A Tool for Improving Mediations: Informed Pairings and Predictive Outcomes

Shaphan Roberts[*]

How do personalities and mediation styles impact mediation outcomes and is there a way to increase the probability of success?

This paper examines the Community Police Unification Program ("CPU"), a collaboration between the Los Angeles Police Department ("LAPD") and the Los Angeles City Attorney's office that offers a tool for effectively pairing mediators to cases. First, this paper will begin by briefly exploring the need for a mediation program bridging communication between LAPD and the community it serves; then, we will explore the uniqueness of CPU cases and the need for correctly pairing mediators; finally, we will discuss the strengths, weaknesses and areas for improvement when developing a pairing tool for such a program.

As I was growing up, my father would tell me stories about his upbringing in Watts, CA. We talked about all types of things, but he took a more serious tone when he spoke about law enforcement and their role in the community at that time. He shared many of his personal encounters, and he would ultimately share his memories of the riots. I was familiar with the critical and jaded lens through which he viewed law enforcement, and through having had my own experiences confirming this perspective. Then, in the 1990's, I experienced the Rodney King riots. Like so many in the inner city of Los Angeles, my views regarding law enforcement were disappointingly vindicated. My father shared flashbacks about his days in Watts, ultimately reinforcing both our views on police in Los Angeles. Despite several harsh interactions, I was fortunate enough to have a few positive encounters with law enforcement that helped counterbalance my previous experiences. Some of these included being pulled over and offered a warning and not a ticket, which was a sincere surprise when it happened. On another occasion, an officer pulled my friends and I over while I was a passenger. The experience was jarring because the car I was in was involved in a robbery, I was not aware. In my ignorance, the police response felt exaggerated and overburdened and I thoroughly vocalized my displeasure. Despite my tirade, one of the officers pulled me aside,

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*. Director, Los Angeles City Attorney's Dispute Resolution Program

politely told me what was happening, and suggested I find new friends to hang out with.

When I was asked to take part in the creation of a pilot program that would facilitate conversation between LAPD and the community, I was skeptical at first, but then I thought about my trajectory and how a simple conversation could lead to a vastly different outcome. This has become our goal.

The City Attorney's Dispute Resolution Program ("DRP") has a long-established history, beginning in 1989, of conducting mediations of all types; Rent Stabilization Ordinance (RSO), [1] Community, and most recently, their Community Police Unification Program (CPU). The CPU Program started as a pilot in 2014 and worked to foster positive relationships between the LAPD and the communities it serves. The goal is to use mediation to facilitate difficult conversations between LAPD and the community which can sometimes go awry at the initial point of contact.

During an encounter with a community member, an officer is in a position of authority and power, while the citizen is clearly not. Personalities, emotional intelligence, perceptions, and biases can convolute this experience. Prior to CPU, the only option available to community members was to register a complaint. The compliant would then be routed to Internal Affairs, and an investigation would ensue. The investigation involves a designated LAPD officer who contacts all parties involved and any witnesses available to collect the facts. This lengthy process is adversarial for the officers involved, who typically have union reps with them. This disempowered community members who would more often than not receive a letter stating their claim was "unfounded". Perception is reality, and community members that truly felt aggrieved, now felt reoffended, distrustful of the system and gained no satisfaction. Furthermore, the officers involved gained no opportunity to grow from these experiences. The CPU program provides an opportunity for community members to resolve complaints of discourtesy and biased-

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1.   Rent Stabilization Ordinance and includes any rental property built prior to 1978 in Los Angeles. The RSO helps to keep rents affordable by controlling how much they can increase annually. Community mediations typically involve neighbor to neighbor, but can include any dispute from an Los Angeles County resident with the exception of child custody cases. *See* L.A. MUN. CODE § 151.01.

policing through face-to-face conversations, facilitated by impartial volunteer mediators from the DRP.

As part of the program, select biased policing and discourtesy complaints go through mediation instead of the traditional investigation procedure. The LAPD Internal Affairs Division identifies complaints that are suitable for mediation. Complaints are not considered eligible if they involve additional allegations of serious or criminal misconduct, an arrest, or allegations of an ethnic remark. For eligible complaints, the LAPD Program Coordinator will reach out to the accused officer(s) and the complainant(s) to offer mediation as a possible solution. Since mediation is voluntary, either party can opt out of the mediation and choose to go through a standard investigation instead. Details of the complaint and areas of concern are laid out as part of a "Responsivity Tool" and are used to guide the mediation, which is conducted by community volunteers. Volunteer mediators receive forty hours of training in mediation and facilitation skills as well as shadowing senior mediators during CPU mediations. After the mediation is complete, participants complete a survey to evaluate the Program's effectiveness. Officers who participate in the mediation process can have the complaint re-categorized within their personnel files. For community members, a constructive conversation with the officer with whom they had a negative encounter can in many instances address their concern. Mutual understanding is the program's objective and the CPU creates a space for this to occur.

While a noble cause, this is no small feat. These mediations are quite different than traditional mediations. Typical mediations involve participants that have some vested interest in repairing the relationship. Often there exists a tacit investment and ongoing interest between the parties that operates as an unseen undercurrent to the relationship. This is noticeably absent in CPU mediations, and at times this makes these conversations tenuous and more difficult to navigate.

The first year of the program produced many lessons and best practices that continue to inform the program today. One such lesson has been the importance of pairing mediators according to the personalities in the room. Success of CPU mediations largely depends on the mediator's ability to adapt to the personalities.

This lesson was hard won. Although most of our mediations have been successful, there is, as they say, always room for improvement. The

program has had some mis-pairings that have resulted in less than desirable outcomes. In response, the LAPD coordinator and I began to discuss the personalities of the parties in more depth. Based on conversations and descriptions of personalities, I would select mediators that would balance the dynamics in the room. The assumptions were based on the idea that mediators that had more of an evaluative (strong and direct) mediation style would have greater success with type "A" personalities types. Conversely, mediators that employed a more facilitative approach would have greater success with more reserved personality types. This more thoughtful approach seemed to improve results. But there was no way to measure these pairings and therefore, no way to measure if the correlation between participants resulted in greater success.

The program was able to secure a COPS grant in 2014.[2] Part of the grant deliverables was to develop a tool that captures the knowledge-based process that was happening intuitively in the pairing of mediators in CPU cases. CPU administrators came up with the name "Responsivity Tool" because it was designed to measure the effectiveness of the program's responsiveness related to mediator pairings in these mediations.

While conducting research for ways to measure and evaluate a mediator's style, we came across Dr. Riskin's assessment grid. In addition to developing the grid, Dr Riskin has published several books and articles on introducing mindfulness into law and mediation practices. He has been recognized nationally for his efforts to integrate dispute resolution into law school curricula. Dr. Riskin is currently a professor of law at The University of Florida Levin college of Law. Riskin's grid works along two continuums.

"… One continuum concerns the goals of the mediation. In other words, it measures the scope of the problem…The second continuum concerns

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2.   COPS, Community Oriented Policing Services, is a division of the U.S Department of Justice, its mission is to advance community policing, focusing on all levels of law enforcement across the country. *See* 34 U.S.C. § 10381 (2018).

the mediator's activities. It measures the strategies and techniques that the mediator employs…"[3]

When defining the goal of measuring the problem, Riskin's continuum ranges from "narrow" to "broad". When evaluating mediator styles, Riskin's continuum ranges from "evaluative" to "facilitative". Once measured and plotted the result falls into a grid containing four quadrants pertaining to mediator styles: Evaluative Narrow, Evaluative Broad, Facilitative Narrow and Facilitative Broad.

Riskin accurately states that with any mediation a particular issue can have a primary and secondary focus. This is also true with CPU mediations. Cases involving discourtesy typically require the mediator to start narrow and work toward the broad end. These cases have a particularly narrow focus on the event that occurred. A transactional or superficial mediation can begin and end without moving from the event, offering no more than an explanation of police policy supporting what occurred. Mediators must work toward opening the conversation to include the secondary broader benefits that can also arise which is a goal of the program.

Cases involving allegations of bias typically require mediators to start broad and move toward the narrow end. These cases often have a particularly broad focus typically including personal and community trauma that has culminated at the recent point of contact. A transactional mediation, in this case, can begin and end without moving away from the general trauma not actually discussing the specific event that occurred. Mediators must start broadly and work their way down to the specific incident and migrate back toward a broad community focus.

In both instances, the goal is for the participants to feel heard, and to understand and gain new perspectives from seeing through the other's lens, if even for a moment.

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3.   Leonard L. Riskin, *Understanding Mediators' Orientations, Strategies, and Techniques: A Grid for the Perplexed*, 1 HARV. NEGOT. L. REV. 7, 17 (1996).
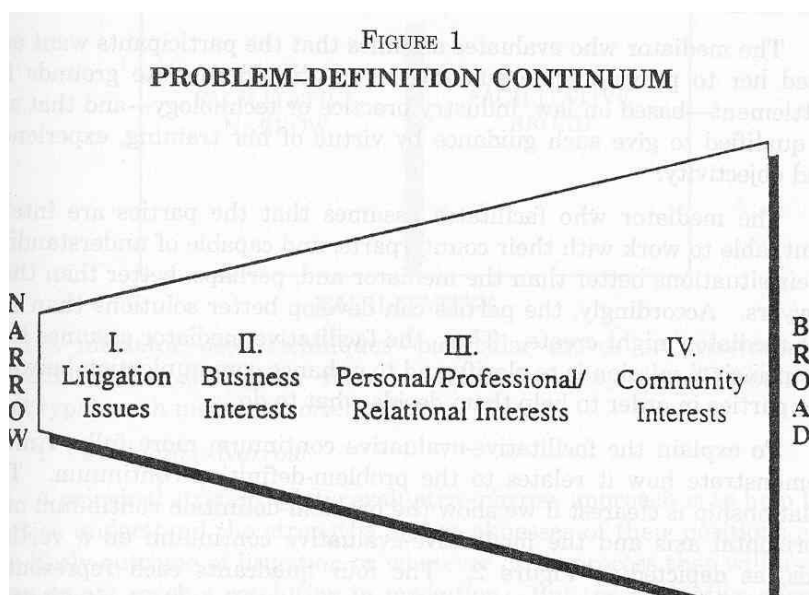
FIGURE 1
PROBLEM–DEFINITION CONTINUUM

Figure 1

To accomplish this outcome, having a mediator with the right skill-set is essential. We utilized the Mediator Scoring Index ("MCI") to rate our mediators. The MCI "…is designed to assist mediators in understanding the particular approach or style that they tend to use during the mediation process."[4] These evaluations are scored and catalogued for future reference.

Once we were able to uniformly identify our mediator's style and approach, we began to develop questions that would allow us to measure the difficulty of the mediation. Questions included the length of residency in the area, length of years on the job for officers, tone of the conversation, whether the party seemed willing to mediate and similar factors.

The mediation coordinator would gather answers to the questions according to the Responsivity Tool and rate the participant on a scale ranging from five to fifteen; a lower score indicating an individual being more amenable and likely to experience the benefits of mediation, while

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4.   Jeffrey Krivis & Barbara McAddo, *A Style Index for Mediators*, MEDIATE.COM (Aug. 2000), https://www.mediate.com/articles/krivis4.cfm?plain=t.

an individual with a higher score required more active involvement from the mediator to achieve such outcomes.

The working assumption is that if there is a mediator style that is a "best fit" when evaluating participants in conflict, and if appropriately paired, satisfaction among participants will improve. To test our tool and gather data we took participants with a higher score and paired them with mediators that fell into the strong and/or Average Facilitative Broad categories on Riskin's grid. Conversely, participants that had lower scores were paired with mediators that fell into the Facilitative Narrow and Broad categories, and participants in the midrange were paired with Facilitative or Evaluative Broad mediator styles. Currently, the program's pool of CPU mediators is shallow, which at times leads to pairing mediation styles that don't align with the parties scores which impacts the success level of the mediation. The program collects exit surveys with each mediation and will be able to track the level of effectiveness as we continue to collect more data.

The process is imperfect, and challenges have been noted that offer opportunity for improvement; I have listed a few below:

Pool of Mediators – CPU mediators offer their services on a volunteer basis and those with the skillset to be successful in these types of mediations are of limited supply. Due to this constraint, we have sometimes paired mediations based on availability and not according to recommended matches. However, the random pairings did allow for various styles to be paired with a variety of cases. Hopefully, a deeper analysis of the Responsivity Tool over time will help to clarify which pairings were most successful.

Assessment of the Participants – The questions used to assess the parties may not be in depth enough or even correlate to a challenging mediation. The questions were developed based on assuming factors such as the officer's length on the job, and the length of time living in the community for complainant, were directly correlated with the complexity of the mediation. This may not be the case, and there may be more relevant questions that provide better insight as to the complexity level.

MCI Style Assessment – Currently, the program administers the mediator assessment once at the time mediators are selected for the CPU. Styles can evolve and develop over time, and the best mediators evolve depending on the case. Therefore, pinning down which style is most

appropriate for which case type can be elusive. It is recommended that style assessments be conducted periodically which would help track mediator style developments.

Counter Balancing Biases - Providing equal exposure to both community and LAPD culture has been difficult. Empathy is a key attribute of any successful mediator and we seek to stimulate this empathy by exposing our mediators to various aspects of community and LAPD life. Because the LAPD is an institution, it has a structure in place that easily replicates the dangerous and complex decisions officers need to make daily. On the other hand, we don't have a similarly balanced structure representing the community's perspective. The mediators themselves come from the community, but they often come from communities other than the ones of CPU participants, and therefore they have very different life experiences. It's difficult to measure how exposure to LAPD policies and training simulations manifest in mediation. It's possible that in the absence of something comparable on the community side this could lead to bias toward law enforcement within the mediation setting. As a counterbalance, education as it pertains to the role law enforcement has played throughout inner cities across the country could help provide context for the current state of affairs. Highlighting this historical perspective, for otherwise uniformed but well-meaning mediators, could help balance empathy of the mediator for both parties.

Because the program is always learning and adapting to become more effective, it has produced many beneficial outcomes for participants. Our program keeps a record of CPU case studies, both those that went well and a couple where lessons were learned. Additionally, the program has commissioned a professor from the University of Southern California, to conduct a program evaluation in part to evaluate the effectiveness of the Responsivity Tool.

The media, both social and mainstream, does a great job reminding us of the need for better relations between law enforcement and the community. The key to bridging gaps and healing wounds begins with communication, and programs like CPU set the table for this dialogue to occur. However, without the right pairing of mediators counterbalancing the personalities in the room, these conversations can be less than productive. Conversely, when the pairings are right and the parties feel heard, validated, and understood the result is transformative. Non-violent

change rarely happens in one fell swoop, it is incremental and it's these types of mediations that create peaceful change one conversation at a time.