Navigating Emotions — Emotional Intelligence Competency
By Robert A. Creo

Earlier columns have addressed the lawyer’s reputation, self-awareness, perpetual learning, professional growth and the art of persuasion. This column begins a series on understanding and addressing common emotions arising from dealing with clients, opposing counsel, colleagues, staff and the diverse people involved in any representational undertaking. Two earlier columns in The Pennsylvania Lawyer are primers on the importance of emotions for lawyers. See, “We Feel, We Choose: Pathos, Decisions and Persuasion” (Jan/Feb 2016) and “Managing Fear and Anxiety” (March/April 2016).

The Navigating Emotions series will dive deeper into the whirlpool of emotions, contending that emotional intelligence is an essential soft skill for lawyer competency, contentment and effective representation.

Emotions Matter
No conflict is devoid of emotion. Interpersonal conflicts are often about concepts of right and wrong, fairness and betrayal. Economic claims are often infused with emotional overtones. Commercial organizations are run by people who are often concerned with more than just the bottom line or making a practical decision.

Interpersonal disputes cause anxiety and discomfort in most people. Conflict avoidance is a means of denying, repressing and numbing emotions that arise from those disputes and may help people deal with emotions they do not believe they can handle. In an adversarial system, emotions are always present, like the tip of the iceberg. Anger and frustration are encountered on a regular basis, usually accompanied by anxiety arising from the uncertainty of a predictable outcome in the legal system. Recognizing emotional interactions and responding appropriately builds trust, restores cognitive efficiency and shows compassion toward those involved.

As noted in prior columns, scientists categorize emotions and emotional-related behavior into groups of primary emotions: anger, disgust, fear, happiness, sadness and surprise. There are secondary derivative feelings that are laden with emotional motivation and elements that fit within one or more of the six groups. These are called “emotions” in common parlance, although they are derivative and may be considered as being descriptive of character traits or motivations.

Common ones lawyers come across are abandonment, betrayal, contempt, envy, frustration, guilt, jealousy and vengefulness.

Emotional Intelligence
The concept that traditional types of intelligence, such as IQ, do not explain cognitive ability in a comprehensive manner was proposed by Professor Howard Gardner. His theory was that people possessed multiple intelligences. Interpersonal intelligence is the capacity to understand the intentions, motivations and desires of other people. Intrapersonal intelligence involves the self-awareness to appreciate your own feelings, fears and motivations. The concept evolved into emotional intelligence (EI), aka emotional quotient (EQ), which gained traction as a highly prized trait of successful professionals. Although the term had been coined in a 1964 paper by Professor Michael Beldoch, emotional intelligence (EI) entered popular culture in a 1995 book by science journalist Daniel Goleman. Emotional intelligence as a separate and distinct construct has not been universally accepted by social scientists, but it is commonly accepted as shorthand for interpersonal skills and decision-making processes. The public has embraced it. My last check on LinkedIn shows that Daniel Goleman has more than 4 million followers.

Emotional intelligence is the innate potential or learned skill to feel, use, communicate, recognize, remember, describe, identify, learn from, manage, understand and explain emotions. Self-awareness is acknowledging what we are feeling, being “in touch” with our feelings. A person with high emotional intelligence may be considered as having “people skills” and traits such as being agreeable, likeable, friendly or wise.

Empathy — A Fundamental Platform
Attempting to address one’s feelings with logic tends to confuse, sadden or infuriate a person and may result in being isolated from one’s own feelings and EQ. Many lawyers spend significant
amounts of professional time “hand-holding” clients to provide comfort and confidence along the too-long and difficult litigation or resolution path. My lifelong friend, professional actor Mark Tierno, has been playing the role of patient for more than 12 years in health care institutions with the goal of teaching interpersonal communication skills, i.e., bedside manner, to doctors, nurses and other providers. Having technical competence is not enough to be the best you can be at your work. Although there have been courses in law schools and continuing education on counseling and other communication skills, legal education in the emotional aspects of soft skills pales in comparison to that offered in the medical profession. The medical profession long ago came to grips with the idea that how providers communicate is a core competency and that it can be taught and learned as part of a holistic approach to educating professionals.

Essential Empathy
Empathy and compassion are core attributes of EQ. Common to the many viewpoints of empathy is that it is caring for other people and having a desire to help them because of experiencing or discerning emotions that match another person’s feelings or emotional state. Many contend that internalizing, feeling and blurring the differences between the self and the other are central to empathy. Simply, it is an ability to feel and share emotions. Empathy can include an appreciation of the personal traumas, background or experiences that have influenced the other person’s actions or poor judgment. Empathy can involve being tenderhearted toward others, although some label this sympathy. Compassion, sympathy and pity are terms often used interchangeably with empathy. Feeling compassion for others who are in need may be a motivation to help them or to ignore a violation of law or social norms. Empathy differs from pity because pity involves feeling that another is in trouble and helpless. People may say they are “feeling sorry” for someone else while not being able to place themselves in the other person’s shoes or take mitigating action.

The ability to recognize primary emotions innately and automatically is an evolutionary survival skill. Many psychologists, therapists and social scientists are certain that everyone is born with the capability of feeling empathy. This is supported by the fact that those on the autism spectrum or who suffer brain injury process empathy differently than others.

When emotions are understood to be a combination of beliefs and desires, understanding those feelings leads to empathy. This ability to imagine oneself as another person is a complex process and involves many unconscious cognitive processes. Research indicates that there are two types of empathy: affective and cognitive. Affective empathy, or emotional empathy, is when you feel someone else’s emotions. Cognitive empathy, or rational empathy, is when you try to understand someone else’s emotions intellectually. Functional magnetic resonance imaging (fMRI) studies have found that different brain regions are associated with different components of empathy. A 2015 analysis revealed that affective empathy is most often associated with increased activity in the insula, whereas cognitive empathy is most often associated with activity in the midcingulate cortex and adjacent dorsomedial prefrontal cortex. The study showed gray matter density in the insula area was associated with more affective empathy, while more gray matter density in the midcingulate cortex area was associated with more cognitive empathy. There is not 100 percent agreement on cause and effect. The question remains whether the differences are hereditary/innate or whether the gray matter increase is due to use, similar to muscle mass growing due to exercise.

Professor Robert Eres, who led the study, noted, “People who are high on affective empathy are often those who get quite
fearful when watching a scary movie, or start crying during a sad scene. Those who have high cognitive empathy are those who are more rational, for example a clinical psychologist counseling a client.

"Every day people use empathy with, and without, their knowledge to navigate the social world. We use it for communication, to build relationships, and consolidate our understanding of others."

"Taken together, these results provide validation for empathy being multi-component, suggesting that affective and cognitive empathy are differently represented in brain morphology, as well as providing convergent evidence for empathy being represented by different neural and structural correlates."

As technology and neuro-imaging techniques become more sophisticated, our understanding of how we are innately hardwired to process and respond to emotions is enhanced. The potential impact of this greater knowledge should not be underestimated. The evidence can be easily interpreted to support the concept that EQ is learnable, which makes the case for practical strategies to teach lawyers and law students how to understand and utilize emotions in our work and in our lives, boosting both competency and contentment. ☺

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Pittsburgh attorney Robert A. Crea has practiced as an in-house corporate lawyer and a solo and small firm general practitioner before focusing on being a human. He has mediated and arbitrated thousands of cases, including as a salary arbitrator for Major League Baseball, a grievance arbitrator for the National Football League and a hearing officer for the U.S. Senate Select Committee on Ethics Office of Fair Employment Practices. Since 1996, he has been on the mediator roster of the Court of Arbitration for Sports in Lausanne, Switzerland, which provides ADR services for international sports, including the Olympics. Since 1991, he has served as an adjunct professor at Duquesne University School of Law and the University of Pittsburgh School of Law. He has a passion for storytelling and is a frequent presenter at The Mesh in Pittsburgh, New York City, and elsewhere. He is the principal of Happy Effective Lawyer LLC (www.happy.lawyer) and author of the Effective Lawyer blog, www.effective.lawyer. His website is www.robertcrea.com. He is the 2018 recipient of a PBA ADR Committee Sir Francis Bacon Alternative Dispute Resolution Award.

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**TAKEAWAYS**

- Emotions are part and parcel of practicing law.
- Soft skills include the core competency of emotional intelligence.
- Empathy (bedside manner) is critical to optimizing effective representation.
- Emotional competence can be enhanced via self-awareness and learning.

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**References and Additional Sources**


Arielle de Sousa, Skye McDonald, Jacqueline Rushby, Sophie Li, Aneta Dimoska and Charlotte James, "Why don't you feel how I feel? Insight into the absence of empathy after severe traumatic brain injury," 48 Neuropsychologia, No. 12, 3585 (Oct. 2010).