

**LAW STUDENTS AS FUTURE LEADERS:  
USING NEUTRAL FACILITATION TECHNIQUES TO TEACH  
LEADERSHIP SKILLS**

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I. INTRODUCTION

Lawyers lead in America. They always have. They probably always will. This Article suggests the reasons why. It also argues that if lawyers are destined to lead, then law schools should help law students develop an understanding of leadership theory and foster leadership skill development. The Article describes how a course called “Lawyers as Leaders” is taught at the West Virginia University College of Law, employing neutral facilitation techniques, as well as lectures, group discussions, journaling, and simulation activities. It then describes a powerful pedagogical tool that can be used to develop future leaders: “student-centered neutral facilitation.” It explains why neutral student-centered facilitation is an effective method for teaching leadership skills to law students. The Article begins and ends with two “facilitation stories,” highlighting the use

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of facilitation by experienced lawyers and law students alike. The first story is about the use of facilitation to help clients achieve their goals. The second is about a student in the midst of learning how to facilitate a discussion.

## II. THE FIRST FACILITATION STORY

Tom, a senior partner in a law firm that represents many health care organizations, is called to the offices of one of his clients, an academic medical center. He learns that the center's leadership wants to review how it can best contribute to helping the state address one of the more serious problems faced by policy makers in Appalachia today—opioid abuse and addiction. Most policy makers in the state and at the center are familiar with the problem, and many are addressing it in different ways. They are aware that state policy makers, including the Governor, legislators, law enforcement groups, prosecutors, addiction centers and clinics, and other health care organizations are launching initiatives to address the associated problems, but progress is slow. Coordination is needed. The medical center executives are struggling to prioritize their efforts. They have this nagging sense they can do more, and should, but they want to pause and reflect before they expend more resources on the problem.

The center's executives know of Tom's background in health care law and programs. They trust him. They also know that he is recognized as an expert facilitator, someone who is experienced at working with diverse inputs to achieve meaningful outputs. He has helped dozens of boards and organizations work through thorny problems. The conversation leads to the formulation of a plan for a statewide series of facilitated discussions involving those who are genuinely concerned and want to help. A pilot meeting is held in a nearby community. A diverse group of individuals representing those with firsthand knowledge of many aspects of the problem attend by invitation. Tom designs the meeting's format, including a "Process Agreement" to keep the meeting on track. He is introduced by his client and assisted by a graduate student, who will take notes and write a report.

The conversation among the community's most important leaders is open and honest. Meaningful ideas flow. The group agrees to meet again and asks Tom if he will meet with them—they sense they may be on to something. They feel that the medical center really cares and that Tom is the right leader to help them refocus their efforts. As Tom drives home, he recalls a law firm meeting three decades ago when he and others were introduced to the idea of neutral facilitation and related skills and processes by an engineer who teaches project management. He realizes that the meeting changed his life and the lives of many of his clients.

### III. LAWYERS AS LEADERS

Lawyers are found leading in nearly all domains of American life. They, of course, lead in all law-related institutions.<sup>1</sup> Lawyers lead in private practice law firms, public interest law organizations, the judiciary, government law departments, corporate law departments, union legal offices, law schools, and other law-oriented positions.

Lawyers also often serve in positions that provide leadership to society as a whole. For example, leadership positions occupied by lawyers include those in the executive branches of government, such as President of the United States.<sup>2</sup> Similarly, lawyers are often the leaders of America's thousands of legislative bodies.<sup>3</sup>

Lawyers lead in many other domains. They regularly lead business organizations,<sup>4</sup> and they often occupy volunteer sector leadership positions.<sup>5</sup> Diplomatic,<sup>6</sup> military,<sup>7</sup> and journalistic organizations<sup>8</sup> also host a number of lawyer-leaders. Men and women with legal training sometimes fill leadership positions in higher education as well.<sup>9</sup> Lawyers even emerge as college athletic

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<sup>1</sup> The term "lawyer" is generally used in this Article to mean those who have a legal education, whether they work as a licensed lawyer, in a law-related activity, or in a field in which the doctrinal knowledge and skills learned in law school simply prove helpful.

<sup>2</sup> Twenty-five of the 45 U.S. Presidents have been lawyers. Dan Slater, *Barack Obama: The U.S.'s 44th President (and 25th Lawyer-President!)*, WALL ST. J.: L. BLOG (Nov. 5, 2008, 9:16 AM), <http://blogs.wsj.com/law/2008/11/05/barack-obama-the-uss-44th-president-and-24th-lawyer-president/>.

<sup>3</sup> In recent decades, lawyers made up almost half of U.S. congressional membership. Deborah L. Rhode, *Lawyers and Leadership*, 20 PROF. LAW., no. 3, 2010, at 1; see also Neil W. Hamilton, *Ethical Leadership in Professional Life*, 6 U. ST. THOMAS L. J. 358, 361 (2009).

<sup>4</sup> Approximately 18% of the CEOs of Fortune 50 companies are lawyers. See Mark Curriden, *CEO, Esq., A.B.A. J.*, (May 1, 2010, 9:50 AM), [http://www.abajournal.com/magazine/article/ceo\\_esq/](http://www.abajournal.com/magazine/article/ceo_esq/).

<sup>5</sup> See Willard L. Boyd III, *Lawyers' Service on Nonprofit Boards: Managing the Risks of an Important Community Activity*, A.B.A.: BUS. L. TODAY, <https://apps.americanbar.org/buslaw/blt/2008-11-12/boyd.shtml> (last visited Sept. 12, 2017).

<sup>6</sup> See William Bodde, Jr., *Lawyers and Diplomats: Some Personal Observations*, 5 NW. J. INT'L L. & BUS. 40 (1983).

<sup>7</sup> Jim Martin, *Armed Forces Day – U.S. Military Leaders Who Also Were Lawyers*, LOC (May 18, 2017), <https://blogs.loc.gov/law/2017/05/armed-forces-day-u-s-military-leaders-who-also-were-lawyers/>.

<sup>8</sup> Peter Scheer, *David Snyder, Journalist and First Amendment Lawyer, Named to Head FAC*, FIRST AMEND. COALITION (Nov. 18, 2016), <https://firstamendmentcoalition.org/2016/11/david-snyder-journalist-first-amendment-lawyer-named-head-fac/>.

<sup>9</sup> Since the late 1980s, leading institutions have trended toward selecting lawyers as university presidents. See Julie Johnson, *Universities Looking to Lawyers for Leadership*, N.Y. TIMES: THE

directors.<sup>10</sup> In short, lawyers appear in leadership positions in almost every field of endeavor in the United States.

Since the nation's founding, observers have noted the importance of lawyers in its leadership cadre. One of the most prominent of these was Alexis de Tocqueville, who came from France to study our new nation in the 1830s.<sup>11</sup> He noted the special status of lawyers in America and, in doing so, cited the reasons why such a status had likely been achieved, even in the earliest years of our country's history:

The special information that lawyers derive from their studies ensures them a separate rank in society, and they constitute a sort of privileged body in the scale of intellect. This notion of their superiority perpetually recurs to them in the practice of their profession: they are the masters of a science which is necessary, but which is not very generally known; they serve as arbiters between the citizens; and the habit of directing to their purpose the blind passions of parties in litigation inspires them with certain contempt for the judgment of the multitude.<sup>12</sup>

Almost 150 years later, Harvard Law Professor A. James Casner made a similar observation about the propensity of lawyers for leadership.<sup>13</sup> Professor Casner commented, "[T]hrough some combination of chromosomes and professional training, lawyers tend to come to the top of the barrel in the shaking and jolting of competition for authority."<sup>14</sup>

There are many definitions for "leadership." James MacGregor Burns described leadership not as a set of specific behaviors but rather as a process by which "leaders and followers raise one another to higher levels of motivation and morality."<sup>15</sup> Not dissimilarly, Stanford Professor and prominent leadership scholar Deborah L. Rhode views leadership in terms of the "traits, processes, skills, and relationships" that allow a leader to guide, direct, or compel others, while obtaining their commitment.<sup>16</sup> Because leadership takes place in all

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LAW (Dec. 25, 1987), <http://www.nytimes.com/1987/12/25/us/the-law-universities-looking-to-lawyers-for-leadership.html>.

<sup>10</sup> Katie Thomas, *Experience in Sports Optional for New Leaders*, N.Y. TIMES (Feb. 1, 2010), <http://www.nytimes.com/2010/02/02/sports/02athletics.html>.

<sup>11</sup> ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA*, at xv (Henry Reeve trans., Phillips Bradley, ed., Alfred A. Knopf, Inc. 1994) (1835).

<sup>12</sup> *Id.* at 273.

<sup>13</sup> A. JAMES CASNER & W. BARTON LEACH, *CASES AND TEXT ON PROPERTY 2* (3d ed. 1984).

<sup>14</sup> *Id.*

<sup>15</sup> JAMES MACGREGOR BURNS, *LEADERSHIP* 20 (1979).

<sup>16</sup> DEBORAH L. RHODE & AMANDA K. PACKEL, *LEADERSHIP: LAW, POLICY, & MANAGEMENT* 6 (2011).

domains of expertise, including law, the concept of leadership put forth in this Article includes skills and traits that can be effective across domains of expertise.

Several sets of factors help explain why lawyers are so commonly thrust into leadership positions. First, there are factors related to *attitudes and predispositions* that cause persons ambitious for the opportunity to lead to “self-select” into the legal profession. Some of these factors are perhaps related to the “chromosomes” cited by Professor Casner.<sup>17</sup> Regardless of the source of these attitudes and predispositions, they are—without question—part of the psychological profile of many lawyers. For example, lawyers and leaders often share the interpersonal skills often referred to as “emotional intelligence.”<sup>18</sup> In other words, the same personality traits that make up the emotional intelligence of good leaders (such as self-confidence, trustworthiness, and a drive to achieve) also make a good and effective lawyer. Along the same lines, good lawyers and good leaders also share “charisma.” They have that special quality that seems to attract not only clients and jurors but also other followers. In addition, lawyers regularly deal with uncertainty and ambiguity, and often lawyers are comfortable dealing with ambiguity, a known leadership skill. Similarly, leadership usually takes place in a competitive arena, and lawyers are competitors. Finally, and as noted by de Tocqueville and others,<sup>19</sup> lawyers hold a special status in American society, and status is often fuel for aspiring leaders.

It is also worth noting that the law is an “opportunistic” profession in that it keeps one’s career options open. Many who choose to pursue a law degree desire career mobility and ultimately find it in the profession. Law students tend to see a law degree as a “generalist” education (much like an MBA or MPA degree) that can open a variety of avenues for advancement, rather than narrow career paths. Many lawyers, like most important leaders, are not content to stay in the same place for their entire lives: they want movement, new challenges, and constant change in their lives.

A second group of factors that thrust lawyers into positions of leadership relates to the *skill sets* they are taught in law school and acquire during years of practice. For example, leaders must face disputes among constituencies, and dispute resolution skills are part of the lawyer’s tool kit. These skills are related not just to formal litigation, but also to activities such as negotiation, mediation, arbitration, and formal facilitation. If lawyers traffic in anything, it is dispute resolution in the courtroom, the boardroom, and the client’s office.

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<sup>17</sup> See CASNER & LEACH, *supra* note 14.

<sup>18</sup> Psychology professors Peter Salovey and John D. Mayer coined the term “emotional intelligence” in 1990, describing it as a “subset of social intelligence that involves the ability to monitor one’s own and others’ feelings and emotions, to discriminate among them and to use this information to guide one’s thinking and actions.” See Peter Salovey & John D. Mayer, *Emotional Intelligence*, 9 IMAGINATION, COGNITION, AND PERSONALITY 185–211 (1990).

<sup>19</sup> DE TOCQUEVILLE, *supra* note 12.

Additionally, most lawyers develop problem-solving abilities and analytical skills. The ability to think through problems, study complex fact patterns, sort out the most important facts, and suggest an outcome by applying particular facts to a general rule is perhaps the most traditional skill associated with lawyers. Finally, both lawyers and leaders must communicate well with their constituencies. All law students are taught to communicate: in writing, orally, and non-verbally. The closing argument, the able brief, the serious interview, the gestures during cross examination, and other activities continuously hone a lawyer's communication skills. Like critical thinking skills, communication skills often improve over the course of a career.

A third group of factors relates to the *work* lawyers do. For example, law is a profession, and, thus, it has an ethical dimension. Most lawyers deal daily with ethical problems, and they are often sensitive to ethical concerns and conflicting duties. Leaders frequently encounter similar concerns. Moreover, lawyers develop judgment as to when to take a stand, along with the courage to do so. Most are comfortable with public scrutiny, and they are comfortable engaging in advocacy in a public setting. Additionally, the ever-increasing commercial demands of law practice foster enhanced efficiency and management skills. Lawyers learn to manage their time and to allocate it as a valuable resource; they develop priorities by necessity and habit. Finally, the nature of their work exposes lawyers to the basic decision-making institutions of our society. These institutions include not only the three branches of government, private business, and the volunteer sector, but also the more basic moral fabric of our society and related institutions, such as the family and marriage. Lawyers acquire this kind of information when enrolled in law school and when practicing law; it is cumulative.

Finally, lawyers become leaders because of the very nature of our society: we are a "nation of laws."<sup>20</sup> Our society is complex and demands good leaders at many levels. An understanding of legal matters and legal compliance is essential to the smooth operation of our federalist and constitutional systems of government. And, as de Tocqueville intimates, in a nation of laws, in the absence of a monarchy, those in the legal profession emerge as the "aristocracy of the meritocracy."<sup>21</sup> Thus, it takes not only laws, but also lawyers, to make America work.

My list of factors that thrust lawyers into leadership positions is certainly not exhaustive, but it is illustrative. Not all lawyers are good leaders. But by reason of their attitudes and predispositions, their skill sets, their work, and the

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<sup>20</sup> See generally PETER CHARLES HOFFER, *A NATION OF LAWS: AMERICA'S IMPERFECT PURSUIT OF JUSTICE* (University Press of Kansas 2010) (discussing the history and importance of law in America); see also David Davenport, *A Nation of Laws, Not Men*, Hoover Institution (Sept. 2, 2013), <http://www.hoover.org/research/nation-laws-not-men>.

<sup>21</sup> DE TOCQUEVILLE, *supra* note 12, at 272–73.

very nature of the capitalistic and entrepreneurial society in which we live, many lawyers have the opportunity to lead—and choose to do so.

If one accepts the premise that lawyers lead in America and likely always will, it follows that legal education must be responsive to the fact that lawyers lead, both in the profession and in society as a whole. Today, legal academics and educators are showing a renewed interest in the phenomena of lawyers as leaders. Ben Heineman, former Senior Vice President and General Counsel for General Electric Company and Distinguished Senior Fellow for Harvard Law School's Program on the Legal Profession,<sup>22</sup> wrote in 2007 about the need for law schools to “more candidly recognize the importance of leadership” for lawyers and to “more directly prepare” young lawyers for leadership roles.<sup>23</sup> Heineman wishes to redefine and re-emphasize “the concept of ‘lawyer’ to include ‘lawyer as leader.’”<sup>24</sup> From 2009 to 2013, the Santa Clara University School of Law hosted an annual “Leadership Education Roundtable,” a national conference on leadership education and training for American law students and lawyers.<sup>25</sup> And, in 2012, its law review published a symposium issue on the topic—the first collection of articles on leadership education for lawyers in an American law review.<sup>26</sup>

This Article supports the notion that law school faculties need to be challenged to examine the nature and usefulness of the curriculum they teach. Today, many are asking about the subject of leadership. Perhaps unsurprisingly, Professor Heineman has argued that while law schools should continue to teach core legal competencies, “they should more systematically teach, in tandem with others, the ‘complementary competencies’ required for students who . . . will likely have diverse careers and hopefully achieve positions of leadership and responsibility” across many domains.<sup>27</sup>

Of course, not all law schools have the same mission, resources, or capabilities. The faculty of each school must set its own institution's unique strategic direction. Questions related to the anticipated careers of the student body and the appropriate curriculum need to be asked, however, at every college

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<sup>22</sup> Benjamin W. Heineman, Jr., CSIS, <https://www.csis.org/people/benjamin-w-heineman-jr> (last visited Sept. 12, 2017). Mr. Heineman is currently a Senior Fellow of the Belfer Center for Science and International Affairs at the Harvard John F. Kennedy School of Government. *Id.*

<sup>23</sup> Ben W. Heineman, Jr., *Lawyers as Leaders*, 116 YALE L.J. POCKET PART 266 (2007) [hereinafter *Lawyers as Leaders*], <http://yalelawjournal.org/forum/lawyers-as-leaders> (last visited Sept. 12, 2017).

<sup>24</sup> *Id.*

<sup>25</sup> *Leadership Roundtable*, SANTA CLARA UNIV., <http://law.scu.edu/leadership/roundtable/> (last visited Sept. 12, 2017).

<sup>26</sup> Donald J. Polden, *Symposium on Leadership Education for Lawyers and Law Students*, 52 SANTA CLARA L. REV. 685 (2012).

<sup>27</sup> *Lawyers as Leaders*, *supra* note 24.

of law. The profession can no longer overlook the potential that lawyers have to make major contributions as leaders in many domains of expertise and in our society as a whole. A course in leadership is an essential supplement to the more traditional curriculum, which typically emphasizes litigation and the adversarial system. Accordingly, law schools must implement curricular changes that not only teach leadership skills but also inspire young lawyers to pursue leadership roles.

In recent years, leadership courses, institutes, and fellowships have begun to spring up in many law schools. A fall 2017 review of the course catalogues on the websites of the “Top 40” ABA-accredited law schools indicates that 21 offer courses related to crisis management, corporate or law firm management, collaborative decision-making, and other leadership-related topics. Only 13, however, offer courses devoted explicitly to leadership.<sup>28</sup> These leadership courses teach law students critical practice skills that are not normally taught anywhere else in the traditional law school curriculum. One such skill is the use of neutral facilitation techniques, which I teach in my *Lawyers as Leaders* course at the West Virginia University College of the Law.

This Article supports the application of student-led neutral facilitation techniques as a primary method of teaching leadership skills and theory in law schools. While originally conceived as one of the skills that should be taught in my *Lawyers as Leaders* course, facilitation is now not only taught as a skill in and of itself, but it is also used as a pedagogical vehicle to teach other theories and skills lawyers will need during the course of their careers. The Article ultimately argues that, collectively, student-led neutral facilitation techniques comprise an effective method for teaching leadership theory and skills to law students.

After teaching *Lawyers as Leaders* for several years, I have come to realize the obvious: second- and third-year law students who enroll in a class that purports to teach leadership theory and skills do so with some degree of understanding of what leaders do and readiness to learn. In part, this is because of the self-selection process that leads one to apply to law school. They also benefit from their prior degree preparation and work experience. Thanks to the first-year classes, they come to an upper-level leadership class with a basic doctrinal understanding of the major areas of the law and some knowledge of how disputes are resolved with the help of lawyers. They also know how to write fairly well, how to analyze problems, and how to orally communicate their views in the context of advocacy. They may have had exposure to leaders in various contexts. They often conceive of themselves as future leaders.

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<sup>28</sup> The Author used U.S. News’s 2017 ranking of the best law schools in the United States in order to conduct this review. See *Best Law Schools*, U.S. NEWS: EDUC., <https://www.usnews.com/best-graduate-schools/top-law-schools/law-rankings> (last visited Sept. 12, 2017).



The West Virginia University College of Law Lawyers as Leaders class uses several tools to offer students the next step: an understanding of the basic skills and theoretical formulations they will need as leaders. The goals of the class include a readiness to take on leadership roles and lead effectively. To facilitate instruction, the class members are randomly assigned to one of four teams of eight students. Throughout the semester, groups are asked to engage in simulation problems, theory, and planning discussions. Students take turns leading the discussions using neutral facilitation techniques, which are a primary focus of this Article and which are discussed in-depth in Section IV.<sup>29</sup> Throughout the semester, a total of eight topics are discussed using neutral facilitation techniques. Each student submits a written report on his or her experience to the instructor, who has observed the facilitated discussion. The instructor prepares a short, written assessment of the facilitation based on the facilitation leader's report and the observed behaviors.

Effective leaders are thoughtful. The class also encourages introspection through a journaling requirement. The eight subjects for the journal range from why they are enrolled in the course to their own career aspirations. The class also encourages self-awareness using StrengthsQuest, a personality assessment tool published by the Gallup Organization.<sup>30</sup> Students are encouraged to recognize and refine their own talents and strengths as well as the collective talents of the teams to which they are assigned. The focus on their individual and collective talents encourages listening by other students who have strengths that are different than their own.

With the class tools at hand (a journal, facilitation skills, and self and collective awareness), the class unfolds throughout the semester. Theory topics are introduced using an established leadership text and selected readings.<sup>31</sup> Socratic lectures and guest speakers and panels provide the context for, and examples of, effective leadership. A time keeping exercise underscores the

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<sup>29</sup> See discussion *infra* Section IV.A.

<sup>30</sup> See DONALD O. CLIFTON & EDWARD ANDERSON WITH LAURIE A. SCHREINER, STRENGTHSQUEST: DISCOVER AND DEVELOP YOUR STRENGTHS IN ACADEMICS, CAREER, AND BEYOND (Gallup Press 2d. ed. 2006). In the context of StrengthsQuest, a "talent" refers to "a naturally recurring pattern of thought, feeling, or behavior that can be productively applied," while a "strength" is "the ability to provide consistent, near-perfect performance in a given activity." *Id.* at 2, 4. Gallup has found that top achievers "recognize their talents and build on them to develop [their] strengths." *Id.* at 8 (emphasis omitted). In other words, individuals develop "strengths" by identifying their greatest natural talents and then supplementing them with knowledge and skill until they "can provide consistent, near-perfect performance in a given activity." *Id.* at 4. The StrengthsQuest method encourages individuals to "apply their greatest talents in roles that best suit them" and even to "invent ways to apply their greatest talents to their achievements." *Id.* at 8 (emphasis omitted).

<sup>31</sup> The Author's Lawyers as Leaders course uses Deborah L. Rhode's and Amanda Packel's LEADERSHIP: LAW, POLICY, & MANAGEMENT (2011).

importance of time awareness and budgeting. Simulations are constructed to introduce forms of planning, risk management, and crisis management. Ethical dilemmas are also discussed.

The course grade is based on the quality and depth of journal responses, the leadership provided during the facilitation exercise and related self-evaluation, and individual contributions to class discussions, including those related to how the course pedagogy might be improved.

#### IV. NEUTRAL FACILITATION TECHNIQUES<sup>32</sup>

##### A. *What is neutral facilitation?*

In this context, the term “facilitation” refers to any activity that makes tasks for others easier. Facilitation, in the forum of discussion leadership, is used in many group settings (including business, education, government, and other organizations) to ensure the running of successful meetings and workshops. At its core, effective facilitation seeks to get the best outputs from a group’s diverse inputs.<sup>33</sup> It is now commonly understood that law firms and other organizations are likely to advance toward their ultimate goals faster if they embrace, practice, and foster diversity within their ranks. The concept of diversity as used herein involves broad-based participation in decision-making by everyone in an organization, respecting each individual’s unique perspective, and learning to value diversity dimensions such as race, ethnicity, socioeconomic status, and physical abilities. Diversity also includes the individual learning and leadership styles of the persons in a group. For instance, some lawyers are highly analytical

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<sup>32</sup> The Author wishes to acknowledge the contributions to our collective understanding of the concept of neutral facilitation techniques made by Dr. Jack Byrd, Professor of Industrial Engineering at the Statler College of Engineering and Mineral Resources at West Virginia University and President of the Interactivity Foundation, a nonprofit organization. Dr. Byrd, an engineering professor for nearly 50 years, has taught many courses related to facilitation and using facilitation techniques. Interview with Jack Byrd, Jr., Professor of Indus. Eng’g, Statler Coll. of Eng’r & Mineral Res, W. Va. Univ. (Nov. 4, 2016). He advises freshmen and teaches over 2,000 students each year. *Id.* He also created and teaches courses in subjects related to facilitation, project management, and team building. *Id.* The Author was taught facilitation skills by Dr. Byrd in private practice when the law firm with which he was affiliated launched efforts to improve the quality of its work in the 1980s and 1990s as part of the Total Quality Management (TQM) movement. Dr. Byrd’s efforts are widely recognized by his current and former students: in a recent survey of industrial engineers conducted by his college, 90% of the alumni responding rated the course in facilitation as “very important” (70%) or “important” (20%) to their careers. *Id.* Much of the material in section IV of this Article is based on the lectures and writings of Dr. Byrd.

<sup>33</sup> For more on the advantages to any organization of diversity and inclusiveness, see David C. Hardesty, Jr., *Getting the Best Outputs from Diverse Inputs*, in VIEWS & VISIONS 4–5, 44 (2011), [http://www.bowlesrice.com/media/vision/20\\_VIEWSandvisions\\_celebrate-Diversity\\_fall\\_2011.pdf](http://www.bowlesrice.com/media/vision/20_VIEWSandvisions_celebrate-Diversity_fall_2011.pdf).

in their approach to problem-solving and want data and factual support before acting; others are willing to take a risk and try a new approach when the result cannot be predicted with certainty.

Both the diversity of group membership and the excellent facilitation of group efforts are necessary to achieve organizational excellence. In particular, facilitation skills ensure that lawyers can get the best out of meetings with teams, clients, and other groups with diverse personalities. The facilitation approach creates what has been called a “culture of inclusiveness,” in which discussion participants listen to and respect diverse inputs in an effort to achieve maximum outputs.<sup>34</sup> By stimulating different points of view, effective facilitators can help a diverse group of individuals become a partnership that can work collaboratively. In short, facilitation helps groups get the best outputs from diverse inputs.<sup>35</sup>

To that end, a facilitated meeting is successful when the participants have truly learned from others and developed insights as a group that they could not have developed as individuals. The so-called “wisdom of the crowds” advantage occurs when the *collective* opinion of a group of individuals is “better” than that of any single member of the group.<sup>36</sup> In other words, the individuals in a group pool their abilities, which results in a decision based in collective thinking and intelligence. This notion also reinforces what we know about diversity: a group tends to make its best decisions if it is made up of members with diverse perspectives and opinions.

*B. What is a facilitator?*<sup>37</sup>

There are a variety of definitions for “facilitator.” National facilitation consultant and trainer Ingrid Bens, M.Ed., defines a facilitator as “[o]ne who

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<sup>34</sup> See *id.* at 44.

<sup>35</sup> *Id.*

<sup>36</sup> See JAMES SUROWIECKI, *THE WISDOM OF CROWDS* 3–22 (2004). Surowiecki argues that “chasing the expert is a mistake . . . We should stop hunting and ask the crowd (which, of course, includes the geniuses as well as everyone else) instead. Chances are, it knows.” *Id.* at xv.

<sup>37</sup> The Author wishes to acknowledge the contributions to our collective understanding of facilitation techniques made by Dr. Carl Hadsell, Ed.D., and Managing Director of the Center for Entrepreneurial Studies and Development, Inc. (CESD), a nonprofit organization affiliated with West Virginia University. Dr. Hadsell is also an adjunct instructor in Industrial and Management Systems Engineering at the WVU Benjamin M. Statler College of Engineering and Mineral Resources. *Carl Hadsell*, W. VA. UNIV., <http://www.statler.wvu.edu/faculty-staff/adjunct-faculty/carl-hadsell> (last visited Sept. 12, 2017). He has designed and delivered numerous seminars, workshops, specific training courses, and facilitator development sessions to many types of organizations. CESD, <http://www.cesd.wvu.edu/staff/staffhadsell.html> (last visited Sept. 12, 2017). He has also created and taught courses in facilitation and advanced coaching principles and practices. *Id.* Dr. Hadsell has over 25 years of experience and has worked with over 50 organizations in manufacturing, health care, service, government, law, academia, and the nonprofit

contributes structure and process to interactions so groups are able to function effectively and make high-quality decisions.”<sup>38</sup> She has similarly described a facilitator as a “helper and enabler whose goal is to support others as they pursue their objectives.”<sup>39</sup> Professional facilitator and trainer Gary Rush defines facilitator to mean “a content-neutral task leader who forms a transitory group of people into a collaborative team-supporting consensus.”<sup>40</sup> He has noted that facilitators use a range of processes to “enable the group to make effective decisions while supporting a collaborative and effective environment.”<sup>41</sup> Expert group facilitator and author Roger Schwarz, Ph.D., states that someone is acting as a facilitator when “a person whose selection is acceptable to all members of the group, who is substantively neutral, and who has no substantive decision-making authority diagnoses and intervenes to help a group improve how it identifies and solves problems and makes decisions, to increase the group’s effectiveness.”<sup>42</sup> Each of these definitions captures the key notion that the term “facilitator” is used to describe someone whose role is to work with group processes to ensure that meetings and other discussions run well and achieve a high degree of consensus, while reducing the adversarial nature of discussions. Or, as Dr. Carl Hadsell puts it, a facilitator simply “makes the meeting process easier.”<sup>43</sup>

Based on these definitions, it is easy to understand that a facilitator must fill many roles in order to effectively design and run group discussions. The roles of an effective facilitator include neutral guide, discussion flow manager, note

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sector. *Id.* Over the years, Dr. Hadsell has shared his expertise in facilitation and how to lead effective meetings with the Author and, more recently, as a guest speaker for the WVU Lawyers as Leaders course. He has also created a manual on how to conduct effective meetings. *See* CARL HADSELL, 5 MASTER MEETING HABITS THAT GET RESULTS (CESD).

<sup>38</sup> Ingrid Bens, *Facilitating with Ease!*, FACILITATION TUTOR 5 (2005), [http://learn.facilitationtutor.com/lmscourses/facilitationtutor\\_0/\\_pdfs/bookpreview\\_lesson1.pdf](http://learn.facilitationtutor.com/lmscourses/facilitationtutor_0/_pdfs/bookpreview_lesson1.pdf). Ms. Bens is a professional consultant and trainer with special expertise in facilitation skills and teamwork. *See Ingrid Bens, Author & Certified Professional Facilitator*, FACILITATION TUTOR, <http://www.facilitationtutor.com/ingrid-bens/> (last visited Sept. 13, 2017). She has worked with many large organizations including NASA, Honeywell, and General Electric Canada, as well as numerous health systems, universities, and government entities in the United States and beyond. *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> Gary Rush, *Revisiting My Definition of a Facilitator*, MGR CONSULTING 4 (2013), [http://mgrconsulting.com/Newsletters/eNewsletter\\_13\\_08.pdf](http://mgrconsulting.com/Newsletters/eNewsletter_13_08.pdf).

<sup>41</sup> *Id.*

<sup>42</sup> ROGER M. SCHWARZ, *THE SKILLED FACILITATOR* 5 (Jossey-Bass 2002). Dr. Schwarz has a Ph.D. in organizational psychology and is the founder of Roger Schwarz & Associates (RSA), an organization that provides guidance and training for leaders and teams that want to be more effective. Prior to founding RSA, Dr. Schwarz was an associate professor of public management and government at the University of North Carolina at Chapel Hill.

<sup>43</sup> HADSELL, *supra* note 37, at 9.

taker, discussion documenter, discussion “cop,” and tone setter.<sup>44</sup> First, a “neutral guide” can guide a group without interjecting his own thoughts. A facilitator must also manage the discussion; being a “discussion flow manager” involves asking the right questions at the right time to ensure that group members explore a topic thoroughly. As a “note taker,” a facilitator works to capture the essence of the discussion. This is typically done on a whiteboard or flip chart so that group members can have a visual summary of the discussion.

Being a “discussion documenter” means that, once the discussion is done, the facilitator will synthesize, or pull together, a coherent summary of what was discussed. The summary often brings clarity to what might have seemed to be a wandering discussion. At times, a facilitator may also need to act as a “discussion cop” by correcting group members’ inappropriate behaviors (e.g., side conversations, lack of participation, interrupting others). Finally, a facilitator sets the tone for a discussion. Facilitators need the ability to create a safe and comfortable environment for group discussion. Acting as a “tone setter,” therefore, involves setting the ambiance, the pace, and the sense of urgency of the discussion. Together, these roles permit a single facilitator to lead a meeting, teach problem-solving tools, and help participants work together more effectively.<sup>45</sup>

To successfully fulfill these roles, many personal skills are needed. Of course, facilitators must understand group processes and problem-solving methods.<sup>46</sup> It is also critical that facilitators are capable of being objective and remaining neutral. A skillful facilitator can guide a group through a discussion, and no one in the group will know how the facilitator feels about the topic. Being neutral requires the facilitator to refrain from expressing personal thoughts about the topic of discussion, to avoid steering the conversation in way that is favorable to those personal thoughts, and to resist showing any emotion when different comments are made. Facilitators can further maximize objectivity and neutrality

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<sup>44</sup> Jack Byrd, *Being a Successful Facilitator 25* (unpublished manuscript) (on file with the Author).

<sup>45</sup> *Id.* Dr. Hadsell also emphasizes that every participant in an effective meeting has a role—not just the facilitator. *Id.* Possible roles include a “leader,” who is responsible for making sure the group follows through on its activities; a “champion,” who supports and encourages the group, primarily outside the meeting; and a “scribe,” who records the meeting activities (i.e., keeps the notes). *Id.*

<sup>46</sup> *Id.* at 7–8. Dr. Hadsell recommends that participants create a “Process Agreement” at the start of a meeting or group discussion. *Id.* at 7. A Process Agreement “represents guidelines on how a group chooses to govern itself.” *Id.* First, the group should establish a list of team “norms” (i.e., rules on how participants are to behave). *Id.* For example, only “[o]ne person speaks at a time.” *Id.* Second, the group should establish a list of team “practices” (i.e., rules on how the group will operate). *Id.* For example, “[d]ecisions will be based on consensus.” *Id.* at 8. By creating a Process Agreement for the meeting, participants ensure that they know what to expect of one another and that all members are equal. *Id.* at 7.

by developing discussion questions that are likely to reveal all perspectives on an issue, by asking follow-up questions that show all sides of the issue, and by including points that represent all perspectives when doing a “wrap up” at the end of the discussion.

Facilitators also need to possess a variety of communication skills, including the ability to listen, the ability to speak clearly, and the ability to paraphrase what others have said. Active listening skills are essential. A facilitator needs to listen carefully to be able to capture the essence of the discussion. In addition, a facilitator must be able to pick up on the emotion behind what is being said to understand the intensity of the comments. Relatedly, a facilitator must be perceptive and think about what is *not* being said. By understanding this reluctance, the facilitator can guide the discussion so that those topics are discussed. Effective facilitators can hear differing points of view and have the confidence to deal with potential conflict.

Finally, facilitators must be adaptable. No matter how well a facilitator plans for a discussion, he or she must be able to adapt as the discussion unfolds. The most effective facilitators are “quick on their feet” and able to deal with complex issues simultaneously. A skillful facilitator will thus be able to adapt in “real time” without losing track of what still needs to be accomplished. And, perhaps unsurprisingly, the ability to maintain a sense of humor is often helpful too.

C. *What is student-led facilitation?*<sup>47</sup>

Student discussion has long been a popular teaching strategy, and many law professors use some form of discussion in their classrooms. In most cases, the instructor is the facilitator in a student discussion: the instructor asks questions, challenges responses, provides commentary, and generally manages the discussion. This Article, however, focuses on the use of a *student-centered* discussion process. In a student-centered discussion, “the students themselves direct the discussion.”<sup>48</sup> As Jack Byrd said, “One student serves as the facilitator of the discussion, but the discussion flows from student to student.”<sup>49</sup> In this approach, the role of each student in a discussion group is to help other students develop their own ideas. The instructor is a passive observer and an evaluator of the discussion, rather than its central figure.<sup>50</sup> Thus, the role of the instructor is

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<sup>47</sup> The following Sections are taken heavily from “Guidebook for Student-Centered Classroom Discussions” by Dr. Jack Byrd.

<sup>48</sup> JACK BYRD, JR., GUIDEBOOK FOR STUDENT-CENTERED CLASSROOM DISCUSSIONS 2 (Suzanne Goodney Lea ed., Interactivity Foundation 2008), <https://www.interactivityfoundation.org/wp-content/uploads/2009/12/Guidebook-for-Student-Centered-Classroom-Discussions.pdf>.

<sup>49</sup> *Id.* at 2.

<sup>50</sup> *Id.*

to be a mentor for students. Specifically, the instructor gives the students feedback on their discussions and makes suggestions for improvement.

In the student-centered classroom, teams of five to eight students form discussion groups early in the semester. After that, the students sit with their discussion group colleagues during every class and take turns leading discussions related to assigned topics. Typically, these discussion groups stay together for the entire semester, and the students become comfortable working with each other.<sup>51</sup> In a nonthreatening environment, students feel free to express their thoughts without fear of judgment or ridicule; shy students become more confident speaking up.<sup>52</sup> In time, all students become comfortable in helping shape and focus discussions—a critical leadership skill. Again, the role of each student in a discussion group, and particularly the role of the facilitating student, is to help the other students develop their own ideas. Thus, discussions are considered successful when not only has each student developed his or her own personal insights about the subject of the discussion, but the students have also developed insights as a group that they could not have developed as individuals.

Jack Byrd has explained that “[c]ourse content in a student-centered classroom is integrated into the course through a variety of means.”<sup>53</sup> In some instances, the instructor first presents the content through a lecture or Socratic inquiry, and the students then develop their own understanding of the content through the student-centered discussions.<sup>54</sup> In others, the student-centered discussion or simulation serves as the background and context for a later presentation delivered by the instructor or a guest lecturer.<sup>55</sup> As the semester progresses, each discussion group becomes “a team which explores questions about the content area and develops its own thinking into possibilities.”<sup>56</sup>

Finally, the student-centered discussions use a process for facilitation.<sup>57</sup> Early in the semester, students are trained to be discussion facilitators, and they also learn how to become effective discussion participants.<sup>58</sup> Specifically, the instructor lectures on the topic and offers tips and insights based on assigned materials and personal experience. Then, all students engage in an ungraded (“mock”) facilitation exercise led by a member of each group. After receiving feedback from the instructor, the students are ready to participate in—and to lead—their own neutral facilitations.

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<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 17.

<sup>53</sup> *Id.* at 2.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

*D. What are the benefits of student-led facilitation?*

Research has found that the student-centered discussion process enriches student learning.<sup>59</sup> In particular, the incorporation of the student-centered discussion process into the classroom “has the potential of enhancing the level of student learning about the course content and about the way they and others think about difficult issues.”<sup>60</sup> This finding makes sense given that students tend to remember course content based on their level of involvement in it.<sup>61</sup> Faculty members have reported that content coverage in their courses has not declined in student-centered classrooms; rather, they have found that their students experience a deeper understanding of the course’s fundamental concepts.<sup>62</sup> One explanation for this deeper level of understanding is that students discover for themselves the essential concepts that would normally be presented through course readings or lecture material. In addition, “[f]aculty report that they have seen students who have not been ‘stars’ in previous classes suddenly ‘blossom’”<sup>63</sup> in the student-centered classroom environment.<sup>64</sup> Because students feel safe and comfortable working with their teammates, student-centered discussions can bring out the potential that some students have but may not otherwise reveal in more traditional classroom environments.

## V. CONCLUSION

I conclude this Article with a second story of facilitation. Allisyn is a very successful third-year law student enrolled in a perspective course called Lawyers as Leaders. She has attended a few classes. She has been introduced to two basic elements of the class: a personality assessment of her strengths and the strengths of other members of an eight-member group to which she is assigned, and the basic tenants of neutral facilitation of group discussions. She knows that we all have strengths and knows that leaders should strive to get the best outputs from diverse inputs. She senses that sometimes people want to act together but cannot find a way. She has even participated in two facilitations in the context of her class and received feedback on her efforts from the professor.

Four weeks after the leadership class begins, Allisyn attends a meeting of law school student leaders who are struggling to address a student concern—changes in parking policies and fees. Despite their good intentions, the student

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<sup>59</sup> *Id.* at 4–5.

<sup>60</sup> *Id.* at 4.

<sup>61</sup> *Id.* at 6.

<sup>62</sup> *Id.* at 5.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*



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leaders cannot seem to reach a consensus on how best to proceed. Everyone seems to be wedded to their respective points of view. Out of frustration, Allisyn begins to act like a facilitator, not an advocate. She asks participants to share their views and insists that all listen to the ideas presented by others and build on them before attacking them. She suggests a discussion path. She uses the whiteboard to record the ideas and discussion points that all seem to agree are important. The group decides on an approach to present to the university administration. All seem satisfied that they played a role in crafting a solution to a problem they all find important.

Later in the week, Allisyn runs into her Lawyers as Leaders professor at the college of law where she is enrolled. “You know,” she says, “this stuff works!”