
Chapter Two

Are Lawyers Emotionally Intelligent?

To help understand the emotional intelligence (EI) of lawyers as a group, this chapter looks over the available evidence from EI assessment and other data, sees how “non-lawyers” evaluate our relationship skills, and reviews the general attitude of law with regard to emotions. Finally, we can learn a lot from a famous groundbreaking case study of cognition and emotions that involved a lawyer.

Emotional Intelligence Assessment and Other Data on Lawyers
The View from the Bleachers
Law’s Skeptical View of Emotions
The Lawyer Who Had No Emotions

Then, in *Where Do We Lawyers Fall Short?*, we review the data on where lawyers stand in each of the four critical components of EI.

Emotional Intelligence Assessment and Other Data on Lawyers

Emotional intelligence, that’s an oxymoron, right?
—Author’s unnamed lawyer client

Not all EI assessments keep track of scores by profession, and even those that do often do not have a large number of lawyers to report on, so there is no definitive answer to how lawyers score as a group. What we do have are the scores of several hundred lawyers on at least a few of the EI assessments to compare to the general population's scores.

With those caveats, how are we doing?

We lawyers score below the national average in overall emotional intelligence. While lawyers score well *above* the national average of 100 in IQ—an average of 115 to 130—their average scores in emotional intelligence are consistently reported, at least anecdotally, to be in the 80 to 95 range, significantly *below* the national EI average of 100.¹

My experience attests to the reliability of these average numbers. In the law firms and law departments where I have done testing, the average EI scores nearly always fall within that range, with only a few exceptions scoring lower or higher.

We lawyers apparently score lower than do doctors, whose mean EI score on a number of different assessments is 100, or the national average.² Yet in the healthcare field, there is a drumbeat to further improve EI for better patient and provider results.

Lawyers are used to acing their academic work and passing their IQ, SAT, LSAT, and other exams with higher than average scores. So a low score on an EI assessment can be quite a blow. Not unexpectedly, the typical reaction from a lawyer contemplating a low score is to question the validity of the assessment, and even the concept altogether.

Yet there is substantial and widespread evidence of how poorly lawyers manage their emotions (with instances of mismanaged romantic feelings particularly abundant)—a prime indication of low EI: lawyers at all levels and types of practice have been charged with emotion-generated crimes³; motions to suspend and sanction lawyers because of unmanaged emotions are legion⁴; and then there is the flood of instances of incivility that can make lawyers look emotionally unhinged.⁵

Not all unruly emotions are so publicly apparent or even privately obvious, however. Missteps in emotional management that

are not publicized—caused by outsized fear, unbridled pride, misdirected passion, unmanaged jealousy, or intense desire for revenge, for example—can still exact a high cost personally and to workplaces and families. Further, management decisions to merge with or acquire a firm, recruitment committee decisions about whether to hire a lateral “star” and on what terms, and day-to-day decisions by individual lawyers as to how to interact with colleagues and respond to clients all risk being undermined by emotions that we don’t recognize or manage.

These types of missteps, which can be major, certainly plague other professions as well and are not solely because of low EI. But lawyers could well avoid behaviors that increasingly risk derailing their careers, jeopardizing their companies or firms, as well as damaging their personal relationships, if they employed greater emotional intelligence.

The View from the Bleachers

Lawyers’ low EI means that those who aren’t lawyers whom we deal with every day—our staff, witnesses, business and financial types, community leaders, and most importantly clients of all stripes—are likely to have higher overall emotional intelligence than we do. That’s right. We lawyers, accustomed to thinking of ourselves as smarter and higher performing than most of those around us, are in fact likely to have lower EI than the office manager, executive, or litigant we are working with.

Our interactions with “non-lawyers” have earned us a reputation that reflects others’ opinions of our interpersonal skills. As Daicoff noted, “By the end of the twentieth century . . . lawyers were not particularly well-liked in society.”⁶ Matters haven’t gotten any better in the 21st century.⁷

The (very) old perception of lawyers as trusted advisors has given way to appellations of “snake,” “shark,” “bottom-feeder,” and “bloodsucker.”⁸ Inappropriate and objectionable behavior repeatedly reinforces the image of our being society’s outliers⁹ and has lowered the public’s trust in lawyers individually, in our justice system generally,¹⁰ and even in judges¹¹ and the Supreme Court.¹²

A Gallup Poll regularly asks respondents to rate the honesty and ethical standards of people in different fields. Nurses, doctors, and police officers are routinely rated as highly trustworthy by over 50 percent of those polled. Lawyers are usually found settled at the bottom, alongside members of Congress, business executives, and stockbrokers, with a recent poll showing only 15 percent of respondents rating lawyers as highly trustworthy.¹³ In the Pew Research Center's latest poll asking which professions "contribute to society," lawyers ranked last.¹⁴

Portrayals of lawyers in film and TV are another indication of how low our EI skills are in the eyes of the public. Long gone is Perry Mason, reassuring the wronged and skillfully bringing evildoers to justice. The TV series about a lawyer entitled "The Shark" pretty much says it all from an image standpoint, only one-upped by the arrival of a lawyer drama entitled "Damages" starring Glenn Close, who will always be remembered as depicting one of the most frightening personas in cinematic history—the man-eating, marriage-dashing, family-unfriendly *Fatal Attraction* psychopath, now dispensing legal advice.

Even our clients, some of whom are lawyers themselves, are bad-mouthing lawyers and our emotional skills. The BTI Consulting Group compiles an annual list of the "most arrogant" lawyers, built on the responses of corporate counsel at hundreds of Fortune 1,000 companies, a list that includes some firms with high standing in the industry.¹⁵ Arrogance is a type of emotional aggression, characterized by a pattern of behavior that "demeans others in an attempt to prove competence and superiority,"¹⁶ a strategy that is obviously not working to lawyers' advantage.

Perhaps most discouraging is the finding of an American Bar Association (ABA) poll that the most negative perceptions of lawyers and the legal profession are held by those people who have the most regular dealings with lawyers. In fact, the survey showed a "disturbing pattern that the more a person knows about the legal profession and the more he or she is in direct personal contact with lawyers, the lower an individual's opinion of them."¹⁷ As a result, the legal lexicon now includes concepts like "legal abuse syndrome"

and “secondary victimization” resulting from litigants’ interaction with the legal system.¹⁸

This lack of appreciation of lawyers by our clients and the general public may well stem at least in part from how differently we and they view the world in terms of emotions. As one commentator points out, lawyers’ typically unemotional approach makes them seem, “odd, rigid, and even amoral to a public who uses both thinking and feeling.”¹⁹

Law’s Skeptical View of Emotions

*(M)en decide far more problems by hate, or love, or lust, or rage, or sorrow, or joy, or hope, or fear, or illusion, or some other inward emotion, than by reality, or authority, or any legal standard, or judicial precedent, or statute.*²⁰

—Cicero

*It is perhaps the quintessential error of the modern Western world view to suppose that thought can occur without feeling.*²¹

—Mary E. Clark, author and political activist

The historical legal view has been that the judicial system should be elevated above emotions, which were thought to poison objective analysis and undermine the predictable and uniform application of the law.²² That may be one of the reasons law practice is so “aggressively rational, linear, and goal oriented,” making lawyers unaware of the “wishes, fear, beliefs and defenses that motivate our actions.”²³

This view of emotions reflects the position that dominated during early centuries of debate on the subject by our greatest thinkers. During the 1st century BCE, Cicero recognized emotions as important in making decisions, but Stoic philosophers such as Seneca and Cato the Younger contended that emotion undermined rational thought. Then in the 4th century BCE, Plato described emotion and reason as two horses pulling us in opposite directions, and Publilius Syrus cautioned, “Rule your feelings, lest your feelings rule you.”²⁴

Conflicting attitudes have continued to prevail in recent history. During the late 18th and early 19th centuries, the Romantic Movement promoted the notion that emotions could provide valuable insight unavailable through rational thought alone, but into the early part of the 20th century emotions were still considered by some philosophers and even psychologists to be purely negative: “acute disturbances” or “disorganized response[s], largely visceral, resulting from the lack of an effective adjustment.”²⁵ One prominent psychologist predicted that the concept of “emotion” was an “unnecessary term” that would soon pass out of scientific consideration altogether.²⁶ Nonetheless, a number of different theories began to coalesce during the 20th century around the importance of emotions and the recognition of some sort of interpersonal intelligence involving the awareness and management of emotions.²⁷

Given these long-standing debates through the centuries, it is no wonder that there has been uncertainty as to how best, or even whether, to consider emotions in delivering justice. Historically, the law has erred on the side of denying the importance of emotions.²⁸

In administering justice in civil cases, we lawyers deal with the “reasonable man” unburdened by outsized emotions. In tort cases, the law tiptoes around identifying and quantifying mental functioning. Personal injury victims are entitled to recover reasonable medical expenses for even minor physical injuries, but significant barriers usually bar recovery for psychological or emotional harm. Even lawsuits for emotional distress often require a showing of some sort of bodily injury. Similarly, determining “pain and suffering” damages for anything beyond physical injury often involves either a complex analysis that is not necessarily consistent with principals of neuroscience or, on the other hand, a simple formula that avoids assessments or calculations of actual emotional damage.²⁹ Even when emotional damages are found, in many cases they are limited by caps.

Criminal cases are also challenged by the introduction of internal brain function or emotion. “Insanity” and “diminished

capacity,” for example, are complicated concepts that theoretically free a person from some or all legal responsibility for his or her actions, but definitions vary from state to state and are often independent of, or even at odds with, relevant modern psychological theory. In fact, mental health practitioners are usually restrained from making a judgment on the issue of whether a defendant is or is not insane. Attributes of “crimes of passion” are also often not analyzed consistent with current psychological research.³⁰

The inability of our conventional justice system to adequately assess the complex interplay between brain function, emotion management, and criminality is highlighted by the creation of special veterans’ courts to adjudicate the wave of criminal cases involving posttraumatic stress disorder suffered by many of our troops.³¹ These troubled veterans, although criminals according to our traditional justice system, are increasingly being treated with a different perspective aimed “at helping them regain the sense of discipline and camaraderie they had in uniform, and steering them onto a more positive course in life.” In other words, the specialized courts hope to help them achieve emotional equilibrium.³²

Dr. Russell Swerdlow, a neurologist who testifies as an expert witness, maintains that physiological conditions that impact emotional management and therefore decision making should be highly relevant to criminal responsibility where criminal intent is key, and some courts have been entertaining that notion. The number of US criminal cases since 2004 in which defense lawyers introduced neuroscientific evidence, including evidence that relates to emotions, has dramatically increased, with currently 20 percent resulting in favorable outcomes for the accused, such as a reduction of charges or sentences, although none have been exonerated based on such evidence.³³ Similarly, in the United Kingdom, the annual average of cases using neuroscientific evidence has nearly doubled from the years 2005–2009 to 2009–2012.³⁴

Certainly, in a comeuppance to the rationalist tradition of legal thought, research clearly shows that, not unsurprisingly, the juries themselves who are applying these rationalist principles often are

more influenced by their emotions than by the clear rationale of the law.³⁵

Law schools and other graduate schools are starting to explore how neuroscience and law interface. The University of Wisconsin in Madison has launched a dual degree program in neuroscience and law, and neuroscientist David Eagleman heads Baylor College of Medicine's Initiative on Neuroscience and the Law. The MacArthur Foundation Research Network on Law and Neuroscience, headquartered at Vanderbilt University in Nashville, Tennessee, and led by Owen Jones, professor of law and biology, has engaged academics across the country in exploring the roles of brain function and emotions on legally responsible behavior.

Not only are emotions traditionally excluded from courtroom considerations, but individual lawyers are also supposed to be emotionless, an attitude reinforced in the education of law students. Most lawyers were taught in law school that, "how they feel about the cases they read is irrelevant; what matters is the soundness of their logic . . . Resistance to the human dimension of the lawyer's work is built into most law training."³⁶

So would we in fact be better off if we lawyers had no emotions?

LAW'S SKEPTICAL VIEW OF EMOTIONS

- The current default position that law is "above" emotions follows centuries of changing attitudes about the relative roles of emotion and reason.
- Civil and criminal law reflect law's resistance to considering and quantifying brain function, emotions, and emotional damage.
- The introduction of neuroscience principles in legal cases and the increasing collaboration between schools of neuroscience and law hold out the possibility of legal proceedings that are more integrated with the principles of behavioral sciences, including those relating to emotions.
- Juries defy the "all reason" rule in law by often deciding cases for emotional reasons.
- Individual lawyers are still expected to personally adhere to the "no emotion" standard of the law in their practices.