

arbitral panel. The Certificate along with a \$50 fee must be sent to the California Bar. The certificate is not, however, approved by the California Bar, but instead must be approved by the arbitrator or panel to which the application is being made.

There is no limit on the number of appearances, but the California's Bar's website explains that it is "usually up to the discretion of the arbitrator and/or arbitral panel who may ask the applying attorney to inform him/her how many times the applying attorney has appeared as an OSAAC."

The Bar's website adds: "The spirit of the rule that the arbitral panel will follow mandates that out-of-state attorneys not abuse OSAAC as a substitute for practicing in California." See

the California Bar's website page titled, "Out of State Attorney Arbitration Counsel FAQ. See <http://bit.ly/2nA1N0y>.

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The duty of candor applies to arbitration! The arbitration panel is a "tribunal" under the rules of professional conduct.

Model Rule 5.5 and its analog versions in the states or the governing case law should give lawyers comfort that they can represent a client in an arbitration in a jurisdiction in which they are not licensed. But prudent lawyers will carefully review the requirements of the jurisdiction for registering, or certifying, or paying a fee so that they do not become subject to grievance in that jurisdiction.

Under Model Rule 8.5, the tradeoff for having a multi-jurisdictional practice is that the lawyer is subject to discipline in jurisdictions where the lawyer is allowed to temporarily provide legal services.

And arbitrators can take comfort in knowing that their job is not to police the enforcement of bar requirements but instead to comply with the Federal Arbitration Act in rendering an award.

And as explained in Part 1 last month, lawyers have to be mindful of their obligations under Model Rule 4.4(b) and consider other steps as needed to address the inadvertent production of privileged or protected documents and insulate such production from arguments about waiver. ■

The Master Mediator

Green: The Color of Money, and the Color of Envy

BY ROBERT A. CREO

Envy is the pain caused by the good fortune of others.

—Aristotle (c. 384 B.C. to 322 B.C.),
"Rhetoric."

Envy and jealousy are the private parts of the human soul.

—Friedrich Nietzsche (1844-1900).

Invidia festos dies non agit. (Envy keeps no holidays.)

—Sir Francis Bacon (1561-1626), "Of Envy" (1625).

* * *

English speakers often use envy and jealousy interchangeably.

Jealousy is a compound emotion, usually comprising other primary and derivative emotions such as anger, disgust, fear, envy or insecurity when compared to another person.

Jealousy requires some level of cognitive involvement. It implicates both thoughts and feelings involving others in making a comparison, especially rivals.

But jealousy is technically distinct from envy. One view is that envy involves wanting what we don't have and others do, while jealousy involves keeping what we have from losing it to another who want it.

Jealously usually involves relationships and identifiable individuals who may be the subject of potential malice, rather than a general sense of disappointment, scarcity, or inadequacy that is more common to envy.

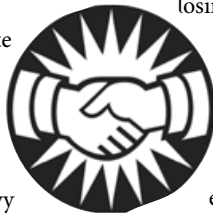
Some scientists consider jealousy to be a cognitive, emotional, and behavioral response to a relationship threat. Many researchers contend that cultural dynamics play a dominant role in defining and expressing jealousy, which is the "green-eyed monster" filled with anger, rage, or disgust.

Envy also is associated with the color green in English cultures. We all have heard the expression that a person is "green with envy." My research has not led me to an undisputable source for envy being green.

Classical views of envy trace back to the origin of the word. Envy has been viewed as a selective blindness, from *Invidia*, which is Latin for "nonsight." People can be envious or

jealous of a person's mental state, reputation, status, relationships, or material possessions.

Philosopher Immanuel Kant defined envy as "a reluctance to see our own well-being overshadowed by another's because the standard we use to see how well off we are is not the intrinsic worth of our own well-being but how it compares with that of others." See Immanuel Kant, *Metaphysics of Morals* (1797).



This monthly column's author is a Pittsburgh attorney-neutral who has served since 1979 as an arbitrator and mediator in the United States and internationally handling thousands of cases. He conducts negotiation and decision behavior courses that focus on neuroscience and the study of decision-making. He is annually recognized by Best Lawyers in America and was named in both 2017 and 2014 as Pittsburgh Mediator of the Year. Last month, he was awarded the Sir Francis Bacon ADR Award by the Pennsylvania Bar Association for contributions to the field. (For details, see <https://bit.ly/2lCc485>.) He is the author of numerous publications, including "Alternative Dispute Resolution: Law, Procedure and Commentary for the Pennsylvania Practitioner" (George T. Bisel Co. 2006). He is the principal of Happy! Effective Lawyer, LLC (www.happy.lawyer), an initiative focusing on lawyer contentment, soft skills, and peak performance, which publishes *The Effective Lawyer* (www.effectivelawyer.lawyer) blog. He is a long-time member of *Alternatives'* editorial board and of the CPR Institute's Panels of Distinguished Neutrals. His website is www.robertcreo.com.

The Master Mediator

(continued from previous page)

Old Testament scholars attribute the killing by Cain of his brother Abel to envy. Envy is one of the Seven Deadly Sins in Roman Catholicism.

In Islam, envy is considered an impurity of the heart. Good deeds can be threatened or destroyed; Muslims should not permit envy to inflict harm upon others.

In Buddhism, *Irshya* is when a person is unable to accept the excellence or wealth of others, causing an uneven or agitated mental state.

Hinduism eschews envy because it is considered to cause one to lose balance and lead to misery.


Consistent in religious, spiritual, and humanistic views, most people view envy in a negative light. But you do not choose how you emotionally react to stimuli. It happens.

This is what makes envy an emotion—you feel it before you think it. Biological changes accompany emotions, and with envy, it is often anger, anxiety, agitation, despair, frustration, sadness, or resentment.

Self-awareness and self-knowledge are tools to effectively process and react to negative emotions. People decide how to understand the influence of emotions and can choose along a continuum the appropriate reaction or omission.

Technology, especially the smartphones attached to our bodies during a majority of working hours, open up a universe of information about what other people are doing. We can follow anyone and get regular updates on their

THIS SERIES

Master Mediator Columnist Bob Creo is examining emotions in mediation in a series of columns that stretch back to the July/August 2016 issue. Emotions are present in all participants in a mediation session, including the mediator. The dynamics of the overwhelming majority of litigated cases and interpersonal claims involve negative emotions. Many of these columns have focused on the negatives. (You can read these columns with a subscription at <http://bit.ly/1BUALop>.) After examining the positive for the past seven columns, the study of emotions continues this month with a renewed focus on envy and jealousy. 

lives ... from the spectacular to the mundane choices eaten for lunch. We share anything and everything for all the world to see.

Mostly this is done to boost our reputation, status, or let the less fortunate know how nice it is to sleep in Costa Rica's treetops. "I am here, and, you are not!" It's electronic chest-thumping at its best. Perhaps the intent is not to elicit envy or jealousy, but the bragger should not be surprised (a primary emotion! See Robert

Looking at Others

The topics: Envy and jealousy.

The effect: Classic emotions—you feel them before you think them.

The mediation tactic: This may be a case for the mediator to evade—'work around it rather than directly grapple with it.'

A. Creo, "Who Could Have Known? Dealing with The Emotion of Surprise in Mediation," 35 *Alternatives* 102 (July/August 2017)(available at <https://bit.ly/2wpg2Np>) by scornful or sarcastic gossip or responses.

A study done by psychologists at the Happiness Research Institute, which is a Danish think tank, tested the effect of a week-long break from Facebook on people's mental health. The break increased concentration, social life, and happiness of the 1,095 subjects.

Instead of being on Facebook, the people had found better things to do—they talked to each other, called friends and family, and they felt much calmer. Part of the reason for feeling better after a week of being away from Facebook could come down to "Facebook envy." Because people usually only post about their best moments, it's essentially a highlights reel. Reviewing other people's best moments, rather than your own, all the time, can give you a sinking feeling. The study's authors note:

- Five out of 10 envy the #amazing experiences of others posted on Facebook.
- One out of three envy how #happy other people seem on Facebook.

- Four out of 10 envy the apparent #success of others on Facebook.

See The Happiness Research Institute, *The Facebook Experiment: Does Social Media Affect the Quality of Our Lives?* (2015)(available at <https://bit.ly/2yLZslb>).

Envy is a natural response to exposure to the perceived success or good fortune of others. It is a negative feeling that can be a harbinger of conflict or be present underneath the surface.

ENVY'S SCIENCE

Many social scientists assert that there are two kinds of envy: one bad, and the other good. The literature commonly refers to this as malicious envy and benign envy, with the latter being pro-social as a motivational or inspirational force that causes the person to aspire to be better, and to emulate others viewed as superior or heroic.

One behavioral study suggests people who are more generous are better protected against envy. Those who give more to others also experience less envy when they see that others have more. Archy de Berker, who co-led the study, with Robb Rutledge, said:

... [G]enerosity towards strangers relates to how our happiness is affected by the inequalities we experience in our daily life. The people who gave away half their money when they had the opportunity showed no envy when they experienced inequality in a different task but showed a lot of guilt. By contrast, those who kept all the money for themselves displayed no signs of guilt in the other task but displayed a lot of envy.

University College of London, New equation reveals how other people's fortunes affect our happiness, *UCL News* (June 14, 2016)(available at <https://bit.ly/1Q78VNb>). The study can be found at Robb B. Rutledge, et al., *The Social Contingency of Momentary Subjective Well-Being*, 7 *Nature Communications* 11825 (June 13, 2016) (available at <https://go.nature.com/2I9QLbC>).

Other studies find that there is a positive effect on individuals when they personally share in the good fortune of friends. UC-Santa Barbara Prof. Shelly Gable contends that, just as people feel happier when they spend money on gifts or

charitable contributions rather than on themselves, they feel happier after spending valuable time listening to friends' accomplishments.

This is not via social media. The concept is that a supportive person gets that to "piggyback" on his or her friend's positivity. See Shelly L. Gable, Harry T. Reis, Emily A. Impett & Evan R. Asher, "What Do You Do When Things Go Right? The Intrapersonal and Interpersonal Benefits of Sharing Positive Events," 87 *Journal of Personality and Social Psychology* 228 (2004) (available at <https://bit.ly/2K4RScR>).

MEDIATION EXPERIENCE

Where I have seen envy and jealousy causing or ramping up conflict has been primarily in business relationships among family members or close friends that have gone bad.

This often is when the second or third generations take charge of the business and the original founders are fading from active operations.

Sometimes it involves inheritance of interests, which disrupt any fragile balance or peaceful co-existence, which kept the business healthy. Sometimes the catalyst is declining revenues, which triggers cost-cutting and a reckoning of individual contributions.

People are unable to hide or coast, and not only other owners, but employees are jealous or envious of the ability of the stakeholder to become, in their view, a free-rider.

My experience is that most participants do not admit to having envy of a sibling, cousin, or rival from a co-founding family. If confronted or accused, they deny it. They usually respond with an insult, contempt, or a declaration of their own superiority and self-esteem.

My customary perspective is to try to identify jealousy and envy to myself only, rather than embrace it or attempt to use it as a platform for resolution. I prefer to work around it rather than directly grapple with it.

In a day or two of sessions I am not going to transform long-held viewpoints. Most of these cases resolve with a dissolution of the continuing business relationship, with one side buying out the other and assuming sole ownership. There will be little or no future relationship, so closure, as opposed to restoration, is my goal.

What is striking over the years of doing this work is how successful businesses can unwind based upon economically minor transgressions

or perceptions of unfairness. This often includes one set of siblings or in-laws being jealous or envious of the other family members.

Often the spouse of the owner's child is integrated into the business operations with great success. This may breed jealousy if there is a perception that the matriarch or patriarch treats the in-laws better than their own offspring.

FRINGE BEHAVIORS

Then there are the perks. Much conflict arises over the fringe benefits or the "perks" arising from being an owner. The economic perks are most often automobiles, meal costs, and tickets to sporting and cultural events. The non-economic issues resulting in conflict usually arise from what is perceived as being unequal contributions.

In highly profitable businesses where the next generations can coast on the brilliance or hard work of the founders, the perceived abuse of perks and freeloading easily come to the forefront. This is especially true when it is clear that the family member would not have been hired, or retained, but-for the family relationship.

Just like the proverbial Cain killing Abel, jealousy and envy can morph into litigation battles for control of commercial organizations.

One case involved five siblings who were inheriting millions of dollars of real estate. The parents had played the children off against each other for years prior to the death of the mother, who had assumed total control of the estate via trusts as the surviving spouse. The five siblings divided into camps opposing the sibling who was designated as managing partner.

Her twin sister and older brother were mostly passive, while the other two sisters carried the fight forward. The parents divided the estate unequally. The sisters were rivals about everything and were consumed by envy and a host of negative emotions.

And there were spouses, and the next generation of children in the middle of everything.

They spent hours examining every detail of any financial transaction made by any of them, such as challenging the expensing of a Sunday *New York Times*. Progress was more like two steps forward, and one to 2.5 steps backward.

All tentative deal points became wobbly. I went for the Holy Grail of transformation, and focused on the building trust, confidence and relationships.

SOURCES AND ADDITIONAL READING

- The essays, or councils, civil and moral of Sir Francis Bacon (1696)(available at <https://bit.ly/2I05LN4>).
- Joseph Epstein, *Envy: The Seven Deadly Sins* (New York, Oxford University Press, 2003).
- Shelly L. Gable, Harry T. Reis, Emily A. Impett & Evan R. Asher, "What Do You Do When Things Go Right? The Intrapersonal and Interpersonal Benefits of Sharing Positive Events," 87 *Journal of Personality and Social Psychology* 228 (2004)(available at <https://bit.ly/2K4RScR>).
- John H. Harvey, Susan Sprecher, and Amy Wenzel (eds.), *The Handbook of Sexuality in Close Relationships*, 311(Mahwah, N.J.: Lawrence Erlbaum Associates, 2004)(excerpt available at <https://bit.ly/2ryiWcX>).
- Sybil L. Hart & Maria Legerstee (eds.), "Handbook of Jealousy: Theory, Research, and Multidisciplinary Approaches," (Wiley-Blackwell 2010).
- Parul Sehgel, An Ode to Envy, TED Talk (October 2013)(available at <https://bit.ly/1pxuRjS>)(fictional literature shows how jealousy is not so different from a quest for knowledge).

So many times we were within an eyelash of success—then someone blinked. Eventually, I realized that decades of jealousy, envy, resentment, frustration, anger, and all of the prime emotions, could not be overcome since they did not want to reconcile. They were blocked in by their emotional barriers, which they did not want to tear down.

Over the years this case continued, and I developed strong ties to the family disputants, counsel, and the other professionals retained as part of the mediation process.

The lesson learned was that it is appropriate to resolve a matter by navigating the shoals of emotion. But if the journey is too long or too treacherous, and economic closure can be grasped from the powerful grips of jealousy, envy, and the herd of negative emotions, then reach your hands out, stretching your fingertips until they hurt, and if it holds, it has been a good day.