Nonverbal Communication and the Skills of Effective Mediators: 
Developing Rapport, Building Trust, and Displaying Professionalism

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Abstract

This thesis explores the phenomenon of nonverbal communication, investigating how mediators use nonverbal communication to develop rapport, build trust, and display professionalism. A review of the literature identified that these three macro level skills make major contributions to mediator effectiveness and also revealed a gap in knowledge regarding how the specific micro actions contribute to effectiveness. The findings of this thesis demonstrate that these skills rely primarily on micro nonverbal communication cues (nonverbal actions) and elements (room arrangement and the mediator’s appearance for example). Three studies were conducted as part of this program of research, connecting these specific micro nonverbal communication cues and elements and the three macro skills identified above. For the purpose of systematically examining each of the micro nonverbal cues and their elements, the METTA acronym (movement, environment, touch, tone, and appearance) was created and applied throughout the research studies.

Study 1 utilized survey data \(N = 385\) to gain insight into mediators’ preferences with respect to nonverbal communication and the three macro skills. The data included the preferences of mediators with respect to specific nonverbal actions, including what mediators stated they do when trying to develop rapport as well as actions they avoid; room and seating arrangements; hand-shaking preferences when greeting the parties; and the appropriateness of the mediator’s appearance based on the context of the mediation topic.

Study 2 used ethnographic semi-structured interviewing of key informants, described as gate-keepers who can provide valuable insight into the phenomenon.
(nonverbal communication) being studied ($N = 11$). The key informants were mediation professors and trainers. Since the purpose of this thesis was to explore the role of nonverbal communication and mediators, it was necessary to understand how mediators are being taught or not taught the micro cues and elements as well as their corresponding macro skills.

Study 3 involved an observational study of different mediators ($N = 10$) regarding their use of nonverbal communication during mediation sessions. The mediator’s introduction was the specific segment analyzed in order to provide consistency across comparisons and because it is an important moment where a mediator should be developing rapport, building trust, and displaying professionalism.

A collective analysis of the three studies resulted in themes emerging that are relevant to both academia and practitioners. The themes that emerged from this thesis were: developing rapport, building trust, and displaying professionalism are the three macro skills of effective mediators and each relies on nonverbal communication cues and elements working in a gestalt manner; the mediator’s introduction is an important moment for the three macro skills to be created and displayed; mediation training can be enhanced by the inclusion of specific segments that address the three macro skills and nonverbal communication; and it is vital that mediators both understand the impact of nonverbal communication and are able to communicate in a genuine manner that is based on the context of the situation.

This thesis provides for the first time a detailed articulation of nonverbal communication skills and important elements used by mediators. This research also
provides a strong basis on which to conduct future studies based on the themes identified by this research.
Statement of Originality

This work has not previously been submitted for a degree or diploma in any university. To the best of my knowledge and belief, the thesis contains no material previously published or written by another person except where due reference is made in the thesis itself.

_____________________________       __8-2-15__________
Jeff Thompson       Date
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PART I

Part I of this thesis contains three chapters: the introduction, a literature review, and an explanation of the methodology used for the three studies of this thesis. The introduction chapter provides an overview of the thesis and the topic being explored: nonverbal communication and mediators. The introduction provides an overview on how both qualitative and quantitative research tools were used to explore this topic contributing to the unique contribution of this thesis. The introduction presents the argument that there are three macro level skills that make a mediator effective: developing rapport, building trust, and displaying professionalism. Additionally, the primary research question is provided as well as additional questions that assisted with exploring the role nonverbal communication cues and elements have with respect to a mediator being effective.

Chapter 2 is a review of the relevant mediation and nonverbal communication scholarship. Mediation is defined and the various practice models are described. The three macro skills of effective mediators, which were developed based on existing literature, are detailed. The chapter also reviews the mediation literature to demonstrate that despite the three macro skills relying on nonverbal micro cues and elements in order for a mediator to be effective, there is a lack of information in the mediation literature regarding nonverbal communication. The nonverbal communication literature is offered to demonstrate that studies outside the mediation and conflict resolution field have identified nonverbal micro cues and elements that correspond with the macro skills of developing rapport, building trust, and displaying professionalism.
Chapter 3 concludes Part I by providing a discussion on the methodology, including its merits and applicability to the research topic. This includes how qualitative methodologies, including ethnography, assisted with the design of the three research studies while it also embraces quantitative methodologies. Thin slice methodology is then explained with respect to how it complemented this mixed-methods approach by looking at a specific segment of a mediation session- the mediator’s introduction. Social semiotics is then discussed from perspective of how it informed the overall design of the research to ensure mediation is explored in relation to nonverbal communication by collecting data through the utilization of multiple methods. Finally, the chapter details how confidentiality concerns were addressed and Griffith University’s ethical compliance procedures were adhered to.
Chapter 1. Introduction

This thesis examines nonverbal communication and its impact on the skills that make mediators effective. Mediation has been used to assist people involved in conflicts and disputes “in almost all periods of history, in most cultures, and used to resolve a wide variety of types of disputes” (Moore, 2014, p. ix). At the core of a mediator’s effectiveness is his or her ability to appropriately communicate with the parties and encourage positive communication between parties. The critical parts of a mediator’s communication are not solely the words that he or she uses. Rather, nonverbal communication also plays a vital role in a mediator’s effectiveness.

A review of the literature reveals that, despite the important role that nonverbal communication plays in mediation, current research and training on the subject are minimal and limiting. Questions that have yet to be addressed and that are answered in this thesis are as follows: What is the role of nonverbal communication with respect to the skills that make a mediator effective? Which of their nonverbal actions do mediators see as effective, what have they been taught, and what do they actually do?

This thesis seeks to contribute to addressing the gap in understanding the role and impact of nonverbal communication used by mediators by exploring, through three studies, the connections between nonverbal communication and mediators. To begin, it lays the groundwork by exploring the main, overarching skills that effective mediators use. Literature reveals that developing rapport, building trust, and displaying professionalism are the three primary, macro skills essential for a mediator to be effective (see Table 2.1, p.25). Moreover and as this thesis explains, developing rapport, building trust, and displaying professionalism are each exhibited and created primarily through
Mediation and Nonverbal Communication Explained

Mediation is a conflict resolution process involving a third party neutral person, the mediator, who assists the parties negotiate but does not have the authority to make binding decisions (Moore, 2014). A mediator is a guide who brings disputing parties together to share their perspective and attempts to help them work toward a mutually beneficial solution or understanding (Boulle et al., 2008; Deutsch, 1973; Bush & Folger, 1994; MacFarlane, 2003; Moore, 2014).

Mediators use a variety of skills within a structured process to help each person during this facilitated negotiation. By displaying these skills, mediators are also fostering the transfer of their skills to the opposing parties by showing them how to effectively communicate with and engage each other during the negotiation.

Nonverbal communication is all communication behavior other than words (Knapp, 1978; Mehrabian, 1972) or language (Ambady & Rosenthal, 1998). This includes nonverbal actions such as gestures, facial expressions, and postures as well as static, environmental elements such as clothing, accessories, arrangement of furniture, and the location of the interaction.

The METTA acronym, developed as a collective, systematic framework to guide the research undertaken as part of the current program of research, was designed to assist in making the role and impact of numerous nonverbal communication cues and elements more understandable. METTA represents movement, environment, touch, tone, and appearance. METTA is a tool to raise awareness of nonverbal communication for
practitioners, a tool that can also assist researchers in exploring the role of nonverbal communication, and it can augment other teaching methods for mediation trainers and professors.

Nonverbal cues (also known as micro cues) are specific, individual behaviors (Ambady & Weisbuch, 2010). Examples include facial expressions such as raising one’s eyebrows or a certain hand gesture such as pointing your index finger directly at someone.

Nonverbal elements are non-kinesic, static aspects of nonverbal communication. This includes physical environment attributes such as the layout of the room, distance between people interacting, a person’s clothing, and accessories such as a briefcase (Allison, 2000; Ambady & Rosenthal, 1992; Coleman & Deutsch, 2000; Hall, 1955, 1966; Latkin, 2006; Madonik, 2001; Moore, 2014; Thaler & Sunstein, 2009).

**Research Design**

This thesis has been guided by previous research and has extended knowledge in the mediation area. This thesis focuses on the research areas of mediation and nonverbal communication and uses the methodological approaches of mixed methodology, thin slice methodology, and social semiotics to ensure exploration of a range of aspects of nonverbal communication within the specific context of mediation. Figure 1.1 provides a layout of the thesis via a mind map, a graphical aid that uses drawings, images, and designs in addition to text to explain an idea or concept.1

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1 Because this thesis explores the role of nonverbal communication, mind maps are a natural avenue for sharing insight into the role of nonverbal communication and mediators. In addition, research on the use of mind maps has shown them to contribute to the understanding of concepts and ideas (Cunningham, 2005), to be an effective study technique (Ferrand, Hussain, & Hennessey, 2002), and to aid people to increase their ability to recall, organize, and frame their reflections from past experiences (Wheeldon, 2011). Finally, Holland, Holland, and Davies (2004) have contended that mind maps assist readers by depicting the essence of the topic, making it more easily manageable and understood.
Figure 1.1 Research Mind Map.

The mediation literature was reviewed to identify the skills that make mediators effective (Carnevale, 1989; Gill, 202; Goldberg, 2005; Goldberg & Shaw, 2007; Harmon, 2006; Poitras, 2009; Pruitt et al., 1990; Wade, 1999, 2005; Zubek et al., 1992).

Nonverbal communication scholarship was reviewed to identify specific nonverbal micro and macro cues and elements that are associated with the macro skills of effective mediators (Ambady & Rosenthal, 1998; Babad, 1999, 2005; Bavelas, 2010; Beebe, 1980; Choi, Gray, & Ambady, 2006; Chovil, 1989; Coker & Burgoon, 1987; Ekman & Friesen, 1978; Grahe & Bernieri, 1999; Mehrabian, 1972; Tickle-Degnen & Rosenthal, 1990; Zeigler-Kratz & Marshall, 1990).

A mixed-methods approach was used to collect data via various means including utilizing surveys and interviews, reviewing documents, and making observations. Qualitative research tools used within ethnography and phenomenology were utilized to provide a detailed method for researching the phenomena of nonverbal communication by gathering data via various means (Asmussen & Creswell, 1995; Atkinson &
Ethnography is the study of a particular group or culture and is completed over an extended period of time and includes collecting data from various means such as interviews, observations, reviewing documents (Murchison, 2009). Ethnography seeks to create understanding rather than to convince (Wolcott, 1990) by identifying themes that emerge from the data that is collected. Considering that this type of research has yet to be conducted in the mediation field, credibility plays a more important role than validation.

Phenomenology is a type of qualitative methodology that explores a topic, experience, or condition for multiple participants and investigates the effects and perceptions of that experience (Bound, 2011; Creswell, 2007).

Qualitative research methods are appropriate to use when credibility is the intention of the research (Creswell, 2007; Eisner, 1991; Lincoln & Guba, 1985; Van Maanen, 1983; Walcott, 1987 & 1990). This was a practical approach for this thesis as this research was the first of this nature in the mediation field. Combining multiple methods strengthened the data that was collected and added to the credibility of the analysis (Patton, 2002). The multiple methods were utilized across the three studies contributing to the triangulation of this research. The three studies and triangulation are explained further below.

Thin slice methodology informed the placement of specific emphasis on a single phase during the mediation session—the mediator’s introduction. Thin slice methodology is a method of observation and analysis that involves taking small excerpts of interactions
between individuals to describe an individual’s personality traits, internal states, social
relations, and behavior (Ambady & Rosenthal, 1993; Ambady, Krabbenhoft, & Hogan,
2006; Funder & Colver, 1998; Grahe & Bernieri, 1999; Hall et al., 2009; Kelly & Caplan,
1993; Murphy, 2005; Roter et al., 2011). Despite differences in mediation models and
individual mediator preferences, the introduction is a segment during the mediation
session that enabled consistency in observations to occur across the selected sample in
Study 3. Thin slices allow accurate evaluation of an individual’s interpersonal
characteristics (Ambady et al., 2006; LaPlante & Ambady, 2003); moreover, initial
interaction has been shown to be the most accurate form of slice (Ambady et al., 2000).

Finally, social semiotics informed the construction of the METTA acronym and
enabled the research to identify each of the various nonverbal communication cues and
elements that can impact the effectiveness of a mediator. Social semiotics is the study of
the use of signs or resources (actions we use to communicate) and their interpretations in
specific contexts (Chandler, 2007; Van Leeuwen, 2005). The METTA acronym
structures all of the possible cues and elements into an easy format to raise the awareness
of nonverbal communication for researchers and practitioners. The structure that the
METTA acronym provides is critical as it helps address the current void in the mediation
literature by first connecting micro cues and elements that correspond with the macro
skills of effective mediators. Additionally, as described in Part II of this thesis, the
METTA acronym also assisted in the designing of each of the three studies.

Using a social semiotics approach also ensured that the thesis was comprehensive
through a rigorous exploration of the phenomenon being explored--nonverbal
communication used by mediators. Morris’s model of social semiotics (1970) explained
the nonverbal communication cues and elements through semantics (identifying the sign), syntactics (identifying the other signs present), and pragmatics (what the sign means in the given context). This model contributed to the design of the three studies to systematically and also holistically explore nonverbal communication and mediators.

This thesis uses the American Psychological Association (APA) format for citations and referencing. Considering there is not a standard referencing format for conflict resolution related journals, and that nonverbal communication studies in psychology-based journals adhere to the APA style, it was practical for the APA style to be used. For example, the nine conflict resolution journals listed in Table 2.2 (p. 40), seven different styles are used and two state any style can be used as long as the submitted manuscript uses a style consistently. In addition, the APA style is used in the Journal of Nonverbal Behavior and it is also used in the journal of Negotiation and Conflict Management Research.

**Unique Contribution**

Research dedicated to nonverbal communication’s role in a mediator’s effectiveness has yet to be done. This thesis has identified this gap in the mediation literature while also reviewing the research on nonverbal communication outside of the mediation and conflict resolution field. It links nonverbal communication micro cues and elements to the macro skills of effective mediators. The empirical data provided by the three studies of this thesis strengthen the links and thereby fill the gap revealed by the literature review. The METTA acronym also assisted by addressing the lack of direct explanation of the links between the macro skills of effective mediators and the micro nonverbal cues and elements that create them by providing a method to easily account for
nonverbal communication cues and elements for mediators. METTA is applicable to mediators and in contexts beyond mediation. First, with respect to mediation, the METTA acronym and the coding sheet that was designed for Study 3 can assist practitioners by raising their awareness of their own nonverbal communication as well as that used by the parties. For researchers, trainers, and professors, the coding sheet utilized in Study 3 can guide them in observing the nonverbal communication of others in mediation contexts.

Second, understanding what mediators do is beneficial to other professionals who rely on effectively using nonverbal communication to excel in their work. A variety of professions require a person to be able to develop rapport, build trust, and display professionalism in order to be effective. This includes lawyers, physicians, teachers, and law enforcement personnel. METTA’s application, thus, extends beyond the mediation profession.

The methodological approach heightened the relevance of this thesis for researchers as well as professionals. The thesis has utilized a variety of tools from both quantitative and qualitative research, filling the gap with substantive empirical data. By exploring and then subsequently presenting the unique empirical data connecting macro skills with nonverbal micro cues and elements, this research makes a significant contribution toward filling that critical gap in scholarship on the skills of effective mediators.

Previous research in this area has taken various approaches to gathering data, but by far the greatest reliance has been on surveys (Goldberg, 2005; Goldberg & Shaw, 2007; Poitras, 2009). Approaches that have not yet been used include the use of
observations and ethnographic presentation of the results. The unique contribution of this research includes its approach in collecting and presenting the data. The purpose of using qualitative tools is not to discount quantitative measures, but rather to complement and expand on the previous quantitative research findings that are included in Study 1.

Through the thick narrative of ethnography, and being consistent with social semiotic analysis, this research explained the how of nonverbal communication cues and elements, not just the what (Chandler, 2002). For example, Study 2 provided the context for the way that nonverbal cues and elements are taught through the words of the teachers while Study 3 described what mediators are actually doing during real mediation sessions.

The qualitative method of collecting and presenting the data is a strength of the thesis and it provides one of the chief benefits for the field--academics will be able to generate future theory and further studies based on the findings. Professionals will have a clearer understanding of how the macro skills of developing rapport, building trust, and displaying professionalism are demonstrated through a cluster of specific nonverbal micro cues and elements, allowing them to apply it to their practice. This impact is not limited to only practicing mediators but extends to all who rely on the same skills to be effective with their work. The value and impact of this research is demonstrated through the triangulation of the research by gathering data from three distinct methods and then conducting a holistic analysis that allowed important themes to emerge.

**Research Questions**

As previously stated, this thesis utilizes a mixed-methodological approach, embracing both quantitative and qualitative tools. In each of the three studies, this thesis
used two key aspects of qualitative research—exploring a topic and asking questions (Malinowski, 1922, as cited in Murchison, 2009). The topic of the thesis was the role of nonverbal communication for mediators, specifically addressed in three research questions, as follows. The main question, therefore, was what are the nonverbal communication cues and elements used by mediators? This question then led to the development of three more guiding questions:

1. What do mediators say they do with respect to nonverbal communication cues and elements and what do they state are their preferences with both?

2. What are mediators taught with respect to nonverbal communication?

3. What are mediators actually doing with respect to nonverbal communication?

The three questions above guided each of the three studies, respectively, while the following additional questions further assisted:

- What is the level of awareness of nonverbal communication among mediators?

- How do mediators say they use nonverbal communication during mediation sessions?

- Are mediators using certain micro cues and elements to develop rapport, build trust, and display professionalism?

- How are mediators taught to develop rapport, build trust, display professionalism, and nonverbal communication?
• How is the mediator’s introduction perceived with respect to its importance, how it is taught, and how mediators actually present their introduction?

• Are nonverbal communication themes established across the three studies?

These questions persisted throughout the research and helped with designing, guiding, and providing a lens to analyze each study.

**Three Research Studies and Triangulation**

This thesis addressed the questions by examining the role of nonverbal communication used by mediators through three studies. Each of the studies cumulatively utilized a mixed methods approach. The thesis explored what mediators say they do in regard to nonverbal communication (Study 1); provided an understanding of how mediation instructors teach (or do not teach) the three macro skills and nonverbal communication during their courses (Study 2); and then used observations of mediators conducting their introduction to identify their use of nonverbal communication during actual mediation sessions (Study 3). Table 1.1 explains the purpose and sample of each of the three studies.

Triangulation is a qualitative methodological tool used to assist the researcher in developing the structure and design of the research. Triangulation refers to gathering data from different sources, using a variety of methods to collect the data, and is used to help avoid biases (Denzin, 1978). The data are presented in a manner that is transferable and applicable to the audience (Creswell & Miller, 2000; Golafshani, 2003; Reimer, 2009). Triangulation therefore contributes to the credibility and accuracy of the research (Denzin, 1978; Golafshani, 2003).
Table 1.1

Research Studies of This Thesis

<table>
<thead>
<tr>
<th>Study</th>
<th>Type</th>
<th>Who</th>
<th>Purpose</th>
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<tbody>
<tr>
<td>1</td>
<td>Survey</td>
<td>Mediators</td>
<td>To understand mediators’ preferences on nonverbal communication cues and elements</td>
</tr>
<tr>
<td>2</td>
<td>Ethnographic interviews</td>
<td>Mediation instructors</td>
<td>To gain insight on how mediators are taught nonverbal communication, developing rapport, building trust, and displaying professionalism</td>
</tr>
<tr>
<td>3</td>
<td>Observations</td>
<td>Mediators</td>
<td>To see what mediators do during sessions with respect to nonverbal communication cues and elements, developing rapport, building trust, and displaying professionalism</td>
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Table 1.1 demonstrates that the triangulation of this thesis was achieved by exploring nonverbal communication through three different studies, that the sample for each study was distinct from the others, and that a mixed methodological set of research tools was utilized.

Conclusion

This introduction has outlined the importance of exploring the role of nonverbal communication in mediation and the contribution of this research. Mediation scholarship has declared the significance of nonverbal communication while also identifying the macro level skills that make a mediator effective. However despite this stated significance, the literature has yet to identify specific nonverbal communication micro cues and elements that contribute to these macro skills. Fortunately the research in nonverbal communication has addressed those cues and elements used in contexts beyond mediation.
Therefore the following chapter explains the importance of nonverbal communication with respect to mediators in developing rapport, building trust, and displaying professionalism. The literature review in Chapter 2 identifies that many studies described developing rapport, building trust, and displaying professionalism as being skills of effective mediators, yet the majority of these studies failed to mention the three macro skills by name. Rather they described each of the terms in varying ways and rarely referred to specific nonverbal cues and elements. This foundation also revealed that the current research is limited on this topic in mediation despite similar nonverbal communication research existing in other fields.

The METTA acronym assists in filling the current gap in the mediation literature by providing a structured approach to understanding the impact nonverbal communication cues and elements have with respect to a mediator being effective. Chapter 2 presents the METTA acronym more in depth, detailing how it structures the three research studies in order to ensure all nonverbal cues and elements are explored.

After the foundation has been laid, the tools used for each of the three studies are explained in Chapter 3. Importantly, the three studies are not just explained, but the methodologies that were used in each are detailed. Mixed methods, thin slice methodology, and social semiotics are all detailed as to how they contributed to the studies and why, based on previous studies, they were the most appropriate for this thesis.

Part II contains separate chapters for each of the studies that identified, through the METTA acronym, the nonverbal communication preferences of mediators, how mediators are taught nonverbal communication, and what they do during mediation sessions. The data from each study generated new insights as this type of data had yet to
be collected in mediation or the conflict resolution field. This included data on specific nonverbal actions a mediator does and avoids, mediators’ preferences with respect to the layout of their room, and what is appropriate clothing for a mediator (Study 1); on how mediators are taught (or not taught) nonverbal communication, developing rapport, building trust, and displaying professionalism, while also giving insight on the preferences of gatekeepers of the mediation community—mediation trainers and professors (Study 2); and on exactly what mediators do with respect to the nonverbal communication cues and elements during a mediation session. This includes gestures, facial expressions, their appearance, and their setting up the mediation room (Study 3).

While Part II contains the individual studies and their corresponding chapters, Part III brings the data together from each study to provide a collective analysis. Important themes were able to be identified when they were reviewed and examined collectively. This could only be done after the data from the individual studies were completely collected. The themes that are presented in Chapter 7 allow mediators to gain a deeper understanding of the impact nonverbal communication can have on their effectiveness. This includes specific cues and elements that lead to developing rapport and building trust, while displaying professionalism ensures those nonverbal communication cues and elements are done correctly based on the context. The themes that are presented in Chapter 7, grounded in the data from each of the studies, contributed to filling the void that existed with respect to understanding the role of nonverbal communication and mediators. Finally, the concluding chapter considers the limitations of the findings contained in this thesis and how future research can expand on the three studies and themes that emerged.
Chapter 2. Literature Review

Introduction

This chapter identifies the relevant scholarship from the two research areas within which this thesis is grounded -- mediation and nonverbal communication. Mediation is explained and the varying practice models used by mediators are explored. A review of the mediation scholarship details the skills that contribute to a mediator’s effectiveness regardless of the mediation model that is practiced. However a review of the literature also reveals that a gap exists in detailing specific nonverbal communication cues and elements that are associated with the macro skills of effective mediators. Next a review of the nonverbal communication literature outside of the mediation profession identifies specific nonverbal communication micro cues and elements, which in a gestalt manner can lead to developing rapport, building trust, and displaying professionalism. This chapter then discusses the way in which the METTA acronym was developed, based on previous research in nonverbal communication.

Mediation

It is important to provide a brief history of mediation as well as the main mediation practice models. These models are informed by different perspectives on the mediator’s role in assisting people engaged in conflict and disputes. An explanation of previous research on effective mediation skills provides the basis and foundation for the identification of developing rapport, building trust, and displaying professionalism as the three macro skills of effective mediators. Finally, the main purpose of this section is to synthesize the importance that nonverbal communication has with respect to these macro skills. It explains how certain micro nonverbal communication cues (actions) and
elements (such as appearance and environmental factors) can contribute to three macro skills- developing rapport, building trust, and displaying professionalism.

Conflict and nonverbal communication are closely linked, as nonverbal communication can contribute to conflict as well as being critical to its resolution and management. Mediators have to foster participation and manage the emotions and communication of parties while also encouraging creativity (Mayer, 2000). Each of these activities requires the effective understanding and use of nonverbal communication skills.

In the well-known negotiation book *Getting to Yes* (Fisher, Ury, & Patton, 1991), the authors referred to “looking” at conflict through three basic categories: perception, emotion, and communication. It is important that mediators possess an understanding of nonverbal cues and elements with respect to these three categories.

Each of the three categories in *Getting to Yes* heavily rely on nonverbal communication, as our perceptions are guided by the actions of others and our emotions are displayed through nonverbal channels as well as what we say. Finally, as this thesis demonstrates, communication, more specifically effective communication of mediators, relies on nonverbal cues and elements.

**Cyclic Nature of Conflict**

An unresolved conflict can be viewed as a never-ending cycle. This metaphor of conflict being cyclic in nature can also be described as it being a wheel or circle. This demonstrates how different pieces or spokes come together that keep a conflict “spinning.” Moore (2014), Mayer (2000), and Furlong (2005) have each embraced this metaphor and have used it to help explain the manifestation and seemingly endless rise of conflict. In order for a mediator to assist parties, it is necessary to understand how
disputes and conflicts can arise. The various “wheels” present the contributors to conflicts in a manner that is easy to grasp.

The original circle (or wheel) of conflict was created by Christopher Moore in 1986. Moore’s *Circle of Conflict* explained the causes of disputes and the opportunities for collaboration. The eight factors that can cause conflicts to arise are identified as follows (Moore, 2014, p. 100):

- History and relationships;
- Information;
- Procedures;
- Power and influence;
- Structural factors;
- Beliefs, values, and attitudes;
- Communications; and
- Emotions

Mayer’s (2000) *Wheel of Conflict* condensed the circle to five main contributors to conflict: emotions, structure, communication, history, and values. Within his wheel, obviously communication includes nonverbal cues and elements; however, its importance is not restricted to this particular spoke in the wheel. Nonverbal communication can also play a significant role in emotions, structure, history, and values as well. This becomes easier to understand when applying the METTA acronym (movement, environment, touch, tone, appearance), as described elsewhere in this paper.

A third version of the Wheel of Conflict, created by Furlong (2005), was based on the versions created by Mayer (2000) and Moore (1986). Furlong changed the title from
“wheel” to “circle” as well as describing the six contributors as values, data, interests, structure, external/moods, and relationships.

Regardless of which wheel or circle might have informed a mediator’s training, connections to nonverbal communication’s contribution to conflict, as well as the ability to resolve it, are evident in each spoke or section. However, this only becomes obvious if the connections and importance of nonverbal communication are explicitly explained.

This thesis demonstrates how the nonverbal actions of a mediator contribute to his or her ability to help parties resolve their conflict and break out of the cycle of conflict.

**Mediation Explained**

Mediation is a confidential voluntary process within the greater discipline of conflict resolution where a third party (the mediator or co-mediators) assists people (the parties) involved in a conflict or dispute. Although in certain situations the parties can be referred to, and compelled to enter, mediation, the voluntary nature of mediation is still emphasized, as each party is free to end the mediation when they choose to do so (Bush & Folger, 1994; Deutsch, Coleman, & Marcus, 2006; Folberg & Taylor, 1984). The session begins with the mediator’s introduction, also known as an opening statement. The mediator introduces him or herself and explains the mediation process, including how mediation is set up, as well as what to expect during the session. There are multiple purposes to this introduction, including developing rapport, educating the parties about the process, and developing guidelines for the mediation process (Boulle et al., 2008; Moore, 2014; Stulberg, 1987).

Each party is allowed an opportunity to share their story and describe what, from their perspective, led to the dispute or conflict. The mediator, by utilizing skills including
active listening, helps the parties identify the issues of their conflict and explore potential solutions, with the intention of exploring the possibility of reaching an agreement. The mediator assists by using various communication skills to help each party while remaining neutral in the sense of not advocating for either party.

Various definitions of mediation have developed as the field has grown (Menkel-Meadow, 1995), and the above was created for the purpose of this thesis. Despite the presence of varying definitions of mediation, some common elements transcend individual definitions or practice models. These common elements include mediation being a voluntary process, and settlements being consensus-based with the mediator not having the authority to impose an outcome (Boulle et al., 2008; Douglas, 2008; MacFarlane, 2003; Moore, 2014).

Mediation, however, is not just a person helping people negotiate. One role of the mediator is to help people engage other people, with whom they are involved in conflict, by shifting their perspective from confrontational to one of problem solving (Chornenki & Hart, 2001) and understanding (Ury, 2007). In order to facilitate this change of perspective for the parties, the mediator must be skilled in many different communication skills, including nonverbal elements such as providing a suitable environment (Allison, 2000) and a favorable climate for negotiation (Ury, 1993). Nonverbal communication plays a pivotal role in mediators effectively being able to facilitate this change. Fisher, Ury, and Patton (1991) summed up the importance of the process of mediation and the negotiations that take place during the sessions by stating “the process is the product” (p. 28).
Mediation Practice Models

Within mediation, mediators use a variety of practice models. Different authors offer explanations of the various models and styles (Kovach, 2004; Lande, 1997; Moore, 2104; Riskin, 1994; Silbey & Merry, 1986) while the most common models include Facilitative Mediation, Transformative Mediation, Evaluative Mediation, and the Narrative Model. Despite there being varying models, the skills described within each for a mediator to be effective all rely on nonverbal communication. Each model is described in the following paragraphs.

Facilitative. In the Facilitative Model, the mediator “conducts the process along strict lines in order to define the problem comprehensively, focusing on the parties’ needs and concerns and helping them develop creative solutions that can be applied to the problem” (Boulle et al., 2008, p. 12). In this model, the mediators are more closely linked as process experts in contrast to content experts (Mayer, 2004). The mediators facilitate communication, promote understanding, focus on interests, seek creative solutions to problems, and enable parties to reach their own agreements (Love, 1997) while leaving the substantive aspects of the dispute to the parties (Stulberg, 1981).

Additionally, they do not offer opinions on settlement offers “although they may, through questioning and other techniques, assist the parties in evaluating the settlement options for themselves” (Boulle et al., 2008, p. 13). Moore (2014) added that mediators operating within this model rarely offer a specific solution for the parties to consider.

Transformative. The Transformative Model looks to improve or transform the relationship of the parties involved in the conflict (Bush & Folger, 1994). The primary focus of the mediator is “assisting the parties to have constructive interaction to improve
the relationship, not settling the dispute at hand” (Boulle et al., 2008, p. 13). Bush and Folger specifically mentioned how “the opening statement [by the mediator] says it all” (in Menkel-Meadow et al., 2005, p. 362), as it is during the introduction that the mediator describes his or her role and how mediation is based on empowerment and recognition. Transformative mediators are described as being the least directive of all mediation practitioners (Moore, 2014, p. 49). Instead of trying to guide parties on a certain “track” and move the process along, mediators in this model are taught reflective listening, summarizing without reframing, and questioning and checking in with the parties to see how they would like to proceed instead of dictating the course (Moore, 2014, p. 50).

The Transformative Model was originally developed to address family disputes (Bush & Pope, 2004), but it has now expanded to include many other types of cases including workplace mediation, school-related issues, and community mediation (Moore, 2014).

**Evaluative.** In the Evaluative Model, the mediator “guides and advises the parties on the basis of his or her expertise” (Boulle et al., 2008, p. 13) and focuses on rights and substantive issues (Boulle & Wade, 2010). Evaluative mediators use their expertise to provide suggestions based on possible outcomes should the matter be heard by a judge or jury.

The mediator’s focus in the evaluative model is to “highlight the strengths and weaknesses of the parties’ positions and arguments in order to bring compromise” (Boulle et al., 2008, p.13). According to Riskin (1996), evaluative mediators predict how the court might decide the case, encourage the parties to accept settlement, develop and
propose the basis for settlement, assess the strengths and weakness of each side’s positions, and educate each party about their own interests.

**Narrative Model.** The Narrative Model is not as well-known as the previous three, yet is still widely used. Similar to the Transformative Model, the Narrative Model is also relationship focused (Moore, 2014). The difference is that with the Narrative Model, the focus is “in the context of their individual and collective construction of social reality” (p. 50). This model’s foundation is based on narrative therapy; however, it has since expanded beyond this (p. 50).

According to Moore (2014, p. 51), Narrative mediation has three goals: 1) the creation of the relational conditions for the growth of an alternative story, 2) building a story of relationship that is incompatible with the continuing dominance of the conflict, and 3) opening space for people to make discursive shifts.

Across each of the mediation models, there is also co-mediation. Co-mediation involves two or more mediators working together during the mediation session. Moore (2014) explained that certain situations might be more conducive for co-mediation. These include divorce mediation and cases involving multiple parties. Multi-party cases could become overwhelming for just one mediator, and so having another mediator can help ensure the mediation session is properly managed (p. 267).

Although each mediation model has distinct features, mediators also commonly use techniques from more than one model in a single mediation. This flexibility and ability to adapt is crucial in order for mediators to be effective (Scanlan, 1999). The ability to identify interests, needs, and issues (Love, 2000); develop options and agreements (Stulberg, 1981); employ positive psychology skills such as thanking the
parties and reminding them of the progress they have made (Love & Stulberg, 2004); and properly utilize time, space, (Coleman & Deutsch, 2000) and location (Watson, Jr., 2002) are all important to mediators, regardless of their self-professed style of mediation.

The *Mediator’s Deskbook* explains mediation as “a flexible, nonbinding dispute resolution process that uses a neutral third party--the mediator--to facilitate negotiation and resolution between parties” (Scanlan, 1999). Mediation is both an art and a science. Requisite skills, such as those mentioned above, and training are required (the science) while each mediator must understand the flexible application of those skills and how to apply them uniquely to each situation (the art).

The three studies of this research address both the science and the art of mediation. The science is contained in Study 2, where mediation professors and trainers explain how they teach rapport, trust, professionalism, and nonverbal communication, while Studies 1 and 3 share the insight of what mediators say they do and what they actually do, respectively.

**Skills of Effective Mediators**

The use of different mediation models presents a challenge to a researcher seeking to identify the skills or practices that define a mediator as being effective. Despite the existence of multiple mediation models, substantial research has been conducted which has identified skills used by effective mediators that are, as this author argues, applicable to all styles of mediation.

**Three macro skills of effective mediators.** Mediation is in some ways an art, and each mediator is an artist with a distinct style (Kaufman & Duncan, 1992). A purpose of this research was to explore the nonverbal micro cues that correspond to the macro
cues of effective mediators: developing rapport, building trust, and displaying professionalism. Identification of the three macro skills of effective mediators proposed for this research is based on numerous research studies including those of Goldberg (2005) and Goldberg and Shaw (2007), as well as others listed in Table 2.1.

### Table 2.1

**Mediation Research on Rapport, Trust, and Professionalism**

<table>
<thead>
<tr>
<th>Author</th>
<th>Mediation Type</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vanderkool &amp; Pearson</td>
<td>Review of divorce mediation cases.</td>
<td>Rapport building is critical component of mediation; Mediators are far from unanimous in the methodology for establishing rapport.</td>
</tr>
<tr>
<td>Zubek et al. (1992)</td>
<td>Observations of community mediation center mediation sessions.</td>
<td>Rapport building was measured by displaying empathy, professing expertise, and providing reassurance; Empathy was positively correlated with all four success measures (reaching agreement; goal achievement; satisfied with agreement; satisfied with conduct of the mediation); Empathy positively correlated with short-term mediation success; Empathic speech tends to reduce defensiveness because it communicates understanding and respect; Empathy is the ability to grasp the situation and what the disputants are really thinking and feeling.</td>
</tr>
<tr>
<td>Kressel (2000)</td>
<td>Review of mediators in general.</td>
<td>Rapport is a reflexive tactic, designed to orient mediators to the dispute and create a foundation for their future activities; Absent rapport with the parties, the mediator can hope to accomplish little.</td>
</tr>
<tr>
<td>Gill (2002)</td>
<td>Interviews and observations of commercial mediators.</td>
<td>Mediators put a great deal of emphasis on rapport as it draws the parties into the process; Rapport builds trust and relaxes the parties.</td>
</tr>
<tr>
<td>Reference</td>
<td>Description</td>
<td>Rapport and Trust</td>
</tr>
<tr>
<td>---------------------------</td>
<td>-----------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Goldberg (2005)</td>
<td>Survey of commercial, labor, and employment mediators</td>
<td>Rapport is building understanding, empathy, and trust; After rapport is established, then the mediator and parties can generate solutions; Rapport allows the parties to communicate more openly.</td>
</tr>
<tr>
<td>Harmon (2006)</td>
<td>Explored the skills of effective mediators.</td>
<td>Rapport building has been shown to be positively correlated with goal attainment, reaching agreement, immediate satisfaction.</td>
</tr>
<tr>
<td>Vanderkool &amp; Pearson (1983)</td>
<td>Review of divorce mediation cases.</td>
<td>Mediator's gain trust and respect by describing their training and experience; Mediator's gain trust and respect by empathizing.</td>
</tr>
<tr>
<td>Pruitt et al. (1994)</td>
<td>Reviewed numerous research studies regarding mediators and trust.</td>
<td>A mediator's role is to restore trust between the parties.</td>
</tr>
<tr>
<td>Goldberg &amp; Shaw (2007)</td>
<td>Survey results from advocates who participated in commercial, labor, employment, divorce, environmental, and public policy mediation sessions.</td>
<td>Central to a mediator's success is the parties trusting him/her (along with rapport and empathy); Trust in the mediator improves the parties’ confidence and comfort; Trust encourages open communication by the parties and greater information sharing; A mediator being trustworthy contributes to rapport.</td>
</tr>
<tr>
<td>Stimec &amp; Poitras (2009)</td>
<td>Questionnaires completed by parties of employer-employee mediation sessions.</td>
<td>Trust in the mediator improves the parties' confidence; Trust in the mediator eases the parties' concerns about confidentiality; Trust in the mediator has two purposes: fostering acceptance of mediation and facilitating the mediation process.</td>
</tr>
<tr>
<td>Yiu &amp; Lai (2009)</td>
<td>Actions of mediators involved in construction related mediation sessions.</td>
<td>A mediator must realize the importance of trust-building tactics; If the parties trust the mediator, then they are more likely to remain at the negotiating table, committed to the process, to believe in achieving successful mediation outcomes; Trust building tactics include try to observe how the parties interact and communicate with and treat each other and try to be effective and show respect/concern for the parties, even when they do not trust you initially; The mediator should attempt to restore trust in the long run and deal with the problems of the dispute in the short run.</td>
</tr>
</tbody>
</table>
As demonstrated in the studies in Table 2.1, research has identified developing rapport, building trust, and displaying professionalism as macro level skills needed for a mediator to be effective. The studies reveal that the three macro skills are not created independently but rather when the micro nonverbal cues and elements are used effectively in a gestalt-like, or holistic, manner. For example, a mediator is able to gain the trust of the parties through empathizing (Vanderkool & Pearson, 1983) while it was also stated rapport was measured by the mediator displaying empathy (Zubek et al., 1992). The research also stated that rapport improves the parties’ trust in the mediator (Gill, 2002; Honeyman et al., 2004), rapport is built through creating trust (Goldberg, 2005) and that trust is a result of rapport (Goldberg & Shaw, 2005). Further, many of the actions that contribute to professionalism are similar to those of rapport and trust. Being prepared, being impartial, and taking an active role in the process are associated with
professionalism yet other studies listed in Table 2.2 also have established their connection to rapport and trust.

In order for the micro nonverbal communication cues and elements to be used effectively in the development of rapport, building of trust, and display of professionalism, the mediator must use each genuinely and appropriately. Simply performing each without being aware of the context or engaging them in a robotic manner will have a detrimental effect on the three macro skills. This demonstrates the interconnectedness of the macro skills; it is the appropriate use of the micro cues and elements that makes a mediator effective.

The three research studies for this thesis explore the nonverbal communication cues and elements that correspond to the defined macro skills of developing rapport, building trust, and displaying professionalism in order to see (based on the previous criteria of effective mediators) how mediators view the role of nonverbal communication during their mediation sessions, how they are taught nonverbal communication and the three macro skills, and what they do during actual mediation sessions. It is through the exploration, subsequent analysis, and presentation of the data that this thesis provides a comprehensive understanding of the role of nonverbal communication and mediators.

Specifically, this thesis contended that a gap exists in the understanding of the role of nonverbal communication used by mediators and that the three studies undertaken for this thesis contributed to addressing that gap by providing data on nonverbal micro cues and elements connected with the effectiveness of mediators in developing rapport, building trust, and displaying professionalism. In order to address the gap in the literature, the skills required of mediators to be effective are considered in detail below.
This is followed by explanation of how the effective use of those skills relies on nonverbal communication. Then a review of a literature search on nonverbal communication in mediation is provided, detailing the deficiency that currently exists.

**Developing rapport.** Developing rapport is recognized as critical for a mediator to be effective (Vanderkool & Pearson, 1990). Because of the dyadic nature of rapport, a mediator using certain nonverbal cues and elements does not guarantee rapport will be established with the parties. Research, as demonstrated later in this chapter, has shown that clusters of certain nonverbal cues can contribute to rapport being created between two interactants when they are used appropriately.

Kressel (2000) stated the importance of rapport as follows: “Absent rapport with the parties, mediators can hope to accomplish little” (p. 5), while Moore (2014) explained that “one of the greatest factors in the acceptability, and ultimately the effectiveness of the [mediator], is probably the personal relationship and rapport he or she establishes with the disputants” (p. 227). Kressel (2000) also noted that “although rapport building is a central tenet of the practitioner community, it does not receive wide attention from researchers” (p. 5). Moore later added that during the initial interaction between the mediator and the parties, there is a moment when the mediator begins the “process of rapport and trust building” (p. 304). As previously mentioned, the mediator displays the relevant skills that promote a collaborative situation where both parties can work together toward a mutually beneficial solution. Therefore, the mediator’s introduction is an important part of the session for the mediator to begin developing rapport and building trust.
The concept of developing rapport is one of the skills most widely recognized as needed by mediators in order to be able to connect and to help parties involved in conflict work toward a mutually acceptable solution (see Table 2.1). Establishing rapport is often emphasized in research as an important skill for mediators and is frequently listed as the first and most important such skill (Gill, 2002). One issue that arises is that the word *rapport* is not always used, but rather similar terminology, such as *affinity, understanding, caring,* and *friendly*. This research is not the first to group these terms under the label of rapport. Goldberg (2005) explained, as mentioned above and consistent with semiotic analysis, that “success in bringing disputing parties to a resolution of their dispute is unlikely” without rapport being established between the parties and the mediator (p. 365).

Rapport’s importance extends beyond its role in working toward an acceptable solution, as its creation and maintenance are requisite for any hopes of a solution being agreed upon (Harmon, 2006). This is also applicable for conflict de-escalation and conflict management. When a mediator creates rapport, it leads to the building of trust and then allows for the parties to work collaboratively toward a mutually acceptable solution. Further, the numerous micro nonverbal cues associated with rapport contribute to the positive manifestation of many, if not all, of the tools in the mediator’s toolbox, as discussed later in this chapter. Rapport, along with the micro cues associated with it, is the most important macro skill for a mediator to possess, especially as its micro cues contribute to other macro skills, including professionalism and trust.

**Building trust.** The link between effective mediation and the mediator’s ability to build trust with the parties is well established in the literature (Ebner, 2012; Ebner &
Thompson, 2015; Poitras, 2009). Trust has even been described as the most valuable skill for a mediator (Goldberg, 2005; Goldberg & Shaw, 2007), as trust in the mediator helps the parties remain committed to the process and believe success in getting an agreement is possible (Yiu & Lai, 2009).

Earning the trust of parties is described as the key to a successful mediation (Polsky, 2008) and the mediator’s nonverbal cues can contribute to the mediator building trust. Polsky describes a mediator as being able to build trust with the parties by the mediator starting the session in a friendly and detached manner to create a relaxed and hospitable environment. Further, Polsky states trust building is connected to the mediator explaining the process, defining the goals, and setting the tone.

Salem (2003) adds that when considering how a mediator gains the trust of the parties, one should observe the mediator’s behaviors. Salem states mediators can earn the trust of the parties by treating the parties equally and with dignity, creating a safe and comfortable environment, displaying his or her neutrality, being non-judging, and using active listening skills.

Generally, trust has also been described as being vital to success in any interaction with others (Feldman & Rime, 1991). In Robert Cialdini’s popular book *Influence: The Psychology of Persuasion* (2006), he describes trust between two people as contributing to efficient and effective interactions that rely on, among other skills, being able to build rapport. Nonverbal communication research has demonstrated the connection between certain actions, such as eye contact and body congruence, and trust (Andersen, 2008; Beebe, 1980; Zeigler-Kratz, 1990).
Trust is not easily defined, especially in the context of mediation (Ebner & Thompson, 2013). Empathizing with the parties has been described as a way mediators can gain their trust (Vanderkool & Pearson, 1983) while this chapter later explains that active listening is linked with displaying empathy (p. 34). Ebner (2007) defined trust as “an expectation that one’s cooperation will be reciprocated, in a situation where one stands to lose if the other chooses not to cooperate” (p. 141). Trust and the nonverbal communication actions that contribute to it are often closely linked with the same attributes of rapport (Braeutigam, 2006; Nadler, 2004; Noone, 1997; Poitras, 2009).

In negotiation settings, integrative negotiation refers to a point when both parties realize trust is necessary to achieve gains for themselves (Watkins & Rosegrant, 2001). Instead of zero-sum bargaining, the two parties share a level of trust and work collaboratively towards mutual gains.

In negotiation settings, trust between negotiators can simplify the negotiation, it is critical throughout the process, it enhances and facilitates the process, and the need for trust arises because of the interdependence of the negotiating parties (Lewicki & Polin, 2013). Lewicki and Polin add that the attributes that make a negotiator trustworthy is being competent, prepared, treating the other person with respect and courtesy, and possessing integrity.

Because mediation is a negotiation assisted by a third-party neutral, it is critical that the mediator builds trust with each party as well as helping foster trust between the parties. When a mediator develops rapport with the parties, it contributes to the parties trusting the mediator (Honeyman et al., 2004). A mediator must use certain nonverbal cues and elements correctly to develop rapport and build trust with the parties. The ability
to understand how and why the skills work while also applying them effectively is professionalism.

Displaying professionalism. The ability to display professionalism is a macro-level skill as it draws on a variety of nonverbal cues and elements that collectively display competence, confidence, an understanding of the necessary skills, and the ability to utilize the skills appropriate to the situation. A mediator’s effectiveness in using the micro cues and elements of rapport and trust building is grounded in his or her ability to use them in a skillful manner that is appropriately done. This ability is displayed through a mediator’s professionalism as this refers to a person being an expert at their work.²

A profession refers to a type of job that requires a person to have a specialized education or training and possessing a particular set of skills.³ However, what makes an occupation a profession is not always clear. For example, an article in the Harvard Business Review describes a profession as having “codes of conduct, and the meaning and consequences of those codes are taught as part of the formal education of their members” as well as having to “adhere to a universal and enforceable code of conduct” (Barker, 2010). In this article, Barker’s argument that business management is not a profession can create a similar argument with respect to those working in mediation. Barker’s argument that business management is not a profession is based on there being no professional body that is granted control, no formal entry or certification is required, no ethical standards are enforced, and no mechanism can exclude someone from practice.

² According the dictionary.com a professional is a person who is an expert at his or her work. According to Merriam-webster.com, professionalism refers to the skill, good judgment, and polite behavior that is expected from a person that is expected to do a job well.
³ Based on the definitions provided by the Cambridge Dictionary (dictionary.cambridge.org) and Merriam-Webster Dictionary (www.merriam-webster.com).
Professionalism, compared to rapport and trust, is not as easily defined in the mediation field. According to Patterson (2013), one reason for this is because “most of us think professions are those occupations which require substantial educational training and practice to qualify… mediation on the other hand has no such extensive requirement” (p. 12).

Professionalism entails standards of actions being required of mediators (ABA Section of Dispute Resolution, 2008; Feerick et al., 1994; JAMS, 2014; Patterson, 2013; Supreme Court of North Carolina, 2014). The behaviors described include competence, impartiality, and actions that maintain the parties’ self-determination. In its exploration of how to improve mediation quality, the ABA Taskforce specifically looked at mediators’ actions that were connected with “quality.” These included patience and persistence--two macro-level skills that rely on nonverbal communication actions to be congruent with verbal messages.

Professionalism includes the mediator taking an active role in the process, being prepared, possessing patience, being analytical, and helping the parties generate solutions while maintaining their self-determination (ABA, 2008; Carnevale, 1989; Cleary 2004; Gill, 2002; Goldberg, 2005; Goldberg & Shaw, 2007; Zubek et al., 1992).

Displaying professionalism involves mediator awareness of the skills that build rapport and develop trust with the parties while also knowing how to use those skills appropriately. Professionalism for mediators also includes, as Allison (2006) and Gerzon (2006) have stated, providing an environment that is suitable for mediation. This includes the mediator’s appearance, the layout of the room, and the distance between the mediator and the parties.
Professionalism entails the standards of actions required of the mediator (ABA Section of Dispute Resolution, 2008; Feerick et al., 1994; JAMS, 2014; Patterson, 2013; Supreme Court of North Carolina, 2014). The behaviors described include competence, impartiality, and actions that maintain the parties’ self-determination. In its exploration of how to improve mediation quality, the ABA Taskforce specifically looked at mediators’ actions that were connected with “quality.” These included patience and persistence--two macro-level skills that rely on nonverbal communication actions to be congruent with verbal messages.

Honeyman et al., (2004) synthesized the connection between professionalism and the actions of the effective mediator in their work titled “Skill Is Not Enough: Seeking Connectedness and Authority in Mediation.” Their work demonstrated that professionalism is not solely a matter of having the requisite skills, but also being able to effectively demonstrate them. Additionally, professionalism includes non-action elements such as the appearance of the mediator, the design of the room, and the preparation of the room.

In contrast to rapport and trust, professionalism is much more difficult to understand because literature in conflict resolution does not use the term, but rather the literature addresses many of the terms that this author identifies with professionalism. For example, research has identified the following as skills of effective mediators: taking an active role in the process, being prepared, exercising patience, being analytical, and generating solutions (see Table 2.1). Each of those, this thesis argues, falls within the scope of professionalism. As the previous studies have shown, each one has used varying terms that are either synonymous with professionalism or an attribute of it. This thesis
has acknowledged the differences and has grouped them under the term *professionalism*. Labeling them as part of professionalism is intended to have a number of benefits, including standardizing what it is that makes a mediator effective instead of the current state of mediation where there is no standard set of terms used.

Active listening can be an example of a mediator demonstrating professionalism. Active listening has been described as crucial for developing rapport in negotiations (Noesner, 2010) and is applicable for mediators as well. When a mediator is actively listening, it can create rapport and build trust. However, this occurs only when the mediator knows how to effectively and genuinely use the skills of actively listening in order for rapport to be established and trust to be built.

It is important to note, and consistent with research in nonverbal communication and semiotics, that these macro skills do not exist exclusive of one another and are not displayed in a vacuum but rather are gestalt in nature. Gestalt refers to the skills being overlapping and occurring in clusters (Ambady & Rosenthal, 1998; Chandler, 2007; Harmon, 2006; Tickle-Degnen & Rosenthal, 1990).

**Mediator’s toolbox.** A mediator requires a toolbox of skills and the ability to use those skills at varying points during the mediation to assist him or her in providing favorable conditions for the two parties (although it can include more) to work toward an agreement. A mediator must be an effective communicator as well as being able to help the parties become more effective communicators (Boulle et al., 2008). A mediator is someone who helps people try to resolve their conflicts by communicating more effectively while working collaboratively.

An effective mediator guides the parties by effectively displaying and using many
of the skills he or she is encouraging the parties to use. Mediators lead by the example of their genuine actions grounded in empathy. Empathy is “knowing about the awareness of another, a capacity by which one person obtains knowledge of the subjective side of another person” (Hakansson, 2003, p. 2).

The toolbox of skills includes the following (Safe Horizon Training Manual, 2008):

- **Validating**: When a mediator validates a comment made by a party, it allows the party to know he or she has not only been heard, but the emotions contained within the statement are acknowledged by the mediator as well.

- **Reflecting**: A mediator uses reflection as a way to re-state a party’s comment while removing, for example, the combative connotation but still retaining the emotion and feelings it involves.

- **Encouraging**: This builds the confidence of the parties to share their thoughts, opinions, and ideas while also building confidence in appropriately using effective communication skills.

- **Clarifying**: A mediator can use this in the form of an open-ended question to help the parties open up and expand on their comments.

- **Restating**: Often, for another party to fully accept and understand a comment, it simply requires the mediator to repeat what was said.

- **Summarizing**: Often, especially in the beginning of the session, the parties will make lengthy statements. An effective mediator, while using the other skills in the toolbox, offers the story back to both parties in a compendious manner.

- **Checking-in**: Periodically the mediator will ask the parties questions to make sure they are satisfied with how the mediation process is progressing.
The above skills contribute to the three macro skills of effective mediators. Additionally, the use of micro nonverbal cues is essential for each of the tools to be used successfully, as explained below.

It is obvious that the use of each of these skills is accomplished in part through verbal channels. However, verbal communication does not provide a complete explanation as the verbal channel is just one of the channels used to express these skills successfully. Although this research is focused on nonverbal communication, it does not discount the importance of the verbal channel of communication. Rather, the mediator’s verbal and nonverbal communication must be congruent in order for the mediator to be effective. Nonverbal cues and gestures are necessary for each skill in the toolbox to be used effectively. For example, “encouraging” becomes effective when appropriate words are combined with forward leaning, directed body orientation, a pleasant tone, and open-handed gestures.

An accomplished and skilled mediator is able to discern when each of the skills is best employed, to be most beneficial to the parties during the mediation process. While each skill is important and possesses distinct features, it is important to note they often work together. These skills possessed by mediators often work in a gestalt manner where each skill complements the other. Missing one part (staying with the above example), such as “forward leaning,” will not prevent “encouraging” from being effectively displayed by the mediator, for example. One part, or nonverbal cue or element, on its own does not create or diminish “encouraging”; rather it is the collective of micro cues and elements.
**Active listening.** Most of a mediator’s time should be dedicated to listening instead of speaking (Boulle et al., 2008). Boulle et al. (2008) elaborated that listening is not passive but rather it “involves a lot of hard work” (p. 124). They explained that a good listener is one who *actively* listens. Mediators are trained to be active listeners, and that has been referred to as the most important skill for mediators and negotiators to possess (Macfarlane, 2003; Van Hasselt, Baker, Romano, Sellers, Noesner, & Smith, 2005; Van Hasselt, Romano, & Vecchi, 2008). Thus, looking at the literature on active listening is relevant for that reason and also because the skills that represent active listening are closely connected with rapport and trust building.

According to the Massachusetts Institute of Technology’s (MIT) Sloan Communication Program (Yates, 2004), active listening is defined as a general approach to listening that helps a person gain more information, improve understanding of other points of view, and work cooperatively with others. MIT further explained that the person who is actively listening looks and sounds interested, adopts the speaker’s point of view, and clarifies the speaker’s thoughts and feelings.

When a mediator uses active listening skills, he or she does not seek to fix a person’s problem, but rather to promote and display understanding (LeBaron Duryea, in Macfarlane, 2003), project empathy (Harvard Program on Negotiation), convey interest (Supreme Court Mediation Training Manual of India), build trust and rapport, and create clarity and calm (MIT Mediation Manual, 2002) by reducing anger and stress (Macfarlane, 2003). Active listening is not demonstrated through a single verbal action or nonverbal cue or element but rather it includes the various actions, cues and elements working in a gestalt-like manner to display warmth, understanding, and empathy (Bodie
et al., 2015). Nonverbal cues and elements include eye contact, forward leaning, smiling and distance between interactants (Bodie et al., 2015).

Macfarlane (2003) provided three behaviors associated with a mediator actively listening: Attending behaviors, acknowledgment, and paraphrasing and summarizing (p. 369). Attending behaviors refers to the numerous nonverbal cues and elements a mediator uses while also being aware of the nonverbal communication of the parties. Acknowledgment refers to the mediator identifying what is going on at the moment (the emotions and intensity of the parties), and thereby putting the parties at ease and making it easier for them to move forward. Paraphrasing and summarizing provide a brief review of what a party said, letting the party know the mediator has heard what was said and has understood it.

Active listening is not just important for mediators. It is also an effective tool used by the parties to mediation and negotiations (Fisher et al., 1991). Effective mediators are able to use active listening skills such as back channels, or paralanguage, including utterances (“mmm”), head nodding, and smiling to let parties know the mediators are listening and understanding them (Goldberg, 2005). These subtle yet effective skills have been described by Schlossberg (in Louden, 2002) as “dynamic inactivity,” and contribute to rapport building.

Although, as first stated, nonverbal communication is often connected with active listening, the connection between the two is limiting and confusing at times. Salem (2013) provided specific nonverbal actions related to active listening but did not elaborate on each. For each example, Salem did not mention that a mediator’s use of facial
expressions matching those of one speaker could potentially be detrimental toward the impression of neutrality perceived by the other party to the mediation session.

The Mediation Training Manual provided by the Supreme Court of India explained that part of active listening includes being aware of the speaker’s body language. It further detailed specific actions that a mediator can do to display active listening, including symmetry of posture, having a comfortable look, smiling, leaning forward, and maintaining appropriate eye contact. These recommendations are similar to the nonverbal actions explored in a study by Bodie et al. (2015) that addressed the following nonverbal cues in relationship to a person be effective at active listening: smiling, eye contact, head nods, face, lean, body orientation, open body-posture, animation, and voice.

The manual subsequently stated that body language could display neutrality. It did not offer an explanation on how this is accomplished nor how, if a mediator does not pay specific attention to the examples listed with active listening, it can in fact be detrimental to neutrality.

The MIT Mediation Manual (2002) mentioned that the mediator should be aware of the nonverbal cues of the speaker with respect to emitting emotions; however, it did not explain how to accurately identify the emotions based on specific cues. The same manual later simply directed mediators to “watch nonverbal cues” yet did not elaborate on what to look for or how to do this accurately.

Boulle et al. (2008) provided an acronym to address many nonverbal communication cues and elements with respect to active listening. They provide Egan’s SOLER Model as part of attending skills associated with active listening (p. 125).
SOLER represents the following actions: Squarely face the client, adopt an open posture, Lean toward the client at times, maintain eye contact most of the time, and relax and be natural in these behaviors.

As important as active listening skills are for mediators, this review indicates that the literature and training materials do not adequately explain the nonverbal cues or how to encode and decode them. This thesis identified specific nonverbal cues and elements that correspond with being effective at active listening to build rapport, demonstrate empathy, and build trust.

**Limits of Previous Research on Nonverbal Communication**

The previous sections have detailed the literature explaining the important skills of mediators and have also demonstrated the literature does not provide details of specific cues that contribute to these skills. The literature also emphasizes the importance of nonverbal communication, yet rarely is there an explicit statement of the specific nonverbal micro cues or their application. The following review of mediation and conflict resolution journals is designed to demonstrate the systemic approach used to confirm the limited nature of research on the topic of nonverbal communication within the scholarship on mediation.

The process for selecting journals included multiple steps. The first involved accessing academic search databases that hosted mediation and conflict resolution journals. The online databases searched included Academic Search Premier, JSTOR, Wiley, Social Sciences Research Network (SSRN), Hein Online, Sage, Springer, PsycINFO, Westlaw AU, and Emerald Insight. A general search of each database was conducted using the terms “nonverbal communication” and “mediation” as this thesis.
was specifically seeking articles related to all aspects of nonverbal communication, not the study of any one particular cue or element or where the topic of nonverbal communication in the context of mediation was minimally mentioned or addressed. Because some of the searches yielded hundreds of results, each article had to be searched individually to verify whether it was relevant to nonverbal communication and mediation. Reviewing the article title, abstract, and keywords achieved this. An example of “false” results was that when searching the *Journal of Conflict Management*, via Sage, 13 results were produced using the search terms. Upon review of each of the results, none were related to nonverbal communication. Interestingly one result involved rapport building, yet it addressed verbal cues only during negotiations (Bronstein, et al., 2012). After completing the review of each of the sites, there were no positive results for the two search terms.

It is notable to mention that during the search of the Australasian Dispute Resolution Journal, eight articles returned results for the search terms. However, after reviewing the articles, they peripherally addressed nonverbal communication with certain instances involving coverage limited to a single sentence. One article discusses Neuro Linguistic Programing (NLP) and mediation (Serventy, 2002). The author provides numerous suggestions with regard to the impact of nonverbal communication yet the assertions are not supported by citations to studies. This thesis further addresses NLP concerns later in this chapter (p. 50).

Among the results were topics on nonverbal communication within conflict resolution. Many of these are detailed in the next section; however, it is noteworthy that none of the identified sources related specifically to mediation, which was the focus of
the search. The null result also does not mean nonverbal communication is not addressed in any of the studies. Many of the studies referred to throughout this thesis, such as Goldberg (2005), referred to the macro skills that involve nonverbal communication, but it was often minimally and not the focus of the study.

The next step involved examining journals specifically dedicated to scholarship on conflict resolution. Again, the two terms were used, as the purpose was not to identify research on nonverbal communication with the field of conflict resolution but rather more specifically with respect to mediation. The search included nine conflict resolution-related journals that are identified in Table 2.2 below. Although results did return for “nonverbal communication” and “mediation,” again closer analysis resulted in none being specific to mediation, but in many instances, negotiation. This demonstrates the unique contribution of this thesis.

<table>
<thead>
<tr>
<th>Journal name</th>
<th>Volumes</th>
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<tbody>
<tr>
<td>Australasian Dispute Resolution Journal</td>
<td>26</td>
</tr>
<tr>
<td>Conflict Resolution Quarterly</td>
<td>32</td>
</tr>
<tr>
<td>Group Decision and Negotiation</td>
<td>24</td>
</tr>
<tr>
<td>International Journal of Conflict Management</td>
<td>26</td>
</tr>
<tr>
<td>International Negotiation</td>
<td>19</td>
</tr>
<tr>
<td>International Ombuds Association Journal</td>
<td>7</td>
</tr>
<tr>
<td>Journal of Conflict Resolution</td>
<td>59</td>
</tr>
<tr>
<td>Journal of Conflictology</td>
<td>5</td>
</tr>
<tr>
<td>Negotiation and Conflict Management Research</td>
<td>8</td>
</tr>
<tr>
<td>Negotiation Journal</td>
<td>30</td>
</tr>
</tbody>
</table>

The final search involved examining journals associated with academic institutions that are highly rated for their dispute resolution programs. Following a review of the *US News & World Report* annual report of the top-rated dispute resolution
programs at law schools in the United States, an online search was conducted of the top ten rated programs. After each of the ten’s websites was accessed, the next step was to see if the school published a conflict resolution journal. Two of the top ten programs (Oregon University and Arizona State University, 5th and 9th respectively) did not have their journals published online. The other eight were Pepperdine University, Ohio State University, Hamline University, Harvard University, University of Missouri, Marquette University, Cardozo Law School (Yeshiva University), and the University of Nevada Las Vegas. The eight journals produced negative results when searching the term “nonverbal communication.” Cumulatively, a total of 258 volumes were searched (see Table 2.3), yet none of them resulted in an article where both nonverbal communication and mediation were the topic of any article.

Nonverbal communication was the topic for multiple articles, yet it was with respect to negotiation. This included, in the Negotiation Journal, 82 results for “nonverbal communication.” Again, none were specific to mediation; however, there were results related to this thesis research topic, including Kim et al. (2014) finding that rapport between two negotiating parties was positively connected to the two wanting to work together again as well as its building trust between them; Olekalns and Druckman (2014) relating how the emotions of one negotiator can affect the other negotiator; Rosenthal (1988) explored the role of nonverbal communication behavior in self-fulfilling expectancies of the other negotiator’s actions; and Faure (1993) described how nonverbal communication can assist in explaining negotiation concepts with an audience of varying cultures.
Table 2.3

Journals from Top-Rated Conflict Resolution Schools

<table>
<thead>
<tr>
<th>School name*</th>
<th>Volumes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pepperdine Dispute Resolution Law Journal</td>
<td>12</td>
</tr>
<tr>
<td>Ohio State Journal of Dispute Resolution</td>
<td>22</td>
</tr>
<tr>
<td>Hamline Law Review</td>
<td>36</td>
</tr>
<tr>
<td>Harvard- Negotiation Journal</td>
<td>31</td>
</tr>
<tr>
<td>University of Missouri Journal of Dispute Resolution</td>
<td>30</td>
</tr>
<tr>
<td>Marquette Law Review</td>
<td>97</td>
</tr>
<tr>
<td>Cardozo Law School Journal of Dispute Resolution</td>
<td>16</td>
</tr>
<tr>
<td>UNLV Law Journal</td>
<td>14</td>
</tr>
</tbody>
</table>

* The schools are listed in their ranking order, not including the two omitted schools.

The review of the academic database searches, the conflict resolution journals, and the academic institution journals all demonstrated that there is a glaring deficiency in the study of nonverbal communication in mediation.

This deficiency of nonverbal communication not being a term discussed in mediation and conflict resolution literature is not limited to academic publications. Mediate.com, the top-rated conflict resolution practitioner focused website, was accessed and the term “nonverbal communication” was searched. The search revealed 17 articles, one of which (Starr and Page) is discussed later in this chapter. It is noteworthy that of the remaining 16 articles, half were written by this author. This demonstrates the limited coverage of nonverbal communication in publications focused on practitioners.

The Gap in Connecting Nonverbal Communication with Rapport, Trust, and Professionalism

This section explores additional studies in conflict resolution related to the three macro skills of effective mediators. These studies either fail to address specific nonverbal cues and elements or in cases that nonverbal communication is addressed, it is limiting.
Despite the important role of rapport, mediation literature rarely explains the micro cues associated with rapport and often does not explicitly mention the word *rapport*. A well-known dispute resolution organization failed to explain rapport building in its *Mediator’s Desktop* book (Scanlon, 1999). The purpose of the book is to be a “practical guide” offering practice tips, as well as a “general reference guide for all mediators” (vii). Even the comprehensive and useful *Mediation: Skills and Techniques* (Boulle et al., 2008) does not reference rapport directly; however, it does explain the importance of nonverbal communication and specific methods of active listening. The training manual offered by the Safe Horizon Mediation Center, now called the New York Peace Institute (2008), the United States’ largest community mediation center, gives minimal information on the micro cues of rapport. It refers simply to active listening skills rather than rapport. This is all in contrast to rapport being shown in numerous research studies to generate understanding, joint problem solving, positive communication, and mutually beneficial results (Bernieri, 1988; Goldberg, 2005; Goldberg & Shaw, 2007; Harmon, 2006; Poitras, 2009).

Building trust and creating a positive tone are key elements in being an effective mediator that require the skillful use of not solely verbal channels, but also nonverbal channels (Noone, 1997). Gerzon (2006) stated that a mediator must foster an environment suitable for the parties to use effective communication techniques, yet he did not offer specific nonverbal techniques such as the layout of the room or specific actions the mediator can take. Additionally, Gerzon mentioned that “presence” is the most mysterious and most difficult to use tool in the mediator’s toolbox. Despite this stated importance, Gerzon referred only to practices outside of mediation, such as meditation. In
those instances Gerzon refers to cultivating “presence” without offering nonverbal communication cues as examples. The lack of detailed explanation of these cues and elements, despite their stated importance, leaves the reader and the professional mediator wondering exactly how to provide this presence and environment. This thesis acknowledges the previous research and aims to fill the gaps that exist by delving deeper into the role of nonverbal communication and the specific micro cues and elements of rapport, trust, and professionalism.

Slocum and van Langenhove (2004), as well as Louis (2008) referred to the importance of nonverbal communication but did not mention specific nonverbal cues. Slocum and van Langenhove referred to the fact that non-linguistic discourse, in addition to linguistics, is necessary for conflict resolution professionals, while Louis called “for an expanded scope of study, beyond utterances. It may include nonverbal conversations of body language and spatial distance” (p. 26).

Starr and Page’s article *Dealing with nonverbal cues: A key to mediator effectiveness* (2005) details nine important aspects of nonverbal communication: voice tone, spatial distance, objects, color, facial expression, eye contact, movement, time, and touch. Because of the intended audience, mediation practitioners, the article does not contain comprehensive citations to support the statements it makes for each of the nine nonverbal communication cues and elements. For example, stating a mediator should use hand gestures sparingly would be better supported with research suggesting that. The article does provide numerous suggestions that are practical and which a mediator should consider with respect to nonverbal communication and him or her being effective. The authors conclude by reminding the nonverbal actions should be used “thoughtfully” to
increase their effectiveness as well as ensuring their verbal communication is congruent with their nonverbal actions.

Research in mediation has previously been described as deficient for determining specific actions of the mediator in correlation with satisfactory outcomes for the parties (Mayer, 2004). Further, research explicitly connecting nonverbal communication and conflict resolution is limited as well. Remland, Jones, and Brinkman (1993) addressed nonverbal communication’s role specifically in the escalation of conflict through people’s use of nonverbal cues during a dyadic interaction involving a dispute. Their work included macro-level coding (such as ridicule, ignoring, and appearing relaxed) as well as micro cues (voice tone, gestures, facial expressions, and eye contact). Their study however limited their research to how these cues are used during the escalation of conflict through the impact and response of the other person involved in the dispute.

Madonik’s book (2001), *I Hear What You Say, but What Are You Telling Me? The Strategic Use of Nonverbal Communication in Mediation*, sounds promising by the title, but in agreement with Remland’s review of Madonik’s book (2002), there are limitations to the book. It is in substantially based on NLP, or Neuro Linguistic Programming. Although NLP can be highly entertaining, there is a lack of empirical research to validate many of its claims (see, for example Beyerstein, 1995; Witkowski, 2010).

Madonik’s (2001) book did make a contribution regarding nonverbal communication, including a detailed chapter on specific actions for a mediator to take to create rapport, as well as details in regard to preparing the room. This includes seating arrangements and writing material and other accessories, as well as the location. Madonik stated that she has mediated over 1,000 cases, and her experience provides
valuable expertise that can benefit mediators, yet many of her suggestions and insights could have gained greater credibility by addressing relevant studies by other researchers. The current research expanded on these anecdotal suggestions and considerations by Madonik by providing quantitative and qualitative data concerning mediators moving beyond individual mediator preferences or recommendations.

Macfarlane (2003) offered specific nonverbal cues, but they are limited to active listening (p. 369). Kolb (1997), in *When Talk Works*, profiled 12 mediators using a style similar to the approach of the second study of this research. Kolb explained that nonverbal communication can be effective, but went on to explore verbal communication as well. Kolb’s use of ethnography to tell the story of mediators and their individual styles indicated that it is possible to describe how mediators conduct their sessions. Schau’s (2013) book, as well as that of Galton and Love (2012), also employed this ethnographic approach, yet each was limited in its analysis. This deficiency is not the fault of the authors; their approach was purposeful as the intended audience was not academics but rather practicing mediators and the broader general community.

Moore (2014) addressed nonverbal communication in multiple instances in his seminal work *The Mediation Process: Practical Strategies for Resolving Conflict*. In respect to nonverbal communication, it was stated that we communicate “a large amount of important information non-verbally rather than verbally” (p. 251). Moore explained various aspects of room arrangement including the recommendation that the mediator should sit equidistant from the parties, as that can convey neutrality; how body placement and furniture can be important; how appropriate body language is needed in order to
influence and build rapport with the parties; and the importance of eye contact, posture, and head nodding.

Moore (2014) also listed numerous micro cues that mediators should consider—such as use of gestures, crossing their legs, and either crossing or not crossing their arms—without stating preferences for what a mediator should actually do. He stated that a good interviewer (during a mediation session) often leans toward the person he or she is talking to, as it can express interest, as well as using head nodding as a nonverbal indicator of paying attention (p. 253). These are both consistent with research on rapport building yet these suggestions can be viewed as limiting as they are just two examples.

Although Moore (2014) addressed nonverbal communication, there are instances in which this author’s arguments are not supported by the research literature as well as lacking in specific details of nonverbal micro actions and elements. Moore correctly pointed out that there are cultural differences with nonverbal communication; he added that cultures “may also have diverse facial expressions with different meanings” (p. 252). However, the opposite has been demonstrated in numerous other studies, showing there is a universality of facial expressions in relation to specific displays of emotions, which have direct relevance to mediation: anger, contempt, disgust, fear, happiness, sadness, and surprise (for a review, see Matsumoto & Hwang, 2011).

Wheeler’s (2003) research on nonverbal communication and negotiation explored, in a laboratory setting, various nonverbal communication cues during a negotiation session. The actions included facial expressions, eye movement, gestures, prosody, posture, space, and mutual influence. Each was considered relevant to developing rapport, building trust, and displaying professionalism. Although Wheeler’s
study offered a holistic overview of the various nonverbal cues, the presentation of the data can be described as introductory as the majority of examples of specific gestures come from other situations unrelated to the negotiation. This is not a deficiency on his part, because as this chapter explains, there is a deficiency of research directly related to nonverbal communication with respect to conflict resolution.

Wheeler’s (2009) work offered valuable information for conflict resolution professionals, and his tips at the end of the paper created a meaningful starting point for conflict resolution professionals interested in being more aware of the nonverbal cues and elements present during a negotiation session. The tips include “continual self-awareness” as he states that the study of nonverbal communication is a science “but its practice will always be an art” (p. 19). Suggestions within self-awareness include using all one’s senses, looking in the mirror, testing one’s assumptions, and being oneself.

Remland (2002) offered the same optimism and positive reflection for the later chapters in Madonik’s book (2001). Wheeler (2009) notably mentioned that “our attention may be better focused on our own behavior, making sure that it is appropriate to the situation” (p. 7). This thesis agrees, and expands on the work that Wheeler has detailed and provides a comprehensive analysis with mediators.

Often the first interaction between the mediator and the parties, especially in court-connected and community-mediation centers, is when the mediation begins. This is the case for the selected population in my mediator observation study (Study 3). A mediator has to be mindful of how to create favorable conditions for the parties. This includes the physical and emotional environment (Boulle et al., 2008).
For the selected population of mediators in Study 3, when they arrive for the mediation session, the room selection and seating arrangement are often the first nonverbal communication element tasks they must decide on based on the particular case and room availability. Providing a suitable environment is part of the role of the mediator (Allison, 2000). A mediator needs to create the right environment while giving the parties support in order for them to feel comfortable enough to negotiate constructively (Bush & Folger, 1994).

The above research and literature identify that nonverbal communication has been a topic with limited discussion in relation to conflict resolution and mediation. The deficiency that exists, however, is that nonverbal communication has yet to become the primary focus of research. Previous studies have mentioned certain aspects of nonverbal communication and have identified different nonverbal cues being associated with mediator skills, yet none have made the specific purpose of the study to connect nonverbal communication with mediator skills. Further, when authors have explained the role of nonverbal communication, it has been with only limited detail and the macro level, not having the comments substantiated with data.

Summary

Research exists demonstrating that developing rapport, building trust, and displaying professionalism are skills of effective mediators. However, there is generally a lack of detail provided for the micro cues and elements that create each of these macro skills. Explaining that “rapport can be established in many ways: by active listening during joint sessions, by asking appropriate questions, by demonstrating empathy and understanding and by the use of appropriate humor,” Harmon (2006, p. 329) provided the
mediator and researcher only with macro-level skills. This leaves mediators still wondering how these skills are expressed and what nonverbal communication cues and elements to look for. A review of the literature further revealed that there has been a glaring omission in scholarship in mediation that is dedicated to the topic of nonverbal communication. Further, there is a gap specifically connecting the nonverbal communication cues and elements to the macro skills of effective mediators.

The three studies of this research looks to bridge the gap between the previously explained macro skills of effective mediators and the research on nonverbal communication micro cues related to those skills, offering researchers and professionals a gestalt understanding of how mediators use them. This is the essence of social semiotics that uses a mixed-methods approach to ensure all nonverbal cues and elements are explored within the specific context of mediation.

The following section addresses the connections between the three macro skills and their nonverbal micro cues and elements that contribute to each being displayed. Additionally, based on the previous research on both the macro and micro skills, the following section explains the METTA acronym created for this research and its relevance to mediators in developing rapport, building trust, and displaying professionalism.

**Nonverbal Communication**

This section explains nonverbal communication and addresses previous research relevant to this thesis relating to the connections between the micro nonverbal communication cues that represent the macro skills of effective mediators: developing rapport, building trust, and displaying professionalism. Research on rapport--including
such micro skills as eye contact and gaze, spatial distance and room design, haptics, body movement and gestures, and mirroring and mimicry--is detailed, explaining the relevance of the micro cues and elements to the macro skills. This research has led to the creation of the METTA acronym, which is then explained in terms of its structure and relevance.

Nonverbal communication is recognized as vital to having successful interactions with others (Feldman & Rime, 1991), regardless of whether it is during professional or social interactions. An often cited yet often misunderstood statement by the well-known nonverbal communication researcher Albert Mehrabian (1972) indicates that over 93% of communication is nonverbal. His research does not state this explicitly, but what can be posited from the research, as well as from numerous other studies in nonverbal communication, is the importance of nonverbal communication in interacting effectively with others. This includes encoding nonverbal cues both strategically and non-strategically, as well as decoding nonverbal cues of others subconsciously and consciously. Mehrabian’s study indicated that when there is incongruence between a person’s body language and what the person says, the other person tends to believe the body language to be the more truthful channel.

Generally, there are seven areas of research in respect to nonverbal communication, as follows:

• Appearance: what someone is wearing, artifacts and adornments
• Chronemics: time
• Haptics: touch
• Kinesics: body movement and gestures
• Oculessics: eye movement, blinking, contact, and gaze
• Proxemics: spatial distance
• Vocalics: voice tone, prosody (rhythm and stress), valence (positive or negative)

This thesis utilized the acronym METTA (movement, environment, touch, tone, and appearance) to improve an understanding of how mediators use nonverbal cues and elements. It was also designed to help mediators and parties in conflict better understand the various nonverbal cues and elements involved in effective communication. The METTA acronym is further explained in this chapter.

Nonverbal communication research dates back to Duchenne’s research on smiles in 1862 and Darwin’s study of facial expressions in 1872. Darwin’s interest in the role of expression was in the conveying of emotions, but he also realized its role in communication (Chovil, 1989). The research conducted by Ekman and Friesen (1978) on facial expressions, including the creation of the Facial Action Coding System (FACS), is arguably the most well known and most impactful through developing an understanding of facial expression decoding, analysis, and training. The FACS contains 44 unique action units and several additional categories of head and eye positions and movements (Ekman & Rosenberg, 1997). Research conducted by Ekman and Izard, and then later by Friesen demonstrated the universality of the recognition of emotions displayed by facial expressions (Matsumoto & Hwang, 2011). Originally, six emotions were identified (anger, disgust, fear, joy, surprise, and sadness), and a seventh (contempt) was eventually added.

4 The METTA acronym was first developed and presented by the author in 2009. It was further developed and modified based on research for this thesis.
**Previous Research**

This section details nonverbal communication research that has direct relevance to this thesis. This includes nonverbal cues of rapport, and how METTA is based on other cues and the various nonverbal elements critical to a mediator’s effectiveness.

Nonverbal communication research is often separated into two main traditions, emotional and communicational (Hall, 2008). Nonverbal cues expressing internal feelings, whether intentional or not, are a result of one’s emotions while those intended to complement or replace spoken words are defined as communicational. Hall (2008) explained the difference between them by using the term nonverbal *behavior* (instead of *emotions*) and *communication*. Although there is a distinction between the two, they are often used interchangeably.

Like semiotics, research in nonverbal communication has utilized a myriad of approaches to meet the specific needs and the uniqueness of each research study. Semiotics and nonverbal communication scholarship share similar descriptions for research on the nonverbal cues and elements but often use varying terminology. For example, in semiotics, a nonverbal action such as finger pointing to express anger has the finger pointing labeled as the signifier and the emotion of anger as the signified (Chandler, 2007) whereas, in nonverbal communication, the finger pointing is described as a deictic (Burgoon, Guerrero, & Floyd, 2010) gesture signifying anger. To prevent confusion, nonverbal communication terminology will be used throughout this thesis except when referencing specific terms related to social semiotics.

**Rapport defined and its corresponding micro skills.** Rapport is the foundation for an effective and positive interaction, and it exists between people when there is
mutual attentiveness, warmth, understanding, and behavioral coordination. This definition, created for this thesis, is based on those provided by Abbe and Brendon (2012), Ambady and Rosenthal (1998), Tickle-Degnen and Rosenthal (1990), and Grahe and Bernieri (1999). The study by Tickle-Degnen and Rosenthal provides information on micro nonverbal cues that correlate with rapport building (see Table 2.4). These include smiling, directed gazing, head nodding, forward trunk leaning, direct body orientation, posture mirroring, uncrossing arms, and uncrossing legs. The information offered in the previously mentioned studies, as well as those in Table 2.4, provided a solid foundation for exploring, coding, and analyzing specific nonverbal cues in this research and can offer the same for others interested in similar research or application to their work.

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**Table 2.4**

**Nonverbal Communication Macro & Micro Cues Associated with Rapport**

<table>
<thead>
<tr>
<th><strong>Andersen (2007)</strong></th>
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</thead>
<tbody>
<tr>
<td>• Eye contact, close interpersonal distances, touch, open direct body positions communicate availability, inclusion and invite communication from others.</td>
</tr>
<tr>
<td>• “Liking” increased with eye contact.</td>
</tr>
<tr>
<td>• Generally, eye contact is perceived as positive, immediate behavior in interpersonal interaction.</td>
</tr>
<tr>
<td>• Forward leaning communicates greater rapport and immediacy compared to upright and backward leans.</td>
</tr>
<tr>
<td>• Head nod signals warmth and agreement.</td>
</tr>
<tr>
<td>• Smiles are classified as crucial part of nonverbal immediacy.</td>
</tr>
<tr>
<td>• Hand gestures perceived as more involved and interested in interaction.</td>
</tr>
<tr>
<td>• Increased gesture activity communicates increased affiliativeness.</td>
</tr>
<tr>
<td>• Body congruence and mimicry produce more positive affect and rapport in various interactions.</td>
</tr>
<tr>
<td>• Open body positions symbolize openness for interaction.</td>
</tr>
<tr>
<td>• Listeners perceive speech similar to their own as more attractive, pleasant, and intelligible.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Feldman &amp; Rime (1991)</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>• Facial expressions influence perceptions of trustworthiness.</td>
</tr>
<tr>
<td>• Posture similarity was positively associated with rapport between interactants.</td>
</tr>
<tr>
<td>• Higher gestures were rated as much warmer and much more relaxed than were speakers making fewer gestures.</td>
</tr>
</tbody>
</table>
Tickle-Degnen and Rosenthal (1990) raised concerns in regard to research on rapport, including judges relying heavily on culture and not the context of the situation unless the situation being observed allowed the context to be “readily apparent and salient” (p. 292). The research for this thesis the context is specific given that the sample is confined to the field of mediation.

Valuable comments and suggestions offered by Tickle-Degnen and Rosenthal (1987) include the finding that “positivity behaviors will receive more weighting than coordination in early interactions” (p. 292), as well as the statement that the micro “approach to measurement seems appropriate for early interactions” (p. 292). Each of these has direct significance to this research as, with respect to the initial interaction, this thesis explores the mediator’s introduction. Further, the micro approach is also used, as this research is exploring the specific nonverbal cues and elements of rapport, trust, and professionalism.

It is important to point out that micro measuring can lose its value when not combined with a macro analysis. Such an approach would involve simple statistics of smiles, head nods, and forward leans without the value of the context of the situation, as well as when those cues could be used at certain moments in addition to other cues. The social semiotic, gestalt approach of this research addresses the “whole” situation as it is comprised of its parts. More importantly, it also provides value for professionals and

<table>
<thead>
<tr>
<th>Tickle-Degnen &amp; Rosenthal (1990)</th>
</tr>
</thead>
<tbody>
<tr>
<td>• The expression of warmth is based on the movements of mouth, eyes, brow, and head in concert with one another.</td>
</tr>
<tr>
<td>• Eight classes of nonverbal behavior are associated with rapport: smiling, directed gazing, head nodding, forward trunk lean, direct body orientation, posture mirroring, uncrossed arms, uncrossed legs.</td>
</tr>
</tbody>
</table>
academics in conflict resolution research and practice by embracing both qualitative and quantitative methodologies.

**Development of METTA.** The METTA acronym was created for the purpose of aiding awareness of all the possible nonverbal communication cues and elements present during any interaction and then more specifically during mediations sessions. METTA was created while the author was first exploring the role and impact of nonverbal communication. Due to the fact that there are numerous potential nonverbal cues and elements being used during any interaction, it is possible to miss certain cues and elements at the expense of others, while it can also have a negative impact on awareness of the verbal aspect of communication.

Therefore, considering the numerous cues and elements that can occur, METTA not only can help raise awareness of each, but it can also help prevent a cognitive overload when trying to decode each. This overload of trying to identify each cue and element could result in nonverbal and verbal communication being overlooked.

Further, as Table 2.4 details, there is not a single cue or element that contributes to rapport being developed. Rather, it is a cluster of micro cues and elements when used appropriately can contribute to rapport between the mediator and parties. This is also the case for building trust and displaying professionalism. METTA acknowledges this and was constructed to account for this gestalt-like manner in which each of the three macro skills can be used by mediators.

The section below outlines various categories of nonverbal communication. The categories and respective research conducted are detailed to display how each contributed to the METTA acronym. Specifically, the *movement* section of METTA includes
research on body movement and gestures, mirroring and mimicry, and eye contact and gaze. Research specific to environment, touch, tone, and appearance are explained in their respective sections.

**Movement.** Body orientation can play a pivotal role in creating a trusting, rapport-building, empathic, and immediacy-filled interaction (Ambady & Rosenthal, 1998; Andersen, 2008; Choi et al., 2006; Hall, 2008; Tickle-Degnen & Rosenthal, 1990). Mediation training programs refer to the importance of mediators using active listening skills. Active listening in negotiations has been described as requisite to being effective, and it also contributes to building rapport and trust (Noesner & Webster, 1997; Hancerli, 2008; Thompson, 2013; Thompson, 2014; Vecchi, Van Hasselt, & Romano, 2005). Relaxed body orientation behaviors have been shown to be associated with higher credibility and attractiveness while open body positions symbolize openness for conversation and interaction (Andersen, 2008). The orientation of the body can also have a reciprocal effect (Andersen, 1984). This is important because, if body positioning and orientation are open and directed, it can create immediacy, while the opposite can have an adverse effect. This emotional contagion, when an emotion is triggered as a result of mimicking someone else’s behavior, occurs through many of the nonverbal channels, including kinesics, or body movement (Knapp, Hall, & Horgan, 2014).

Along with body orientation, forward leaning has been reported as a nonverbal cue of immediacy (Andersen, 1985; Mehrabian, 1971; Tickle-Degnen & Rosenthal, 1990). Immediacy refers to behaviors that establish positive interaction between interactants and that involve nonverbal cues and elements, such as close proximity, forward lean, open arm and leg postures, facing one another, eye contact, and postural
relaxation (Hall, Harrigan, & Rosenthal, 1995). Of particular note, and similar to the subconscious and unintended roles played by nonverbal cues, Coker and Burgoon (1987) showed that when subjects were told to increase immediacy without further instruction, forward leans increased significantly.

Depending on their use, hand gestures can contribute to rapport building and immediacy (open-handed, palms up); can be used as speech regulators (palms facing down and pushing down); can be directional; and can be a form of intimidation (pointing). Table 2.5 lists eight common hand gesture categories.

Table 2.5

<table>
<thead>
<tr>
<th>Gesture</th>
<th>Description</th>
<th>Example</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adaptor</td>
<td>Unintended, unconscious movement</td>
<td>Touching the back of your neck displaying anxiety or discomfort.</td>
</tr>
<tr>
<td>Batonic/Beats</td>
<td>Speech assistant, done in rhythm with speech</td>
<td>Slamming your hand on the podium to emphasize a comment being said; hand rolling outwardly to help the speaker find the words to say.</td>
</tr>
<tr>
<td>Deictic</td>
<td>Finger pointing</td>
<td>Performing this gesture when referencing someone.</td>
</tr>
<tr>
<td>Emblematic</td>
<td>Speech replacement</td>
<td>Wagging your finger horizontally back and forth instead of saying no.</td>
</tr>
<tr>
<td>Iconic</td>
<td>Space, layout, concrete objects</td>
<td>While describing the layout and design of another location, pointing when each item is located and outlining the shapes.</td>
</tr>
<tr>
<td>Metaphoric</td>
<td>Signifies something abstract</td>
<td>Stating “taking control of the situation” while grasping the air with your hand.</td>
</tr>
<tr>
<td>Pantomimic</td>
<td>Replicating an act</td>
<td>When describing how you were running up the stairs, acting out the motion with your hands, arms, and legs.</td>
</tr>
<tr>
<td>Regulator</td>
<td>Controls speaking turns</td>
<td>When finishing speaking, using a palm-up gesture moving towards the other persons, letting them know you would like them to speak.</td>
</tr>
</tbody>
</table>

Although categories are separately listed above, often a single gesture can represent more than one category. An example includes using one’s index finger,
moving it horizontally while stating, “I will not go.” This gesture is deictic, as pointing is involved, as well as batonic, as it is emphasizing what is being said (think of underlining, bolding, or italicizing a word in written text). This overlapping is consistent with the other nonverbal micro cues that represent more than one macro skill, as already discussed with rapport building.

Smiling is often associated with immediacy, and this association has been demonstrated in numerous studies (Andersen, 1985; Gutsell, 1980; Koch, 1971; Krumhuber, Manstead, & Kappas, 2007). Smiling and the varying styles associated with smiling have been studied extensively, with Duchenne considered to be the first during the late 19th century. The “Duchenne Smile,” or a genuine smile, received its name after his research was able to identify the various muscles used when people make smiles that are perceived as more or less genuine. Andersen (2008) stated that smiling is a primary means of communicating interpersonal affiliation, based on numerous studies.

Nonverbal mirroring and mimicry are often a result and development of rapport, empathy, and immediacy (Bodie, 2011; Bruneau, 1993). They can sometimes be described as body congruence with the other person. Nonverbal mirroring and mimicry are defined as similar and complementary movement and actions between interactants, and both can signal empathy, positive effect, and rapport in various interactions (Andersen 1998, 2008; Chartrand & Bargh, 1999). In Woodall and Burgoon’s (1981) study, confederates who produced congruent movements were perceived as more competent, composed, trustworthy, extroverted, and sociable than confederates who enacted incongruous movements with others. This gives credibility to the view that, at
least to some degree, these cues, even when purposely acted out, can still have a positive effect on the other interactants.

It would seem that mimicry should be part of the mediator’s toolbox because, according to Knapp and Hall (2007), increased mimicry seems to occur “more often when we are other-oriented...feel concerned about others” (p. 249). If a mediator is attempting to create an environment suitable for rapport and immediacy, he or she would also want to reduce distractions and ensure a focus on the concept of mutual gains and affiliation between the parties, as well as with the mediator, as another study showed unconscious mimicry was more likely to occur with a person when there was a mutual goal (Lakin & Chartrand, 2003).

Eye contact and gaze have been detailed as having a direct connection to the nonverbal micro cues of immediacy and creating rapport. Eye gaze has the ability to create positive evaluations and perceptions of competence, communication skills, and pleasantness (Manusov, 1991). It is common to associate lack of eye contact with lying and evasion, despite research finding the opposite to be true (Geiselman, Elgrem, Green, Rystad, 2011). An example of this was demonstrated in a study stating that eye gaze leads to the perception, among other things, of trust (Beebe, 1980).

Eye gaze can be used unknowingly to create rapport as a study showed that when confederates were told to express the macro cue “liking,” they increased their eye contact even without instruction to do so (Mehrabian, 1969). This shows the subtle and automatic nature of people encoding micro cues. This automatic nature of doing certain cues related to rapport building also demonstrates that people might not always be able to recall nonverbal actions because they are not purposefully doing the cues.
A study relevant to mediators assessed therapists and found that maintaining eye contact and gazing were associated with being trustworthy and possessing the qualities of an expert (Zeigler-Kratz, 1990). Additionally, the patients also had a greater tendency to revisit that particular therapist compared to those who did not use gaze. Mediators can draw important lessons from this study that found that eye contact not only creates trust and rapport, but also conveys the impression of professionalism.

Additionally, Burgoon, Coker, and Coker (1986) provided details of the negative consequences of general gaze aversion, which include perceptions of non-immediacy and lack of trustworthiness.

Movement involves a variety of micro cues that can help a mediator develop rapport and build trust with the parties. The literature has provided a number of cues that have previously been demonstrated to contribute to both rapport and trust. A mediator’s professionalism ensures the cues are being used appropriately.

**Environment.** Distance and space can be critical elements to success in mediation. This includes where the mediator and the parties are seated. Too close can create discomfort while too much distance can negate efforts to create immediacy. Hall (1959, 1966) created the *zone of interpersonal distance* to explain the differences between several socially accepted space zones between individuals. For mediation purposes, this applies to the room set-up and the environment. The zones include intimate distance (contact to 18 inches), personal distance (18 inches to 4 feet), social distance (4 to 12 feet), and public distance (12 to 25 feet). From the perspective of creating immediacy, distance can aid or hinder the process, depending on the context.
In that regard, further connection with distance includes replacing the word “distance” with “space.” Elements connected to space having a direct effect include the design and layout of the room. For example, territorial displays, such as spreading out one’s mediation papers across the table, could be violating the other person’s space and could diminish attempts by the mediator to develop immediacy and rapport.

Room design also has an impact on an interaction, specifically during mediations. The subject matter of the mediation can affect the room arrangement. Knapp and Hall’s (2007) text detailed research relating to seating arrangement with regard to positioning based on leadership, dominance, task, gender, acquaintance, and introversion-extraversion (Hare & Bales, 1963; Howells & Becker, 1962; Porter & Geis, 1981; Russo, 1967; Taylor & Fiske, 1975; Ward, 1968). Sitting at the head of the table was linked with leadership (for men and women) and dominance; sitting centrally at the table was also linked with leadership; non-central seating was linked with those seeking to be out of the conversation.

In Sommer’s (1969) and Cook’s (1970) studies, seating preferences of students and nonstudents engaged in the accomplishment of different tasks varied, based on whether they were conversing, working cooperatively, co-acting, or competing (as cited in Knapp & Hall, 2007, p. 156). Sitting closer or next to one another at a table was connected with tasks labeled as “conversation” and “cooperation,” respectively, while the greatest distance was associated with a “competition” task.

The choice of table during mediation sessions can have a much greater impact than one might believe. For most settings, according to the first study of this thesis (covered in Chapter 4), the mediators tended to select a rectangular table for their
mediation session. What is notable is that this table shape, however, has been associated with people being “more competitive, less cooperative, and less generous” (Thaler & Sunstein, 2009, p. 72).

It is argued in this thesis that the design of the room and the arrangement of the seating have an impact on the mediation as they affect people’s emotions, behaviors, interpretations, and negotiating styles (Ackerman, Nocera, & Bargh, 2010; Goffman, 1963; Rapoport, 1983). Although it could be dismissed or overlooked, this research identifies the impact of the environment with respect to rapport, trust, and professionalism.

**Touch.** Touch is often a sensitive subject regardless of culture, and types of touch include those that can be intimate, harmful, or sexual in nature (Andersen, 2008). With regard to mediation and this research study, touch refers to the greeting in the beginning of the session and to leakage. Helsing and Alper (1983) identified five categories of touching between people, and for the purpose of this paper and my research, I will refer to two of the five: functional/professional and social/polite. The other three are friendship/warmth, love/intimacy, and sexual arousal.

Included within touch is “leakage” (Babad, Bernieri, & Rosenthal, 1989b), or unintentional nonverbal actions such as self-adaptors (fidgeting; touching one’s own neck, hair, or other body part) or object-adaptors (playing with a ring, pen, or necklace) that are associated with situational discomfort and anxiety. Bargh (1994) characterized leakage as being unaware, uncontrollable, and unintentional. Parties can observe and interpret the mediator’s leakage without consciously realizing it, as decoding is often based on an automatic process (Choi et al., 2006). Ambady and Rosenthal (1998)
described nonverbal communication as, on the whole, a more automatic rather than a controlled process, and because of this, a party can state that the mediator was not professional but may not be able to pinpoint the exact micro cues or specific leakage actions that led them to state this. Therefore, leakage can diminish attempts at establishing trust, building rapport, and displaying professionalism, despite either the parties or mediators realizing it occurred.

Each of the three studies for this research explored the impact that touch can have during a mediation session. With respect to shaking hands, mediators can begin to develop rapport and trust based on how or if they shake the parties’ hands. Further, despite leakage being unintentional or unconscious, it can impede rapport and trust building and have an adverse effect on the display of professionalism. Therefore, this thesis intentionally explores these types of touch in each of the three studies.

**Tone.** How we deliver our thoughts can give significance to the words being used as it can reveal our current emotional state (Choi et al., 2006). Research has shown that how we say things affects the impression others have of us, including being perceived as assertive (Hayes, 2002), polite (LaPlante & Ambady, 2003; Tree & Manusov, 1998), and attractive and dominant (Patterson, 2011). Paralanguage refers to our speaking aside from the actual words being used. This includes utterances, the prosody and valence of our tone, firmness, and pitch (Hayes, 2002). In regard to decibel levels, people with higher levels have been judged to be more assertive compared to those with lower levels while people perceived as aggressive had higher decibel levels compared to those viewed as assertive (Rose & Tryon, 1979).
Voice tone is particularly important for mediators when trying to establish rapport and build trust as our tone can reveal our true emotional state when compared to body movement (Ekman & Friesen, 1969; Rosenthal & DePaulo, 1979) and can reveal insincerity (DePaulo, Lanier, & Davis, 1983; Feldman & Rime, 1991; Zuckerman, DePaulo, & Rosenthal, 1981). These studies demonstrated that although one might control one channel of nonverbal communication such as our body movement, our true emotions can leak out in other channels such as our tone.

In the mediator’s position as a guide having a certain degree of power over the session, tone again plays a critical role. Using fewer speech disfluencies such as “umms” and “ahhs” has been shown to display perceived power (Carney, Hall, & Smith LeBeau, 2005) while tone also has been shown to have an effect on emotional contagion (Lakin, 2003), meaning the mediator’s tone can affect the tone used by the parties.

There is more to what a mediator says to the parties aside from the actual words. The literature shared in this section has identified the impact it can have on the three macro skills. If a mediator is a guide during the process, the mediator’s tone has a substantial impact on how he or she assists the parties.

**Appearance.** A person’s appearance plays a significant role in contributing to the impression he or she makes and his or her influence on others (Ambady & Rosenthal, 1992; Lakin, 2006). Appearance includes facial features, clothing, adornments, and accessories (Hall, 2008). It would be reasonable to assume that mediators should adapt their clothing, like the use of their skills, to the context of the mediation session.

Accessories, including briefcases, bags, writing instruments and materials, and other items, can also impact perception and influence people’s actions. For example, a
person possessing a briefcase and sitting at a conference table can prime another person towards being competitive and less cooperative (Thaler & Sunstein, 2009). This not only shows the gestalt nature of the various aspects of METTA working together, but it also demonstrates how a person’s accessories, a briefcase for example, can signal certain impressions to other people regardless of the intention.

**METTA**

Awareness of the various nonverbal cues and elements that are primarily automatic processes (Choi et al., 2006), occurring on the micro level, increases the chance of recall on the macro level (Hall & Murphy, 2006). The METTA acronym was developed to help mediators recall nonverbal elements and cues while also, and more importantly, preparing themselves for the mediation session. METTA is designed primarily for mediators yet is applicable for a general audience interested in being aware of their own, as well as other people’s, nonverbal communication and the environment with the intention of communicating more effectively.

The METTA acronym is the basis for analysis for this research in exploring various nonverbal cues and elements. The acronym incorporates a semiotic perspective by allowing the numerous cues and elements to be identified and then analyzed. The impact of social semiotics is explained further in Chapter 3 while the METTA acronym is explained in Table 2.6.
The METTA Acronym takes a gestalt approach and is consistent with social semiotics in that it gives a gestalt-like view and explanation of all the nonverbal cues and elements involved during a mediation session. This includes micro cues and elements when they are being analyzed from a macro perspective of developing rapport, building trust, and displaying professionalism. This thesis explicitly connects the nonverbal micro cues and elements with the way a mediator can create rapport, build trust, and display professionalism. The METTA acronym serves as an aid to memory for mediation observers, helping ensure that each cue and element is not forgotten during the coding process.

One value of METTA has to do with gestalt analysis as it does not simply provide a statistical tally of certain nonverbal cues. Rather, it raises awareness of all of the potential nonverbal communication cues and elements. Further, METTA structures the consideration of nonverbal communication, through the coding sheet utilized in Study 3, in a manner to not overwhelm a person but rather to facilitate awareness. For example, this research explains the nonverbal micro cue of an open-handed gesture. From a purely statistical and quantitative coding perspective, there is limited value in tabulating the number of times it was observed. Alternatively, by combining the social semiotic, quantitative, and qualitative approaches, the entire situation can be explained, giving the
context and allowing the analyst to explain the most likely reasons behind the intentional or unintentional use of a nonverbal cue.

Conclusion

Nonverbal communication relies on numerous micro cues and elements that are critical to establishing rapport and trust and displaying professionalism. As there are numerous cues and elements constantly being encoded and decoded during a mediation session, it is easy to overlook certain elements or overemphasize them to the detriment of others. It is for that reason the METTA acronym was created as a means to help with the analysis and awareness. METTA has been created based on the previous research in nonverbal communication as well as social semiotics.

Nonverbal communication offers various theories on explaining how, why, and what we understand in the use of both macro and micro nonverbal communication. This section detailed a brief history of nonverbal communication research while also explaining key theories and elements critical to this research. An important theme to point out is that nonverbal communication research design must be specific and unique. In other words, it needs to meet the purpose of the research (Ambady & Rosenthal, 1993).

The following chapter on methodology explains how this thesis embraces multiple research disciplines, including qualitative research tools, thin slice methodology, and social semiotics. A multi-disciplinary approach provides a cohesive and dynamic system for this research in exploring nonverbal communication and its use by mediators.
Chapter 3. Methodology

Introduction

This chapter details the mixed-methodological approach used for this research. The role of nonverbal communication in mediation was explored by embracing both quantitative and qualitative methods in order to provide a “well integrated picture” of what is being studied (Patton, 1999). Specifically, through three studies this thesis set out to explore the role of what previous research had identified as the skills required of effective mediators. As discussed in Chapter 2, developing rapport, building trust, and displaying professionalism have been established in previous studies as key skills of effective mediators (Gill, 2002; Goldberg, 2005; Goldberg & Shaw, 2007; Harmon, 2006; Honeyman et al., 2004; Kressel, 1972; Moore, 2014; Pruitt et al., 1990; Vanderkool & Pearson, 1983; Wade, 1999; Wade, 2005; Zubek, et al., 1992).

Three studies were necessary for this thesis. The first study addressed the gap that had existed with respect to the nonverbal communication data in mediation while the second study gained the insight from mediation trainers and professors, and the third study provided an understanding into which nonverbal communication cues and elements mediators used. The distinct approach of each study contributed to the triangulation of study undertaken within the current program of research. As this chapter explains, triangulation serves a critical role in qualitative research.

The previous chapter identified the development of rapport and trust, along with the display of professionalism as macro-level skills and explained that each is primarily created and displayed through micro nonverbal cues and elements. Because of the gestalt
nature or interdependence of the corresponding micro cues and elements, they can often contribute to the development of more than one macro skill.

This chapter first addresses the design of the three studies, including the methods used for presentation and data analysis. The chapter then details why qualitative methodology, thin slice methodology, and social semiotics were utilized. The chapter concludes by addressing confidentiality and ethical issues.

The previous chapter demonstrated that existing research has established the relationship between nonverbal communication with developing rapport, building trust, and displaying professionalism. The previous chapter also explained that despite this connection, nonverbal communication has not been explored in-depth within the context of mediation. This thesis therefore is addressing that gap.

**Research Design**

The three studies that comprise of this thesis were designed to address the current gap in the literature regarding the nonverbal communication cues and elements used by mediators. The methodological and analytical approach taken for this research relied on three key methodologies: mixed-methods research, thin slice methodology, and social semiotics. Quantitative and qualitative research tools were the methods of data collection and presentation; thin slice methodology structured the observations; and social semiotics synthesized each of the previous two along with the METTA framework, in order to provide a whole-system gestalt analysis.

The lack of previous exploration of the connection between nonverbal communication and mediators necessitated the use of a detailed data collection approach involving various means. As discussed in the next section, three studies were conducted
to ensure a detailed approach was taken to reduce the existing gap in understanding the role of nonverbal communication and mediators.

**Triangulation**

According to Pierre Teilhard de Chardin (2008), the universe as we know it is a joint product of the observer and the observed. This thesis contains the insights of both the observer (the author) and the observed (the samples from each study). Considering the paucity of research on nonverbal communication used by mediators, this thesis, through its triangulation, attempts to remove ambiguity with respect to nonverbal communication in this specific context and to explain it by connecting the micro nonverbal communication cues and elements with their established macro cues.

Triangulation is a qualitative research tool that assists with the research design. It refers to avoiding reliance on data coming from just one method, a single source, as this can contribute to a bias and diminish the accuracy and credibility of the research (Denzin, 1987; Golafshani, 2003).

The triangulation of the research has been accomplished by combining multiple methods of data collection, using different samples for each study, and setting up a framework to identify discernable themes based on the research topic or question (Creswell, 2007). The distinct methods of data collection and samples are displayed in Table 3.1.
Table 3.1

<table>
<thead>
<tr>
<th>Ethnographic term</th>
<th>Study</th>
<th>Purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>Collecting texts &amp; artifacts</td>
<td>1. Survey of mediators</td>
<td>Gather information on preferences and practices related to nonverbal communication</td>
</tr>
<tr>
<td>Key informant interviews</td>
<td>2. Interviewing mediation program trainers &amp; professors</td>
<td>Understand how mediators are taught rapport, trust, professionalism, the mediator's introduction, &amp; nonverbal communication</td>
</tr>
<tr>
<td>Observations</td>
<td>3. Observing a key part of mediation sessions</td>
<td>See what mediators do with respect to nonverbal communication during their introduction</td>
</tr>
</tbody>
</table>

**Study 1: Mediators and nonverbal communication survey.** Because a major argument of this thesis is that a gap exists in the literature concerning the role of nonverbal communication in the work of mediators, the first study was designed to gather quantitative data to fill the void. The study asked a variety of questions, using the METTA acronym that was designed for this research to structure those questions so they addressed all aspects of nonverbal communication. This included the connections of nonverbal communication with rapport, trust, and professionalism as well as collecting data on each respondent to see if differences and themes existed within the sample. The results are addressed in detail in Chapter 4.

**Study 2: Ethnographic interviews of mediation trainers and professors.** Study 2, building upon the results of Study 1, once again utilized the METTA acronym in order to gain insight from people who are responsible for teaching mediators the skills that will make them effective. Rather than continuing the use of quantitative tools for data collection, the METTA acronym was used this time in conjunction with the qualitative research tools of ethnographers and phenomenologists.
The study consisted of engaging key informants in the mediation field--mediation professors and trainers--to understand how they teach (or do not teach) mediators to develop rapport, build trust, and display professionalism. Semi-structured questioning, a valuable tool of qualitative researchers especially in ethnography (Murchison, 2009) and phenomenology (Wimpenny & Gass, 2000), was used to gather insight and responses from these key informants through a thick narrative (Geertz, 1973) instead of simple statistics. This means providing, via their own words, the context and motivations for why the key informants did or did not teach something (Reimer, 2009). Collecting the data this way allowed for themes to be established based on the analysis conducted. One such theme was that, although nonverbal communication was said to be important, the teaching of it, including mediators being aware of their own nonverbal communication and that of the parties, and nonverbal elements such as room design, seemed very limited and often not as structured compared to other segments of mediation training. The results of this study are outlined in Chapter 5.

**Study 3: Observations of the mediator’s introduction.** Study 3 completed the triangulation of the thesis as it involved observing mediators perform their introductions to the parties. The macro skills and related micro nonverbal cues and elements should be displayed during the mediator’s introduction, thus making this moment of the mediation session a reliable thin slice from which to draw reliable inferences. Given the varying mediation styles and practice models, the mediator’s introduction also provided consistency. The literature has shown that despite the differences among mediators, the introduction should be similar regardless of style or model practiced as the mediator seeks to establish a positive environment and working relationship with the parties while
also explaining the mediation process (Boulle et al., 2004; Bush & Folger, 1994; Moore, 2014).

The observations were once again guided by the METTA acronym. This time the acronym informed the development of a coding sheet that included both quantitative and qualitative measuring tools. This study embraced the tools of qualitative researchers by getting insights directly from those being observed, the difference in this study being that it was the nonverbal communication rather than the words of those being observed that furnished the primary data. The results from this study are shared in Chapter 6.

Chapter 7 presents themes that were established across all three studies and describes their significance for the mediation community. The themes are presented from the perspective of the author, who makes recommendations on how nonverbal communication with respect to building rapport, developing trust, and demonstrating professionalism can be better understood, shared during training, and evaluated in order to increase the mediator’s use and awareness of nonverbal communication. This evaluation, in turn, has the potential to help mediators be more aware, genuine, and thus effective at developing rapport, building trust, and displaying professionalism.

The following sections describe the participants of each study, how the data was collected, and the method of analysis that was used.

**Sample Selection**

The sample selected for each of the three studies involved the mediation community; however, there were distinct differences between the studies. Samples for each study were selected purposefully based on the thesis using a mixed-methods approach to explore the role of nonverbal communication by mediators. The use of a
more limited sample, such as mediators from one organization, would not have met the intended goals. Instead, this thesis approaches the topic by engaging three different but related samples—one for each study.

**Study 1.** Study 1 involved a diverse selection of practicing mediators from across the world \( N = 385 \). The participants in this study were recruited based on their membership in professional mediator associations in the United States, Canada, Australia, New Zealand, and the United Kingdom. Organizations were selected based on previous knowledge of their existence as well as Internet searches of mediation and conflict resolution organizations. This includes in the United States the Association for Conflict Resolution (ACR) national organization and state chapters, state mediation associations, the Institute for Conflict Resolution (CPR-ADR), the National Association for Community Mediation (NAFCM), and individual community mediation centers. Within the United Kingdom the Scottish Mediation Network and the Centre for Excellence in Dispute Resolution (CEDR) were contacted. The Association for Dispute Resolvers (LEADR) was contacted for both Australia and New Zealand.

Participants were recruited either by contacting them through their professional organization or directly via email if a publicly available member directory was available. In instances where organizations invited their members via email, it included the invitation in Appendix B (p. 264) along with a brief message from the organization introducing my invitation. In instances where mediators were contacted directly by the researcher, only the invitation described in Appendix B was sent. In each situation, the invitation included a link that redirected him or her to the survey.
While conducting Internet searches, numerous results were displayed for individual mediator websites. In instances where the websites provided an email address, the mediator was contacted and invited to participate.

The exact number of potential participants invited to participate could not be accurately determined. This is due to not knowing if the email addresses used were accurate and if the intended person received and opened the email. Further, the organizations that sent out the invitation on my behalf did not provide the total number of their membership that the email was distributed to.

To determine eligibility, after agreeing to participate in the survey, the first question asked of the participants was to confirm that they were a mediator. If the response was “no,” the participant was taken to a page which thanked them while also informing them they did not qualify to participate in the survey.

**Study 2.** The study sample consisted of 11 key informants (also referred to as participants; 7 females and 4 males) who were purposively selected. This group included two subgroups: academic professors and mediation trainers that were purposely weighed equally. Each interview was to be consistent in length of time as well as being conducted in person.

The professors teach mediation clinics at their respective law schools, while the trainers deliver training programs that are recognized and approved by their local state court systems as meeting the requirements of basic mediation training. Both groups of participants teach and train mediators using heuristic (experience-based) techniques such as role-playing.
Study 3. A purposive sample of 6 female and 4 male mediators \(N = 10\) were recruited for this study, and 18 mediation sessions were observed. The sample obtained for this study was consistent with the procedures detailed by Patton (1990). This “typical case” sampling provides a typical understanding of a group or program (p. 173). Additionally, based on Patton’s description, this sample is also an operational construct sample as the sample is representative of the phenomenon being explored (p. 177). To maintain consistency, the sample was drawn from mediators from the New York Peace Institute (NYPI), who mediate in civil and small claims court. This achieved two goals: (1) consistency among the mediators, as they all received the same training from NYPI (basic mediation training and advanced training to mediate in court), and (2) consistency in the setting (civil and small claims court mediation). Mediators were selected after conferring with the mediation coordinator regarding the scheduling of cases. All the mediation sessions were conducted either in court (New York or Kings County) or at the NYPI Mediation Center. Six mediations occurred in court, while 12 were held at the mediation centers (one in Manhattan and 11 in Brooklyn).

All but one of the mediators was certified, meaning they had passed a video test and completed at least 25 mediation sessions. Twelve of the 18 sessions were mediated alone while the remaining six were co-mediated (two mediators working together).

Sample Sizes In Qualitative Research. The sample sizes for Study 2 and Study 3 were smaller compared to Study 1. This is not surprising as the first study is primarily quantitative while the second and third are qualitative. Qualitative research does not require a large sample size, and for some researchers, it can include a single key informant (Walcott, 1987). Nastasi (2011) stated that sample sizes for phenomenology
(nonverbal communication is the phenomenon for this research) can include 10 people, and ethnography can include typically 20-30 people for saturation to occur. However, Nastasi also stated that for key informant interviews, five people could be sufficient. Others have stated (in Guest, Bunce, & Johnson, 2006) that 15 is the smallest acceptable number for any qualitative study; another stated 36 was the average for ethnography, and another stated between six and eight was suitable for ethnographic interviews. However, Guest et al. (2006) also pointed out that the number of participants should be guided by when saturation occurs. Saturation happens when new data fail to shed further insight on what is being explored (Mason, 2010). For each of the three studies, the sample size returned sufficient data for themes to be established with respect to nonverbal communication and mediators. The data for each study are presented in their respective chapters, and the themes are explained in Chapter 7.

Mason (2010) reviewed PhD sample sizes in qualitative studies and presented interesting findings further indicating the seemingly arbitrary nature of sample sizes. His review of 560 PhD studies showed that the mean size for interview samples was 31, yet the distribution was non-random as many occurred in multiples of 10. Mason added that Jette, Grover, and Keck (2003) stated that the expertise of the researcher can reduce the number of required participants; Lee, Woo, and McKenzie (2002) added that when a researcher utilizes more than one method, fewer participants are required. Mason further added that researchers should avoid making a recommendation of what constitutes a sufficient sample size. Mason’s review (2010) concluded, the most common sample sizes were 20 and 30 (followed by 40, 10 and 25). The significantly high proportion of studies utilizing multiples of ten as their sample is the most important finding from this analysis.
There is no logical (or theory driven) reason why samples ending in any one integer would be any more prevalent than any other in qualitative PhD studies using interviews. If saturation is the guiding principle of qualitative studies it is no more likely to be achieved with a sample ending in a zero, than any other number. However, the analysis carried out here suggests that this is the case- authors decided to have their sample size end in a zero.

Credibility is successfully achieved when the sample size is defended by objective standards. The objective standards state the research design of a qualitative study must meet the needs of that particular study. For this research, the sample sizes of each of the three studies were sufficient to offer detailed insight as the data were constantly reviewed as the research progressed. A pre-determined number was not set prior to commencement of each study, but rather the data were constantly reviewed as they were entered. Previous research studies offered guidance on each study toward an approximate sample size, yet based on the samples size analysis provided by Mason as well as the review offered by Creswell (2007), saturation was deemed more important than the sample size. For each of the studies, saturation did occur, resulting in data that allowed themes to be established.

**Data Collection**

The researcher must be able to present material from the perspective of the individuals within the group while also ensuring the style is acceptable and understandable to a reader who is not part of the group or culture being described.

There are a variety of methods to collect data, and it is up to the qualitative researcher to design the method most suited for the study. This includes eliciting stories
through interviews (Czerniakawska, 2004) and using multiple sources such as field notes (Clandinin & Connelly, 2000), surveys (Creswell, 2007), observations (Wolcott, 1987), and archival records (Yin, 2003). Asmussen and Creswell (1995) explained the four main types of data collection available for qualitative researchers: interviews, observations, documents, and audiovisual materials. They paid particular attention to interviews and observations, which also have a significant role for this research in Studies 2 and 3.

A variety of methods were used for this thesis: a survey was utilized for Study 1; audio recordings and interviews for Study 2; and field notes and observations for Study 3. Each is further discussed below.

**Study 1: The survey.** The survey was designed using online software created by SurveyGizmo.com, which also hosted the survey. The questions covered topics related to nonverbal communication cues and elements with respect to developing rapport, building trust, and displaying professionalism. Questions were developed after reviewing information in the literature and were structured based on the METTA (movement, environment, touch, tone, and appearance) framework, which provides a guideline for investigating and interpreting nonverbal communication cues and elements used by mediators. The survey was designed to obtain the stated nonverbal preferences and actions of mediators. The survey was not intended to observe the actual actions of mediators or the elemental nonverbal aspects of a mediation session but rather provide a foundation of mediator preferences and allow Study 2 and Study 3 to explore this topic more substantively based on the data from this study.
The survey consisted of 31 close-ended questions (Appendix C, p. 265). Of these, four questions allowed the respondent to write-in up to five examples if he or she answered “yes” (questions 20-23). The questions were developed based on the research described in Chapter 2 that explained the skills of effective mediators (p. 25) as well as the micro cues and elements that are associated with them (beginning on p. 54). Completed surveys were included in the study if participants answered at least the first 19 questions. This cut-off point was based on the minimum amount of information that could provide a useful contribution to the research. This determination was made based on the respondent at that point having provided demographic data as well as minimal yet important information with respect to the thesis topic. This included their view on the mediator’s introduction and nonverbal communication.

Closed-ended questions were used to collect demographic information on participants. Other closed-ended questions employed various 4- or 5-point scales (ranging from “very important,” “somewhat important,” “not sure,” “somewhat unimportant,” and “not important”) or invited respondents to rank options in order of preference based on the room and seating arrangement. Two open-ended questions related to nonverbal actions. Specifically, participants were asked to list up to five specific nonverbal actions they employ as mediators and up to five specific nonverbal actions that mediators should attempt to avoid during a mediation session.

The other two open-ended questions were in regard to how the mediator develops rapport with the involved parties. Respondents were asked to list up to five ways a mediator can develop rapport and up to five ways a mediator can hinder the development
of rapport. The questions related to rapport did not specify nonverbal means of
developing rapport, so as not to impose limits on respondents’ answers.

The final question provided a variety of male mediator outfits and asked the
respondent to decide if each outfit was appropriate based on the context of the mediation
session. Four outfits (business, business-casual, casual, and polo shirt/jeans) were
provided as well as four different mediation settings (court, community, divorce, and
employment/business). The selection of one outfit being appropriate was independent of
the selection of the other outfits.

Respondents were not required to complete each question in the survey.
Therefore, in each of the tables listed throughout the chapter the sample sizes (N’s)
provided will not always be the same.

A variety of analysis tools were used to determine if significant differences were
present when grouping the data based on demographic information provided by the
respondents. Chi-square analysis was used to test the frequency of responses against
expected values for the questions relating to the appropriateness of the male mediator’s
attire based on the context of the mediation. Additionally, t-tests were performed to test
the means of scores from questions that used Likert-type scales when two groups were
being analyzed (gender and attorney/non-attorney). Finally, for group analysis
(geographic location and practice area) a one-way analysis of variation (ANOVA) was
used to see if there was a difference in the data among groups on a variable.

**Study 2: Ethnographic interviews.** Key informants were recruited via an email
invitation to participate in the study (see Appendix D, p. 275). Consistent with qualitative
research, a purposeful sample was selected with individuals invited to participate on the
basis of their capacity to “purposely inform an understanding of the research problem and central phenomenon” of nonverbal communication and mediators (Creswell, 2007, p. 125). The key informants were selected as each are on the approved roster to teach a basic mediation course that is approved by the state court mediation program. The sample was restricted to the Northeast United States region for traveling practicality reasons. The selection and qualifications of the key informants selected is further explained below.

The interviews took place individually on separate dates and in separate locations. The date, time, and location was agreed upon with the key informant, and prior to beginning the interview I explained again the purpose of the research and asked them to sign the consent form (Appendix E, p. 276). After signing the consent form, the interview commenced. Arrangements to preserve the confidentiality of each of the key informants as well as the protective measures to store the audio files were explained in Chapter 3.

Using the METTA framework and the results of Study 1, 13 topics were identified and used to guide the semi-structured interviews consistent with the ethnographic model of interviewing (Creswell, 2007; see Table 5.1, p. 146; individual questions can be found in Appendix F, p. 279). The METTA framework ensured the questions covered topics related to body movement, environmental factors, touch, voice tone, and the mediator’s appearance.
Table 3.2

Interview Topics

<p>| | |</p>
<table>
<thead>
<tr>
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<tbody>
<tr>
<td>1</td>
<td>Mediation model taught to students</td>
</tr>
<tr>
<td>2</td>
<td>Is there a nonverbal communication segment?</td>
</tr>
<tr>
<td>3</td>
<td>The role of nonverbal communication in mediation</td>
</tr>
<tr>
<td>4</td>
<td>The role of rapport</td>
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<td>5</td>
<td>The role of trust</td>
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<tr>
<td>6</td>
<td>The role of professionalism</td>
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<tr>
<td>7</td>
<td>The mediator's introduction</td>
</tr>
<tr>
<td>8</td>
<td>The environment (room setup)</td>
</tr>
<tr>
<td>9</td>
<td>Handshaking</td>
</tr>
<tr>
<td>10</td>
<td>The mediator's appearance</td>
</tr>
<tr>
<td>11</td>
<td>Specific nonverbal cues taught</td>
</tr>
<tr>
<td>12</td>
<td>Completing the sentence, &quot;A good mediator...&quot;</td>
</tr>
<tr>
<td>13</td>
<td>Any additional comments</td>
</tr>
</tbody>
</table>

**Study 3: Mediation observations.** Consistent with qualitative research, the methodology was designed to address the main goals of the study. It was grounded in Flanagan’s (1954) critical incident procedure, which was created to study combat leadership and disorientation during World War II. The method has subsequently been applied by other researchers in a variety of fields beyond the initial setting, including motivation at work, nursing, psychotherapy, the experience of unemployment, and resiliency in survivors of the Holocaust (see Hogan, 2001, pp. 27-28). The critical incident procedure involves five steps:

1. Determine the aim of the activity being studied.
2. Set plans and criteria for the observations.
3. Collect data.
4. Analyze the categories derived from the data.
5. Report the findings.

Based on these five steps, the present study set out to:
1. Explore the use of nonverbal cues and elements used by mediators during the mediator’s introduction.

2. Design a coding sheet to observe mediators in a specific setting where the mediators have received the same training.

3. Conduct observations from real mediation sessions.

4. Compile information from the coding sheets.

5. Analyze the information to determine the role of nonverbal communication in each session and the group as a whole.

The coding sheet was created based on the METTA framework and consisted of 33 nonverbal cues and elements as well as other data relevant to the topics being explored. Design of the coding sheet was also informed by information from previous studies related to conflict resolution (specifically mediation) and rapport. Considering the confidentiality of mediation and the fact that recording the sessions is not permitted, the form was designed to enable an observer to collect data in an accurate and expeditious manner. The complete coding sheet can be found in Appendix G (p. 280).

Prior to the start of a mediation session, I explained the purpose of the research and received written consent from the mediator to observe the introduction (Appendix H, p. 281). Mediators obtained verbal consent from the parties involved in the mediation session to allow me to observe that part of the session and I completed the confidentiality form prior to the session (Appendix I, p. 284). The situation was not unusual, as trainees from NYPI and mediation clinic students frequently observe mediation sessions as part of their training. I entered the room prior to the start of the introduction and exited shortly after the introduction was completed. The reason for leaving after the introduction was to
ensure that the outcome of the mediation did not bias the coding or analysis of the introduction. Only the mediator was coded. The only reference to the parties in the coding sheet related to where they sat and whether they initiated shaking hands.

**Data Presentation and Analysis**

During the data analysis stage, a qualitative researcher displays the findings, highlights key findings, identifies the themes (if any are developed), and explains the procedures by which the data were collected (Creswell, 2007). The establishment of themes or patterns is critical to qualitative research, and this process was used for this thesis. The qualitative approach provides significant statements by the people involved in the study in order to explain the varying perspectives of what is being explored.

Statistical analysis for the first study included data being entered into SPSS\(^5\). This allowed various reports to be generated providing generalized information from all the respondents. Further, SPSS allowed tests to be conducted to test for significant differences based on group comparisons. This included responses comparing gender, attorney/non-attorney, mediator practice area, and geographic location of the respondent. The tests conducted, and which are further explained in Chapter 4, were group comparisons, one-way ANOVA, t-tests, and chi squared tests.

The structure of presenting the data for Study 2 and Study 3 is consistent with the structure proposed by Creswell (2007) who describes how it is done jointly with the discussion and insight of the writer. Creswell states (p. 193):

\(^5\) SPSS is Statistical Package for Social Sciences, a software program created by IBM to perform statistical analysis.
I personally like the approach of interpreting the findings both within the context of the researcher’s experiences and within the larger body of scholarly research on the topic.

…the researcher presents analytical claims next, and Emerson and colleagues (1995) indicate the utility of “excerpt commentary” units, whereby an author incorporates an analytical point, provides orientation information about the point, presents the excerpt or direct quote, and then advances analytical commentary about the quote as it relates to the analytical point.


The ethnographer tells the story through both excerpt and commentary, and, thus, ideas and descriptive details must support each other. An excerpt should not only further a theme or concept; it should also convince the reader that the ethnographer’s specific interpretation and more general story are justified.

Each of the three studies is presented in a separate chapter in the next part of this thesis. Each chapter further explains the methodology for its study while then presenting the results and discussions of the findings of each study. After those three chapters, Chapter Seven connects the results and findings of each of the studies and provides a collective analysis. The research questions and the METTA acronym guided the analysis by identifying the relevant themes that emerged when the data was reviewed from all three studies.

An example of the analysis is the micro cues of developing rapport. Research in other fields identified the nonverbal cues that contribute to developing rapport. Using the structure provided by the METTA framework, the data from each study was analyzed to
see how mediators stated they build rapport through their actions and room design (Study 1), how mediators are trained to build rapport with the parties (Study 2), and what they are doing to build rapport during actual mediation sessions (Study 3). Having data from each study allowed the analysis to move from one that was based on a single study to a gestalt process of all three studies giving a more detailed understanding of how mediators develop rapport. This process was also conducted for the other two macro skills (building trust and displaying professionalism) and each aspect of the METTA framework. This is the essence of qualitative research, gathering data via various means to understand a phenomenon (nonverbal communication and mediators) and allow for themes to be identified. The following sections describe qualitative research and other research methodologies that guided and structured each of the three research studies.

Qualitative Research

This section details an overview and history of qualitative research and why its use was beneficial to this thesis. The three studies for this thesis utilized a mixed-methods research design where both quantitative and qualitative methodologies contributed to the design and analysis. With respect to the qualitative aspect of the research, ethnography and phenomenology are explained, as both methodologies are used for this thesis. Ethnography is the primary source of guidance for the qualitative aspects of this thesis while phenomenology also provided assistance in exploring the role of nonverbal communication used by mediators. Although the survey used for the first study of this thesis can be accurately described as quantitative based, this chapter reveals how its design was informed by qualitative principles.
This section explains the value of using a qualitative research methodology for the exploration of nonverbal communication and mediators. First, ethnography and phenomenology are defined and explained. Then the focus and legitimacy of qualitative work is explained while also detailing the importance of conducting fieldwork. Data collection, presentation, and analysis are then considered through the qualitative lens. Finally, this section addresses the criticisms and concerns surrounding the use of qualitative methods in research of this nature.

**Ethnography.** Ethnographic research tools were utilized in the three research studies to help better understand the role of nonverbal communication by collecting the data via various means, namely surveys, interviews, and observations. Utilizing an ethnographic approach for this thesis was appropriate as the exploration of nonverbal communication mediators has yet to be done in this manner where nonverbal communication micro cues and elements are connected to the macro skills effective mediators. As this section details, ethnography details the “routine” of those being observed in order to establish themes for the purpose of creating a greater understanding rather than the creation of theory(Creswell, 2007; Fetterman, 1998; Wolcott, 1990).

Ethnography is defined as is the study of a particular group or culture and is completed over an extended period of time. Wolcott (1987) described ethnography as being:

Primarily a qualitative based research, as it is descriptive based in contrast to quantitative which is statistically based. Ethnography helps us understand how particular social systems work by providing detailed descriptive information, coupled with interpretation, and relating that working to implicit patterns and
meanings which members of that society (or one of its sub-groups) hold more or less in common. (p. 11)

An ethnographer’s work is primarily based on fieldwork that is comprised of interviews, observations, and collection and description of documents (Murchison, 2009). The work is then compiled and presented in a “thick descriptive” manner (Geertz, 1973), which includes specific details and explanations from the perspectives both of members of the group and of the ethnographer. This accounts for ethnography being both descriptive and interpretive (Murchison, 2009). Murchison’s description of fieldwork corresponds directly with each of the three studies for this thesis as described in Table 3.1.

Embracing an ethnographic approach allows the “routine” (Fetterman, 1998) of mediators to be examined over the course of the three studies in order to understand the micro cues behind the ambiguous macro skills of rapport, trust, and professionalism.

In contrast to using a solely quantitative approach, the thick description of ethnography allowed this research to be presented in a style described as "dramatic form" (Van Maanen, 1998). Creswell (2007) described dramatic form as having elements of both realist and confessional writing, and in his mind it presents a compelling and persuasive story. The story is presented through the eyes of the writer, and it is important to note that although the story is being described from the perspective of those within the group or culture, it is still filtered through the eyes of the ethnographer. It is important for the writer to acknowledge this potential bias and to fully introduce himself or herself to the reader. This is further addressed in the section of credibility.
Although the purpose of this research, from an ethnographic perspective, is not to generate theory, the resulting data can be described as providing an analytical framework that offers suggested nonverbal cues and elements for mediators to consider when trying to develop rapport, build trust, and display professionalism. Across the three studies, themes are revealed based on the survey results, the interviews, and the observations. These data provide a starting point for the creation of future theory as, according to Lecompte, Preissle, and Tesch (1993), theories are statements describing how things are connected.

Wolcott (1990) explained that ethnography seeks to create understanding rather than to convince. This research does not seek to convince others that certain nonverbal cues and elements should or should not be used or that such cues and elements are important to mediators. Rather, it provides insight into the preferences of mediators, the framework guiding the way they are taught, and what they are actually doing with respect to nonverbal communication.

More important, and what has been a guiding point for this research, is what Wolcott (1990) stated is the purpose of ethnography--to identify critical elements and develop plausible interpretations from them. This is an effective and practical approach for this current research as it is the first of its kind in the field of mediation. Instead of seeking to establish a theory (which others are invited to generate based on the data), this research importantly provides information for future theory development regarding the connection between nonverbal communication and mediators with respect to establishing rapport, building trust, and displaying professionalism.
This research uses the style endorsed and preferred by Creswell (2007) in that the interpretation of the findings is done within the context of the researcher’s experiences as well as the larger body of scholarly research on the topic. This approach allowed me to provide an interpretation based on my experiences while also showing those interpretations as congruent with research in both the nonverbal communication and mediation fields of study.

**Phenomenology.** Phenomenology is a type of qualitative methodology that explores an experience or condition of participants and investigates the effects and perceptions of that experience (Bound, 2011). Exploring nonverbal communication used by mediators is one such example of a type of phenomenology. Phenomenology research methodology informed the three research studies in a manner similar to the understanding provided by ethnography. Importantly, approaching the phenomena of nonverbal communication used by mediators is important as phenomenology is concerned with gaining the insight and perspective of people with respect to the phenomena being studied. In order to fill the gap that currently exists with understanding nonverbal communication and mediators, it is important to gain the perspective of mediators. This has yet to be done with mediators and therefore phenomenological research tools contributed to this thesis in providing a unique and deeper understanding of the impact nonverbal communication has with respect to a mediator developing rapport, building trust, and displaying professionalism.

Husserl, acknowledged as the father of modern phenomenology, described the focus of this method as identifying the central theme of an experience as a way of furthering knowledge (as cited in Phillips-Pula, Strunk, & Pickler, 2011, p. 68).
The steps involved in phenomenology, as described in Creswell (2007, p. 61), are:

1. Determining if the phenomenological approach is best for the research topic;
2. Setting aside all preconceived notions of the phenomenon being studied while collecting data;
3. Collecting data from a variety of people and sources;
4. Analyzing data by listing significant statements to provide an understanding of the common experiences of the participants; and
5. Providing a composite description that presents the “essence” of the phenomenon.

Phenomenology’s purpose is not solely the study of a topic such as nonverbal communication, but rather discovering the perspectives and insights of the people experiencing the phenomenon. Bound (2011) elaborated by quoting Willis: “The focus is thus on understanding from the perspective of the person or people being studied” (p. 2).

**Research direction.** An important element of qualitative research is that it does not begin with a hypothesis or attempt to create a theory, at least not from the outset (Atkinson & Hammersley, 1994). Rather a question is asked or a topic is explored. This has been called the foreshadowed problem and, aptly, the research question (Malinowski, 1922, in Murchison, 2009). The research questions in Chapter 1 (p. 9) provided the framework on exploring the role of nonverbal communication used by mediators.

The research question helps guide qualitative researchers in conducting their research, helping them remain focused yet open to the possibility that new questions might arise that could add different elements and analysis during the process. This
openness is important to ethnography and phenomenology as both explore a topic and information is provided directly from the participants via means including surveys, interviews, and observations.

Although the previous qualitative scholarship explains the importance of having a research question compared to a hypothesis guiding the research study, it also does not mean a hypothesis is not used. This is important specifically when considering the intended audience (Murchison, 2010). For research that is conducted as part of a doctoral degree, a hypothesis can be expected. For the purpose of this thesis, although it has been previously stated the importance of having research questions that explore a topic, it does not mean it cannot also be framed as a hypothesis. Transforming the research question to a hypothesis is achieved in the following manner:

Research question:

What are the nonverbal communication cues and elements used by mediators in relation to the three macro skills?

Transformed to a hypothesis:

There are specific nonverbal micro cues and elements that contribute to the three macro skills of effective mediators- developing rapport, building trust, and displaying professionalism. This thesis attempts to prove this first with the literature review and then by conducting the three studies.

Considering this thesis is the first to explore nonverbal communication used by mediators, the approach of using a research question and sub-questions in contrast to being guided by a hypothesis was important to gain the insight from mediators in order to have a deeper understanding of the phenomena. Reimer (2009) explained this approach
as setting out to describe a process or circumstances rather than applying a cause-and-effect explanation of their foreshadowed problem.

Fieldwork is one of the most important elements of ethnographic research and phenomenology. Fieldwork, and consistent with qualitative research methodology, was used in this thesis to gather data for this thesis from multiple locations and by using various methods (Creswell, 2007; Geertz; 1973; Murchison, 2009; Wolcott, 1990). Fieldwork enables the researcher to document people’s beliefs and practices from the perspective of those people (Reimer, 2009). The method of documentation begins the process of establishing reliability and credibility of the research. A method of documentation needs to be constructed in a standardized manner according to predetermined procedures (Golafshani, 2003). The METTA acronym, as previously discussed, was created with this in mind. As well as being a coding tool, METTA also makes the phenomena of nonverbal cues and elements measurable (Winter, 2000) for each of the three studies. This led to the creation of the METTA coding sheet detailed in Chapter 6.

The observations of a researcher are completed either as a participant observer or non-participant observer. A participant observer produces an *emic* account—an insider’s view (Reimer, 2009). This research encompasses an emic perspective as my experience as a certified mediator (also having received the same training as the mediators observed in Study 3), as well as my research and practical experience related to nonverbal communication, provides an insider’s viewpoint.

The other option is the non-participant approach. This method allows the researcher to be present in the same daily activities of the participant observer, but he or
she does not get involved as an active member of the group. This is called an etic perspective, or the view of an outsider (Reimer, 2009).

**Research and researcher credibility.** Wolcott (1990) and Eisner (1991) explained that in the context of ethnography, credibility plays a more important role than validation. This is consistent with research that is qualitatively based (Creswell, 2007; Lincoln & Guba, 1985; Van Maanen, 1983; Walcott, 1987). The credibility of this research was established with the in-depth method of triangulation (Brewer & Hunter, 1989; Guba, 1981; Patton, 1995) in looking at nonverbal communication and conducting the research through three different studies with a variety of participants.

This thesis established credibility, according to standards provided by Creswell and Miller (2000) in the following manner: prolonged engagement; triangulation making use of many different sources and methods; peer review and debriefing; clarification of research bias from the outset; the researcher’s solicitation of feedback from the participants; rich, thick descriptions that allow the reader to make decisions regarding transferability (the information being applicable to them); and external auditing.

Qualitative research places importance on the author/researcher and his or her qualifications (Alkin, Daillak, & White, 1979; Maykut & Morehouse, 1994; Patton, 1990, in Shenton, 2004). Ager (1986) described this as the authority of the writer. The writer has to provide an understanding of the phenomenon being studied while also being reflexive (Aamodt, 1982). Reflexivity refers to the author/researcher being part of the research, not separate from it (Krefting, 1991). When using qualitative methodology as part of a research study, the researcher’s background, perceptions, and interests influence his or her ability to provide accurate and reliable information. Therefore, researchers
must first acknowledge this while also explaining their qualifications. Krefting (1991) offered a practical approach for examining a qualitative researcher’s authority by explaining the following four tools offered by Miles and Huberman (p. 220):

1. The degree of familiarity with the phenomenon;
2. A strong interest in conceptual or theoretical knowledge and the ability to conceptualize large amounts of qualitative data;
3. The ability to take a multidisciplinary look at the topic from different perspectives;
4. Good investigative skills that are developed through literature review, course work, and experience in qualitative research methods.

Appendix A (p. 261) provides my credentials as a researcher and writer on this topic.

**Research criticism and concerns.** The use of qualitative research methodologies can be open to criticisms relating to addressing the accumulation of too much data and consequent data interpretation issues. As with any research, its methods can also generate ethical concerns.

The accumulation of data, quite often too much, is expected and common in ethnography (Genzuk, 1999). Ethnography data are comprehensive in nature and are described as *thick* for a reason. A lot of data need to be reviewed, and ultimately not all will make it into a final product such as a thesis, dissertation, or journal article. Framing the research through the stated questions and using the METTA framework allowed the relevant data to be collected in each of the three studies.
Another concern with ethnography and phenomenology is the interpreting of information. The subjective element of this type of research often leads to questions concerning its credibility and accuracy. For this reason, research involving qualitative methodology must first acknowledge this criticism and offer a response. This does not have to include debunking the criticism, but at the very least there must be an explanation of why a particular approach is best suited for the study. The reasons for utilizing mixed methods, as well as the credibility of the author, were explained earlier in the chapter. Further, the use of the mediator’s introduction as a thin slice of the mediation session, along with other criticisms of qualitative research, is addressed later in this chapter in the thin slice methodology section.

An additional concern, which is not limited to qualitative research but applies to quantitative as well, is confidentiality. Qualitative research such as ethnography and phenomenology involves engaging people in discussion and observations. This requires a level of trust that participants give as they are sharing detailed information as well as providing a view into their experiences. A researcher needs to ensure the trust he or she is receiving is not violated, either purposely or accidentally. Confidentiality is addressed later in this chapter while the criticisms and concerns presented are further addressed in the section on thin slice methodology.

**Summary.** When exploring potential research options available for this topic, a mixed-methods approach was deemed the most suitable. Qualitative tools used by ethnographers and phenomenologists were decided to be the best option to explore the questions set for this research topic: the role of nonverbal communication used by mediators.
Reporting the findings in a thick description through interviews and observations in a naturalistic setting, while also providing the data and making subjective interpretations based on objective criteria, offers conformability for examiners and readers. Conformability refers to the uniqueness of the research and how the analysis is supported by the data (Lincoln & Guba, 1985; Trochim, 2006). The results provide specific information allowing further research and theory to be developed in the field of mediation and conflict resolution. This research can also impact other professions as these findings can be applied to their settings as well.

The qualitative approach has been detailed and explained in terms of its relevance and appropriateness for this research. In the following section, a similar approach is utilized to describe how a specific point in the mediation session, the mediator’s introduction, is the most appropriate focus for the observations undertaken for Study 3.

**Thin Slice Methodology**

Thin slice methodology is a method of observation and analysis. For this research, the use of thin slice methodology created a consistency of observations among the selected population. Specifically, Study 3 used the mediator’s introduction as a thin slice to observe the nonverbal communication of mediators. This section provides an overview on relevant thin slice research and establishes its important role within this thesis. The concept of thin slice as a method is most associated with researchers Nalini Ambady and Robert Rosenthal (1993), and it involves taking small excerpts of recorded interactions of individuals to describe an individual’s personality traits, internal states, social relations, and interactive motives. Previous research has demonstrated that it is not necessary to observe and code an entire interaction, such as a mediation session, as thin
slices can be an accurate measuring tool. For the purpose of this research, the thin slice being explored and analyzed is the mediator’s introduction. This part of the mediation session is purposely selected and explained in a later section of this chapter.

The mediator’s introduction is the opening statement a mediator makes to the parties (the people involved in the dispute or conflict). The mediator’s introduction serves two purposes: to be affective-based (developing rapport and building trust) and informative. Mediators are able to begin establishing rapport and building trust with the parties (affect), and by speaking calmly and clearly explaining the process of mediation, they are sharing information that displays their competence and professionalism. As previously discussed, developing rapport, building trust, and displaying professionalism are the key skills possessed by effective mediators.

The thin slice, or sample, includes observations of various nonverbal channels including the face, posture, hands, prosody, touch, body orientation, legs and feet, and paralanguage. Judges base their rating on various nonverbal channels made available to them. Previous research has included audio only, video only, audio and video, and tone of voice.

Thin slice methodology explained. Thin slices are snippets of interaction taken from a longer interaction between people. Thin slices range from a few seconds to as long as 5 minutes. The accuracy of thin slices as a representation of broader behavior has been measured using a variety of methods including consensus among judges, comparison to self-ratings, and judgments based on previously determined criteria (see Table 3.2).
Previously, research utilizing thin slices has covered a diverse range of practice areas and professions (Table 3.2). The variety of studies conducted using thin slices give greater credibility to the accuracy of thin slices as well as their suitability for use in different settings where accurate conclusions based primarily on people’s interpersonal characteristics can be validated.

Areas of judging are often on the macro level that measure interpersonal characteristics such as trust, competence, dominance, nervousness, warmth, likability, expressiveness, sympathy, and politeness (Ambady & Krabbenhoft, 2006; LaPlante & Ambady, 2003). The findings, as displayed in Table 3.2, are all relevant as these characteristics are associated with either contributing to or hindering rapport and trust building.

Generally, accuracy is much greater on the macro level than on the molecular level (Ambady & Rosenthal, 1993). This could be due to individuals’ nonverbal decoding often being automatic and happening subconsciously (Bargh, 1994). Further, the judging of interpersonal characteristics has been viewed as more accurate compared to those that are task related and related to anxiety (Ambady, Krabbenhoft, & Hogan, 2006).

Anxiety measuring has included fidgeting, adaptors and self-adaptors, and other forms of leakage. Fidgeting can include constant movement of the hands, feet, and trunk. Leakage involves gestures not intended to communicate but rather unconscious movements identifiable with stress and anxiety (Ekman & Friesen, 1969). This includes adaptors such as touching the face, hair, and neck along with smoothing of clothing, including that in the thigh area. An object-adaptor is similar to a self-adaptor; however,
as the term indicates, it includes an object. A common object-adaptor is moving a pen or paper for no intended or explicit purpose. The display of leakage is relevant to this research as it can hinder the development of rapport, building trust, and diminish a professional presence.

**Thin slice research credibility.** Table 3.2 describes previous research studies that have used thin slices to accurately predict and explain a broad range of personality characteristics and the nonverbal channels that correspond with those judgments.

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**Table 3.3**

<table>
<thead>
<tr>
<th>Thin Slice Research</th>
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<tbody>
<tr>
<td><strong>Author</strong></td>
</tr>
<tr>
<td>Ambady, et al. (2006)</td>
</tr>
<tr>
<td>Ambady et al. (1998)</td>
</tr>
<tr>
<td>Berry et al. (1997)</td>
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<tr>
<td>Borkenau et al. (2004)</td>
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<tr>
<td>DeGroot &amp; Motowidlo (1999)</td>
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<tr>
<td>Funder &amp; Colvin (1988)</td>
</tr>
<tr>
<td>Grahe &amp; Bernieri (1999)</td>
</tr>
<tr>
<td>Hall et al. (2009)</td>
</tr>
<tr>
<td>Hecht &amp; LaFrance (1995)</td>
</tr>
<tr>
<td>Reference</td>
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<td>---------------------------------</td>
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<tr>
<td>Kenny et al. (1992)</td>
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<tr>
<td>Leigh &amp; Summers (2002)</td>
</tr>
<tr>
<td>Prickett et al. (1999)</td>
</tr>
<tr>
<td>Roter et al. (2011)</td>
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<tr>
<td>Tickle-Degnen (1998)</td>
</tr>
</tbody>
</table>

In Ambady and Rosenthal’s (1992) meta-analysis of thin slices, they offered a comprehensive review of research based on thin slice methodology. It included emotions being accurately identified (Rosenthal et al., 1979); social and clinical psychological outcomes (Babad et al., 1989a; O’Sullivan et al., 1988); therapeutic research assessing relationships (Burstein & Carkhuff, 1968); and honesty in subjects (DePaulo & Rosenthal, 1979).

**Thin slice accuracy.** Ambady and Rosenthal (1993) conducted multiple studies measuring the accuracy of thin slice judging and its correlation with teacher evaluations. Their research explored numerous topics, including assessing the accuracy of zero acquaintance and consensual judging. The ratings were based on macro characteristics including active, competent, confident, dominant, enthusiastic, likeable, optimistic, warm, and supportive. These descriptions correlate with mediators as each trait (besides dominant) contributes to trust and rapport being established according to Study 1.

Important findings from Ambady and Rosenthal’s (1992) meta-analysis include the following:
• Accuracy does not increase with longer clips;

• Natural settings for thin slices are not necessarily more accurate than those conducted in laboratories;

• Ratings based on the face, body, and speech were more accurate than those based on just the face and body;

• The level of accuracy did not differ between 30-second through 5-minute clips, and there was no difference between these thin slice clips and “thick” slices;

• Time and money can be saved by using thin slices to evaluate important affective variables, without sacrificing accuracy.

The above findings demonstrate the value of using thin slices while accurate judgments increase with more nonverbal channels being available.

Ambady et al. (2006) stated that the greatest opportunity for accuracy lies in thin slice judgments of macro level nonverbal cues (for example, warmth instead of micro levels such as of smiling and forward leaning) that complement a gestalt approach. Untrained judges were not able to identify the specific nonverbal cues that are displayed in clusters, yet on the micro level these clusters combine to create the theme or macro level of interpersonal traits (Koch, 1971). Another reason for the success of thin slice judgments and the accurate prediction of nonverbal interpersonal cues by untrained judges on the macro level could be due to the non-conscious level of decoding and encoding that takes place (Bargh, 1994; Choi et al., 2006). The subtle, non-conscious level of decoding has even been referred to as “effortless” (Choi et al., 2006). Training
people to identify nonverbal micro cues and elements is possible while training can also help people to make micro level judgments (Blanch-Hartigan, 2011).

**Thin slice methodology addresses qualitative research criticisms.** Thin slice methodology complements the use of qualitative tools. Specifically it can contribute to addressing the criticisms that can accompany the use of qualitative methodologies such as ethnography and phenomenology.

A criticism of qualitative methodology has been the abundance of data accumulated and determining which should and should not be included; thin slice methodology helps to alleviate this concern. Consistency is another important aspect of qualitative research, and the purpose of utilizing thin slice methodology focusing on the mediator’s introduction was to provide consistency in the third study. My subjective interpretation is structured with an objective set of criteria--the mediator’s introduction. Further, my interpretations, which are subjective, are based on previous research on the skills of effective mediators.

Another concern that needs to be addressed in research of this kind is the style and accuracy of the coding of nonverbal cues within the thin slice. The coding in the third study is based on previous research studies. The METTA coding sheet was designed to meet the needs of the specific topic being studied as well as drawing on previous research. This also complements the approach of thin slice methodology. The design and credibility of my coding process are supported by previous research in nonverbal communication.

Thin slice methodology’s relevance to mediation is that it can be applied to a specific slice of the mediation session, in this case the mediator’s introduction. Although
thin slice sections can be taken randomly by the researchers, the initial, first interaction stage is likely more relevant to thin slice judgments (Ambady et al., 2000). Given that the mediator’s introduction occurs during the initial interaction, not only should the critical skills of developing rapport, building trust, and displaying professionalism be built and displayed, but it also offers an accurate judgment based on thin slice research.

The mediator’s introduction conforms to the time length that is usually explored for thin slices as they often range from a few seconds to as long as 5 minutes. Of the mediator’s introductions observed as part of the third study of this research, 88% ($N = 18$) of the introductions observed fitted this timeframe for thin slices. Using thin slices assists with a concern of qualitative research of acquiring too much data. The thin slice reduces the length of a mediation session needed to be observed while still providing a part of the interaction that can be coded on nonverbal communication for the three macro skills. This is further discussed in the section “Using the Mediator’s Introduction.”

In thin slice research, areas of judging are often conducted on the macro level. This includes describing interpersonal characteristics such as liking, trust, competence, dominance, nervousness, warmth, likability, expressiveness, sympathy, and politeness (Ambady et al., 2006; LaPlante & Ambady, 2003). Each of these traits has direct relevance as they are all responses that mediators gave in Study 1 as being nonverbal actions mediators try to do, as well as the respondents stating it is how rapport can be developed with the parties.

Another example of coding occurring on the macro level was the study conducted by Ambady, Krabbenhoft, and Horgan (2006). In this study judges were tasked with decoding nonverbal channels that display intelligence, achievement, confidence,
decisiveness, influence, perseverance, professionalism, and self-control. Each of the
eight characteristics were similar to what the mediation literature has stated to be part of
the cluster of skills that contribute to a mediator being effective. This includes many of
the skills associated with professionalism.

While none of the studies listed in Table 3.2 involve mediation, the results have
relevance to the potential effectiveness of mediators developing rapport, building trust,
and displaying professionalism based on the actions described in the table. Each of these
studies has demonstrated that thin slice methodology can be used to accurately measure
skills and traits that similar to what this thesis is exploring. For example, like
psychologists, a mediator’s actions affect the outcome of a mediation session. Finally,
being honest is directly connected to a mediator developing rapport, building trust, and
displaying professionalism (Goldberg, 2005).

**Limitations of using thin slice methodology.** As described above, there are
numerous advantages to utilizing thin slice methodology. However, there are also some
concerns with respect to the limitations of thin slice methodology. According to Ambady
et al. (2006), accuracy of judgments can diminish when verbal channels are presented
along with nonverbal cues. Another concern is that accuracy diminishes when micro
variables are rated compared to macro level variables. An example includes “warmth”
(macro) versus specific actions such as smiling (micro). The reason is that specific
actions can have different meanings based on the context of the situation.

**Using the mediator’s introduction.** According to previous research (Ambady et
al., 2006) the initial stage is the most relevant for thin slice judgment. Developing
rapport and building trust are important to mediators, and its establishment should start
with the mediator’s introductory statement. Thin slice methodology, specifically
examining the initial encounter, has been demonstrated to be accurate for measuring
rapport and affect (Hall et al., 2009; Roter et al., 2011). Tickle-Degnen and Rosenthal’s
(1990) research on rapport demonstrated that early stages of rapport development have a
strong presence of positivity while later interactions have a higher degree of coordination.
Another research study (Webster, 1964, as cited in Curhan & Pentland, 2007) concluded
that the interviewer of a job applicant forms an impression early on, and it persists
throughout the interaction.

Curhan and Pentland’s (2007) study of negotiators explored the initial
conversation between negotiators and how it affected the result of the negotiation.
Variations in speech prosody (pitch and volume) in the first 5 minutes had a negative
effect on the negotiation result. Curhan and Pentland stated the negative effect is due to
the variations of prosody are displays of emotions, and when that occurs in the beginning
of the negotiation, it can be a sign of desperation. Curhan and Pentland added that this is
the case, despite people being mostly unaware of the impact of one’s prosodic style. The
relevance this has on a mediator’s introduction is that his or her prosodic style, when
varying as mentioned in the above study, can have a detrimental effect on building
rapport and trust, as well as displaying a professional presence.

Olekahns and Druckman’s (2011) study explained how varying levels of trust at
the beginning of the negotiation shape the rest of the process. Small talk and relationship
building can provide a benefit in the initial interaction of the negotiation (Giddings &
Crump, 2005). Nadler’s (2004) work on rapport in negotiations (which is closely linked
to trust) established a connection between a positive start and success. Nadler states,
“Engaging in small talk enabled negotiators who were strangers to affiliate… leading to the sharing of crucial information with the other party, and resulting in favorable impressions of the counterpart after the negotiation” (p. 881).

Boughton (in Matsumoto, Hwang, & Frank, 2012) explained the importance of using the beginning of the negotiation to engage in small talk in order to gain valuable insight and establish a baseline of verbal and nonverbal cues used by the other person. While each is an example of thin slices being used in conflict resolution, they do not involve mediators. Negotiators are similar to mediators; however, the fundamental difference is that negotiators are not neutral but rather are trying to use their skills to conclude the interaction at greater advantage than they had prior to engaging in the negotiation. Thin slice methodology being utilized in a mediation session has yet to occur, and, therefore, this thesis is making a unique contribution with respect to this methodology.

For these reasons it is argued that the mediator’s introduction can give an accurate display of the macro skills that are used by effective mediators. During the mediator’s introduction, the mediator must be able to accomplish many things in a short amount of time. He or she has to establish rapport (nonverbal examples include leaning forward, prosody and valance, eye gaze, smiling), explain the mediation process (establish confidence and knowledge of the process), and answer any questions the parties might have.

The selection of the mediator’s introduction is also validated by the successful use of thin slices to predict performance in other work areas such as among physicians and
sales people where strong interpersonal and affective skills are required in order to be effective (Ambady et al., 2006; Hall et al., 2009; Roter et al., 2011).

Viewing the mediator’s introduction as a thin slice should reveal most if not all of those skills displayed by an effective mediator. Admittedly, there are other moments when certain traits might be displayed more frequently or more intensely, but due to the fluidity of a mediation session, the mediator’s introduction is arguably the section that offers the greatest consistency across sessions amongst a variety of mediators.

This mixed-methods research design uses consistency as a method of triangulation. The mediator’s introduction is crucial to the consistency and triangulation of the research. The research includes observing mediation sessions by multiple mediators. This will give a “whole” (gestalt) perspective of how the mediator uses nonverbal communication and will allow the observational data to be reviewed across multiple sessions as well as with Study 1 and Study 2.

Social Semiotics

If thin slice methodology contributes to the qualitative aspect of the research being used in the mixed-methods approach of the research, understanding social semiotics assisted in the entire research process. Social semiotics informed the selection and use of the research methodologies and it guided the entire research design as it contributed first through the realization that this was not a matter of selecting either a qualitative or quantitative design. Social semiotics provided the answer that the most credible approach involved using a mixed-methods approach. This mindset also led to the conclusion that three studies were necessary to provide all the data necessary in order
to pull back that veil of ambiguity with respect to nonverbal communication and mediators and fill the research gap that existed.

Semiotics is the study of signs, and social semiotics is the study of the use of resources\(^6\) and their interpretations in specific contexts. A sign, as defined by Chandler (2007), is “a meaningful unit which is interpreted as ‘standing for’ something other than itself.” Signs include “words, images, sounds, acts or objects” (p. 260). Nonverbal cues and elements are the “signs” that are being explored in this thesis by conducting the three studies in the specific setting or context of mediation.

**Morris’s model: Semantics, syntactics, and pragmatics.** The semiotic framework offered by C.W. Morris (1970) and used also by semioticians researching within the field of the Semiotics of Law, uses a branch system of semiotic analysis that, for the purpose of this research, is used to describe nonverbal communication by mediators. It is worth pointing out that graduate and post-graduate work in conflict resolution is commonly part of law school programs\(^7\) and thus Morris’s Model has a connection with this topic that is not obvious on first view.

In Morris’s Model, as well as in Peirce’s research (as cited in Sowa, 2000), the three dimensions offered are semantics, syntactics, and pragmatics (Table 3.3). This approach does not conflict with other social semiotic understanding and methods but, rather, complements them. Morris’s Model is the basis of creating and using the METTA acronym; it identifies and categorizes all the possible nonverbal communication cues and elements present during a mediation session.

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\(^6\) The term “resources” in social semiotics replaces the word “sign,” which is used in semiotics. 
\(^7\) For example, *US World News* compiles an annual list of the top dispute resolution programs at law schools in the United States. There are no lists compiled outside of law schools for this subject.
Each dimension can be further explained using the Facial Action Coding System (Ekman & Friesen, 1978), or FACS, as a method of applying Morris’s Model. This is appropriate as FACS is a method of research that identifies specific facial muscle movements. FACS analysis can then identify the emotions of the person based on the cluster of facial muscle movements.

Table 3.4

<table>
<thead>
<tr>
<th>Term</th>
<th>Description</th>
<th>Example</th>
</tr>
</thead>
<tbody>
<tr>
<td>Semantics</td>
<td>Identifying the sign</td>
<td>Finger pointing at someone</td>
</tr>
<tr>
<td>Syntactics</td>
<td>Identifying the other signs present</td>
<td>The person is using an aggressive voice tone, eyebrows are tense, and the person is leaning towards the person he or she is talking to.</td>
</tr>
<tr>
<td>Pragmatics</td>
<td>What the sign means within a specific context</td>
<td>The two people are arguing over a missing book.</td>
</tr>
</tbody>
</table>

Semantics is the first step as it identifies the sign being studied. Before any type of analysis can be conducted, the sign must be identified first. For FACS, this is what is called a facial action unit--or individual facial muscle movement.

Syntactics then looks at the other facial muscle movements that are occurring in conjunction with observation of the first one. Syntactics observes the different elements of nonverbal communication as a cluster instead of seeing each as if it was occurring in a vacuum by itself.

Finally, pragmatics involves making an analysis based on the sign, or muscle movement of the face with FACS, and how it is understood in the context of the situation. The context is made up of the other signs being displayed, as well as the words and environmental factors. One note of importance is the impact that the context of the situation has. For example, and staying with the use of FACS analysis, furrowing or
tensing one’s eyebrows is related to a person displaying anger, yet it also can be a sign of someone in deep concentration (Ekman & Friesen, 2003, p. 83). This explains how the context plays a pivotal role in making an accurate analysis and how utilizing Morris’s Model can assist with this.

**Contribution and value.** Chandler (2007) stated, “While all verbal language is communication, most communication is nonverbal” (p. 223). He further added--which specifically addresses the purpose of this research--“There is no escape from signs. Those who cannot understand them and the systems of which they are a part are in the greatest danger of being manipulated by those who can. In short, semiotics cannot be left to semioticians” (Chandler, 2007, p. 225). Ignoring the signs (nonverbal communication cues and elements in mediation for the purpose of this thesis) does not mean they do not exist or will not maintain their importance. Chandler’s research identifies the signs, offering meaning based on previous research and the context in which they are displayed, with the purpose of providing a comprehensive understanding of mediators and their use of nonverbal communication.

Social semiotics explains signs through people’s interpretation as well as the context of the particular situation. A social semiotic approach to research involves a variety of methods and varying disciplines. Therefore, although someone who uses a mixed-methods approach is using what is considered a social semiotics methodology due to its comprehensive nature, one might not recognize this or necessarily describe the research design as grounded in or motivated by social semiotics. Regardless, it is still considered a social semiotic approach.
The research design for this thesis was explicitly informed by social semiotics as understanding the theory and literature of social semiotics. It was social semiotics that enabled the following:

1. Creation of the METTA acronym’s five different areas of focus;
2. Development of the argument that rapport, trust, and professionalism are the three macro skills of effective mediators;
3. Development of the further argument that the macro skills are displayed and created primarily through nonverbal micro cues and elements;
4. Use of a mixed-methods approach to explore this topic that is grounded in qualitative research tools;
5. Use of thin slice methodology to look specifically at the mediator’s introduction.

As already stated, there is no escape from nonverbal communication or its impact, regardless of whether we are aware of it or not. What social semiotics can do is shine a light on nonverbal communication and, through a comprehensive research approach, contribute to providing meaning to those affected by it based on specific contexts.

Social semiotics is the detailed study of signs, and the METTA acronym explores all the nonverbal communication cues and elements connected with developing rapport, building trust, and displaying professionalism. The METTA acronym enables a type of semiotic analysis, looking at the clusters of nonverbal communication, that takes into account the context of the situation.

Semiotician Roman Jakobson expresses the importance of context in relation to the study of signs (nonverbal communication cues and elements are the “signs” for this
research) by stating, “It is not enough to code in order to grasp the message…you need to know the context” (as cited in Chandler, 2007, p. 182).

**Ethics and Confidentiality**

The three research studies conducted for this thesis were approved by Griffith University and adhere to the guidelines set forth by the University’s Higher Degree Research (HDR) Centre. This included addressing confidentiality matters for the studies. Griffith University’s approach to human research ethics is based upon the (Australian) National Statement on Ethical Conduct in Human Research. Receiving ethical clearance is mandatory at Griffith University prior to commencing a research study.

The author was required to complete an online course explaining ethical and confidentiality procedures and concerns prior to commencing the three studies. Further, an initial application seeking ethical approval to commence the research was prepared detailing the purpose of the thesis and its three studies. The report included how ethical and confidentiality regulations set forth by Griffith University would be adhered to. This included relevant documents such as the survey and invitation for Study 1; the invitation and the interview questions for Study 2; and the coding method and invitation for Study 3. The report was approved, and each year since approval, ethical clearance has been extended as per University procedures. The invitation to participate for each of the three studies included, as required, University contact information to report any concerns or complaints regarding the research study or researcher.

For each of the three studies, the participants voluntarily took part and were required to acknowledge this. Participants were told, in writing, that they would not

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8 The Griffith University ethics protocol approval number is LAW/05/11/HREC.
receive compensation for their participation, there was no individual benefit or harm in participating, and they were free to stop at any time.

An ethical conduct report was required to be submitted each year in order for the research to continue. This was a requirement as per the procedures set forth by the Griffith University Human Research Ethics Committee. The report contained 13 topics that were required to be addressed. Among the topics were questions regarding if issues arose about the following: data collection, variations in the proposal, participants withdrawing consent, complaints regarding ethical conduct, and unexpected risks. For each of the topics for which an issue did arise, the report required a further explanation. The report was approved each year it was submitted and there were no unforeseen issues that presented itself during the course of the research.

Confidentiality of the participants was maintained in each of the studies. The first study did not ask for the respondent’s name, nor were identifying data collected that would enable someone to connect any of the responses to an individual. For Study 2 and Study 3, explicit mention of the key informant’s or mediator’s name did not occur. The author, for the purpose of contacting them, knew their names; however, each informant was referred to by a letter signifying the gender (M or F) and a numerical digit (for example, M1 and F1).

For Study 1, after reading a brief introduction to the purpose of the survey, including the voluntary nature of participation, participants were required to either click “start,” if they agreed to participate, or click that they did not agree. When clicking “start” the participant was re-directed to another webpage where the survey questions were located. The survey was protected in a secure location at SurveyGizmo.com that
requires a password for access. The reports detailing the responses of the participants were saved to a private computer in a password-protected folder.

Participants for Study 2 were contacted via email to participate. The emails are stored in a password-protected account. Prior to beginning the interview, the researcher briefly explained the study’s purpose, and then the participant was presented with a participant consent form further explaining the purpose of the interview and research. Each participant signed the form prior to starting the interview.

The interviews were recorded on two portable audio recording devices. The files were stored on the device and are password-protected. A file detailing the names of each participant was stored on a personal computer in a password-protected folder. Notes that were taken during the interviews were not identifiable with respect to each participant.

Participants for Study 3 were contacted in person through coordination with the community mediation center coordinator. Prior to beginning the mediation observation, while a participant waited in a “mediator’s waiting room,” the purpose was briefly explained by the researcher, and then the participant was presented with a consent form further explaining the purpose of the interview and research. Each participant signed the form prior to the researcher observing the mediation session. The mediator explained to the parties who I was and what my purpose was for being there and received verbal consent from each party. This is consistent with the mediation center’s policy for mediation session observers.

As previously mentioned, all electronic data collected in each of the three studies were saved electronically and were password protected on a private computer. Paper documents associated with the research are secured in a safe located at the researcher’s
residence. This includes the signed “Agreement to Participate” forms and the coding sheets for the third study.

**Conclusion**

In summary, the purpose of this research is not to present theory, but rather to deepen the understanding of key nonverbal cues and elements used by mediators and make plausible conclusions as a prelude to the development of future theory. This is consistent with qualitative research and will allow future research and theories to be developed and tested by providing this understanding. Mixed-methods and three studies are used with three distinct samples, offering a comprehensive understanding of the phenomena of nonverbal communication with respect to mediators developing rapport, building trust, and displaying professionalism.

This concludes the first part of the thesis where the topic has been introduced, the literature has been reviewed, and the methodology has been explained. Part I has established the foundation--the previous research on nonverbal communication and mediation--while also identifying the existing gaps. This chapter has explained how this thesis will contribute to filling the current void.

Part I has first explained, through a review of the literature, that there are three main, or macro-level, skills possessed by effective mediators. Those skills are described as developing rapport, building trust, and displaying professionalism. The literature review further detailed that each of the three macro skills are primarily developed through a collection of nonverbal cues and elements that often contribute to more than one macro skill.
The literature review identified the lack of research dedicated to the role and impact of nonverbal communication despite its direct relationship to a mediator’s effectiveness.

The METTA acronym was then presented as a tool to identify the variety of relevant cues and elements as well as its role during each of the three studies. Through the use of the METTA acronym, the design and purpose of each of the three studies was then explained, providing insight into how this thesis provides a unique contribution to conflict resolution by establishing the need for research connecting nonverbal communication cues and elements with mediators.

Next, Part II contains chapters on each of the three studies including the findings, discussion, and an explanation of how the data provide a deeper understanding of the impact of nonverbal communication in a mediator developing rapport, building trust, and displaying professionalism. Each study provides a separate element of the triangulation of the research topic, nonverbal communication, and mediators. Part III then begins with Chapter 7 by bringing the different studies together by identifying themes that emerged when looking at the three studies collectively. This is followed by the conclusion chapter, which reviews the purpose of the study and the unique contribution it has made while also offering insight on how the thesis can guide future studies.
PART II

Part I presented the introduction and a review of the mediation literature on the role of nonverbal communication in developing rapport, building trust, and displaying professionalism. The review highlighted the current lack of information in the literature regarding the role of nonverbal communication used by mediators, which forms the central research topic for this thesis. A discussion of the methodology, including its merits and applicability to the research topic, was also provided.

Part II addresses the triangulation of this research by presenting the three studies that comprise this thesis. Triangulation is a methodological research tool used in qualitative studies. It contributes to the credibility and accuracy of the research by gathering data via various means (Denzin, 1987). This can include interviews, surveys and questionnaires, observations, and documents. The three separate studies each collected data by embracing different methodological research tools and engaging different samples to provide a diverse collective dataset.

In Study 1, mediators were surveyed on the preferred use of a variety of nonverbal communication cues and elements. This approach allowed a large, diverse set of mediators to provide their insight on the phenomenon being studied.

In Study 2, mediation trainers and professors were interviewed regarding nonverbal communication, developing rapport, building trust, conveying a sense of professionalism, and how these topics are taught. This approach allowed data to be collected in a more in-depth manner from gatekeepers- people that have a critical role in mediation. Mediation professors and trainers are considered gatekeepers, as they are responsible for teaching mediators to use the requisite skills necessary in order to be
effective. Getting insights from these gatekeepers therefore is important to the research and understanding the role of nonverbal communication used by mediators.

Study 3 entailed the observation of several mediation sessions of different mediators to determine how nonverbal communication cues and elements are applied in practice. Observing people in their natural setting, in this case mediators during a mediation setting, is an important element to qualitative research (Mays & Pope, 1995) and it contributes to understanding a phenomenon (Denzin & Lincoln, 1994; Patton, 2002).
CHAPTER 4. Study 1: Mediator Survey

Introduction

Professional mediators are expert communicators who assist people involved in a dispute or conflict. The mediator’s goal is to improve the situation for all parties involved. This can come in the form of a negotiated agreement or having the parties deciding their best option is not to settle on an agreement. Regardless of the conclusion, a mediator seeks to help the parties manage the conflict in a better manner than prior to seeking the mediator’s assistance.

The main argument of this thesis is that developing rapport, building trust, and conveying a sense of professionalism represent important skills for mediators that are displayed primarily through nonverbal communication. In order to address how these skills are taught and used in practice, they must first be identified. However, evidence in the literature is lacking in regard to the specific nonverbal cues and elements used in mediation.

Accordingly, the first study of this thesis employed a survey method to identify important nonverbal cues and elements used by mediators. The design of the survey was structured by the METTA acronym as well as the research questions that were presented in Chapter 1. This chapter specifically addresses the main question of what are the nonverbal communication cues and elements used by mediators as well as the following five research questions that were outlined in Chapter 1 (p. 10):

- What do mediators say they do with respect to nonverbal communication cues and elements and what do they state are their preferences with both?
- What is the level of awareness of nonverbal communication among mediators?
• How do mediators say they use nonverbal communication during mediation sessions?
• Are mediators using certain micro cues and elements to develop rapport, build trust, and display professionalism?
• How is the mediator’s introduction perceived with respect to its importance?

This chapter first reviews relevant research, explains the methodology of this study, and then it presents the data and findings, and concludes with a discussion detailing the impact of the data.

**Previous Research**

As described in Chapter 2 (p. 18), the role of the mediator is to provide guidance and assist in the negotiation of disputes (Moore, 2014) while ensuring that the self-determination of those involved remains intact (MacFarlane, 2003; Douglas, 2008). Effective mediators possess a variety of skills and use them appropriately based on the context of the situation, often collectively and in a gestalt-like manner (Ambady & Rosenthal, 1998; Chandler, 2003; Harmon, 2006; Tickle-Degnen & Rosenthal 1990). These skills are used to assist parties in working collaboratively towards a resolution or, at the very least, a greater understanding of their options (Boulle et al., 2008). In addition, effective mediators are able to create rapport and develop a sense of trust among the involved parties while acting as professionals (Moore, 2014).

The skills involved in creating trust and developing rapport are often interconnected. For example, eye gaze has been shown to build trust and develop rapport (Beebe, 1980; Mehrabian, 1969). In addition, developing rapport contributes to creating a trusting environment (Van Hasselt, Baker, Romano, Sellers, Noesner, & Smith, 2005).
Professionalism is a macro level skill that entails possessing the necessary mediation skills and then knowing how and when to use them. Professionalism includes using the micro skills that are associated with developing rapport and developing trust appropriately and effectively. For a mediator, professionalism also means understanding the role of the mediator. Evidence cited in the literature demonstrates that developing rapport, building trust, and conveying a sense of professionalism are accomplished primarily through nonverbal communication (see Part I). However, within the field of conflict resolution, research is lacking regarding the specific nonverbal cues and elements used by mediators to accomplish these goals (Gerzon, 2006; Louis, 2008; Wheeler, 2003).

Finally, mediators must be skilled in communication in order to show the involved parties how to communicate effectively (Boulle et al., 2008). In addition, a mediator must create an environment that allows the parties to feel comfortable exchanging information and, where appropriate, negotiating (Allison, 2000; Bush & Folger, 1994; Louis, 2008).

**Method**

The sample selection for this study as well as the details of the data collection was described in Chapter 3 (pages 80 and 85 respectively). As a review, this study involved a diverse selection of practicing mediators from across the world ($N = 385$). The survey respondents varied in geographic location, gender, practice areas, and experience level. The survey was administered electronically using a student version of www.SurveyGizmo.com. The survey included 31 questions to gain the stated preferences of the respondents with respect to nonverbal communication.
Results

A total of 505 people responded to the invitation by following the link to SurveyGizmo.com and clicked “I agree” to take the survey. One survey was excluded because the respondent indicated that they were not a mediator. In addition, 119 surveys were discarded because respondents did not complete the survey up to at least question 19 (this is explained in Chapter 3, p. 86). The remaining 385 surveys were included in the analysis.

Table 4.1 shows demographic data for the 385 participants who were included in the study. Of these, 60% were females, 36% were attorneys, and the greatest proportion of participants was from Canada and the US (47%), followed by Australia and New Zealand (38%). The majority of participants (81%) were certified mediators, most (68%) had more than 6 years of experience, and 95% were over the age of 35. The largest practice area was family mediation\(^9\) (24%), followed by employment (16%) and “other” (15%).

<table>
<thead>
<tr>
<th>Category</th>
<th>Frequency</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gender</td>
<td>N = 385</td>
<td></td>
</tr>
<tr>
<td>Female</td>
<td>233</td>
<td>60%</td>
</tr>
<tr>
<td>Male</td>
<td>152</td>
<td>40%</td>
</tr>
<tr>
<td>Attorney</td>
<td>N =385</td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>137</td>
<td>36%</td>
</tr>
<tr>
<td>No</td>
<td>248</td>
<td>64%</td>
</tr>
<tr>
<td>Location</td>
<td>N =377</td>
<td></td>
</tr>
<tr>
<td>Canada/USA</td>
<td>177</td>
<td>47%</td>
</tr>
<tr>
<td>Australia/New Zealand</td>
<td>144</td>
<td>38%</td>
</tr>
</tbody>
</table>

\(^9\) Family mediation differs from divorce mediation in that it is not limited to issues that are related specifically to a divorce but can be disputes that arise while a family is still together or after a divorce.
<table>
<thead>
<tr>
<th>United Kingdom</th>
<th>42</th>
<th>11%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other</td>
<td>14</td>
<td>4%</td>
</tr>
</tbody>
</table>

**Certified Mediator**  
\( N = 385 \)
- Yes: 313 (81%)
- No: 72 (19%)

**Years Mediating**  
\( N = 385 \)
- 0-2 years: 59 (15%)
- 3-5 years: 62 (16%)
- 6-14 years: 148 (38%)
- 15+ years: 116 (30%)

**Ages**  
\( N = 385 \)
- 18-24: 1 (<1%)
- 25-34: 17 (4%)
- 35-54: 155 (40%)
- 55+: 212 (55%)

**Mediation Level**  
\( N = 381 \)
- New: 9 (2%)
- Novice: 34 (9%)
- Experienced: 241 (63%)
- Expert: 97 (26%)

**Primarily Co-Mediate**  
\( N = 384 \)
- Yes: 114 (30%)
- No: 270 (60%)

**Primary Practice Area**  
\( N = 385 \)
- Family: 92 (24%)
- Employment: 63 (16%)
- Other: 59 (15%)
- Community: 54 (14%)
- Court: 52 (14%)
- Divorce: 40 (10%)
- Government: 9 (2%)
- Real Estate: 6 (2%)
- Construction: 5 (2%)
- Education: 4 (1%)
- Religion: 1 (<1%)

**The Introduction and Nonverbal Communication**

Table 4.2 presents the results from closed-ended questions regarding the importance of a handshake in greeting, the introduction, and nonverbal communication, with answers based on one of two 5-point scales. In regard to nonverbal communication,
88% of respondents indicated that nonverbal communication was very important, while 10% stated it was somewhat important. For the introduction, 84% of respondents indicated it was very important, while 13% indicated it was somewhat important.

Handshakes were categorized according to gender. If the mediator was the same gender as the client, 45% of respondents indicated they always shook hands and 41% indicated they usually shook hands. The results were similar when the mediator was the opposite gender of the client: 41% of respondents indicated they always shook hands and 43% indicated they usually shook hands.

| Table 4.2 |
| Results for Questions on Touch, Introduction, and Nonverbal Communication |

<table>
<thead>
<tr>
<th>In regard to mediation, nonverbal communication is:</th>
<th>Frequency</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not important</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Somewhat unimportant</td>
<td>1</td>
<td>&lt;1%</td>
</tr>
<tr>
<td>Unsure</td>
<td>4</td>
<td>1%</td>
</tr>
<tr>
<td>Somewhat important</td>
<td>40</td>
<td>10%</td>
</tr>
<tr>
<td>Very important</td>
<td>339</td>
<td>88%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Do you consider the mediator's introduction to be:</th>
<th>Frequency</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not important</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Somewhat unimportant</td>
<td>4</td>
<td>1%</td>
</tr>
<tr>
<td>Unsure</td>
<td>1</td>
<td>&lt;1%</td>
</tr>
<tr>
<td>Somewhat important</td>
<td>51</td>
<td>13%</td>
</tr>
<tr>
<td>Very important</td>
<td>325</td>
<td>84%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>When greeting the mediation parties, do you shake their hand?</th>
<th>Frequency</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Same gender as the mediator</td>
<td>N = 384</td>
<td></td>
</tr>
<tr>
<td>Never</td>
<td>11</td>
<td>2%</td>
</tr>
<tr>
<td>Rarely</td>
<td>32</td>
<td>8%</td>
</tr>
<tr>
<td>Unsure</td>
<td>11</td>
<td>2%</td>
</tr>
<tr>
<td>Usually</td>
<td>156</td>
<td>41%</td>
</tr>
<tr>
<td>Opposite gender of the mediator</td>
<td>N = 384</td>
<td></td>
</tr>
<tr>
<td>-------------------------------</td>
<td>---------</td>
<td></td>
</tr>
<tr>
<td>Never</td>
<td>12</td>
<td>3%</td>
</tr>
<tr>
<td>Rarely</td>
<td>35</td>
<td>9%</td>
</tr>
<tr>
<td>Unsure</td>
<td>11</td>
<td>2%</td>
</tr>
<tr>
<td>Usually</td>
<td>167</td>
<td>43%</td>
</tr>
<tr>
<td>Always</td>
<td>159</td>
<td>41%</td>
</tr>
</tbody>
</table>

**Environment**

In regard to the mediation environment, participants were presented with various seating arrangements and asked to rank them in order of preference. Table 4.3 shows the frequency of responses for the top rankings for each seating arrangement by type of seating (circular tables, conference tables, couch plus chairs, and chairs only). For circular and conference tables, most respondents preferred an arrangement where the mediator and parties sat closest together (41% and 47% for circular and conference tables, respectively). With a couch and chairs setting, the vast majority of respondents (81%) preferred a seating arrangement whereby the parties were seated in separate chairs while the mediator was seated on the couch. For an arrangement of three chairs, 79% of respondents preferred the arrangement whereby the mediator sat equidistant to both parties.
### Table 4.3

**Most Appropriate Seating Arrangements by Room Design**

<table>
<thead>
<tr>
<th>Seating Arrangement</th>
<th>Frequency</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Circular table seating</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A</td>
<td>102</td>
<td>34%</td>
</tr>
<tr>
<td>B</td>
<td>124</td>
<td>41%</td>
</tr>
<tr>
<td>C</td>
<td>45</td>
<td>14%</td>
</tr>
<tr>
<td>D</td>
<td>33</td>
<td>11%</td>
</tr>
<tr>
<td><strong>Conference table seating</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A</td>
<td>143</td>
<td>47%</td>
</tr>
<tr>
<td>B</td>
<td>79</td>
<td>26%</td>
</tr>
<tr>
<td>C</td>
<td>47</td>
<td>16%</td>
</tr>
<tr>
<td>D</td>
<td>27</td>
<td>8%</td>
</tr>
<tr>
<td>E</td>
<td>8</td>
<td>2%</td>
</tr>
<tr>
<td><strong>Couch &amp; chairs seating</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A</td>
<td>240</td>
<td>81%</td>
</tr>
<tr>
<td>B</td>
<td>38</td>
<td>13%</td>
</tr>
<tr>
<td>C</td>
<td>16</td>
<td>5%</td>
</tr>
<tr>
<td>D</td>
<td>3</td>
<td>1%</td>
</tr>
</tbody>
</table>
Respondents were also asked to rank room arrangements based on their appropriateness for different mediation contexts (court, community, divorce, and business/employment), where 1 = *most appropriate* and 4 = *least appropriate*. The options for each were: chairs only, couch and chairs, conference table, or circular table. For each type of mediation, a conference table was the most common choice for 1 = *most appropriate* (70%, 45%, 52%, and 71% for court, community, divorce, and business/employment, respectively). In addition, while the top choice for community mediation was ranked most important by less than half of participants (45%), only 22% of respondents selected chairs only, which was the next most popular choice.

**Table 4.4**

<table>
<thead>
<tr>
<th>Room Arrangement Based on Context of Dispute</th>
</tr>
</thead>
<tbody>
<tr>
<td>Responses for 1 = <em>most appropriate</em></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td><strong>Court (N = 292)</strong></td>
</tr>
<tr>
<td>Chairs Only</td>
</tr>
<tr>
<td>15</td>
</tr>
<tr>
<td>5%</td>
</tr>
<tr>
<td>Chairs &amp; Couch</td>
</tr>
<tr>
<td>28</td>
</tr>
<tr>
<td>10%</td>
</tr>
<tr>
<td>Conference Table</td>
</tr>
<tr>
<td>205</td>
</tr>
<tr>
<td>70%</td>
</tr>
<tr>
<td>Circular Table</td>
</tr>
<tr>
<td>44</td>
</tr>
<tr>
<td>15%</td>
</tr>
<tr>
<td>Community (N = 275)</td>
</tr>
<tr>
<td>-----------------------------</td>
</tr>
<tr>
<td>Chairs Only</td>
</tr>
<tr>
<td>61</td>
</tr>
<tr>
<td>22%</td>
</tr>
<tr>
<td>Chairs &amp; Couch</td>
</tr>
<tr>
<td>51</td>
</tr>
<tr>
<td>19%</td>
</tr>
<tr>
<td>Conference Table</td>
</tr>
<tr>
<td>124</td>
</tr>
<tr>
<td>45%</td>
</tr>
<tr>
<td>Circular Table</td>
</tr>
<tr>
<td>39</td>
</tr>
<tr>
<td>14%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Divorce (N = 270)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chairs Only</td>
</tr>
<tr>
<td>37</td>
</tr>
<tr>
<td>14%</td>
</tr>
<tr>
<td>Chairs &amp; Couch</td>
</tr>
<tr>
<td>39</td>
</tr>
<tr>
<td>14%</td>
</tr>
<tr>
<td>Conference Table</td>
</tr>
<tr>
<td>141</td>
</tr>
<tr>
<td>52%</td>
</tr>
<tr>
<td>Circular Table</td>
</tr>
<tr>
<td>53</td>
</tr>
<tr>
<td>20%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Business/Employment (N = 278)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chairs Only</td>
</tr>
<tr>
<td>11</td>
</tr>
<tr>
<td>4%</td>
</tr>
<tr>
<td>Chairs &amp; Couch</td>
</tr>
<tr>
<td>21</td>
</tr>
<tr>
<td>7%</td>
</tr>
<tr>
<td>Conference Table</td>
</tr>
<tr>
<td>197</td>
</tr>
<tr>
<td>71%</td>
</tr>
<tr>
<td>Circular Table</td>
</tr>
<tr>
<td>49</td>
</tr>
<tr>
<td>18%</td>
</tr>
</tbody>
</table>

**Appearance**

The appearance of male mediators was addressed to examine the perceived appropriateness of different styles of clothing based on the context of the mediation. The four outfits were: a business suit; business casual, consisting of a collared, button-down shirt tucked in with dress pants; casual, which was the same as business casual but with the shirt untucked; and a polo shirt and jeans. Respondents were asked to select if each outfit was appropriate based on the context of the mediation. The appropriateness of each of the four outfits was made independent of the other outfits. Therefore, a respondent could have selected all four outfits as appropriate, inappropriate, or a combination of each. The results are shown in Table 4.5.

The top choice for community and divorce mediation was business casual, while the top choice for court and business/employment mediation was a business suit. The polo shirt and jeans outfit was ranked very low for court, divorce, and
business/employment settings (less than 7%) but was considered more appropriate than a business suit in a community mediation context (26% versus 16%, respectively).

Table 4.5

<table>
<thead>
<tr>
<th>Mediation setting</th>
<th>Responses for The Outfit Being Appropriate</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Business suit</td>
</tr>
<tr>
<td>Community</td>
<td>61 (16%)</td>
</tr>
<tr>
<td>Court</td>
<td>252 (66%)</td>
</tr>
<tr>
<td>Divorce</td>
<td>158 (41%)</td>
</tr>
<tr>
<td>Business/Employment</td>
<td>248 (64%)</td>
</tr>
</tbody>
</table>

Developing Rapport

Questions on developing rapport were open ended. Respondents were asked to list up to five actions used to build rapport and in a separate question list up to five actions that hinder the development of rapport. Not every respondent provided an answer to these questions and, of those who did, not all provided five answers. To aid in the analysis of these qualitative responses, actions were grouped into categories based on commonalities in language identified in the literature on mediation and nonverbal communication. For actions that aid in developing rapport, listening and active listening were listed separately as they have different meanings. Listening connotes simply paying attention cognitively, while active listening connotes physical movement and verbal and nonverbal actions that demonstrate the person is listening (Moore, 2014; Noesner & Webster, 1997).
Of the 385 participants in the survey, 307 provided at least one answer to the question on developing rapport. In total, 1289 actions were listed in the responses. The top ten groups of actions represented 782 of the 1289 responses, or 61%. Of the top ten actions, eye contact and warmth were the most frequently cited (50% and 49%, respectively).

Table 4.6

<table>
<thead>
<tr>
<th>Action</th>
<th>Frequency*</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eye contact</td>
<td>152</td>
<td>50%</td>
</tr>
<tr>
<td>Warmth**</td>
<td>150</td>
<td>49%</td>
</tr>
<tr>
<td>Listening</td>
<td>98</td>
<td>32%</td>
</tr>
<tr>
<td>Active listening</td>
<td>80</td>
<td>26%</td>
</tr>
<tr>
<td>Empathy***</td>
<td>63</td>
<td>21%</td>
</tr>
<tr>
<td>Smiling</td>
<td>63</td>
<td>21%</td>
</tr>
<tr>
<td>Equal^</td>
<td>50</td>
<td>16%</td>
</tr>
<tr>
<td>Environment^^</td>
<td>45</td>
<td>15%</td>
</tr>
<tr>
<td>Explain^^^</td>
<td>43</td>
<td>14%</td>
</tr>
<tr>
<td>Body orientation/posture</td>
<td>38</td>
<td>12%</td>
</tr>
</tbody>
</table>

* each participant could provide up to five answers; total answers = 782
** includes being friendly, welcoming, open, and inviting
*** includes synonyms such as understanding, acknowledging feelings, respectful
^ includes the mediator not favoring or acting differently towards one party over the other
^^ includes responses such as room setup and refreshments.
^^^^ refers to responses related to the mediator explaining the mediation process.

As with the previous question, actions that hinder the development of rapport were grouped according to similar responses in Table 4.7. The names selected for the action groups were, wherever possible, the antonym of the related category for actions that develop rapport. Two examples are coldness (contrasted with warmth) and perceived bias/partiality (corresponds to equal). Of the 385 participants in the survey, 305 provided at least one answer to the questions on hindering rapport. In total, 24
actions were listed in the responses. The top ten groups of actions represented 800 of the 1089 responses, or 73%.

Table 4.7

Actions that Hinder the Development of Rapport
(N = 305)

<table>
<thead>
<tr>
<th>Action</th>
<th>Frequency*</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cold**</td>
<td>199</td>
<td>65%</td>
</tr>
<tr>
<td>Bias/partiality</td>
<td>124</td>
<td>41%</td>
</tr>
<tr>
<td>Giving opinion/expertise</td>
<td>97</td>
<td>31%</td>
</tr>
<tr>
<td>Interrupt</td>
<td>75</td>
<td>25%</td>
</tr>
<tr>
<td>No eye contact</td>
<td>68</td>
<td>22%</td>
</tr>
<tr>
<td>Impatient</td>
<td>60</td>
<td>20%</td>
</tr>
<tr>
<td>Negative body movement</td>
<td>47</td>
<td>15%</td>
</tr>
<tr>
<td>Talk too much</td>
<td>46</td>
<td>15%</td>
</tr>
<tr>
<td>Judging</td>
<td>44</td>
<td>14%</td>
</tr>
<tr>
<td>Distracted</td>
<td>40</td>
<td>13%</td>
</tr>
</tbody>
</table>

* each participant could provide up to five answers; total answers = 800
** includes responses such as aloof, abrupt, too formal, condescending, and not acknowledging the parties

Nonverbal actions. Questions on nonverbal actions were also open ended.

Respondents were asked to list up to five nonverbal actions used by mediators and separately up to five actions that should be avoided by mediators. Not every respondent provided an answer to these questions and, of those who did, not all provided five answers. As with the questions on rapport, actions were grouped into categories based on commonalities in language identified in the literature on mediation and nonverbal communication.

For nonverbal actions used by mediators, 278 of the 385 participants in the survey provided at least one answer. In total, 47 actions were listed in the responses. The top ten groups of actions represented 630 of the 947 responses, or 67%. The results are
shown in Table 4.8. Of the top ten nonverbal actions, eye contact and head nodding were
the most frequently cited (48% and 38%, respectively).

<table>
<thead>
<tr>
<th>Table 4.8</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nonverbal Actions Used by Mediators (N = 278)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Action</th>
<th>Frequency</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eye contact</td>
<td>132</td>
<td>48%</td>
</tr>
<tr>
<td>Head nodding</td>
<td>107</td>
<td>38%</td>
</tr>
<tr>
<td>Smile</td>
<td>93</td>
<td>34%</td>
</tr>
<tr>
<td>Posture open/relaxed</td>
<td>55</td>
<td>20%</td>
</tr>
<tr>
<td>Hand gestures</td>
<td>49</td>
<td>18%</td>
</tr>
<tr>
<td>Lean forward</td>
<td>48</td>
<td>17%</td>
</tr>
<tr>
<td>Regulate gestures</td>
<td>44</td>
<td>16%</td>
</tr>
<tr>
<td>Facial expressions</td>
<td>36</td>
<td>13%</td>
</tr>
<tr>
<td>Mirror/matching</td>
<td>35</td>
<td>13%</td>
</tr>
<tr>
<td>Open-handed gestures</td>
<td>31</td>
<td>11%</td>
</tr>
</tbody>
</table>

* each participant could provide up to five answers; total answers = 630

For nonverbal actions that should be avoided by mediators, 259 of the 385
participants in the survey provided at least one answer. In total, 44 actions were listed in
the responses. The top ten groups of actions represented 325 of the 683 responses, or
48%. The results are shown in Table 4.9. Of the top ten nonverbal actions to be avoided
by mediators, folding arms and bias with body movement were the most frequently cited
(19% and 17%, respectively).
Table 4.9

Nonverbal Actions to be Avoided by Mediators (N = 259)

<table>
<thead>
<tr>
<th>Action</th>
<th>Frequency</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fold arms</td>
<td>48</td>
<td>19%</td>
</tr>
<tr>
<td>Bias with body movement</td>
<td>45</td>
<td>17%</td>
</tr>
<tr>
<td>Frown/grimace</td>
<td>38</td>
<td>15%</td>
</tr>
<tr>
<td>Fidget</td>
<td>35</td>
<td>14%</td>
</tr>
<tr>
<td>Nodding</td>
<td>33</td>
<td>13%</td>
</tr>
<tr>
<td>Frustration/anger/impatience</td>
<td>27</td>
<td>10%</td>
</tr>
<tr>
<td>Roll eyes</td>
<td>26</td>
<td>10%</td>
</tr>
<tr>
<td>Slouch/tired/bored</td>
<td>26</td>
<td>10%</td>
</tr>
<tr>
<td>No eye contact</td>
<td>24</td>
<td>9%</td>
</tr>
<tr>
<td>Finger pointing</td>
<td>23</td>
<td>9%</td>
</tr>
</tbody>
</table>

Group differences in responses. The survey data was further analyzed based on various demographic indices, specifically gender, attorney versus non-attorney status, geographic location, and mediation practice area to see if significant differences occurred. This was done as overall the data can provide value but its impact and relevance can increase when exploring whether the preferences are different based on respondents. To determine whether there were significant differences in responses, chi-square analysis was used to test the frequency of responses against expected values for the questions relating to the appropriateness of the male mediator’s attire based on the context of the mediation. In other cases, t-tests were performed to test the means of scores from questions that used Likert-type scales when two groups were being analyzed (gender and attorney/non-attorney). Finally, for group analysis (geographic location and practice area), a one-way ANOVA was used.

Gender. For differences according to gender, two-tailed t-tests and chi-squared tests were performed and identified areas of significant differences. The differences displaying significance occurred between responses to questions regarding the
importance of nonverbal communication and appropriate attire for male mediators based on the mediation setting. The results displaying the significant differences are shown in Table 4.10.

<table>
<thead>
<tr>
<th>Question</th>
<th>female</th>
<th>male</th>
<th>p</th>
</tr>
</thead>
<tbody>
<tr>
<td>In regards to mediation, nonverbal communication is:</td>
<td>N = 232</td>
<td>N = 152</td>
<td></td>
</tr>
<tr>
<td>Not important</td>
<td>0</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>Somewhat unimportant</td>
<td>&lt; 1%</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>Unsure</td>
<td>&lt; 1%</td>
<td>2%</td>
<td></td>
</tr>
<tr>
<td>Somewhat important</td>
<td>8%</td>
<td>14%</td>
<td></td>
</tr>
<tr>
<td>Very important</td>
<td>91%</td>
<td>84%</td>
<td></td>
</tr>
<tr>
<td>Mean score:</td>
<td>4.19</td>
<td>4.14</td>
<td>.036</td>
</tr>
<tr>
<td>Male mediator's appearance based on the setting</td>
<td>N = 233</td>
<td>N = 152</td>
<td></td>
</tr>
<tr>
<td>Community</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Polo shirt and jeans</td>
<td>29%</td>
<td>20%</td>
<td>.054</td>
</tr>
<tr>
<td>Casual</td>
<td>54%</td>
<td>28%</td>
<td>&lt;.001</td>
</tr>
<tr>
<td>Court</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Business casual</td>
<td>44%</td>
<td>28%</td>
<td>.001</td>
</tr>
<tr>
<td>Casual</td>
<td>16%</td>
<td>6%</td>
<td>.002</td>
</tr>
<tr>
<td>Divorce</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Business casual</td>
<td>58%</td>
<td>40%</td>
<td>&lt;.000</td>
</tr>
<tr>
<td>Casual</td>
<td>39%</td>
<td>16%</td>
<td>&lt;.000</td>
</tr>
<tr>
<td>Business/employment mediation</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Business casual</td>
<td>46%</td>
<td>27%</td>
<td>&lt;.001</td>
</tr>
<tr>
<td>Casual</td>
<td>21%</td>
<td>11%</td>
<td>.007</td>
</tr>
</tbody>
</table>

In regard to the importance of nonverbal communication in mediation, a t-test on the means of the response scores (a five point scale, ranging from “very important” to “not important”) revealed a significant difference in the responses by gender. This result indicates that females tended to rank the importance of nonverbal communication higher than males. With respect to the mediator’s appearance, a chi square test identified that the responses were significantly different for all but the polo shirt and jeans outfit in a
community setting. In all four settings, females were more likely than males to choose business causal as the most appropriate attire. In the court, divorce, and business/employment settings, females were more likely than males to choose casual as the most appropriate attire.

Attorneys compared with non-attorneys. Some mediators are also attorneys or lawyers. In regard to the importance of nonverbal communication in mediation, a t-test on the means of the response scores (same scale as above) revealed that non-attorneys ranked nonverbal communication higher than attorneys (p < .003).

In regard to male mediator attire, 2x2 chi-square tests revealed significant differences in responses between attorneys and non-attorneys. More attorneys than non-attorneys indicated that a business suit was appropriate for community mediation (23% versus 12%, respectively, p = .007).

In terms of seating arrangements, most responses were similar for attorney and non-attorney respondents except for the choice of seating at a conference table. More attorneys than non-attorneys opted for the parties to sit closer to the mediator (57% versus 42%, respectively, p < .001); however, this option was the top choice for both groups.

Practice area. The top five practice areas represented in the study sample were family, community, divorce, court, and business/employment. Responses from these groups were analyzed using a multiple comparison test and then an analysis of variance (ANOVA) to determine whether there were significant differences based on practice area. Additionally, 5x2 chi square tests were used for the questions regarding the mediator’s attire. Overall the findings demonstrated when reviewing the data based on the
respondent’s practice area, differences were present. The notable differences, explained further below, were with respect to seating arrangements, the mediator’s appearance, and room arrangement.

Multiple comparison tests were conducted, as it is important to know what mediators preferred in their own setting. For example, the preferences of court mediators in court mediation are considered more relevant compared to what mediators engaged in the other three practice areas prefer in a court setting.

In divorce mediation settings, divorce mediators choice of seating arrangement at a conference table (five options were provided, see Table 4.1) deviated (p = .015) from the top selection made by the other mediators. Divorce mediators did not select option “A” like the others but rather selected “B” (42%), which has a greater distance between the mediator and the parties. Option “A” was their second top selection with (32%).

There were notable differences among the practice areas in regard to the male mediator’s appearance. Court mediators considered a suit to be much more acceptable (34%) for a community mediation session compared to the other groups (next closest groups were 13% for both family and business/employment, p = .001). Another outfit that resulted in differences of opinions was the casual outfit in business/employment mediation sessions. Business/employment mediators in their own setting found this outfit more appropriate (32%) compared to their counterparts with the next closest being substantially less (community mediators, 19%; p=.034). Preferences of mediators based on their practice area are now discussed below.

For those respondents who listed court as their primary area of practice, it was unsurprising that a conference table was the most selected choice (71%) while
interestingly the chair/couch combination was second (15%), and only chairs and a circular table were tied for third (7%). Additionally, court mediators favored the closest seating option “A” for the conference table layout. In regard to the male mediator’s appearance in court mediation settings, 71% deemed a suit appropriate, 4% for the polo shirt and jeans combination, 52% for business casual, and 21% for casual.

Community mediation respondents chose the conference table as their primary preference in community mediation (47%), with a circular table (20%), chairs and couch (19%), and chairs only (14%) following after. The top selected seating arrangement for the conference table option was having the parties and mediator sit the closest together (option “A”). With respect to the male mediator’s appearance, community mediators listed business casual as being the most appropriate (56%). Each of the other options was under the 50% threshold (casual 43%, polo shirt/jeans 22%, and a suit 11%).

Family mediators did not have a specific question related to their practice area regarding the choice of room arrangement, seating options, and the appropriateness of the male mediator’s appearance as their mediations have the possibility to occur in multiple settings including court, community, and divorce. In regard to room arrangement, the most selected option for each of these settings was a conference table (court, 67%; community, 32%; and divorce, 47%). This shows, despite the various locations a family mediator might conduct their mediation sessions, their top choice of a room set-up is a conference table. It is notable that although a conference table was the top choice for each of these contexts that in a community setting a conference table received just under a third of votes from the respondents. A chair and couch was the second most selected option with 25%, then both chairs only and a circular table had 21%.
The responses from family mediators for the appropriateness of each outfit based on the setting was: court (suit, 65%; polo shirt/jeans, 3%; business casual, 32%; and casual, 12%); community (suit, 13%; polo shirt/jeans, 27%; business casual, 46%; and casual, 49%); and divorce (suit, 38%; polo shirt/jeans, 7%; business casual, 53%; and casual, 34%). Although the business casual outfit is the overall most appropriate outfit across all settings, the result also displays these mediators realize the appearance needs to match the context of the mediation session.

Divorce mediators preferred a conference table as their top choice with regard to room arrangement (70%) while a circular table was a considerable distant second top choice (17%). Divorce mediator respondents selected option “B” (42%) as their top choice in seating arrangement for a conference table. Business casual was selected as the most appropriate outfit for a male mediator (63%) in a divorce setting while a suit (38%), casual (33%) and a polo shirt/jeans (6%) were less popular. Based on the divorce mediators’ data that their top selected choice for appearance is business casual yet their response for this outfit being acceptable in court is 40%, a conclusion that can be made is they do not perform their mediations in court. If divorce mediators did conduct their mediation sessions primarily in court, the percentage of appropriateness of a business causal appearance would be expected to be higher than 40%.

Mediators that listed employment related cases as their primary practice area selected a conference table as their top choice in business/employment mediations (70%). For this type of room setting, employment mediators selected option “B” (Table 4.3) as the preferred seating arrangement (44%). Option “B” has the mediator sitting at the end of the table while the parties sit on separate sides at the middle of the table. With respect
to the appropriateness of the male mediator’s attire, a suit was deemed the most appropriate (67%). The appropriateness of the other outfits was: business casual 51%, casual 32%, and polo shirt/jeans 2%.

**Geographic location.** An analysis of significant differences based on the geographic location of the respondents yielded similar findings to analyses based on practice area and other demographic variables. Specifically, the main differences pertained to room arrangement and the appearance of the male mediator.

Table 4.11 shows the results for room arrangement. For respondents in USA/Canada and Australia/NZ, the conference table was the most preferred room arrangement for all four types of mediation. It was also the top room arrangement for mediators in the UK for business/employment mediation and court mediation. However, for divorce and community mediation, respondents in the UK preferred chairs.

**Table 4.11**

<table>
<thead>
<tr>
<th>preferred Room Arrangement (% of respondents)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Court mediation</td>
</tr>
<tr>
<td>USA/Canada (N = 177 for each)</td>
</tr>
<tr>
<td>71% conf. table* 15% circular table 4% chairs 11% chairs &amp; couch</td>
</tr>
<tr>
<td>Australia/NZ (N = 144 for each)</td>
</tr>
<tr>
<td>76% conf. table 17% circular table 4% chairs 4%</td>
</tr>
<tr>
<td>UK (N = 42 for each)</td>
</tr>
<tr>
<td>55% conf. table 7% circular table 17% chairs 21% chairs &amp; couch</td>
</tr>
<tr>
<td>Community mediation</td>
</tr>
<tr>
<td>USA/Canada</td>
</tr>
<tr>
<td>45% conf. table+ 15% circular table 19% chairs 20% chairs &amp; couch</td>
</tr>
<tr>
<td>Australia/NZ</td>
</tr>
<tr>
<td>52% conf. table* 17% circular table 19% chairs 17%</td>
</tr>
<tr>
<td>UK</td>
</tr>
<tr>
<td>25% conf. table+ 7% circular table 58% chairs 8% chairs &amp; couch</td>
</tr>
<tr>
<td>Divorce mediation</td>
</tr>
<tr>
<td>USA/Canada</td>
</tr>
<tr>
<td>52% conf. table~ 28% circular table 11% chairs 9% chairs &amp; couch</td>
</tr>
<tr>
<td>Australia/NZ</td>
</tr>
<tr>
<td>57% conf. table~ 14% circular table 12% chairs 18%</td>
</tr>
<tr>
<td>UK</td>
</tr>
<tr>
<td>33% conf. table~ 4% circular table 38% chairs 25% chairs &amp; couch</td>
</tr>
<tr>
<td>Business/Employment mediation</td>
</tr>
<tr>
<td>USA/Canada</td>
</tr>
<tr>
<td>70% conf. table~ 20% circular table 2% chairs 8% chairs &amp; couch</td>
</tr>
<tr>
<td>Australia/NZ</td>
</tr>
<tr>
<td>74% conf. table~ 16% circular table 4% chairs 7%</td>
</tr>
<tr>
<td>UK</td>
</tr>
<tr>
<td>61% conf. table~ 14% circular table 18% chairs 7% chairs &amp; couch</td>
</tr>
</tbody>
</table>

p values represent significance between groups, * p=.001, + p=.005, ^ p<.001, ~ p=.030
Table 4.12 shows the results for male mediator appearance. In each mediation settings presented, the percentage of respondents from the USA/Canada rating of attire as appropriate was significantly greater than the percentage of respondents from either Australia/NZ or the UK.

It is worth noting that in some circumstances, what the respondents considered inappropriate was more clearly delineated than what they considered inappropriate. For example, there was a significant difference with US/Canadian mediators believing a business casual outfit was appropriate for community mediation whereas mediators from the UK and Australia/NZ did not. Upon further analyzing this, the data shows that with the mediators from those two groups, none of the outfits crossed the 50% threshold for appropriateness. The business casual outfit was the highest selected outfit for appropriateness for UK based mediators in the community mediation setting yet only 43% deemed it appropriate.

<table>
<thead>
<tr>
<th>Setting and Attire</th>
<th>USA/Canada</th>
<th>Australia/NZ</th>
<th>UK</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Community mediation</strong>*</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Business casual is appropriate</td>
<td>59%</td>
<td>44%</td>
<td>43%</td>
</tr>
<tr>
<td><strong>Court mediation</strong>**</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Business casual is appropriate</td>
<td>48%</td>
<td>28%</td>
<td>29%</td>
</tr>
<tr>
<td><strong>Divorce mediation</strong>*</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Suit is appropriate</td>
<td>45%</td>
<td>42%</td>
<td>36%</td>
</tr>
<tr>
<td><strong>Business/Employment mediation</strong>*</td>
<td>38%</td>
<td>24%</td>
<td>19%</td>
</tr>
</tbody>
</table>

p values represent significance between groups
* p = .027, ** p = .001, *** p = .044, *** p = .013
Discussion

The main argument of this thesis is that developing rapport, building trust, and conveying a sense of professionalism represent important skills for mediators that are displayed primarily through nonverbal communication. This topic is addressed through three studies that identify, explore, and observe the use of these skills in practice. In Study 1, the specific stated preferences of mediators’ nonverbal cues and elements used in mediation sessions were identified.

The survey questions addressed the importance of the mediator introduction, including handshaking and nonverbal communication. The vast majority of respondents (98%) indicated that nonverbal communication is very important or somewhat important in regard to mediation. Approximately 85% of respondents indicated that they always or usually shake hands with clients as part of their greeting, and these numbers were very similar whether the gender of the mediator was the same as or opposite to the gender of the party.

A significant majority of respondents (84%) indicated that the introduction represents a significant moment during the mediation session in terms of developing trust and rapport and conveying a sense of professionalism. The introduction forms part of the first impression that a mediator makes with the involved parties. Research on first impressions has demonstrated that the initial interaction has a lasting impact on the remainder of the interaction and is judged mainly on nonverbal communication (Anderson, 2008; Kenny et al., 1992; McMahon, 1976). Research has also shown that the initial encounter is the most accurate determinant of rapport and other aspects of an interaction (Hall et al., 2009; Roter et al., 2011). Finally, the mediator displays
professionalism through the introduction by explaining to the involved parties what mediation is and by describing the role of the mediator.

The survey questions also addressed seating arrangements and appearance of the mediators. Most respondents preferred seating arrangements that kept all parties in close proximity, but with the mediator sitting between the two parties. Conference tables were the top choice of seating type, regardless of the context of the mediation. The preferred dress style of male mediators was business suit for court and business/employment mediation and business casual for community and divorce mediation.

Respondents were asked to provide a list of up to five actions that help develop rapport during mediation. The top ten most frequently cited actions were consistent with previous research on rapport (see Table 2.1, p. 24). In addition, there was some overlap among the responses. For example, warmth was the second most cited action for developing rapport (see Table 4.6). However, conveying a sense of warmth can involve numerous distinct actions, such as eye contact or smiling, which were the first and sixth most popular responses, respectively. This interconnectedness of responses reflects the gestalt-like manner in which effective mediators apply their skills (Ambady & Rosenthal, 1998; Chandler, 2003; Harmon, 2006; Tickle-Degnen & Rosenthal 1990).

In regard to actions that hinder the development of rapport, as noted with the previous responses, there was some overlap between general and distinct actions. Bias or partiality was the second most frequently cited action (correlates to equal treatment in the top ten actions that promote rapport). Demonstrating bias towards one party not only compromises rapport and trust, but also reflects badly on the professionalism of the mediator, whose job is to foster a balanced discussion. Bias may be shown through a
variety of specific actions that were also listed in the top ten, such as body movement. Body movement can convey a positive or negative message, depending on how it is used. For example, open-handed gestures can be positive and contribute to the development of rapport; however, if used with unequal weight between both parties, such gestures can become negative by displaying a perceived or actual bias toward one party. Eye contact can also be effective at establishing rapport, but if used with bias it can have an adverse effect.

Responses that were categorized under body movement included obvious examples, such as fidgeting, frustration, and eye rolling that hinder rapport. A less obvious example is nodding. Nodding may be something to avoid because it could be misconstrued as the mediator agreeing with what is being said by one party and therefore displaying a perceived bias.

A mediator serves as a guide in displaying the actions (both verbal and nonverbal) that are conducive to collaboration, it is important for the mediator to be aware of their actions and it affects the parties. Regardless of the intentions, a mediator’s nonverbal communication can guide the parties towards creating empathy and collaboration or in the direction of the dispute becoming perceived as intractable, the conversation becoming adversarial and reduced attention instead of active listening. Without awareness of his or her actions, a mediator can repeatedly “leak” out numerous perceived biases and judgments without knowledge of it occurring. Leakage, described by Babad et al. (1989b) and discussed in the methodology chapter, consists of gestures or body movement that is unintentional and can be associated with discomfort or anxiety.
Reviewing the ten most common responses in Table 4.7, many can be associated with leakage from the mediator.

Finally, some actions reported to hinder the development of rapport were, not surprisingly, the opposite of those that help to develop rapport, such as coldness (as opposed to warmth), no eye contact (as opposed to eye contact), and talking too much (as opposed to listening).

**Limitations**

The limitations of this study largely relate to the question of mediator appearance and the available responses for each mediator practice area. Questions about mediator appearance were limited to male mediators. Female attire was not included as male attire was deemed easier to categorize. The responses were designed to determine which outfits were considered most appropriate for a specific setting, but not to collect information on attire that was deemed inappropriate. For some demographic groups, no answer generated a response frequency greater than 50%, but there was no way to determine why such variations in response occurred.

In regard to the response options for the question of practice area, the “other” category was the third most selected option, suggesting that a major practice area was overlooked in the list of possible responses. In hindsight, providing an option to select “business” as a practice area may have addressed this situation.

**Conclusion**

Information in the literature is lacking regarding the specific nonverbal communication cues and elements used by mediators to develop trust and rapport and to convey a sense of professionalism. The purpose of Study 1 was to obtain data on
nonverbal communication cues and elements used by mediators, based on the METTA framework. Data was collected on the importance of the mediator’s introduction, preferred choice of mediation room layout, and appearance of the mediator. These findings are relevant in their own right, but also serve as a complement to qualitative data obtained as part of the overall thesis project. Specifically, before exploring the pedagogy and observing the use of nonverbal communication in practice (Study 2 and 3), specific nonverbal cues and elements needed to be identified. The results from Study 1 met that need.

This study provided important information towards creating a deeper understanding of what are the nonverbal communication cues and elements used by mediators. This was the main guiding question of this thesis. This question and the additional questions detailed in the beginning of this chapter were answered by the respondents and thus has provided an understanding of mediators’ overall view of nonverbal communication, their perception on the importance of the mediator’s introduction, as well as their preferences with regard to specific micro cues and elements that can contribute to developing rapport, building trust, and displaying professionalism.

The results of this study indicate that nonverbal communication is a very important part of mediation and that the introduction is a crucial moment for the mediator in building trust and rapport. Handshaking is a common part of the greeting, and seating arrangements where the parties are close to the mediator, but separate from one another, are preferred. For developing rapport, eye contact, warmth, and listening were the most commonly employed behaviors, while a cold attitude, displays of bias, and providing opinions were considered to hinder the development of rapport. The top three nonverbal
cues used by mediators were eye contact, head nodding, and smiling, while mediators avoided folding their arms, showing bias with body movement, and frowning. Differences among mediators in different practice areas and geographic regions pertained largely to room arrangement and mediator attire.

Although the main topic of this thesis is nonverbal communication used by professional mediators, the findings may be applicable to other professionals who rely on communication, such as negotiators, ombudsmen and ombudswomen, and conflict coaches, and those who rely on interpersonal skills, developing rapport, building trust, and displaying professionalism in order to be effective in their role. Considering the macro skills of developing rapport, building trust, and displaying professionalism are important to many professions, the findings in this study connecting the micro cues associated with each are equally important. This study has revealed the gestalt nature of the micro cues and elements that work in a gestalt like nature that can create (or hinder) them and thus allows professionals to be more aware of their use of the micro skills as well as being aware of the skills used by others.
CHAPTER 5. Study 2: Interviews with Educators

Introduction

The previous chapter presented data from Study 1, a survey of nearly 400 practicing mediators that identified nonverbal communication cues and elements that contribute to developing rapport, building trust, and displaying professionalism. This chapter presents the second study in this thesis, which involves interviews with individuals who are responsible for teaching mediation skills. The aim of this study was to determine whether and how the nonverbal cues and elements identified in Study 1 are taught to mediators as part of their professional education.

This chapter further contributes to addressing the main research question of this thesis- what are the nonverbal communication cues and elements used by mediators? This study also addressed the following additional questions presented in Chapter 1 (p. 10):

- What are mediators taught with respect to nonverbal communication?
- How is the mediator’s introduction perceived with respect to its importance and how is it taught?

Method

The sample selection for this study as well as the details of the data collection was described in Chapter 3 (pages 81 and 87 respectively). The sample for Study 2 ($N = 11$) was limited specifically to gatekeepers of the mediation profession. The gatekeepers, or key informants, were a selection of professors and trainers responsible for teaching new mediators. Face-to-face interviews were conducted. The interviews were semi-
structured with respect to 13 topics to gauge the insight of the gatekeepers with respect to the three macro skills and nonverbal communication.

Results and Discussion

Ethnographic research, specifically through the use of interviewing, allows participants to provide detailed answers that can facilitate a greater understanding of the study topic (Czarniakawska, 2004). As described above, due to the nature of this qualitative data, the results and discussion are combined in a narrative format where key similarities and differences can be described.

Audience and Mediation Model

The composition of the audience varied somewhat among participants. Of the 11 participants, six teach law school students while the other five teach students enrolled in a mediation training program that instructs students on mediating in community mediation centers, courts, and private practice.

Seven key informants stated that their instructional method is based on a facilitative mediation model, one uses a transformative model, while the other three offered less traditional answers in explaining their models: interest based; elicitive, directive, and problem solving; and value based. The main mediation practice models are described in detail in Chapter 2 in the section on mediation.

After naming their approach, many of the respondents stated that their training methods include aspects of other models as well. For example, four participants (M3, F3, F6, and F7) explained that aspects of their training method related to transformative mediation although this was not the main model taught. Participant M4 included aspects
of facilitative and transformative models. Table 5.2 lists the audiences and mediation models for all 11 participants.

Table 5.1

<table>
<thead>
<tr>
<th>Audience</th>
<th>Mediation Model</th>
</tr>
</thead>
<tbody>
<tr>
<td>M1 Mediation clinic/law school</td>
<td>Transformative</td>
</tr>
<tr>
<td>F1 Mediation clinic/law school</td>
<td>Facilitative</td>
</tr>
<tr>
<td>M2 Mediation clinic/law school</td>
<td>Facilitative</td>
</tr>
<tr>
<td>F2 Mediation clinic/law school</td>
<td>Facilitative</td>
</tr>
<tr>
<td>M3 Basic mediation training</td>
<td>Interest Based</td>
</tr>
<tr>
<td>F3 Basic mediation training</td>
<td>Facilitative</td>
</tr>
<tr>
<td>M4 Basic mediation training</td>
<td>Value-based</td>
</tr>
<tr>
<td>F4 Basic mediation training</td>
<td>Facilitative</td>
</tr>
<tr>
<td>F5 Basic mediation training</td>
<td>Facilitative</td>
</tr>
<tr>
<td>F6 Mediation clinic/law school</td>
<td>Facilitative</td>
</tr>
<tr>
<td>F7 Mediation clinic/law school</td>
<td>Elicitive, directive, problem solving</td>
</tr>
</tbody>
</table>

The Role of Nonverbal Communication

Each participant was asked if an individual segment of instruction is dedicated specifically to nonverbal communication. Only one participant responded in the affirmative. Among the 10 who responded “no,” six commented that their segments on listening include discussions on nonverbal communication. Participant F2 reported that her course includes a segment on nonverbal communication, taught by a guest lecturer. Participant M2 stated that his segment on the comparison of martial arts and mediation contains information about many elements of nonverbal communication.
While most participants do not devote a specific segment of their course to nonverbal communication, all 11 agreed that nonverbal communication is an important aspect of mediation. Participant M4 stated:

*Nonverbal communication has a definitive role in every means of communication. [Nonverbal communication] plays a role in how the mediator responds to the parties and plays a role in how the mediator interprets what’s important to the parties and what is going on emotionally with the parties. I let [the students] know the large percentage of communication that goes across is nonverbal and how mindful they have to be of that, and therefore sensitive to how they are reacting to the party.*

Participant F7 stated that nonverbal communication was “essential” and added the following:

*I highlight the importance of [nonverbal communication] in the beginning and then through the work we do. We not only talk about the substance but we talk about what we observed. The important thing is I think nonverbal communication is essential, I think it’s really like 80% of meaning.*

Table 5.2 summarizes the findings on the role of nonverbal communication and whether a specific unit of instruction is devoted to the subject.

<table>
<thead>
<tr>
<th></th>
<th>Role of Nonverbal Communication</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Is it taught as an independent subject?</td>
</tr>
<tr>
<td>M1</td>
<td>No, but is discussed during other segments including Attending.</td>
</tr>
<tr>
<td>F1</td>
<td>Active Listening has its own segment, 90 minutes, includes lots of role-playing.</td>
</tr>
<tr>
<td>M2</td>
<td>Not an individual segment but incorporated throughout the course. There is a one-hour segment on communication and the martial arts that includes many nonverbal elements.</td>
</tr>
</tbody>
</table>
While nonverbal communication was described as being important, 10 out of 11 participants do not teach it as an independent segment of the course material. However, as the interviews progressed, it became apparent that references to nonverbal communication are pervasive throughout participants’ training sessions. Participants’ responses to questions about the role of nonverbal communication fell into two main categories: one related to the mediator’s actions and the second related to the mediator’s awareness of the nonverbal actions of the parties involved in mediation.

Nonverbal communication cues and elements can contribute to developing rapport, building trust, and displaying professionalism. Nonverbal communication can also convey the main pillars of mediation: neutrality, impartiality, and self-determination.
Participant F1 explained that while nonverbal communication can display each of these qualities, it could also display biases that contradict them. This finding is consistent with findings in Study 1 showing that the same nonverbal cue can have a positive or negative effect on trust and rapport based on whether there is bias in the use of the cue toward one party or the other.

Many participants reported including discussions of nonverbal communication in lessons on listening. Participant F5 explained:

*The first thing I teach that I think addresses nonverbal communication is that I talk about the levels of listening. I talk about empathic listening versus filtered listening. I spend a lot of time on that at the beginning [of the training]. I want [the trainees] to notice how they are sitting there judging—listening with judgment [thinking] ‘does this sound right?’ [or] ‘does this sound wrong?’ I say [to the trainees] you are never going to be able to hide that; you cannot hide that nonverbally, I don’t care how perfect your reframes are, you will never hide you are being judgmental because it will come out in your tone of voice, it’s going to come out in the way you hold your body, it’s going to come out in the inflection of how you re-arrange your words. Even if the reframe is fine on paper, the way you said it came off judgmental, you can’t hide it.*

Another aspect of listening taught to the students is observing the parties and their use of nonverbal communication. Participant F6 explained that she teaches her students that much information about the emotions and attitudes of the parties is displayed by their body language and the mediator needs to be aware of it.

Another aspect of nonverbal communication relates to emotional contagion, whereby the mediator’s nonverbal communication has an impact on the parties. For example, if the mediator’s actions are anxious it can have negative consequences on the mediation session as it can affect the parties’ actions (Knapp, Hall, & Horgan, 2013). Participant F5 reported that this situation could occur during the initial greeting, creating a mood of tension and anxiety. She added that providing a positive welcome and a
calming presence is not easy for a mediator, as it requires the mediator to know how to manage his or her own anxiety or nervousness.

Although participant M1 does not teach a specific segment on nonverbal communication, his segment on attending includes a wide range of nonverbal elements:

We focus a lot on being present in a particular way. The term we use is to attend. The first thing we teach the student is to attend to the parties. Attend means listening very carefully, look at the speaker, respond to the speaker, pay attention to all kinds of cues, body language, anything that is conveyed... really on the micro level.

Interestingly, M3 deviated from the consensus by stating that nonverbal communication could be considered an advanced practice and was not necessarily suitable for new trainees. An additional reason he shared is that a substantial amount of information on the basics of mediation needs to be covered, resulting in insufficient time to discuss nonverbal communication. This comment is inconsistent with the main argument of this thesis, which asserts that nonverbal communication cues and elements are a vital component of mediation.

While the majority of participants do not devote a specific section of their course instruction to the topic of nonverbal communication, they recognize its importance. Many include the topic in segments on listening. In the context of mediation, listening involves many nonverbal elements that can also be considered aspects of active listening. Based on the central argument of this thesis, instructional segments on listening could be improved by emphasizing the relationship between specific nonverbal cues and listening, as demonstrated in the literature on conflict resolution (p. 35).
Rapport, Trust, and Professionalism

Previous research has identified developing rapport, building trust, and displaying professionalism as key skills of effective mediators (p. 26). The central argument of this thesis asserts that these outcomes are accomplished primarily through the use of nonverbal communication. In Study 1, specific nonverbal cues and elements were identified. In Study 2, the importance and inclusion of these cues and elements in mediation instruction was investigated. In this section, the three skills of developing rapport, building trust, and displaying professionalism are discussed together because there is a significant degree of interconnectedness among them, and the various nonverbal cues and elements discussed in this thesis can apply to more than one of these skills. Table 5.3 provides an overview of participant responses relating to rapport, trust, and professionalism.

Table 5.3

Instruction on Rapport, Professionalism, and Trust in Mediation Courses and Trainings

<table>
<thead>
<tr>
<th>Rapport</th>
<th>Trust</th>
<th>Professionalism</th>
</tr>
</thead>
<tbody>
<tr>
<td>M1</td>
<td>Described as &quot;attending.&quot; It is built in the beginning of the mediation.</td>
<td>Causing contributes to trust; checking-in.</td>
</tr>
<tr>
<td>F1</td>
<td>Created during the mediator's introduction; uses the term &quot;connection.&quot;</td>
<td>It is built by being responsive to the parties</td>
</tr>
<tr>
<td></td>
<td>Not addressed explicitly but the concept comes up during debriefs.</td>
<td>Is first developed during the mediator's opening statement. Appropriate questioning builds trust.</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>F2</td>
<td>It is addressed specifically; it is related to the mediator being happy and not reactive. Being non-judgmental contributes to developing rapport.</td>
<td>Trust is built with rapport by not judging, not making assumptions, and keeping their reactions in check.</td>
</tr>
<tr>
<td>M3</td>
<td>Not addressed by name but is part of listening, especially in the beginning of the session.</td>
<td>Trust is developed when the mediator is competent, when the parties can rely on the mediator to help and support them.</td>
</tr>
<tr>
<td>F3</td>
<td>Being non-judgmental allows the mediator's actions to build rapport.</td>
<td>Trust building begins in the very beginning; during the greeting and the opening statement.</td>
</tr>
<tr>
<td>M4</td>
<td>Refers to the word &quot;engagement.&quot; The mediator has to act in a way that makes the parties feel comfortable. Rapport is not as intense as engagement.</td>
<td>Trust is built by the mediator’s actions.</td>
</tr>
<tr>
<td>F4</td>
<td>Rapport needs to be built in the beginning and persist throughout the session. Neutrality contributes to rapport.</td>
<td>Is closely connected to rapport. Trust is predominantly built during caucus.</td>
</tr>
<tr>
<td>F5</td>
<td>It is addressed specifically and is &quot;super&quot; important. She teaches filtered listening, which removes judging.</td>
<td>Trust and rapport building are synonymous.</td>
</tr>
<tr>
<td>F6</td>
<td>Not addressed by name but rather its elements: greeting people, small talk, acknowledging feelings, and summarizing.</td>
<td>It is connected with listening and showing empathy while listening.</td>
</tr>
</tbody>
</table>
A theme that emerged from the participant responses is that although developing rapport, building trust, and behaving as a professional were identified as important skills, there was no uniform approach to teaching these skills, particularly in regard to the nonverbal cues and elements that contribute to each. Participants referred to these skills using varied terminology. In addition, while state courts provide the guidelines and approval for mediation courses, including what topics must be covered, trainers are permitted to design their own courses. This situation may contribute to the apparent lack of uniformity in instruction regarding developing rapport, building trust, and displaying professionalism. Creating standards for mediation instruction, including standardized language around rapport, trust, and professionalism, may increase awareness of the importance of these skills, not just among students but also among the profession as a whole.

Standardization should be based on the science of mediation and current research. However, this does not have to be accomplished to the detriment of mediation as an art form (i.e., applying knowledge in a manner unique to one’s own style and based on the context). Just as students acquire knowledge and then apply it in their own particular way, knowing the science of developing rapport can provide trainers and professors with information that can be taught according to their unique model of instruction. Rapport, trust, and professionalism can be framed in a manner that promotes each as key skills of...
effective mediators while including their related nonverbal communication cues and elements. By framing the subject in this way, the universality of what makes a mediator effective is promoted, while providing specific cues and elements that contribute to the development of these skills. Importantly, this framework allows for professors and trainers to teach the subject according to their preferred style and instructional approach.

**Rapport.** Throughout the interviews, respondents shared that creating rapport was often addressed in each of the trainings or courses but the word itself was not necessarily used. Instead of explicitly using the word rapport, key informants utilize words such as “attending” (M1), “connection” (F1), “engagement” (M4), or “affinity” (F7). Although these words were used in place of rapport, each can be considered interchangeable based on their description. A noted exception to this was participant M4 who stated that rapport is too much of a “social thing” and that engagement is a more fitting description of what mediators attempt to do during a session. However, based on M4’s definition of engagement, an argument can be made that he is, in fact, describing rapport, which has been defined as mutual attention, positivity, and coordination between two interactants (Tickle-Degnen & Rosenthal, 1990). Participant M4 defined engagement as:

> [The mediator] acting in such a way that the parties feel comfortable, [are] communicating, and also feeling like they are listened to and are willing to listen upon a response that you actually have a connection- a constructive positive connection... you know as far as engaging.

Five of the 11 participants described rapport as being established at the beginning of the mediation session. Participant F1 explained:
An opening statement is an opportunity to develop rapport with the parties. It's your first opportunity to develop rapport with parties; and so it should be used that way. You should be trying to inspire a connection...

Participant F7 also referred to the role of introduction and connection in developing rapport but also included summarizing:

*We teach the pieces of rapport, starting with greeting people; small talk, you know the kind of stuff... basic courtesies, acknowledging feelings. Summarize, letting people know you heard them.*

As explained by multiple participants, rapport includes the mediator acting in a manner that displays warmth. Participant F5 summarized this and included the importance of displaying neutrality:

*By being confident, by being personable, by being friendly, by being open, setting a tone that you want to hear [what the parties have to say] - not that you’re not neutral. I think neutrality goes underneath building rapport, you know, that they trust you’ll hear their side. Not that you’re going to be, you know a robot- a robot mediator who’s reading off the checklist of things they need to say in the opening. There are so many things that go into building rapport.*

The gestalt of rapport, trust, and professionalism is reflected in the words of participant F4. She stated that neutrality and competence contribute to both rapport and professionalism:

*I think a lot of the skills that go with building rapport go with building professionalism: maintaining neutrality, demonstrating that you are not biased to either party, being able to demonstrate some knowledge of the issue. At least demonstrate that you know the language and that you have a grasp of the language I think is really important.*

Many participants taught similar nonverbal cues and elements related to rapport, such as the introduction and non-judgmental actions. However, most instructors did not refer specifically to rapport, but rather the actions related to rapport. This suggests a deficiency in current instructional methods for mediators, especially in light of survey data from Study 1 describing the views of mediators on specific actions that contribute to
developing rapport. Nonverbal communication and rapport development is addressed at varying moments, but it never takes center stage.

**Trust.** Instruction on building trust was more consistent and established compared to instruction on rapport. The participants did not mention parties having trust in the mediation process as the focus of the study was with the mediator’s actions that developed trust between him or her with the parties. A degree of trust in the process can be argued as having already been established with the parties as they agreed to participate in the mediation session. Further, when a mediator is able to develop trust the trust is in both the mediator and the process of mediation.

Participants F4 and M1 described trust being developed during the caucus with each party. According to F4:

*I focus on training students really in one-on-one conversations, how to demonstrate active listening in a one-on-one conversation. I actually think you build the most trust during a caucus; not that you can’t build trust [though] in a joint session. You can build or destroy trust during a caucus.***

Participant M1 shared a similar opinion regarding building trust during the caucus:

*That is where [during the caucus] you really get a sense they trust you, they tell you all kind of things that are very intimate and very private and they trust you are not going to convey it to the other side. [There’s] a lot of checking-in, about the process, about how they’re doing, [this] helps with trust building.*

Another specific moment where the mediator can develop trust is during the introduction. Participant M2 stated:

*We come back to the [opening statement] a lot—and that’s the nonverbal piece—because [the opening statement] sets the tone. That’s where the rapport comes in. First impressions can be really important. If you are projecting a certain poise, a certain calm, a certain professionalism in that room, you’re starting off*
on the right foot. You are more likely to engage people and build trust. We talk a lot about building trust throughout the mediation. That is really huge.

Participants reported that the mediator being able to develop trust is crucial to conducting an effective mediation and that the process begins early in the mediation session. However, as with nonverbal communication, trust is addressed during different parts of the courses and training sessions rather than in a specific segment of the course that is devoted specifically to that topic.

**Professionalism.** Amongst the three skills that are possessed by effective mediators, professionalism may be the most ambiguous in terms of how it is displayed. Based on the interview responses, participants do not teach professionalism by name, yet they clearly teach many aspects of what could be considered professionalism. A working definition of professionalism, grounded in the feedback provided by participants, is: possessing knowledge of mediation skills and being able to appropriately apply these skills during the mediation session. Professionalism also includes being able to build rapport and develop trust with the parties through verbal and nonverbal actions and environmental factors.

Many participants talked about competence, which is related to professionalism. Competence includes various nonverbal cues and elements such as tone of voice, appearance, being prepared, and demeanor. When M2 was asked to explain how a mediator’s competence is connected to professionalism and, specifically, to being prepared, he replied:

*It’s about competence; we don’t necessarily frame it as professionalism but it is about competence. We tell them you need to be prepared mentally in the room and you need to be prepared in terms of the opening statement... rehearsed to the point where you get it to be second nature; in your words, you want it to be natural.*
Beyond that [professionalism] is what you project. The students are facilitative so they don’t need to be subject matter experts and we don’t want them at all evaluating. The competence is more that they don’t come across as deer in the headlights, that they come across as calm and that they are there to help [and] they won’t get rattled when things don’t go smoothly.

This explanation of professionalism, framed in the context of competence, could provide a useful universal definition. Professionalism entails knowing the required skills of a mediator and then knowing how to use them appropriately based on the context of the situation. The role of competency connects the micro nonverbal communication cues and elements with neutrality (being neutral is an example of professionalism in mediation). A mediator is said to be neutral, or not choosing “sides” during the session. Additionally, the literature review and Study 1 established the micro nonverbal cues and elements associated with developing rapport and building trust between the mediator and the parties. Neutrality can be displayed when those nonverbal actions (eye contact and body direction/orientation for example) are equally displayed with both parties yet it can be diminished when it is perceived as occurring with one party compared to the other.

As mentioned previously, a more standardized approach to training and instruction on rapport, trust, and professionalism in mediation should include standardized definitions of these terms that reference current research on the topic.

Participant F1 reported that mediators need to be calm in order to display professionalism, that what is needed is:

...[a] calm, confident, connected delivery and not to seem unsure or insecure of what they are saying. They should be comfortable to handle questions from the parties during the opening statement and be able to observe the nonverbal communication of the parties so that if someone does something [nonverbally] they can modify what they are doing to be responsive to parties.
The ability of the mediator to be calm and confident contributes to another aspect of professionalism, as reported by M2 and F2: not reacting or being drawn into verbal attacks and emotionally charged statements. This is consistent with findings from Study 1 showing that mediators need to avoid becoming frustrated, angry, and impatient.

Multiple informants shared comments that linked professionalism to rapport and trust. However, while participants shared anecdotally how nonverbal cues create rapport, build trust, and display professionalism, a concise method of teaching these nonverbal cues is lacking. Creating a more structured approach for explaining these connections may help students understand the interconnectedness of these skills and use them in role plays and mediation sessions.

Participant F7 shared how she believed rapport and trust are attributes that fall within the broader scope of professionalism:

*With all of the things [I] said about nonverbal [including] rapport and trust, to me professionalism is overarching. [Professionalism] is the skills of how does one actually learn how to build rapport, how does one build trust?*

Participant F4 also viewed developing rapport as contributing to professionalism, including maintaining neutrality, being unbiased, and understanding the jargon associated with the dispute. Participant F6 confirmed that trust, rapport, and professionalism are interconnected in terms of the actions that promote them:

*It’s the little things that both communicate you are in charge and you (both mediators) are professionals and also establish we are taking care of you. You establish trust and begin to make rapport.*

Participant F2 linked professionalism to the actions of the mediator during the caucus. She stated that during a caucus, a mediator might be tempted to move beyond a neutral approach and behave as a “buddy” to the party. She emphasized that this should
be avoided because, among other reasons, it undermines professionalism. Participant F4 commented on the importance of the caucus in building trust. However, F4 reported that a more informal approach, where the mediator is more expressive, is desirable for building trust but at the same time has a negative impact on building professionalism. This contradiction can be explained based on varying mediator preferences and individual styles. An informal approach may provide opportunities to further develop rapport and trust. This can be the case so long as concerns about professionalism and neutrality are addressed by the mediator when he or she offers a clear description of their role and ensures that their actions are not contributing to a perception of bias.

Participant M4 explained that he avoids the term *professionalism* due to connotations of power. However, his statement could be interpreted as being consistent with the concept of professionalism:

*I think maybe I don’t use it because it connotes power? It connotes a sense of knowing more, knowing better. As it relates to trusting, you don’t need to call yourself professional to gain trust at the table, you do that by your actions. So, you know, [professionalism] is not such an important aspect, I mean there is a certain integrity inherent in being a mediator- that belies professional.*

It can be argued that professionalism necessarily involves power. Mayer (2000) stated that power is a part of conflict and that the real issue is not whether it exists, but how each participant will use it. Power in professionalism means applying skills with the goal of guiding and helping the parties. In mediation, power is in the form of control. To a certain extent, the mediator controls the entire mediation process, but this does not have to negatively impact the self-determination of the involved parties (an important pillar of mediation). Rather, the mediator’s power can be displayed through explaining the process, guiding the session, and a certain amount of charisma. Charisma includes being
able to motivate and influence a person through warmth, power, and presence (Fox Cabane, 2012). Charisma may be helpful for creating a collaborative environment, one that is conducive to the parties negotiating and arriving at a suitable resolution.

Participant M4 stated that trust is displayed through the mediator’s actions. Professionalism can be described as the appropriate use of actions based on the context of the situation. The integrity that M4 referred to can also be framed in terms of professionalism. M4’s reference to the two macro terms of trust and professionalism being interconnected is not limited to him or at the macro level. Participant M4 states trust is created when a mediator is acting in a professional manner. Many participants detailed how each of the three macro skills are linked together and further explained how many of the micro nonverbal cues and elements contribute to the development of each macro skill.

Displaying a professional presence was also linked with the appearance of the mediator. Participants reported that a mediator’s choice of clothing contributes to professionalism and needs to be appropriate. The appropriateness of the mediator’s outfit depends on the context of the mediation and where the mediation session is occurring. This is further explained in the section on appearance (see below) and, notably, corresponds to the survey data from Study 1 showing that mediators consider certain attire to be more appropriate than others based on the type of mediation.

While sharing many nonverbal cues and elements, professionalism, as described by the participants, differs from building rapport and trust. Rapport and trust are affective skills, while professionalism is connected with displays of competence. Displaying professionalism includes appearance, possessing a skill set, and being able to
effectively deliver and articulate a message. Professionalism complements the building of rapport and trust as it allows the mediator to guide the mediation session based on those two tools. As described earlier in this chapter, fundamental tenets of mediation, such as neutrality, are created or diminished by the mediator’s nonverbal communication.

The Mediator’s Introduction

Many participants described the mediator’s introduction as an important part of the mediation session. This is consistent with the literature related to this issue (Moore, 2014, p. 98). This opinion is also consistent with the survey data from Study 1, in which 98% of respondents stated the introduction was important. As described in the previous section, multiple interview participants reported that the mediator’s introduction is an opportunity for developing rapport. Table 5.4 presents an overview of participant responses regarding the mediator’s introduction. Based on the responses, the introduction can be viewed as serving two important roles. The first is described as affective, relating to building rapport and trust, while the other role is substantive and explanatory. These descriptions fit neatly into the view of an association between professionalism, rapport, and trust, because professionalism involves the effective use of the cues and elements of rapport and trust.
Participant M2 described how the mediator could accomplish both the affective and substantive tasks while explaining that the introduction sets the tone for the rest of the session:

*Like everything else, it has to be a reflection of the position that [the mediator] plays in the [mediation session] and the relationship you want to create.*

Participant M2 explained that the approach a mediator takes is one of neutrality and guiding the parties. The relationship involves the mediator assisting the parties by actively listening, exploring options, and helping the parties identify potential solutions. Participant M2 added that a mediator’s nonverbal communication could enforce his or

<table>
<thead>
<tr>
<th></th>
<th>Role of the Mediator’s Introduction</th>
</tr>
</thead>
<tbody>
<tr>
<td>M1</td>
<td>It is important; it explains the process while also de-emphasizing the dominant role of the mediator.</td>
</tr>
<tr>
<td>F1</td>
<td>It is vital as it inspires, builds rapport and trust. Its importance changes, however, based on context.</td>
</tr>
<tr>
<td>M2</td>
<td>Flexibility is important, as there are many things to cover while the mediator also has to be &quot;in the moment.&quot; It sets the tone. It builds rapport, professionalism, and trust.</td>
</tr>
<tr>
<td>F2</td>
<td>An &quot;incredible amount of time&quot; is dedicated to the introduction. It expresses the mediator's knowledge and allows the mediator to connect with the parties.</td>
</tr>
<tr>
<td>M3</td>
<td>It plays an important role to &quot;set the tone of the rest of the mediation.&quot;</td>
</tr>
<tr>
<td>F3</td>
<td>Trust building begins during the introduction; it allows the mediator to display transparency while also covering the key points of mediation.</td>
</tr>
<tr>
<td>M4</td>
<td>It is an opportunity to explain the critical elements of mediation and develop rapport. Self-determination is stressed, seeks to create comfort.</td>
</tr>
<tr>
<td>F4</td>
<td>The parties don't care, however it is important for students to grasp it. Jargon should be avoided.</td>
</tr>
<tr>
<td>F5</td>
<td>It is a key moment where rapport is built although important topics need to be covered too. Display confidence, be personable, friendly, and set a tone for the rest of the mediation that you are there to listen.</td>
</tr>
<tr>
<td>F6</td>
<td>Rapport and trust are built by maintaining self-determination of the parties. The mediator needs to be clear and transparent.</td>
</tr>
<tr>
<td>F7</td>
<td>It plays two varying roles, one for the parties and the other for the mediator. It is the only constant and structured part of the mediation. It explains the process and also builds trust and rapport.</td>
</tr>
</tbody>
</table>
her verbal comments when describing the importance of self-determination, while
displaying the impartiality of the mediator.

Participants revealed that what they teach is not always consistent with what they
believe to be the most effective way to mediate. Participant F4’s personal approach to
the introduction is not what she teaches her students, as explained in this candid and
humorous comment:

>You know, a lot of people really think their introductory statement is important, I
don’t think the parties really care (as she lets out a loud outburst of laughter). I
think practically speaking, they don’t care much about my opening statement.
I mean do you read the opening credits of a movie? Not really, you want the
movie to start (as she starts laughing yet also noticeably she crossed her arms at
her chest displaying what seemed to be a batonic like gesture emphasizing her
point of the lack of attention the parties give to the introduction).
(Now returning to a serious tone) I think it matters for the mediator, because I do
think it builds an air of professionalism... I think it is helpful in building
professionalism. I make my students memorize their opening statements so they can say it (she
begins snapping her fingers signifying an instantaneous ability to say the
introduction). I think it is important for them to feel comfortable enough with the
words that they are speaking so they can just get into mediator mode and they’re
not thinking about having to give a speech and being nervous about giving a
speech- that’s not the point. The point is for them to mediate, not give a speech.

Although not the topic of this thesis, it is worth pointing out that F4’s use of
analogy (waiting for a movie to start) serves as an illustration of the verbal techniques
that a mediator can use to help create understanding. Use of narrative may help the
parties involved in mediation relate to the topic based on something with which they are
more familiar.

Many participants mentioned rapport, trust, and professionalism in the context of
the mediator’s introduction. Participant F6 stated:

>I think it is important for building rapport, for building trust, for introducing
yourself. Not so much what’s in there, not so much what you say, as [compared
to] the tone. Being transparent- I think it’s really important to be clear. It’s like
when you go to the doctor... don’t assume just because you explained the process anybody understood it.

The introduction also plays an important role for novice mediators. Participant F7 explained that the structured design of an introduction can give a new mediator confidence, as the rest of the mediation session is often very fluid and can go in many directions. This is important because, as previously mentioned, the emotional state and actions of the mediator can dictate the overall mood and tone of the session through emotional contagion. Previous research has shown that the initial interaction (in this case, the mediator’s introduction) is the most accurate situation for judging affective skills (Ambady et al., 2000), that first impressions are based overwhelmingly on nonverbal communication (McMahon, 1976), and that first impressions last throughout the interaction (Andersen, 2008). Therefore, it is not surprising that many participants placed such a strong emphasis on teaching students the purpose and impact of the mediator’s introduction.

Environment

Participants were asked to describe the ideal environment for a mediation session. Many pointed out that the reality is quite different from the ideal, giving examples such as having to mediate in hallways, mediating in rooms where others frequently wander in to eat their lunch or make photocopies, and not having a choice of tables or chairs. Not surprisingly, factors such as a room that is free of disturbances and the ability to choose their own type of table were often part of their ideal design.

Eight of the 11 participants indicated a preference for a round table (Table 5.5). This is in contrast to the survey results in Study 1, where the majority of respondents preferred a conference table. One explanation for this discrepancy is that interview
participants were asked to consider their response from the perspective of an ideal situation, while the survey question asked about the most appropriate setting. Participant F4 explained the advantages of using a round table:

To try and establish equal footing in the discussion, if I put them around a rectangular table facing me, they’re not going to talk to each other. My whole goal is to get them to talk to each other. I’m not going to solve their problem; they are going to solve their problem and they are not giving a presentation to me, I’m not a judge.

On the other hand, participant F1 explained that a rectangular table could increase the confidence of a new mediator. Sitting at the head of the table may contribute to feelings of competence and may assist with guiding the mediation process. This confidence may affect the parties in a positive manner through the process of emotional contagion, as described above in regard to the mediator’s introduction. The confidence generated by the seating placement can contribute to displaying professionalism, put the mediator at ease, and make the mediator feel ready to build trust and rapport with the parties. An overview of responses to interview questions about the mediation environment can be found in Table 5.6.

**Shaking Hands**

Research has demonstrated the importance of first impressions and their impact on how people are judged by others (Ambady et al., 2006). Shaking hands, a customary greeting in western cultures for business and professional settings, can be an important element in the initial greeting during a mediation session. Participants were asked whether they addressed the issue of shaking hands during the greeting in their course or training program (Table 5.5). Participant M3 offers this advice to his students on how to shake hands:
I say to [the trainees], you are making the first impression and they are important. So, if you are going to shake hands (he begins to laugh and acts out with an imaginary counterpart), it should be a nice firm handshake, looking the person in the eye, acknowledging them. Again, you tailor that [based on the context].

On the other hand, participant F2 explained that a welcoming greeting does not necessarily include shaking hands:

Touching people [through] shaking hands is a nice thing. Typically, my own routine is to not shake hands when I begin because I don’t know the people- I do a gesture (as she leans forward, first bowing slightly and then another gesture tilting her body and head slightly forward) that could be a bow, but depends on the people. It’s kind of a nod. You see it in a lot of people, a sort of acknowledgment.

Interview participants generally noted two considerations in deciding whether to shake hands: (1) be aware of cultural differences and (2) display neutrality by either shaking the hands of all parties or not shaking hands at all. An overview of responses to interview questions about shaking hands can be found in Table 5.5.

Appearance

Two themes emerged from participant responses to questions about the mediator’s appearance: the context of mediation and displaying respect (Table 5.5). Displaying respect relates to developing rapport and building trust. Understanding the context relates to professionalism, where the mediator understands the demands of the mediation context and applies the appropriate elements (in this case, attire) to that situation. Participants also shared that the mediator’s appearance should not diverge too much from that of the parties. The majority of participants felt that appearance is an important part of being an effective mediator and can connote a professional presence. This professional presence can then contribute to building trust and establishing rapport.

Participant F3 stated:
[Dressing in business casual] tells the parties I recognize this is important, I’m providing a service, I’m at work. It also impresses upon [the parties] that you take it seriously. This isn’t something casual, not in the playground. (In a deadpanned sarcastic manner) This is not playground mediation. These are important issues to these people.

Participant F5 explained the connection between professionalism and the mediator’s clothing:

There is something at that level [of dressing] that needs to set the tone of ‘I’m here, I’m professional, I’m respectful and I’m not intimidating. Again it comes down to you want to give the feeling that we are working, that I’m accessible. You want to give the feel that I’m not doing this in my backyard, I actually care, I’m a professional, I have credentials, and I have spent many years honing this craft, and I am taking your case very seriously.

In contrast, participant M4 felt that the mediator’s clothing should not convey professionalism: “In some ways it also speaks to not being seen like a professional, not as someone with power.” An overview of responses to interview questions about appearance can be found in Table 5.5.

<p>| Table 5.5 |
| Environment, Handshake, and Appearance |
| Environment | Handshake | Appearance |
| M1 | Parties choose where to sit. A table is important but the type is up to the parties. | Yes, mediators should shake hands with the parties. | It is addressed based on setting. Creates a level of calmness for the parties. Displays respect as the parties expect a certain appearance (a suit in certain settings). It varies based on context. |
| F1 | Round tables; they are more intimate and encourage informality. Rectangle tables can give confidence to new mediators. | Dependent on culture. Does not recommend students do it. | Tells the students they need to dress appropriately. For court, business casual; dress as if they are going into a law office. |
| M2 | Quiet place and a round table. A round table creates balance. The mediator needs to set everything up and be &quot;really conscious about the environment.&quot; | Not addressed during the course, however generally it would be appropriate. | It is addressed briefly. A professional appearance is expected but not like a corporate lawyer. |</p>
<table>
<thead>
<tr>
<th></th>
<th>The ideal includes a room where the tables can be rearranged to make different shapes. There is value to different shapes. She &quot;likes circles&quot; but cannot be too big or small.</th>
<th>It is discussed as part of the cultural norms segment. Does not tell them to shake hands at the beginning but cautions if they do, shake everyone's hand.</th>
<th>Context dictates the mediator's clothing. In court the expectation is for the mediator to dress like a lawyer while that could be off-putting in the community center setting.</th>
</tr>
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<tbody>
<tr>
<td>M3</td>
<td>The ideal room is neutral in décor, free from distractions. Round tables are preferred as it removes the sides.</td>
<td>It is discussed in relation to cultures; emphasizes if you shake one party's hand, do it with all.</td>
<td>It is not talked about as much as other training topics but the mediator's appearance should match that of the parties.</td>
</tr>
<tr>
<td>F3</td>
<td>Mediators should prepare the room ahead of time, choose their seat and make sure supplies (pen, paper) are available. Parties should choose their own seat; a table should be used.</td>
<td>It is culturally based but generally suggests that the mediator should offer their hand.</td>
<td>She advises her trainees to dress in business casual for their mediation sessions. This displays the mediator is taking the case seriously, they are at work and providing a service.</td>
</tr>
<tr>
<td>M4</td>
<td>Round table, parties should feel comfortable with chairs and space. A round table removes edges, everyone is working together.</td>
<td>Does not address it-leaves it up to the mediator's choice.</td>
<td>Trainees are told that a formal outfit is not necessary and can connote power. The mediator's appearance should not be seen like a professional.</td>
</tr>
<tr>
<td>F4</td>
<td>A round table, mediator sitting closest to the door. The round table creates equal footing, to get the parties talking to each other.</td>
<td>Advises the mediators to shake the hands of the parties (first if there are also attorneys).</td>
<td>Appearance is important, dressing as if you are approachable, not a &quot;stuffy suit.&quot; Appearance should match that of the parties.</td>
</tr>
<tr>
<td>F5</td>
<td>A round table, mediator sitting closest to the door. The round table creates equal footing, to get the parties talking to each other.</td>
<td>Encourages mediators to shake hands with the parties.</td>
<td>It is important; a suit is not appropriate for most cases, look respectful but not intimidating.</td>
</tr>
<tr>
<td>F6</td>
<td>A round table is preferred and having the parties sit next to each other. Having water, tissues, and snacks available, this communicates taking care of people.</td>
<td>Encourages the mediators to shake hands with the parties.</td>
<td>It is based on context and location of the mediation. For court, the students are lawyers and should dress like one. Appearance should make the mediator feel confident and comfortable while also showing the parties respect.</td>
</tr>
<tr>
<td>F7</td>
<td>A round table is preferred and having the parties sit next to each other. Having water, tissues, and snacks available, this communicates taking care of people.</td>
<td>Does not address it specifically but rather how does the mediator extend openness, accessibility, and warmth.</td>
<td>It is addressed in terms of ensuring it displays respect towards the parties.</td>
</tr>
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</table>

**Specific Nonverbal Cues**

During the course of the interviews, participants shared examples of specific nonverbal cues they use in practice with respect to certain situations, such as when they...
are expressing interest or developing rapport with the parties. Participants were also asked about specific nonverbal cues that are taught in their courses or training programs. Their responses are shown in Table 5.6.

**Table 5.6**

<table>
<thead>
<tr>
<th>Nonverbal Cues Taught to Students</th>
<th>Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>M1</td>
<td>Equal eye contact, &quot;call out&quot; actions of the parties. &quot;Listening&quot; is an important segment for the mediator to pick up more than the words being spoken.</td>
</tr>
<tr>
<td>F1</td>
<td>Active listening includes eye contact, forward leaning, nodding your head, and paralanguage.</td>
</tr>
<tr>
<td>M2</td>
<td>Projecting being calm, patient, being very good listeners in an active way- eye contact, reflecting, summarizing, posture.</td>
</tr>
<tr>
<td>F2</td>
<td>Posture, smiling, arm placement, and leaning forward is referenced, as are many cues during the guest speaker's lecture such as eye contact and gestures.</td>
</tr>
<tr>
<td>M3</td>
<td>Voice tone helps &quot;set the tone&quot; during the opening statement, hands being visible, a firm handshake with eye contact, and congruence with the mediator's words.</td>
</tr>
<tr>
<td>F3</td>
<td>She literally will pull back from the table to let the parties talk; make sure her body trunk faces one party while she looks at the other; and eye contact with both parties while listening.</td>
</tr>
<tr>
<td>M4</td>
<td>Eye contact, being attentive and connected, positioning, voice tone.</td>
</tr>
<tr>
<td>F4</td>
<td>Being aware of specific cues of the parties: sighs, crossed arms, legs, eye contact or lack of it, more than the words spoken.</td>
</tr>
<tr>
<td>F5</td>
<td>Non-judging listening is displayed in the mediator's tone and body language.</td>
</tr>
<tr>
<td>F6</td>
<td>Explains how various sitting postures give different impressions and the importance of establishing a baseline of the parties.</td>
</tr>
<tr>
<td>F7</td>
<td>Specific gestures and actions are addressed during debriefs to get the student to reflect on when they do them, are they aware of what they are doing and why.</td>
</tr>
</tbody>
</table>

The responses reveal certain repeated cues such as eye contact, postural orientation, facial expressions, tone of voice, and head nodding. These results are consistent with previous research on developing rapport (Ambady & Rosenthal, 1992; Ambady & Rosenthal, 1998; Bernieri et al., 1996; Chartrand & Bargh, 1999; Grahe & Bernieri, 1992; Tickle-Degnen & Rosenthal, 1990) and with survey results from Study 1. These findings suggest that instructors may find it valuable to teach about and display
nonverbal cues while instructing students on how to build rapport. Importantly though the instructors must first have a clear understanding of the use and impact of nonverbal communication cues and elements is required prior to sharing it with students.

What Makes a Good Mediator

Participants were asked to describe the qualities of a good mediator by completing a sentence that begins with “A good mediator is...”. The answers varied (Table 5.8); however, many related to overall themes of an awareness of what is going on in the moment and genuinely wanting to help the parties being served. Awareness is necessary when mediators check in with themselves and the parties during the session and when they reflect on the session afterwards. Checking in with themselves refers to taking a moment to reflect on what they are doing to ensure, for example, that they are not being biased towards one party. Checking in with the parties allows the mediator to see how the parties are doing and whether they have any questions or general comments about how the mediation session is progressing. The attribute of genuinely wanting to help the parties is displayed through various nonverbal cues and elements that develop rapport, build trust, and display professionalism.

<table>
<thead>
<tr>
<th>Key Informant Response</th>
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</thead>
<tbody>
<tr>
<td><strong>M1</strong> Pays careful attention to what the parties are saying, doing, and how they are interacting with each other and responds to whatever presents itself in the mediation room with a lot of flexibility based on what's happening in the room.</td>
</tr>
<tr>
<td><strong>F1</strong> Someone who cares more about understanding what parties want for themselves than they do about asserting what they would want for parties... is truly in the moment with parties when they come in.</td>
</tr>
<tr>
<td><strong>M2</strong> Is patient, empathetic, and a good builder of trust.</td>
</tr>
<tr>
<td><strong>F2</strong> Likes the mediation on many levels- practically, the idea of it, and the challenge of it.</td>
</tr>
</tbody>
</table>
Participant F3’s reply demonstrates that a mediator’s awareness can display a genuine interest yet it does not include the negative attribute of being judgmental. She concluded the sentence, “interested in the parties and does not seek to judge them or resolve their dispute but rather help them have a more productive conversation.”

This participant’s responses further illustrate the interconnected nature of the three macro skills and their reliance on a cluster of nonverbal communication cues and elements.

**Conclusion**

Qualitative analysis is concerned with the quality of information. An advantage of using a thick narrative approach is that the insight is obtained directly from the words of participants (Murchison, 2009). A disadvantage of this approach is the abundance of information and having to decide what to include and what to omit in the analysis. This requires the researcher to bring his or her self into the research, a process that is referred to as reflexivity (Creswell, 2007; Moustakas, 1994).

Researchers must acknowledge reflexivity when sharing information (Creswell, 2007) and, importantly, must engage in a constant internal self-reflective practice during
data collection and analysis. In this study, the researcher engaged in self-reflective practice while developing the interview questions, during the interview process, and while seeking relevant information from the data. This process was assisted by referring to survey data from Study 1, the literature review (see Chapter 2), and the METTA framework. This practice helped keep the focus of the research from deviating away from the main topic of exploring nonverbal communication.

The participants in this study are key informants who represent the mediation profession. Their influence extends well beyond their individual opinions because they are responsible for training mediators. This chapter offered a thick narrative explanation of the questions detailed in the introduction. A thick narrative explained how mediation professors and trainers view the role of nonverbal communication in mediation sessions. Their responses provided insight into how they teach various cues and elements of nonverbal communication to students and which topics are not specifically taught. The key informants also provided their insight into the role of the mediator’s introduction. Although each of the participants offered a unique reply to the questions, common themes emerged from the responses.

In regard to what makes an effective mediator, one theme that arose from participant responses was maintaining a level of awareness through checking with oneself and the parties. This process, also described by participants as reflection, includes being aware of verbal and nonverbal cues and elements.

In regard to the importance of nonverbal communication, only one participant devoted a specific segment of their instruction to that topic. However, all participants reported that nonverbal communication was an important aspect of mediation. Many
included the topic of nonverbal communication in segments on listening. However, by serving as a contributor to segments rather than being presented as a distinct topic, the importance of nonverbal communication can easily be diminished or overlooked.

In regard to specific nonverbal cues, many participants reported that in their courses and training programs, students are encouraged to show genuine interest in assisting the parties by, among other things, the appropriate use of nonverbal cues. Participants identified several nonverbal cues, such as eye contact, facial expressions, and tone of voice that can display a genuine desire to help. Previous research has shown such cues to assist in developing rapport, and these cues were also noted in the survey results from Study 1. However, the responses from interview participants suggested that displaying a genuine desire to help is taught as part of debriefing (discussions that take place after a mediation session) or through feedback sessions after role playing with students and is not connected to developing rapport.

Previous research has shown that rapport, professionalism, and trust are key skills of effective mediators (see Table 2.1, p. 26). Overall, these three skills play an important role in the courses taught by interview participants. One participant reported avoiding the term *professionalism* in his instruction as it raises negative connotations of power. However, his response emphasized competence, which is an important component of professionalism. This is an example of how the concepts of rapport, trust, and professionalism are taught through different approaches by the various instructors and trainers.

Another example of variation in approach is the teaching of building rapport and trust. Few participants used the term specifically, but attributes of rapport were evident
in many responses. The development of rapport was often included in discussions of the mediator’s introduction, which was described as “important,” “vital,” and as a “key moment” for developing rapport. Trust was described by many participants as being closely linked with rapport and professionalism. Participants teach their students that a mediator builds trust by listening in a non-judgmental manner and by being responsive to the parties.

Professionalism was often linked with the appearance of the mediator. However with respect to the significance of the mediator’s appearance and what outfits are appropriate, responses varied widely. For example, one informant felt the mediator should not look like a lawyer (M2), while another stated that the mediator should look like a lawyer (F2). These opposing views provide evidence that mediation instruction is inconsistent with regard to mediator appearance.

Based on the responses in this study, certain conclusions and recommendations can be made. First, the teaching of nonverbal communication, specifically rapport, could be enhanced by addressing the term rapport directly. Based on the extensive literature on the importance of developing rapport and its role in effective mediation, it is surprising that this topic is not specifically addressed in mediation training and instruction. Consideration should be given to incorporating this topic, along with the relevant research, into the design of mediation courses, including the specific nonverbal (and verbal) cues that can be used to develop rapport.

Second, given that developing rapport, building trust, and displaying professionalism often involve the same nonverbal cues and elements, addressing nonverbal communication in a specific segment of instruction could aid in teaching
students about the critical skills of effective mediators. The METTA framework can provide guidance and assistance with designing a comprehensive course segment on nonverbal communication and its role in rapport, trust, and professionalism.

Third, the results of this study revealed a lack of uniformity in mediation training and instruction, including a lack of focus on the key skills of effective mediation - rapport, trust, and professionalism, and their corresponding nonverbal cues and elements. While a single, identically structured method of teaching mediation is not necessarily being suggested, consistency with respect to the three main skills, including a segment specifically on the impact of nonverbal communication, could benefit mediation students. These recommendations should be tested in future studies.

The information provided by participants in this study, in the context of the METTA framework and the results of Study 1, provides a basis for the third study of this thesis: the observation of actual mediation sessions. The third study is addressed in the next chapter. In this way, data has been obtained regarding (1) what mediators say about the role of nonverbal communication and mediation, (2) how instructors teach nonverbal communication in the context of mediation, and (3) what mediators are actually doing in practice. This approach allows for triangulation of the data and a deeper understanding of the overall research topic.
CHAPTER 6. Study 3: Observation of Mediation Sessions

Introduction

The third study of this thesis, observation of mediation sessions, completes the triangulation of the research for this thesis. Study 1 explored the perspectives of mediators regarding the importance of nonverbal communication, their preferences with regard to nonverbal cues and elements, the mediator’s introduction, and specific actions to use or avoid during a mediation session. Study 2 explored how mediators are taught (or, in some cases, not taught) about nonverbal communication and mediation skills that correspond with rapport, trust, and professionalism.

This study further contributed to the main research question of what are the nonverbal communication cues and elements used by mediators as well as the following additional questions that were presented in Chapter 1 (p. 10):

- What are mediators actually doing with respect to nonverbal communication during mediation sessions?
- How is the mediator’s introduction presented during actual mediation sessions? Are mediators using certain micro cues and elements to develop rapport, build trust, and display professionalism?

This study, as well as the previous two studies, was framed through semiotic analysis of the METTA framework to answer the research questions. Together, the results of the three studies offer a detailed understanding of the role of nonverbal communication with respect to the three main skills of effective mediators: developing rapport, building trust, and displaying professionalism.
The purpose of Study 3 was to connect the information obtained in the first two studies with the behaviors of mediators in practice. The purpose was not to identify discrepancies among results from the three studies or to determine whether the mediators being observed are competent or effective. Rather, the study allowed for exploration of the concepts of espoused theory and theory in use. Argyris and Schön (1974) explained that there are differences between what people say they do (espoused theory) and what they actually do (theory in use). Research on negotiators and mediators has shown that discrepancies between what is said and what is done are present in conflict resolution (Charkoudian et al., 2009; Goldberg, 2005; Goldberg & Shaw, 2007; Butts & Kressel, 2006; Schneider, 2002; Williams, 1983).

This chapter begins with a review of previous research pertaining to nonverbal communication and thin slice methodology that is directly relevant to this study. The previous two studies are discussed to explain the relevance and significance of the specific nonverbal cues and elements being explored in Study 3. In addition, information from Study 1 and Study 2 contributed to the design of a unique coding sheet for Study 3 that was grounded in previously established coding procedures.

**Previous Research**

The METTA framework and subsequent development of the METTA coding sheet for this study were based on coding schemes created for other studies. One scheme that had considerable influence was that used by Babad (1999, 2005). In these studies, nonverbal cues used by college professors and television interviewers were rated by third parties according to whether they gave a positive or negative impression. The purpose
was to “uncover the molecular determinants of global impressions” (Babad, 2005, p. 299). Table 6.1 presents Babad’s list of nonverbal cues.

<table>
<thead>
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<th>Table 6.1</th>
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<tbody>
<tr>
<td><strong>Nonverbal Cues from Babad’s Studies</strong></td>
</tr>
<tr>
<td><strong>Face</strong></td>
</tr>
<tr>
<td><strong>Head</strong></td>
</tr>
<tr>
<td><strong>Hands</strong></td>
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<tr>
<td><strong>Body</strong></td>
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<tr>
<td><strong>Changes</strong></td>
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<tr>
<td><strong>Global</strong></td>
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<tr>
<td><strong>Voice</strong></td>
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</tbody>
</table>

Developing rapport, building trust, and displaying professionalism are skills of effective mediators that are displayed primarily through nonverbal communication (see Table 2.1, p. 26). Previous research has employed a variety of methods and coding schemes to identify the specific cues and environmental designs that contribute to rapport, trust, and professionalism. Such methods include self-reports, reports from other interactants, independent raters, and combinations of these. Hall (2010) added three more options: naïve raters, trained coders, and instrumentation. Hall cautioned that option selection needs to be based on the particular aspects of nonverbal communication that are being explored and should be guided by “theory rather than formulas or by past traditions” (p. 4). The research for this thesis was designed from a semiotic perspective to ensure that all relevant nonverbal cues and elements related to rapport, trust, and professionalism were considered. This perspective informed the design of the METTA coding sheet for this study. Numerous options exist for exploring and coding nonverbal communication. For example, research on smiling could include “smile frequency,
frequency separately while listening versus speaking, rate of smiling, total smile duration, smile duration per smile, smile intensity, and different kinds of smiling” (Hall, 2008, p. 4).

Grahe and Bernieri (1999) explored dyad rapport by collecting self-reports from two interactants in a laboratory setting. In addition, they trained raters to measure rapport between interactants based on 25 cues, including being expressive, using gestures, posture shifts, smiling, leaning forward, mutual eye contact, pointing, adaptors (unintentional gestures or nonverbal actions that can be associated with stress, anxiety, or discomfort), orientation, back channel responses, and nervous behavior. The authors concluded that nonverbal behavior was more important than verbal behavior in the expression and communication of rapport.

Ambady and Rosenthal (1993) used trained independent raters to explore macro and micro nonverbal behaviors in thin slices of teacher-student interactions. The macro nonverbal behaviors were: active, competent, empathic, honest, likable, professional, confident, warm, honest, and enthusiastic. Micro nonverbal behaviors included frowning, touching the head, gazing down, leaning forward, fidgeting with hands, nodding head, fidgeting with object, laughing, and smiling. Teachers with higher positive ratings were judged to be more optimistic, confident, dominant, active, enthusiastic, likable, warm, competent, and supportive on the basis of their nonverbal communication.

Murphy (2005) coded thin slices for smiling, nodding, eye gazing, self-touching, and gesturing demonstrating thin slice’s methodology accuracy compared the results to

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10 Thin slice methodology is the process of taking small segments of an interaction between individuals to describe an individual’s personality traits, internal states, social relations, and interactive motives.
coding of the entire interaction. The findings showed moderate to high positive
correlations between the coding of the thin slices and the entire interaction. The five
nonverbal behaviors that were coded were gaze, smile, gestures, nods, and self-touches.

Ambady et al. (2006) used thin slices to explore salesperson personality,
motivation, trustworthiness, and affect. The study included independent raters judging 19
traits, including collaborative, emotional, warm, enthusiastic, empathic, influential,
professional, and self-controlled, based solely on the salesperson’s tone of voice. The
authors reported that people make judgments unconsciously, yet such judgments affect
their behaviors and decisions. A related study by Kelly and Caplan (1993) found that
sales managers who were described as “stars” by their co-workers were more skilled at
developing rapport using their interpersonal and affective skills than managers described
as “average.”

Nonverbal sensitivity (Elfenbein et al., 2007) and engaging in small talk prior to
the start of negotiations (Nadler, 2004) has been correlated with better-negotiated
outcomes. Nadler (2004) reported that rapport was rated higher when negotiators
engaged in brief, face-to-face conversations prior to the start of negotiations compared to
the conversations taking place via speakerphone. The conversation, or small talk, was
also linked to higher cooperation during negotiation. Small talk contains numerous
nonverbal cues and elements, and mediators use small talk during mediation sessions
(Elfenbein et al., 2007).

Conveying calmness, displaying warmth, active listening, and nonverbal cues of
speech that is fluid, friendly, and without disfluencies can display professionalism.
Displays of professionalism can be assisted by additional nonverbal cues such as eye
contact, gaze, and tone of voice and cues involving the face, arms, legs, trunk, and hands. D’Augelli (as cited in Matsumoto et al., 2012, p. 82) reported that participants who nodded and smiled while listening to another participant talk about their problems were rated by third parties as warm and understanding. Beck, Daughtridge, and Sloan (2002) performed a meta-analysis of physician-patient outcomes and reported that specific cues, such as head nodding, forward leaning, direct body orientation, uncrossed arms and legs, and head nodding, were connected to positive outcomes.

Various studies have reported that nonverbal communication cues contribute to negative displays of emotions that, in the context of this thesis, may diminish rapport development, trust being built, and the display professionalism. For example, Maccario (2013) reported that negative behaviors, such as throat clearing, facial flushing, sweating, voice and body trembling, changes in voice pitch, rigid body posture, minimal body movements, and repetitive or exaggerated grooming gestures, can diminish professionalism. Other studies have reported on specific adaptors that hinder social interactions (Ambady & Rosenthal, 1993; Babad, 1999; Ekman & Friesen, 1971).

Nonverbal aspects of speech, grouped under “tone” in the METTA framework, can also lead to negative ratings. In research by Hall, Roter, and Rand (1981), judges rated physician’s voices in terms of anger, anxiety, and other affective aspects. Anxiety has been correlated with speech disfluencies, nervous mouth movements, and fidgeting (Egloff & Schmukle, 2002). Anxiety and fear have also been associated with speech disturbances, pauses, and stutters (Harrigan, Suarez, & Hartman, 1994), yet pauses have been connected with a person deep in thought (Greene & Ravizza, 1995). These findings demonstrate that the context of the situation plays a pivotal role. In the present study, the
mediator’s introduction represents a situation where the mediator is sharing information while attempting to build affect. In this context, the findings of Hall et al. (1981) and Harrigan et al. (1994) are more relevant because the mediator should be able to deliver their introduction with no or minimal speech disfluencies.

Research in conflict resolution that focuses on rapport, trust, and professionalism has generally been limited to surveys. For example, Wade (1999) surveyed mediators about the skills and attributes of experienced mediators. Poitras (2009) explored how mediators build trust by surveying parties involved in mediation. By contrast, the research for this thesis addresses some of the limitations that exist with surveys by also incorporating key informant interviews and mediation session observations.

The present study employs the thin slice methodological approach, as detailed in Chapter 3 using the mediator’s introduction. The introduction was selected for multiple reasons. Research has shown that the initial interaction is the most accurate source for thin slices (Ambady et al., 2000), and in the context of mediation, it has even greater relevance. The introduction plays an important role in terms of information gathering and affect-building. The three macro skills being explored in this research, developing rapport, building trust, and displaying professionalism are part of an effective mediator’s introduction. Professionalism relates to the informational portion of the introduction, while rapport and trust are based on affect. Informational and affective aspects of the introduction do not operate separately or independently; rather, they work in a complementary and gestalt manner and a lack of one can have a detrimental effect on the other.
Professionalism entails explaining key elements of the mediation process such as the stages of mediation and the role of the mediator. Verbal aspects are important and should not be disregarded; however, the scope of this research is limited to exploring nonverbal cues and elements.

The design of Study 3 was informed by the findings from Study 1 and Study 2. Both studies provided guidance on what to look for during the mediator’s introduction in Study 3 with respect to cues related to rapport, trust, and professionalism.

Method

The sample selection for this study as well as the details of the data collection was described in Chapter 3 (pages 82 and 89 respectively). Study 3 involved utilizing ethnographic research tools where mediators (N = 10) were observed in order to code the nonverbal communication cues and elements they used. In total 18 mediations sessions were observed.

Rater Reliability and Credibility

Prior to beginning the study and the observations, a video of a mediator introduction was coded by the researcher and an experienced mediator and trainer, separately, using the METTA coding sheet. Coder inter-reliability was achieved by discussing any differences in coding between the two coders and reaching an agreement on how the item should be coded. The credibility of the observer (the author) for this study is based on FACS certification; practical experience as a mediator; conducting research on nonverbal cues associated with rapport, trust, and professionalism; conducting research on the skills of effective mediators; and conducting the two studies
(Study 1 and Study 2) that provided a foundation for the present study. See Appendix A, p. 261, for detailed researcher credentials).

Results and Discussion

Ethnographic research, specifically observations, can provide more accurate information about nonverbal cues and elements than self-reports (Burgoon, Stern, & Dillman, 1995). Self-reports can be biased and may contain random inaccuracies (Bernard, Killworth, Kronerfield, & Sailer, 1984). The observations and the coding sheet provide insight into specific mediator behaviors during the introduction that relate to developing rapport, building trust, and displaying professionalism.

This section presents the results, which are discussed in the context of the METTA framework. Providing the results and analysis jointly is consistent with qualitative research methodologies as described in Chapter 3. This refers to presenting the information in a thick description where the perspective of the group being observed is filtered through the eyes of the ethnographer (Creswell, 2007; Van Maanen, 1998). For this study it is the mediators’ nonverbal communication cues and elements that are being observed and they are filtered with the METTA acronym.

Similar to Study 2, the results and discussion are combined in a narrative format where key similarities and differences can be described. Study 2 engaged key informants to provide, via their own words, the context and motivations for why they did or did not teach the three macro skills and nonverbal cues and elements. This study, through observations, provided the mediators’ actions rather than their own words. This method of presentation is consistent with qualitative research as the format that has been selected does not limit itself to simply providing the data in aggregate form but rather it is both
descriptive and interpretative (Murchison, 2009). This format lets the reader know what happened in the environment under observation by providing meaning to the actions (Genzuk, 2003).

**Movement**

Nonverbal cues or actions made by the mediator accounted for the most coded items on the coding sheet. Nonverbal cues included a range of movements involving the head, hands, trunk, and legs. Table 6.2 displays the cues observed for each case.

Each mediator performed batonic and open-handed gestures. Batonic gestures, a type of illustrator gesture, are hand movements that help the speaker articulate what they are saying and occur “primarily for rhythmic purposes” (Mendoza-Denton & Jennedy, 2011, p. 268). Batonic gestures aid the speaker and the listener, providing a flow to the speaker’s conversation that can display comfort and ease while helping the listener understand what is being said. When a mediator uses this type of gesture in the context of the introduction, it can convey to the parties that the mediator is comfortable and at ease with the mediation process, which may contribute to building rapport and trust and displaying professionalism.

The majority of mediators used open-handed gestures; none of them pointed or used closed-handed gestures. The lack of pointing gestures is consistent with findings from Study 1, where survey participants listed pointing as an action to be avoided during mediation. Pointing can be interpreted as confrontational and accusatory, which would be expected to hinder efforts to build rapport and develop trust.
### Table 6.2

**Movement Coding of Mediation Observations**

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<th>case #</th>
<th>gender</th>
<th>gestures</th>
<th>gesture type</th>
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<th>baseline^</th>
<th>posture</th>
<th>orientation</th>
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<th>head nod</th>
<th>head shake</th>
<th>head tilt</th>
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<td>neutral</td>
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</tr>
</tbody>
</table>

^ = baseline of the position of the hands. A= resting on table, B= hands resting on top of each other on table; C= hands on lap, D= hands vertical together on table, E= hands on arm rest, F= hands folded resting on stomach, G= finger tips on table's edge, H= one hand on lap, one on table
^ ^^ did not speak and therefore was not coded
* = 1-5 scale based response. 1= frequently pointed, 5= never pointed.
The majority of mediators kept their hands visible during their introduction. Hiding one’s hands can have a detrimental effect on the display of professionalism and confidence. In a study of posture and confidence, non-confident people sat with their hands hanging loosely between their legs, leaning forward and therefore drooping their shoulders (Carney, Cuddy, & Yap, 2010). When the hands are in the lap, it prevents the use of open-handed gestures that can contribute to rapport. In Study 1, survey respondents listed open-handed gestures as a specific nonverbal action they perform during mediation sessions. The gestalt nature of nonverbal cues, the absence of one gesture does not necessarily diminish rapport. However, identifying individual cues allows for analysis of the contribution of each to developing rapport, building trust, and displaying professionalism.

**Posture and orientation.** Although Andersen (2008) asserted that “crossing one’s legs is associated with positive, affective interpretations such as friendliness and relaxation” (p.147), it is worth considering this action in the context of mediation. If a mediator crosses his or her legs during the initial stages of the mediation session, this relaxed posture could diminish the sense of professionalism. In the present study, the majority of mediators did not cross their legs during the introduction.

During the introduction, the mediators predominantly faced forward (directionally straight, based on the way they were sitting and how the seat was arranged), rather than facing one party or the other or changing their body orientation as they spoke. Sitting in this manner can contribute to the notion of mediator neutrality. Additionally, considering the mediator is the one speaking during the introduction, there may be fewer tendencies to face either party, as neither party is speaking. Changing posture while talking may
also be cumbersome as the mediator is concentrating on the information being conveyed in the introduction.

**Eye contact and head movement.** All but two of the mediators shared eye contact, or gaze, with each of the parties. Two mediators were observed looking at one party more than the other. Looking at one party more than the other can contribute to perceptions of favoritism by either party. The person receiving less eye contact may feel the mediator is not listening or paying as much attention to them, while the person receiving more eye contact may believe the mediator is siding with them. Failing to maintain equal gaze during the introduction can create an impression of partiality that becomes reinforced due to confirmation bias, regardless of the mediator’s intentions or awareness of their actions. This bias refers to an initial perception of the mediator as being partial towards one party based on their actions and then the mediator’s continued actions throughout the mediation are viewed by the party as further contributing (or confirming) to this perceived bias.

In Study 1, eye contact was listed prominently in terms of nonverbal cues used by mediators that build rapport. Lack of eye contact was listed as an action to avoid. In the present study, during co-mediation sessions, the mediator who was not giving the introduction was often engaged in looking over or filling out paperwork. A study of doctors demonstrated that patients were less satisfied with doctor visits when the doctor spent more time reviewing the patient’s medical records than making eye contact (Guerrero & Hecht, 2008). Other studies reported similar findings with respect to doctors and patients: the more eye contact a doctor made, the more patients shared information and trusted the doctor (Gorawara-Bhat & Cook, 2011; Mechanic & Meyer, 2013;
Montague, Chen, Xu, Chewning, & Barrett, 2013). These findings suggest it may be worth considering what the co-mediator does while the other is speaking.

Looking down at notes and writing reduces eye contact and could generate confusion, suspicion, or fear that the mediator is evaluating the parties, since they would have no idea what the mediator is writing. This impression would be expected to diminish rapport and trust while also conveying a lack of professionalism, as the mediator can be perceived as not being prepared. If this situation occurs due to time constraints and paperwork needing to be completed, the mediator might consider explaining to the parties what they are doing to avoid any misperception. The co-mediators who were observed writing provided no such explanation. Simply explaining what he or she is doing can remove this confusion or misinterpretation.

With respect to head movement, nodding, shaking, and head tilt were coded. Head nodding can be perceived as positive and affect building when used effectively, as it can display agreement with what is being said and demonstrate understanding. Head tilting can also be positive and affective as it can be used to demonstrate active listening. Mediators who were observed nodding their heads did so while they were speaking. For example, while stating that mediation is a confidential process, mediators nodded their head in a batonic manner, further emphasizing the confidential nature of the proceeding. This nonverbal method of affirming what is being said can connote control of the process. Controlling the mediation process was listed as a positive attribute of mediators in the first study.

It was not surprising that the mediators did not tilt their head, as this is associated more closely with listening rather than talking. Considering the mediator was the one
speaking during the introduction, the opportunity to tilt their head while listening did not arise. Head shaking was also not observed. Head shaking can be negative as it can appear as judging, disagreeing, or wanting the person to stop talking (Knapp, Hall, & Horgan, 2013; Kendon, 2002). However, it could be used in a positive manner. For example, while explaining the difference between mediation and having the proceeding decided by a judge, head shaking while mentioning the option of using a judge could emphasize the benefits of using mediation to settle the dispute.

**Environment**

The physical environment influences a mediation session and can “affect an individual’s thoughts, emotions, and behavior in a variety of ways” (Andersen, 2008, p. 335). During the mediation sessions at the community center, the mediators had a choice of rooms. In the one instance where a room with a circular table was available, the mediator selected it (the sole case in the Manhattan center). The other options were rooms that contained a large rectangular table, small rectangular table, or couch and chairs. In each of those cases, the mediators selected the large rectangular table. This finding is consistent with the data from Study 1 showing that mediators in the United States prefer rectangular tables for community mediation.

A highly visible seating position can contribute to control of the interaction, influence over the other parties, and the efficient monitoring of responses (Andersen, 2008). Therefore, it is important for the mediator to select the appropriate seat for a mediation session. In each mediation session where a rectangular table was used, the mediator(s) sat at the head of the table, which is consistent with the results of Study 1 and Study 2. This occurred regardless of whether the mediation was conducted by one
practitioner or two. In each case, the mediators sat closest to the door. This is consistent with a statement made by one of the participants in Study 2, who explained that this is done for the safety of the mediator.

The seating distance between parties is also important. If the mediator is seated closer to one party than the other, it can give the impression of partiality, which violates an important tenet of mediation—neutrality. Further, based on the research of Cook (see Knapp, Hall, & Horgan, 2013, p. 145), seating arrangement played an important role in each of the three studies for this research as it can demonstrate perceived collaboration or competitiveness between people. The mediators frequently spent time setting up the room to ensure there was water and writing materials for the parties; however, in the majority of observed cases the mediator did not ensure that the chairs were placed at an appropriate distance from where the mediator would sit. As a result, the parties often sat at different distances from the mediator due to environmental factors and not by choice. The difference was noticeable to the observer yet, at the same time, the spatial distance was not substantial enough to yield different scores on the sheet, except for one case.

The mediators were observed ushering the parties into the room and asking them to sit on either side of the mediator, but other than one instance where the mediator asked the party to move to a closer seat, the parties sat where they wanted on their respective sides. Not only can this imbalance hinder rapport and trust building, it also displays a lack of professionalism in regard to the mediator not preparing the room adequately.

Flexibility is an important trait for a mediator. Mediators must occasionally mediate in settings that are not ideal, such as small rooms that have multiple mediation sessions occurring simultaneously, or in courthouse hallways. This last example
presented itself during one of the mediation observations. Due to lack of room
availability, the mediation session took place in the court hallway. Although this might
seem odd and arguably unprofessional, experienced mediators accustomed to mediating
in courts are likely to be familiar with this situation. In this instance, the mediator’s
actions were professional, despite the arguably non-professional setting. However, the
mediator was observed to produce more pauses and “ums” compared to his other case
that was observed in a mediation room. It is unknown whether this observation was due
to the setting, but it may have been related to the increased stress and discomfort
associated with the location of the session in the hallway.

Chronemics. An important nonverbal element within the “environment”
category of the METTA framework is the concept of chronemics, or the study of time,
with respect to the length of the mediator’s introduction. Certain statements must be
included in the introduction, such as explaining the mediation process, confidentiality and
exemptions to it, the role of the mediator, and the self-determination aspect of mediation.
The issue of time allotted to the introduction has yet to be explored empirically within the
context of mediation. This study looked at how much time was spent giving the
introduction. A portable digital time device was used discreetly during the observation.
The timing device was initiated when the mediator began talking and stopped at the
completion of the introduction; it was paused if the parties asked a question or started
talking during the introduction. The resultant data is shown in Figure 6.1.
The majority of introductions were just over four minutes in length; one was just over 11
minutes and another was 2:41. Including the 11:03 introduction, the mean was 4:26, and
when this outlier was removed, the mean was 4:06. The short introduction occurred
during the mediation session that took place in the hallway. The other introduction by the
same mediator, in a session that took place in a more traditional setting (a room), was just
under five minutes (4:55). The mediator who did the 11-minute introduction explained to
the observer prior to the session (the parties were not present) that she intended to
provide an in-depth introduction. The mediator did not further elaborate on her reasons
for doing so; one possible explanation is that she changed her usual actions because she
was being observed. In other sessions mediated by this same mediator, her introductions
were consistent with the average length.

![Figure 6.1 Time Length of the Mediator’s Introduction (x axis= case number, y
axis= time length of the introduction).]
Several mediators mentioned that they were taught that the introduction should be 3 to 5 minutes in length, which is consistent with the literature (McCorkle & Reese, 2014).

**Touch**

As part of this study, the researcher wished to observe the use of touch, specifically shaking hands, during the initial greeting. Unfortunately, it could not always be determined whether the mediator shook hands with the parties during the initial greeting because, in nine of the 18 observations, the observer was not present when the mediator greeted the parties. For example, in the community mediation center, the observer entered the mediation room but the mediator would go out to the waiting room and greet the parties there and then invite them into the room. In three other cases, as the observer and mediator walked from the waiting area to the session area, the parties were encountered along the way and the mediator greeted them and invited them into the room. In each of these instances, the mediator did not shake hands with the parties. During court mediation sessions, where the observer was able to witness the mediator greeting the parties, no hand shaking took place.

Other aspects of touch explored in this study were leakage, adaptors, and object adaptors. Adaptors are self-touching gestures or movements, while object adaptors involve the use of some type of object such as a necklace, watch, or pen. These actions occur when a person engages in a gesture or movement that is not performed intentionally for the purpose of communicating, but rather is associated with leakage of stress, anxiety, or discomfort (Babad, Bernieri, & Rosenthal, 1989b; Bargh, 1994; Choi, 2006). Fidgeting can communicate anxiety and discomfort and has also been associated
with low status and low power (Andersen, 2008; Carney, Hall, & Smith LeBeau, 2005; Hall, Coats, & Smith LeBeau, 2005). When repeated fidgeting was observed, the effect was a negative rating for professionalism. The theoretical framework for this study posits that adaptors and object adaptors are signs of leakage that can diminish professionalism. This is because leakage can denote nervousness, not being prepared, and uncertainty.

In four observations, the mediators held pens while giving their introductions, but these actions were not coded as object adaptors. To be considered an object adaptor, the mediator had to be observed fidgeting or playing with the pen. Simply holding a pen is not an object adaptor, as the pen is necessary for the mediator to complete paperwork and take notes. In instances where leakage was observed, it was minimal both in duration and frequency among the observed sessions (two cases out of 18). In one instance, the mediator was rubbing/smoothing his hands together while speaking, and in the other instance the mediator fidgeted with his ring and his watch.

**Tone**

The tone category includes several nonverbal aspects of voice such as prosody, paralanguage, and backchannel utterances. The mediator’s tone, either positive or negative, can have a contagious effect on the parties (Lakin & Chartrand, 2003) and thus the tone has a role in each of the three macro level skills. Four qualities of the mediator’s voice (friendly, assertive, expressive, and pauses/ums) were scored on a five-point scale where 1 = great and 5 = poor. The results are shown in Table 6.3.

---

11 Prosody refers to rhythm, stress, and intonation; paralanguage includes voice qualities such as loudness and tempo (Burgoon, Guerrero & Floyd, 2010); and backchannel utterances include short responses such as “hmm” and “mmm” that signal attention (Bavelas, Coates, & Johnson, 2002).
Overall the mediators were rated as being friendly, assertive, and expressive. The notable deviation occurred with respect to pauses and “ums.” These seemed to occur often when the mediator lost track of what he or she was saying. The occasional pause or “um” is not negative and is common during conversations. However, when such utterances become extensive and frequent, they can have a detrimental effect on professionalism, which can, in turn, negatively affect rapport and trust. During the observations, when mediators lost track of what they were saying, or seemingly did not know what to say next, their eye contact would frequently shift down towards the table, accompanied by pauses and “ums.” While the mediators did seem to recover their eye contact with the parties following these pauses, low scores for assertiveness and professionalism were primarily due to frequent use of pauses/ums.

Mediators were also observed uttering “ums” as an apparent unconscious speech disfluency, akin to a period at the end of a sentence. In these cases, the mediator used “um” to differentiate the end of one sentence and the start of a new sentence. This behavior likely occurs unbeknownst to the mediator, and the only way it can be addressed is by having it pointed out. When “ums” are used repeatedly in this manner, it can have a detrimental effect on the display of professionalism as it suggests being unprepared, inexperienced, or possibly unqualified. Previous studies identified by Knapp, Hall, and
Horgan (2013) demonstrated that these type of “fillers” can impair the speaker’s performance, it resulted in negative evaluations, and it gave the perception that the speaker was anxious, angry, or contemptuous. Each is a label a mediator would like to avoid when trying to develop rapport, build trust, and display professionalism.

**Appearance**

With respect to the appearance of the mediator, the outfits chosen by the mediators were consistent with the findings from Study 1. In each case where the mediation session was held in court, the mediator’s outfit fell within the scope of a business suit. In the majority of cases held in the community mediation center, the appearances were more casual in comparison.

For at least one mediator in this study who was observed twice on the same day, the choice of outfit was deliberate: in court he wore a business suit, while at the community mediation center, his attire was more casual. He informed the observer that he deliberately removed his tie and jacket for the latter session because a suit was not considered appropriate for the mediation center setting. In another example, a female mediator was observed wearing a suit for a session at the community mediation center, while for another session she wore a more casual outfit. Unfortunately, there was no opportunity to ask her about the change in her appearance. Finally, in another community center situation, a male mediator was wearing a sports jacket but, prior to sitting down, he took it off and put it on his chair. One possible explanation for this is that taking off the jacket may have signified that the mediator was ready to “get down to business.”
People have a tendency to erect barriers to delineate or claim a space on a shared surface (Smeltzer, Waltman, & Leonard, 2008). In the present study, observations were made regarding whether the mediator placed belongings on the table, such as writing instruments and materials. In every observed session, the mediators placed materials on the table space in front of them. This included folders and requisite paperwork that they are required to complete, such as stipulation forms if an agreement is reached. Additionally, the mediators used a pen as a writing instrument, which was either placed on the table or, as described above, was held during the introduction. Displaying such materials on the table may convey a sense of professionalism, which contributes to developing rapport and building trust.

**Rapport, Trust, and Professionalism**

After reviewing the measures for the items described above, an overall score was subjectively assigned for developing rapport, building trust, and displaying professionalism. The scores were based on a five-point scale where 1 is the highest score and 5 is the lowest score. The scores were determined by considering clusters of nonverbal communication cues and elements rather than a single section of the coding sheet. Scores were assigned after the observations were complete and after reviewing all of the information on the sheet. The overall results (mean and SD of all observations) are shown in Table 6.4.

<table>
<thead>
<tr>
<th>Table 6.4</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Scores for Rapport, Trust, and Professionalism</strong></td>
</tr>
<tr>
<td>Rapport</td>
</tr>
<tr>
<td>Mean</td>
</tr>
<tr>
<td>Standard Deviation</td>
</tr>
</tbody>
</table>
The overall scores for rapport, trust, and professionalism were high. This suggests that the mediators effectively used nonverbal communication to build rapport, develop trust, and display professionalism. Certain actions of some mediators had a detrimental effect on the scoring, resulting in worse scores. This included speech disfluencies (repeated “ums” and “ahs”), speaking for an extended time during the introduction, displaying adaptors, and writing extensively during the introduction (refers to co-mediation sessions where the non-speaking mediator was filling out paperwork).

Scoring low on one aspect did not necessarily result in a reduction of scores for any of the three main skills. Rather, the scoring was subjectively applied as this study was grounded in qualitative research. Although the METTA coding sheet employs scale-based ratings, the ratings were used to capture the nonverbal communication cues and elements used during mediation for the purpose of identifying themes (Walcott, 1990). The scores were not intended to be used to judge the mediators. The subjective scores were based on the scorer’s ability to observe the nonverbal communication, use of the METTA coding sheet, and previous research regarding the contributions made by each of the three macro skills associated with effective mediators. The scoring for this, as well the entire coding sheet, involves a subjective assessment. Given these factors and the small sample size, it is worth mentioning again that this study utilized a qualitative research approach focused on exploring a topic in contrast to stating what should or should not be done based on the actions of those being observed. The scoring was conducted to assist with the fieldwork, frame the observations across multiple participants, and determine if themes were established.
Themes

Qualitative research, specifically ethnography, seeks to identify critical elements and develop plausible interpretations from them. Interpreting data begins once it is collected however when the data is categorized and then analyzed, themes are then able to emerge (Creswell, 2007). Themes rely on coding and the METTA coding sheet allowed the data to be categorized immediately during the observations. Analyzing the coding sheets collectively allowed patterns to emerge and enable the reader to learn from the behavior and actions of the group being observed- mediators (Creswell, 2007; Patton, 2002).

This is the first study to observe the specific nonverbal actions and elements of mediators on this scale. Based on the observations, themes associated with high scores for displays of professionalism, building trust, and developing rapport were identified.

The themes derived from this study are presented and described in Table 6.5. These findings may be useful to mediators, who can review them to understand the connection between their actions and the three main skills of effective mediators. The usefulness of the themes is grounded in being transferable and confirmable (Lincoln & Guba, 1995). Transferability refers to the extent to which the findings can apply to other contexts. Importantly, it is not the task of the researcher claim transferability but instead provide the themes in a manner where the reader is able to make that conclusion.

Therefore the data, analysis, and themes must be presented in a manner that is practical for the reader. Confirmability is linked with the credibility of the research where the data and method of coding is transparent in order for others to see how the themes
were established (Golafshani, 2003; Zhang & Wildemuth, 2009). The METTA coding sheet allowed the phenomena of nonverbal cues and elements to be measured (Winter, 2000). The sheet also allowed the phenomena to be categorized, leading to themes emerging, and with respect to transferability and confirmability, permitting the reader to see how those interpretations were made and their applicability to other contexts.

### Table 6.5

Emergent Themes Based on Observations

<table>
<thead>
<tr>
<th>Theme</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Rarely had any head movements</td>
<td>Head shaking could be perceived as negative and head tilting is linked more with listening.</td>
</tr>
<tr>
<td>2. Had equal eye contact with both parties (unless they were a co-mediator who was not speaking)</td>
<td>Promotes neutrality (thus displaying professionalism), builds rapport &amp; trust</td>
</tr>
<tr>
<td>3. Sat upright yet also noticeably leaned forward</td>
<td>Displays a professional posture yet also engaging</td>
</tr>
<tr>
<td>4. Faced forward and not toward either party</td>
<td>Promotes neutrality (thus displaying professionalism) &amp; is expected as the mediator was speaking, not listening</td>
</tr>
<tr>
<td>5. Used open-handed gestures and gestures that complemented their words</td>
<td>Promotes warmth, engaging dialogues, &amp; helps clarify what is being said</td>
</tr>
<tr>
<td>6. Never pointed</td>
<td>If it did occur, could be considered confrontational</td>
</tr>
<tr>
<td>7. Usually had their hands visible</td>
<td>Non-visible hands could be a distraction as the hands have to move a greater distance to become visible to display a gesture</td>
</tr>
<tr>
<td>8. Rarely displayed leakage</td>
<td>Leakage is connected with anxiety, stress &amp; discomfort so its presence would hinder rapport, trust, &amp; professionalism</td>
</tr>
<tr>
<td>9. Spoke in a manner that was friendly, expressive, and assertive</td>
<td>These contribute to rapport, trust, &amp; professionalism</td>
</tr>
<tr>
<td>10. Had writing materials and instruments</td>
<td>This shows the mediator is taking the session serious</td>
</tr>
<tr>
<td>11. Dressed according to the setting</td>
<td>Dressing appropriately contributes to professionalism</td>
</tr>
<tr>
<td>12. Did not set the room up with respect to the chairs although they did sit at the head of the table and equally apart from the parties.</td>
<td>Despite not setting the seating prior to mediation, the discrepancy did not hinder rapport, trust, and professionalism</td>
</tr>
</tbody>
</table>
The twelve themes that emerged from the observations can impact mediators seeking to develop rapport, build trust, and display professionalism. The themes present nonverbal cues and elements that mediators may want to consider doing and avoiding when attempting to effectively assist the parties to the mediation.

The collection of themes demonstrates how each contains a collection of interconnected micro cues and elements. It is not a single nonverbal cue or element that contributes to a mediator being effective. If qualitative research involves the examination of the “routine” actions and behaviors of the group being studied (Fetter, 1998), these themes provide an in-depth understanding of what makes a mediator effective. The themes, grounded in the previous two studies, provide a guide on specific actions a mediator will want to consider doing and avoiding with respect to being effective.

In order to be effective, the context of how the mediator uses nonverbal communication cues and elements shared in the themes determines its effectiveness (or ineffectiveness). For example, having writing materials present can display the mediator is taking the session seriously. However, if this professional presence of the mediator changes to him or her constantly writing notes and looking down at the notepad, it then diminishes eye contact and can be perceived as the mediator being inattentive or aloof. This displays the gestalt nature of the nonverbal communication micro cues and elements and how each of the themes can help or hinder the development of each of the three macro skills.

Conclusion

In this study, information from the first two studies and the literature was used to design a coding sheet to explore how mediators use nonverbal communication to build
rapport, develop trust, and display professionalism. Based on the coding sheet, important
cues and elements were identified, and based on previous research and Studies 1 and 2,
the following conclusion can be made: the majority of nonverbal cues and elements used
by the mediators contributed to creating rapport, building trust, and displaying
professionalism. Mediators employed many nonverbal cues and elements that have been
shown in previous research to be representative of rapport, trust, and professionalism (see
Table 2.1, p. 26).

It is also important to note the limitations of this study. The role of nonverbal
communication was explored in the context of the mediator’s introduction. The intention
is not to dismiss the impact of verbal messages. In order for a mediator to be effective,
he or she needs to ensure their verbal and nonverbal actions are congruent and contribute
to developing rapport, building trust, and displaying professionalism. In this study, the
results are presented with an emphasis on the fact that these three skills are displayed
primarily (and not solely) through nonverbal cues and elements.

While the mediator’s introduction is important, rapport, trust, and professionalism
can be established or diminished during other moments in the mediation session.
Findings from Study 2 suggest that the caucus may be an important moment with respect
to developing rapport, building trust, and displaying professionalism. Nadler’s (2004)
findings with regard to the importance of small talk for negotiators could be expanded to
include mediators. Time permitting, studies of verbal and nonverbal behaviors over the
entire course of a mediation session could provide important information for academics
and practitioners. Previous research has looked at mediator style, but not nonverbal communication.12

The results of this study showed that the actions of the mediator during the introduction can either 1) promote a professional presence and begin to build rapport and trust, or 2) their actions can hinder this process. These findings can be used by mediation educators to incorporate these concepts into their instruction and training programs. Additionally, mediators can use this information to inform their practice.

For researchers, modifications to the METTA coding sheet could be made to include verbal elements. Adding check boxes next to important elements of the mediator’s introduction can ensure a verbal and nonverbal semiotic analysis is conducted. These elements include explaining the neutrality of a mediator, self-determination of the parties, what a caucus is, the legal enforceability of an agreement, and confidentiality.

The structure of the METTA coding sheet demonstrates the impact of nonverbal cues and elements on a mediation session. It is these “little things” that, collectively, establish the “big things,” the skills of effective mediators: developing rapport, building trust, and displaying professionalism.

In this study, specific nonverbal cues and elements used by mediators in their introduction were identified. Being able to connect specific nonverbal actions with previous research on what makes a mediator effective helps bridge the gap between espoused theory and the theory in use. In addition, the “art” of mediation was observed in this study as individual mediator nonverbal actions and element preferences were explored. Mediators’ actions were analyzed using a scientific approach to remove the
mystery of nonverbal communication and its relationship to the skills that are associated with effective mediators. The hope is that practitioners will be able to apply the science to their individual art and that researchers will be able to apply semiotic analysis to the exploration of nonverbal cues and elements used by mediators.

Establishing themes is a critical element to conducting qualitative research. Although themes emerged from this individual study, reviewing the data collectively from each of three studies enhances the credibility of the thesis. This is because the themes explained in the following chapter are derived from different sources yet were developed for the purpose of understanding the same topic- nonverbal communication used by mediators.
PART III

Part I of this thesis explained the need for the exploration of the role of nonverbal communication used by mediators and how this thesis seeks to contribute filling the gap that currently exists on the topic. Part I also detailed the structure of how this thesis was guided by particular methodologies and how it was designed to approach the topic through three studies.

Part II explored each of those three studies in independent chapters. Study 1 explored the preferences of mediators with respect to nonverbal communication cues and elements, Study 2 explored how mediators are instructed, and Study 3 looked at what mediators do with respect to nonverbal communication during mediation sessions.

Part III of this thesis utilizes the framework that was developed in Part I to analyze the data and results provided in Part II in order to establish themes with respect to nonverbal communication used by mediators. First, Chapter 7 identifies themes and important findings from the three studies and provides insight on how those insights can be applied by practitioners, their relevance for trainers and professors, and their potential impact for future research. Based on the three studies, the chapter establishes the myriad connections between micro nonverbal cues and elements with the three macro skills of effective mediators: developing rapport, building trust, and displaying professionalism.

Chapter 8, the conclusion, reviews the purpose of the thesis, the significance of nonverbal communication in mediation and how the thesis has succeeded in making a unique contribution to the conflict resolution field. The chapter details how the results and subsequent themes can provide guidance for future studies. Further, it discusses the
impact the research, including the METTA acronym, can have beyond the profession of mediation.
CHAPTER 7: Discussion

Introduction

The previous three chapters addressed each of the studies that constituted the current program of research. Each chapter explained the purpose and outcomes of the respective studies. This chapter provides the important next step of presenting a holistic, top-down, collective analysis of the three studies by establishing themes that can only emerge when reviewing the data together. Presenting themes based on data analysis is a critical part of qualitative research (Creswell, 2007; Murchison, 2009; Patton, 2002). The themes shared in this chapter provide a structure to understand the phenomena of nonverbal communication used by mediators.

Qualitative research seeks to come to plausible conclusions after identifying critical elements (Wolcott, 1990). Although each chapter has accomplished this, themes and patterns can only be established after analysis of the data collected via different means (Aronson, 1994). Each study independently offers the data from a survey, open-ended interviews, and observations respectively. This chapter now brings each of the studies together and presents themes based on each as well as drawing on previous research.

The mixed-methodological approach this thesis utilized was designed to explore the role of nonverbal communication and mediators. One advantage to this approach was to identify common themes as a way to further mediators’ understanding of the skills they should possess in order to be effective (Phillips-Pula, Strunk, & Pickler, 2010). This approach also allowed for both quantitative and qualitative data to be collected through a social semiotic process ensuring that all aspects of nonverbal communication were
explored. The social semiotic and qualitative research tools allowed the data to be compiled, with structure provided by the METTA acronym. This chapter looks at the results of the three studies and explains the themes that have emerged as well as the important findings that can be applied to increase mediators’ knowledge of the impact that nonverbal communication has on their ability to build rapport, develop trust, and display professionalism.

Similarly to how mediation has been described as an art and science (Kaufman & Duncan, 1992), the approach of this research involved exploring relevant literature with respect to nonverbal communication with how such communication it is understood, learnt and used by mediators (Cohen & Crabtree, 2006). An ethnographic approach was used, also informed by social semiotics, to ensure the macro skills of mediators were appropriately and accurately explored. Three commonly used methods of ethnography and other qualitative research tools were applied across three studies. The three methods are collection of texts and artifacts (other relevant documents), interviews, and observations (Cohen & Crabtree, 2006; Murchison, 2009). These three represent the methods of data collection used in each of the three studies that create the triangulation of the research as described in Table 3.2 (p. 92).

The use of three studies harnesses the strength of a mixed-methodological approach (Patton, 2002) and provides a thick description (Geertz, 1973) grounded in both its descriptive and interpretative qualities (Murchison, 2009). As previously stated in the methodology chapter, an important element of qualitative research and specifically ethnography is that it does not begin with a hypothesis or attempt to create a theory, at least not from the onset (p. 66). Instead, it asks a question or explores a topic.
This research project and each of its three studies was drive by a question—what are the nonverbal cues and elements used by mediators? This question was explored through three studies to identify, with respect to nonverbal communication, what mediators stated their preferences were, what they were or were not taught, and what they actually do. It has been argued that the three macro skills of effective mediators are developing rapport, building trust, and displaying professionalism and that the role of nonverbal communication has not been adequately recognized. Further, it argued that each macro skills is primarily created through nonverbal communication cues and elements.

**Research Questions**

In order to explore this phenomena to ensure all nonverbal elements and cues as well as all perspectives are accounted for, the following additional questions helped further guide the exploration of the primary research question of what are the nonverbal communication cues and elements used by mediators? The additional questions were:

1. What is the mediator’s awareness of nonverbal communication?
2. How do they say they use nonverbal communication during mediation sessions?
3. Are mediators using certain micro cues and elements to develop rapport, build trust, and display professionalism?
4. How are mediators taught rapport, trust, professionalism, and nonverbal communication?
5. How is the mediator’s introduction viewed, how is it taught, and how do mediators actually do it?
6. Are nonverbal communication themes established among the three studies?

These questions were empirically examined over the course of the three studies. This chapter provides a thematic perspective incorporating the data from each of the studies.

With respect to awareness of nonverbal communication, Study 1 found that mediators express a deep knowledge of micro nonverbal cues (p. 128) and specific preferences with regard to nonverbal elements (p. 122). As Table 7.2 explains, they use a variety of cues during a mediation session, including certain cues related specifically to developing rapport. Further, mediators indicated they avoid using a number of cues that can have a negative impact on developing rapport, building trust, and displaying professionalism (see Tables 4.7, p. 139, and Table 4.9, p. 141).

The second study showed the awareness the key informants had that nonverbal communication exists, with respect to the three macro skills, yet there is clearly a missing link in regard to explicitly teaching nonverbal communication and the three macro skills (see Table 5.2, p. 158). This is further discussed later in the chapter.

In the third study, mediators were observed using many of the cues that were shared in the first two studies. The study also revealed that the mediators were not always aware of certain environmental aspects. Specifically, they did not always set up the chairs for the parties prior to the session to ensure they were equal distance from the mediator despite literature suggesting otherwise (Moore, 2014). The implications of this omission can be a perceived partiality based on unequal distance between each party and the mediator.
Answers to the questions that guided the thesis (p. 11) are provided throughout each of the sections below starting first with the three macro skills, then addressing the METTA acronym, the mediator’s introduction, and finally with other themes that were established. This chapter not only follows the format used previously in the thesis, but also frames it through the themes that were established when reviewing all three studies collectively. The themes are:

1) Developing rapport, building trust, and displaying professionalism, which were identified as macro skills of effective mediators, are primarily created through specific nonverbal communication cues and elements;

2) The METTA acronym is a useful tool to address the specific cues and elements that contribute to the three macro skills and it provides value to raise awareness of nonverbal communication. Additionally the METTA coding sheet can help in accurately observing the nonverbal communication of mediators;

3) The mediator’s introduction is an important opportunity for mediators to build rapport, develop trust, and display professionalism;

4) With respect to the three macro skills and nonverbal communication, basic mediation courses can be enhanced by the inclusion of specific segments that address each; and

5) There is an importance not only for a mediator to be aware of the nonverbal micro cues and elements, but also for the mediator to be genuinely able to use them in order to effectively build rapport, develop trust, and display professionalism.
Rapport, Trust, and Professionalism

A mixed-methods approach was used to explore the nonverbal communication cues and elements of the three macro skills of effective mediators. Rapport has been described as being one of the most important factors for a mediator to be effective and is often closely linked with trust building tactics (Gill, 2002; Goldberg, 2005; Moore, 2014). Table 2.2 (p. 40) demonstrates the previous research on rapport and how its development relies primarily on nonverbal cues. Previous research has also demonstrated the need for a mediator to address nonverbal elements and cues that are associated with professionalism in order to be effective (Allison, 2000; Gerzon, 2006; Goldberg, 2005; Goldberg & Shaw, 2007; Zubek et al., 1992).

With respect to rapport, the survey revealed specific actions identified by mediators as enabling them to develop rapport with the parties (see Table 4.6, p. 138), as well as actions they generally engage in during a mediation session (see Table 4.8, p. 140). The survey also revealed the opposite—those actions they believed diminished rapport and which actions they avoid (Table 4.7, p. 139 and Table 4.9, p. 141).

The information in Table 7.1 is significant in that research had not previously identified these aspects of developing rapport by mediators—the actions mediators do or avoid doing. Not surprisingly, the congruency of mediators’ actions in Table 4.8 (p. 140) corresponds closely to the ways in which they build rapport (Table 4.6, p. 138). Both tables are displayed side by side in Table 7.1. For example, eye contact is not only the top way in which mediators build rapport, but it is also the top action in which they engage. The same pattern generally seems to hold true on the negative side as well. Additionally, the gestalt nature of how rapport is built (which also applies to trust and...
professionalism) is displayed by the macro and micro responses. The answer of
“warmth” is macro, for example, as it is not a single action that creates warmth but rather
a cluster of other listed actions such as eye contact, smiling, and open-handed gestures.

Table 7.1

<table>
<thead>
<tr>
<th>How mediators develop rapport with the parties</th>
<th>How mediators can diminish rapport with the parties</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Eye contact</td>
<td>1 &quot;Cold&quot;</td>
</tr>
<tr>
<td>2 &quot;Warmth&quot;</td>
<td>2 Bias/partiality</td>
</tr>
<tr>
<td>3 Listening</td>
<td>3 Giving opinion/expertise</td>
</tr>
<tr>
<td>4 Active listening</td>
<td>4 Interrupt</td>
</tr>
<tr>
<td>5 Empathy</td>
<td>5 No eye contact</td>
</tr>
<tr>
<td>6 Smiling</td>
<td>6 Impatient</td>
</tr>
<tr>
<td>7 Equal</td>
<td>7 Negative body movement</td>
</tr>
<tr>
<td>8 Environment</td>
<td>8 Talk too much</td>
</tr>
<tr>
<td>9 Explain the process</td>
<td>9 Judging</td>
</tr>
<tr>
<td>10 Body orientation/posture</td>
<td>10 Distracted</td>
</tr>
</tbody>
</table>

Specific nonverbal actions mediators do

<table>
<thead>
<tr>
<th>How mediators develop rapport with the parties</th>
<th>How mediators can diminish rapport with the parties</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Eye contact</td>
<td>1 Fold arms</td>
</tr>
<tr>
<td>2 Head nodding</td>
<td>2 Bias with body movement</td>
</tr>
<tr>
<td>3 Smile</td>
<td>3 Frown/grimace</td>
</tr>
<tr>
<td>4 Posture open/relaxed</td>
<td>4 Fidget</td>
</tr>
<tr>
<td>5 Hand gestures</td>
<td>5 Nodding</td>
</tr>
<tr>
<td>6 Lean forward</td>
<td>6 Frustration/anger/impatient</td>
</tr>
<tr>
<td>7 Regulate gestures</td>
<td>7 Roll eyes</td>
</tr>
<tr>
<td>8 Facial expressions</td>
<td>8 Slouch/tired/bored</td>
</tr>
<tr>
<td>9 Mirror/matching</td>
<td>9 No eye contact</td>
</tr>
<tr>
<td>10 Open-handed gestures</td>
<td>10 Point with their finger</td>
</tr>
</tbody>
</table>

Specific nonverbal actions mediators avoid

| 1 Fold arms                                   | 19%                                          |
| 2 Bias with body movement                     | 17%                                          |
| 3 Frown/grimace                               | 15%                                          |
| 4 Fidget                                      | 14%                                          |
| 5 Nodding                                     | 13%                                          |
| 6 Frustration/anger/impatient                 | 10%                                          |
| 7 Roll eyes                                   | 10%                                          |
| 8 Slouch/tired/bored                          | 10%                                          |
| 9 No eye contact                              | 9%                                           |
| 10 Point with their finger                    | 9%                                           |
During the interviews in Study 2, the majority of key informants explained eye contact as being a specific action they teach their students (Table 5.6, p. 181). Developing rapport, which eye contact can contribute to, was understood by multiple respondents as creating trust (Table 5.3, p. 162). Specifically, key informants linked the building of trust with the actions of the mediator, and indicated that this process, like rapport building, begins during the mediator’s introduction. Active listening, an action involving a set of skills described as essential to negotiators and mediators (p. 40), is similarly critical in order for a mediator to be effective as it is closely linked to rapport and trust building. Respondent F6 stated that trust is connected with empathy and active listening while also stating that the third macro skill, displaying professionalism, connects with both developing rapport and building trust (Table 5.3, p. 162).

The connections between the micro cues of rapport and trust as well as their relevance to professionalism are demonstrated in Table 7.2 and displayed in Figure 7.1. Eye contact, warmth, and active listening are listed as creating rapport and trust, yet it is also important to realize the role professionalism has with each. The professional aspect to each is using them appropriately in order for rapport and trust to be created. For example, staring in a “cold” manner instead of gazing does not contribute to rapport and trust. Additionally, displaying warmth and using active listening skills with only one party does not build trust and rapport, but rather they contribute to the right-sided attributes in Table 7.1, such as bias and being partial, impatient, or cold. This is an example of the science being effective only when the art--professionalism--is used appropriately. Further, as discussed later in this chapter, the art includes being genuine.
During the observations in Study 3, the mediators frequently shared eye contact with both parties as an example of displaying professional knowledge by using the appropriate skills appropriately (Table 6.2, p. 198).

The interconnectedness of nonverbal cues and elements is presented in Figure 7.1. Each line represents a mention by a key informant of a way in which a mediator could build rapport, develop trust, and display professionalism based on the data from Table 5.4 (p. 174) and Table 5.5 (p. 179).

![Interconnectedness of nonverbal clues and elements](image)

**Figure 7.1 Interconnectedness of nonverbal clues and elements.**

Figure 7.1 displays the high degree of interconnectedness among the three macro skills and the extent to which they rely on nonverbal communication. The data and lines
are based on direct responses from key informants, and through analysis, lines that are not directly connected still display their connectedness. Each line represents an instance of the word inside the circle being mentioned by a key informant as connected with one of the macro skills (as described in Table 5.3, p. 162 and Table 5.4, p. 174). Providing data in the form of this type of mind map provides a variety of benefits including increasing the ability to retain information (p. 5).

For example, creating comfort is linked with rapport, and providing refreshments is linked with professionalism. Although the two were not explicitly linked together by a key informant, the connection between serving refreshments and creating comfort is apparent. All of the figures and tables in this chapter, in addition to their pure function in the research, also are designed to help mediators be more effective in their work, they aid in the practical teaching of these concepts, and help guide future research on nonverbal communication.

**METTA**

The METTA acronym was created to ensure all the potential micro nonverbal cues and elements were addressed during the three studies (Sowa, 2000). The purpose of METTA was two-fold. First, it was used as a framework to explore, collect, and present the data. Second, researchers and practitioners can use METTA to conduct future research and apply it to their practice. Therefore, METTA is intended to be both a guiding tool for research and a tool with practical applications for mediators, helping researchers and practitioners to easily see the relevance of each cue and element and their interconnectedness.
Movement

With respect to movement, Table 7.2 provides specific nonverbal actions that practicing mediators ought to use along with others they should avoid, in line with previous research (Tickle-Degnen & Rosenthal, 1990; Grahe & Bernieri, 1990; for more see Table 2.2, p. 45). The second study identified actions that mediation instructors teach, while the third study revealed the nonverbal actions of observed mediators and their nonverbal element preferences. Practicing mediators can benefit from knowing specific actions that other mediators do, which, when applied with insight, can contribute to rapport and trust.

<table>
<thead>
<tr>
<th>Movement: Specific Actions a Mediator Should Consider</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Have eye contact that is equal with both parties</td>
</tr>
<tr>
<td>2 Smile appropriately</td>
</tr>
<tr>
<td>3 Use open-handed gestures</td>
</tr>
<tr>
<td>4 Explain the mediation process without using jargon</td>
</tr>
<tr>
<td>5 Employ active listening skills</td>
</tr>
<tr>
<td>6 Use head nodding to acknowledge listening</td>
</tr>
<tr>
<td>7 Use silence</td>
</tr>
<tr>
<td>8 Use facial expressions to display engagement</td>
</tr>
<tr>
<td>9 Avoid judging with actions or words</td>
</tr>
<tr>
<td>10 Mirror &amp; match their body movement when appropriate</td>
</tr>
<tr>
<td>11 Lean forward to display engagement</td>
</tr>
<tr>
<td>12 Have a relaxed posture (neither too stiff nor slouching)</td>
</tr>
<tr>
<td>13 Have hands visible</td>
</tr>
<tr>
<td>14 Control your actions, respond not react</td>
</tr>
<tr>
<td>15 Be equal with body movement</td>
</tr>
</tbody>
</table>

Table 7.2 indicates specific nonverbal cues, based on the three studies, that practicing mediators can employ to build rapport, develop trust, and display
professionals. Within METTA, movement is one of the subsets that clearly displays the overlapping of the micro cues that contribute to all three macro skills.

The above micro cues complement much of what was identified by the key informants (see Table 5.3, p. 162), what was observed in Study 3 (Table 6.2, p. 198), and what the literature states (Boulle, et al., Goldberg, 2005; Moore, 2014; Tickle-Degnen & Rosenthal, 1990). With respect to movement, key informants stated that each of the three macro skills were built by being happy, not reactive; asking the right questions; practicing active listening; during their introduction, controlling the process and their reactions; and being non-judgmental with their words and actions. Specific micro examples of these are listed in Table 7.1 and Table 7.2.

Respondent F5 addressed being non-judgmental by saying, “…You will never hide you are being judgmental because … it’s going to come out in the way you hold your body” (p. 160). She later connected the mediator’s actions with the effect it has on the parties, by saying mediators must know what they are doing in order to provide a calming presence that reduces the parties’ anxiety (p. 160).

In relation to the above comments, two themes emerged concerning the actions of mediators. First, Study 1 and Study 3 provided specific micro cues that complement the comments of the key informants with respect to the three macro skills. This is a theme as the determination was made in accordance with how themes are developed- gathering the data, categorizing it, and then analyzing the information in order for themes to emerge. This information is expressed in Table 7.2. Second, the impact of the mediator’s actions is not limited to the three macro skills. The last comment by F5 shone the spotlight on the emotional contagion of the mediator’s nonverbal actions. As F5 stated, mediators’
actions are a visual demonstration of how to act in order to increase the chances of a negotiated agreement being reached. Further, the key informants pointed out that this emotional contagion and the development of macro skills through nonverbal cues (and elements), begins with the mediator’s introduction while the mediator’s being observed in Study 3 demonstrated this (Tables 5.3, 5.4, 6.2; Figure 7.1).

**Environment**

Each of the three studies provided insight into the preferences of mediators with respect to nonverbal environmental elements. These studies provided data, which previously did not exist in mediation, on the preferences of mediators for seating arrangement and table choices. Study 1 revealed that significant differences existed between mediators based on specific criteria such as gender, practice area, and geographic location. Study 2 showed that the instructors seemingly preferred round tables when expressing their choice of the ideal setting (Table 5.5, p. 179). This information contradicted the survey data as the rectangular table was the overwhelming preference and the circular table not the top choice in any category. All three studies also showed that the mediators put an emphasis on setting the room up prior to the mediation session. This included having writing instruments and paper available, as well as drinks and snacks (Table 4.6, p. 138 and Table 5.5, p. 179).

Surprisingly, Study 3 revealed that arranging the seats for the parties was often overlooked (Table 6.5, p. 213) despite recognition in Study 1 that having the mediator sitting at unequal distances from the two parties could be perceived as taking sides (Moore, 2014). Overlooking this single nonverbal element did not on its own prevent rapport or trust from being developed or necessarily display a lack of professionalism.
What is important is reflecting on the gestalt nature of nonverbal micro cues and elements and that it is not one cue or element but rather a cluster that contributes or hinders the development of the three macro skills. Table 7.3 lists five factors related to the environment mediators should consider with respect to the three macro skills.

Table 7.3

<table>
<thead>
<tr>
<th>Environmental Factors to Consider</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Have the parties sit an equal distance from the mediator</td>
</tr>
<tr>
<td>2 Have writing materials available for everyone</td>
</tr>
<tr>
<td>3 Have refreshments</td>
</tr>
<tr>
<td>4 Reduce or remove distractions &amp; interruptions</td>
</tr>
<tr>
<td>5 Use appropriate furniture</td>
</tr>
</tbody>
</table>

It is also worth noting the role that having refreshments available has across the three studies. Each study mentioned that refreshments were an element within “environment” that mediators need to account for. Having refreshments available for the parties has multiple advantages. First, it is part of a mediator’s preparation prior to the session beginning. Having refreshments available displays professionalism similar to having writing materials available and arranging the seating appropriately. From a rapport and trust-building perspective, recent research as well as anecdotal evidence points to the “affective” benefits of having refreshments.

A recent study (Passamonti et al., 2011) showed that hunger could increase a person’s anger and make the person more aggressive due to fluctuations in serotonin levels. Anger and aggression are both attributes a mediator should try to avoid experiencing and displaying to the parties when trying to promote a collaborative environment. Displaying these emotions can hinder the mediator’s ability to both guide
the parties and assist them in working collaboratively towards a mutually acceptable resolution. Further, another research study (Balachandra, 2013) spotlighted how having a meal together in a restaurant while negotiating produced more productive discussions and resulted in greater mutual gains compared to negotiating in a conference room and not eating. The researchers stated that the reasons for this were numerous, including mimicry (sharing the same kinesic motions of eating), sense of control (no one is forcing you to eat), and regulating prejudice and aggressive behaviors.

Although the environment might be something easily overlooked or not considered important, the three studies have identified environmental elements of nonverbal communication as in fact something worthy of consideration as contributing to developing rapport, building trust, and displaying professionalism. The environment clearly matters, even if it is something that can easily be overlooked, might be considered by the parties to be unimportant, or can be seemingly trivial.

**Touch**

Touch was explored in the three studies from two perspectives: shaking hands when greeting the parties and leakage via adaptors and object-adaptors. Leakage is unintentional kinesic movement that has been associated with anxiety, discomfort, and stress (Babad, Bernieri, & Rosenthal, 1989b).

Study 1 showed that the majority of mediators shook hands with the parties regardless of a party’s gender (Table 4.2, p. 132). Study 2 provided complementary data as the key informants generally recommended mediators shake hands with the parties (Table 5.5, p. 179). The key informants generally suggested that the mediator shake
hands with the parties, yet they also cautioned mediators to consider cultural implications before doing so.

Study 2 involved North American-based trainers, and many explained to their trainees their mediation sessions could involve parties whose culture does not allow opposite genders to touch one another, including greeting by shaking hands. Therefore, although they recommended the “shake one, shake all” concept, the mediator must understand the cultural implications as well. In the second study, key informant F2 stated she avoided shaking hands and potential cultural concerns by doing a greeting and welcoming gesture similar to bowing that avoids the necessity of physical contact (p. 168).

Leakage was explored in Study 3, and all but one mediator displayed no signs of leakage (p. 207). This showed the level of professionalism expected of mediators (all but one being certified mediators with their organizations and the person who displayed the leakage being one of the certified mediators). Leakage can have a detrimental effect on rapport, trust, and professionalism. The respondents in Study 1 identified leakage not explicitly by name, but rather stated a cue that could be associated with leakage: fidgeting (Table 4.9, p. 141). Fidgeting can also be an expression of boredom (Andersen, 2008; Ekman & Friesen, 1969), so the context and cluster of nonverbal and verbal cues would need to be accounted for through a semiotic analysis. Regardless of the reason for the fidgeting, however, its connotation is negative.

Considering that leakage is not intentional, the only way mediators will be aware of it is if someone points it out to them. In the one instance where it was observed, it was connected with the mediator seeming to lose focus on what to say next. This displays the
gestalt nature of the nonverbal cues and elements. When a mediator is trying to build rapport, develop trust, and display professionalism, a person trained in its cues can recognize leakage. To the untrained person, despite not overtly recognizing it, the effects can still be felt nonetheless as its awareness is occurring subconsciously (Bargh, 1994; Choi et al., 2006). Because adaptors and object-adaptors are signs of stress, discomfort, and anxiety, they can impede the mediator’s ability to display the nonverbal cues and elements that correspond with rapport, trust, and professionalism.

The gestalt nature of the cues can create a positive cyclical effect where the mediator’s actions are contributing to rapport, trust, and professionalism. Conversely, when leakage is present, this cyclical effect contributes negatively to a downward spiral of the mediator’s emotional contagion, having an adverse effect on rapport, trust, and professionalism during the negotiation.

Table 7.4 details what mediators should consider with respect to touch when trying to effectively use each of the three macro skills.

<table>
<thead>
<tr>
<th>Considerations with Respect to Touch</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Shake hands with all or no one</td>
</tr>
<tr>
<td>2 Be aware of cultural concerns</td>
</tr>
<tr>
<td>3 Avoid &quot;leakage&quot;</td>
</tr>
<tr>
<td>4 Avoid self-adaptors</td>
</tr>
<tr>
<td>5 Avoid object-adaptors</td>
</tr>
</tbody>
</table>

Key informants repeatedly mentioned that mediators have to be confident as well as being aware of their actions and the actions of the contending parties (Table 5.3, p. 162 and Table 5.5, p. 179). Table 7.4 raises this awareness to help the mediator be mindful
of the impact that touch has on the mediation session. It is also important to note that possessing awareness necessitates practice. Awareness is the first step, as described later in this chapter, for a reason. A mediator must first be aware of the implications nonverbal actions have (for example shaking hands or leakage) prior to moving on to the subsequent steps. Different settings can create anxiety or stress in the mediation session, and considering again the impact of first impressions, mediators will want to continually maintain their awareness of the effect the various nonverbal cues involving touch, such as shaking hands and leakage, can have with respect to developing rapport, building trust, and displaying professionalism.

**Tone**

Within the mediator’s toolbox, an effective tool is effectively using a tone of voice that is calming and friendly, yet also assertive. Based on the data from the three studies, a mediator’s voice can dualistically build rapport and trust while also displaying control of the mediation session (professionalism). Mediators can systematically select their words and attempt to control their nonverbal cues, yet they must not forget the importance of their tone of voice and that it can reveal their true emotional state—especially in conjunction with their body movement (DePaulo, 1983; Ekman & Friesen, 1969; Feldman & Rime, 1991; Rosenthal & DePaulo, 1979; Zuckerman, DePaulo, & Rosenthal, 1981).

As with many other nonverbal cues and elements, mediators can overlook their tone and not be aware of it at a particular moment nor be aware of its impact. Empathy, a quality repeatedly mentioned during the second study, depends heavily on the tone of voice being displayed. In the first study, warmth, equality, and active listening all relied
on the mediator’s tone of voice because, when not used appropriately, these qualities could easily turn into coldness, bias, and impatience. Study 3 showed that the mediators seemed to be aware of their tone and used it in a positive manner to build rapport and develop trust while also demonstrating their professionalism (p. 208).

Leakage is not limited to adaptors and object-adaptors, as discussed previously. Key informant F5 stated that a lack of genuineness can leak out through the mediator’s voice, saying, “I don’t care how perfect your reframes are, you will never hide you are being judgmental because it will come out in your tone of voice” (p. 160).

Table 7.5 raises awareness of individual cues and presents them in a table format, showing the cluster of tone-related actions that can contribute to the three macro skills of developing rapport, building trust, and displaying professionalism.

<table>
<thead>
<tr>
<th>Considerations Related to Tone</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Use a calming voice</td>
</tr>
<tr>
<td>2 Use a suitably assertive voice</td>
</tr>
<tr>
<td>3 Avoid an aggressive tone</td>
</tr>
<tr>
<td>4 Reduce disfluencies</td>
</tr>
<tr>
<td>5 Empathetic tone</td>
</tr>
<tr>
<td>6 Minimal encouragers while listening (“mmm,” “okay”)</td>
</tr>
</tbody>
</table>

**Appearance**

In Study 2, key informants stated that despite the importance of nonverbal communication, instruction on specific micro cues and elements did not have its own segment during mediation trainings and courses (Table 5.2, p. 158), nor did it seem that nonverbal communication’s direct connection with rapport, trust, and professionalism was firmly established. This lack of articulation with the three macro skills includes the
mediator’s appearance despite the literature saying otherwise (Moore, 2014). The first study provided interesting insight into mediators’ preferences with respect to what is and is not appropriate for mediators to wear, based on the context of the mediation session (Table 4.5, p. 137). As mentioned in the chapter on the first study, there were significant differences about what was deemed acceptable for the mediator to wear based on the context of the mediation session. This generated practical implications for practicing mediators. The data’s relevance was revealed through the pragmatic element of social semiotics, or applying the contextual lens to the preferences of the respondents. Specifically, the opinions of mediators with respect to their practice area outweighed the opinions of those outside their practice areas from a practical perspective. The reason is that it is much more important, for example, to know what a court mediator thinks is appropriate to wear in a court setting, just as the opinions of community mediators are of greater relevance than those of other mediators in relation to their own particular mediation context. This relevance extends beyond physical dress or appearance, too, as it also applies to room design and seating arrangements (p. 143).

Study 3 complemented the data from the first two studies. The observations provided unique data via “thick descriptions,” such as a mediator who was wearing a suit mindfully taking off his jacket and tie prior to beginning a community mediation (he had just come from a court mediation session). This context-based choice of clothing is an example of how mediators do believe appearance matters. Table 7.6 shares considerations for a mediator with respect to the three macro skills and appearance elements.

13 The third study does not limit the description to the feedback provided by the key informants, as was the case in Study 2. Rather, the thick description includes the nonverbal communication cues and elements that were observed. The “thickness” is derived from the details of the coding sheet.
Table 7.6

<table>
<thead>
<tr>
<th>Considerations with Respect to Appearance</th>
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<tr>
<td>1</td>
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<td>3</td>
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<td>4</td>
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<tr>
<td>5</td>
</tr>
</tbody>
</table>

The second study also provided insight from the key informants that the mediators’ appearance contributes to their display of professional presence. Again emphasizing the importance of first impressions and the fact that over 80% of it is based on nonverbal channels (Andersen, 2008), the parties’ impressions are being shaped before the mediator even begins speaking. Therefore, Table 7.6 raises valuable considerations that a mediator will want to reflect on, especially with respect to professionalism.

The METTA acronym was used as a method to share important information and themes that the three studies collectively provided, based on analysis. Presenting the information and themes via the METTA acronym can be used as an aid for practitioners to be easily able to discern and apply to it their practice since the acronym displays the various nonverbal cues and elements that a mediator would want to consider when trying to assist the parties.

Mediator’s Introduction

An important theme that emerged across all three studies and congruent with literature review was the importance of the mediator’s introduction. It plays a critical role in a mediator’s ability to develop rapport and build trust with the parties, and it also allows the mediator to display a professional presence. Study 1 generated statistical data
demonstrating overwhelmingly that mediators believed the introduction plays a pivotal role (Table 4.2, p. 132). This perspective of the respondents in Study 1 is congruent with research on first impressions as the mediator’s introduction occurs during the initial interaction between the mediator and the parties (Ambady et al., 2000; Hayes, 2002; LaPlante & Ambady, 2003; Moore, 2014; Patterson, 2011; Tree & Manusov, 1998).

Key informants shared information on the role of the mediator’s introduction and explained that, with respect to rapport, variously described it as “important,” “vital,” and a “key moment.” Informants stated that trust begins to be built during the mediator’s introduction as it sets the tone for the rest of the session. Professionalism can also be displayed during the introduction; key informants stated that during the introduction, the mediator projects a calming presence in a way that can be contagious, while explaining the mediation process.

The mediator’s introduction can be both effective and affective. Mediators have to explain the mediation process to the parties in a manner that the parties find welcoming, friendly, and easy to understand. The introduction is a dual process because, as the mediator gives the introduction to inform the parties about mediation and the role of the mediator, he or she is also presenting it in a way that is developing rapport and building trust. The interconnectedness of the micro nonverbal communication cues and elements demonstrated in Figure 7.1 is on display during the introduction. For example, by being prepared and calm, the mediator can give the introduction with minimal or no speech disfluencies and limited or no self-adaptors or object-adaptors, clearly articulating the key points of mediation.
While doing this, the mediator is also using the cues and elements listed in each of the tables throughout this chapter to ensure the nonverbal cues are congruent with his or her words and conducive to developing rapport and building trust. For example, the mediator wants to set up the seating equally distant, utilize equal eye contact, use open-handed gestures, use a pleasant tone of voice, and dress appropriately.

Figure 7.1 showed the interconnectedness of the mediator’s introduction and the three macro skills. The numerous lines connecting the introduction with rapport and trust further emphasize the important role it has specifically in developing rapport and building trust.

The third study also showed that the time needed to present the introduction seems fairly clear for that setting (court-connected mediation sessions)—just over four minutes (Figure 6.1, p. 205). This length allows mediators to take their time to fully explain the mediation process in a non-hurried manner but also in a time limited enough to avoid losing the parties’ attention.

Since the introduction can play such an important role, it is most accurate to modify the statement made by informant F4 when she compared the introduction to the opening credits of a movie—no one cares. As previous research (Bargh, 1994; Choi et al., 2006) has demonstrated that much of nonverbal communication is decoded subconsciously, the mediator’s introduction is more like a complex opening scene of a movie: it has the potential to impact the audience significantly, yet they most likely will not be able to explain the details that make it such an important part of the entire film.

While the introduction is not the only moment where rapport, trust, or professionalism can be created and displayed during a mediation session, it is one of the
most important parts of the session for multiple reasons. As already stated, first impressions have a lasting effect on the remainder of an interaction. As a guide, the mediator must start the session on the right course by displaying effective communication tools that he or she hopes the parties will “catch” (via emotional contagion); it is a rare opportunity during the session where all three macro skills can be developed and displayed concurrently. Finally the introduction, when done effectively, allows the mediator to move forward in a positive direction setting a “tone” that is promoting the use of collaborative tools by the parties to negotiate their dispute (Moore, 2014).

Lack of Individual Segments

An important theme that emerged while reviewing the data was that despite nonverbal communication, rapport, trust, and professionalism all being important to mediation, no individual segments were dedicated to any of these topics during the trainings or courses. The studies’ data established a connection and overlapping between micro nonverbal cues and elements with the three macro skills, so the current void can easily be filled.

Mediation training requires certain concepts to be taught that have a specific terminology associated with it in a manner that includes interactive elements such as role-plays and simulations.

The statistics from Study 1 along with the comments from Study 2, as well as the literature review, provide justification for including individual segments for nonverbal communication, rapport, trust, and professionalism in mediation courses and training. Creating these segments is not necessarily a vexing or tedious process. The METTA acronym allows the nonverbal communication cues and elements to be presented in an
easy manner while rapport, trust, and professionalism can be addressed during a segment; they can also be included when discussing the important pillars of mediation--confidentiality, self-determination, and the neutrality of the mediator.

Finally, the data also confirms the importance of active listening skills (Boulle et al., 2008; Macfarlane, 2003; Moore, 2014; Van Hasselt, Baker, Romano, Sellers, Noesner, & Smith, 2005; Van Hasselt, Romano, & Vecchi, 2008). One might consider active listening skills as being primarily verbal based, but at the very least the verbal message must be complemented by congruent nonverbal cues. Nonverbal communication cues and elements are what determine the effectiveness of active listening.

Designing an active listening exercise that includes an emphasis on the interconnectedness of verbal and nonverbal communication can help shed light on the importance of specific nonverbal communication cues. This previously did not exist, and now mediation trainers and professors have specific examples grounded in research that can be used to train new mediators.

For example, emotional labeling- a critical element to active listening- (Van Hasselt et al., 2005) includes accurately identifying the emotion being expressed by the party. This is clearly a verbal element, yet the mediator does not have to be totally accurate on the label. The mediator could say that a party sounded “frustrated,” “angry,” or “really bothered,” with the party agreeing to any of those descriptions. The nonverbal cues are what demonstrate empathy. These include eye contact, an understanding tone of voice, an open-handed gesture, facial expressions such as raising one’s eyebrows, and slightly leaning forward. This cluster of nonverbal cues displays the gestalt nature of
active listening and how it does not rely on one word or a single nonverbal cue (Bodie et al., 2015).

A segment that clearly identifies these clusters of nonverbal cues can provide mediators with a variety of new tools, grounded in research, increasing his or her ability to develop rapport, build trust, and by effectively using them, display a professional presence. The METTA acronym can once again assist with this by structuring the collection of cues and elements in an easy-to-comprehend manner.

**Being Genuine and Aware**

It has previously been stated that creating individual segments on rapport, trust, professionalism, and nonverbal communication can be beneficial to mediators. The reason is because of their impact on a mediator’s effectiveness. Critical to learning the micro nonverbal cues and elements that create the three macro skills are two important qualities for the mediator: genuineness and awareness.

Awareness refers to multiple aspects of nonverbal communication. The Effective Mediator Stairway Model (EMSM, Figure 7.2) has been designed for this thesis to assist mediation practitioners appreciate the social semiotic approach to understanding nonverbal communication. It is not simply pulling back the veil of ambiguity and expecting the role of nonverbal communication to instantaneously become clear and the mediator to become an expert regarding its dynamics. The reality is that understanding nonverbal communication and its impact on developing rapport, building trust, and displaying professionalism is a multi-step process.

The first step is realizing the impact nonverbal communication has on the three macro skills. The second step is possessing the knowledge that it is a cluster of
nonverbal micro cues and elements that work in a gestalt manner which can allow the mediator to develop rapport and build trust with the parties as well as displaying a professional presence. The final step is being genuine when using nonverbal communication. Being genuine requires the mediator to possess empathy.

![Effective Mediator Stairway Model](image)

**Figure 7.2 Effective Mediator Stairway Model.**

Figure 7.2 displays these steps while the bottom importantly indicates that it is also not solely knowledge of the steps, but continued practice of each that leads to effectiveness.

The mediators in the third study genuinely displayed many of the cues identified in the first study, and the scoring of the coding sheet indicates their actions contributed to developing rapport, building trust, and displaying professionalism.

Creating segments on nonverbal communication, rapport, trust, and professionalism in initial mediation courses and training is an ideal opportunity to raise awareness of the importance of each. Additionally, teaching the importance of
genuineness in the use of the micro skills can raise the awareness of mediators on how to be effective.

**Value of the METTA Coding Sheet**

Study 3 importantly raised awareness of the micro nonverbal communication cues and elements used by mediators and presented an opportunity upon which practicing mediators might reflect. Realizing that Study 2 emphasized the importance of practice during role-plays as well as receiving feedback from the instructors and fellow students; it is worthwhile for established mediators therefore to ask themselves when they were last observed conducting a mediation. Aside from their initial training, which included feedback and role-plays, how are their skills assessed? A common method is feedback from parties but that surely is not sufficient to gauge the use (or lack of use) of certain micro skills. Additionally, party feedback will most likely not be able to identify these negative aspects as previous research has shown that people decode the actions of others frequently on a subconscious level (Choi et al., 2006). The METTA coding sheet can provide trainers, professors, and observers an opportunity to gauge the use of mediator skills that allows both a quantitative and qualitative analysis to take place. It can be useful for giving new and established mediators a chance to reflect on how they engage the parties. For example and as already stated, it is not easy for people to be aware of the “ums” they use without having someone else point it out. Additionally, as the third study indicated, effort was put into arranging the room in many aspects, but the placement of the chairs was frequently overlooked. Use of the METTA coding sheet can shed light on such issues.
The coding sheet offers a practical way to observe how a mediator can build rapport, develop trust, and display professionalism. Similarly to the way that the tables and figures were grounded in the three research studies, the final version of the coding sheet was designed based on statistical data including, specific nonverbal micro cues (Study 1), the feedback from key informants (Study 2), and the nonverbal communication cues and elements of experienced mediators (Study 3). Importantly, METTA and its coding sheet were not designed anecdotally, but rather by research. Having mediators observed beyond their initial training and having the observers utilize the METTA coding sheet can assist mediators in becoming more aware of their nonverbal and verbal communication cues as well as the nonverbal communication elements. This can lead to their becoming more effective mediators by developing rapport, building trust, and displaying professionalism.

Conclusion

This chapter revealed important themes that were established upon reviewing the data from the three studies of this thesis. These themes have relevance for both academics and practitioners. The establishment of the themes was guided by the research questions as they provided direction on specific areas to explore. This included determining mediators’ awareness of nonverbal communication, how mediators say they use nonverbal communication cues and elements, how mediators are taught nonverbal communication, the role and impact of the mediator’s introduction, and how mediators apply the skills they say they use. These questions were structured under the premise that the three macro skills of mediators, namely developing rapport, building trust and
displaying professionalism primarily rely upon nonverbal communication cues and elements.

The result was multiple themes being established as detailed in this chapter. With respect to nonverbal communication in a broad review, mediators explained they had a detailed knowledge of specific nonverbal cues and elements that they explained they employ during mediation sessions. This awareness helped shaped how they prepare for a mediation session, how they engage the parties, and how element factors such as appearance and room design can impact the mediation session. This knowledge and awareness generally was displayed during the observations that were conducted in Study 3.

The data from each of the studies also established a nexus between nonverbal communication cues and elements with what the literature review identified as the three macro skills of effective mediators: developing rapport, building trust, and displaying professionalism. Further, the literature in Chapter 2 also identified specific nonverbal cues and elements associated with the three macro skills. These skills often corresponded directly with the data shared in each of the three studies. Therefore this thesis uniquely has been able to establish specific nonverbal cues and elements with the three macro skills that make a mediator effective.

Despite the stated importance of nonverbal communication revealed by the literature review and Study 1, the feedback provided in Study 2, and the observations in Study 3, another theme that emerged as a result of Study 2 was the deficiency of a specific segment dedicated to the topics explored in this thesis. Firstly, nonverbal communication did not have its own segment in any of the courses or trainings. This
revelation shows that although nonverbal communication has been established as being directly important to the creation of the three macro skills, there is still much to be done in terms of it being taught.

The mediator’s introduction has been established as a pivotal moment for a mediator to build rapport, develop trust, and display professionalism. This was identified through the literature review. Each of the studies then confirmed its importance signifying the introduction as an important moment that can help or hinder the development and display of the three macro skills that rely primarily on nonverbal communication cues and elements.

In order for a mediator to use the cues and elements effectively, he or she must first be aware of the many nonverbal cues and elements and the important role each has on mediation sessions. This awareness, however, is only the first step, as the EMSM indicates. If the veil of nonverbal communication’s ambiguity has been pulled back through the establishment of these themes, the METTA acronym, and the EMSM, it is not the goal to stop there. The successive steps of the EMSM allow the mediator to take data from the three studies, structured using the METTA acronym, to see how the nonverbal micro cues and elements collectively can help a mediator build rapport, develop trust, and display professionalism.

Finally, in order for the mediator to effectively demonstrate the three macro skills, he or she must accurately use the numerous micro cues and elements that represent in a manner that is grounded in a genuine wanting to build rapport, develop trust, and display professionalism. Much like how the micro skills are used in a cyclic nature, the opportunity for a mediator to be effective begins anew for each mediator session. The
METTA acronym, the EMSM, and the tables provided in this chapter therefore can be utilized a guide for mediators to work towards being more effective and for researchers, each can assist him or her in exploring the skills used by practitioners.

This chapter demonstrated that through the triangulation of this thesis, nonverbal communication has a direct effect on a mediator being either effective or ineffective with developing rapport, building trust, and displaying professionalism. Each of the three studies provided a different perspective of nonverbal communication with respect to mediation. Study 1 provided insight from mediators in a variety of practice settings and geographic locations, Study 2 offered the insight of mediation instructors, and Study 3 showed what mediators are actually doing. This chapter brought together the results of each individual study and was able to identify the critical elements by conducting a holistic analysis of the three studies. This allowed then for the establishment of the themes, a core purpose of conducting qualitative research (Walcott, 1990), which were discussed throughout the chapter.

The themes have been shared for the purpose of: emphasizing the important role nonverbal communication has in mediation; providing specific cues and elements for practicing mediators to consider when trying to be effective; and providing opportunities for future research studies to be conducted on the role of nonverbal communication in mediation.

The next chapter, the conclusion, reviews the purpose for which this thesis was undertaken. It also shares its distinctive contribution to mediation scholarship, limitations of the studies, how the thesis can guide future research, and the impact it is hoped to achieve.
CHAPTER 8. Conclusion

This thesis set out to explore a phenomenon, nonverbal communication, and investigates how mediators use it in order to develop rapport, build trust, and display professionalism. This thesis looked at the “routine” actions of effective mediators and determined that the three previously mentioned macro skills make major contributions to mediator effectiveness. Further exploration demonstrated that these skills rely primarily on micro nonverbal communication cues and elements. This thesis connected the missing link of specific micro nonverbal communication actions, or cues, and elements with the three macro skills by collecting the unique empirical data from each of the three studies.

This thesis embraced mixed methodology and by using qualitative research tools, identified a pattern that always existed (Fetterman, 1998). The skills of effective mediators are there to be observed, it just needed to be explored with a specific lens. This thesis highlighted ambiguity relating to the use of those skills and identified the nonverbal communication cues and elements connected to developing rapport, building trust, and displaying professionalism.

This ambiguity was addressed by the data collected through the three studies of this thesis. Based on the population of respondents (mediators), the data indicated the particular nonverbal cues and elements used by these mediators that contributes to their effectiveness during mediation sessions. Previous research outside the mediation community in nonverbal communication has identified the micro cues and elements of developing rapport, building trust, and displaying professionalism. The three studies identified the explicit micro cues and elements representing the three macro skills with
respect to mediators that had yet to be done. Additionally, through utilization of qualitative and quantitative research methodologies, the information detailed how and why these cues are used, as well as how they are taught. The following sections review the unique contribution this thesis has made and how it contributes to extending the limited understanding of the relationship between nonverbal communication and the effective skills of mediators. The chapter concludes explaining the limitations of the thesis and how future studies can expand on the themes and findings that have been presented.

**Skills of Effective Mediators**

This thesis explained that the three macro skills of effective mediators rely on a cluster of nonverbal communication cues and elements. In order to explore the nonverbal communication used by mediators this thesis first explored the current research in order to identify the skills of effective mediators. Analyzing the literature (Chapter 2) allowed this thesis to reveal two important themes. First, prior to this thesis, scholarship had yet to articulate developing rapport, building trust, and displaying professionalism as the three macro, or over-arching, skills that are possessed by effective mediators. The review of the literature revealed that although the research consistently described each of the three as being necessary and important skills, it also often failed to use the words explicitly. For example, rapport rarely was mentioned but its synonyms and traits such as “friendly,” “understanding,” or “empathy” were used instead.

This thesis, by categorizing the numerous descriptions of effective mediator skills into the three macro skills of developing rapport, building trust, and displaying professionalism, contributed to making it easier for trainers, students, and researchers to
understand what it is that makes a mediator effective. This is similar to the purpose of the creation of the METTA acronym—first identify the nonverbal communication and then making it easy to recognize and explore, understand, and practice the skills (Figure 7.2).

Second, the review of the literature also uniquely revealed the significant role nonverbal communication has with respect to each of the three macro skills (for example, see Table 2.1 p. 26). Previous research on rapport, trust, and professionalism identified that each are displayed and created primarily through nonverbal cues and elements. The review also generated two further important findings. First, it is not a single nonverbal action that contributes to each of the three macro skills but rather it is an interconnected cluster of nonverbal cues and elements that contributes to each. Next, the review of the literature exposed a gap that existed in mediation scholarship. Although the three macro skills rely on nonverbal communication, the research in mediation was severely lacking studies explaining the micro skills and more generally evening simply emphasizing nonverbal communication’s important role in a mediator being effective.

**Addressing the Current Gap in the Literature with METTA**

The literature review in Chapter 2 provided the foundation for this thesis to contribute to addressing the lack of understanding of the specific nonverbal micro cues, that in a gestalt-like manner, display the three macro skills of developing rapport, building trust, and displaying professionalism. As stated in the previous chapter, METTA is intended to be both a guiding tool for research and also a tool with practical applications for mediators. Utilizing METTA enables researchers and practitioners to
easily see the relevance of each nonverbal micro cue and element and the impact they have with the macro skills.

The METTA acronym (movement, environment, touch, tone, and appearance; see Table 2.6, p. 72) was created in order to ensure a systematic examination of each micro nonverbal cue and element in each of the studies. Three studies were designed from a mix-methods approach ensuring both quantitative and qualitative tools contributed to a thorough understanding of the nonverbal communication used by mediators.

The METTA acronym and the data from previous scholarship guided the design of each study. The studies explored this topic from multiple approaches using various methodological tools in order to provide a rigorous understanding of the topic. This approach was important as the topic had yet to receive this attention in academia. The triangulation of the three studies with respect to nonverbal communication and mediators provided what mediators say they do (Study 1), how they are taught or not taught nonverbal communication (Study 2), and what do they do in mediation sessions, specifically during their mediator’s introduction or opening statement (Study 3).

**Nonverbal Communication Cues and Element Preferences of Mediators**

The first study provided the necessary statistical data on mediators’ preferences of nonverbal communication cues and elements in order for the next two studies to be undertaken. Considering that the topic of nonverbal communication had yet to be explored in-depth in mediation, Study 1 provided valuable data that had not previously existed.

Through the structure of the METTA acronym, Study 1 provided numerous findings with respect to nonverbal communication preferences of mediators (see Tables 255.
4.2 through 4.11). First, the respondents (\( N = 385 \) mediators, see Table 4.1, p. 130) of the survey shared insight on how a mediator builds rapport with parties and specific actions they do during a mediation session. By also asking the opposite of each of those questions, the data also offered a list of actions that a mediator will want to consider avoiding when attempting to build rapport and develop trust with the parties. Thus this list importantly is not just positive actions but by asking the mediators what they avoid also allows mediators now to reflect on both specific actions they should consider doing and those they should avoid during a mediation session. The data also provided insight with respect to environmental preferences such as the room and seating arrangement, and the respondents view on the importance of the mediator’s introduction.

The diversity of respondents allowed the data to be reviewed from various perspectives including seeking to see if significant differences existed. Analysis of differences related to gender, whether or not the mediator is also a lawyer or attorney, the mediator’s subject matter practice area, and geographic location revealed that in some instances, significant differences did exist. This data showed that although previous research has demonstrated a universality of certain nonverbal communication such as facial expressions (Matsumoto & Hwang, 2011), this was not the case for other nonverbal communication elements such as seating arrangement, design of the room, and the appearance of the male mediator.

The data from Study 1 provided valuable information that is relevant to both practitioners and professionals. Specific mediator micro nonverbal cues and elemental preferences that correspond to what makes a mediator effective did not previously exist. This thesis has provided a comprehensive explanation of the cues and elements with
respect to how they contribute to the three macro skills. These nonverbal micro cues and elements are also relevant to other conflict resolution professionals as well as professionals beyond this particular field where being effective relies on developing rapport, building trust, and displaying professionalism. This represents the transferability of the research where the reader can determine the applicability of the data and themes (Creswell & Miller, 2000).

**Nonverbal Communication Instruction for Mediators**

Study 2 purposefully took a distinctively different approach to explore the nonverbal communication used by mediators compared to the Study 1. Through the use of qualitative research tools, specifically those used in ethnography and phenomenology, Study 2 was able to provide a deeper insight into the preferences and motivations of mediation professors and instructors who have experienced the phenomenon under study (Geertz, 1973; Reimer, 2009).

For this thesis, the phenomenon was nonverbal communication and Study 2 used semi-structured interviewing of key informants—important individuals described as gate-keepers who can provide valuable insight into the phenomenon (nonverbal communication) being studied (Creswell, 2007). The key informants were mediation professors and trainers because if this thesis was to explore the role of nonverbal communication and mediators, it was necessary to understand how mediators are being taught or not taught the micro cues and elements as well as their corresponding macro skills.

Similar to the results of Study 1, the semi-structured key informant interviews provided valuable data that previously did not exist in mediation. First, the method of
providing the responses through a thick narrative explained the *how* of nonverbal communication, not just the *what*. By providing the data through the key informants own words with an analysis, it explained the process of how they teach or do not teach the aspects of nonverbal communication in contrast to quantitative data that is only aggregated statistics. Further, thick descriptions allow the reader to make decisions regarding transferability, or the information being applicable to them (Creswell & Miller, 2000).

Moving beyond the statistical implications of the first study, Study 2 generated important themes. Although the key informants described that nonverbal communication as important to be understood and used by mediators, there was an overwhelming lack of dedicated teaching segments focused on nonverbal cues and elements.

The key informants also described the important role the mediator’s introduction has which complemented the results from Study 1 (Table 5.5, p. 179) as well as stating the importance of being genuine when demonstrating nonverbal skills associated with rapport, trust, and professionalism (Table 5.7, p. 182). The key informants also importantly explained how each of the three macro skills rely on each other for them to be displayed and how specifically the moment of the mediator’s introduction is an important part of the mediation session for each of the three to be developed (Figure 7.1, p. 228).

Based on the data from Study 2, a recommendation that emerged was for a more structured approach to teaching the nonverbal communication and the three macro skills be considered for future mediation courses and trainings.
Mediators’ Use of Nonverbal Communication

Study 3 involved observing the nonverbal communication used by mediators during a specific moment of a mediation session— the mediator’s introduction. Study 3 was designed with reference to the mediation literature and it also incorporated the findings of the first two studies. This lead to the METTA acronym being used to create the coding sheet (Appendix G) that needed to be both practical and be able to quickly and accurately allow for relevant micro nonverbal communication cues and elements to be observed and coded.

Therefore, through the METTA coding sheet, Study 3 provided valuable data on what mediators did during actual mediation sessions with respect to developing rapport, building trust, and displaying professionalism when they presented their mediator’s introduction. The mediator’s introduction was used as a thin slice, or snippet of the interaction, as justified by the previous research demonstrating the impact and accuracy of the initial interaction on the rest of the interaction (Ambady et al., 2006), well as previous scholarship stating the importance of the mediator’s introduction (Boulle, et al., 2004; Bush & Folger, 1994; Moore, 2014), and the data from Study 1 and Study 2 (Table 4.2, p. 132 and Table 5.4, p. 174).

As shared in Study 3, the actions of the mediator during the introduction can either 1) promote a professional presence and begin to build rapport and trust, or 2) can hinder this process. Mediation educators are able to incorporate these concepts into their instruction and training programs while mediation practitioners are able to use the findings.
Study 3 demonstrated the value of the METTA coding sheet could provide instructors, researchers, and practitioners. The coding sheet can assist instructors teach the importance of the nonverbal communication micro and macro tools while also giving them an effective tool to rate mediators on their use of the skills. Researchers can incorporate the METTA coding sheet into future studies and practitioners can review it while practicing to be more effective.

Additional Themes

The purpose of including qualitative research tools in this thesis was not to generate theory but rather to enhance the credibility of the research and be able to come to plausible conclusions by identifying critical elements through the variety of methods in collecting data (Creswell, 2007; Lincoln & Guba, 1985; Van Maanen, 1983; Wolcott, 1987 & 1990).

An analysis of the three studies collectively, as shared in the previous chapter, resulted in themes that are relevant to both academia and practitioners. The themes can provide guidance for future research studies and practitioners. The themes that emerged from this thesis are: the mediator’s introduction is an important moment for mediators to build rapport, develop trust, and display professionalism; the three macro skills and nonverbal communication, basic mediation courses can be enhanced by the inclusion of specific segments that address the three macro skills and nonverbal communication; and it is vital that mediators both understand the impact of nonverbal communication and then be able to use it in a genuine manner that is based on the context of the situation.

For mediation practitioners, limited understanding of how nonverbal communication impacts the ability to enhance effectiveness by developing rapport,
building trust, and displaying professionalism has been reduced by identifying associated nonverbal micro cues. As discussed later in this chapter, future research studies to expand on this data are recommended.

The tables and graphics in Chapter 7 provide guidance for future researchers and are intended to also assistant practitioners. Being grounded in data, the tables and graphics offer easy reference tools for practitioners to be better able to understand the impact nonverbal communication can have as well as having quick reference guides to increase their ability to develop rapport, build trust, and display professionalism by knowing the micro cues and elements that contribute to them.

**Limitations**

As with any research study, this thesis had limitations. Limitations existed with each of the three studies that were a result of different causes. First, in Study 1, the questions on appearance were limited to only male mediators. By not including options for female mediators, the study missed an important aspect of mediation with respect to nonverbal communication. The study also did not include the options “business” or “commercial” for the mediator’s practice area. This, as stated in the chapter, may have contributed to the large number of selections of “other” for the mediator respondent’s choice of practice area. The sample selection included results from three geographic regions: US/Canada, the United Kingdom, and Australia/New Zealand. Data from other regions, such as Continental Europe, could have yielded a more diverse sample.

Limitations existed within the second study as well. Although saturation was deemed to have occurred with the sample, embracing a wider group of key informants,
including key informants beyond the United States, could have provided data for comparative analysis.

The third study provided data based on the observation of mediation sessions. A limitation that was purposely included was the limiting of coding to strictly nonverbal communication cues and elements. Further, the study was also limited to mediators from a single mediation center on sessions that were part of court proceedings. Including mediators from different training backgrounds and diverse practice areas can provide a greater perspective with respect to actions used by mediators.

**Future Research**

Future research studies can address the previously mentioned limitations while also expanding in other areas. Recent literature has explored mediator styles. For example, an entire issue of *Journal of Negotiation and Conflict Management* (November, 2012) featured articles dedicated to mediators’ style. However, these articles do not address nonverbal communication. Combining the methods used in those studies while addressing nonverbal communication cues and elements can contribute to a more rigorous study of mediator styles.

With respect to the three studies, future research can address female mediators and include mediators from other geographic regions while also ensuring that all practice areas are included as options.

Future studies can also expand on the use of the METTA coding sheet to observe the use of nonverbal communication throughout a session as well as conflict resolution and crisis communication professionals engaged in other practice areas. For Study 3, the coding sheet was limited to only the mediator’s introduction. The sheet can also be
applied to other parts of the session such as during caucusing as well as comparing different segments utilizing the coding sheet as the method of analysis. This can include conducting an analysis of the mediator’s use of both verbal and nonverbal communication through different stages of the mediation. Specifically, a comparative analysis of the mediator during a caucus (when only one party is present) and when both parties are present can provide interesting data.

Additionally, exploring the nonverbal communication of the parties and whether or not the mediator responds appropriately could provide value to both researchers and practitioners.

Finally, this research facilitates possible future studies based on the themes identified in the results of this research. Based on the social semiotic analysis, future researchers will be able to pursue various approaches based on the wide-ranging nonverbal communication information provided. This includes, but is not limited to, head movement and nodding, smiling, eye contact and gaze, body orientation, body posture, hand gestures, mirroring, mimicry, tone, touch, territorial displays, clothing, adornments, artifacts, and chronemics.

**Conclusion**

For conflict resolution professionals, this research provided for the first time a detailed articulation of nonverbal communication cues and important elements validated by research. Identifying these micro cues and elements is important and can have a beneficial impact on the mediation community by discussing and evaluating those cues and elements being used by practitioners. Conflict resolution professionals—including mediators, negotiators, facilitators, conflict coaches, ombudsmen, and others—will now
have access to an inventory of nonverbal communication techniques used by fellow mediators allowing those professionals to explore the information and apply it uniquely to their own practice helping them to become more effective in their work.

It is important to note that the relevance of the research is not expected or intended to be limited to the above-mentioned individuals. The information provided in the research studies is applicable and useful for many professionals and practitioners who rely on developing rapport, building trust and promoting a professional presence as part of their work. This includes too many professions to list, but notably doctors, judges, law enforcement personnel, lawyers, psychiatrists, psychologists, teachers, and counselors, all of who may find information of direct relevance and importance to them and their fields.

Mediation rests on two pillars--rapport and trust. Possessing professionalism informs the mediator when and how generate and harness that rapport and trust. Effective use of the nonverbal micro cues and elements contributes to rapport and trust building and it is professionalism that allows that to happen. Professionalism entails also being genuine when using the micro cues and elements which takes into account the context of the situation at that moment.

The METTA coding sheet is an additional device that can be applied to the numerous conflicts with which conflict resolution professionals will be faced with. This thesis has provided researchers the METTA acronym and its coding sheet- a new way to understand and further explore the impact of nonverbal communication on mediation sessions. It has also provided examples of both macro and micro cues and elements used by and taught to mediators to build rapport, develop trust, and display professionalism.
This important data has filled a gap that has existed. However, there is still much room for additional research to further enlarge this area of knowledge.

For practitioners, this research now provides specific micro nonverbal cues and elements used by their peers to increase their effectiveness while mediating. Mediators can now apply this “science” to their individual “art” to further increase their effectiveness in assisting people engaged in disputes and conflicts. Although there is no finish line to the work of mediators, the METTA acronym and the data from this thesis has provided them with tools to better navigate the endless avenues of conflict in order to increase the chances for those involved to come out of the mediation session better than they were when they first entered it.
Appendix A

Researcher Credibility/Qualifications

The following provides my credibility as a researcher and establishes my authority as a writer on this topic.

Reviewing previous research in mediation, thin slice methodology, and nonverbal communication allowed for the identification of the nonverbal communication micro cues that correspond with the establishment of rapport, trust, and professionalism. Next, it enabled me to design the survey, ethnographic questions, and lists of cues and elements to look for during the observations to provide an accurate analysis of the role of nonverbal communication and mediators. Being able to “read” or look for these cues and elements is an important dimension of social semiotics (Chandler, 2002) and critical to this research. My authenticity and credibility in being able to read these cues have been established through multiple means. I have written, designed trainings, and given presentations and workshops in nonverbal communication for diverse audiences. I have been a guest on various shows providing expertise on nonverbal communication as well as offering expert opinions for digital and print publications. I have been published in a variety of media outlets with respect to conflict resolution and nonverbal communication including Mediate.com, TheNegotiatorMagazine.com, The FBI Bulletin, and TheConversation.edu.au. I have presented at numerous conferences on nonverbal communication including the American Bar Association, the Western States Crisis and Hostage Negotiators Conference, the New York Association of Hostage Negotiators Conference, the Association for Conflict Resolution, the Eastern Communication Association, 5th Biennale on Negotiation at the Business School of Paris, and conferences
at the University of Rome, Columbia University, and Georgetown University. With respect to trainings and workshops, I have presented to judges, mediators, negotiators, lawyers, physicians, office staff, police officers, and cadets at the United States Military Academy at West Point.

Considering that this research states the skills of effective mediators as being developing rapport, building trust, and displaying professionalism and that each is displayed primarily through nonverbal communication cues and elements, my mediation and conflict resolution experience are relevant as well. I am a certified mediator with the New York Peace Institute and the International Mediation Institute; I am a trained arbitrator, negotiator, and ombudsman; and I have given guest lectures at over a dozen universities and law schools.

From an academic perspective, my writings and research have been published in peer-reviewed journals while I am also a reviewer for journals relevant to this thesis. I have a Master of Science degree in Negotiation and Dispute Resolution from Creighton University Law School. Additionally, I am a Research Scholar at Columbia University Law School. The topics I am researching include nonverbal communication and conflict resolution, crisis and hostage negotiation, and communication strategies related to counterterrorism initiatives.

My law enforcement background also provides relevance through my investigative and interviewing experience. I am currently a detective in the New York City Police Department, and I have more than ten years of experience in applying conflict resolution skills in a variety of situations that require the ability to build rapport, develop trust, and display professionalism in order to be effective in promoting peaceful
conclusions to situations. This has included developing trainings on these three skills, conflict resolution, and raising awareness of nonverbal communication cues and elements in police-community interactions. Further, I have worked extensively with interfaith dialogue projects that rely on the three macro skills. Finally, my police training and research include being trained in crisis and hostage negotiation by the Federal Bureau of Investigation.

I am also trained and qualified in the Facial Action Coding System (FACS). Paul Ekman and W.V. Friesen created FACS in the 1970s. It is a system that measures and describes facial behaviors based on Facial Action Units, or distinct facial muscle movements. FACS is used in empirical research studies to understand the emotions displayed by people observed in the study. This includes forensics, consumer and marketing research, and homeland security.
Email to participate in the survey

Hello, my name is Jeff Thompson and I am a professional mediator based in New York City, USA. I am reaching out to you as a fellow professional mediator to request you to complete a brief survey that is studying nonverbal communication and mediation. The survey is part of my PhD research at Griffith University Law School (Nathan, Australia) and the results will be shared and made public for everyone.

The results will in no way be connected to any individual. By taking this brief 5-10 minutes survey, you will be helping provide a better understanding in the role nonverbal communication has during mediation sessions.

When you click the link below, it will bring you to the survey with the first page being a more detailed explanation and consent form.

[LINK]

Finally, feel free to pass this along any other experienced and certified mediators that you.

Thank you, I appreciate it greatly and if you have any questions, feel free to email me (Jeff.Thompson@griffithuni.edu.au).

Jeff
Appendix C
Study 3 Survey

Nonverbal Communication & Mediators

Participation consent.

1) Please read this consent document carefully before you decide to participate in this
study. This survey examines the role of nonverbal communication and mediators. Your
participation should take between 5 and 10 minutes. It is being conducted as part of a
PhD project by Jeff Thompson at Griffith University Law School under the supervision
of Professor Jeff Giddings and Dr. Jacqueline Drew. This study is not funded by external
sources

Purpose
It is hoped that through this research we will be able to identify nonverbal cues and
elements used by mediators in order to help them be more aware of mediators' preferences and improve their understanding of the role of nonverbal communication
during a mediation session. The results of this study will be published as part of a PhD
thesis at Griffith University and may be published in academic journals.

Participation Risks
There are no foreseeable risks associated with this study beyond those encountered in
everyday life.
Your participation in this study is completely voluntary and there is no penalty for not
participating.

Confidentiality
The information you provide will remain confidential and will not be published in ways
that enable the identification of any single participant.

Ethics & Questions
This research is approved by Griffith University and is in accordance with the National
Statement on Ethical Conduct in Research Involving Humans. If potential participants
have any concerns or complaints about the ethical conduct of the research project, they
should contact the manager, research ethics on 37355585 or research-
ethics@griffith.edu.au.

Any questions that you have regarding this research should be addressed to Jeff
Thompson (PhD Candidate): Jeff.Thompson@GriffithUni.edu or Professor Jeff Giddings
(Supervisor):
J.Giddings@Griffith.edu.au

By clicking the start button below you agree to participate in this research and further
indicate:
1. You have read and understand the information written above;
2. You understand that participation is voluntary;
3. You understand that you are free to withdraw from participation at any time; and
4. You are 18 years of age or older.*

( ) Start

2) Are you a mediator?*

( ) Yes
( ) No

3) Are you a certified mediator?*

( ) Yes
( ) No

4) If yes, what organization are you certified with?*

(list all)

5) For how many years have you been mediating?

( ) Less than 1
( ) 1 to 2 years
( ) 3 to 5 years
( ) 6 to 10 years
( ) 10+ to 14 years
( ) 15 to 20 years
( ) 20+ years

6) How would you describe your mediation competence?

( ) Expert ( ) Experienced ( ) Novice ( ) New

7) What city and country do you mediate in?

If more than one, list your primary location.

City: _________________________________________________
8) What is your gender?*

[ ] Male
[ ] Female

9) What is your age?*

( ) 18-24
( ) 25-34
( ) 35-54
( ) 55+

10) What is your primary area of mediation practice?*

( ) Community
( ) Construction
( ) Court
( ) Divorce
( ) Education
( ) Employment
( ) Family
( ) Government
( ) Real Estate
( ) Religious
( ) Other

11) What additional areas do you practice in (if any):*

Hold the "Control" button on your keyboard down when choosing more than one.

( ) Community
( ) Construction
( ) Court
( ) Divorce
( ) Employment
( ) Education
12) Are you a lawyer/attorney?*
   ( ) Yes
   ( ) No

13) Do you currently co-mediate?*
   ( ) Yes
   ( ) No

14) Do you conduct the majority of your mediations via co-mediation?
   ( ) Yes
   ( ) No
   ( ) not applicable: _________________________________________________

15) If you mediate under the auspices of a mediation organization, please specify.
   [ ] AAA
   [ ] CEDR
   [ ] CPR
   [ ] FINRA
   [ ] IMI
   [ ] JAMS
   [ ] LEADR
   [ ] NYPI
   [ ] Scottish Mediation Network
   [ ] None
   [ ] Other
Touch & Mediator's Introduction

16) When greeting the mediation parties, do you shake their hand if they are the SAME gender as you?

( ) Always     ( ) Usually     ( ) Not Sure     ( ) Rarely     ( ) Never

17) When greeting the mediation parties, do you shake their hand if they are the OPPOSITE gender as you?

( ) Always     ( ) Usually     ( ) Unsure     ( ) Rarely     ( ) Never

18) Do you consider the mediator's introduction to be:

( ) Very Important     ( ) Somewhat Important     ( ) Unsure     ( ) Somewhat Unimportant     ( ) Not Important

19) In regards to mediation, nonverbal communication is:

( ) Very Important     ( ) Somewhat Important     ( ) Unsure     ( ) Somewhat Unimportant     ( ) Not Important

20) List up to five ways a mediator can develop rapport with the parties:

1: _________________________________________________
2: _________________________________________________
3: _________________________________________________
4: _________________________________________________
5: _________________________________________________

21) List up to five ways a mediator can hinder their development of rapport with the parties:

1: _________________________________________________
2: _________________________________________________
3: _________________________________________________
4: _________________________________________________
5: _________________________________________________

22) Do you intentionally try to do certain nonverbal cues such as gestures, movements, or expressions during a mediation session. If yes, list up to 5.
23) Do you intentionally TRY NOT TO DO certain nonverbal cues such as gestures, movements, or expressions during a mediation session. If yes, list up to 5.

1.: _________________________________________________
2.: _________________________________________________
3.: _________________________________________________
4.: _________________________________________________
5.: _________________________________________________

Environment

24) List in order the most appropriate seating arrangement with 1= most appropriate and 4= least appropriate.

_____ A
_____ B
_____ C
_____ D
25) List in order the most appropriate seating arrangement with 1= most appropriate and 5= least appropriate.

______A
______B
______C
______D
______E

26) List in order the most appropriate seating arrangement with 1= most appropriate and 4= least appropriate.

______A
______B
______C
______D
27) List in order the most appropriate seating arrangement with 1= most appropriate and 2= least appropriate.

   _______A
   _______B

28) In regards to COURT-based mediation, list in order the most appropriate seating arrangement with 1= most appropriate and 4= least appropriate.

   _______Chairs Only
   _______Chairs & Couch
   _______Conference Table
   _______Circular Table

29) In regards to COMMUNITY mediation, list in order the most appropriate seating arrangement with 1= most appropriate and 4= least appropriate.

   _______Chairs Only
   _______Chairs & Couch
   _______Conference Table
   _______Circular Table

30) In regards to DIVORCE mediation, list in order the most appropriate seating arrangement with 1= most appropriate and 4= least appropriate.

   _______Chairs Only
   _______Chairs & Couch
   _______Conference Table
   _______Circular Table
31) In regards to BUSINESS & EMPLOYMENT mediation, list in order the most appropriate seating arrangement with 1= most appropriate and 4= least appropriate.

_______Chairs Only
_______Chairs & Couch
_______Conference Table
_______Circular Table

Appearance

32) Click the box if you think that particular outfit is appropriate for each type of mediation practice area. If you do not think the outfit is appropriate for that particular mediation practice area, leave it blank.

<table>
<thead>
<tr>
<th></th>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
</tr>
</thead>
<tbody>
<tr>
<td>Community Mediation</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Court Mediation</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Divorce Mediation</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Business &amp; Employment Mediation</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
</tbody>
</table>
Thank You!

Thank you for taking our survey.

Your response is very important to us and will help explore the role of nonverbal communication and mediation.

If you wish to receive an email update to be notified when results are published, send an email to Jeff.Thompson@griffithuni.edu.au with the subject line stating "PhD Survey Results 2012."
Appendix D

Invitation to Key Informants

Hello,

My name is Jeff Thompson. I am a professional mediator based in New York City and I am currently conducting research towards a PhD degree at Griffith University Law School based in Queensland, Australia. My research topic is nonverbal communication and mediators. I am reaching out to you given your role in the mediation community as someone who is responsible for instructing aspiring mediators both on the knowledge of the field as well as how perform as a mediator. I want to invite you to contribute to my research project.

Your participation would involve being interviewed by me in person. The interview will include questions to gather your opinion, understanding, and method of instructing students on nonverbal communication and its role with mediators. The interview will be recorded either by using a digital audio video recorder or solely audio based on the type of interview being conducted. The recordings will be transcribed and de-identified maintaining your anonymity.

The recording is for analysis purposes and will be destroyed after the research is completed. Each participant will only be referred to as a male/female trainer or professor. The interview will last for approximately 30 minutes.

It is important to stress your participation is entirely voluntary. It is confidential and participants who do volunteer will not be personally connected or mentioned during any stages of the process or any future publications.

If you have any questions, I will gladly answer them. If you are interested in participating, please contact me so we can further discuss this and coordinate in regards to scheduling the interview.

Regards,

Jeff Thompson
Ph:
Email: jeff.thompson@griffithuni.edu.au
Appendix E

Information Sheet and Consent Form for Mediation Professors/Trainers

Who is conducting the research?
Name(s): Jeff Thompson, PhD Candidate
School(s) / Centre(s): Law School, Griffith University
Contact Email: jeff.thompson@griffithuni.edu.au

Why is the research being conducted?
The objective of this research is to explore the use of nonverbal communication by mediators. The research seeks to understand how various nonverbal cues and elements are used by mediators as well as how mediators say they use nonverbal cues and elements. The research is being conducted by a PhD candidate from Griffith University.

What you will be asked to do
As a professor or trainer who teaches mediation, you are asked to participate in either a face-to-face, Skype, or phone interview focused on gathering information on your understanding of how nonverbal communication applies to mediation and how you teach it to students. The interview will take place in one session and should last approximately 25 minutes. The interview will be recorded for the purpose of analysis.

The expected benefits of the research
It is expected the global mediation and conflict resolution community will benefit directly from this research. For mediation professionals and practitioners, the research is expected to identify the nonverbal cues and elements used by mediators. The research will inform further studies in the areas explored. The general community will benefit by the identification of these traits and uses of nonverbal communication. This will allow mediators to be more effective in helping them assist people involved in disputes and conflict. Additionally, it is expected the information provided as a result of the research will also be applicable to other professions where effective communication is relied on in order to achieve success.

Your confidentiality
All data collected will be secured while analysis is conducted. Your recorded interview will be transcribed and the recording will be deleted after analysis. Your contact details will be kept in a separate file to the information provided by you. No personal information will be published with the results and all data will be de-identified.

Your participation is voluntary
Participation in this research is voluntary. You are free to withdraw from the study at any time without comment or penalty. Please advise the researcher if you wish to withdraw from the study.
Questions / further information
Should you require any additional information about this research, please contact Jeff Thompson, Law School, Griffith University [email: jeff.thompson@griffithuni.edu.au].

The ethical conduct of this research
Griffith University conducts research in accordance with the National Statement on Ethical Conduct in Research Involving Humans. If potential participants have any concerns or complaints about the ethical conduct of the research project they should contact the Manager, Research Ethics on + 61 7 3735 5585 or research-ethics@griffith.edu.au.

Feedback to you
A summary of project results (in an aggregated de-identified form) will be available to participants upon request. Please contact the researcher (identified above) if you wish to receive a summary of results when they become available.

Privacy Statement
Data from this research may be used in a de-identified form for other research purposes. However, your anonymity will at all times be safeguarded. For further information consult the University’s Privacy Plan at www.griffith.edu.au/ua/aa/vc/pp or telephone + 61 7 3735 5585.
Consent Form For Mediation Trainers/Professors

Research Team
Name(s): Jeff Thompson, PhD Candidate
School(s) / Centre(s): Law School, Griffith University
Contact Email: jeff.thompson@griffithuni.edu.au

By signing below, I confirm that I have read and understood the information package and in particular have noted that:

• I understand that my involvement in this research will include participation in either a face-to-face interview, phone interview, or Skype interview;
• I have had any questions answered to my satisfaction;
• I understand the risks involved;
• I understand that there will be no direct benefit to me from my participation in this research;
• I understand that my participation in this research is voluntary;
• I understand that if I have any additional questions I can contact the research team;
• I understand that I am free to withdraw at any time, without comment or penalty;
• I understand that I can contact the Manager, Research Ethics, at Griffith University Human Research Ethics Committee on +61 7 3735 5585 (or research-ethics@griffith.edu.au) if I have any concerns about the ethical conduct of the project; and
• I agree to participate in the project.

Name
__________________________________________________________

Signature
__________________________________________________________

Date
__________________________________________________________
Appendix F

Guiding Questions and Topics for the Key Informant Interview

1. Name
2. Years teaching/training mediation?
3. What is your definition of mediation?
4. Do you teach a certain mediation model?
5. Does nonverbal communication have a role in mediation?
6. How is nonverbal communication taught in your course/training?
7. Do you refer to specific nonverbal communication techniques? (if yes, based on what?)
8. How does a mediator develop rapport with the parties?
9. Does nonverbal communication have a role in mediation?
10. How is nonverbal communication taught in your course/training?
11. Do you refer to specific nonverbal communication techniques? (if yes, based on what?)
12. How does a mediator build trust with the parties?
13. How does a mediator display a professional presence?
14. Do you recommend mediators shake each person’s hand during greeting? (does gender matter?)
15. What role do you see the Mediator’s Introduction playing?
16. What is your ideal layout for the type of mediation you do?
17. What impact does the mediator’s appearance have?
18. Finish this sentence: A good mediator…
19. Anything else you would like to add?
## Appendix G

### METTA Coding Sheet for Study 3

<table>
<thead>
<tr>
<th>Mediator Code</th>
<th>m/f</th>
</tr>
</thead>
<tbody>
<tr>
<td>Location</td>
<td>Time</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Head nod</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Head shake</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Head tilt</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Eye contact</td>
<td>A</td>
<td>B</td>
</tr>
<tr>
<td>Posture</td>
<td>Forward</td>
<td>Upright</td>
</tr>
<tr>
<td>Legs</td>
<td>Crossed</td>
<td>Uncrossed</td>
</tr>
<tr>
<td>Mouth</td>
<td>Smile</td>
<td>Neutral</td>
</tr>
<tr>
<td>Body orientation</td>
<td>A</td>
<td>Both</td>
</tr>
<tr>
<td>Gestures</td>
<td>Open</td>
<td>Closed</td>
</tr>
<tr>
<td>Painting</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Hands Visible</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Adaptors</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Tone</td>
<td>Friendly</td>
<td>Assertive</td>
</tr>
<tr>
<td></td>
<td>1</td>
<td>2</td>
</tr>
</tbody>
</table>

- **Tone**
  - Friendly: 1, 2, 3, 4, 5
  - Assertive: 1, 2, 3, 4, 5
  - Expressive: 1, 2, 3, 4, 5

<table>
<thead>
<tr>
<th>Appearance</th>
<th>Business</th>
<th>B-Casual</th>
<th>Casual</th>
<th>Pol/k</th>
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<tbody>
<tr>
<td>Belongings on table</td>
<td>Yes</td>
<td>No</td>
<td>distance</td>
<td></td>
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<tr>
<td>Writing material</td>
<td>Yes</td>
<td>No</td>
<td>0</td>
<td>1-5</td>
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<tr>
<td>Instrument</td>
<td>Yes</td>
<td>No</td>
<td>0</td>
<td>6-12</td>
</tr>
<tr>
<td>Shake hands</td>
<td>A, Both</td>
<td>B</td>
<td>Neither</td>
<td>layout</td>
</tr>
<tr>
<td>Initiate</td>
<td>A</td>
<td>B</td>
<td>Med</td>
<td>Both</td>
</tr>
</tbody>
</table>

**Overall**
- Support: 1, 2, 3, 4, 5
- Professional: 1, 2, 3, 4, 5
- Trust: 1, 2, 3, 4, 5

Extra:
Appendix H

Mediator Observations Information Sheet and Consent Form

Who is conducting the research?
Name(s): Jeff Thompson, PhD Candidate
School(s) / Centre(s): Law School, Griffith University
Contact Email: jeff.thompson@griffithuni.edu.au

Why is the research being conducted?
The objective of this research is to explore the role of nonverbal communication and mediators. The research seeks to understand how various nonverbal cues and elements are used by mediators as well as how mediators say they use nonverbal cues and elements.
The research is being conducted by a PhD candidate from Griffith University

What you will be asked to do
As an experienced mediator, you are asked to allow the researched to observe your mediation sessions. The mediation observation sessions will be done according to your scheduling of cases.

The expected benefits of the research
It is expected the global mediation and conflict resolution community will benefit directly from this research. For mediation professionals and practitioners, the research expects to identify the nonverbal cues and elements used by experienced and successful mediators. For researchers, the research will allow them to conduct further studies on the areas explored.
The general community will benefit by identifying these traits and uses of nonverbal communication will allow mediators to be more effective in helping them assist people involved in disputes and conflict. Additionally, it is expected the information provided as a result of the research will also be applicable to other professions where effective communication is relied on in order to achieve success.

Your confidentiality
All data collected will be secured while analysis is conducted. Video of the simulation will be deleted after analysis. Your contact details will be kept in a separate file to the information provided by you. No personal information will be published with the results and each participant will be de-identified.

Your participation is voluntary
Participation in this research is voluntary. You are free to withdraw from the study at any time without comment or penalty. Please advise the researcher if you wish to withdraw from the study. Whilst support for this research has been gained from your mediation center, participation in this research will in no way impact on your relationship with
them. You are not compelled to participate in this research as a result of their organizational support.

Questions / further information
Should you require any additional information about this research, please contact Jeff Thompson, Law School, Griffith University (email: jeff.thompson@griffith.edu.au).

The ethical conduct of this research
Griffith University conducts research in accordance with the National Statement on Ethical Conduct in Research Involving Humans. If potential participants have any concerns or complaints about the ethical conduct of the research project they should contact the Manager, Research Ethics on 3735 5585 or research-ethics@griffith.edu.au. Ethics approval has also been provided by your mediation center.

Feedback to you
A summary of project results (in a aggregate, de-identified form) will be available to participants upon request. Please contact the researcher (identified above) if you wish to receive a summary of results when they become available.

Privacy Statement
A de-identified copy of this data may be used for other research purposes. However, your anonymity will at all times be safeguarded. For further information consult the University’s Privacy Plan at www.griffith.edu.au/ua/aa/vc/pp or telephone (07) 3735 5585.
Mediator Observation Consent Sheet

Research Team

Name(s): Jeff Thompson, PhD Candidate
School(s) / Centre(s): Law School, Griffith University
Contact Email: jeff.thompson@griffith.edu.au

By signing below, I confirm that I have read and understood the information package and in particular have noted that:

- I understand that my involvement in this research will include allowing my mediation sessions to be observed by the researcher and participation in either a face-to-face interview, phone interview, or Skype interview;
- I will participate in a video recorded simulation of a mediator’s introduction;
- I have had any questions answered to my satisfaction;
- I understand the risks involved;
- I understand that there will be no direct benefit to me from my participation in this research;
- I understand that my participation in this research is voluntary;
- I understand that if I have any additional questions I can contact the research team;
- I understand that I am free to withdraw at any time, without comment or penalty;
- I understand that I can contact the Manager, Research Ethics, at Griffith University Human Research Ethics Committee on 3735 5585 (or research-ethics@griffith.edu.au) if I have any concerns about the ethical conduct of the project; and
- I agree to participate in the project.

Name

________________________________________________________________

Signature

________________________________________________________________

Date

________________________________________________________________
CONFIDENTIALITY FORM FOR MEDIATION OBSERVERS

I ________________________________, agree to maintain the confidentiality of the mediation process I am observing on ________________________________.

(Print Name)

of the mediation process I am observing on ________________________________.

(Date)

As required by law, any matter discussed in connection with the mediation cannot be used in a subsequent case against the parties. Any reference to the case you observed in future periodicals, reports, etc. should not contain identifying information (this includes names, case numbers, and/or specific case details).

SIGNED:

Observer: ________________________________

Mediation Staff Person: ____________________

Date: __________________________
References


American Bar Association Section on Dispute Resolution (2008). *Taskforce on improving mediation quality*.


Butts, T. & Kressel, K. (2006). Explorations of mediator schema. In J. Kerwin (Chair), *Conflict Dynamics and the ADR Process*. Symposium conducted at the meeting of the University of Massachusetts-Boston Conflict Studies Conference, Boston, MA.


Nastasi B.K. (2011). *Qualitative research: Sampling & sample size considerations*. Retrieved from: https://my.laureate.net/Faculty/docs/Faculty%20Documents/qualit_res__smpl_size_consid.doc


Remland, M. S. (2002). Book Review: Madonik, B. I hear what you are saying, but what are you telling me? The strategic use of nonverbal communication in mediation. Conflict Resolution Quarterly 20, 121-127.


