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The Process of Peace: Using Community Dispute Resolution to Improve the Relationship Between Police and Community in Minnesota

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**THE PROCESS OF PEACE: USING COMMUNITY DISPUTE
RESOLUTION TO IMPROVE THE RELATIONSHIP
BETWEEN POLICE AND COMMUNITY IN MINNESOTA**

*Kelsey Schwarzrock**

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INTRODUCTION

Since January 2000, there have been one hundred and sixty-two deaths that occurred after a physical confrontation with law enforcement in Minnesota.¹ The most prominent names, Philando Castile, Jamar Clark, and most recently Justine Ruszczyk (Damond) spurred community outrage and nationwide press coverage.² The public's reaction to the result of investigations, the release of livestream video and body-camera footage, and the acquittal, and clearing of involved officers, led to protests blocking Interstate 94, multiple subsequent arrests,³ and community upheaval.⁴ As a result, Minnesota gained national attention to the officer-involved shootings, resulting protests, and the prominence of Black Lives Matter. While these responses may be appropriate, they can be detrimental to innovative conversations surrounding effective policy solutions and community healing after similar circumstances in the future. Calls for training and education reform for police

1. Jeff Hargarten, et al., *Fatal police encounters in Minnesota since 2000*, STAR TRIB. (July 18, 2017), <http://www.startribune.com/fatal-police-encounters-in-minnesota-since-2000/435017603/>.

2. National Press coverage of deadly officer-involved shootings of Justine Ruszczyk's (Damond) (Ms. Ruszczyk called 911 to report a possible rape and was shot by an officer upon arriving to the scene.), Philando Castile (Officer acquitted in Mr. Castile's death that occurred during a traffic stop while his girlfriend (Diamond Reynolds) livestreamed the incident. Her 4-year-old daughter was in the backseat), and Jamar Clark (An internal probe found the officers were justified in using force against Jamar Clark when they were responding to an alleged assault by Mr. Clark and he tried to seize one of their weapons.). John Eligon, et al. *In Minneapolis, Unusual Police Killing Raises an Old Outcry: Why?*, N.Y. TIMES (July 22, 2017), <https://www.nytimes.com/2017/07/22/us/minneapolis-police-shooting.html>. Elliott C. McLaughlin & Ray Sanchez, *Minneapolis police clear officers in fatal shooting of Jamar Clark*, CNN (Oct. 21, 2016), <http://www.cnn.com/2016/10/21/us/jamar-clark-shooting/index.html>. Emily Shapiro & Julia Jacobo, *Dashcam video from police shooting of Philando Castile released*, ABC NEWS (June 20, 2017), <http://abcnews.go.com/US/dashcam-video-police-involved-shooting-philando-castile-released/story?id=48152901>.

3. *Id.*

4. Associated Press, *Philando Castile shooting: 18 arrested in protests over Minnesota officer's acquittal*, CBS NEWS (June 17, 2017), <https://www.cbsnews.com/news/philando-castile-shooting-protesters-arrested-minnesota-officers-acquittal/>.

officers have the potential to address one side of the problem.⁵ However, the public's trust in law enforcement must be redeveloped.

This article will explore and advocate for the use of Community Dispute Resolution (CDR)⁶ as a practicable solution for reducing police shootings in Minnesota. CDR provides a non-litigation means for settling disputes. Using CDR to ease the tension between communities and law enforcement, and to rebuild trust in law enforcement, will generate long-lasting change and rebuild relationships. Part I of this article provides a history of CDR and background in Minnesota. Part II analyzes how the National Initiative for Building Community Trust and Justice's pillars and other successful practices could come together and heal communities. It also reviews how stakeholders and professionals would become involved to ensure success and provide accountability. Part III outlines challenges and counterarguments facing the process.

Resolving Minnesota's community disputes via a supportive environment such as CDR gives communities input into solving issues that would lead to long-lasting decisions that the community had ownership over. This paper reviews the existing divide between police and community in Minnesota and recommends CDR as a long-term solution for reducing the number of police shootings in the state and ultimately bridging the divide of racial inequality.

I. BACKGROUND

The United States continues to experience cycles of polarization that cause conflict as the gap in ideals between opposing political parties widens. If the public can easily understand and appreciate the benefits, the United States may embrace CDR as an alternative

5. James Densley & Jon R. Olson, *A blueprint for better policing in Minnesota*, MINNPOST (July, 13, 2016), <https://www.minnpost.com/community-voices/2016/07/blueprint-better-policing-minnesota> (recommending major reform including mandating a four-year degree for entry into a peace officer training program, and a state police academy, along with shifting of all law-enforcement functions to elected sheriffs).

6. As used in this article, the term "community dispute resolution (CDR)" will refer to methods including restorative practices, restorative justice, collaborative decision-making, and community mediation.

approach to resolving existing conflicts.⁷ A shift of focus from individual interest toward greater good is necessary as the United States faces internal turmoil and division. Minnesota is not unique to the effects of the nation's political division. However, it is imperative to note that Minnesota is among the worst in the country for racial inequity (only outdone by neighboring Wisconsin).⁸ Data reported August 18, 2017 ranks Minnesota as the second worst, citing median household income for black families as less than half of that for white families, \$30,306 and \$66,979 respectively.⁹ The white unemployment rate is 3.0%, nearly a third of the 8.8% reported for unemployed black workers.¹⁰ Homeownership rate (21.7% (black), 76.0% (white)) and incarceration rate ((per 100,000): 1,219 (black), 111 (white)) are equally disparate.¹¹ Therefore, the need for closing these gaps is obviously great in Minnesota. A successful case study for the rest of the nation would provide methods for closing the gap of racial inequity that would be applicable to states faced with similar, and less drastic, disparities.

A. *A Brief History of CDR*

In the late 1960s and early 1970s, the Civil Rights movement and the Anti-(Vietnam) War movement created a social climate ripe for dispute resolution.¹² During this time, "a CDR movement developed which envisioned itself as a nexus for empowering communities and spreading a culture of peace."¹³ The key to this movement was an important concept in CDR: "when people develop, change, or modify any social programs, there will be an

7. Howard S. Bellman & Susan L. Podziba, *Public Policy Mediation: Best Practices for a Sustainable World*, DISPUTE RESOLUTION MAGAZINE, (Spring 2014) at 25.

8. Michael B. Sauter, *Black and white inequality in all 50 states*, 24/7 WALL ST (August 18, 2017),

<http://247wallst.com/special-report/2017/08/18/black-and-white-inequality-in-all-50-states-2/11/>.

9. *Id.*

10. *Id.*

11. *Id.*

12. Brett Reeder, *Beyond Intractability*, (reviewing PAUL WAHRHAFTIG, COMMUNITY DISPUTE RESOLUTION, EMPOWERMENT AND SOCIAL JUSTICE: THE ORIGINS, HISTORY AND FUTURE OF A MOVEMENT (2004)).

13. *Id.*

impact on society beyond its immediate scope."¹⁴ This key explains how CDR is distinct from other forms of alternative dispute resolution (ADR), which focus on the resolution of a dispute alone. CDR focuses on the future and how social and societal impact can be made as a result of the resolution of disputes.

At its onset, ADR was a response to the monopolization of formal legal institutions and dispute resolution processes by the upper-class.¹⁵ This monopolization prevented lower-class community members from “learning how to master their own environments and ultimately, their own lives.”¹⁶ As a reaction to these tensions, the community empowerment movement surfaced in the late 1960s and early 1970s.¹⁷ Concurrently, the support of community justice gained momentum in response to the alienation and dis-empowerment of black Americans during this time, which echoed the ideals of President Lyndon Johnson’s “war on poverty.”¹⁸ This parallels other community justice efforts that occurred around the same time.

In San Francisco, community justice as empowerment manifested itself through community boards that sought to set up an “alternative governance structure,” which included dispute resolution.¹⁹ These community responses during a time of isolation and disapproval of black Americans in the 1960s mirrors disparity among races today.²⁰ African-Americans, other people of color, and those in poverty did not have ready access to courts, and therefore did not have ready access to justice. “Separate but equal was ‘the law,’ but it was not justice.”²¹ This movement was about bringing to light inequity and focusing on justice.

Community justice centers adopted mediation, likely with the direct intention of “nurturing positive relationships within the

14. *Id.*

15. Deborah R. Hensler, *Our Courts, Ourselves: How the Alternative Dispute Resolution Movement Is ReShaping Our Legal System*, 108 PENN STATE LAW REVIEW, 165-197 (2003) at 170.

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.* at 171.

20. *Id.* at 170.

21. Isabelle R. Gunning, *Know Justice Know Peace: Further Reflections on Justice, Equality and Impartiality in Settlement Oriented and Transformative Mediations*, 5 CARDOZO JOURNAL OF CONFLICT RESOLUTION, (June 2004) at 88.

community,” because it was “characterized by its supporters as antithetical to adversarial dispute resolution processes.”²² This desire for mediation and conciliatory approaches above adjudication is an important point in the review of ADR and CDR alike. The focus of nurturing positive relationships in the community is an important goal and must not be lost in the desire to reach an agreement in its current use.

B. How is CDR Currently Used?

Today, government leaders typically turn to CDR only after other methods of decision-making have failed in their efforts to reach an agreement.²³ Collaboration among government organizations “requires negotiations that are sensitive not only to the objectives of the governmental units but to the political ‘realities’ that influence their officials.”²⁴ CDR tools are employed to determine what these interests are and ensure they are detailed as priorities throughout the process.²⁵ For example, mediators can convene with the stakeholders of local governments for economic development tools that are supported or resisted by community groups.²⁶ Mediators then step in to encourage stakeholders to share their interests, collaborate, encourage them to share data, and discover and review approaches to the proposals together.²⁷ In Minnesota, these practices are completed through collaborative problem-solving, restorative practices, and community mediation.

1. The Current Landscape of ADR in Minnesota

In Minnesota’s current ADR Program, the Supreme Court adopts the rules that govern the practice, procedure, and jurisdiction for these ADR programs.²⁸ Minnesota Statute 484.76 provides for the use of nonbinding ADR processes in all civil cases, excluding

22. Hensler, *supra* note 15, at 171.

23. Bellman & Podziba, *supra* note 7, at 22.

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. Alternative Dispute Resolution Program, MINN. STAT. § 484.76 (2017).

family law matters and in good cause shown by the presiding judge.²⁹

Former Professor of Law Emerita and Senior Fellow, Dispute Resolution Institute, Hamline University School of Law, Bobbi McAdoo explains that after two-decades of legislation, Supreme Court task forces, studies, and public hearings, Rule 114 was developed as a “consideration” rule.³⁰ “The educational efforts of the dispute resolution community and individual judicial willingness to order parties into ADR resulted in a successful ADR program throughout Minnesota.”³¹

Minnesota Statute’s procedural rules also outline that the chief administrative law judge shall adopt rules to govern the conduct of voluntary mediation sessions for rulemaking and contested cases other than those within the jurisdiction of the Bureau of Mediation Services.³² The scope of the ADR statute includes arbitration, private trials, neutral expert fact-finding, and mediation, with all methods being nonbinding unless the parties agree otherwise.³³ The CDR methods discussed below are nonbinding also, however, the processes focus less on fact-finding than on restoration and healing.

a. Collaborative Problem-Solving

The Bureau of Mediation Services’ Office of Collaboration and Dispute Resolution (OCDR) in St. Paul, Minnesota, provides collaborative problem-solving services serving the State of Minnesota (legislature, governor and state agencies) and local governments (cities, counties, schools, townships, etc.).³⁴

29. *Id.*

30. Bobbi McAdoo, *All Rise, the Court Is in Session: What Judges Say About Court-Connected Mediation*, 22, OHIO STATE JOURNAL ON DISPUTE RESOLUTION, 377-430 (2007), at 384 (citing Barbara McAdoo, *The Minnesota Experience: Exploration to Institutionalization*, 12 HAMLINE J. PUB. L. & POL’Y 65 (1991) and ADR HANDBOOK).

31. *Id.*

32. Procedural Rules, MINN. STAT. § 14.51 (2017).

33. Alternative Dispute Resolution Program, MINN. STAT. § 484.76 (2017).

34. Bureau of Mediation Services, *OCDR: Our Services*, <https://mn.gov/bms/ocdr/services/> (March 2018).

“OCDR helps government and citizens find better ways to work together on important public issues.”³⁵ OCDR explains the benefits of the collaborative problem solving services as developing high quality solutions; accelerating the pace of a project; bridging differences; dealing productively with shared power for decision-making; and making efficient use of public and private resources.³⁶ These services, along with other community resources, were put into use following the death of Philando Castile on July 2, 2016 in Falcon Heights, Minnesota.

Falcon Heights City Council formed The City of Falcon Heights Task Force on Inclusion and Policing.³⁷ OCDR, the Center for Integrative Leadership at the University of Minnesota, and the Mitchell Hamline School of Law Dispute Resolution partnered in the effort to design and facilitate the work of the task force.³⁸ Five community conversations with more than 140 community members participating unearthed community values, community needs, and recommendations “for programming and policies to improve policing and make the City of Falcon Heights a more inclusive community.”³⁹ The group came away with two sets of recommendations accepted by the City Council on May 24, 2017: (1) “dedicate to issues of policing and focused on restoring mutual trust and safety”; and (2) “focus[] on making Falcon Heights a more inclusive community.”⁴⁰ The City’s reaction to the need to heal created a venue for honest dialogue and community building.⁴¹ Whether with collaborative problem solving, restorative practices, or community mediation, Minnesota’s CDR community is prepared to react in the case of community crisis.

b. Restorative Practices

The values of the practice of restorative justice match and complement those of centuries-old cultures and communities across

35. *Id.*

36. *Id.*

37. Bureau of Mediation Services, *The City of Falcon Heights Task Force on Inclusion and Policing*, <https://mn.gov/bms/ocdr/projects/falcon-heights-mn-task-force-on-inclusion-and-policing.jsp> (March 2018).

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

the globe.⁴² The use of restorative justice has been prevalent “as a means of mediation between victims and offenders, particularly within the juvenile court system, since the 1970s.”⁴³ These practices aim at healing everyone who is involved in a wrongdoing.⁴⁴ The effects create a genuine, long-lasting understanding. In fact, “[r]esearchers have found that rates of compliance with regulations are higher when regulated industries and corporate actors are actively engaged in the discussions with the regulators.”⁴⁵

Restorative justice focuses on healing and authentic communication. The practice brings stakeholders together to focus on the needs of the victims, offenders, and the communities that are affected.⁴⁶ Repair, restore, reconcile, and reintegrate are the four Rs that provide a framework for restorative practices.⁴⁷ The ability for all stakeholders to come together to express their hurt brings forward the truth that can be embedded in fear and distrust. The honesty resulting from this practice creates a deeper understanding and the opportunity for a refreshed dynamic for the community as a whole.

An example of restorative practices being put to use in Minnesota is the Seward Longfellow Restorative Justice Partnership. The partnership, which promotes reconciliation and healing with youth and within the community, is a joint project with Seward Neighborhood Group and Longfellow Community Council.⁴⁸

The mission of the partnership “is to build community by providing the opportunity to repair harm by involving the victim, offender and community in solutions that promote healing, accountability, and reconciliation.”⁴⁹ The partnership holds Restorative Conferences through agreements with the Hennepin

42. *Id.*

43. *Id.* (citing Carrie Menkel-Meadow, *Restorative Justice: What Is It and Does It Work?* 3 ANN. REV. L. & SOC. SCI. 161, 162 (2007)).

44. *Id.*

45. Laura Merkey, *Building Trust and Breaking Down the Wall: The Use of Restorative Justice to Repair Police-Community Relationships*, 80 MO. L. REV. 1133-42 (2015) at 1134.

46. *Id.*

47. *Id.*

48. Seward Neighborhood Group, *Restorative Justice* <https://sng.org/restorativejustice/> (March 2018).

49. *Id.*

County Attorney's Office and the Minneapolis Police Department. The conferences target youth with typical referrals for shoplifting, theft, property damage, and 5th degree assault.⁵⁰ In these conferences, youth offenders meet face-to-face with their parents, their support system, the victims, and community members, as an alternative to juvenile court.⁵¹ The neighborhood employs Peacemaking Circles that allow healing through listening to the story every person has to share.⁵² Restorative practices give everyone involved in a wrongdoing the opportunity to speak honestly about their pain, and creates a space for them to move forward together. Community Mediation further reaches into communities with a similar goal, while also providing resources for their community.

c. Community Mediation

Community Mediation takes a similarly optimistic view as restorative practices of the parties involved in resolving a dispute. Community Mediation empowers individuals to make change to large social power structures within their community.⁵³ Community Mediation Centers (CMCs) are typically nonprofit agencies taking the majority of their clients in as referrals from local courts. The profession of community dispute resolution programs, National Association for Community Mediation (NAFCM), is dedicated to providing dispute resolution "at the earliest stages of conflict," explaining further the commitment "to provide an alternative to the judicial system at any stage of a conflict."⁵⁴

In Minnesota, CMCs are generally referred to as Community Dispute Resolution Centers (CDRPs). Minnesota Statute 494 provides guidelines for CDR training programs and provisional

50. *Id.*

51. *Id.*

52. *Id.*

53. Gunning, *supra* note 21 at 90.

54. Lorig Charkoudian & Michal Bilick, *State of Knowledge: Community Mediation at a Crossroads*, 32 CONFLICT RESOLUTION QUARTERLY, 233-276 (Spring 2015) at 234. (citing Hedeon, T. 2003. *Institutionalizing Community Mediation: Can Dispute Resolution 'of, by, and for the People' Long Endure?* PENN STATE L. REV. 108: 265-76.).

requirements, as well as exclusions and eligibility requirements for grants.⁵⁵

Minnesota's CDRPs provide their communities with opportunities for mediation and support in disputes involving businesses and consumers, families, housing, schools, neighborhood, and juveniles.⁵⁶ They additionally train community volunteers as mediators, provide training in resolving organizational disputes, and restorative justice, and serve as a resource center for their communities.⁵⁷ By preparing community members to mediate and resolve disputes, CDRPs are providing their communities with opportunities to resolve disputes alongside people who reflect their community's diversity.⁵⁸ This is significant because of the impact that representativeness and diversity of the board of directors has on a program's outcomes.⁵⁹ When a CMC/CDRPs board reflects the diversity of its constituents, a significant positive correlation exists for the number of collaborative accomplishments reported by the organization.⁶⁰ As with collaborative problem solving and restorative practices, community mediation connects with and heals community members. If employed, these readily available resources can work to heal Minnesota following its recent and turbulent history with upheaval.

2. Minnesota's Struggle with Police Shootings

National media attention and initiatives focused on violence between police and community call out the need for focus and understanding of how both communities, and police are reacting. Dennis Flaherty, executive director of the Minnesota Police and Peace Officers Association, opines that the increase in people with firearms and confrontations with people having mental health crisis are common situations officers face. He states, "I think there's just

55. Community Dispute Resolution, MINN. STAT. § 494 (2017).

56. Community Mediation and Restorative Services, Inc., *Services*, (last visited April 30, 2018) <http://communitymediations.org/services/>.

57. *Id.*

58. Charkoudian & Michal Bilick, *supra* note 54.

59. *Id.*

60. *Id.* (citing Gazley, B., W. K. Chang, and L. B. Bingham. 2010. *Board Diversity, Stakeholder Representation, and Collaborative Performance in Community Mediation Centers*. PUBLIC ADMINISTRATION REVIEW 70:610–20.)

too many people out there that have firearms when they commit crimes—they have a total disregard for life or public safety, and they're willing to use their guns.”⁶¹ Flaherty also explains that a drive for officers receive de-escalation skills may help prevent them from having to use their firearms.⁶²

In Minnesota, a growing number of assaults against police officers have coincided with the increase in fatal shootings by police. Prior to 2011, the average number of officer assaults was less than 200.⁶³ Even with a general decline of violent crime and weapons offenses, “officers have been assaulted more than 300 times each year since 2011” (excluding 2015, when weapons crimes were at their highest point in nine years).⁶⁴

Because loss of life is such a significant, impactful, and far reaching circumstance, reviewing the data and correlation between use of force by police and assaults on officers is not a simple task. Chris Burbank, Director of Law Enforcement Engagement at the Center for Policing Equity at John Jay College of Criminal Justice, cautions that only using quantitative analysis can diminish the impact of these human losses.⁶⁵

On August 8, 2016, Minneapolis police announced new policies with an emphasis on de-escalation and a focus on community relations.⁶⁶ The new policy underscores the importance of barriers, distance, and communicating (i.e. warnings) from a safe position to avoid physical confrontation unless immediately necessary.⁶⁷

In October 2016, in direct response to the shootings of Jamar Clark and Philando Castile, Governor Mark Dayton established the Governor's Council on Law Enforcement and Community

61. Mara H. Gottfried & Josh Verges, *Minnesota shooting deaths by police highest ever recorded. Dangerous year for cops, too*, PIONEER PRESS (November 25, 2016, updated November 25, 2016), <http://www.twincities.com/2016/11/25/minnesota-shooting-deaths-by-police-highest-ever-recorded-dangerous-year-for-cops-too/>.

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. Tim Nelson, *Minneapolis police unveil new emphasis on de-escalation, community relations*, MPR NEWS (Aug 8, 2016), <https://www.mprnews.org/story/2016/08/08/minneapolis-police-make-changes-aimed-at-defusing-conflicts>.

67. *Id.*

Relations. The Council was charged with “identify[ing] strategies to improve relations between Minnesota communities and law enforcement officers, review best practices, and recommend specific reforms.”⁶⁸ However, the Council’s progress has been criticized. Several members have not attended every meeting, namely the Black Lives Matters member who only attended one meeting as of May 19, 2017. Some critics believe the group’s recommending power doesn’t provide enough accountability, and the inconsistent attendance doesn’t provide fair input for all community groups involved.⁶⁹

On September 29, 2017, the Council put forward a report of recommendations to the Governor. Their executive summary examined the reaction to Minnesota’s highly-publicized shootings and called out the importance of trust, accountability and transparency between police and community.⁷⁰ “Mutual trust between police and community members is a key tenet in maintaining public safety and ensuring effective policing, law enforcement and civilian stakeholders have a wide range of strongly held views on how to build trust.”⁷¹ In their recommendations, several work groups detailed the importance of communication, positive interactions, restoring relationships, and partnerships built on trust and mutual respect. The Police Training Workgroup explicitly recommended promoting and implementing conflict management and mediation, including de-escalation strategies.⁷² In general, the focus behind these recommendations drives toward the goal of community-centered resolutions that could be achieved through CDR. However, the report falls short of a plan for implementation recognizing the involvement is far reaching and

68. Office of Governor Mark Dayton and Lieutenant Governor Tina Smith, *Governor Mark Dayton Establishes Governor’s Council on Law Enforcement and Community Relations* (October 12, 2016), <https://mn.gov/governor/newsroom/?id=1055-259855>.

69. Tad Vezner, *They’re trying to improve police-community relations. But can they weather the attacks?*, PIONEER PRESS (May 19, 2017, updated May 22, 2017), <http://www.twincities.com/2017/05/19/minnesota-police-shootings-task-force-on-police-community-relations-cant-agree-jamar-clark-philando-castile/>.

70. *Governor’s Council on Law Enforcement and Community Relations*, (September 2017) http://mn.gov/gov-stat/pdf/2017_09_29_Governors_Council_Relations_Report_FINAL.pdf, at 3.

71. *Id.*

72. *Id.*

could involve legislative action and state funding. The National Initiative for Building Community Trust and Justice, however, provides a nationwide opportunity for focus on these issues.

3. National Initiative for Building Community Trust and Justice

Minneapolis, Minnesota is one of six pilot sites for the National Initiative for Building Community Trust and Justice (National Initiative), part of a three-year \$4.75 million grant through the U.S. Department of Justice.⁷³ “[T]he National Initiative is coordinated by the National Network for Safe Communities at John Jay College of Criminal Justice, with partnership from the Justice Collaboratory at Yale Law School, the Center for Policing Equity at John Jay College and UCLA, and the Urban Institute.”⁷⁴

The “project [seeks] to improve relationships and increase trust between communities and the criminal justice system and advance the public and scholarly understandings of the issues contributing to those relationships.”⁷⁵ Through trust-building interventions with police departments and communities, the work has a basis in enhancing procedural justice, reducing the impact of implicit bias, and fostering reconciliation.⁷⁶ “The National Initiative also regularly evaluates its interventions to determine effectiveness, and makes a commitment to building and sharing a knowledge and practice base for communities everywhere.”⁷⁷

The National Initiative’s work involves trust-building interventions with police departments and communities based on three pillars: (1) Enhancing procedural justice: how police interact with the public and how it shapes the views of police; (2) Reducing the impact of implicit bias: associations and stereotypes automatically made and its influence on policing; and (3) Fostering reconciliation: authentic interactions between minority communities and police addressing issues that contribute to mistrust and misunderstanding.⁷⁸ This third approach begins to address the

73. National Initiative for Building Trust and Justice, *Mission*, <https://trustandjustice.org/about/mission> (March 2018).

74. *Id.*

75. National Initiative for Building Community Trust & Justice, *Minneapolis 2016 Status Report*, (September 2016), https://s3.trustandjustice.org/misc/National_Initiative_-_2016_Status_Report_-_Minneapolis.pdf, at 1.

76. *Id.*

77. *Id.*

78. *Id.*

suggestion for using CDR to resolve this dispute. However, it remains to be seen whether these pillars will positively affect the police and community relationships in Minnesota through the future.

In a report published in September 2016, the National Initiative team details their work toward “designing and implementing trust-building interventions that address the following populations in Minneapolis: youth, Native Americans, victims of domestic violence and/or sexual assault, and LGBTQIA communities.”⁷⁹ Other efforts conducted by the Minneapolis Police Department in support of the mission of the National Initiative include a program that will replace court dates for disorderly conduct arrests with a meeting between the arresting officer and the offender, and participation in a Criminal Justice Coordinating Committee, which seeks to align the practices of all agencies within the Minneapolis and Hennepin County criminal justice system to achieve just outcomes for residents.⁸⁰

The report indicates that the fundamental aspects of the three pillars of the National Initiative will continue to be well under way into the future stating that new curricula that has been developed specifically for Minneapolis including “a reconciliation process that will start frank engagements between communities and law enforcement to address historical tensions, misconceptions, and mutual mistrust; development and implementation of further trust-building interventions that address a variety of special populations; and development of a baseline for evaluation.”⁸¹

Looking to the future, plans for the National Initiative include: rolling out new curricula raising public awareness, increasing public engagement, measuring impact, and developing partnerships with researchers to address research gaps.⁸² Expanding the efforts of the National Initiative throughout the state of Minnesota, and throughout the entire nation, focusing on improving police and community relationships could produce lasting results.

79. *Id.* at 3.

80. *Id.* at 4.

81. *Id.* at 4-5.

82. *Id.* at 5.

II. ANALYSIS

In today's volatile political climate, communities turn to CDR to bring agreement and understanding to topics enveloped in emotion. Using CDR to review, analyze and make determinations regarding future changes to policy, and community healing because of officer-involved shootings will ensure a community-based and fair approach to difficult and dangerous topics.

In review of the National Initiative's recommendations, building community and trust through Civic Fusion, an effective restorative practice in Seattle, together with the concerns regarding participants and facilitation for CDR practices, we further understand how the practice can be applied in Minnesota.

A. *National Initiative in Action*

In October, 2017, the National Initiative published its *2017 Interim Status Report*, moving Minneapolis, its police department, and communities into their fourth year of efforts to "enhance procedural justice and promote racial reconciliation."⁸³ The status report details progress in the areas of procedural justice, implicit bias, and reconciliation.⁸⁴ Further, the report indicates that community member surveys will indicate progress of the National Initiative's effect on "community member perceptions of and attitudes towards crime and police."⁸⁵ In a baseline survey in fall 2015, "residents expressed support for obeying the law and willingness to partner with police to solve crime, but only 23% supported the police's actions in the community."⁸⁶

Over the remainder of the project, the National Initiative will continue the rollout and institutionalization of its new curricula; facilitate trust-building efforts through listening sessions; raise public awareness of its activities and increase public engagement; measure the impact of its interventions; and continue to develop

83. National Initiative for Building Community Trust and Justice: Minneapolis, Minnesota, <https://trustandjustice.org/pilot-sites/info/minneapolis-minnesota> (March 2018).

84. *Minneapolis 2017 Interim Status Report* https://nnscommunities.org/uploads/National_Initiative_2017_Interim_Status_Report_Minneapolis.pdf (October 2017).

85. *Id.* at 4.

86. *Id.*

local partnerships to sustain and institutionalize this collaborative effort.⁸⁷ Trust-building efforts between police and community creates opportunities for building relationships and creating understanding, similar to the concept of Civic Fusion.

B. Unintended Benefit: Civic Fusion

Susan Podziba writes about how CDR professionals achieve actionable agreements through Civic Fusion.⁸⁸ Podziba explains that “when people bond, even as they sustain deep value differences, to solve a common public problem” the parties involved shift their assumptions and come to unexpected realizations about their values.⁸⁹ By bringing diverse, politically active participants together, mediators can aid disputants in bonding.⁹⁰ In Minnesota, Civic Fusion can bring trust back into communities affected by police shootings.

While Civic Fusion does not typically result in changing deeply held views of participants or in acceptance of the opposing view, the process does open minds. Participants develop a new way of thinking that creates a channel for mutual recognition and understanding, which allows participants to connect through their shared purpose.⁹¹ Civic fusion brings together citizens immersed in the public policy conflict who have enough interest motivating their participation and commitment.⁹² Here, the process would bring communities together who were immersed in conflict in order to motivate participation toward healing. This interest makes for effective and lasting decision-making.⁹³

Bellman and Podziba encourage focusing on consensus building and avoiding the current [2014] combative ideals of strong and weak parties at odds with the process.⁹⁴ They warn that the dynamics resulting from the most recent election will produce create dynamics making it more difficult for “partisans to jointly decide to start mediation, much less select a mutually acceptable

87. *Id.* at 5.

88. Podziba *supra* note 139.

89. *Id.*

90. *Id.* at 278.

91. *Id.* at 279.

92. *Id.* at 242.

93. *Id.*

94. Bellman & Podziba, *supra* note 7, at 23.

mediator.”⁹⁵ By focusing on positive and innovative change, the process becomes a focus on how to bring the community forward together, rather than creating a competitive and negative experience. Civic Fusion is the result of a process to bring understanding into a community. Restorative practices further connect community members through healing.

C. Restorative Practices in Seattle

Community members employed form of restorative practices, a restorative circle, to address a collectively felt wrong in Seattle. Attorney Andrea Brenneke suggested a restorative circle on behalf of the family of John T. Williams.⁹⁶ John T. Williams, a First Nations wood carver, “was walking down a sunny downtown street with the tools of his trade — a piece of wood and a small carving knife” when a police officer approached him.⁹⁷ The officer walked toward Williams with his gun drawn, yelled three times to “Put the knife down!” and fired four times seconds later, killing Williams.⁹⁸ “The officer later testified he felt threatened by the knife.”⁹⁹

Brenneke’s insight told her that a traditional meeting between the family and police leadership would not be sufficient to address the continued conflict and escalating tensions.¹⁰⁰ Brenneke suggested a restorative circle that aligned with a practice she had studied, developed in Brazil by Dominic Barter.¹⁰¹ She found the process powerful and offered to facilitate.¹⁰² Police Chief John Diaz agreed to the request understanding that it “would provide him and the Seattle Police Department an immediate opportunity to address the pain and issues involving the family and the larger community.”¹⁰³ During the process, “a request was made that [Sergeant] Fred Ibuki, [an officer John T. Williams’s brother (Rick

95. *Id.*

96. Andrea Brenneke, *Tikkun A restorative circle in the wake of a police shooting* (February 1, 2012) <http://www.tikkun.org/nextgen/a-restorative-circle-in-the-wake-of-a-police-shooting>.

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.*

Williams) trusted, and who knew his father and three generations of Williams family carvers,] and other seasoned veterans mentor newer officers in developing relationships based upon mutual respect.”¹⁰⁴

During the circle, in a discussion that could parallel community feelings in Minnesota, the First Nations/Native American carvers described their perception of a lack of respect shown to community, other minorities, and the homeless by newer officers.¹⁰⁵ The circle members explained that “the ‘command and control’ approach demands obedience and escalates quickly and unnecessarily into use of force.”¹⁰⁶ Members of the police department “shared their regret and sadness for harm done and trust broken with the family and within the Native American community.”¹⁰⁷ The police heard the First Nation’s community’s frustration, and the First Nation’s community heard the police’s regret. This shared honesty aided in a recognition that a commitment to a community-based policing model would aid in rebuilding trust and respect.¹⁰⁸

Tools from the Seattle restorative circle are directly applicable to the issues and concerns that currently plague Minnesota. Including how minority populations communicate, interact and have developed a relationship, or incongruity, with police officers.

The work preparing for and following up with restorative circles are equally important. Preparation and follow-through are the keys to ensuring long-standing improvement that will continue throughout time and reflect the potential for continued positive future outcomes for community and police interactions.

Before the meeting, Brenneke worked with Rick Williams to ensure respect for the family’s wishes.¹⁰⁹ This included recognition and agreement “that the subject and details of the shooting would be off limits” because investigation of the use of force was in process.¹¹⁰ Focusing on addressing the dynamics and conditions

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.*

that gave rise to the incident and continued after it are the most important parts of the process.¹¹¹

Several steps that resulted from the Restorative Circle held September 13, 2010 were: (1) appointing a sergeant who was close to the family as a “direct line” of contact with the family and to take a lead role in educating officers about issues arising from the Aug. 30 shooting; (2) family members received Sgt. Fred Ibuki’s cellphone number; (3) on a larger scale, the department pushed sergeants to help bolster community relations and prevent officer misconduct;¹¹² and (4) Diaz told the City Council he wants front-line sergeants to assume a greater role in coaching the department’s large number of young officers as part of an effort to reduce conflicts with citizens.¹¹³

Following the meeting, the group reflected on the goals, action agreements and consequences of the circle. They asked, “[W]ere the needs identified in the initial Restorative Circle met? What more needs to happen?”¹¹⁴ Brenneke reported a sense of connection and increased trust in that meeting explaining that the mood was different with increased trust “resulting from the agreements, actions, and ongoing contacts and relationships that had developed in the intervening months.”¹¹⁵

Brenneke asks the following questions to gauge how restorative practices would provide a forum for open dialogue and resolution to long-standing conflict. Consider these questions providing the foundation for dialogue between police and Minnesota communities: What would happen if police officers and community members participated in restorative justices to address conflicts and tensions, preventing escalation into violent confrontation?; and “Can you imagine a community empowered with the capacity and support to engage in the most difficult conversations, ensure accountability, and engage in collective action to solve common

111. *Id.*

112. *Id.*

113. Steve Miletich, *Extraordinary meeting followed carver’s fatal shooting by Seattle officer*, (February 2, 2011, updated February 3, 2011) <https://www.seattletimes.com/seattle-news/extraordinary-meeting-followed-carvers-fatal-shooting-by-seattle-officer/>

114. Brenneke, *supra* note 96.

115. *Id.*

challenges?”¹¹⁶ A process focused on shared dialogue, appreciation for partnerships, and professional facilitation with ensured freedom from bias, with the right stakeholders in the room, can bring peace to devastated communities.

D. Stakeholder Involvement

CDR provides an intentional forum for discussions and encourages input from all stakeholders.¹¹⁷ Analogizing Public Policy Mediation with CDR combines the focus of trust-building with success in bringing changes in government policy to light. This broadens the scope of input and impact for CDR.

In Public Policy Mediation, professionals perform assessment phase interviews to ensure relevant and key stakeholders are and remain involved in the process.¹¹⁸ This step in the process takes time but is essential to ensuring those running the process have a full understanding of the history and complications surrounding each issue.¹¹⁹ An important part of this initial phase is also determining the likelihood of success for the process. Responses range from working to instill confidence in those involved or recommending to avoid the process altogether.¹²⁰

The goal of CDR is to bring about an opportunity for mutual understanding, and as a result, an increased potential for consensus agreements.¹²¹ CDR could provide federal, state and local governments with input and time to reflect on the impact of complicated decisions impacting stakeholders.¹²² Stakeholders will provide input regarding the struggles in their communities, their priorities for the future, and their concerns for their families. Sharing this input in a controlled and safe environment will allow stakeholders to share innovative ideas and open dialogue. This format will help inform decisions within communities both at the public safety and at the political levels.

116. *Id.*

117. Bellman & Podziba, *supra* note 7, at 22.

118. *Id.*

119. *Id.*

120. *Id.*

121. Bellman & Podziba, *supra* note 7, at 22.

122. *Id.*

Through the CDR principles of fair and efficient resolution of disputes and giving individuals and communities the power of control in their own lives will foster positive participation.¹²³ Engaging community members in conversation allows a dialogue, and gives participants a stake and an active interest in improving the community. Community members who have a stake in their community and can see results will continue to engage. The prevalence of consensus-making and collaboration has the potential to ultimately open minds and doors for improved future relationship between the public and their government representatives. However, ensuring diversity in representation throughout the CDR process is also important for success.

1. Diversity and Partnerships

Using CDR for officer-involved shootings, the makeup of individuals involved would be the victim's family or representatives, law enforcement representatives, and a diverse representation of the community. Ensuring a diverse involvement in the process includes have a corresponding representation of the community's racial, economic, and gender makeup.¹²⁴ Gunning

123. Charkoudian & Bilick, *supra* note 54 at 245-46 (quoting Gazley, B., W. K. Chang & L. B. Bingham, *Collaboration and Citizen Participation in Community Mediation Center*, REV. POL'Y RESEARCH 23:843-63 (2006)).

124. Nancy La Vigne, Jocelyn Fontaine & Anamika Dwivedi, *How Do People in High-Crime, Low-Income Communities View the Police?* Urban Institute Justice Policy Center (February 2017), at 8, (footnotes removed) (citing Phillip A. Goff & Kimberly Kahn, *Racial Bias in Policing: Why We Know Less Than We Should*, JOURNAL OF SOCIAL ISSUES AND POLICY REVIEW 6, no. 1 (2012): 177-210; and citing Robin S. Engel & Richard Johnson, *Toward a Better Understanding of Racial and Ethnic Disparities in Search and Seizure Rates*, Journal of Criminal Justice 34, no. 6 (2006): 605-17; Jeffrey Fagan and Garth Davies, *Street Stops and Broken Windows: Terry, Race and Disorder in New York City*, FORDHAM URBAN LAW JOURNAL 28 (2000): 457; Andrew Gelman, Jeffrey Fagan, and Alex Kiss, *An Analysis of the New York City Police Department's 'Stop and-Frisk' Policy in the Context of Claims of Racial Bias*, JOURNAL OF THE AMERICAN STATISTICAL ASSOCIATION 102, no. 479 (2012): 813-23; Richard J. Lundman and Robert L. Kaufman, *Driving While Black: Effects of Race, Ethnicity, and Gender on Citizen Self-Reports of Traffic Stops and Police Actions*, CRIMINOLOGY 41, no. 1 (2003): 195-220; John Reitzel and Alex Piquero, *Does It Exist? Studying Citizens' Attitudes of Racial Profiling*, POLICE QUARTERLY 9, no. 2 (2006): 161-83; Rob Tillyer, Robin S. Engel, and John Wooldredge, *The Intersection of Racial Profiling Research and the Law*, JOURNAL OF CRIMINAL

suggests remembering how a community's history and current culture can affect typically underrepresented groups.¹²⁵ For example, groups without positive cultural myths, "out" groups, women, and minorities, have to make a conscious effort to create new moral codes.¹²⁶ "Thus, when mediators do nothing or 'remain neutral,' the outcome will tend to conform with the dominant and familiar cultural myths."¹²⁷ This is an important reminder for all facilitators of CDR to ensure equity in their representation of community members.

Exploring aspects of diversity aside from the traditional examination of racial and gender makeup and expanding to include economic and other measures of equal representation based on the particular issue at hand.¹²⁸ Gazley, Chang, and Bingham examine how to foster citizen participation and democratic governance in community mediation centers and highlight two main goals: "fair and efficient resolution of disputes; and ... giving individuals and communities the power of control in their own [lives]."¹²⁹ The pervasiveness and scope of police bias is difficult to determine. However, extensive documentation associates disparate police outcomes with race, age, gender, and sexual orientation.¹³⁰ "Studies

JUSTICE 36, no. 2 (2008): 138–53; Patricia Warren, Donald Tomaskovic-Devey, William Smith, Matthew Zingraff, and Marcinda Mason, *Driving While Black: Bias Processes and Racial Disparity in Police Stops*, Criminology 44, no. 3 (2006): 709–38.; and citing Robin S. Engel and Jennifer M. Calnon, *Comparing Benchmark Methodologies for Police-Citizen Contacts: Traffic Stop Data Collection for the Pennsylvania State Police*, Police Quarterly 7, no. 1 (2004): 97–125; Robin S. Engel and Jennifer M. Calnon, *Examining the Influence of Drivers' Characteristics during Traffic Stops with Police: Results from a National Survey*, Justice Quarterly 21, no. 1 (2004): 49–90; Warren et al., *Driving While Black.*; and citing Robert A. Brown and James Frank, *Race and Officer Decision Making: Examining Difference in Arrest Outcomes between Black and White Officers*, Justice Quarterly 23, no. 1 (2006): 96–126).

125. Gunning, *supra* note 21, at 93.

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.*

130. Nancy La Vigne, Jocelyn Fontaine & Anamika Dwivedi, *How Do People in High-Crime, Low-Income Communities View the Police?* Urban Institute Justice Policy Center (February 2017), at 8, (footnotes removed) (citing Phillip A. Goff and Kimberly Kahn, *Racial Bias in Policing: Why We Know Less Than We Should*, JOURNAL OF SOCIAL ISSUES AND POLICY REVIEW 6, no. 1 (2012): 177–210; and citing Robin S. Engel and Richard Johnson, *Toward a Better*

that examine the relationship between a person's race and police behavior point to racial disparities in police stops, searches, arrests, and use of force, which can severely erode public trust and reduce perceptions of police legitimacy."¹³¹ Applying these principles after officer-involved shootings creates an opportunity for law enforcement, legal representatives, community members, and victims to band together toward a common goal: healing.

E. Professional Facilitation

The range of facilitation for CDR includes trained professionals, legal practitioners, and trained community members. An exploratory study suggests that professional facilitators can effectively address political incivility and manage public discourse through deliberative forums, whereby the public discusses conflicts

Understanding of Racial and Ethnic Disparities in Search and Seizure Rates, Journal of Criminal Justice 34, no. 6 (2006): 605–17; Jeffrey Fagan and Garth Davies, *Street Stops and Broken Windows: Terry, Race and Disorder in New York City*, FORDHAM URBAN LAW JOURNAL 28 (2000): 457; Andrew Gelman, Jeffrey Fagan, and Alex Kiss, *An Analysis of the New York City Police Department's 'Stop and-Frisk' Policy in the Context of Claims of Racial Bias*, JOURNAL OF THE AMERICAN STATISTICAL ASSOCIATION 102, no. 479 (2012): 813–23; Richard J. Lundman and Robert L. Kaufman, *Driving While Black: Effects of Race, Ethnicity, and Gender on Citizen Self-Reports of Traffic Stops and Police Actions*, CRIMINOLOGY 41, no. 1 (2003): 195–220; John Reitzel and Alex Piquero, *Does It Exist? Studying Citizens' Attitudes of Racial Profiling*, POLICE QUARTERLY 9, no. 2 (2006): 161–83; Rob Tillyer, Robin S. Engel, and John Wooldredge, *The Intersection of Racial Profiling Research and the Law*, JOURNAL OF CRIMINAL JUSTICE 36, no. 2 (2008): 138–53; Patricia Warren, Donald Tomaskovic-Devey, William Smith, Matthew Zingraff, and Marcinda Mason, *Driving While Black: Bias Processes and Racial Disparity in Police Stops*, Criminology 44, no. 3 (2006): 709–38; and citing Robin S. Engel and Jennifer M. Calnon, *Comparing Benchmark Methodologies for Police-Citizen Contacts: Traffic Stop Data Collection for the Pennsylvania State Police*, Police Quarterly 7, no. 1 (2004): 97–125; Robin S. Engel and Jennifer M. Calnon, *Examining the Influence of Drivers' Characteristics during Traffic Stops with Police: Results from a National Survey*, Justice Quarterly 21, no. 1 (2004): 49–90; Warren et al., *Driving While Black.*; and citing Robert A. Brown and James Frank, *Race and Officer Decision Making: Examining Difference in Arrest Outcomes between Black and White Officers*, Justice Quarterly 23, no. 1 (2006): 96–126).

131. *Id.*

in government-sponsored meetings.¹³² The study exposed concerns with disruptions that occurred in public deliberations as well as a need for further review to better understand the underlying behaviors.¹³³ “Strategic political incivility and disruptive tactics of well-organized and sometimes well-financed interest groups may have structural consequences beyond the moment of the individual disruptions.”¹³⁴ Local leaders may be discouraged from their work in public service.¹³⁵ This could have consequences further into the future such as difficulty in recruiting and retaining high-quality public officials.¹³⁶ It could also discourage the public’s participation in these important processes.¹³⁷ However, a common theme in the research and survey responses was that, arguably, facilitated forums have a higher likelihood of creating a better range of options, and bring legitimacy to these forums.¹³⁸ Trained mediators help participants in understanding and connecting across the common goals all the parties share.¹³⁹ As a result, they find mutual understanding and respect for the interests of others and come to understand and accept the constraints of their complex situations.¹⁴⁰

Bellman and Podziba suggest that professionals work with the relevant stakeholders to determine ground rules, responsibilities and expectations, and work to build consensus on those issues before working on the most difficult task of negotiating on substantive issues.¹⁴¹ This work builds confidence and relationships with the professionals and other stakeholders.¹⁴² As part of the effort to build confidence, facilitators must be clear and transparent regarding bias in order to fully engage participants.

132. Kirk Emerson et al., *Disrupting Deliberative Discourse: Strategic Political Incivility at the Local Level*, 32 CONFLICT RESOLUTION Q., 299, 299-324 (2015).

133. *Id.* at 319.

134. *Id.* at 306-07 (citing Maisel, L. S., *The Negative Consequences of Uncivil Political Discourse*, 45 PS: POL. SCI. AND POL., 403, 405-11 (2012)).

135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.* at 319.

139. SUSAN L. PODZIBA, *CIVIC FUSION: MEDIATING POLARIZED PUBLIC DISPUTES* 231 (Chicago: ABA Publishing Co., Inc., 2012).

140. *Id.*

141. Bellman & Podziba, *supra* note 7, at 22.

142. *Id.*

1. Preempting Concerns of Bias

Bias is defined as “a particular tendency, trend, inclination, feeling, or opinion, especially one that is preconceived or unreasoned.”¹⁴³ Impartiality is the lack of bias. These concepts are particularly important in CDR in order to facilitate open communication that creates a foundation of trust.

Standard II of the *Model Standards of Conduct for Mediators* explicitly addresses impartiality. The Standard defines impartiality as “freedom from favoritism, bias or prejudice.”¹⁴⁴ It further provides instruction that mediators should not “act with partiality or prejudice based on any participant’s personal characteristics, background, values and beliefs, or performance at a mediation, or any other reason.”¹⁴⁵ These standards of conduct are not only held nationally, but further reviewed in case law from Minnesota as well. *White v. Minnesota Republican Party* reviewed impartiality at length.¹⁴⁶ The decision reached was not unanimous, but the definitions of impartiality employed in the majority opinion weren’t what the dissents challenged. Justice Antonin Scalia wrote the majority opinion and defined three meanings for impartiality: “(1) having no bias against or favor towards any party; (2) the impossible—having no preconception in favor of or against any particular legal view; and (3) open-mindedness—a willingness to be open to being persuaded in spite of your preconceived notions.” In her dissent, Justice Ginsberg added: “(4) having no interest in the outcome of the dispute.”¹⁴⁷ A neutral, or impartial, party is key to facilitating a consistent and fair dialogue. Gunning suggests “checking-in” with the parties to determine and develop an agreed upon process, as well as values.¹⁴⁸

Bias is especially a concern when dealing with parties who are wary of government officials and police. This is especially complicated for a facilitator hired and paid for by the

143 . Bias, DICTIONARY.COM, <http://www.dictionary.com/browse/bias> (last visited March 26, 2018).

144. MODEL STANDARDS OF CONDUCT FOR MEDIATORS, (AM. ARBITRATION ASS’N, AM. BAR ASS’N, AND ASS’N FOR CONFLICT RESOLUTION 2005).

145. *Id.*

146. Gunning, *supra* note 21, at 91 (citing 536 U.S. 765 (2002)).

147. *Id.*

148. *Id.* at 95.

government.¹⁴⁹ In these cases, participants could view this arrangement as inherently biased in favor of the government.¹⁵⁰ CDR professionals have to work hard to ensure all stakeholders know that they do not serve one party in particular but have been hired to facilitate the process as a whole. Building confidence in the fairness of the process is part of the initial phase of assessment when CDR professionals “expend a great deal of effort to overcome such assumptions.”¹⁵¹ Trust in the process and its facilitators will develop once the process becomes familiar to all parties.¹⁵² Participants will readily see positive effects that their voices are heard and their trust is well placed.

2. Establishing Values

During a process that unearths a variety of emotions and opinions, establishing shared values for participants can show a community that is at odds that they have a common underlying goal. Gunning suggests establishing the values of justice and fairness when beginning sessions by using a phrase like “[we all] affirm that we all have the same need for self-respect, autonomy and pride,” during an opening statement.¹⁵³ This statement establishes the shared values of justice and fairness appropriate for these sessions.¹⁵⁴ Further, explaining that agreements as a result of the process will be fair to everyone involved establishes a foundation of respect and fairness.¹⁵⁵

While developing ideas throughout the session, the facilitator reminds the parties of their earlier agreements regarding process and values.¹⁵⁶ Throughout the discussions, the facilitator encourages further explanation of their views on fairness and justness relating to the proposal or conflict at hand.¹⁵⁷ In CDR practices that use community trained volunteers, such as CDRPs, the difficulties in establishing a shared community value are overcome because the

149. *Id.*

150. Bellman & Podziba, *supra* note 7, at 22.

151. *Id.*

152. *Id.*

153. Gunning, *supra* note 21, at 93.

154. *Id.*

155. *Id.*

156. *Id.*

157. *Id.*

facilitator is an active, engaged, and concerned member of the community as well.

Therefore, shared values, diversity of representation, and preempting bias are prevalent concerns that should be readily and appropriately addressed by facilitators.

III. CHALLENGES AND COUNTERARGUMENTS

CDR practices have been critiqued as a way “second-class citizens” get justice.¹⁵⁸ These claims meant that CDR, and ADR alike, weren’t for the elite of society but focused on giving those “second-class claims” a place for their disputes to be resolved.¹⁵⁹ Community, police, and government share the responsibility of healing after officer-involved shootings. However, the prevalence of extreme emotion can make the process seem daunting for those who are not familiar with its benefits. Institutionalizing these high stakes processes is a worthwhile challenge.

A. *Second Class Justice*

“Second class justice” refers to the early critiques of mediation and CDR practices.¹⁶⁰ This argument claims the processes are aimed at steering the poor and disadvantaged away from the court, away from protections of the court and their chance of a favorable outcome, and, therefore, from justice.¹⁶¹ This view is particularly challenging considering police shootings due to the inherent racial bias underlying tensions between police and communities. It is also particularly important to understand this view in order to prepare communities with information about why CDR is beneficial for their futures; this is an effective and worthwhile form of justice that will give them a voice.

The 1990s initiative Operation People’s goals were to incorporate concepts of both restorative justice and community policing in high-crime neighborhoods with Maryland state troopers

158. Craig A. McEwen & Laura Williams, *Legal Policy and Access to Justice Through Courts and Mediation*, 13 OHIO STATE J. ON DISP. RESOL., 865, 865. Hensler, *supra* note 15, at 179.

159. Hensler, *supra* note 15, at 179.

160. Craig A. McEwen & Laura Williams, *Legal Policy and Access to Justice Through Courts and Mediation*, 13 OHIO STATE J. ON DISP. RESOL., 865, 865.

161. *Id.*

handpicked to implement these goals.¹⁶² As with Operation People, focusing on the positivity of the relationships through building trust will ensure this model doesn't receive the label "second class justice." Operation People took the following steps: (1) perceptions of police and community gathered via anonymous survey; (2) Operation People's leaders simultaneously "engaged the local police chief in discussions about the initiatives' mechanics and objectives" to gain agreement and support;¹⁶³ and (3) state troopers and local police officers "participate[d] in community meetings in which they engaged in discussions about issues that concerned citizens in that particular neighborhood and worked with them to brainstorm solutions."¹⁶⁴

The discussions led to solutions like police officers giving their pager numbers to anyone who requested it, officers doing homework with the community's children, and hanging the children's high test scores and artwork on command buses parked in the neighborhood.¹⁶⁵ By creating an environment where the first encounters with members of the community were positive experiences, members would build trust with the police.¹⁶⁶

Operation People focused on community engagement. Concepts from this operation are directly applicable in Minnesota. By engaging in respectful discussion via "[r]egular, open meetings that bring together everyone involved – from police officers, city officials, protest leaders, police union leaders, public defenders, local prosecutors, and community leaders," communities can face their community's conflicts.¹⁶⁷ The same goals and results of diminishing unnecessary violent encounters can be achieved with the goals here of goodwill, trust, and open dialogue.¹⁶⁸ The responsibility for achieving these goals is shared by everyone affected.

162. Merkey *supra* note 45, at 1140 (citing Interview with Vernon Herron, Senior Policy Analyst, Univ. of Md. Ctr. For Health & Homeland Sec., in Balt., Md. (Jan. 21, 2015)).

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.*

167. *Id.* at 1141.

168. *Id.*

B. Equality of Responsibility

The traditional justice system has not provided justice in the case of police shootings. Officers are generally not charged and, when they are, they are rarely convicted.¹⁶⁹ “Between 2005 and April 2017, 80 officers had been arrested on murder or manslaughter charges for on-duty shootings. During that 12-year span, 35% were convicted, while the rest were pending or not convicted.”¹⁷⁰ However, the communities remain at odds and left with the responsibility to create healing and understanding in order to move forward. Therefore, communities need to identify a different way of handling these issues.

Formal and informal partnerships of community organizations, police, and governmental agencies, focused on informal networks and relationships, can result in fair and efficient resolutions to disputes.¹⁷¹ CDRPs focus on resolutions. These community organizations regularly and directly impact the work of the other. Here, a resolution brings healing, a sense of community, and a renewed understanding to communities in turmoil.

Community members, police, and local government have equal responsibility during these processes. Bellman and Podziba express the importance of understanding that, while government agencies share a value of improving relationships in the community, they have complicated processes to consider when implementing ideas.¹⁷² Government agencies have no legal obligation to support implementation of a resolution developed by its citizens.¹⁷³ Even so, failure to move forward with the product or decision “could result in negative political implications, although the negotiators would not have recourse in the courts. Given such complex dynamics, one can understand why government officials enter into such processes cautiously.”¹⁷⁴

169. CNN, *Police shootings: Trials, convictions are rare for officers*, <https://www.cnn.com/2017/05/18/us/police-involved-shooting-cases/index.html> (last visited March 27, 2018).

170. *Id.*

171. *Id.*

172. Bellman & Podziba, *supra* note 7, at 23.

173. *Id.*

174. *Id.*

A prevalence of opinion exists that a fundamental change is necessary and could be accomplished through reform of education and training of police officers.¹⁷⁵ Analogizing government agencies to police departments, the comparison can be made that failure to support resolutions developed by the communities they serve will have negative implications for their work in ensuring safety for the community.

Turning to the responsibility of police educators, experts have discussed training reforms which include additional mental health screenings, restorative practices education, and citizen oversight. Colleges and universities determine how their students will meet the learning objectives that are set by the Minnesota Board of Peace Officer Standards and Training (POST).¹⁷⁶ Education reform recommends a four-year degree requirement for officers.¹⁷⁷ The result would be more mature officers, taught in an FBI-style police academy, who would have a more developed and diverse outlook on society.¹⁷⁸ Graduates would then receive training through a police academy.¹⁷⁹ The training would be coupled with rigorous screenings including mental health and, perhaps most importantly, training in implicit bias, procedural justice, de-escalation, mental health first aid, and less-lethal options. On-the-job reform includes shifts that promote healthy sleep patterns, mandated counseling for all Minnesota peace officers, front and back body cameras, less-lethal options for de-escalation, and traffic enforcement cameras to reduce “unnecessarily confrontational stops.”¹⁸⁰ Not surprisingly, citizen oversight of all police agencies is recommended.¹⁸¹ Additionally, to ensure further accountability, it is recommended to “shift all law-enforcement functions to the county level under

175. Densley & Olson, *supra* note 5.

176. *About the POST Board*, MINNESOTA BOARD OF PEACE OFFICE STANDARDS AND TRAINING (POST); <https://dps.mn.gov/entity/post/about/Pages/default.aspx> (last visited December 18, 2017) (explaining the POST Board’s mission as established in 1977: Create the first law enforcement occupational licensing system in the United States, establish law enforcement licensing and training requirements, and set standards for law enforcement agencies and officers); Densley & Olson, *supra* note 5.

177. *Id.*

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.*

elected sheriffs . . . [to] cut bureaucracy, promote collaboration over competition among agencies, and fund police properly by sharing the cost across a far larger tax base.” The demand for accountability and the research suggesting the importance of evaluation and standards support these changes. However, one-sided changes will not mend these relationships. A process institutionalized through fair and efficient means that is supported by the community with consistency and trust will gain the trust of the public. The public is crying out for accountability and the research demands it.¹⁸² “Research finds that the manner in which the law is applied does more to shape views and engender compliance than perceived fairness of the law or its application.”¹⁸³ The public’s view of police “as fair and trustworthy representatives of the law, who apply the

182. *Id.*

183. La Vigne, Fontaine & Dwivedi, *supra* note 130, at 8 (citing Jacinta M. Gau et al., *Examining Macro-Level Impacts on Procedural Justice and Police Legitimacy*, 40 J. OF CRIM. JUST., 333, 333–43 (2012)); Lyn Hinds and Kristina Murphy, *Public Satisfaction with Police: Using Procedural Justice to Improve Police Legitimacy*, 40 AUSTL. & N.Z. J. OF CRIMINOLOGY, 27, 27–42 (2007); Jonathan Jackson et al., *Policing by Consent: Understanding the Dynamics of Police Power and Legitimacy*, ESS Country Specific Topline Results Series, (1) (London: European Social Survey, 2012); Lorraine Mazerolle et al., *Procedural Justice, Routine Encounters and Citizen Perceptions of Police: Main Findings from the Queensland Community Engagement Trial (QCET)*, 8 J. OF EXPERIMENTAL CRIMINOLOGY, 343, 343–67 (2012); Murphy, *Regulating More Effectively*; Kristina Murphy et al., *Nurturing Regulatory Compliance: Is Procedural Justice Effective when People Question the Legitimacy of the Law?* 3 REG. & GOVERNANCE, 1, 1–26 (2009); Michael D. Reisig and Camille Lloyd, *Procedural Justice, Police Legitimacy, and Helping the Police Fight Crime: Results from a Survey of Jamaican Adolescents*, 12 POLICE Q., 4, 4–62 (2009); Michael D. Reisig et al., *Procedural Justice, Police Legitimacy, and Public Cooperation with the Police among Young Slovene Adults*, 14 VARSTVOSLOVJE, 147, 147 (2012); Tyler, *Enhancing Police Legitimacy*; Tyler, *Procedural Justice, Legitimacy, and the Effective Rule of Law*; Tyler, *Why People Obey the Law*; Tyler and Fagan, *Legitimacy and Cooperation*; Tyler and Wakslak, *Profiling and Police Legitimacy*; Scott E. Wolfe, *The Effect of Low Self-Control on Perceived Police Legitimacy*, 39 J. OF CRIM. JUST., 67, 67–74 (2011); Tal Jonathan-Zamir and David Weisburd, *The Effects of Security Threats on Antecedents of Police Legitimacy: Findings from a Quasi-Experiment in Israel*, 50 J. OF RES. IN CRIME AND DELINQ., 3, 3–32 (2013); Scott E. Wolfe et al., *Is the Effect of Procedural Justice on Police Legitimacy Invariant? Testing the Generality of Procedural Justice and Competing Antecedents of Legitimacy*, 32 J. OF QUANTITATIVE CRIMINOLOGY, 253, 253–82 (2016); and citing Tyler, *Enhancing Police Legitimacy*; Tyler and Fagan, *Legitimacy and Cooperation*).

law without bias and use their considerable powers to stop, search, detain, and engage in force sparingly, equitably, and justifiably” affects their ability to be effective.¹⁸⁴ Communities see and respect this legitimacy if they believe police share their values and ideas about justice and fairness.¹⁸⁵

Combining restorative and procedural justice blends the need for understanding with the goal of peace. From the viewpoint of residents, in order for residents to perceive police as conducting themselves in a procedurally just manner, police must: (1) give residents an opportunity to tell their side of the story; (2) treat residents with dignity and respect; (3) explain the reasons for their decisions and actions; and (4) convey fairness and impartiality in their interactions with residents.¹⁸⁶ These perceptions provide a framework for expectations that community residents have for police officers.

Authors Vigne, Fontaine, and Dwivedi considered the link between the ways police engage with community members and the community’s perceptions of relatability to police while working to enforce the law.¹⁸⁷ Their research found that “while less than one-quarter of respondents agreed that the police are honest (23.8 percent), a considerable share could imagine being friends with a police officer (42.9 percent).”¹⁸⁸ This underscores a phenomenon that has been documented in the literature: despite often deep distrust in law enforcement overall, individual relationships with individual patrol officers can be strong and positive.¹⁸⁹ These measures of relatability include the degree to which residents view the police as honest, personally trust the police, feel safe in the presence of police, and perceive the police as a part of the

184. *Id.*

185. *Id.*

186. *Id.* at 7.

187. *Id.*

188. *Id.* at 12 (citing Paul E. Smith and Richard O. Hawkins, *Victimization, Types of Citizen-Police Contacts, and Attitudes Toward the Police*, 8 L. & SOC’Y REV., 135, 135–52 (1973); Tom R. Tyler et al., *The Consequences of Being an Object of Suspicion: Potential Pitfalls of Proactive Police Contact*, 12 J. OF EMPIRICAL LEGAL STUD., 602, 602–36 (2015); Elaine B. Sharp and Paul E. Johnson, *Accounting for Variation in Distrust of Local Police*, 26 JUST. Q., 157, 157–82 (2009)).

189. *Id.*

community.¹⁹⁰ Minnesota has a strong CDR community poised to develop methods to build this trust between police and community.

C. Institutionalizing CDR in Minnesota

Clashes between police and communities across the nation continue. The evidence and “the collective fallout from these events, are substantial evidence that the violence and mistrust that plagues communities across the nation must be addressed.”¹⁹¹ Change to the institutional process for addressing this conflict must restructure how community members interact.¹⁹² “Restorative justice techniques should be used to build relationships before a catastrophic event strains these relationships. Subsequently, [these practices] should be used to fully heal the damage caused by such events.”¹⁹³ Communities will then stabilize and create their own potential to grow together.¹⁹⁴ Enduring changes that bring communities in Minnesota together will reverberate throughout the country. Using the restorative circle in Seattle as a model and focusing on the event and feelings within communities brings the goals of continued communication and peace to the forefront of creating lasting results.

D. What's at stake?

Continued turmoil and disputes in Minnesota communities will further divide police from those they are serving and make the task of rebuilding trust increasingly difficult. The lack of political clout in the CDR community can pose a risk to its clients.¹⁹⁵ Depending on the method, or agreement, decisions through this process can be final, lacking the appeal process that is so appealing for adjudicated decisions. However, when high-level constituents and politicians advocate for policy mediation, all participants in the process share the risk.¹⁹⁶ This shared risk and stake in the process is particularly appealing for use in circumstances like solving resolving

190. *Id.*

191. Merkey *supra* note 45, at 1143.

192. *See supra* note 45, at 1143.

193. *See supra* note 45, at 1143.

194. *See supra* note 45, at 1143.

195. Bellman & Podziba, *supra* note 7, at 23.

196. *See supra* note 7, at 22.

community and police disputes in Minnesota. Community participants who may feel hesitant to partake in a process lacking the possibility of appeal will view the involvement by politicians and high-level community leaders as a gesture of faith in the process and its outcomes.

It is unlikely that participants of a prior failed CDR attempt will be willing to put forth the effort to try again.¹⁹⁷ Therefore, heeding the warning of the “second class justice” argument, it is imperative to focus on the future while respecting the impactful history of Minnesota’s communities.¹⁹⁸ Acknowledging the history of the communities, and respecting what their diverse cultures and backgrounds bring to the process furthers the goals of success.

To take control of their lives and communities, community justice advocates argue that communities need to build grassroots justice institutions that apply community-based norms to disputes, and rely on community members to resolve disputes. Much of the desire for communities to seize control over the resolution of conflict “is subsumed by court-connected mediation or a less ‘each one-teach one’¹⁹⁹ and a more professional, credentialed private mediator model.”²⁰⁰ Moderators will consider the makeup of the community including diversity of racial, gender, cultural, sexual origination and economic standing when determining the appropriate membership for involvement in the process. Heeding the warning that “[m]ediation programs are particularly suspect when they are mandatory” is imperative in building trust. Transparency about the goal of the program and the tendency toward suspicion of mandatory programs will bring these issues to the forefront and allow those moderating to directly approach the issues with discretion and diplomacy. Counteracting suspicion by readily communicating the goal of the program gives control of the outcome back to community members keeping the focus on the

197. See *supra* note 7, at 22.

198. Hensler, *supra* note 15, at 170 (citing Edward W. Schwerin, *Mediation, Citizen Empowerment and Transformational Politics*. Westport, Connecticut: Praeger, 1995); see also McEwen & Williams *supra* note 158, at 865.

199. The saying “Each one teach one” is an African proverb that originated in America during slavery. Slaves were seen as chattel and therefore denied an education so when one slave learned to read or write, it became his duty to teach someone else. *About*, EACH ONE TEACH ONE (last visited Dec. 30, 2017), <https://www.eachoneteachone.org.uk/about/>.

200. Gunning, *supra* note 21.

greater good.²⁰¹ This focus on the greater good will eliminate a tendency for personal and selfish goals to be the focus. Shifting control gives the community a say and voice in the outcome of disputes and thereby reinstalls justice into the communities and trust into the community members when it is needed the most.

Aligning with the National Association for Community Mediation's 2014 model for community mediation centers, a successful program would include a commitment to a diverse advisory board to oversee, maintain, and provide oversight for the process; use trained CDR facilitators to resolve disputes; provide ready access regardless of economic status that is free from all types of discrimination; provide a forum for dispute resolution at the earliest stage of conflict and an alternative to the judicial system at any stage of a conflict; and engage in public awareness and educational activities about the values and practices of mediation.²⁰²

201. McEwen & Williams *supra* note 158, at 865. (citing JONATHAN B. MARKS ET AL., DISPUTE RESOLUTION IN AMERICA 51-52 (1984)).

202. Charkoudian & Bilick *supra* note 54, at 236.

Factors of successful community mediation centers:

1. A private nonprofit or public agency or program thereof, with mediators, staff, and governing or advisory board representative of the diversity of the community served;
2. The use of trained community volunteers as providers of mediation services, with the practice of mediation open to all persons;
3. Providing direct access to the public through self-referral and striving to reduce barriers to service, including physical, linguistic, cultural, programmatic, and economic;
4. Providing service to clients regardless of their ability to pay;
5. Providing service and hiring without discrimination on the basis of race, color, religion, gender, age, disabilities, national origin, marital status, personal appearance, gender orientation, family responsibilities, matriculation, political affiliation, and source of income;
6. Providing a forum for dispute resolution at the earliest stage of conflict;
7. Providing an alternative to the judicial system at any stage of a conflict;
8. Initiating, facilitating, and educating for collaborative community relationships to effect positive systemic change; and
9. Engaging in public awareness and educational activities about the values and practices of mediation.

CONCLUSION

Minnesota is plagued with turmoil resulting from the tragic deaths of citizens at the hands of their police officers. Police officers and community leaders strive to ensure safety, improve community relations, and earn the trust of the citizens of these tortured communities. CDR provides these parties the opportunity to express their concerns, share their values, and develop innovative solutions to bring the community together and move forward in a positive and safe way. Increased use of these methods and increased dependence on CDR will come through understanding and appreciation of the best practices, grounded in valuing stakeholder participation. Preliminary assessments, developing ground rules with participants, and maintaining the independence of mediators is imperative for sustained success. Minnesota could be a national leader for improving police and community relationships by looking to existing data and programs, such as the National Initiative for Building Community Trust and Justice, to reinforce the need for collaboration and healing. Through stakeholder involvement and ensuring diversity and equality in representation, communities can face the process of sharing the responsibility of processing grief, and moving forward toward peace together. “Lasting peace is always about the presence of justice. And both must be our charge as mediators as well.”²⁰³ When peace officers and peace makers join to build communities, lasting justice will be served.

203. Gunning, *supra* note 21, at 95.

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