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The Use of Mediation to Resolve Citizen Complaints and  
Foster Better Citizen/Police Relations

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## INTRODUCTION

Probably no greater source of alienation exists between police and citizens than how allegations of police wrongdoing are resolved (STGCCP, 1980). Resolution of complaints is usually the domain of internal affairs divisions in most police departments (Terrell, 1982). While several arguments favor internal investigation, complainants often feel the conclusive results are unsatisfactory (Waddington, 1999). Credibility of complaint procedures may incur debate coupled with intense media interest and could undermine public confidence in a police agency (West, 1988). Some police agencies, like Minneapolis, Rochester, San Francisco, and New York City, have instituted mediation through their civilian review boards to resolve certain types of citizen complaints. The goal is to increase satisfaction for all involved parties (Finn, 2000). At this point, no Texas agencies are known to use the process of mediation.

Mediation is broadly defined as an informal process where a neutral third party, with no power to impose a resolution, helps the disputing parties attempt to reach a mutually acceptable agreement (Bush, 1994). Within a law enforcement environment, it may assume informal or formal status. In formal cases, a trained mediator can conduct a hearing at a neutral location. In informal cases, a supervisor may serve as a mediator. In these cases a meeting could be held in a quiet private place at the police building (Finn, 2000).

The purpose of this research is threefold. The main goal is to determine the validity of instituting mediation processes as a method of dealing with some citizen complaints. These include failure to take action or discourtesy (Finn, 2000). About fifty percent of complaints against police officers come from these two areas alone (Griswold, 1994). Police agencies should be responsive to its citizens. This is a tenet of community policing models. Community policing involves not only

sympathetic listening but the creation of opportunities to listen (Skolnick & Frye, 1995). Mediation may provide a manner of fostering listening between officers and citizens. Secondly, the creation and potential contents of a mediation complaint resolution policy will be studied. Finally, the potential ground rules for mediation in law enforcement will be researched.

Research was done in several ways as little written research currently appears to exist on mediation as a police complaint resolution technique. Information was drawn from existing research on mediation, psychology, and law enforcement complaint processing. Departments using this method were contacted for overall information. Interviews were conducted with Texas police agency command and internal affairs personnel to determine potential advantages or disadvantages of such policies. Interviews were conducted with professionals in the mediation field for opinions on how well complaint processing coordinates with mediation processes.

Concluding this project is a recommendation for the introduction, for many agencies, of a new concept with the profound ability to better police/citizen relations. It will show the benefits and limitations of such a policy. However, mediation seems to be a novel, yet positive concept for a public relations oriented police agency. The implications for law enforcement are important. A police agency needs solid citizen support to be effective (Fiechtner, 2000). Mediation may provide an additional tool for police agencies to foster good community relations and support.

## REVIEW OF LITERATURE

Research by academicians on this topic has been almost non-existent as it relates to complaint processing. Therefore, much of the material for this project was obtained from a professional mediation practitioner, interviews with Texas police executives, and journal or professional publication articles on mediation. Much information exists on mediation itself but resources applying it to complaint processing are relatively rare. Few police agencies are using it right now. Those who do are mostly in places such as New York and California. No Texas law enforcement agency was found to use such a program currently.

Mediation is broadly defined as an informal process where a neutral third party, with no power to impose a resolution, helps the disputing parties attempt to reach a mutually acceptable agreement (Bush & Folger, 1994). In police/citizen complaint settings, mediation could be as simple as a police supervisor sitting down with a complainant and the officer to reach an oral agreement or conclusion. It could however, involve more formalized settings with a trained mediator in a neutral location. Its flexibility is user friendly (Meyer, 1997). Furthermore, the State of Texas encourages it in dispute resolution. Section 154.002 of the Texas Civil Practice & Remedies Code says that it is the policy of the state of Texas to encourage peaceable resolution of disputes and early settlement of pending litigation through voluntary settlement practices (Texas Legislative Council, 2004). Texas law on mediation is mainly found in chapters 152, 154, and 155 of the same Civil Practice & Remedy Code according to B. Good who is Executive Director of Dispute Resolution Services of Tarrant County (personal communication, October, 2000).

Traditional mediation has five stages according to a brochure available through Good's agency (TSOM, 2000). The initial phase is an opening where ground rules are explained and parties

may make opening statements. The second phase involves ventilation where parties may explain what happened in their own words. In the third phase, called clarification, the parties explain how the dispute affects them and perhaps what the underlying cause of the dispute was. Generating options is the fourth phase. Within this phase, the parties begin to look towards the future by trying to create acceptable, or workable, settlement options. The final phase is agreement and closure. Parties have settled on a particular option, put them on paper, and sign the agreement.

The process of citizen complaint mediation would be basically the same as traditional mediation. Good (personal communication, October, 2000) says two primary mediation methods exist. These are the evaluative and facilitative methods. The evaluative method involves the mediator giving advice or making judgements which can be counterproductive, especially in citizen/police type complaints. In the facilitative method, the mediator strives to assist the parties in reaching a workable agreement. Good recommends the facilitative method and it the only style his agency uses and teaches. Parties may reach agreement more readily considering the mediator serves in a non-judgmental style (Good, 2000).

Good (personal communication, October, 2000) further believes that co-mediators would be best in handling complaint disputes. Choosing the particular mediators for a specific conflict involves attempting to match characteristics of the disputing parties. For example, if a woman is an involved party, then one of the mediators should be a woman. A minority involved party would typically find a minority mediator helping with their case. Such a system promotes the image of fair and impartial mediators while helping to relax the parties.

This topic becomes important as it has been written that probably no greater source of alienation exists between police and citizens than in how allegations of police wrongdoing are

resolved (STGCCP, 1980). While several arguments favor internal investigation, complainants often feel the conclusional results are unsatisfactory (Waddington, 1999). For senior police officials, one of their major problems is designing systems for investigating citizens complaints which are thorough and impartial, and yet are acceptable to the officers themselves, to political officials charged with the responsibility of ensuring that police agencies are effectively and efficiently managed, as well as to members of the public (West, 1988). Some police agencies, like Minneapolis, Rochester, and New York City have instituted mediation through civilian review boards to resolve certain types of citizen complaints. The goal is to increase satisfaction for all involved parties (Finn, 2000). New York City now has the largest police/complainant mediation program in the country and the number of cases mediated is growing according to Patterson (personal communication, August 23, 2004). Mediation provides a manner of fostering greater listening between the disputing parties than traditional complaint processing. Patterson believes mediation offers an excellent opportunity for parties to speak freely without getting in trouble or facing the fear of retribution.

Most Texas police agencies currently handle complaints internally. No large scale movement has been seen in consistency within complaint handling procedures. This is due to the highly fragmented criminal justice system in the United States combined with traditionally highly localized accountability (West, 1988). However, broad generalizations can be made as to how complaints are handled among Texas agencies.

Most complaints are informal in nature. According to Benbrook Police Commander S. N. Eubanks (personal communication, September, 2000), for example, in Benbrook from November of 1993 to November of 2000, most of the 161 complaints received fell into this category. These informal complaints are strong candidates for mediation type processes. Often the complainant is not

interested in seeing the officer punished but simply wants to tell the officer what they found objectionable about their behavior. Arlington Police Department Deputy Chief Kim Lemaux (personal communication, February, 2002) believes that only complaints involving discourtesy or where the complainant states they do not want the officer to “get in trouble” would be acceptable for handling in a mediation format. These types of complaints are among the most common in Arlington as well. Eubanks believes that about ninety percent of all complaints involve poor communication between the officer and complainant. While a good administrator should make a concerted effort to resolve complaints involving even unsubstantiated complaints, some citizens might still feel unsatisfied with the results. Mediation potentially could be useful in resolving tension, especially in cases of misunderstandings, a lack of communication, or miscommunication (Finn, 2000). About fifty percent of all complaints involve failure to take action or discourtesy (Griswold, 1994). These two areas are often directly related to communication failure issues.

Adapting mediation for complaint processes would necessitate developing a policy framework of rules for determining which complaints and under what circumstances mediation could become an option. For example, Rochester allows eight types of complaints to be eligible to resolve such complaints. These range from discourtesy to property damage incurred during search warrant execution (Finn, 2000). Excessive force cases may be mediated in Minneapolis where not serious injury has occurred and the complainant wished to mediate (Finn, 2000). A study by Griswold (1994) found about seventeen percent of all complaints involved excessive force. Excessive force allegations are potential criminal acts and civil litigation grounds in state or federal courts. Furthermore, Eubanks (personal communication, November, 2000) believes that potential excessive force complaints need to be investigated internally to protect the department and the public with officers using excessive force



deserving punishment. New York City does not allow mediation involving complaints where the officer injured someone or damages property, results directly from an arrest, or if the officer has an extensive complaint history (NYCCRB, 2004). Thus, the exact nature of topics eligible for mediation vary by locality.

The literature and interviews indicates that an initial problem with mediation is in getting officers and especially complaints to participate. Patterson (personal communication, August 23, 2004) believes that as more mediations are done that officers feel more comfortable with the process as word spreads and officers have good experiences with it. J. Field (personal communication, August 23, 2004), senior attorney of the San Francisco Office of Citizen Complaints, states many complainants agree to participate and once a session is set up, they do not appear or tell the Office of Citizen Complaints they are “too busy” to attend. When this happens, Field often believes the complainants are asking that the office finish the complaint process and implying the complainant has done their part in reporting the matter. Looking at the results from the polled cities, it seems all have a significant number of complainants who do not appear. This matter is discussed further in the Findings section of this project.

## METHODOLOGY

Researching the issue of mediation as a tool for law enforcement to use in handling some citizen complaints for this paper involved several avenues, especially since the concept has not been currently been widely adopted. First, three agencies using the method were contacted for additional information and statistics on how mediation has fared. Interviews were conducted by telephone when possible. Questions asked centered on mediation's level of success rates in that location, any encountered problems, and how the program has been received by involved parties. The goal of all the research was to attempt to determine if mediation is a valid method of resolving complaints.

Contact was made with those responsible for the mediation programs in Minneapolis, New York City, San Francisco, and Rochester. The Civilian Police Review Authority of Minneapolis responded with statistical information. They also sent much information detailing their complaint mediation program. This information included annual reports which contained relatively detailed actual case studies of police complaint mediation in action. Some of San Francisco's statistical results were published in a Police Chief magazine article on this topic in 2000. Additional information was obtained from San Francisco's Office of Citizen Complaints through telephone interview. Information was gathered from New York City's Civilian Complaint Review Board website and through a telephone interview with its director of mediation.. However, Rochester did not respond to several requests for information by telephone, e-mail, or regular mail. Furthermore, interviews were conducted with several Texas police managers who deal with citizen complaint and internal affairs issues. Finally, an interview was also conducted with a professional mediator. While this mediator has never dealt with police related complaint issues he felt the concept has merit. Inquiries were made with several Texas police agencies to determine what they currently do with

complaints.

It is believed that mediation has merit for some complaints for several reasons. Agencies who have tried it have had some success with it. B.Good (personal communication, October, 2000), an experienced professional practitioner in mediation, believes complaint processing lends itself to a format of resolving such conflicts through mediation processes.

## FINDINGS

The key components of processing complaints involve such components as reducing suspicion, mistrust, and at times downright hostility, especially among youth, minorities and the poor (STGCCP, 1980). Much is at stake for an agency in both tangible and intangible ways. For example, a complainant may feel under some circumstances that a “buddy system” may apply to protect the accused officer or even that they will face reprisals (STGCCP, 1980). The findings of this project appear to show that mediation or mediation type processes hold promise in more successful complaint resolution and in reducing or eliminating such concerns. However, mediation processes do have limitations and should not be considered a panacea.

Cities using mediation are reporting positive results. Rochester was contacted several times and did not respond to a request for information. However, San Francisco, Minneapolis, and New York City reported their success rates for this project. The table below summarizes the results for Minneapolis. A review of Minneapolis’s results for the number of cases mediated, successful outcomes, and the overall percentage of successful outcomes showed an overall success rate of 78 percent (see Table I). Success is defined as the complainant expressing to the mediator that they are satisfied (Finn, 2000). Information from Minneapolis was not immediately available from 2000-2003 according to B. Dykes (personal communication, August 23, 2004), director of the Minneapolis Civilian Review Authority, so data was not included for those years.

Table I

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Number of Cases, Successful Mediations, and Percentage of Successful Mediation Rates by Year for Cases Mediated in Minneapolis from 1991-1999 and 2003-2004 (from January to August of 2004)

Year	Cases Mediated	Successful Mediations	Percentage of Successful Mediations
1991	2	1	50
1992	7	6	86
1993	2	2	100
1994	9	8	89
1995	5	4	80
1996	15	8	53
1997	15	14	93
1998	16	13	83
1999	22	15	68
2003	7	6	86
2004	10	9	90
Totals	110	86	78

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San Francisco's Office of Citizen Complaints Senior Attorney J. Field (personal communication, August 23, 2004) reports that seven cases went to mediation there in 2003. Through the first six months of 2004, five cases have been mediated. Field did not have exact figures on successful mediation rates but believes about one or two cases a year do not have successful conclusions. San Francisco is in the process of revamping their mediation processes to train supervisors in mediation for very minor informal cases where supervisors will call an officer in and talk to them with the complainant present. San Francisco also is working to improve their statistical gathering to include such informal dispositions.

New York City has the largest mediation program in the country according to R. Patterson, Director of Alternative Dispute Resolution (personal communication, August 23, 2004). Patterson

oversees the mediation cases for the New York Civilian Review Board which handles police complaints there. About four percent of all complaints filed are mediated. Patterson reports a ninety-two percent success rate with mediation. Success here is defined as both the officer and the complainant are satisfied with the result. The biggest problem is that many complaints do not show up for the session after agreeing to participate. Table II summarizes the number of cases that have gone to mediation and the number of cases which the complainant has failed to appear twice without good cause, or fails to respond to phone calls or letters to set up a session. New York closes the internal case whether or not the session is successful. Officers have been generally enthusiastic about such a system and have become much more likely to agree to mediation as they have become more familiar with the process and positive “word of mouth” spreads.

Table II

Complaint Cases,Closed by Year as Total Cases Attempted as Mediation, Cases Mediated, and Cases where the Complainant Agreed to Mediation but Failed to Appear in New York City from 1997 to 2003

Year	Total Cases Attempted	Cases Mediated	Complaint Failed to Appear
1997	2	2	0
1998	14	14	0
1999	28	28	0
2000	63	43	20
2001	41	32	19
2002	172	73	99
2003	150	91	59
Totals	470	283	197

Mediation also has other advantages not previously mentioned. These include such items as cost, resource conservation, time, and civility. Some complaints can evolve into litigation. Litigation is not cost effective. The United States legal system is the world’s most expensive and

court cases may take years to resolve (Meyer, 1997). Dispute Resolution Service of Tarrant County only charges about \$50 per party to handle a dispute according to director B. Good (personal communication, October, 2000). This covers administrative overhead as the actual mediation is free. Good's agency might be willing to work with a police agency to lower cost further if one approached him. Furthermore, avoiding litigation may shield a department from bad publicity (Crowley, 1994). Secondly, investigating complaints takes time and "ties up" investigators, particularly in smaller agencies where investigations may have multiple duties outside of internal investigation (Dugan & Breda, 1991). For example, Benbrook Police Commander S.N. Eubanks (personal communication, November 2000) has numerous duties yet complaint processing averages approximately three to four hours per case for him. This translated to approximately 72 to 96 hours of work on the twenty-four investigated complaints at the Benbrook Police Department in 1999. Sometimes, it takes several days for Eubanks to get started on an investigation. Furthermore, mediation works well when parties have a mutual interest in a relatively quick resolution of the dispute (Crowley, 1994). Civility becomes an advantage as parties resolving complaints through mediation are often able to work together in the future (Meyer, 1997). This can assist when police are contacting those who have complained previously. Resolution of a complaint in a manner satisfactory to the complainant, as mediation strives toward, may cause less future hostility toward police.

Examples of mediation's role in complaint processing are described in the 1999 annual report of the Minneapolis Civilian Review Authority. In one case, the complainant alleged the officer used inappropriate language and displayed inappropriate conduct during a traffic stop. The complainant said they lost several nights of sleep over the incident due to being very emotionally

upset. At mediation, the complainant explained his feelings during the incident and how the experience affected him. The officer listened to everything the complainant said and later apologized for the incident. In a second case, it was alleged that an officer had harassed the complainant and used inappropriate language when telling her to leave a bank. A bank teller had refused to cash the complainants check and allegedly been told by the complainant that the complainant would shoot him as a result. The officer told the complainant to leave or face arrest. At mediation, the officer listened to the complainant in a tactful manner and demonstrated a willingness to hear the complainants story. The officer acknowledged his actions could have seemed offensive but explained their context in such a manner the complainant was able to understand and agree. Both parties ended up apologizing to each other (MCPRA, 1999). These examples illustrate how officers can be educated as to the effect their words, attitudes, and behaviors may have on members of the public. However, it also illustrates how officers may use the setting to help citizens understand why officers sometimes act in certain manners (Finn, 2000).

Mediation does have limitations and is not a panacea. First, mediation may lead police administrators to believe they are losing control over discipline especially since a condition of most mediation is no further investigation or no discipline against the officer. Eubanks (2000) thinks that if a matter is settled in mediation then there is no need for discipline as the matter is resolved. Secondly, a police administrator may believe it has less of a deterrent effect than an internal investigation due to no formalized departmental discipline (Finn, 2000). Third, a resolution is not likely when one party refuses to attend in good faith. However, a good mediator can often see such a potential prior to a session. A variation of not coming to the table in good faith is when one party is out of touch with reality (Meyer, 1997). Patterson (personal communication, August 23, 2004)



says that some of New York's mediation eligible cases are not mediated due to mental illness on the complainant's part making it likely an unsuccessful conclusion would result. A fourth limitation is police administrators may not feel comfortable in letting junior level officers create agreements without management approval which could result from mediation. Good (2000) believes a police manager rank officer could be present during sessions to resolve any concerns over the agreement. For example, the management officer could approve sending an officer to a cultural diversity class when the city would incur cost. Eubanks (personal communication, November, 2000) feels that an officer should simply go into the session realizing any agreement may not involve departmental expense or time without management approval. The officer would need to call management and get approval before agreeing to incur expense. Eubanks believes having a management officer present could hamper dialogue. A fifth limitation is when no one leaves satisfied (Finn, 2000). Nationwide, mediation for all dispute subjects has an approximately eighty to eighty-five percent success rate (TSOM, 2000). Thus, success is not guaranteed. Considering though that investigated complaints often result in allegations of the complaint not being taken seriously by investigators, such high success rates deserve consideration of other methods of dealing with complaints (Goldsmith, 1996). Mediation could be one of these.

A final limitation is in all of the surveyed cities a significant number of complainants and a few officers never appear at the mediation or later refuse the process. Field (personal communication, August 23, 2004) says many of the complainants say they are "too busy" once the mediation is finally scheduled. One possible reason given by Patterson (personal communication, August 23, 2004) is that perhaps greater "word of mouth" as to the benefits might improve attendance. Officers are becoming more comfortable with the process with time and experience.

Thus, attendance rates for officers are dramatically improving with time. For example, San Francisco reported only two officers turned down the opportunity in 1997 out of 22 eligible complaints (Finn, 2000). Field reported that in her city, they strive to create a time for mediation convenient for all parties as one way of trying to increase attendance by complainants. A better way of increasing attendance might be to set up mediation sessions quickly while emotions are still high enough to encourage a complainant to “come to the table” and before they totally “move on” with their lives.

## **DISCUSSION/CONCLUSIONS**

Complaint processing has traditionally been handled internally by most police departments in the United States. While internal investigation has advantages some complainants may feel the final results are unsatisfactory. Mediation is being used as a tool for law enforcement handling of complaints in a few out of state locations in an attempt to increase satisfaction for all parties involved. This project attempts to study the mediation processes now being used and to determine if such processes are valid tools for resolving complaints in Texas police agencies. It was believed upon undertaking the project that mediation type processes holds promise in helping achieve a relatively high level of successful conclusions to most minor citizen complaints against police officers. The overall results of this project seem to support the hypothesis.

This research is relevant to law enforcement for several reasons. Many complaints are informal in nature where the complainant does not want to see the officer punished but simply wants to tell what they found objectionable about the officer's behavior. Mediation processes seem to lend themselves well to such situations. Frustration may result for the complainant if they believe the results of their complaint were not satisfactory. For example, they believe that internal affairs recommendations and reports are inaccessible or that a "conspiracy theory" exists. Credibility of complaint procedures may incur debate coupled with intense media interest and could undermine public confidence in a police agency (West, 1988). Even the officer may feel frustrated at the complaint if they perceive the public does not understand police work (Finn, 2000). Eubanks (personal communication, November, 2000) believes that about ninety percent of all complaints involved poor communication between the officer and complainant. Mediation can potentially be

useful in resolving tension in cases of misunderstandings, a lack of communication, or miscommunication (Finn, 2000).

Upon completion of this project, it appears that mediation does have a positive effect upon many complaint conclusions and supports the hypothesis. The three cities surveyed all report relatively high success rates with mediation. New York City reports a ninety-two percent success rate on its mediated cases and is on pace to mediate 120 cases in 2004 (Patterson, personal communication, August 23, 2004). Field, Dykes (director of the mediation program in Minneapolis), and Patterson (personal communications, August 23, 2004) all stated they believe mediation processes have generally worked well in their cities.

Perhaps the largest problem seen is in the high number of complainants who initially agree to mediation and never appear or later refuse to participate. Each city has seen many cases where the complainant failed to appear. For example, New York City experienced an overall no-show percentage of forty-two percent (197 no-shows out of 497 attempted mediations) to both parties (NYCCRB, 2004).

A limitation of this study which may hinder its conclusions centers on a lack of interviews being conducted with citizens who have made complaints against officers which might be subject to mediation processes. Such avenues were not attempted due to fears of fostering bad relations with police departments asked to provide information on citizens who have made complaints against their officers. Within the author's own police department it might give the appearance that the department or author was going around its own policies for handling complaints. Thus, it was believed that it would be best to avoid directly interviewing any complainants in the context of which this particular study was done.

Mediation processes appear to be a potential answer to solving some of the problems associated with internal complaint processing. It has numerous advantages including cost savings, allowing for correction of miscommunication, time savings, and a relatively high rate of success. It frees up investigators when used on minor complaints to focus on more serious allegations, such as excessive use of force. Limitations do exist to complaint related police mediation. However, these can be solved in many cases through such items as helping both parties understand the process, the neutrality and choice of the mediator, or having a management ranking officer present during the process. Perhaps the biggest advantages result from potential improvement of a department's relations with the public and its image as citizens are less likely to feel frustrated or unhappy with the results of police internal investigations (Finn, 2000). Furthermore, the benefits of improved communication as to how members of the public felt or why an officer did what they did in a situations lays groundwork for better police field performance. Mediation can also increase satisfaction for all involved compliant participants. When a system of complaints against police do not rise to the challenge of giving voices to all involved parties, such a system is likely to face a challenging and probably limited future (Goldsmith, 1996). Mediation serves to fill the role of letting all parties communicate their feelings and interests. It appears mediation processes should be considered as an alternative in Texas to exclusive internal affairs complaint processing in both formal and informal standard police practice for less serious complaints.

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