

MEDIATING WITH EMOTIONAL INTELLIGENCE: WHEN “IQ” JUST ISN’T ENOUGH

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I. IT TAKES MORE THAN IQ TO SUCCEED IN LIFE AND LAW

Emotional Intelligence (“EI” and sometimes “EQ”) is not a new concept, except for lawyers. Business schools such as Harvard, Notre Dame, Dartmouth and Yale have added EI as a part of the core curriculum. EI has been credited for advancements in diplomacy; improvements in health-care and patient satisfaction, key skills for developing effective leaders in the military, and requirements for entrance to police academies; and recognized as important for coaches to improve individual and team performance. The benefits of EI are not just for business, but on a personal level produce increased happiness, mental and physical health, improved social and marital relationships, and decreased levels of cortisol (the stress hormone).

Even though EI has been around for more than 20 years, the legal profession has been slow to incorporate EI training into the profession. Lawyers typically have above average to very high IQs demonstrated by high test scores required for entrance into the profession. In some ways, the legal profession may be compared to how IQ was viewed prior to the publication of Daniel Goldman’s groundbreaking book, *Emotional Intelligence: Why It Can Matter More Than IQ*, in the early 1990s when he wrote, “Those were the days when the preeminence of IQ as the standard for excellence in life

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was unquestioned, a debate ranged over whether it was set in our genes or due to experience.”¹

Goldman describes the limits of IQ as follows:

IQ offers little to explain the different destinies of people with roughly equal promises, schooling, and opportunity. When 95 Harvard students from the classes of the 1940s—a time when people with a wider spread of IQ were at Ivy League schools than is presently the case—were followed into middle age, the men with the highest test scores in college were not particularly successful compared to their lower-scoring peers in terms of salary, productivity, or status in their field. Nor did they have the greatest life satisfaction, nor the most happiness with friendships, family, and romantic relationships.²

In a recent article, Goldman references Malcom Gladwell’s bestseller *David and Goliath*, in which Gladwell was befuddled by the finding that many of those in the mid- to low- achievement spectrum of Ivy League schools did not turn out to be world leaders—despite their SAT scores being higher than even the best students at the so-so colleges, who fared better. Goldman writes, “Gladwell’s reasoning was slightly muddled. He assumed that academic skills should predict how well we do in life. They don’t.”³

Education, like law, is an area in which IQ has been prized for many years. Yet, even the education profession recognizes the importance of developing a curriculum to enhance EI skills. The Harvard School of Education has developed a program called “Project Spectrum.” The guiding visionary behind Project Spectrum, psychologist Howard Gardner, says, “[t]he time has come ... to broaden our notion of the spectrum of talents. The single most important contribution education can make to a child’s development is to help him towards a field where his talent best suits him, or he will be satisfied and competent.”⁴ Gardner further states, “[we] should spend less time ranking children and more time helping them to identify their natural competencies and gifts, and cultivate those.

¹ Goldman, page ix.

² Goldman, page 35.

³ IQ Doesn’t Predict Success (Huffington Post, Aug. 8, 2014 by Daniel Goldman; http://www.huffingtonpost.com/dan-goleman/iq-doesnt-predict-Success_b_5658898.html?utm_hp_ref=education&ir=Education).

⁴ Goldman, page 57.

There are hundreds and hundreds of ways to succeed, and many, many different abilities that will help you get there.”⁵

The dramatic successes in business, education and life for those with high EI warrant a closer look by the legal profession.

II. WHAT IS EMOTIONAL INTELLIGENCE?

While there is no agreed-upon definition of EI, there are certain characteristics that exemplify someone with high EI:

- Self-confidence
- Optimism
- Persuasiveness
- Empathy
- Remaining unflustered when challenged
- Stress tolerance
- Awareness of one’s emotional state
- Self-control
- Improved team work and conflict resolution

Although these traits seem desirable for any professional with client interaction, lawyers as a group are generally low on the scale of emotional awareness. Whether it is for self-preservation, improved quality of life, or increased profits, lawyers and law firms are starting to pay attention to the importance of EI. Research has consistently shown that high EI has a positive impact on client relations, business development and employee turnover rates. EI training may also be viewed as a way to address extremely high rates of substance abuse and depression in the legal profession.

The slow rise of EI in the legal profession may simply be the result of law firms observing how other businesses are changing the way they do business to compete and remain profitable. Many companies are downsizing and with smaller staffs come increased stress levels. In response to these changes, thirty-four percent (34%) of hiring managers said they are placing greater emphasis on emotional intelligence when hiring and promoting employees post-recession, according to a new CareerBuilder survey. When asked why emotional intelligence is more important than high IQ, these hiring managers listed the following EI traits:

⁵ Goldman, page 57.

- Employees [with high EI] are more likely to stay calm under pressure;
- Employees know how to resolve conflict effectively;
- Employees are empathetic to their team members and react accordingly;
- Employees lead by example and tend to make more thoughtful business decisions.

This is a decided shift from focusing strictly on technical (a.k.a. “hard”) skills as opposed to relational (a.k.a. “soft”) skills.⁶

“Hard” versus “Soft” Skills

“Hard skills” are the technical skills needed to perform well in a particular job or industry. These skills are easily listed on a resume and like the 95 Harvard students from the study mentioned above, it was common to believe that strong “hard skills” are all that are needed for success in life.

“Soft skills” are the relational skills that allow an individual to excel in relationships with others. A person with excellent “soft skills” may be seen as charismatic, approachable, easy to talk to and someone who can be trusted. Surprisingly, “soft skills” trump “hard skills” when it comes to value to the group. In other words, a person with excellent “hard skills” but low in “soft skills” will be less valuable to the group than a person with mediocre “hard skills” and excellent “soft skills.”

Leading EI authors and trainers, Travis Bradburry and Jean Greaves, describe the importance of EI as follows:

- How much of an impact does EI have on your professional success? The short answer is: a lot! We’ve tested EI alongside 33 other important workplace skills, and found that it subsumes the majority of them, including time management, decision-making, and communication.
- Your EI is the foundation for a host of critical skills—it impacts most everything you say and do each day. EI is so critical to success that it accounts for **58% of performance in all types of jobs**. It’s the single biggest predictor of

⁶ Why Do Employers Value Emotional Intelligence Over IQ (April 16, 2013) <http://www.techjournal.org/2011/08/why-do-employers-value-emotional-intelligence-over-iq/>

performance in the workplace and the strongest driver of leadership and personal excellence.

- No matter whether people measure high or low in EI, they can work to improve it, and those who score low can actually catch up to their co-workers.... People who are low in EI and job performance can match their colleagues who excel in both—solely by working to improve their EI.
- Of all the people we've studied at work, we've found that **90 percent of top performers are also high in EI**. On the flip side, just 20% of bottom performers are high in EI. You can be a high performer without EI, but the chances are slim.
- People with high EI's make more money—an average of \$29,000 more per year than people with low EI. The link between EI and earnings is so direct that every point increase in EI adds \$1,300 to an annual salary. These findings hold true for people in all industries, at all levels, in every region of the world. We haven't yet been able to find a job in which performance and pay aren't tied closely to EI.⁷

Others studies have resulted in similar conclusions:

The highest performing managers and leaders have significantly more 'emotional competence' than other managers.... The single most important contributor to the feelings of employee engagement, empowerment, and satisfaction is based on the relationship they have with the leaders of the organization.... Management practices that affect employee satisfaction can have bottom line results on productivity and profit.⁸

EI in Business

Companies are focusing on EI and “soft skills” over “hard skills” because it makes a huge difference on the bottom line.

A multitude of studies suggest that EI is a strong predictor of job performance.... A study found that partners in a multinational consulting firm who scored higher than the

⁷ Travis Bradburry and Jean Greaves, *Emotional Intelligence 2.0*. (San Diego: Talent Smart, 2009), 19-22.

⁸ Kenneth Nowack, Ph.D., *Leadership, Emotional Intelligence and Employee Engagement*.

median on an EI measure produced \$1.2 million more in business than other partners did.⁹

A three-year study of AMADORI, a supplier of McDonald's in Europe, assessed links between EI, individual performance, organizational engagement, and organizational performance. EI was found to predict 47% of the variation in managers' performance management scores. EI was also massively correlated with increased organizational engagement with 76% of the variation in engagement predicted by manager EI. Finally, plants with higher organizational engagement achieved higher bottom-line results. During this period, employee turnover also dropped by 63%.¹⁰

Following are some of the high-profile success stories issuing from EI and EI-related training efforts.

FedEx is one of Fortune's Top 20 Most Admired Companies for a decade. Founder Fred Smith focuses on people before profits and this vision has translated to the "PSP Philosophy"—People-Service-Profit—which drives FedEx Express today. This commitment to people-first leadership created an interest in "emotional intelligence" as a learnable skillset that would equip managers to deliver the FedEx way. FedEx uses a simple formula: *Emotions drive people, people drive performance*.¹¹

In 2006, a Google engineer decided to create a program to help engineers to be more aware of their emotions. An estimated 1,500 Googlers are expected to go through EI training this year, while thousands more wait for open seats in the future. The basic structure of the program uses the five components of emotional intelligence: self-awareness, self-regulation, motivation, empathy, and social skills—or, as we call them, leadership skills.¹²

Financial advisors at American Express whose managers completed an emotional competence training program were compared to an

⁹ Natalie Shipley, *The Effects of Emotional Intelligence, Age, Work Experience, and Academic Performance*.

¹⁰ Six Seconds: The Amadori Case (April 3, 2013) <http://www.6seconds.org/2013/04/03/amadori-case-engagement-emotional-intelligence/>

¹¹ Six Seconds Publishes New Research Findings from Multi-Year Study at FedEx That Links Emotional Intelligence to Increased Performance and Quality of Life (Jan. 20, 2014).

¹² Inside Google's Insanely Popular EI Course by Vivian Giang published in *Fast Company*.

equal number whose managers had not . . . “advisors whose managers had been trained grew their businesses by 18.1% compared to 16.2% for those whose managers were untrained.”

The US Air Force found that the most successful recruiters scored significantly higher in the emotional intelligence competencies of assertiveness, empathy, happiness, and emotional self-awareness. The Air Force also found that by using emotional intelligence to select recruiters, they increased their ability to predict successful recruiters by nearly three times. The immediate gain was a saving of \$3 million annually. These gains resulted in the Government Accounting Office submitting a report to Congress, which led to a request that the Secretary of Defense order all branches of the armed forces to adopt this procedure in recruitment and selection

The information above on EI in business is taken from an article by Evan Carmichael, “Business Case for Emotional Intelligence EI and Emotional Intelligence EQ.”¹³

EI and the Law

A search for EI in the law reveals a dearth of writing on this subject. In one way, this is not surprising given the priority placed on IQ and high test scores for entrance to top law schools and law firms. However, when one considers the highly competitive market for legal services, the relatively frequent announcements of major and mid-size law firms going out of business, and the shift in the market place for legal services from client loyalty to a hyper-emphasis on price, the relational skills offered by EI are a “no brainer” for law firms to cultivate and excel in promoting both for firm stability and growth in the future.

One article written specifically on EI in the law is by Middleburgh and Butterworth at Huron Legal, a legal consulting firm (“Emotional Intelligence: What Can Learned Lawyers Learn from the Less Learned?”). The article poses an interesting question: “Why do smart lawyers fail?” This question reminds us of the 95 Harvard graduates in the 1940s who had “all the right stuff” yet failed in both their careers and in life. The answer seems to be that the technical

¹³ See <http://www.evancarmichael.com/Business-Coach/2668/Business-Case-for-Emotional-Intelligence-EI-and-Emotional-Intelligence-EQ.html>

skills that propel lawyers to the top of the class—legal analysis, reasoning, writing, learning how to suppress their feelings and emotions—are not enough to succeed in the modern work environment.

The same article includes quotes from some top lawyers who recognize the value of EI. Susan Lees, Executive Vice President and General Counsel at Allstate insurance company, attributes her success at managing a department of over 500 lawyers to people smarts. “A lot of lawyers are technically more proficient than I am. I have always known how to read people, how to get along with them. In my experience, what makes an effective CLO is someone who has great people skills.” Bill Mordan, Senior Vice President and Group General Counsel at Reckitt Benckiser makes a similar comment. “When we dramatically wanted to improve training and development in the legal team, we focused on the misunderstood psychological barriers to great teamwork.” A recent survey by UK law firm Nabarro LLP found 82% of general counsel surveyed felt they would be more effective in their position with improved “influencing skills,” and 88% felt that improved “influencing skills” would increase their effectiveness over the course of their career.

How can EI help lawyers? First and foremost through client satisfaction and retention. In years gone by, lawyers were more commonly referred to as “counselors at law.” This “counselor” function seems to have diminished in the last few decades as law firms have become more like big corporations than trusted friends. Susan Lees, Executive Vice President and General Counsel of Allstate, says, “Lawyers develop early on in their careers as technical specialists. They often find the transition to strategic business advisor a difficult one. Their emotional intelligence skills are often underdeveloped in comparison with their technical skills.” Clients tend to stay with lawyers they like as people in addition to respecting as top legal eagles in their area of specialty. A second benefit is improved leadership abilities. Goldman and many others have shown that EI is particularly important to those in leadership position. The old adage that “people do not care how much you know until they know how much you care” applies well in this context.

A third benefit is increased business development. How many times have you seen a less technically proficient lawyer be the rainmaker in the firm? It is no stretch to say that the rainmaker has higher EI than the other more technically skilled lawyers. Studies have also shown that increased EI results in less employee turnover.

Again, law firms are not unfamiliar with the partner who runs through multiple secretaries and junior associates on the way to winning case after case. It is important to realize that increasing EI for this partner would not only improve morale at the firm, reduce liability for disgruntled employees and make the partner (and likely the clients) happier with no loss in his effectiveness as a lawyer. This is truly win-win!

III. ABILITY TO IMPROVE EI

The good news for lawyers is that EI skills can be learned. A major difference between IQ and EI is the fact that IQ is relatively stable over time vs. EI which can improve over time with dedication and guidance. Due to studies by neuropsychologists we know that the brain has the capacity to develop new neural pathway—known as “plasticity”—and synapses in response to experience or injury. These studies suggest that, with adequate training, people can become more pro-social, altruistic, and compassionate. Not only is this great news for the future of mental and emotional wellness, it has spawned a burgeoning industry for teaching these skills at all levels of business (executives, managers and employees).

This also means that people have the ability to “unlearn” or “learn a better way” to handle their emotions, even adults who may feel “trapped” in old patterns and habits that are hard to overcome. One author describes the prospect of learning new habits and patterns as follows:

Everyone can change, but few people are seriously willing to try. Think about the worst boss you ever had—how long would it take him [or her] to start coming across as more considerate, sociable, calm or positive? And that’s the easier part—changing one’s reputation. It is even harder to change one’s internal EQ; in other words, you might still feel stressed out or angry on the inside, even if you manage not to show those emotions on the outside.¹⁴

¹⁴ Harvard Business Review: Improving Emotional Intelligence (May 29, 2013) <https://hbr.org/2013/05/can-you-really-improve-your-em>

IV. CONCLUSIONS

The old paradigm that high IQ is enough to succeed in life and the practice of law is dead. IQ is no longer (and may never have been) enough to determine success in today's complex and inter-connected world. While there is no shortage of people with high IQ in the legal profession, there is a deficiency of people with high EI in that arena.

Lawyers and law firms are slowly beginning to realize what the corporate world has known for two decades: Emotional intelligence determines success in business and in life as well. EI has been proven to increase profits and profitability of the biggest corporations in the world, including McDonald's, FedEx, Google and others. EI is big business both from the standpoint of those with high EI contributing dramatically more to the bottom line and from the standpoint of major corporations that have invested substantial time and resources to improving EI for their leadership and employees.

EI can have dramatic results in every area of life—more fulfilling personal relationships, improved business profitability, and increased health and wellness. The good news is that EI can be learned and improved with effort and dedication.

In the next segment of this three-part series on EI and the law, we will examine the neuroscience of emotions and explain how emotions can “hijack” the rational brain and start a “downward spiral” that makes rational thought and action increasingly difficult until the powerful emotion has subsided. We will also offer effective strategies for dealing with some powerful emotions such as fear, anger, betrayal and injustice, all typically prevalent in varying degrees and combinations when parties are embroiled in conflict.