

Mediation

“It’s a chance to hear what the other really has to say and clear up misunderstandings.”

— a Portland police officer after mediation

“... I think any opportunity to speak our differences rather than simply punishing or complaining is vital if we are to have peace in our community. “

— a citizen after mediation

Not everyone who has a complaint against a police officer wants to see the officer punished. The goals of some complainants are simply to understand why an officer took a particular action, or to be able to explain their own actions. Others want to retain some control over how the complaint gets handled, rather than turning the complaint entirely over to others for decisions and resolutions. Some believe that taking an adversarial approach is not constructive or ultimately helpful to anyone. When it comes to how to resolve complaints against the police, one size does not fit all, and that is why the IPR offers mediation as an alternative to the traditional complaint process.

The IPR began offering mediation as an alternative means of resolving complaints against police officers in the last quarter of 2002. By the end of 2002, only one case had been mediated. As a consequence, our report on the mediation program in the 2002 Annual Report focused primarily on how the program had been designed and developed. We are pleased to report now on the first full year of the IPR’s citizen-police mediation program, which has quickly established itself as one of the most active and successful programs in the country.

The Citizen-Police Mediation Program

The Historical Context

The past 30 years has seen significant growth in mediation as an alternative means of resolving disputes in many fields, including neighborhood and employee grievances, public resource issues, small claims, and family and criminal court cases. Mediation of citizen-police disputes has lagged behind, however. Few citizen-police mediation programs exist in the United States, and most handle only a very small number of cases. This is ironic since by their nature, many citizen complaints against police are particularly well suited to mediation.

According to a national study of citizen-police mediation programs (Walker et al, 2002), out of a total of more than 17,000 U.S. law enforcement agencies, only 16 jurisdictions had mediation programs for citizen complaints as of 2000, and most of those mediated only one or two cases per year.

Mediation of citizen-police disputes first began in Portland in 1993, with a pilot program operated through the Neighborhood Mediation Center (NMC). If the Internal Affairs Division of the Police Bureau believed one of the complaints they were investigating was suitable for mediation, they sent it to the NMC. The staff of NMC then contacted the parties and scheduled the mediations with volunteer neighborhood mediators.

The pilot project ran from 1993 through 2001. Although only 14 cases were mediated during all those years, nearly all participants reported that they were pleased with the process, and felt

mediation was valuable and worthwhile. An evaluation of the pilot program in 2001 identified the need for dedicated staff and funding, clear-cut case selection criteria, case-handling procedures, and performance measurements. The Neighborhood Mediation Center was assigned to conduct the mediations but not given any additional funds or staff to do so. Additionally, it often took some time before IAD routed cases to mediation in the first place. As a consequence, timeliness was a serious problem: cases often took up to a year to be mediated.

A strong mediation program was a priority issue in the development of the Independent Police Review Division in 2001. The ordinance creating the IPR included a provision for citizen-police mediations.

The task of building and managing the mediation program was assigned to the Community Relations Coordinator. The IPR citizen-police mediation program was developed after careful consideration and discussion with mediation professionals, police managers, union leaders, the Citizen Review Committee, and after researching existing and past mediation programs to identify best practices and avoid common mistakes.

The IPR engaged in significant outreach efforts to educate officers about mediation and address their concerns. In order to provide meaningful incentives for officers, the IPR mediation program is offered as an alternative to the traditional complaint process. If an officer mediates, there is no Internal Affairs investigation, no disciplinary action, and

no record of the complaint on the officer's service record. (The IPR does keep records of mediated cases, however, as part of our overall tracking of complaint cases, for program management purposes, and for purposes of evaluating case assignments.) After the mediation is completed, the case is closed and cannot be appealed.

The IPR contracted with professional mediators to ensure they would have the skill and experience to make the mediation sessions constructive. Excluding IPR staff time, the cost associated with achieving 20 successful mediations in 2003 was roughly \$160 per mediation.

How Mediation Cases are Selected

Case selection for mediation is part of the intake process for all complaints received by the IPR. The only cases categorically excluded from the mediation process are those involving allegations of police corruption, where there is evidence of criminal conduct on the part of an involved officer, where an officer is a witness against a complainant in a pending criminal case, or where an allegation, if sustained, would result in the imposition of serious discipline such as termination, demotion, or a lengthy suspension.

Cases are reviewed by the IPR for suitability for mediation. The first concern is whether the complainant is willing to mediate. The second concern is whether the IPR and the Captain of the

Internal Affairs Division (IAD) believe mediation would be an appropriate and constructive way to address the complaint. Mediation is approved in those cases where the IPR and IAD believe that it is likely to (1) result in greater complainant satisfaction, (2) improve citizen understanding of police procedures and actions, (3) result in improved officer conduct, and/or (4) contribute to community policing goals of improved citizen-police relations.

Portland has adopted much more inclusive case selection criteria than most citizen-police mediation programs. Some programs categorically exclude certain types of cases from mediation as a matter of policy. For example, some programs exclude all cases alleging use-of-force, reasoning that inappropriate use of force is too serious an issue for mediation. However, in most cases the use-of-force by officers is determined *not* to have been inappropriate. In addition, the use-of-force by officers is often the result of failures in communication. Categorical exclusion of use of force cases means losing valuable opportunities for citizens and police to better understand each other's perspective, explore how they might prevent similar problems in the future, and for citizens to come to a satisfying resolution of their complaint.

Some programs exclude all cases involving allegations of racial discrimination or disparate treatment. Again, the reasoning is that such allegations – if true – are too serious for mediation. Although the IPR will not assign a case involving racial slurs or objective proof of discrimination for mediation, such allegations are often

impossible to prove; there is often no evidence beyond the complainants' perceptions or suspicions that they were treated a particular way based solely upon their race. An allegation that cannot be proven generally leaves the complainant's concerns unresolved. Mediation allows complainants an opportunity to address and resolve their concerns, it can help to increase officer sensitivity to those issues and perceptions, and help to repair the harm the incident may have caused in the relationship between police and the individual and their community.

Some programs exclude any officer who has received more than a certain number of complaints in a specific time period. The reasoning is that such officers may require aggressive action in the form of management intervention or the imposition of discipline. We have observed, however, that the number of complaints an officer may get is sometimes the result of the nature of their assignment. In addition, we are not convinced that the disciplinary system is in a better position to improve officer conduct than referrals to mediation. If we learn that a particular officer is not amenable to mediation, however, that officer will not be invited to participate in future mediations.

The decision to allow mediation is made after careful consideration of the characteristics of the individual cases. As much as possible, however, we make mediation available as an option in order to allow the involved parties to decide for themselves whether mediation is an appropriate or desirable way to resolve their concerns.

The Process

After the complainant indicates a desire to mediate, and if the IPR Director and the IAD Captain approve the case for mediation, IAD invites the involved officer(s) to mediate the complaint. If the officer(s) agrees, the complainant is contacted in order to verify that there is still a desire to participate. The case is then assigned to a mediator who schedules the mediation session. If the involved officers decline to participate, the case is returned to the normal complaint handling process.

The timing and location of IPR mediations are flexible to accommodate the needs and preferences of the parties. Most mediations are conducted in the IPR office, during officers' duty shifts; they are often scheduled for weekends and evenings. Mediations may also be conducted in community centers, churches, and other community locations.

Before the mediation begins, the parties are required to sign a consent-to-mediate form, which includes a confidentiality agreement. Upon the completion of the mediation, the parties and the mediator are given exit surveys, to permit effective management and evaluation of the mediation program. The IPR maintains a database of all complaints, including mediated cases, in order to collect and track a variety of data about complaints, complainant demographics, and involved officers.

To allow all parties to speak freely, the confidentiality of the content of mediation sessions is protected by law.

The typical mediation session is essentially a thorough analysis of the incident in question by the participants, with the assistance and direction of the mediators. The mediators begin by explaining the process and ground-rules, the primary of which are confidentiality, courtesy, and mutual respect. Each party is given the opportunity to describe their perspective of the incident. The mediators guide the discussion as needed to maintain a constructive dialog. The process continues until the parties believe that their concerns have been

Characteristics of Complainants in Cases Assigned for Mediation

As the table below shows, of the 86 people whose complaints were assigned to mediation in 2003, complainants were very evenly divided between males and females, although overall, the IPR receives more complaints from males than from females. Forty-three (53%) of the community members who participated in mediation were white, 19 were African-American (23%), 12 were Hispanic (15%), and 7 (9%) were of another ethnicity.

Gender and race/ethnicity of complainants assigned to mediation	Total Number as of 12/31/03
Gender	
Male	41
Female	40
Total	81
Race/Ethnicity	
White	43
African American	19
Hispanic	12
Asian	5
Other minority	2
Total	81

Cases Assigned for Mediation

Nine cases assigned to mediation in 2002 were still pending in January, 2003, and 41 cases were assigned for mediation in 2003. Out of those 50 cases, 20 were mediated by the end of the year, nine cases were still pending and 21 cases were closed without mediation.

Outcome of all mediation cases opened or closed in 2003	Number of Cases
Successfully mediated	20
Unsuccessful attempts at mediation	
Citizen unavailable	8
Citizen declined to mediate	4
Officer declined to mediate	2
IAD rejects mediation	1
Case resolved without mediation	3
Citizen did not appear for scheduled mediation	3
Subtotal	21
Pending at the end of 2003	9
Totals	50

The most common cause of cases failing to be successfully mediated is due to the unavailability of the complainant, either because the complainant has moved and did not leave a forwarding address, or because they stop returning phone calls or letters to schedule the case. The second most common cause of cases failing to be successfully mediated is due to the complainant changing his or her mind about mediation.

In only two cases did officers decline to mediate. In the first case, the officer was insulted by the fact that the complainant (who was cited for speeding) made a disparate treatment allegation and believed the complainant was too unreasonable to mediate successfully. In the second case, the officer believed that the complainant seriously misrepresented the facts of the call (which related to a child custody dispute) and was concerned that a mediation session could interfere with an on-going investigation.

There were three *no show* cases in 2003, in which a mediation was arranged and scheduled, and everyone showed up except the complainant. In these cases, due to the officer's willingness and availability to mediate and the complainant's failure to appear, even after having received notification of the correct time and place, the IPR declined the complaint.

Four cases were initially assigned for mediation, but were ultimately resolved in other ways. In one case, the officer was able to resolve the complainant's concerns after an informal conversation. In other cases, the complaints were handled through the *service complaint* process or by a referral to a precinct or special unit.

Mediation Satisfaction Rates

“I was angry before. Now, I’m not. I think we all worked it out. It really helps to see both sides.”

— a citizen after mediation

The table on the next page shows complainant satisfaction rates for mediated cases. It must be noted that the IPR uses a special instrument for measuring satisfaction rates for mediated complaints above and beyond that which is used to measure satisfaction for all citizen complainants. The instruments are administered differently, and have different return rates. For example, the special mediation survey is filled out by mediation participants immediately after they complete the mediation (which result in almost a 100% response rate), while general IPR satisfaction surveys are mailed out in quarterly batches (this results in roughly a 30% response rate). As such, it is not possible to directly compare the satisfaction rate for mediated cases with other complaints at this point in time. The sample size of complainants who have participated in mediation and also completed and returned a general IPR survey is still too small to effectively compare the satisfaction of complainants who went through the mediation process to complainants who had their complaints disposed through some other mechanism (e.g. service complaint, investigation).

Despite the short-term difficulties in comparing satisfaction rates between cases that are mediated and those that are resolved in other ways, the special mediation satisfaction survey demonstrates that a relatively high satisfaction rate exists for both complainants and officers who participated in mediation. Even people who were not satisfied with the outcome of their mediations reported satisfaction with the mediation process itself. Specifically, 97% of all complainants and 86% of officers who participated in mediation reported they would recommend mediation to others as a way to resolve citizen-police complaints. Four respondents (one citizen and three officers) said they were not sure if they would recommend mediation to others, that it would depend upon the case in question. Only one person (an officer) who participated in mediation in 2003 said he would not recommend mediation as a means of resolving complaints.

This is quite different from IPR satisfaction rates for non-mediated cases, where complainants’ reported satisfaction with the complaint handling process appears to be directly related to whether or not they received the outcomes they wanted.

Mediation Participant Satisfaction

	Complainants	Officers
Was the dispute resolved to your satisfaction?		
Completely	51.6%	70.0%
Partially	32.3%	15.0%
Not at all	16.1%	15.0%
<i>Number</i>	31	20
Did you get the opportunity to explain yourself in the mediation process?		
Yes	93.3%	95.5%
No	6.7%	0.0%
Other	0.0%	4.5%
<i>Number</i>	30	22
Did you feel that the mediators were fair to both sides?		
Yes	100.0%	100.0%
No	0.0%	0.0%
Other	0.0%	0.0%
<i>Number</i>	30	21
Would you recommend the mediation process to others?		
Yes	96.7%	85.7%
No	0.0%	4.8%
Unsure	3.3%	9.5%
<i>Number</i>	30	21

CITIZEN Comments Concerning Mediation

Was the dispute resolved to your satisfaction?

STRENGTHS
I have let go of anger toward the individuals involved.
You guys rock!
Everyone seems happy with the outcome. [The mediator was] very helpful and understanding. I think we worked it out. It really helps to see both sides.
We came to an understanding of each other, respecting each other... I had very negative thoughts coming in, going out I have a more positive relationship.
I now have a much better understanding of why the event happened.
We did get to be human in the same room at the same time. Impressive. [Mediation] creates a greater sense of common humanity. I feel that the opportunity to do this instead of the formal complaint process is very important and needs to continue to be available to the public.
I think it has a more positive outcome [than other means of resolving complaints].
The facilitation was very helpful.
Good conversation and movement toward mutual understanding.... [I have] better understanding for the officers' point of view.

WEAKNESSES
I believe the officer has an anger issue that needs to be addressed in some way.
He just couldn't admit he could have done it better. So righteous.
I still feel the same. I don't like cops.
Good communication. Keep up the good work...I now understand the police strategy better. [However,] I feel the officer remains quite arrogant. I don't think he took me very seriously.
People who actually did the [illegal act] are not held accountable/ fined for their action. Still, [mediation] provides a way to resolve a situation without additional costs.
We still disagree on the issue.

OFFICER Comments Concerning Mediation

Are you satisfied with the mediation?

STRENGTHS
Instead of just hearing what the sergeant or IA tell you about some complaint, we get to understand what the complainant's concerns really were – and they get to really hear and understand our side.
I felt the line of communication opened up.
We all learned something.
The citizen and I got to explain our actions in a friendly manner. I was able to see both sides of the situation and see how it escalated.
What brought us here was misunderstandings. We cleared those up.
This process gives both sides an opportunity to understand what they did/said and why.
I was able to ask questions of the other side that I was not able to ask at the time of the incident. I could feel for the situation they were in as maybe they were also victims...[I would change] the way the original situation was handled.
The process worked well and the mediators did a good job at leading the discussion and defusing some hostilities that arose.

WEAKNESSES
They never would admit what they said to me that day. That was what I wanted.
Not sure it's worth it – it would depend. This was kind of a waste of time – no offense.
He's kind of a jerk.
The mediators were talented. They did their very best. But no matter how skilled or motivated... you can't squeeze blood out of a turnip! I got to explain myself in more ways that I thought possible. The complainant still didn't get it.
Even if I did not agree with everything said by the other party, I did hear it... Maybe emphasize at the beginning (a bit more) that all portions of this conflict or disagreement may not be resolved. Although I was disappointed by the lack of courtesy I was given at the incident, I had nothing personal or professional against them. I still don't.
My only issue is that a fair amount of resources and time were spent to clarify his assumptions.
If this is worth that clarification then I'm all for it.

Comparing Portland's Citizen-Police Mediation Program Nationally

As of 2003, Portland has one of the largest and most active citizen-police mediation programs in the United States, along with New York City, San Diego, and Washington, D.C.

City (and date of most recent data)	Approximate# of mediations
New York City (2002)	70
Washington DC (2003)	21
Portland OR (2003)	20
San Diego (2003)	13
Berkeley (2003)	4

Although the New York City mediation program conducted nearly twice as many mediations last year as the Portland IPR's program, New York City is 16 times larger than Portland and has a police force more than 40 times the size of the Portland Police Bureau (PPB).

Portland and Washington, D.C. both mediated a similar number of complaints in 2003. While Washington's police force is about seven times larger than Portland's, the population is comparable. The Office of Citizen Complaints in Washington, D.C. is also unique in the citizen-police mediation community in that it has the power to assign cases for mandatory mediation. In all other programs, including Portland's, mediation is voluntary.

Minneapolis, with a police force which is similar in size to Portland's, holds the record for the largest number and percentage of complaints mediated: 11% of all complaints in 2001, the last year of operation before the program became a casualty of budget shortfalls. Although the Minneapolis program has since been at least partially reinstated, no further information or statistics were available at the time of this writing.

Timeliness

One of our main goals for 2003 was to improve timeliness. This was one of the problems with the pilot mediation program, as well; cases frequently took eight months or more before mediations took place. Our original goal was to complete mediations within 45 days or less after intake. In 2002, many cases assigned for mediation went well over 45 days. Common sources of scheduling delays included working around the personal and business schedules of the complainants, officers, and mediators.

Timeliness was still a problem in 2003, although it has improved. We concluded that the 45-day goal was unrealistic after reviewing the time it takes to confer with Internal Affairs about the appropriateness of mediation, obtain the consent of the involved officer to mediate, assign a case to a professional mediator, and then schedule a mediation at a time that is agreeable to all the participants. As such, we now try to complete all mediations within 60-90 days after the intake interview is concluded.

To improve timeliness, in November 2003 we started assigning cases directly to the mediators for scheduling rather than requiring the Community Relations Coordinator to complete this task. As the case load increased, it became increasingly time-consuming for one person to schedule all the mediations and serve as a go-between when the mediators could more easily complete this task themselves. This also allows mediators to perform case development, which can make quite a difference in how productive and successful mediation will be. More than once, parties commented in their exit surveys that they thought it would have helped if the mediators were better acquainted with the parties and the cases in advance of the mediation.

Another strategy for 2004, will be to add mediators to our roster. One problem in the scheduling of mediation cases has been the occasional unavailability of mediators to conduct them. Furthermore, for those cases that involved issues of disparate treatment or non-English speaking complainants, there is a need to increase the diversity of the mediator pool. Accordingly, we intend to recruit additional mediators at the beginning of the 2004-2005 fiscal year.

Timeliness of Mediation Completed in 2003

	<60 Days	60-90 Days	90-120 Days	120+ Days	Total
Number of Days to Complete Mediation	5	8	5	2	20

A Brief Portrait of Cases Mediated in 2003

As described by complainants before mediation:

- ◆ An off-duty officer had an angry, threatening confrontation with young neighbors.
- ◆ An African-American woman reported being disrespected and handled with unnecessary force during a traffic stop.
- ◆ A woman was arrested on an outstanding warrant for her sister.
- ◆ A man coming out of traffic court had a confrontation with the witness officer, and felt the officer was excessively volatile and abusive.
- ◆ A woman felt an officer improperly took sides in an ongoing neighbor dispute, and was insensitive to her health condition and age.
- ◆ A man stopped for a minor pedestrian violation during a protest felt the officers responded with excessive harshness, which aggravated a recent shoulder injury.
- ◆ Some individuals felt that officers were insensitive and disrespectful of their religious beliefs as they conducted a ceremony in a park.
- ◆ A visitor reported that officers belittled and cited him instead of helping him when he got lost and went the wrong way down a one-way street.
- ◆ While stopped for a traffic citation, a man left his car to retrieve his mail across the street. The officer cuffed him and put him in the patrol car, publicly humiliating him.
- ◆ A woman was very frightened when awakened by someone pounding on her door and threatening her if she didn't open it. It was an officer serving a warrant on someone who had lived at that address before the current resident.
- ◆ A woman and her teenagers were trying to get into their locked car when a hostile officer approached with his gun drawn, frightening them and escalating the contact.
- ◆ A woman was greatly offended when she was stopped by officers on suspicion of prostitution while walking home from the store at night.

-
-
- ◆ Three African-American college students stopped for a minor traffic violation alleged the officer was rude, used profanity, called them *stupid*, and tried to provoke a fight.
 - ◆ A non-white immigrant family felt an officer responding to a case of illegal dumping unreasonably sided with (white) accusers and ignored the evidence of their innocence.
 - ◆ A man reporting an assault found the responding officer dismissive, unwilling to investigate further or to write a report.
 - ◆ An older, non-English-speaking couple were alarmed and reminded of police from their home country when police searched their home, and they did not understand why.
 - ◆ A woman was hit by an uninsured driver who admitted responsibility, but the responding officer would not take any information or write a report, saying it was too hot.
 - ◆ A man was assaulted by a drunk woman stranger. The responding officer assumed he was the aggressor, arrested him, and let the woman drive away.
 - ◆ A young man said he was arrested and taken to detox in retaliation for a confrontation he had with an officer who swore at him.
 - ◆ An Hispanic family felt the officer unfairly took the side of a white neighbor in a dispute, resulting in the arrest of a family member.

