

Sharing Dispute Resolution Practices with Leaders of a Divided Community or Campus: Strategies for Two Crucial Conversations

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- A. *"Become engaged right away, asking other leaders to do the same, and augment resources as necessary to respond effectively."*
- B. *"Identify and engage stakeholders, those persons who have a stake in the conflict or can be a resource for developing and implementing a durable resolution."*
- C. *"Issue a statement that 'frames the matter' by summarizing what has occurred, recognizing the impact, describing issues, announcing decisions, acknowledging who has been consulted, identifying the processes and values that will be applied to address the issues—all with an authentic voice and delivered by a person whose message will be trusted."*
- D. *"When a conflict or concern is raised, in addition to the clearly articulated dispute, identify the roots of the problem."*
- E. *"Keep in mind the brittleness of some residents' trust in their local leaders in the midst of volatile conflict and follow approaches likely to develop or enhance that trust . . . Help your staff understand that some conflicts are precipitated or arise because of a lack of trust, and they must work to earn public trust in this context . . . Show a sense of urgency regarding the concerns of all parts of the community."*
- F. *"Acknowledge the pain that may fall unevenly on residents but that it is the shared hope of all to deal with the hurt of any."*
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ABSTRACT

Dispute resolution experts have much to offer local leaders during a time of national division. They can provide ways for these leaders to: preserve and build trust, take advantage of the energy underlying protest to help the community deal over the long term with root causes of the concerns that residents raise, and prepare the community by making it more resilient and ready to deal with a divisive incident or conflict. In creating and using a “virtual toolkit” of resources for assisting local officials, several strategies emerged that will help dispute resolution experts reach these leaders. The strategies include: ask other local leaders to transform the dispute resolution practices into leader-to-leader counsel, omit alternative dispute resolution (ADR) jargon, fit leaders’ schedules, offer an engaging format that might be a change of pace for leaders, educate for discovery so that local leaders can tailor the concepts to local situations, and conduct the conversations quietly.

I. INTRODUCTION

All politics may be local,¹ and certainly local leaders are among the most trusted public officials.² Still, the rancor of national politics and cries for racial equity seem to have intruded on local politics and rendered more brittle the public's trust both for their local leaders and one another.³ Surveys indicate heightened levels of violent hate incidents,⁴ perceptions of

¹ U.S. House of Representatives Speaker Tip O'Neill is often credited with the statement, "All politics is local." See, e.g., E.J. Dionne, Jr., *All Politics Used to Be Local, Then Along Came Trump*, WASH. POST, Nov. 3, 2019, https://www.washingtonpost.com/opinions/all-politics-used-to-be-local-then-along-came-trump/2019/11/03/19c3cc2a-fcdf-11e9-ac8c-8ec6ef_story.html.

² *Why Americans Don't Fully Trust Many Who Hold Positions of Power and Responsibility*, PEW RESEARCH CENTER, Sept. 19, 2019, <https://www.peoplepress.org/2019/09/19/where-public-confidence-stands-about-eight-groups-that-have-positions-of-power-and-responsibility/> ("Roughly six-in-ten (63%) say local elected officials do a good job promoting laws and policies that serve the public at least some of the time, compared with a smaller share (47%) who say members of Congress do this."); Lee Rainie and Andrew Perrin, *Key Findings About Americans' Declining Trust in Government and Each Other*, PEW RESEARCH, July 22, 2019, <https://www.pewresearch.org/fact-tank/2019/07/22/key-findings-about-americans-declining-trust-in-government-and-each-other/> ("Three-quarters of Americans say that their fellow citizens' trust in the federal government has been shrinking.").

³ Bruce Drake & Jacelyn Kiley, *Americans Say the Nation's Political Debate Has Grown More Toxic and 'Heated' Rhetoric Could Lead to Violence*, PEW RESEARCH CENTER, July 18, 2019, <https://www.pewresearch.org/fact-tank/2019/07/18/americans-say-the-nations-political-debate-has-grown-more-toxic-and-heated-rhetoric-could-lead-to-violence/> ("More than eight-in-ten U.S. adults (85%) say that political debate in the country has become more negative and less respectful . . . About three-quarters (76%) say it has become less fact-based and 60% say it has become less focused on issues."); Frank Newport, *The Impact of Increased Political Polarization*, GALLUP, Dec. 5, 2019, <https://news.gallup.com/opinion/polling-matters/268982/impact-increased-political-polarization.aspxpew>; Mark Jurkowitz et al., *U.S. Media Polarization and the 2020 Election: A Nation Divided*, Pew Research Center, Jan. 24, 2020, <https://www.journalism.org/2020/01/24/u-s-media-polarization-and-the-2020-election-a-nation-divided/>; Nick Laughlin, *How 2020 Is Impacting Gen Z's Worldview*, MORNING CONSULT, undated, approximately August, 2020, <https://morningconsult.com/form/gen-z-worldview-tracker/> ("In just two months, the average trust rating for 15 major institutions Morning Consult is tracking has dropped from 56 percent to 46 percent. The largest declines are with the police (24-point drop in trust), the U.S. government (-17), the criminal justice system (-14) and the news media (-13).").

⁴ Adeel Hassan, *Hate-Crime Violence Hits 16-Year High*, F.B.I. Reports, N.Y. TIMES, Nov. 12, 2019, <https://www.nytimes.com/2019/11/12/us/hate-crimes-fbi-report.html>.

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discrimination,⁵ distrust of government and institutions,⁶ hard feelings across political and identity groups,⁷ and a resort to media sources that reinforce the user's views.⁸ Local public officials and other community and university leaders—"local leaders" for simplicity—who are working to protect the rights and the safety of residents or students in the midst of divisive incidents or conflicts therefore must deal with these heightened trust and communication challenges. And they must do so often, as residents and students are frequently raising local versions of national issues.⁹ These are crucial and difficult conversations.

Dispute resolution experts have a great deal to offer local leaders. We explain, as a start to the conversation about doing this work, three suggested strategies for the first crucial conversation—between leaders and their residents or students—and six strategies for the second crucial conversation between dispute resolution experts and local leaders.

Our experience engaging in this work leads us to believe that at least three strategies permeate the counsel that dispute resolution experts might offer:

1. Build trust: Collaborative practices can help to maintain and build trust during strained times.

⁵ Lydia Saad, *Fewer See Equal Opportunity for Blacks in Jobs, Housing*, GALLUP, Jan. 21, 2019, <https://news.gallup.com/opinion/gallup/246137/fewer-equal-opportunity-blacks-jobs-housing.aspx>

⁶ Frank Newport, *The Impact of Increased Political Polarization*, GALLUP, Dec. 5, 2019, <https://news.gallup.com/opinion/polling-matters/268982/impact-increased-political-polarization.aspx?pew>.

⁷ Susan Page, *Divided We Fall? Americans See Our Angry Political Debate as a Big Problem*, USA TODAY, Dec. 9, 2019, <https://www.usatoday.com/story/news/politics/elections/hiddencommonground/2019/12/05/hidden-common-ground-americans-divided-politics-seek-civility/4282301002/> ("an overwhelming 74% said that situation had gotten worse over the past decade.").

⁸ Jurkowitz, *supra* note 4.

⁹ See, e.g., events arising the last week in February: Lauren Bates et al., *A Call to Strike on March 31: A Letter to Faculty from Students*, Feb. 27, 2020, <https://middleburycampus.com/48635/opinion/a-call-to-strike-on-march-31-a-letter-to-faculty-from-students/> (White supremacy); Dawn Onley, *Syracuse University Suspends Students Who Were Protesting White Supremacy Hate Crimes*, THE GRI, Feb. 19, 2020, <https://thegrio.com/2020/02/19/syracuse-university-suspends-students-who-were-protesting-white-supremacy-hate-crimes/> (racial issues); Carla Hill, *White Supremacist Propaganda Produced by U.S. Hate Groups Is Spreading—and Working*, NBC NEWS, Feb. 24, 2020, <https://www.nbcnews.com/think/opinion/white-supremacist-propaganda-produced-u-s-hate-groups-spreading-working-ncna1140726> (white supremacy canvassing neighborhoods and college campuses at high point in recent memory).

2. Focus on root causes: While leaders must focus on preserving the safety of those presenting their grievances, they can, at the same time, channel some of the energy and attention stimulated as the result of broad scale protest into long-term problem-solving processes. These processes can address underlying concerns.
3. Prepare ahead: The chances of succeeding increase when a community or campus prepares ahead of a divisive incident or conflict. That focus on preparing also helps to make the community more resilient and a better place to live.

Dispute resolution professors can teach their students about the use of selected dispute resolution practices for community division, thereby reaching future leaders or their lawyers.¹⁰ But they face broader and more immediate hurdles when they seek to reach current leaders. Their challenge is to engage leaders with relevant and practical insights. To accomplish that, they need to develop strategies that incorporate other realities facing local leadership. In addition to dispute resolution concepts, these leaders consider the role of safety agencies, the need to reach users of social media, political and electoral ramifications, the resistance to “outsiders,” the need to build a team of leaders and other stakeholders, to list a few examples. For this second level crucial conversation, we suggest six additional strategies:

1. Communicate leader to leader: Ask local leaders who understand dispute resolution practices to offer counsel to other local leaders.
2. Use no ADR jargon: Explain concepts and techniques without dispute resolution vernacular (no “BATNA” or “caucusing,” for example).
3. Adapt the outreach to fit times that are more free: Offer counsel as part of the typical breaks in a local leader’s frantic calendar (e.g., during an annual conference, at a staff retreat, during normal, steady-state times before a crisis develops or, if during a crisis, through a quick phone call with a counterpart from elsewhere).
4. Make it engaging: Format advice in a manner that alters the pace of a typical day (e.g., a game-like table-top simulation, a discussion-based academy) or takes little time (e.g., a short video or desk card).
5. Facilitate tailoring to local needs: Offer a deep enough understanding of the concepts so that local leaders can adapt them to their own communities and situations.

¹⁰ See *infra* Part V(E).

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6. Don't brag: Allow for quiet conversations with leaders so that they can decide whether to announce that they have consulted dispute resolution experts.

To explain these nine strategies, we offer more detail on current community division and how leaders are responding to it (Part II). We then elaborate on how dispute resolution concepts might help achieve the first three strategies (Part III); what dispute resolution experts need to understand about leading locally, including tackling the "root causes"¹¹ so as not to dissipate the energy that might be diverted to achieve change (Part IV); what resources dispute resolution professors might use to teach students how to apply dispute resolution concepts if they become leaders or, applying the six strategies identified immediately above, how dispute resolution experts might advise and use other forms of pedagogy to reach local leaders (Part V).

Would it be better to focus dispute resolution expertise elsewhere? As we focus on local leaders, we do not suggest that this is the only or even the most important use of dispute resolution expertise during this period of national polarization. Others may want to teach advocates for change strategies to negotiate more effectively. Still others may want to teach collaborative approaches to Congressional or state lawmakers or leaders at the grass roots level. The possibilities to add value are many.

II. HOW NATIONAL POLARIZATION IS PLAYING OUT LOCALLY

Expressions of concerns, mass protests, and other forms of dissent are a normal, and often positive, part of democratic life. But the tools that local leaders have previously used to sustain citizen trust in their efforts and keep their residents safe during these events may no longer be as effective in the current environment. To exaggerate a little and use dispute resolution jargon, one might say that local leaders are increasingly having a difficult conversation with community residents.

Local leaders are more often confronted with violent hate crime, which had reached a 16-year high, according to FBI statistics, even before a reported 2020 surge in hate incidents toward Asian Americans in response to the coronavirus pandemic.¹² Moreover, colleges and universities report a

¹¹ Wallace Warfield, *Building Consensus for Racial Harmony in American Cities: Case Model Approach*, 1996 J. DISP. RESOL. 151; Mara Schoeny and Wallace Warfield, *Reconnecting Systems Maintenance with Social Justice: A Critical Role for Conflict Resolution*, 16 NEGOT. J. 253 (2000).

¹² Adeel Hassan, *Hate-Crime Violence Hits 16-Year High*, F.B.I. Reports, NEW YORK TIMES, Nov. 12, 2019, <https://www.nytimes.com/2019/11/12/us/hate-crimes-fbi.html>.

recent upswing in hate speech incidents.¹³ These incidents, in addition to animating needs for protection and counsel, often spawn conflict as people focus on the underlying issues that made the insults painful, such as their sense that the community or campus does not make them feel welcome or that decision-making is not equitable. For example, a movement, discussed below, begun with an initiative “I, Too, Am Harvard,” for students of color to express their desire to feel as valued as other students, became an “I, Too, Am” movement that resonated broadly enough to spread to campuses across the United States.¹⁴

Survey results also suggest that community cohesion and trust have become more brittle. For example, people who live in politically diverse areas are less likely to feel a community bond or sense of trust with their neighbors.¹⁵ Trust in traditional institutions is also shakier, making it complicated for leaders to reach residents with accurate information and gain their confidence in it.¹⁶ Further, people are creating their own echo chambers by choosing news and social media sources that reinforce their views, and “evidence suggests that partisan polarization in the use and trust of media sources has widened in the past five years.”¹⁷ Interpreting polling data, Frank Newport of Gallup explained:

report.html; Matthew Ormseth, *Rise in Hate Incidents Toward Asian Americans During Coronavirus Crisis, Officials Say*, LOS ANGELES TIMES, Mary 13, 2020, <https://www.latimes.com/california/story/2020-05-13/hate-crimes-and-incidents-directed-at-asian-americans-rise-during-pandemic-county-commission-says>.

¹³ See Jeremy Bauer-Wolf, *Hate Incidents on Campus Still Rising*, INSIDE HIGHER ED, Feb. 25, 2019, <https://www.insidehighered.com/news/2019/02/25/hate-incidents-still-rise-college-campuses>; Carla Hill, *White Supremacist Propaganda Produced by U.S. Hate Groups Is Spreading—and Working*, NBC NEWS, Feb. 24, 2020, <https://www.nbcnews.com/think/opinion/white-supremacist-propaganda-produced-u-s-hate-groups-spreading-working-ncna1140726> (white supremacy canvassing neighborhoods and college campuses at high point in recent memory).

¹⁴ See, e.g., Chrystal A. George Mwangi, Genia M. Bettencourt, & Victoria K. Malaney, *Collegians Creating (Counter) Space Online A Critical Analysis of the I, Too, Am Social Media Movement*, 11(2) JOURNAL OF DIVERSITY IN HIGHER EDUCATION 146 (2018).

¹⁵ Zacc Ritter, *Polarization May Undermine Community Bonds, Trust in Others*, Gallup, Feb. 19, 2020, <https://news.gallup.com/opinion/gallup/284357/polarization-may-undermine-community-bonds-trust-others.aspx>.

¹⁶ Frank Newport, *The Impact of Increased Political Polarization*, GALLUP, Dec. 5, 2019, <https://news.gallup.com/opinion/polling-matters/268982/impact-increased-political-polarization.aspx?ew>; Laughlin, *supra* note 4.

¹⁷ Jurkowitz, *supra* note 4.

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Partisans on both sides increasingly see institutions in the U.S. not as beneficial and necessary, but as part of an effort by the other side to gain advantage and to perpetuate its power and philosophical positions. Liberals and Democrats today, for example, have lower trust in traditional family institutions, traditional religious institutions and the economic system. Republicans have lower trust in the scientific process, higher education, the mass media, and the role of the state (government).¹⁸

With national political division falling along societal fault lines,¹⁹ trust in equitable treatment has fallen as well. Trust hit a low after the police killing of George Floyd in 2020, with the vast majority of Americans saying that racism is “a big problem,” and most perceiving discriminatory police treatment of African-Americans.²⁰ Beliefs that African-Americans have equal job opportunity have dropped in the last few years, reaching the lowest point since before the Civil Rights Act of 1964.²¹ As a further illustration of

¹⁸ Frank Newport, *The Impact of Increased Political Polarization*, GALLUP, Dec. 5, 2019, <https://news.gallup.com/opinion/polling-matters/268982/impact-increased-political-polarization.aspx?pew>.

¹⁹ Alec Tyson, *The 2018 Midterm Vote: Divisions by Race, Gender, Education*, PEW RESEARCH CENTER, November 8, 2018, <https://www.pewresearch.org/fact-tank/2018/11/08/the-2018-midterm-vote-divisions-by-race-gender-education/> (“The stark demographic and educational divisions that have come to define American politics were clearly evident in voting preferences in the 2018 congressional elections. There were wide differences in voting preferences between men and women, Whites and non-Whites, as well as people with more and less educational attainment.”).

²⁰ Giovanni Russonello, *Why Most Americans Support the Protests*, NEW YORK TIMES, June 5, 2020, <https://www.nytimes.com/2020/06/05/us/politics/polling-george-floyd-protests-racism.html>; Bradley Jones, *Democrats Far More Likely Than Republicans to See Discrimination Against Blacks, Not Whites*, PEW RESEARCH CENTER, Nov. 1, 2019, <https://www.pewresearch.org/fact-tank/2019/11/01/democrats-far-more-likely-than-republicans-to-see-discrimination-against-blacks-not-whites/> (“A new survey by Pew Research Center ... finds that Americans continue to see widespread discrimination against a number of groups in the U.S., including Muslims, gays and lesbians, Hispanics, women, and Jews, as well as Blacks.”).

²¹ Lydia Saad, *Fewer See Equal Opportunity for Blacks in Jobs, Housing*, GALLUP, Jan. 21, 2019, <https://news.gallup.com/opinion/gallup/246137/fewer-equal-opportunity-blacks-jobs-housing.aspx> (“Sixty-one percent of U.S. adults now say that Blacks in their

the division, White respondents are twice as likely as African-American respondents to believe that there is equal job opportunity.²² Gallup reports that in 2019 for the first time since the Gallup staff began asking the question in 2001, most African-Americans described race relations as bad; most Whites still report those relations as good.²³ Polling regarding religious groups indicates that over 80 percent of Americans believe that Muslims encounter discrimination in the United States.²⁴ Results for other identity groups solidify the picture of increasingly fractured and fractious communities.²⁵

While leadership responsibilities have always involved addressing challenges, the multiple social dynamics that have increased polarization put at risk the public confidence in both their local leaders' ability to deal with such matters and their community members' resiliency when addressing them.²⁶ For example, a university administrator may work quietly with students in one dorm where hate speech occurred so as not to provide a megaphone for the hateful persons. But students may instead interpret that limited response as either an administrator's effort to cover up an incident that might be considered a public relations problem for the university or as the administration's failure to care about the pain caused by such hateful incidents.²⁷ A mayor's decision to delay the release of police videos at the request of prosecutors may quickly be deemed a cover-up, such that when the video is released a few days later, that decision may be considered a bow

community have the same chance as whites to get any job for which they are qualified, the lowest since before Dr. Martin Luther King Jr.'s August 1963 'I Have a Dream' speech when fewer than half perceived this.").

²² *Id.* ("In the 2018 poll, 67% of Whites and 30% of Blacks expressed the view that Blacks have the same chance as whites in their community to get any kind of job for which they are qualified.").

²³ Mohamed Younis, *Most Blacks Rate Race Relations with Whites as Bad*, GALLUP, Feb. 21, 2019, <https://news.gallup.com/poll/246899/blacks-rate-race-relations-whites-bad.aspx> (In late 2018, 54% of white respondents considered Black-White relations to be good; 45% considered them bad, whereas 40% of African-American respondents considered Black-White relations to be good; 59% considered them to be bad.).

²⁴ David Masci, *Many Americans See Religious Discrimination in U.S.—Especially Against Muslims*, PEW RESEARCH CENTER, May 17, 2019, <https://www.pewresearch.org/fact-tank/2019/05/17/many-americans-see-religious-discrimination-in-u-s-especially-against-muslims/> ("Most American adults (82%) say Muslims are subject to at least some discrimination in the U.S. today. . . .").

²⁵ *Id.*; Jones, *supra* note 21.

²⁶ Page, *supra* note 8; Raine & Perrin, *supra* note 3.

²⁷ See, e.g., Lauren Aratani, 'It Could Be Someone in My Class': US University Rocked by Hate Incidents, THE GUARDIAN, Nov. 27, 2019, <https://www.theguardian.com/us-news/2019/nov/27/syracuse-university-racism-campus>.

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to increasing pressure.²⁸ As dispute resolution folks might portray it, local leaders, when tackling such matters, are conducting difficult and crucial conversations²⁹ with their residents or students.

More and more, local leaders are thus having difficult and crucial conversations with groups of residents who experience their community in different ways. Some residents may feel they are members of groups that are targeted and discriminated against and other residents may think that all is fine. Local leaders deal with a public that might not trust the information that they or many other traditional sources are releasing. These community members resemble in some way disputants at a mediation table. Leaders may benefit from mediation, negotiation, and dispute system design concepts that help to maintain and enhance trust, focus on underlying interests and root causes, and prepare in advance for divisive incidents and conflicts. We turn now to more detail about these concepts.

III. THE FIRST CONVERSATION: HOW DISPUTE RESOLUTION CONCEPTS RELATED TO TRUST, ROOT CAUSES, AND PREPARATION MIGHT HELP LOCAL LEADERS HELP THEIR COMMUNITIES

To identify which dispute resolution concepts might help local leaders, we worked with our students and colleagues at the Divided Community Project to offer a small group of local leaders, community-wide mediators, law enforcement leaders, and civil rights advocates a document that listed potentially applicable dispute resolution concepts. We asked them to tell us which of these concepts seemed helpful, how they would explain them, and what other key considerations should be mentioned to local leaders. Their conclusions help to illustrate how dispute resolution concepts might assist local leaders and, the subject of Part IV below, what else dispute resolution experts might consider regarding a leader's constraints and interests in order to effectively apply dispute resolution concepts. We were

²⁸ See, e.g., Eric Ross, *Mayor Suthers Supports Release of Body Camera Video in Fatal Weekend Shooting*, KOAA NEWS5, Aug. 7, 2019, <https://www.koaa.com/news/covering-colorado/mayor-suthers-supports-release-of-body-camera-video-in-fatal-weekend-shooting>.

²⁹ Materials on difficult conversations apply concepts from negotiation, mediation, and facilitation to challenging and important conversations. See, e.g., DOUGLAS STONE, BRUCE PATTON, & SHEILA HEEN, *DIFFICULT CONVERSATIONS: HOW TO DISCUSS WHAT MATTERS MOST* (2010); KERRY PATTERSON ET AL., *CRUCIAL CONVERSATIONS: TOOLS FOR HOLDING TALKS WHEN STAKES ARE HIGH* (2d ed. 2011).

able to further sharpen their advice with insights from experts who study race, ethnicity, and implicit bias.³⁰

We set out below a few examples of these key considerations for local and university leaders when conflicts or divisive incidents arise.³¹ These relate to three dispute resolution-grounded strategies for local leaders:

1. Retain and build trust.
2. Create processes to deal with the root causes for residents' concerns or demands.
3. Prepare ahead of a divisive incident or conflict.

Of course, the considerations in the subtitles are not meant to help leaders mediate; rather, they offer leadership suggested action steps to take. These actions are informed by dispute resolution concepts but without its jargon. For each action step, we mention the dispute resolution concepts that support it; those will be familiar to dispute resolution faculty and experts.³²

³⁰ The Kirwan Institute staff helped to include principles from their work, including those reflected in Ohio State University Kirwan Institute for the Study of Race and Ethnicity, THE PRINCIPLES OF EQUITABLE CIVIC ENGAGEMENT (2019). See generally THE OHIO ST. U. KIRWAN INST. FOR THE STUDY OF RACE AND ETHNICITY, <http://kirwaninstitute.osu.edu/> (last visited Aug. 6, 2020).

³¹ These are excerpted from four of the guides published by the Divided Community Project at The Ohio State University Moritz College of Law. DIVIDED COMMUNITY PROJECT, PLANNING IN ADVANCE OF COMMUNITY UNREST (2d ed. 2020) [hereinafter PLANNING IN ADVANCE OF COMMUNITY UNREST]; DIVIDED COMMUNITY PROJECT, KEY CONSIDERATIONS FOR LEADERS FACING COMMUNITY UNREST: EFFECTIVE PROBLEM-SOLVING STRATEGIES THAT HAVE BEEN USED IN OTHER COMMUNITIES (2d ed. 2020) [hereinafter KEY CONSIDERATIONS FOR LEADERS FACING COMMUNITY UNREST]; DIVIDED COMMUNITY PROJECT, KEY CONSIDERATIONS FOR COLLEGE AND UNIVERSITY LEADERS: WHEN CONFLICTS AND DIVISIVE INCIDENTS ARISE (2020) [hereinafter KEY CONSIDERATIONS FOR COLLEGE AND UNIVERSITY LEADERS: WHEN CONFLICTS AND DIVISIVE INCIDENTS ARISE]; DIVIDED COMMUNITY PROJECT, KEY CONSIDERATIONS FOR COLLEGE AND UNIVERSITY LEADERS: PREPARING THE CAMPUS AT A TIME OF NATIONAL POLARIZATION (2020) [hereinafter PREPARING THE CAMPUS AT A TIME OF NATIONAL POLARIZATION].

³² For books used for teaching these concepts, see generally ROBERT BARUCH BUSH & JOSEPH P. FOLGER, THE PROMISE OF MEDIATION (2d ed. 2005); EDWARD BRUNET, CHARLES B. CRAVER, AND ELLEN E. DEASON, ALTERNATIVE DISPUTE RESOLUTION: THE ADVOCATE'S PERSPECTIVE (5th ed. 2016); JAY FOLBERG, DWIGHT GOLANN, LISA KLOPPENBERG, & THOMAS STIPANOWICH, RESOLVING DISPUTES: THEORY, PRACTICE, AND LAW (3d ed. 2016); STEPHEN B. GOLDBERG, FRANK E. A. SANDER, NANCY H. ROGERS, & SARAH RUDOLPH COLE, DISPUTE RESOLUTION: NEGOTIATION, MEDIATION, ARBITRATION, AND OTHER PROCESSES (7th ed. 2020); CARRIE J. MENKEL-MEADOW, LELA P. LOVE, & ANDREA K. SCHNEIDER, MEDIATION: PRACTICE, POLICY, AND ETHICS (3d ed. 2020);

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We then provide an example that highlights the difference that this advice and these concepts can make for local leaders dealing with new challenges. These are illustrations—just the beginning of how dispute resolution concepts might help local leaders assist their communities.³³ These considerations aim at trust, root causes, and preparation. The last consideration relates more often to the strategies involved in preparing for divisive incidents and conflicts.

A. *“Become engaged right away, asking other leaders to do the same, and augment resources as necessary to respond effectively.”³⁴*

This advice about early engagement resembles a similar concept in public policy mediation:

Many conflicts start with a resolvable problem and grow beyond hope of resolution because they are not dealt with early . . . One or more parties choose not to acknowledge that a problem exists. Other groups are forced to escalate their activities to gain recognition for their concerns. Eventually everyone engages in an adversarial battle, throwing more time and money into ‘winning’ than into solving the problem.³⁵

MICHAEL L. MOFFITT & ANDREA K. SCHNEIDER, EXAMPLES AND EXPLANATIONS: DISPUTE RESOLUTION (3d ed. 2014); NANCY H. ROGERS, ROBERT BORDONE, FRANK E. A. SANDER & CRAIG A. MCEWEN, DESIGNING SYSTEMS AND PROCESSES FOR MANAGING DISPUTES (2d ed. 2019); JOSEPH B. STULBERG & LELA P. LOVE, THE MIDDLE VOICE 75 (3d ed. 2019); KIMBERLEE K. KOVACH, MEDIATION: PRINCIPLES AND PRACTICE (3d ed. 2008); LISA BLOMGREN AMSLER, JANET K. MARTINEZ, & STEPHANIE E. SMITH, DISPUTE SYSTEMS DESIGN: PREVENTING, MANAGING AND RESOLVING CONFLICT (2020).

³³ For additional applications of dispute resolution concepts for local leaders, see the guides for community and campus leaders posted at Divided Community Project, *Toolkit Navigation*, THE OHIO ST. U. MORITZ COLLEGE OF L., <https://go.osu.edu/dcptoolkit> (last visited Aug. 6, 2020).

³⁴ KEY CONSIDERATIONS FOR COLLEGE AND UNIVERSITY LEADERS: WHEN CONFLICTS AND DIVISIVE INCIDENTS ARISE, *supra* note 32, Point I.

³⁵ SUSAN CARPENTER & W.J.D. KENNEDY, MANAGING PUBLIC DISPUTES: A PRACTICAL GUIDE FOR GOVERNMENT, BUSINESS, AND CITIZENS’ GROUPS 3–4 (1988).

The impact of early involvement is considered so central that one of the mediators from the Community Relations Service of the U.S. Department of Justice reported that immediately after the 9-11 attacks in New York City, the mediators established new operational areas. They became engaged early in order to remind governmental and civic leaders to include a message of tolerance:

As soon as we had direct information—that's within the first days [after the 9-11 attacks]—we were working out of command posts because Lower Manhattan was completely sealed off. [We worked] with high level state officials and the police departments and state troopers to issue messages of moderation, restraint, tolerance, and vigorous law enforcement of any hate crime activity. As quickly as [the attack] was linked to Middle Eastern terrorists, we wanted to avoid creating a tremendous backlash against other people who were Middle Eastern or appeared to be Middle Eastern, which included South-Asian and Sikh populations. We also encouraged that messaging to go into part of what Governor Pataki and Mayor Giuliani were saying in New York; that is, while the primary emphasis was on the rescue and the recovery, we encouraged messages around maintaining this moderation, restraint, tolerance, and vigorous law enforcement of hate crimes. . . . There was no resistance to the request by the state and local officials. They saw the clear need.³⁶

In addition to perhaps forestalling hate crimes, early involvement may help people find safe and constructive avenues to achieve goals. A university staff member reported this occurring on a personal level:

³⁶ Civil Rights Mediation Organization, *Interview with Renaldo Rivera*, Oct. 29, 2001, http://www.civilrightsmediation.org/interviews/Renaldo_Rivera.shtml.

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Students confided in me that they were marching to the university administration building with demands. I said, “[c]ool, that is fine. You can do that. Or you can tell me what your concerns are and we can get them resolved that way.” As they explained what they sought, I recognized that they might well succeed if they explained their goals in writing and made an appointment with the appropriate university official. Although they were set on marching, they gave me permission to arrange for that official to be available when they arrived, and they followed her counsel about bringing a written explanation of their concerns and ideas to resolve them. They achieved their goals.³⁷

CRS’s quick engagement after 9-11 enhanced trust between the agency and marginalized communities.³⁸ The campus administrator’s preparation (by arranging a meeting with a key administrator) enabled the students to address their underlying concerns. Advice to engage early in a dispute, as encouraged by public policy mediators, could make a critical difference for leaders encountering divisive incidents or conflict.

B. *“Identify and engage stakeholders, those persons who have a stake in the conflict or can be a resource for developing and implementing a durable resolution.”³⁹*

This consideration about engaging stakeholders operationalizes for leaders similar advice offered to those designing dispute resolution processes or systems, suggesting questions such as:

³⁷ Based on oral descriptions by an equity and inclusion university staff member at the Divided Community Project’s campus unrest gathering on Jan. 10, 2020.

³⁸ Discussing how to build credibility and trust, Rivera noted “In a series of activities from day two right through the present, what occurred is that they consistently heard about CRS and when there was a big problem they had seen us at work.” Rivera, *supra* note 37.

³⁹ KEY CONSIDERATIONS FOR LEADERS FACING COMMUNITY UNREST, *supra* note 32, at 11.

- “Who cares about the problem?
- Who is affected either by the problem/conflict or by a potential solution to it?
- Who must be part of any resolution?
- Who has expertise that will help to create or assess proposals?
- Who will ultimately provide the resources?
- Who will approve the new process?
- Who will implement the new process or system?
- Who will be persuasive with the decision-makers?
- Who might effectively oppose implementation?”⁴⁰

Meaningfully engaging multiple stakeholders during a divisive incident or conflict can be important as those persons might help leaders better understand or address the situation. For example, in December 2019, a man violently stabbed five persons of the Jewish faith who were celebrating the festival of Hanukkah in a Rabbi’s home.⁴¹ The next day, New York Governor Andrew Cuomo conducted a news conference to address the matter, joined by local elected officials, the chief of police, and multiple community members.⁴² Having representatives of those affected stand with the Governor at the news conference gave residents a visual confirmation that their leaders were taking account of people who shared their viewpoints or religious views.⁴³ It helped to maintain residents’ trust that their leaders were taking their viewpoints into account.

Engaging additional stakeholders, as designers understand, may also provide important expertise or insights to leaders about underlying or root causes. In one situation, engaging an expert as a key stakeholder allowed city leaders to address some of the bitterness lingering from past discrimination:

In Sanford, Florida residents recently sought an apology for the closing of a city pool fifty years earlier. Some of the city leaders at first found the demand irritating; it

⁴⁰ NANCY ROGERS, ROBERT BORDONE, FRANK SANDER & CRAIG MCEWEN, DESIGNING SYSTEMS AND PROCESSES FOR MANAGING DISPUTES 71–72 (2d. ed. 2019); *see also* LISA BLOMGREN AMSLER, JANET K. MARTINEZ AND STEPHANIE E. SMITH, DISPUTE SYSTEMS DESIGN: PREVENTING, MANAGING AND RESOLVING CONFLICT 29–30 (2020).

⁴¹ Ryan Tarinelli & Michael R. Sisak, *Five Stabbed at Hanukkah Celebration in Latest Attack on Jews*, CONCORD MONITOR, Dec. 19, 2019, <https://www.concordmonitor.com/5-stabbed-at-Hanukkah-celebration-in-latest-attack-on-Jews-31627048#lg=1&slide=0>.

⁴² *Id.*

⁴³ *Id.*

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occurred so long in the past.

But involving a city historian helped the city officials to understand that people still living had been excluded from swimming in a city pool because of “Whites only” policies and that these people recalled vividly that the city had closed the pool because federal law otherwise required them to integrate. The historian helped officials realize that, though they had not perpetrated this harm, they could be a part of resolving this still-current bitterness by acknowledging what had occurred and the effects of the insult on many of its residents and suggesting an official city apology. Though the apology did not occur, the conversation was cathartic for participants.⁴⁴

Leaders in Sanford and New York used collaborative practices to build trust and deal with root causes during strained times.

C. *“Issue a statement that ‘frames the matter’ by summarizing what has occurred, recognizing the impact, describing issues, announcing decisions, acknowledging who has been consulted, identifying the processes and values that will be applied to address the issues—all with an authentic voice and delivered by a person whose message will be trusted.”⁴⁵*

Those teaching mediation focus on a number of the concepts reflected in this “framing” consideration for local leaders, including: after parties have shared their perspectives, “it is generally beneficial for the neutral to restate those positions and demonstrate a basic comprehension of the relevant information and to reflect the apparent feelings of the parties . . . [T]his lets the participants know that they have been heard and their

⁴⁴ KEY CONSIDERATIONS FOR LEADERS FACING COMMUNITY UNREST, *supra* note 32, at 13.

⁴⁵ KEY CONSIDERATIONS FOR COLLEGE AND UNIVERSITY LEADERS: WHEN CONFLICTS AND DIVISIVE INCIDENTS ARISE, *supra* note 32, at 10.

feelings have been validated.”⁴⁶ Emotionally charged statements may be “adroitly reframed to make them more palatable to the other side.”⁴⁷ “It seems sensible to identify negotiating issues . . . [P]arties often neglect to do it. They are understandably wrapped up in the matter. Frequently they see only their own concerns and have no patience to listen to the concerns of others . . . [T]he mediator sorts out the parties’ negotiating issues and uses them to build the bargaining agenda.”⁴⁸ “The mediator listens carefully to learn the parties’ central tenets. The principles each party holds dear will need to be reflected in the resolution.”⁴⁹

A summarization and framing by Indiana University Provost Lauren Robel in 2019 illustrates a leadership application of these techniques, familiar to all mediators. After learning that a professor from the business school had maligned members of a number of groups on social media, she sent the following memorandum to the business school community and released it to the broader campus community:

[This professor] has, for many years, used his private social media accounts to disseminate his racist, sexist, and homophobic views. When I label his views in this way, let me note that the labels are not a close call, nor do his posts require careful parsing to reach these conclusions. He has posted, among many other things, the following pernicious and false stereotypes:

- That he believes that women do not belong in the workplace, particularly not in academia, and that he believes most women would prefer to have a boss than be one; he has used slurs in his posts about women;

⁴⁶ EDWARD BRUNET, CHARLES B. CRAVER & ELLEN E. DEASON, ALTERNATIVE DISPUTE RESOLUTION: THE ADVOCATE’S PERSPECTIVE: CASES AND MATERIALS 251 (5th ed. 2016) (citing Alison Taylor & Folberg, *Mediation* 112–15 (1984)).

⁴⁷ *Id.* (citing KARL A. SLAIKEU, *WHEN PUSH COMES TO SHOVE: A PRACTICAL GUIDE TO MEDIATING DISPUTES* 231–33 (1996)).

⁴⁸ JOSEPH B. STULBERG & LELA P. LOVE, *THE MIDDLE VOICE* 80–81 (3d ed. 2019).

⁴⁹ *Id.* at 75.

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- That gay men should not be permitted in academia either, because he believes they are promiscuous and unable to avoid abusing students;
- That he believes that Black students are generally unqualified for attendance at elite institutions, and are generally inferior academically to White students.

Ordinarily, I would not dignify these bigoted statements with repetition, but we need to confront exactly what we are dealing with in [his] posts. His expressed views are stunningly ignorant, more consistent with someone who lived in the 18th century than the 21st . . .

His latest posts slurring women were picked up by a person with a heavily followed Twitter account, and various officials at Indiana University have been inundated in the last few days with demands that he be fired. We cannot, nor would we, fire [him] for his posts as a private citizen, as vile and stupid as they are, because the First Amendment of the United States Constitution forbids us to do so. That is not a close call.

Indiana University has a strong nondiscrimination policy, and as an institution adheres to values that are the opposite of [his] expressed values. We demand tolerance and respect in the workplace and in the classroom, and if [he] acted upon his expressed views in the workplace to judge his students or colleagues on the basis of their gender, sexual orientation, or race to their detriment,

such as in promotion and tenure decisions or in grading, he would be acting both illegally and in violation of our policies and we would investigate and address those allegations according to our processes. Moreover, in my view, students who are women, gay, or of color could reasonably be concerned that someone with [his] expressed prejudices and biases would not give them a fair shake in his classes, and that his expressed biases would infect his perceptions of their work. Given the strength and longstanding nature of his views, these concerns are reasonable.

Therefore, the Kelley School [of Business] is taking a number of steps to ensure that students not add the baggage of bigotry to their learning experience:

- No student will be forced to take a class from [him]. The Kelley School will provide alternatives to [his] classes;
- [He] will use double-blind grading on assignments; if there are components of grading that cannot be subject to a double-blind procedure, the Kelley School will have another faculty member ensure that the grades are not subject to [his] prejudices.

If other steps are needed to protect our students or colleagues from bigoted actions, Indiana University will take them.

The First Amendment is strong medicine, and works both ways. All of us are free to condemn views that we find reprehensible, and to do so as vehemently and publicly as

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[he] expresses his views. We are free to avoid his classes, and demand that the university ensure that he does not, or has not, acted on those views in ways that violate either the federal and state civil rights laws or IU's nondiscrimination policies. I condemn, in the strongest terms, [his] views on race, gender, and sexuality, and I think others should condemn them. But my strong disagreement with his views—indeed, the fact that I find them loathsome—is not a reason for Indiana University to violate the Constitution of the United States.

This is a lesson, unfortunately, that all of us need to take seriously, even as we support our colleagues and classmates in their perfectly reasonable anger and disgust that someone who is a professor at an elite institution would hold, and publicly proclaim, views that our country, and our university, have long rejected as wrong and immoral.⁵⁰

One can imagine the likely positive reactions of students to Provost Robel's candid and authentic summary of what occurred, her attention to the harm, including students who might be fearful, and her effort to protect them, her openness to more ideas for protecting students, her explanations of the Constitutional issues of why some likely proposals may not be feasible, and her commitment moving forward to the values that nearly all likely share. Moreover, as Executive Vice President for Academic Affairs and Provost, she is the university's chief academic officer; by making this statement and then making it public, she announced to the university's multiple stakeholders, including students, faculty, staff, alumni, and financial supporters, the university's authoritative stance on this particular matter and the values that support it. As this example illustrates, the framing wisdom that mediators know well can work for leaders to maintain and build trust between campus leaders and students and among the students. It can

⁵⁰ Lauren Robel, *On the First Amendment*, INDIANA UNIVERSITY (Nov. 20, 2019), <https://provost.indiana.edu/statements/archive/first-amendment.html>.

emphasize the root causes of the reaction, including the sense of insult by those already having dealt with past discrimination based on race, gender, and sexual orientation.

D. *"When a conflict or concern is raised, in addition to the clearly articulated dispute, identify the roots of the problem."*⁵¹

In dispute resolution literature, commentators focus on delving to discover the underlying issues or "root causes" in community-wide civil rights disputes as a means of dealing with the heart of the concerns.⁵² These commentators advocate a focus on underlying issues not only to reach resolution, but also to meet a valid concern that Professor Bernard S. Mayer explained as a fear that "dispute resolution might be used as a means of preventing serious organizing, dissipating dissent through a show of dialogue, and focusing people on the potential for minor concessions rather than on the essence of exploitation."⁵³

This dispute resolution skill, when employed by leaders, can help avoid treating only the presenting protests while disregarding underlying issues. For example, in Bloomington, Indiana during the summer of 2019, protestors confronted a vendor who was participating in the city's long-standing, popular weekly Farmers' Market; the vendor, in her social media posts, aligned herself with White supremacists.⁵⁴ The protestors' actions, met by the vendor's supporters, created a public safety concern, a situation that led Bloomington's Mayor John Hamilton to suspend the market's operations.⁵⁵ But Mayor Hamilton importantly characterized the matters involved in the Farmers' Market situation as raising deeper issues that

⁵¹ KEY CONSIDERATIONS FOR COLLEGE AND UNIVERSITY LEADERS: WHEN CONFLICTS AND DIVISIVE INCIDENTS ARISE, *supra* note 32, at 10.

⁵² See Wallace Warfield, *Building Consensus for Racial Harmony in American Cities: A Case Model Approach*, 1996 J. DISP. RESOL. 151 (1996) (discussing the importance of understanding the role of consensus in the resolution of interracial conflict); Mara Schoeny & Wallace Warfield, *Reconnecting Systems Maintenance with Social Justice: A Critical Role for Conflict Resolution*, 16 NEGOT. J. 253, 257 (2000).

⁵³ BERNARD S. MAYER, BEYOND NEUTRALITY: CONFRONTING THE CRISIS IN CONFLICT RESOLUTION 44 (2004).

⁵⁴ Jack Healy, *Amid the Kale and Corn, Fears of White Supremacy at the Farmers' Market*, N.Y. TIMES (Aug. 18, 2019), <https://www.nytimes.com/2019/08/18/us/indiana-farmers-market-white-supremacy.html>.

⁵⁵ *Id.*

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required “ongoing efforts to address race, inclusion, and equity.”⁵⁶ He asked the Divided Community Project to “meet with community leaders, City employees, and many other local leaders who play critical roles in the life of the city to gain insight into longstanding issues related to race and diversity in Bloomington.”⁵⁷

Processes implemented in Sanford, Florida, after Trayvon Martin’s tragic death further illustrate how collaborative processes can highlight the root causes of conflict. Depicted as a “deeply divided community” with layers of “distrust between the police department and the Black community, which erupted following the Trayvon Martin shooting,” the City of Sanford—working with community residents and stakeholders—developed a Nine Point Plan to “to reunite the City and move forward.”⁵⁸ After more than two years of community engagement to develop and implement the Plan, a report identified collective “feelings of frustration and anger” and “feelings of ongoing institutionalized prejudice and racism.” Community engagement “reinforced the history of injustices” and the African-American community’s “resolve to hold the City accountable for change.”⁵⁹

⁵⁶ Press Release, Mayor’s Office of Bloomington, Ind., City Invites Continued Engagement on Issues of Race and Inclusion in Bloomington, (Nov. 19, 2019) (on file at <https://bloomington.in.gov/news/2019/11/19/4269>).

⁵⁷ *Id.*

⁵⁸ Andrew Thomas, *Nine Point Plan: Action Plan for Reuniting the Community, One City—Many Communities, Two Year Progress Report April 2012 - April 2014*, at 2 (Jan. 2015), <https://www.sanfordfl.gov/home/showdocument?id=11455>.

⁵⁹ *Id.* As stated in the report:

The following is a summary list of some of the long standing issues that was a driving force underlying the frustration and anger.

- The State of Florida dissolving the incorporation of the City of Goldsboro and merging it with the City of Sanford in 1911
- The renaming of streets in Goldsboro following the merger in 1911
- The Jackie Robinson experience in Sanford in the 1940’s and the making of the movie “42” in 2012
- Seminole County Public School non-compliance with Consent Decree of 1970
- Poor housing inventory in the African American communities
- High unemployment rate in the African American communities
- Inadequate infrastructure in the African American communities[.]

Id.

Advice from dispute resolution experts for leaders to search for and deal with underlying issues and roots of conflict thus can help leaders restore equity and resilience within their communities.

- E. *"Keep in mind the brittleness of some residents' trust in their local leaders in the midst of volatile conflict and follow approaches likely to develop or enhance that trust . . . Help your staff understand that some conflicts are precipitated or arise because of a lack of trust, and they must work to earn public trust in this context . . . Show a sense of urgency regarding the concerns of all parts of the community."*⁶⁰

Maintaining and enhancing trust takes a central role in mediation literature. As one mediation text notes:

[The process of securing trust] begins with the mediator's first interaction with the disputants and continues until mediation is concluded. Trust is attained and maintained when the mediator is perceived by the disputants as an individual who understands and cares about the parties and their dispute, has the skills to guide them to a negotiated settlement, treats them impartially, is honest, will protect each party from being hurt during mediation by the other's aggressiveness or their own perceived inadequacies, and has no interests that conflict with helping to bring about a resolution which is in [their] best interest.⁶¹

Some community leaders have recognized the importance of taking an aggressive approach toward maintaining and enhancing trust, in light of the threats to trust discussed in Part II. In one example, the leaders not only kept their communications timely and ongoing but also enlisted the collaboration

⁶⁰ KEY CONSIDERATIONS FOR LEADERS FACING COMMUNITY UNREST, *supra* note 32, at 13–16.

⁶¹ NANCY H. ROGERS & RICHARD A. SALEM, A STUDENT'S GUIDE TO MEDIATION AND THE LAW 11–12 (1987).

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of community leaders who might be trusted by those citizens who had lost confidence in city leaders. Following the Trayvon Martin shooting in Sanford, Florida, in 2013, leaders—advised by local and the U.S. Justice Department’s Community Relations Service mediators—arranged for multiple sources of information about the trial of George Zimmerman, the neighborhood volunteer who had been charged in connection with the shooting:

[Sanford, Florida] needed a means to control rumors. By the time Zimmerman’s trial occurred in 2013, the local clergy had formed an association, Sanford Pastors Connecting, that met regularly, and the Sanford Police Department, CRS, and the County Sheriff’s Office reserved seats in the courtroom that could be rotated among members of that association. The pastors could provide information to members that would be trusted Sanford [also] hired a public relations firm so that the city could respond to media requests in a timely way.⁶²

F. “*Acknowledge the pain that may fall unevenly on residents but that it is the shared hope of all to deal with the hurt of any.*”⁶³

Mediators understand the role of expressing empathy; that “acknowledgment of hurts and frustrations helps to humanize the conflict,” and that it helps to note the “positive aspects of the relationship and the goals the disputants have in common”⁶⁴

In the Farmers’ Market conflict noted previously, Bridge Initiative @ Moritz mediators recognized racial tensions surfaced by protests at the Farmers’ Market. Importantly, they acknowledged the deeper pain experienced by some residents when they noted in their report that “people

⁶² Andrew Thomas in Nancy H. Rogers, *When Conflicts Polarize Communities*, 30 OHIO ST. J. ON DISP. RESOL. 173, 183–84 (2015).

⁶³ KEY CONSIDERATIONS FOR LEADERS FACING COMMUNITY UNREST, *supra* note 32, at 3.

⁶⁴ NANCY H. ROGERS & RICHARD A. SALEM, A STUDENT’S GUIDE TO MEDIATION AND THE LAW (1987), reprinted in GOLDBERG ET AL., DISPUTE RESOLUTION: NEGOTIATION, MEDIATION, ARBITRATION, AND OTHER PROCESSES 108 (7th ed. 2020).

of color, religious minorities, and other marginalized communities in Bloomington have been confronting these realities for generations.”⁶⁵

For the reasons above, it is important to provide counsel to leaders about showing empathy and commonality in the midst of divisive incidents. One can imagine, for example, the reaffirming impact of the statement by the Indiana University Provost quoted above: “[W]e support our colleagues and classmates in their perfectly reasonable anger and disgust that someone who is a professor at an elite institution would hold, and publicly proclaim, views that our country, and our university, have long rejected as wrong and immoral.”⁶⁶ Surely it must have helped students rebuild trust among students and with their leadership to have the top academic officer acknowledge their pain and further affirm that the whole community will support them.

G. *“Offer students safe and effective options to meet their needs and goals.”*⁶⁷

Mediation professors suggest generating multiple options that meet the parties’ interests.⁶⁸ Creating these options is more difficult in the midst of a divisive incident or conflict but can be a useful part of increasing the resiliency of the community or campus—the preparation part.

The “I, Too, Am” Movement referenced above illustrates the usefulness of this suggestion for leaders as well and the power of finding these options in a university context:

[A student’s desire to do something arose in 2012—her first year as an undergraduate at Harvard—] in response to debates about Harvard’s affirmative action policy that were generated by an article in the student newspaper written by a White student

⁶⁵ DIVIDED COMMUNITY PROJECT, BRIDGE INITIATIVE @ MORITZ, REPORT: BLOOMINGTON, INDIANA 3 (2019) <https://bloomington.in.gov/sites/default/files/2019-12/Bridge%20Initiative%20Bloomington%20Report%20123019.pdf>. [hereinafter BRIDGE INITIATIVE REPORT: BLOOMINGTON, INDIANA].

⁶⁶ Letter from Lauren Robel, Exec. Vice President & Provost, Indiana Univ., to Kelly Sch. Of Bus., Indiana Univ., Provost Statement: On the First Amendment (Nov. 20, 2019), <https://provost.indiana.edu/statements/archive/first-amendment.html>.

⁶⁷ KEY CONSIDERATIONS FOR COLLEGE AND UNIVERSITY LEADERS: WHEN CONFLICTS AND DIVISIVE INCIDENTS ARISE, *supra* note 32, at 3, 15.

⁶⁸ See, e.g., SUSAN L. CARPENTER & W.J.D. KENNEDY, MANAGING PUBLIC DISPUTES: A PRACTICAL GUIDE FOR GOVERNMENT, BUSINESS, AND CITIZENS’ GROUPS 132–36 (1988); ROGERS & SALEM, *supra* note 61, at 111.

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opposed to the university's affirmative action policies. The student who started the "I, Too, Am" Movement recalled:

'I felt, and other students felt, that our presence and identity as Black students was being de-valued. At the time I was a freshman. We'd just shown up on campus, and we felt like people were saying I wasn't smart enough to be here. . . . Everybody was talking about it on campus and it created a lot of racial tension.'⁶⁹

She worked on several projects for academic credit or with university support..

Concerned about the climate for minority students at Harvard and inspired by Langston Hughes's poem, "I, Too," she created an online montage of photos and interviews of other minority students at Harvard. In the photos, interviewees held a dry erase board with a belittling comment they heard or a response they might have wanted to make to an off-putting comment or action by another student. She posted the montage on Tumblr under the name "I, too, am Harvard." She did that work for credit as part of an independent study at Harvard. The University hosted a play by students based on this work. The student's work was viewed over a million times and stimulated similar online montages at other universities. What became known as the ITA ("I, Too, Am") Movement received

⁶⁹ Ali Vingiano, *63 Black Harvard Students Share their Experiences in a Powerful Photo Project*, BUZZFEED NEWS, (Mar. 3, 2014), <https://www.buzzfeednews.com/article/alisonvingiano/21-black-harvard-students-share-their-experiences-through-a>, quoted in PREPARING THE CAMPUS AT A TIME OF NATIONAL POLARIZATION, *supra* note 32, at 11.

support from student affairs professionals at a number of campuses.⁷⁰

H. Conclusion

The action steps suggested above are a few of the potential examples illustrating what dispute resolution expertise has to offer for local and university leaders given the challenges discussed in Part II.⁷¹ This is so particularly as leaders aim to take advantage of three dispute resolution-based strategies—maintain and enhance trust, deal with root causes, and prepare in advance for a more resilient community and effective decision-making when a divisive incident or conflict occurs.⁷² But, to be effective, dispute resolution experts need to appreciate some other aspects of leading locally (Part IV) and translate what they know into a language and a format that will help them reach these leaders (Part V).

IV. CHALLENGES IN REACHING LOCAL LEADERS

Context matters—a crucial first lesson in dispute system design.⁷³ Thus, designers are advised to conduct an assessment of each new milieu.⁷⁴ Leaders weigh a number of factors that may not typically concern mediators. To the extent that mediators choose not to recognize these or lack the experience to discern them, their counsel may be dismissed as impractical.

⁷⁰ PREPARING THE CAMPUS AT A TIME OF NATIONAL POLARIZATION, *supra* note 32, at 11.

⁷¹ For additional examples of counsel for local leaders based on dispute resolution concepts, see the guides for community and campus leaders at <https://go.osu.edu/dcptoolkit>.

⁷² Other instances of considerations for leaders, taken from Divided Community Project guides, that coincide with dispute resolution concepts (listed in parentheses might include: “Expand teaching of effective negotiation, advocacy, and facilitation for faculty, staff, and students.” (“[N]egotiator training by a professional third party is often used as a precursor to formal negotiation.” CARPENTER & KENNEDY, *supra* note 36, at 235); “Identify and apply college or university values and aspirations.” (Identify common interests and goals. STULBERG & LOVE, *supra* note 33, at 75; Nancy H. Rogers, *One Idea for Ameliorating Polarization: Reviving Conversations About an American Spirit*, 2018 J. OF DISP. RESOL. 28, 29–35; CARPENTER & KENNEDY, *supra* note 36, at 204; “Work to improve relationships that were strained during the conflict.” (Reconcile the parties. BUSH & FOLGER, *supra* note 33 (transformative mediation); Annalise Buth & Lynn Cohn, *Looking at Justice Through a Lens of Healing and Reconnection*, 13 NW. J.L. & SOC. POL’Y 1 (2017) (restorative justice practices)).

⁷³ ROGERS ET AL., *supra* note 33, at 69–97.

⁷⁴ *Id.* at 83–89.

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We argue in Part V, below, that there are also other strategies to deal with any deficits in experience on the part of the dispute resolution experts, but we first offer a few examples of what these experts may not appreciate about the contexts in which local leaders operate.

First, law enforcement plays a role in local leaders' decisions. In hate crime situations, for example, prosecutors may urge leaders not to release evidence to the public until they can apprehend and question those who are suspected to have committed the offenses. Dispute resolution experts can recognize these matters as leaders' important interests in the effective administration of justice and public safety. However, these experts may fail to appreciate how strongly leaders may be committed to particular options on both philosophical and practical grounds. Thus, the commitment that leaders have to certain options may be a feature of the local context in which leaders operate.

Second, elected leaders may be worried about how their actions and speech affect coming elections. In an analogous context, public university leaders may be attentive to the views of legislators who vote on appropriations. In addition, university leaders may be mindful to how their actions and speech are perceived by the board of trustees. These considerations can influence how leaders approach their decisionmaking and their choices.

Third, leaders often emphasize the unique nature of their community or university. Some leaders may therefore resist "outside" experts who base their advice on what occurs elsewhere. This resistance can create a tendency for local leaders to reinvent what to do when facing divisive incidents or conflicts. After reviewing decades of studies of communities under stress, sociologist James Coleman concluded, "Each community [deals with these conflicts] as if similar problems had never arisen elsewhere. Each community carries out for itself a trial and error process without benefit of the cumulative experience of other communities."⁷⁵ Local leaders may also believe that the unique nature of their community precludes the sort of divisive incidents or conflicts that occur elsewhere. The Presidential Commission that examined university leaders' lack of preparation for unrest in the 1960s concluded:

Convinced that their own campuses were immune to disruptive or violent protests, administrators were unprepared to cope with them when they occurred. In the midst of a crisis, some administrators believed that

⁷⁵ JAMES COLEMAN, COMMUNITY CONFLICT 4–5 (1957).

their only options were to do nothing or call in the police.⁷⁶

Fourth, unlike most mediators, local leaders operate in what might be described as a “goldfish bowl.” National publicity is always a possibility. The involvement of national advocacy groups is a game-changing contingency. Public information requests affect the candor of discussions among the leadership team. Social media use increases the pace at which conflicts develop.

Fifth, leaders may be sensitive to the charge, mentioned above,⁷⁷ that they are using collaborative methods to squelch expression. Several leaders responded positively at Divided Community Project meetings to the conclusion of civil rights mediator Wallace Warfield that mediators in these contexts should search for the tap roots of conflict, including historical issues.⁷⁸ They also embraced his view that leaders should set in place long-term processes to deal with them, including committing to public accountability in dealing with these concerns.⁷⁹

Some may argue that these and other influences on leaders’ actions make those leaders believe that the counsel of dispute resolution experts is, or will be, unhelpful. We do not. We suggest in the next part that a number of strategies can be employed to reach leaders in ways that they will accept and find useful and will make a difference in communities across the nation.

V. THE SECOND CONVERSATION: STRATEGIES TO REACH CURRENT LOCAL LEADERS AND TEACH FUTURE LEADERS (CURRENT STUDENTS)

The first three parts of this article discuss the crucial and difficult conversations that local leaders are having with residents or students during

⁷⁶ PRESIDENT’S COMMISSION ON CAMPUS UNREST, THE REPORT OF THE PRESIDENT’S COMMISSION ON CAMPUS UNREST 37–38 (1970).

⁷⁷ See text accompanying *supra* notes 53–60.

⁷⁸ Wallace Warfield, *Building Consensus for Racial Harmony in American Cities: A Case Model Approach*, 1996 J. DISP. RESOL. 151, 153; Mara Schoeny & Wallace Warfield, *Reconnecting Systems Maintenance with Social Justice: A Critical Role for Conflict Resolution*, 16 NEGOT. J. 253, 257 (2000). But see Laura Nader, *Controlling Processes in the Practice of Law: Hierarchy and Pacification in the Movement to Re-Form Dispute Ideology*, 9 OHIO ST. J. ON DISP. RESOL. 1, 13 (1993); JEROME AUERBACH, JUSTICE WITHOUT LAW? 144 (1983) (both arguing that informal dispute resolution processes are used to pacify dissidents).

⁷⁹ Schoeny & Warfield, *supra* note 79, at 266.

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this time of national polarization. We turn now to the occasions when dispute resolution experts reach out to assist local leaders. This might also be described as a crucial and difficult conversation, though the focus here is on the conversation between dispute resolution experts and leaders rather than between leaders and residents or students.

We mentioned in the last part of this article that it is not easy for those who are not local leaders to transmit dispute resolution counsel that takes into account the other challenges that these leaders face. At least six strategies will help: 1) offer the advice through other local leaders or at least as they would word them; 2) omit the ADR jargon; 3) fit the patterns and breaks in leaders' frantic schedules; 4) select a game-like or other engaging format; 5) give enough explanation so that a local leader can tailor the counsel to the community's need and situation; and 6) do all of this quietly, unless the leader prefers otherwise.

The Divided Community Project's approach provides an illustration of approaches that implement both the themes and strategies discussed above. The Project will share all of its tools for implementing these six strategies, what we call a "virtual toolkit," with other dispute resolvers who will employ them in nonprofit ventures. The Project will also advise dispute resolution experts on how they might create their own or additional tools.

A. Guides that Summarize What Other Leaders Were Glad That They Did or Wish that They Would Have Done When a Divisive Incident or Conflict Occurred

The Divided Community Project prepared written guides that contain prescriptive dispute resolution suggestions for addressing or planning for divisive events and conflicts. But they are distinctive in several ways. In preparing for the conversation between dispute resolution experts and leaders, Project personnel first shared dispute resolution ideas with a group of current and former local and university leaders and then solicited these leaders' help in identifying ideas they were glad to have used and ideas they wished they had used. It importantly invited these leaders to give feedback regarding the tone and language of the written suggestions. The result is that the guides are styled as practical advice from leader to leader, written in the language of leaders speaking to colleagues. They include both summary advice and deeper discussions and illustrations that allow leaders to decide how they might apply the concepts in their own situations. Others could

replicate this process for translating dispute resolution concepts into practical advice for leaders, described in each guide.⁸⁰

The guides themselves do not meet all of the strategic factors listed above. Reading a guide does not fit easily into a leader's frantic schedule, for example. The Project discovered that it had to combine the guides with other strategies discussed below to reach leaders.

B. *Guides and Tools to Help Communities Prepare in Advance of a Divisive Incident or Conflict*

One strategy to avoid local leaders' hectic schedules during a crisis is to help community leaders plan in advance, when they have more time. This strategy strengthens a community even if it never faces a divisive crisis by building trust among residents and with leaders. The Divided Community Project has developed guides for both community and higher education leaders highlighting principles and action steps to take to plan for addressing divisive events.⁸¹ In addition, its virtual toolkit has a guide for identifying a community spirit.⁸² The Project also offers leaders guides and a website that they can provide for community organization leaders and classroom teachers who want to build bridges across community divides at a grassroots level.⁸³ These guides, though, work best when there is an incentive to read them. We turn now to two means to encourage leaders to read or listen to counsel (Parts C and D).

⁸⁰ For the introductory materials in key Divided Community Project publications, see DIVIDED COMMUNITY PROJECT, DIVIDED COMMUNITIES AND SOCIAL MEDIA: STRATEGIES FOR COMMUNITY LEADERS 3 (2d ed. 2020) [hereinafter DIVIDED COMMUNITIES AND SOCIAL MEDIA]; DIVIDED COMMUNITY PROJECT, IDENTIFYING A COMMUNITY SPIRIT 3–6 (2019); KEY CONSIDERATIONS FOR LEADERS FACING COMMUNITY UNREST, *supra* note 32, at 5–8; KEY CONSIDERATIONS FOR COLLEGE AND UNIVERSITY LEADERS: WHEN CONFLICTS AND DIVISIVE INCIDENTS ARISE, *supra* note 32, at 5–8; PLANNING IN ADVANCE OF COMMUNITY UNREST, *supra* note 32, at 5–6; PREPARING THE CAMPUS AT A TIME OF NATIONAL POLARIZATION, *supra* note 32, at 6–7.

⁸¹ PLANNING IN ADVANCE OF COMMUNITY UNREST, *supra* note 32; PREPARING THE CAMPUS AT A TIME OF NATIONAL POLARIZATION, *supra* note 32.

⁸² IDENTIFYING A COMMUNITY SPIRIT, *supra* note 81.

⁸³ KASSANDRA STEWART & DIVIDED COMMUNITY PROJECT, HOSTING AMERICAN SPIRIT STORYTELLING CONVERSATIONS: A BRIEF GUIDE WITH 18 IDEAS (2019); DIVIDED COMMUNITY PROJECT, AN AMERICAN SPIRIT (2019); *American Spirit*, MORITZ COLLEGE OF LAW, <https://moritzlaw.osu.edu/american-spirit/>.

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C. *Simulations and De-Briefing Materials: Midland, New Lake & Springfield University*

Each simulation asks participants to play—in person or virtually—the roles of community or university leaders during a series of crises that arise in a fictional community or university.⁸⁴ Participants are asked to develop talking points for an emergent press conference. While participants work, the simulation becomes increasingly more complicated through a series of “injects” which participants must react to, such as calls from the media, emergent protests, questions about public records, and outside influences.

One goal for using “table-top” simulations is to encourage leaders to read the guides so that they can perform well within the leadership team during a simulation. A second function is to ask them to imagine that the events occurred in their own community and then help them create an agenda to implement what they would like to have in place that is tailored to their communities and situations—thus a plan to prepare ahead of a divisive incident or conflict. A third aspect is the game-like nature of a simulation. In addition, a simulation can be completed and discussed within a half day, a time period that might be set aside for leadership team retreats.

While dispute resolution scholars and community leaders could easily pull out lessons on facilitation and participatory process from the simulations, the simulation’s core learning goals for leaders tie back to the Project’s virtual toolkit:

1. The value of counsel from an experienced community mediator.⁸⁵
2. What other community leaders can contribute.⁸⁶
3. How to build trust in government.⁸⁷
4. Effective communication strategies during crisis.⁸⁸

⁸⁴ Crises are adapted from relevant news headlines.

⁸⁵ KEY CONSIDERATIONS FOR LEADERS FACING COMMUNITY UNREST, *supra* note 32, at 9–10; KEY CONSIDERATIONS FOR COLLEGE AND UNIVERSITY LEADERS: WHEN CONFLICTS AND DIVISIVE INCIDENTS ARISE, *supra* note 32, at 19.

⁸⁶ KEY CONSIDERATIONS FOR LEADERS FACING COMMUNITY UNREST, *supra* note 32, at 11–12; KEY CONSIDERATIONS FOR COLLEGE AND UNIVERSITY LEADERS: WHEN CONFLICTS AND DIVISIVE INCIDENTS ARISE, *supra* note 32, at 8.

⁸⁷ KEY CONSIDERATIONS FOR LEADERS FACING COMMUNITY UNREST, *supra* note 32, at 13–16.

⁸⁸ KEY CONSIDERATIONS FOR COLLEGE AND UNIVERSITY LEADERS: WHEN CONFLICTS AND DIVISIVE INCIDENTS ARISE, *supra* note 32, at 17; KEY CONSIDERATIONS FOR LEADERS FACING COMMUNITY UNREST, *supra* note 32, at 19–22; DIVIDED

5. Framing what is taking place.⁸⁹
6. How to immediately begin long-term collaborative processes that will deal with root causes over time.⁹⁰
7. The value of planning in advance of conflict.⁹¹

The simulations engage participants, and the core learning points emerge during the simulation debrief. Facilitators often begin with open-ended questions about the simulation and ask participants to complete an online poll to assess their community's preparedness for community unrest.⁹² Facilitators prompt discussion asking, "How do you wish Midland had prepared for situations such as this one?" and "If Midland leaders knew that all of these events would take place in three months, what would they do to prepare for community unrest?"

In conjunction with debriefing conversations, the simulation may be used to help public officials assess whether a community has strong, existing relationships with the natural, influential leaders of various stakeholder and bridge-building groups; whether a community has made it apparent to the public, both visually and audibly, that leaders are taking into account the views of the groups most directly affected by the crisis at hand; whether the community's communications team is prepared to expand quickly during a time of crisis; whether bringing in an outside mediator or consultant would be helpful or disruptive; whether the community has local leaders they can call on to help facilitate tough conversations; and whether the community is communicating effectively during crisis.

The simulation stimulates self-discovery, thus avoiding the potential resentment of "outsiders" giving advice. In Columbus, Ohio, one of more than a dozen communities and campuses that have used a Project

COMMUNITIES AND SOCIAL MEDIA, *supra* note 81, at 4–8, 12–30; PREPARING THE CAMPUS AT A TIME OF NATIONAL POLARIZATION, *supra* note 32, at 18.

⁸⁹ KEY CONSIDERATIONS FOR COLLEGE AND UNIVERSITY LEADERS: WHEN CONFLICTS AND DIVISIVE INCIDENTS ARISE, *supra* note 32, at 10–14; KEY CONSIDERATIONS FOR LEADERS FACING COMMUNITY UNREST, *supra* note 32, at 23–24.

⁹⁰ KEY CONSIDERATIONS FOR COLLEGE AND UNIVERSITY LEADERS: WHEN CONFLICTS AND DIVISIVE INCIDENTS ARISE, *supra* note 32, at 8–10.

⁹¹ KEY CONSIDERATIONS FOR COLLEGE AND UNIVERSITY LEADERS: WHEN CONFLICTS AND DIVISIVE INCIDENTS ARISE, *supra* note 32, at 24; KEY CONSIDERATIONS FOR LEADERS FACING COMMUNITY UNREST, *supra* note 32, at 29; PLANNING IN ADVANCE OF COMMUNITY UNREST, *supra* note 32; PREPARING THE CAMPUS AT A TIME OF NATIONAL POLARIZATION, *supra* note 32, at 21–23.

⁹² The Divided Community Project created an online quiz called "Community Assessment and Preparedness Test," available to access from Bill Froehlich at Froehlich.38@osu.edu.

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simulation,⁹³ Mayor Andrew Ginther described his experience with the *Midland* Simulation this way:

The simulation provided a realistic gauge of the mounting tensions that occur during civil unrest between city officials, residents, community advocates and civic leaders. [During the debriefing conversation, Project staff] elicit[ed] ideas to enhance city's community engagement efforts, to leverage the work of community partners, and to begin planning in advance of civil unrest and social crisis. The Midland Simulation was an opportunity for my staff to identify how they will support the community during a social crisis and encouraged participants to think creatively—outside of our traditional silos. Ben Franklin tells us, “If you fail to plan, you are planning to fail.” Midland has helped Columbus plan.⁹⁴

In other words, the combined approaches described in Parts A through C—creating the lay language guides that reflect the context in which leaders operate and then incentivizing their use in a half day, game-like setting when leaders are in a retreat and not in the midst of a crisis, followed by applying the lessons learned to a plan for their community—resulted in reaching local

⁹³ The Project has used the *Midland* Simulation with hundreds of students at OSU’s Moritz College of Law and students at Stanford Law, as well as with community leaders from the following communities: Bloomington (IN), Charlotte (NC), Charlottesville (NC) Columbus (OH), Dallas (TX), Indianapolis (IN), Kenyon College (OH), Memphis (TN), Midwest City (OK), Norman (OK), Portland (OR), San Leandro (CA), Sanford (FL), Sugarland (TX), and at a number of conferences. The *Midland* simulation is also effective with large groups (ranging between 12 and 150) as a 45-minute mini exercise. The Project has used the *New Lake* Simulation with dozens of students at OSU’s Moritz College of Law.

The Project has used the *Springton University* Simulation with more than a hundred participants including students at OSU’s Moritz College of Law and campus leaders from the following campuses: The Ohio State University, The University of Oklahoma, The University of Hawaii at Manoa, The University of Massachusetts at Amherst, Case Western Reserve University, and Menlo College. The *Springton University* Simulation.

⁹⁴ Mayor Standup-Midland Simulation, VIMEO ,<https://vimeo.com/ctvcolumbus/review/320046219/c7181fcb8d> (last visited Aug. 1, 2020).

and campus leaders from dozens of communities and campuses in ways that led to planning ahead.

D. Academies for Community “Core Leadership” Groups

A second Divided Community Project strategy for overcoming challenges of reaching leaders is to invite them, in teams, to participate in a three-day seminar. The Academy Initiative,⁹⁵ conducted in collaboration with the American Bar Association Section of Dispute Resolution, brings diverse leaders together from several communities at a time to engage in a conflict resolution strategy and skill-building program. The goal is to strengthen community leaders’ skills to effectively intervene in divisive conflicts. It can also help assemble, support, and train a core cadre team from each community in principles and practices in planning for and addressing immediate incidents or underlying causes of community unrest. These team members will be a vital part of that community’s leadership team in the event of a divisive incident or conflict; the credibility and effectiveness of their counsel and insights stems from their being viewed by leaders as collaborators, not “outsiders,” that their counsel stems from their understanding and taking into account the practical issues faced by leaders, and their being able to communicate their counsel to leaders in a jargon-free language with a tone that will make their counsel most effective.

Divided Community Project facilitators⁹⁶ commit to keep Academy conversations confidential so that participants can openly discuss and analyze specific problems, challenges, or both in their city, advance a game

⁹⁵ Initiated in March 2019, the inaugural Academy Initiative hosted core leadership groups from Charlottesville (VA), Kenyon College, Memphis (TN), and the State of Oregon. Based on feedback from the 2019 Academy, the Divided Community Project hosted a second Academy in March 2020 with core leadership groups from Bloomington (IN), Charlotte (NC), Indianapolis (IN), and Midwest City (NC). This initiative is developed in partnership with the American Bar Association Section of Dispute Resolution (specifically, Section Director Linda Seely and Public Policy, Consensus Building, and Democracy Committee co-chairs Jessie Lawrence and Terry Amsler).

In August 2020, the Project hosted an online three day “Campus Academy” for University leaders including leaders from the following campuses: The Ohio State University, The University of Oklahoma, The University of Hawaii at Manoa, The University of Massachusetts at Amherst, Case Western Reserve University, and Menlo College.

⁹⁶ Facilitators have included experienced mediators who reflect the diversity of the communities represented: Terry Amsler, Susan Carpenter, William Froehlich, Jessie Lawrence, Michael Lewis, Becky Monroe Nancy Rogers, Linda Seely, and Josh Stulberg.

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plan for addressing them, and share their conclusions with other teams in attendance and welcome their feedback and assessment. Program assurances of confidentiality facilitate this. The Academy curriculum includes five key components: academy preparation, introductions and orientation, simulation, planning, and follow-up.

To prepare, participant communities must identify diverse core leadership groups from their communities. To develop a process that can be implemented broadly in a community, a core leadership group ideally includes two representatives from municipal infrastructure (that number insures public leadership commitment to initiative and ideally includes a high-ranking police official and a city manager or the equivalent) and representatives from the local non-profit community, community advocates, faith community, and an educational institution.⁹⁷ Once identified, participants in the Academy engage in pre-session conference calls so that Academy facilitators learn how the group came together, participant expectations for the Academy, sources of community tension, the desired outcomes, and next steps envisioned for the team. As in the simulations, participants should read some of the Divided Community Project guides in advance of the Academy.

Over the three days, each community group explains that group's goals for participating in the academy and the follow-up discussions. Facilitators then describe how the academy will respond to those goals. Participants discuss with similarly situated leaders from other communities (e.g., separate meetings of police leaders, religious leaders, non-profit advocates) the challenges to engaging broad stakeholder groups and processes that have worked in their communities. They engage in an abbreviated simulation,⁹⁸ complete an assessment test that asks participants to consider whether their community is prepared for community unrest,⁹⁹ and debrief on key insights for handling and preparing for community unrest. With the aid of Divided Community Project facilitators, participants develop a process for broadly engaging community stakeholders.¹⁰⁰ To get an idea of what has worked in other communities, participants hear from a panel of

⁹⁷ See *Academy Initiative: Strengthening Democratic Engagement to Address Local Civil Unrest*, DIVIDED COMMUNITY PROJECT, <https://moritzlaw.osu.edu/dividedcommunityproject/strengthening-democratic-engagement-to-address-local-civil-unrest/> (last visited Apr. 2, 2020).

⁹⁸ See *supra* Part V(C).

⁹⁹ The Divided Community Project created an online quiz called "Community Assessment and Preparedness Test," available to access from Bill Froehlich at [Froehlich.38@osu.edu..](mailto:Froehlich.38@osu.edu)

¹⁰⁰ Planning materials and prompting questions are available at <https://go.osu.edu/dcptoolkit>.

individuals who have been in the heat of community unrest or are engaging in similar planning processes. Participants engage in conversations about topics including advanced negotiations, addressing power imbalances, and bringing additional people to the table.

Following the Academy, the Divided Community Project hosts individual and group follow-up conversations to provide continued support for communities seeking to implement their respective plans. Following the 2019 Academy, for example, initial conversations focused on obstacles to implementation; later conversations addressed specific issues like how to bring those who don't want to engage to the table.

Kenyon College's team developed the "Kenyon Concerns Coalition" following the 2019 Academy. The college website describes this initiative:

Kenyon Concerns Coalition is an advisory group of Kenyon staff, faculty[,] and students whose purpose is to support a connected community by identifying and positively intervening on issues of broad campus concern to avert community division. If you know of a potential campus-wide issue within the Kenyon community, you can let the coalition know by contacting a coalition member listed below, or by completing this form.¹⁰¹

Dispute resolution experts can develop their own approaches, of course, to preparing leadership teams in a concentrated format. The Academy seems to work in part because it encourages locally-generated insights and planning in

¹⁰¹ *Kenyon Concerns Coalition*, KENYON COLLEGE, <https://www.kenyon.edu/directories/offices-services/ombuds-office/kenyon-concerns-coalition/> (last visited Apr. 2, 2020). In March of 2019, a group of eight Kenyon College community representatives attended The Ohio State University Moritz College of Law, Divided Communities Project's inaugural Academy Initiative, titled "Strengthening Democratic Engagement to Address Local Civil Unrest." This academy was the result of lessons learned from community leaders and mediators that had experience dealing with community unrest within their communities. The academy sought to teach the tangible principles, guidelines, and suggestions born from the strife endured. The Kenyon representatives returned to campus and formed the Kenyon Concerns Coalition as a way to identify and address issues of broad campus concern by applying the principles learned during the academy. Since formation, the coalition expanded to include additional campus leaders to best serve the group's purpose and meets monthly to discuss any areas of possible campus-wide concern.

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a confidential atmosphere. It also takes advantage of the time when leaders are not involved in a crisis and therefore have more time to plan and can use their flight time on the way to the Academy to read the guides. By including other leaders in the presentations and using a discussion and breakout format, the Academy takes into account the reality of their situations and engages participants. The Divided Community Project makes its academy curriculum available for nonprofit use as part of its “virtual toolkit.”¹⁰²

E. *Individual Counsel: The Bridge Initiative @ Moritz*

One way to reach local leaders during a crisis is to offer the help in a condensed format and free of charge. Often the approach to these leaders can be through a member of the leadership team who understands the constructive role that dispute resolution expertise can play. Alternatively, the offer may be a simple one—simply to connect leaders with their counterparts (mayor to mayor, police chief to police chief, etc.) in another city or university that has encountered similar issues. Sometimes, a leader will contact the Divided Community Project’s Bridge Initiative and ask for quiet counsel.

The Project’s Bridge Initiative @ Moritz models itself on the U.S. Justice Department’s Community Relations Service, a group of civil rights and hate incident mediators.¹⁰³ The Project often touches base with or recommends that leaders contact that agency, taking care to supplement rather than replace the work of these experienced community mediators. Serving as a hub, the Divided Community Project tries to leverage the reach of current Divided Community Project products and tools, create a network of skilled dispute resolution practitioners and leaders who have led communities successfully through polarized circumstances to provide initial screening and consultation, and help implement locally-based sustainable planning and service efforts.

The following example from the Project suggests what might be feasible for other dispute resolution experts interested in doing this work. In

¹⁰² See Divided Community Project, *Toolkit Navigation*, THE OHIO ST. U. MORITZ C. OF L., <https://go.osu.edu/deptoolkit>. (last visited Aug. 1, 2020).

¹⁰³ CRS serves as “America’s Peacemaker” for communities facing conflict based on actual or perceived race, color, national origin, gender, gender identity, sexual orientation, religion, or disability. CRS works toward its mission by providing facilitated dialogue, mediation, training, and consultation to assist these communities to come together, develop solutions to the conflict, and enhance their capacity to independently prevent and resolve future conflict. Community Relations Service, <https://www.justice.gov/crs/about>.

August 2019, Bloomington, Indiana Mayor John Hamilton contacted representatives of the Bridge Initiative @ Moritz to identify services the Project could provide after the Mayor shut down the community Farmers' Market following protests concerning a farm with ties to White supremacist groups.¹⁰⁴ Though most Bridge Initiative contacts are conducted quietly, Mayor Hamilton chose to make this consultation public. He announced that he had asked the Bridge Initiative to help identify the underlying concerns.¹⁰⁵ Former Divided Community Project Director Becky Monroe¹⁰⁶ and Bridge Initiative Mediator William A. Johnson¹⁰⁷ traveled to Bloomington on five occasions between August 2019 and February 2020. Johnson met with dozens of community leaders and city employees, "including non-traditional local leaders who may not hold positions in local organizations but play critical roles in the life of the city."¹⁰⁸ After three trips to Bloomington, the Project developed a report to identify longstanding community divisions and their underlying caucus "in a way that enables local leaders to work together to identify actions they can take independently as well as collaboratively with city government officials to address them."¹⁰⁹ As the report explains:

Mayor Hamilton described the pain and fear that the recent events at the Farmers' Market brought to the fore, and his commitment to address longer standing and underlying concerns around White supremacy, racism,

¹⁰⁴ Divided Community Project Shares Report, Recommends Collaborative Community Process to Address Long-standing Social Issues in Bloomington, City of Bloomington News Release, December 30, 2019, <https://bloomington.in.gov/news/2019/12/30/4302> ("Mayor John Hamilton sought out the services of the Bridge Initiative in August 2019 when escalating tensions spurred the temporary suspension of the City-run Bloomington Community Farmers' Market.").

¹⁰⁵ *Frequently Asked Questions–2019: Farmers' Market*, CITY OF BLOOMINGTON, INDIANA: MAYOR JOHN HAMILTON, <https://bloomington.in.gov/market-FAQ> (last visited Apr. 2, 2020).

¹⁰⁶ Former interim Director of the U.S. Justice Department Community Relations Service. For Becky Monroe's more detailed biography, see Divided Community Project, *Becky Monroe*, THE OHIO ST. U. MORITZ C. OF L., <https://moritzlaw.osu.edu/dividedcommunityproject/project-designers/who-we-are/becky-monroe/>. (last visited Aug. 2, 2020).

¹⁰⁷ Experienced mediator who previously served three terms as the Mayor of Rochester, New York and served for over two decades as the President and CEO of the Urban League of Rochester. BRIDGE INITIATIVE REPORT: BLOOMINGTON, INDIANA, *supra* note 66, at 3.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

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and other forms of discrimination. The Mayor also shared his perspective that Bloomington was a stronger and more resilient community because of its engaged and active citizenry who spoke up and out when they felt that the government and others were not living up to Bloomington's ideals. [The Project was asked to support the community as it grappled with] some of the longer-standing and underlying issues and to provide a structure upon which local leaders could begin to address these issues through action planning.¹¹⁰

In February 2020, Monroe and Johnson returned to Bloomington to give community members the opportunity "to provide feedback to the report, confirm its representation of community concerns, and discuss ways to expand public involvement as the report's recommended action steps proceed."¹¹¹ At the time of the development of this article, Monroe and Johnson continue to work in Bloomington on behalf of the Project.

Other dispute resolution experts could replicate the Community Relations Service or Bridge Initiative models that seek to listen to what local leaders find useful, can be provided quickly and easily because there are no charges for the assistance, and leave the decision-making to the local leaders.

F. Teaching Students: Preparing Future Leaders and Their Advisors

A few professors have begun to create,¹¹² and we anticipate that others will create, teaching materials on leading in the midst of division. All of the Divided Community Project tools are available now to teach law or other students in higher education how to lead effectively in the future and advise leaders. The Divided Community Project "virtual toolkit" has

¹¹⁰ *Id.*

¹¹¹ *Bridge Initiative Reconvenes Community Members, Awards Training Toward Implementation of Next Steps*, WBIW, Feb. 14, 2020, <http://www.wbiw.com/2020/02/14/bridge-initiative-reconvenes-community-members-awards-training-toward-implementation-of-next-steps/>.

¹¹² See, e.g., exercises on Congressional negotiations and divided communities in the latest editions of GOLDBERG ET AL., *supra* note 33, at 59–66, 457–58; ROGERS ET AL., *supra* note 33, at 235–36.

teaching notes on how to use these guides and tools in the classroom. In addition to the tools listed above, these include videos, case studies, and other materials for classroom preparation and use.

We have also used a Dispute System Design Workshop to involve students in preparing current and future leaders, co-facilitating the leaders meeting and soliciting the advice that the Project includes in the guides described in Subparts A and B above.¹¹³ Students developed and tested each of the simulations: *Midland*, *New Lake*, and *Springton*. Following graduation, some students have continued to work with the Project as contractors; others have volunteered to facilitate the simulation in various communities across the country.¹¹⁴

In the long-term, teaching students how to apply dispute resolution concepts to leadership may have the deepest effect of all of the approaches discussed in this article, as these students move into leadership positions. In the short-term, we have found that students are drawn to the topic, appreciate getting the individual feedback involved in teaching through simulation, and seem (based on anecdotes only) to gain in appreciation for those who sincerely hold different viewpoints during these polarized times.

VI. CONCLUSION

A two-level difficult and crucial conversation may seem daunting at first. As discussed above, regarding the first level conversation, leaders in Bloomington, Kenyon College, Rochester, Columbus, Sanford, and elsewhere applied dispute resolution concepts constructively to help retain and build trust, deal with the root concerns in their communities, and make their communities more resilient and prepared to handle divisive incidents

¹¹³ For Divided Community Project materials that were developed in this manner, see generally PLANNING IN ADVANCE OF COMMUNITY UNREST, *supra* note 32; KEY CONSIDERATIONS FOR LEADERS FACING COMMUNITY UNREST, *supra* note 32; DIVIDED COMMUNITIES AND SOCIAL MEDIA, *supra* note 81; IDENTIFYING A COMMUNITY SPIRIT, *supra* note 81. Materials on dealing with hate also permeate a number of the guides.

¹¹⁴ Graduates have facilitated the simulation in Dallas (TX); Sugarland (TX); Columbus (OH), and as part of an International Association of City/County Management training event in Charlottesville (VA). We have used the simulations (with the guides as preparatory material) for hundreds of law students. Student participants may gain or strengthen a sense of appreciation for public officials involved in crisis; gain valuable feedback from experienced facilitators on how each individual interacts during a crisis; and prepare for matters that may arise if they hold public office, lead in other ways in a community or university, or advise leaders. We find that offering the simulation as an extra-curricular workshop attracts about twenty law students each year.

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and conflicts. We have offered illustrations of the second-level conversation—how dispute resolution faculty and other dispute resolution experts can find strategies to overcome the challenges that we describe in providing help to local officials, community leaders, and university leaders. Themes regarding these strategies include quiet leader-to-leader and jargon-free counsel, taking advantage of the times that leaders typically devote to learning or preparation, offering an engaging change of pace, and preparing leaders to apply the concepts themselves. We make the Divided Community Project virtual toolkit available to our colleagues to use for both levels of conversations, but we also explain ways for colleagues to add other resources. Our toolkit is but a start. Dedicated and creative colleagues in the field will devise additional and we hope even better strategies.

It is a moment when most Americans think that the nation is becoming increasingly polarized—in fact, too polarized to solve the problems facing it.¹¹⁵ In addition, it is a time when Americans broadly want to end racial discrimination and need local leaders' help to translate their determination into social change. Dispute resolution faculty and experts have the background and workable strategies to help communities and campuses express and even resolve basic concerns while treating each other well on a human level.

¹¹⁵ Newport, *supra* note 4; Lee Rainie, Scott Keeter & Andrew Perrin, *Trust and Distrust in America*, PEW RESEARCH CENTER, July 22, 2019, <https://www.peoplepress.org/2019/07/22/trust-and-distrust-in-america/> (70% think that low trust in each other makes it harder to solve problems; 64% think low trust in the federal government makes it harder to solve problems); Zaid Jilani and Jeremy Adam Smith, *What Is the True Cost of Polarization in America?*, GREATER GOOD MAGAZINE, Mar. 4, 2019, https://greatergood.berkeley.edu/article/item/what_is_the_true_cost_of_polarization_in_america (“If Americans don’t learn to build bridges with each other, we may see more government shutdowns, lying, segregation—and even violence.”); Stephen M. Walt, *America’s Polarization Is a Foreign Policy Problem, Too*, FOREIGN POLICY, Mar. 11, 2019, <https://foreignpolicy.com/2019/03/11/americas-polarization-is-a-foreign-policy-problem-too/>.

