

Mediators' Use of Humor: Quippers, Jokesters and Raconteurs

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Abstract

This paper presents results of a small qualitative study investigating how and why mediators use humor. More specifically, the paper illumines and explores the nature of the humor that mediators use and how humor functions in the context of mediation. The effect of humor on parties and attorneys is also addressed. Data for the study were collected through the observation of five individual mediations and subsequent interviews with the mediators, attorneys, and parties. The results indicate that humor has particular functions in mediation, including exerting pressure, distraction, and managing strong emotions. Implications for mediators, ideas for future research, and additional theories on humor and mediation are also discussed.

Chapter 1—Introduction

Is humor a temperament or a talent? Is it innate and individual and evolutionarily adaptive, or learned and cultural and gloriously pointless?
~Tad Friend, *The New Yorker*, November, 2002

There is a typical story mediators tell about what they do—about how they actually mediate cases. This story includes how information is elicited from the parties, how mediations begin, whether and when caucuses happen, how an agreement is made or not made, and how much attention mediators give to parties' emotions and stories. Much of what mediators do feels intuitive or seems logical or is just not questioned—there is generally agreement about the basic elements of good mediation practice. Further, there is a sense that there are some fundamental skills that mediators must possess in order to be effective, such as eliciting information, uncovering interests underneath positions, demonstrating empathy, and helping parties think about creative solutions (Honeyman, 1990; Moore, 1996). What has been given far less attention and is therefore less known are the skills and tactics that lie at the fringes of the well-examined catalogue of mediator behavior.

This project is an attempt to glean one morsel of knowledge about how mediators execute the tasks involved in mediating by examining how they use humor. In order to explore this issue and frame my project, I formulated the following research questions:

1. What is the nature of the humor that mediators use?
2. Are there points in a mediation where mediators are more or less likely to use humor?
3. Are mediators aware of their use of humor?

4. Are parties aware of the mediator's use of humor?
5. How does mediators' use of humor function in the mediation process?

This study attempts to answer these questions via observations of five mediations and subsequent interviews with the mediators, parties, and attorneys. My hypotheses about what this data would reveal are:

- There are particular moments in a mediation in which mediators are more likely to use humor.
- Mediators have stock anecdotes or quips that they use in particular moments in a mediation, but most of their humor is spontaneous.
- Mediators use humor as a tool to facilitate the mediation process.
- Mediators do not necessarily realize they use humor and parties and attorneys do not necessarily notice it either.

Two additional goals of this project are to highlight the value of research on unexplored areas of mediation practice and to focus more attention on how parties and attorneys experience mediation.

Chapter 2—Review of Relevant Literature

Functions of Humor in Social Situations

Because “humor” is a broad term, it is useful to begin with a definition appropriate to this study. For her (2005: 9) study of humor in multicultural negotiations, Vuorela defined humor as “anything said or done verbally in order to cause amusement, intentionally or unintentionally, for example, a narrative joke, a joking tone of voice, and ‘quips’ such as a funny word choice.”

It is generally recognized that humor can create and support camaraderie (Fraley & Aron, 2004), improve psychological health (Poland, 1994), increase hope (Vilaythong, A.P., Arnau, R.C., Rosen, D.H., & Mascaro, N., 2003), and is closely linked to creativity (Fry & Allen, 1996; Jurcova, 1998). Thus humor is closely interwoven with social interaction. According to some, humor has particular powers. Forester writes:

The sensitive use of humor... can do substantial work: acknowledging others, defusing expectations and providing relief, signaling one's depth of understanding; observing the ambiguity of obligations, noting the unpredictability of broader contexts, displaying personal style and character, acknowledging pain and enabling response, empowering others and encouraging collaboration, and noting a multiplicity of perspectives that might be apt and practical in the moment (2004, 236).

A mediation is a social situation, albeit with particular goals which may include the chance to be heard, justice, the end of legal entanglement, or monetary gain. Does humor assist mediation participants in achieving these goals? Almost every human interaction is eased and made more enjoyable when humor is present. Is this true for mediation? How might humor function in the mediation context?

Functions of Humor in Mediation and Negotiation

A certain amount has been written about mediators' use of humor (Debevec, 2004; Forester, 2004; King, 1998; Wimmer, 1994), though there is scant research of what this humor actually looks like, the effect, if any, on the mediation process; or what parties and attorneys think about it if they notice humor at all. Commentators including Honeyman (1990); Hermann, Hollett, Gale and Foster (2001); and Cloke (2003) have discussed a sense of humor as a desirable mediator quality. Others (Madonik, 2001; Pruitt, 1981) stress the usefulness of humor as a way of building rapport between the mediator and the parties. Madonik cautions mediators to "use it only if you are sure the type of humor and content of the material fit the environment and audience" (165). In Goldberg's (2005) survey of professional mediators, humor was reported as one way to reduce tension. I know from my experience conducting this research that many mediators are intrigued by and have strong opinions on the topic. Everyone I have spoken to either formally for the project or informally can regale with stories about humor gone wrong or humor that worked. King (1988), Forester (2004) and Debevec (2004) have described their own or others' personal experiences with humor.

In 1993, Ansgar Wimmer reported the results of a study for which he interviewed ten Boston-area mediators to garner their thoughts on mediators' use of humor. Although it is essentially a summary of mediators reporting on their own experiences, the study provides information that is germane to this project. Wimmer's informants described several potential benefits of humor in mediation: relief of tension, broadening of perspective, a means of "saving face", a way of heading off negative emotions, providing a sense of security, causing a reduction of the threat level, a means of focusing on issues,

a way of readjusting one's position, a method of marketing the process, a way to break the ice, and a way to create movement. The mediators also discussed a few disadvantages: the risk of using the humor at an inappropriate moment, the variability of mediators' personalities in regard to humor, the possibility of risking ethical boundaries, and the risk of reinforcing or creating an asymmetrical power situation between parties. Wimmer's survey is useful primarily because it indicates potential directions for the current study.

Other researchers have examined humor more closely. In her (2005) study of humor in multicultural negotiations, Vuorela found that humor can be an essential ingredient for negotiator success because it is one way to pursue goals and because it enhances interpersonal relationships, thus aiding situations when a negotiator seeks to be cooperative. In a somewhat similar vein, Adelsward and Oberg (1998) reported on research that examined laughter and joking in international negotiations. They concluded that laughter and humor can indicate power relationships, act as a signal for when it is acceptable to discuss a given topic, and as a gauge for the beginning or ending of a negotiation stage.

So it seems that humor is a tool of social interaction that has three potential functions in mediation: (1) managing emotions and tension; (2) distraction/redirection; and (3) building relationships.

Managing Emotions and Tension

Managing emotions and tension is the function addressed by Francis, Monahan, and Berger (1999) in their study of humor in medical interactions. They write: "The purpose of emotion work (or emotion management) is to try and bring emotions into line

with the feeling norms of the situation. If humor accomplishes this goal, or is at least attempted with this purpose in mind, it is, by definition, a form of emotion management” (152). For mediators, managing the emotions of the parties, such as helping them harness their anger in a productive way, might be achieved with humor.

Mediators also use humor to manage tension on both an individual and a group level. King (1988: 120) asserts that “using humor during a dispute resolution session can reduce the tension level of everyone involved and increase the possibility of a successful outcome.” Tension is a motivator for change. If the level is too low, the individual and group may not be motivated to progress; if it is too high, the individual or group may feel too overwhelmed to be productive. Humor is one tool for balancing this tension.

The social theorist Kurt Lewin believed that people function at their best when a state of emotional equilibrium is achieved. “For any type of social management, it is of great practical importance that levels of quasi-stationary equilibria can be changed in either of two ways: by adding forces in the desired direction or by diminishing opposing forces “ (1999: 280). Humor may be one way of achieving this balance.

Distraction/redirection.

Mediations are frequently lengthy processes and are often stressful, at least for the parties, who often have much at stake and are usually new to the process. Even if parties are accompanied by an attorney, they must discuss difficult issues with a stranger and prepare to potentially walk away with less than what they would ideally want. Under these circumstances, some form of momentary distraction can be welcome.

In addition to momentary distraction from difficult topics, mediators may use humor to redirect a mediation that has spun off into non-productivity. In this way, humor functions as a rerouting from an unproductive direction.

Building relationships.

For mediators, success is probably not possible unless the parties trust them and believe they can help the parties get what they want. Mediators must be able to elicit personal information and stories about what happened. In order to do so, they must discover ways to establish some sort of congenial, trust-promoting relationship with the parties, if only for a few hours or a day. Humor is one way of building this relationship.

If mediators' use of humor functions in these ways and if mediation exists for the parties, where do the parties fit?

Parties and Attorneys

In addition to observing what mediators do in terms of humor, I wanted to find out if the parties themselves noticed humorous mediator behavior and what they thought about it if indeed they noticed it at all. McEwen supports this question because:

If there is any lesson from negotiation theory and research for the study of third-party processes, it is that we should pay much closer attention to what the parties bring to the process by way of negotiating skills, orientations, and expectations....The challenge is to overcome the natural tendency for ADR research to focus on the third party, almost to the exclusion of the parties they are assisting (1999: 333).

While several researchers have indeed concerned themselves with what parties in mediation think about the process generally, few have focused on how parties experience mediation in situ. This is remarkable because as Welsh (2004: 672) comments, "...in a field devoted to the self-determination of disputants, we need to focus on—and work to

discover—what the disputants see.” For the most part researchers who consider parties have focused on issues such as fairness and justice (Peachey 1989; Tyler 1987), the importance of achieving resolution (Carnevale, Lim & McLaughlin 1989; Pruitt, McGillicuddy, Welton, & Fry, 1989), or why parties choose mediation (Pearson & Thoennes, 1989), but not on how parties actually experience mediator behavior. If mediation and mediators exist to help people in conflict it makes sense that researchers devote more attention to how parties experience and interpret mediator behavior.

Chapter 3—Methods

This study seeks to assess and understand the ways that mediators use humor and how their choices affect the mediation process. To determine this, I conducted a small qualitative study, an inquiry process with the purpose of understanding a social or human question or interaction through words and reporting by informants (Creswell, 2002). The goal of this qualitative research project is to understand how one mediator tool—humor—functions in mediation. While some researchers (including Kolb, 1983; Kolb & Associates, 1994; Silbey & Merry, 1986) have observed mediators and others (Wimmer, 1994) have interviewed mediators about humor, up to this point no one has observed mediators specifically for humor and interviewed mediators, parties, or attorneys about humor.

Research Design

My primary concern in designing the study was to find a way to connect what mediators believe they do when they mediate with what they actually do; to move beyond mediator self-reports of behavior. From informal conversations with mediators, my own experiences as a community mediator, and the post-mediation interviews included in the data for this study, I realized that many mediators often do not remember some of the specifics of what actually happens when they mediate because they are so focused on the moment-to-moment process. Therefore, while mediators' self-reports are somewhat useful, it seemed critical that I observe mediators in action and then verify my observations with subsequent interviews.

One initial challenge of the study was to find mediators who use humor and secure permission to observe them. For the most part this was achieved through word of

mouth. At the beginning of the study, I asked mediators I know in the Boston area if they knew of any mediators who regularly use humor while mediating. Once I realized how challenging it would be to observe *any* mediator, I stopped asking for funny mediators and started asking if my contacts knew anyone, funny or not, who might let me observe them.

Because I was concerned with mediators self-consciousness if they knew that I was researching humor, they were told when I requested to observe them that the study was on “Mediators’ Techniques and Strategies” and informed of the specific nature of the project during the post-mediation interviews. While marginally covert, this research strategy is an acceptable method (Lee, 1993) in qualitative research studies. After I received permission to observe a mediator, each mediator then had to secure permission from the parties and attorneys.

I observed five mediators mediate one case each between May and August of 2004. Because the sample size was small, it was not enough to achieve what Straus and Corbin (1998: 143) refer to as “theoretical saturation” which they define as “the point in category development in which no new properties, dimensions, or relationships emerge during analysis.” They describe how in qualitative research, “Because we are looking for events and incidents that are indicative of phenomena and not counting individuals or sites per se, each observation, interview, or document may refer to multiple examples of these events” (1998, 214). For the present study, each mediation case is rich with data, and while saturation was not achieved, several intriguing relationships and themes emerged.

With the exception of one long-time (mediating for more than two years) volunteer mediator, all of the observed mediators were professionals; that is, they define themselves either primarily or secondarily as mediators and charge a fee for their services. I included only experienced mediators in the project because I believe humor to be an advanced skill or tool which novice mediators are less likely to use. Each mediation lasted between three and eight hours.

While observing, I took notes on what was happening generally in the mediation (e.g., "discussion about money") as well as the setting (joint session, caucus, etc.) to give the humor context and noted verbatim to the best of my ability when I noticed the mediator or another participant in the mediation using humor. I also noted the verbal and non-verbal reactions of the participants, such as whether or not they contributed more humor, laughed or smiled.

Throughout each mediation, I shadowed the mediator. This entailed following the mediator from caucus with one party to caucus with the other, to joint sessions with everyone, and to the mediator's office or waiting area during breaks or while parties and attorneys met privately. During the two full-day mediations, I hastily ate lunch with the mediators between caucuses. Occasionally the mediators would ask for my opinion about certain aspects of the case or if I had any questions. I kept my comments vague and only asked questions to clarify the mechanics of what was happening in the mediation.

During sessions with parties and/or attorneys, I sat in a corner of the room where I could hear everything that was said and see participants' faces as much possible. With the exception of one mediator, I interviewed each of the mediators using a semi-

structured interview guide immediately after the mediation, and recorded the conversation with a tape recorder. I asked the mediator about the humor I observed, whether the mediator remembered it, if it appeared to have the intended effect, whether or not it was planned, if this was a typical mediation for the mediator, what the mediator thought generally about mediators' use of humor, and if the mediator had ever used humor in a circumstance in which it did not have the intended effect.

Interviewing parties and attorneys proved to be considerably more difficult because not all of them agreed to be contacted after the mediation, they usually left the mediation site promptly at the conclusion of the mediation, and few of them were easily accessible by phone. Nevertheless, I was able to interview three attorneys and one party. I asked them if they remembered any humor and if so, what they thought about it.

After each case, my observation notes were typed and the recordings were transcribed. The resulting transcripts were then analyzed for patterns and themes. Strauss and Corbin describe this method of qualitative research, or "grounded theory" as "theory that was derived from the data, systematically gathered and analyzed through the research process. In this method, data collection, analysis, and eventual theory stand in close relationship to one another." (Strauss & Corbin, 1998: 12).

Participants

Professional mediators, one long-time volunteer mediator, and mediation parties and attorneys were the participants in this study. The mediators were contacted via phone and email. Once each mediator agreed to participate, she or he then checked for an appropriate case and contacted the parties and attorneys to ask their permission to participate.

Challenges in Observing Humor in Mediation

Access

My most significant challenge in the study was gaining access to mediators, parties, and attorneys. Because my data was collected from a “convenience sample” (Weiss, 1995), I was completely dependent on the generosity and availability of mediation participants. In a few cases, the mediator and the attorney and party for one side agreed to participate but the other side did not and I was therefore unable to observe those cases.

Because I wanted to observe as many mediators as possible, my sole criterion for observable cases was that they last no longer than one day. The types of cases I observed were personal injury, landlord/tenant, employment, and wrongful death.

While many mediators in the Boston area are quite accustomed to either being observed by students for the purpose of writing a case study or interviewed for the purpose of collecting information about what mediators do or their opinions on a mediation-related topic, rarely have they encountered a student who wants to both observe a mediation and interview the attorneys, parties, and the mediator for research purposes. While the mediators I observed were intrigued by the study, particularly once the true subject was revealed in the post-observation interview, obtaining permission to observe and interview mediators and parties proved to be quite trying. The respondents who did elect to participate self-selected as people who are interested in mediation research.

Mediators are understandably protective of their parties, and some expressed concerns about the effect on the mediation process that a researcher-observer might have

by simply being in the room. Whether that concern was for the parties, who were likely to be new to the process and thus ignorant of how it “usually” works, for the parties’ attorneys, all of whom had considerable experience with mediation, or for the mediators themselves cannot be determined. For these mediators, assurances of confidentiality, my experience as an observer and mediator, and my indifference to the substance of cases did nothing to persuade them to participate.

Similar access challenges have been encountered by other researchers. In Kolb’s detailed account of her (1983) observational study of federal and state mediators, she describes obstacles such as being denied permission to observe some mediators. This occurred despite the relationships she developed with the mediators over the course of her study.

Identifying Humor

Since humor is personal and contextual, how did I know what to look for while observing mediations? I watched and listened for laughter, comments that seemed to have a jocular intent, humorous stories, playful banter, jokes, and the verbal and non-verbal reactions of the other people in the room. A similar method was used by Vuorela (1995) in her study of humor in multicultural negotiations and Hay (2000) in her study of how men and women use conversational humor.

Verifying Observed Humor during Interviews

With the interviews, my intention was to verify the humor I had observed by determining if the interviewee remembered instances of humor and if the humor had an impact on the mediation from the respondent’s perspective as a mediator, attorney, or party. As Weiss (1995: 150) advises, “...we will obtain more reliable information and

information easier to interpret if we ask about concrete incidents than we will if we ask about general states or about opinions.” I believed that because I asked respondents about specific behavior I had observed, their responses would reveal particular insights into that behavior.

Confidentiality and Informed Consent

Each mediation participant signed a study participation consent form with the understanding that no identifying information would be used in the study report. During data analysis, I assigned a pseudonym to each participant. I also omitted from the report any identifying information about participants and the mediation cases.

Data Analysis

Coding Process

The transcriptions of the observation field notes and interviews were put into Maxqda, a computer program that facilitates the process of qualitative data analysis. Then, based on the interview guides, research questions, and ideas in existing literature, I generated a preliminary code list that helped describe, categorize, and conceptualize the data. For the observation data, the general codes were: Humor Locus, Type of Humor, Content of Humor, and Humor Initiator. A separate code list was created for the interview data and included Distraction, Rapport, Intentional Humor, and Spontaneous Humor. I subsequently used “open coding” (Strauss & Corbin, 1998: 101) to “open up the text, and expose the thoughts, ideas, and meanings therein” (Strauss & Corbin, 1998: 102). In essence, open coding is one method for making sense of qualitative. At first, I coded the observations by analyzing each line and sentence, then repeatedly reread and

recoded each document for ideas I might have missed previously (Strauss & Corbin, 1998: 119-120).

Developing Themes and Generating Meaning

After coding was completed, matrices were used to find patterns and develop themes (Miles & Huberman, 1994). During this process, different elements within and between cases were combined and separated. For example, I combined Locus of Humor with Humor Initiator to see if there was a pattern. Sample matrices can be found in Appendix [C]. Other methods that were used during the analysis process were: clustering different ideas, counting phenomena (such as how many times banter occurred) and making contrasts and comparisons (including comparing humor in caucuses to humor in joint sessions).

Another method I used throughout this stage was memo writing. According to Strauss and Corbin (1998: 217), memos are “written records of analysis that may vary in type and form.” I wrote memos each time I thought I understood something new about the data or if I was struggling to understand what was happening in a given piece of data. The memos were an informal way of capturing my interactions with the data. Many of the ideas generated through memos became building blocks of the formal written report of the study.

After the analysis process, the next step was to confirm my findings.

Checking for Representativeness

Due to the limitations on access to participants the mediations in this study are not representative of all mediations or mediators in terms of humor. However, because similar phenomena occurred across the mediations, it is plausible that the sample is

adequate enough to describe what is at least sometimes true regarding humor in mediation. Additionally, as Miles and Huberman (1994: 269) advise, the data were checked for “outliers” or data that did not seem to fit established patterns. Doing this challenged my assumptions about what was happening with the data and added integrity to the sample—it was not as homogeneous as I initially believed.

Researcher Effects

Miles and Huberman (1994: 265) describe two types of researcher effects: “A. the effect of the researcher on the case and B. the effect of the case on researcher.” To protect against the former, I used slight subterfuge in not telling mediators that I was interested in humor. I was also as unobtrusive as possible while observing the mediations, sitting in each mediation room mutely and with my best neutral facial expression. The interviews proved to be a valuable tool for guarding against the latter researcher effect because participants were able to interpret the observational data and either confirm or question what I believed I had seen.

Weighting the Evidence

The first mediation I observed played the role of a test case. I was still determining the best way to track the humor in mediations in a way that would make sense. Therefore, my field notes for this case are much less detailed and data-rich. My method for observing subsequent cases was more standardized; it is much easier to tell from the field notes what was happening in each mediation, particularly in terms of humor. The result of this discrepancy is that the data from the latter four observations is much stronger and thus given more weight and attention than the data from the first mediation.

Exploring Rival Explanations

Another tactic I employed for confirming findings was to continuously seek out alternative explanations for what was occurring in the study (Miles and Huberman, 1981: 274). This tactic was effective because it challenged me to question conclusions and look deeper into the data. To this end, I reread relevant literature and found new literature sources throughout the study and analysis to help spur my thinking.

Validating Findings

The final step in this study was to validate my findings—What are the standards against which findings are judged? Miles and Huberman (1994) outline various criteria for doing so. For this study, the criterion I found most useful was “utilization” (Miles and Huberman, 1994: 280).

Utilization

The value of qualitative research is that it examines real people in real situations with the aim of providing new insight into those situations or otherwise benefiting the population involved in the study (Miles and Huberman, 1994). The findings in this study present new information about how humor functions in mediation that should prove useful to mediators in terms of thinking about how they practice mediation and what behaviors are effective.

Chapter 4—Results

This project examines mediators' use of humor. The first section is a description of each element I examined: the locus of the humor, the form of the humor, the content of the humor and the specific conversational context at the time it occurred, and the person (mediator, party, or attorney) who initiated the humor. The next section is an in-depth discussion of the results for each case, including data from participant interviews. Finally, I discuss trends across the different mediations.

Elements

Locus

Since one of my theories about mediators' use of humor is that there are certain points in a mediation where mediators are more likely to use humor than others, it seemed important to identify where the humor occurred in the mediations I observed. Because all of the mediations followed roughly the same pattern, for simplicity I use these stages as loci: initial joint session/opening, caucus, joint session, closing/final joint session, and outside of the mediation room.

Form

As one question I had is what the humor looks like, it was essential to determine what form the humor took. I used four broad categories: quips, banter, anecdotes, and jokes. Quips are spontaneous, stand-alone witty remarks. They may give insight into what the speaker is thinking or be a way to articulate an idea in a minimally threatening way. Banter is interactive humor in which various members of the social group participate. It also occurs spontaneously and may be relationship-building since a certain amount of agreement is necessary for it to occur. Anecdotes are stand-alone, true,

humorous stories and jokes are brief stories with punch lines. They could be used to illustrate a point or to distract briefly the other participants.

Content and Context

The substantive content of the humor is important because it seems like a potentially sensitive issue given the nature of the cases in the study and because I wanted to know what mediator humor looked like. An example of this might be a quip made about a party's injury. The context is the larger conversation in which the humor occurred—what was being discussed immediately prior to each instance of humor. The humor context might provide insight into how the humor functions in a given mediation or for a particular mediator.

Humor Initiator

Because initially I was so focused on how mediators use humor, it did not occur to me that other mediation participants might initiate it. As I began examining the data, it became apparent that occasionally parties and attorneys were humor initiators. When participants engaged in banter, it was often difficult to determine from my field notes who initiated it. One participant might say something that struck another as funny or witty and build on it by saying something jocular, but because the first comment was not necessarily humorous, it is a bit of a boundary issue: Did the humor begin with the first person or the second or third? This could not be captured by a single observer.

Supplementary Data: Interviews

As noted in the Methods chapter, I sought to confirm the humor I saw by interviewing the mediators and when possible, the attorneys and parties. Another goal of the interviews was to address Research Questions 3 and 4: Are mediators aware of their

use of humor? Are parties aware of the mediator's use of humor, and if they are, do they think it had an effect on the mediation? I asked the mediators these questions:

1. Did the mediator notice any humor in the mediation? If yes, I asked for examples. If no, I told the mediator about examples of humor I observed and asked if they could then recall it.
2. Assuming the mediator remembered some of the humor, I asked what they were thinking at the time and if the humor use was planned.
3. Was this a typical mediation for the mediator in terms of the kinds of questions that were asked, caucusing, the interactions between the participants, etc?
4. Additional thoughts on mediators and humor?

For the interviews with the parties and attorneys, I asked the first two questions.

Mediation One: Mary

Mediation Information

Unlike the other mediations I observed, this one occurred in a room in a courthouse in the metro Boston area and was mediated by a volunteer community mediator, Mary. It was a landlord/tenant case in which the plaintiff/landlord was trying to evict the defendant/tenant. The case lasted about three hours. It was the first case I observed and I had not yet systematized my note taking. I only noted the humor that occurred, not general notes on the entire process as I did with subsequent observations. Therefore, this case contains less data overall than the other mediations.

Results

In this mediation, all of the humor occurred in either the initial joint session or the closing joint session. Mary initiated all of the humor, which consisted completely of quips which were for the most part about the attorneys and which occurred while the participants discussed the details of the settlement agreement. One of Mary's quips was one of two within the entire project about the researcher. Here are all of the examples of humor in this mediation:

Intro/1st Joint

- Mary re: CRM calling parties: "there won't be repeated calls." [parties pick up on this and laugh.]

Joint

- Re: modifying the agreement: Mary: "Or you guys can say you're done with your legal fees and work it out on your own." [Big smile.] Plaintiff: "Yeah." [Others distracted by the agreement-writing.]
- Mary: "The meter's ticking..."

[Two notes about transcription: 1. "CRM" refers to the researcher. 2. Each instance of observed humor is noted with a bullet.]

Interview with Mary. Due to time and scheduling issues, I interviewed Mary via phone approximately four weeks after the mediation. Despite the gap in time, she remembered the mediation quite clearly and recalled much of the humor when I prompted her with observations from my field notes. Here are excerpts from her interview:

CRM: "At one point when everyone was talking about modifying the agreement sometime in the future...you said, 'Or you guys can say you're done with your legal fees and work it out on your own.'"

Mary: "...it was sort of an intervention I guess in one sense, that could have been seen as funny."

CRM: "So ... you said you use humor pretty

often, and so were you thinking that that's how you were going to do that..."

Mary: "...I thought that approaching it that way, in terms of these guys are here to help you and actually making contact with them, I felt that I could... try to get them to be more cooperative in their behavior but do it in a positive and less threatening way."

At the beginning of the interview, Mary did not remember using humor, which is understandable given the time lag between the mediation and the interview. However, when I offered her examples of observed humor, her memory of the mediation was triggered and she was able to discuss the humor expansively. For her, using humor was a way of a gently coaxing the attorneys to seal the deal in the interests of their clients. Finally, she said that humor is a tool she uses regularly when she mediates because it is part of who she is and she's comfortable bringing it into mediations where appropriate. Humor is a standard tactic for Mary, when appropriate, for achieving various goals as a mediator.

Mary's humor was very party-focused. Almost all of her humor was directed at pushing the attorneys to serve their clients better than she believed they were. In this way her humor risked undermining the relationship between the attorneys and their clients.

Mediation Two: Brian

Mediation Information

There were five participants in this mediation: the mediator, Brian; the plaintiff, Nina; Nina's attorney, Roger; the defendant's attorney, Phil; and the insurance adjuster on the defendant's side, Kate. The defendant herself was not present, which was often the situation in the mediations I observed. The case was about an alleged wrongful death.

It occurred in a conference room at Brian's office in downtown Boston and lasted approximately seven hours.

Results

Most of the humor in this mediation occurred in caucus. There was slightly more humor in the plaintiff caucuses than in the defendant caucuses. The single occurrence of humor outside the mediation room in the study occurred during this mediation. Here is the record of it from my field notes:

While Brian and Cristin are in the hall, Nina and Roger walk by. Brian: "They're [defendants] in the other room." Roger: "You mean they're caucusing." [All laugh.]

Roger quipped often throughout the mediation. Here, he used humor to poke fun at the mediation process and possibly the mediator as well. Roger also initiated the humor in the mediation in the initial joint session, which is unusual for this study because while parties and attorneys initiated humor in the other mediations, they did so only after the mediator had established it in the first joint session. Further, Brian was the only mediator of the five who did not initiate any humor in the first joint session. This suggests that Brian is more comfortable using humor in caucus, where humor is potentially less risky or that he takes his cues regarding humor from the parties and attorneys.

In this mediation as with some of the others, most of the humor in the plaintiff caucus was about numbers—how much money the case was going to settle for. However, it was also about the mediation process and often involved self-deprecating humor from the mediator. The humor in the defendant caucus was similar, though it covered more topics (the Red Sox, for example) that were unrelated to the case. This was also the

second mediation in which the subject of one instance of humor was the researcher.

Unlike Mary's quip in Mediation One during the initial joint session when preliminary matters were being discussed, Brian's quip more directly acknowledged my presence in the mediation and occurred during one of the plaintiff caucuses:

Brian: "Discussion about the number is higher than I expected and Cristin can attest, but she's agreed to be a potted plant." [All laugh, CRM smiles.]

Interestingly, by addressing my presence in this direct way, Brian recognized that rather than being a "potted plant," I was in one sense a participant to the mediation with my own interests in the case, although he was unaware of what those were. Perhaps his comment revealed his curiosity about the true nature of my project—was I examining how he helped cases settle? Or maybe the comment revealed some anxiety about my presence and why I was really there.

In caucus with the plaintiff, Brian spent a fair amount of time helping Nina think through the realities of a trial given the personal circumstances of her case. Sometimes this included humor initiated by either Brian or Nina's attorney, Roger. Here is an example:

- Brian regarding a jury: "What fourteen people think is an approximation of the truth." [Nina laughs.]
 Brian-Discussion about a trial-what it might be like.
 Brian: "What would it feel like for you to go through a trial?"
 Discussion.
 Nina: "Reasonable compensation."
 Roger: "That's his [Brian's] job. [Smiles.]
 [Brian smiles.]

The humor functioned as a friendly reality check—if the situation was not sorted out in mediation, a trial might be difficult and no one could predict what might happen, so it was probably in Nina's best interests to settle. Nina laughed often during the mediation, and it was difficult to tell if this was because she was nervous, because she found Brian and Roger's quips to be funny, or because laughter was the expected response to apparently light or humorous comments.

Brian quipped throughout his mediation, particularly when discussing the content and context of the case. Here are two examples:

- [In caucus with the Defendants]: Brian to Kate (insurance adjuster):
 “I'm not naïve to think that with the magic of my words I can bring great changes in your thinking...” [Kate laughs.]
- [In caucus with the Plaintiffs]
 Brian: “Discontent is my stock in trade.”
 [Nina laughs.]
 Nina: “Stock in trade.” [Laughs.]

In the first exchange, Brian seems to validate the classic mediation principle of self-determination (Kate can do whatever she wants) while simultaneously trying to encourage her to move. He uses humor to exert pressure. In the latter exchange, Brian uses humor to prepare Nina for a settlement that may not be completely satisfactory.

In addition to quips, in this mediation there was a moderate amount of banter as well as a couple of jokes and stories told by the mediator or by Roger. Brian's mediation was different from all of the others in this regard. His was the only mediation in which all four forms of humor occurred, although there was substantially more banter and quips than anecdotes and jokes. One possible explanation for this is that while Brian's humor is for the most part spontaneous, he has mediated enough cases that he has a repertoire of

stock jokes and anecdotes that he utilizes at strategic moments. It is probable that Brian has had success with these anecdotes and jokes in the past, and so he continues to use them.

Interview with Brian. I interviewed Brian in his office immediately after the mediation. Perhaps because of the timing, his recollections of the humor were quite sharp. Here are some of his comments:

Brian: "...I use humor a lot... as a comfort device really...I don't think that I use it in a really self-conscious kind of way. I think it just... increases the comfort level for me ..."

CRM: "...towards the end when you were trying to push them on the numbers you'd say things like, 'You can tell them, you can blame me, I made you do it.'"

Brian: "I actually didn't intend that in any way to be humorous."

CRM: "Really?"

Brian: "No, I mean that was really quite literal ...in the sense of the mediator can really be a helpful lightning rod for displacing anger. But actually I did not intend that humorously."

CRM: "Well Nina laughed so..."

Brian: "OK, well I said it in a light way but it was not intended with any kind of irony actually. It was really quite literal."

CRM: "Again very close to the end, you were pushing at [dollar amount] and you said, 'discontent is my stock in trade.'"

Brian: "I have used that line before."

CRM: "And Nina repeated you. She said 'stock in trade' and laughed."

Brian: "...there's a point to that too, which is that it reinforces the notion that I try to introduce this pretty early in mediations that when you settle a case it might or might not feel good. And so it's a humorous way of scoring that point."

The interview with Brian is notable in three respects. First, there were at least two instances where I believed I saw humor in the mediation, either because of Brian's tone of voice or because of the reaction of the participants, particularly Nina, but according to Brian, he did not intend the quips to be humorous. This underscores one challenge of this study: Humor is experienced (or not) on a very personal level that does not necessarily correspond to how others experience it. Brian did not intend to be funny, but nevertheless he apparently was.

Second, humor has specific instrumental goals for Brian as a mediator. It is a way of connecting him with the other participants and it is a means of making particular points in a non-threatening manner, such as that mediation is not about getting everything you want.

Finally, Brian commented at length about his interactions with the other participants and what this meant for the mediation:

You know it really could have with different lawyers... deteriorated. I think the lawyers' personalities were very helpful. Really very helpful in that respect. I found... everybody easy to deal with. I didn't find anyone really prickly. I think Kate was certainly not someone whom I felt any difficulty relating to. Same with Roger. I felt good rapport with everybody, which I think was real important, at least the way I mediate. And I think humor is... part of that.

Although Brian tries to use humor and thinks it is part of his mediator persona, in this case he initially took his humor cues from the attorneys and parties, particularly Roger, who initiated much humor including humor in the initial joint session, and Nina, who seemed to respond to anything vaguely humorous by laughing. He was also very

concerned with developing good relationships with the party and attorneys; he seemed to want to be liked and used humor to achieve this.

Interview with Nina. My interview with Nina (the plaintiff) occurred approximately two weeks after the mediation. Although she had agreed to be contacted, she was quite difficult to reach and when I finally did, she was very busy with work and could only talk for a few minutes. However, in terms of this project, her brief responses are significant because she is the only non-attorney party I was able to interview. Here is what she had to say about Brian's humor in the mediation:

Nina: "No, I don't remember humor in particular, and I very much respond to that. I like it when people approach things with a sense of humor because I think it's extremely effective. You can get away with all kinds of stuff if you say it in a humorous way. I don't remember specific jokes or innuendo, but he had a light-hearted way about him you might say. It wasn't exactly humor, but there was a lightness to the way he presented things that made it very positive."

Nina's memories of the humor were quite vague, which is not surprising given the nature of the case. Because the interview was so brief, I can merely guess at her reactions to the humor. She was in mediation to resolve an extremely difficult personal issue and thus it is possible that she was so focused on the details of the case and getting through the mediation process that the minutiae of the mediator's behavior was a peripheral matter at best. I had noted that she laughed often during the mediation, and her interview indicated that this may have been because she appreciated Brian's overall mediation manner or persona, not necessarily because she was thought he was funny.

One additional note about Brian is that as with the other mediators, he seemed tickled, intrigued and surprised when I told him in the interview that I was researching mediators' use of humor and therefore observed his mediation for this. However, unlike the others, he commented on this in the middle of the interview as well as at the beginning when I revealed my true intentions: "Well it's...really interesting to not know what the research was on because you can become completely self-conscious." During the mediation he seemed generally more aware of my presence than some of the other mediators, as evidenced by his quip about me being a potted plant, and the interview confirmed this. Although he is just one mediator, his response suggests that my slight methodological subterfuge succeeded in not affecting how the mediators used humor. However, while my presence may not have affected Brian's humor use, it is clear that my presence was on his mind as he mediated.

Mediation Three: Glenn

Mediation Information

This was a personal injury case. In addition to Glenn, the mediator, the participants were Ava, the plaintiff; Heather, the plaintiff's attorney; Karen, the insurance adjuster for the defendant; and Art, the defendant's attorney. The defendant was not present. The mediation occurred over the course of a day in conference rooms at the mediator's office in downtown Boston. Due to an equipment failure, I lost the post-mediation interview with Glenn. While this is unfortunate, the data from the observation and interviews with Heather and Art mitigates the loss somewhat.

Results

In this mediation, most of the humor occurred in caucus, with slightly more humor in the defendant caucuses. Humor also occurred in the first joint session. This mediation is notable because it contained the most humor unrelated to the mediation. Unrelated topics included previous mediations in which something amusing had occurred, activity outside the mediation room, and the refreshments. Here are two examples:

- Glenn: “We’ve told them (Plaintiffs) about the brownies so....” [Karen laughs].
- Baked goods-Glenn: “This is actually better than the stuff in the other room.” [All laugh.]

The volume of humor initiated by Glenn that was unrelated to the case suggests that he may not be comfortable with humor that is directly about a case or the parties. Humor about topics unrelated to the case is low-risk; it is unlikely that someone will take offense to a quip about a brownie.

Interview with Heather (plaintiff’s attorney). I interviewed Heather in person in the mediation room about an hour after the mediation. She thought that there was some humor in the mediation. She also said:

“I’ve come to expect that the cordiality that a mediator will extend to the parties and the attorneys often includes humor, and I think that’s what Glenn did. I’ve known other mediators who tell a formal joke or something like that but Glenn’s humor is more woven into things that are going on.”

For Heather, a mediator’s use of humor is about promoting a friendly atmosphere and being polite, which is what Glenn did.

Interview with Art (Defendant's attorney). My interview with Art occurred by phone approximately one week after the mediation. His opinion on why mediators use humor was quite different from Heather's. He believes that mediators use humor for two purposes: 1. to help sell the service they provide because cases could and would settle without them. 2. To make a sometimes stressful process more pleasant for everyone involved. Art thought that Glenn used gentle humor in the service of both of these goals. As he observed, "Glenn builds people up. He lobbed some softballs. It's polite. People appreciate the attempt to make the atmosphere less caustic. For Art, Glenn's humor was a way to gently coax the parties along. "Glenn was very unfrontational. [Dollar amount]—Glenn thought it was too low but asked a question. It's important for him to do that where he has no power—he's not even a retired judge. He has to be somewhat deferential to the parties—part of his shtick." According to Art, then, Glenn's success as a mediator was partly dependent on his deference towards the attorneys and parties, and his humor reflected this. He rarely quipped about the case itself or the parties/attorneys.

Mediation Four: Candace

Mediation Information

The subject of this mediation was an employment issue. The participants were: Candace, the mediator; Mark, the plaintiff; Ellen, the plaintiff's wife; Lynn, the plaintiff's attorney; Emily, the defendant's attorney; and Ed, a representative for the defendant. The mediation occurred in conference rooms at a law office unaffiliated with the mediator or any of the other parties in western Massachusetts and lasted approximately six hours.

Results

The most intriguing element of this mediation is that it was the only mediation in the study in which almost every participant initiated humor. In particular, the attorneys together initiated as much humor as Candace. Perhaps correspondingly, in addition to being about the case, much of the humor was about the attorneys and attorney stereotypes. Here are two examples:

- Candace: “What would be an OK number? Where do you think they want to end up, based on your gut feeling? Oh wait, lawyers don’t go on gut feeling.” [Laughs. Lynn laughs a bit.]
Lynn discusses.
- Emily [hadn’t met her client before]. “Good thing we didn’t have to pick each other out of a line-up.”

Candace’s frank, direct humor about the attorneys was quite bold and thus potentially risky. Yet she was confident enough to try it. Unlike the other mediators, Candace is a psychologist. It could be the case that her psychology training and experience, in concert with her mediation training and experience, provided her with insights into the participants’ behaviors and motivations that in turn somehow informed how and when she used humor. Additionally, because she is not an attorney and therefore has a different (lower?) status, Candace could use her position to say things that might otherwise offend the attorneys; it was understood that she was kidding because she is “just” a psychologist and therefore allowed to use humor in a more candid manner.

One further note that may explain the distribution in humor initiator is that this was the only case of the five in which the mediator and both of the attorneys were women. It is possible that this dynamic provided a mediation situation where all of the participants felt comfortable engaging in humor in a way that was not true in the other

mediations. Authors such as Hay (2000) have studied and discussed the supportive and sharing nature of women's humor, which may have been a factor here, despite the presence of two men. While this is just a theory, it may be worth investigating in future studies.

Interview with Candace. I interviewed Candace in her car on the drive back to the Boston area immediately after the mediation. In the interview, Candace revealed that for the most part she did not plan to use humor, but she consciously tries to relax participants so that they will discuss difficult issues and humor is one way of achieving this. She also said, "I don't like things to be so serious because I don't think people are that comfortable for the most part with things being that serious for that length of time. And for the rapport as well." However, in her preparation for the mediation, she planned to ask about the plaintiff's job with a quip, thinking it would lighten the mood in the room, which it did, as everyone laughed in response. In this study, this was an unusual example of a pre-meditated quip.

Mediation Five: Andrew

Mediation Information

This mediation centered on a personal injury. In addition to Andrew, the mediator, the participants were the plaintiff, Megan; her significant other, George; her attorney, Joe; and the defendant's attorneys, Matt and Peter. The mediation occurred in conference rooms at the mediator's office in downtown Boston and lasted approximately three hours.

Results

This case contained more humor than the others in the study, almost all of which was initiated by the Andrew. In particular, there was a substantial amount of quipping and banter. While this was also true for Mediations Two, Three, and Four, what makes the volume of humor in Mediation Five remarkable is that the mediation's duration was about half the time of the others. Andrew's humor was often self-deprecating, although he also quipped about the case and directed quips at the plaintiff. Like Candace, his humor was often blunt. Here are some examples:

- Andrew: "Take what I say with a grain of salt. Take anything I say with a grain of Salt." [Megan smiles.]
- Discussion of money.
Andrew: "I'm always honest when I do these things. I don't lie because I could never get my stories straight." [All smile.]
- Joe: "You can only beat a dead horse so much."
Andrew: "I'll defend to the death your right to beat the horse." [Joe laughs.]
- Andrew to Megan: "What do you want to do? Don't give me a dirty look. What do you want to do?" [Megan laughs.]

During the mediation, Megan, the plaintiff, barely spoke and was visibly upset about the details of her case. Much of Andrew's humor seemed to be aimed at managing her emotions, distracting her from the difficulties of her case, and including her in the process. At the same time, the humor he engaged in with the attorneys, particularly in caucus with the defendants, was more specific to the minutiae of the case and was also masculine in tone. While some of the other mediators may have also balanced these two kinds of interactions—party on the one hand and attorney/insurance adjustor on the other,

the contrast was much more pronounced in this mediation. The different modes of interaction in this mediation suggest that yet another way Andrew used humor was to build relationships with the parties and attorneys.

Andrew is an retired judge. Throughout the mediation it was clear that he was in charge of what was happening. He quickly drew out the relevant case information and efficiently caucused with each side until it was settled. In his interview he discussed how the length of the mediation was appropriate given the circumstances of the case and that his job was to find a way for the attorneys to settle within that amount of time, whether it was achieved with humor or with something else.

Andrew's humor was often self-deprecating because, I can surmise, he was not concerned with undermining his authority. Andrew knew he would be taken seriously no matter what he said or did. He had an unusual high status that he used to push the attorneys, but he did so with humor. At the same time, he was much gentler with the plaintiff, possibly to appear less imposing given his status and because he guessed that she would take the advice of her attorney. It was easy to imagine him in a courtroom, bantering with and perhaps bullying the attorneys and then turning to the clients and checking in with them. As he later said in his interview, "some people like my style, some people don't. And I don't care." Unlike some of the other mediators, particularly Brian and Glenn, who seemed to care about how the attorneys and parties viewed them and whose humor reflected this to a certain extent, because of his status as a retired judge, Andrew did not have this concern.

Interview with Andrew. I interviewed Andrew in his office immediately after the mediation. He confirmed my observation that much of his humor was about himself. He

also said that his banter with the two defendant attorneys in particular was focused on pushing them as much as possible on the settlement amount. He began many of the caucuses with a quip or a bit of banter before discussing the other side's new offer. When I asked him about this he replied, "... you're all business but you try to do it in a low-key, light way in order to make them amenable to coming up with something." One further piece of data from the interview is that Andrew said that another reason he uses humor is to simply break up the rhythm of the mediation and make it more interesting: "You can't talk about the case every single solitary minute."

Interview with Joe (Plaintiff's Attorney). My interview with Joe occurred in transit as he walked back to his office in downtown Boston. He had noticed the humor in the mediation, particularly its impact on Megan, his client:

"She was very teary from time to time, but I think if it weren't for the humor, she would've sat there in tears for three hours. And the humor just sort of picked her back up, got her back to a baseline where she could then [participate in the mediation] somewhat rationally..."

From Joe's perspective, Andrew's apparent attempts to involve Megan in the process, or at least make her feel more comfortable by using humor, were successful. In this instance, humor functioned as a way of managing emotions.

Themes and Patterns across Mediations

Importance of Loci

Given that participants in Mediations Two through Five spent most of their time either in the initial joint session or in caucus, it is not a surprise that most of the humor occurred there. Nevertheless, mediators' humor functioned differently in these different

loci. In the initial joint session, the humor was a way for the mediator to establish a congenial tone to the mediation and establishing rapport with the parties and attorneys. In the caucuses, mediators' humor functioned as a means to reassure the parties that the process was moving forward, it provided a brief distraction from the negotiations, it was used to present the other side's latest offer in a non-threatening way, and it was employed to pressure the attorneys and parties on their latest offer. It seems that a potential mediator philosophy for these functions is "If I make the process more pleasant, participants will be more willing to make more substantial concessions sooner." In this way, humor can improve the efficiency of the mediation process.

Quips and Banter vs. Anecdotes and Jokes

As I discussed earlier, quips and banter are forms of spontaneous humor that arise out of the context of a particular mediation or caucus setting while anecdotes and jokes are humorous stories that are employed at strategic moments in a mediation. [Anecdotes and jokes were not quoted directly in this report because it was impossible to do so without revealing identifying information about the mediators]. However, quips and banter are also used strategically, often as a way of exerting pressure on the parties to move.

Mediator Beliefs about Humor

The mediator interviews revealed several elements of the mediators' beliefs about humor. Some mediators discussed how they use their senses of humor and their feel for the mood and temperament of the other participants to determine if and how they use humor while mediating. Brian commented at length on how easy the other participants were to work with, particularly given the nature of the case (wrongful death): "I felt good

rapport with everybody, which I think was real important, at least the way I mediate.

And I think humor is...part of that.” Mary and Brian discussed how humor is a part of their personalities and how they tend to look for humor in almost every situation, so they naturally try to use it when they mediate.

Mary: I think they're [opportunities for humor] plentiful and just that's sort of the way my brain works... I do this all the time. It's my personality.”

Brian: One of the things I would say is I don't think I have a mediation persona that is very different from my regular person... humor is something I like and use in everyday life, so I use it here...”

Mary and Brian think of themselves as funny people generally and do not separate their funny selves from their mediator selves.

Trust

Three of the mediators, Brian, Candace, and Andrew, discussed the importance of humor in establishing trust:

Brian: “...it's about...making people trust you in a very short period of time...”

Candace: “...you want people to be able to relax and feel comfortable talking with you about really difficult things.”

Andrew: “I ultimately did draw one of those lawyers out, and that's good.”

Trust between the mediator and the other participants is an essential component in mediation. Parties and attorneys must be willing to tell the mediator details about the case that will help advance the process and must believe that the mediator will do

everything she/he can to help each side. For at least some of the mediators in this study, this was achieved in part with humor.

Parties and Attorneys

Again, because I was able to obtain just a few interviews with parties and attorneys, this data is quite limited. Nevertheless, the interviews with Nina, Heather, Art and Joe provide valuable insights into what parties and attorneys notice and how they respond to mediator humor. Nina did not notice or remember specific humor but was generally aware of Brian's light manner. Heather and Art remembered some of Glenn's humor but thought it was just part of the business of mediation. Joe thought that above all, Andrew's humor functioned to support the teary plaintiff and involve her in the process. Their responses indicate that while the specifics of mediator humor are often not remembered, they think that the overall tone of the mediation that results may indeed facilitate the process.

To summarize, this study examined how mediators use humor. This section discussed humor in five individual mediations. Mediators, attorneys and parties engaged in banter, quipped, and occasionally told anecdotes and jokes. Most of the humor occurred in caucus. All of the mediators were aware that they used humor, and most of the humor was spontaneous, although there were instances of pre-meditated humor. The one party who was interviewed did not remember specific instances of humor, but did recall and appreciate the overall lightness of the mediation atmosphere. The interviewed attorneys remembered mediator humor and believed it helped the process overall by setting a relaxed tone, distracting parties, and establishing trust.

Chapter 5—Discussion and Additional Thoughts on Mediators' Use of Humor

The previous chapter demonstrated how and to what effect five mediators used humor. While the results cannot be generalized to all mediators, the research provides a sample of how humor can function in mediation. In this chapter I revisit the hypotheses I developed initially and compare them to the findings in the previous chapter. I then discuss other themes in the study and for future research. Finally, based on the results of the study and my knowledge of and experience with mediation and humor, I offer further insights about humor and mediation.

Hypotheses and Discussion

1. There are particular moments in a mediation in which mediators are more likely to use humor. This could not be determined by the locus of humor because while almost all of the humor the mediations occurred either in the initial joint session or in caucus, the most time was spent in these loci, and thus it would be expected that most of the humor would occur there. However, in terms of what was happening procedurally when humor was used, the mediators often used a quip or engaged in banter with participants just before presenting the other side's latest offer. This appeared to be an attempt to lessen the participants' anger or disappointment upon hearing the number, which was usually lower or higher than the participants hoped it would be.

2. Mediators have stock anecdotes or quips that they use in particular moments in mediation, but most of their humor is spontaneous. This was confirmed by the observations and interviews. The quantity of quips and banter far outnumbered the anecdotes and jokes. A few of the mediators told one or two anecdotes or jokes during

the course of their mediations. During their interviews, these mediators confirmed that they do sometimes tell particular jokes or anecdotes regularly while mediating.

3. Mediators use humor as a tool to facilitate the mediation process. Although this may seem obvious, the results here give credence to the notion that everything an experienced mediator does has a particular goal. In this study, the mediators used humor to exert pressure on parties and attorneys, to promote a pleasant atmosphere in which the participants might be more willing to make concessions, to distract participants from a sometimes intense process, to manage emotions, and to develop rapport with and gain the trust of parties and attorneys.

4. Mediators do not necessarily realize they use humor and parties and attorneys do not necessarily notice it either. Three of the mediators did not immediately recall the specific humor that occurred; two of them did. All of them remembered the humor when prompted. The one party I interviewed did not remember specific humor but felt that the mediator had a light way of mediating which made the atmosphere more pleasant. The *interviewed* attorneys recalled the mediators using humor in their mediations.

Additional Themes

Impact on Parties and Attorneys

The results of this study (with the small data set in mind) suggest that according to attorneys, humor is just one tactic some mediators employ to do the work of mediating. For some attorneys, the possibility that the mediation atmosphere might be light and possibly even fun enhances the desirability of the mediation process for resolving disputes.

Although the data for parties is quite limited, it reveals that parties may not necessarily pay attention to the specifics of what mediators say and do because they are

so focused on the details of their cases. The implication for mediation practice is that it may be useful for mediators to find ways to test the efficacy of their tactics—particularly “risky” ones, such as humor and touching—perhaps through interviewing parties in-depth after mediations.

Humor Frame in Mediation

In at least four of the mediations, humor was initiated in the initial joint session by the mediator. Thus it was immediately established as one way that the work of the mediation would proceed; humor became a part of the culture of each mediation. Because this humor frame was created so quickly by the mediators, the other participants received the message that it was acceptable for them to engage in humor as well. In establishing humor in their mediations, the mediators relied on their previous experiences and abilities to read the mood of the other participants as a group to somehow know that they could use humor. Or perhaps in using it in the initial stage of their mediations, they were testing to see how the participants would respond and whether or not they could continue to use it. In this study, at least some of the participants responded to the initial humor, thus signaling that humor was indeed acceptable.

Mediator Identity and Humor

For the mediators in this study, humor use is closely linked to their identities as mediators. Mary, Brian, Candace, and Andrew discussed how using humor is natural way for them to go about the businesses of mediating. They each cautioned that while humor is not always appropriate, they look for ways to use it if they think it will be helpful to the process. Each of them had their own humor style, which was partially

determined by their respective mediator backgrounds and status vis-à-vis the attorneys and parties: community mediator, attorney, psychologist, and retired judge.

To take the ideas in the interviews further, I think that mediators who use humor regularly and successfully do so because they are confident in their mediating abilities generally, confident in their abilities to use humor while mediating, and have had prior successful experiences with humor in both their lives and while mediating. It follows, then, that mediators who do not think of themselves as funny in life will be less likely to use humor while mediating because they will be less confident in their ability to use it successfully. Humor is not part of their mediator identity. Further, mediators who do not tend to use humor are also more likely to think of it as risky, while mediators who do tend to use it are also likely confident in their ability to recover if it doesn't go well, just as they do in life. As Ziv (1984: 29) notes, "...we are usually aware of the nature of our humorous ability, and we learn by experience whether or not it is a tactic we can use effectively."

Recommendations

Observational studies of mediator behavior in real mediations are rare. Based on my experiences with the current study, this may be due in part to access issues. If we want to understand better how particular mediator behaviors are most effective, it seems imperative for more researchers to attempt observational studies.

It is quite difficult to gain access to mediation parties, particularly when attorneys are involved. Again, if we want to better understand which mediator behaviors have particular impacts, we must find ways to gain access to parties. Further, very little attention has been devoted to either how parties actually experience mediation or to their

roles as active participants in mediation. As this study has shown, mediation is indeed a social activity in which the parties as well as the mediator and attorneys actively participate.

Future Research

While this project explored how humor functions in mediation, several areas for additional research emerged from the study.

- Teaching/learning humor. If effective humor is an advanced skill, can mediators be taught to use it?
- This study examined how solo mediators use humor. An interesting future study might investigate humor in co-mediation situations.
- How does the gender of the participants affect humor in mediation?
- In this study, I did not see an instance of humor that failed. Although this was due to luck, future research that includes more cases might uncover insights into how mediators recover from failed humor and whether parties are aware of it.
- How do mediators who do not use humor achieve the same effects as mediators who do?
- Research on similar “risky” and identity-derived mediator behaviors, such as touching.

Conclusion

This study examined humor in five mediations. While the results cannot be generalized for all mediations or all mediators, the study offers insights into mediation participants' behavior regarding humor and into how participants think about humor in mediation. The results of the study indicate that effective mediator humor sometimes

plays an important, versatile role in mediation. It is one tactic for doing the work of mediation and it is one way that the various participants relate to and connect with each other. Finally, it is theorized that mediators' use of humor is both conscious and unconscious and determined by the mediator's beliefs about, confidence with, and previous experience with humor in life and in mediation. To answer Tad Friend's question at the beginning of this paper, mediators' humor is both temperament and talent, innate and learned, cultural, but definitely not pointless.

References

- Adelsward, V. & Oberg, B.M. (1998). The functions of laughter and joking in negotiation activities. Humor: International Journal of Humor Research 11(4), 411-429.
- Carnevale, P. J. D., Lim, R., & McLaughlin, M. E. (1989). Contingent mediator behavior and its effectiveness. In K. Kressel & D. G. Pruitt (Eds.), Mediation research (pp. 213-240). San Francisco: Jossey-Bass.
- Cloke, K. (2003). What are the personal qualities of the mediator? In D. Bowling & D. A. Hoffman (Eds.), Bringing peace into the room (pp. 49-56). San Francisco: Jossey-Bass.
- Creswell, J. (2002). Research design: Qualitative, quantitative, and mixed methods approaches. Thousand Oaks, CA: Sage Publications.
- Debevec, C. J. (2004). A funny thing happened on my way to resolution!
Mediate.com.
- Forester, J. (2004). Responding to critical moments with humor, recognition, and hope. Negotiation Journal 20(2), 221-237.
- Fraley, B., & Aron, A. (2004). The effect of a shared humorous experience on closeness in initial encounters. Personal Relationships, 11, 61-78.
- Francis, L., Monahan, K., & Berger, C. (1999). A laughing matter? The uses of humor in medical interactions. Motivation and Emotion 23(2), 155-174.
- Friend, T. (2002, November 11). What's so funny? A scientific attempt to discover why we laugh. The New Yorker.
- Fry, W. F. J., & Allen, M. (1996). Humour as a creative experience: The development of a Hollywood humorist. In A. J. Chapman & H. C. Foot (Eds.), Humor and

- laughter. (pp. 245-258). New Brunswick, NJ: Transaction Publishers.
- Goldberg, S.B. (2005). The secrets of successful mediators. Negotiation Journal 21(3), 365-376.
- Hay, J. (2000). Functions of humor in the conversations of men and women. Journal of Pragmatics 32, 709-742.
- Hermann, M. S., Hollett, N., Gale, J., & Foster, M. (2001). Defining mediator knowledge and skills. Negotiation Journal, 17(2), 139-154.
- Honeyman, C. (1990). On evaluating mediators. Negotiation Journal 6(1), 23-36.
- Jurcova, M. (1998). Humor and Creativity: possibilities and problems in studying humor. Studia Psychologica, 40(4), 312-316.
- King, K. N. (1988). "But I'm not a funny person": Humor in dispute resolution. Negotiation Journal 4(2): 119-124.
- Kolb, D. (1983). The mediators. Cambridge, MA: The MIT Press.
- Kolb, D.M. & Associates (1994). When talk works: Profiles of mediators. San Francisco: Jossey-Bass.
- Lee, R. (1993). Doing research on sensitive topics. London: Sage Publications.
- Lewin, K. & Gold, M. (1999). The complete social scientist: A Kurt Lewin reader. Washington, D.C.: American Psychological Association.
- Madonik, B.G. (2001). I hear what you say, but what are you telling me?: The strategic use of nonverbal communication in mediation. San Francisco: Jossey-Bass.
- McEwen, C. A. (1999). Toward a program-based ADR research agenda. Negotiation Journal, 15(4), 325-338.
- Miles, M.B. & Huberman, A.M. (1994). Qualitative data analysis: An expanded

- sourcebook. Thousand Oaks, CA: Sage Publications.
- Moore, C.W. (1996). The mediation process (2nd Ed.). San Francisco: Jossey Bass
- Peachey, D.E. (1989). What people want from mediation. In K. Kressel & D. G. Pruitt (Eds.), Mediation research (pp. 300-321) San Francisco: Jossey Bass.
- Pearson & Thoennes (1989). Divorce mediation: Reflections on a decade of research. In K. Kressel & D. G. Pruitt (Eds.), Mediation research (pp. 9-30) San Francisco: Jossey Bass.
- Poland, W.S. (1994). The place of humor in psychotherapy. In H.S. Streat (Ed.), The use of humor in psychotherapy. (pp. 173-177). Jason Aronson: Northvale, NJ.
- Pruitt, D. G., McGillicuddy, N. B., Welton, G. L., & Fry, W. F. (1989). Process of mediation in dispute settlement centers. In K. Kressel & D. G. Pruitt (Eds.), Mediation research (pp. 368-393). San Francisco: Jossey Bass.
- Silbey, S.S. & Merry, S.E. (1986). Mediator settlement strategies. Law and Policy 8(1), 7-32.
- Strauss, A., & Corbin, J. M. (1998). Basics of qualitative research: Techniques and procedures for developing grounded theory (2nd ed.): Thousand Oaks, CA: Sage Publications.
- Tyler, T. R. (1987). The psychology of disputant concerns in mediation. Negotiation Journal, 3(4), 367-374.
- Vilaythong, A.P., Arnau, R.C., Rosen, D.H., & Mascaro, N. (2003). Humor and hope: Can humor increase hope? Humor 16(1),79-89.
- Vuorela, T. (2005). Laughing matters: A case study of humor in multi-cultural business negotiations. Negotiation Journal 21(1), 105-129.

- Weiss, R. S. (1995). Learning from strangers: The art and method of qualitative interview studies. New York: The Free Press.
- Welsh, N. A. (2004). Stepping back through the looking glass: Real conversations with real disputants about institutionalized mediation and its value. Ohio State Journal on Dispute Resolution, 19(2), 573-678.
- Wimmer, A. M. (1994). The jolly mediator: Some serious thoughts about humor. Negotiation Journal 10(3), 193-199.
- Ziv, A. (1984). Personality and sense of humor. Berlin: Springer.

Appendix A: Consent Form

CONSENT FORM FOR MEDIATOR TECHNIQUES AND STRATEGIES

University of Massachusetts Boston
Department of Dispute Resolution
100 Morrissey Boulevard
Boston, MA 02125-3393

Introduction and Contact Information

The research project covered by this consent form is about mediators' techniques and strategies. The principal researcher is Cristin Martineau, a graduate student in Dispute Resolution. Her phone number is 857-891-1445. Her is advisor is David Matz. His phone number is 617-287-7421.

If you decide to participate in this study, you will be asked to agree to be observed in a mediation and interviewed afterwards.

Description of the Project

This study examines mediators' techniques and strategies. The purpose of this study is to examine how and when mediators use particular techniques and strategies and the effect of these techniques and strategies on the parties. Participation in the study will last for the length of the mediation plus one, 15-30 minute interview after the mediation. The researcher will take notes during the mediation and tape record the subsequent interviews.

Risks or Discomforts

The research performed for this study is of minimal risk to participants.

Confidentiality

Your part in this research is confidential. That is, the information gathered for this project will not be published or presented in a way that would allow anyone to identify you. Information gathered for this project will be stored in a locked file cabinet and only the researcher will have access. After the collection of the data, identifying information and the data will be separated. All original data will be destroyed at the conclusion of the study.

Voluntary Participation

Participation in this study is voluntary. Refusal to participate or withdrawal will involve no consequences for participants.

Rights

You have the right to ask questions about this research before you sign this form and at any time during the study. You can reach Cristin Martineau (see below) or David Matz at 617-287-7421. If you have any questions or concerns about your rights as research participant, please contact a representative of the Institutional Review Board (IRB), at the University of Massachusetts, Boston, which oversees research involving human participants. The Institutional Review Board may be reached at the following address: IRB, Quinn Administration Building-2-015, University of Massachusetts Boston, 100 Morrissey Blvd., Boston, MA 02125-3393. You can also contact the Board at 617-287-5370 or human.subjects@umb.edu.

For further information about this project, contact Cristin Martineau at 857-891-1445 or cmartin@law.harvard.edu.

Signature of Participant

Date

Signature of Researcher

Printed Name of Participant

Typed/Printed Name of Researcher

Appendix B: Interview Guides

Mediator Use of Humor Master's Project Interview Guide

A. Mediator Interview Questions

Note: These mediators will be interviewed within a couple of days after I have observed them mediating.

Researcher: While I am interested in mediators' strategies and techniques, I am specifically interested in mediators' use of humor. I am going to ask you a few questions about what I observed during the mediation and about your thoughts on humor and mediation more generally.

1. During the mediation, ____ was happening/Party A said/did ____ and you said/did _____. What was your rationale for saying/doing ____? How did Party A respond? Did what you said/did change the tone or facilitate some other sort of change in the session/parties? Tell me about this.
2. Have you used humor before? What was the situation? Did it have the effect you intended? If not, did it have a detrimental effect on the mediation? How do you know? How did you recover?
3. What do you think generally about mediators using humor?

B. Party/Client Interview Questions

Note: Parties will be interviewed as soon as reasonably possible after a mediation.

Researcher: While I am interested in mediators' strategies and techniques, I am specifically interested in mediators' use of humor. I'm going to ask you a few questions about what the mediator said and did during the mediation.

1. During the mediation, the mediator said/did _____ when _____ happened. How did you feel/What did you think when the mediator said/did _____?

Appendix C: Sample Matrices

Banter + Content

	BANTER→	M1	M2	M3	M4	M5
CONTENT↓						
Process		0	0	2	0	0
Case		0	1	0	2	3
Money		0	1	0	1	1
Parties		0	1	0	1	1
Unrel. to the med		0	1	4	4	5

Quips + Content

	Quips→	M1	M2	M3	M4	M5
CONTENT↓						
Process		0	1	5	1	1
Case		0	4	4	4	2
Money		0	2	1	0	0
Parties		0	0	0	2	2
Mediator		1	3	0	0	7
Attorneys		1	2	1	5	2
Researcher		1	1	0	0	0
Unrel. to the med		0	0	2	0	4

Context + Form

	FORM→	Banter	Anecdote	Canned Joke	Quip
CONTEXT↓					
Process					M2-2 M3-2 M4-1
Case		M2-1 M3-1 M4-2 M5-6	M2-1		M2-5 M3-7 M4-10 M5-10
Money		M2-1 M3-3 M4-1 M5-2	M2-1 M3-1 M5-1		M2-5 M3-2 M4-1 M5-3
Researcher					M1-1
Settlement Terms		M2-2 M4-2 M5-1		M2-2	M1-3 M2-1 M3-2 M5-2

Appendix D: Codes

Interviews

- Pressure to settle
- Uses humor to illustrate a point
- Recalls Humor
- Does not recall humor
- Humor helps the process
- Distraction
- Part of mediator's personality
- Eases tension/manages emotions
- Rapport
- Intentional humor
- Spontaneous humor
- Didn't intend to be humorous
- Has used joke/story/quip before
- Increases comfort

Mediator-initiated humor

- Banter
- Anecdote
- Canned Joke
- Quip
- Physical Humor
- Other

Attorney/Party-initiated humor

- Banter
- Anecdote
- Canned Joke
- Quip
- Physical Humor
- Other

Humor content

- About the researcher
- About the mediator
- About the process
- About the case
 - About money
- About the parties
- About the attorneys
- About something unrelated to the mediation

Locus

- Introduction/1st joint session
- Joint session
- Caucus
- Close
- Outside the mediation room