

Identity and Conflict: Collaboratively Addressing Police-Community Conflict in Cincinnati, Ohio

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History was made on April 12, 2002, when a collaborative agreement to try to transform policing and police-community relations was signed in Cincinnati, Ohio. Signatories included the Mayor of Cincinnati, the president of the local police union, the head of the Ohio chapter of the American Civil Liberties Union (ACLU), and the president of the Cincinnati Black United Front (BUF). Even the Attorney General of the United States was there to witness the occasion. This unprecedented agreement was based on goals encapsulated by the citizens of Cincinnati as well as the police, and included the most advanced social science research on police effectiveness. It called for improved relationships and a new problem-solving policing strategy in Cincinnati that could simultaneously transform troubled police-community relations while reducing crime.

The Collaborative Agreement (CA) was the result of nine months of participatory problem assessment and goal setting by almost 3,500 citizens of Cincinnati, followed by three months of intense negotiations among representatives of the city, the police, the BUF, and the ACLU. The CA was launched by a proposed federal lawsuit alleging racial profiling and misuse of force by police against African-Americans. In March 2001, Federal Judge Susan Dlott decided to seek a new way to address these issues through alternative dispute resolution (ADR). On April 7th, just weeks after Judge Dlott made this decision to pursue ADR and asked me to serve as her special master to design and guide the process; it was catapulted ahead after three days of protests and confrontations by African-American citizens against the police following the shooting death of an unarmed African-American. Where there was previously a willing but somewhat resistant attitude on the part of many of the parties toward the CA, now there was great enthusiasm that it could indeed pave a desperately needed new path to healing this open wound.

The conflict, previously expressed largely through outrage (punctuated by lawsuits over a number of years) by African-American citizens at what they viewed as disparate and racist treatment by police, with equally outraged denial of it by police, was now powerfully symbolized and expressed by the protests and police response. As media images and descriptions of the “riots”—also referred to locally as “unrest,”

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“disturbances,” and even “rebellion”—were plastered around the world (resulting in a temporary travel ban to Cincinnati by Great Britain), it became clear, with local media in many ways leading the charge, that a new and creative way forward was essential.¹

This was an identity-based conflict. The public protests and the highly charged accusations and denials of racial profiling were more than just expressions of the concrete and relative tangible *interests* of the police and the community. Rather, they were deeper expressions by the African-American community in particular, and the police community in response, of frustration and threats to their respective sense of self and dignity. While the interests at stake in the conflict were real and significant—for the police, such interests included the ability to do their job unfettered, and for African-Americans, such interests included the ability to drive throughout the city without fear of unwarranted police stops—both police and African-Americans felt a challenge to their respective sense of fairness and essential dignity.

Accusations of racial profiling essentially blame police for systematically breaking the law. What could be more insulting to a police officer than this? From the police perspective, while it may happen with a few “bad apples,” they commonly view these accusations as false and mean-spirited. On the other hand, for African-Americans, and in particular young males, experiences with police are too often a flashpoint where American social and structural racism are played out and perpetuated.

As the police-community relations collaborative unfolded, a core approach was to surface and frame the identity-based conflicts at stake, through intra-group dialogue about why the problems were so troubling (i.e., among African-Americans, police officers, youth, etc.). Said one officer during discussions in the Cincinnati police-community relations collaborative, “I don’t believe racial profiling exists. Why do people believe that it does? I have never seen one instance of racial profiling. Why has good police work turned into ‘racial profiling?’”² Another officer explained:

¹ See The Story: Overview of the Cincinnati Collaborative, <http://www.socsci.uci.edu/istudies/applied/presentations/site/media.html> (last visited Oct. 17, 2006).

² During the collaborative, as described later in this paper, some 800 people participated within their self-selected identity groups in four hours of dialogue about their goals for the future of police-community relations and their narratives about why a better future was so necessary. These discussions were transcribed and are maintained in a court-protected database by The ARIA Group, which was responsible for the data gathering and feedback process. The following are illustrations of some of the “Why”

POLICE-COMMUNITY CONFLICT IN CINCINNATI, OHIO

The media has painted this horrible picture of us. [If] [s]omeone pulls a gun on me, I'm sorry, I'm going home alive. If they were put in the same situation, they would do the same thing. They're just Monday morning quarterbacks. I'm out there to protect them. I hugged a kid back the other day and his mother went off on me. They're teaching their kids to hate us. "See if you're bad he's going to take you away. . . F- the police." I was proud to wear my uniform two years ago; that has shifted.

Indeed, the feeling of "us versus them" ran deep. An African-American male described his experience with police: "I feel that as a black man I am automatically suspect. I was profiled and treated with disrespect by the officers who were arresting me when they used excessive force during the arrest." Another African-American described her negative experience with and fear of police:

I've seen people pulled out of their cars and treated like criminals automatically. I saw meanness, and I saw victims upset and angry. You can't work toward a solution when the other is angry. I have a child and I am very much concerned that the poor relations occurring between African-Americans and the police in the city could go on for a long time because police in the city of Cincinnati do not respect African-Americans. They're afraid of us and we're afraid of them.

An African-American youth described the problems largely in terms of lack of trust from both perspectives, and in a larger social context, also envisioned solutions:

I plan to make Cincinnati my home for my whole life. It hurts thinking it's not a safe place to live. I have had experiences that make me realize that there are problems in police-community relations that need to be addressed. I know that my skin tone makes a difference. I have heard that by the time we're twenty-one, most black males are dead or in jail. I'm real concerned about black-on-black crime too. I hope we will stop sending scared officers to dangerous places and have wounding training so that people like Timothy Thomas don't get killed. I have family that are [sic] police officers and I believe we should be able to trust each other. It also bothers me that people see our generation as not knowing how to deal with problems without using violence. Our generation is smart and we can solve problems by talking

discussions. For a general discussion of the "Why" process used in the collaborative and its significance, see *Why?*, <http://www.socsci.uci.edu/istudies/applied/presentations/site/Why.html> (last visited Oct. 18, 2006). See also Victor Friedman, Jay Rothman, & Bill Withers, *The Power of Why: Engaging the Goal Paradox in Program Evaluation*, 27 AM. J. EVALUATION 201-218 (2006).

them over. This is home. Home is a place where you are supposed to feel trusting and safe. This country was founded on trust and built a unique system. I believe in unity, open dialogue, and trust, and it feels like the U.S. is falling apart at the seams. Distrust is a huge part of the decline of this country.

As these personal, passionate, and pain-filled narratives illustrate, police-community conflicts in Cincinnati were prime examples of a deeply emotion-laden and historically rooted *identity-based conflict*, which is usefully distinguished from more concrete interest-based conflicts. That these issues of core identity were deeply engaged in this conflict led to the bold decision to pursue accusations of racial profiling, which in themselves have become a symbolic core of the racial flashpoint described, through an alternative, non-adversarial means.

Because the conflict in Cincinnati was so deeply embedded in people's sense of self, great care was invested in the formulation of the intervention itself to create opportunities for self expression and listening by all sides.³ In fact, what most characterized this intervention, as is common in interventions in which issues of race and identity are strong components, was an emphasis on people's experiences, hurts, and hopes. Unlike more conventional interest-based interventions that commonly start with, or at least quickly move towards, a focus on outcomes, the Cincinnati Police-Community Relations Collaborative began with nine months of data gathering, dialogue, and goal setting around hopes, hurts, and ideals for the future.

By the end of nine months of community and police data gathering, focus groups, and goal-setting sessions, some 3,500 people had shared their ideals, and 800 of those had participated in 3,200 hours of deliberation and consensus building. This process was framed as an "Action Evaluation," which was essentially a form of public evaluation and agenda setting with the sponsorship and full encouragement of the court to do so.⁴ As one observer of the Cincinnati Collaborative process wrote:

It is significant that the . . . collaborative process in Cincinnati was conceived of as participatory evaluation. The stated assignment for the

³ For an outline of the intervention process, see Appendix.

⁴ For a theoretical and applied description of "Action Evaluation," see Jay Rothman, *Action Evaluation and Conflict Resolution: In Theory and Practice*, 15 *MEDIATION Q.* 119 (1997); and Jay Rothman, *Action Evaluation and Conflict Resolution Training: Theory, Method and Case Study*, 2 *INT'L NEGOT.* 451-470 (1997). See also ARIA Group, Information and Resources about ARIA C3, <http://www.ariagroup.com/libraryC3.html> (last visited Oct. 17, 2006).

POLICE-COMMUNITY CONFLICT IN CINCINNATI, OHIO

stakeholder groups was to come up with goals for the relationship between the police and the African-American community in the city. Their process was to inquire and listen and summarize, first in homogenous stakeholder groups and then in groups that spanned experience, culture, and perspectives. In this case evaluation was the process.⁵

This was followed by an intense period of legal negotiation, in which the thousands of participants' ideals and goals for the future of police-community relations formed a core platform for negotiation. The resulting CA was signed in April 2002 by the parties, and several months later, following a public fairness hearing, it was accepted by the federal court as a binding class action settlement.

This agreement was historic for a number of reasons, perhaps the most significant being that it came about through participatory assessment, dialogue, and goal setting instead of litigation. The preamble to the signed agreement in Cincinnati highlights the identity-based nature of the conflict as well as its focus on problem-solving efforts. Its attention to the human dimension of this social conflict highlights its distinctiveness as a legal document:

The overall Collaborative Agreement described in this document contains a description of problem oriented policing which frames the overall philosophy and practices at its core. Central to a problem solving orientation is that problems are dilemmas to be engaged and learned from and that blame is an obstacle to progress. The overall collaborative effort suggests an alternative to blame: that different groups within the community with different experiences and perspectives share much more in common than not, and can work together on common goals and solve problems together.⁶

In this paper, I will present a brief background for the collaborative itself and the decision to undertake this process. I will also present a theoretical framework emphasizing the diagnosis of identity-based conflicts and resulting intervention design. The paper concludes with my personal reflections on some of the successes as well as shortcomings of the collaborative in fully engaging the identity-based conflicts it set out to address.

⁵ See Ann Martin, *Action Research on a Large Scale: Issues and Practices*, in HANDBOOK OF ACTION RESEARCH (forthcoming).

⁶ *In re* Cincinnati Policing, Collaborative Agreement, <http://www.socsci.uci.edu/istudies/applied/presentations/site/agreement.htm> (last visited Oct. 17, 2006) [hereinafter CA].

I. BACKGROUND: SETTING THE STAGE FOR A COLLABORATIVE PROCESS

On March 15, 2001, the Ohio chapter of the ACLU joined forces with the Cincinnati BUF on behalf of Mr. Bomani Tyehimba. Mr. Tyehimba was an African-American businessman who claimed that two police officers had violated his civil rights by handcuffing him and unjustifiably pointing a gun at his head during a traffic stop two years earlier. Together, the ACLU and the BUF proposed a class action lawsuit in federal court for the southern district of Ohio, alleging that the Cincinnati Police Department had treated African-American citizens differently than other racial groups for more than thirty years.⁷ As evidence, they cited seventeen investigative commissions, ad hoc committees, and other suits dealing with allegations of discrimination by the Cincinnati Police Department. In short, the plaintiffs claimed that recent deaths of African-Americans at the hands of the police, and the disproportionate police stopping rate for African-Americans, were not an aberration, but part of an illegal but common pattern and practice of discrimination by the Cincinnati Police Department.

The key player in moving the suit from proposed litigation to collaborative problem solving was Judge Susan Dlott of the U.S. District Court for the Southern District of Ohio. Through Judge Dlott's efforts, all parties eventually agreed to set aside normal litigation efforts and instead seek to address the social conflicts at the core of the police-community divide, by pursuing an alternative path of collaborative problem solving and negotiation on the wider issue of police-community relations.⁸

The decision to pursue a collaborative approach, a form of ADR, for a public policy dilemma was not unprecedented. Collaborative processes have grown in popularity and application in recent years and have been applied increasingly to complex social issues in which "[g]etting all the stakeholders together to explore their concerns in a constructive way allows them to search for a solution they all can accept and averts the potential for escalation of the conflict."⁹ What was unprecedented in the Cincinnati case was the application of participatory and collaborative procedures to such a large-scale dilemma, namely the nature and future of police-community relations in the context of mutual mistrust and animosity. Moreover, what made it particularly distinctive, which in the end may have been a combination of a

⁷ *In re Cincinnati Policing*, 209 F.R.D. 395, 397 (2002).

⁸ *Id.*

⁹ BARBARA GRAY, *COLLABORATING: FINDING COMMON GROUND FOR MULTIPARTY PROBLEMS* 5 (1989).

POLICE-COMMUNITY CONFLICT IN CINCINNATI, OHIO

blessing and a problem, was the way it was rooted in and conditioned by the court context.

In terms of the major strengths of this context, Judge Dlott held a personal conviction that a collaborative process could address the issues in an alternative, non-litigious manner. In her previous role as a domestic relations attorney, she had developed the strong conviction that in issues with such deep emotional content, like domestic relations and race, the court of law was not the best starting point on the way to a lasting solution. She believed that people need to be deeply engaged in defining and solving problems themselves. In her court order establishing the collaborative process she wrote:

The proposed amended complaint alleges social conflict of great public interest to the community. To the extent possible, the collaborative will include an opportunity to receive the viewpoints of all persons in the Cincinnati community regarding their goals for police-community relations. The participants will state their goals for police-community relations, why these goals are important, and how they would achieve these goals. . . . The collaborative will include an opportunity for dialogue about these responses in structured group sessions. . . . It is anticipated that the openness of this collaborative process and the combination of expert and broad-based community input will provide an opportunity for the parties and the court to create a national and international model for other communities.¹⁰

Clearly the social conflicts at the root of the controversies over perceived or actual racial profiling needed a broader and deeper process than could be afforded by a win-lose court battle. Yet, both the timeline imposed by the court—one year—and the context of adversarial negotiations that ensued following the first nine months of participatory and collaborative assessment and goal setting, were inconsistent with the highest ideals which launched the collaborative effort: to transform the nature of police-community relations and establish a new era of mutual trust and cooperative problem solving.

II. FROM PROBLEM FRAMING TO GOAL SETTING

In making the decision to pursue ADR, Judge Dlott invited me to serve as the special master to design a problem-solving process. I immediately began by holding meetings with leaders from the various sides—the

¹⁰ *In re Cincinnati Policing, Collaborative Agreement*, *supra* note 6.

Fraternal Order of Police, the city, the police administration, the BUF, and the ACLU.

At first, I proposed a problem definition process, suggesting to the parties that without a common definition of the problem (i.e., What is racial profiling? Is it happening? What are the conditions of racial tension and poor police-community relations?), they would have difficulties finding a common solution. However, the police leadership strongly resisted this approach. They argued that focusing on problems would only result in further finger pointing. If the process was adversarial, they said, they would prefer simply to take it to court since they denied wrongdoing. Moreover, the police and city attorneys were unwilling to engage in an effort to define a problem—racial profiling—that they simply did not agree existed. I therefore proposed a forward looking goal oriented process instead.

In hindsight, I believe I gave in to this resistance and these fears too quickly. I did not spend adequate time explaining how a problem framing process need not be adversarial, but rather can reveal mutual misunderstandings and foster new trust, thus in itself leading to new attitudes and problem solving relationships. Moreover, I believe the collaborative was handicapped from its inception by a common perception, perhaps often quite accurate, that many ADR processes are simply adjuncts to the law and therefore, by definition, are not true alternatives. Perhaps most problematic in the decision to run a largely future-oriented goal setting process, without first conducting a thorough problem framing process about the pains and contradictions of the past, was that in identity conflicts, until and unless the emotional issues of the past—including in this case African-American perceptions of mistreatment and the police's opposing perceptions of unfair accusations—are safely surfaced and made discussable *between* the parties to the conflict, they will undermine, or at least seriously handicap, efforts to rebuild trust and design a new future.¹¹

Despite my own professional focus on identity-based conflicts and my belief that they needed to be directly engaged, and in response to the police concern that they would walk out of the process if problem framing about the past and accusations of racial profiling were to be our initial focus, I needed to find a way to keep all the parties on board and moving forward. Therefore,

¹¹ Note that while the collaborative was designed to hold such discussions of hurt and personal narrative about the past *within* identity groups, these were held in the context of future goal-setting sessions and did not occur between groups. For a description about how such discussions can and should take place in identity-based conflicts see Jay Rothman, *Reflexive Dialogue as Transformation*, 13 *MEDIATION Q.* 345-354 (1996); and JAY ROTHMAN, *RESOLVING IDENTITY-BASED CONFLICTS IN NATIONS, ORGANIZATIONS, AND COMMUNITIES* (1997).

POLICE-COMMUNITY CONFLICT IN CINCINNATI, OHIO

I suggested that the parties undertake a broad-based visioning process focused on improving police-community relations in the future rather than uncovering and addressing perceptions, analyses, and experiences from the past. As Alphonse Gerhardstein, one of the attorneys for the BUF who in many ways was the main engine behind the collaborative said:

If you go down the path of litigation, then there is a winner and a loser. And you get a judicial order that orders the loser to do something. If that something is other than objective acts, if it's a philosophy you want changed, it is a way of relating to people you want changed, you are off on the wrong foot because you are dragging people to that "new era" of policing. And that's what we were trying to avoid. We didn't want to spend the next three years deprogramming the police from their resentment of the battle.¹²

These ideals for a collaborative process that would lead beyond enforced change to lasting transformations in police-community relations led to a yearlong process of unprecedented proportions in which thousands of Cincinnatians, dozens of lawyers, and a research team, all under federal court oversight, conducted an inclusive and ultimately large scale collaborative effort.¹³

And yet in hindsight, the collaborative was itself something of a contradiction in that while at its core it had inclusive and cooperative ideals, the sides nonetheless viewed it in many ways as an interest-based negotiation at best, and a continuation of the win-lose game by other means, at worst. For the city administration and police department, this proposal represented a way out of a protracted and costly lawsuit *and* seemed like it could be a constructive process in which representatives from all parties could work collaboratively. The leaders of the Cincinnati BUF, on the other hand, found this approach appealing largely because it was to be conducted within a framework that promised some form of judicial oversight and enforcement during the process and after its conclusion. As Damon Lynch, head of the BUF, said in an interview about the process:

If we were just mediating and collaborating and somehow magically we were going to trust each other, I wouldn't be at the table. I like the idea that we will eventually build relationships out of this. Relationship building is

¹² DRIVING WHILE BLACK (BBC/Open University 2001).

¹³ See Jay Rothman & Randi Land, *The Cincinnati Police-Community Relations Collaborative*, 18 CRIM. JUST. 35 (Winter 2004).

key eventually in the long-term. But what keeps me at the table is that there is a federal judge; a federal court order that will come out of this.¹⁴

Such a process, it was hoped, would lead to new agreements and behavior *and* foster collaborative relationships. However, it is notable that the emphasis was on compliance. Collaborative relationships are defined as those that “evolve toward commitment to common mission, comprehensive communication and planning, pooled resources, and shared risks and products. Authority is vested in the collaborative, rather than in individuals or an individual agency.”¹⁵ Clearly this was the ideal of the collaborative, but from its founding there was, not surprisingly, still a win-lose and adversarial mindset at play.

On April 7, 2001, just a few weeks after agreeing in principle to launch a collaborative process to avoid litigation and improve police-community relations, a young black male, Timothy Thomas, was shot and killed by the police. Cincinnati was engulfed in three days of riots, or civil unrest, as the events are variously described. With a renewed determination, the Cincinnati BUF, the ACLU, the Cincinnati City and Police Administration, and the Cincinnati Fraternal Order of Police were now formally constituted as an advisory group for the collaborative.

Formally launched and officially legitimized, though with strong and significant opposition from four of the nine city council members who voted against financially contributing to or officially endorsing the collaborative,¹⁶ the next task for the collaborative was to foster wide-scale public participation. As its first act, the advisory group decided to invite participation from all citizens of the city, including the police as a specific stakeholder or identity group in the goal setting and visioning process. Based on previous studies of tensions in police-community relations, the advisory group organized the population into eight stake-holding groups—African-

¹⁴ DRIVING WHILE BLACK, *supra* note 12.

¹⁵ ELLEN TAYLOR-POWELL, ROSSING BOYD & JEAN GERAN, EVALUATING COLLABORATIVES: REACHING THE POTENTIAL 5 (July 1998), <http://www.uwex.edu/ces/pdande/evaluation/evaldocs.html>.

¹⁶ This vote, passed by a five to four majority, was taken in response to a \$100,000 grant proffered to the collaborative by the New York-based Andrus Family Fund, on condition that the city match it and formally join the process. The dissenting minority of the council resisted the collaborative, saying that issues of police-community relations were public policy issues to be handled by them as elected officials, not by a court-based, public process.

POLICE-COMMUNITY CONFLICT IN CINCINNATI, OHIO

American citizens; city employees; police and their families; white citizens; business, foundation, and education leaders; religious and social service leaders; youth; and other minorities.

This decision was perhaps the most important in approaching the issues from an identity-based perspective. Even if not addressing the conflicts from the past, viewing possible solutions from the views of distinct identity groups did invest the collaborative with a depth of commitment to eliciting narratives and aspirations based on people's group experiences with each other (e.g., as African-Americans, police, youth, etc.). This is somewhat rare in ADR processes, which normally seek to forge common ground based on mutual interests. Given the identity-based nature and framing of the issues at stake in this context, giving voice to people's group and identity-based experiences and aspirations proved to be powerful and positive. The search for city-wide unity on a new future for police-community relations would therefore be launched by individuals self-identifying within the safety and separate context of their important identity groups and reaching intragroup consensus on a new vision for the future.¹⁷ These interim goal statements within stakeholder identity groups (e.g., African-American citizens, youth, police, etc.) would then serve as building blocks for a wider and more inclusive consensus about necessary changes to improve police-community relations.

To launch the collaborative process, and with considerable help from the news media, everyone who lived or worked in the city or was closely associated with the city (e.g., those in the suburbs) was invited to answer a questionnaire about their goals for the future of police-community relations in the city, why these goals were deeply important to them, and how they thought these goals could be achieved. Instructions for access to the online questionnaire were broadcast and published by all of the local media outlets, hard copies were distributed through churches and social service agencies and in the police department, and, to assure participation of inner city African-American and Appalachian youth, interviewers canvassed youth clubs, street corners, and basketball courts to record responses from young

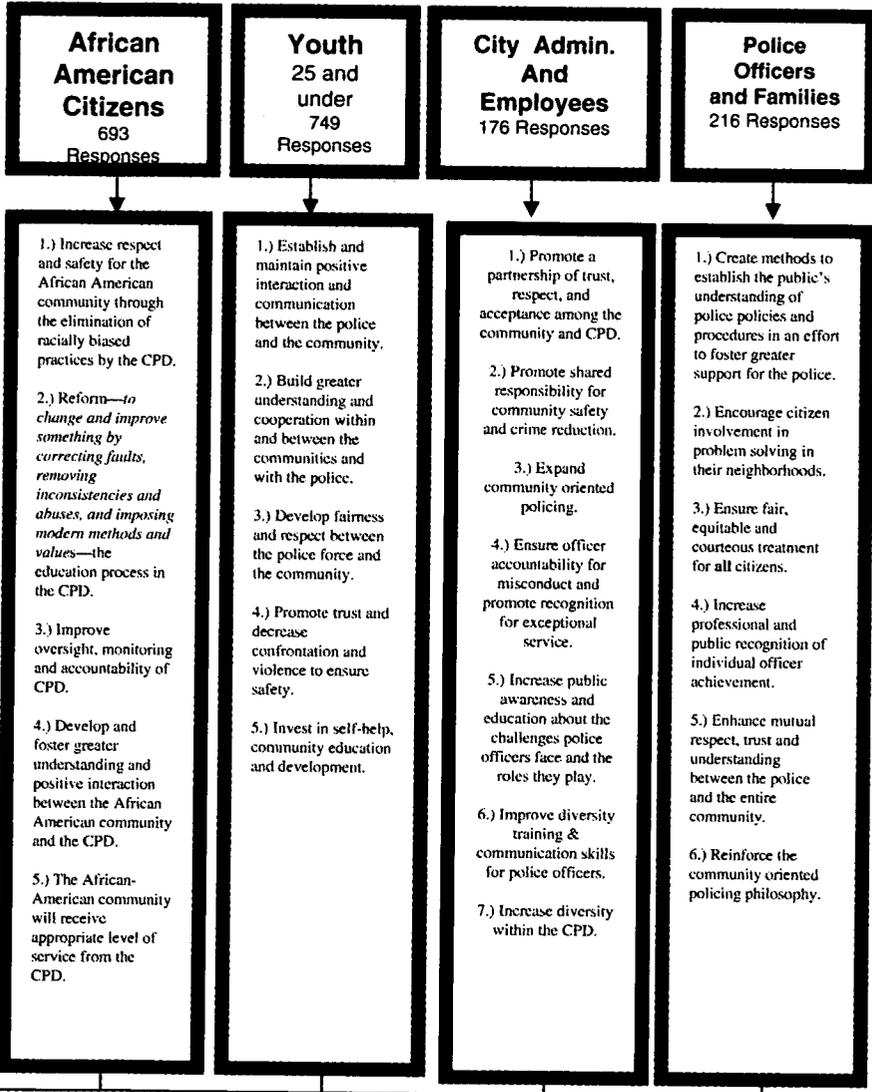
¹⁷ While this approach was endorsed by the advisory group and used to guide the organization and focus on the process throughout, it was not without controversy or challenge. For example, it was asked, how would an African-American police officer who was under twenty-five years old self identify? Such an officer could be part of three groups but would have to choose one. The answer was that such a person needed to choose the most salient identity from which to engage in the particular issues at this particular time and place.

residents of the city. In all, nearly 3,500 responses were collected, with almost 750 of them coming from youth.¹⁸

Eight hundred people later participated in four-hour follow-up dialogue and agenda-setting meetings within their respective identity groups. At the end of each of these sessions, the views of these participants were summarized in a series of goals. In addition to establishing principles, the stakeholders also articulated thousands of specific implementation ideas. Here are the goals as developed by each of the eight groups internally, and the five shared principles of practice that reached across the eight groups to set a shared agenda for the CA:

¹⁸ Approximately 2,000 of these were gathered via a web-based system and the other 1,500 through hard copy responses and personal interviews.

POLICE-COMMUNITY CONFLICT IN CINCINNATI, OHIO



Integration and Action Planning Group:
60 Stakeholder Representatives Voted on and Affirmed Five Goals:

First Goal: Police Officers and Community Members Will Become Proactive Partners in Community Problem Solving.

Second Goal: Build Relationships of Respect, Cooperation and Trust Within and Between Police and Communities.

Third Goal: Improve Education, Oversight, Monitoring, Hiring Practices and Accountability of CPD.

Fourth Goal: Ensure Fair, Equitable, and Courteous Treatment for All.

Fifth Goal: Create Methods to Establish the Public's Understanding of Police Policies and Procedures and Recognition of Exceptional Service in an Effort to Foster Support for the Police.



III. IDENTITY-BASED CONFLICT AND POLICE-COMMUNITY RELATIONS

The topic of identity-based conflict is increasingly gaining attention in the still-emerging conflict resolution field. It is one that, to some extent, has been a little sister in the field of conflict resolution, which in many ways has grown out of and focused upon interest-based conflicts and outcomes.¹⁹ Conflict theorist John Burton describes the basis for identity conflict when he talks about underlying frustrations and threats to people's needs for dignity, distributive justice, recognition, control over their destiny, and security, along with a whole constellation of collective beliefs, values, and existential identifiers that are threatened and frustrated in conflict with another side.²⁰ This kind of conflict requires an initial and systematic analysis of problems and their core causes. Focusing prematurely on outcomes, including who is to blame, restricts the essential task of ascertaining what is making people on all sides of a divide feel deeply threatened and frustrated. This analytical process of reframing such commonly protracted conflicts away from polarizing opposites, like good and bad or victimizers and victims, is a form of constructive intervention in itself. Identifying the core contexts and the roots of these conflicts helps to identify approaches that can address the underlying conditions so that they do not repeat themselves.

Identity-based conflict resolution processes therefore focus on the inner human dimension of conflict, including people's hopes and fears, hurts, and pains. This is in contrast to interest-based work, which emphasizes outcomes and mutual gains and may not as fully emphasize or explore underlying values that drive conflict. In some ways, these two approaches to conflict resolution embody the range of approaches in the field. Below is a broad typology that highlights the different approaches:

¹⁹ See ROTHMAN, RESOLVING IDENTITY-BASED CONFLICTS IN NATIONS, ORGANIZATIONS AND COMMUNITIES, *supra* note 11.

²⁰ See JOHN BURTON, DEVIANCE, TERRORISM AND WAR: THE PROCESS OF SOLVING UNSOLVED SOCIAL AND POLITICAL PROBLEMS 72 (1979); CONFLICT: HUMAN NEEDS THEORY (John Burton ed., 1990).

Identity-Based Conflict		Interest-Based Conflict
	Sources	
Needs and Values		Interests
Threats to and frustrations over such identity needs as dignity, safety, and control over destiny.		Misunderstanding and poor communication around underlying social, economic, and political "common ground."
	Characteristics	
Intangible		Tangible
Rooted in history, psychology, culture, and belief systems. Existential, abstract, and complex and largely focused on the grievances from the past.		Focused on relatively tangible, functional concerns, including socio-economic factors, resource scarcity, and competition. Functional, relatively concrete, and goal and outcome-focused.
	Initial Conflict Engagement	
Dialogue, analysis about needs and values to promote voice and mutual recognition of grievances and hopes.		Interest-based and mixed-motive bargaining to achieve common ground and mutual gain.

POLICE-COMMUNITY CONFLICT IN CINCINNATI, OHIO

Police-community relations present a rich arena for identity-based conflict since race is often at their core. Yet in many ways such conflict is only symptomatic of larger societal failures and may not be a very effective setting in which to address issues of racism, structural inequality, and historical inequality and animosity. The collaborative was in many ways caught in this dilemma. It surfaced issues of frustrations and threats and gave voice to people's stories of hurts and aspirations for a better future. But then it rather quickly (in hindsight, I would say prematurely) moved into a bargaining mode as the lawyers sat down to hammer out an agreement. Common ground was actually not fostered between the groups at this time. It was deeply constituted within each group as consensus was forged within identity groups. However, as the push for court-based settlement discussions was made in November 2001, the deeper and perhaps more important work of forging consensus across the groups never occurred. Indeed, instead of seeking consensus at the inter-group meeting as is normally done in the "Action Evaluation" process, a platform of five goals was put forward to be ratified, without discussion, by eighty people representing the eight stakeholding groups.²¹

When Judge Susan Dlott determined in 2001 that her courtroom was not the best place to start addressing the causes of racial profiling, or at least charges of it, she was moving from the normal interest-based orientation of court and the law to the identity-based focus described above. I do not believe, however, that this focus was adequately sustained, especially once the legal negotiations began and the participatory input, dialogue, and goal setting process concluded. This resulted in what the monitor, who was appointed by the court to oversee the implementation of the agreement, identified as the biggest problem with the implementation of the agreement: lack of ongoing community participation.²² Indeed, in early 2006 when a survey was sent to those original participants who had an email address,

²¹ I recall a very painful moment after the five goals were ratified at that meeting when a police officer asked, "Can we now dialogue with one another, please?" I felt constrained by the press of time, the rising acrimony that surrounded the collaborative at the time, and the mandate to launch the court-based negotiations, and responded that our assessment and goal setting process was now complete as we handed off our agenda to the lawyers to use in their negotiations. I wonder what would have happened if I had said, "Okay."

²² See CincinnatiMonitor, <http://www.gabsnet.com/cincinnati/monitor> (last visited Aug. 10, 2006).

inviting them to re-engage in the process some four years later, only a fraction responded.²³

IV. RESULTS: THE JURY IS STILL OUT

In hindsight, how well did the collaborative live up to its own very high aspirations of surfacing and engaging the identity-based conflicts at the core of the police-community problems? How much did it address interest-based conflicts in a more creative and initially participatory way than is usual? Undoubtedly, there were impressive gains made in paving a new model for broad and deep participation in setting an agenda for addressing a complex policy dilemma, and ensuring public safety while not harming civil liberties (an issue which is ever more complex and troubling post 9/11). Yet the collaborative, due to expire in April 2007, five years after its launch, has not yet lived up to its own ideals of getting beyond blame and building deep, problem-solving partnerships between police and community to address the mistrust, hurt, and animosity that still mark relationships between African-American citizens and the police in Cincinnati (and perhaps in most major urban settings in the United States).

The decision to pursue the collaborative by focusing on forging shared, city-wide goals for the future of police community relations was bold. Was it correct? Did it lead to substantive and lasting improvement? Or did it further bury significant issues underlying police-community relations and fail to address racial tensions, mistrust, and misunderstandings at the core of those relations that will be significant or lasting?

Clearly, the underlying identity-based conflict issues were not addressed directly in the collaborative, although they were starkly surfaced in the variously named "disturbances," "riots," or "unrest" that preceded the collaborative. That the underlying identity conflicts were not directly addressed is well summarized by these very semantic differences. In a series of radio interviews marking the fifth anniversary of the killing of Timothy Thomas and its aftermath, two key actors in the collaborative, then-president of the Fraternal Order of Police union, Keith Fangman, and Reverend Damon

²³ I believe this disappointing result occurred as the result of a number of factors including the fact that at least half the participants' e-mail addresses changed, they lost interest in the process due to the negative publicity that marked its launch and much of its implementation, and perhaps most importantly, they were not systematically engaged in implementation efforts after the agreement was reached in court. While there was an early effort to get participants involved in helping to conduct an educational effort about the agreement that led to some ongoing participation, this invitation to re-engage was sent four years later.

POLICE-COMMUNITY CONFLICT IN CINCINNATI, OHIO

Lynch III, then-president of the BUF, sounded off from opposite perspectives about what to call that aftermath:

I always use the factually correct term of riot, because somehow using the politically correct terms of rebellion, unrest, or uprising doesn't seem to do justice [to the situation]. Yes, let's call it what it was: a riot. ²⁴

The uprising of 2001, I say uprising because riot doesn't capture or encompass all that was happening at the time, it was a time of protests, marches, lawsuits, boycotts and demands. It was much more than a riot, it was a rebellion. ²⁵

Thus, not only was the issue of racial profiling not directly addressed in the collaborative, but neither was what Lynch in the same interview described as "a tale of two cities, in which black and white Cincinnati see the same situation with completely different lenses." ²⁶

As described, the collaborative was launched to foster common goals for a better future between police and community, not to directly address the identity-based conflicts surrounding issues of racial profiling. This choice led to downplaying underlying racial, economic, and historical factors that must still be addressed. In a sense, even as it approached the social conflicts in an alternative way, at the back end of the process when it was returned to the lawyers to negotiate a legal agreement, it led to deemphasizing the identity-based elements underlying this conflict. A court agreement is an interest-based agreement at best. While this one was framed in a way that is dramatically different—to mutually solve problems—it still was conditioned by the reality that a court agreement is ultimately, and especially when push comes to shove as it has over and over in Cincinnati, about compliance and not transformation.

Could it have been done differently? Of course such a hypothetical is impossible to answer except affirmatively. Should it have been done differently? I believe that had we tried to engage the underlying issues fully and systematically looked backwards at the identity-based conflicts before trying to move forward to a new future based on shared interests, it would have never gotten off the ground. However, I also believe that a fuller and

²⁴ See Keith Fangman, Interview, http://198.234.121.108/cincinnatiedition/040906_Fangman.mp3 [hereinafter Fangman's interview].

²⁵ See Reverend Damon Lynch III, Interview, http://198.234.121.108/cincinnatiedition/040906_Lynch.mp3 [hereinafter Lynch's interview].

²⁶ *Id.*

more sustained effort to engage the identity issues at the core of the conflict was a missed opportunity that I was party to when I agreed to run a visioning process instead of launching with a problem framing process. At some point, those of us who focus on identity-based conflict resolution and those of us who focus on more interest-based ADR, need to surface our own identity-based conflicts and forge our own interest-based agreements for working deeply together on the two halves of the same coin: identity and interests.

The collaborative process was designed to help usher in a new future in police-community relations in Cincinnati. But the path was strewn with the legacy of mistrust and poor race relations that were often played out in tense and sometimes violent police and African-American community relations. Despite its highest ideals, the collaborative never really came close to surfacing or addressing these underlying conditions. And yet, the collaborative launched a new way of gathering people's deep participation, narratives, and aspirations.

Al Gerhardstein, the Cincinnati civil rights attorney who was a key figure in the collaborative process and continues to be so in its implementation, is known as a gladiator among gladiators. Having sued, often successfully, the police and the city numerous times previously over allegations of police misconduct toward minorities, he distinguished his own litigious and win-lose ways from what occurred in the collaborative:

I like to sue people. That's what I do. I like to cross-examine people. I like to go into the courtroom. It's all very controlled. The lawyer gets to orchestrate it. I put forward the evidence found that I think is most important. It's simple compared to what we are doing here. Because we are not just trying to win. We are really trying to listen, to figure out what everybody's interests are. We are trying to serve those interests while meeting the highest goal, which is a safe community where people trust each other.²⁷

While this attitude marked the highest ideals of the collaborative, the actualization of the agreement has fallen far short of it to date. The community understood those ideals during the assessment and goal-setting phase: thousands participated in establishing goals for a collaborative future in a collaborative way. The leadership, and many of the attorneys, if not the legal framework itself, on the other hand, fell short of the mark. This began with a relative lack of involvement by elected officials in the assessment and goal-setting stages, and then heightened as negotiations to consolidate the

²⁷ DRIVING WHILE BLACK, *supra* note 12.

POLICE-COMMUNITY CONFLICT IN CINCINNATI, OHIO

ideals and gains of the collaborative in a legal framework were launched in January 2002. From the first moment the lawyers met to hammer out a collaborative settlement, the old way of doing business returned. Win; don't lose. Give up the least necessary; gain the most possible. This was the time that interest-based bargaining, rooted in the dialogue about the human dimension of the conflicts that preceded it, was required. And yet the attorneys and the parties they represented were still so far apart, mistrusted one another so much, that it was "hardball" all the way. Each sentence of the agreement ended up being crafted in this antagonistic atmosphere.

Once the adversarial way regained its upper hand, as court-based negotiations began and a court-enforced agreement resulted, the same antagonistic atmosphere persisted. The mayor sought several times to get out of the collaborative, as did the police union, though neither the Justice Department nor Judge Dlott allowed either to withdraw. The BUF dropped out and was replaced by the NAACP, based on its preference to continue to promote its boycott of Cincinnati businesses. The police leadership also seemed to buck the agreement whenever and however possible.

The collaborative settlement was implemented with the oversight of a federal monitor, former U.S. Attorney Saul Green and his team. The main job of Mr. Green and his team was to ensure "compliance" with the CA along with the use of force agreements simultaneously reached with the Justice Department.²⁸

Could an outcome more consistent with the collaborative process have resulted instead? What could have been done differently, or should be done differently in the future, to more fully connect the initial participatory process with outcomes that, in this case, essentially morphed into a top-down and antagonistic approach?

One negative influence, perhaps more than any other, was the rush to outcomes. This collaborative process sought to surface, analyze, and address problems that had deep roots, decades old, or perhaps even dating back to slavery, as race relations in the U.S. are undoubtedly grounded. It needed much more time and many more resources to more fully evolve. It is no real surprise that after nine months of doing things differently, the handoff back to court and the lawyers led to a reversion to old ways of doing things. Then with the agreement and the appointment of an extremely able agreement monitor, compliance by the police rather than joint problem solving and

²⁸ Indeed, in early 2005, the collaborative agreement was converted into a formal court order when Judge Magistrate Michael Merz, the court appointed "conciliator," determined that the city was in breach of the agreement and that voluntary compliance was inadequate, and thus recommended it be converted into a federal court order. And so it was. *In re Cincinnati Policing, Collaborative Agreement*, *supra* note 6.

collaboration between police and community, became the focus. While there is much to criticize the city and police for in terms of their lack of willing engagement in the process as it unfolded and their often reluctant participation in its implementation, it is not hard to empathize with the bind in which this process put them. It was framed as a new way to address social conflicts, yet it was ultimately implemented within a legal context, using legal frameworks and measures of success to guide it and ultimately force compliance. This emphasis, not surprisingly, was one which the police and the city deeply resented.

Nonetheless, in a recent presentation to the Vera Institute of Justice, monitor Saul Green does discuss the advantages of and his hopes for the collaborative in addressing underlying conditions of mistrust between police and the community:

The Cincinnati MOA [Memorandum of Agreement, which was signed simultaneously with the Department of Justice regarding patterns and practices of police use of force] without the CA would have resulted in a more professional, more accountable police department, but it would not have addressed the breakdown in community trust. Police departments cannot successfully address issues such as racial profiling and community distrust of the police unless they forthrightly engage the community and examine how their police strategies impact community members, particularly persons of color. The collaborative is a structure that guides the parties to that engagement. The jury is still out on whether the important goals of the collaborative will result in the relationships of respect, cooperation, and trust envisioned by the collaborative process.²⁹

In May 2006, in his thirteenth report, Mr. Green was more upbeat about progress than ever before:

This Report shows that there has been great progress in implementing the reforms of these Agreements. But the work is not done. We look forward to working with the Parties to continue this progress and strive for the goal of the Agreements—fostering a safer community where mutual trust and respect is enhanced among citizens and police.³⁰

²⁹ Saul Green, *Monitoring the Cincinnati Collaborative, Remarks Delivered at the Vera Institute of Justice (May 6, 2004)*.

³⁰ SAUL A. GREEN, ET. AL., *CITY OF CINCINNATI INDEPENDENT MONITOR'S THIRTEENTH REPORT* 5 (2006), [http://www.gabsnet.com/cincinnati/monitor/13th_Report\[1\].pdf](http://www.gabsnet.com/cincinnati/monitor/13th_Report[1].pdf).

POLICE-COMMUNITY CONFLICT IN CINCINNATI, OHIO

As poet William Butler Yeats wrote, “peace comes dropping slow,”³¹ and in fact, key aspects of the collaborative agreement are gaining positive momentum as it winds to its conclusion in early 2007. Perhaps the most important institution to emerge from the collaborative was the birth of the Cincinnati Community Police Partnering Center (Partnering Center). This new institution was produced through a combination of idealism directly drawn from the hopes of the thousands of participants for true and deep participation and collaboration *and* from police frustration. During negotiations, while plans for police compliance and monitoring were developed, attorneys for the Fraternal Order of Police argued that the other half to this collaborative, the community, was not being held accountable for changes as well. While the police and city, they argued, would be made to comply with provisions in the agreement, the community could continue to be disrespectful and obstructive with no consequence. The Partnering Center was created to address this concern, and has turned into the most sustained and successful collaborative effort on the part of the lawyers and their parties.

In April 2006, the Partnering Center sponsored high-visibility training in problem-oriented policing and the role of the community. Close to three hundred people attended this first “CPOP (Community Problem Oriented Policing) Summit” to learn about ways to reduce crime and improve their neighborhoods.³² The main concept of CPOP is that problem solving should become the principal policing strategy and that citizens and police working together provides the foundation for improving community safety. “Citizen input and involvement is key to the process,” said Partnering Center executive director Richard Biehl. Independent monitor of the CA, Saul Green, agrees, pointing out the fact that Cincinnati is the one place in the country where citizens and police are sitting together on a regular basis to address issues with civility and respect.³³

V. CONCLUSION

Here is a key lesson I learned, or relearned, from this experience: when identity conflicts are deep and prevailing, they must be safely surfaced and discussed before future-oriented and collaborative goal setting efforts are

³¹ WILLIAM BUTLER YEATS, *THE LAKE ISLE OF INNISFREE* (1892), *reprinted in* THE COLLECTED POEMS OF W.B. YEATS (The Macmillan Company 1956).

³² For an excellent overview of the Partnering Center, see *The Collaborative Quarterly*, Vol. 1, <http://www.martensart.com/cpop> (last visited Oct. 17, 2006).

³³ *See id.*

launched. In particular, adequate time and resources are needed to do this. Otherwise, underlying issues and conditions will continue to rear their ugly heads and progress will be stunted. This is what has happened in Cincinnati and continues to occur. Moreover, when non-legal and legal frameworks and approaches are combined, there is a professional identity conflict there too that merits time and attention before launching. Otherwise, as happened in this case, the collaborative and identity-focused process may be all but overshadowed, set aside and almost lost when more conventional bargaining and legal frameworks take over.

And yet both Lynch and Fangman saw the outcomes and the collaborative in a hopeful light, despite their different analyses of the identity-based conflicts at the core of the problems, which pointedly were never directly addressed in the collaborative. Lynch explained that necessary “change did take place. . . [t]he lawsuits of the families whose sons were victims of police brutality have all been settled. The Collaborative Agreement was signed and is being implemented.”³⁴ Fangman concluded that “there is an improved dialogue between the police department and the black community, which hopefully, hopefully, will prevent an unnecessary nightmare like this from ever occurring again in our great city.”³⁵

Whether the agreement reached on April 12, 2002, was a beginning or a culmination is still unclear. But what it did do was allow the parties involved, and the citizens of Cincinnati, to step back from the crisis and begin working in a common direction. Perhaps the most important legacy is the establishment of the Community Police Partnering Center. In name and deed, it is carrying the torch.

³⁴ Lynch’s interview, *supra* note 25.

³⁵ See *id.*; Fangman’s interview, *supra* note 24.

POLICE-COMMUNITY CONFLICT IN CINCINNATI, OHIO

APPENDIX

DETAILED DESCRIPTION OF THE COLLABORATIVE PROCESS

The six-stage Cincinnati collaborative process began with a focus on goal setting about future relations between police and the community in Cincinnati. The process was facilitated by The ARIA Group, Inc., with the active involvement of leaders from stakeholding groups to validate, monitor, and champion the process. An advisory group consisting of representatives from the Black United Front (BUF), the American Civil Liberties Union (ACLU), the Cincinnati Fraternal Order of Police, and the city administration provided input and advice during the collaborative process. Judge Susan Dlott of the U.S. District Court for the Southern District of Ohio oversaw the collaborative. Jay Rothman, Ph.D., president of The ARIA Group, was appointed Judge Dlott's special master to conduct this process.

A. Stage One: "Cincinnati Sings" (May 1–July 1, 2001)

The project began with a broad public awareness campaign and an emphasis on outreach and relationship building with the media, as well as coordination with other similar efforts. The campaign was designed to explain the process of gathering visions from all sectors of Cincinnati for a better future for police-community relations and, more generally, race relations.

B. Stage Two: "Getting Out the Voice" (June 1–August 31, 2001)

Information about goals was gathered by asking the following questions:

1. What are your goals for future police-community relations in Cincinnati?
2. Why are these goals important to you? (What experiences, values, beliefs, and feelings influence your goals?)
3. How do you think your goals could be best achieved? (The more specific your suggestions the better).

Responses were gathered through web-based online questionnaires, paper and pencil questionnaires, and interviews. Individual identities and identifiers remained confidential. The ARIA Group gathered thousands of citizen responses which were analyzed and organized for presentation to feedback groups.

The ARIA Group launched this process on June 25, 2001, with a pilot group consisting of leaders of social service and religious organizations. Concurrently, the group began to reach out to youth, particularly African-American youth and young adults, to encourage their early and positive engagement in this process. Also concurrently, a research process was launched, guided by University of Cincinnati Professor John Eck, for collecting current and best police practice data from around the country.

C. Stage Three: "Shared Visions" (July–November 2001)

Representatives from each of the eight stakeholding groups participated in one scheduled feedback session. Approximately 10%–25% of those responding from each stakeholding group participated in separate four-hour feedback sessions. Feedback sessions consisted of carefully facilitated small-group discussions regarding people's motivations and values. A staff of some thirty volunteer facilitators expertly guided this process. As part of the feedback sessions, these facilitated dialogue groups enabled participants to have an opportunity to express deeply held feelings and find resonance with others in their group, as well as to provide an underlying value basis for constructive steps for addressing the broader issues of race and police-community relations.³⁶ Following the small sessions, each group was provided with a set of shared goals compiled from The ARIA Group's analysis of their group's questionnaire responses. Representatives from each group then negotiated and reached agreement on their group's goals.

As of November 2001, The ARIA Group had reached the end of the first half of the Cincinnati collaborative process work plan. In those months, The ARIA Group generated a collaborative dynamic to begin transforming the crisis of police-community relations—which came to a head with the riots in April—into an opportunity for positive change and improved relationships. From June through October 2001, data was collected by questionnaire from more than 3,500 people representing all segments of the community, including African-Americans, white citizens, leaders of religious organizations and social service agencies, business leaders and foundation professionals, educators, youth, police and their families, city leadership, and other minority persons.

³⁶ For more information on The ARIA Group's approach to addressing identity-based conflicts, see Jay Rothman, *Conflict and Creativity: Opening the Window to New Ideas*, http://ariagroup.com/paper_training.html (last visited Oct. 18, 2006).

D. Stage Four: Integration (November–December 2001)

After the feedback and dialogue process had been completed with each stakeholding group, The ARIA Group produced a set of shared goals, as well as summaries of value statements and motivations across all of the groups. The sixty selected representatives met in early December 2001 as the Integration Group to review, prioritize, and comment on the goals from all of the stakeholding groups. The ARIA Group presented this shared set of prioritized goals, motivations, and suggestions, along with the information on best practices gathered by the Police Practices and Model Programs Research Group, to the Settlement Group, which overwhelmingly affirmed them.

The Integration Group was comprised of five to ten representatives from each of the stakeholding groups. The role of this group was to review the following goals from all of the stakeholding groups and reach agreement on them:

1. Police Officers and Community Members Will Become Proactive Partners in Community Problem Solving.
2. Build Relationships of Respect, Cooperation and Trust Within and Between Police and Communities.
3. Improve Education, Oversight, Monitoring, Hiring Practices and Accountability of Cincinnati Police Department.
4. Ensure Fair, Equitable, and Courteous Treatment for All.
5. Create Methods to Establish the Public's Understanding of Police Policies and Procedures and Recognition of Exceptional Service in an Effort to Foster Support for the Police.

The ARIA Group merged these goals and the information on best practices gathered by its research team and presented this material to the Settlement Group to serve as the basis for their collaborative settlement negotiations. The stage was then set for developing a collaborative settlement outside of the courtroom.

E. Stage Five: Negotiation (January–April 2002)

Facilitated by ARIA, the Settlement Group, consisting of the parties to the proposed lawsuit, engaged in intensive work on negotiating a Collaborative Settlement Agreement (CSA).³⁷

³⁷ See Collaborative Agreement, *supra* note 6.

F. Stage Six: Approval and Implementation (April–August 2002)

Once successful agreement was reached in the negotiations, the Settlement Group submitted the CSA to the federal court for approval. In addition, it started working with the stakeholder group representatives and coordinating with other local efforts to bring the settlement agreement back to the various stakeholders for implementation at both administrative and grassroots levels.

Through the participation of the 3,500 citizens of Cincinnati in the collaborative process, with all of this input and tremendous sources of creative ideas and commitment, the foundation was laid for forging a long-term and participatory process to promote constructive and grassroots-directed development aimed at improving quality of life for all those who live and work in the city of Cincinnati. This participation was rewarded on August 5, 2002, when Judge Susan Dlott approved and signed the Cincinnati Police-Community Relations Collaborative Settlement Agreement.