

# ALL OPINIONS MATTER: BREAKING DOWN ASSUMPTIONS ABOUT THE COMMUNITY RELATIONS SERVICE

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## INTRODUCTION

Since 1964, the Community Relations Service (“CRS”) has operated as “America’s Peacemaker” for community conflicts and tensions stemming from differences of color, race, gender, national origin, gender identity, religion, disability, and sexual orientation. In this role, the CRS has used a style of facilitative mediation to enable dialogues between parties, including State and local units of government, public and private organizations, civil rights groups and law enforcement figures. However, despite the CRS’ positive outcomes following involvement in conflicts from the bombing of a Sikh temple in Oak Creek, Wisconsin to the civil unrest following the shooting of Trayvon Martin in Sanford, FL, the CRS’ digital footprint across the internet is laden with critical and disparaging stories and news articles.

Specifically, media coverage of the CRS’ involvement in Ferguson, MO following the shooting of Mike Brown depicts the agency as a stealthy, wealthy and influential federal agency with manipulative intent. Some of the top resulting news articles for a “Community Relations Service Ferguson” Google search include “*Ferguson Stirred Up by Feds’ ‘Community Relations Service’*,”<sup>1</sup> “*DOJ Sends ‘Marshals’ To ‘Coach’ The Protesters in Ferguson*,”<sup>2</sup> and “*Ferguson Mayor: Two DOJ ‘Protest Marshals’ in Town*.”<sup>3</sup>

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<sup>1</sup> Paul Bremmer, *Ferguson Stirred Up by Feds’ ‘Community Relations Service’*, WND (Nov. 13, 2014) <http://www.wnd.com/2014/11/ferguson-stirred-up-by-feds-community-relations-service/>.

<sup>2</sup> Michael Snyder, *DOJ Sends ‘Marshals’ To ‘Coach’ The Protesters in Ferguson*, FREEDOM OUTPOST (Aug. 15, 2014) <http://freedomoutpost.com/2014/08/stirring-pot-doj-sends-marshals-coach-protesters-ferguson/>.

<sup>3</sup> Chuck Ross, *Ferguson Mayor: Two DOJ ‘Protest Marshals’ In Town*, THE DAILY CALLER (Aug. 14, 2014) <http://dailycaller.com/2014/08/14/ferguson-mayor-two-doj-protest-marshals-in-town/>. See also *Documents Obtained by*

Words and phrases like “stirred up,” “marshals,” and “coach” are unsettling and problematic from a mediation and alternative dispute resolution perspective given the supposedly neutral agency’s reliance upon “impartial mediation practices” and lack of law enforcement authority.<sup>4</sup>

As such, this article aims to refute publicized opinions regarding the CRS. Although news outlets spin the CRS’ efforts as advocating on behalf of the Ferguson protestors and the “Black Lives Matter” initiative, I believe that the CRS occupies a more specialized and professional role as a mediator between Ferguson protestors, law enforcement individuals, representatives from the NAACP, and community groups, and provides a neutral forum for conversation where *all* opinions are expressed. This paper argues that the Community Relations Service appears to be a surprisingly effective, neutral and impartial organization.

## I. BACKGROUND

### A. Who They Are

The CRS has worked behind the scenes and under the radar of our nation’s most challenging and tense conflicts as a conflict resolution agency since 1964.<sup>5</sup> Created by Title X of the Civil

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*Judicial Watch Reveal Justice Department Sent Community Relations Service Agents to Ferguson at the Request of the NAACP*, JUDICIAL WATCH (Nov. 20, 2014) <http://www.judicialwatch.org/press-room/press-releases/documents-obtained-judicial-watch-reveal-justice-department-sent-community-relations-service-agents-ferguson-request-naacp/>; Sundance, *Ferguson Missouri Gets A Taste Of The DOJ Secret Police – The CRS Comes to Ferguson...* [..], THE CONSERVATIVE TREEHOUSE (Sep. 20, 2014) <http://theconservativetreehouse.com/2014/09/20/ferguson-missouri-gets-a-taste-of-the-doj-secret-police-the-crs-comes-to-ferguson/>.

<sup>4</sup> Community Relations Service, *CRS Fact Sheet*, UNITED STATES DEPARTMENT OF JUSTICE (accessed on April 26, 2015) <http://www.justice.gov/archive/crs/pubs/crsfacts-102001.htm>.

<sup>5</sup> In May 2012, the CRS worked in the City of Geneva, NY to facilitate discussions between the Geneva Human Rights Commission, the local branch of the NAACP and several other local African American organizations to address the shooting of an unarmed African American male by a Geneva police officer. Community Relations Service, *Who We Work With*, UNITED STATES DEPARTMENT OF JUSTICE (accessed April 29, 2015) <http://www.justice.gov/crs/who-we-work-with/law-enforcement>. CRS

Rights Act of 1964, the agency is tasked with providing “assistance to communities and persons therein in resolving disputes, disagreements, or difficulties relating to discriminatory practices based on race, color, or national origin which impair the rights of persons in such communities under the Constitution or laws of the United States or which affect or may affect interstate commerce.”<sup>6</sup> The CRS may offer its services for such disputes or conflicts whenever peaceful community relations are threatened.<sup>7</sup> Violation of a specific anti-discrimination statute is not required prior to its deployment.<sup>8</sup>

Additionally, the agency may deploy these services “either upon its own motion or upon the request of an appropriate State or

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involvement ultimately resulted in a mediated agreement between community leaders and local officials to collaborate “to address perceptions of police bias.” *Id.* CRS also trained law enforcement officials and community leaders in identifying racial profiling as part of the mediated agreement. *Id.*

Within hours after a white supremacist attacked an Oak Creek, Wisconsin Sikh in August 2012, the CRS was in contact with national and local Sikh officials, federal and local law enforcement officials, and the White House Counsel on Faith-Based and Neighborhood Partnerships. Community Relations Service, *Who We Work With*, UNITED STATES DEPARTMENT OF JUSTICE (accessed April 29, 2015) <http://www.justice.gov/crs/who-we-work-with/religious-groups>. The CRS facilitated communication between law enforcement and community members, and facilitated a leadership meeting with the U.S. Attorney for the Eastern District of Wisconsin “to discuss hate crimes, analyze community concerns over the shooting, coordinate law enforcement, and assess community needs for funerals.” *Id.*

CRS also facilitated the creation of an action plan and a signed mediated agreement between a Latino civic engagement organization and Kansas City’s City Manager following tensions stemming from the belief that the local Hispanic community was being categorically excluded from hearings on redistricting. Community Relations Service, *Who We Work With*, DEPARTMENT OF JUSTICE (accessed April 29, 2015) <http://www.justice.gov/crs/who-we-work-with/federal-and-state-agencies>.

<sup>6</sup> 42 U.S.C.A. § 2000g-1 (1964).

<sup>7</sup> *Id.*

<sup>8</sup> William A. Newman, *Use of Non-Adjudicative Third Party Dispute Resolution Methods by Dispute Resolution Agencies of the United States Government*, 17 OHIO N.U. L. REV. 121, 125 (1990).

local official or other interested person.”<sup>9</sup> Similar to court-ordered cases in the small claims or family court context, a federal court may refer a civil rights related suit to the agency when and for as long as the court determines there is a reasonable chance of a voluntary settlement.<sup>10</sup> Certain federal agencies are even required to cooperate with the CRS in providing information and referrals. For example, the Secretary of the Department of Housing and Urban Development must assist the CRS with the goal of reducing housing discrimination.<sup>11</sup> Other agencies of the Department of Justice may also refer matters to the CRS when litigation is deemed inappropriate.<sup>12</sup>

## **B. What They Do**

What is interesting about the CRS is that it is the only federal agency dedicated to working with state and local governments, private and public organizations and groups to resolve conflicts and tensions rising out of the above issues.<sup>13</sup> The agency “provides mediation, facilitation, training, and consulting services to” improve the ability of communities to prevent, alleviate, solve and respond to future conflicts more effectively.<sup>14</sup> According to its Customer Service Standards, the CRS promises to provide on-site services to major racial or ethnic disputes within twenty-four hours from the moment your community alerts CRS or CRS independently becomes aware of the issue.<sup>15</sup>

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<sup>9</sup> 42 U.S.C.A. § 2000g-1 (1964).

<sup>10</sup> Newman, *supra*, note 7 at 125.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Community Relations Service, *Federal and State Agencies*, UNITED STATES DEPARTMENT OF JUSTICE (accessed on April 26, 2015) <http://www.justice.gov/crs/who-we-work-with/federal-and-state-agencies>.

<sup>14</sup> Community Relations Service, *What We Do*, UNITED STATES DEPARTMENT OF JUSTICE (accessed on April 26, 2015) <http://www.justice.gov/crs/what-we-do>.

<sup>15</sup> Community Relations Service, *CRS Fact Sheet*, UNITED STATES DEPARTMENT OF JUSTICE (accessed April 29, 2015) <http://www.justice.gov/archive/crs/pubs/crsfacts-102001.htm>.

Although the CRS is a component of the Department of Justice, the agency does not take sides in disputes, nor does it “investigate, prosecute, impose solutions, assign blame, or assess fault.”<sup>16</sup> The partnership between the CRS and the Department of Justice is more so grounded in the mutual goal of providing support to state and local governments in the prevention of violence, resolution of destructive conflicts, and promotion of public safety.<sup>17</sup> In fact, because the CRS’ activities are funded by the Department of Justice, conciliators, as the CRS titles its conflict resolution specialists, can offer services free of charge to participants.<sup>18</sup> Conciliators deploy nationwide from fourteen regional offices and can provide services to all fifty states and the U.S. Territories.<sup>19</sup>

The CRS approaches dispute resolution using several different processes, including “alerts, assessments, conciliation, mediation and community tension appraisals.”<sup>20</sup> An alert

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<sup>16</sup> Community Relations Service, *What We Do*, UNITED STATES DEPARTMENT OF JUSTICE (accessed on April 26, 2015) <http://www.justice.gov/crs/what-we-do>.

<sup>17</sup> *Id.* As representatives of the Justice Department, CRS mediators are also afforded the credibility and trust to work effectively with individuals “on all sides of the conflict.” See Community Relations Service, *Annual Report 2012*, UNITED STATES DEPARTMENT OF JUSTICE, 34 (accessed April 28, 2015) <http://www.justice.gov/sites/default/files/crs/legacy/2013/07/22/crs-fy2012-annual-report.pdf>.

<sup>18</sup> Community Relations Service, *Federal and State Agencies*, UNITED STATES DEPARTMENT OF JUSTICE (accessed on April 26, 2015) <http://www.justice.gov/crs/who-we-work-with/federal-and-state-agencies>.

<sup>19</sup> *Id.* The CRS has ten regional offices located in Boston, New York, Philadelphia, Atlanta, Chicago, Dallas, Kansas City, Denver, Los Angeles, and Seattle. Community Relations Service, *About CRS*, UNITED STATES DEPARTMENT OF JUSTICE (accessed April 28, 2015) <http://www.justice.gov/crs/about-office>. Field offices are located in Miami, Detroit, Houston, and San Francisco. *Id.* The regional and field offices increase the accessibility of CRS services to individuals in rural communities and assist in quick deployment in times of need. *Id.*

<sup>20</sup> Newman, *supra*, note 7 at 125-26.

commences CRS involvement with a community.<sup>21</sup> The agency is notified by public or private organizations, individual members of the public, or through the media, CRS itself discovers potential or actual disputes in communities.<sup>22</sup> These alerts are then evaluated depending on the severity of the dispute given its potential for violence or increased tensions.<sup>23</sup> If the CRS concludes that the dispute is potentially dangerous or likely to increase, the agency will conduct an assessment.<sup>24</sup>

CRS assessments intend to determine whether or not the conflict is appropriate for CRS intervention.<sup>25</sup> Conflicts are evaluated based upon the following criteria: “(1) [l]ikelihood that the conflict will be resolved peaceably without CRS intervention; (2) [l]ikelihood that conciliation, mediation or advice will resolve the dispute; (3) [t]he importance of the conflict, relative to others in which CRS is, or may become, an intervenor.”<sup>26</sup> Next, and if necessary, the agency can initiate a community tension appraisal, which is a thorough assessment of a particular community’s level of tension (specifically racial and ethnic) and potential methods for the reduction of such tensions.<sup>27</sup> These appraisals are ordered by one of the ten CRS Regional Directors depending upon the relevant geographic area of the conflict.<sup>28</sup>

Following the assessment or appraisal phase, the CRS may provide recommendations that could be effective in calming tensions and voluntarily resolving the conflict.<sup>29</sup>

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<sup>21</sup> *Id.* at 126.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

Recommendations can be sent to a variety of potential parties or participants including “the disputants, mayors, police chiefs, superintendents of schools, or to any parties that CRS believes could act to resolve the dispute amicably.”<sup>30</sup> The CRS might offer its services as a conciliator or mediator if deemed appropriate, however parties can reject these, or any services.<sup>31</sup>

## 1. CRS & Mediation

The mediation or conciliation of parties occurs following a CRS assessment.<sup>32</sup> In CRS mediations, conciliation specialists play a “third-party role in voluntary negotiations by incorporating standardized and established mediation procedures.”<sup>33</sup> These specialists are trained in helping communities identify their differences and create strategies to resolve their issues and concerns.<sup>34</sup> Their goals in mediation are to establish a framework that helps communities resolve conflicts, form a mutual trust, and independently thwart and resolve later conflicts.<sup>35</sup> Mediations are not used to assess who is wrong and who is right;<sup>36</sup> the conciliation specialists are not judges, advocates, or attorneys for any of the parties. CRS mediators do not have law enforcement authority, nor does the agency investigate or prosecute cases, or impose

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<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 126-27.

<sup>31</sup> *Id.* at 127. If parties reject the CRS’ services, the agency often recommends the case to another agency, like the Civil Rights Division of the Department of Justice. *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> Community Relations Service, *Annual Report 2013*, UNITED STATES DEPARTMENT OF JUSTICE, 11 (accessed April 28, 2015) [http://www.justice.gov/sites/default/files/pages/attachments/2014/08/20/2013\\_annual\\_report.pdf](http://www.justice.gov/sites/default/files/pages/attachments/2014/08/20/2013_annual_report.pdf).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

solutions.<sup>37</sup> The mediators merely facilitate negotiations and frequently memorialize the results of a community's mediation in a document, like a Memorandum of Understanding, Resolution, Community Pact, Mediation Agreement, or Ordinance.<sup>38</sup> Further, CRS mediators are prohibited from disclosing confidential information and required by law to orchestrate their activities in confidence.<sup>39</sup>

There is some evidence of success in the resolution of disputes through the use of CRS mediators, although the numbers are inconsistent. According to a 1987 CRS Annual Report, the agency once reported that 2,046 alerts were filed, and 1,606 assessments processed.<sup>40</sup> Out of the 1,208 conciliation cases conducted, 806 were closed.<sup>41</sup> That same year, the CRS reported that fifty-seven cases were mediated, with twenty-seven of those cases resulting in a mediated agreement.<sup>42</sup> Conversely, the agency's 2013 annual report is framed a bit differently. The CRS' Annual Report states that the agency "completed 693 cases throughout the United States and its territories."<sup>43</sup> It is unclear

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<sup>37</sup> Community Relations Service, *CRS Fact Sheet*, UNITED STATES DEPARTMENT OF JUSTICE (accessed April 29, 2015) <http://www.justice.gov/archive/crs/pubs/crsfacts-102001.htm>.

<sup>38</sup> Community Relations Service, *Annual Report 2013*, UNITED STATES DEPARTMENT OF JUSTICE, 11 (accessed April 28, 2015) [http://www.justice.gov/sites/default/files/pages/attachments/2014/08/20/2013\\_annual\\_report.pdf](http://www.justice.gov/sites/default/files/pages/attachments/2014/08/20/2013_annual_report.pdf).

<sup>39</sup> Community Relations Service, *CRS Fact Sheet*, UNITED STATES DEPARTMENT OF JUSTICE (accessed April 29, 2015) <http://www.justice.gov/archive/crs/pubs/crsfacts-102001.htm>.

<sup>40</sup> *Id.* at 125-26.

<sup>41</sup> *Id.* at 126.

<sup>42</sup> *Id.*

<sup>43</sup> Community Relations Service, *Annual Report 2013*, UNITED STATES DEPARTMENT OF JUSTICE, 31 (accessed April 28, 2015) [http://www.justice.gov/sites/default/files/pages/attachments/2014/08/20/2013\\_annual\\_report.pdf](http://www.justice.gov/sites/default/files/pages/attachments/2014/08/20/2013_annual_report.pdf). This figure reflects a drop in cases in comparison to the CRS' completion of 728 cases throughout the United States and Puerto Rico in 2012. *See* Community Relations Service, *Annual Report 2012*, UNITED STATES DEPARTMENT OF JUSTICE, 3 (accessed April 28, 2015)

whether this figure encompasses alerts, conciliation, mediation or community tension appraisals in total or individually. Nonetheless, one of the CRS' priorities during the 2013 fiscal year was to increase the number of mediated agreements produced for and by communities, and between October 1, 2012 and September 2013, the CRS led communities through the development of fifty-four mediated agreements.<sup>44</sup> Unfortunately, the number of mediated agreements from the previous year is not included in the CRS' 2012 Annual Report for comparison.

## 2. CRS in Ferguson

On August 18, 2014, Attorney General Eric Holder issued a press release stating that the Department of Justice's full resources were being committed to the federal civil rights investigation of Michael Brown, including the dispatching of the Community Relations Service to Ferguson.<sup>45</sup> Michael Brown, an eighteen-year-old African American teen, was shot and killed by Officer Darren Wilson on August 9, 2014 in Ferguson, MO.<sup>46</sup> Exactly how the encounter began is in dispute, but what is not in dispute is that Brown was unarmed and his body lied in the street for four hours after the incident.<sup>47</sup> Protests, both peaceful and violent, began almost immediately following the shooting and climaxed upon the

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<http://www.justice.gov/sites/default/files/crs/legacy/2013/07/22/crs-fy2012-annual-report.pdf>.

<sup>44</sup> Community Relations Service, *Annual Report 2013*, UNITED STATES DEPARTMENT OF JUSTICE, 31 (accessed April 28, 2015) [http://www.justice.gov/sites/default/files/pages/attachments/2014/08/20/2013\\_annual\\_report.pdf](http://www.justice.gov/sites/default/files/pages/attachments/2014/08/20/2013_annual_report.pdf).

<sup>45</sup> Office of the Attorney General, *Attorney General Statement on Latest Developments in Federal Civil Rights Investigation in Ferguson, MO*, UNITED STATES DEPARTMENT OF JUSTICE (August 18, 2014) <http://www.justice.gov/opa/pr/attorney-general-statement-latest-developments-federal-civil-rights-investigation-ferguson-mo>.

<sup>46</sup> *Tracking the Events in the Wake of Michael Brown's Shooting*, N.Y. TIMES (Nov. 24, 2014) [http://www.nytimes.com/interactive/2014/11/09/us/10ferguson-michael-brown-shooting-grand-jury-darren-wilson.html?\\_r=0#/#time354\\_10512](http://www.nytimes.com/interactive/2014/11/09/us/10ferguson-michael-brown-shooting-grand-jury-darren-wilson.html?_r=0#/#time354_10512).

<sup>47</sup> *Id.*

police's heavy-handed response, which included military-style weapons and artillery, curfews, and even the dispatch of the National Guard.<sup>48</sup> Brown's death sparked a nationwide debate over the excessive use of police force and civil rights violations against communities of color.<sup>49</sup> Eric Holder framed the purpose of the CRS' deployment as "to convene stakeholders whose cooperation is critical to keeping the peace."<sup>50</sup> Thus, the CRS would employ their primary roles as mediators, facilitators, trainers, and consultants to identify and organize key individuals or groups within the Ferguson conflict for a conversation.

## II. ANALYSIS

Somewhere and somehow, the intentions and operations of the CRS have been lost in translation since landing in Ferguson. Despite the agency's foundation in the Civil Rights Act of 1964 and purpose of eradicating challenging conflicts and tension across the country, it is still depicted as a biased, impartial and duplicitous organization. This section focuses on the CRS' involvement in Ferguson, MO by identifying and refuting both natural and publicized assumptions regarding the CRS.

### A. Assumption #1

#### a. **The Department of Justice's close connection to the CRS creates a conflict of interest cutting against Ferguson protestors.**

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<sup>48</sup> *Id.*

<sup>49</sup> John Eligon and Michael S. Schmidt, *In Ferguson, Scrutiny on Police Is Growing*, N.Y. TIMES (Aug. 20, 2014) <http://www.nytimes.com/2014/08/21/us/in-ferguson-scrutiny-on-police-is-growing.html?action=click&contentCollection=U.S.&module=RelatedCoverage&region=Marginalia&pgtype=article>.

<sup>50</sup> Office of the Attorney General, *Attorney General Statement on Latest Developments in Federal Civil Rights Investigation in Ferguson, MO*, UNITED STATES DEPARTMENT OF JUSTICE (August 18, 2014) <http://www.justice.gov/opa/pr/attorney-general-statement-latest-developments-federal-civil-rights-investigation-ferguson-mo>.

The first, and likely, most natural assumption regarding the CRS is that its close connection with the Department of Justice compromises the agency's neutrality due to the inherent assumption that the CRS is a representation of the Department, the State, and law enforcement; thus, why would protestors challenging the government's continued failure of African American and minority communities cooperate with yet *another* government entity? The foundational issue in this assumption is that the CRS operates as a government agency. The agency is funded and essentially employed by the Department of Justice. The Director of the CRS is appointed by the President with the advice and consent of the Senate for a four-year term.<sup>51</sup> As with any appointment, the selection of the CRS Director must rely on bipartisan nomination commissions, but ultimately, the President would likely choose someone aligned and integrated into his or her political circle and ideology. Because of this alignment, there is a chance that the Director could avoid or address national conflicts either consistent with the President's agenda or based upon presidential influence during the assessment stage of the CRS vetting process.

Moreover, the Department of Justice also has a hand in whether the agency receives future, increased funding. According to § 2000g-2 of the Civil Rights Act of 1964, the CRS may request additional funds from the Department of Justice as necessary to respond to certain conflicts.<sup>52</sup> "There are authorized to be appropriated to the Department of Justice, including the Community Relations Service, for fiscal years 2010, 2011, and 2012 such sums as are necessary to increase the number of personnel to prevent and respond to alleged violations of section 249 of title 18, United States Code, as added by section 4704 of this division."<sup>53</sup> This means that the Department of Justice is the gatekeeper to additional funds as required by the CRS to combat violations of civil rights. Thus, between the appointed CRS

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<sup>51</sup> Community Justice Service, *Legislative Mandate*, UNITED STATES DEPARTMENT OF JUSTICE (accessed April 29, 2015) <http://www.justice.gov/crs/legislative-mandate>.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

director and DOJ-held funding, there appears to be an incentive for CRS mediators to try to stay in the Department's good graces by, perhaps, favoring the interests of the State.

**b. To the contrary, Ferguson protestors seem to be participating with the CRS without much hesitation.**

However, it appears that the CRS is making significant, positive contributions to Ferguson using impartial, effective communication. First, any hint of advocacy or partiality would contravene the CRS' legislative mandate. CRS members are statutorily prohibited from performing investigative or prosecutorial functions and are even susceptible to criminal, misdemeanor charges, up to a \$1,000 fine or imprisonment up to one year if found in violation.<sup>54</sup> As current CRS Director Grande Lum has stated, the goal of the agency "isn't to make arrests or file lawsuits, but to give all sides a private place to talk, and, hopefully, solve their own problems."<sup>55</sup> The CRS believes that the longest-lasting solutions are those reached when people resolve their own conflicts.<sup>56</sup> Overall, the unit merely strives to provide a forum for "people to speak" as opposed to imposing hidden, or not so hidden, agendas upon them.

Second, reports from CRS discussions between community leaders in Ferguson reflect a satisfaction with the fairness of their process. In September 2014, the CRS organized a community meeting where "hundreds of local residents gathered" to discuss the future of the St. Louis suburb following weeks of protests.<sup>57</sup>

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<sup>54</sup> *Id.*

<sup>55</sup> David Hunn, *The Justice Department's soft side: How one federal agency hopes to change Ferguson*, ST. LOUIS POST-DISPATCH (Oct. 12, 2014) [http://www.stltoday.com/news/local/govt-and-politics/the-justice-department-s-soft-side-how-one-federal-agency/article\\_591a2e64-7dd1-5008-b300-0ab9ad8b9168.html](http://www.stltoday.com/news/local/govt-and-politics/the-justice-department-s-soft-side-how-one-federal-agency/article_591a2e64-7dd1-5008-b300-0ab9ad8b9168.html).

<sup>56</sup> *Id.*

Thus, the Department of Justice connection was not enough to sway a significant number of residents from attending. Although the meeting was confidential and closed to non-residents of Ferguson, several participants discussed their general optimism with the process to The Huffington Post.<sup>58</sup> Many participants “were generally encouraged by the” conversation at the meetings.<sup>59</sup> When asked about the meeting, Josh Renaud, a resident of Ferguson who also works as a journalist for the St. Louis Post-Dispatch stated, “[a]s a resident, I like [the] tenor of [the] meeting, glad people felt free to speak honestly, openly. As a journalist, wish reporters had been allowed in.”<sup>60</sup> Renaud’s comments reflect an understanding that the CRS was capable of facilitating a free, open dialogue despite his bias as a member of the press in favoring disclosure.

## **B. Assumption #2**

### **a. The CRS is emboldening the Ferguson protestors.**

Conversely, and perhaps ironically, the more publicized and popularized assumption is that the CRS’s neutrality is compromised in that the agency favors the protestors of Ferguson. Several news outlets have reported that the CRS’ purpose in Ferguson is to “justify the grievance mentality and to empower and

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<sup>57</sup> Ryan J. Reilly and Mariah Stewart, *Ferguson Residents Generally Optimistic After First Closed-Door DOJ Meeting*, THE HUFFINGTON POST (Sep. 23, 2014) [http://www.huffingtonpost.com/2014/09/23/ferguson-doj-meeting\\_n\\_5866016.html](http://www.huffingtonpost.com/2014/09/23/ferguson-doj-meeting_n_5866016.html).

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* Others stated that “[a] lot was accomplished tonight. A lot of good things were said tonight. The biggest thing that was mentioned is that we as a community need to come together as one. Because there’s no black, there’s no white, there’s no Hispanic. We are all one community. We all need to rally around the flagpole. We have to work a little harder to make this a better community. . . . This town hall meeting was more comfortable than others. . .” because “everyone seemed as though they were working toward the same goal” *Id.*

to enable it.”<sup>61</sup> Some reports state that the CRS is “spreading resentment and hostility among the Ferguson protestors” by suggesting that Michael Brown’s death “had racial overtones” and “was racially motivated.”<sup>62</sup> These assumptions have naturally evolved into the assumption that in addition to the CRS, the Department of Justice is *dually* supportive of all protestors and their “race-based” initiatives. CRS alerts raised by the NAACP for Ferguson have been manipulated to reflect “Justice Department employees dropping everything to rush to the side of the far-left NAACP.”<sup>63</sup> Statements from Eric Holder like “I am the attorney general of the United States, but I am also a black man” suddenly allude to a “Holder cover-up” for the Department’s support of rioting and anti-law enforcement sentiments.<sup>64</sup>

**b. There is little support for this assumption.**

Despite these assumptions, there is no hard evidence that the CRS aims to bolster Ferguson protestors, specifically; however the agency has previously received accusations of “racial favoritism.”<sup>65</sup> In 2013, former CRS director Ondray Harris told The Daily Caller that the agency is conflicted “between being mediators versus being advocates.”<sup>66</sup> Harris, who is African American, joined the CRS during the George W. Bush administration in 2007 and left in 2010 citing pressure from his appointers to prioritize “pro-black” agendas.<sup>67</sup> Harris stated that

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<sup>61</sup> Bremmer, *supra*, note 1; *see also* note 3.

<sup>62</sup> *Id.*

<sup>63</sup> *Documents Obtained by Judicial Watch, supra*, note 3.

<sup>64</sup> *Id.*

<sup>65</sup> See Patrick Howley, *Former DOJ Official: Civil Rights unit sent to mediate anti-Zimmerman protests has history of advocacy*, THE DAILY CALLER (July 21, 2013) <http://dailycaller.com/2013/07/21/former-doj-official-civil-rights-unit-sent-to-mediate-anti-zimmerman-protests-has-history-of-advocacy/?print=1>.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

some of the agency's employees felt "more of an allegiance to the people they perceive to be discriminated against than to the law, the government, or even the CRS mandate."<sup>68</sup> Thus, allegations of CRS bias did not originate in the Ferguson era of racial conflict.

Nonetheless, the circumstances surrounding the Harris interview are tenuous, at best. Harris' tenure as CRS director ended nearly five years ago. The former director also left shortly after the inauguration of President Obama, an entirely fresh administration whose agenda surely differs from that of President Bush. Moreover, Harris was previously employed by the United States Department of Justice as the Deputy Chief of Employment Litigation for two years, and for five years in Virginia as an Assistant Attorney General.<sup>69</sup> Harris is just as vulnerable to bias leaning towards government agencies and law enforcement as his political appointees with agendas of their own. Therefore, Harris' statements regarding the CRS do not necessarily reflect the current state of the agency under its Democratic administration, and Harris himself might be susceptible to bias given his previous employment for varying iterations of the State.

Additionally, complaints that the CRS "has done nothing to calm the Brown supporters"<sup>70</sup> are consistent with expected actions of neutral mediators. If the CRS *did* encourage "Brown supporters" or protestors to stop protesting, this would violate their duties to remain impartial and allow communities to solve their own problems. Such actions would essentially support conservative news outlets and the anti-protest majority by imposing solutions that are not their own upon them. If when the media calls the CRS "resentment-creators," they mean that the agency is listening to all parties involved in the conflict, then this is precisely what we *want* the agency to be doing.

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<sup>68</sup> *Id.* Harris went on to say that this would not "change regardless of what political party controls the White House. The heads of the agency will change, and they will bring their own politics with them, but the employees are always going to come to this kind of agency with the same kind of viewpoints or bias. It's headquarters' job to rein in the career employees out in the field." *Id.*

<sup>69</sup> Ondray T. Harris, *LinkedIn* (accessed May 1, 2015) <https://www.linkedin.com/pub/ondray-t-harris/8/9b/6a2>.

<sup>70</sup> Bremmer, *supra*, note 1.

### C. Assumption #3

#### a. The CRS is a “stealthy and powerful” organization.

The last common assumption regarding the CRS is that the agency operates as stealthy, wealthy and powerful organization. For example, a *Judicial Watch* article stated that the CRS “reportedly has greatly expanded its role under President Barack Obama.”<sup>71</sup> The article also stated that “taxpayers were billed \$15,000 on travel to send eight CRS agents (including the CRS Director and Deputy Director) to Ferguson between August 10 and September 3.” On a surface level, this is further evidenced by the media’s use of the terms “marshals”<sup>72</sup> and “coaches.”<sup>73</sup> But even deeper than that, the media interprets the confidentiality of the CRS process as an attempt to shield “secretive” meetings and deceive the public by advocating for alternative, political agendas. Another article was critical of the agency’s refusal to “comment on the CRS workers or what exactly they are doing.”<sup>74</sup> But these articles greatly misrepresent the actual underpinnings and operations of the CRS.

#### b. The CRS must be stealthy, but wealthy it is not.

It is true that the CRS is a stealthy organization in that its proceedings are always confidential. However, there is no evidence that the agency possesses covert or clandestine intentions. Quite the contrary, participants have cited positive experiences with the agency free of leading or suggesting influence.<sup>75</sup> The confidentiality of the CRS process is essential to guarantee good-

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<sup>71</sup> *Documents Obtained by Judicial Watch, supra, note 3.*

<sup>72</sup> Ross, *supra, note 3.*

<sup>73</sup> Snyder, *supra, note 2.*

<sup>74</sup> Bremmer, *supra, note 1.*

<sup>75</sup> See Part II.A.(b), *supra, at 8-9.*

faith negotiations and protection for the parties involved. The agency once elaborated that “[i]f you’re being recorded and the words that you say may come back to haunt you on any social media platform or any other way, it’s not fair to the people that are here. . . . Nobody wants to say something controversial or honest and have it recorded.”<sup>76</sup> Confidentiality creates an added incentive for parties to participate honestly and openly about extremely sensitive topics and this veil of secrecy largely contributes to the agency’s effectiveness.

It is also true that the agency’s reach has substantially expanded under President Obama. However, the media fails to provide any context regarding this change. In October of 2009, § 249 of the Civil Rights Act of 1964 was amended to expand the definition of federal hate crimes to include crimes “based on the victim’s actual or perceived sexual orientation, gender, gender identity, or disability.”<sup>77</sup> Federal law did not previously provide any authority for the protection of these categories of cases,<sup>78</sup> so the passage of this law allowed the CRS to pursue cases of this nature in addition to racial, religious and national origin. Thus, only the categories of protected classes afforded federal funds for CRS involvement expanded; the agency’s “powers” or actual responsibilities did not increase as alluded to in the media.

Additionally, despite the agency’s connections to the Department of Justice, the CRS has limited resources. The agency operates on only \$12 million per year for the operation of fourteen

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<sup>76</sup> Ryan J. Reilly and Mariah Stewart, *Ferguson Residents Generally Optimistic After First Closed-Door DOJ Meeting*, THE HUFFINGTON POST (Sep. 23, 2014) [http://www.huffingtonpost.com/2014/09/23/ferguson-doj-meeting\\_n\\_5866016.html](http://www.huffingtonpost.com/2014/09/23/ferguson-doj-meeting_n_5866016.html).

<sup>77</sup> Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act (HCPA), *What You Need to Know*, ANTI-DEFAMATION LEAGUE (accessed May 2, 2015) <http://www.adl.org/assets/pdf/combating-hate/What-you-need-to-know-about-HCPA.pdf>. See also Community Justice Service, *Legislative Mandate*, UNITED STATES DEPARTMENT OF JUSTICE (accessed April 29, 2015) <http://www.justice.gov/crs/legislative-mandate>.

<sup>78</sup> Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act (HCPA), *What You Need to Know*, ANTI-DEFAMATION LEAGUE (accessed May 2, 2015) <http://www.adl.org/assets/pdf/combating-hate/What-you-need-to-know-about-HCPA.pdf>.

local and regional offices, ten Regional Directors and at least fifty Conciliation Specialists.<sup>79</sup> Specifically, this \$12 million includes operating expenses including, but “not limited to, payroll for its 61 permanent positions; travel expenses to enable CRS’ conciliation professionals to respond in person to requests for assistance from state and local units of government, private and public organizations, and community groups; and funding for normal operations (e.g. information technology, communications, equipment, supplies, etc.)”<sup>80</sup> Furthermore, the CRS does not charge anything to participants for its services.<sup>81</sup> Thus, it cannot be said that the CRS operates on unlimited funds flowing freely from the Department of Justice.

## CONCLUSION

Despite negative publicity in the press, the Community Relations Service illustrates how a small federal agency with limited resources can work together effectively with state and local officials to provide valuable expertise in tense and challenging environments. Although the CRS’ close connections to the Department of Justice might leave Ferguson protestors weary of trusting another government entity, it appears, to the contrary, that the agency has made significant movement within the community. Additionally, while conservative media outlets depict the CRS as powerful, wealthy advocates *for* the protestors with resources to spare, the agency actually functions on a limited budget as *facilitators* of the mediation process. While the confidential nature of the agency does not lend itself to a public understanding of who they are and what they do, this should not detract from its ability to effectively mediate disputes.

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<sup>79</sup> Community Relations Service, *FY 2013 Performance Budget: Congressional Submission*, UNITED STATES DEPARTMENT OF JUSTICE (2013) <http://www.justice.gov/sites/default/files/jmd/legacy/2014/01/07/fy13-crs-justification.pdf>.

<sup>80</sup> *Id.*

<sup>81</sup> Community Relations Service, *CRS Mediation of Community Racial Disputes and Conflicts*, UNITED STATES DEPARTMENT OF JUSTICE (accessed May 1, 2015) <http://www.justice.gov/sites/default/files/crs/legacy/2012/12/17/med-comm-racial-disp.pdf>.

In order for the CRS to successfully continue mediating conflicts across the country, the media needs to reevaluate its coverage of the agency. Coverage of CRS mediations should either become prohibited, or coverage that *is* allowed of these cases should remain impartial. Otherwise, continued negative publicity will undermine the positive work of the CRS and impede future progress as later challenging conflicts arise.