



Welcome

The *Ohio State Journal on Dispute Resolution*, in collaboration with the Moritz College of Law's Program on Dispute Resolution, is pleased to bring you Volume 16, Issue 1, of the *Mayhew-Hite Report on Dispute Resolution and the Courts*.

The U.S. Department of Justice Community Relations Service: Assisting Communities in Resolving Conflicts and Restoring Peace

Grande Lum, Francis Amoroso & Rosa Melendez*

On Sunday, August 5, 2012, an individual with alleged white supremacist ties entered a Sikh gurdwara, or temple, in the community of Oak Creek, Wisconsin, and opened fire on the congregation. Six worshippers were killed and four others were wounded, including a responding law enforcement officer.^[1] Within hours of the shooting, Community Relations Services (CRS) was in contact with national and local Sikh organizational leaders, the U.S. attorney for the district, and numerous federal and local law enforcement officials. In addition, CRS helped facilitate communication between law enforcement and community members, providing contact information for key law enforcement officials. Later that same week, CRS and the U.S. attorney for the Eastern District of Wisconsin facilitated a key leadership meeting to discuss hate crimes, analyze community concerns over the shooting, and assess community needs for funerals. CRS and its federal and local partners then assisted in the planning and moderation of a larger community meeting at Oak Creek High School that was attended by more than 250 people from the greater Milwaukee area.

A Hate Crime in a Quiet Community Elicits a Unique Mandate

The Oak Creek, Wisconsin, gurdwara attack serves as an example of the services CRS can provide to communities in the wake of a hate crime. Founded under the Civil Rights Act of 1964, the CRS supports state and municipal government officials, law enforcement executives, and community leaders with resolving disputes based on racial and ethnic tensions, to improve police-community relations. CRS also helps local leaders prevent and respond to alleged violent hate crimes committed on the basis of actual or perceived race, color, national origin, gender, gender identity, sexual orientation, religion, or disability. CRS is not an investigatory or prosecutorial agency, and it has no law enforcement authority. The agency does not impose solutions or assign blame or fault. All CRS services are provided free of charge to the communities and are confidential. CRS works in all 50 states and the U.S. territories in communities large and small, rural, urban, and suburban. Most of CRS' work originates from requests by police chiefs, mayors, school administrators, local government authorities, community-based organizations, tribal communities, and civil and human rights groups.

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EDITOR'S CORNER



Welcome to the 2017-18 MHR

Welcome to the first issue of the *Mayhew-Hite Report* for 2017-2018. We're your editors, Mary Bockstahler and Brooke Mangiarelli. The theme of this issue is community, culture, and dispute resolution. Over the last few years, community disputes have gained much attention in the news, from events in Ferguson, Missouri to Cleveland, Ohio, to Baltimore, Maryland. An important part of resolving these disputes through alternative dispute resolution requires effective community engagement that considers the cultures of affected communities, as well as other parties to the disputes and their mediators. Thus, dispute resolution, community, and culture are all inherently intertwined, and the materials included in this issue accordingly reflect the importance of community engagement in alternative dispute resolution.

This first issue presents one feature article: *The U.S. Department of Justice Community Relations Service:*

ARTICLE SUMMARY

Culture and its Importance in Mediation

National University of Singapore Professor Jole Lee's *Culture and its Importance in Mediation* originally appeared in Pepperdine's *Dispute Resolution Law Journal*, Volume 16, Issue 2. The article focuses on the importance of considering culture in conducting mediations. Professor Lee begins by stating that culture is so pervasive in daily life, that we often do not realize its effect. The article takes a deep-dive into Singapore's journey in dealing with the intersection between culture and mediation.^[1]

Professor Lee asserts that the problem with academic definitions of culture is that the definitions may over-generalize or be overly simplistic. More comprehensive definitions of culture address so many variations and exceptions such that their usefulness is undermined.

Sometimes, culture is equated with the rules, etiquette, and customs of a particular community or group. Yet this definition fails to consider that rules, etiquette and customs are usually manifestations of the "cultural iceberg" that lies beneath. According to Lee, the task of delineating culture is made more arduous by a "shrinking world" and the segmentation of cultures. Formerly, culture could be defined fairly easily along national or ethnic lines. Even then, there would be exceptions, but widespread norms in a community could be nonetheless identified. asserts that in the past, there was little cross-influence of various cultures: members of one culture had little to no exposure to other cultures.^[2]

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CASE SUMMARY

City of Cleveland Consent Decree

On March 14, 2013, the United States Department of Justice began an investigation into the Cleveland Division of Police's policies and practices, at the request of Cleveland Mayor Frank Jackson. The goal of this investigation was to determine whether CDP engaged in a pattern or practice of using excessive force, in violation of the Fourth Amendment of the U.S. Constitution and the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141. ^[1]As a part of this investigation, the Department of Justice (DOJ) and police-practice experts conducted a comprehensive assessment of CDP's use of force, as well as its policies and community engagement efforts, among other factors. The investigation included meetings with Cleveland residents, community groups, members of religious communities, and the Civilian Police Review Board. Members of the Cleveland community, including community advocates, religious leaders, and members of CDP's unions took an interest in the investigation and played a critical role in providing information and facilitating the investigation.

On December 4, 2014, the DOJ announced that it had reasonable cause to believe that the CDP engaged in a pattern or practice of use of excessive force, due in part to certain systemic deficiencies.^[2] These deficiencies related to operational and structural areas of CDP, including community policing efforts. The City agreed that the findings raised important issues that needed to be addressed by both the City and the community. To ensure that the Decree effectively responded to the community's concerns, the DOJ and CDP consulted with

Assisting Communities in Resolving Conflicts and Restoring Peace, written by Grande Lum, [Divided Community Project Director](#) and Moritz College of Law Professor and former Director of the Department of Justice's Community Relations Service, as well as Francis Amoroso, and Rosa Melendez.

Our feature article summary, written by Mary Bockstahler, showcases the article *Culture and its Importance in Mediation* by Joel Lee, Associate Professor at the National University of Singapore, Faculty of Law. This article originally appeared in Pepperdine's *Dispute Resolution Law Journal*, Volume 16, Issue 2.

Instead of a case summary, this issue includes a summary of key portions of the City of Cleveland's 2015 Consent Decree ("Decree") with the U.S. Department of Justice in *U.S. v. City of Cleveland*. The Decree was the result of the Justice Department's 2013–2014 investigation into the Cleveland Division of Police's ("CDP") policies and practices, to determine whether the CDP engaged in a pattern or practice of using excessive force in violation of the Fourth Amendment to the U.S. Constitution. Part of the Decree focuses on community engagement and trust-building to resolve disputes between the CDP and Cleveland's diverse communities, which reflects the theme of this issue of the *Mayhew-Hite Report*.

STUDENT SPOTLIGHT



Judicial Intervention in

community leaders, police officers, residents, and other concerned individuals. Thus, the Decree (i) reflects the input received from the various communities within the City of Cleveland and (ii) emphasizes the importance of engaging with these communities to resolve disputes.[3]

[Read more](#)

HEADLINE NEWS

Heckman Presents Lawrence Lecture to a Packed House

On September 28, 2017 New York Peace Institute CEO Brad Heckman delivered Moritz's Annual Lawrence Lecture on Dispute Resolution titled *Mediation on the Beat: Bringing Conflict Resolution Skills to Police Departments*. Brad explored his experience training hundreds of officers in the New York Police Department in mediation and dispute resolution as part of a program designed to rebuild civilian-police relationships. The NYPD is working to hard-wire mediation skills into police training, and develop a vibrant partnership between community mediation centers and police precincts. Brad highlighted the challenges in training law enforcement during deeply divided times and discussed which mediation tactics are most useful in peacefully deescalating conflicts between police and civilians.



Recent Grad Awarded Honorable Mention in Boskey Competition

Brian Holb ('17) earned Honorable Mention in the 2017 [James B. Boskey Law Student Essay Contest on Dispute Resolution](#). Brian's award-winner paper *Making the Case for Mediation in Public Sector Labor Relations* was developed as part of Moritz's Mediation Clinic course under the supervision of **Prof. Ellen Deason**. Brian's article is available for review on the [ABA's website](#). Great work Brian!

More than Fifty Compete in Lawrence Negotiation Competition

Congratulations to the *more than 50 students* who participated in the 2017 Lawrence Negotiation Competition. After four nights of hard work four negotiating teams came out on top:

1. First Place: Christopher Stevens and Anthony Thompson
2. Second Place: Alex Karcher and Tyler Simms
3. Third Place: Nicole Repetto and Cameron Wright
4. Fourth Place: Sungtaek Jun and Matthew Mendoza

Communities in Conflict

Leigh Anne Newcomer*

In an era of division and unrest, courts are an overlooked resource for bridging divided communities. If utilized properly in the right setting, courts can prevent conflict from escalating and "add the critical dimension of getting people in divided communities to deliberate about ways to solve, or at least ameliorate, the problems underlying their differences." [1] Attorneys with mediation experience can contribute to resolving issues in their own communities by recommending court involvement at the right moments and for the right conflicts.

This article reviews two instances of constructive court involvement—one by a state court system prior to any litigation and one by a federal district court that mediated a conflict well beyond the issues in pending litigation and involved more than the parties to the dispute. Then the article examines the arguments against court involvement beyond the parties and issues in pending cases. It suggests that courts and attorneys who recommend the mediation can deal with these arguments—which raise valid concerns—through appropriate structuring, effective timing, and choice of conflicts involving the courts.

Courts have the potential to contribute significantly to communities in conflict and often have advantages, as illustrated below in the two success stories. Some community members may be distrustful of public officials, and as a perceived neutral; courts may be able to better engender trust and engage stakeholders in an intervention process. A court can also help provide critical local intervention when other state or local officials cannot balance the tensions between accountability and creating the requisite climate for dispute resolution processes. In many instances, courts have broadened cases to deal with conflict well beyond the issues in dispute to come up with a widely-supported agreement for sustainable change. Furthermore, sponsoring

Great work! Chris, Anthony, Nicole, and Cameron head to Michigan in early November to compete in this year's regional competition. Wish them luck!

Moritz Alums Implement Award-Winning ODR Program

On August 31, 2017 the Ohio State Bar Association awarded the 2017 Judicial Administration and Legal Reform Committee [Innovative Court Practices Award](#) to the Franklin County Municipal Court [Online Dispute Resolution Program](#). Franklin County Small Claims Dispute Resolution Manager Alex Sanchez ('11) and Franklin County Small Claims Dispute Resolution Supervisor Veronica Cravener ('08) developed, implemented, and managed the award-winning ODR program on behalf of the court. Congratulations Alex & Veronica!

3L Engages in Sport Arbitration during Summer Clerkship

Kim & Chang is the largest law firm in South Korea. I was thrilled to have the opportunity to clerk at Kim & Chang during the summer--and took every opportunity to network with experienced international attorneys. On my very first day, Attorney Jin Han was seeking a few summer clerks to support his arbitration work. I did not have any knowledge regarding the Court of Arbitration for Sport (CAS). Mr. Han helped me understand the procedural rules and explained what my task would be for the summer.

Like Judges--arbitrators develop a volume of decisions which illustrate their style, decision-making process, and the factors they find critical to the disposition of a case. Three CAS arbitrators decide every case on a panel. To support Mr. Han, I worked as a "detective" and find patterns, tendencies, strengths and weaknesses of each arbitrator. This meant that I would have to go back several years and read each and every ruling written by the arbitrators involved in each matter. Although I was involved with eight to ten different projects during the summer, the CAS project was one of the most challenging and interesting. Because I was so deeply involved in the CAS project, I was able to observe how arbitration cases evolved throughout the summer.

While working on the project, I became very close with Mr. Han. While having coffee, he mentioned that he spent a year in Seattle. I have many relatives in Seattle, and frequently visit the city. We had many things in common and what started off as a summer work-relationship turned into a friendship. We met several times outside of work and we continue to stay in touch today. During my time at Kim & Chang, we always joked about how he should come visit Columbus. On Friday August 25 Mr. Han delivered a presentation here at Moritz titled *Court of Arbitration for Sport and Unique Aspects of Sports Arbitration*.

My work on CAS with Mr. Han enriched my summer experience with Kim & Chang. I'm thrilled Mr. Han was able to discuss CAS with my fellow students here at Moritz and I appreciate Mr. Han's mentorship.

community intervention does not necessarily undermine confidence in the justice system if court-appointed intervenors maintain neutrality, act on their promises and communicate their actions in a way that the public can understand, and allow people a forum to express their views. Court-appointed intervenors can perform these functions while simultaneously respecting people and their rights.

State and federal district courts have engaged in innovative efforts by both creating ways to proactively address problems in divided communities, and providing a forum to constructively discuss and resolve issues after unrest has occurred. Interventions by the Maryland Court of Appeals and the U.S. District Court for the Southern District of Ohio in Cincinnati illustrate how courts can be well-suited as intervenors in communities in conflict.[Read more](#)

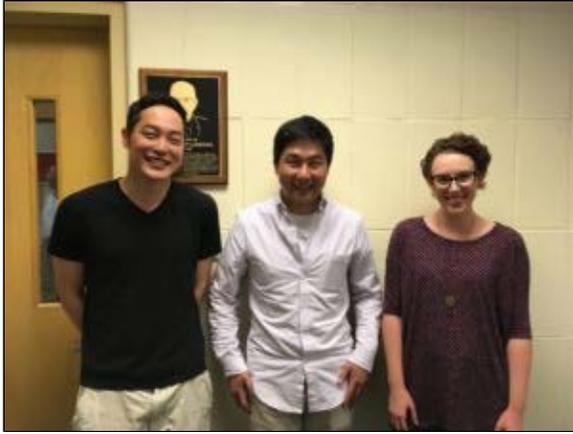
MORITZ ADR LINKS

Moritz Program on Dispute Resolution

Widely regarded as one of the nation's finest programs in the area of Alternative Dispute Resolution, the Moritz ADR program was established in recognition of the need for future lawyers to be trained in an array of dispute resolution methods beyond litigation, including negotiation, mediation, and arbitration. [[Program Home](#)]

Ohio State Journal on Dispute Resolution

The *Ohio State Journal on Dispute Resolution* ("JDR") is a student-initiated, student-run publication and is the official law journal of the



Mr. Han (center) is picture with Larry Shim and Nicole Repetto.

Fifty Students Trained as Truancy Mediators

On Friday September 29 and Saturday September 30, fifty Moritz students attended the Truancy Mediation Project's mediation training session. Marya Kolman, Director of Mediation Services for the Franklin County Court of Common Pleas Division of Domestic Relations and Juvenile Branch led the twelve hour training.

The Truancy Mediation Project provides basic mediation skills and truancy mediation training to an enthusiastic group of students, including 1Ls. Students mediate cases involving school officials, students, and parents with the goals of fostering clearer understanding of expectations between schools and families, helping to generate ideas that will help young people and their families believe school attendance is a high priority, and, ultimately, reduce absences in schools.

American Bar Association's Section on Dispute Resolution. [[JDR Home](#)]

The Caucus

The Caucus is a monthly e-newsletter that highlights the scholarship and accomplishments of the Moritz Program on Dispute Resolution faculty and students. [[The Caucus Home](#)]

Indisputably

Indisputably is a blog operated by law professors from around the United States concentrating on issues involving dispute resolution.

[[Indisputably Home](#)]

Bridge Initiative @ Mershon and Moritz

The Bridge Initiative, which combines resources from Moritz College of Law and the Mershon Center for International Securities Studies, is an indispensable resource for those doing research in issues involving dispute resolution. [[Bridge Initiative Home](#)]

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Mayhew-Hite Report The U.S. Department of Justice Community Relations Service: Assisting Communities in Resolving Conflicts and Restoring Peace

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A Hate Crime in a Quiet Community Elicits a Unique Mandate

The Oak Creek, Wisconsin, gurdwara attack serves as an example of the services CRS can provide to communities in the wake of a hate crime. Founded under the Civil Rights Act of 1964, the CRS supports state and municipal government officials, law enforcement executives, and community leaders with resolving disputes based on racial and ethnic tensions, to improve police-community relations. CRS also helps local leaders prevent and respond to alleged violent hate crimes committed on the basis of actual or perceived race, color, national origin, gender, gender identity, sexual orientation, religion, or disability. CRS is not an investigatory or prosecutorial agency, and it has no law enforcement authority. The agency does not impose solutions or assign blame or fault. All CRS services are provided free of charge to the communities and are confidential. CRS works in all 50 states and the U.S. territories in communities large and small, rural, urban, and suburban. Most of CRS' work originates from requests by police chiefs, mayors, school administrators, local government authorities, community-based organizations, tribal communities, and civil and human rights groups.

In addition, CRS works with schools, colleges, and universities. Of the 728 cases the agency conciliated in 2012, 118 involved educational institutions. For example, in April 2012, the Broward County School District in Ft. Lauderdale, Florida, requested CRS' assistance in response to allegations of racial and ethnic tension between black Haitian and African American students and faculty in schools. CRS convened administrators, teachers, students, and concerned parents and facilitated a dialogue to address their concerns, as well as providing cultural professionalism training.

In May 2012, CRS was in Detroit, Michigan, in response to community concerns over the suicide of a young boy who had allegedly been bullied based on his gender.^[ii] CRS convened a series of meetings with the federal and local partners, who later participated in a CRS-facilitated hate crimes, bullying, and harassment dialogue. CRS also helped the parties develop a

Community Resolution Call to Action—a commitment to provide community-wide anti-bullying education and awareness to parents and students.

In 2012, community tensions in Seattle, Washington, over Native Americans' high dropout rates, and perceptions of disciplinary bias against them led CRS to convene leaders of the city's urban Indian community and education administrators. CRS conducted a series of workshops to identify opportunities to address the students' achievement gap and to create awareness of issues and perceptions among teachers throughout the school system. The workshops led to the development of a plan to mitigate the issues, which has become a nationally recognized model for addressing similar urban Indian student issues in school systems throughout the United States. [\[iii\]](#)

CRS services are provided by highly skilled conflict resolution specialists who are trained to provide assistance in the four areas of mediation, facilitation, consultation, and training. They apply these principles as they work with leaders to resolve conflicts stemming from issues of race and other factors that contribute to hate crimes. In fact, the majority of CRS' cases involve working directly with law enforcement executives and community leaders following divisive occurrences, such as allegations of biased policing or community concerns about excessive use of force. When there is a need for communities and police departments to work through sensitive incidents or strengthen their partnership capacity, their leaders frequently turn to CRS.

CRS provides mediation services to help the parties achieve sustainable agreements to resolve conflicts. CRS conciliators do so by helping parties uncover underlying interests and develop options that resolve differences. Mediation is not used to determine who is right or who is wrong. The goal of mediation is to provide a framework that helps communities clarify misunderstandings, establish mutual trust, and independently prevent and resolve future conflicts.

Facilitation is another service provided by CRS conflict resolution specialists. They facilitate discussions to help communities open lines of communication by listening to the issues of each community group and learning from each group about the problem and potential solutions to the conflict. These dialogues often include various local agencies, institutions, and community residents. Topics of these discussions may include race, police-community relations, perceived hate crimes, tribal conflicts, protests, demonstrations, and other issues that may be important to a community. By reframing and clarifying the issues, CRS can move communities forward toward resolving their problems in mutually acceptable ways. These conciliatory communications may be in-person, by telephone, or via email and may occur over a substantial period of time. Communication is a fundamental building block for developing community trust; it reduces tension and establishes important relationships that build community stability and promote harmony.

CRS conciliators also provide consulting services. Through consulting, CRS furnishes technical assistance, information on best practices, referrals, coaching, advice, and insight. For example, CRS might provide technical insight on the structure and function needed in order to establish a Human Relations Commission. Consulting services can help communities address police, community, or school conflicts.

In addition, CRS conflict resolution specialists provide training programs. Training is a tool for understanding and alleviating current disputes and for preventing future disagreements. These programs bring together representatives from local government agencies, community faith-based organizations, law enforcement, advocacy groups, and businesses in order to develop collaborative approaches for reducing conflicts and addressing the factors that have contributed to the disagreement.

CRS and Law Enforcement: A Long History of Collaboration

In its almost 50-year history, the CRS has worked with law enforcement communities across the country. During the Elian Gonzalez custody and immigration controversy of 2000, CRS provided technical assistance in contingency planning to command

staff and intelligence units of the Miami police department, facilitated meetings between Cuban leaders and Immigration and Naturalization Services officials, and was on-site at several demonstrations, fostering communication between police and protesters, and preventing incidents of violence. As reports of violence against Arabs, Muslims, and Sikhs in the United States intensified following the 9/11 terrorist attacks, CRS deployed its forces to promote understanding. CRS prepared an Arab, Muslim, and Sikh Awareness and Protocol seminar, and created a law enforcement roll-call video titled *The First Three to Five Seconds*. The video helps police officers to reduce tension by differentiating between threats and cultural norms in non-crisis situations involving Arabs, Muslims, and Sikhs.

Following Hurricane Katrina in 2005, CRS worked to open lines of communication between disaster relief entities and minority communities. CRS collaborated with local law enforcement and federal government officials to implement rumor control measures surrounding the alleged presence of hate groups in cities and towns affected by Hurricane Katrina, and the agency outlined the demographics of major racial and ethnic communities in the Gulf Coast states and then trained program participants on the history of these communities' relations, specifically their encounters with authority; perceptions of discrimination; and allegations of unaddressed grievances by local, state, and national government.

In 2007 and 2008, CRS assisted local law enforcement after the shooting death of Sean Bell in Queens, New York. The agency provided contingency planning assistance, self-marshal training, and on-site conciliation during community protests following Bell's death. Following the acquittal of the three police officers indicted over the shooting, CRS sent a National Deployment team to New York to help local law enforcement and government officials ensure peaceful demonstrations. CRS responded to more than 25 community events in New York City and monitored and provided assistance during six highly publicized "Civil Disobedience for Sean" demonstrations that consisted of blocking public access to the Triborough, Manhattan, and Brooklyn Bridges.

Today, CRS continues to provide services for, and alongside, law enforcement communities. The agency is often asked to furnish technical assistance and aid law enforcement in logistical planning when there are demonstrations, marches, and rallies. CRS also provides its mediation, facilitation, training, and consulting services to law enforcement when there is community tension regarding a high-profile police investigation or controversial prosecution in the aftermath of actual or perceived hate crimes. In addition, CRS frequently works with law enforcement to improve police-community relations and communication, particularly when community members have made accusations of racial profiling, bias-based policing, and excessive use of force against community members of a different race, color, national origin, gender, gender identity, sexual orientation, or religion or against a community member with a mental or physical disability.

CRS Training and Education Programs for Law Enforcement

CRS provides a wide array of services, including training programs specifically designed to assist law enforcement and improve police-community relations.

Law Enforcement Mediation Program: CRS' Law Enforcement Mediation Program is a two-day course that strengthens the problem-solving and mediation skills of law enforcement officers and commanders who serve diverse communities. CRS works with officers to identify opportunities to enhance the level of mutual trust and respect between their department and the community and to eliminate barriers to providing more effective police services. Many of the issues addressed can lead to the residual benefit of a reduced number of calls for service and an increase in patrol efficiency.

Responding to Allegations of Racial Profiling: Responding to Allegations of Racial Profiling is an eight-hour course that brings together law enforcement and community members to address perceived racial profiling and biased policing practices. This course can be tailored to the specific needs of a given community. It is helpful in reducing tensions and creating a shared

understanding of factors that contribute to mistrust. It is an effective way to begin a police-community relations initiative or problem-solving process, and it encourages collaborative police-community relations.

Arab, Muslim, and Sikh (AMS) Cultural Awareness Program: The AMS Cultural Awareness Program is a four-hour course intended to familiarize law enforcement and government officials with some of the predominant customs and cultural aspects of Arab, Muslim, and Sikh communities. The program is effective as a tool for helping law enforcement avoid behavior and actions that might be deemed offensive—or as part of a broader initiative to strengthen the relationship between local officials and the Arab, Muslim, or Sikh communities that they serve.

Hate Crimes Program: The Hate Crimes Program is a two-day training program that provides state and local law enforcement officers with the skills and knowledge that are critical when addressing hate crimes. The program has been designed to familiarize officers with best practices for identifying, reporting, and investigating hate crimes. The program also covers strategies for effectively educating the public about hate crimes and their significance to community relations.

Self-Marshalling Assistance and Training: CRS assists local law enforcement, city officials, and demonstration organizers with planning and managing safe marches and demonstrations. CRS facilitates meetings between all parties involved and serves as a neutral entity to ensure that logistics are coordinated, information is shared appropriately, and that marches and demonstrations are conducted safely.

Rumor Control: CRS' Rumor Control Program assists in establishing measures that control inflammatory and inaccurate rumors. By employing a proactive and coordinated approach to publicity (and a formalized community-notification process), CRS ensures the dispersal of accurate and credible information.

Student Problem Identification and Resolution of Issues Together (SPIRIT): The SPIRIT program is a two half-day interactive student-based problem-solving program that engages students in developing solutions to problems associated with allegations of discrimination, harassment, and hate activity in schools. SPIRIT also engages school administrators, teachers, school resource officers, local officials, community leaders, and parents in the process of identifying and responding to these conflicts in school, and both students and administrators work toward creating the safest possible environment for learning.

City Site Problem Identification and Resolutions of Issues Together (City SPIRIT): City SPIRIT is a two-day problem-solving and resolution program that brings together representatives from local government agencies, community and faith-based organizations, law enforcement, and businesses to develop collaborative approaches for reducing racial conflicts and addressing the factors that contribute to these conflicts. The parties may also develop approaches for preventing and responding to alleged violent hate crimes on the basis of actual or perceived race, color, national origin, gender, gender identity, sexual orientation, religion, and disability. This program helps communities establish a lasting capacity to prevent and respond to conflicts.

Healing Communities

Several months ago, Oak Creek, Wisconsin, commemorated the one year anniversary of the attack on the Sikh gurdwara. In the year since the shooting, CRS has continued to assist the community in establishing stronger and lasting bridges of communication between federal and local law enforcement officials, national and local Sikh officials, and the larger Oak Creek community. CRS conciliators have moderated dialogues, organized a forum on safety concerns for houses of worship, and provided conciliation services at vigils for the victims. In addition, the agency has responded to requests from mosques and gurdwaras across the United States who have expressed anxiety that a similar incident could occur in their communities. CRS has aided these congregations in voicing their concerns with local law enforcement and assisted them in educating their broader communities about their religious traditions and beliefs through facilitated dialogues and cultural professionalism trainings. By learning how to

peacefully communicate, communities are fostering an environment of positive communication and reducing the risk of conflicts now and in the future.

For information regarding CRS services, trainings, and support, please contact the CRS Headquarters Office at (202) 305-2935. Additionally, information regarding CRS' various regional and field offices is located on the agency's website (<http://www.justice.gov/crs/map.htm>).

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Francis Amoroso is the former CRS Regional Director of the Northeastern Region, Chief of Police (Retired) of Portland, Maine
Rosa Melendez is the CRS Regional Director of the Northwestern Region, U.S. Marshal (Retired) of the Western District of Washington

Footnotes:

[i] John Edwards and Libby McInerney, "Oak Creek: Leading a Community in the Aftermath of a Tragedy," *The Police Chief* 80 (October 2013): 98–106.

[ii] Gina Damron, Cecil Angel, and Matt Helms, "7-Year-Old Boy's Suicide Shocks Detroit Community," *Detroit Free Press, USA Today*, May 25, 2012, <http://usatoday30.usatoday.com/news/nation/story/2012-05-25/detroit-child-suicide/55200606/1> (accessed October 18, 2013).

[iii] Community Relations Service, *Community Relations Service: FY 2012 Annual Report* (Washington, D.C.: U. S. Department of Justice, Community Relations Service, 2013), 23, <http://www.justice.gov/crs/pubs/crs-fy2012-annual-report.pdf> (accessed October 18, 2013).

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With the creation of modern travel and communication, cross-influence of cultures is now the norm. Further, exposure to media like movies also means that any individual may manifest characteristics of different "sub-cultures." Lee asserts that thinking about culture in "frameworks" is far more useful in measuring culture than attempting to define it. The question becomes, then, what cultural framework is most useful in the particular context. Such frameworks may overlap, and cultural traits are better measured on a continuum rather than defined as one thing or another.^[3]

Professor Lee points to Geert Hofstede's "dimensions of culture," which identifies four cultural dimensions that can be used to describe important differences between culture: 1) power distance; 2) individualism/collectivism; 3) masculinity/femininity; and 4) uncertainty avoidance.^[4] Professor Lee's articles focuses on power distance and individualism/collectivism in considering the possible impact the dimensions have on mediation.

Lee questions whether or not culture has an impact on mediation, and more generally whether culture has a significant impact on human interactions. "Universalists" believe that all conflicts are fundamentally universal in nature, while "Culturalists" believe humans are more different than similar. Lee states that in 2003, the primary dispute-resolution method employed in Singapore was a facilitative interest-based model of mediation. There was question, however, whether this method was appropriate in the Asian context.^[5] Lee notes Singapore is a small island made up of many ethnicities, which is a developed and democratic country. Historically in Singapore, disputes were resolved through indigenous forms of mediation practiced among different ethnic groups. The mediators were often religious community leaders who had standing and credibility in their respective communities. Under British influence, these mediation-like practices gave way to western litigation as a primary dispute-resolution method. Mediation has again taken root in Singapore in the form of Primary Dispute Resolution Centre in the Subordinate Courts, Community Mediation Centres, and the Singapore Mediation Centre. In all of these contexts, parties of different ethnicities, races, and nationalities mediate their disputes.^[6]

From 1994-2003, western mediation training and practice found its way to Singapore and had a heavy influence on modern mediation in the country, which has manifested in the facilitative interests-based model. Lee states that while the method does work well in some situations, in other situations it's clear that the type of mediation is not the "most comfortable" fit for Singapore. The Singapore Mediation Centre was thus tasked with looking at whether the facilitative interests-based model was appropriate for the Asian context.^[7] A working group was formed and tasked with the questions of "West versus East" mediating norms. The group rejected this question and proceeded from the assumption that the interests-based model of conflict resolution provided a "functional paradigm" that was universal to the human condition.

According to the group, what caused the "uncomfortable fit" with non-Western cultures was the cultural assumptions inherent in the facilitative interests-based model of mediation. The assumptions regarding this model are: 1) primacy of the individual and the individual's expectation of autonomy; 2) the priority of the interests of the individual; 3) the premium placed on direct and open communication for constructive conflict management; and 4) the importance of maintaining a good working relationship for constructive conflict resolution.^[8] Lee notes that the assumptions were "invisible" when the model was used in a context that had compatible cultural assumptions. By not making a distinction between the functional assumptions and operation paradigms of the method, operationalizing the method, such as by encouraging direct communication may not fit all cultural contexts.^[9]

By identifying the four "Western" assumptions and replacing them with cultural assumptions that better fit the Singaporean context, the usefulness of the interests-based model of mediation was preserved and harmonized with Singaporean culture. Thus, "Asian" assumptions were identified as: 1) primacy of social hierarchy and the individual's expectations to fulfill roles in any hierarchical relationship; 2) priority is given in observing proper conduct; 3) communication and conduct is geared towards preserving harmony, relationships, and face; and 4) one approaches context-dependent relationship maintenance as a way of life.^[10] Lee points out that these assumptions do not represent the value system of all Asians, nor do they attempt to prescribe an "Asian model" of mediation. Rather, the assumptions offer a Singaporean perspective and provides a methodology by which academics and mediation practitioners in other contexts can choose to contextualize the interest-based model for their own cultures.^[11]

Lee asserts that inserting the "Asian" assumptions into the conflict resolution model allows the paradigm of using "interests" to resolve disputes untouched. Rather, what changes by using the Asian assumptions are the operational aspects of implementing the interest-based model. For example, the first tenet of Western assumptions is primacy of the individual and the individual's expectations of autonomy. Operationally, this puts disputing parties first and in the center of the mediation.^[12] Comparatively, the first tenet of the Asian assumptions is primacy of social hierarchy and the individual's expectations to fulfill roles in hierarchical relationships. Operationally, this requires that the mediator be at the heart of the mediation, instead of the parties.^[13] Thus, using a party-centric process created tensions in the Asian context due to the incompatible cultural characteristics, which leaves parties and the mediator feeling out of place.^[14] Lee states that it is possible to manifest the interest-based model in a less facilitative manner, which would allow mediators to take on a larger leadership role without depriving parties of their power to decide how to resolve the dispute.^[15]

Lee rejects a proposition that when resolving conflicts in Asia, parties should, for example, use indirect speech. Lee notes that this solution is "too blunt an instrument," in that it presumes a dichotomous choice of direct vs. indirect speech based on whether the context is in the East or West. However, this cannot be correct because direct speech is also used in the East, thus only using indirect speech in every context in the East would only sometimes be appropriate. It would be inaccurate to make a general assumption that in an Asian context, one must use indirect speech to preserve "face," because there are many contexts in which parties communicate directly and do not seem concerned about helping the other party preserve "face." Lee asserts there is consistency in this behavior, under which lies a framework.^[16]

The framework resolves around a few notions, the first of which is status: a measurement of how society handles inherent

inequalities, measured by Hofstede's "Power Distance Index" (PDI). Lee notes some societies are more hierarchical than others, and hierarchical societies have a more defined sense of roles and obligations, and there are clear decision makers. Lee notes that in societies like the U.S. that have a low PDI, there are still certain contexts within society that exhibit higher PDI – i.e. the military and legal professions.^[17]

The second notion is belonging, which is measured by the Individualism Index (IDV). Belonging is defined as a measurement of the relationship and extent of integration between the individual and the group that prevails in the given society. Simply put, cultures with high IDV focus more on individual rights, and those with low IDV focus on close ties between individuals.^[18] As with status, there are contexts in which a culture exhibits high IDV, but certain groups within that culture exhibit a low IDV, and vice versa.^[19]

The third is communication, which can be split between direct and indirect communication. Direct communicators derive meaning from the words used by the speaker, whereas indirect communicators derive meaning from context clues and cues. Where a direct communicator may say, "this deal will not work for me," an indirect communicator may say "I will think about the deal" but give off other cues that indicate they are being polite and do not actually intend to think about the deal.^[20] Lee notes it is important to understand that both forms of communication seek to convey the same message. Additionally, because most people have a preference for a style of communication, a communicator may attribute negative intentions to the other type of communicator. Direct or indirect communication is not always a direct "either or" distinction, and communication styles are more usefully characterized as being on a range within the direct-indirect continuum. Different people often perceive the same phrase differently depending on their preferred style of communication.^[21] Finally, since people operate inside a range between indirect and direct, most people exercise discretion and choice about where in their range they will communicate. The values people have about communication or the model of mediation being used can help guide this choice.^[22]

The final notion Lee observes is the concept of "face," which is expressed in western contexts as ego or pride. A person can either save one's own face, or give the other person face (which Lee characterizes as the same as "saving the other person's face.") Lee asserts the norm as an assumption that where there are no "face" considerations, two parties will communicate with each other in a direct manner and can be expected to assert what they are entitled to in terms of respect, behavior, or rights.^[23]

In a scenario in which a party feels the need to give the other face, the party may communicate indirectly or otherwise manifest patterns of deference, and thus assert for less than what they are entitled to. In another scenario, a party may feel the need to save face and thus communicate directly, manifesting dominance and authority and asserting exactly what they are entitled to. In the first scenario, the party may seem too deferential, and in the second, the party may seem unreasonable. In the context of mediation, the need to give or save face may also manifest as a reluctance to talk about certain things during the joint session.^[24]

Lee focuses the rest of the article on how status, belonging, communication, and fact interact. Specifically Lee's proposed framework focuses on status (PDI) and belonging (IDV) as the two variables that determine which communication and face strategies to engage in. Lee created a table which illustrates various scenarios, characterized by PDI status, the status of parties in mediation and where they stand hierarchically, and whether the parties are in-group or out-group. The table illustrates one possible mediation in which the parties are from the "in-group" in a society that have a high PDI. In a situation where one party has "high status" and the other has "low status," the party with "high status" can be expected to engage in direct communication with the other party, and observe the "norms" of face play.^[25]

Lee states that using a similar table, or framework of thinking where status, hierarchy, and PDI are considered can help mediator determine what mode of communication to use with parties. For example, if the parties have a preferred style of communication, it would benefit the mediator to use that style of communication in conducting the mediation. If the parties' styles of communication are mismatched, the mediator must be careful not to let his or her preferred mode of communication give the impression that they

are partial to either party. Lee also states that a mediator plays an important role in bridging the communication gap, and does so by playing the role of a translator. For example, the mediator can help “translate” one party’s indirect communication to the other party who prefers direct communication. [26]

Where face play is important to both parties, the mediator can use that information to help parties construct agreements that both save and give face. This can involve symbolic gestures, that may not otherwise be a part of mediation if the mediator only focused on the substantive interests of the parties. Additionally, being aware of status and belonging factors can help the mediator decide when to use private sessions during the mediation.[27]

Finally, Lee notes that understanding belonging can help the mediator can help parties who are “out-group” transition to being “in-group,” which helps parties come up with options that both parties can agree upon.[28]

Lee concludes that of course culture is important, and the challenge is to not fall into generalizations that give us shortcuts in we can more easily navigate the world. It is thus important to have a framework from which we can create our own generalizations when we meet a situation that does not fit with our current generalizations.[29]

Footnotes

[1] Jole Lee, *Culture and its Importance in Mediation*, 16 Pepp. Disp. Resol. J.J. 317 (2016)

[2] *Id.* at 319.

[3] *Id.* at 320-321.

[4] *Id.* at 321.

[5] *Id.* at 323.

[6] *Id.* at 324.

[7] *Id.* at 325-326.

[8] *Id.* at 326.

[9] *Id.* at 327.

[10] *Id.* at 328.

[11] *Id.*

[12] *Id.* at 326.

[13] *Id.* at 328.

[14] *Id.* at 329.

[15] *Id.* at 331.

[16] *Id.* at 332.

[17] *Id.*

[18] *Id.* at 332-333.

[19] *Id.* at 333.

[20] *Id.*

[21] *Id.* at 334.

[22] *Id.* at 334-335.

[23] *Id.* at 335.

[24] *Id.* at 336.

[25] *Id.* at 336-337

[26] *Id.* at 338.

[27] *Id.* at 338-339.

[28] *Id.* at 339.

[29] *Id.*

Mayhew-Hite Report City of Cleveland Consent Decree

On March 14, 2013, the United States Department of Justice began an investigation into the Cleveland Division of Police's policies and practices, at the request of Cleveland Mayor Frank Jackson. The goal of this investigation was to determine whether CDP engaged in a pattern or practice of using excessive force, in violation of the Fourth Amendment of the U.S. Constitution and the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141. [1] As a part of this investigation, the Department of Justice (DOJ) and police-practice experts conducted a comprehensive assessment of CDP's use of force, as well as its policies and community engagement efforts, among other factors. The investigation included meetings with Cleveland residents, community groups, members of religious communities, and the Civilian Police Review Board. Members of the Cleveland community, including community advocates, religious leaders, and members of CDP's unions took an interest in the investigation and played a critical role in providing information and facilitating the investigation.

On December 4, 2014, the DOJ announced that it had reasonable cause to believe that the CDP engaged in a pattern or practice of use of excessive force, due in part to certain systemic deficiencies. [2] These deficiencies related to operational and structural areas of CDP, including community policing efforts. The City agreed that the findings raised important issues that needed to be addressed by both the City and the community. To ensure that the Decree effectively responded to the community's concerns, the DOJ and CDP consulted with community leaders, police officers, residents, and other concerned individuals. Thus, the Decree (i) reflects the input received from the various communities within the City of Cleveland and (ii) emphasizes the importance of engaging with these communities to resolve disputes. [3]

Emphasizing the importance of community engagement, the Decree states that both the City of Cleveland and the United States of America are committed to ensuring that the CDP is operated in a manner that is constitutional, effective, and consistent with community values, while maintaining community and officer safety. It also states that both the DOJ and the City are committed to ongoing engagement with the community to foster continued participation and long-term stability of the reforms. Essential to the success of this goals is a strong relationship between CDP and Cleveland's communities, built on mutual trust and respect. To promote public trust and confidence in the CDP, the Consent Decree also states that the CDP will create formal and informal mechanisms that facilitate ongoing communication between CDP and the many Cleveland communities that it serves.

Part III of the Consent Decree specifically addresses community engagement and trust-building. The section starts by stating that "[t]he Agreement recognizes the importance of community input into the way police services are delivered." [4]

To leverage the experience and expertise of community members in Cleveland, and to ensure that CDP operates in a manner consistent with cooperative community engagement going forward, the Decree mandates that the City establish a Community Police Commission. The Commission consists of thirteen members who represent the communities of Cleveland and was to be established within 90 days of the Effective Date of the Agreement. The Decree also mandates that the Community Police Commission do the following:

1. Make recommendations to the Chief of Police and the City, including the Mayor and the City Council, on policies and practices related to community and problem-oriented policing, bias-free policing, and police transparency;
2. Work with the many communities that make up Cleveland for the purpose of developing recommendations for police practices that reflect an understanding of the values and priorities of Cleveland residents; and
3. Report to the City and community as a whole and to provide transparency on police department reforms. [5]

The Decree also requires that the City establish a selection panel, selected by the Mayor in consultation with the DOJ, that includes representatives from: (i) faith based organizations; (ii) civil rights advocates; (iii) the business/philanthropic community; (iv) organizations representing communities of color; (v) advocacy organizations; (vi) youth or student organizations; (vii) academia; and (viii) individuals with

expertise in the challenges facing people with mental illness or the homeless.^[6] The panel's task is to accept applications, from Cleveland residents or individuals who work in the city, for membership on the Community Police Commission ("Commission"). The selection panel then recommended ten persons to be appointed as members for a term of no more than four years, ensuring at least one representative from the categories above. The Cleveland Patrolmen's Association, the Fraternal Order of Police, and the Black Shield also appointed one member each to serve on the Commission.^[7]

The Consent Decree sets out the following goals for the Commission:

1. Within 90 days of appointment, hold public meetings across the City, complete ^[1]an assessment of CDP's bias-free policing policies, practices, and training, ^[2]and make recommendations;
2. On an ongoing basis, including through its membership on the Training ^[3]Review Committee, assist as appropriate in CDP's development of training ^[4]related to bias-free policing and cultural competency;
3. On an ongoing basis, assess CDP's community activities, and make ^[5]recommendations for additional strategies for CDP to consider to increase ^[6]community engagement with and community confidence in CDP;
4. On an ongoing basis, review CDP's civilian oversight structure to determine if ^[7]there are changes it recommends for improving CDP's accountability and ^[8]transparency; and
5. Perform other function as set out in this Agreement.

The Decree also gave the Commission the authority to:

1. Review and comment on CDP's policies and practices related to use of force, ^[1]search and seizure, and data collection and retention;
2. Review and comment on CDP's implementation of initiatives, programs, and ^[2]activities that are intended to support reform; and
3. Hold public meetings to discuss the Monitor's reports and to receive ^[3]community feedback concerning CDP's compliance with this Agreement.^[8]

The Consent Decree also mandates that the Commission issue annual reports which include any recommendations for improvement, related to any activity it undertakes. The City agrees to post the Commission's findings of the City's website. The City is also obligated to respond to the Commission's recommendations for improvement.^[9]

Importantly, the Commission, CDP, and the Community Relations Board all agreed to work with the District Policing Committees to facilitate communication between CDP and local community leaders, requiring that they meet at least quarterly.^[10] The Commission and CDP were also tasked with creating a mechanism to recruit and expand the membership of the District Policing Committees, which should include a representative cross-section of the community. The CDP and District Policing Communities were further instructed to work together to identify strategies to address and safety issues in each district.^[11]

Article Post-Script

Since the issuance of the Consent Decree in 2015, Chief Judge Solomon Oliver, Jr. of the District Court for the Northern District of Ohio appointed Matthew Barge as the Monitor to oversee the implementation of the Decree and head the Cleveland Police Monitoring Team ("Monitoring Team"). Mr. Barge's team consists of experts with backgrounds in law enforcement, psychology, social science, law, and organizational change, among others. Along with the Monitoring Team, Cleveland's Community Police Commission and the CDP are all conducting separate outreach into communities across Cleveland to ensure that community members have ample opportunity for input concerning the CDP's reform efforts, consistent with the goals of the Decree.

Pursuant to the terms of the Decree, the CDP has seen new policies for responding to mental health crises, a plan for bias-free policing, and reforms to the office that handles citizen complaints.^[12] In its Third Semiannual Report, the Monitoring Team noted that, as of June 2017, Cleveland's Community Policy Commission had provided meaningful contributions and recommendations for changes in police practice and procedure as required under the Consent Decree.^[13] This includes monthly meetings open to the public and held by the Commission throughout locations in various neighborhoods throughout Cleveland, to find new and innovative ways to engage the public in the reform process and hear the facilitated comments and concerns of community members. The Monitoring Team has also continued its work to facilitate substantive involvement of Cleveland's community members in the implementation of the Consent Decree, to ensure that an inclusive community voice is part of reform processes and that newly-developed police policies and practices reflect the community's desires and values. Facilitating even greater community involvement is at the forefront of the Monitoring Team's agenda.

The full Third Semiannual Report, which describes in fuller detail the state of the City's compliance with the requirements of the Consent Decree, is [available here](#).

Footnotes

[1] *United States v. City of Cleveland*, Consent Decree, (June 2, 2015) pg. 2

[2] *Id.*

[3] *Id.*

[4] Consent Decree, pg. 4.

[5] *Id.* at 5.

[6] *Id.*

[7] *Id.*

[8] *Id.* at 6.

[9] *Id.*

[10] *Id.* at 7.

[11] *Id.*

[12] Matthew Richmond, *With Deadline Nearing, How Will Cleveland's Next Mayor Handle Consent Decree?*, ideastream (Nov. 1, 2017), <http://www.ideastream.org/news/with-deadline-nearing-how-will-clevelands-next-mayor-handle-consent-decree>

[13] Cleveland Police Monitoring Team, *Third Semiannual Report* (June 2017), <https://static1.squarespace.com/static/5651f9b5e4b08f0af890bd13/t/593fd8543e00be3feb4a3c6a/1497356385030/Third+Semiannual+Report-FINAL-FOR+FILING.pdf>

Mayhew-Hite Report Judicial Intervention in Communities in Conflict

Leigh Anne Newcomer*

In an era of division and unrest, courts are an overlooked resource for bridging divided communities. If utilized properly in the right setting, courts can prevent conflict from escalating and “add the critical dimension of getting people in divided communities to deliberate about ways to solve, or at least ameliorate, the problems underlying their differences.”^[1] Attorneys with mediation experience can contribute to resolving issues in their own communities by recommending court involvement at the right moments and for the right conflicts.

This article reviews two instances of constructive court involvement—one by a state court system prior to any litigation and one by a federal district court that mediated a conflict well beyond the issues in pending litigation and involved more than the parties to the dispute. Then the article examines the arguments against court involvement beyond the parties and issues in pending cases. It suggests that courts and attorneys who recommend the mediation can deal with these arguments—which raise valid concerns—through appropriate structuring, effective timing, and choice of conflicts involving the courts.

Courts have the potential to contribute significantly to communities in conflict and often have advantages, as illustrated below in the two success stories. Some community members may be distrustful of public officials, and as a perceived neutral; courts may be able to better engender trust and engage stakeholders in an intervention process. A court can also help provide critical local intervention when other state or local officials cannot balance the tensions between accountability and creating the requisite climate for dispute resolution processes. In many instances, courts have broadened cases to deal with conflict well beyond the issues in dispute to come up with a widely-supported agreement for sustainable change. Furthermore, sponsoring community intervention does not necessarily undermine confidence in the justice system if court-appointed intervenors maintain neutrality, act on their promises and communicate their actions in a way that the public can understand, and allow people a forum express to their views. Court-appointed intervenors can perform these functions while simultaneously respecting people and their rights.

State and federal district courts have engaged in innovative efforts by both creating ways to proactively address problems in divided communities, and providing a forum to constructively discuss and resolve issues after unrest has occurred. Interventions by the Maryland Court of Appeals and the U.S. District Court for the Southern District of Ohio in Cincinnati illustrate how courts can be well-suited as intervenors in communities in conflict.

Court-Sponsored Intervention Before Litigation

Maryland’s highest court, the Maryland Court of Appeals, has an office, the Mediation and Conflict Resolution Office (MACRO), that intervened when racial tensions formed between students at Frostburg State University and residents of the town. When two African-American students were murdered by other African-American students in back-to-back years, Frostburg residents responded by denouncing the import of violence that the more racially diverse university brought to the town.^[2] Outraged students responded by characterizing town residents as racists and gained extensive statewide media coverage of their concerns. The town was sharply divided, and Frostburg State University officials knew something had to be done before tensions developed into civil unrest. The university vice president, who’d attended MACRO’s fellows program, worked with a professor to submit a proposal to MACRO to intervene in the Frostburg conflict.

The judiciary supported Frostburg through a Memorandum of Understanding (MOU) between the Maryland Court of Appeals and

the university that provided funding for a facilitator to intervene in the divided Frostburg community. MACRO provides short-term grants and monitors the conflict without passing on information about the details to the Court of Appeals judges. A facilitated dialogue took place between students and community members over the course of two years and is still ongoing. The design team used university resources to create a video and social media campaign. The project's goals were outreach and education and bringing people together for a community dialogue.

Numerous benefits surfaced from this process. University police, township police, the mayor, church, community leaders, university students, and residents had a forum to constructively address community concerns. Other community programs also emerged. An Adopt a Student Program was formed where the more diverse university student population would tutor high school students from local families in town, in exchange for meals. By intervening in Frostburg proactively and establishing a community dialogue, facilitators may have prevented a less constructive outcome resulting from unrest from occurring.

Court-Sponsored Intervention by Moving Beyond the Issues and the Participants Involved in Pending Litigation

The U.S. District Court for the Southern District of Ohio in Cincinnati's appointment of a mediator and structuring of a mediation demonstrates how a federal court can intervene following unrest and provide a forum for engaging parties to litigation and community leaders in a planning initiative to establish new processes for community problem solving. The need for reform became evident after years of lawsuits filed by African-Americans and highlighted by the Cincinnati Black United Front (BUF) and the American Civil Liberties Union of Ohio Foundation, Inc. (ACLU) filing a class action suit against the City of Cincinnati and the Fraternal Order of Police alleging racial profiling and discriminatory law enforcement practices.^[3]

The key player in converting the pending litigation to collaborative problem solving was U.S. District Judge Susan Dlott.^[4] Judge Dlott persuaded the parties to agree to set aside the litigation and pursue mediation focused on addressing the "social conflicts at the core of the police-community divide."^[5] She invited special master mediator, Jay Rothman, to design and facilitate the mediation process using participatory and collaborative procedures to explore improving police-community relations and addressing racial injustice.^[6] Though the parties had made progress by agreeing to halt litigation and explore potential reforms through mediation, riots soon broke out following that agreement after Cincinnati police shot an African-American youth named Timothy Thomas.^[7]

Cincinnati "endured several days of demonstrations and rioting; injuries to demonstrators, police, and people driving by; and scores of arrests."^[8] The riots grabbed the attention of city leaders and renewed their commitment to participate in the collaborative process.^[9] The Cincinnati Black United Front (BUF), the American Civil Liberties Union of Ohio Foundation, Inc. (ACLU), the Cincinnati City and Police Administration, and the Cincinnati Fraternal Order of Police became formally constituted as an advisory group for the collaborative effort.^[10] The mayor of Cincinnati also decided to get the Department of Justice (DOJ) involved.^[11] The parallel dispute resolution and DOJ tracks proved key, as Judge Dlott later called the head of the civil rights division at DOJ and asked to consolidate negotiations.^[12] It is important to note here that Judge Dlott charged the parties with paying for the mediation process, and one of the plaintiffs' attorneys found a grant to fund the initiative.^[13]

The result was a Collaborative Settlement Agreement^[14] between parties and a consent decree between Cincinnati and DOJ.^[15] In the Collaborative Agreement, the police officers and community members agreed to become proactive partners in community problem solving; build relationships of respect, cooperation and trust within and between police and communities; improve education, oversight, monitoring, hiring practices and accountability of the Cincinnati Police Department; ensuring fair, equitable, and courteous treatment for all; and create methods to establish the public's understand of police policies and procedures and recognition of exceptional service in an effort to foster support for the police.^[16] In the consent decree, DOJ recommended, and the parties agreed to, eighty changes to then-existing police practices.^[17] Some of the recommendations included a revised K9

(police dogs) policy, response to mental health incidents, use of force, and increased training for Cincinnati police officers (1,000 hours of additional training before beginning employment and mandatory continuing education). An official signing ceremony was held to symbolize this monumental agreement on April 12, 2002, and the U.S. Attorney General signed on behalf of DOJ.^[18]

The Collaborative Agreement set forth a five-year timeline and called for independent monitoring to ensure compliance with its terms.^[19] Saul Green, former U.S. attorney for the Eastern District of Michigan, was hired as the independent monitor and oversaw the implementation of the agreed to police reforms in Cincinnati.^[20] He formed an eight-member team comprised of law enforcement and experts in community/police relations.^[21] He and his team frequently met with the city to discuss new policing methods.^[22] Saul helped the police make improvements such as better analyzing the calls they received.^[23] He cautioned them to not just be reactive in performing their duties, but to also be proactive and go out and talk to people about what's going on in their communities.^[24] These new procedures also strengthened the police department's relationship with social services.^[25]

The momentum continued to build. After introducing the use of computer statistics in policing, the fourth year of the Collaborative Agreement became a critical turning point for the city.^[26] By the end of the fifth year, Cincinnati police had complied with all eighty recommendations from DOJ.^[27] Motivated by the program's success, the police asked for an extension, and Judge Dlott supervised the process for a sixth year.^[28] In total, she monitored compliance from 2002-2008.^[29]

Even though fifteen years have passed since its inception, the Collaborative Agreement is a living document.^[30] The citizens' complaint authority established by the Collaborative Agreement has remained in place and has even increased its number of staff members during the last decade.^[31] The Agreement and resulting improved police/community relations have also dramatically changed the face of the city.^[32] The downtown area has vastly improved.^[33] People feel safer now and enjoy areas that were once considered too dangerous to either live or maintain establishments.^[34]

This model can be applied in municipal and county settings as well.^[35] For example, the leaders of these localities are currently working out the problems of the sewer district, which is run by city, but owned by county.^[36] A further application involved repairing the city of Cincinnati's insufficient pension plan.^[37] The city's bond rating would have gone down in January 2015 if the city hadn't figured out how to resolve the issue beforehand.^[38] The city solicited the court to help solve these problems, and the model worked in these additional settings.^[39]

The key to triggering these negotiations is a pending case.^[40] In such cases, the federal courts can provide critical intervention and make a lasting community contribution by affecting change. The federal court has the authority to force parties to the litigation to show up and order the parties to pay for mediation.^[41] It is also well-respected enough to get non-parties to show up and willingly talk about community problems.^[42] Often, courts invite people they don't have jurisdiction over, invitees agree to participate, and a stakeholder group, with broad and converging interests, forms.^[43] While state trial courts can implement impactful programs, such as MACRO, to address escalating issues within a community, the distinction between the state and federal models is a pending case.

The federal model also differs from the model used by the state court in Maryland in other ways. While less voluntary, it provides more protection. The court removes both pressure from city officials and politicization of the issue, and provides cover regarding contentious issues.^[44] Federal judges are not in elected positions, so they can make unpopular decisions without the fear of repercussions, and lifetime appointments allow them to see those decisions through.^[45] Whereas, a state court model applied in the same Cincinnati area covers just the Hamilton County Common Pleas Court, and those judges occupy elected positions.^[46] This may provide a different focus and concern over unfavorable decisions.^[47]

Critiques of Court Intervention in Community Conflict

Some may be hesitant to turn to courts to assist in resolving community conflicts for a variety of reasons. There may be a fear of introducing perceived bias on the part of the judiciary; potential confusion over the role of the court as an independent branch of government; or that judicial involvement may create political overtones, thereby politicizing the court through the intervention process.^[48] Further risks include communication of information not otherwise available to judges, lack of impartiality from a vested interest in the success of the intervention, undermining public confidence in the judiciary, and distraction from its core functions.^[49]

Others have suggested that the judiciary's climate and culture may pose difficulties for effective intervention.^[50] While a well-respected institution, a court is also a "highly structured, traditional, [and] rule-bound institution" ^[51] and may lack the flexibility necessary for resolving community conflicts. By adhering to the narrow and regimented focus typically associated with litigation, critics caution that courts may fail to "accomplish the issue-broadening" or reconciliation goals sought by parties.^[52]

Intervenors have also noted the importance of early intervention,^[53] and courts may not be able to respond quickly enough following unrest. Consequently, judicial intervention may not be the best institutional fit for a community. Each governmental branch has a role in the intervention process, and it's important to determine where each is most effective.

Following the shooting death of Trayvon Martin in 2012, thousands of protestors flocked to Sanford, Florida. By housing the intervention function in its executive branch, officials in Sanford were able to intervene quickly when civil unrest ensued.^[54] As a result, no riots, violence, or arrests occurred during the demonstrations.^[55] In contrast, the federal court in Cincinnati didn't intervene until after days of demonstrations, rioting, and scores of arrests following the shooting of another African American youth.

Responding to the Critiques

While the critiques raise valid issues, they miss the mark, as the courts in both Cincinnati and Maryland avoided the potential harm they warn against.

Though timing was key in Sanford, the executive branch isn't the only branch that can intervene quickly during conflict. If structured properly, an intervention agency housed within the judicial branch can also respond quickly to rising community tensions. This is where a state court model, such as MACRO, an agency of Maryland's highest court, is most effective. By contracting with intervenors and keeping one on retainer who can enter a powder keg situation immediately, courts can intervene quickly and then structure the contract to work alongside public officials to shape community intervention, just as MACRO did in Frostburg. Other courts can emulate this model by creating a similar agency.

The federal court model in Cincinnati was effective in dispelling other concerns. By involving parties other than those subject to the litigation, Judge Dlott was able to accomplish the issue broadening critics have warned courts are incapable of achieving. The issues were no longer solely about resolving the issues in litigation pending before the court, but in improving perceptions of justice, communication between leaders and residents, and Cincinnati as a whole.

Furthermore, both the Maryland and Cincinnati court structures immunize the judges themselves from receiving information they would otherwise not be privy to and avoids any politicization of the courts. In Judge Dlott's example, by making the referral to DOJ, she was careful to orchestrate the process to ensure she didn't receive information that wasn't otherwise available to her. The same is true for different reasons in Maryland, as the state court model doesn't involve cases pending before the Maryland Court of Appeals or its lower courts. With both models, proper structuring creates barriers to information, and any dangers pointed out by critics, did not occur.

A Role for Courts and for Attorneys in Suggesting Court Involvement?

Within each community, there are promising opportunities for institutional intervenors to assist in bridging divided communities and creating forums to better communicate with one another. By planning ahead and engaging in a collaborative process, city leaders can create a shared community narrative and sustainable mediation processes. These processes can stem from influential institutions, such as the courts, increase public perception of fairness and justice, provide transparency, access to decision making, and improve the way people react to one another. No region is immune to divisiveness and the unrelenting spread of civil unrest, making imperative the need to design processes pivotal to gaining trust in communities. By keeping an ear to the ground, attorney mediators can suggest that courts intervene at the right moments and for the right conflicts. Attorneys in both Maryland and Cincinnati approached the judges that later spearheaded their respective judicial intervention initiatives. Courts can provide critical community intervention and should be considered a valuable resource to reestablish connections among people, restore trust and understanding in each other, and rebuild fractured communities.

Footnotes:

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[1] Nancy H. Rogers, *When Conflicts Polarize Communities: Designing Localized Offices that Intervene Collaboratively*, 30 Ohio St. J. on Disp. Res. 173, 178 (2015).

[2] *Id.* at 207.

[3] *Id.*

[4] Jay Rothman, *Identity and Conflict: Collaboratively Addressing Police-Community Conflict in Cincinnati, Ohio*, 22 Ohio St. J. on Disp. Resol. 105, 110 (2006).

[5] *Id.*

[6] *See id.* at 111.

[7] *Id.*

[8] Rogers, *supra* note 1, at 216; Jay Rothman, *supra* note 60, at 110, 217-28.

[9] Jay Rothman, *supra* note 4, at 114.

[10] *Id.*

[11] Telephone Interview with Judge Susan Dlott, presiding judge over the Cincinnati Collaborative Agreement, (Oct. 5, 2016).

[12] *Id.*

[13] *Id.*

[14] Rothman, *supra* note 4 at 105. "The Collaborative Agreement was the result of nine months of participatory problem assessment and goal setting by almost 3,500 citizens of Cincinnati, followed by three months of intense negotiations among representatives of the city, the police, the BUF, and the ACLU."

[15] Dlott, *supra* note 11.

[16] Collaborative Agreement at 3, In re Cincinnati Policing, (2001) (No. C-1-99-317), <http://www.cincinnati-oh.gov/police/linkservid/27A205F1-69E9-4446-BC18BD146CB73DF2/showMeta/0/> (last visited Oct. 26, 2016).

[17] Dlott, *supra* note 11.

[18] *Id.*

[19] Collaborative Agreement, *supra* note 16, at 24-25.

[20] Dlott, *supra* note 11.

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] *Id.* Author's note: social services can also serve as potential community radars.

[26] *Id.*

[27] *Id.*

[28] *Id.*

[29] *Id.*

[30] *Id.*

[31] *Id.*

[32] *Id.*

[33] *Id.*

[34] *Id.*

[35] *Id.*

[36] *Id.*

[37] *Id.*

[38] *Id.*

[39] *Id.*

[40] *Id.*

[41] *Id.* See also Rogers, *supra* note 1, at 221.

[42] Dlott, *supra* note 11.

[43] See e.g., Joseph F. Sullivan, *Trenton's Efforts at Mediation Pay Off*, N.Y. Times, Feb. 17, 1994, at <http://www.nytimes.com/1994/02/17/nyregion/trenton-s-efforts-at-mediation-pay-off.html> (discussing the federal court's judicial intervention into a dispute concerning the closing of low income housing in New Jersey). See also Symposium on Litigation Management: Toward a Functional Approach for Managing Complex Litigation, 53 U. Chi. L. Rev. 440, 443 (1986) (discussing a federal case involving Native American fishing rights, civil unrest, and stakeholder analysis).

[44] Dlott, *supra* note 67.

[45] *Id.*

[46] *Id.*

[47] *Id.*

[48] Judith Resnik, *Managerial Judges*, 96 Harv. L. Rev. 374, 424–31 (1982); Judith Resnik, *Failing Faith: Adjudicatory Procedure in Decline*, 53 U. Chi. L. Rev. 494, 536–39 (1986); Judith Resnik, *Managerial Judges, Jeremy Bentham and the Privatization of Adjudication*, 49 Sup. Ct. L. Rev. 2d 205, 211–12 (2010); Judith Resnik, *Many Doors? Closing Doors? Alternative Dispute Resolution and Adjudication*, 10 Ohio St. J. on Disp. Resol. 211, 260–62 (1995).

[49] Rogers, *supra* note 1, at 225.

[50] See Robert Rack, *A Letter to My Successor*, 26 Ohio St. J. on Disp. Resol. 429 (2011).

[51] *Id.* at 431.

[52] Rogers, *supra* note 1, at 211; see also Rack, *supra* note 50.

[53] Rogers, *supra* note 1, at 189; see also Susan L. Carpenter & W.J.D. Kennedy, *Managing Public Disputes: A Practical Guide for Government, Business, and Citizens' Groups* 11 (1988); James H. Laue, et al., *Getting to the Table in Policy Conflicts*, 20 Conflict Resolution Q. [previously Mediation Q.] 6 (1988); Richard A. Salem, *Community Mediation Through Outside Intervention*, 8 Peace & Change 91 (1982); John S. Murray, *Third-Party Intervention: Successful Entry for the Uninvited*, 48 Albany L. Rev. 572 (1984).

[54] Rogers, *supra* note 1, at 184, 190.

[55] *Id.*