Getting to 'Beyond Smart' –

Should Lawyers Work On Their Emotional Intelligence?

Which of these is true?

- *Emotional Intelligence is one of the most important, yet overlooked, areas of law practice.*
- *The law seems to offer an either-or choice: you can be objective (and be a good lawyer) or you can be emotional.*

Both of these quotes are from BEYOND SMART: LAWYERING WITH EMOTIONAL INTELLIGENCE, 2nd Edition by Ronda Muir (ABA Publishing 2025) https://www.americanbar.org/products/inv/book/448955338/ . The first, from the back cover, is praise from a reviewer; the second, in the text, is a lament from someone who is both a lawyer and a therapist.

Muir begins the book with the neuroscience of emotional intelligence, particularly the roles of the amygdala and the prefrontal cortex, and makes the overarching point that the

> role of emotional intelligence is to build the ability of the neocortex to recognize our own and others' emotional states, to understand what data those emotional cues are providing, and to consciously use that information to manage the emotional aspects of our responses and relationships in order to achieve the results we desire. BEYOND SMART, 26.

The problem? Lawyers, regardless of academic intelligence, score significantly lower than the national average in emotional intelligence. So I turned to author Muir (https://www.lawpeopleblog.com/about/) to learn what we need to know and how we can teach others.

Q: BEYOND SMART lists four components of EI – emotional perception, emotional empathy, emotional understanding and emotional regulation – and says that of the four lawyers' greatest deficit is the first – emotional perception. What is that, and why are we so bad at it?

Emotional perception is the ability to perceive or be aware of our own emotions and also those of others, either individually or as a group. That awareness helps us recognize the emotional state that we are in and how others are reacting. That knowledge can help us know how to modulate our emotional expressions and behavior.

We can speculate as to why lawyers are so bad at that. Their cognitive skills got them high undergraduate grades, good scores on the LSAT, and high standing in their law schools, so they probably lean into those. It's interesting that none of these accomplishments are directly associated with successful lawyering. In fact, an extensive study done to determine what makes lawyers successful found that a third of the 26 factors identified were "noncognitive constructs," which had a "higher level of significance with lawyer performance" than cognitive constructs like LSAT scores, undergraduate grade point average, concluding that most lawyers are "unlikely to exhibit [the] strong emotional development" necessary to practice law well.

Some evidence points to the LSAT favoring those who have diminished emotional management skills. It also appears that during law school, unlike during medical school, average EI declines, so our legal instruction is evidently not only not raising emotional intelligence but likely reducing it.

Q: *The book says that we "suppress and ruminate" [page 69]. Can you illustrate each?*

Suppression and rumination are both tried and true emotional coping mechanisms of lawyers, although they are opposite in practice and neither is effective.

Suppression is trying to consciously or subconsciously avoid dealing with emotions. It requires what is called "emotional labor" to diligently whack-a-mole any emotional stirrings. That emotional labor unfortunately takes so much emotional and cognitive effort that it is very hard to be otherwise effective when in the throes of suppression.

Why suppress? For example, a lawyer may fear feeling guilty about his/her decision regarding a case's disposition—settled too early, perhaps, or settled on too stringent or too financially disadvantageous terms. The lawyer may forcefully push those feelings away as being too risky to entertain. What if he/she concludes that they misjudged? Lawyers are well-documented as being low in resilience so it's safer to avoid thinking/feeling about that possibility than having to confront it and then recover from such a devastating conclusion. The emotions being suppressed could be related to personal issues too—the possibility of a divorce, or a child's illness. Better to ignore/suppress those feelings than acknowledge them and have to confront the situation that gave rise to them.

Rumination is the exact opposite of suppression: it is the emotional marination in the negative aspects of a matter. Lawyers often tell themselves that they are going back over a mistake or unresolved dilemma to try to understand what went wrong so they don't make the same mistake again. The problem is that rumination is relentless and thoroughly negative and therefore largely self-defeating. If there were lessons to be learned that were positive: I clearly understood the issues, or I devoted enough time to the matter, those are

lost to what is negative: my written response wasn't as thorough as it should have been, or the associate didn't finish their input early enough. This repeated emphasis on the negative doesn't provide a full picture and is very harmful to future endeavors. Going forward, the lawyer likely has lost confidence and questions him/herself without having a balanced view of what happened. Low resilience, again, makes it hard to recover and charge forward. As one psychologist concluded, "there is nothing good about rumination." There is a saying that lawyers would do well to heed: "It's better to glance at the past than to dwell there."

Q: I noted above that lawyers score lower than average on EI? What are the main consequences?

It's a hard pill to swallow since we score high on many assessments. The primary area of deficiency is emotional awareness, as mentioned above. The problem with that is that EI is largely a garbage in/garbage out paradigm. If the basic info is incorrect about what we are personally feeling and/or what the emotional states around us are, it's very hard to successfully go up the emotional pyramid to being empathic, to reasoning about the situation and to coming up with strategies for remedying it. For example, if I misidentify your emotion as shame instead of anger, empathically drawing on my historical feelings of shame doesn't share in what you are feeling, my reasoning about what might have led to shame in your case won't apply to what accounts for your anger, and my inclinations about how to address your shame may well be useless in resolving your anger.

So, the lawyer deficiency in emotional perception/awareness essentially undercuts our EI abilities generally. The ultimate consequences of that are reflected in low trust by the public, a high rate of complaints by clients and high stress levels and physical and emotional burnout in lawyers.

Q: At page 101, BEYOND SMART says that without sufficient EI, years of trial experience are inadequate to help us properly evaluate cases and then advise clients accordingly. What supports that assertion?

Randall Kiser has done breakthrough research addressing this very issue. In an extensive analysis of over 11,000 decisions made over 40 years regarding whether to accept settlement offers or go to trial, Kiser found that over 61% of offers that their lawyers had refused would have been more lucrative for plaintiffs than going to trial, while defendants made such "mistakes" in 25% of cases. The details of that analysis are even more damning. Lawyers who had the benefit of extensive experience, who ranked high in law school, and were members of large law firms not only did not make better decisions, but over the forty years, those factors ***raised*** *the probability of those lawyers making "mistakes."*

In another survey, lawyers were often found to be overconfident, men more so than women, in predicting the outcome of both civil and criminal cases. Almost half of the lawyers surveyed did not meet what they themselves had set as a "minimum goal" in an upcoming matter, and further, those who rated themselves most confident were also the ***most likely*** *to fail to reach their goal. Again, the accuracy of their predictions was found not to be enhanced by the length of their litigation experience.*

Why would our prediction skills be so unreliable, despite good grades in law school and years of experience? While it is difficult to determine exactly where the breakdown in forecasting cases is occurring, there is a collection of studies, dubbed "the emotional oracle effect," that demonstrates that recognizing our own and others' emotional cues makes us better at predicting outcomes of all kinds. According to the lead researcher, "our feelings give us access to a privileged window of knowledge and information—a window that a more analytical form of reasoning blocks us from." That is the essence of the compound noun that is emotional intelligence—drawing on both emotional and cognitive data to make good decisions.

Other aspects of case management could also improve with higher EI, for example, recognizing and managing personal biases about money and prestige, fears of failure and other insecurities around success that play a role in our assessments, as well as those same feelings of our clients, and then being able to effectively communicate to them regarding those and other issues.

As one of Kiser's interviewees said, "[C]ase evaluation. It's a people skill. If you don't have a feel for people, you won't make it… This has so many facets it's like a symphony."

Q: The book's index has no mention of jurors or juries. How does/would EI help in the trial tasks of designing a case theory and theme, and thereafter when speaking and delivering information in the courtroom? And what about the lawyer's interaction with witnesses?

Thanks for pointing that out! I had no input in building the index but it's a loss because juries and jurors are definitely discussed.

There is substantial evidence—from mock juries, meta-analyses and real-juror interviews—that despite juries being routinely instructed to decide issues based on evidence and law, their emotions significantly influence their decisions, although typically in modest to moderate ways. For example, juror anger likely results in their favoring more punitive punishment.

A lawyer using emotional intelligence can "read the room" better, meaning perceive the emotional state in real time of the jury, the judge and other participants. In another of his studies, Randall Kiser found that the most successful litigators were also high in EI,

particularly more empathic—"good at putting themselves in the juror's shoes and seeing the case from the perspective of the jury." One litigator contended, "Juries are primarily emotional."

Emotionally intelligent communication can help Induce empathy for the lawyer's client or anger toward the other party, in each case impacting the jury's perception of the facts. Emotional intelligence also plays a role in how an attorney is perceived as he/she interacts with a judge, jury and witnesses. Projecting dominance, or arrogance, for example, can undercut a lawyer's persuasiveness with the judge and turn off a jury. Witnesses who are perceived as being excessively "browbeaten" often end up in jurors' minds as more sympathetic.

Tone, pace and body language are also important factors in courtrooms. We know that in ambiguous situations, nonverbal expressions are considered more trustworthy than words. One study concluded that the COVID-19 pandemic practice of not holding in-person trials was "detrimental to justice" because jurors were deprived of the full array of nonverbal communication of courtroom participants. And a meta-analysis found that trial judges' nonverbal behavior could undermine fairness in jury verdicts. Those nonverbal expressions are perceived to be what the lawyer or judge ***feels****, rather than thinks. And if there is a disconnect between the words spoken and those feelings expressed, it's clear that people are more likely to believe the nonverbal cues. So, the advocate's feelings need to be aligned with his/her verbal message for maximum persuasiveness.*

Q: Where do we find tools to bring EI into our teaching, particularly in advocacy classes? As one example, what might I tell or show students preparing for an oral argument before an appellate court?

EI assessments can be used to help students understand and improve their EI, but law schools and legal workplaces have not embraced their use.

Of course, in law the content of our arguments is highly important, but is there anything else that tips the scales? It's an interesting tidbit that John Roberts, before he was Chief Justice, examined arguments during a couple of Supreme Court terms and concluded that those lawyers who received the fewest questions from the Justices were more likely to succeed on the issues.

That may seem logical but we do have interesting research on which lawyer communication styles are most persuasive with judges. We know that linguistic mirroring, that is mimicking the tone, pace and style of who you are speaking to, improves the chances of being perceived as persuasive. One study showed that mimicking a judge's verbal style doubled an advocate's likelihood of success. So, for those arguing before

appellate courts, I would start out with becoming very familiar with both the written and verbal style of the judge(s).

Q: You write that EI also helps to manage stress. Courtroom lawyering can be all about stress – before, during and after the trial or hearing. Can you explain how this would work.

Unmanaged stress is ultimately disabling both physically and mentally. Like dribbling sugar into complex machinery, as one researcher put it. EI's role in stress management occurs on several levels. EI helps us recognize what emotions we are feeling, understand what the cause and the course of those emotions would be, and how to manage them. It's important to be able to identify which feelings that are components of that stress are relevant to the situation and which are not. Landmark research shows that EI significantly improves risk assessment. By understanding which anxieties/fears are risk appropriate, we can eliminate or downplay some of those emotions that are extraneous. Then positive self-talk, for example, which lawyers tend not to do, can help manage the level of stress before and after the argument. And of course, suppression and rumination are not good stress management skills because of their disabling effect.

Q: I am sure there are questions I didn't think to ask. What did I miss; or said differently what added information do we need?

Introversion and pessimism are two of the most common personal attributes of lawyers. Given that a Harvard study found that warmth is the most influential trait a leader can exhibit (followed by competence), lawyers are often challenged to achieve that, both professionally and personally. Similarly, we know that delivering a negative message in a positive tone makes the listener remember the interchange as positive. Further, it is well settled that the best learning is accomplished by praising what someone is doing right. Finding the way to feel and express more optimism and pleasure in relationships could be a game changer for some lawyers.

There is also an important point to be made about the connection between emotional intelligence and malpractice liability, as there is good evidence that emotion plays a part in patients who decide to sue doctors. What data we have points to highly emotionally intelligent lawyers having low liability exposure.

And all this information is easily transferable to the negotiation table, whether or not in connection with litigation.

Ronda Muir will be our guest at the December, 2026 free online advocacy conference. For prior conferences see https://law.temple.edu/aer/publication_type/conferences/