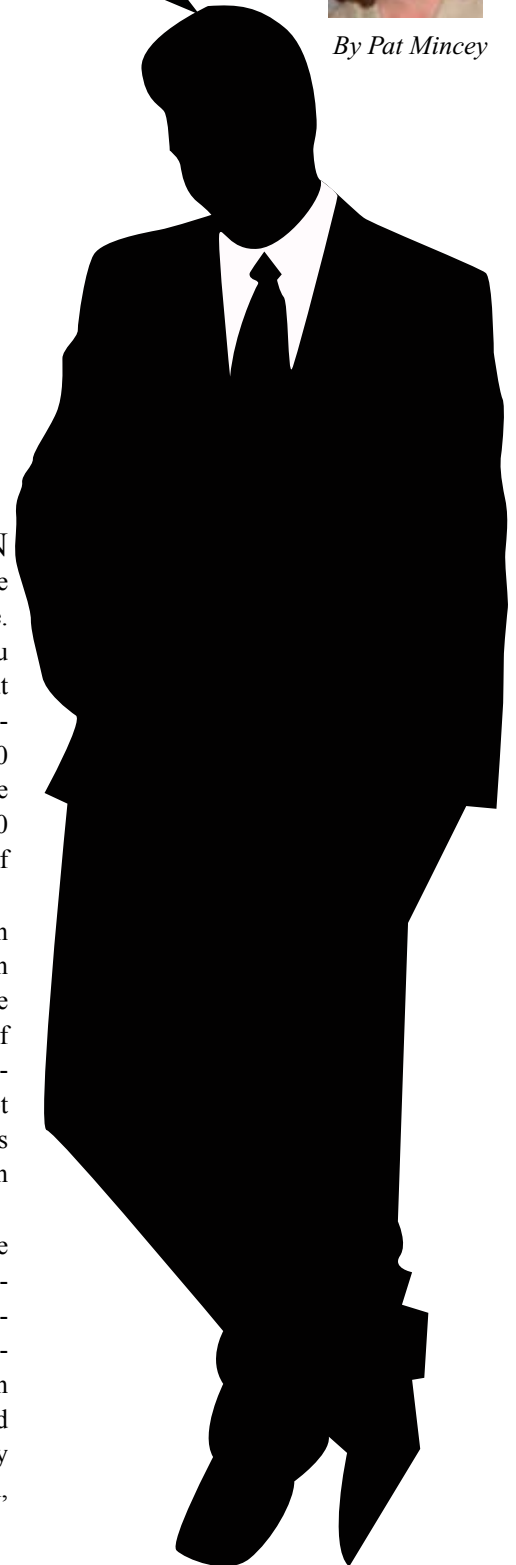
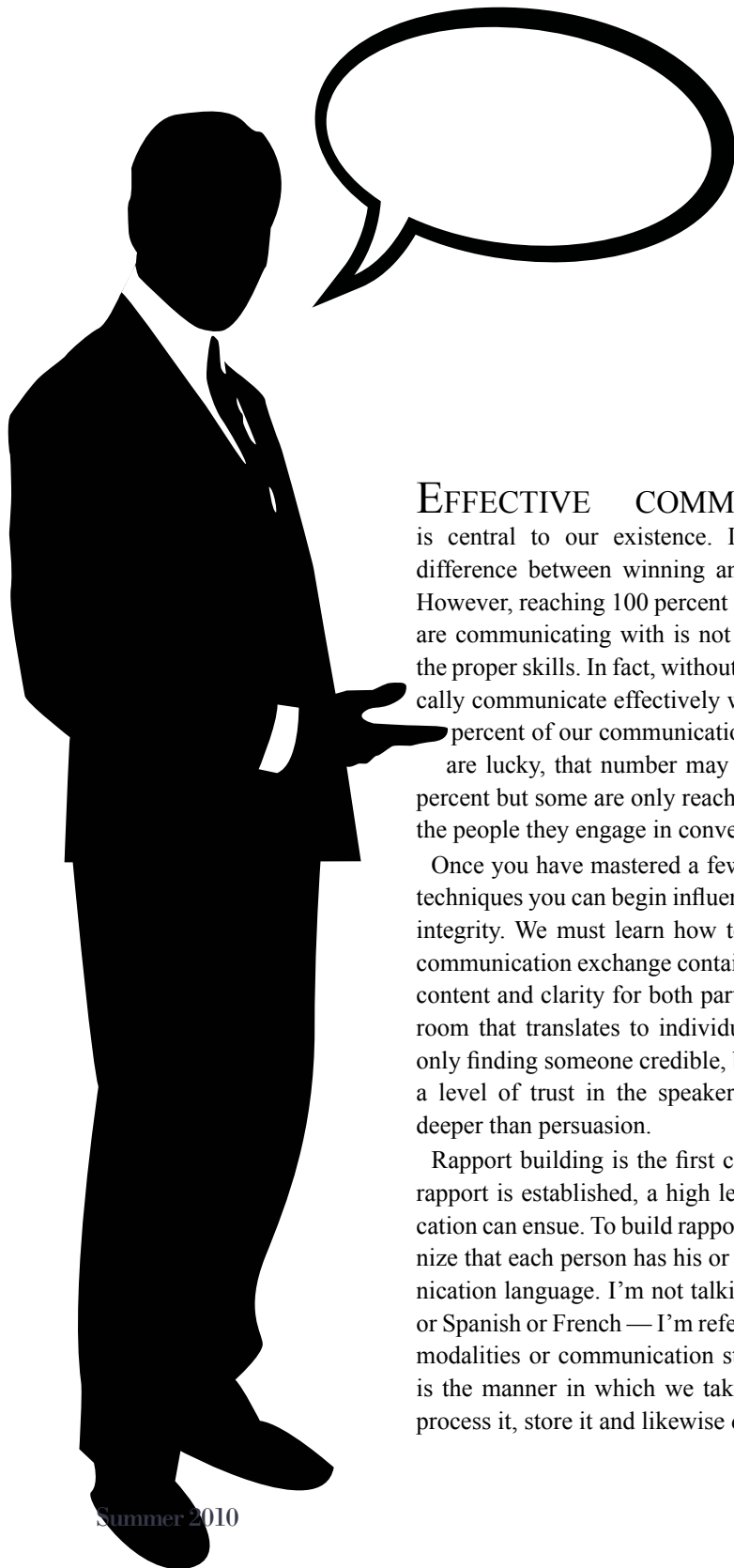


# Your Lips Are Moving, BUT...



*By Pat Mincey*



## EFFECTIVE COMMUNICATION

is central to our existence. It can mean the difference between winning and losing a case. However, reaching 100 percent of the people you are communicating with is not possible without the proper skills. In fact, without training we typically communicate effectively with only 40 – 60 percent of our communication partners. If we are lucky, that number may be as high as 80 percent but some are only reaching 20 percent of the people they engage in conversation, ever!

Once you have mastered a few communication techniques you can begin influencing people with integrity. We must learn how to ensure that the communication exchange contains a high level of content and clarity for both parties. In the courtroom that translates to individuals or juries not only finding someone credible, but it also creates a level of trust in the speaker that goes much deeper than persuasion.

Rapport building is the first crucial step. Once rapport is established, a high level of communication can ensue. To build rapport we must recognize that each person has his or her own communication language. I'm not talking about English or Spanish or French — I'm referring to preferred modalities or communication styles. A modality is the manner in which we take information in, process it, store it and likewise dish it back out.

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## *If your communication isn't getting the desired response, change what you are doing.*

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### Map of Reality

People code information and memories into their brains based on their preferred communication modality. When they listen to information, they recall from their memories a like item or experience and automatically make a comparison to what they have heard. This is called *accessing one's map of reality*. We all have our own unique maps of life experiences that color the way we receive additional information as we go through our lives.

The realities of our individual maps determine our perceptions. They also determine how we respond in communication with others. This raises a problem: We can't know another person's map. We can only know that they have one, and it is *not* the same as ours. Everyone's map is unique to his or her life experiences.

### Communication Styles

There are three preferred styles or modalities of communication: visual, auditory and kinesthetic. Since we are born to one or sometimes two communication styles, we must *learn* the second and/or third and how to speak in them. In order to communicate at a high level with others, you must match their preferred and automatic style. This principle crosses all racial and ethnic boundaries.

Visual people make up 40 percent of the population and they use "seeing" words, speak in a high-pitched tone rather quickly and use hand motions in the upper body area. When they try to think of an answer, they will look up at the ceiling and to the right if they are right-handed or to the left if they are left-handed. Even a person

who is unable to see can be a visual communicator.

When you were a kid in school and the teacher yelled at Suzie for looking up at the ceiling when asked the answer to a math question and the teacher exclaimed, "Suzie, the answer isn't up on the ceiling!" the teacher was dead wrong. For Suzie it was up on the ceiling and she had to pull the image of the answer down from there to her conscious mind and then speak it out loud.

Auditories make up only 20 percent of the population and are typically people who speak for a living. They use many "hearing" words, like to hear lots of words and also use a lot of words when they write, but they don't like to be bothered with descriptive or feeling words. Their speech tends to be monotone or melodic but predictable, they gesture mid-body and sometimes cock their heads to the side and sit in the telephone position. They remember *everything* they say, and everything *you* say, so don't argue with them unless you too are auditory.

Kinesthetics represent about 40 percent of the population and base their communication on feelings and make decisions based on their gut instincts. They like to use and hear "feeling" words, and they like to taste and smell things, too. They gesture low, their speech is low and they will do and say what feels right. When pressed for an answer, they will look down and pull the answer up from their gut. Contrary to what is taught in law enforcement and in the legal field, when a person looks down before answering a question, it does not mean that they are lying — it means that they are kinesthetic.

### Forms of Communication

Communication can be broken down into three parts<sup>1</sup>:

1. **Verbal Portion** (what we say to each other): Various experts place the percentage of weight given to verbal communication as low as 7 percent and only as high as 30 percent.
2. **Non-Verbal Portion** (the feelings or emotions we emit): The greater weight of importance falls on this portion of the message and is no less than 70 percent and as high as 93 percent.
3. **Belief Portion** (the power behind our messages): The belief structure of an individual is the impelling force behind virtually all communication (and all behaviors). One's beliefs about another person, the subject matter or the situation dictate the intensity, the voice tone and the emotional content, and provoke our body language.

What heavy weight is given to the non-verbal portion of our communication! It must be surprising that no more than 30 percent weight is given to the importance of the words we actually say.

A recent article indicated that "the first 30 seconds are your best chance to sway Judge and Jury."<sup>2</sup> The same is true for any communication experience, whether you are speaking to a group or in a one-on-one meeting. If we communicated in all three modalities within the first 30 seconds of an encounter and observed our communication partner, we would gain rapport immediately. Then we begin a positive communication experience that will only get better as it progresses.

## Neurolinguistic Programming (NLP)

Nationally-recognized Texas Plaintiffs' Attorney Howard Nations uses and teaches the concept of Neurolinguistic Programming (NLP) to win multi-million dollar decisions:<sup>3</sup>

- Some individuals learn best with visual props, others by auditory cues, and others by physically repeating an act over and over (known as kinesthetic learning).
- Lawyers tend to be auditory learners, which guides their presentation of a case. But most people are visually oriented. This realization helped lead to the tremendous increase in the use of courtroom graphics and displays in recent years – and to the tremendous growth in trial consulting.
- Neuro Linguistic Programming (NLP) can be used as an extremely powerful technique in the courtroom. It not only works with juries, it's helpful in communicating effectively with judges.
- The poet Robert Frost once quipped, "A jury consists of 12 persons chosen to decide who has the best lawyer." Now, more and more lawyers are looking for an edge. For some, NLP is that little bit extra.

## Communication Excellence

Mastering communication is invaluable. So much fuss has been made about how to best communicate with others and make them feel valued, to "story-tell," but rarely are we taught to understand how we input and process information ourselves, and how that affects the way we subconsciously convey information to others. Unless we learn to recognize that about ourselves and in others, we will never truly master communication.

Once learned, these powerful influencing tools can be utilized in every communication. A master communicator can use these skills to pick a jury with just the right communication style or a combination of styles that best suit the evidence to be presented and the testimony of the witnesses. Witness testimony can be so richly enhanced if the witness can communicate his or her information using all communication styles when formulating an answer. Litigators can master communication in the courtroom with every person they encounter, greatly increase the effect of the statements of a witness and reach every juror with certainty, rather than just hoping they understood certain pieces of evidence or points in opening and closing.

Let me leave you with this thought about communication excellence: If your communication isn't getting the desired response, change what you are doing.

### Notes

<sup>1</sup>Taken from the Anatomy of Communication as explained by Dr. Jerry Harris in his address at the Brigham Young University Families under Fire Conference in 2000.

<sup>2</sup> McElhaney, James W., *No Time to Waste*, ABA Journal, April 2004.

<sup>3</sup> Carter, Terry, *Secret Sway*, ABA Journal, September 2001; also available at <http://www.howardnations.com/persuasivejuryarguments/secretsway.html>.

[com/persuasivejuryarguments/secretsway.html](http://www.howardnations.com/persuasivejuryarguments/secretsway.html).

*Pat Mincey is a Certified Forensic Interviewer with more than twenty years of experience. She is also a certified instructor for IDEA Corporation in Palo Alto, CA, teaching Influencing with Integrity and related training classes and is currently pursuing her Masters degree in Adult Education.*

*The eight-hour course on Influencing with Integrity can be scheduled at your firm's office and is offered in two half-day sessions or in a one-day format.*

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*"He who is his own lawyer has a fool for a client."*



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