

## Mediation Program Meeting—7/9/12

### **Attendance**

Ursula Price (Independent Police Monitor)  
Maya Terrance (Independent Police Monitor)  
Laraque Stewart (Independent Police Monitor)  
Heather Siegel (Independent Police Monitor)  
David Logan (Independent Police Monitor)  
Arlinda Westbrook (NOPD Public Integrity Bureau)  
Michael Glasser (NOPD; PANO)  
Matt Fraser (New Orleans City Council District A Office, Susan Guidry)  
Michael Cowan (Common Good)  
Ted Quant (Twomey Center)  
Mary Lou Specha  
Cassie Pierson (Common Ground Relief Legal Clinic)  
Derrick Francis  
Tom Gogola (The Lens)  
Wes Ware (Break Out)  
Al Grandoit (Louisiana Capital Assistance Center)  
Patricia Walsh (Young Leadership Council)

### **To Do List**

- Al G—Research state statutes governing the creation of a mediation program
- Ursula Price—Obtain examples of post-mediation resolution agreements
- ALL—Report to constituents and fellow stakeholders
- TABLED—Research possible methods of leadership support and evaluation criteria for mediation program
- TABLED—Research inclusion and exclusion criteria for mediation program and the post-mediation protocol

### **Introductions**

*N.B. Recorder arrived approximately 5 minutes late to the meeting.*

Facilitator Ursula Price began the meeting by asking attendees to introduce themselves and answer one of three prompt questions about case studies of mediation program in other U.S. cities.

Reikow said the mediation experience of the New York Police Department could prove helpful in highlighting the role of incentivizing officer participation. Officers might view mediation as an attractive alternative if it means avoiding a sustained complaint or other disciplinary action from their record. Reikow also said that mediation might help foster police-community relations and develop empathy across the criminal justice system by drawing parallels between the experiences of criminally accused and officers facing complaints.

Pierson said she was drawn to the Denver and New York models because they incorporate bias-motivated complaints, including, in New York, racist, homophobic, and other discriminatory slurs and actions. Proposed enshrining in the mediation protocol explicit references to types of statements and actions that would qualify for mediation by, for instance, referencing individual protected classes.

Quant highlighted two modes of incorporating mediation activities with existing policing policies and procedures, especially community-policing practices. First, he said that the underlying principles of *selling the stop* and other more communicative policing practices feature key mediation techniques and should already be a recognized part of quality policing. This should, in some ways, allow for an easier integration of mediation into policing culture. Second, despite the clear connection between mediation and current best practices, Quant said the roll-out of new programs would likely be met with some resistance and should be accompanied by efforts to promote support the new program. For example, officers implementing community policing practices for the first time may score comparatively low on evaluation methods established under older policing practices. New evaluation methods should be developed reflecting the values and goals of the new policing practice. In addition, officers may face frustration in simply learning a new practice and they should be offered support and encouragement by leadership which, in turn, should recognize the learning curve.

Specha addressed the question of including diverse stakeholders in the formation of the mediation program. She said that the development process of the mediation program should reflect the values of mediation itself, including communication, inclusion and transparency. She pointed out the importance of building trust in the community, and looking at values and principles – asking the question, what is the motivation for people asking to get involved?

Quant emphasized the need to leverage positive peer-to-peer relationships on the force to help sell the mediation program and emphasize, that in the program's early phases, there may be some difficulties in implementation but that such difficulties do not constitute an indictment of the program in general.

Glasser said that he senses a disconnect between rank-and-file and upper-level officers, but that he is excited about the program.

Cowan stated that he likes the essence of community policing collaborating with officers to make the city safer.

Fraser stated that regarding new members, it would probably be best to cap the committee at the current number of members, explaining that at some point, the maximum capacity of effectiveness has been reached.

Ware stated that he thinks a call needs to go out again, giving media attention to the committee, getting more people to join.

### **Westbrook Presentation**

*Westbrook delivered a presentation about PIB complaint policies and practices.*

Westbrook began by reviewing PIB procedures for complaint intake and processing. Complaints must generally be investigated within 60 days though PIB may appeal to the Civil Service Commission for an extension, which, if granted, extends the initial 60-day window to 120 days. PIB investigates complaints and produces findings, classifying the complaint as sustained, not sustained or no violation observed (NVO). When appropriate, PIB will notify other law enforcement partners such as the District Attorney or Department of Justice. Westbrook said that the majority of complaints investigated by her office return findings of not sustained or NVO.

Westbrook discussed the creation, in February of 2011, of Force Investigation Teams (FIT) for investigation of officer-involved shootings. Prior to the creation of the FIT teams, officer-involved shootings resulting in a hit or death were investigated by the Homicide Division which could make such investigations vulnerable to real or perceived conflicts of interest. FIT teams currently investigate all officer-involved shootings, deaths in custody, and use of force incidents that result in a hospitalization.

PIB has an *In Touch* system by which officers can communicate with the office or directly with the Superintendent to report instances of alleged misconduct or submit complaints or questions regarding departmental practices. Westbrook said that, generally, internal allegations of misconduct (those submitted by officers about other officers) are more reliable.

When citizens submit a complaint to PIB, they sign a form swearing to the honesty and accuracy of the information they have provided. Westbrook said the form is supposed to guard against filing frivolous or false complaints.

PIB has facilitated 5 informal mediations between civilian complainants and officers. Of the 5, Westbrook said that 3 were "successful." She said that one challenge to mediation is that while the officer is generally willing to "compromise" to avoid a formal disciplinary record, often civilian complainants will demand outright termination. She explained how typically the disciplinary actions doled out by PIB are guided by a standard Civil Service schedule.

Quant asked about where to include the possible mediation step within the overall timeline of PIB's complaint and discipline schedule.

Westbrook recommended conducting the mediation session prior to the initiation of disciplinary proceedings since conducting it following a disciplinary action will remove a major incentive for officer participation and may even make the officer resentful of the civilian.

Westbrook further recommended that only "low-level" administrative complaints qualify for mediation. These complaints, according to Westbrook, constitute roughly 60 percent of all complaints submitted to PIB. Because these often involve complaints of non-professional conduct and discourteousness, such an approach would mesh well with community policing initiatives.

Removing these lower level complaints from the PIB dossier, according to Westbrook, would help free administrative resources for investigation of more serious allegations of criminal activity by officers.

Failed mediations, according to Westbrook, would result in the continuation of the normal investigative and disciplinary proceedings.

A question was raised about the post-mediation protocol for successful mediations. Westbrook said that mediating certain kinds of complaints or mediating too many complaints could have unintended consequences elsewhere. For example, the department's early warning system depends in part on having reliable discipline data from officers and that the mediation program might remove some of this data. It should be designed with this in mind.

Group raised question about how the participants in the mediation maintain the positive outcome afterwards and decrease the incidents of future complaints.

Price said that Pittsburgh included a mediation agreement for use at the end of the mediation process which could be a valuable tool in New Orleans for encouraging positive changes in behavior in the future.

Glasser discussed what kinds of complaints should be eligible for mediation, highlighting a distinction between procedural and behavioral complaints. Procedural complaints, according to Glasser, include violations of mandatory departmental policy and should not qualify for mediation since they often do not directly affect the experience of the complainant and could reflect important red flags about possible problem officers; the department also would not want officers to escape disciplinary action for repeated violation of departmental policy. Behavioral complaints, however, as they generally involve issues of direct personal contact between complainant and officer (non-professional conduct and discourteousness), should be the focus for mediation.

Westbrook said that mediating behavioral issues would increase the likelihood of achieving some measure of closure for the complainant since, currently, sustaining a complaint of discourteousness (or some other behavioral complaint) often merely pits the word of the complainant against that of the officer. Such complaints are difficult to investigate and sustain she said. Mediation, however, would provide another potentially more productive means of addressing complaints.

Glasser said that mediation could be helpful with younger officers who are often at greater risk for engaging in misconduct, especially behavioral.

Westbrook again discussed the amount of administrative resources that are dedicated to investigating low-level complaints. She said that current departmental policy requiring PIB investigation of all complaints stemmed from the aftermath of the Linn Davis case in which an officer who had multiple uninvestigated complaints filed against him subsequently orchestrated the murder of the complainant. Westbrook intimated that this policy may have been an over-correction at the time and has had the unintended consequences of diverting valuable PIB resources from more serious investigations.

Cowan said that the mediation program itself, like all programs, will have a finite administrative capacity and that, for this additional reason, it would be important to establish eligibility guidelines for inclusion in the mediation program.

Westbrook said she desired citizen participation in the formation of the mediation program, specifically the intake process and creation of inclusion and exclusion criteria.

Price asked the group what step they would like to take next, voting on the goals language of the mediation program or delineating possible inclusion and exclusion criteria. Price noted that the meeting was then a little more than an hour behind schedule according to the official agenda. The group opted to look at the goals language of the mediation program.

Logan read two definitions of mediation programs and their goals. The group discussed the positives and negatives of the two definitions and what kinds of principles they would like included in this group's mediation goals language. Logan took notes on the white board and the key principles or points agreed to are listed below.

- Mutual Understanding
- Mutual Beneficial Resolution

- Mutual Accountability
- Exclusion of Lawyers or Other Third Parties
- Avoidance of Mediation Outcome as Determinative
- Language Outlining Role of Mediator or Facilitator
- Include Standards & Evaluation Criteria
- Promote Empathy
- Include Post-Mediation Standards of Action & Follow-Up

The meeting concluded with a discussion of next steps and tentatively setting the next meeting for August 20.