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# Book Review, Lawrence Susskind Et Al., The Consensus-Building Handbook, 1999

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Book Review

By Phyllis Bernard

# 'Consensus Building Handbook' a Monumental Contribution to the Field

**• *The Consensus Building Handbook: A Comprehensive Guide to Reaching Agreement.* Lawrence Susskind, Sarah McKearnan & Jennifer Thomas-Larmer, eds. Sage Publications. 1999. 1147 pages. $129.95.**

The editors of this monumental book demur that it is meant "as a reference, like an encyclopedia." They do not "expect that very many people will read it from cover to cover."[1] They have seriously underestimated their achievement.

Yes, *The Consensus Building Handbook* serves as a comprehensive resource into which one may dip from time to time, from topic to topic. However, it also reads extremely well. Indeed, despite the possibly daunting physical size of this book, *The Consensus Building Handbook* invites the reader to share a thoughtful and enthusiastic weekend with wise colleagues – meeting them in the well-written chapters from cover to cover. The design of the book merits discussion. It operates on three different, interrelated levels, Parts 1, 2 and 3. These various levels correspond to the various foci that a wide range of audiences bring to the subject matter. It attempts to assist not only professional mediators, but "anyone who is contemplating convening or participating in a consensus building process."[2]

Generally, it focuses on how to foster agreement among large, diverse groups in a variety of settings. The materials are attorney-friendly although not attorney-focused. The book takes processes, skills and objectives that might appear too "touchy-feely" for most lawyers to value, and then explains these techniques and their dynamics in a manner that engenders respect.

Ironically, the very concept of consensus, in and of itself, can spark hot debate. As the editors acknowledge: "Many people are convinced . . . that consensus – especially within large groups, is not a reasonable objective. They believe that most people are selfish and will pursue their own goals rather than search for solutions that satisfy everyone. They also assume that whenever hard choices have to be made, some people will win and some will have to lose."[3]

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The book proceeds from the fundamental belief that voluntary, principled agreement can be achieved in many, if not most, situations. But, the methods used

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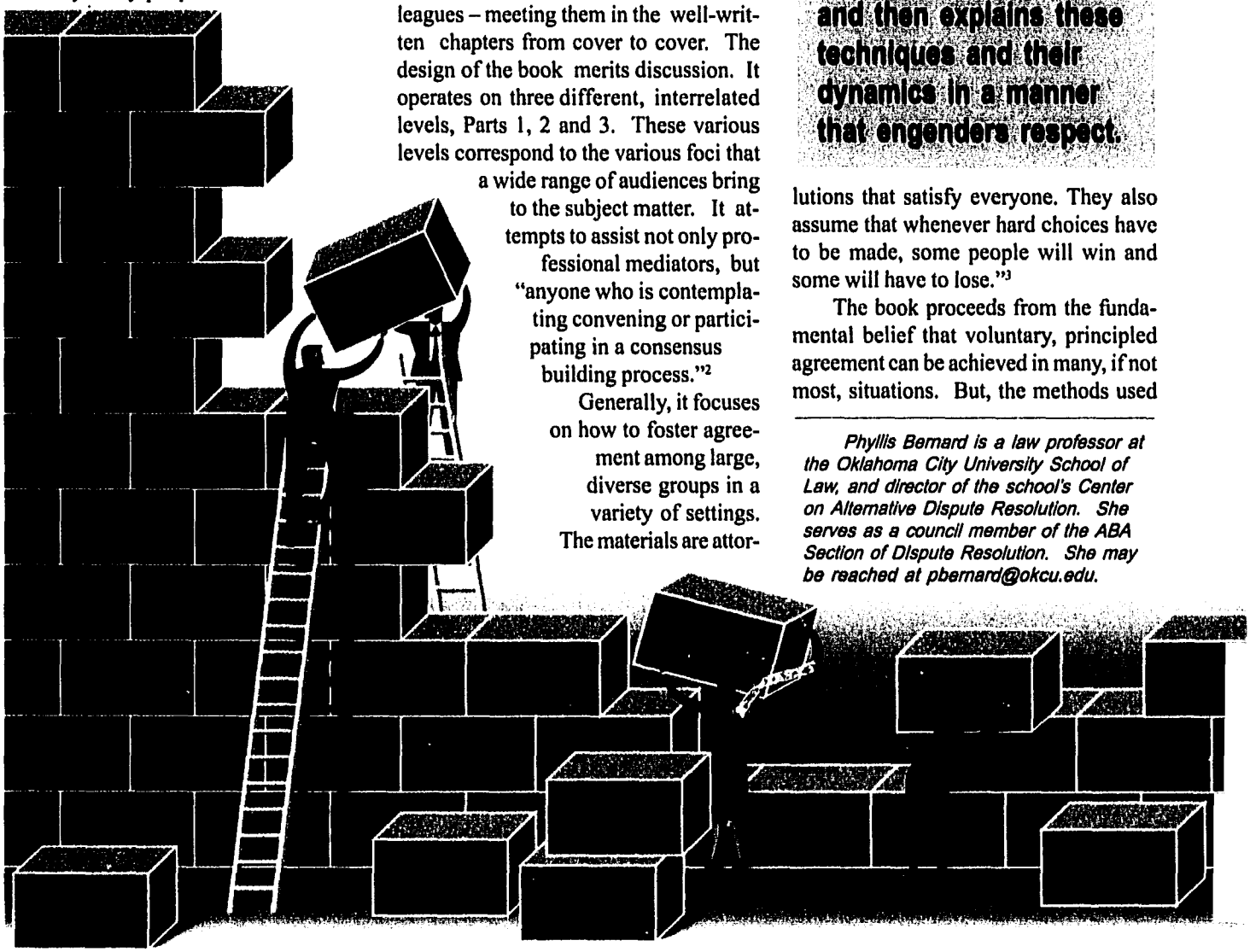

to achieve such agreement may need to change – and change radically – from the more formalistic, coercive methods that have been used in the past.

## A new framework

Part 1, *A Short Guide to Consensus Building,* offers an expanded "executive summary" of the best practices set forth in remainder of the book. It provides a superb overview of the pitfalls encountered by so many consensus-building techniques; and explains how to avoid those difficulties through more straightforward, collaborative methods.

One of the most important contributions in the entire book is Susskind's pithy deconstruction of *Robert's Rules of Order.* Any reader who has ever been frustrated by the arcane, baffling rules of parliamentary procedure embodied in that 1870 guide will recognize the truth of Susskind's analysis. *Robert's Rules of Order* embodies a top-down model of power in which the majority will almost always rule. The complexity of the parliamentary process – especially when applied to meetings of lay persons – can become a trap for the unwary. This can lead to a profound, lasting sense of manipulation that further results in a lack of lasting consensus. And so, Susskind argues for throwing out the procedures that have become the standard for conducting large meetings throughout North America. He lays out, step by step, a method more in tune with collaborative, horizontal power. The group itself would develop its own ground rules, in accord with the participants' own sensibilities. These procedures may be far more creative and fluid than the formalistic practices of the past.

For example, instead of preparing the dreaded, dry and lifeless minutes of the typical group meeting, Susskind suggests a consensus-building method would preserve group memory through the use of "drawings, illustrations, maps or other icons to help people recall what they have discussed."[4] He provides a description, explanation and even a visual matrix to assist participants in developing their own ground rules for deliberation and follow-through.

## Dealing with the press, other special issues

Part 2, *How to Build Consensus,* consists of 17 chapters exploring in more detail the steps outlined by Part 1. Indeed, I think it is fair to say that to a large extent, Part 2 offers additional techniques to respond to some of the key misconceptions about consensus building that Part 1 lays out: "I will have to give up authority; I will be pressured to betray my constituents; I will lose face; I will have to help my 'enemies;' I will be forced to abandon my principles."

Twenty-four different authors provide their insights on different aspects of choosing appropriate techniques and strategies, convening, use of technical experts, collaborative problem solving and evaluation. Each chapter could stand alone as a step-by-step guide on best practices in the particular area covered. But, read together as a unit, they dovetail neatly into each other, with a bit of overlap to reinforce important themes. Readers will find real-life examples of how the suggested techniques have worked in practice.

Thankfully, the editors have made sure to provide "handles" to help the reader grasp what could otherwise be fairly amorphous theories. Each chapter is clearly outlined with bulleted "take-away" points or checklists, making it easier for the reader to apply these theo-

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ries to their own situation. Further, for the visual learner, the book takes care to offer flow charts and diagrams of the concepts presented within the chapter.

All of Part 2 provides more detail and depth than one will find in most basic mediation texts. But there are some chapters that fill particular gaps in the mediation literature – offering much-needed information in a concise but thorough manner.

For example, Chapter 10, *Making the Best Use of Technology,* by Connie P. Ozawa, is a great addition to the literature. The author lays out how technology can be used to open the public process, to assure transparency and accountability. For example, in order to keep the public informed during a process meeting minutes, agendas, schedules, working documents, background resources can be posted on a web site. List-servs and web conferences can be used to create a running dialogue for building consensus among groups, subsets of groups, or any other subset of persons. Documents can be drafted as a group.

Ozawa does not shy away from confronting the limitations of such technology. Among other downside risks, dialogues conducted without the participation of all members will fragment the group into subsets of people who no longer share a common knowledge base. Participants who have "stepped out of the room" so to speak, may be left behind as Internet discussions move others further along in their development of consensus. It becomes the facilitator's responsibility to ensure that all participants are kept up to speed as the conversation moves beyond what was achieved in the face-to-face sessions.

In Chapter 11, *Dealing with the Press*, James E. Kunde engages in a trenchant discussion of an issue which many mediators and facilitators prefer to avoid, but often cannot: We worry about inaccurate or biased reporting. This concern might be well-placed. As Kunde points out: "The press, after all, focuses on conflict. Conflict is interesting and newsworthy. . . . Mediators and facilitators, on the other hand, seek to resolve conflict. They want to focus people's attention on what the disputing parties have in common and how they can reach mutually beneficial solutions."[5]

Kunde attempts to explain the perspective of the media and that of the facilitator in ways that identify potential common interests. Further, he acknowledges that there may well be times – such as those involving public entities subject to open meetings laws – where press coverage is not only permissible, but necessary and even desirable.

Chapter 12, *Dealing with Deep Value Differences,* by John Forester illustrates one of the real benefits of this "encyclopedia." The book suggests a rational construct and a vocabulary for discussing difficult issues. Especially for the attorney who is just beginning to work consciously and publicly in cross-cultural areas, such assistance can be helpful. It is rarely possible to discuss issues of values unless they can first be articulated with integrity and appreciation. And yet, the facilitator must ensure that the meaning of values is not minimized in an effort to be even-handed. As Forester points out: "When values involved are about the sanctity of life or land, traditions, or the environment, mediators who speak of respecting all viewpoints equally seem more like political spin doctors with no values at all than helpful dispute resolvers."[6]

**The chapter on technology illustrates how web sites, list-servs, web conferences and other such innovations can be used to open the public process, and to assure transparency and accountability.**

Indeed, this is partly why other foreign societies and traditional communities within the United States may value a respected "insider" more than a totally divested "outsider" as mediator. Values should not be compromised, but they can and must be discussed. And different strategies are required, depending upon whether the discussion entails threatened interests or threatened values. Here's the primer, especially when read in conjunction with Amitai Etzioni's *The New Golden Rule: Community and Morality in a Democratic Society* (1996), which brilliantly describes "rules for engagement" as diverse persons forced to live together in society enter into problem-solving dialogues.

Finally, in Chapter 13, *Legal Issues in Consensus Building*, Dwight Golann and Eric E. Van Loon provide an excellent quick reference source for attorneys and non-attorneys. For the attorney already well-versed in the Byzantine intricacies of administrative or state and local government law, Chapter 13 streamlines the interrelationships so well that the subheadings form a virtual checklist for the practitioner. The authors also supply language to facilitate communicating with the client about very complex procedural, substantive and sometimes constitutional issues. For the attorney new to this practice area, Chapter 13 offers a comprehensive but not confusing road map.

Golann and Van Loon do not provide merely a theoretical nor technical enumeration. Yes, they set forth a checklist for developing an enforceable agreement, as one would ordinarily expect. But they also address a vital area that many mediation trainers shun: the issue of physical security and the possibility of violence. In a larger context, the authors highlight how participants might – for better or worse – use a range of legal processes as a matter of strategy to increase the parties' negotiating power. The authors outline how to coordinate consensus-building activities with an on-going adjudicatory proceeding. Importantly, they keep in mind the legal and ethical framework that shapes acceptable negotiating strategies.

Unlike many other writers, Golann and Van Loon wade into the briar patch of administrative agency and local government law as related to consensus building. The flexibility that private entities enjoy for developing creative solutions may not exist for negotiations with public bodies. Confidentiality may be seriously reduced, or totally eliminated. Groups formed under the auspices of a federal agency may be subject to requirements of the Federal Advisory Committee Act. Open meetings laws, quorum requirements and separation of powers issues may limit

attempts to "stretch the envelope." Even selection and payment of the mediator may be subject to public procurement and ethics regulations.

### Reflective case studies

Part 3, *Cases and Commentaries,* contains 17 case studies that illustrate the principles and practices described in Part 2. Indeed, Part 2 liberally cross-references to Part 3, making it easy for the reader to focus efficiently upon the expanded fact situation needed to deepen one's understanding of the theory at issue.

Simply put, Part 3 presents one of the most courageous and helpful compilations one will find in the mediation literature. Not only do we have the benefit of case studies written, in part, by the mediators in the actual case. But we also have the privilege of hearing their assessments of their own effectiveness, judged from the perspective of intervening years.

**The collection of reflective case studies by the neutrals who facilitated them is one of the most courageous and helpful compilations one will find in the mediation literature, including discussions and critical self-evaluations that more resemble the grand rounds in medical school than the normal debriefing after a mediation.**

Do not mistake Part 3 for a collection of war stories or mere anecdotes. No. The format far exceeds that of an informal debriefing or feedback in a workshop. Instead, the editors designed Part 3 in a manner reminiscent of the grand rounds of medical schools, where medical students, residents and attending physicians analyze selected cases in exhaustive, unflinching detail, seeking to identify what went right and what went wrong in the treatment in order to improve the quality of care in the future.

Similarly, the book has encouraged independent critiques from various perspectives to gather a fuller picture of consensus processes over time. An historian, Mark Kishlansky; a political philosopher, Jane Mansbridge; a legal scholar, Carrie Menkel-Meadow; an environmental scientist, William Moomaw; a social psychologist, Max Bazerman; an ethicist, Daniel Markovits; a decision scientist, Howard Raffia; a political economist, Charles F. Sabel; an anthrolopologist, Sally Engle Merry – all add another segment, another layer to the increasingly complex and rich analysis.

Each of the case studies provides a valuable set of insights into the limitations and possibilities of consensus building. One continuing theme explores whether consensus-building may be the preferred administrative process for developing and implementing complex governmental policies? Perhaps so. Contrasting case studies, linked by cross-commentaries examine a range of municipal, county and regional situations, and – as importantly – the human dynamics that contributed to success and failure. Systems analysis assists in identifying the macro issues that also affected outcomes, and whether the lessons learned can truly be applied elsewhere.

### Landmark achievement

Facilitators describe in vivid, self-reflective detail the attitudes, apprehensions and techniques they brought to the consensus process.

Some contributors, such as Norman Dale, even engage in a sensitive critique of their own ethical dilemmas. In Case 10, *Cross-Cultural Community-Based Planning: Negotiating the Future of Haida Gwaii (British Columbia)*, Dale looks back on the complex, convoluted path by which he brought stakeholders to the table to determine how the lands known as the Queen Charlotte Islands would be managed. Would it be under the control of the Anglo Canadians? Or would it be under the control of the native Haida?

Dale acknowledges that he was not a true neutral – fully detached and equally committed to both sides, or to neither side. He had worked and lived for many years with First Nations people. As Dale describes it: "Back in Vancouver, I did not 'wear' this perspective in plain sight for the client. Instead I adopted an ethically fragile position: It is better to work as a covert 'change agent' than to leave the task to others whose philosophy fitted the formal client's expectations."[7]

This is problematic, presenting major issues, for example, when viewed from the perspective of the generic model of mediation used in North America. But, is it in fact the wrong action for these circumstances? Dale is not called here a "mediator" but rather "facilitator" or "community liaison." What does this imply? Is the process of consensus-building – especially across dramatically different cultures – different than standard mediation? Yes.

Sally Engle Merry examines Dale's decision from her perspective as an anthropologist. "His background in mediation and work with other First Nations clearly equip him with a particular body of knowledge and experience that shapes the way he intervenes. An economist from Toronto with no First Nations experience would bring a different body of knowledge and skills to this assignment. . . . Without the author's particular strengths and efforts, it is highly likely that Gitsga [the Haida representative] would never have returned to [the negotiations]."[8]

Is the process of consensus-building so linked to the personalities of the people involved that it is, after all, a product of kismet? No, but neither is it a scientific formula programmable in binary code. The writers and editors of *The Consensus Building Handbook* have managed to gather into this volume the strengths of intuition and rigor. Through this complex balance, the book becomes a landmark achievement, essential for any personal or professional library.

#### Endnotes

1. SUSSKIND, ET AL, CONSENSUS BUILDING HANDBOOK xxii (1999)
2. *Id.*, at xxii.
3. *Id.*, at xxii.
4. *Id.*, at 9.
5. *Id.*, at 436.
6. *Id.*, at 466.
7. *Id.*, at 928.
8. *Id.*, at 931.