Christopher Robert* and James A. Wall, Jr.

Humor in civil case mediations: A functional approach

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Abstract: This study investigates humor by mediators and disputants in 95 civil case mediations. Consistent with the majority of the humor literature, as well as with the descriptive and prescriptive literature on mediation, we found that some humor was used by mediators and disputants in a "nice" and affiliative way, to control tension and to facilitate amicable relationships. Some of that humor also came in the form of reciprocal back-and-forth banter or in a positive and affiliative form that was unrelated to the mediation itself. However, many incidents of humor were harsh, as well as aggressive, and that humor often served specific functions within the mediation context. Mediators, and, to a lesser extent, disputants, used humor as a means of applying pressure to another party. Disputants, but seldom mediators, used humor defensively, to counter the pressure applied to them. We discuss how our results stand in contrast to the conventional wisdom about humor; we extend humor and conflict theory by integrating theory and perspectives on power; and we explain how our findings might extend to various social situations that involve power differentials between parties.

Keywords: humor, mediation, power, conflict

1 Introduction

It is generally acknowledged that humor serves many positive functions in interpersonal contexts. Humor stimulates positive emotions, supports cohesiveness (Robert and Wilbanks 2012), and reduces tension (Romero and Cruthirds 2006). The use of humor has also been associated positively with work performance, job satisfaction, health, coping effectiveness, and a reduction in work withdrawal behaviors (Mesmer-Magnus et al. 2012). While numerous authors acknowledge the potential for humor to result in negative outcomes (e.g. Duncan et al. 1990;

***Corresponding author: Christopher Robert,** Management, University of Missouri, Columbia, MO, USA, E-mail: robertc@missouri.edu
https://orcid.org/0000-0002-1984-4583
James A. Wall, Jr., Management, University of Missouri, Columbia, MO, USA, E-mail: wallja@missouri.edu

Malone 1980; Robert et al. 2016; Romero and Cruthirds 2006), humor is generally assumed to have positive effects. In sum, the literature seems to be very consistent in painting a very rosy picture of humor's functions.

But some neglected and stern functions surfaced as we observed civil case mediations. Civil case mediations entail disputes (e.g. automobile injuries, contract disputes, medical malpractice, personal injury) in which a plaintiff and defendant bring their case to a mediator, prior to a trial or instead of going to trial. This is an edgy environment; one that is alien and tense because people have been hurt, lives have been lost or disrupted, high demands have been made, and some individuals want to hurt the opponent.

We did not expect to find humor here, but we did. And in many instances it was different from that delineated in the literature. It was often functional, or instrumental, used by mediators to press disputants to make concessions, and it was employed by disputants as a means of defensively pushing back against the mediator's pressure. Although humor was used by both mediators and disputants in a positive and affiliative manner, the humor behavior used to press the other party and to control pressure was clearly not always positive, friendly, affiliative, or "nice."

We wanted to explore these functions in order to document how humor is manifest in mediation, and to develop as well as test predictions at the intersection of theories on mediation, humor, and power. Second, we sought to expand researchers' awareness of the roles humor plays that go beyond the positive, affiliative, and safe strategies that are the predominant focus of the literature on humor in organizational contexts. With these two goals in mind, we first present an overview of civil case mediation, and describe how an initial set of observations of 25 civil case mediations were used to inform subsequent theorizing about the role of humor. Next, we develop formal hypotheses regarding humor use in mediation by integrating our observations from the 25 cases with the literatures on mediation, negotiation, humor, and power. Finally, we report on a study involving observations of 95 mediations that were used to test these hypotheses.

2 The civil case mediation process

Civil case mediation operates within the institutional environment of the U.S. civil court system, which allows the cases to go to mediation or sends them there. These cases are civil ones (e.g. automobile injuries, contract disputes, medical malpractice, personal injury) and not criminal. The cases involve

conflict, which can range from low to very high. In addition to sending cases to mediation, the court system sets norms for the participants. The mediation is voluntary; therefore, the mediator can accept the case or not. The mediator is required to be neutral and cannot give legal advice. Also, the mediator cannot dictate the agreement; rather, he or she controls the process. As for the disputants, they are expected to bargain in good faith, to respect the mediator, and to allow him or her to control the process. Mediators tend to be highly experienced attorneys, and/or current or former judges, and a paramount norm in mediation is for mediators to receive considerable respect and deference within the process from disputants and their attorneys.

In civil case mediation, the mediator, plaintiff, defendant and their attorneys meet at an agreed-upon location. Typically, the mediator arrives first and as the other parties arrive, an assistant escorts the plaintiff and attorney to one room and the defendant with attorney to another. The mediator initially goes to each room for introductions and then assembles all parties in a control room for a joint session. Here the mediator greets the parties, describes her background, discusses the value of mediation and notes how the mediation will be conducted. The plaintiff attorney then lays out its case, followed by the defense attorney, who does the same.

Concluding this opening joint session, the mediator asks the plaintiffs and defendants to decamp to their respective rooms and the mediation begins. Typically, the mediator's first private meeting is with the plaintiffs. After a discussion with them and obtaining an opening demand, the mediator goes to the defendant's room where he discusses the case, presents the other side's offer and asks for a counter-offer. Subsequently, the mediator commutes between the plaintiffs' and defendants' rooms until an agreement/settlement or non-agreement is reached.

Within the mediation there are at least three decision makers: one mediator and two or more disputants (usually the plaintiff with an attorney and a defendant also with an attorney). It is useful to think about each party as having a unique set of operational and end goals, and of their behaviors as endeavors to move the mediation toward those goals. The mediator's operational goals are to reduce the disputants' expectations and control their behaviors. The end-goal is to reach agreement. Toward this end, mediators typically engage in what the literature terms "pressing behaviors" (Wall et al. 2011), that are designed to move disputants' positions closer to one another. This might be accomplished by convincing disputants that their expected outcome in court will be worse than they anticipate, getting disputants to reduce the extremity of their demands, or encouraging disputants to make explicit concessions (e.g. dropping a demand for damages due to pain and suffering). While attempting to hammer

out a settlement, the mediator must also indulge and placate the disputants somewhat, because mediation is a voluntary process from which the disputants can walk away at any time. Therefore, the mediator might take steps to control tension and to foster an amicable environment, in order to keep the disputants cooperative and at the bargaining table.

The disputants' end goal is to obtain an agreement that is favorable to them (i.e. a high settlement for the plaintiff, and low payout settlement for the defendant). To accomplish this, disputants might press the mediator (e.g. pushing the mediator to demand a concession from the other disputant). However, the disputants' primary tactic or operational goal is to control pressure from the mediator to reduce demands or to make concessions—that is, not to give in. This might be done by downplaying the reasonableness of the mediator's suggestions, by reinforcing one's own arguments, or by deflecting mediator suggestions.

Also, like the mediator, the disputants usually prefer to reach an agreement during mediation rather than engaging in the risky and time-consuming trial. Therefore, disputants might also behave in ways that help reduce tension and promote positive affect. Here, the disputants' tension reduction and affect enhancement behaviors are directed primarily at the mediator, and not at the opposing disputant, because the disputants typically prefer for the opponent to remain anxious about the prospect of having to go to trial.

3 Theory and hypotheses

How does humor fit into this paradigm? To examine this question, we first examined the existing literature on humor in negotiation and mediation to determine what role the literature indicates humor plays within these processes. We then conducted a set of pilot observations of 25 mediations, and compared those observations to the expectations set forth by the literature. Subsequently, we integrated our observations with additional literature on humor and power to develop a set of testable hypotheses that we examined in the main study.

3.1 Humor in the negotiation and mediation literature

The literature on humor in negotiation generally paints a very rosy picture of the benefits of humor. Laboratory-based research on negotiation suggests that humor can be used to help negotiators reach favorable settlements by increasing positive affect and trust. Humor reduces opponents' contentious tactics (Carnevale and

Isen 1986; Kurtzberg et al. 2009), increases opponents' concessions (O'Quin and Aronoff 1981), and helps to legitimize one's own proposals or delegitimize those of the opponent (Bonaiuto, Castellana, Pierro 2003). Similarly, field research indicates that humor plays an important role in reducing tension and defusing aggression by mitigating possible offense, by assisting in the presentation of difficult issues (Mulkay et al. 1993; Norrick and Spitz 2008; Vuorela 2005), and by promoting smoother transitions between issues (Adelsward and Oberg 1998; Consalvo 1989).

The limited descriptive and prescriptive literature on humor in mediation contexts has also taken a positive view of humor in mediations and encourages mediators to use it judiciously. For example, Forester (2004) encourages mediators to use subtle, respectful, and sensitive forms of spontaneous conversational humor at critical moments during the flow of mediation in order to break tension, to highlight possible connections between the parties, to reframe issues, and to encourage conversation. Similarly, Cruthirds (2006) and Coburn et al. (2013) suggest that humor can be a means of increasing cohesiveness, reducing stress and encouraging more effective listening. Wimmer (1994) notes that humor can be a form of entertainment and a distraction that relieves tension, derails negative emotions, and provides parties with an opportunity for a break to reflect upon the process and their positions. In addition, Coburn et al. (2013), Forester (2004), and Wimmer (1994) note that humor can be used as a tool for de-emphasizing the mediator's status (e.g. through self-deprecating humor), and for leveling potential power imbalances between the disputants. Notably, these sources all go to great pains to emphasize that humor must be used with extreme caution, because negatively-toned or contemptuous humor can decrease perceptions of the mediator's legitimacy, and could derail possible resolution.

The prescriptions set forth in the negotiation and mediation literature speak to the importance of humor primarily as a tool for controlling tension. And they are consistent with the notion that using or reciprocating positive and affiliative forms of humor might help build rapport if used judiciously. These prescriptions for mediator humor seem reasonable and are consistent with conventional wisdom which holds that positive humor is associated with positive outcomes, and negative humor with bad outcomes (Pundt and Herrmann 2014; Robert et al. 2016). Consistent with this tone, the prescriptive literature seems to discourage the use of humor to press other parties (especially the mediator), or to control or resist that pressure: to push, or to push back. Similarly, descriptions of the mediation process do not acknowledge that humor might be used by mediators or disputants in aggressive, harsh, or tough ways.

However, we wondered if these prescriptions and descriptions are consistent with mediators' use of humor in actual mediation contexts, and whether we might observe humor being used in the more assertive (pressing) and/or defensive (controlling pressure) functions. Of particular concern to us was that the literature has relied heavily on mediator narratives and/or interviews with mediators, rather than upon empirical studies, as the primary source of descriptive data about mediator behavior (e.g. Coburn et al. 2013; Forester 2004). While these retrospective self-reports are instructive, it is unclear whether people have the ability to recall their actual use of humor (Craik and Ware 1998). Also, given that humor and the sense of humor are generally viewed as positive characteristics (Martin 2007), mediators' reports of their own behavior might be influenced by social desirability biases, and by attempts to frame their own humor in a positive light.

3.2 Pilot observations of mediations

In 25 actual civil case mediations, an observer accompanied mediators throughout each mediation and recorded exactly what the mediator and disputants said. Although the presence of the observer was approved by the parties, no one was informed that humor was being investigated. Subsequently, the transcripts of the mediations were examined to determine how humor was used.

The most salient phenomena detected in the observations was that both the mediator and the disputants utilized humor as techniques for accomplishing their goals. That is, they used humor instrumentally as a tool. For example, one mediator used humor to indicate that a defendant's offer was too low and should be raised. When returning from the plaintiff's room, he quipped sarcastically, "He accepts your generous offer." In context, it was clear that the defendant's offer was unrealistic, and the quip was meant to convey that the offer would have to be increased considerably in order to get close to agreement.

Secondly, it seemed to us that the mediators used humor more often and took the offense in the mediations. Because they were in charge of the process (i.e. had high legitimate power), they could frequently employ a wide variety of techniques – including humor – to press both the plaintiffs and defendants. For example, a mediator said to the plaintiff, "Do you want this case to go to trial where it will be decided by 12 beady-eyed morons who are too stupid to get off jury duty?" This comment was intended to draw attention to the risk involved in going to court and obtaining a verdict from a jury.

In contrast, it seemed the disputants and their attorneys were on the defense and adopted techniques – including humor – that were more defensive in

nature. Seldom did the disputants adopt offensive (pressing) tactics, such as questioning the mediator's interpretation of the law. For the most part, they seemed to adopt a defensive posture (i.e. controlling pressure). As an example, a defense attorney said, "We will agree to your suggestion that we raise our offer as soon as we scrape together enough coins to pay the parking meter."

Thirdly, we noted that the mediator and the disputants frequently reciprocated each other's humor. As an example, when a mediator said, "If I don't come back (from the plaintiff's room) please call my wife," and the defense attorney quickly responded, "She's still putting up with you?" Usually this type of back-and-forth humor was positive and "nice."

3.3 Broader humor literature

In sum, our pilot observations revealed "nice" humor was used to control tension, and to keep the mediation process from derailing, but also many times humor was used to press, and to control pressure. In contrast to the cautious prescriptions regarding humor set forth in the mediation literature, this use of humor was frequently blunt, or harsh. Somewhat surprised by these observations, we examined the broader humor literature beyond that which focuses on negotiation and mediation to examine themes in that literature that would account for this behavior.

One of the more well-known and widely referenced frameworks for understanding different types of humor, and the functions or motivations underlying that humor, was described by Martin et al. (2003). Their model of humor suggested there are four major humor styles, which are delineated by two dimensions (in a 2 × 2 pattern): a) humor that is generally positive or benign versus humor that is potentially hostile and detrimental to others, and b) humor that is interpersonally focused versus humor that is self-focused. The four labels corresponding to the four quadrants and styles are "affiliative" humor (i.e. interpersonally focused and positive and used to make others feel good and increase cohesiveness), "aggressive" humor (i.e. interpersonally focused and negatively-toned and detrimental, involving threat, ridicule, and disparagement), "self-enhancing" humor (i.e. self-oriented and positive, perhaps involving attempts to use humor to cope with stress and regulate one's emotions), and "self-defeating" humor (i.e. negatively-toned humor that is focused on oneself, involving more than minor self-deprecation, and spilling over into self-disparagement and self-loathing).

The affiliative category is most consistent with the descriptions and prescriptions set forth in the mediation literature, which focuses primarily on the

mediator, and that literature recommends use of light humor that is non-offensive, non-hostile, and "enhances interpersonal cohesiveness and attraction" (Martin et al. 2003, p. 53). Importantly, this category might also involve mildly aggressive humor such as teasing, which can have positive effects if the target is not offended and accepts the humor as non-threatening (Cruthirds et al. 2013; Robert et al. 2016; Robert and Wilbanks 2012; Romero and Cruthirds 2006). Self-enhancing humor is also consistent with the prescriptive literature, as it involves humor used to cope with negative emotions (Wimmer 1994).

Given that mediations often involve cases where plaintiffs experienced significant physical, financial, or personal losses, and where defendants are held accountable, the use of positive humor by mediators to put their anxieties in perspective and cope with their feelings during mediation would seem appropriate and expected. Both affiliative and self-enhancing humor styles would be expected to serve the function of "controlling tension" within the mediation, either one's own tension or another's.

While the affiliative and self-enhancing styles of humor are prescribed in the literature, the two hostile/detrimental sytles are not. In particular, the negative and disparaging functions of aggressive humor are inconsistent with recommendations that parties involved in the mediation avoid humor that can cause offense or dischord (e.g. Forester 2004). Yet we found aggressive humor in the pilot observations. Given this contrast, we turned to the literature on humor and the literature on power to provide some theoretical and empirical basis on which to expect more negatively toned and aggressive humor from both mediators and disputants, especially in the categories of pressing behavior and behavior aimed at controlling pressure.

With regard to mediator behavior, our theoretical rationale for why mediators might use aggressive humor is guided by Keltner, Gruenfeld, and Anderson's (2003) synthesis of the power literature. Their approach/inhibition theory of power builds upon earlier theorizing about power (e.g. Kipnis 1972, Kipnis 1976) in suggesting that the experience of power fundamentally changes the way people view their environment and behave toward others. At the core of Keltner et al.'s (2003) theory is the idea that the possession of power stimulates approach-oriented behaviors, while the lack of power inhibits behavior. They suggest that powerful people are less concerned about negative consequences of their actions and thus feel less constrained in their behavior. As a result, they tend to behave as they want, or do what they believe is necessary, without calculating the costs and benefits of their behavior: they are incautious. In contrast to the "nice" prescriptive theory of mediator behavior, this would suggest that mediators will feel comfortable using aggressively toned humor insofar as they believe doing so will help them reach their goals. The degree of

comfort that high-power individuals might feel in using a wide range of humor types is also consistent with a long-standing finding in the humor literature that high-power people enjoy a "high status humor monopoly" (Duncan 1982, p. 141), whereby people with power are given the right to joke with others with impunity, but low status people are much more restrained in their use of humor. Studies have often found that in mixed-status encounters, the vast majority of humor is initiated by high status individuals, (e.g. Bradney 1957; Coser 1960; Holmes 2000; Lundberg 1969).

Other findings in the humor literature suggest that low-power individuals might also engage in aggressively-toned or "edgy" types of humor, perhaps even spilling over into self-defeating humor (Martin et al. 2003). In particular, researchers have found that low-power workers may push back against management through the use of humor, as a means of resisting or subverting power (e.g. Holmes and Marra 2002; Rodrigues and Collinson 1995; Westwood and Johnston 2013). For low-power individuals, humor protects the humorist by removing him or her from the seriousness of the underlying message (Ullian 1976). Holmes (2000) extended this argument to suggest that humor is tolerated by powerful others, whereas other, more direct strategies of challenge might not be. In the context of mediation, this deduction suggests that the relatively low-power disputants might be likely to *control the pressure* being put on them by the high-power mediator by using humor defensively to push back. Doing so allows disputants to challenge the mediator inoffensively, yet still communicate their underlying position.

3.4 Hypotheses

Taking into account our pilot observations, as well as this integration of the literature on humor and power, we predicted that mediators in a more extensive study would use the aggressive, affiliative, and self-enhancing styles of humor more often than the disputants (we saw no reason they would use self-defeating humor). Support for this prediction is driven by the observation that mediators are typically high-status individuals, such as former judges and seasoned attorneys with significant judicial experience and status, who can use any style of humor they choose. The lawyers who represent disputants in civil mediation are accustomed to deferring to them, and the disputants themselves are very respectful. Thus, we believe this clear power difference will be an important contextual condition in mediation, which drives both mediator and disputant humor behavior. It is also consistent with the "high status humor monopoly" discussed in the humor literature (Duncan 1982).

Hypothesis 1: Mediators will more often employ humor—aggressive, affiliative, and self-enhancing– than will disputants in civil case mediation.

Given that mediators are more apt to utilize humor in mediations, is there a difference between the type of humor they employ versus that used by the disputants? We believe there is. Keltner et al.'s (2003) theory underpins the prediction for the mediators' use of humor, which differs substantially from the picture painted in the existing literature on mediator humor. While the existing prescriptive literature indicates mediators should use humor cautiously so as not to offend others, the approach/inhibition theory of power predicts that mediators – given their power – might be less sensitive and more assertive. As high-power individuals, they are likely to take a pugnacious approach to humor use, to use a more aggressive style (Martin et al. 2003), and are apt to violate politeness-related communication norms (Keltner et al. 2003) if doing so serves as a way of decreasing the disputants' resistance to settlement offers. Because humor is a strategy that allows the humorist to mask the unpleasantness in messages that might otherwise be too blunt, direct, or unappealing to the message receiver (Duncan 1984; Holmes 2000), it would be viewed as a viable communication strategy for mediators. As an example of such use, we observed a mediator during our pilot observations saying to the plaintiff attorney "Yes, you would easily get $500,000 in trial, if your father-in-law is the judge and your cousins packed the jury box. But since that's not the case, you won't get over $150,000. So now, come on, drop your demand by $25,000." Such behavior is also consistent with the mediator's primary end-goal, which is to resolve the dispute in lieu of going to court (Brindley 2006). Therefore, we propose that mediators will more often take the offense, and will more often use aggressively-toned humor to apply pressure to disputants to come off their positions.

Hypothesis 2: Mediators will use aggressive humor more often to press than will disputants

The power differences between mediators and disputants will lead to a more placid use of humor by the disputants. In contrast to mediators, disputants—who have low power—are probably more cognizant of their own behavior and how it is interpreted by others. Therefore, disputants are more likely to consider carefully the ramifications of their behavior prior to acting (Keltner et al. 2003). Given the stronger orientation of low-power disputants toward carefully thinking through their actions, we believe that disputants in mediations will be more cautious in the use of humor, because it might be perceived by the mediator as inappropriate (e.g. disrespecting the mediator, undermining his or her mediation strategy, or undermining the seriousness of the other disputant's claims). However, the finding that

humor is frequently used to subvert or resist power (e.g. Westwood and Johnston 2013) suggests that humor might be seen by disputants as a viable strategy for pushing back against mediator pressure and resisting demands for concessions (i.e. controlling pressure). Although disputants want to reach agreement, and to avoid litigation, their primary end goal is to attain an outcome (in either trial or mediation) that is as beneficial as possible to their side. By using humor in response to mediator pressure, disputants can cast mediator proposals as "less than serious," and thus deflect the need to respond directly to those proposals. We suggest, then, that disputants will tend to use humor as a defensive strategy that enables them to resist mediator pressure.

> **Hypothesis 3:** Disputants will more often use humor with aggressive, affiliative, or self-enhancing styles to deflect pressure (defense) than will the mediators.

In addition to employing humor more often than the disputants and more assertively, mediators, we predict, will be more likely to use it tactically to control tension. In support of this hypothesis, we note that Keltner et al. (2003) hold that powerful individuals often exercise power for prosocial reasons. They suggest that high-power individuals might engage in these behaviors in order to help others, and they specifically note that it might be used to mediate conflict. In this regard, mediators are likely to view humor as a means of controlling tension, and will be less concerned about the negative ramifications of humor use. In particular, they will be more likely to engage humor for tension control if they believe it will increase the chances of agreement. Such humor might involve teasing or mild aggression that is open to some interpretation, but is generally intended to be affiliative (e.g. Romero and Cruthirds 2006).

Conversely, disputants will generally avoid humor, even humor intended to diffuse tension. This is because disputants in mediation contexts are low-power parties who are likely to spend their time contemplating the potential negative ramifications of behaviors such as humor. While humor used to control pressure might be seen by disputants as necessary for achieving their goals, humor used to reduce tension might be perceived as involving too much risk relative to reward, especially if it involves mild aggressive humor such as teasing. In addition, tension reduction is not a major goal of disputants, particularly reduction of the opponent's tension. Rather, disputants might perceive tension and the opponent's anxiety (e.g. fear of poor outcomes in trial) as strengthening their position in the mediation.

The prediction that mediators will often use humor to control tension is consistent with other facets of the humor literature. In particular, a number of

theories describing humor's impact in organizational contexts note that the impact of humor derives from its ability to stimulate positive affect in others (Cooper 2008; Robert and Wilbanks 2012). Similarly, research on interpersonal affect regulation suggests that behaviors such as joking enhance relational outcomes such as friendship and trust via their impact on positive affect (Niven et al. 2012a). Attempts to regulate others' positive emotions have been found to augment the regulator's own positive affect (Niven et al. 2012b). This finding suggests that mediators would also be motivated to use humor to control tension in others, in part because doing so helps to enhance the mediator's own positive emotional state.

Hypothesis 4: Mediators will use humor for controlling tension more often than will the disputants.

When mediators utilize humor to control tension, and for other purposes, it will, we predict, be reciprocated. As noted earlier, one basis for this prediction is our observations of reciprocity in the 25 pilot mediations. We also point out that reciprocity is a powerful behavioral response which is common to almost every culture (Brown 2004). It is observed in primates, cats, ravens and other animals, and is an ethical underpinning in most cultures (Gouldner 1960). This being the case, we expect reciprocation of humorous statements in mediation: disputants will reciprocate the mediator's humor; likewise, the mediator will reciprocate the disputants' humor. The literature on humor bolsters this prediction when it notes that the frequency of humor use by supervisors and subordinates are correlated (Decker and Rotondo 1999), and humor in social contexts often occurs in episodes in which initial humorous comments are followed by multiple responses of additional humorous banter (Fine 1977; Lehmann-Willenbrock and Allen 2014; Scogin and Pollio 1980).

Hypothesis 5: Mediators and disputants will reciprocate each other's use of humor.

Given that humor reciprocity is expected in mediation, who will reciprocate more often, the mediator or the disputants? We lean toward the disputant. Although we have previously argued that disputants might be hesitant to initiate humor, reciprocation of the mediator's humor is a different case. If a mediator initiates humor, he or she essentially assumes the risk that the humor might be perceived as inappropriate by other parties, making reciprocation by disputants less risky. In addition, the mediator's use of humor indicates that he or she has an informal orientation (Caron 2002), and thereby is receptive to others' use of humor. Responding to the mediator's humor with additional humor represents an acknowledgement of the mediator's humor attempts, and indicates that the

disputant is being responsive to the mediator's behavior. Relatedly, disputants' reciprocation of mediators' humor might be seen as an effective ingratiation strategy. Cooper (2005) argues that humor is an important category of ingratiatory behavior that lower status individuals can use to build positive affect and positive relationships with higher status individuals. Therefore, we expect disputants to reciprocate humor by the mediator in an attempt to be affiliative. Also, because humor is viewed as a less risky strategy for communication of serious content, disputants might perceive the mediator's use of humor to press the disputants as an opening for them to use humor to engage in their own pressing behavior, or to control pressure by pushing back.

In contrast, because mediators are the relatively high-power parties, they don't need to view disputants' humor as an opening for their own humor use: their powerful position allows them to use it whenever they think it might be helpful. Thus, we expect disputants to reciprocate both the more affiliative "control tension" types of humor, as well as the more contentious pressing and control pressing behaviors.

Given the above deductions we predict the following:

Hypothesis 6: Disputants will reciprocate mediators' humor more often than the mediators will reciprocate disputants' humor.

4 Method

4.1 Research setting and participants

The study utilized transcripts from 95 civil case mediations, which took place in two cities. The mediators were 29 retired or practicing attorneys and 10 retired judges. They had practiced law for 33 years on average, had mediated for an average of 8.5 years, and had mediated an average of 463 cases. These statistics help bolster the argument that mediators in our sample tended to be highly experienced and respected individuals, who were afforded power and status based on their experience and upon norms within the legal field for deferring to high status individuals in the mediator role. The disputants included plaintiffs and defendants, as well as one or more lawyers for each side. Each mediation lasted an average of 5.5 hours, ranging from 2 to 10 hours.

With the permission of the parties, an observer accompanied the mediator throughout the mediation and recorded (in writing) what the mediator and disputants said. Typically, the mediation sessions involved an initial meeting

between the mediator and the disputants. This was followed by a series of separate individual meetings between the mediator and each side (i.e. plaintiff or defendant) in which the mediator would communicate offers and counter-offers, frame the issues, provide insight, and attempt to move the parties toward agreement.

4.2 Transcript coding

Two coders with over two decades of experience in coding mediation transcripts were enlisted to code the transcripts. The mediators' and disputants' statements were first coded independently by these two raters using a classification system modified from one developed by Pruitt and colleagues for their study of community mediations (Pruitt et al. 1989). One of the codes in the classification system was "humor."

Once a humor incident was identified, each coder noted if the humor was initiated by the mediator or a disputant, and then reviewed the discussion that occurred prior to the humor and following it to determine if the humor was used for pressing (i.e. an aggressive style), controlling pressure (i.e. aggressive, affiliative, or self-enhancing styles to counter the pressure), controlling tension, or reciprocation of any style of humor. That is, the context of the humor—rather than the form of the humor itself—was analyzed to identify its category. The fact that both coders had considerable experience with research on the mediation process enabled them to understand the subtleties involved in the mediation context, and to determine the function of the humor within that context. Each incident was coded into one category by each coder independently, and then the two coders compared their codes. The initial agreement rate was 90%. For each incident in which the coders disagreed, they discussed the incident and then came to a consensus upon a code for each incident (see Table 1).

We provide an overview of this coding method here, and will be more specific when we describe each coding category. This procedure was adopted because a humorous statement can fall into any of the above categories, dependent upon the context. Take for example the mediator's statement "they accept your generous offer." This statement is humorous because disputants never make generous offers. If the transcript shows the offer was in fact very small and the mediator follows the statement with claims that a trial will be costly, that the opponent has a strong case, and that juries in that court make large awards, then the humorous comment would be considered "pressing."

Table 1: Coding categories for the mediators' and disputants' use of humor.

Category	Description
Pressing	The mediator uses humor to press disputants or to set the stage for pressure on a disputant (e.g. to make a concession), or the disputant uses humor to pressure the mediator, or to set the stage for pressure on the mediator (e.g. to push the mediator to make the other disputant make a concession). (This is an *offensive* tactic)
Control Pressure	The mediator uses humor to fend off pressure from a disputant, or the disputant uses humor to fend off pressure from the mediator (This is a *defensive* tactic)
Control Tension	The mediator or disputant employs humor to reduce tension during the mediation
Reciprocation	The mediator reciprocated a disputant's display of humor in a previous statement, or the disputant reciprocated a mediator's display of humor.
Other	The mediator uses humor in a way that does not fall into the preceding categories

On the other hand, if the transcript shows the opponent had made no concession and had sent an irritating message that disputed the disputant's position, then the statement would be considered "controlling tension." And if this humorous statement immediately followed a disputant's humorous statement, it would be coded as reciprocity.

4.2.1 Pressing

Now we will flesh out the coding categories and provide some examples. We start with the "pressing" function. Pressing is one of the most central behaviors in the mediator's repertoire (Wall et al. 2011). Humor can be used to initiate the pressing or can be incorporated in the pressing tactic. Consider the mediator statement, "Do you want to write a check now or make it in twelve easy payments?" If the coders found in the preceding rounds that the disputant's concessions had slowed, that the mediator was becoming irritated, or was calling for the disputant to consider the negotiation a "business decision," we would code this statement as "pressing." Subsequent mediator statements that weaken the disputant's case, strengthen the opponent's case and emphasize the risk of trial would also indicate the humorous statement has the function of pressing.

Since pressing is akin to the aggressive style, we can say that when parties are using humor to press, they will typically be using the aggressive style.

4.2.2 Controlling pressure

Typically, parties have the goal of resisting or controlling pressure from another party. In particular, disputants are inclined to make minimal concessions in order to end up with a favorable result, and the context indicates when humor is used for this purpose. Consider this statement from the defendant, "The plaintiff has Dr Jones as their expert witness. They better put him on the stand early because he'll fall asleep after ten minutes, and they better pick him up, because he is too senile to find the courtroom." If the mediator had mentioned that Dr Jones was going to be on the stand and would strengthen the plaintiff's position, this statement by a defendant would be considered "controlling pressure." This would also be the case if the mediator had previously mentioned some weaknesses in the defendant's case. Defendant comments subsequent to the humorous statement would also be guides. If the defendant followed the humor with counters to the mediator's points, with strengthening of its own case, or with voiced preferences for a jury trial, then the humor would be coded as "controlling pressure."

Since parties can use any style to control pressure, we maintain that when parties seek to deflect pressure, they can utilize aggressive, affiliative or self-enhancing styles.

4.2.3 Tension reduction

As noted earlier, mediators want to reduce tension in order to make the mediation more satisfying to the parties and to increase the chances for agreement. Humor used for tension reduction can take various forms. It can come when the mediator detects irritation and quickly addresses it, or tension reduction humor can come in response to an opponent's demand that is brought in by the mediator. Whatever the form, it is always preceded by tension, and an indication of this in the context is the key to the coding. If there are signs of tension prior to the humorous statement then the statement is considered "control tension." The tension can come from something as subtle as the plaintiff's inappropriate tiger-striped tight pants. In this example, the mediator said, "She might dress and act like a stripper, but she'll be a reasonable one."

In this case, the mediator was acknowledging the defendant's irritation with the (female) plaintiff's demeanor by demeaning the plaintiff (who was not present) with the quip, "She might dress and act like a stripper." At the same time, the mediator's comment "but she'll be a reasonable one," represents an attempt to juxtapose her supposed inappropriate demeanor with her potential

willingness to be "reasonable" and come to agreement, and to help re-focus the defendant on the end-goal of agreement.

Or the tension can arise from insensitivity. A vivid example involved a case in which a plastic surgery on a woman's (i.e. the plaintiff) face had gone badly, and she had scars. The defendant's attorney, quite insensitively and stupidly, said that he could tell she (the plaintiff) was concerned about her appearance, and that he was scheduling an appointment—at his expense—with a beauty salon to get her a manicure and give her hair a style. As the defendant's attorney left with the mediator, the plaintiff and her attorney were livid. When the mediator returned he said, "Well, I bet he ran that one by his wife."

By this, the mediator was being sarcastic, and the humor relied on the "clueless/insensitive man" stereotype. The humor was meant to convey that the "beauty parlor" comment was stupid and offensive, and to help reduce tension by acknowledging the plaintiff's anger and the defendant's attorney's improper behavior.

4.2.4 Reciprocity

A humorous statement was coded as reciprocity if it immediately followed another's humorous statement. When coding reciprocation, the initial humorous comment was coded as one of the previous four types (i.e. pressing, control pressure, control tension, or other), and then the humorous comment that directly followed was coded as reciprocation. Humor coded in this way typically continued the initial use of humor, or amplified it. As one example, a mediator was entering the defendant's room after delivering an offer to the plaintiff that was clearly low:

> Mediator: "They are thrilled with your offer"
>
> Defendant's Attorney: "We knew they would be!"

As another example:

> Mediator: "This mediation reminds me of one where two attorneys were dissolving a firm and everything was to be split 50–50, but neither would cooperate. After everything else was divided, one attorney took the telephone cord in his hand and cut it in half with some scissors, giving one half to his former partner"
>
> Attorney: "Who got the scissors?"

4.2.5 "Other" Humor

As in daily life, the parties in mediations made humorous statements at times that seemed to have no functional purpose directly related to the mediation of the dispute. That is, the "other" comments were not clearly related to pressing or controlling pressure, nor were they explicitly related the reduction of tension in the mediation context. However, these comments were not irrelevant in that they typically served the purpose of amusing others, ostensibly with the purpose of bonding or building cohesiveness, or lightening the atmosphere. In this regard, humor classified in the "other" category, while generally off topic, was largely positive and affiliative or self-enhancing, and thus consistent with the prescriptive literature. As examples, a mediator at a random point told a joke about himself when he first was an attorney, "I'd always say 'screw you' and then I'd get down to business." As another example, a defendant noted that the bakery supplying the sandwiches would, "Fatten us up too much."

5 Results

In total, 511 incidents of humor were identified across the 95 mediations. Table 2 provides a summary of the number (and means) of humor incidents for the mediators and disputants, by category, across all 95 mediations. Our analyses focus on the mean number of humor incidents per mediation.

Table 2: Frequencies (and Means) of humor use by mediators and disputants.

Category	Frequencies	
	Mediators	**Disputants**
Pressing	67 (M = 0.71)	40 (M = 0.42)
Control Pressure	2 (M = 0.02)	37 (M = 0.39)
Control Tension	144 (M = 1.52)	63 (M = 0.66)
Reciprocation	40 (M = 0.42)	52 (M = 0.55)
Other	35 (M = 0.37)	31 (M = 0.33)
Total	288 (M = 3.03)	223 (M = 2.35)

Hypothesis 1 predicted that mediators would employ humor more often than would the disputants, and this hypothesis was supported. As Table 2 indicates, the total number of humor incidents for mediators was 288, and the total number for the disputants was 223. The mean number of humor incidents for mediators ($M = 3.03$, $SD = 2.88$) was significantly higher than the mean for the disputants ($M = 2.35$, $SD = 2.50$; $t = 2.63$, $df = 94$, $p < 0.01$).

Hypothesis 2 predicted that mediators would more often use humor instrumentally, to press (an offensive tactic), than would the disputants. As Table 2 indicates, there were 67 incidents of mediators using humor in this fashion, and 40 incidents in which the disputants did so. The mean for mediators ($M = 0.71$, $SD = 1.19$) was marginally higher than the mean for disputants ($M = 0.42$, $SD = 0.87$; $t = 10.87$, $df = 94$, $p < 0.07$). Hypothesis 2 was therefore tentatively supported.

Turning to the defensive tactic of controlling pressure by the other party, Hypothesis 3 predicted disputants will more often use humor to control pressure than will mediators. Our data (Table 2) show there were only two control pressure behaviors observed among the mediators, and 37 for disputants. The mean for mediators ($M = 0.02$, $SD = 0.14$) was significantly lower than the mean for disputants ($M = 0.39$, $SD = 0.66$; $t = 5.50$, $df = 94$, $p < 0.01$). Therefore, Hypothesis 3 was supported.

Hypothesis 4 predicted that mediators would use humor more often for controlling tension than would the disputants, and the data supported this prediction. As Table 2 denotes, mediators used humor to control tension 144 times in the mediations ($M = 1.52$, $SD = 1.67$) versus 63 times by the disputants ($M = 0.66$, $SD = 1.10$). This mean difference was significant ($t = 4.96$, $df = 94$, $p < 0.01$).

Hypothesis 5 predicted mediators and disputants would reciprocate each other's humor and this prediction was supported. There were 92 reciprocations (40 for mediators and 52 for disputants). Although we do not compute a statistical test for this statistic, the fact that reciprocation was observed about once per mediation, on average, suggests that it was an important category of humor behavior.

Hypothesis 6 predicted that disputants would reciprocate mediators' humor more often than the mediators would reciprocate the disputants' humor. In Table 2 it can be noted that the disputants reciprocated the mediators' humor 52 times ($M = 0.55$, $SD = 0.91$) and the mediators reciprocated only 40 times ($M = 0.42$, $SD = 0.72$); however, this difference was not significant ($t = -1.38$, $df = 94$, *n.s.*). In addition, we note that because mediators used humor more frequently overall, disputants theoretically had more opportunities to reciprocate humor. Not including humor used in

reciprocation, mediators had 244 incidences of humor, and disputants had 171 incidences (59% and 41%, respectively). Thus, if reciprocation rates were the same for mediators and disputants, we would expect disputants to have 59% of all reciprocations. The actual number coded was 58% (i.e. 52/92), and thus, the adjusted analysis of reciprocation rates further confirms no difference in reciprocation for mediators versus disputants. This finding seems to indicate that reciprocity might be a reflexive social response that overrides considerations of status of the other party.

6 Discussion

This research was undertaken to examine the role of humor in mediation. Our starting point was the literature on humor in organizations and the limited literatures on humor in negotiation and mediation. Although these literatures pose some cautions about the potential "dark side" of humor (e.g. Duncan et al. 1990; Malone 1980; Romero and Cruthirds 2006), and warn of the possibility that some contexts might not be right for humor (e.g. Wimmer 1994), they generally do so in a more offhanded way, or as a secondary consideration. The literature implies that the primary function of humor is to build positive affect, cohesiveness and rapport, and to relieve tension. In mediation contexts, positively-toned humor is viewed as a powerful positive tool that "can signal possibility and hope" (Forester 2004, p. 221), and perhaps balance out unhelpful power differences between parties that can enable breakthroughs. In a word, humor should be "nice."

Our pilot observations of civil mediation widened our perspective on humor's actual use by both mediators and disputants. In addition to observing humor used for controlling tension, which is generally affiliative and is consistent with the descriptive and prescriptive literature on humor in mediation, we observed other uses of humor that have been neither described nor prescribed in the literature. Specifically, both mediators and disputants often used assertive and sometimes aggressive humor that was decidedly not "nice," and they sometimes played this type of humor off of one another in reciprocal episodes of humor. Most importantly, our observations suggested that much of the humor that was used served functions or goals that were unrelated to positive affect, affiliation, and cohesiveness building.

Based on those observations, we turned to the literature on power, and integrated it with the mediation literature and additional findings from the humor literature to develop a set of hypotheses about the range of functions

humor might serve for both mediators and disputants. In particular, we drew on Keltner et al.'s (2003) approach/inhibition theory of power, which suggests that high-power individuals (i.e. mediators) are less likely to be concerned with the negative ramifications of their behaviors, and thus will be more willing to take risks or behave in ways that might offend others, whereas low-power individuals will avoid such behaviors. Also, we noted that low-power individuals have been found to use humor to resist or subvert power (e.g. Holmes 2000; Westwood and Johnston 2013), as a way of pushing back in a relatively low-risk manner.

Based on these observations and theories, we predicted that in addition to humor used explicitly to control tension or to build positive rapport, high-power mediators would use more humor in general, and would use humor to pressure or "push" parties toward an agreement. In addition, we predicted that humor would have the function of controlling pressure and resisting or pushing back against that pressure, especially by the relatively low-power disputants. Finally, we expected to find patterns of reciprocal humor use or banter, whereby humor use by one party would be followed by humor by another in a pattern of humor banter.

Codings of over 500 incidences of humor across 95 civil case mediations provided significant support for most of our hypotheses. Mediators used more humor in general, and though both mediators and disputants used humor to control tension, mediators did so more often. Mediators used humor marginally more often to press disputants, though disputants also used humor to press, perhaps more so than we would have expected. However, mediators almost never used humor to control pressure (i.e. identified only twice in our data). This finding is particularly interesting given that disputants seemed to engage in a fair amount of pressing behavior (i.e. 40 incidences of humor used to press), so ostensibly humor could have been used as a tool by mediators to control that pressure. We also found that both mediators and disputants engaged in patterns of reciprocal humor use, whereby an initial humorous remark was followed immediately by a follow-up humorous remark by another party. Though we expected more reciprocation from disputants, the incidences of reciprocation were approximately the same. Finally, we noted 66 incidences of humor that were not directly linked to specific functions in the mediation context, which we labelled "other." Notably, these humor behaviors were usually positive in tone (e.g. affiliate or self-enhancing), and though not directly relevant to the mediation that was underway, it is clear from the context in which they were embedded that the individuals using such humor intended to amuse others and to build positive rapport.

7 Theoretical implications

The primary contribution of this study is the finding that humor was used functionally in mediation, to serve the goals of the parties. It was not used simply to put people at ease: it was used to accomplish a goal. These findings contribute to the literature on negotiation and mediation. The finding that humor had the function of controlling tension and more generally of stimulating positive affect and building cohesiveness is largely consistent with the current negotiation and mediation literature, and our finding that humor was often used as part of a reciprocal pattern of humorous banter expands our understanding of how humor is actually leveraged in a dyadic fashion to serve this purpose. Specifically, although the literature on humor in mediation focuses on how the mediator might use humor to relieve tension and build rapport, our findings indicate that this is not simply unidirectional, but that the disputants' participation in reciprocal humor banter is also important. But most importantly, our findings that both mediators and disputants will use humor very assertively to further their agenda is unique. Both mediators and disputants pressed the other, with mediators more often doing so, and disputants often used humor to control or fend off that pressure from the mediator.

The contents of the humor itself (beyond the simple counts of humor incidences) are also instructive. As is evident from some of the examples provided (e.g. a mediator referring to one of the disputants as acting "like a stripper," or to jurors as "beady-eyed morons") parties in the mediations used humor in "tough" and sometimes socially inappropriate ways that were clearly aggressive or shaded in that direction. The current negotiation and mediation literatures do not accommodate for this phenomenon, either descriptively or prescriptively. We believe that viewing humor behavior in the context of the power dynamics involved is useful in this regard. Instead of viewing humor as a tool for enhancing positive affect and cohesiveness or reducing tension (e.g. affiliative and self-enhancing styles of humor) it might be more accurate to view humor like any other behavior enacted in a context with power differentials. Powerful people will engage in it and will be insensitive to the risks of possible offense if they think it furthers their goals. Less powerful people will use it to push back as a more socially acceptable way to do so than to use more direct forms of resistance to or subversion of power. As such, humor used to control pressure can be seen as a "contestive" strategy, which is "a socially acceptable means of signaling lack of agreement, registering a protest, or even a challenge to more powerful participants" (Holmes 2000, p. 165). Their use of humor allows disputants to communicate displeasure at being pressured to act against their

interests, but it does so in a way that is neither overtly aggressive nor confrontational toward the high-power mediator.

Finally, it seems worthwhile to theorize that mediators' and disputants' experiences with humor will contribute to a learning process whereby humor behavior that appears successful (e.g. it leads to positive outcomes like favorable mediated settlements) will become reinforced and repeated over time. A closer examination of these types of feedback loops and their influence on individuals' humor behavior should be examined in future research. In particular, it would be worthwhile to examine novice mediators or negotiators as they experiment with the use of humor and to track whether positive responses to the humor and positive outcomes lead to repeated uses of humor.

The study also contributes to the humor literature. The humor literature has increasingly recognized the importance of distinguishing between different motivations behind humor, as exemplified in Martin et al.'s (2003) work on the positively and negatively-toned humor styles. This perspective has led to important work that has documented relationships between negatively-toned humor and negative outcomes such as strain (e.g. Huo et al. 2012), and to recommendations to avoid such humor. However, our framework and results suggest that it might be more fruitful to examine not only humor styles, but also the functions. On one level, negatively-toned styles such as aggressive or self-defeating humor might appear to be associated with negative outcomes for some individuals, but the more important questions might be "what are the function or goals of the humor," "why is the individual using humor in this way," or "what do they expect to achieve by doing so?"

For example, work by Pundt and Herrmann (2014) demonstrated that aggressive humor by leaders was associated with weaker leader-member exchange quality perceptions in subordinates. One way of viewing this result is by simply viewing aggressive humor as pathological or bad, and recommending ways of reducing it. Alternatively, one might view it functionally: what is the leader trying to accomplish? Leader-member exchange theory (e.g. Graen and Uhl-Bien 1995) suggests that leaders develop high-quality relationships with some subordinates (the ingroup), and low-quality relationships with others (the outgroup). In high-quality relationships the perceived hierarchical differences are minimal, and they are associated with trust, respect, and behavioral latitude. The low-quality relationships are based more on formal hierarchical relationships, mutual obligations and instrumental exchange. In this context, perhaps leaders are more likely to use aggressively-toned humor with outgroup members. Such behavior might be akin to "pressing" behavior from mediators, in that leaders might use aggressive humor to pressure outgroup subordinates to live up to their obligations. In contrast, aggressive humor might be seen as

unnecessary to use with ingroup subordinates, who leaders do not typically think need to be pressured. Similarly, humor by subordinates that is resistant or subversive might be more likely for outgroup subordinates, who might feel the need to control pressure and push back against their leader.

In this regard, we think the integration of these perspectives on power might be theoretically useful if applied to the study of humor in other interpersonal contexts involving power differences. These might include contexts bounded by formal organizational structures (e.g. doctors and nurses, pilots and flight crews), as well as contexts that are not necessarily bounded by such structures, but which contain power dynamics by tradition, social status, or resources (e.g. mentors and protégés, negotiations regarding mergers or acquisitions between two companies).

Our results also extend the work which shows that in organizations, people often use humor to resist and subvert the power of management (e.g. Westwood and Johnston 2013). Previous work in this area has generally examined traditional management-subordinate relationships with formalized authority in organizations (e.g. Rodrigues and Collinson 1995). Our study examined a context in which power relationships were based on strong professional norms dictating that mediators are powerful, rather than a formal power structure. This suggests that perhaps resistant or subversive humor could be examined in other contexts that might involve real but non-formalized power dynamics, such a police-citizen relationships, or teacher-student relationships.

Our findings also indicate that viewing humor strictly as an independent variable is overly simplistic. Indeed, this kind of one-way influence paradigm whereby humor is used to influence others' emotions and behaviors has been the dominant model within the nascent literature on humor in organizational contexts (Mesmer-Magnus et al. 2012). Our results indicate that humor should be viewed as a *dependent* as well as an independent variable. It *can* be a stimulus for initiating a range of responses in others (i.e. an independent variable), but it can also be a strategic response to others' behavior (i.e. a dependent variable). Our findings of reciprocity by both the mediator and the disputants support this contention, as does the observation that disputants use humor in response to mediators' pressure. Furthermore, when viewed as a dependent variable, humor can be seen as an adaptive behavior that is used as part of an individual's strategy for achieving his or her own goals.

8 Strengths, limitations, and future directions

In this study we examined humor behavior in extensive mediator-disputant interactions. Our sample of mediations was large, and involved direct observation of behavior over hundreds of hours of mediation sessions, rather than

retrospective recall and judgments of past behavior. And our quantitative coding of humor behavior by experienced independent coders allowed us to test our hypotheses about a range of different behaviors. Importantly, unlike the existing literature which focuses almost exclusively on mediator behavior, our analysis also explicitly included disputant behavior.

These strengths notwithstanding, we also acknowledge a number of weaknesses. First, the data were collected in only two cities in the U.S., and therefore we cannot necessarily generalize to other locations within the U.S. Future research examining humor in mediation contexts outside of the U.S. might also illuminate the ways in which culture shapes the way mediators and disputants use (or don't use) humor to navigate mediation or other social situations.

Second, because the study was observational rather than experimental, it is impossible to make causal inferences about the relationships between humor and other phenomena. For example, although we used contextual cues from the transcripts to infer that humor was being used for a particular purpose (e.g. relieving tension, setting the stage, etc.), it is possible that more complicated causal patterns were present that we were not able to detect. Similarly, because humor was observed rather than manipulated, it is not possible to unambiguously link incidences of humor to outcomes, such as whether the mediation resolved the dispute or not. For example, it is possible that humor was related to some other unmeasured variables (e.g. the personality of the mediator) which was related to both humor use and outcome. Future research might extend this line of inquiry into laboratory simulations, where the use of humor might be manipulated to examine its relationships with mediation outcomes.

Also, because humor was defined by examining records of *what* was said and the context in which it was said (i.e. what was said before and after the humor incident), we were not able to analyze other communication cues such as tone of voice, posture, volume, or eye contact. One possible implication of this is that we might have missed identifying instances of humor that were not obvious through transcriptions alone, but which might have been more apparent to an observer in situ. Although obtaining permission of the parties might be challenging, future research might examine video recordings of such cues during mediation, or alternatively, might use observers who are trained to examine those cues. That being said, the fact that we might have missed some more subtle or nuanced uses of humor does not change our general conclusions about humor use in mediation or its implications. That is, in contrast to the descriptive and prescriptive literature on humor in mediation, we found frequent use of aggressive forms of mediators' humor such as pressing, and humor used to push-back against the mediator. Moreover, these uses of humor were consistent

with notions of power and resistance to power described in the literature. The identification of additional specific incidences of humor within our data would not have changed the implications of identifying these phenomena, though the possibility remains that unidentified humor might have been theoretically meaningful for other reasons.

In addition to video-recording mediations, researchers could examine characteristics of the individuals who use humor. In particular, research on gender differences in humor (e.g. Decker 1991; Holmes et al. 2001) might be leveraged to examine whether gender differences in humor use by mediators and/or disputants exist, or have an impact on others' interpretations of the humor or on mediation outcomes.

9 Practical implications

Does this study have implication for mediators? The mediations we observed were very serious and the mediators very effective, obtaining agreements about 65% of the time. So, it would be presumptuous for us to proffer sweeping prescriptions and proscriptions. But we do offer four specific tactical recommendations.

The first is not to use humor excessively to control tension. We observed that some mediators did so, and this seemed to annoy the disputants and to diminish the mediator's credibility. Mediators and disputants *expect* the mediation to be somewhat tense. As one mediator said, "If people want to relax, let them go to a bar." Therefore, it might be counterproductive to attempt to create an atmosphere that is very relaxed, informal, and jovial.

When they do employ "tension reduction" humor, mediators need to specifically target their humor rather than attempting to reduce the overall tension. That is, they need to wait until tension surfaces and then use specific humor to resolve it. For example, in one of our mediations a defendant blurted out, "We have been here for five hours and haven't even mentioned any figures." Here was a good opening for a humorous comment, such as, "Yes, but after we've been here eight hours the plaintiff has to pay his attorneys time and one-half. Plus there are three of them!"

Another suggestion is that mediators use humor to flank disputants' positions rather than employing frontal assaults. Specifically, when a plaintiff strengthens their case, mediators should use humor to point out the risk of trial rather than trying to directly weaken the case. If the defendant points out the high risk for the plaintiff in trial, the mediator could use humor to weaken

the defendant's case. Or if the plaintiff points out precedents that weaken the defendant's case the mediator can humorously provide information that juries in the probable trial court have historically awarded low amounts to plaintiffs. Humor might be well-suited to this kind of counter-argument strategy.

A good example of this flanking maneuver came in an automobile accident case in which a daughter sought an award for her leg injuries. The mother had also been injured and had previously settled for a large amount. The plaintiff's case was basically that the defendant was at fault in the mother's case and therefore was at fault in the daughter's case. Instead of countering this logic, the mediator wondered out loud if the daughter was getting too much sun in the soccer games she had been playing (i.e. he was implying she was not badly injured).

A final suggestion is that mediators use humor to ratchet the mediation forward. An expedient mediation moves through the steps of: a) A discussion of facts and offers, b) Exchange of offers only, c) Establishment of final offers, and d) The close. When moving through these steps, disputants tend to retreat to previous steps. For example, when discussing his final offer, the plaintiff will often bring in new facts and ask that the mediator communicate these to the defense. The mediator can use humor to avoid this retrograde. For example, she might quip, "The interstate is a parking lot after 5pm," or "We provide lunch, not tomorrow's breakfast" or "I'll tell the defendants this on the way to the parking garage" (implying they will leave after hearing more facts).

10 Conclusions

Civil case mediations often involve plaintiffs who have suffered a significant financial or personal loss, and thus, much like in funerals, one does not expect to find humor. But there *is* humor, and it is used instrumentally. Some of the humor used by both mediators and disputants was intended to relieve tension or to amuse others and ostensibly to build rapport: nice humor. This is the type of humor that is typically prescribed, not only for mediators, but for people in most situations. But we also found considerable use of humor that was used to apply pressure to another party, or to push back against pressure. This humor was often aggressive in tone, and was at times impolite, bawdy, and tough. These unexpected and perhaps counter-normative demonstrations of humor can be explained in the context of the power dynamics that occur in mediations and elsewhere. High-power individuals see humor as functionally useful for achieving their goals, and their power reduces their concerns about the risk of

offending others. In contrast, low-power individuals see humor as a less risky strategy for pushing back against powerful others. We hope that our findings in the mediation context draw additional attention to the role of power dynamics, and is useful for helping researchers and practitioners predict and explain the humor that appears in unexpected places.

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Bionotes

Christopher Robert

Christopher Robert (PhD University of Illinois) is the Associate Dean for Graduate Programs and Research in the Department of Management in the Trulaske College of Business at the University of Missouri. His research focuses on humor at work, conflict and negotiation, and cross-cultural management.

James A. Wall, Jr.

James A. Wall, Jr. (PhD University of North Carolina) is Professor Emeritus in the Department of Management in the Trulaske College of Business at the University of Missouri. His research has focused on negotiation and mediation, and he is a long-standing member with leadership roles in the International Association for Conflict Management, and the Conflict Management division of the Academy of Management.