Emerald Insight

International Journal of Conflict Management

Towards an understanding of the role of anticipatory justice in the employment dispute-resolution process: An investigation of EEOC-sponsored mediation

Barry Goldman Debra L. Shapiro Matthew Pearsall

Article information:

To cite this document:
Barry Goldman Debra L. Shapiro Matthew Pearsall , (2016),"Towards an understanding of the role of anticipatory justice in the employment dispute-resolution process", International Journal of Conflict Management, Vol. 27 Iss 2 pp. 275 - 298
Permanent link to this document:
http://dx.doi.org/10.1108/IJCMA-12-2015-0081

Downloaded on: 10 November 2016, At: 01:57 (PT)
References: this document contains references to 77 other documents.
To copy this document: permissions@emeraldinsight.com
The fulltext of this document has been downloaded 111 times since 2016*

Users who downloaded this article also downloaded:

(2016),"Work relationships: counteracting the negative effects of conflict", International Journal of Conflict Management, Vol. 27 Iss 2 pp. 225-248 http://dx.doi.org/10.1108/IJCMA-10-2014-0079

(2016),"Does ethnic conflict impede or enable employee innovation behavior?: The alchemic role of collaborative conflict management", International Journal of Conflict Management, Vol. 27 Iss 2 pp. 199-224 http://dx.doi.org/10.1108/IJCMA-09-2014-0071

Access to this document was granted through an Emerald subscription provided by emerald-srm:563821 []

For Authors

If you would like to write for this, or any other Emerald publication, then please use our Emerald for Authors service information about how to choose which publication to write for and submission guidelines are available for all. Please visit www.emeraldinsight.com/authors for more information.

About Emerald www.emeraldinsight.com

Emerald is a global publisher linking research and practice to the benefit of society. The company manages a portfolio of more than 290 journals and over 2,350 books and book series volumes, as well as providing an extensive range of online products and additional customer resources and services.

Emerald is both COUNTER 4 and TRANSFER compliant. The organization is a partner of the Committee on Publication Ethics (COPE) and also works with Portico and the LOCKSS initiative for digital archive preservation.

*Related content and download information correct at time of download.

Downloaded by TASHKENT UNIVERSITY OF INFORMATION TECHNOLOGIES At 01:57 10 November 2016 (PT)

The current issue and full text archive of this journal is available on Emerald Insight at:
www.emeraldinsight.com/1044-4068.htm

Received 8 December 2015
Accepted 9 December 2015

Towards an understanding of the role of anticipatory justice in the employment dispute-resolution process

An investigation of EEOC-sponsored mediation

Barry Goldman
Department of Management and Organization, University of Arizona, Tucson, Arizona, USA
Debra L. Shapiro
Department of Management and Organization, University of Maryland at College Park, College Park, Maryland, USA, and
Matthew Pearsall
Department of Organizational Behavior, University of North Carolina at Chapel Hill, Chapel Hill, North Carolina, USA

Downloaded by TASHKENT UNIVERSITY OF INFORMATION TECHNOLOGIES At 01:57 10 November 2016 (PT)

Abstract

Purpose – The paper aims to investigate why organizations often opt to reject Equal Employment Opportunity Commission (EEOC)-sponsored mediation of employment disputes (in contrast to employees who tend to readily agree to it). It is guided by recent research associated with Shapiro and Kirkman's (1999, 2001) theory of "anticipatory justice", whereby (in)justice is anticipated, or expected, when people think about an event they have not yet experienced whose likely fairness they are questioning. In contrast, "organizational justice" reflects people's retrospective assessments of how fair they have been treated to date.

Design/methodology/approach – The paper relied upon data made available by the mediation program administered by the US EEOC. The EEOC provided the names and contact information for the officially designated EEOC contacts for each dispute. The authors distributed surveys to each of these organizational representatives and received completed surveys from 492 organizations (a response rate of 85.8 per cent).

Findings – The authors tested the extent to which organizational representatives' decision to accept or reject mediation as a means of settling discrimination claims is influenced by representatives' expectation of more versus less fair treatments – by the opposing party as well as by the third-party mediator – during the mediation procedure. The pattern of findings in the study support all hypotheses and, thus, also the expectation-oriented theories that have guided them.

Research limitations/implications – The study relies on self-reports. However, this concern is somewhat lessened because of the salience and recency of events to the time of surveying.

Practical implications – The paper provides new insights on the need for organizations to implement rules, policies and procedures to constrain decision-maker choices consistent with

International Journal of Conflict Management
Vol. 27 No. 2, 2016
pp. 275-298
© Emerald Group Publishing Limited
1044-4068
DOI 10.1108/IJCMA-12-2015-0081

organizational goals. The authors offer specific procedural proposals to reduce this organizational tendency to reject mediation.

Social implications – Employee grievances are costly to organizations in terms of finances, reputation and to the emotional climate of the organization. Moreover, it is similarly costly to employees. This study provides new insights to better understand why employees (as opposed to organizations) are almost three times more likely to elect mediation of employment disputes. As such, it offers some promising ideas to narrow that gap.

Originality/value – The paper investigates a little-studied phenomenon – the differential participation rate of employees versus organizations in EEOC-sponsored mediation.

Keywords Discrimination, Mediation, Litigation, Anticipatory justice, EEOC

Paper type Research paper

Downloaded by TASHKENT UNIVERSITY OF INFORMATION TECHNOLOGIES At 01:57 10 November 2016 (PT)

Employee grievances are costly to organizations – financially, reputationally and emotionally. Consistent with this characterization, between 1950 and 2006, total US commercial tort costs increased from $13 to $247bn per year (in 2006 dollars), rising from 0.62 to 1.87 per cent of US gross domestic product. Moreover, since 2000, these costs grew at a rate of 6.9 per cent per year (USDOC, 2008). In addition to these easily measured financial losses, organizations also incur real but more difficult to measure costs associated with the loss of positive image and negative publicity related to these grievances (Zavyalova *et al.*, 2012), as well as the uncertainty surrounding the outcomes of litigation (Marshall *et al.*, 2004). Litigious approaches to settling disputes, such as filing discrimination-claims, typically involve communications from all sides that are "power-oriented and "rights-oriented," according to Ury *et al.* (1988). An example of a power-oriented remark is referring to an inclination to harm an uncooperative opponent, such as by a willingness to "see you in court". An example of a "rights-oriented" remark is referring to policy or law violations or to wrongful actions. Power- and rights-oriented communications, Ury *et al.* (1988) explained, tend to escalate, not defuse, conflict because of the defensiveness and anxiety that these communications generally provoke.

Less costly approaches to resolving employee grievances exist. Indeed, guided by research and years of experience with arbitration and mediation, Ury *et al.* (1988) describe a third type of communication, namely, communications that are "interest-oriented" (e.g. oriented toward satisfying concerns underlying each side's competing claims). Interest-oriented communications are exemplified by mediators (Shapiro and Brett, 1993; Shapiro and Kolb, 1994; Shapiro and Kulik, 2004), and relative to power- and rights-oriented communications, more likely to *lower* the costs of disputing. Consistent with this forecast, Brett *et al.* (1998) found that higher-quality agreements and satisfaction levels were generally reported by disputants when their communications comprised more remarks that were interest oriented rather than rights or power oriented or when an interest-oriented emphasis accompanied any rights- or power-oriented remark (e.g. such as would occur when disputants emphasize the gains that each side accrues from an "out of court" settlement of impending litigation). Similarly, Kiser *et al.* (2008) found that, relative to mediation participants, court defendants generally paid $1.1m more per case.

Moreover, there is a significant body of research that states that among the most positive strengths of mediation is client satisfaction, settlement rates and compliance with agreements reached (Reich *et al.*, 2007). Kressel (2006) reports that 70-90 per cent of disputing parties were pleased with the results of their mediation and would recommend

it to a friend and think it should be available to others in similar circumstances. He reports that these figures compare favorably with public satisfaction with more litigious alternatives, such as the use of attorneys (66 per cent) and the use of the court system (40-50 per cent). In summary, these findings suggest that disputes that are settled more litigiously (e.g. via the power- and rights-oriented remarks that characterize arbitration-hearings) tend to result in outcomes that are more costly to both sides of the dispute compared to disputed that are settled with interest-oriented communications (as typically occurs during mediation).

This makes quite curious the tendency for managers to:

- choose litigation over mediation (Groth *et al.*, 2002); and
- intervene in employee disputes as "arbitrators" or "umpires" rather than as "mediators" (Lewicki and Sheppard, 1985).

Mediation is an interest-oriented approach involving a third-party's solicitation of both sides' perspective and interests, and efforts (guided by this information) to assist both sides in discovering mutually satisfying ways to resolve differences.

Managers' preference for more litigious methods for resolving employee grievances is in sharp contrast to employees' preference for mediation (Gelfand and DeDreu, 2007). For example, Barrier (2003) and Grinberg (2004) report that 89 per cent of aggrieved workers agree to participate in mediation sponsored by the US Government's Equal Employment Opportunity Commission (EEOC), but only 31 per cent of organizations do so. Prior explanations for managers' preference to act like arbitrators rather than mediators include the quickness with which settlements can occur when managers behave in an autocratic, or umpire-like, fashion rather than as a mediator whose role is more like a discussion-related facilitator (Shapiro and Kolb, 1994; Shapiro and Brett, 1993). However, the "quickness" of mandated conflict–resolution that characterizes more autocratic and/or legalistic approaches (e.g. arbitration, litigation) has been identified as more time-consuming in the long run, as disputants' lack of involvement in, hence also lack of commitment to, the settlement decision often leads to an unstable peace (Brett *et al.*, 2006; Ury *et al.*, 1988).

Purpose of this study

Might other explanations exist for why organizations often opt to reject mediation? In this paper, we posit "yes" and our thinking is guided by more recent, yet still hardly empirically investigated, theorizing associated with Shapiro and Kirkman's (1999, 2001) theory of "anticipatory justice". As this concept's name implies, (in)justice is anticipated, or expected, when people think about an event *that they have not yet experienced* whose likely fairness they are questioning. In contrast, the construct of "organizational justice" that has long been assessed via four dimensions is identified in Colquitt's (2001) meta-analysis of the justice literature which reflects people's retrospective assessments of how fairly they have been treated to date – hence people's "experienced justice," as called by Shapiro and Kirkman (1999, 2001). Contemplating likely justice – that is, anticipatory justice – should affect decision-making behavior regarding future events, including an organizational decision-maker's choice to accept or reject mediation as the procedure for settling their employees' filed grievances.

Research has supported the proposed effects of anticipatory justice theory in organizationally relevant decisions. However, the theory and research have thus far

Downloaded by TASHKENT UNIVERSITY OF INFORMATION TECHNOLOGIES At 01:57 10 November 2016 (PT)

Downloaded by TASHKENT UNIVERSITY OF INFORMATION TECHNOLOGIES At 01:57 10 November 2016 (PT)

been restricted to the employee's or job applicant's perspective (Rodell and Colquitt, 2009; Harrison *et al.*, 2013) and has neglected the perspective of organizational decision-makers, whose views of justice may be very different than individual employees (Bell *et al.*, 2004). Further, anticipatory justice theory has thus far not been applied to issues associated with managerially relevant sources of organizational conflict such as employee grievances against their employer. A unique feature of the dispute resolution process is that both the third party (e.g. mediator) and the opposing party can affect anticipatory justice in the dispute, making the decision process of the organizational representative complex and multi-faceted. Moreover, mediation research to date has focused on the role of the third-party mediator, including the effects of various mediator behaviors (Brett *et al.*, 1986; Shapiro *et al.*, 1985; Carnevale and Pruitt, 1992; Conlon and Meyer, 2004) and, thus, has generally ignored the effects of various disputant behaviors during the mediation process. Indeed, we know of no study that has examined how anticipated behavior of the other disputant during an upcoming mediation may affect managers' decisions about whether to participate in mediation.

Therefore, the primary purpose of this study is to examine the influence of anticipatory justice in decisions by *managers* (organizational representatives) in a context associated with *grievance management*. We also challenge and extend the literature on justice and mediation by demonstrating that the effects of anticipatory justice are moderated by the opposing party's voice, more fully capturing the critical decision factors weighed by organizations facing discrimination claims. As a result, we offer a new theoretical perspective to view organizational disputes that accounts for decision-makers' expectations of both the dispute resolution process and their opponent. Additionally, our findings promise to improve on unsuccessful efforts in the past to explain why managers often reject mediation and prefer more costly forms of grievance-settling procedures.

In this study, we rely upon data provided by the mediation program administered by the EEOC. Therefore, in the next section, we briefly describe key elements of this program.

Overview of the EEOC's mediation program

The EEOC administers the largest mediation program in the USA. From 1999 through 2014, 181,734 mediations have occurred and 127,924 charges of employment discrimination (70.4 per cent) have been resolved. (EEOC, 2015a). In this program, EEOC offers mediation to both parties (employer and employee) in most cases soon after the charges are filed and deemed to have merit (>80 per cent) (i.e. those relating to the substantive provisions of Title VII) but prior to further investigation. However, the parties may request mediation at any stage of the administrative process. If either the employer or employee decline to participate in mediation, the charge will be processed exactly as any other discrimination charge. In a very few cases, the EEOC may proceed directly with enforcement litigation; however, this affects a very small portion of charges filed. For example, the EEOC filed a total of 167 suits in 2014 (out of 88,778 charges filed in 2014; see EEOC, 2015b). The EEOC maintains strict confidentiality in its mediation program. The mediator and the parties sign agreements to keep confidential everything revealed during the mediation. The sessions are not tape recorded nor transcribed. Notes taken during the mediation by the mediator are

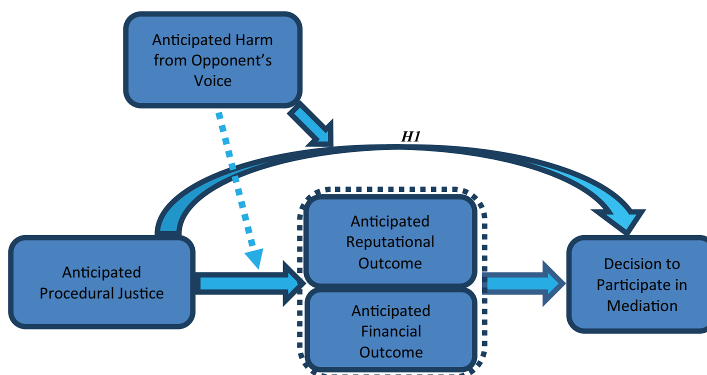
destroyed. Furthermore, to ensure confidentiality, the mediation program is insulated from the EEOC's investigative and litigation functions.

Theory and hypotheses

As shown in Figure 1, we posit that organizational decision-makers who are faced with the decision whether to settle employees' filed grievances via mediation think, first, about whether their firm will be treated fairly by the mediation procedure and, if so, what the likely (reputational and financial) consequences will be for their organization. With these consequences in mind, the organizational decision-maker decides whether or not to accept the EEOC's invitation to engage in mediation of employees' discrimination claims. In the remainder of this paper, we develop theory guiding the relationships depicted in Figure 1, all of which visually illustrate the hypotheses we test. In this paper, we emphasize *anticipatory* factors likely to be considered by an organizational decision-maker who is contemplating whether to mediate an employee grievance, namely, the extent to which the mediation process *may* be fair and the extent to which the opposing side's voice *may* harm the organization. This focus promises to alert managers and management scholars interested in understanding third party-intervention-choice dynamics to the importance of understanding the concept and implications of anticipatory justice.

Anticipatory justice

People sometimes anticipate, or expect, varying levels of fairness in future interactions, such as interactions they will have in an organization they are considering joining as new employees, interactions they will have after new management practices or other organizational changes are implemented and/or interactions they will have with a new supervisor. Such anticipations led Shapiro and Kirkman (1999, 2001) to introduce the notion of "anticipatory justice", later called "justice expectations" (Bell *et al.*, 2006). Anticipatory justice has been found to explain variance in people's decisions, such as



Notes: Influence of anticipated procedural justice on decision to participate in EEOC mediation, as moderated by anticipated harm associated with opponent's voice and mediated by anticipated outcomes of mediation (reputational, financial)

Figure 1. A theoretical model of the relationship between anticipated justice and organizations' decision to accept EEOC-sponsored mediation: Mediated Moderation Model

Downloaded by TASHKENT UNIVERSITY OF INFORMATION TECHNOLOGIES At 01:57 10 November 2016 (PT)

Downloaded by TASHKENT UNIVERSITY OF INFORMATION TECHNOLOGIES At 01:57 10 November 2016 (PT)

whether to accept an organization's job offer (Bell *et al.*, 2006) and whether to accept organizational changes of various kinds such as self-managing team assignments (Shapiro and Kirkman, 1999) and smoking bans (Rodell and Colquitt, 2009). Moreover, Ambrose and Schminke (2009) empirically demonstrated the uniqueness of anticipatory justice relative to experienced justice. In all of these studies, people (e.g. prospective and existing employees) generally expressed greater decision acceptance when they anticipated being recipients of fair treatment. Such anticipations were generally found to be associated with expectations of more fair outcomes. This is because outcome allocations in organizations are typically determined by the procedures used in them (e.g. performance-appraisal procedures, cf. Folger and Cropanzano, 1998). The tendency for anticipated fairness to be positively associated with acceptance decisions leads us to posit that a positive relationship likely exists, too, between anticipated fairness in mediation and decisions to accept EEOC-sponsored mediation invitations.

More specifically, we posit that when faced with a decision whether to accept the EEOC's invitation to mediate an employee's grievance, the decision-maker will anticipate the fairness of the mediation procedure and the positivity of outcomes that the procedure will likely produce (such as reputational and financialoutcomes of concern to his/her organization); and that a decision of "yes" is more likely to occur when there is optimism in these anticipations. Our proposed model of anticipatory justice thus suggests that optimism of the likelihood of outcomes associated with mediation will be higher when the process of getting employees' grievances mediated is itself anticipated to be fair. As a result, our theorizing suggests that the reason why anticipatory procedural justice will be positively related to organizational decision-makers' decision to accept EEOC-issued invitations for mediation is that such anticipation heightens their expectation for desirable mediation-related outcomes. Thus, we predict:

H1. Organizational decision-makers' anticipatory procedural justice of mediation procedures is positively associated with their decision to accept an invitation to mediate employee discrimination claims.

Until now, our theorizing has pertained to expectations that organizational decision-makers have regarding how *the mediator* will treat them during mediation and how it may affect the outcomes of mediation. Similarly, anticipatory justice research has focused on the anticipated justice of the decision-making authority (Rodell and Colquitt, 2009). However, it is important to remember that the mediation procedure also involves the grievant – this being the organization's "opposing side" in the dispute who has filed a claim that the organization has violated equal employment opportunity (EEO) law. As such, organizational decision-makers will also tend to anticipate how the *opponent's* voice might affect their ability to obtain the outcomes they seek. If the opponent's voice is feared because of the harm, it is anticipated to cause to the organization's case; this may encourage organizational decision-makers to prefer arbitration (or other adjudicatory procedures) which, because of stricter procedural rules than mediation, are more likely to constrain opponent voice (Cooley, 1985/1986). We rely on two justifications to explain the decision-maker's reaction of the harm to their case arising from features of the opponent's voice.

Research investigating third-party alternative dispute resolution (ADR) techniques, such as mediation and arbitration, have concentrated on the roles, techniques or context as it relates to the mediator. For example, Lewicki *et al.* (1992, p. 210) it "emphasizes the

Downloaded by TASHKENT UNIVERSITY OF INFORMATION TECHNOLOGIES At 01:57 10 November 2016 (PT)

actions taken by parties external to a conflict [...] " and Carnevale and Pruitt (1992, p. 563, p. 566) focus their discussion of mediation on "mediator behavior and effectiveness" and "antecedents of mediator behavior". To the extent that disputants are discussed, it is in the context of their relationship to the mediator and not each other. ADR researchers have had very little to say with regards to the parties themselves in these situations.

One neglected area of research is how the disputants may be affected by their anticipation of how the other party may behave in the pending mediation. Research suggests that the anticipation of conflict may affect the decision to engage in the pending perceived conflict itself. In the case, where a disputant in a mediation fears that the opponent will say things during the mediation that will harm the disputant's chances of getting a fair settlement, they may try to avoid an anticipated loss (Seligman *et al.*, 2013).

This thinking is largely guided by scholarship on "prospection" based on the pioneering work of Gilbert and Wilson (2007), the psychological representation of possible futures. Prospection posits that people's behavioral choices result from their "pre-experience simulation of it" and that, ultimately, the behavior they chose tends to be the one that brings them the greatest sense of predictability or control. More specifically, in contrast to retrospection, the concept of prospection refers to the ability to "pre-experience" the future by simulating it in our minds. In essence, the brain combines incoming information with stored information to build mental representations of the external world. According to Gilbert and Wilson (2007), our pre-feelings are a combination of our simulations of the future events and contextual factors (e.g. what is occurring in the present and the thoughts in our present bodily states). People use their immediate reactions to mental simulations as predictors of reactions they are likely to have when the events they are simulating actually occur (Gilbert and Wilson, 2007; Schwarz and Strack, 1999). If a simulation is constructed that increases unpredictability, a person will tend to pursue a behavior that provides them with a "high degree of predictability to putatively gain control again, to be able to anticipate the outcome" (Riegler, 2003, p. 12).

Moreover, prospection should be viewed as augmented by prospect theory (Kahneman and Tversky, 1979) that states that individuals perceive gains and losses differently, i.e. they overvalue losses relative to comparable gains. People rarely accept symmetric gambles that involve a 50 per cent probability of winning x and a 50 per cent probability of losing x. The evidence for this phenomenon of loss aversion is robust and pervasive (Kahneman and Tversky, 1979; Kahneman *et al.*, 1991). Because of the asymmetry of gains and losses, the identification, or framing, of the reference point can have a critical effect on choice. A change in frame can result in a change in preferences even if the values and probabilities associated with outcomes remain the same (Kahneman and Tversky, 1979; Camerer, 1995, pp. 652-665; Levy, 1997).

Experimental evidence provides that loss aversion is more salient when people are in a meaningful competitive environment (Gill and Prowse, 2012) and when the outcomes are uncertain (Tversky and Kahneman, 1992). Certainly, these would likely be the conditions under which an organizational decision-maker may react to a grievant's anticipated comments during a possible EEOC mediation.

Folger's (1987) Referent Cognitions Theory (RCT) is another theory that combines the use of anticipated future outcomes along with existing context or background. In

Downloaded by TASHKENT UNIVERSITY OF INFORMATION TECHNOLOGIES At 01:57 10 November 2016 (PT)

essence, RCT proposes that outcomes allocated by a decision-maker create resentment when the perceived recipient believes they would have obtained better outcomes if the decision-maker should have implemented other procedures (Cropanzano and Folger, 1989). RCT is distinguishable from prospection, however, as the cognitions referred to in this theory are triggered by an experience of injustice, *not* by an anticipated injustice event. Nevertheless, it supports the basic logic behind prospection by proposing a complementary theory of how and why people perceive and attempt to interpret future events.

How might we extrapolate from this to predict how an organizational representative will respond to an EEOC-issued invitation to settle an employee's grievance via mediation? In the case of anticipated voice during mediation, when the organizational representative engages in pre-experience simulation that leads to fears about the mediation proceedings allowing the opposing party (claimant) to present incorrect, unfair or prejudicial information then it is likely because of their construction of a simulation that jeopardizes their perception of a fair and impartial procedure. Consequently, they will be less likely to engage in mediation proceedings. In contrast, when organizational decision-makers have little fear about the voice of the opposing side (such as may occur when they believe a grievant's claim clearly lacks merit), organizational decision-makers expectations and preferences are aligned so as to encourage mediation. Under these circumstances, therefore, organizational decision-makers ought to be more likely to accept EEOC-issued invitations to mediate employees' grievances (see, McDermott *et al.*, 2003, where surveys distributed to organizational representatives reported that 93.8 per cent of respondents indicated that they would decline an invitation to participate in EEOC-sponsored mediation when the "merits of the case do not warrant mediation").

This perspective is also supported by the broader socio-legal view that the outcome of mediation or the verdict of a court case will be predicated on the merits of the claim (Samuelson, 1998) and by Priest and Klein's (1984) seminal model of how people decide whether to take their disputes to litigation. Priest and Klein, more specifically, propose that one of the major factors that parties to litigation use to decide whether to settle or pursue litigation is the "information that parties possess about the likelihood of success at trial" and that "potential litigants form rational estimates of the likely decision [...]." (1984: 4). They propose that these decisions are based, in part, on facts available and the decision-maker's prediction of how these facts will be interpreted by a court or jury.

If our thinking is correct, then it suggests that theories of anticipatory justice have been incomplete. This is because until now we have theorized that organizational decision-makers will be more likely to accept EEOC-issued invitations to mediate employees' grievances if the organizational decision-maker anticipates the mediation procedure to be fair, yet this fails to consider how this relationship will be strengthened or weakened by organizational decision-makers' expectations about whether the opponent's voice will help or hurt their ability to anticipate a fair platform from an EEOC-sponsored mediation procedure. In essence, then, when choosing whether to accept an EEOC-sponsored mediation invitation, organizational decision-makers likely anticipate procedural fairness and the likely outcome they may obtain from mediation. This means there is self-interest and anticipatory fairness guiding this assessment. To reflect this greater complexity, we thus now predict the following interactive effect (hereafter called the "Fair Mediator-but-Harmful Opponent Interaction-Effect"):

Downloaded by TASHKENT UNIVERSITY OF INFORMATION TECHNOLOGIES At 01:57 10 November 2016 (PT)

H2. The positive relationship between organizational decision-makers' anticipatory procedural justice and their decision to mediate (predicted by *H1*) is weaker when organizational decision-makers strongly fear being harmed by what the grievant will say during the mediation process.

The hypothesized "Fair Mediator-but-Harmful-Opponent-Interaction Effect" illuminates the fact that those contemplating whether to participate in mediation probably consider the likely effects of – *not only the actions of their mediator, but also* – the actions and related consequences of the opposing party. In addition to the anticipated fairness of the mediation procedure, an organizational decision-maker will also consider the positivity of outcomes likely to result from the mediation procedure (such as reputational and financial outcomes of concern to his/her organization), and that a decision of "yes" is more likely to occur when there is optimism in each of these areas. Considerable organizational justice research demonstrates an interaction between procedural justice and outcome favorability in predicting attitudinal and behavioral outcomes (Brockner and Weisenfeld, 1996; Brockner, 2002).

The form of this interaction suggests that fair procedures can partially compensate for unfavorable outcomes and that process fairness has less impact when the outcome is favorable. However, we propose that the relationship between process and outcome fairness is somewhat different with anticipatory justice. Specifically, we suggest anticipated positivity of outcomes will mediate (rather than moderate) the relationship between the interaction of anticipatory procedural justice and fear of harm from the claimant's voice and decisions to accept an invitation to participate in mediation. This proposal is based on the possibility of negative outcomes from both the process and the outcome of mediation. Organizational decision-makers' motivation to accept or reject an invitation to mediate an employee's dispute is thus likely to be guided in part by the extent to which they expect *rewarding*, and *not* punishing, consequences to result from taking an employee dispute to mediation (Vroom, 1964). These contemplated consequences should include the organization's likely standing, or reputation, and the organization's likely financial cost as a result of its participation in mediation, as these factors have been demonstrated to be important to organizations in discrimination claims (Goldman *et al.*, 2006). Moreover, prospection is helpful to understand the organizational decision-maker in this situation as well. If the decision-maker anticipates beneficial outcomes, he or she will tend to construct a pre-experience simulation that facilitates such a decision to accept mediation; however, if negative outcomes are anticipated, a rejection of mediation is likely (Gilbert and Wilson, 2007). Thus:

H3. The "Fair Mediator-but-Harmful Opponent Interaction-Effect" on decision-makers' agreement to settle discrimination claims through mediation (predicted by *H2*) is mediated by the extent to which decision-makers anticipate reputational and financial costs to their organization resulting from engaging in mediation.

Method

Sample and data collection

To examine decision-makers' *anticipations* about the mediation procedure's likely consequences based solely on conjecture, not actual prior experience, we surveyed designated representatives from organizations that had recently been offered the

Downloaded by TASHKENT UNIVERSITY OF INFORMATION TECHNOLOGIES At 01:57 10 November 2016 (PT)

opportunity to engage in the EEOC-sponsored mediation of an employee discrimination claim and had *no* prior experience with the mediation process. The EEOC's mediation services are offered to both employees and their organizations when grievances are filed with a US federal agency and allege that job applicants' or employees' rights for EEO have been violated (www.eeoc.gov/eeoc/index.cfm). The description of these mediation services matches an interest-oriented approach involving a third-party's solicitation of both sides' perspective and subsequent efforts to help both sides discover mutually satisfying ways to resolve their differences.

The choice faced by all organizational representatives in our sample was, therefore, whether to accept or reject this invitation. All sample participants understood that rejecting the mediation invitation meant pursuing settlement via more litigious options. To be invited to participate in EEOC-sponsored mediation, employee grievance claims must first be adjudged by the EEOC to have merit (i.e. must be based on facts that, if supported, may lead to a violation of the Title VII federal anti-discrimination statute). Such violations include events that fit the definition of "discrimination-claims". Such claims consist of denials of employment-related opportunities to employees or job applicants on the basis of race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability, or as a result of job-seekers' involvement in complaints, lawsuits or investigations associated with any of these types of discrimination.

The organizational decision-makers in our sample consist only of those who reported *never having previously experienced mediation* and, thus, whose anticipations about the mediation procedure's likely consequences are based solely on conjecture, not actual prior experience. Our need to isolate conjecture-based musings from memory-guided dispute resolution preference is because of our focus on *anticipatory (and therefore, not yet experienced*) justice dynamics. Accompanying the invitation to participate in EEOC-sponsored mediation, organizational representatives received a detailed explanation provided by the EEOC of the benefits of the EEOC-mediation program (see www.eeoc.gov/employees/mediation.cfm) and what it would involve. Such information is communicated as very positive ("fast, fair, efficient, successful").

Within two weeks after these organizations received their formal invitation from the EEOC to participate in mediation (mean of 11 days), the employee with the decision-making authority who accepts or rejects the invitation to mediate a pending dispute (identified to the researchers by the EEOC) received an email from the researchers explaining the existence of this study and, as a result, their opportunity to complete a 10-15 min survey either online (via a website being managed by the researchers) or in paper-form. If the latter was their preference, the email also explained, the researchers would mail them the survey along with an already-addressed stamped envelope to ease their return of it directly to the researchers. The questionnaire's content contained questions assessing the constructs identified in our "Measures" section, the substance of which primarily regarded expectations of EEOC-sponsored mediation. Completed surveys were received from 492 organizations (response rate = 85.8 per cent). Out of 492 respondents, 4 chose to complete the paper version, while the remainder completed the internet-based version. Both questionnaires averaged about 10 min to complete. Our principal motivation for using a web-based survey was to ensure that the questionnaire was completed by respondents as soon as possible after they made their decision whether to participate in mediation (Griffis *et al.*, 2003), while the rationale for their decision was still readily accessible. Internet-based surveys also offer

Downloaded by TASHKENT UNIVERSITY OF INFORMATION TECHNOLOGIES At 01:57 10 November 2016 (PT)

the advantage of higher response rates, fewer data entry errors and fewer missing values (Dillman, 2000; Stanton, 1998).

Of the 492 responding organizations, 20 per cent were private service firms; 18 per cent were manufacturing firms; 27 per cent were from local, state or federal governmental institutions; 16 per cent were non-profit organizations; and 19 per cent were from other industries. The organizational representatives responding to our survey were the officially designated EEOC contacts (hereafter referred to as "organizational decision makers"; 20 per cent were CEOs; 58 per cent HR directors; 8 per cent lawyers representing the organization; and 14 per cent other managers. The mean responding organization had between 5,000 and 10,000 employees and had 1 discrimination claim filed against it in the previous three years. All surveys were returned within two weeks after the researchers made them available and prior to the date of any survey respondent's mediation session.

Measures

Decision to participate in mediation. Our dichotomous dependent variable was coded "1" for organizations in our sample who accepted their invitation to participate in EEOC-sponsored mediation and "0" for those who rejected it.

Anticipated procedural justice of mediation. To assess anticipated procedural justice, we asked decision-makers to indicate how strongly they agree (via a seven-point scale anchored by 1 = Strongly disagree and 7 = Strongly agree) with seven statements describing the likely fairness of the upcoming mediation procedure (shown in Appendix). Of these seven items, Item #1 and Item #2 are nearly identical to those used in Rodell and Colquitt's (2009) measure of anticipatory procedural justice (with changes being our reference to mediation and to the dispute-related claim), and Items #5, 6 and 7 are nearly identical to those used in Rodell and Colquitt's measure of anticipatory interpersonal justice (with changes again being our reference to the mediation-context). The remaining two items refer to the "mediation procedure". The inextricability of the mediator's behavior with the mediation procedure is why in this study we combined items associated with the anticipated fairness of the mediator's actions and of the mediation procedure. This scale's coefficient alpha for reliability was 0.91.

Anticipated harm from opponent's voice. To assess anticipatory harm resulting from the opposing side's voice, we asked decision-makers to indicate how strongly they agree (via a seven-point scale anchored by 1= Strongly disagree and 7 = Strongly agree) with statements describing the possibility that the mediation proceedings might allow the claimant to present incorrect, unfair or prejudicial information. Such possibilities are *unrelated* to the contexts examined in prior studies assessing anticipatory (in)justice dynamics, as none of those pertained to upcoming third-party dispute resolution. As a result, uniquely for this study, we asked decision-makers how strongly they agree with the following three statements (shown in Appendix):

(1) "what the claimant will say during the mediation process will unfairly influence the outcome";

(2) "the mediation procedures will allow the claimant to inappropriately influence the final settlement"; and

(3) "the mediation procedures will allow the claimant to express unjustified views and feelings."

Downloaded by TASHKENT UNIVERSITY OF INFORMATION TECHNOLOGIES At 01:57 10 November 2016 (PT)

The alpha coefficient for reliability of this three-item scale was 0.79.

Anticipated outcomes of mediation: reputational and financial in nature. Although ideally our measure of anticipated outcome fairness would utilize items associated with anticipatory distributive (in)justice as conceptualized and measured in prior work, this was not possible given our study's unique focus on an upcoming third-party dispute-resolution context. For this reason, we created the measures used in this study to assess anticipated outcomes of mediation.

Specifically, to assess decision-makers' anticipation of the likely *reputational* outcomes resulting from mediating an employee's grievance, we asked respondents to indicate how strongly they agree (via a seven-point scale anchored by 1 = Strongly disagree and 7 = Strongly agree) with the following statement (shown in Appendix 1): "Settling the dispute via EEOC-sponsored mediation will help my organization maintain a positive reputation". We interpret low scores on this scale to mean that the respondent did not agree that his/her company's positive reputation would be maintained by participating in mediation. Although this does not necessarily equate to an expectation of reputational harm, it also does not suggest that the respondent anticipated positive reputational consequences to result from opting mediation. As such, we interpret a score of 3 or lower on this scale as an evidence of reputational concern. The directness of the statement enabled us to assess the construct of interest to us, thereby reducing reliability concerns that are traditionally given to support multiple items (Churchill, 1979). It also prevented response problems resulting from repetitive, multi-item scales of single concepts which may reduce response rates and respondent attention (Nagy, 2002; Poon *et al.*, 2002). As Wanous *et al.* (1997, p. 250) noted: "Respondents may resent being asked questions that appear repetitious".

To assess decision-makers' anticipation of the likely *financial* outcomes resulting from mediating an employee's grievance, we asked respondents to indicate how strongly they agree (via a seven-point scale anchored by 1 = Strongly disagree and 7 = Strongly agree) with the following statement (shown in Appendix 1): "If this case were settled via mediation, it will tend to be less expensive than alternatives". We again used a single item for this assessment for the same reasons we noted above (collateral issues associated with repetitive measures) and the objective nature of the judgment (Ganzach *et al.*, 2008).

Control variables. When testing all hypotheses, we controlled for the following two variables, i.e. an organization's size and an organization's industry. We controlled for organizational size, measured via an organization's number of employees, because of the possibility that larger firms may be more likely than smaller ones to have experienced more discrimination claims. We controlled for industry (by coding if the participating organizations were privately owned or governmental) to account for the possibility that governmental agencies may be more likely to be required to follow EEOC recommendations for settling discrimination charges.

Results

Means, standard deviations and intercorrelations among the variables of interest are presented in Table I; the hypothesis-testing results are shown in Table II. Because the final endogenous variable in our theoretical model (Figure 1) is a dichotomous choice between accepting and rejecting an invitation to participate in EEOC-sponsored mediation, we used logistic regression to test hypotheses involving this dichotomous

Variable	Mean	SD	1	2	3	4	5	6	7
1. Organization size	4.79	2.13	–						
2. Industry	0.42	0.50	0.09	–					
3. Decision to participate in mediation	0.21	0.40	−0.15**	0.05	–				
4. Anticipated procedural justice of mediation	5.61	1.01	−0.04	0.11	0.18**	–			
5. Anticipated reputational outcome of mediation	3.66	1.25	−0.10*	0.06	0.33**	0.28**	–		
6. Anticipated financial outcome of mediation	3.71	1.48	−0.07	0.10	0.35**	0.40**	0.55**	–	
7. Anticipated harm from opponent's voice	4.26	1.36	−0.01	−0.04	−0.17**	−0.40**	−0.28**	−0.27**	–

Notes: $N = 492$; $*p < 0.05$; $**p < 0.01$

Table I. Means, standard deviations, and intercorrelations among study variables

Predictor	*H1* B	*H1* Wald statistic	*H2* B	*H2* Wald statistic	*H3* B	*H3* Wald statistic
Organization size	−0.24	10.68**	−0.26	11.47**	−0.24	8.17**
Industry	0.46	2.57	0.50	2.81	0.37	1.26
Anticipated procedural justice	0.54	9.30**	0.50	6.24*	0.07	0.09
Anticipated harm from opponent voice			−0.14	1.25	0.01	0.01
Anticipated procedural justice X opponent voice			−0.28	4.78*	−0.21	2.49
Anticipated reputational outcome					0.58	15.24**
Anticipated financial outcome					0.40	9.57**
Δ Nagelkerke R^2				0.04		0.20
Total Nagelkerke R^2		0.12		0.16		0.36
Δ-2LL				8.45**		48.23**
Chi-square		23.73**		32.18**		80.41**

Notes: $N = 492$; $*p < 0.05$; $**p < 0.01$

Table II. Logistic regression results for the mediated effects of the interaction between anticipated procedural justice and harm from opponent voice on the decision to participate in mediation

choice. Therefore, the effect of each variable on the dependent variable is reported in Table II as both a logistic coefficient (B) and Wald statistic. As the logistic coefficient cannot be interpreted in terms of unit changes in the independent and dependent variables, we report the Wald chi-square to indicate whether a regression coefficient is significant in the model.

Consistent with *H1*, as shown in Table II, we found that organizational decision-makers' anticipatory procedural justice was indeed positively related to their decision to mediate employees' grievances (Wald $\chi 2_{(1)} = 9.30, p < 0.01$). Therefore, the proposed main effect of anticipatory procedural justice on the decision to resolve an employment dispute through facilitated mediation was supported.

Consistent with *H2*, as seen in Table II, we also found that the tendency for decision-makers' anticipatory procedural justice to positively influence their decision to

Downloaded by TASHKENT UNIVERSITY OF INFORMATION TECHNOLOGIES At 01:57 10 November 2016 (PT)

Downloaded by TASHKENT UNIVERSITY OF INFORMATION TECHNOLOGIES At 01:57 10 November 2016 (PT)

take employee disputes to mediation was significantly stronger when their concern about the opposing side's voice was low rather than high and, thus weaker when the opposing side's voice was highly feared. As shown in Figure 2, decision-makers' level of concern about the opponent's voice harming their organizations' outcomes significantly moderated the relationship between their anticipatory procedural justice and their decision to participate in mediation (Wald $\chi2_{(1)} = 4.78$, $p < 0.05$). Therefore, the "Fair-Mediator-but-Harmful-Opponent-Interaction Effect" predicted by *H2* was supported.

H3 proposed that the effects of the interaction between anticipatory justice and opponents' harmful voice on the organizational decision to mediate a claim would be mediated by both the expected reputational and financial outcomes of engaging in mediation (i.e. mediated moderation). As shown in Table II, we found that the anticipated reputational (Wald $\chi2_{(1)} = 15.24$, $p < 0.01$) and financial (Wald $\chi2_{(1)} = 9.57$, $p < 0.01$) outcomes of mediation were both significantly related to decision-makers' decision to participate in mediation while in the presence of the interaction. At the same time, the effects of the relationship between the interaction of anticipated justice and fear of voice with mediation participation (as tested in *H2*) became non-significant (Wald $\chi2_{(1)} = 2.49$, ns) in the presence of the mediating variables. To test the strength of the indirect effect, we used a bootstrap procedure to calculate the 90 per cent confidence intervals for each indirect path. For both reputational [CI = −0.0157; −0.0001] and financial [CI = −0.0139; −0.0001] outcomes, the confidence intervals did not include zero, indicating a significant indirect effect. Therefore, *H3* was supported.

Discussion

Mediation is a workplace dispute resolution procedure that provides many advantages for participants representing both sides of the dispute. However, as we noted in our paper's outset, participation rates for organizations are surprisingly low. To better understand organizations' decisions to mediate employment disputes, in this paper, we

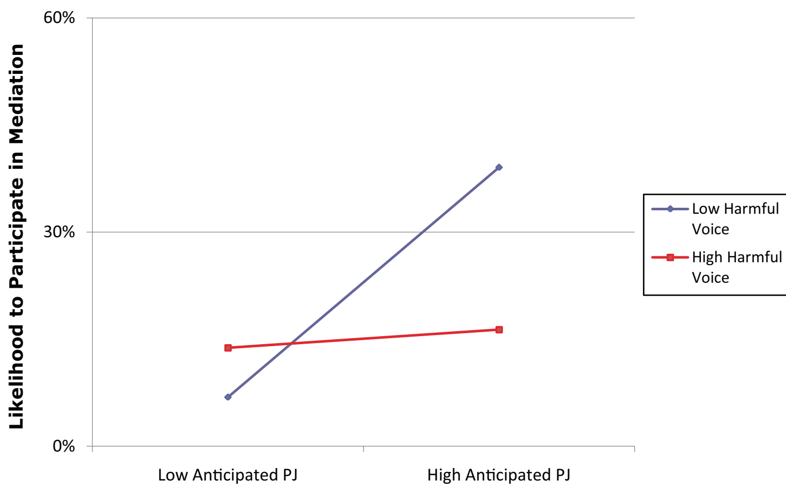


Figure 2.
The effect of the interaction between anticipated procedural justice and anticipated harm from opponent voice on the decision to participate in mediation

have proposed a model guided by Anticipatory Justice Theory (Shapiro and Kirkman, 2001). As expectations (of various kinds) play a prominent role in guiding organizational decision-makers' choice of strategic actions (Vroom, 1964), it is surprising that empirical investigations of anticipatory justice have been relatively scant in general (Ambrose and Schminke, 2009; Bell *et al.*, 2006; Rodell and Colquitt, 2009) and completely absent in prior studies about why organizations often reject mediation as a means of settling employee grievances. Similarly, it is surprising that Vroom's (1964) classic Expectancy Theory of Motivation has been dormant for so long and, to our knowledge, never used to illuminate why organizations often reject mediation as a dispute resolution procedure. At a minimum, we hope this paper will alert conflict management scholars and practitioners to the insights potentially available from expectation-based theories, such as anticipatory justice, for explaining when organizations may be more rather than less willing to mediate employee grievances rather than use more costly alternatives.

The pattern of findings in this study support all of our hypotheses and, thus, also the expectation-oriented theories (of Anticipatory Justice and Prospection) that have guided them. Cumulatively, this leads us to suggest three conclusions. First, *expectation-oriented theories* such as those named here are helpful in explaining organizational decision-makers' choice to mediate (or not mediate) employees' grievances, a choice that until now seems to escape rational-based financial-oriented explanations. Although this may seem like an overly simplistic conclusion, the fact is that relatively little of the organizational behavior literature relies on theories whose focus is future oriented, even though many theories and/or measures designed to test them require assessing employees' perceptions of past events (Hawkins and Hastie, 1990).

A second conclusion guided by our theorizing and findings is that the choice to mediate (or not) is influenced by anticipated negative effects (fear) of the *opposing side's* voice – an element of procedures that prior third-party research and anticipatory justice research has generally ignored.

Our third conclusion is that it is useful to understand *why* potential participants to mediation may fear the opposing side's voice. This is because, as we predicted, we found that decision-makers' fear of the opposing side's voice is linked to whether they expect what the opponent says during the mediation process to negatively affect their organization's reputational and financial outcomes. This suggests, therefore, that designing dispute-intervention procedures in ways that help to minimize harm in both of the latter ways is essential if organizations and/or employees are to feel motivated to engage in them. Next, we discuss the implications of the three conclusions above – for future theorizing and grievance-related practices, each in turn.

Theoretical implications

As noted earlier in the paper, an overarching purpose of this study was to enhance our understanding about how and if anticipatory justice influences the decision made by organizational representatives after learning about employees' filed EEO-related grievances to engage (or not engage) in EEOC-sponsored mediation. An important theoretical implication of this is that future-oriented views of justice (i.e. the *expectation* of justice) have unique effects on important organizational outcomes relating to conflict. In particular, we identified the equation of expected outcome favorability with anticipated distributive justice, because in dispute resolution contexts, the feeling of

Downloaded by TASHKENT UNIVERSITY OF INFORMATION TECHNOLOGIES At 01:57 10 November 2016 (PT)

Downloaded by TASHKENT UNIVERSITY OF INFORMATION TECHNOLOGIES At 01:57 10 November 2016 (PT)

being right leads people to anticipate a fair outcome as being a favorable outcome. In addition, we demonstrated that anticipated procedural and distributive justice exist in a mediating relationship rather than a moderating relationship typically seen with experienced justice. Thus, this research serves to identify some important extensions to the small, but growing line of research that investigates the effects of anticipatory justice. Future research should investigate other ways in which anticipatory justice differs from experienced justice, perhaps with other types of anticipated outcomes (e.g. satisfaction nad commitment).

A second theoretical implication of this research is to demonstrate that the decision to litigate or settle (mediate) a legal claim by an employee is also affected by the anticipated negative effects (fear) of *the opposing side's voice*. Although this may seem intuitive, surprisingly little of the theorizing and studies associated with "voice" pertains to people's anticipation of outcomes associated with what *others* may say. Instead, the focus by voice scholars, including early theorizing about when employees are more versus less likely to express their grievances (Lewicki and Sheppard, 1985), has consistently been on people's anticipation about how supportive or unsupportive others may be to what they themselves might speak up about (Morrison, 2011). Examining voice effects of solely the "voicer" – be this the grievant or the opposing defending party or the third party– is problematic when one considers the *multiple* people who often serve as sounding boards, advisors and/or informal conflict interventionists to grievants; this is why, Shapiro and Burris (2015) describe the role of voice in managing conflict as a "multi-voiced" dynamic. Future research regarding conflict management dynamics needs to therefore allow the examination of voice effects on the part of multiple parties too. This study is a start in this direction, but, additionally, this study points to the fact that parties needing conflict–resolution anticipate what their opposing side will say and that these anticipations shape their choice of conflict–resolution procedure. Future studies of multi-voiced dynamics will therefore ideally be sensitive, too, to the anticipated and experienced nature of voice.

A final implication of our study is associated with our finding that organizational decision-makers' anticipation of mediation outcomes (in terms of how these may affect organizations' reputation and financial-savings) is significantly influenced by their fear of the opposing side's voice. Concerns regarding the possibility of a fair hearing are likely to be greater now than ever given the fact that the internet has enabled grievants to express their discontent to exponentially larger audiences via social media channels such as Twitter, Myspace, Facebook and the like (Kulik *et al.*, 2012) If future theorizing and studies regarding conflict or disputeresolution indeed focus more on multiple sources of "voice" at varying levels of the organization's hierarchy and even outside of the organization (via social media outlets), then this promises to also broaden the largely dyadic or triadicorientation of conflict resolution-related examinations to a *multi-level orientation* which Shapiro and Burris (2015) have also identified as needed.

Practical implications

In addition to having important theoretical implications, our finding that *expectations* of justice can affect decisions by organizational decision-makers regarding whether to mediate employee grievances has at least two practical implications. One relates to the organization itself: Because an expectation of justice can affect individual decision-makers' responses to employee legal claims and conflict, organizations must be

careful to put systems in place to ensure that individual biases (such as risk preferences, see Li *et al.*, 2010; Shapira, 1995) affect organizational outcomes no more than they should. Shapira suggests that such systems may include creating rules, policies and decision-making procedures that identify, as explicitly and objectively as possible, when authorization or approval for allocation decisions (regarding valued resources such as rewards, job opportunities, time extensions, special treatment) needs to be taken from supervisors and/or committees.

A second practical implication of our findings is that they help to explain why, despite the potential advantages of mediation, organizations often reject this procedure as a means of settling employees' grievances. Specifically, our findings suggest that such rejection is due, at least in part, to decision-makers' anticipation of injustice resulting from mediation. Perhaps such anticipations, or fears, could be lessened, enabling more organizations to more comfortably participate in mediated dispute procedures if four procedures were introduced into the mediation process, each as pre-conditions for the occurrence of mediation. The first of these procedures would be for the mediators to be trained to better understand that the mediation may be affected by events *preceding* the initial meeting of the parties. That is, as noted herein, the disputants often construct simulations of how they anticipate the mediation to occur, especially as it may affect their outcomes. Consequently, the mediator should intervene early to address these potential obstacles. Such intervention may include providing organizations evidence showing financial and/or reputational benefits that have accrued for other organizational participants in mediation.

The second of these procedures might involve presenting a list of average financial settlements in similar claims to each side prior to the mediation process. A third procedure might request each side to present their main arguments in writing to the other side prior to the formal mediation process. This is similar to the "discovery" procedure in litigation except without its formalism, a procedure that provides an evenhanded method by which both sides of a dispute share important information to lessen the possibility of surprise tactics by either side (Burnham, 2011). A fourth procedure that may lessen the organizational decision-maker's fear of harmful outcomes resulting from the opponent's (i.e. grieving employee's) voice during mediation is to require all disputing parties who are present in the mediation session to sign confidentiality agreements about the grievance's resolution, thereby minimizing any worries about precedent setting or possible harm to the organization's reputation.). Each of these procedures, alone but especially as a collective, can serve to set *expectations of fairness*, hence anticipatory justice, associated with the mediation procedure and its outcomes. In so doing, these procedures will tend to increase organizations' acceptance of future invitations by the EEOC to mediate employees' grievances.

Limitations and direction for future research

As with any field study, this study has a number of methodological limitations that must be acknowledged. First, this study relied on respondents' survey responses regarding their perceptions of mediation and their expectations of outcomes. Given that we are studying the expectations of organizational decision-makers in their decision process, a reliance on those same responders as a primary source of data is an unavoidable artifact of the research question. Therefore, to help alleviate concerns that common method variance might inflate some of our observed relationships, we designed

Downloaded by TASHKENT UNIVERSITY OF INFORMATION TECHNOLOGIES At 01:57 10 November 2016 (PT)

Downloaded by TASHKENT UNIVERSITY OF INFORMATION TECHNOLOGIES At 01:57 10 November 2016 (PT)

our data collection methods based on the guidance of previous researchers (Podsakoff *et al.*, 2003). First, although justice perceptions and expected outcomes of mediation were assessed by a single person for each case, we captured our dependent variable, the decision whether to participate in mediation, with an objective measure. Second, we temporally separated the organizational decision whether to participate in mediation from the completion of the questionnaire about the perceptions of the mediation process. Finally, in testing our mediated moderation model (*H3*), the main effect of the interaction between anticipated justice and opponent's voice and the effects of each mediator are essentially controlled for in a simultaneous test, reducing concerns of inflated intercorrelations because of single source responses.

Second, the surveys relied on retrospective accounts in the collection of our perceptual measures. Although we attempted to minimize this concern by surveying organizational decision-makers within two weeks of their formal invitation to participate in mediation and by limiting the organizations in our sample to those who had no prior experience with mediation, it is possible that hindsight biases influenced survey responses. That is, after the organization had accepted or declined to participate in EEOC mediation, their attitudes toward mediation and the perceived merits of the claim may have been influenced by that choice. Although problems related to retrospective bias are lessened when the event is perceived as important and salient to an individual (Crutcher, 1994), as is the case with the present sample, we cannot rule out its possible influence. On the other hand, the fact that our findings include significant interaction effects and significant moderated mediation effects, consistent with theory-guided predictions, suggests that organizational decision-makers responded independently to each of our specific questions about the expected outcomes and fairness of the mediation procedures, rather than retroactively justifying their mediation decision. Future studies aiming to understand how anticipatory (in)justice influences organizational decision-makers' acceptance decisions regarding EEOC-sponsored mediation invitations will ideally include decision-makers who have mediation experience as well as decision-makers who do NOT. The control group may enable scholars to better disentangle influences on these types of decisions that pertain to recalled versus anticipated mediation process and outcomes.

Third, while we were able to find evidence that organizational decision-makers' expectations about the procedures and outcomes of mediation were each critical determinants of their decision about whether to participate in EEOC-sponsored mediation, we cannot say with 100 per cent certainty what was the source of these expectations were. To focus on expectations unbiased by personal experience, we surveyed only organizations that lacked prior involvement with EEOC mediation. It is possible, however, that organizational representatives' expectations were informed by their networks of decision-makers across organizations, or by their membership in professional associations. Although the nature of the relationships uncovered in this study should remain unaffected by the source of these biases, future research would benefit from examining the personal and professional networks of decision-makers and the potential for institutional pressures to influence unique decision-making episodes (Scott, 1987).

Fourth, previously used items of anticipatory justice for studies involving job-search decisions (Bell *et al.*, 2006) and receptivity to organizational changes (Shapiro and Kirkman, 1999, 2001; Rodell and Colquitt, 2009) lacked relevance for the unique dispute

resolution-related decision examined here; this forced us to adapt prior anticipatory justice measures and/or to create new ones. As a result, construct validity-strengthening work is needed in future studies interested in applying an anticipatory (in)justice perspective to explaining decisions about whether to settle disputes using mediators versus alternative interventions. Hopefully, this study will serve as an impetus for more studies to occur regarding when mediation is versus is not preferred over ADR interventions – an issue of practical as well as theoretical importance.

Conclusion

This study is the first we know of to examine real organizations' decision-makers' anticipations of EEOC-sponsored mediation and its outcomes, and how these expectations influence their choice to accept or reject the opportunity to mediate employees' discrimination claims. The complete support for our hypotheses, some of which involve complex mediated moderation patterns, suggests that there is value in examining strategic decisions of this nature with an anticipatory justicee orientation. We hope this study's findings, as well as our suggestions for how to strengthen future studies that build on these, will encourage more study to occur on the unsolved mystery of why a disproportionate number of organizations (unlike their employees) tend to reject mediation. Relatedly, we hope this study's investigation of a nascent area of research (i.e. anticipatory justice) on a problem of, both, practical and theoretical importance will provoke more management scholars and practitioners to revisit the utility of examining anticipated justice or, more broadly, anticipations of various kinds, as helpful in improving predictions about decision-making phenomena (Garling *et al.*, 2009; Li *et al.*, 2010, Zeelenberg, 1999), such as when organizational decision-makers may be more likely (and potentially also more strategically wise) to *accept* opportunities to mediate employees' grievances rather than pursue more litigious alternatives.

References

Ambrose, M.L. and Schminke, M. (2009), "The role of overall justice judgments in organizational justice research: a test of mediation", *Journal of Applied Psychology*, Vol. 94 No. 2, pp. 491-500.

Barrier, M. (2003), "The mediation disconnect", *HR Magazine*, May, pp. 54-58.

Bell, B.S., Ryan, A.M. and Wiechmann, D. (2004), "Justice expectations and applicant perceptions", *International Journal of Selection and Assessment*, Vol. 12 Nos 1/2, pp. 24-38.

Bell, B.S., Weichmann, D. and Ryan, A.M. (2006), "Consequences of organizational justice expectations in a selection system", *Journal of Applied Psychology*, Vol. 91 No. 2, pp. 455-466.

Brett, J.M., Behfar, K. and Kern, M. (2006), "Managing multicultural teams", *Harvard Business Review*, Vol. 84 No. 11, pp. 84-91.

Brett, J.M., Drieghe, R. and Shapiro, D.L. (1986), "Mediator style and mediation effectiveness", *The Negotiation Journal*, Vol. 2 No. 3, pp. 277-285.

Brett, J.M., Shapiro, D.L. and Lytle, A. (1998), "Breaking the bonds of reciprocity in negotiations", *Academy of Management Journal*, Vol. 41 No. 4, pp. 410-424.

Brockner, J. (2002), "Making sense of procedural fairness: how high procedural fairness can reduce or heighten the influence of outcome favorability", *Academy of Management Review*, Vol. 27 No. 1, pp. 58-76.

Downloaded by TASHKENT UNIVERSITY OF INFORMATION TECHNOLOGIES At 01:57 10 November 2016 (PT)

Brockner, J and Wiesenfeld, B.M. (1996), "An integrative framework for explaining reactions to decisions: the interactive effects of outcomes and procedures", *Psychological Bulletin*, Vol. 120 No. 2, pp. 189-208.

Burnham, W. (2011), *Introduction to the Law and Legal System of the United States*, 5th ed., West Publishing, St. Paul, MN.

Camerer, C.F. (1995), "Individual decision making", in Kagel, J.H and Roth, A.E. (Eds), *The Handbook of Experimental Economics*, Princeton University Press, Princeton, NJ, pp. 587-703.

Carnevale, P. and Pruitt, D. (1992), "Negotiation and mediation", *Annual Review of Psychology*, Vol. 43 No. 1, pp. 531-582.

Churchill, G.A., Jr (1979), "A paradigm for developing better measures of marketing constructs", *Journal of Marketing Research*, Vol. 16 No. 1, pp. 64-73.

Colquitt, J.A. (2001), "On the dimensionality of organizational justice: a construct validation of a measure", *Journal of Applied Psychology*, Vol. 86 No. 3, pp. 386-400.

Conlon, D.E. and Meyer, C. (2004), "Contractual and emergent third-party intervention", in Gelfand, M. and Brett, J. (Eds), *The Handbook of Negotiation and Culture*, Stanford University Press, Palo Alto, CA, pp. 258-279.

Cooley, J. (1985/1986), *Judicature*, Vol. 69, pp. 263-273.

Cropanzano, R. and Folger, R. (1989), "Referent cognitions and task decision autonomy: beyond equity theory", *Journal of Applied Psychology*, Vol. 74 No. 2, pp. 293-299.

Crutcher, R.J. (1994), "Telling what we know: the use of verbal report methodologies in psychological research", *Psychological Science*, Vol. 5 No. 5, pp. 241-244.

Dillman, D.A. (2000), *Mail and Internet Surveys: The Tailored Design Method*, 2nd ed., John Wiley & Sons, New York, NY.

EEOC (2015a), "EEOC mediation statistics FY 1999 through 2014", available at: www.eeoc.gov/eeoc/mediation/mediation_stats.cfm

EEOC (2015b), "EEOC litigation statistics FY 1997-2014", available at: www.eeoc.gov/eeoc/statistics/enforcement/litigation.cfm

Folger, R. (1987), "Reformulating the preconditions of resentment: a referent cognitions model", in Masters, J.C. and Smith, W.P. (Eds), *Social Comparison, Justice, and Relative Deprivation: Theoretical, Empirical, and Policy Perspectives*, Erlbaum, Hillsdale, NJ, pp. 183-215.

Folger, R. and Cropanzano, R. (1998), *Organizational Justice and Human Resource Management*, Chap. 5, Sage, Thousand Oaks, CA.

Ganzach, Y., Ellis, S., Pazy, A. and Ricci-Siag, T. (2008), "On the perception and operationalization of risk perception", *Judgment and Decision Making*, Vol. 3 No. 4, pp. 317-324.

Garling, T., Kirchler, E., Lewis, A. and van Raaij, F. (2009), "Psychology, financial decision making, and financial crises", *Psychological Science in the Public Interest*, Vol. 10 No. 1, pp. 1-47.

Gelfand, M. and De Dreu, C.W. (2007), *The Psychology of Conflict and Conflict Management in Organizations: SIOP Frontiers Series*, Lawrence Erlbaum, Hillsdale, NJ.

Gilbert, D. and Wilson, T. (2007), "Prospection: experiencing the future", *Science*, Vol. 317 No. 5843, pp. 1351-1354.

Gill, D. and Prowse, V. (2012), "A structural analysis of disappointment aversion in a real effort competition", *American Economic Review*, Vol. 102 No. 1, pp. 469-503.

Downloaded by TASHKENT UNIVERSITY OF INFORMATION TECHNOLOGIES At 01:57 10 November 2016 (PT)

Goldman, B., Gutek, B., Stein, J. and Lewis, K. (2006), "Antecedents and consequences of employment discrimination in organizations", *Journal of Management*, Vol. 32 No. 6, pp. 786-830.

Griffis, S.E., Goldsby, T.J. and Cooper, M.C. (2003), "Web-based and mail surveys: a comparison of response, data and cost", *Journal of Business Logistics*, Vol. 24 No. 2, pp. 237-258.

Grinberg, D. (2004), *Personal Communication with David Grinberg, Public Information Officer*, EEOC, Washington, DC.

Groth, M., Goldman, B.M., Gilliland, S.W. and Bies, R.J. (2002), "Commitment to legal claiming: influences of attributions, social guidance, and organizational tenure", *Journal of Applied Psychology*, Vol. 87 No. 4, pp. 781-788.

Harrison, T.R., Hopeck, P., Desrayaud, N. and Imboden, K. (2013), "The relationship between conflict, anticipatory procedural justice, and design with intentions to use ombudsman processes", *International Journal of Conflict Management*, Vol. 24 No. 1, pp. 56-72.

Hawkins, S.A. and Hastie, R. (1990), "Hindsight: biased judgments of past events after the outcomes are known", *Psychological Bulletin*, Vol. 107 No. 3, pp. 311-327.

Kahneman, D., Knetsch, J.L. and Thaler, R.H. (1991), "The endowment effect, loss aversion, and status quo bias", *Journal of Economic Perspectives*, Vol. 5 No. 1, pp. 193-206.

Kahneman, D. and Tversky, A. (1979), "Prospect theory: an analysis of decision under risk", *Econometrica*, Vol. 47 No. 2, pp. 263-291.

Kiser, R., Asher, M. and McShane (2008), "Let's not make a deal: an empirical study of decision making in unsuccessful settlement negotiations", *Journal of Empirical Legal Studies*, Vol. 5 No. 3, pp. 551-591.

Kressel, K. (2006), "Mediation revisited", in Deutsch, M., Coleman, P.T. and Marcus, E.C. (Eds), *The Handbook of Conflict Resolution: Theory and Practice*, 2nd ed., Wiley Publishing, Hoboken, NJ, pp. 726-756.

Kulik, C.T., Pepper, M.B., Shapiro, D.L. and Cregan, C. (2012), "The electronic water cooler: insiders and outsiders talk about organizational justice on the internet", *Communication Research*, Vol. 39 No. 5, pp. 565-591.

Levy, J.S. (1997), "Prospect theory, rational choice, and international relations", *International Studies Quarterly*, Vol. 41 No. 1, pp. 87-112.

Lewicki, R.J. and Sheppard, B.H. (1985), "Choosing how to intervene: factors influencing the use of process and outcome control in third party dispute resolution", *Journal of Organizational Behavior*, Vol. 6 No. 1, pp. 49-64.

Lewicki, R.J., Weiss, S.E. and Lewin, D. (1992), "Models of conflict, negotiation and third party intervention: a review and synthesis", *Journal of Organizational Behavior*, Vol. 13 No. 3, pp. 209-252.

Li, S., Zhou, K., Sun, Y., Rao, L., Zheng, R. and Liang, Z. (2010), "Anticipated regret, risk perception, or both: which is most likely responsible for our intention to gamble?", *Journal of Gambling Studies*, Vol. 26 No. 1, pp. 105-116.

McDermott, E.P., Obar, R. and Jose, A. (2003), "An investigation of the reasons for the lack of employer participation in the EEOC mediation program", available at: www.eeoc.gov/eeoc/mediation/report/study3/index.html

Marshall, BK Picou, J.S. and Schlichtmann, J.R. (2004), "Technological disasters, litigation stress, and the use of alternative dispute resolution mechanisms", *Law & Policy*, Vol. 26 No. 2, pp. 289-307.

Morrison, E.W. (2011), "Employee voice behavior: integration and directions for future research", *Academy of Management Annals*, Vol. 5 No. 1, pp. 373-412.

Downloaded by TASHKENT UNIVERSITY OF INFORMATION TECHNOLOGIES At 01:57 10 November 2016 (PT)

Downloaded by TASHKENT UNIVERSITY OF INFORMATION TECHNOLOGIES At 01:57 10 November 2016 (PT)

Nagy, M.S. (2002), "Using a single-item approach to measure facet job satisfaction", *Journal of Occupational and Organizational Psychology*, Vol. 75 No. 1, pp. 77-86.

Podsakoff, P.M., MacKenzie, S.B., Lee, J.Y. and Podsakoff, N.P. (2003), "Common method biases in behavioral research: a critical review of the literature and recommended remedies", *Journal of Applied Psychology*, Vol. 88 No. 5, pp. 879-903.

Poon, W.Y., Leung, K. and Lee, S.Y. (2002), "The comparison of single item constructs by relative mean and relative variance", *Organizational Research Methods*, Vol. 5 No. 3, pp. 275-298.

Priest, G.L. and Klein, B. (1984), "The selection of disputes for litigation", *The Journal of Legal Studies*, Vol. 13 No. 1, pp. 1-55.

Reich, W.A., Kressel, K., Scanlon, K.M. and Weiner, G. (2007), "Predicting the decision to pursue mediation in civil disputes: a hierarchical classes analysis", *The Journal of Psychology*, Vol. 141 No. 6, pp. 627-635.

Riegler, A. (2003), "Whose anticipations?", in Butz, M.V., Sigaud, O. and Gerard, P. (Eds), *Anticipatory Behavior in Adaptive Learning Systems*, Springer, Berlin, pp. 11-22.

Rodell, J.B. and Colquitt, J.A. (2009), "Looking ahead in times of uncertainty: the role of anticipatory justice in an organizational change context", *Journal of Applied Psychology*, Vol. 94 No. 4, pp. 989-1002.

Samuelson, W.F. (1998), "Settlements out of court: efficiency and equity", *Group Decision and Negotiation*, Vol. 7 No. 2, pp. 157-177.

Schwarz, N. and Strack, F. (1999), "Reports of subjective well-being: Judgmental processes and their methodological implications", in Kahneman, D., Diener, E. and Schwarz, N. (Eds), *Well-Being: The Foundations of Hedonic Psychology*, Sage, New York, NY, pp. 6-84.

Scott, W.R. (1987), "The adolescence of institutional theory", *Administrative Science Quarterly*, Vol. 32 No. 4, pp. 493-511.

Seligman, M., Railton, P., Baumeister, R. and Sripada, C. (2013), "Navigating into the future or driven by the past", *Perspectives on Psychological Science*, Vol. 8 No. 2, pp. 119-141.

Shapira, Z. (1995), *Risk Taking: A Managerial Perspective*, Sage Foundation, New York, NY.

Shapiro, D.L. and Brett, J.M. (1993), "Comparing three processes underlying judgments of procedural justice: a field study of mediation and arbitration", *Journal of Personality and Social Psychology*, Vol. 65 No. 6, pp. 1167-1177.

Shapiro, D.L. and Burris, E. (2015), "The role of voice in managing conflict", in Ashkanasy, N. and Jehn's, K. (Eds), *Handbook of Conflict Management Research*, Edward Edgar Publishing, Cheltenham, pp. 173-192.

Shapiro, D.L., Drieghe, R. and Brett, J.M. (1985), "Mediator behavior and the outcome of mediation", *Journal of Social Issues*, Vol. 41 No. 2, pp. 101-114.

Shapiro, D.L. and Kirkman, B.L. (1999), "Employees' reaction to the change in work teams: the influence of anticipatory injustice", *Journal of Organizational Change Management*, Vol. 12 No. 1, pp. 51-66.

Shapiro, D.L. and Kirkman, B.L. (2001), "Anticipatory injustice: the consequences of *expecting* injustice in the workplace", in Greenberg, J. and Cropanzano, R. (Eds), *Advances in Organizational Justice*, Stanford University Press, Stanford, CA, pp. 152-178.

Shapiro, D.L. and Kolb, D.M. (1994), "Reducing the 'litigious mentality' by increasing employees' desire to communicate grievances", Sitkin, S. and Bies, B. (Eds), *The Legalistic Organization*, Sage Publications, Newbury Park, CA.

Shapiro, D.L. and Kulik, C. (2004), "Disputing with faceless opponents: new challenges for conflict management research", in Gelfand, M.J. and Brett, J.M. (Eds), *Handbook of Negotiation and Culture*, Stanford University Press, Palo Alto, CA, pp. 177-192.

Stanton, J. (1998), "An empirical assessment of data collection using the Internet", *Personnel Psychology*, Vol. 51 No. 3, pp. 709-725.

Tversky, A. and Kahneman, D. (1992), "Advances in prospect theory: cumulative representation of uncertainty", *Journal of Risk and Uncertainty*, Vol. 5 No. 4, pp. 297-323.

Ury, W.L., Brett, J.M. and Goldberg, S.B. (1988), *Getting Disputes Resolved: Designing Systems to Cut the Costs of Conflict*, Jossey Bass, San Francisco, CA.

USDOC (2008), "United States Department of Commerce Report, The US litigation environment and foreign direct investment", October 2008.

Vroom, V.H. (1964), *Work and Motivation*, Wiley, New York, NY.

Wanous, J.P., Reichers, A.E. and Hudy, M.J. (1997), "Overall job satisfaction: how good are the single-item measures?", *Journal of Applied Psychology*, Vol. 82 No. 2, pp. 247-252.

Zavyalova, A., Pfarrer, M.D., Reger, R.K. and Shapiro, D.L. (2012), "Managing the message: the effects of firm actions and industry spillovers on media coverage following wrongdoing", *The Academy of Management Journal*, Vol. 55 No. 5, pp. 1079-1101.

Zeelenberg, M. (1999), "Anticipated regret, expected feedback and behaviorial decision-making", *Journal of Behavioral Decision Making*, Vol. 12 No. 2, pp. 93-106.

Further reading

Folger, R. and Greenberg, J. (1985), "Procedural justice: an interpretive analysis of personnel systems", in Rowland, K. and Ferris, G. (Eds), *Research in Personnel and Human Resources Management*, Jai Press, Greenwich, CT, Vol. 3, pp. 141-183.

Goldman, B., Cropanzano, R.M., Stein, J. and Benson, L. (2007), "The role of third parties/mediation in managing conflict in organizations", in Gelfand, M. and De Dreu, C. (Eds), *The Psychology of Conflict and Conflict Management in Organizations: SIOP Frontiers Series*, Lawrence Erlbaum, Hillsdale, NJ.

Groopman, J.E. (2007), *How Doctors Think*, Houghton Mifflin, Boston, MA.

Snyder, M. and Swann, W.B., Jr. (1978), "Behaviorial conformation in social interaction: from social perception to social reality", *Journal of Experimental Social Psychology*, Vol. 14 No. 2, pp. 148-162.

Appendix. Survey measures

Anticipated procedural justice of mediation ($\alpha = 0.91$)

How strongly do you agree that, in mediation:

(1) my organization would be able to express its side of the claim;
(2) the mediation procedures would be applied in the same way for everyone;
(3) the mediation procedures would maintain ethical and moral standards;
(4) the mediation procedure would be fair;
(5) my organization would be treated in a polite manner by the mediator;
(6) my organization would be treated with respect by the mediator; and
(7) the mediator would be truthful when giving my organization information.

Anticipated harm from opponent's voice ($\alpha = 0.79$)

How strongly do you agree that, in mediation:

Downloaded by TASHKENT UNIVERSITY OF INFORMATION TECHNOLOGIES At 01:57 10 November 2016 (PT)

(1) what the claimant will say during the mediation process will unfairly influence the outcome;
(2) the mediation procedures will allow the claimant to inappropriately influence the final settlement; and
(3) the mediation procedures will allow the claimant to express unjustified views and feelings.

Anticipated reputational outcome of mediation

How strongly do you agree that:

(1) settling the dispute via EEOC-sponsored mediation will help my organization maintain a positive reputation.

Anticipated financial outcome of mediation

How strongly do you agree that:

(1) If this case were settled via mediation, it will tend to be less expensive than alternatives.

Corresponding author
Barry Goldman can be contacted at: bgoldman@eller.arizona.edu

For instructions on how to order reprints of this article, please visit our website:
www.emeraldgrouppublishing.com/licensing/reprints.htm
Or contact us for further details: **permissions@emeraldinsight.com**

Downloaded by TASHKENT UNIVERSITY OF INFORMATION TECHNOLOGIES At 01:57 10 November 2016 (PT)