A New Tool in Police-Civilian Mediations: Conflict Coaching and Its Potential Benefits

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A NEW TOOL IN POLICE-CIVILIAN MEDIATIONS: CONFLICT COACHING AND ITS POTENTIAL BENEFITS

ABSTRACT

Communities across the country have implemented mediation programs as an alternative dispute resolution process for civilian complaints against police officers. These programs vary from state to state, but certain challenges exist in each, such as ensuring neutrality, encouraging participants to engage fully in the mediation, and navigating subconscious biases held by officers and civilians. In response to these issues, this article considers whether conflict coaching opportunities within these programs have the potential to improve their effectiveness in resolving disputes and better support mediation participants. Conflict coaching is an emerging conflict navigation tool and thus there is limited research on its effectiveness. To determine its potential impact on police-civilian mediations, a group of key stakeholders in the police-civilian mediation program in St. Louis, Missouri were interviewed to determine the potential impact of conflict coaching on the program. These representatives discussed the potential benefits and drawbacks of implementing conflict coaching opportunities for civilians and officers in their own community. Despite potential costs, interviewees overall agreed that a conflict coaching program aligns with community policing standards and meets civilian demand for empathetic conflict resolution.
INTRODUCTION

One evening in July 2010, the New York City police department received a call about two neighbors engaging in a verbal altercation in the shared hallway of their apartment building. Upon arrival, the responding officers found Ms. Smith, Ms. Doe, and Ms. Doe’s 4-year-old child standing in the hallway screaming at one another. One officer, attempting to de-escalate the situation, said in a harsh tone to Ms. Doe, “Get in your f***king apartment, or I am going to arrest you.” Ms. Doe was deeply offended by the officer’s conduct and, after the police left the scene, she filed a complaint with the department.

According to the U.S. Department of Justice, one in five U.S. residents over the age of sixteen interacted with a police officer in 2020. Two percent of civilians experienced a “nonfatal threat” or the use of force during the interaction, with Black civilians experiencing police misconduct twelve times more often than White civilians. Nearly half of the total number of civilians who experienced or were threatened with force felt that the force was unnecessary. The majority of police misconduct is not reported, but civilians who do report have options on how they do or do not seek redress. Depending on the conduct, civilians may choose to file a complaint with the police department, as Ms. Doe did in the case study above. A civilian filing a complaint against a police officer is uncommon, and a complaint like Ms. Doe’s

1. This anecdote is based on an online mediation case profile created by the Civilian Complaint Review Board of New York City. Domestic Dispute and Alleged Discourtesy, Civilian Complaint Rev. Bd. N.Y.C., https://www.nyc.gov/site/ccrb/mediation/domestic-dispute.page [https://perma.cc/4D3X-LC84].


4. Tapp & Davis, supra note 2, at 12.


6. Reporting Crime, USA.GOV, https://www.usa.gov/report-crime [https://perma.cc/5Y47-97PN]. Police accountability scholar Samuel Walker notes that only 36% of individuals with a complaint against a police officer took any steps to further address the encounter, and some individuals preferred to contact a friend after the incident instead of or in addition to contacting authorities. Walker, supra note 5, at 123.


8. There are a variety of reasons why someone may not file a complaint against a police officer, including believing that the complaint is futile, fearing retaliation, concerns about losing
is unlikely to lead to the officer’s dismissal or criminal charges. Still, a civilian like Ms. Doe may want recourse. After a negative police encounter, some individuals report wanting an apology, an opportunity to ask questions about the incident, or a face-to-face meeting with the officer to express their feelings. The majority of civilian complaints filed in the U.S. request “moderate” disciplinary action and do not advocate for the police department to punish the officer.

Upon filing her complaint with the police department, Ms. Doe was offered an opportunity to mediate with the officer. Ms. Doe wasn’t quite sure what the mediation would entail, but she wanted an opportunity to see the officer again and explain how scared his threat of arrest made her and her four-year-old son. The officer agreed to the mediation, and the two scheduled a time to meet with a mediator to discuss what happened.

Although underutilized, police accountability scholars and government agencies support mediation as a highly effective method of resolving civilian complaints against police officers. Mediation is a process in which two parties come together to discuss a conflict with the help of a neutral, third party mediator. During a mediation, the goal is that parties engage in good faith with the process and explain their own perspectives of the conflict by sharing emotions and discerning possible next steps. Police-civilian mediations, such as the one between Ms. Doe and the officer, are available in at least sixteen jurisdictions in the United States today, including large metropolitan areas.


9. See WALKER, supra note 5, at 124; Walker et al., supra note 8, at 9.

10. In one study, researchers found that the complainant’s race, ethnicity, and age strongly influenced whether or not they filed a complaint with a police department. Samuel Walker, Complaints Against the Police: A Focus Group Study of Citizen Perceptions, Goals, and Expectations, 22 CRIM. JUST. REV. 207, 216-17 (1997).

11. Id. at 222.


14. Walker et al., supra note 8, at 1.

15. Id. at 87.

such as Seattle, Washington D.C., and Denver. Practitioners have found that police-civilian mediations offer opportunities for reconciliation that traditional remedies cannot offer, including face-to-face contact and sharing of perspectives between the officer and civilian. Proponents also claim that mediating disputes with police officers can lead to better police-community relations overall and foster trust between departments and civilians.

On the day of the mediation, Ms. Doe, the officer, and the third-party mediator met in a private room at the courthouse. During the mediation, Ms. Doe stated that she was upset that the officer yelled at her and used profanity in front of her child. She also stated that, by forcing her back into her apartment, Ms. Doe felt that the officer was taking the other neighbor’s, Ms. Smith’s, side. The officer then shared his perspective, explaining that he told Ms. Doe to go back into her apartment because he had deemed her to be more rational than Ms. Smith and thus more likely to take his directions. He was concerned for Ms. Doe and her child’s safety, he stated. By the end of the mediation, the officer expressed understanding that his actions and language made Ms. Doe upset, and Ms. Doe stated that she understood why the officer acted as he did.

Experts in police-civilian mediation recognize a variety of possible positive outcomes to a mediation. These include parties expressing greater understanding of the incident and working together to determine what factors led to the conflict. Although Ms. Doe and the officer’s mediation met these goals, is there some way it could have been improved? Consider whether Ms. Doe was as fully informed as she could have been before the mediation, or whether the officer freely chose to mediate. It is possible that Ms. Doe had concerns about retaliation or further mistreatment from the officer or department, or that she worried the officer was not participating in good faith. One may wonder what...

18. Walker et al., supra note 8, at 6; Greenwald & Beck, supra note 16.
19. Greenwald & Beck, supra note 16; Walker et al., supra note 8, at 12.
21. See Walker et al., supra note 8, at 24-25. Both civilians and officers are at risk for not participating in good faith.
22. See Walker et al., supra note 8, at 24. Some civilians worry that police incentives for mediating may lead to a lack of good faith. In officer discipline diversion programs, “no formal
race Ms. Doe and the officer were and if either party felt racial discrimination during the conflict. 23 What about other factors that might inhibit good faith mediation, such as agism, sexism, and cultural differences?24 And finally, would a pre-mediation conversation about conflict styles have allowed one or both of the parties to participate more effectively in the mediation?

A typical mediation format does not include an opportunity for pre-mediation preparation of parties facilitated by a qualified mediator.25 In fact, such pre-mediation discussions are typically discouraged since a core tenet of the mediator’s role is to impartially “facilitate . . . communication and negotiation” between the parties themselves, not between the mediator and the parties.26 The majority of both civil and family mediators receive new information about the conflict during the mediation itself, which could negatively impact both the mediator and the participant’s abilities to participate in the mediation.27 Practitioners report that two of the biggest obstacles to a successful mediation are a lack of understanding of the mediation process and a lack of “participation incentives” for both parties.28 If not discussed prior to a mediation commencing, there are limited opportunities to correct these issues during the mediation itself.

I. WHAT IS CONFLICT COACHING?

In 1993, a university in Australia created a program called “Problem Solving for One,” or PS1, which gave individuals within the university an opportunity to meet with a mediator and discuss their conflict if the other party to the conflict declined mediation.29 The PS1 program approached conflicts as “largely perceptual,” and aimed to help students create personalized plans to manage conflict themselves instead of resolving the conflict through mediation.30 Since department discipline can be imposed if the officer successfully mediates the complaint, and no record of the complaint appears in [the] disciplinary file.” Walker et al., supra note 8, at 24.

24. For a discussion into these factors, see Walker et al., supra note 8, at 20-23.
25. Roselle L. Wissler & Art Hinshaw, What Happens Before the First Mediation Session? An Empirical Study of Pre-Session Communications, 23 CARDOZO L. REV. 143, 147-48 (2022). If a party is represented by an attorney, the party may receive some pre-mediation preparation from their counsel; however, this article focuses on mediations that do not involve attorneys. Richard Barron, Ten Commandments for Counsel Preparing for Mediation, MEDIATE (Nov. 23, 2004), https://mediate.com/ten-commandments-for-counsel-preparing-for-mediation/ [https://perma.cc/5D53-YLZZ].
27. Wissler & Hinshaw, supra note 25, at 184-85.
30. Id. at 311-12.
the PS1 program was first developed, the concept of meeting individually with a mediator to address a conflict has developed into an alternative dispute resolution concept called conflict coaching.\(^\text{31}\) Conflict coaching is defined as a process by which an individual and a conflict coach or mediator (referred to as a “coach”) meet and develop “the client’s conflict-related understanding, interaction strategies, and interaction skills.”\(^\text{32}\) Unlike other individualized mediation methods, such as caucusing, conflict coaching focuses on skills acquisition instead of mediation strategies and tactics.\(^\text{33}\) There are several existing conflict coaching models; however, they each include similar stages, such as an opportunity for storytelling, communication strategy development, and a discussion about conflict styles with participants.\(^\text{34}\) While effective on its own, conflict coaching scholars agree that coaching may be used in conjunction with other alternative dispute resolution methods, including mediation.\(^\text{35}\)

Practitioners can use conflict coaching to introduce the concept of mediation, prepare a party for mediation, clarify party interests and goals, and provide a safe environment for individuals to express concerns before the mediation takes place.\(^\text{36}\) Providing parties with an opportunity to vent and express frustration in advance of a mediation often makes the mediation itself “much more productive.”\(^\text{37}\)

Currently, there is no available data on the use of conflict coaching practices in conjunction with police-civilian mediations. Most police-civilian mediations are handled by non-profits or governmental agencies who operate with limited resources and may have difficulty funding new, untested programs such as pre-mediation conflict coaching.\(^\text{38}\) Research is needed to determine if conflict coaching has a strong enough positive impact on police-civilian mediations to justify the additional time and personnel costs of implementing such a program.


\(^\text{32}\) Id. at 4-5; Tricia S. Jones, Mediation and Conflict Coaching in Organizational Dispute Systems, in Advancing Workplace Mediation Through Integration of Theory and Practice 89-90 (Katalien Bollen et al. eds., 2016).

\(^\text{33}\) Jones, supra note 32, at 91.

\(^\text{34}\) Jones & Brinkert, supra note 31, at 26-28, 34.

\(^\text{35}\) Id. at 10.

\(^\text{36}\) Id. at 10, 239-40.

\(^\text{37}\) Zoom Interview with Reshad Staitieh, Programs Director, Conflict Resol. Ctr. St. Louis (CRCSTL), at 4-5 (Feb. 6, 2023) (on file with author).

\(^\text{38}\) Notably, the Seattle Office of Police Accountability offers pre-mediation caucusing for mediation participants. Seattle Office of Police Accountability, Mediation Program: Mediation Process (July 2022), https://www.seattle.gov/opa/programs/mediation-program [https://perma.cc/56GQ-GH8S]. Caucusing is not the same as conflict coaching, however both techniques involve an individual meeting between the mediator and participant. Gregorio Billikopf, Pre-Caucusing and Pre-Mediation, Univ. Cal. (June 26, 2009), https://nature.berkeley.edu/ucce50/ag-labor/7/article/article06.htm [https://perma.cc/WHH7-4DW9].
II. THESIS

This article considers whether police-civilian mediation programs should implement conflict coaching opportunities for participants and how this additional service might positively or negatively impact their services. Because conflict coaching is a relatively new field, there is limited research available on its impact on individuals, groups, and mediation outcomes. In order to provide an analysis, I interviewed a small group of key participants in the police-civilian mediation program in St. Louis, Missouri. These individuals provided a first-hand perspective on barriers within the police-civilian mediation program and how conflict coaching could positively or negatively impact their work. It is my hope that mediation practitioners use this analysis to support existing programs and improve both civilian and officer experiences with alternative complaint resolution processes.

A. St. Louis’ Police-Civilian Mediation Program Today

To understand the interviewees’ perspectives, it is important to know the system that they work within. St. Louis’ first police-civilian mediation program began in 2011 and was run by local non-profit Community Mediation Services of St. Louis (MediationSTL). At that time, the organization was operated out of a Mennonite Peace Center and had provided community mediation services to St. Louis residents since 2003. Although supported by St. Louis City officials, the program was largely underfunded and not a permanent part of the police complaint process. In the first three years of the program, only fifteen civilian complaints against officers were resolved through mediation. According to MediationSTL’s website, the nonprofit formed a “collaborative relationship” with the St. Louis Metropolitan Police Department (“SLMPD”) in 2014 and from then on handled all of the city’s police-civilian mediation requests. John Doggette, the former director of MediationSTL, said in 2014 that “[t]he potential [of the police-civilian mediation program] is phenomenal. . . . People need an opportunity to have a civil discourse instead of getting upset.”

39. JONES & BRINKERT, supra note 31, at xxi.
42. Id.; Currier, supra note 40.
43. Currier, supra note 40.
45. Currier, supra note 40.
The program experienced a renewed focus after the police shooting of Michael Brown in Ferguson, Missouri. During the ensuing unrest and local reckoning with police brutality, mediators and volunteers from MediationSTL facilitated dialogues with Ferguson community members and police officers. The mediation group’s presence did not go unnoticed; two years after the shooting, the Department of Justice tasked the nonprofit with developing a neighborhood mediation program specifically for Ferguson, Missouri, which included police mediation services.

In the wake of the shooting of Michael Brown and national attention on Missouri policing practices, the governor of Missouri created an independent group to provide an “unflinching” report on racial inequality in Ferguson, Missouri, as well as to offer specific policy recommendations to the community. The group of sixteen volunteer leaders, together called the Ferguson Commission, began meeting regularly in 2015 and developed policy changes in collaboration with other community members. A little over a year after their appointment, the Commission released the Ferguson Commission Report, which covered a wide range of topics from youth engagement and school discipline practices to sentencing guidelines and discontinuing warrants for nonviolent offenses. One of the many policy changes supported by the Commission was the creation of a civilian oversight board, which the group described as a body “external to the police department’s internal affairs” that would review allegations of officer misconduct and make disciplinary recommendations. The Commission also espoused that developing and growing police-civilian partnerships was essential to the Commission’s goals. The City of St. Louis acted on this recommendation for civilian oversight in May 2015 when then-mayor Francis Slay signed into law the creation of the Civilian Oversight Board (“COB”) of St. Louis for the Metropolitan Police

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48. CMTY. MEDIATION SERVS. ST. LOUIS, supra note 41.
50. Id.
51. Id., supra note 46, at 31, 42, 93.
52. Id. at 74.
53. Id.
Department.\textsuperscript{54} Today, the COB is responsible for reviewing and investigating all civilian complaints against SLMPD officers.\textsuperscript{55}

Although the Ferguson Commission report did not discuss police mediation specifically, it did support the creation of “[c]ommunity justice centers,” which would serve to “resolve community disputes” through community mediation and restitution.\textsuperscript{56} While MediationSTL already informally filled this role, local lawmakers voted in 2018 to create a permanent Office of Community Mediation for the city.\textsuperscript{57} The bill forming the program listed cost effectiveness, curbing violence, and growing national support for community mediation as reasons for creating the department.\textsuperscript{58} Members of MediationSTL came together to form the new mediation nonprofit Conflict Resolution Center St. Louis (“CRCSTL”), which received the city’s contract and brought the community mediation center to life.\textsuperscript{59} Today, CRCSTL specializes in mediating “non-litigious disputes between City employees, neighbors, citizens, and police.”\textsuperscript{60} CRCSTL handles all police-civilian mediation requests in the City of St. Louis and focuses on “rebuilding trust” and encouraging vulnerability on both sides.\textsuperscript{61}

In order to file a complaint with the COB and request a mediation with an SLMPD officer, a civilian must complete the Joint Civilian Complaint Form: SLMPD Internal Affairs Division & Civilian Oversight Board.\textsuperscript{62} On the form, civilians have the option to select a box indicating their interest in mediation.\textsuperscript{63}

\begin{itemize}
\item \textsuperscript{54} Effective 6.5.2015: Bill Establishing Civilian Oversight Board, St. Louis Mo. Gov. (June 5, 2015), https://www.stlouis-mo.gov/government/departments/mayor/news/effective-civilian-oversight-board.cfm [https://perma.cc/ZX8N-NUNB].
\item \textsuperscript{55} About the Civilian Oversight Board: Mission, Goals, Strategy, and Responsibilities, St. Louis Mo. Gov., https://www.stlouis-mo.gov/government/departments/public-safety/civilian-oversight/civilian-oversight-board/about.cfm [https://perma.cc/4HZ5-KZJV].
\item \textsuperscript{56} Ferguson Comm’n, supra note 46, at 32.
\item \textsuperscript{58} St. Louis Mo. Code § 70681 (2018).
\item \textsuperscript{59} About CRC-St. Louis, Conflict Resol. Ctr. St. Louis, https://www.crcstl.org/aboutcrc [https://perma.cc/6FNV-LFRE]. John Doggette founded both MediationSTL and CRCSTL. CMTY. MEDITATION SERVS. St. Louis, supra note 41.
\item \textsuperscript{60} Id.
\item \textsuperscript{61} Rebuilding Trust, Conflict Resol. Ctr. St. Louis, https://www.crcstl.org/police [https://perma.cc/YYM5-QVY8].
\item \textsuperscript{62} Id. The COB officer complaint form can be found on the COB homepage. SLMPD Internal Affairs Division and Civilian Oversight Board, Joint Civilian Complaint Form, St. Louis Mo. Gov., https://www.stlouis-mo.gov/government/departments/public-safety/civilian-oversight/civilian-oversight-board/documents/joint-civilian-complaint-form.cfm [https://perma.cc/6NQ4-8ZP5].
\item \textsuperscript{63} Joint Civilian Complaint Form, supra note 62.
\end{itemize}
Once filed, the COB reviews the complaint and forwards it to the SLMPD’s Internal Affairs Division (“IAD”). Typically, the IAD then conducts a formal investigation into the complaint and shares the outcome with the COB. If the civilian requested a mediation, or if the COB or IAD think the case would benefit from mediation, a CRCSTL representative reaches out to both civilian and officer to ask if they are willing to mediate.

The latest annual report from the COB reveals that the police-civilian mediation program is underutilized. In 2019, before the beginning of the COVID-19 pandemic, the COB received only thirty-eight complaints from civilians, twenty-five of which were investigated. None of those complaints led to a mediation between the officer and complainant. The total number of allegations investigated between 2016 and 2019 was only 168, and the report contained no information on how many complainants requested mediation. The most common civilian complaint topic was officer discourtesy. The second highest was excessive use of force, and the third was abuse of authority. The typical complainant was a Black man between the ages of 25 and 49 who qualified as low income or was unemployed. As of November 2022, while the commission had received over 100 civilian complaints, CRCSTL has not mediated any police-civilian complaints since 2020.

B. Interviews

For this analysis, four stakeholders in the St. Louis police-civilian mediation program were interviewed about their role, their thoughts on conflict coaching.

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64. A screenshot of the language on the Joint Civilian Complaint Form about mediation. Id.
66. Id.
69. Jones et al., *supra* note 67, at 14. Due to the nature of police oversight in St. Louis in 2019, a potentially large number of civilian complaints are missing from this analysis. Id. at 19.
70. Id. at 33-34.
71. Id. at 17.
72. Id.
73. Id.
74. Id. at 3.
75. E-mail from Reshad Staitieh, Programs Director, CRCSTL, to Beatrice Connaghan (Feb. 22, 2023, at 10:36 CST) (on file with author).
generally, and how they personally think conflict coaching could be utilized in St. Louis’ police mediation services.

City officials selected Commissioner Matthew Brummund to lead the COB in June 2022. He is a former FBI agent known for his efforts to improve police-community relations in the St. Louis area. When asked if he supports police-civilian mediations, Commissioner Brummund said “I think [mediations are] super important. . . . That’s a big part of why I took this job. I want to prevent interactions that are destructive or harmful to police-community relations.” In July 2022, City officials selected Commissioner Brummund as the first director of St. Louis City’s Division of Civilian Oversight, which will eventually replace the existing COB and give the agency more power to investigate complaints.

CRCSTL programs director Reshad Staitieh facilitates the organization’s community mediation and eviction prevention programs. He is an attorney who specializes in alternative dispute resolution, civil rights litigation, and consulting. Staitieh’s dedication to CRCSTL’s mission began in 2018 when he joined the team as a volunteer community mediator. Staitieh supports the police civilian mediation program in St. Louis and explains that “police departments around the country are considering how they can use this type of mediation in order . . . [to] encourage better community understanding.”

One of the two CRCSTL mediators interviewed for this article requested anonymity. The anonymous CRCSTL mediator has been involved with

77. ST. LOUIS MO. GOV., supra note 76.
78. Interview with Matthew Brummund, Commission, Civilian Oversight Bd. of St. Louis, in St. Louis, Mo., at 6 (Nov. 16, 2022) (on file with author).
79. Schlinkmann, supra note 76.
81. Id.
82. Staitieh, supra note 37, at 1.
83. Id. at 6.
84. Interview with Anonymous Mediator, CRCSTL, in St. Louis, Mo., at 1 (Nov. 9, 2022) (on file with author).
CRCSTL since its inception and continues to do mediations today. They have also held several leadership positions within CRCSTL. The mediator has done several police-civilian mediations and many community mediations. They stated that the police-civilian conflicts most suited to mediations are ones where the civilian feels that the officer “treated [them] excessively rude” or where the “civilian felt [the officer’s conduct] was just over the top.”

Madeline Franklin is a CRCSTL mediator who received her community mediation training after the death of Michael Brown in Ferguson, Missouri. She received her police-civilian mediation training through SLMPD and believes that police mediation is helpful to communities because it gives “both parties an opportunity to communicate to one another their perspective of [the incident].”

These four individuals discussed a wide variety of potential outcomes of implementing a conflict coaching program in the St. Louis police complaint mediation program. This analysis focuses on the major themes presented in the interviews and divides them into positive or negative potential outcomes.

III. POTENTIAL POSITIVE IMPACTS OF CONFLICT COACHING

A. Conflict Coaching can foster officer buy-in by educating officers on the mediation process before the mediation begins.

Practitioners report that police opposition to mediation is the “single most important obstacle” to a successful mediation. There are a variety of reasons an officer may hesitate to agree to a mediation with a civilian. Some officers may want to avoid admitting guilt or putting themselves on “equal footing” with the complainants. Others might be reluctant to see themselves as a “client” of a mediation, or their police union may oppose the mediation system itself. Still others, as Commissioner Brummund stated, might be afraid of getting “yelled at

85. Id.
86. Id. at 2.
87. Id.
88. Id. at 9-10.
89. Zoom Interview with Madeline Franklin, Mediator, CRCSTL, at 1 (Feb. 6, 2023) (on file with author).
90. Id. at 1-2.
91. Walker & Archbold, supra note 12, at 236.
92. Id. at 237.
93. Id. According to one study on the demographics of complaint-prone officers, white, male, young officers with less policing experience are the most likely to receive a civilian complaint. Steven G. Brandl, Meghan S. Stroshine & James Frank, Who are the Complaint-prone Officers?: An Examination of the Relationship Between Police Officers’ Attributes, Arrest Activity, Assignment, and Citizens’ Complaints About Excessive Force, 29 SOC. & CULTURAL SCIS. FAC. RSCH. & PUBL’NS 521, 527 (2001).
94. Walker & Archbold, supra note 12, at 237.
for an hour” by a civilian.95 When thinking about her past mediations, Franklin stated that she “did experience some initial hesitance on the part of the officers to participate. It was sort of like, I really don’t want to be here, but my hands are kind of forced that I had to come.”96 Staitieh noted that “psychologically, [officers] might not feel like they want to open up and talk in detail about this, especially if they don’t understand how confidentiality within the mediation works.”97 Franklin explained that, after receiving an explanation of the goals of the mediation, officers frequently participated more.98 In her experience, “once we as mediators assured them that we were neutral, that we were there not to render a judgment, but basically to just kind of direct the conversation and the dialogue between the parties and establish the relationship with them, I think that that kind of smooth[ed] over any hesitance or anxiety that they may have had with regard to the process.”99 The interviewees who spoke on this subject agreed that the earlier mediation practitioners can “establish the relationship with” officers and “eliminate that potential mental roadblock,” the better.100

Conflict coaching scholar Tricia Jones identifies six ways that disputants can utilize conflict coaching before, during, or after a mediation.101 Encouraging officers to agree to participate in a mediation would likely fall into the “investigation” category, which entails the conflict coach explaining how the mediation process works.102 During the conflict coaching session, officers can inquire about participant confidentiality,103 mediator neutrality,104 and what may happen if they decline mediation.105 An officer’s lack of understanding of mediation is a major barrier to the officer agreeing to mediate.106 By providing a confidential conversation with a trained coach before the officer agrees to

95. Brummund, supra note 78, at 14.
96. Franklin, supra note 89, at 3.
97. Staitieh, supra note 37, at 4.
98. Franklin, supra note 89, at 3.
99. Id.
100. Id. at 3; Staitieh, supra note 37, at 4.
102. Id.
103. “[T]he officer must be assured that any apology or acknowledgment of wrongdoing will not be used against him or her, either by the police department or by a private attorney in some other legal proceeding.” Walker et al., supra note 8, at 30.
104. Officers may worry that a mediator has hostile feelings about law enforcement and worry that the mediator will side with the civilian. Walker et al., supra note 8, at 29. Franklin elaborated on this concept, stating that “I think the most important topic to cover [with an officer] is that the process would be a fair and open one. That there was no predetermination on the part, certainly, of the mediators as far as the situation was concerned. That there had been no—there was no bias present. Because I think that often, or sometimes, police officers may feel that there are biases that might exist as far as their position is concerned.” Franklin, supra note 89, at 3.
105. Walker et al., supra note 8, at 17.
mediate, police-civilian mediation programs may increase the number of officers agreeing to meet with a complainant in a mediation context.

B. Conflict coaching may increase officer good faith participation in the mediation by encouraging them to explore their motivations before the mediation begins.

Once the officer agrees to mediation, the next step is to encourage them to participate fully in the process, which is referred to as participating in “good faith.” A party mediates in good faith when they “have the sincere intention of trying to find a resolution in the dispute.” For officers, the good faith requirement is complex for several reasons. First, many police departments offer officers some kind of benefit for mediating with a civilian complainant, which might improperly influence the officer’s motivations for mediating. The anonymous CRCSTL mediator experienced this conflict in several of their past police civilian mediations. They explained, “one of the caveats to mediation was . . . [that] the complaint against [the officer] would not go in their file if they agreed to mediation.” This, in turn, made the mediations “a little tricky” to navigate since some officers only wanted to participate in order to avoid the official recording of the complaint and not to reach a resolution with the civilian. Compared to civilians, mediation is less “voluntary” for officers, since the officer’s incentive to avoid a formal investigation and record of the complaint is so high. However, the anonymous CRCSTL mediator noted that in the mediations she handled the officers always “loosen[ed] up” after the session began. When asked why this was, the mediator explained that, in her experience, the civilians were very open to the mediation process and focused on communicating how the interaction with the officer made them feel. Upon seeing how the civilian engaged in the conversation, “you could see [the officer] making that change and buy into what was going on.”

108. Id. See also Walker et al., supra note 8, at 28 (discussing how sincere participation by an officer might also be measured by civilian participant’s “level of satisfaction that the officer has listened and responded appropriately”).
109. Walker et al., supra note 8, at 28.
110. Anonymous Mediator, supra note 84, at 3.
111. Id.
112. Id. at 3; see also Lonnie M. Schaible et al., Denver’s Citizen/Police Complaint Mediation Program: Officer and Complainant Satisfaction, 24 CRIM. JUST. POL’Y REV. 623, 630 (2013) (discussing how some officers may mediate to avoid “formal records” instead of mediating to seek “authentic reconciliation with the complainant”).
113. Walker et al., supra note 8, at 17.
115. Id.
116. Id.
Staitieh noted that, when an officer and complainant show up to mediate, “we don’t know what that particular person is feeling at that moment. We don’t necessarily know the nature of the complaint that they’re bringing, that they’re being investigated for.”

Exploring officer motivations would fall into the “preparation” category for ways disputants can engage with conflict coaching prior to an alternative dispute resolution process. Any pre-mediation effort to help a party clarify interests and motivations is “rarely wasteful” and a pre-mediation discussion on motivations may help an officer express their true desires better than they would during a mediation in front of the civilian. According to the comprehensive conflict coaching model, the role of the conflict coach is not to tell the officer that his or her motivation or goals for the mediation are incorrect, but instead to challenge the client’s personal narrative. A conflict coach might navigate an officer’s motivation to mediate by asking questions like,

- When you consider this dispute, what is your side of the story? How might the other person describe his or her side of the story?
- What might be a third side of the story? For instance, if an objective third person observed and heard the two of you during your conflict, what might be his or her perception of what is going on between you that is different from these versions?
- What do you not know or understand about the other person’s perspective on the situation?

While these questions would not make sense in most mediation contexts where both parties are seated across the table from one another, they are important reflections for mediation participants to consider prior to a conflict. Conflict coaches can explore officer motivations through these questions and encourage the officer to critically consider how to engage in the mediation.

C. Conflict coaching will support a civilian complainant by giving them an opportunity to learn more about mediation and discuss their concerns.

Although mediation is available to all St. Louis residents, many may have concerns about mediating a dispute with an officer. Civilians may not know what mediation is or not have a clear incentive to mediate. The filing of the...
complaint itself may have been difficult or traumatic, or the complainant may fear retaliation. Practitioners state that the greatest barrier to civilian participation in mediation is a lack of understanding of what mediation is or a lack of awareness that mediation is an option.

When asked about the types of complaints received by the COB, Commissioner Brummund commented that “a lot of the complaints [we receive] are ‘I wasn’t heard,’ ‘he didn’t listen to me,’ ‘he didn’t give me a chance.’” Commissioner Brummund discussed how mediations are a great way to handle these complaints since they address the “core foundations of police legitimacy.” The anonymous CRCSTL mediator agreed, saying that civilians in mediations often said to the officers, “you didn’t have to talk that way, you didn’t have to treat me that way, I was trying to explain to you, you know, what was going on.” From a programmatic standpoint, Staitieh notes that “there is a reluctance perhaps for people [who] have concerns over power dynamics, subconscious or consciously.” The civilian in the mediation has already experienced a negative interaction with the officer, so “there’s a lot of trust building that has to happen in order for that citizen to feel comfortable sitting across the table.”

If a civilian does not know that mediation is an option or what it would entail, they are unlikely to advocate for it as a solution (or check the mediation box, as is required in St. Louis). Once the civilian makes it to mediation, however, they typically have a positive experience. The anonymous CRCSTL mediator shared that, in their experience, when a civilian made it all the way to the mediation table, they were very engaged in the process and focused on sharing with the officer how the officer made them feel during the altercation alleged in the complaint.

Conflict coaching would give the civilian an opportunity to ask honest questions about the mediation without the officer present, which would fall into the “investigation” category of coaching. Similar to the officer’s concerns

125. Fear of police retaliation is one reason individuals choose not to file a complaint at all. WALKER, supra note 5, at 124. Programs Director Reshad Staitieh discusses how some complainants may fear losing their jobs. Staitieh, supra note 37, at 4.
127. Brummund, supra note 78, at 7.
128. Id.
129. Anonymous Mediator, supra note 84, at 10.
130. Staitieh, supra note 37, at 3.
131. Id.
133. Walker et al., supra note 8, at 9-10.
134. Anonymous Mediator, supra note 84, at 3.
discussed in proceeding sections, a civilian may worry about a mediator’s neutrality and the possibility of retaliation in a mediation context. A civilian may also have concerns about losing legal rights and remedies if they participate. A conflict coach would not only be able address these concerns before the mediation, but could answer all the civilian’s questions before the civilian even needs to agree to mediate. When a civilian files a complaint, a member of the review board could reach out to them and offer a conflict coaching session during which the coach could explain the benefits of mediation and answer any questions about the process. Mediator Franklin stated that “I think that by having a prior opportunity for them to feel comfortable with the process and what is involved in the process certainly might assist in moving the process forward.” And if more civilians agree to mediate, then the larger community will become interested in the opportunity, too. Staitieh commented that “the more people engage with [the mediation] process, the more you start to see those ripple effects and the more people will continue to buy into it.” Conflict coaching prior to mediation would allow the civilian to make a fully informed choice to mediate and would likely lead to more requests for mediation.

D. Conflict coaches could begin discussions about bias before the mediation so that both officer and civilian can participate more effectively.  

More and more, mediation practitioners are recognizing that racism, sexism, and other prejudices have major impacts on the outcomes of mediations. Programs Director Staitieh discussed how participants may worry about subconscious or conscious power dynamics in the mediation, and how important it is to address these concerns in order to create an environment conducive to mediation. Conflict coaches could lead discussions with parties about these topics before the mediation and help negate their effects. Specifically, interviewees stated that navigating explicit and implicit racial bias was an issue during police-civilian mediations. Commissioner Brummund thinks that a

136. Civilians may worry that mediators have pro-police bias or have family members who are officers. Walker et al., supra note 8, at 29.

137. “I think that the more people who know what mediation is, the less that they will perceive it as a harmful process or one where they’re forgoing their legal rights.” Staitieh, supra note 37, at 4.

138. Franklin, supra note 89, at 3.

139. Staitieh, supra note 37, at 6.


141. Staitieh, supra note 37, at 3.
preliminary discussion about racial bias “would be very beneficial, because . . . so many of these mediations involve race issues, which are just so tough for a lot of people to discuss or talk about.”

In St. Louis, Black residents are more likely to be stopped by the police and are subject to police force 4.3 times as often as White residents. Black residents are also more likely than White residents to file complaints against police officers, and since most St. Louis City police officers are White, it’s likely that a majority of complainant and officer pairs are different races. When those statistics are combined with the fact that eighty-eight percent of White people have an anti-Black bias and forty-eight percent of Black individuals have an anti-White bias, there is a clear need for intentional discussions around race in many mediation contexts. Conflict coaching can begin these discussions on racism and other biases in order to help create more race-conscious mediations.

E. Conflict coaching will help parties identify and refine their conflict styles, which will allow them to participate more effectively in the mediation.

Many of the barriers to effective police-civilian mediation discussed in this analysis deal with how both complainant and officer engage in the mediation process. How the participant engages in the mediation can be described as the their conflict style, or how they behaviorally respond to conflict. Commissioner Brummund alluded to conflict styles as an element of mediations

142. Brummund, supra note 78, at 14.
144. “Black citizens file complaints and voice their displeasure with police conduct much more often than do their White counterparts.” Andrea Marie Headley, Stewart J. D’Alessio & Lisa Stolzenberg, The Effect of a Complainant’s Race and Ethnicity on Dispositional Outcome in Police Misconduct Cases in Chicago, 10 RACE & JUST. 43, 44 (2020); see generally Lonnie M. Schaible et al., Denver’s Citizen/Police Complaint Mediation Program: Officer and Complainant Satisfaction, 24 CRIM. JUST. POL’Y REV. 623, 626–50 (2013).
146. The COB report states that the typical reporting party is a Black man between the ages of twenty-five and forty-nine, while the typical officer on the receiving end of the complaint is a White man in the same age range. Jones et al., supra note 67, at 3. Even if a civilian complaint does not specifically mention race, often “the underlying dynamics of the incident come from misunderstandings or misperceptions based on race or ethnicity.” Walker et al., supra note 8, at 19.
148. See Press & Deason, supra note 140, at 32.
149. JONES & BRINKERT, supra note 31, at 188.
when he likened conflict coaches to interpreters.\textsuperscript{150} Commissioner Brummund explained that, to him, the conflict coaches have an important role of helping officers and civilians explore how to speak in ways that are more easily understood by the other party.\textsuperscript{151} Specifically, he stated that coaches could help an officer consider if “there [is] another way that we can say this [so] that it would be heard.”\textsuperscript{152} Commissioner Brummund emphasized that “being a police officer is a tough job . . . people call the police when they couldn’t solve [a problem] themselves.”\textsuperscript{153} Because officers are trained to respond to incredibly stressful and potentially dangerous situations, “officers are on a [high] threat level . . . but sometimes I think that it can be more destructive than helpful.”\textsuperscript{154} While officers are taught to “excel under stressful and violent conditions,” mediation draws on a completely different set of skills, such as reconciliation and problem solving.\textsuperscript{155} The anonymous CRCSTL mediator explained that stepping out of that high alert mentality is important during a mediation because “each person gets to speak and be heard. There’s no interrupting . . . [we’re here to] let you all figure out how this can be resolved.”\textsuperscript{156}

A conflict coach can help both officers and civilians navigate their conflict styles and prepare to better engage with one another. A coach could do this by asking questions such as:

\begin{itemize}
  \item \textit{When you consider a current dispute or the last time you were in one, what specifically did the other person say or do (or not say or do) that heightened negative emotions in you?}\textsuperscript{157}
  \item \textit{How do you want to be . . . perceived during this conversation? What tone, manner, or body language do you intend to have in order to come across the way you want?}\textsuperscript{158}
\end{itemize}

An intentional discussion around each parties’ conflict management techniques would allow disputants to approach the conflict more intentionally and could lead to better mediation outcomes.\textsuperscript{159} By helping an officer or civilian name their own conflict style (as well as contemplate the conflict style of the other party), conflict coaches can help parties see “large patterns of behavior or
conflict themes ... and the ongoing conflict conversation.\textsuperscript{160} A conflict coaching session before the mediation is an opportunity for each party to consider his or her conflict approach and prepare to communicate with each other in a more effective manner.

IV. POTENTIAL NEGATIVE IMPACTS OF CONFLICT COACHING

A. Pre-mediation conflict coaching may call into question (or outright destroy) mediator neutrality.

Mediator neutrality is central to a successful mediation.\textsuperscript{161} If neutrality is lost, parties may lose trust in the process or look to the mediator to decide who is right.\textsuperscript{162} Three of the interviewees expressed concern that, if a conflict coach works with a party prior to mediation and then the same coach mediates the mediation, the mediator/coach could lose their perceived neutrality. The anonymous CRCSTL mediator explained that mediators usually enter mediations with “very little information . . . [so] you couldn’t be biased. You couldn’t make any judgments before you go in there. You just go . . . in there . . . very open to hearing what they have to say and keeping them on task.”\textsuperscript{163} Franklin agreed, saying “I think that it’s just important to always have the apparent appearance of fairness and impartiality. So we were, as a community mediator, always mindful of making certain that one of the parties did not presume that the other party was getting some preference or some preferred treatment.”\textsuperscript{164} Staitieh explained that, from a programmatic standpoint, this concern is easily navigable. “Some organizations might have the mediator being the conflict coach, and that would be an issue for [CRCSTL’s program]” because the pre-mediation conversations might create a “concern for impartiality.”\textsuperscript{165} Although navigable, concerns about neutrality are essential to address in police-civilian mediations since there is such high potential for both parties to think the mediator has a bias for or against officers.\textsuperscript{166}

\textsuperscript{160} JONES & BRINKERT, supra note 31, at 189.
\textsuperscript{161} Joseph B. Stulberg, Must a Mediator Be Neutral? You’d Better Believe It!, 95 MARQ. L. REV. 829, 835 (2012).
\textsuperscript{163} Anonymous Mediator, supra note 84, at 23.
\textsuperscript{164} Franklin, supra note 89, at 4.
\textsuperscript{165} Staitieh, supra note 37, at 5.
\textsuperscript{166} Franklin, supra note 89, at 3; Walker et al., supra note 8, at 29.
B. Conflict coaching sessions require additional resources that mediation programs don’t have and additional time that mediation participants might not be able to give.

Lack of available resources to handle mediation requests is an important obstacle to police-civilian mediations and would affect conflict coaching opportunities in a similar way. Without a conflict coach available to handle the session with an officer or civilian, the coaching is not possible. Commissioner Brummund agreed that time and resource constraints were the biggest barriers to police-civilian mediations. For an effective mediation, he states that multiple sessions are usually necessary to go beyond “scratching the surface” of the situation. A similar argument can be made about conflict coaching. Programs would need to evaluate whether one conflict coaching session is sufficient to prepare a civilian or officer for mediation, and if not, what the ideal number of sessions would be.

In a similar vein, there are significant costs for civilians and officers desiring a conflict coaching session. Though police departments incentivize officers to mediate by paying them for their time spent in mediation, the time commitment itself is still a barrier. The anonymous CRCSTL mediator explained that “it’s already hard to pin down the police officer to come to the mediation period.” They worried that forcing the officer to participate in extra meetings has the potential to make the officer “more hostile or more … reticent and more antagonistic.” To navigate this concern, programs should emphasize to officers that conflict coaching is an optional part to the process. Additionally, police departments should strongly encourage conflict coaching, but not punish officers for declining. This will preserve the coaching experience as a way to benefit the officer on a voluntary basis.

When compared to officers, civilians have even fewer incentives to participate in a mediation or conflict coaching call. The civilian must take time off work or sacrifice time with family to attend a mediation. Franklin pointed out that “we had situations where it was even difficult for civilians, for purposes of transportation, childcare, that kind of thing, even to get to the mediation. So that was somewhat of a hardship.” These barriers for civilians mediating are also concerns for conflict coaching calls. To address these concerns, programs could offer conflict coaching calls via phone or video conferencing instead of requiring the participant to come to a physical location. Programs might also

169. Walker et al., supra note 8, at 25.
171. Id.
172. Walker et al., supra note 8, at 25.
173. Franklin, supra note 89, at 2.
choose to have conflict coaching appointments available in the evenings or weekends in order to work around civilian schedules.

V. RECOMMENDATION AND FUTURE INVESTIGATIONS

Based upon the comments and critiques shared by the St. Louis police-civilian mediation stakeholders, it appears that conflict coaching has the potential to greatly improve existing police-civilian mediation programs. The potential benefits outweigh the potential concerns, and the potential negative consequences of coaching that were shared are navigable through programmatic adjustments. Specifically, programs can avoid compromising mediator neutrality by restricting conflict coaches from serving as mediators or not allowing conflict coaches to mediate disputes involving a party they have coached in the past. By making conflict coaching voluntary or providing it during evenings and weekends, programs can make the service accessible to clients, and related service costs can be built into programmatic budgeting.

While this analysis did present the perspectives of mediation stakeholders from programmatic and implementation backgrounds, there are numerous voices missing. First, no civilian complainants who engaged (or declined to engage) in mediation were interviewed for this analysis. The civilian perspectives presented came from other articles and studies,174 but no St. Louis City residents’ thoughts on police mediation nor conflict coaching were provided.175 Researchers should include this group in future analyses.

Secondly, no current St. Louis City police officers were interviewed for this recommendation.176 Officers’ opinions on mediations with civilians and ways to improve the experience could create robust recommendations. As discussed extensively by the mediators, officer buy-in and active participation are essential to a successful police-civilian mediation. Having an officer’s own words to explain these challenges could create a better analysis.

CONCLUSION

Conflict coaching has the potential to improve existing police-civilian mediation programs in many ways, including by increasing officer buy-in, informing civilians of the mediation process, navigating police and civilian biases pre-mediation, and refining each party’s conflict styles. Although the implementation of a coaching program may be costly, the future benefits will likely outweigh the upfront cost. Increasing the accessibility and quality of

174. See, e.g., Walker et al., supra note 8.
175. Due to confidentiality concerns (and the limited scope of this analysis), I was unable to interview past complainants nor mediation participants.
176. I reached out to the St. Louis Metropolitan Police Department, but never received a response back. See E-mail from Beatrice Connaghan to media@slmpd.org (Jan. 21, 2023, at 10:23 CST) (on file with author).
police-civilian mediations will foster police accountability and align with community policing strategies. Additionally, studies show that civilians desperately want ways to navigate conflicts with officers that emphasize a human-to-human connection, instead of a purely punitive framework. Like Ms. Doe from the case study at the beginning of the article, real-life complainants across the country are in need of ways to connect with officers and express how negative police interactions hurt them and their communities. Since “[c]onflict coaching is a very beneficial process for anyone who will be going into a mediation,” implementing such a program in an existing police mediation framework will benefit both civilians and officers as they navigate frustration, anger, and all the other emotions that come after a negative police interaction. Conflict coaching opportunities will allow organizations to better meet their participants’ mediation needs and create meaningful, positive change in police-civilian complaint processes.

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178. Walker et al., supra note 8, at 9.
179. Staitieh, supra note 37, at 4.

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