discussion, all those seated at the table will seek to abide by the following rules.

1. Only one person will speak at a time and no one will interrupt when another person is speaking.
2. Each person will express his or her own views rather than speaking for others at the table.
3. No one will make personal attacks or issue statements blaming others for specific actions or outcomes.
4. Each person will make every effort to stay on track with the agenda and avoid grandstanding and digressions in order to move the deliberations forward.
5. Each person will strive to maintain a sense of humor, listen well, and be open minded.

Members are expected to communicate concerns, interests, and ideas openly and to make the reasons for their disagreements clear. In the event that a member is unable to speak about a concern directly to another member, he or she can contact the facilitators by phone (or in person). The facilitators will serve as a channel for such concerns. Upon request, all information or views shared during conversations with the facilitators will be kept confidential.

VI. Role of Facilitators

Facilitation will be provided by the Consensus Building Institute. The members of the facilitation team will

1. Formulate the agenda for all meetings and facilitate these proceedings;
2. Conduct or coordinate any joint fact-finding required;
3. Identify and synthesize points of agreement and disagreement and communicate these in the form of written meeting summaries (see below for further detail);
4. Prepare single-text drafts of proposals between meetings to serve as a basis for deliberations;
5. Assist in building consensus among members;
6. Ensure compliance with all the ground rules;
7. Serve as a confidential communication channel for members, alternates, and observers who wish to express views but do not feel comfortable addressing the full group;
8. Advocate for a fair, effective, and credible process, but remain utterly nonpartisan with respect to the outcome of the deliberations;
9. Communicate the results of the process to the Governor and the Secretary of the Department of Natural Resources and Environmental Control; and

10. Facilitate discussions between members and the Secretary, and/or the full group, if necessary, to resolve disagreements over the Secretary's draft of the regulations.

The facilitation team will prepare a summary of each meeting. The summary will include the key points of discussion as well as items of agreement and disagreement described without attribution. A draft version will be sent to members and alternates after each meeting. Approval of the summary will occur at the following meeting, after the facilitators take note of any proposed additions, corrections, or clarifications. If substantial changes are made, a revised version will be sent to members and alternates, as well as any observers who wish to receive it. Attendance will be kept at each meeting, and a roster of those in attendance will be mailed out with each meeting summary.

VII. Working Groups

Working groups may be established to undertake more in-depth discussion or carry out discrete tasks. These working groups will meet between meetings of the full group and will report back on the results of their discussions when asked to do so. The representation, roles, and responsibilities of the members of working groups will be determined by the full membership.

VIII. Media

All meetings will be open to the public and the media. Press conferences will not be held in conjunction with these meetings. However, the facilitators may, at the request of the Committee, periodically produce press releases, for approval by the members, to keep the media informed of the deliberations.

DNREC will be responsible for ensuring compliance with the Delaware Freedom of Information Act, and will notify the public and media of Advisory Committee meetings.

Members and alternates are free to make statements to the press regarding their own opinions, but agree to not attribute statements to others involved in the process. No member or alternate should presuppose to speak for the group as a whole. In order to facilitate productive deliberations, members and alternates will make every effort to abide by the ground rules under the section "Communication" listed above while interacting with the media. If an article or report appears that misquotes or inaccurately represents an individual, that individual should inform the group of that occurrence as soon as possible.

Figure 2.3. Ground Rules for Delaware's Coastal Zone Act Regulatory Advisory Committee

Relationship to Other Efforts

Interlocking activities relating to the issues addressed in the consensus building process will undoubtedly take place before, during, and after the process. Town meetings, public hearings, elections, court cases, the promulgation of administrative rules, academic research, and even other consensus-based processes

may overlap. The assessor must determine, to the extent possible, how the consensus building process might interact with these activities. Agreement may be needed by a certain date, for example, to meet a separate but linked deadline. It may be best not to begin a consensus process until after an election, so the political landscape is clear. Or a faculty member at a local university may have a research project under way that could influence the dialogue.

Budget and Funding Mechanism

The assessor should determine and make recommendations regarding the likely cost of the process, if it goes forward. The estimate will probably be a “best guess.” It should take into account the expected costs of professional services, staff travel, meeting room rental, catering, and other administrative needs. A more precise, itemized budget can be drawn up later if the process goes ahead.

The assessor may also want to recommend to the convenor that, once a process is under way, the group appoint an executive committee to oversee whatever funds are contributed by the convenor or other parties. Money may come solely from the convening organization or from a great many sources. Either way, the funding committee should determine how the money should be spent. The group must have autonomy so that the funding is not contingent on achieving a certain result.

Phase 5: Report Writing

The analysis of the interview results and the proposed process design should be presented to the convenor and the interviewees in summary form. Some dispute resolution practitioners prefer to present their findings in an oral report. This may take less time and therefore cost less, leaving whatever funds are available for the consensus building effort itself. An oral report may also give the assessor more freedom to be candid with the convenor, although confidentiality must still be protected (McKernan, 1997, p. 9). Oral presentations may be particularly useful in those instances in which the number of parties interviewed is so small

that it might not be possible to write a detailed analysis of the results without revealing who said what. An assessor could also present his or her findings to one or more focus groups. These can be composed of stakeholders with similar interests who are in a position to give the assessor feedback on the results. This method is suggested for use in intraorganizational disputes (Costantino & Merchant, 1996, pp. 107-108). In general, however, we recommend a written report.

What to Include in a Written Report

A written conflict assessment report should include the following.

Introduction. This section should review the initiation of the assessment, naming the convenor, the assessor, the purpose of the assessment, how the assessment was conducted, the number of people interviewed, and, perhaps, a short summary of the points of agreement and disagreement among the interviewees.

Findings. As discussed previously, this section should summarize the interests and concerns of the interviewees, using language that protects confidentiality.

Analysis. This section should include the assessor's analysis of the findings, including a matrix. It should point out where stakeholders' interests overlap and where they diverge, and identify potential barriers to agreement.

Recommendations. This section should include, first, a recommendation regarding whether or not the assessor thinks a consensus building process should proceed. Second, if the assessor recommends that such an effort go forward, this section should sketch a possible process design—the work plan for proceeding. It should cover (1) the goals of the consensus building process, (2) issues to be discussed, (3) who should participate, (4) time frame and schedule of meetings, (5) ground rules, (6) relationship to other decision-making efforts under way, and (7) the budget and funding mechanism.

Phase 6: Report Distribution

“Report distribution can be used to help launch a consensus building effort.”

Report distribution can be used to help launch a consensus building effort, serving as a “springboard” to convening. The first step in distribution is to circulate the report—with the word *draft* stamped on every page—to all interviewees and the convenor. Comments should be sought on both the description of stakeholder interests and on the proposed work plan. This will enable the assessor to ensure that he or she has accurately portrayed each stakeholder’s interests and test the parties’ readiness to proceed. Once the deadline for comment has passed, the assessor should revise the draft and issue a final report.

This document can then be circulated to a wider audience, if appropriate. If a process hinges on public support, for example, the final document should be distributed to all relevant media outlets as well as the public and elected officials. A report that makes a case for a consensus building process will help strengthen public support.

If a consensus building effort is recommended, the convenor should move ahead with the selection of a mediator, a first meeting of stakeholders (to ratify the work plan, budget, and mediator selection), and the securing of adequate funds. If the assessment was conducted according to the guidelines set forth in this chapter, all the pieces should be in place to proceed.

■ *Dilemmas and Debates in the Practice of Conflict Assessment*

This section discusses the tensions that often arise during the preparation of a conflict assessment and some suggestions that experienced practitioners have to offer about how to handle them. Included are a review of how to handle perceived conflicts of interest, how to structure a relationship between the assessor and the convenor, how media contact should be handled, and what conflict assessments typically cost.

Conflict Assessment as an Educative Process

We believe that a conflict assessment is, willy-nilly, an educative process. Stakeholder interviews should always touch on what consensus building is and what it takes to make a process work. Although consensus building is more common these days, stake-

holders are still relatively unfamiliar with the concept. In addition, many groups are represented by inexperienced negotiators. Those in positions of leadership are likely to be familiar with the traditional adversarial approach to dealing with differences, but not with the mutual gains approach outlined in Chapter 8. Because this is true, we consider it to be a responsibility of the assessor to help those with less knowledge and experience think about creating the right conditions for effective participation. Some may need negotiation training. Some may require financial support to cover travel expenses. The assessor can help by offering all parties “off-line” training (or finding another qualified professional to provide this help) or by working with the parties to identify financial support.

An assessor must be careful not to jeopardize his or her neutrality. It is not appropriate, for example, for the assessor to give “extra” information, advice, or training to one stakeholder or group but not to the others. All should be treated equally, even though they may have different needs and levels of ability. The assessor should offer negotiation training to all stakeholders, for example, not just those who need it most.

Assessors should not offer strategic advice to one “side” during an assessment process either (e.g., “Push hard on Issue X but not on Issue Y to achieve your goals”). In our view, this is a clear ethical violation. The assessor should ask questions that force each stakeholder group to think hard about its options (e.g., “What is your best alternative to a negotiated agreement? What makes you think that? What do you think the most important issues are for other stakeholders?”). But questions like these should be asked of all parties, to ensure fairness.

Dealing with Perceived Conflicts of Interest

Part of an assessor’s job is to make a recommendation about whether or not to proceed with consensus building. Yet most assessors are experienced mediators who hope to be selected to facilitate the process if it goes forward. It would appear, therefore, that the assessor has an inherent incentive to recommend that a group be convened.

There is a simple—though problematic—way to avoid this possible conflict of interest: The assessor can be prohibited from competing for the consensus building contract. Such a prohibition, however, would undermine one of the primary purposes of

a conflict assessment, which is to build relationships. In the course of an assessment, the assessor works to build the trust of the stakeholders. This trust is essential for mediating successfully. Any new mediator would have to start from scratch (which is practically impossible once the process has begun).

But a general recommendation about whether or not to proceed is not the primary purpose of a conflict assessment. (It may be clear, for example, that some sort of consensus building process is desirable.) In these instances, the primary purposes are to build relationships, secure stakeholder participation, and develop a work plan. There is no conflict of interest, therefore, if the outcome is more or less predetermined and everyone expects the assessor to mediate the process that follows.

In situations in which the feasibility recommendation is, indeed, the primary focus, it is not uncommon for the assessor to recommend *not* proceeding (C. Pou, personal communication, December 11, 1997). In fact, one study revealed that, of 81 environmental disputes in which mediators sought to intervene, 57 were found during the assessment phase to be inappropriate for mediation. Another 16 never got past a first organizational meeting. Mediation was pursued in only 11 percent of the cases that were fully assessed (Buckle & Thomas-Buckle, 1986, p. 61). It is also common for conflict assessments—as in the Delaware case—to recommend going forward only if certain conditions can be met. Assessors, too, have an interest in ensuring that a process that does continue has a good chance of succeeding.

“Assessors only make recommendations; they do not have decision-making authority.”

It should be remembered, as well, that assessors only make recommendations; they do not have decision-making authority and cannot force the parties to proceed. Also, if a written report is submitted, the assessor’s findings and analysis will be thoroughly reviewed by the convenor and the stakeholders. There has to be a basis, on the merits, for going forward. This is the best safeguard against potential conflict of interest.

The Relationship with the Convenor

The assessment and the final report should be used to help the convenor survey the complexities of the conflict at hand. We do not assume that a convenor is knowledgeable about mediation or consensus building. Indeed, the concept of neutrality, the principles of mutual gains negotiation, and the definition of

consensus will probably all need to be explained. Furthermore, the convenor and the assessor usually need to discuss what the convenor's role actually is. The assessor's insights are extremely useful to the convenor.

The contract between the convenor and the assessor should specify that a conflict assessment involves an independent analysis based on the professional judgment of the assessor. This means that it is the assessor's call as to who should be interviewed, what should be asked, and how the findings should be interpreted.

Even with a signed contract, the relationship between the assessor and the convenor can be tricky, and occasionally it turns sour. For example, a convenor may want to rewrite the assessment report so that the recommendations reflect his or her own conclusions. Or the convenor may insist, after a draft is completed, that the assessor interview additional stakeholders or present the concerns of a certain group in a different way. Most will say no to such requests.

The best solution to problems of this sort is prevention. Through open communication before and during the assessment process, these difficulties can usually be avoided. But if a conflict does emerge, the assessor should negotiate with the convenor, using the mutual gains approach outlined in Chapter 8 (and, perhaps, with the assistance of another mediator). The assessor may have to take a hard line and opt out. If an assessor is forced to abandon the process, he or she should let the interviewees know what has happened (in general terms), being careful to leave the door open for a return if the convenor has a change of heart.

Dealing with the Media

Media attention can complicate a conflict assessment, in part, because it can undermine a promise of confidentiality. Therefore, there is rarely a reason for an assessor to seek media attention—at least not until an assessment has been completed.

The media are interested in “news,” and conflict assessments are not really newsworthy until a decision has been made to go forward. If the subject of a conflict assessment is highly controversial, however, the media may take an interest. If a reporter does call during an assessment process, the assessor should focus on the purpose of the assessment, including its timing, the types of stakeholders being interviewed, and the qualifications of the

convenor. The assessor should definitely not characterize the concerns of the stakeholders, name the interviewees, or offer a preview of his or her recommendations. Interviewees, of course, are entitled to speak with the media about their own views, but they should be advised not to talk about their attitudes toward others being interviewed. Once a written conflict assessment has been prepared, the assessor and the convenor may wish to release it to the media, as discussed in the previous section, “Report Distribution.”

If media coverage does follow and this escalates interviewees’ concerns, those fears can be assuaged. The assessor should encourage stakeholders to talk to others involved in previous conflict assessments and to review completed assessments. They will quickly realize that even if word does get out about the recommendations contained in a conflict assessment, the parties retain the sole authority to decide whether to go ahead or not and to set the terms for the conversation.

The Cost of a Typical Conflict Assessment

Costs depend on the fees of the assessor and the number of interviewees. Convenors often prefer a fixed-price contract to an open-ended one based on hourly rates. The cost of a fixed-price contract is generally determined by multiplying the daily or hourly fee of the assessors by the amount of time required to arrange and conduct interviews, analyze the results, write the report, and revise it in light of comments received. The costs of travel, long-distance calls and faxes, and related administrative overhead must also be factored in. It is customary for all costs to be covered by the convening organization.

Assessors’ fees vary. An informal survey done in 1998 found that dispute resolution practitioners’ fees depend on their level of experience and their clients’ ability to pay. Fees for senior-level mediators averaged between \$130 and \$190 per hour. Average hourly rates for midlevel mediators were \$75 to \$110, and fees for entry-level practitioners ranged from approximately \$50 to \$70 per hour (Thomas-Larmer, 1998, p. 5).

In making a rough forecast of costs, it’s best to figure about six hours per interviewee (including the time needed to arrange the interviews through revision of the completed document). So an assessment that includes interviews with 25 people will require

roughly 150 hours to complete. At an average cost of \$100 per hour, the assessment would cost \$15,000 plus expenses.

The assessment in the Delaware case, in which 53 people were interviewed, cost just under \$30,000. The high cost was due in part to the fact that the assessment was conducted by a four-person team led by a senior-level consultant who charged about \$200 per hour. At the other end of the spectrum, we recently conducted a conflict assessment for a multistakeholder negotiating group in Connecticut that required interviewing 25 people, and it cost \$9,800. Not only were there fewer interviews, but we used lower-level staff, charged lower daily fees, and minimized expenses in a variety of ways. The typical cost of a conflict assessment in a public policy dispute is somewhere between these two extremes—about \$15,000.

■ *Conclusion*

As consensus building becomes more widespread, convenors, stakeholders, and even mediators may assume that conflict assessments are unnecessary. They may think they know from experience how to spot the likely stakeholders and how every process should be structured. This would be a serious mistake. Each potential effort must be designed anew. In fact, conflict assessments may become even more important as the public learns more about consensus building and becomes more comfortable with it. We hope they will become more discriminating, rejecting processes that are likely to be inefficient and demanding appropriately tailored processes in each case. Conflict assessments should ensure that every consensus building effort gets off to a good start. Every dispute resolution practitioner should be skilled in conducting conflict assessments, since assessments are, and will continue to be, crucial to the success of all consensus building efforts.

■ *Notes*

1. It should be noted that the term *issues assessment* has a different meaning in the realm of international treaty negotiations. In that setting, it means an effort by a neutral to gather the best available information on a given set of issues, without reference to the interests or concerns of the parties. It is

used, in particular, in highly technical matters in which stakeholders have very unequal levels of scientific knowledge and capabilities.

2. In inquiring about the history of a situation or conflict, the assessor should ask interviewees whether or not the press has covered the issue in the past or is likely to if a consensus process moves forward. Chapter 11 describes in detail how a mediator, during a conflict assessment process, should consider issues relating to the potential coverage of a consensus building effort by the media.

3. Moore (1986, pp. 90-94) includes a thorough and very useful discussion of the types of questions that can be used in these interviews.

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