@ Face Value?

Non-Verbal Communication and Trust Development in Online Video-Based Mediation

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Abstract

Mediation is a process wherein a third party, or mediator, attempts to assist two conflicting parties in dealing with their dispute. Research has identified party trust in the mediator as a key element required for mediator effectiveness. In online video-based mediation, the addition of technology to the mix poses both challenges and opportunities to the capacity of the mediator to build trust with the parties through non-verbal communication. While authors researching the field of online dispute resolution have often focused on trust, their work has typically targeted text-based processes. As online dispute resolution embraces video-based processes, non-verbal communication becomes more salient. Non-verbal communication research has identified examples of specific actions that can contribute to trust. This article combines that research with current scholarship on trust in mediation and on non-verbal communication in mediation to map out the landscape mediators face while seeking to build trust through non-verbal communication in online video-based mediation. Suggestions for future research and implications for practice are noted, holding relevance to researchers and practitioners in any field in which trust, non-verbal communication and technology converge.

Keywords: trust, mediation, non-verbal communication, rapport, technology.

1 Introduction

Mediation refers to a process for dispute resolution or joint decision making, in which two disputing parties voluntarily request the assistance of an uninvolved third party to help them work through their differences. The mainstream practice of professional mediation in Western countries emphasizes two elements: parties are free to leave the process at any time, and the third party, or mediator, does not have the authority to impose a binding decision on them. Any outcome arrived at through the mediation process is that of an agreement reached between the parties themselves.

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Given the non-coercive and voluntary nature of the process, it should come as no surprise that studies on mediator effectiveness have demonstrated the significant value assigned – both by mediators and by parties to mediation – to the mediators' capacity to capture the parties' trust. How is this trust formed? The literature points to many individual elements of party–mediator trust.[1] This includes the mediator's reputation and expertise as well as the skills possessed by the mediator. Reviewing the literature, however, leaves one with the sense that this search for a complete understanding of the mechanisms of trust in mediation is a work in progress.

Studies show the critical role non-verbal communication plays in creating trust between individuals. Generally, non-verbal communication has been described as being vital to having a successful interaction with others,[2] while, more specifically, body congruence can create trust.[3] Eye contact has been demonstrated to contribute to a person being perceived as trustworthy,[4] and to creating "liking".[5] Conversely, lack of eye contact, or gaze aversion, has been associated with a person being perceived as untrustworthy.[6]

Given the potential for non-verbal communication tactics to directly affect trust, we find the relative scarcity of studies on non-verbal communication in mediation somewhat surprising, as we do the dearth of prescription towards specific non-verbal actions in mediation training and literature. The necessity of increased focus on the topic is supported by recent data showing that mediators overwhelmingly describe non-verbal communication in regard to mediation being "very important".[7]

Mediation is currently facing a period of great change – evolution, if you will – as it increasingly embraces online communication. Online mediation offers a wide range of benefits over its face-to-face counterpart, from saved costs,

1   N. Ebner, 'ODR and Interpersonal Trust', *in* M.S. Abdel Wahab, E. Katsh & D. Rainey (Eds.), *ODR: Theory and Practice*, Eleven International Publishing, The Hague, 2012 (hereinafter, Ebner, 'ODR and Interpersonal Trust', 2012).
2   R.S. Feldman & B. Rime, *Fundamentals of Nonverbal Behavior*, Cambridge University Press, New York, 1991.
3   P.A. Andersen, *Nonverbal Communication: Forms and Functions*, Waveland Press, Long Grove, 2008.
4   S.A. Beebe, 'Effects of Eye Contact, Posture, and Vocal Inflection upon Credibility and Comprehension', *Australian Scan: Journal of Human Communication*, Vol. 27, 1980, pp. 92-97; N. Zeigler-Kratz & L.L. Marshall, 'Impressions of Therapists: The Effects of Gaze, Smiling and Gender', *Journal of Psychology and the Behavioral Sciences*, Vol. 5, 1990, pp. 115-129.
5   A. Mehrabian & S.R. Ferris, 'Inference of Attitudes from Nonverbal Communication in Two Channels', *Journal of Consulting Psychology*, Vol. 31, 1967, pp. 248-252.
6   Andersen, 2008.
7   J. Thompson, *Nonverbal Communication & Mediators: Practical Tips Based on Research* (unpublished presentation and infographic at the ABA Section on Dispute Resolution's Annual Conference, April 2013, Chicago).

convenience and flexibility[8] to environmental protection.[9] As the feasibility of online dispute resolution (ODR) gains acceptance in general, a rising number of individual practitioners offer to bring disputing parties together online to resolve their differences through mediation.[10]

In online mediation processes, trust remains an important mediator attribute. The online environment poses a particularly rough playing ground to a mediator attempting to build trust. The literature on negotiation and dispute resolution, along with the literature on other aspects of online communication, has noted many specific challenges to trust creation and maintenance in the online environment.[11]

However, much of this literature has focused on text-based communication, primarily asynchronous – such as email – based communication – seeing such 'lean media' as the most challenging landscape to navigate.[12] There seems to be an assumption, voiced or not, that in video-based communication the challenges to trust would diminish to their proportions in face-to-face communication. Indeed, while research has found video interactions to be generally more conducive to trust emergence than other media other than face-to-face interactions,[13] it does not follow that video communication does not pose its own, unique, challenges to trust.

The aim of this article is, therefore, to establish and reinforce the range of techniques for trust building that mediators can bring to the virtual table through the channels provided by non-verbal communication in online video-based mediation. After establishing the role trust plays at the heart of mediators' efficacy, and the important role of non-verbal communication in engendering or diminishing this trust, we will explore the ways in which these roles play out in the online environment. Through specific examples of non-verbal transmission and reception of cues, we will demonstrate how trust in e-mediation processes – and indeed, the processes themselves – can be derailed or supported by close atten-

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8   E. Katsh & J. Rifkin, *Online Dispute Resolution: Resolving Conflict in Cyberspace*, Jossey-Bass, San Francisco, 2001; C. Rule, *Online Dispute Resolution for Business: B2B, E-Commerce, Consumer, Employment, Insurance, and Other Commercial Conflicts*, Jossey-Bass, San Francisco, 2002.

9   N. Ebner & C. Getz, 'ODR: The Next Green Giant', *Conflict Resolution Quarterly*, Vol. 29, No. 3, 2012, pp. 283-307.

10   N. Ebner, 'E-Mediation', *in* Abdel Wahab *et al.*, 2012 (hereinafter, Ebner, 'E-Mediation', 2012).

11   *See* N. Ebner, 'Trust-Building in E-Negotiation', *in* L. Brennan & V. Johnson (Eds.), *Computer-Mediated Relationships and Trust: Managerial and Organizational Effects*, Information Science Publishing, Hershey, 2007; Ebner, 'ODR and Interpersonal Trust', 2012.

12   *See, e.g.*, Z.I. Barsness & A.D. Bhappu, 'At the Crossroads of Technology and Culture: Social Influence, Information Sharing, and Sense-making Processes During Negotiations', *in* M.J. Gelfand & J.M. Brett (Eds.), *The Handbook of Negotiation & Culture*, Stanford University Press, Palo Alto, 2004; Ebner, 2007; N. Ebner, A. Bhappu, & J.G. Brown, *et al.*, 'You've Got Agreement: Negoti@ing via Email', *in* C. Honeyman, J. Coben & G. DiPalo (Eds.), *Rethinking Negotiation Teaching: Innovations for Context and Culture*, DRI Press, St. Paul, 2009; S.N. Exon, 'Maximizing Technology to Establish Trust in an Online, Non-visual Mediation Setting', *University of La Verne Law Review*, Vol. 33, 2011, p. 27.

13   N. Bos, J. Olson & D. Gergle, *et al.*, 'Effects of Four Computer-mediated Communications Channels on Trust Development', *in Proceedings of SIGCHI Conference on Human Factors in Computing Systems*, ACM Press, New York, 2002, pp. 135-140.

tion to non-verbal communication. We will then offer recommendations for further explorations the mediation field and the non-verbal communication field need to conduct to further develop our understanding of the juxtaposition of trust, the online environment and non-verbal communication. Finally, we discuss the implications of these suggestions for people operating in fields other than e-mediation, in which building trust is necessary for conducting successful interactions.

2 Mediation Explained

Mediation refers to a spectrum of processes in which two disputing parties voluntarily accept the assistance of an uninvolved third party to help them work through their differences (for a simplified portrayal of mediation,[14] see Figure 1). While there are many process shades along this spectrum, two elements remain constant: the disputing parties maintain their autonomy and are free to leave the process at any time; and the third party, or mediator, does not have the authority to impose a binding decision on the disputants. Any outcome arrived at through the mediation process is the result of an agreement reached between the parties themselves.

While many schools of thought exist with regard to the purpose of mediation, the scope of issues to be covered in a process and the role of the mediator,[15] the limitations on mediator authority implicit in the two commonalities noted above require mediators to ground their ability to assist parties in areas other than in formal authority. Indeed, lacking the authority to impose participation in the process or any final outcome on parties, the fundamental attribute that mediators can bring to the table (or develop at the table) is parties' trust in them.[16]

These attributes of mediation are at the root of the transferability of the discussion in this article to other areas in which professionals cannot dictate results during an interaction, but requires their engagement. Trust is key, and non-verbal communication is at the heart of trust building.

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14 While a great many mediations do run along the lines indicated in Figure 1, two other factors often intervene to make mediation a more complex interaction. First, some professionals strongly advocate 'co-mediation', in which two mediators team up to work with disputing parties. Second, disputes often involve multiple parties. As a result, it is not unusual to encounter mediation processes in which the lines of communication and trust relationships form a web of great complexity.

15 R.A.B. Bush & J.P. Folger, *The Promise of Mediation: Responding to Conflict Through Empowerment and Recognition*, Jossey-Bass, San Francisco, 1994; L.L. Riskin, 'Mediator Orientations, Strategies, and Techniques', *Alternatives to High Costs of Litigation*, Vol. 12, 1994, pp. 111-114; C. Moore, *The Mediation Process*, 3rd edn, Jossey-Bass, San Francisco, 2003.

16 A third trust relationship exists, of course – the trust relationship between the parties themselves. While certainly an important topic with regard to the mediator role, it is not the focus of this article, which deals solely with affecting the degree of trust parties place in the mediator.

Figure 1   Mediation Triangle
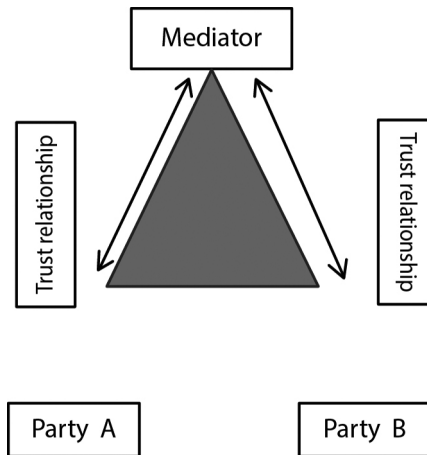
3   Trust in Mediation

It is well accepted that a mediator needs to develop trust with the parties they are helping in a dispute in order for a successful outcome to be possible.[17] In fact, surveys of mediators and of parties to mediation have clearly shown that the ability to gain a party's trust is held to be *the* most valuable skill of the effective mediator.[18] However, the current scholarship offers limited micro tools a mediator might use with the specific aim of building trust with the parties. Instead, big-picture considerations are discussed in the context of trust; the effects of trust on mediation, rather than the effects of specific actions on trust. One such macro finding is that parties' trust in their mediator is an important factor not only in the important question of whether parties actually reach a settlement but also in the preliminary question of whether they agree to participate in mediation at all.[19]

The sparse discussion of micro tools might be connected to a challenge of macro definition. Without knowing what one is trying to achieve in a general sense, it is hard to point to concrete steps he or she should take. Simply, trust is a tricky thing to define. It is often pointed out that there is no one universal way to define it, and that all suggestions made on this count are affected by the particu-

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17   J. Poitras, 'What Makes Parties Trust Mediators?', *Negotiation Journal*, Vol. 25, No. 3, 2009, pp. 307-325.

18   S.B. Goldberg, 'The Secrets of Successful Mediators', *Negotiation Journal*, Vol. 21, No. 3, 2005, pp. 365-375; S.B. Goldberg & M.L. Shaw, 'The Secrets of Successful (and Unsuccessful) Mediators Continued: Studies Two and Three', *Negotiation Journal*, Vol. 23, 2007, pp. 393-417.

19   P. Carnevale & D. Pruitt, 'Negotiation and Mediation', *Annual Review of Psychology*, Vol. 43, 1992, pp. 531-582.

lar perspective of the definer.[20] Ebner has suggested, as a working definition of trust in the context of dispute resolution, that it is "an expectation that one's cooperation will be reciprocated, in a situation where one stands to lose if the other chooses not to cooperate".[21] In other words, the act of trusting someone involves accepting an element of risk, of betting on an unguaranteed occurrence. Applying this to party–mediator dynamics within the mediation process, Ebner explains how mediators depend on parties to accept risk and, in essence, bet on the mediator:

> As mediators, we also ask parties to trust *us* and to trust the mediation *process*, despite the risk and uncertainty involved and despite the fact that their expectations cannot, ultimately, be fully satisfied by us, but rather by the other party. We ask them to desist, delay, or act in parallel to other alternative processes for solving their problems, while at the same time explaining that there is no certainty regarding the outcome of the mediation process. We invite them to divulge information to us, to explore their interests with us, and to reconsider their assessments and offers – even when they are uncomfortable doing this together with the other party – and their agreeing to do so is predicated on their trust in the mediator.[22]

Such a working definition might make it easier to address trust in an empirical and practical sense, rather than in philosophic discussion. Indeed, it provides a lens through which mediators can address what may be their most important question: with so much riding on the mediator successfully engendering trust in parties, what, practically speaking, should a mediator do to develop this trust? How does trust 'happen', and how can it be nurtured? Or, simply, what mediator actions might make parties more likely to bet on the mediator?

Formation of trust can be related to different elements inherent in a particular mediation process. Some of these elements might be structural or social in their nature: mediators often rely on their reputation or on their status in a particular community or network.[23] Other elements relate to the mediator's personal in-the-room skillset: in addition to their general competence in process management, parties have reported that effective mediators are those with good communication abilities, who are skilled at forming rapport with each party and who are able to engender trust in parties.[24]

With regard to those last traits of communication, trust and rapport, we must ask: what, precisely, is it that good mediators do? 'Engendering trust', for

20   J. Boyd, 'The Rhetorical Construction of Trust Online', *Communication Theory*, Vol. 13, No. 4, 2003, pp. 392-410; D. Koehn, 'The Nature of and Conditions for Online Trust', *Journal of Business Ethics*, Vol. 43, No. 1, 2003, pp. 3-19; Y.D. Wang & H.H. Emurian, 'An Overview of Online Trust: Concepts, Elements, and Implications', *Computers in Human Behavior*, Vol. 21, No. 1, 2005, pp. 105–125.
21   Ebner, 2007, p. 141.
22   Ebner, 'ODR and Interpersonal Trust', 2012, p. 206.
23   Moore, 2003.
24   Goldberg, 2005.

example, is a very general concept. How does a mediator go about doing this in practice? Given the complex and hostile atmosphere mediation often provides, what can mediators do to form bonds of trust and rapport, and how can their actions be applied to other professionals who need to build trust to be effective?

In order to draw together findings on trust building in mediation, one must cast a net wide enough to draw in other related notions and terms. The literature on mediation often relates to trust obliquely, or spotlights traits and dynamics that are closely connected to trust. Most notable is the term *rapport*. The ability of a mediator to form rapport with parties has been found to be the most important ability or skill a mediator can possess[25]; a primary element of this rapport, as the term was used in this study, was parties' trust in the mediator, also discussed as the mediator gaining the *confidence* of the parties. Their negative counterparts support these findings: a lack of *integrity* (including trust-breaking behavior) has been found to be widely viewed as a cause of mediator failure.[26]

Reading the above, though, one might remain frustrated by the generalities. Rapport, good communication and trust are all clearly interrelated and of critical importance for mediation, yet how does one go about creating and improving them?

Indeed, despite the clear links established between rapport-building and trust,[27] and rapport's stated importance to being an effective mediator,[28] one finds very little advice as to specific actions a mediator might take with the goal of developing it. This might be due to the mediation literature's tendency to focus primarily on verbal communication. However, as we shall see, non-verbal communication plays a major role in a mediator's ability to navigate these complex webs and help parties in their endeavor to work out their differences – and the field of non-verbal communication contains specific and implementable findings related to improving communication, increasing rapport and building trust. We will focus on this in the next two sections.

First, however, we will note the few suggestions that have been made in the literature to operationalize trust, by pinning it down to specific phases of mediation, as well as to particular mediator actions and moves.

A mediator's positive reputation can garner him or her some measure of trust before the parties even enter the room,[29] as can displaying or detailing their credentials at the beginning of the process.[30] A mediator being observant, show-

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25   *Id*.; Goldberg & Shaw, 2007.
26   Goldberg, 2005.
27   *See* A.M. Braeutigam, 'What I Hear You Writing is... Issues in ODR: Building Trust and Rapport in the Text-based Environment', *University of Toledo Law Review*, Vol. 38, 2005, p. 101; J. Nadler, 'Rapport in Negotiation and Conflict Resolution', *Marquette Law Review*, Vol. 87, 2004, pp. 875-882; Poitras, 2009.
28   M. Noone, 'Mediating Personnel Injuries Disputes', *in* J. Macfarlane (Ed.), *Rethinking Disputes: The Mediation Alternative*, Emond Montgomery, Toronto 1997, pp. 39-51.
29   Goldberg, 2005.
30   Exon, 2011.

ing the parties respect and identifying the issues of central importance to them[31] have also been described as facilitating trust-development.

Trust has been described as developing at particular points throughout the course of mediation; in other words, temporally speaking, trust fluctuates. Some stages in the process are particularly important for trust development. For example, some mediators pinpoint the opening stages of a mediation – the mediator's greeting of the parties, and his or her introduction of the mediation process itself – as being critical moments for trust development. Others pinpoint the mediator's private sessions with parties, or caucuses, to be laden with potential for trust building.

In one survey, *mediators* suggested that trust was most effectively built through the mediator's empathic listening, and to a lesser extent by the mediator displaying honesty and adherence to ethical considerations.[32] *Parties* to mediation surveyed on this same question stressed other mechanisms and traits as affecting the degree of trust that mediators evoked in parties, highlighting mediators' friendliness, likability, integrity, neutrality, maintaining of confidentiality and level of preparedness for the process.[33]

One way or another, these findings close a circle of trust, or as Ebner put it: "[…] not only do many mediator moves *depend* on trust […] many (or most) mediator moves *affect* trust as well".[34]

However, this is only the tip of the iceberg, in terms of actions a mediator can take to affect trust dynamics. In moving from generalities to specific actions, the role of non-verbal communication in mediation must be revisited. This revisiting is particularly important in light of the trend, discussed below, towards video-based mediation – in which non-verbal communication plays an important role.

4   Non-Verbal Communication in Mediation

In this article, our exploration of non-verbal communication in e-mediation will relate to a wide range of cues (or actions) and elements (such as clothing or the environment) divided into five categories as part of the METTA (Movement, Environment, Touch, Tone and Appearance) model.[35] The METTA model was designed to raise awareness of each of the non-verbal cues and elements potentially present in a mediation session by classifying non-verbal communication into five categories as described in the table below. Identifying each of the potential non-verbal elements and cues through METTA helps ensure that none of them is overlooked. Additionally, it allows for mapping out each attribute in

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31   T.W. Yiu & W.Y. Lai, 'Efficacy of Trust-building Tactics in Construction Mediation', *Journal of Construction Engineering and Management*, Vol. 135, No. 8, 2009, pp. 683-689.
32   Goldberg, 2005.
33   Goldberg & Shaw, 2007.
34   Ebner, 'ODR and Interpersonal Trust', 2012, p. 210.
35   J. Thompson, *Nonverbal Communication and Mediators: An Ethnographic Approach and Semiotic Analysis* (unpublished candidature paper, Griffith Law School, 2011, Brisbane, Australia).

Table 1:   METTA Model of Non-Verbal Communication

Movement	Gestures, posture, body orientation, eyes, facial expressions and head nodding
Environment	Location, distance between people, time, and layout of the room
Touch	Handshaking, adaptors, and object adaptors
Tone	Clarity, pauses, 'ums' and 'ahs'
Appearance	Clothing, accessories, and adornments

relation to all of the others. This is particularly important when exploring a macro trait such as trust.

When compared with verbal communication, non-verbal communication can have a greater impact on social interactions,[36] and when incongruence exists between the two, it is the non-verbal cues people will rely on as being more truthful.[37]

While often mentioned in passing, non-verbal communication is rarely explored in depth in the context of negotiation and dispute resolution. Most discussions in the literature on the subject of communication in mediation have focused on verbal elements of communication. In instances when non-verbal communication is described, it is often limited to macro-level explanations. This includes rapport being described as contributing to generating understanding and mutually beneficial solutions,[38] yet specific micro examples are not provided.[39]

When non-verbal micro cues are spotlighted, they have often been linked with examples that seem to be accepted as common knowledge even though they have not been validated by research.[40] Some works do reference the importance of non-verbal communication,[41] and others specifically explore the role of non-verbal communication in negotiation; however, the examples provided are not specific to conflict resolution, limiting their potential for guidance.[42]

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36   M.L. Patterson, *More than Words: The Power of Nonverbal Communication*, Aresta, Spain, 2011.

37   J.K. Burgoon, L.K. Guerrero & K. Floyd, *Nonverbal Communication*, Pearson, Upper Saddle River, 2010; L.K. Guerrero & M.L. Hecht (Eds.), *The Nonverbal Communication Reader*, Waveland, Long Grove, 2008.

38   Goldberg, 2005; Goldberg & Shaw, 2007; K.M.J. Harmon, 'The Effective Mediator', *Journal of Professional Issues in Engineering Education and Practice*, Vol. 132, 2006, pp. 326-333.

39   W. Louis, 'Intergroup Positioning and Power', *in* F.M. Moghaddam, R. Harre & N. Lee (Eds.), *Global Conflict Resolution Through Positioning Analysis*, Springer Science Business Media, New York, 2008, pp. 21-40; New York Peace Institute Training Manual, 2008 (distributed during training); N. Slocum & L. Langenhove, 'The Meaning of Regional Integration: Introducing Positioning Theory in Regional Integration Studies', *Journal of European Integration*, Vol. 26, No. 3, 2004, pp. 227-252.

40   As noted by M.S. Remland, *Nonverbal Communication in Everyday Life*, 3rd edn, Allyn & Bacon, Boston, 2009.

41   *See*, *e.g.*, D. Kolb, *When Talk Works*, Jossey-Bass, San Francisco, 1997.

42   *See*, *e.g.*, M. Wheeler, *Nonverbal Communication in Negotiation*, Harvard Business School Publishing, Boston, 2003.

Works by Wheeler, Kestner and Ray, Madonik and Kolb[43] do offer examples and tips that can be beneficial to mediators but can also be viewed as either introductory or limited in data pinpointing non-verbal actions that have been validated. What few validated suggestions have been made tend to focus on recommendations for incorporating non-verbal communication cues and elements in the use of active listening as a communication tool.[44] While each of these works offers a contribution to a greater understanding of non-verbal communication and its application in conflict resolution, there is obviously yet much to be uncovered in this area.

That fact notwithstanding, a few recent studies have offered initial substantiated findings in this area. Poitras' 2009 study[45] names five macro skills, wherein specific mediator actions can be attributed with trust building by the mediators: degree of mastery over the process, explanation of the process, warmth and consideration, chemistry with the parties and lack of bias towards either party. When reviewing the list provided by Poitras, multiple skills have clear non-verbal communication aspects to them. For example, mediator warmth is most likely not only an outcome of the mediator's verbal words but also a result of the non-verbal aspects of the mediator's actions.

Thompson's[46] research expands on Poitras and Goldberg's work by specifically exploring non-verbal communication and mediators. His work provides quantitative and qualitative data of micro and macro non-verbal cues used by mediators, which are specific to trust and rapport building.

The tendency to focus on verbal rather than non-verbal communication is reflected in the content of mediation training courses, which serve, for many professionals, as the mediation field's entry-level qualification. The communicative skills stressed tend towards verbal communication: listening, using questions, reframing messages and so on. Non-verbal communication exploration is usually limited to very perfunctory discussions of body language or facial expressions. While other issues we categorize as non-verbal communication sometimes also receive mention (such as the question of how to design a mediation room, or arrange seating at a table), they are not usually discussed through the lens of non-verbal communication.

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43 *Id.*, p. 203; P.B. Kestner & L. Ray, *The Conflict Resolution Training Program Participant's Workbook*, Jossey-Bass, San Francisco, 2002; B. Madonik, *I Hear What You Say, but What Are You Telling Me? The Strategic Use of Nonverbal Communication in Mediation*, Jossey-Bass, San Francisco, 2001; Kolb, 1997.
44 J. Macfarlane, *Dispute Resolution*, 3rd edn, Emond Montgomery, Toronto, 2011.
45 Poitras, 2009.
46 Thompson, 2013.

5   Non-Verbal Communication Elements of Trust

The role of a mediator is to guide and assist the parties during the mediation ses-sion.[47] Overt aspects of this guidance might include, for example, the mediator utilizing skills to directly help parties explore options and evaluate possible solu-tions. However, an underlying layer of guidance exists in the mediator's ability to demonstrate positive and productive actions that each party might pick up on, and use, during the mediation session. Therefore, key mediator skills have their roots in non-verbal communication – developing rapport, immediacy, mirroring and mimicry. These skills are all related to party–mediator trust.

Research on rapport, which has been identified as being directly connected with mediators building trust with the parties,[48] identifies three elements occur-ring between rapport-forming interactants: positivity, coordination and mutual attention.[49] Specific micro examples of rapport are linked with non-verbal actions.[50] This includes smiling, directional gaze, head nodding, forward trunk positioning, postural mirroring, direct body orientation, uncrossed arms and uncrossed legs.[51] Through intentional manipulation of the frequency and intensity of these cues, mediators can directly influence the degree of rapport with parties. And, with rapport comes trust.

Rapport builds trust and confidence in the mediator and has been described as being achieved when the mediator is "connected" with the parties.[52] *Connected-ness* occurs when the mediator is 'one of us' with the parties. That rapport must be built skilfully, in order to coexist with *authority*, another source of party trust. Authority is engendered when the sensation that the mediator is 'one of us' does not limit the sense that the mediator is also 'beyond being one of us', by virtue of his or her being experienced and professional in working in conflict. This tricky juggling act is supported largely by non-verbal communication.

Immediacy – messages that signal warmth, closeness and involvement – is another concept closely linked with trust. Immediacy has been shown to increase credibility, competence and trustworthiness.[53] When one looks at the research on the non-verbal actions that create immediacy,[54] one might not be surprised to see actions similar to those that have been listed as contributing to rapport and trust as well (including, *e.g.*, direct body orientation, smiling, nodding, direct eye con-tact and facial expressiveness). Robinson[55] cautions us that with immediacy, as with trust-building cues, it is a *cluster* of non-verbal actions that *collectively* con-

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47   Harmon, 2006.
48   *Id*.; Poitras, 2009; Thompson, 2011.
49   L. Tickle-Degnen & R. Rosenthal, 'The Nature of Rapport and its Nonverbal Correlates', *Psycho-logical Inquiry*, Vol. 1, 1990, pp. 285-293.
50   Nadler, 2004.
51   Tickle-Degnen & Rosenthal, 1990.
52   C. Honeyman, B. Goh & L. Kelly, 'Skill Is Not Enough: Seeking Connectedness and Authority in Mediation', *Negotiation Journal*, Vol. 20, No. 4, 2004, pp. 489-511.
53   Andersen, 2008.
54   *See Id.*, p. 221.
55   J.D. Robinson, 'Nonverbal Communication in Doctor-Patient Relationships', *in* L.K. Guerrero & M.L. Hecht (Eds.), *The Nonverbal Communication Reader*, Waveland, Long Grove, 2008.

tribute to creating immediacy; thus looking solely at one specific action, in isolation, is unlikely to give a dependable assessment of immediacy.

Mirroring and mimicry are actions, both verbal and non-verbal, that are congruent between persons.[56] Congruent non-verbal movements, even when purposely acted out, result in that person being perceived by the other as being more competent, trustworthy and sociable.[57]

Unconscious mimicry, or the repeating of another's non-verbal behaviour,[58] is more likely to occur when there is a mutual goal.[59] Mimicry has also been linked with politeness[60] and is described as being able to increase rapport with people.[61]

Postural mirroring has been linked to creating rapport,[62] empathy[63] and immediacy. Therefore, it would be wise for a mediator to incorporate mirroring and mimicry into their ongoing mediator moves such as reframing and summarizing parties' statements. Remland[64] offers a note of caution, however, stating that engaging intentionally in mimicry in a manner that is perceived as disingenuous may have a detrimental effect on your attempts at building rapport.

Each of these attributes is a basic building block of parties' trust in their mediator. As a guide, the parties look to the mediator, often subconsciously, for examples of how to act during their negotiation. This opens the door for the mediator to continually prime parties. "Priming", in this regard, involves one person engaging in subtle non-verbal actions performed with the intention of influencing the actions of others.[65]

In our context, mediators can prime parties towards initiating or responding to rapport building with the mediator or with each other, through the power

56   Thompson, 2011.
57   W.G. Woodhall & J.K. Burgoon, 'The Effects of Nonverbal Synchrony on Message Comprehension and Persuasiveness', *Journal of Nonverbal Behavior*, Vol. 5, 1981, pp. 207-223.
58   M.L. Knapp, J.A. Hall & T.G. Horgan, *Nonverbal Communication in Human Interaction*, Wadsworth Cengage Learning, Boston, 2013.
59   J.L. Lakin & T.L. Chartrand, 'Using Unconscious Behavioral Mimicry to Create Affiliation and Rapport', *Psychological Science*, Vol. 14, 2003, pp. 334-339.
60   *Id.*
61   Tickle-Degnen, 2006.
62   J.A. Hall, *Nonverbal Behavior in Social Psychology Research: The Good, the Bad, the Ugly* (prepared for a volume based on Purdue Symposium on Behavior, 5-6 May 2008); Tickle-Degnen & Rosenthal, 1990.
63   J.R. Curhan & A. Pentland, 'Thin Slices of Negotiation: Predicting Outcomes from Conversational Dynamics Within the First Five Minutes', *Journal of Applied Psychology*, Vol. 92, 2007, pp. 802-811.
64   Remland, 2009.
65   R.H. Thaler & C.R. Sunstein, *Nudge: Improving Decisions About Health, Wealth, and Happiness*, Penguin Books, New York, 2008.

inherent in their own non-verbal actions to change the thoughts, feelings and behaviours of others.[66],[67]

5.1 Taking Mediation into the Digital Age

Returning to mediation, with the aim of applying the findings above to video-based mediation, we must first understand the roots of mediation's transition to the online venue.

Given the ever-increasing trend of people transferring their activities online, and the growth of business and transactions at a distance, it should perhaps come as no surprise that Internet-based communication spurred the development of a subfield of the alternative dispute resolution (ADR) field focused on conducting dispute resolution processes online; this area of inquiry and mode of practice has been dubbed online dispute resolution. ODR's origins can be traced to the mid-1990s as an area of exploration for academics and a challenging area for hobbyists. Successes in applying ODR to eBay's large-volume commercial caseload,[68] as well as The Internet Corporation for Assigned Names and Numbers' decision to institutionalize ODR for resolving domain name disputes,[69] fuelled ODR's growth, and ODR evolved through an entrepreneurial stage in which dozens of service providers offered a variety of models and processes for profit.[70]

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66   Patterson, 2011. We note that in this context we deviate from our mediator–party focus and note parties' capacity to build rapport with each other, given that this development not only creates a generally more trust-conducive atmosphere but also validates and reinforces the trust the party initially placed in the mediator-guide, which led the party to implement the rapport-building strategy in the first place.

67   At the end of this section we wish to stress, generally, that the examples and research noted in this article with regard to non-verbal communication are primarily grounded in findings referencing Western-based culture. Some elements of non-verbal communication have been shown to transcend cultures and trigger universal understanding, such as seven basic facial expressions; see D. Matsumoto, M.G. Frank & H.S. Hwang (Eds.), *Nonverbal Communication: Science and Applications*, Sage, Thousand Oaks, 2013. However, culture certainly has an impact on the use and understanding of non-verbal communication. *See, e.g.*, Z. Semnani-Azad & W.L. Adair, 'The Display of "Dominant" Nonverbal Cues in Negotiation: The Role of Culture and Gender', *International Negotiation*, Vol. 16, No. 3, 2011, pp. 451-479. This study explored different non-verbal expressions of dominance or submission, and suggests that Canadian and Chinese negotiators display different non-verbal actions.

68   S. Abernethy, 'Building Large-scale Online Dispute Resolution & Trustmark Systems', *in* E. Katsh & D. Choi (Eds.), *Online Dispute Resolution (ODR): Technology as the "Fourth Party"*, *Papers and Proceedings of the 2003 United Nations Forum on ODR*, available at <www.mediate.com/Integrating/docs/Abernethy.pdf>, last accessed 5 August 2014.

69   ICAAN, Uniform Domain Name Dispute Resolution Policy, 1999, available at <www.icann.org/dndr/udrp/policy.htm.>, last accessed 5 August 2014.

70   For more on ODR's evolution and scope, *see* Katsh & Rifkin, 2001; Rule, 2002; N. Ebner, 'Online Dispute Resolution: Applications for E-HRM', *in* T. Torres-Coronas & M. Arias-Oliva (Eds.), *Encyclopedia of Human Resources Information Systems: Challenges in E-HRM*, Idea Group Reference Publishing, Hershey, 2008; for a recent discussion of ODR development, *see* B. Farkas, 'Old Problem, New Medium: Deception in Computer-facilitated Negotiation and Dispute Resolution', *Cardozo Journal of Conflict Resolution*, Vol. 14, 2012, p. 161.
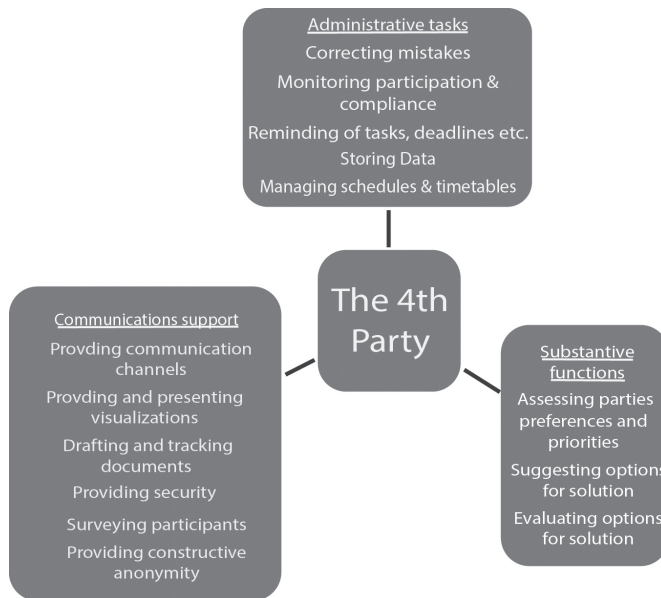
The number and spread of ODR providers has fluctuated over the past fifteen years.[71] However, ODR is clearly on the rise, and is making headway in multiple arenas: private sector, government, court systems and more.[72]

Perhaps the best conceptualization of the potential of ODR for improving dispute resolution service delivery lies in Ethan Katsh and Janet Rifkin's[73] dubbing of technology as "The Fourth Party", which can be utilized in many ways by third-party neutrals to help them with dispute resolution. The Fourth Party can facilitate performance of a wide variety of tasks, as demonstrated in Figure 2 below.

In the case of e-mediation (mediation conducted online through a medium provided by information technology), which is the most commonly offered ODR service,[74] the human third-party mediator can view the technological fourth party as an ally, assistant and partner. The fourth party can perform some mediation-related tasks on its own, simplify others and help human mediators perform still others in a more structured, organized and timely manner. In this article we focus on the role of technology in *providing communication channels* – and the challenges deriving from this.

In e-mediation, two current trends call the role of non-verbal communication to center stage. First, the primary model of tech-savvy companies with proprietary software branding themselves as e-mediation service providers seems to be in decline – giving way, instead, to a model in which individual practitioners of face-to-face mediation expand their market by offering their services online, relying on low- or no-cost technology. Another converging trend concerns a developing shift in communications media. Most ODR service providers have, thus far, focused their efforts on text-based processes, with few service providers

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71   For general global surveys, *see*, M.C. Tyler, '115 and Counting: The State of ODR 2004', *in* M.C. Tyler, E. Katsh & D. Choi (Eds.), *Proceedings of the Third Annual Forum on Online Dispute Resolution* (electronic version), 2004, International Conflict Resolution Centre, University of Melbourne, available at <www.mediate.com/odrresources/docs/ODR%202004.doc>, last accessed 5 August 2014; J. Suquet, M. Poblet & P. Noriega, 'Online Dispute Resolution in 2010: A Cyberspace Odyssey?' *in Proceedings of the 6th International Workshop on Online Dispute Resolution*, Liverpool, 15 December 2010; CEUR Workshop Proceedings Series: 1-12, available at <http://ceur-ws.org/Vol-684/paper1.pdf>, last accessed 3 August 2014. For recent regional surveys *see* A. Pearlstein, B. Hanson & N. Ebner, 'ODR in North America', *in* Abdel Wahab *et al.*, 2012 (North America); Abdel Wahab, 'Online dispute resolution for Africa', 2012 (Africa); Yun *et al.*, 'Online dispute resolution in Asia', 2012 (Asia); Szlak, 'Online dispute resolution in Latin America – Challenges and opportunities', 2012 (Latin America); Poblet & Ross, 'ODR in Europe', 2012 (Europe), all *in* Abdel Wahab *et al.*, 2012. In truth, probably no fully accurate and comprehensive count of ODR services, sites and providers has been conducted, despite researchers' best intentions. This is due to differences in the definition of what constitutes an ODR-related site, as well as to the natures of Internet-based ventures and Internet searches. Some studies provided very specific discussion regarding their definitional approach and search parameters (*e.g.*, Pearlstein *et al.*, 2012; other studies, less so. In this sense, ODR's spread and growth is somewhat of a moving target.
72   *See* M. Abdel Wahab, E. Katsh & D. Rainey (Eds.), *Online Dispute Resolution: Theory and Practice*, Eleven Publishing International, The Hague, 2012.
73   Katsh & Rifkin, 2001.
74   At least in the US; *see* Pearlstein *et al.*, 2012.

Figure 2   The Fourth Party

Administrative tasks
Correcting mistakes
Monitoring participation & compliance
Reminding of tasks, deadlines etc.
Storing Data
Managing schedules & timetables

The 4th Party

Communications support
Provding communication channels
Provding and presenting visualizations
Drafting and tracking documents
Providing security
Surveying participants
Providing constructive anonymity

Substantive functions
Assessing parties preferences and priorities
Suggesting options for solution
Evaluating options for solution

utilizing real-time videoconferencing for resolving disputes. It would seem, however, that improvements in technology, changes in the nature and identity of ODR providers and shifts in the public's comfort with technological platforms are on the cusp of reversing this tendency towards text.[75] Indeed, we note that most of the new individual practitioners referred to above do so using common videoconferencing platforms such as Adobe Connect or Skype. Given that videoconferencing has become a familiar and comfortable mode of communication for many in their business and personal life,[76] we suggest that, increasingly, more mediators and their potential parties are likely to feel comfortable with this medium for conducting mediation.[77]

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75   Ebner, 'E-Mediation', 2012.
76   Recent data on the usage of such platforms leads us to believe this trend continues to grow. For example, one common platform, Skype has recently reached 250 million monthly users. D. Murph, *Skype CEO Tony Bates Confirms 250m Monthly Users, Talk Microsoft Partnership and Future Plans, 2012*, retrieved from <www.engadget.com/2012/05/31/skype-ceo-tony-bates-microsoft-kinect-future-voip-communication-d10/>, last accessed 5 August 2014. Another, Google Hangouts is a part of Google+, a wide suite of communication and networking tools, which has more than 400 million users. D. Schroder, *Google+ Has 400 Million Users*, 2012, retrieved from <http://mashable.com/2012/09/18/google-has-400-million-members/>, last accessed 5 August 2014.
77   In this regard, we note the work of Giuseppe Leon who, together with the Hawaii chapter of the Association for Conflict Resolution, is spearheading a project using Skype for conducting mediation simulations between parties situated at a distance, in order to train mediators. *See, e.g.*, <www.adrhub.com/profiles/blogs/mediators-around-the-world-improve-their-mediation-skills-with>, last accessed 5 August 2014.

Believing that this tendency towards online video-based mediation is indeed the wave of the future – even given the folly of trying to predict anything the future holds with regard to technology[78] – we find ourselves writing this article with a sense of urgency. Already in spin from being transitioned online, mediation practice once again needs to adapt to a new environment – the near-yet-distant environment of video-based communication. In this somewhat unfamiliar environment, non-verbal communication – of diminished importance in text-based communication – once again plays a major role. However, before we explore non-verbal communication in the online environment, we will explore a more basic issue challenging the feasibility of online mediation – the negative effects of online communication media on trust.

6 Trust in ODR

In e-mediation processes, the role of trust as a mediator's greatest asset does not diminish; indeed, it may be compounded. However, the online environment poses significant threats to the formation and maintenance of trust. Colin Rule, one of the earliest advocates for ODR, suggested that trust might very well be the Internet's scarcest resource in a wide sense: "Transactions require trust, and the Internet is woefully lacking in trust."[79] The literature on negotiation and dispute resolution, as well as the literature on other aspects of online communication, has noted many specific challenges to trust creation and maintenance in the online environment.[80]

Much of the literature on e-mediation, and on trust in computer-mediated communication in general, has focused on text-based communication, primarily asynchronous, such as email-based communication. This lean media, providing few contextual cues for assessing trust, seemed to present the greatest challenge to trust investigators and warranted the most attention.[81] This has led to detailed mapping out of the topic, such as Ebner's (2007) list of eight discrete challenges to trust[82] and Exon's (2011) six building blocks for enhancing trust.[83] However, while certain of these findings carry over to video communication, the lion's share of insight on this topic does not. Indeed, reading through the literature, one gets the sense that there is an assumption, spoken or unspoken, that in video-based communication trust would not pose any more of a challenge than it does in face-to-face communication.

Indeed, research has found video interactions to be almost as good as face-to-face interactions for trust emergence. However, even if trust can emerge to the

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78   Indeed, some authors are looking beyond video and suggesting the benefits of holography for ODR. *See* S.N. Exon, 'The Internet Meets Obi-Wan Kenobi in the Court of Next Resort', *Boston University Journal of Science & Technology Law*, Vol. 8, 2002, pp. 1-36.
79   Rule, 2002, p. 98.
80   Ebner, 2007; Ebner, 'ODR and Interpersonal Trust', 2012.
81   Barsness & Bhappu, 2004; Ebner *et al.*, 2009.
82   Ebner, 2007.
83   Exon, 2011.

same degree through video interactions in a quantitative sense, qualitative differences with regard to trust development and resilience persist.[84] We suggest that video presents new challenges to trust formation precisely owing to this intuitive assumption that video and face-to-face communication are largely the same. In reality, video-based communication does not fill in the full range of cues and psychological impacts lacking in text-based communication. It only fills them in partially, and alters others – while giving the *impression* of providing them in full. Communicators' expectations that video would be the same as in-person may lead them to forgo conscious filtering of the unique set of contextual cues provided by online video communication. These could pose even greater challenges to mediators aiming to build trust, given the opportunities for misreading these cues by all communicators involved.

6.1 Developing Trust in Video-Based e-Mediation

Bringing the foregoing discussion into mediators' attempts to develop trust with parties in the online, video-based environment, we first suggest that mediators are not venturing into wholly uncharted territory. Indeed, when using most commonly encountered videoconferencing platforms, a mediator will find that the attributes and actions conducive to building trust in in-person, face-to-face interactions carry over to the e-mediation setting to a large extent. Reviewing each of the aforementioned non-verbal cues that contribute to trust, including those of rapport, mirroring and mimicry, a mediator can apply each similarly in their e-mediation sessions.

However, this review and application must include care and adaptation, as characteristics of the online environment and the videoconferencing channel do affect non-verbal communication. Awareness of some of the major effects can go a long way in facilitating simple adaptations – physical or technological. Such characteristics might include the potential for the Internet connection creating delay or disruptions in voice or video, for poor lighting preventing people from being visible or shadowing them in particular ways; for noisy backgrounds and other audio issues and for the camera's positioning not showing everyone who is in the room.

Approaching these issues through the lens of non-verbal communication and utilizing the METTA model, some of the challenges to trust in video-based mediation, related to these characteristics of videoconferencing, are depicted in Table 2.

These concerns are formidable, not only to mediators but to other professionals in early stages of transitioning from face-to-face meetings, or from text communication, to video-based interactions. However, these characteristics are not inherently negative. On the contrary, we suggest that through familiarity with their effects on non-verbal communication, and through approaching them with intentionality, mediators avoid trust pitfalls, but also harness these characteristics for enhancing trust building.

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84   Bos *et al.*, 2002.

Table 2:   *METTA Model of Non-Verbal Communication and non-verbal challenges in e-mediation*

Movement	Are the movements of the mediator building rapport and creating trust? Are the movements of both the parties and the mediator visible? Is the mediator's eye contact with the screen or the webcam?
Environment	Is the location of the mediator and each party conducive to confidentiality? Is it too noisy? Are there distractions in the background such as people walking to and fro, or motion behind the mediator?
Touch	Is the mediator aware of movements that can be representative of anxiety or stress? Might the angle/frame of the camera restrict the mediator's ability to perceive such movements?
Tone	The tone of the mediator needs to be clear with limited 'ums' and 'ahs' while the technology has to not disrupt the fluency of the speakers by interrupting the audio channel.
Appearance	The mediator's clothing needs to display a professional presence while also ensuring the context is accounted for. Using earphones or some other type of headset might be perceived as inappropriate.

Table 3:   *Using METTA to Build Trust*

Movement	Make eye contact with the webcam, use open-handed gestures, orient your body towards the computer, nod your head occasionally while listening, sit up right while occasionally leaning forward.
Environment	Ensure each party participates from a quiet location to limit distractions.
Touch	Avoid fidgeting or playing with jewellery or your hair, avoid frequent touching of your face and your clothing.
Tone	Be prepared and confident – this helps ensure tone and paralanguage is positive.
Appearance	Dress suitably, just as one would for conducting a face-to-face mediation process.

In Table 3, we provide examples of how creating more opportunities for non-verbal channels to be used in video-based mediation increases the mediator's capacity to build trust with the parties.

To demonstrate the particular characteristics of non-verbal communication through video, we will briefly expound on two issues: user–webcam proximity and the frame of vision, and eye contact and screen management.

Current videoconferencing technology allows for parties' and mediators' non-verbal actions to be visible to each other, reinstating the non-verbal communication cues that are absent in text-based mediation. However, discussants' grasp of each other is not all-encompassing, and is more limited than it would probably be in a truly face-to-face, in-presence interaction. First, sensory information is limited to sight and sound. Odor and touch are still missing. Second, even sight and sound are affected, and limited by the definition of webcams, the sensitivity of microphones and the quality of Internet connection. In addition to these limita-

tions, one significant limitation exists with regard to the scope of vision. Parties and mediators do not see each other in their entirety. They see each other, on screen, in a window. The size of the window and how much of the user's body and background is visible might be affected by the choice of videoconferencing software and the hardware specifications of the webcam. However, one issue relating to the way each actor is viewed on screen, which can be manipulated to serve trust building, concerns party–webcam proximity. Distance between the user and the webcam, as shown in the three examples below, can affect the process by contributing to, or hindering, trust building, based on the visibility of the non-verbal actions of the actor – parties or mediator.

Image 1 demonstrates how one setting might limit the visibility of non-verbal cues, owing to the actor being too close to the webcam. Due to this proximity, the screen is filled with his face – a somewhat artificial view in its own self – leaving his hands and body, as well as his background, invisible.

Image 2 shows how another setting might serve to limit the visibility of non-verbal cues owing to an excessive degree of distance between the actor and the webcam. While hands and body are now visible, micro expressions of the face and hands might easily go unnoticed or be misconstrued. In addition, external motion or actions in the background are easily visible and might distract or confuse.

Image 3 demonstrates what we suggest as a 'just right' balance for webcam–actor proximity in mediation settings. This distance allows for the actors' facial expressions to be clearly visible as well as their hand gestures, posture and body orientation; some background is visible for providing cues, but attention is still directed towards the actor.

As noted above, making or maintaining eye contact is associated with trust, trustworthiness and liking (and, by implication, rapport)[85]; indeed this point is often made in mediation training. In the online video-based mediation setting, this important cue remains a bit elusive and contrived, owing to the characteristics of most videoconferencing platforms and the way computers are constructed. A mediator looking at a party's image on the screen, even if looking directly into the party's eyes, will appear to be looking elsewhere to the party. This is because the mediator's computer webcam is (with current technology, which might be in flux) not located behind the screen, but elsewhere – usually, although not always, at the top of the screen.[86] Looking at the parties' eyes on the screen, in such a case, the mediator will appear to the party not to be focused on him or her, but rather to be looking downwards at something else, and not meeting their gaze. In this case, following the instinct to aim eyes towards eyes, and practising training to the letter, would backfire because of the mediator adapting for media characteristics.

One solution is for mediators to retrain themselves not to maintain eye contact with the parties but instead to practise looking directly into the webcam,

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85   *See* Andersen, 2008; Beebe, 1980; Mehrabian, 1967; Zeigler-Kratz, 1990.
86   For example, parties using computers without integrated webcams might have the camera set up on their table, below the screen and to the side, pointing upwards.
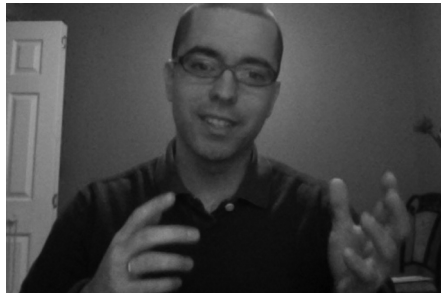
giving the impression that they are gazing directly at the parties. This, however, hinders the mediator's own ability to view the parties' non-verbal cues. Another simple solution, which works with many types of videoconferencing platforms (including, *e.g.*, Skype, G-talk, Google Hangouts and ooVoo), is to move – or 'drag' – the video window showing the party to a point on the screen as close to the webcam as possible. This way, when looking at the party, the mediator's eyes are angled towards the party, giving the impression of eye contact. Of course, given that in reality no *real* eye contact is made, mediators' actions in this regard will certainly feel artificial – however, they should enhance their ability to build trust and rapport with the parties.

These examples demonstrate how non-verbal communication through video, while sharing much in common with its off-camera, face-to-face counterpart, has

unique characteristics that must be taken into consideration. Attention to the characteristics of video communication and how they affect the elements identified in the METTA model is likely to eliminate pitfalls and create new opportunities for trust building.

6.2 Future Research and Implementation

Considering that online video-based mediation – and video-based interaction in general – is fairly new, there are many opportunities for research to be conducted measuring different aspects of the engagement process, the role of technology and the impact non-verbal communication has on the session. Research can explore the initial expectations as well as post-process feedback from both mediators and parties offering a multi-perspective view of video-based mediation.

Granted that mixed or combined methodologies offer unique perspectives into conflict resolution research,[87] both qualitative and quantitative means of research can be applied to this area of exploration. Surveys measuring various mediator skills and scale-based party feedback are current measures often employed in community mediation centers for measuring mediator effectiveness and process quality. These can be adapted and implemented for assessing non-verbal communication elements of online video-based mediation. These can be complemented by ethnographic interviewing of mediators and parties.

Research on video-based online mediation holds great promise for online as well as for traditional face-to-face mediation, owing to the capacity to record and review entire interactions in their original form. For example, a future study can explore the role of non-verbal communication during the mediator's introduction to the process. Having the mediator record his or her introduction and having it reviewed by expert raters allow many potential raters to be used regardless of their location as the file can be shared electronically. Additionally, because reviewing the process is conducted by means of the raters using the same technology and viewpoint encountered by parties in the actual mediation, it is arguably more accurate compared with people rating a mediator's introduction recording of an in-person mediation session. Simply, a recording of an online video-based mediation process contains all the information and cues that were experienced by parties in the actual recording. This, as opposed to reviewing a video recording made of a face-to-face mediation session, in which case the reviewer is viewing a recording on a screen or monitor that was shot from a somewhat arbitrary point of view (not that of the actual parties), and that leaves out all the environmental and some of the non-verbal cues (*e.g.*, the reviewer does not see a window in the corner that was not captured by the camera's frame, even though the actual parties did; the reviewer sees parties shaking hands with the mediator, but does not experience the sense of touch). Taking this into account, as further research emerges, online video-based mediation will contribute to a greater understanding of how mediators – both online and in a traditional setting – can be effective and develop trust.

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87   *See* D. Druckman, *Doing Research: Methods of Inquiry for Conflict Analysis*, Sage, Thousand Oaks, 2005.

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We suggest that our own suggestions, and any further research outcomes, are not limited to assisting mediators. Establishing interpersonal trust is always a challenge, context notwithstanding. Findings on how to do it better will benefit other professionals whose efficacy depends on their ability to work with others at a distance in a collaborative manner based on establishing trust and rapport. Examples of such professionals might be team members engaged in projects spread across a large geographic area; corporate employees based in different locations; interviewers of any sort, such as academic researchers or journalists; diplomats engaged in international diplomacy; negotiators conducting their business online; online teachers and online counsellors. Trust, so essential to mediators, has a market ranging far beyond mediation – and the ripples of research into trust in the context of mediation are likely to spread far.

7   Conclusion

Trust building is a necessary skill for mediators to be effective. Previous research has uncovered how mediators and parties believe trust can be created, while research in non-verbal communication has demonstrated the micro cues that correspond with trust building. Similarly, other traits have been identified, which are based primarily on non-verbal cues – such as rapport, immediacy, mirroring and mimicry – that are associated with trust and support its development.

As Internet-based video technology proliferates as a communication channel for professional and private uses, mediators and other professionals whose practice relies on trust building must learn to operate in the video environment in a trust-promoting manner. Intentionality regarding non-verbal communication is an important component of this emerging new skill set. Mastering these skills will allow professionals to overcome trust-degrading media effects and conduct their business successfully at a distance.