

Chapter 3

Mediations

“This process gives both sides an opportunity to understand what they did and said and why.”
— a Portland police officer after mediation

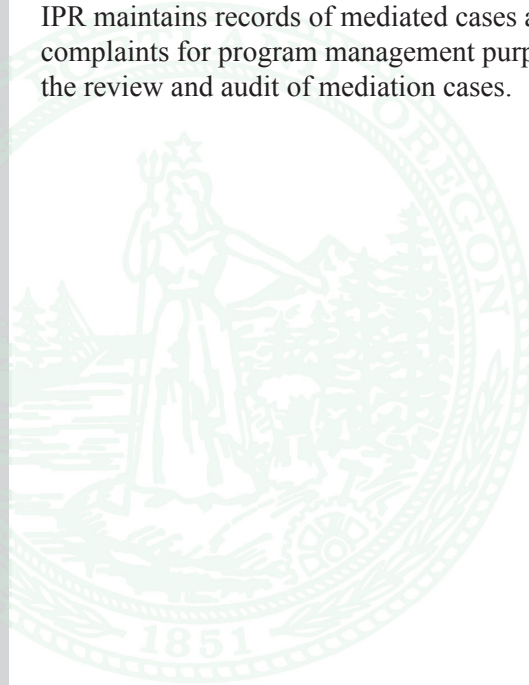
“It’s a peaceful approach to problem solving.”
— a citizen after mediation

In 2004, IPR successfully completed 33 mediations, making IPR one of the largest mediation programs in the nation. The program continues to expand, staff continue their efforts to enhance the experience for participants, and participants continue to express very high satisfaction rates with the experience. In 2004, almost all participants (officers and citizens) felt mediation gave them the opportunity to explain themselves. Almost all would recommend mediation to others.

IPR offers mediation as an alternative to the traditional complaint process because when it comes to resolving complaints against the police, one size does not fit all. Not everyone who has a complaint against a police officer wants to see the officer disciplined. Some believe that taking an adversarial approach is not constructive or ultimately helpful to anyone. Some complainants simply want to understand why an officer took a particular action, or to explain their own actions and perceptions, or to discuss how the incident affected them. Others want to retain control over how the complaint gets handled, rather than turning the complaint entirely over to others for decisions and resolutions.

The IPR mediation program was created as a non-adversarial alternative to the regular complaint-handling process; therefore, if the citizen and officer agree to mediate, there will be no Internal Affairs investigation, no disciplinary action, and no record of the complaint on the officer’s service record. However, supervisors are kept apprised of mediations. Supervisors approve all mediations to ensure that they know about complaints against officers, that they are kept informed of case outcomes, and that they have information to more effectively supervise and manage officers.

IPR maintains records of mediated cases as part of its overall tracking of complaints for program management purposes, for transparency, and for the review and audit of mediation cases.



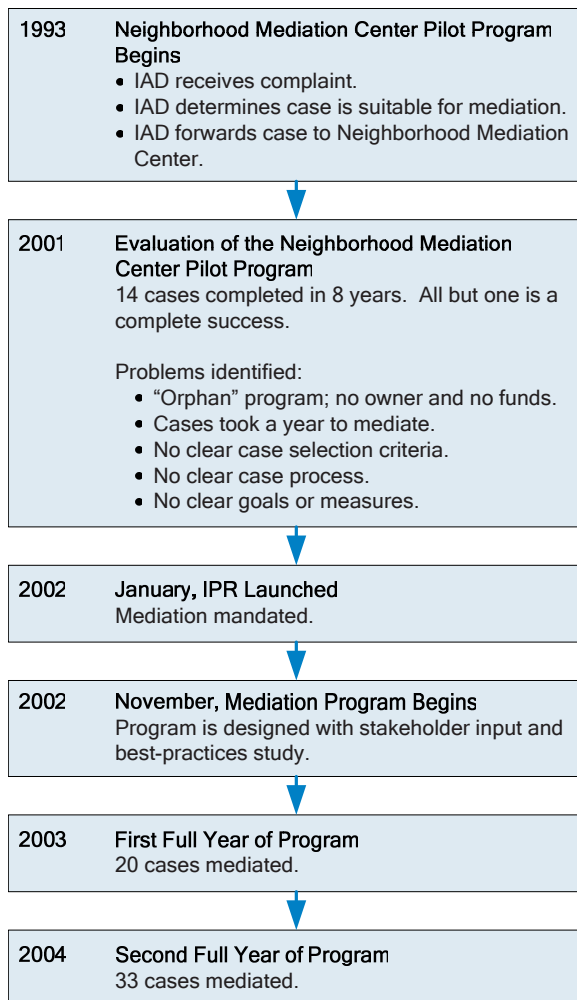
The Historical Context

Mediation of citizen-police disputes began in Portland in 1993, with a pilot program operated by the Neighborhood Mediation Center (NMC). (See Figure 3.1.) The NMC mediated a total of 14 cases between 1993 and 2001, and while nearly all participants were satisfied with their mediation, a 2001 evaluation of the pilot program found significant problems with the program. For example, the evaluation found that cases often took more than a year to mediate, and that the program lacked a clear “owner.”

“The only question about using mediation in citizen oversight is, “Why isn’t there more of it?”
 — Sam Walker,
 NACOLE Conference, September 2003

In 2001, IPR was mandated to revive the police-citizen mediation program. IPR staff solicited and received input from mediation professionals, police managers, police union leaders, and members of the Citizen Review Committee. IPR also researched other mediation programs to identify best practices and to avoid common mistakes. IPR’s objective was to develop a viable and effective mediation program that would be

in the forefront of police-citizen mediation programs across the nation. Today, less than three years after its inception, IPR’s police-citizen mediation program is recognized as one of the most successful programs in the country.



The Selection of Cases

Mediation is offered as an option whenever possible; however, the decision to allow mediation is made after careful consideration of the characteristics of the individual cases. The preference is to provide an opportunity in which citizens and officers decide for themselves whether mediation is an appropriate or desirable way to resolve their differences. Thus, IPR will consider and encourage mediation in a wider range of cases than most citizen-police mediation programs.

For example, in many jurisdictions, programs categorically exclude certain types of cases from mediation as a matter of policy. Ineligible allegations may include the use of force, racial discrimination, or disparate treatment. IPR’s philosophy, however, is that categorical exclusion of cases means losing valuable opportunities for citizens and police to better understand each other’s perspective, to explore how they might prevent similar problems in the future, and to reach a satisfying resolution.

Figure 3.1

Moreover, IPR recognizes the value in using mediation to address the issues underlying citizen complaints. For example, the use of force often results from a failure of communication. Mediation is effective at facilitating communication; therefore, IPR considers mediation appropriate in some use-of-force cases. Similarly, disparate treatment is notoriously difficult to prove; often there is no evidence beyond the complainants' perceptions or suspicions that they were treated a particular way out of bias. A case that cannot be proven often goes unresolved when the traditional

complaint handling process is used. Mediation, however, allows complainants an opportunity to address and resolve their concerns, and for both parties to learn from the open discussion of sensitive issues. It can potentially increase officer sensitivity to those issues and perceptions, allow both sides to deal with each other as individual human beings, and contribute to better relations between police and the individual and their community.

Other jurisdictions exclude from mediation 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 corrective action. But it is an open question as to whether discipline is more likely than mediation to result in improved officer conduct. In fact, there is evidence to suggest that mediation may be more effective.

The only cases categorically excluded by IPR from consideration for mediation are those involving allegations of police corruption, those with evidence of criminal conduct on the part of an involved officer, or where an officer is a witness against a complainant in a pending criminal case.

Because IPR has opted for greater inclusiveness of cases for mediation, all cases are reviewed for mediation suitability as part of the intake process. Two preliminary questions are asked before a case is referred for mediation: 1) is the complainant willing to mediate; and 2) is mediation an appropriate and constructive way to address the complaint? When deciding whether to approve mediation as an alternative, IPR and IAD must consider whether mediation 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 4) contribute to community policing goals of improved citizen-police relations.

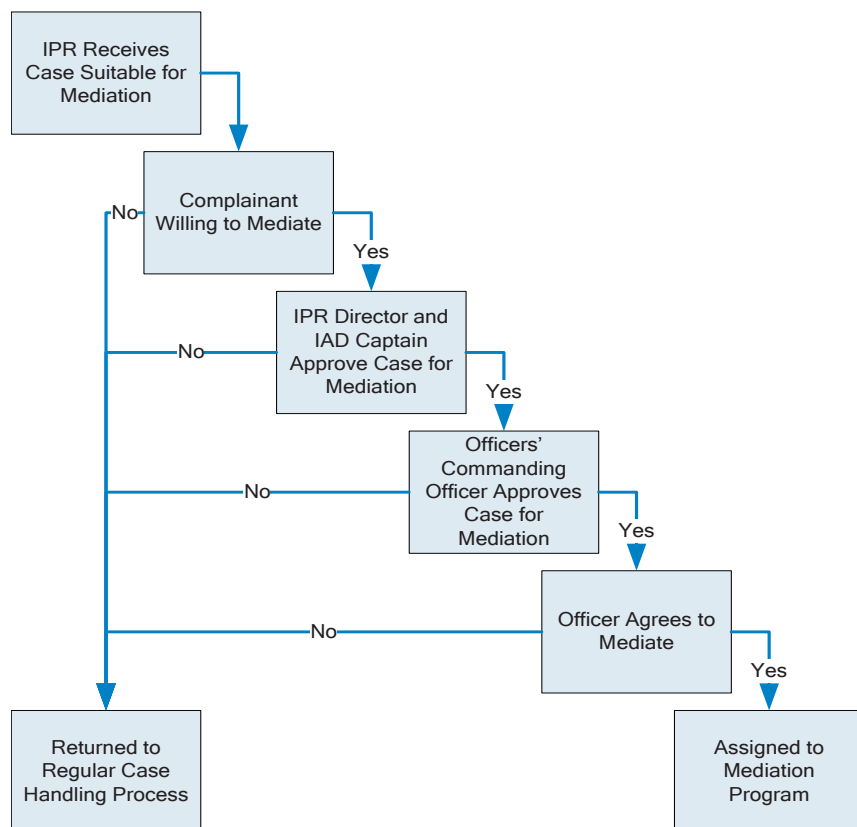


Figure 3.2

Once a case has been approved for mediation, the Community Relations Coordinator shepherds the case through the process. While timeliness is important, mediation cases require flexibility and patience. For example, the timing and location of IPR mediations need to be flexible to accommodate the needs and preferences of the parties. Most mediation sessions are conducted in the IPR office, during officers' duty shifts, including weekends or in the evening. Mediations have also been conducted in community centers, churches, and other community locations.

What Happens During Mediation

The typical mediation session is essentially the participants' analysis of the incident in question, with the assistance and guidance of the mediators. Each party has the opportunity to discuss the incident from their perspective, and to understand the perspective of the other party. The emphasis is on keeping the dialog constructive. (See Figure 3.3.)

Complainant Demographics

Of the 111 complainants whose cases were assigned for mediation in 2004, 61% were male and 39% were female.

More than half the complaints in mediation cases were White/Caucasian (53%). This was followed by African American (24%), Hispanic/Latino (5%), and Other (7%). In 2004, Hispanic complainants represented only 5% of mediation cases, as compared to 15% in 2003. Analysis of this change suggests that most of the 2003 cases with Hispanic complainants involved multiple complainants; for example, couples and families. In 2004, cases with Hispanic complainants usually involved a single complainant.

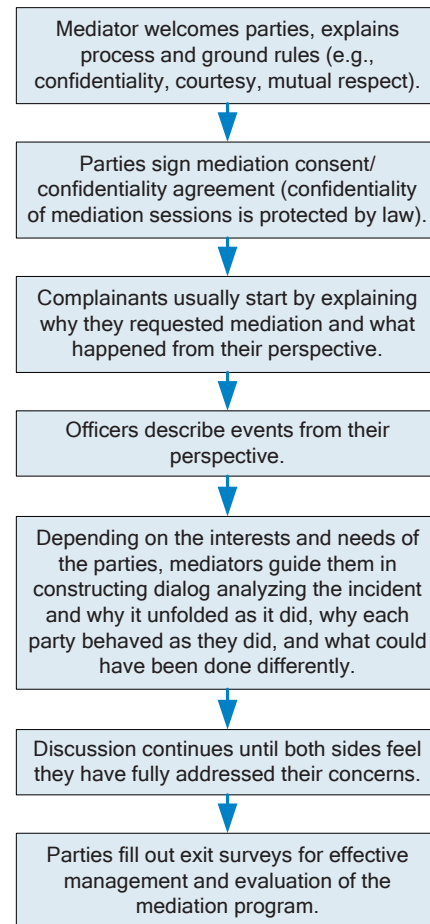


Figure 3.3

Gender and Race/Ethnicity of Complainants	2003		2004		Total	
	Complainants	Percent	Complainants	Percent	Complainants	Percent
Gender						
Female	40	49.4%	43	38.7%	83	43.2%
Male	41	50.6%	68	61.3%	109	56.8%
Race						
Hispanic or Latino	12	14.8%	6	5.9%	18	9.9%
White	43	53.1%	59	58.4%	102	56.0%
Black or African American	19	23.5%	28	27.7%	47	25.8%
Other Race/Ethnicity	7	8.6%	8	7.9%	15	8.2%

Case Outcome

In 2004, IPR mediated 33 cases. Not all cases assigned for mediation are actually mediated. Cases frequently “fall out” before they can be mediated, and it is not uncommon for national mediation fallout rates to average 50%. In 2004, 39 cases were assigned for mediation, but were eventually dismissed. The unavailability of the complainant was the primary reason for dismissing a mediation case. Unavailability usually means the complainant moved and left no forwarding address, was taken into custody, or did not return calls and letters to schedule the case. In a few cases, complaints were dismissed because complainants changed their minds about mediation, officers refused to mediate or were no longer with the Bureau, Internal Affairs declined to assign a complaint to mediation, or the complaint was resolved before a mediation session was conducted.

Of the 93 officers invited to mediate, only 4 declined the invitation. In one case, the officer expressed his reason for declining the mediation as, “if [the mediation] was with anyone else, I would, because I believe in mediation. But not with him.” Another officer gave a similar reason. A third officer told his commander, “I have no confidence in the process.” The fourth gave no reason for declining the invitation.

There were four cases in which a mediation session was arranged and scheduled, and all participants showed up except the complainant. Every effort is made to ensure both parties are very clear of the date, time, and location for the session. As a general practice, both the citizens and the officers receive a written confirmation approximately one week before the mediation

and a final telephone reminder the day before. Generally, if an unexpected event intervenes, and one of the parties is unable to attend, the case is rescheduled. However, in cases where the complainant fails to appear, makes no effort to call in advance, and offers no reasonable explanation for their failure to attend, IPR will decline the complaint. Sometimes the officer specifically requests that IPR make another effort to reschedule the case. IPR accommodates these requests.

Three 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 the other cases, the complaint was addressed by developing a long-term plan to deal with the ongoing neighborhood or professional issues involved.

Table 3.2
Outcome of All Cases Assigned for Mediation

Outcome of All Mediation Closed	2002	2003	2004	Total
Successfully Mediated	1	20	33	54
Cases that were Not Mediated	2	21	39	62
Citizen Unavailable	0	8	22	30
Citizen Declined	1	4	6	11
Officer Declined	0	2	4	6
IAD Rejected	0	1	0	1
Officer Retired/Resigned	0	0	2	2
Other Resolution	1	3	1	5
No Show	0	3	4	7
Assigned but not mediated till the following year	9	9	15	
Total number of cases assigned during the year	12	50	87	

Mediation Satisfaction Rates

IPR measures participant satisfaction with the mediation process. It should be noted that IPR uses a different instrument for measuring satisfaction with mediated complaints than for complaints handled through the traditional IPR/IAD process. Also, the mediation survey is filled out by mediation participants immediately after they complete the mediation, while general IPR satisfaction surveys are mailed quarterly. Thus satisfaction rates between those who mediate, and those who do not, cannot be directly compared.

However it is clear from the data that mediation participants, both citizens and officers, report relatively high satisfaction rates. It is highly improbable that an equivalent rate of satisfaction would be reported by complainants in non-mediated cases, even if no data were missing.

Another aspect of reported satisfaction is worth noting. With non-mediated cases, complainants' reported satisfaction with the complaint handling process appears to be directly related

"Talking it out really helped."
— An officer after mediation

to whether they received the outcomes they wanted. However, in mediation cases, even those who were not satisfied with the outcome of their mediation often had positive comments about the mediation process itself.

For example, 87% of officers and 90% of citizens would recommend mediation to others as a way to resolve police-citizen complaints

	2003		2004	
	Citizens	Officers	Citizens	Officers
Was the dispute resolved to your satisfaction?				
Completely	51.6%	70.0%	49.0%	66.0%
Partially	32.3%	15.0%	39.0%	21.0%
Not At All	16.1%	15.0%	12.0%	10.0%
Did you get the opportunity to explain yourself in the mediation process?				
Yes	93.3%	95.5%	88.0%	100.0%
No	6.7%	0.0%	0.0%	0.0%
Missing	0.0%	4.5%	12.0%	0.0%
Was the mediator fair to both sides?				
Yes	100.0%	100.0%	99.0%	100.0%
No	0.0%	0.0%	0.8%	0.0%
Would you recommend mediation to others?				
Yes	96.7%	85.7%	90.0%	87.0%
No	0.0%	4.8%	7.0%	2.0%
Unsure	3.3%	9.5%	4.0%	2.0%

while 66% of officers and 49% of citizens reported that they felt their cases were fully resolved to their satisfaction. This satisfaction is also evident from the open-ended comments in the surveys. Positive comments about the process, case outcome, and other participants greatly outnumber the negative comments. Also, many comments suggest that although participants were not entirely satisfied with

the outcome, they recognized the importance of the interaction. For example, one officer commented, “Nobody was 100% satisfied, but both parties got something out of it.” A citizen commented, “This is just one of those agree to disagree situations.”

Satisfaction rates increased slightly in 2004; complainants reporting that they are “not at all

satisfied” dropped from 16.1% to 12%. 2004 also represents the first full year in which mediators scheduled their own mediation cases directly, rather than having the Community Relations Coordinator schedule all the cases. This new process allowed the mediators to perform case development and become familiar with the case and parties before the mediation.

Comments from Mediation Participants

Fully Satisfied: Citizens 12 of 20 Respondents

I feel this was an excellent process. All issues were addressed. 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.

It was helpful, interesting, informative, an opportunity for growth and understanding.

I understood where the officer was coming from and how that was affected by my actions, which were based on perceptions that I had. I view him in a better light now.

It allows people to see each other outside of normal circumstances and adds humanity to the situations. I saw him in more human light and saw his overall personality, which helped.

I think it helps all parties involved understand. I feel much more comfortable. It is very helpful.

Candid, good conversation. I saw the other side and understood their concerns.

It was an opportunity for me to express myself and show who I am. Everything was so right. I feel better. I would recommend mediation because it...can change how they might feel.

No change (in my view of the situation): I just feel it was useful to air all perspectives.

Change in my view? Yes, he is a very nice guy. We need more just like him.

**Fully Satisfied: Officers
13 of 26 Respondents**

Great communication. I now understand the officer's situation.
Recommend mediation? Yes. It works!

Change in my view? No. I still know I am innocent! (But at least) he was more polite.

It helps you to better understand what's going on. All parties were in favor of the outcome.

(In the future, I will) take more time if feasible to explain some things (to citizens). Recommend mediation? Yes, because you can ask questions and have first hand knowledge of the complaint and why they complained.

Talking it out really helped. I learned some interpersonal communicating ideas. Recommend mediation? Yes, it's a great idea.

It gives the police officer the chance to explain his side.

Yes, I did not know the entire story and thought the other party (was something he was not).

I now understand the original intent of the contact between the citizen and myself. There is a difference between a misunderstanding of a situation and a complaint about a particular action.

Everyone seemed to get their questions answered.

The complainant was more receptive than I'd hoped.

It helped me remember to consider the feelings of others.

This shouldn't have been a complaint.

We were able to voice our concerns and answer the complaint. It enabled me to explain police procedures the other side was not aware of.

Recommend mediation? I would because it works in my opinion. Nobody is 100% satisfied, but both parties get something out of it.

I enjoyed having a chance to speak with him. I actually like him now.

I do not nor did I ever feel he was just being vengeful. I believe he was mediating for the purpose of understanding what had transpired.

**Partially Satisfied: Citizens
9 of 16 Respondents**

It's a neutral corner, so to speak, to air concerns and thoughts – an opportunity not available at the time of the incident.

I am troubled by his arrogance. I don't think he took us very seriously. (But) I now understand the police strategy better. Keep up the good work.

I better understand the miscommunication, (and the) role of police. I am grateful they participated, but one officer...was defensive throughout.

I still have some reservations that the officers didn't totally believe my statements.

It's a peaceful approach to problem solving. I have a better understanding of the issue, and we found a potential solution. Very helpful.

The officer admitted he misunderstood me at the time.

I was encouraged by the forum, but as for the overall outcome...I'll have to be optimistic.

(I learned) the officer was not intentionally picking out anyone; there was valid information he was acting on. You get to know what and how much the police go through on duty and that there are some nice and truthful officers out there.

(One officer) had difficulty being completely open and not defensive. (But) I gained insights into how to improve the work I do with the police. It was helpful, interesting, informative, an opportunity for growth and understanding.

**Partially Satisfied: Officers
5 of 8 Respondents**

There's more to do, but the conversation was very worthwhile.

It gave the citizen a good perspective from the police point of view. I think it is a valuable process – my first time, I would recommend it to others.

There was miscommunication between the two sides (during the incident). Although we may not agree with each other, it feels good to let it out.

Allows open discussion of issues. I understand their frame of reference, but I think the complainant still thinks police have malice for African American citizens.

I believe the complainant had a better understanding of my side. It's a better solution than an investigation.

**Not At All Satisfied: Citizens
5 of 5 Respondents**

I did not get the feeling that the officer took any responsibility or tried to understand why we were here. Change? No. What I got out of it was basically, "I'm the officer, I'm the law and whatever I do or tell you to do must be done." But I would recommend mediation because, in many cases I think this will work.

The officer had an opinion drawn. No change.

He was unable to remove (emotions and) analyze the situation from an objective standpoint. I felt maybe the officer would be able to explain his actions in a way that I would understand his motivations. He did, and now I know that his actions were based on my questioning his authority which insulted his pride. It would have been nice to feel that the officer understood where I was coming from...I could not get him to understand my side and only pissed him off...

There was nothing to be resolved.

This is just one of those agree to disagree situations. I personally think it's best to say how it made you feel and what you think about the situations, rather than leave it up to someone else (as in the regular complaint process). I think it is a great choice for those who choose to do this.

**Not At All Satisfied: Officers
3 of 4 Respondents**

She agreed (the blame was hers) not the police's. Change in my view of the situation? No, I still think she is (what she was accused of being).

It was pretty obvious from the start it was not going to get resolved, no fault of the mediator. We just didn't agree on much of anything.

Change in how I view the complainant? Not really – possibly worse. Not sure anything was resolved in this session, but I would be willing to give it a second chance. I think it is a good option to the complaint process. Not sure how to improve it.

Comparing Portland’s Citizen-Police Mediation Program Nationally

As of 2004, IPR’s mediation program is the second largest and most active mediation program in the United States in terms of total number and largest percentage of mediations completed. Only New York City mediates more cases. In 2004, New York City mediated 120 cases, but they also receive about 20 times more complaints than Portland and they have a much larger police force. Comparative data for the largest police-citizen mediation programs is shown in Table 3.4.

Portland and Washington, D.C. both mediated a similar number of complaints in 2003 and 2004. While Washington’s police force is about three times larger than Portland’s, the population is comparable. The Office of Citizen Complaints in Washington, D.C. is also unique in that it has the power to assign cases for mandatory mediation. In all other programs, including Portland, mediation is voluntary.

City	Number of Mediations	
	2003	2004
New York City	70	120
Portland, OR	20	33
Washington, D.C.	21	31
Kansas City, MO	--	8
Berkeley, CA	4	3
San Diego, CA	13	0

Timeliness

Timeliness remains a priority for the IPR mediation program. IPR’s original goal, when launching the program, was to complete mediations within 45 days or less after intake. However, by the end of 2003, with a full year of experience, IPR staff concluded that the 45-day goal was unrealistic. Given 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, staff determined that a more realistic goal would be to try to complete all mediations within 60-90 days after the intake interview is concluded.

The year 2004 also represents the first full year in which mediators schedule their own mediation cases directly, rather than having the Community Relations Coordinator schedule all the cases.

It was a program goal to add more mediators to our roster, as one problem in the scheduling of mediation cases has been the occasional unavailability of mediators to conduct them. This problem continued intermittently through 2004. However, while staff did recruit for additional mediators in 2004, the selection process was not complete as of the end of 2004. Accordingly, we will report the status of the recruitment in 2005.

	Less than 60 Days	60-90 Days	90-120 Days	120+ Days	Total
2003 Number of Days to Complete Mediation	5	8	5	2	20
Percent of Cases	25%	40%	25%	10%	
2004 Number of Days to Complete Mediation	10	11	7	5	33
Percent of Cases	30%	33%	21%	15%	

Case Summaries

An officer, responding to a road rage dispute, treated the complainant in an unpleasant and demeaning manner. The officer inappropriately used physical restraint when the complainant tried to cross the road to where her young niece waited alone.

Complainant believed the officer had racially discriminated against her son and was inaccurate in writing a citation. When the complainant spoke to the officer's supervisor about her concerns, she found the supervisor to be rude and dismissive.

The complainant was inappropriately ordered to move his legally parked car. The officer threatened the complainant with a citation if the car was not moved.

An officer singled out, shoved, and knocked down a smaller, older woman while trying to move protestors.

A father saw his son being confronted by a man with a gun. The father intervened, not realizing the man with the gun was a plainclothes officer arresting his son on a warrant.

A woman was ticketed for a traffic offense. She alleged the officer was very disrespectful and called her a liar.

Complainant felt officers did not respond appropriately to a robbery in his home, and alleged it was disparate treatment.

A professional who works with youth felt police did not take appropriate action on a child abuse report.

Police were responding to a call of youths creating a disturbance at a transit stop. An innocent bystander was swept up in the action and wrongly issued a citation. The police did not believe the bystander's claim that she was not involved.

A man felt he was stopped and cited, by an officer who didn't agree with his political views, after he honked in support of gay marriage.

Police arrested a wanted man, leaving his young daughter alone with strangers overnight instead of contacting her mother to come and pick her up.

A father felt police misled him when they asked him to call his adult son, and to tell his son to come home because police just wanted to talk to him. When the son returned home, police arrested him.

An immigrant was assaulted and felt the police response was inadequate. He alleged the officer was rude and threatening, and believed it was disparate treatment.

A complainant was traumatized after police subjected him to a high-risk stop in his driveway. Police had the complainant on his knees, with their guns pointed at him, after his vehicle was mistaken for one driven by a wanted felon.

During a traffic stop, an officer was rude and threatening. The officer incorrectly accused the driver of being drunk and illiterate. The man believed it was disparate treatment.

A driver who was stopped for a traffic violation alleged disparate treatment because an officer screamed, intimidated, and demeaned him (by ordering him to recite a traffic law).

A man entered an area blocked by traffic cones to ask an officer a question. The officer was unnecessarily rude and would not let the man explain what he was trying to do.

The complainant called 9-1-1 to report he was being pursued by a driver in a road rage. Responding officers did not take appropriate action, sided with the other driver in the dispute, and did not listen to the complainant's version of what happened.

A man alleged he was mistaken for a speeding driver by an officer who was rude, would not listen to him, and called him a liar.

A man's car was towed after a traffic stop; he believed he was falsely charged and racially profiled.

A woman said officers responding to a neighbor dispute call unfairly sided with the neighbor and were rude to her.

A man stopped for a very minor traffic violation believed it was a racially motivated pretext stop, and said officers were rude, hostile, threatening, and would not listen to his explanation.

A gas station attendant put extra gasoline in the complainant's car, and then demanded the complainant pay for the extra. Responding police presumed the complainant was guilty and sided with the gas station owner without letting the complainant explain. The complainant believed it was disparate treatment.

An officer endangered a bicyclist by cutting him off with the patrol car. After stopping the bicyclist, the officer was hostile, grabbed and searched the bicyclist, and then followed the bicyclist in a menacing manner.

An officer was rude to and humiliated a mother in front of her family and neighbors when he threatened to remove her children if she did not keep her house cleaner.

A man was detained and cited for jaywalking by an overly aggressive off-duty officer. The man was taken to detox when the officer knew he wasn't drunk.

A protective services worker felt police did not respond properly to a reported crime against a patient at a care facility.

A man believed he was being unfairly harassed by police because he is an ex-con.

A man was trying to exit a driveway blocked by an officer in his patrol car. After waiting for several minutes, the man sounded his horn. The officer then confronted him in a disrespectful manner in front of his family. The man suspected the officer would not have spoken to a White man in that way.

A couple felt an officer responded inappropriately to an accident in front of their home, including not taking the drunk driver into custody.

A man had issues with police response to some longstanding neighborhood problems.

A man felt he was economically profiled for a traffic stop, treated like a criminal, demeaned, and ultimately stranded after his vehicle was towed.

A woman's car was stolen, but the officer would not take a stolen car report. When the car was recovered, the driver was not arrested, the car was impounded, and she had to pay a fee to get it released after she had been told she would not have to.