

Managing Fear and Anxiety

By Robert A. Creo

Earlier columns have addressed the lawyer's identity and reputation and explored self-awareness, perpetual learning and professional growth through civic service, persuasion and emotion. This column continues to examine the preparation and self-control necessary for effective communication and persuasion by focusing on internal emotions and considerations, specifically fear and anxiety. Successful practitioners grapple not only with the complexity of human emotions of others but of themselves as well.

Markers of Emotion

As noted in the last column, researchers categorize emotions into seven separate "families." These are: anger, contempt, disgust, fear, happiness, sadness and surprise. Anxiety is within the category of fear as an emotion and is a state of distress in reaction to or anticipation of novel, threatening or difficult situations.

Anxiety usually triggers the "flight" response rather than the "fight" biological systems, which are generally tipped by anger. Research supports the thesis that feeling or looking anxious during negotiations results in suboptimal outcomes. When experiencing anxiety, negotiators take weaker initial positions, respond quickly to proposals and may exit negotiations early, all to their detriment.

Facial expressions, voice and body movement emit emotional signals. Anxiety is often difficult to mask. When communicating in presentations, arguments or negotiations, even the most rehearsed presentation rarely goes forward without moments of hesitation or anxiety. What comes to my mind in an analogous situation is the tactic of the opposing football team calling a timeout just as the kicker is lined up to attempt a potentially game-winning field goal. Research indicates that highly successful negotiators purposely attempt to make their counterparts feel anxious. Anxiety and fear affect performance.

Natural to Be Anxious

Recently, during several conversations with experienced lawyers, I explored my belief that most people react with anxiety to the prospect of public speaking, appearing in court or negotiating directly with adversaries. One practitioner told me that he always has butterflies in his stomach until the first few sentences come out of his mouth. Then he calms down and is fine. Even famed trial lawyer Gerry Spence acknowledged the fear and anxiety inherent in practicing law, writing that "after all these years, when I go into a courtroom I still feel fear. People's lives and my career are in my hands. I am as afraid as I was when I was a young man trying my first case. I am only better at admitting it. And the question for me has always been: How do I deal with that fear?"

Over the years I've found that my fear can be a powerful gift. First, I've never known a dead man who was afraid. Fear reminds me that I'm quite alive. I've never known anyone who cared, who was facing something difficult, who wasn't afraid — afraid of failure. If we aren't afraid it means we don't care. Fear leads us to the better part of us.

Fear and Our Better Part

Anxiety can never be vanquished, nor is it productive or healthy to eliminate fear and anxiety. Research shows that mild or moderate levels of stress sharpen our minds and bodies to improve both cognitive and physical performance. Adrenaline flows when we are confronted with stress. As we begin to take center stage, thinking and speaking, we enter the flow and concentrate on what is important in our presentation, representation or case. This does not occur in a void but is a product of education, training, preparation and planning. Mastery of the facts of the matter and applicable law and familiarity with the opposition and its anticipated positions and supporting arguments minimizes fear arising from surprise. Most important, preparation instills a quiet confidence within you that can easily be projected to opposing counsel, clients or inside the courtroom. Inherent in proper preparation are clear goals and a range of options that empower communications that are essential to effective representation.



Strategies, Techniques, Tactics

Familiarity with people and surroundings reduces anxiety. Whenever possible, meet opposing counsel informally for coffee at the start of the matter. This is an opportunity to engage in small talk and to humanize the attorney-attorney interaction. This has been my practice for decades.

Years ago I was retained by a small law firm in eastern Pennsylvania for the sole purpose of being the negotiator to resolve a bad-faith claim against a carrier. We decided to make a sizable, perhaps unreasonable and clearly unobtainable demand. As expected, there was no response. I called opposing counsel to seek an informal get-to-know-each-other meeting with the express understanding that we would not discuss the case. Despite what opposing counsel termed an “offensive” demand, the bad-faith case eventually settled. That was a start of a professional relationship that continued for decades, which included my serving as a mediator in many other cases, being retained as consultant on a catastrophic-loss claim and bad-faith case in a western state and serving as the mediator in the dissolution of the counsel’s law firm. When undertaking all of these activities, including the first meeting with counsel after the unrealistic demand, anxiety was present within me, but with each encounter it diminished. As I gained experience and confidence in my relationships and ability to participate in large, complex matters, my fear subsided. The lesson learned is that there is no substitute for getting out into the field and engaging face-to-face with people.

It surprises and perplexes me that attorneys expect to rehearse opening statements, examinations of witnesses, arguments and other roles in the courtroom, yet view rehearsing and role-playing negotiations with skepticism or disdain. The benefits of role-playing an upcoming negotiation are obvious. If the stakes are significant enough, videotaping it on the iPad or mobile phone may make sense, providing, however, that watching yourself does not increase your anxiety. Key phrases and what reactions and demeanor to undertake may emerge from this simple preparation.

Become a student of communication, negotiation and persuasion. Better communication and negotiation skills and strategies can be learned. Attend CLEs and other programs focused on effective communication. Read and study negotiation, decision-making, human behavior and related disciplines. There is a wealth of information available online, especially videos, podcasts and webinars geared to effective oral communication.

Attorneys and clients uncomfortable with confrontational negotiation can use mediation. Successful mediators create comfortable environments for negotiation that minimize unpleasant confrontations. Mediators can reframe and communicate arguments and positions in an efficient and productive manner. Should an impasse be reached, proposals can be floated without compromising positions. Engaging in mediation is also a learning experience as you observe experienced negotiators in a process with an unhurried pace and private time for reflection and communication with clients. The same can be true of judicially supervised settlement conferences, especially with judges who take the time to nurture communication.

Asking an experienced colleague to participate or retaining co-counsel to act as the

negotiator can be a successful strategy. By participating as second chair in negotiations and being central in the preparation process you can gain critical experience both before mediation and at the table.

Attorneys who rely primarily upon letters, emails, texts and telephone communications to reduce daily fear and anxiety fail to maximize the effectiveness of their representation of clients. Talk to opposing counsel. Even if opposing counsel is unpleasant or difficult, strive to unearth the positive traits, characters and attributes of the opposition. This is not weakness but ultimately a strength that promotes realization of your potential. Attempt the impossible. Achieve the improbable. ☎



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Takeaways

- It’s OK to be anxious or fearful. Own and manage it.
- Rehearse deal-making, including role-playing.
- Get experience: Seek meetings with adversaries.
- Engage in negotiation training and study.
- Consider mediation or judge-moderated settlement conferences.
- Consider retaining special negotiation counsel.

References and Additional Sources

- Alison Wood Brooks, “Emotion and the Art of Negotiation: How to Use Your Feelings to Your Advantage,” *Harvard Business Review*, 57 (December 2015).
- Alison Wood Brooks, “Get Excited: Reappraising Pre-Performance Anxiety as Excitement,” 143 *Journal of Experimental Psychology*, No. 3, 1144-1158 (June 2014).
- Maurice E. Schweitzer, Alison Wood Brooks, “Can Nervous Nelly negotiate? How anxiety causes negotiators to make low first offers, exit early and earn less profit,” 11 *Organizational Behavior and Human Decision Processes*, 43-54 (2011).
- Gerry Spence, *Win Your Case: How to Present, Persuade and Prevail — Every Place, Every Time* (St. Martin’s Griffith, 2005).