

PERSUASIVE
COMMUNICATION

Twenty-five Years of Teaching Lawyers

Also by Eric Oliver

The Human Factor at Work

Courtroom Power: Communication Strategies for Trial Lawyers
(with Paul M. Lisnek)

Facts Can't Speak for Themselves:
Reveal the Stories that Give Facts Their Meaning

PERSUASIVE COMMUNICATION

Twenty-five Years of Teaching Lawyers

By Eric Oliver



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To my family, those here in body and in spirit.

“I’m no idealist to believe firmly in the integrity of our courts and in the jury system. That is no ideal to me, it is a living, working reality.”

—Harper Lee

Fury said to a mouse,
That he met in the house,
‘Let us both go to law:
I will prosecute you.
—Come, take no denial;
We must have a trial:
For really this morning
I’ve nothing to do.’

—Lewis Carroll

ALICE’S ADVENTURES IN WONDERLAND

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Introduction

We all know what's really important. We just need reminding on occasion. For twenty-five years now, trial attorneys have been taking my reminders to heart.

As a group, they have made a greater effort to put my observations and suggestions to work in their individual practices, shown more enthusiasm for the effort, and had more success doing it than any other professional group I have worked with.

So, what are those reminders all about? That nobody escapes the moment of truth. For almost every case, no matter how well you prepare it, no matter how much time and energy you commit to developing it, the moment comes when you have to stand up in front of one—or several—real, live human beings.¹ You have to *deliver* your client's story in a way that a mediator, lawyer, adjuster, judge, or jurors find both memorable and compelling. Every day, at that moment, lawyers get to see the vast gulf between theory and practice. They must persuade living, breathing people.

1. Judges included

In a chapter in the fifth section of this book, I refer to the most current understandings available that give us a valuable insight into the moment of truth when you actually have to *present* a client's story:

When we encounter casual acquaintances, our rapport heightens to the degree we both [often] engage in a nonverbal dance of mutual attention, smiling, coordinating posture and movement, and the like. But, when we meet someone in a professional role, we tend to focus on a need or on some desired outcome... Studies ...show that the standard ingredients of rapport are notably weaker on both sides than between people in informal encounters.²

I know what you might be thinking. The research just confirms what I've heard so many times over the years from attorneys. They doubt anybody can teach someone to be a better communicator. They usually go on to say, "...even if they could, I'll just relax and be myself. I don't need any help, thanks."

It's not just me saying so, a man named Nick Morgan, who's made a career out of consulting with upper level management on interpersonal influence and communication, has this to say:

Somewhere between the twentieth and twenty-first centuries, the general public became tired of hype and decided that it wanted authenticity... With it, you can move people to action. Without it, you can't even get a hearing... [T]hen there's charisma—the X factor every leader wants, even if some won't admit it. These are the ones who often say something like, "I'd just rather be me. That's more authentic." What they really mean is, *I don't*

2. Daniel Goleman, *Social Intelligence: The New Science of Human Relationships* (New York: Bantam Books, 2006) Pg. 112

want to do the hard work of practice. I'll just wing it...

Leaders who rely on ad-libbing and improvisation risk looking unprepared and stilted. The irony of leadership in the media age is that winging it looks fake; only the prepared can look authentic... It's time to learn how to control the nonverbal conversation as well as we control the content of discussions... It's time to stop leaving the emotional side of leadership to chance. It's time to make ourselves aware of our own and others' need for the second conversation—the physical messages our limbic brains send out faster than we can think ... If you can accomplish that, then you can boost your leadership skills, increase your authority and intensify your personal charisma.”³

What I say (also in Part V) is the parts of the mind that give us the opportunity to think, feel react, and build legal decisions are almost all outside conscious direction and reach. Because of this, it is a maxim of human life that we get what we rehearse far more than what we consciously intend. This fact alone should be a wakeup call if you rely strictly on your own sense of confidence and your belief in your client's message to carry the persuasive day. Your focus is on your own inner world. Everyone has daily habits that divide and fragment the small amount of conscious attention we have. These together conspire to make it less likely that even your most sincerely held inner convictions will ever get across to those whom you must reach.

In 1984, when I started working with trial attorneys, only a select few were interested in their presentation job. For most, they still relied on “preparation, preparation and preparation” to carry the whole load of influencing the decision makers—whoever they may be. Over the intervening twenty-five years, I've seen interest in

3. Nick Morgan, *Trust Me: Four Steps to Authenticity and Charisma* (San Francisco: Jossey-Bass, 2009) Pgs 22-23, 50-51

persuasion and influencing skills grow. This includes interest in listening; visuals and nonverbal communication; positioning and reframing (including psychodrama); storytelling; metaphor and anchors; body and voice work; focus groups; juror cohorts; voir dire sharpening; and more recently into the rules of the road and the reptilian brain.⁴

These are all valuable undertakings, some with deep, lasting impacts for any serious practitioner. For example, these skills teach you how to frame your case as a *case story*, seek that story out in focus groups, and then plug the elements of that story into the rules and other aspects of depositions. The result is that in addition to your side, the other side carries some aspect of your story in their testimony as well.

But, as time has passed, attorneys seem to have concentrated their effort, energy, and resources further away from the moment of truth. Their attention has swung almost full circle now, with few trial attorneys actively pursuing the best way to *deliver* a client's story. Instead, they're pursuing how to develop it. And, that is only natural. In law school and CLE, almost nobody trains a lawyer to think of presentation and persuasion skills as important. We have to be reminded how important those skills are. With my work on this book, I'm hoping to help remind a few more—before you stand up in front of those human decision makers.

What do we all know about decision makers, but repeatedly need to be reminded? We all build legal decisions, like we build all decisions, completely out of the reach *or* direction of the conscious parts of our minds. People far more *realize* legal decisions than *make* them in the traditional imaginings of “rational weighing,” “pros versus cons,” and so on. Nobody makes a decision by direct,

4. Rick Friedman and Patrick lone, *Rules of the Road: A Plaintiff Lawyer's Guide to Proving Liability* (Portland, OR, Trial Guides 2006). David Ball and Don Keenan, *Reptile: The 2009 Manual of the Plaintiff Revolution* (New York Balloon Press 2009)

conscious reasoning. We each find ourselves with a leaning—based on the story we’ve unconsciously built about the case. Then we make up several reasons why that leaning seems to be right.⁵

People build legal decisions almost entirely outside conscious control. Any effort you make to persuade someone to decide in your client’s favor must be an *unconscious* appeal. If you want to persuade the other-than-conscious parts of anyone’s mind, you have to play by those other-than-conscious rules. You can’t play by the conscious rules we’d all rather use.

And, what do we all need reminding about when it comes to communicating with the parts of anyone’s mind that aren’t conscious? The other-than-conscious mind⁶ only speaks English as a *second* language. This mind only gets to language after it runs through *two* other communication priorities first. The “reptilian” brain demands that you persuade it first with *actions*, in the gestures and behavior you use, and then with *images*, both actual and mental, that you must provide. If you don’t meet the decision maker’s mind where it wants to be met, the odds are *nine to one* against your client’s story getting across the way you want it to.⁷

We all know that *how* you say it is more influential than *what* you say, every time. The decision making machinery in every mind you approach in mediation, negotiation, or in a courtroom does the same thing to your communication.

- ♦ First, it divides your message into verbal and nonverbal components. It weights the *nonverbal* nine times more heavily.

5. Eric Oliver, *Facts Can’t Speak for Themselves: Reveal the Stories that Give Facts Their Meaning* (Louisville CO, NITA 2005) Chapter 3.

6. Whether you call it “subconscious, unconscious, the limbic system, the lizard brain, the reptilian mind, the ‘old’ brain, or just ‘the reptile’” for short...

7. Morgan, *ibid.* Chapters 1–3.

- ♦ Then, it seeks out (or just makes up) *images* to use as personal reference points to make sense of your basic case story structure.
- ♦ Finally, only if you've done the previous two steps well, your words get a hearing.

People will always override great words because of poor images or actions from a lawyer, but they'll never do that in reverse. They never put just the words you say on top. It's a one-way street to get into the reptile mind. It is called "Nonverbal Road."

So, as a reminder of what we all know is most important about influencing and communicating with legal decision makers, I compiled and thoroughly revised these essays. They span almost the whole twenty-five years of my work with attorneys. You'll note we didn't call the book *Jury Persuasion* for a very good reason. If what you are learning to do isn't providing equal value to your clients in motions, depositions, and discovery; in negotiations and mediations as well as in trial; then you may want to rethink how you are doing it. The case story plan you get from your preparation (including focus groups) should work like a concertina. You should be able to squeeze it down to fit into a twenty-minute mediation presentation, or pull it out all the way for a full-scale trial. But developing a good plan does very little to help you learn to deliver it as well as that job needs to be done. That's where this book may well prove valuable.

I've divided it into six sections.

Part I: Rapport

Brain and social science have now confirmed the value of putting first things first in persuasive communication. That means your *actions* before the words. Specifically, that means appealing directly to the decision making mind by applying the natural phenomenon of *mirroring* in each persuasive communication. This is right up front where it does the most good. The brain wants your

behavior to lead any communication. Your listener's brain will read and respond to your actions.

Part II: Stories

Every decision maker is going to rewrite your clients' cases, whether or not he or she ever attended law school. You need to know how to develop your case presentation as a story. But, no matter how great a story you prepare, if your *presentation* is poor, it most likely won't get across the way you hope.

Part III: Decision Making

Actions and images always come before your words when you are trying to persuade the "reptilian" mind. Decisions have a similar set of rules they play by. These rules are different than most of us have been raised and taught to think. In this part, you can learning a little more about the real decision making process, and even how to track what is likely to influence it most, and at what stage.

Part IV: Persuasion

When you try to present the case story you've spent so much time, energy, and resources preparing, you want to be sure you're taking advantage of every tool you can. It's not enough just to respect the other-than-conscious demands of starting with *actions* and *images* before you jump to the words. You need to know how to put the nonverbal and verbal parts of your client's case story into a seamless package you can actually deliver with some confidence. That's true whether your decision makers are in a courtroom, a conference room, or on the phone.

Part V: The Mind

What exactly is going on beyond your listeners' conscious scenery? What is going on with every decision maker, is judging every legal decision? Our appreciation of the way the mind really handles (or

sometimes manhandles) efforts to influence it has changed a great deal even over the last decade or so. In this part, you can open a window onto what we know about that process.

Part VI: Theme

You have to start somewhere. You have to move through the middle. And, you have to know when you've arrived. Your case story theme is what you must rely on to provide these essential directions for your delivery.

Communication, persuasion, and influence are skills that require hands-on training to perfect. But, anyone can learn a tremendous amount about which directions to take how you deliver legal communication, and which directions to avoid. You'll find that in this book.

Please, enjoy the trip.

—*Eric Oliver, September 2009*

Part I

Rapport



rapport
(rā-pô'r')

Relationship, especially one of mutual trust or emotional affinity.

Melting the Ice

Twenty-five years ago, I was invited to provide my first training in communication and persuasion to a group of trial lawyers. Two of the things lawyers in that first group told me are things I still hear from attorneys today: “I have to appear as credible as I can,” followed closely by “How do I get jurors and other folks to talk to me more?” There was, and always will be, one answer to both questions: rapport, or the connection between individuals communicating well, is both the source of greater perceived credibility and the key to getting people to open up.

The proven source of connection—rapport—between people in any situation turns out to be an unconscious matching of behaviors between us, known as *mirroring*. Momentarily adopting something in the other person’s demeanor, like head or body leaning, arrangements of limbs, voice tone, pace or volume forms a basis for better connections between us. I’ve been teaching lawyers the complete technique for using mirroring to *confirm* a connection with any listener or decision maker since facing that group back in March of 1984. However, it wasn’t until just recently that neurologists around the world were able to prove what we’d been doing actually works. It works as well or better than our trainees consistently attest to from results within in their own practices.

With the recent discovery of *mirror neurons* and their role in engaging attention—even empathy—from your listeners, twenty-five years of training for our attorney clients have been validated—after the fact—by the brain scientists.¹ (Thank goodness, those attorneys and their clients didn’t have to wait.) Mirror neurons are nerves in the brain associated with both starting actions and with responding to actions seen (or vividly imagined) in another. We all know we each learn how to act like human beings primarily by mimicking each others’ behaviors. What wasn’t always clear were

1. About a decade back, the explosion of research into mirror neurons was set in motion at the University in Parma, Italy, by a team of neurophysiologists headed by Professor Giacomo Rizzolatti.

the particular brain mechanics that make that mimicking possible. In addition, we didn't understand how those mechanics maintain an active, sometimes crucial role in communication, influence, and relationships throughout our adult lives.

Science has finally confirmed this skill to be the single most powerful persuasive tool you can use in litigation, negotiation, mediation, or in court. What other skill offers you the chance to invite your listener to switch from a posture of reticence or suspicion to an inclination to *help* you persuade them? It is as close as we can come today to delivering the "magic bullet" attorneys have been seeking to improve the level of influence they can have with almost anyone, in virtually any venue.

But it's a little nerve-wracking to learn and use this technique, because consciously directing your communication efforts into territory that has always been relegated to nonverbal, "intuitive" responses will cause some discomfort for almost anyone. If you want to melt the ice for the people you wish to persuade, first you've got to break through it for yourself. The reports we have received of remarkable success—beginning with the first lunch break at that first group—have consistently shown the effort to manage your own discomfort is very well worth it.

The following essay, originally released in the MetaSystems newsletter, *News From the Mental Edge*, Summer 2000, was reprinted in *TRIAL*, October 2000.



1

Reflections on Mirroring

Mirroring, Attention, and Persuasion

“We look for similarities in differences, and differences in similarities.”

—SANTAYANA

“Hello in there!”

“Am I coming through?”

“Is this registering?”

Before a trial attorney starts to guess whether a listener has received a message the way she or he wishes, the question is more basic: is the listener *available* to receive the message at all? Plenty of lawyers are familiar with the sensation of staring into wide-open eyes, fearing that the minds behind them are focused far from the point.

We can all ask for, direct, or even demand someone’s attention. But the truth is that paying attention is not a wholly conscious activity. We cannot demand attention at will, politely or not. Volume won’t always capture it—ask the parent of a small child. Proximity won’t guarantee it—people staring you in the face can still forget every word before you finish speaking. A flash of a cufflink can send a juror off on some reverie, despite the juror’s honest efforts to focus. Noise can keep you from holding your mind still to watch and listen—ask anyone ever distracted by a dripping faucet. Even a

physical sensation like an itch or a sore back, can totally turn attention away from the intended object at unpredictable moments.²

If your clients' case story needs full and focused attention for a listener to see and hear it compellingly, I suggest you connect first nonverbally, then verbally—the way the brain forms its most vivid memories and compelling responses. The alternative is to risk offering factually and legally eloquent messages which fall on deaf ears and glazed eyes.

It turns out that the way we all connect, when we do, is *always*, without fail, at the nonverbal level first. What does that mean? Very simply, a part of your mind picks a part of my behavior to mimic. When I see and sense that, a part of my mind responds in kind by matching that same or some other behavior, such as a posture, gesture, or head tilt. Sounds spooky at first, but just pay attention and you'll start seeing and hearing it everywhere. Mirroring as a technique takes advantage of this ubiquitous exchange of behaviors that goes along with other than conscious attention to set up and confirm a person's responsiveness, without having to ask for her attention out loud.

By observing yourself and others you can quickly establish that the greater the focus on someone's message, the more unconscious behavioral mirroring happens. This natural habit of adopting some behavior from whoever has our attention happens everywhere, with everybody. You can use this habit to almost instantly direct the focus and confirm the quality of your listeners' attention at any time.

Mirroring appropriately is as easy as one, two, three:

1. MATCH SOME POSTURE, GESTURE, TONE, FACIAL MOVEMENT, RATE, PITCH OR VOLUME OF SPEECH. Do this a couple seconds after he or she displays the cue or immediately as your turn

2. If you'd like to test the limits of conscious control over your attention, try this simple meditation exercise. Count your exhales, one to four, over and over for twenty minutes. Allow no other thoughts but your counting and exhaling. You'll begin to get a sense of the multifaceted, other-than-conscious nature of what we call attention.

to speak comes up in a conversation. You won't need to keep it up for more than five to seven seconds. But always be sure in situations where you are not "taking turns" and waiting to respond that you allow a two- to four-second pause, out of courtesy to the decision maker's mental process.

2. NOTE THE LISTENER'S RESPONSE. Not what he/she says, but rather how each unthinkingly reacts to your mirroring. Though the reactions take many forms, like a particular hand or foot movement, common responses include increased eye contact, head movements similar to nods, and turning the corners of the mouth.
3. FEED BACK THAT RESPONSE YOU JUST NOTED AS PRECISELY AS POSSIBLE. Without this step, you have not established an exchange of communication and you won't be able to confirm the level of attention you seek.

So, imagine sitting down to start a deposition or a negotiation, or standing to start voir dire or an opening statement. You look at your listeners as you always would, say whatever preliminary phrases as you always would, but, just before you begin, you do something deliberately you've let unreliable chance to handle up till now.

Start seeking out a posture in your listeners (leaning in, back or turned partly sideways), a gesture (head tilts, hands or feet arrangements, eyebrows lifted, and so on), a tone of voice or pattern of speech (faster, slower, more words or less than your own "norm"). Then match that behavior in your physical output as you begin the oral part of the communication.

Within a couple seconds, the other person responds. Most typically (though not always), the person responds in one of three ways: increasing eye contact, movements of the head, or movement of the lips. Avoiding the temptation to waste a second interpreting their response (is it a smile? Fear? Annoyance? Attraction?) This turns nonverbal communication back to an unproductive conversation with yourself. Forge ahead. Note the unconscious response

your mirroring got. Then, carefully feed *that* reaction back, now mirroring for a second time in just a few seconds.

Assuming you've seen what you thought you saw, and matched their responses well, a remarkable thing happens. That slight turning up of the lip becomes twice as broad, or the little tipping back of the head turns into three distinct up and down moves, or the little cant of the head to the left becomes twice as steep, or quickly straightens completely. Whatever response you saw the person have to your first mirroring, as you feed it back exactly as it appeared, it somehow gets "amplified" or altered by their inner process. Some part of their mind knows to isolate on that particular response, the one you feed back just after they displayed it, yet their head picks that one reaction over all the others they could spontaneously have in that moment, and *changes* that one right in front of you.

Altering that particular behavior, without any conscious will or awareness, turns out to be a reliable indicator that you've set up a connection. That connection is outside conscious reach, and the person sitting across from you has *confirmed* it. Yet, under ten seconds has passed.

"Your Honor," you say as you stand to approach the bench during pretrial motions. You notice and match a slight tip of the head to the judge's right, as you walk forward. Halfway to the bench, in response to your first mirroring, the judge raises his chin slightly, twice. About to reach the bench, you feed back this dual response to your first reaching out. Almost immediately, the judge bobs his head back farther than before, and dips his chin just slightly, two times—amplifying his initial response, reacting to your acknowledgement.

You may not win the motion, but you have forged the connection for future responses, and the odds go up along with the level of unconscious rapport you continue to work to build.

By matching the listener's responsive movement or sound, you offer the other person a chance to *demonstrate* his or her full attention. If you have it, the person will alter or amplify the response (head movement, hand movement, voice tone shift, eye focus, or facial expression) you just carefully fed back. All this happens out-

side conscious notice, but not without their full attention. You can do all three steps in less than ten seconds, while talking about other things.

This technique of mirroring is primarily responsible for my career working with trial lawyers. It was in the early 1980s, after mirroring a well-known opposition expert in deposition for a medical negligence trial that John Carey, former president of the Minnesota Trial Lawyers, asked me to try teaching these techniques to some attorneys. He noted that when he used mirroring, each deposition answer the doctor gave became more detailed and forthcoming. Ultimately, the opposing counsel took the expert aside and reprimanded him for volunteering too much information and helping the plaintiff. This expert had successfully confounded plaintiff's attorneys in many prior cases. The only difference from all prior depositions was that here, John had started sitting a lot like the expert, while tracking and showing some respect for the responses that little effort kept getting him.

Leaning My Way

Mirroring or matching some part of the behavior of your listeners is the most effective means available to capture and then direct full attention. The three-step technique takes about ten seconds, does not depend on any spoken words, and yields a far more complete connection to the listener's mind than spoken messages alone.³ That is because mirroring allows you to approach people at the same mental level of the flashing cufflink, the errant noise and the sudden itch.

The connection, often called rapport, is active in the mind before pre-existing biases, values and beliefs come into play. By mirroring a listener's mannerisms and then his subsequent reaction, to

3. Mirror neurons and their effects were discovered at the end of the 1990s. Ever since then, science has shown you can capture much *more* than someone's complete, undivided attention. The almost undisputed proof today is that mirroring, done to the level of full rapport, actually invites *empathetic responses* from some of the most consciously opposed listeners.

confirm his unrealized amplification, you can establish a connection with him that invites his full attention, though he may be *consciously* predisposed to disagree with your words. If you approach a listener with some respect for the real nature of attention and its primarily unconscious, and then conscious, layering, any listener will offer you the full range of his or her attention despite conscious biases. Do not expect the same attentiveness if you fail to mirror before offering up your words.

Here's how New Jersey trial attorney Tom Vesper recently described such an encounter at deposition:

In a case involving a defendant previously deposed by my co-counsel described to me as the most stubborn, hard-to-understand witness he'd ever deposed, mirroring worked a "miracle" of clarification. The defendant's prior deposition read like a bad Tarzan script: "me defendant, you lawyer." I decided to re-depose this individual, disregarding my co-counsel's caveat that this was a waste of time. I was warned that he was a former Nazi... who didn't understand English, was difficult to understand, and was basically like talking to a wall. I arrived at the deposition early, and even before it started or the defense attorney arrived, I greeted the man. He stood and formally bowed to me. I formally bowed to him. I immediately commenced mirroring as I got him a cup of coffee. He sat down, folded his arms across his chest and leaned forward; so did I. He then took the oath after which he placed both hands on the table, and we were off...

This defendant, who had expressed difficulty in understanding basic questions at his first deposition immediately admitted to me he had taken several days to prepare his written answers to interrogatories as best he could with his wife. He also quickly admitted that he had performed an installation

contrary to manufacturer's instructions [and] further [admitted] he had never *gotten* the manufacturer's instructions. At a time when the project was nearly over, he took them to the general contractor (another defendant in the case)... and was told by the general contractor to "ignore them!" Obviously, defendant's counsel and defense counsel for the contractor were stunned at the flood of information pouring out to me through this presumed "Berlin Wall."⁴

Vesper said rapport which the mirroring generated led the defendant to give more honest and detailed answers that went well beyond the scope of the questions. At one point, the defense counsel tried to stop him from answering a question by grabbing his shoulder. The defendant just pulled away and continued talking with the object of his full attention.

Reading Mirroring Among Others

It is not always necessary to use mirroring directly to reap benefits for your client. Often, just watching ordinary mirroring among others—in negotiations, in meetings, or in the jury box—can provide a great deal of valuable direction for your efforts.

I made this point to a room of attorneys attending an American Association for Justice (AAJ) National College of Advocacy course a few years ago. I'd introduced some nonverbal techniques, including mirroring, to the group that morning. In the afternoon, we gathered in a large, semi-darkened room to watch a mock jury deliberation on closed-circuit TV—sans sound. While the audio glitch was being fixed, the attorneys and I observed the group selecting seats around the table before beginning deliberations.⁵

4. Reprinted from the Spring 2000 issue of *News From the Mental Edge*, Vol. 7, No. 2, MetaSystems, 2000.

5. *Trial Diplomacy Journal*, Vol. 19, 299-307, 1996.

The lawyers were all experienced at trials and interested in the deliberations, but were getting a bit bored from the delay. One lawyer said, "Hey, Eric, tell us what they're thinking!" to the delight of a couple of his colleagues. Several lawyers seated near me turned to look. I spoke to four of them seated in front of me, still facing the silent screen.

I can't tell you exactly *what* they're thinking, but I can tell you this. The woman in the gray coat (Ms. Gray Coat) will be the person to direct all the activity. The young man across from her (a law student, we had been told by the organizers of the event) will probably be suggested as the nominal foreperson, but he will still defer to her directions. The woman to her immediate left will be the one to talk first on most subjects (Ms. Me First). The younger, dark-haired woman directly across from Ms. Gray Coat will typically speak last. The older gentleman to her left will have to be prompted for any contributions, and Ms. Gray Coat will have the last word announcing a consensus, after which deliberations will come to a quick halt, all within five minutes.

Shortly after, the sound returned, and over the next forty to fifty minutes, as each predicted response appeared, the four lawyers would turn and stare at me. Later, they said they were most impressed not that the information had been advertised, but that I had gleaned most of it from watching the jurors speak about things like soda pop and seating arrangements. The lawyers assumed, as we are all prone to, that the subject matter of a discussion somehow controls the outcome. We presume that concepts drive our interactions: "Tell us *what* they are thinking so we may know what they will do." More often, it's, "Watch what we *do* to learn about our thinking."

What drove my guesses about the mock jurors was what they did without ever thinking. I looked for the connections they advertised, the alliances those predicted, and the sequence in which the

group introduced and subsequently disposed of the topics. I could see the connections by watching who was mirroring whom—and when. The sequence of when each person consistently shifted posture or gestures after someone else showed the order in which people would most likely speak when deliberating. And the way Ms. Gray Coat invited people to speak or to stop simply by moving the focus of her attention, without necessarily speaking, told me who would be directing things once we could again hear the conversation.

The lawyers made an assumption to which we are all prone: figuring the subject matter of what we talk about somehow controls and directs our experience and its outcomes. We presume our conscious thoughts drive our interactions: “tell us what they’re thinking,” so we’ll know what they might do.

When I was observing the jurors, however, what I watched was what I teach any lawyer to observe; what they were doing *without* thinking. What gave me the most valuable information about their likely directions were things they wouldn’t be conscious of even if they tried.

First Things First

During voir dire, and through a trial, effective trial attorneys try hard to reach jurors’ conscious thinking. They endeavor to use plain English, they use common analogies, and they try to establish strong verbal anchors for major points.⁶

Texas attorney Jim Perdue suggests a smile is one of the most powerful tools a lawyer has when facing jurors. A smile moves the attorney away from the most verbal and conscious ways of communicating a client’s message and toward the more powerful nonverbal forms of communication. Smiles sit right at the border between conscious efforts to capture attention and all other means.

6. Those anchors, visual or verbal, become cues to hold certain case story frames in place; that collection of frames repeatedly delivered in sequence eventually evokes a theme.

When testing *perceived* measures of rapport, communication researcher Frank Biernieri and his associates found that postural and gestural mirroring provided the strongest indication of connection between people. Interestingly, they found that study subjects whose job it was to rate the strongest factors associated with rapport discounted the importance of mirroring compared with smiles, proximity, and eye contact, among several options. Mirroring was, by far, the most effective predictor of connection.⁷

Biernieri's study shows the inverted reality between what people *expect* to be effective and what truly *is* when making connections. The more easily a listener consciously appreciates an action, the greater the expectations we hold for that action's success. People easily appreciate the conscious message that smiling passes. But, you can access a greater share of people's attention if you respond to them in line with how their attention actually functions *outside* conscious thinking.⁸

What will the effort to mirror judges, witnesses, and jurors get for you and your client? At the very least, it offers full access to their focused, undistracted attention. This level of attention is the one where impressions, the first part of judgments, reside. Most of the life experiences that a person uses to appreciate your message also reside here. To get this level of attention, you must start at the non-verbal level and move down to the words.

Mirroring offers advantages to trial lawyers in many ways. Hundreds of attorneys I've trained across the country can confirm that in deposition a little mirroring goes a long way toward getting

7. Elaine Hatfield, et al, *Emotional Contagion: Studies in Emotion and Social Interaction*, Cambridge Press, 1993, 183-187. Note that these studies were done before the discovery of and subsequent revelations about mirror neurons driving these responses.

8. Today the most current research has shown that, even in an obvious sales situation, when the seller mirrors the customer and goes so far as to openly express a conscious, verbal desire to be convincing, people will actually try to *help* the seller far more than those who have not been deliberately, carefully mirrored.

longer, more detailed, and even strategically harmful (to the opposition) responses from both expert and lay witnesses.

Judges can—and have—been engaged by mirroring to the point they refer to “hearing” arguments actually delivered by purely nonverbal means. An attorney using mirroring let his opponent rant and rave on a motion while he simply matched the reactions of the judge. The judge denied the motion, saying, “I’ve heard from *both of you...*” Also, you can help witnesses and clients to present their stories more effectively if you spend your preparation time working with their full undistracted attention. Then, in court, you can actually help them regain that sharper focus using the same technique when they begin testifying.

Who’s Responding?

Mirroring allows you to track responses. Jurors sometimes adopt the postures and gestures of certain people in the courtroom with whom they’ve developed connections. They don’t just mirror their fellow jurors. Although not confirming agreement or affection, this signal does confirm who currently has that person’s less-divided attention. In one of my earliest post-trial interviews, one juror repeatedly modeled the actions of the plaintiff’s attorney when describing his “private” thinking process in arriving at a plaintiff’s verdict.

While reviewing the video, I was fast-forwarding and rewinding the whole forty-five minutes and noticed a curious thing. Three different times, the young man leaned far forward, shoved both arms out from his shoulders bent at the elbow (as if grasping an invisible barrel), knit his brows, and sharply nodded a couple times. Slowing the replay down on just these three vignettes, I discovered the first was a congruent replay of the plaintiff’s attorney in opening and closing describing the bad act attributed to nurses in the E.R. The second was a comment about what other options this plaintiff-leaning juror thought the defense should have explored before jumping to a negative conclusion about their patient. Most revealing, the last time he did the whole outraged plaintiff’s lawyer

“package,” he had nothing to do with recounting the facts at all. The *words* spoken were all about the juror’s private decision making process, but the body looked exactly the same as the first time he mimicked the attorney’s claim the nurse just assumed this lady was doing drugs, justifying the hospital’s later mismanagement of their obstetrical patient. *How* he said it revealed far more than *what* he said—and who he was following.

Who’s Following Whom?

When we observe mirroring among jurors over time, it often shows us a *sequence* in which people respond repeatedly to things they hear and experience. That order almost always transfers to the jury room when they begin deliberating. Knowing the predilections of jurors, such as who will probably speak first, second, and last, can provide a wonderful chance to craft your case presentation to take advantage of that sequence. For instance, in the earlier example, if you could see that Ms. Gray Coat’s friend on her left would lead each subject after observing the order of the group’s mirroring. You knew what the hot-button biases and issues were for her in *voir dire*. With that information, you could form some pretty strong guesses as to which portions of the case story she might bring up first in deliberation. If those portions are not your particular strengths, you might want to shore them up more strongly in opening and during testimony along the lines of Ms. Me First’s prevailing biases. Or, before it’s too late, you could choose to offer different, stronger parts of the case, cast to be more appealing to someone with those attitudes (revealed during *voir dire*), which can help strengthen the story in another, related area. At a minimum, you would know what you would have to communicate, with whom and when. How exactly to go about it depends on the specifics of your case, your presentation style, and your witnesses.

When dealing with biases, knowing which juror is more likely to fully attend to which other jurors offers you a priceless chance to frame, suggest and reinforce alterative biases to one or both parties.

This framing and suggesting allows you to overcome some of the jurors' prevailing leanings in deliberation.

For example, after watching who shifted first, second, third, and so forth in a focus group, I had a strong idea who would direct the deliberations. So, even though the rest of the panel had some strong conservative leanings regarding suing doctors, one young man was able to bring his beliefs out early. This man believed in personal responsibility and felt that the doctor failed to "do all he could to protect the patient." This shifted the tenor of the whole panel's discussion. The person who had followed him most nonverbally spoke up next, and she also used the preventability language. So did the person to speak after her (who was mirroring the first woman, who was following the young man). Naturally, in court, it will be you or a witness who addresses the people the others are following, along lines they've declared important in voir dire or on their questionnaires. Having that sequence to observe can be of tremendous value, and the sequence is there to use in every single case. Mirroring is a naturally occurring phenomenon present in almost every human interaction.

Targeting One Particular Juror

By mirroring both a witness and a juror in proper sequence—juror, then witness, then back to the juror—you can actually invite a witness to "target" select pieces of testimony to a particular juror, assured that the particular juror will have his or her full attention on that specific piece of the witness' message. You mirror the juror as you begin your question, passing to the witness as soon as you see a response. Then, as the answer is about to start, having mirrored the witness through the middle and end of the question, you are ready to "throw" the attention you've captured from the person on the stand back to the person whose attention you confirmed at the start just as the answer begins. But now you are confident that you have their full, undivided collected attention, instead of just hoping that they are looking in the right place. So, imagine connecting the "Mr. More Science" juror who wants only measurable,

objective evidence on the cause of harms with the expert witness you brought to provide it. As the expert is on the stand, you see that Mr. More Science, the one who revealed concrete, objective, and measurable evidence is a big factor for him during voir dire, is leaning forward with his head tipped a little to his right.

This witness can give him what he wants. As you approach the key subject in your questions, standing near the far end of the jury box still facing your witness but turned toward the jurors, you tip your own head, just as Mr. More Science has his tipped. Without even meeting your eyes, within a couple seconds, Mr. More Science straightens his head and purses his lips. You immediately follow suit, as closely as possible, while the witness answers the previous question. The juror purses his lips more, and juts his chin forward, straightening even more in response to your efforts. Mirroring accomplished.

Moving forward a step or two till you're almost even with Mr. More Science, you now match your *witness's* shoulder tilt, and he responds by tilting his head as well. So, you feed that back, and he then amplifies the reaction, dropping his shoulder and head a bit more, while you say, "Doctor, please tell the jurors what the objective, measurable evidence here draws you to conclude?"

As you speak, you don't just do the usual, vague hand wave toward the jury box that always accompanies attorneys' asking a witness to "tell the jurors" something. Frequently, I've seen lawyers wave at the ceiling and, depending on the level of witness rapport, the witness' gaze will often fly right up there, actually *breaking* juror contact, instead of improving it.

No, you draw a hand in front of you, chest high, with a finger slightly pointed, and drag the witness's focus (now fully committed to you) directly to the face and eyes of Mr. More Science, who also is still intently focused on you. In the world of nonverbal communication, you may as well have said, "Please tell my friend in seat #3 here, exactly what he most wants to hear, Doc." And, he will proceed to do just that. With both of them having just confirmed they're putting the full force of their other-than-conscious facilities into the exchange.

Is that choreography complex? Yes. Are attorneys who've practiced these techniques doing it every week to some great effect? Oh, yeah.

Enhancing Witness Presentation

After capturing a witness's attention by mirroring, you can more effectively invite that witness to enhance memory and intensity in their recollection.

Your witness on direct exam may need help to view the scene of the hospital room again, in his own mind, so that he can give a more detailed and compelling description. But, you've learned he is not only a man of few words, but also uncomfortable on the stand. When you have confirmed a more fully engaged rapport, by waiting till you see (or sometimes hear) the *amplified* or *altered* response he chose without any conscious direction, you can use this greater level of rapport he's given you to help him present himself at his best for his one chance on the stand.

As you see the amplified response as the last step of mirroring, you say, "What is the first thing you can see as you walk in that room, Bob?" but you also help him "see", nonverbally. Not only are your hands up, palms out, slightly above mid-chest in a visually-leading gesture, but your eyes meet his and you then draw yours (and his) up and to his left, where they *must* travel to most directly access his visual memories.

For each question that follows, you stay engaged and continue to help him sort through his own references, starting with the images, and moving into the sounds of the bedside alarms going off, the conversations he had with the nurses and his wife, and, finally, the feelings he had at the time. Each time, you draw his eyes in the direction where accessing sights, sounds or sensations⁹ is most easily accomplished, while using words and gestures he's automatically got linked to those sense systems already.

9. Smell, taste, and touch, at these levels of communication, can be folded in under the "sensations" heading.

Current research on mirroring alone, without any added aid from sorting out sensory biases and reference experiences, shows the person you've engaged is up to six times more likely to take just a verbal suggestion. Imagine how much more responsive they can be where the exchange doesn't have to be reduced to words, but can stay at the primary level of our nonverbal "dance" of rapport.¹⁰

You can step up from basic engagement, as powerful as that can be, to start weaving sight, sound and sensations all together, inviting any witness's eye movements to areas where he or she can more easily recall information or emotional responses. Eyes up and to the left, for most people most of the time, garners remembered sights. Eyes up and to the right, on the other hand, tends to foster constructed or imagined images. Each of the three major sensory systems has eye positions, advertising which one each person happens to be indulging at any given moment.¹¹ If you mirror a witness, she will tend to follow you even more than she otherwise might. By looking up and to *her* left when you ask for recollections of sights or images, you can nonverbally invite the witness to improve both the quality of the memory itself, as well as that of its subsequent expression in court. (Of course, the process can work to inhibit memory retrieval and expression if you invite a witness' eyes to search for information through an inappropriate access point.¹²) Over time, this practice automatically heightens your awareness of these and all other movements any human being may make.

10. Robin J. Tanner, Rosellina Ferraro, Tanya L. Chartrand, James R. Bettman, and Rick Van Baaren, "Of Chameleons and Consumption: The Impact of Mimicry on Choice and Preferences." *Journal of Consumer Research*: April 2008.

11. There will be more detail on this technique later on. But, like any rhetorical or nonverbal skill, all will be improved by establishing the kind of rapport mirroring alone can accomplish, and they will fare worse for failing to use it well at the outset of any persuasive communication.

12. Without some practice, you *will* inadvertently do this with your own witnesses, from time to time, and be left wondering why she "went blank" or "lost all her emotion" after testifying well during prep.

A woman is reluctant to describe an assault. A man is reluctant to describe the experience of the loss of his child. A doctor won't describe his process at the time of the operation in vivid terms. An expert is prepared to distract jurors with deflected, distorted testimony. These are all people whose performances rely on their ability to get better or worse access to what's already in each of their heads. By forging a more complete connection with their whole mind, not just relying on lip service ("I'd like to ask you a few questions, if you don't mind Doctor ..."), you can use any number of verbal and nonverbal techniques to help—or inhibit—their efforts. With the assault victim and the Dad who's had the loss, make these efforts first in prep sessions, not during testimony.

Small steps and short, general questions are preferred at first. For example:

- ♦ "Before anything happened, what did you see?"
- ♦ "You eventually had to go back home. What do you recall as you stepped inside?"

If the nonverbal channel is strong, you don't have to form your questions brilliantly to get the job done.

If you first confirm the witness' full attention by mirroring, an array of methods for helping him tell the truth most effectively are much closer at hand. If you use mirroring well, you can begin to confirm within seconds whether you have gained or lost a witness's, judge's, or juror's full attention to upcoming parts of any message.

Mirroring with Demonstrative Visual Aids

If you wish to be more effective in using demonstrative visuals and verbal phrases—also known as anchors—to strongly condition decision maker associations with certain story points, then capture and confirm the viewer's full attention before you use the demonstrative aid or the key phrase.

Let's say you want to invite decision makers to reinforce the phrase "unnecessary risk with people's safety." You can balance the verbal with the nonverbal levels of communication to most likely

imbed that phrase where you most want it to reside. To do this, confirm their full rapport before you mouth that phrase in *voirdire*, in opening statement, or at the top of your mediation presentation. Then sort your delivery to show the image of that risk first. Then, lead people towards their auditory systems as you go.

If the “needless risk” scene is a trucking dispatch center, a construction site contractor’s trailer, a product design team’s conference table, a nurses’ desk in the Neonatal ICU, it makes no difference. Knowing how to grab someone’s full attention, and then confirm their engagement with you *before* you try to invite them to anchor “unnecessary risk” to that scene in their own minds is what makes all the difference. Otherwise, you may plant the verbal seed on mental rocks.

When you establish that connection first, it makes a big difference for the person receiving your message. Likewise, when you use any other communication or persuasion techniques, you are more likely to succeed if you’ve first worked to invite the person’s full attention. Without applying mirroring before trying these techniques, your chances of failing rise rapidly even with simple skills like rhetorical questions or rule-of-three groupings. The lack of this level of rapport is quite often the cause of failures at reading reactions in your listeners.

Here’s an example: a plaintiff’s attorney familiar with mirroring and other nonverbal techniques devised a pattern for use with opposing counsel or adjusters’ one-on-one settlement talks. He would establish the starting negotiating positions, mirror the opposition, feed back the nonverbal response and then wait until he saw or heard the *change* confirming their more complete connection. Then he would ask a question, usually phrased, “Is that all you’ve got?” all the while suppressing all voice inflection and advocacy.

A fly on the wall in that room, might first see the plaintiff’s attorney tip his head, drop a shoulder, or raise his brows to match that part of his opponent’s behavior, showing respect for the other person nonverbally. A couple seconds later, there would be some nonverbal sign from the opponent *in response* to his mirroring effort. Most commonly, the opponent’s head or lips would move or

the eyes would make more direct contact, although there are dozens of other responses to being mirrored, including reliably consistent movements of one hand or one foot, for some people.

Noting what response he got, the plaintiff's lawyer would carefully mirror *that* behavior, whether from eye, hand, lips, foot or head, and wait. If the other party is actually engaged—in or on the way to full rapport—that particular response behavior being fed back will get unconsciously *changed*, usually by being amplified or expanded in some way. The foot moves twice, the tipped head tips more, the bobbing head bobs bigger and faster, and so forth. That would be the cue to ask the big question.

Having confirmed the person's engaged attention before asking, he had the best chance to read a response focused on the subject under discussion. Knowing something about his opponent's signals for agreement and disagreement (which he noted earlier in conversation), he would listen and watch as the answer came out. If he observed a sufficient mismatch between words of agreement and the nonverbal signs of denial, he would just sit silently. The opponent typically filled the silence—in the atmosphere of focused, complete attention—with a higher settlement number. Then everyone would relax and talk some more until the attorney began the routine again.

Over time, he'd found he could predict the final amount his opposition would offer by proposing a few numbers and watching the nonverbal reactions to each. But these predictions were most accurate only if he'd been careful to mirror well, first.¹³

Many failed attempts at reading veracity, along with many other persuasive techniques, come down to the lack of focused attention—on both sides of the communication—that mirroring can easily provide.

13. Eric Oliver, *The Human Factor at Work*, (Canton, MI: MetaSystems, 1993), 90-98.

Shattering Myths

There are many myths about rapport and how to use mirroring to promote it. First is the myth of likability. It is an outgrowth of the presumption that impressions spring from conscious verbal sources. Many attorneys still believe a juror has to like him or her for the juror to agree with the lawyer's positions at trial. Yet most attorneys have heard post-verdict comments like "You really were the far better lawyer. It's too bad that you had such a lousy case, 'cause I really wanted to vote your way. Can I have your card?" Conscious factors do not always drive judgment, just as they do not drive attention. The likability many lawyers deem essential to success is primarily a position people express consciously. It shows up in surveys after the fact, rather than during decision-making.

Another myth about building rapport through mirroring is that the responses involved somehow show both dominance and submission. A person who follows your gestures or postures in court is assumed to somehow be submitting to your control. This presumption shows a misunderstanding of what mirroring is all about. As

Dr. Paul Lisnek and I wrote, in *Courtroom Power*,

You will notice when you begin to use mirroring that people will appear to be following your every move. In fact, many people who train professionals in mirroring consider this their goal; that is, until you can demonstrably "lead" someone into following your behavior, you have not established sufficient rapport... This interpretation ignores a critical fact about matching and mirroring behavior—that humans are almost constantly *following* one another's behaviors, postures, and stances. It appears that a human primate will match some of the behaviors of any other person in the vicinity, as long as that primate perceives no major threat.¹⁴

Another myth is that rapport between people implies agreement. Just because you've invited and successfully received someone's full attention (and maybe more) does not mean they must

agree with you, submit to you, or even like you. A person can cheerfully hate you, yet still discover themselves attending astutely to your message. Later, during deliberations, the same juror may find more of that message memorable, if not more compelling, despite his or her personal bias.

The confusion comes from the still popular presumption that we drive decisions consciously. Once you set that bias aside, related assumptions about impressions, rapport and mirroring will likewise fade.

Common worries about using mirroring include “getting caught” and “forgetting what I was going to say.” In the former case, just acknowledge that indeed you were sitting or standing as the other person was, but omit the fact it was deliberate. “Why, so I was. What do you know.” Then pick something else to mirror and start again. In the case of forgetting your place, take a breath and your thought will come back to you just as it does when you’re not practicing nonverbal techniques.

“What if the other person turns away?” is another common fear. That turning would constitute the response at step two of the mirroring process. Step two is their reaction to your first matching of some behavior of theirs, which you must feed back to finish step three of the mirroring process. Step three confirms that the listener received your message, by amplifying or changing what the receiver felt back in step two. So, if you mirror someone and that person’s immediate response is to turn away, your job then will be to turn away exactly as the listener did. At that point, about half the people who turn away from you will turn right back.

One comment I frequently hear after a lawyer tries mirroring in deposition (the best practice arena of all) is, “She wanted to tell me her entire life story.” If you want this to stop, at some point just mismatch a behavior and she will tend to find someone else to focus on.

14. Paul Lisnek and Eric Oliver, *Courtroom Power: Communication Strategies for Trial Lawyers*, (Eau Claire, WI: PESILaw Publications, 2001 (orig. 1993)), 64.

Though you can easily prove that unconscious mirroring occurs naturally, some people will still insist that using this natural response mechanism to capture someone's attention is somehow artificial. Attorneys who would never question showing conscious attentiveness will quickly question this allegedly manipulative way of inviting full attention. While open to any verbal devices to tell their client's story in the most compelling way, these people balk at a five-to ten-second nonverbal way to ensure their listeners are ready to do just that—listen and watch.

Where to Mirror

Following are just a few suggestions of where you can use mirroring:

- ◆ **ON FIRST MEETING WITH A CLIENT**, to build a connection, gather more complete information, and avoid offering a distracted face.
- ◆ **ON SUBSEQUENT MEETINGS**, to get higher quality responses to questions, build the habit of connection, and focus your own attention.
- ◆ **ON SPEAKING WITH OPPOSING COUNSEL**, to fix your attention on their reactions instead of own preoccupations, and better read those reactions accurately for both present and future communications.
- ◆ **WHEN DEPOSING WITNESSES**, to encourage more complete responses, read their reactions and any major shifts, and be more certain you'll catch those shifts.
- ◆ **WITH ANYONE IN YOUR OFFICE** with whom you need to pass and receive messages as efficiently as possible, regardless how busy you may each be.
- ◆ **WHEN PRESENTING TO MEDIATORS, ARBITRATORS OR OTHER PARTIES** in negotiation or ADR settings to confirm their attention at the outset, at each critical stage, and at the conclusion of your presentation. In addition, mirroring helps you keep your own attention tuned to their reactions.

- ◆ WHEN EXAMINING POTENTIAL JURORS to better encourage responsive answers. Mirroring helps you fix your full attention on them and model that attentiveness for others in the box.
- ◆ WHEN EXAMINING WITNESSES ON DIRECT EXAMINATION, when working with that witness and a particular juror with whom you want their statements to register, or with the judge for the same reason.
- ◆ WHEN EXAMINING WITNESSES ON CROSS-EXAMINATION, to draw and direct their attention, or work with the jury members to quickly pull their focus toward you.
- ◆ WHEN SITTING AT COUNSEL TABLE, working with a witness, a juror, your client, or the judge, depending on whose focus you need at what time. Mirroring helps you keep yourself from losing track of the flow of the messages as your audience receives them.
- ◆ IN OPENING AND CLOSING, when working with jurors as well as the people at your table. You can draw and direct focus to the boards, people, or verbal points you wish to fix strongly in the juror's minds, while keeping your attention better fixed on your messages' receivers.
- ◆ WHENEVER YOU HAVE AN ENCOUNTER WITH SOMEONE LASTING LONGER THAN A MINUTE. You will have the skill available without great effort when you need it to avoid repeating your current habits without thinking. Using mirroring helps you become sensitized to the physical way in which you put yourself across at any given moment.¹⁵

Developing skills in behavioral communication has double-edged benefits. Mirroring, you'll find, works the same on both sides of the communication. Just as you can use it to invite the complete attention of the other person, so will yours be committed briefly to them. That full attention can last anywhere from thirty seconds to

15. First appeared in "The Question is not Responsive to the Answer," *News From The Mental Edge*, Vol. 5, No. 1, MetaSystems, 1998.

several minutes, but with minds being constantly active, it will not last forever. Mirroring at three moments—at the outset of a communication, just prior to its critical points, and at its conclusion—is a rote, three-step method to ensure productive results. You will discover that this skill far surpasses eye contact as the most common method of soliciting rapport. Anyone who has ever spent time staring into vacant eyes in the jury box can attest to this.

Decisions, Decisions

It seems like we should just be able to tell ourselves—or someone else—to attend to something and have it happen immediately, without distraction. That's because in normal circumstances we can direct or invite enough of our own attention to accomplish whatever task we've undertaken. But legal persuasion is not a normal situation.

Judgments start with impressions. Impressions start with attention to both the messenger and the message.

Judgments are formed first by an impression, filled in with reactions to stored reference experiences and only then justified from one of an abundant supply of rationales. It is not proven that jurors reach their conclusions by the end of opening statements, but even if it were, developing fluency with other aspects of communication would be even more important... It is the portion of people's minds outside conscious awareness that lawyers must address, because that's the portion that develops impressions.¹⁶

Addressing that part of the mind is as easy as one, two, three. Why bother? Because, first, you have to get their attention. Then you match and note their responses and feed it right back to them. And finally—you just stop engaging and start persuading.

16. Lisnek and Oliver, 60.

Respecting Their Minds

I have often said that much of what the lawyers I train are learning is just good manners for the mind outside of conscious awareness. That's the part of the mind in charge of beginning all legal decision-making. By re-authoring the case stories which any negotiator, mediator, judge, or juror hears, these stories may well be the mental part you want to be sure and respect first.

The following article lays out some of the basics of verbal and nonverbal etiquette for attorneys to apply in public speaking. Because they are fundamentals, they certainly apply in plenty of other forums as well.

Keeping in mind that because a jury never addresses more than 90 percent of all civil cases, your primary audiences often includes other decision-makers: judges, mediators, or negotiators. These persuasion tactics work equally as well with these decision-makers as they do with jurors. Here is a time-tested primer on how to deal with the dynamic between how the mind processes conscious and other-than-conscious messages you need to convey.

The following essay, first printed in 1993 in *News From the Mental Edge*, has been MetaSystems's most reprinted article. Speakers, trainers and schools around the country have used it as part of their curriculum almost from its first appearance. Much of it appeared in my first book, *The Human Factor at Work*.

