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**THE USE OF NON-VERBAL COMMUNICATION
IN MEDIATION**

RONALD S TOLENTINO
ATTORNEY-AT-LAW/MEDIATOR
PHILIPPINE JUDICIAL ACADEMY
SUPREME COURT OF PHILIPPINES (PROFESSORIAL LECTURER 1)

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THE USE OF NON-VERBAL COMMUNICATION IN MEDIATION

Ronald S. Tolentino
Attorney-at-law, Philippine Bar
Mediator, Philippine Mediation Center
**Professorial Lecturer 1, Philippine Judicial Academy-Supreme Court of the
Philippines**

The bulk of mediator's basic training focuses on verbal communication skills and merely mentions non-verbal communication in passing. However, non-verbal communication plays a much larger part in how we communicate and trained mediators need to pay much more attention to the non-verbal cues of the disputing parties.

The fact is people communicate more through non-verbal means. According to Alton Barbour, author of "Louder than Words: Nonverbal Communication", 7% of communication is verbal through words, 38% of communication is through volume, pitch and tone while 55% of communication is through body language and facial expression. This means that non-verbal cues account for 93% of the effectiveness of communication.

Non-verbal cues also convey mood, feelings, attitude, emotion, state of mind, give support for spoken words and provide immediate feedback to messages received. A range of non-verbal expressions and body language may red flag a situation during mediation proceedings. The ability to understand and use nonverbal communication can be a powerful tool for mediators to help them connect with others, accurately express what they mean, and navigate challenging situations. This, in turn enhances significantly the mediator's abilities for meaningful interaction, enhance understanding and avoid impasse situations. Thus, it is therefore important for a trained mediator to improve his skills in interpreting non-verbal communication to be truly effective as a mediator.

Paralinguistics

Paralinguistics refer to the nonverbal vocal expressions of a person. According to experts, voice set and vocalization are the two dimensions of the voice. Voice set is the information that may be gathered from the sound of the voice such as gender, maturity and mindset. On the other hand, vocalizations are non-word sounds that usually reveal emotion such as laughing, crying, yawning, etc.

Paralinguistics communication has several contributing factors. Speed (rate), Volume, Rhythm, Pitch, Inflection, Quality and Intensity are just a few of these factors.

Speed refers to the rate of speech. A fast rate of speech and a fast rate of being able to respond have been traditionally correlated to self-assurance and composure. Thus, a person who talks fast is often seen as confident and dominating. However, the downside to fast talkers is that they are often perceived as poor listeners especially when the content of the response given is off target and seemingly irrelevant. To establish a more subtle connection with the disputants and vocal rapport with them, it is thus recommended that mediators talk in the similar rate as that of the disputant the mediator is conversing with.

Volume, as one of the factors of paralinguistics communication, refers to the loudness of the sound. A weak voice usually indicates a lack of confidence, timidity and hesitancy while assertiveness, confidence and boldness are reflected in a louder speech. Since a mediator must be in control of the mediation process, it is important for a mediator to speak with sufficient volume as not to appear timid and hesitant.

Rhythm refers to the pattern of sound that characterizes a language, dialect or accent. All international languages have peculiar rhythms unique to each particular language. A Malaysian speaks at a different rhythm and speed from that of a Filipino.

When speaking in the global language of English, a person will generally speak English using a rhythmical pace similar to that of their native language. A person from China will likely speak using a rhythmical pace similar to their native Chinese language rhythm. Since the Chinese language has a very fast rhythm and speed, it is expected that a person from China will likely speak English faster than the other nationalities.

With this in mind, irrespective of the mediator's native language, it is advisable for a mediator to speak in a rate and rhythm similar to the speech rate and rhythm of the slowest speaking person. By doing so, communication and connection on a paralinguistic level between the mediator and the disputant will be so much easier.

Pitch refers to the frequency or level of a sound. Lower pitches are often associated with greater credibility, maturity and authority while a high-pitched voice appears to child-like, excitable and at times, immature.

Often times, mediators are advised to speak a lower pitch to appear more authoritative, calmer and more credible. However, it is important to note that the pitch a mediator uses to speak in during a mediation session should be closer to the one that is most natural his or her vocal range. Forcing one's voice to speak at a low pitch often results in loss of vocal power and focus.

Inflection or vocal variety refers to variations in pitch or musical quality of the voice. Inflection is best illustrated by the almost sing-song variations of pitch that a storyteller makes while reading a book to children. Caution must be made in the use of too much inflection in the mediation context since it may undermine the credibility of a mediator. A mediator must have some degree of inflection in his speech to maintain the interest of the disputants in what he is saying. With a little inflection, a mediator will be perceived as charismatic and credible.

Quality, in paralinguistics communication, usually refers to the character of the vowel sound and the distinctive tone people make when speaking. It is that distinctive vocal characteristic of the voice that differentiates one voice from another.

Mediators should be aware that the quality of their voices or speech plays an important role in the conduct of their mediation sessions. A disputant is less likely to listen to the mediator when his speech or voice is small, thin, throaty, nasal, or hoarse. Good quality makes listening to the mediator so much easier and pleasurable. It is thus important for a mediator to get a realistic idea of how he sounds by making a recording of his speech and getting feedback from trusted persons on vocal quality.

Intensity refers to the strength, power or force of the speech. Intensity is indicative of the passion and level of commitment of the speaker and reveals the emotions behind the spoken words.

When a mediator quickly and established vocal rapport with the disputants when he matches and mirrors the vocal characteristics of a disputant without mockery coupled with a genuine intention to authentically connect with them. This in turn leads to greater understanding and more efficient paralinguistic communication.

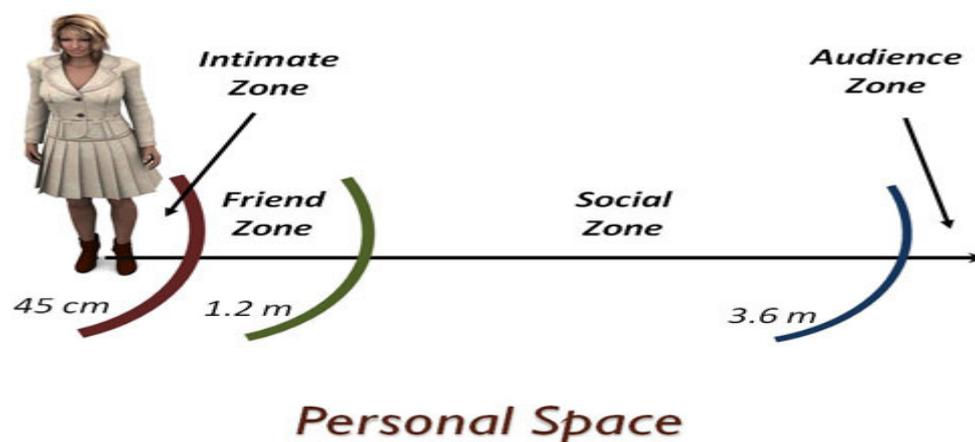
When a mediator is aware of his or her own paralinguistic vocal strengths and weaknesses, this will allow him to subtly influence his manner or speaking and of listening which in turn allows him to be more effective as a mediator.

Mediators are often advised to use a clear, calm and steady voice while mediating between parties and to avoid sudden changes in voice pitch and rate. The mediator is also advised to avoid making dominant vocalizations during the mediation conferences. The clear, calm and steady voice of the mediator and the absence of dominant vocalizations communicate the mediator's confidence, maturity, calmness, professionalism, calmness and credibility to the disputants.

Even when the disputants are emotional and raising their voices, the mediator must maintain the use of a clear, calm and steady voice. It has been observed that the clear, calm and steady voice of the mediator has a calming effect on the disputing parties. Furthermore, the parties are likely to model the tone set by the mediator.

Proxemics

Proxemics refers to the amount of space around a person or between two persons. Communicating with others by virtue of the relative positioning of your bodies is called Proxemic communication.



Hall (1966) found four key zones of personal space around our bodies and classifies them as:

- *Intimate:* touching to 10 inches. For close friends and family.
- *Casual-personal:* 18 inches to four feet: Informal conversation with friends.
- *Social-consultative:* four to twelve feet: formal transactions.
- *Public:* Addressing groups of people.

The distances can vary from person to person. In terms of personality, extroverts tend to have smaller distances compared to introverts usually want to keep their distance.

In mediation, an understanding and application of proxemics by the mediator is important. The mediator must sit equidistant from both of the parties. Sitting closer to one of the parties usually generate the perception of bias or partiality.

The mediator must also sit closer to the disputants than to their counsels or support persons. In this manner, the mediator is able to converse with the disputing parties directly without the risk of being cut off by their counsels or support persons.

Vertical space between persons may indicate the level of dominance. Mediators should create a safe and open environment for the parties in mediation. In order to create such an atmosphere, mediators are often advised to sit at the same eye level as those of the parties.

Parties should also be seated at identical chairs so that one party does not sit higher than the other. The Mediator must also be aware of the relative heights of the disputants and to make a taller disputant sit at a lower chair and a shorter party at a higher chair. The goal is to allow the parties to sit at equal eye level to avoid the setting of dominance. To this end, this author has a personal preference for adjustable seats in the mediation rooms since it allows the author to adjust the heights of the seats to in accordance with the heights of the parties.

In the Philippines, observation of the distance between the parties is also a good indicator of the progress of the mediation. Usually at the start of the mediation, the parties sit some distance from each other but as progress is being made and greater understanding between them is being created by the Mediator, the parties will start to lean towards each other and eventually move closer to one another. At times, the parties sit beside each and talk directly to one another totally ignoring the Mediator. When this happens, it is an indication that the Mediator has done his job and has restored good communication between the disputants.

Kinesics

The scientific study of the use of body movement that accompany speech is referred to as kinesics. The key components of kinesics are gestures, facial expressions, eye behaviour, and posture. There are also five (5) kinds of kinesics that are used in everyday communication, namely, emblems, illustrators, affect displays, regulators and adaptors.

Emblems are defined as body movements that substitute for words and phrases. Examples of these are the first finger on an upright position placed in front of the mouth universally means "quiet". An Open hand held up usually means "stop". The "Victory Sign" is commonly displayed by first and second finger extended to form a letter "V" and the third and fourth fingers are curled with the thumb palm with the palm facing outside. However, the meaning of emblems usually vary from culture to culture. The thumbs up generally mean "OK.", "Approved." or "Right on!" or to indicate something that is liked or appreciated. In, Afghanistan, Iran, Nigeria and some part of Italy and Greece, the thumbs up sign is an obscene insult, especially when combined with a sweep of the arms.

Illustrators, on the other hand, accompany and reinforce verbal messages. A few examples of illustrators are nodding when saying yes, shaking the head when saying no, and pointing a finger to emphasize an argument. Illustrators tend to be more universal in meaning than other kinds of body movement but they can also be misinterpreted. Even the simple nod may be differently interpreted by a man and a woman. A man may nod to mean "Yes, I heard you" but the woman may take it to mean as an agreement and support for her idea.

In mediation, an emotional party may point a finger to emphasize her emotions or argument. A yawn or stretching may indicate exhaustion or frustration with the process. In the Philippine setting, it is an insult or may mean a challenge when a disputant, in anger, points his finger to the other disputant. The mediator must be aware of these illustrators and he should be alert to probe if the behavior is threatening. In which case, the mediator should move to curtail such behaviour and address the cause of such behavior.

Mediators are also advised not to point when conducting a mediation session as the act of pointing a finger may be offensive to the disputants. The use of open palms by the mediator when illustrating a point may be a better alternative since open palm indicate openness.

The third kind of kinesics is affect displays which refer to the nonverbal displays of the body or face that carry an emotional meaning or display affective states. IN other words, affect displays show the mood that the person is in. Affect Displays are often spontaneous such as the breaking out in a grin when happy or amused, frowning when displeased and the slamming the hand on the table when a disputant is angry or slamming the door when an angry person leaves the room. Observe how the disputants stare and threaten each other during the storytelling phase of the mediation process.

Regulators, as the fourth category of kinesics, are nonverbal messages which control, regulate or influence the flow and pace of communication. Nodding of the head to indicate understanding or to encourage the party to continue talking, moving away to signal the desire to terminate the communication or looking away to show disinterest. Another example is raising a finger or hand to indicate the desire to speak or sitting upright as well as leaning forward to show interest in the discussion and a desire to be involved.

In mediation, the use of regulators is more evident in the turn taking type of discussions of mediation. With the use of regulators, the mediator may effectively control the pace and flow of the communication between the disputants. It has been observed that the mediators often use nodding as a means to encourage a disputant to continue talking. However, the mediator should avoid moving or looking away as a means to communicate his desire to terminate the communication of the disputant with him as these actions are considered negative mediator behavior and counterproductive to creating an safe and cooperative atmosphere for communication.

The final area of kinesics is adaptors. Adaptors are low level awareness behaviors to meet a personal need as one adapts to a specific situation. Some experts believe that adaptors are use at times to relieve tension. Some even call adaptors as "nervous habits" or "involuntary ticks". Examples of adaptors are the tapping of the pen or of the fingers, pulling of the ear, twisting of the hair, scratching of the nose or

of the head, pushing of eyeglasses up the nose, shaking of the leg or foot and the like.

People doing the adaptors are often not conscious or aware of this behaviour. More often an observer is more aware of the behaviours than the person doing the behaviour. Thus, adaptors may serve as unintentional clues to how a person is feeling. However, caution should be made in making inference about a disputant's feelings from a single gesture or behaviour. The Mediator must seek additional adaptors or behavioural clues.

In a mediation session, a disputant who crosses his arms may not be defensive or resistant but may be actually feeling cold due to the air conditioning. A party who leans back in his chair or moves back may not be disinterested in the discussion but may merely far-sighted or avoiding a glare from the lighting. In such cases, the mediator should seek additional cues rather than draw complex inferences from a single gesture.

Sitting upright coupled with the pulling the chair closer together and leaning forward accompanied by direct eye contact by a party usually indicates interest and involvement in the discussion. In this example, there are at least four (4) non-verbal cues to indicate interest and involvement. Thus, a mediator should draw conclusion from several non-verbal cues and not from just one.

Posture as an element of kinesic communication is important since it is used to determine the degree of involvement and attention. Leaning forward shows increased interest and attention while leaning back shows disinterest in the communication. Slouching gives a negative impression on the personality of the speaker.

Mediators are also advised to maintain an upright posture, to lean a little forward and have appropriate eye contact with the disputants. Other than showing interest and involvement in what the parties are saying, the professionalism and alertness of the mediator is emphasized.

Appearance

One of the important factors of non-verbal communication is Appearance. Generally, a listener usually forms impressions about the occupation, competence, socio-economic status through the speaker's clothing, hairstyle, make-up neatness and stature. Appearance comprises of clothing, adornments and personal grooming.

Inference of person's status, rank, group, individuality or intentions are often derived from the clothing that he or she wears. Doctors wear lab coats or scrub suits, while judges wear robes, businessmen wear suits and soldiers wear uniforms. In the Philippines, lawyers wear the national costume called "barongs" or business suits. Inferences about a person's intentions are also derived from their clothing. People who are about to go to the gym for exercise or about to engage in a sports activity are usually in gym attire and rubber shoes.

Adornments are the items or accessories placed or worn by a person to compliment or enhance their clothing. Personal grooming such as cleanliness, hair, nails or wearing make-up communicates attitudes towards one's self.

To create an atmosphere of professionalism, competence and confidence, it is advisable that mediator conduct their session in a business suit or culturally

appropriate attire. Adornments should be kept to a minimum as not to create any distractions to the disputants. Mediators must have a well kept appearance with nails properly trimmed and make up not overly done. The ungroomed, messy and sloppy appearance of a mediator will negatively influence the impressions of the disputants respecting the mediator's competence and attitudes.

Oculesics

The study of eye contact in nonverbal communication is called "Oculesics". There is eye contact when two people look at each other's eyes at the same time. Eye aversion, on the other hand, is defined as the avoidance of eye contact.

It has been found that people indicate their interest through the use of their eyes. Eye contact can provide positive or negative mood signs to the observer. However, the frequency, interpretation and appropriateness of eye contact differ from culture to culture.

In the Western World, direct eye contact lasting 2 seconds is preferred. A person who avoids eye contact is considered insecure, incompetence, untrustworthy and may lack confidence. However, any eye contact longer than 2 seconds is regarded as "staring" and the person who stares is considered "rude". Prolonged eye contact between men and women is a sign of interest and may even be interpreted as being sexually suggestive.

In Asia, indirect eye contact is preferred. It is a sign of bad manners, aggression and hostile to have prolonged eye contact. People from Japan direct their gaze to the throat area and lower their eyes as a sign of respect.

In the Islamic faith, while eye contact between males is allowed, this is not the same case for eye contact between members of the opposite sex unless the parties are legitimate spouses or family members. After the initial eye contact, men lower their gaze when speaking with women. Any prolonged eye contact with the opposite sex is considered highly inappropriate and disrespectful.

Mediators, when dealing with Asians, are encouraged to make appropriate eye contact or avoid eye contact when dealing with members of the opposite sex belonging to the Islamic Faith. However, where the disputants belong to Western countries, then eye contact is important. When addressing a number of disputants, it is often advisable to look at everyone.

The use of nonverbal communication plays an important role in mediation. The proper and appropriate use of paralinguistics, proxemics, kinesics, oculesics and appearance can greatly assist the mediator in bringing about greater understanding of the parties and moving them closer to settlement. Such nonverbal communication techniques may assist the Mediator in providing a safe and professional atmosphere for the parties to talk and portray the Mediation as fair, competence and confident. By using his or her body language to reinforce what he or she said, the Mediator makes a bigger impact on the parties in mediation.

It is thus important for the mediator to familiarize himself with the various elements and meanings of nonverbal communication. The key to the successful use of nonverbal communication in mediation is observation. The nonverbal cues of the disputant must complement his or her spoken words. A variance in the nonverbal cues to the spoken words may signal that a party may be hiding something. Caution must, however, be made to an overzealous mediator who would draw conclusion

from a lone variance between the spoken word and the body language of a disputant. Inference should be made from a range of nonverbal cues and not from just one.

Below is a list of nonverbal behavior and its suggested interpretation. Again to the point of being redundant, a range of nonverbal behaviour must be observed before any inference is made from it.

NONVERBAL BEHAVIOR	INTERPRETATION
Brisk, erect walk	Confidence
Standing with hands on hips	Readiness, aggression
Sitting with legs crossed, foot kicking slightly	Boredom
Sitting, legs apart	Open, relaxed
Arms crossed on chest	Defensiveness
Walking with hands in pockets, shoulders hunched	Dejection
Hand to cheek	Evaluation, thinking
Touching, slightly rubbing nose	Rejection, doubt, lying
Rubbing the eye	Doubt, disbelief
Hands clasped behind back	Anger, frustration, apprehension
Locked ankles	Apprehension
Head resting in hand, eyes downcast	Boredom
Rubbing hands	Anticipation
Sitting with hands clasped behind head, legs crossed	Confidence, superiority
Open palm	Sincerity, openness, innocence
Pinching bridge of nose, eyes closed	Negative evaluation
Tapping or drumming fingers	Impatience
Steepling fingers	Authoritative
Patting/fondling hair	Lack of self-confidence; insecurity
Tilted head	Interest
Stroking chin	Trying to make a decision
Looking down, face turned away	Disbelief
Biting nails	Insecurity, nervousness
Pulling or tugging at ear	Indecision

By way of quick reference of the above discussions, below is a table of desirable and undesirable nonverbal mediator behavior:

DESIRABLE	UNDESIRABLE
Open Relaxed Upright Posture	Rigid Posture Slouching Crossed Arms

	Leaning towards one party
Suitable Eye Contact or Downward gaze when culturally and religiously appropriate	Prolonged eye contact, looking elsewhere, shifty eyes
Leaning Forward	Leaning Backward
Sitting at the same level with Disputants	Sitting at a higher or lower level than that of the Disputants
Congruent facial expression	Lack of facial expression
Relaxed gestures	Fidgeting, Distracting behavior e.g. leg shaking, pen clicking, etc.
Equidistant to both parties preferable between 2 to 3 feet	Too close or too distant to the parties
Clear speech at a calm voice with appropriate variations in pitch, volume and rate	Talking too fast or too loud or too soft, Monotonous voice
Comfortable with silence	Talking or pausing too much

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