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# Building Consensus for Racial Harmony in American Cities: A Case Model Approach

*Wallace Warfield*[*]

## I. INTRODUCTION - CONSENSUS AND CONFLICT

Racial conflict in America is widespread. No attempt to homogenize American political culture out of an amalgam of egalitarian values can mask its occasionally virulent manifestations. Despite the introduction of large numbers of new immigrant groups in the decades after 1965[1] and the new profiles of intergroup conflict that have emerged, the dominant image of racial conflict in the United States remains the one that takes place between African Americans and whites.[2] For example, the Los Angeles riot of 1992 contained a rich subtext of conflict between blacks and Koreans, blacks and Hispanics, and Hispanics and whites. These examples of the dark side of cultural diversity were obscured by the visceral images of blacks beating a white truck driver senseless in the street. Thus, what Gadlin calls the culture of racism, "[the] constellation of commonality, conflict, and difference"[3] is signatured by the persistent and sometimes violent interactions between blacks and whites. Racism is not a black problem, or a white problem, but rather an interactive dynamic, woven onto a tapestry of history and events that envelop the two groups.

This interactive dynamic is not all there is to the relationship between blacks and whites. Despite the rather Hobbesian view of race relations, Americans frequently overlook the fact that racial interactions in the United States (mainly with blacks and whites) is made up of consensus as well as conflict. Persons who

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1. L.A. IS BURNING: FIVE REPORTS FROM A DIVIDED CITY (WGBH Educational Foundation Productions 1992). From 1930 to 1960, roughly 80% of United States immigrants came from Europe or Canada. From the late 1970's on into the early 1980's, this figure was reversed with less than 20% of new immigrants coming from this area. Asian and Latin American countries accounted for 80% of the total immigration. C. J. DEVITA, AMERICA IN THE 21ST CENTURY 9 (1989).

2. It is not the author's intention to invite unnecessary controversy in the politically correct climate of the 1990's, but I want to signal my intention to switch from the arguably more acceptable term "African American" to the designation of more historical vintage, "black." I do so because I find that in writing about conflict between the two races, the term African American obscures the polarity of views that still exist between the two groups.

3. H. Gadlin, *Conflict Resolution, Cultural Differences, and the Culture of Racism*, 10 NEGOTIATION J. 34 (1994).

study race relations and those who practice conflict resolution in the wake of its disasters ignore the many and varied ways that interracial consensus is built in America's changing communities. Consensus does not necessarily mean the kind brought about through negotiations by high profile political elites.[4] Rather, consensus refers to the kinds of agreements reached by ordinary people, wrought out of a daily pattern of co-existence.[5] This consensus is not always arrived at through the formal convening of specific groups (although the process referred to later certainly depends on this). Consensus in this article refers more to those small, intimate interactions, invisible to social reporters, that represent the shared values of a civil society. Moreover, not understanding how consensus is arrived at in racially and ethnically diverse communities misses valuable opportunities to apply this knowledge for interventions in racial conflicts.

This article uses an informal case model approach to discuss the importance of understanding the role of consensus in the resolution of interracial conflict. As well, the article offers an elaboration on the classic mediation model as a way of enriching the technology of intervention.

## II. INSTITUTIONAL CONSTRAINTS OF THE CLASSIC MEDIATION MODEL

The conflict resolution field,[6] having its origins in the work of practitioners, has tended to place a greater emphasis on getting parties to reach specific agreements.[7] The social context of the dispute which might be a contributing factor to its prolongation and resistance, is often of secondary concern.[8]

This downsizing of conflict misses opportunities to understand the texture of relationships that contain histories of consensus as well as conflict. There are several reasons that third parties miss such opportunities. For one, mediation in its several applications has become commercialized, replete with advertisements of success proclaimed in the literature and brochures of various dispute resolution organizations.[9] This creates a market-driven approach to mediation where mediators, sometimes in concert with parties, focus on those aspects of the conflict

4. *See* former President Jimmy Carter's much publicized activities in Haiti that brought about the reinstallation of Jean Bertrand Aristede to the presidency.

5. In communities as in organizations, people find creative ways to negotiate the conduct of social behavior. This may involve identity groups, but more often than not, it comprises the interaction of a myriad of interpersonal relations, reaching across diverse spectrums.

6. The field is made up of various third party roles such as conciliator, mediator, and arbitrator that operate under the heading of alternative dispute resolution.

7. *See* ROBERT BOUKON, PROFESSIONAL MEDIATION OF CIVIL DISPUTES 10-16 (Am. Arb. Ass'n 1984); STEPHEN GOLDBERG ET AL., DISPUTE RESOLUTION 123 (1985).

8. Mark Galanter, *Why the 'Haves' Come Out Ahead: Speculation on the Limits of Social Change*, 9 LAW & SOC. REV. 95-160 (1974); Sally Merry, *Disputing Without Culture*, 100 HARV. LAW REV. 2057-73 (1987).

9. ROGER FISHER & WILLIAM URY, GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN (Bruce Patton ed., 1981).

that will produce the most immediate and measurable outcomes.[10] Second, understanding the sources of conflict imbedded in the texture of relationships is a complex and time-consuming task. This can be a costly undertaking where, as in community disputes, public resources are often unavailable. Third, in connection with the first observation, probing the origins of conflict and consensus in a community creates difficulties in measuring what was accomplished. This is unappealing for institutionalized providers who feel they have to establish a track record of success in order to attract more resources.

In short, mediation has all too often succumbed to case processing expediency under the pressure from funding sources and bureaucracies to quantify the achievements in an expanding new field.

## III. A CONCEPT OF DEEP-ROOTED RACIAL/ETHNIC CONFLICT

In determining interventions in racial conflicts, particularly those that involve blacks and whites, it is essential to understand the connection between the specific event (or series of events) and the embracing social and political context. The concept offered as an analytical frame is really a rather simple theorem called "Two Tap Roots and a Triggering Incident." The concept's origins evolved out of the early work of the Justice Department's Community Relations Service,[11] and it seeks to convey how subordinate groups see their lives in relationship to larger society.

At the level of Tap Root 1, subordinate groups see society as inherently racist. In this level, dominant white society's inner core values[12] are structured to lodge blacks firmly in a position of subservience.[13] Tap Root 2 charges that society's public and private organizations operate to keep blacks out of positions and circumstances where they could begin to have control over their own lives.[14] The triggering incident is always some climatic event: a firebombing of a black

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10. Frank Munger, *Making a Commitment to Social Change, in* 12 STUDIES IN LAW, POLITICS AND SOC'TY 434 (1992).

11. The Community Relations Service ("CRS") was created out of Title X of the 1964 Civil Rights Act. CIVIL RIGHTS ACT OF 1964, Pub. L. No. 88-352, § 1001-04, 78 Stat. 267 (1964). The agency has the responsibility for responding to disputes, disagreements, and hostilities involving matters of race and national origin utilizing the techniques of conciliation and mediation. As such, it is the non-investigatory arm of the Department of Justice in matters of civil rights compliance. The author served with the agency in various capacities for more than twenty years.

12. Individuals have inner core values that form a bonding glue for that person's identity. KENNETH BOULDING, CONFLICT AND DEFENSE 312 (1962). These values are non-rational, inflexible, and often viewed by the individual to be non-negotiable. *Id.*

13. *See, e.g.*, Richard Delgado et al., *Fairness and Formality: Minimizing the Risk of Prejudice in Alternative Dispute Resolution*, 6 WIS. L. REV. 1359 (1985).

14. *See* Mark A. Chesler, *Racial/Ethical/Cultural Issues in Dispute Resolution*, A Discussion Paper for National Institute for Dispute Resolution Conference on Dispute Resolution and Race, Ethnicity and Culture (Feb. 1991); Lawrence Bobo, *Prejudice and Alternative Dispute Resolution, in* 12 STUDIES IN LAW, POLITICS AND SOC'TY 150, 156-58 (1992).

home that leads to street protests and demonstrations, or a Rodney King incident where the blatant use of excessive force by police leads to the massive civil disturbance that took place in Los Angeles in 1992 and similar ones in Miami in 1980 and 1982.[15]

While the descriptive emphasis is on race rather than class, the Tap Root concept as an analytical approach to conceptualize black-white relations is essentially Parsonian.[16] Like Parsons, the concept seeks to explain a stratified and hierarchical relationship based on power and "a differentiation of attitude systems, of ideologies, and of definitions of the situation to a greater or less degree around the structure of the occupational system and of other components of the instrumental complex."[17]

The Tap Root concept compares favorably to other social theorists' description of power relationships where dominant groups control not only what gets on the agenda for discussion, but how subordinate groups think about the agenda.[18] During the heyday of the anti-poverty movement in New York City, officials were adept at keeping protest groups focused on competing over the ever-shrinking public grants rather than the policies that were really shaping outcomes. However, dominant political elites can only control the agenda for so long. Eventually, frustrations build up and subordinate groups ventilate their rage in response to the triggering incident. Looking at racial conflict writ large on the American landscape, it is possible to say that such conflict is the result of ascriptive realities functioning within a political culture whose ideology is egalitarian and universalistic.[19] In effect, we have two realities in America that exist side-by-side. There is the one sustained by a culture of racism encoded with belief systems that stereotypes the behavior of both groups.[20] There is the other reality that brings together individuals and groups across racial lines in an ideology of consensus.[21] This article will describe this in more detail when discussing the intervention approaches used in the two case models referred to later.

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15. *See* Wallace Warfield, *Triggering Incidents for Racial Conflict: Miami, Florida Riots of 1980 and 1982*, Proceedings of the Thirteenth International Conference of the Society of Professionals in Dispute Resolution, Boston, Ma. (1985).

16. TALCOTT PARSONS, ESSAYS IN SOCIOLOGICAL THEORY (1954).

17. *Id.* at 330-31.

18. JOHN GAVENTA, POWER AND POWERLESSNES: QUIESCENCE AND REBELLION IN AN APPALACHIAN VALLEY (1980).

19. S. Martin Lipset discusses the cultural values of ascriptiveness and universalism to describe the differences in values that exist between nations (for example, Britain and the United States). SEYMOUR MARTIN LIPSET, FIRST NEW NATION 248-73 (1979).

Aaron Wildavsky "applies egalitarianism to the American values of equal opportunity." But, it is these very values that appear ironic to subordinate groups from the Tap Roots perspective. AARON WILDAVSKY, *Resolved, that Individualism and Egalitarianism be made Compatible in America: Political-Cultural Roots of Exceptionalism, in* IS AMERICA DIFFERENT? 116-22 (1991).

20. GADLIN, *supra* note 3, at 35.

21. SEYMOUR MARTIN LIPSET, CONSENSUS AND CONFLICT: ESSAYS IN POLITICAL SOCIOLOGY 2 (1985).

The culture of racism incorporated in the Tap Roots theory implies not merely different rationalities, as when Lipset[22] discusses Weber and Mannheim's social tensions constructed around substantive and functional reality, but opposing world views that go beyond economic consequences to permeate the very social fabric of American society.[23] The Tap Root concept provides a framework for understanding the complexity of racial conflict and therefore, provides clues to its resolution.

## IV. THE COLLABORATIVE PROBLEM SOLVING APPROACH TO RESOLVING RACIAL CONFLICT

The Collaborative Problem Solving Process ("CPSP") is one version of a body of new approaches designed to assist parties in deep-rooted social conflict to reach outcomes that change the nature of their relationships. The CPSP intervenes in a number of community conflicts in the United States dealing with land use and environmental issues, police-community relations, the distribution of public resources, and an array of other public policy issues.[24] Intervenors also have experimented with collaborative problem solving approaches in the international arena.[25]

These approaches have in common the knowledge that the origins of deep-rooted social conflicts are interwoven with the histories of relationships between conflicting parties.[26] These histories inform the world view and guide the responses to the conflict and its anticipated outcomes. Problem-solving approaches also share a belief that mediation, with its formulaic procedures, does not have sufficient flexibility to resolve this form of conflict.[27]

The CPSP differs from classic mediation in that it places a greater emphasis on analysis as a part of "getting to the table,"[28] as well as a way of guiding what

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22. *Id.*

23. Oscar Nudler comments that "in a situation where world view differences play a role, as in many of the cases of ethnic, religious, environmental, generational, gender, and other kinds of disputes, such lack of awareness may become an insurmountable obstacle to understanding and dealing with conflicts." Oscar Nudler, *In Search of a Theory for Conflict Resolution: Taking a New Look at World Views Analysis*, ICAR NEWSL., Summer 1993, at 1, 4.

24. SUSAN L. CARPENTER & W.J.D. KENNEDY, MANAGING PUBLIC DISPUTES 27, 52-65 (1991); JAMES E. CROWFOOT & JULIA M. WONDOLLECK, ENVIRONMENTAL DISPUTES: COMMUNITY INVOLVEMENT IN CONFLICT RESOLUTION 20 (1990).

25. *See* MICHAEL BANKS & CHRIS MITCHELL, COLLABORATIVE ANALYTICAL PROBLEM SOLVING (in draft) (1990); HAL SAUNDERS & RANDA SLIM, DIALOGUE TO CHANGE CONFLICTUAL RELATIONSHIPS (1994).

26. Penelope Canan, *Environmental Disputes in Changing Urban Political Economies: A Dynamic Research Approach, in* 12 STUDIES IN LAW, POLITICS AND SOCIETY 287-308 (1992).

27. SAUNDERS & SLIM, *supra* note 25.

28. This term of art is used liberally throughout the dispute and conflict resolution community and describes a range of activities that parties and the mediator engage in during preparation for negotiations. In the classic mediation model, these negotiations literally take place around a table.

takes place at the bargaining table. The analysis is contained within various stages of the CPSP and begins before the intervenors ever meet with the conflicting parties.[29] This article elaborates on the stages by using as a framework a generalized reference to two social conflict interventions that took place within the last four years. Allegations of police use of excessive force against black males triggered both interventions.

### *A. Intervenor Self-Analysis*

The first stage of analysis is called intervenor self-analysis. At some early point, an intervenor is contacted, gathers essential background information, makes a tentative decision to intervene, but does not make a full commitment to the parties. In these reflective moments, the intervenor (or intervenors if it is a team) asks several questions. What do I/we offer parties to this conflict? How do I/we locate myself/ourselves in relation to the issues? What are my/our beliefs about the values that appear to be driving this conflict? What resources will support the intervention and who will supply them?

This is an early stage of role formation and how intervenors respond to these questions will say a great deal about the strategies they will use to assist parties in reaching agreements. Their responses are described as mediator contingent behavior.[30]

As intervenors prepare themselves introspectively, these questions frame a critical internal dialogue around what might loosely be described as the myth of mediator neutrality.[31] The myth emerges from the shaping paradigm of the field

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The CPSP and similar approaches are creative in the venue used to gather parties for discussion. In some cases a table around which parties sit is the format. But as often as not, parties will sit in a circle, or meet under open skies. The latter was the arrangement that John Paul Lederach used in his intervention in the conflict between the Nicaraguan Sandanista government and indigenous Indians. *See The Mediator's Cultural Assumptions*, 5 CONCILIATION Q. NEWSL. 1-6 (1986).

29. In problem solving process this is called the assessment phase. It is secondary research usually conducted away from the locus of conflict for the purposes of getting a better understanding of the conflict and to guide intervention technology.

30. Using a self-report technique, the researchers asked forty-nine mediators about the various techniques they used to get parties in a dispute to reach an agreement. They identified some thirty-six different stratagems or contingent behaviors that mediators claimed to have used influenced primarily by parties' intransigence at certain points in the negotiations. P. J.D. Carnevale et al., *Contingent Mediator Behavior and its Effectiveness in* MEDIATION RESEARCH (Kenneth Kressel & Dean G. Pruitt eds., 1989).

31. *See, e.g.*, J. FORESTER, ENVISIONING THE POLITICS OF PUBLIC SECTOR DISPUTE RESOLUTION, STUDIES IN LAW, POLITICS AND SOCIETY 256 (1992); S. Cobb & J. Rifkin, *The Social Construction of Neutrality in Mediation*, a proposal submitted to the Fund for Research in Dispute Resolution, National Institute for Dispute Resolution, Washington, D.C. (1991); Wallace Warfield, *Public Policy Conflict Resolution; The Nexus Between Culture and Conflict, in* CONFLICT RESOLUTION THEORY AND PRACTICE: INTEGRATION AND APPLICATION 23 (Dennis J.D. Sandole et al. eds., 1993).

of dispute and conflict resolution that dictates the mediator as a neutral intervenor.[32] The mediator symbolizes a kind of "deus ex machina," unencumbered by the positions, interests, and values that bring parties into the dialogue.[33] Cloaked in the garb of neutrality, mediators assume parties come to the table with equal strengths and resources; their responsibility is to simply assist parties in reaching an agreement.[34] Of course, as the Carnevale et al. research suggests, there is much going on behind the scenes; pushing prodding, cajoling, and the like, to get parties to reach an agreement. But this is mere process manipulation, devoid of contextual values that could contaminate the mediator's neutrality.[35]

While the intervenor-as-neutral might be a desirable trait for industrial labor disputes or disputes emerging from the commercial arena, it is unworkable and untenable in deep-rooted social conflict.[36] P.H. Gulliver argues there is a three-way relationship between parties representing opposing sides and the mediator.[37] In this construct, mediators bring their own cultural baggage to the intervention, influencing not only what takes place in the negotiations, but shaping the outcomes as well. Other commentators take the view that mediators, merely by advocating, cause the mediation process to no longer be neutral since the process itself acts as a power equalizer.[38]

Researcher/practitioners in the field of conflict analysis and resolution chip away at the myth of neutrality by suggesting there are role and process characteristics inherent in third party interventions that influence outcomes. With respect to racial conflict, I would go farther and argue that all of us, parties and would-be intervenors alike, are caught up in the American context of the culture of racism. As I carry out the pre-intervention internal dialogue, I ponder the values that I will bring to the resolution of the conflict. Not just a case of getting agreements for agreements' sake, but how will my intervention expedite the transformation of relationships? As an African American male contemplating an intervention in a racial conflict between subordinate and dominant groups in American society, particularly if it is one between blacks and whites, I must ask

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32. *See* ROBERT COULSON, PROFESSIONAL MEDIATION OF CIVIL DISPUTES 8 (1984); SOCIETY OF PROFESSIONALS IN DISPUTE RESOLUTION, MAKING THE TOUGH CALLS: ETHICAL EXERCISES FOR NEUTRAL DISPUTE RESOLVERS 3 (SPIDR 1990); LINDA R. SINGER, SETTLING DISPUTES: CONFLICT RESOLUTION IN BUSINESS, FAMILIES, AND THE LEGAL SYSTEM 19 (1990).

33. Herbert C. Kelman, *The Problem-Solving Workshop in Conflict Resolution, in* COMMUNICATION IN INTERNATIONAL POLITICS (R.L. Merritt ed. 1972).

34. Carnevale et al., *supra* note 30, at 215, 219.

35. COULSON, *supra* note 32, at 10; CHRISTOPHER W. MOORE, THE MEDIATION PROCESS: PRACTICAL STRATEGIES FOR RESOLVING CONFLICT 14 (an unpublished training guide) (1986).

36. John W. Burton, *Conflict Resolution as a Political System*, Working Paper #1, 6-9 (George Mason University 1988).

37. P.H. GULLIVER, DISPUTES AND NEGOTIATIONS: A CROSS-CULTURAL PERSPECTIVE 209-31 (1979).

38. *See* James H. Laue & Gerald Cormick, *The Ethics of Intervention in Community Disputes, in* THE ETHICS OF SOCIAL INTERVENTION 205-32 (Herbert C. Kelm & Donald P. Warkwick eds., 1978).

myself, "how do I understand my blackness in relationship to values expressed and unexpressed, at the tap root levels?" For it is here that I make the critical determination that my intervention will help or hinder the progress of racial understanding.

In both the aforementioned conflicts, one taking place in a small, southeastern city and the other in a mid-sized midwestern city, I acknowledge that my values have been informed and acculterated by two experiences. My experiences as a black male allows me to identify with the risk of situational stereotypes. My values have also been shaped by having spent a long career in the Justice Department, working with law enforcement officers, having a father and other relatives in law enforcement, and knowing something about the risks they take and the ambiguities that penetrate the practice of their professional duties and responsibilities. These experiences co-exist as a form of synergy between conflict and consensus and I feel that my perspective is useful to both blacks and whites.

### *B. Identifying the Stakeholders*

Community conflicts involve a complex interaction of stakeholders who play varying roles.[39] There are, of course, the immediate parties to the conflict. In the southeastern city, appointed city officials were the respondents in complaints lodged by local black leadership that white police had a history of using unnecessary and excessive force against black citizens. In particular, the alleged abuse directed against a popular black high school coach proved to be the triggering incident.

The CPSP recognizes that community conflict engages a complex interaction of players who may not be directly involved in the negotiations, but who nonetheless, will play a significant role in the negotiations process and its outcome.[40] Lawrence Susskind and Connie Ozawa refer to the necessity of adequate identification of parties to public disputes (which is another way of describing community conflicts), noting in particular, that the very way parties are identified can in and of itself, lead to conflict.[41]

The phenomenon of interaction of community players in conflict has relevance for certain kinds of game theory. N.E. Long sees local communities as places where players act out roles imprinted with the values of their institutions that are both self-determined and ascribed by others.[42] The community becomes an interactive network of relationships that brings different players together situationally depending upon the issue being dealt with.[43] In large communities,

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39. *Id.*

40. Laue & Cormick, *supra* note 38, at 213.

41. Lawrence Susskind & Connie Ozawa, *Mediated Negotiations in the Public Sector: Mediator Accountability and the Public Interest Problem*, 27 AM. BEHAV. SCIENTIST 274 (1983).

42. N.E. Long, *The Local Community as an Ecology of Games*, 64 AM. J. OF SOC. 253 (1958).

43. *Id.*

it is the rare event that will bring all players together in the game.[44] In smaller communities, a limited number of players fill multiple roles because certain issues will not have a developed constituent base from which a separate leadership elite can emerge. Games are strategic activities engaged in by the elite of a community, whose purpose is to sustain their viability in the local ecology.[45] Thus, in the southeastern city we see the local NAACP calling for the immediate resignation of the police chief and a federal investigation of the police department not because this approach gets the best results, but because that is what the NAACP does. In the midwestern city, a militant black leader viewed as the historic firebrand, engages in the confrontational tactics expected of his role. The police chiefs in both cities immediately defend the offending officers not necessarily because they believe their innocence or guilt, but because this is the "game" of a police chief and how individuals sustain their roles in the local community. The CPSP intervenor attempts to map this process as part of the identification of stakeholders.

The intervenor seeks to discover the internal links between stakeholders as well as external links, those that connect community actors in conflict with organizations and institutions outside the community that could sustain or disrupt an agreement.[46] Understanding the internal linkages helps the intervenor to see under what conditions consensus has been possible as well as those conditions that have created conflict. In the midwestern city, blacks and whites have come together in times of natural disasters where values held in common are at risk. Many blacks and whites interviewed in this city took pride in noting the construction of a new public library on the fringes of the inner city as an example of how interracial collaboration and consensus could take place. In the southeastern city, blacks and whites created a partnership to design and execute innovative approach to urban renewal. With respect to external linkages, what would be the likely reaction of the national NAACP if a local branch decides to take a negotiating position different from national policy? What pressures might police chiefs be subject to from the International Association of Chiefs of Police or police benevolent associations if they were to adopt a negotiating position contrary to their policies?

All these variables cannot be taken into full consideration for each and every conflict. There is not always time or resources to mount this kind of analysis. However, the effort must be made if the intervenor has any hope of helping parties address tap root issues that underlie the triggering incident. A serious criticism of mediation is its tendency to focus on the presenting issues to the exclusion of causal factors driving the conflict. Reflective practitioners argue that even apparently superficial conflict calls for rigorous exploration of origins to determine if there are motivating factors that need to be considered as part of the

44. *Id.*
45. Long, *supra* note 42, at 254.
46. CARPENTER & KENNEDY, *supra* note 24, at 14.

resolution.[47] In this respect, intervenors should approach conflicts in much the same manner as one would observing an iceberg -- knowing that what is visible is only the ten percent above the surface of the water.

Identification of parties or stakeholders is a precursor to the more intrusive third party roles of interviewing stakeholders and participating in the decision about who will actually participate in the collaborative problem-solving discussions.[48]

### *C. Interviewing Stakeholders*

In the interviewing stage of the CPSP, the objectives are to reach as representative a group as possible to gain their perspective of the conflict and, with the formal convening entity, determine who will actually participate in the discussions. The intervenor also wants to use interviews as an opportunity to support and stimulate flexibility, build trust in the process, and create a basis for better communications. In a broader sense, it is an opportunity to hear people's stories. "Stories" does not refer to the mere recounting of an event. Rather, the CPSP intervenor seeks to hear the myths that lie embedded in the stories -- what has been described as "mythic story telling."[49] Intervenors seek this information because they want to understand those influences that lie at the tap root levels beyond the triggering incident.

In the dispute and conflict resolution community, it is known through largely heuristic experience that parties to any conflict start at the beginning of negotiations from fixed positions which tend to be rigid and unyielding.[50] These positional stances do not easily lend themselves to agreements because the negotiating platforms leave little room for maneuvering. It is now axiomatic that in traditional mediation, the mediator must help parties identify their interests if a conflict can be successfully resolved.[51] Interests are what parties really want and lie below positions that parties initially feel invested in. Since interests are rarely configured in the same zero-sum fashion as positions, they are thought to be more flexible.[52] More options can be identified and agreements more easily reached, reflecting the true desires of the parties. Interest-based approaches function best in disputes and conflicts where there is equivalency of power between parties and potential substantive and procedural outcomes can be fairly easily distributed.[53]

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47. Burton, *supra* note 36, at 7.

48. CROWFOOT & WONDOLLECK, *supra* note 24, at 126-28.

49. *See,* Beryl Blaustone, *The Conflicts of Diversity, Justice, and Peace in the Theories of Dispute Resolution*, 25 TOL. L. REV. 253-70 (1994).

50. CROWFOOT & WONDOLLECK, *supra* note 24, at 137; *Flexibility in International Negotiation and Mediation*, THE ANNUALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE (Nov. 1995).

51. FISHER & URY, *supra* note 9, at 40-55.

52. *Id.* at 41.

53. Susskind & Ozawa, *supra* note 41, 271.

Interest-based negotiations assume parties come to the table with something to trade. It is essentially a rational process. In racial conflict, core values that lie at the tap root level are often viewed by parties as non-rational and lie at an even deeper level than interests.[54] Viewing conflicts from this perspective is analogous to looking at an archaeological dig; the intervenor-as-excavator has to peel back layers of conflictual stances to understand what is motivating the conflict.

In both cities previously mentioned, the acts of police use of excessive force becomes a metaphor for dominant-subordinate relationships between blacks and whites, despite the reality that most blacks do not encounter this with any systematic frequency. The myths persevere and the interviews with blacks in the Southeastern city reveal that despite a patina of racial civility, blacks feel excluded from decision-making in the formation and execution of important public policies. Deals are made by a cadre of political elites and the public is informed (or sometimes not) of the intentions of the local regime. Similarly, in the midwestern city, a political elite controlled by the business community makes most of the significant policy decisions. Despite this, or because of it, blacks and whites interviewed believed there was a leadership vacuum. The absence of effective leadership meant there were few people who could tap into the fears, aspirations, and hopes of low income blacks and whites who shared lives of poverty. Consequently, few felt an ownership in the process of decision-making and therefore, had no stake in proposed outcomes. Blacks felt that while some things have gotten better for them, ultimately, not much has changed.

Whites in both locales tell stories as well. Their stories contain myths exemplifying beliefs in having made racial progress, of having come a long way. Many view the instances of police abuse as anomalies that have no causal relationship with embedded tap roots, because in their world view there are no tap roots. They fear "the fire next time" rhetoric emanating from more militant segments of the black community and some want to exclude it from the problem-solving dialogue. It is though blacks and whites look at a house and see it differently. One group sees the front of the house and believes that this is the whole house. The other group views the back and says no; "this is the whole house."

Of course, the interviews reveal that in both cities, there are blacks and whites who hold convergent world views; who see the same house and who have been instrumental in consensus-building efforts in the past. They should be part of the problem-solving dialogue because they will be valuable internal facilitators. The interviews describe fears, concerns, and desires that go beyond the triggering incident[55] and reach into the tap roots. Blacks and whites express alarm at the growing drug problem. Blacks feel that housing is still inadequate in their community and that far too many black youth are unemployed. Everyone is

54. Warfield, *supra* note 31, at 186.

55. Although interestingly enough, we discover that there are white youth who also feel they are hassled by police.

concerned about school failures and drop-outs. The interviews also tell us that the political regime is struggling to come to grips with the notion that conflicting elements in the community respond to both perception and reality. There is a sense as well as a sincere desire for constructive change across racial lines, but different concepts as to what constructive change is. Ultimately, the intertwining of myth and metaphor become powerful symbols of how each group sees and understands the world around it. Joyce Hocker and William Wilmot write "producing creative metaphors for conflict may help participants produce creative moves in the interaction."[56] Thus, metaphor dialogue is not simply an academic reflection, but if used properly, becomes a strategic tool for resolving deep-rooted conflict.

The task of the intervenor is a formidable one. She or he must be the translator of disparate world views or the cultural role interpreter.[57] Since world views like basic human needs are non-rational, intervenors must help to create a discourse that will not necessarily result in blacks and whites seeing the same house, but constructing a new one they both have an investment in.

### *D. The Convening Sessions*

In the southeastern city, a broadly representative group of twenty-six community residents and public officials were convened as a task force to initiate the problem-solving dialogue. The site was the basement of the church where the black mayor was pastor. The location was comfortable and convenient, but more important, the mayor held a kind of stature in both the black and white community. Therefore, there was no thought of bias.

The facilitation team arrived early to find chairs arranged in typical classroom fashion. This setup was quickly undone with the necessary number of chairs arranged in a large circle to provide open and face-to-face communication. The team wanted to see if body language would complement the mythic story telling.

In the opening introductions, participants were asked to identify themselves[58] and to state briefly why they chose to be a part of the task force. The opening statements provided the facilitators with an opportunity to see how parties articulated conflict and consensus and how they told their stories.

For reflective third-party practitioners, the CPSP is an opportunity to go beyond the role of process manager and to locate one's self in relation to the values embedded in the conflict. Indeed, since facilitators are part of the circle, they commit themselves to doing so. In the opening moments of this particular dialogue, I spoke to my experience in responding to racial conflict and noted that as a black man, I could make assumptions about my safety (from racial violence or mistaken identity) based on the appearance of being middle class. My experience told me that healing and consensus could take place in racially divisive

56. J.L. HOCKER & W.W. WILMOT, INTERPERSONAL CONFLICT 23 (1974).
57. Warfield, *supra* note 31, at 25.
58. Almost everyone knew everyone else.

communities and there was no reason that it could not take place again. As participants introduced themselves around the circle, a moment of sharing emerged when a black participant revealed that he was a sergeant in the same army unit in Viet Nam in which a white public official, also a participant, was the captain. The warmth between the two was brief, but unmistakable.

Later, the facilitation team summarized the information extracted from the interviews.[59] Prior to this summary, in analyzing the interview data the facilitators realized they faced a difficult task of how to portray the views articulated by black participants about the police chief. The views calling for the chief's dismissal was representative of some participants' position but did not portray the real issues, or underlying values and needs that lay beneath. The facilitation team chose to present a composite characterization of the chief that reflected the essence of peoples' concern. When the presentation of themes and issues drawn from the interviews had been completed, the facilitators asked for corrections and additions. With minor corrections, all agreed the information represented the views of participants. The team was relieved, but ambivalent about its decision. The team adroitly handled a touchy situation, but wondered if the power of the facilitation role quashed voices that needed to be heard. In a subsequent heated statement by a black participant, the team realized it gave itself too much credit.

The facilitation team encountered a similar dilemma in the midwestern city where some conservative and liberal leadership expressed reservations about the participation in the proposed CPSP of a militant black leader who has been vocal in his condemnation of the police department's actions and of its chief. There was a fear that if the police chief participated, he would be disruptive, further polarizing racial relationships. In fact, the militant leader had not committed himself to participate, because he feared he would be co-opted. He was conscious of his role in the local game as an irritant that reminded people how far the city still has to go in order for there to be true racial equality.

In the pre-CPSP interviews and meetings, the facilitation team used the metaphor of looking at an ocean from the shore and seeing a large wave coming towards them as a way of responding to concerns about the militant leader. The team observed that there were other waves in the ocean, but they were much smaller. As community leaders, they were inclined to dismiss the large wave as not being representative of the turbulence in the ocean or they would decide to contain it -- to limit its impact so as to minimize the perceived damage. The facilitators felt this was a mistake. They argued that the wave represented the potential the ocean could become. The facilitators stressed (particularly with whites) that while many blacks were uncomfortable with the militant individual's level of rhetoric, they knew that he spoke to the tap roots in ways that many could not. A few accepted this, but others remained uncomfortable. With the militant leader, the facilitators stressed the importance of his participation in the CPSP. They expressed their concern that his voice will become marginalized and

59. The information was not for attribution since this was confidential.

untransferable in the transitional negotiations from values to interests. He agreed reluctantly to participate.

In the CPSP retreat, the facilitators realized that the militant black leader was seeking an opportunity to confront the police chief. The other fifty-odd participants were watching this development nervously. Because theirs was a particularly antagonistic relationship, facilitators placed them in different break-out groups hoping to mitigate the chance of an explosion that would end the CPSP prematurely. Although the day ended with a number of specific commitments for follow-through, I felt as if I had acted hypocritically, sacrificing the merits of an espoused metaphor to keep the overall group consensus alive.

In the southeastern city, the issue of representativeness of the black community also was raised, with somewhat different implications. In between joint problem-solving sessions, facilitators met with city officials to assess commitment to the process and the additional resource burden that would be borne by the city to sustain it. In the meeting, a white police commander portrayed the black community as divided, alleging that those who raised the charges against the police were middle class blacks who do not live in the low income projects most beset by crime and violence. Those who did, appreciated the protection they received from police even if the fringes of civil liberty were trod upon occasionally. This was a difficult moment in the CPSP because as a black person, I wanted to protest what appeared to be an unsubtle manipulation of one part of a community against another. I paused, however, when I realized that while conducting the earlier interviews with black representatives, I did detect a slight, but unmistakable difference of perspective between spokespersons from the low income projects and the main line civil rights organization. The view of the low-income blacks seemed to say "try living in these projects for a few days and lay awake at night hearing the death rattle of automatic weapons fire. Then, ask yourself if concerns about police use of excessive force is a luxury you can afford."

It became clear that I was about to become trapped in a myth of a monolithic black culture. In an intellectual sense, I knew better, but I wanted to believe we were one in the struggle. I likened it to beads strung out along an economic continuum, with some blacks fortunate enough to have made more progress than others, but inextricably connected. As I passed a "brother" on the street from a lower economic station in life, we affirmed each other's presence with a brief greeting. In effect, we acknowledged unity even though I knew that on a practical, day-to-day level, our lives are very different. That on a daily basis he incurred risks along a range of decisions that I would rarely have to encounter.

In responding to the police commander, I decided to compromise, saying that I thought it would be a mistake for any city official to give the appearance of siding with one part of a community against another. The results could backfire, thereby undermining the process all had pledged to support. There was a silent assent, but I sensed resentment that I had stepped outside the bounds of an acceptable third party role.

## V. MEASURING OUTCOMES OF THE CPSP

What impact can the CPSP have on changing race relationships in a community? Intervenors feel the familiar temptation to defend the process against the challenge that consensus interventions merely change superficial feelings, but have no long-lasting impact. The other bottomless argument is whether such interventions should have objectives of changing behavior or changing attitudes. The easy response is to protest that this article is to be merely descriptive, to bring the reader inside a portion of the process and to portray it with all its warts; not in the textbook fashion that mediation is often presented in. As well, the CPSP is meant to encompass long-term involvement, both in terms of the actual intervention and the expected participant follow-through.[60]

I feel compelled to offer some examples of what I believe were measurable outcomes of the case models I participated in. Christopher H. Moore notes there are three aspects to the satisfactory resolution of a conflict.[61] Most community conflicts, since they are also public conflicts, will involve some aspect of procedure, a protest around the way something is carried out. These conflicts require changes in formal and informal policy. Second, in community conflicts, peoples' feeling on how they are being treated and their relationships will have to be addressed. Third, persons protest substantive and structural issues, specifying quantifiable changes that must take place.

In the beginning of the joint session in the southeastern city case model, participants set out criteria for a satisfactory outcome. These criteria appeared to be fully achieved. The first criteria was mutual respect for all people. From a relationship-building standpoint, this may have been a too ambitious undertaking for the task force, but it represented a worthy goal. Certainly, it was possible to see respect growing among the task force members and a sense of empowerment came with a publicly recognized role. The second criteria required accurate definitions of problems. This criteria was met as the task force went beyond the triggering incident to identify underlying concerns dealing with employment, housing, and drug abuse.

The third criteria participants set out was to identify areas where immediate action could be taken. The focus was on bringing more blacks into the police department, reducing incidences of crime, and changing the police complaint procedure. The task force efforts were partially successful in this regard. The method the city used to recruit for the police department was changed to reflect recommendations from the task force. A team policing program was put in place in the low income project which reportedly was having an impact on reducing crime. In addition, a cadet program was created designed to identify black youth who, after successful completion, could enter the police department in a

60. The intervention in the southeastern city took place over a period of a year and in the midwestern city, facilitators were involved over a five month span of time.

61. CHRISTOPHER H. MOORE, THE MEDIATION PROCESS: PRACTICAL STRATEGIES FOR RESOLVING CONFLICT (1986).

probationary status. A year after the task force convened, the police academy was fifty percent minority, a significant improvement over the department's record.

However, the task force was not as successful in changing the police complaint procedure. Black participants requested a civilian review board to replace the current procedure of citizens writing anonymous letters to the chief, or coming directly to police headquarters. They felt this was necessary to deal more fairly with complaints, emanating from the black community, against police. The resistance to this proposal proved to be stiff and the procedure had not been changed a year later.

The fourth criteria was to identify areas where long range action could be taken. The task force cited concerns with youth unemployment, housing, and the unacceptably high drop out rate as underlying issues that needed to be addressed. A year later, the group was still tackling police-community relations issues, almost as if there was a reluctance to let go of the one issue that bonded the group together and gave it a sense of identity -- or because defining prescriptive outcomes for the underlying issues proved to be elusive.

Collaborative problem-solving, beyond the triggering incident level, is as much a matter of changed attitudes as it is a function of changed instrumentalities. Some city officials acknowledged that the task force, while it pressed the city into uncomfortable arenas of shared decision-making, identified issues that the city probably would have ignored. The chief of police, who many felt was the most resistant to change, indicated that while trust relationships had not yet been built, a transition had taken place from adversarial statements to dialogue.

More than fifty people, engaged in the CPSP in the midwestern city, created break-out groups to deal with issues of housing, education, employment, public safety, and the cross-cutting issue of leadership. Many felt this was the first time, such a diverse group of citizens had come together to address the underlying causes of racial tension. Several months after the initial intervention, the break-out groups were still meeting, establishing targets for the completion of designated items. As in the southeastern city, there were unique moments of collaboration in between the seams of the formal process. In one such instance, an Hispanic community leader bemoaned the anticipated loss of office space because her organization would not be able to afford an increase in rent. Hearing this, a white business leader who was a member of her sub group, responded that he had excess office space that she could have for free.

The conflict-solving process is not without criticism. One criticism is that the process was directed at only those who participated. While the citizens who did participate were racially and ethnically diverse, many felt that they were not (with perhaps one exception) representative of the target population for whom many of the efforts were intended. This raises important questions that require further research into the use of conflict-solving processes. Some persons argue that CPSP intervenors have to work with leadership elites if an effective change is going to occur.[62] Leadership elites are in control of decision-making that

62. Kelman, *supra* note 33, at 176, 179, 198.

effects the distribution of resources and are the ones who will be needed to engage in the inevitable negotiations in the governance of outcomes. Hopefully, new leadership can be drawn from communities to replenish those leaders who are in danger of burn-out. The risk, of course, is that the reins of power will not be relinquished, thereby perpetuating or recreating new forms of dominance that will frustrate transformation objectives.

Other persons feel that true collaborative problem-solving should be geared towards identifying and bringing to the bargaining table precisely those who have no official voice in the creation of social policy.[63] To do otherwise relegates the game to a process producing outcomes bent on preserving a status of harmony antithetical to the transformation change that needs to take place.[64] While this model has a certain Marxist appeal, it lacks prescriptive value since those who articulate this paradigm fail to specify the methodology. Moreover, it overlooks the obvious in that everyone cannot be at the table and some process has to be used to determine who will represent constituent interests. There is no guarantee that any emergent leadership will not succumb to the temptations that bedevil many people in these positions.

It is important to identify and bring into the process people who have leadership skills and already occupy positions of leadership in their respective communities. Such individuals have garnered experience in conflict and consensus and are in a position to implement the complexities of problem-solving agreements. Besides, local communities have their own versions of realpolitik. To ignore existing leadership risks is to sabotage the objectives the CPSP is set up to achieve. At the same time, the CPSP should ideally be constructed as an empowering vehicle that ensures indigenous leadership is created to play roles in the feedforward of information about objectives and the feedback as to how objectives are being carried out. Eventually, a new cadre is formed that can take the place of the more established leadership.

Finally, although the CPSP that took place in the Midwestern city was not designed to be a vehicle for the resolution of individual conflict, the intervenors failed to explore an opportunity to bring the police chief and the militant leader together. These leaders were two central figures who would play important roles in the outcomes of the agreements, particularly those that deal with police-community relations.

## VI. CONCLUSION

Racial conflict in American cities, particularly conflicts between blacks and whites, can best be understood as the manifestation of the culture of racism. The culture of racism makes conflicts between blacks and whites seem more intractable

63. *Id.* at 199, 200.

64. L. NADER, *Harmony Models and the Construction of Law, in* CONFLICT RESOLUTION: CROSS-CULTURAL PERSPECTIVES 41-57 (Avruch et al., eds., 1991).

because each group holds different and frequently oppositional, world views. The culture of racism is the constellation of commonality, conflict, and difference that surrounds the attitudes, thinking, and behavior of the two groups. These views act as informational filters that each group uses to understand the behavior of the other.

Conflict and consensus is the ying and yang of race relations, but the conflict resolution field focuses too exclusively on conflict. Most mediative interventions in racial conflict overlook the histories of relationships in communities which are sprinkled with examples of cross-racial consensus. Failing to note these occurrences impoverishes the methodology because the intervenor is uninformed about the processes of negotiations that created agreements. The CPSP and similar processes stand a better chance of reaching longer-lasting resolutions than classic mediation because its exploratory nature seeks to probe the deep-rooted, underlying causes of conflict (the tap roots) that drive responses to the triggering incident.

CPSP is not a panacea for racial conflict nor should it dismiss the usefulness of more traditional alternative dispute resolution technologies such as mediation. Mediation can be a useful contingency for dealing with individualized conflicts that are brought into the CPSP, or that emerge while CPSP negotiations are underway and threaten consensus. As well, mediation will probably be in the tool kit of communities as one of a number of self-enforcing mechanisms designed to respond to conflicts that will emerge during the governance of agreements. Finally, those intervenors who are in this "growth industry" of conflict resolution would do well to adopt a modicum of humility and remember that their interventions are but one in a sea of variables that influence the outcomes of any community conflict. Intervenors are quick to claim credit when things work well and just as quick to deny responsibility when it does not. Ultimately, community conflicts take place within a larger dialectic of consensus and conflict. All intervenors can hope to do is to play a small role in creating better social environments for the future generations that will inherit the legacy of their actions.