

The Master Mediator

You, Me, & Me—and You!

An Exploration of Unconscious Imitation

BY ROBERT A. CREO

At the 2009 and 2012 Master Mediator Institute Immersion Courses held on the Duke University campus, Prof. Tanya Chartrand, of Duke's Fuqua School of Business, in Durham, N.C., presented on the unconscious imitation—AKA mimicry.

Humans, and other animals, especially primates, intentionally copy or mimic others, usually for learning, deference or otherwise integrating acceptable behavior into their community.

Mimicry is generally defined as the unintended copying of four categories of verbal, facial, emotional, and behavioral activities. The “chameleon effect” involves changing behavior to blend into the surrounding environment without conscious awareness.

Mimicry appears to lead to more convergent, “creative” thinking. The lack of mimicry, or anti-mimicry, encourages “divergent” or skeptical thinking, and may influence creativity, within the two-person interaction (dyad).

There is a correlation between mimicry and rapport, with people having a more positive feeling toward the person who is mimicking them. Prof. Chartrand contends that mimicry is a unconscious tool to affiliate, and also to disaffiliate, by decreasing mimicry. Those in power, such as group leaders, are mimicked more than those with less status. See Tanya L. Chartrand and J.A. Bargh, “The Chameleon Effect: The Perception-Behavior Link and Social Interaction,” 76 *J. of Personality and Social*

Psych. 893 (1999)(available at <http://bit.ly/sX-irYI>), and Jessica L. Lakin, Tanya L. Chartrand and Robert M. Arkin, “I Am Too Just Like You,” 44 *Psych. Science* 816 (2008)(available at <http://bit.ly/Wq8EY7>).

Mimicry arises in both business and social contexts. It is thought to have a pro-social effect to strengthen interpersonal communication, communal and group cohesiveness. Mimicry supports empathy since it is involved in the understanding of emotions of others.

The ability to read emotions may be dependent upon how people unknowingly may mimic facial expressions.

Researchers have found that those with neurological disorders or who are temporarily prevented from mimicking have deficits in the ability to perceive the emotional content of common facial expressions. The scientists refer to “afferent facial feedback.” One study found that two weeks after 32 patients were injected with Botox or Restylane, which paralyze for wrinkle reduction, their emotion perception was dampened. See David T. Neal & Tanya L. Chartrand, “Embodied Emotion Perception: Amplifying and Dampening Facial Feedback Modulates Emotion Perception Accuracy,” 2 *Social Psych. & Personality Science* 673 (2011)(abstract available at <http://bit.ly/z9ySOof>).

Mimicry is also correlated to persuasion and may also enhance performance. There are studies that indicate that leaders who are mimicked perform better on some tasks. There also is research that supports the contention that in a group setting, persons who perceive themselves as not part of the in-group may be motivated to mimic the in-group leaders or members to address needs of a sense of belonging to the group. There is also one study involving only women, where the degree of mimicry was correlated to the

reputation for fairness of the woman being mimicked. Dennis Hofman & others, “Fairness modulates non-conscious facial mimicry in women,” 279 *Proc. R. Soc. B* no. 1742 3535-3539 (Sept. 7, 2012)(abstract available at <http://bit.ly/YPbPuI>)

INSIGHTS AND MEDIATOR SENSE

Mimicry is an unconscious process, and I am not certain that we can always be attentive to these subtleties during the course of a negotiation or a mediation session involving many participants.

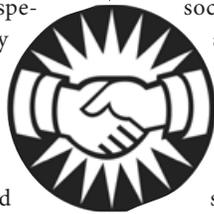
There have been times when my posture is leaning back in a chair or my arms behind my head or crossed that I have noticed someone else in the room with a similar configuration. I usually was unable to conclude whether that person was mimicking me or vice-versa.

Early in my mediation career a plaintiff's lawyer started smiling at me and pulled me aside from his client. He told me that he had been a practicing psychologist before becoming a lawyer and that he was impressed by my ability to “mirror” him and his own client while maintaining credibility and rapport with both of them.

I was surprised since this was not a conscious effort on my part but something that apparently came naturally during the flow of the dialogue. I was not acting or attempting to influence the participants by exchanging body language or otherwise attempting to influence the decision-making process. From this point onward, I became more aware of “mirroring” but decided against adding it as an affirmative tool in my mediator box.

In another case when I was in caucus with the plaintiff's team and counsel was advising his client to reject the defendant's final offer, I

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noticed that the client seemed to be mirroring my mannerisms and posture. My Mediator Sense kicked in and I approached it very gently by saying something to the effect that the plaintiff's lawyer was extremely competent and had excellent results in the courtroom. The client hired this lawyer for a reason, and I told the client that the two of them had spent lots of time collaborating on a complex and deeply personal matter. I noted my own opinion that even though I considered the defendant's proposal to be within the zone of reasonableness that certainly a higher verdict was possible. As a result I would not push the client to a settlement based upon my own risk tolerance and how I balanced the many factors in the case.

I ended the session by saying I would step out into the waiting room, and that I would be supportive of any decision made by the client. I said that I would communicate any rejection in a respectful and appropriate manner.

I took this approach because I interpreted the client's body language mirroring me as

already being "with me" more than with his own counsel. Since I perceived that we already

ADR Copycats

The column's topic: Is there a usable 'chameleon effect' in mediation?

The challenge: How identifying mimicry might help bring bargaining parties together.

What's the practical application?

That's the tough part. Mirroring verbal/facial/body responses could mean a variety of things, but decoding and deploying may be obvious or contrived.

were in alignment I decided not to focus on the merits of the case, but rather on my rapport and positive support of the client as a human being facing an important decision under risk and uncertainty.

My intent was to bolster his ego and sense of self so that he would be confident enough to make his own decision independent of his lawyer, while at the same time respecting his relationship with counsel. The lawyer came out and said that the case is settled and that he and his client appreciated the respect shown to each of them.

* * *

I am not certain that mediators can consciously use mimicry as a technique without being obvious or contrived. I think there may be value in any observation about who members of the same team are mimicking, or if they are "in tune" with the mediator or members of the opposite team.

There are people who are more attuned to the emotions of others and are able to "read" the reactions and context more accurately. Since mimicry is correlated to the ability to understand verbal and facial response, and conduct, the lesson that may be taken home is that there is a better understanding of the science behind interpersonal interactions, and that the theory of mimicry assists in understanding Mediator Sense. 

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ADR Tools

Resolving a Dispute by Getting a Neutral To Provide Probability Assessments

BY MARC B. VICTOR

Many readers are aware of the use of decision-tree analysis for valuing a lawsuit, and probably have performed such "expected-value" analyses as part of advising business clients on litigation and settlement strategy.

But there is always the concern over how realistic probability assessments really are. How

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much of the disagreement between your valuation and your opponent's is really due to the other side being unrealistic ... rather than to your being unrealistic?

How often can it be true that, when it comes to determining case value, "We're right and you're wrong"?

When faced with a situation where you would be happy to settle at an amount between "all" or "nothing," but you and your opponent are far apart on what would be a "fair" amount—i.e., one that realistically reflects what would happen, on average, if the case were tried multiple times—have you ever considered asking a

third-party neutral to provide the probabilities for your decision tree?

That is, rather than asking the neutral to give his or her opinion of who would win at trial and what the damage award would be if the plaintiff were to prevail, instead asking the neutral to opine on the *probability* of the judge and jury resolving each issue for plaintiff versus for defendant?



A PANEL OF NEUTRALS

This can be an excellent way to resolve a case ... to both clients' satisfaction. One dispute in which the