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## Court Review: Volume 38, Issue 1 - Courting Justice with the Heart: Emotional Intelligence in the Courtroom

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# Courting Justice with the Heart: Emotional Intelligence in the Courtroom

Nancy Perry Lubiani and Patricia H. Murrell

Recently, in a courtroom in Tennessee, a defendant was convicted of a DUI assault after a tragic accident that took the life of a young woman—at least life as she knew it before the accident. Evidence presented by the prosecution did not include a blood alcohol test, a Breathalyzer test, a field sobriety test, or any witnesses at the scene testifying that the defendant appeared to be under the influence of alcohol, although testimony from eyewitnesses did suggest that earlier in the evening the defendant did appear to be intoxicated. The lawyer for the prosecution simply brought the victim of the accident into the courtroom.

The 31-year-old wife, mother, and nurse was rolled before judge and jury in her wheelchair. As a result of the accident, she could no longer speak, stand, or sit up. She stayed in the courtroom one minute and fourteen seconds.<sup>1</sup> The jury deliberated 3 hours and 25 minutes before convicting the defendant. He was later sentenced to 12 years of a possible 25-year sentence.<sup>2</sup> The defense had argued, unsuccessfully, for a directed verdict, asking that the “sympathy factor” be removed from the courtroom. In this case, the lawyer clearly recognized and identified the primary emotion working on decision makers and the effect it would likely have on his case. Feelings are not always so easily identified and named, but whether or not we are cognizant of emotions, they impact almost every encounter and every decision we face.

Robert Levy, a psychiatrist and anthropologist, reported that in Tahiti “there is no concept or word for sadness in the culture. The signs—loss of appetite, sad expressions, inactivity—were present, but they ‘could not name the feeling.’ The symptoms were considered to be due to a sickness. This is a powerful demonstration of how cultural differences influence emotional experience.”<sup>3</sup>

American culture certainly has a word for sadness. In fact, we have several words, depression, dejection, sorrow, melancholy, despondency, and even a few colloquial phrases: “the blues,” “down in the dumps.” Sadness is probably one of the mildest emotions that judges see in their courtroom. On any given day they might also see anger, frustration, fear, impatience, apathy, boredom, awe, respect, intimidation, perhaps even some of the more welcome emotions, such as happiness, relief, or even joy, and that is just when the judge is on the bench. The list could go on and on. Other aspects of judicial work open up areas where emotions play a part as well. In fact, any activity that draws on a personal perspective or requires one to relate to others will draw on emotional experience.

Judges’ awareness of these emotions, both their own and other people’s, can influence how well they manage themselves, the people before them, and the judicial process. It may even contribute to what sets a judge apart in the eyes of his or her constituency as a well-qualified judge, what builds public trust and confidence and respect for him or her as a leader in the community. This awareness and regulation of emotion is foundational to a set of leadership qualities most recently defined as emotional intelligence.

## JUDGES AS LEADERS

Leadership characteristics are universally valued, whether in the boardroom, the courtroom, or the community at large. Often now, the judge is, in all of these positions, sometimes perceived to be the member of a team rather than a commanding presence from the bench issuing edicts. According to Judge Paul Lipscomb, presiding judge of the Marion County courts in Oregon, “Judges are taking a more active leadership role in the community, intervening to form coalitions and partnerships, mediating disputes, gathering allies and drawing people together.” In this scenario, collaboration is vital, community presence significant, and the ability to draw upon leadership qualities critical to a judge’s professional success.

Leadership development itself, starting out as what may have seemed to be the hot new topic for management training, has embedded itself firmly in our professional consciousness. So what exactly is leadership? And how does it present itself to us in a recognizable form?

The skills we value in leaders are related as much to who a person is as to what a person does. Leadership is a way of being as much as it is a way of doing. A person has acquired more than just a new set of skills, but has developed in ways that have transformed who they are, and this comes out in what they do, particularly how they relate to other people.

At the Leadership Institute in Judicial Education, housed at the University of Memphis and funded by the State Justice Institute, leadership is defined as “the capacity to discern and develop one’s resources, whether human or material. It further involves the ability to marshal those resources in realizing a vision, reaching a goal, or resolving a problem. It starts with who we are and then moves to what we do.” The idea of people as our most important resource has become almost a cliché, but we all know that relationships with others are critical to our success at work. How we handle those relationships, how we “marshal” the resources of the people we come into contact

## Footnotes

1. William C. Bayme, *Jury Sees Life Ruined in Crash/Disabled Nurse Appears as Testimony Ends*, COMMERCIAL APPEAL (Memphis, Tenn.), April 13, 2000 at A1.
2. William C. Bayme, *Ex-Policeman Convicted of DUI-Assault in Crash Disabling Nurse*, COMMERCIAL APPEAL (Memphis, Tenn.), April 14, 2000 at A1.
3. CHARLES DARWIN, *THE EXPRESSION OF THE EMOTIONS IN MAN AND ANIMALS* 392-93 (Paul Ekman ed. 3rd ed. 1998).

with can set apart a good leader from an excellent one.

In fact, some of the latest research in leadership indicates that the skills that set apart the good from the best are the result of a different kind of mental activity, a function of the affective, rather than the cognitive, the emotional rather than the reasoning capabilities. This research does not negate the necessity of reasoning capabilities but serves instead to elevate the connection that emotion has to the function of reasoning.

Grade points, technical skills, and intellectual abilities have long been considered traditional thresholds for success. What we are learning, however, is that the higher the position of a person in an organization, technical skills become relatively less important.<sup>4</sup> Better effectiveness is determined by a set of competencies; once again, what we are referring to as *emotional intelligence*.

So what is emotional intelligence, how does it apply to the court, and how do we determine our own competency and skill in this critical area of leadership?

### CONNECTING EMOTIONS WITH INTELLIGENCE

Cognition, or reasoning and judgment, is typically the kind of mental activity associated with the word *intelligence*. Howard Gardner, author of *Frames of Mind*, says that we must be careful to use the word intelligence as a means of labeling a phenomenon that may (but may well not) exist. To treat the concept of intelligence as a tangible, measurable quality is to give it more significance than it can hold. Ultimately, all intelligences (Gardner identifies seven in his book) must be viewed in the light of culture, how they provide us with opportunities to live well with and for the good of our society and ourselves. "The possession of an intelligence is best thought of as a potential," the difference between "knowing-that" and "knowing-how."<sup>5</sup>

John D. (Jack) Mayer, a researcher who, in partnership with Peter Salovey, provided the first formal definition and experimental measure of emotional intelligence, outlines the extremes of the different definitions of emotions. He explains that a biology-oriented researcher will define emotions as electrochemical reactions, while psychologists will define emotions as a conscious experience. He seems to suggest that emotions connect thought, feeling, and action: "Most people who study emotions are somewhere in between and they view emotions as a coordinated response system, so that an emotion occurs when there are certain biological, certain experiential, certain cognitive states which all occur simultaneously."<sup>6</sup> Mayer and Salovey define emotional intelligence as "the ability to perceive emotions, to access and generate emotions so as to assist thought, to understand emotions and emotional knowledge, and to reflectively regulate emotions so

as to promote emotional and intellectual growth . . . combining the idea that emotion makes thinking more intelligent and that one thinks intelligently about emotions."<sup>7</sup>

The Latin term for emotions, *motus anima*, means literally "the spirit that moves us," so we can say that emotion is the movement of our feelings.<sup>8</sup> Emotional intelligence, based on Salovey and Mayer's work, can be described as knowing we are moved by our feelings and understanding the impact on ourselves and others. Almost everyone hits a performance plateau eventually; the difference for the few that do not seems to be their emotional intelligence.

In their book, *Executive EQ: Emotional Intelligence in Leadership and Organizations*, Robert K. Cooper and Ayman Sawaf define emotional intelligence as "the ability to sense, understand, and effectively apply the power and acumen of emotions as a source of human energy, information, connection, and influence."<sup>9</sup> They argue that "reasoning has its power and value only in the context of emotion. No matter what the product, idea, service, or cause, we buy—or buy in—based on feelings; and then, if possible, we rationalize or justify our choices with numbers and facts. No one talks about the rationale of a passionate relationship or hobby, or brags about a reasonable marriage or logical vacation, or requires a statistical analysis of deeply felt human longings and dreams."<sup>10</sup>

Daniel Goleman, in his book *Working with Emotional Intelligence*, defines emotional intelligence as two distinct competencies: the personal competencies of self-awareness, self-regulation, and motivation, and the social competencies of empathy and social skills.<sup>11</sup> Some of Goleman's research has been highlighted in the *Harvard Business Review*. Analyzing leadership competency models from 188 companies in order to identify the distinguishing leadership characteristics in the organizations, performance proficiencies were collated into the categories of technical skill, IQ, or emotional intelligence. When these three factors were calculated in ratios as the components of excellent performance, emotional intelligence was twice as important as the others for jobs *at all levels*. Finally, by the time a person reached a senior leadership position, 90% of the difference in star performer versus average performer was due to a proficiency in emotional intelligence capabilities.<sup>12</sup>

**What we are learning . . . is that the higher the position of a person in an organization, technical skills become relatively less important.**

4. Daniel Goleman, *What Makes a Leader*, HARV. BUS. REV., Dec. 1998, at 94.  
5. HAROLD GARDNER, *FRAMES OF MIND* 68-69 (1985).  
6. EQ TODAY, Spring 1999, at 3.  
7. John D. Mayer & Peter Salovey, *What Is Emotional Intelligence?*, in EMOTIONAL DEVELOPMENT AND EMOTIONAL INTELLIGENCE: EDUCATIONAL IMPLICATIONS 3-31 (Peter Salovey & David J. Sluyter eds., 1997).

8. ROBERT COOPER & AYMAN SAWAF, *EXECUTIVE EQ: EMOTIONAL INTELLIGENCE IN LEADERSHIP AND ORGANIZATIONS* xiii (1998).  
9. *Id.*  
10. *Id.* at xxxi.  
11. DANIEL GOLEMAN, *WORKING WITH EMOTIONAL INTELLIGENCE* 24 (1998).  
12. Daniel Goleman, *What Makes a Leader*, HARV. BUS. REV., December 1998, at 94.

**Technical skills are a threshold to leadership positions; the qualities of emotional intelligence are what make a leader exceptional.**

## **EMOTIONAL INTELLIGENCE AND THE COURTS**

So, what the recent gurus of emotional intelligence tell us is that those who are skilled in connecting what they know and how they feel, and who can translate that connection into more productive behavior, will be more effective at work. But wait. The courtroom, we say, is different from the rest of the working world. A judge must be autonomous and independent in order to

receive and retain public trust and confidence. In no circumstance should a personal bias, emotional or otherwise, influence a decision or a ruling, or even the procedural management of the court. How, then, can understanding or implementing emotional intelligence skills be relevant to a judge? Goleman's theories about star performers holds its weight just as well in the court system.

Judges, lawyers, and other court professionals may take the courtroom for granted, while those who do not have daily interaction with the court may be a little in awe of the system. Someone looking down from on high, physically or figuratively, rendering a judgment on one's life, has the capacity to either set one at ease, to intimidate one, or to manipulate the situation in many different ways. If courts are to retain the respect and honor that they deserve—and that is necessary to maintain their position as moderators of society—then a mantle of judicial demeanor, temperament and fairness is important.

## **JUDICIAL PERFORMANCE EVALUATION**

All over the country, bar associations and other professional organizations in the legal community administer surveys and evaluations on the performance of judges. Usually the qualities fall into the broad general categories of legal knowledge, ability and/or experience, work ethic, integrity, fairness, and demeanor (sometimes called judicial temperament). These surveys are then published broadly among the judges' constituents in an effort to assist voters in deciding who are the best candidates and how to vote. The results of two such surveys will be analyzed here for the importance of qualities related to emotional intelligence. First, though, an analysis will be provided for a survey that polled voters in an effort to find out what they would like to know about judicial candidates, and how they use the information they do have in an election.

Founded in 1874, the 22,000-member Chicago Bar Association is the largest metropolitan bar association in the country. Their published purpose and objective is to establish and maintain the honor and dignity of the profession.<sup>13</sup> In

1998, the Chicago Bar contracted with an outside firm to administer a random survey of voters. One question asked was about which qualities were most important in selecting judges. Demeanor, described as fairness, lack of bias and behavior toward others in the courtroom, was extremely important among 65% to 70% of the surveyed voters. Legal experience was the second most important characteristic in selecting a judge: courtroom experience was extremely important to 55%, and time practicing law was extremely important to 41% of the respondents. A significant number of the voters polled (42% to 46%) ranked opinions on social issues, such as the death penalty, business and/or labor issues, abortion or gay rights, as extremely important. (Of course, these are the kinds of issues on which judges are prohibited from expressing their opinions, and these topics tend to be more likely to evoke passionate responses on either side. Consequently, how judges manage their own emotional responses as well as the responses of others—be it the prosecution, the defense, the jury, the media, or the public—is especially important.)

Political experience or party affiliation ranked fairly low as an issue extremely important to voters (20%), and grades in law school were at the bottom of the list at 18%. This survey indicates that for those characteristics considered extremely important to voters, there is a range of at least 15 points and up to 30 points verifying the importance of behavioral qualities. What we are calling emotional intelligence is more important than technical skills and experience, and just as important, if not more so, than a judges' record on decisions regarding social issues.<sup>14</sup>

Most voters in the survey responded that their primary source of information regarding judges was media coverage (28%). Regarding recommendations, 21% said they paid attention to newspaper endorsements and 20% relied on ratings by lawyers' associations, which are a common practice in many states.

One such organized effort is organized by the Chicago Council of Lawyers, which has a 200-member committee that spends thousands of volunteer hours evaluating judicial candidates. The Chicago Council collaborated in a joint process with the Alliance of Bar Associations and reported these findings on judicial candidates in a recent primary.<sup>15</sup> Their criteria can be divided into the two categories that Goleman used in his research: technical skills (legal knowledge, ability, and professional experience) and qualities of emotional intelligence (judicial temperament, diligence, sensitivity to diversity and bias, integrity, respect for the rule of law, political and institutional independence, character and professional conduct.) Of 88 judges evaluated, 23 were classified as *not recommended* based on lack of participation; the remaining 65 chose to participate in the process by submitting information in support of their candidacy.

A look at the narratives of the 65 participating judges in the

13. CHICAGO BAR ASS'N, THE JUDICIAL VOTERS SURVEY (Feb. 10, 2000).

14. All of the figures cited here are from the Chicago Bar's report of the survey data, *see supra* note 12.

15. CHICAGO COUNCIL OF LAWYERS, REPORT ON JUDICIAL CANDIDATES IN THE MARCH 21, 2000 PRIMARY (report initially posted on the

Chicago Council's website, but no longer available there). All of the data from the Chicago Council's discussed in this article came from their report on candidates in the March 21, 2000 primary election.

committee report supports Goleman's theory that technical skills are a threshold to leadership positions; the qualities of emotional intelligence are what make a leader exceptional. Those judges up for election who were considered *not qualified* were lacking technical skills twice as often (14 out of 24) as they lacked interpersonal skills (7 out of 24); in two cases, the narrative indicated a lack in both areas. If judges lacked sufficient legal ability or courtroom experience, they were automatically considered *not qualified*, and if they met the requirements for such technical skills but had not demonstrated qualities indicating emotional intelligence, then they were also considered *not qualified*.

A lack of emotional intelligence did not make up for lack in technical skills, although in at least one instance a judge's interpersonal competency and commitment overcame an apparent lack in the grasp of some legal issues. Of the 24 judges classified *qualified*, the narrative recommending all but 3 indicated proficiency in both technical skills, such as legal ability and experience in the courtroom, as well as skills demonstrating emotional intelligence, such as judicial temperament, demeanor, bias, etc. The two narratives that only mentioned legal abilities and experience were for judges who had supervisory experience, indicating some adeptness in interpersonal relationships. As stated previously, one judge's narrative indicated some problems grasping legal issues, but the overwhelmingly positive response to his work ethic, integrity, and service to the community allowed the review committee to consider him *qualified*.

The greatest correlation with Goleman's theory comes when the evaluations of the judges ranked *well qualified* (13, or 20% of those rated) and *highly qualified* (4, or 3% of those rated) are reviewed. All judges in these categories did exhibit superior legal ability, considerable experience in the courtroom, and had excellent reputations for their interpersonal relationships and personal presentation. However, one more quality of emotional intelligence that seemed to set them over the top in qualification was their extra effort in promoting the judiciary outside of the courtroom, sometimes even outside of the legal community. This extra effort, or motivation, is a weighty component of emotional intelligence. Often, this effort plays out in generative acts, such as teaching, writing articles, and organizing efforts of community involvement. These judges were also cited for providing creative solutions, such as mediation, and for participating in professional associations or community activities. In addition, they had a broad range of experience, which might indicate a degree of risk taking.

Another survey, on a smaller scale, conducted by the Northern San Diego County Bar Association reflects interest in the same kinds of traits and characteristics regarding judges.<sup>16</sup> The rankings of *exceptionally well qualified*, *well qualified*, *qualified*, and *not qualified* were assigned by lawyers asked to rank judges on intellectual and legal knowledge, industriousness and diligence, temperament and demeanor, and fairness and lack of bias. There was a significant trend in how affective behaviors influenced the perceptions of whether or not a judge was qual-

ified for his job. Of the judges whose composite ratings were *qualified* or *well-qualified*, knowledge and experience were, at best, almost equal in importance to an understanding and a competence level of more affective behaviors. More significantly, of the votes that measured a judge to be on the extreme, either *exceptionally well qualified* or *not qualified* at all, proficiencies in emotional intelligence—or lack of the same—were the defining factor.

The message is that judges can perform adequately or even well in their work, but to be exceptional, to reach a level of excellence, they must have something besides a basic skill knowledge. They must demonstrate a way of relating to others that allows their performance to be noticed beyond the technical ability to carry out their day-to-day responsibilities. This is a double-edged sword: their lack of diligence, fairness, or judicial temperament may overshadow whatever skills and experience they possess. Technical abilities will not serve them well if they do not also know how to relate to other people, particularly in such an emotion-laden situation as the courtroom.

#### EQ MAP®

If we have established that competency in managing emotions, both our own and others, is important, then how do we determine if we are operating at our full potential, and, if not, how do we augment our performance in that area? We may or may not have been fortunate enough in our life experiences to have been taught these more developed and desirable ways of relating to ourselves and to other people; the good news about emotional intelligence is that it can be learned. Chances are we can look back over the experiences we have had, and with reflection, see where we have performed with wisdom and maturity, or see the challenges we face.

Once we have decided to evaluate ourselves, we may need a guide. Robert Cooper, along with Esther Orioli and others, has developed an instrument, EQ Map, to help us in that way. The EQ Map is challenging, and at the same time supportive, in helping us to evaluate personally and privately both our competencies and our areas of potential growth. EQ Map is more qualitative than quantitative; the scale of performance is a range of optimal, proficient, vulnerable, and caution, and the categories explored are current environment, awareness, competencies, values, and attitudes and outcomes. The EQ Map examines several categories of proficiency in emotional intelligence:

*Current Environment.* First, EQ Map has us take a look at our current environment, our life pressures, and our life satisfactions. Life pressures are the stresses and strains in every area of our life that

**Technical abilities will not serve [judges] well if they do not also know how to relate to other people, particularly in such an emotion-laden situation as the courtroom.**

16. These survey results are available at <http://www.sddt.com/law/survey/evalsupnorth.html>.



**Daniel Goleman has been emphatic in asserting that emotional intelligence can be learned, and further, that it can be increased across the life span.**

we experience as con-  
straining, difficult, or  
draining. Life satisfac-  
tions are those relation-  
ships or circumstances  
that we experience as  
pleasurable and fulfill-  
ing.

*Dimensions of Aware-  
ness.* Another category  
of review is awareness.  
Self-awareness is the  
degree to which we are  
able to notice our feel-  
ings, label them, and

connect to their source. Awareness of others is  
being able to sense what they may be feeling from  
their body language, their words, or other direct or  
indirect cues. Expression encompasses both self-  
awareness and awareness of others, and explores  
the ability to speak, using this new information in  
productive ways.

*Competencies for Growth and Development.* Our  
competencies in emotional intelligence explore fun-  
damental skills and behavior patterns we have  
developed over time to respond to the people,  
events, and circumstances of our life. They include  
our ability to act with purpose, or intention, our  
creativity, and an ability to be flexible or our  
resilience. Other competencies involve interper-  
sonal connections or those people with whom we  
can express caring and appreciation; vulnerabilities  
and hopes; and finally constructive discontent, or  
our ability to stay calm and emotionally grounded  
even in the face of disagreement or conflict.

*Values and Attitudes.* The personal principles that  
frame our lives and guide our actions are our system  
of values and beliefs. Our belief about how to inter-  
pret life events is our outlook: is the glass half-  
empty or half-full? Compassion, or empathy, is  
about valuing another person's feelings and point of  
view, and being forgiving of yourself and others.  
Intuition is the degree to which we trust and use  
hunches, our "gut feelings." The degree to which  
we believe and expect other people will be trust-  
worthy, or our inclination to trust until we have  
specific reason not to, is our trust radius. A calm  
conviction about who we are and our ability to get  
the things we want and need in life indicates a level  
of personal power. Finally, our level of self-integra-  
tion is the degree to which our intellectual, emo-  
tional, spiritual, and creative selves fit together to  
support our personal values.

*Outcomes.* Finally, the EQ Map measures the out-

come, or the impact, that emotional intelligence is  
having on our life, our general health, quality of life,  
and the quality and depth of our interpersonal con-  
nections with others.<sup>17</sup>

EQ Map is one instrument that can give us an indication of  
the strengths and challenges we have in the area of emotional  
intelligence; there are many others. These devices can be very  
helpful as they help us discern where we are and give us indi-  
cations of what to strive for in terms of improvement.

## **JUDICIAL BRANCH EDUCATION**

What can judicial branch education offer regarding EQ and  
court leadership? Daniel Goleman has been emphatic in assert-  
ing that emotional intelligence can be learned, and further, that  
it can be increased across the life span. That's the good news  
for providers of education in the court system. The perplexing  
question is, "How do we do it?"

David Kolb's experiential learning model offers a framework  
that can be useful in developing the kinds of affective out-  
comes that are identified with emotional intelligence. Kolb  
suggests that learning is a cyclical process involving concrete  
experience, reflective observation, abstract conceptualization,  
and active experimentation. The concrete experience and  
reflective observation modes seem especially useful as a way to  
recognize, acknowledge, and name feelings or emotions, and  
to question the appropriateness of those emotions. Three  
examples of judicial education programs will illustrate this  
process.

At the Leadership Institute in Judicial Education, partici-  
pants visit the National Civil Rights Museum that commemo-  
rates the 1968 sanitation workers' strike in Memphis and the  
life of Dr. Martin Luther King, Jr. The museum is designed to  
be participatory. There is the opportunity to sit on a  
Montgomery, Alabama, city bus and hear the driver demand  
that you move to the back of the bus. There is a lunch counter  
with stools on which one can perch and observe a film of the  
degradation and insults that African American customers  
received. Finally, there is the room in which Dr. King was stay-  
ing, the balcony on which he was shot, and the view of the  
boarding house window from which the fatal bullet was fired.  
Mahalia Jackson sings, "Take My Hand, Precious Lord."

The group will vary considerably in their experience of the  
civil rights movement, due to their ages and geographic ori-  
gins. Some will have participated; others will hardly know of  
its existence. Members of the group proceed through the  
museum at their own pace—sometimes in small groups, some-  
times individually, sometimes conversing quietly and solemnly  
at displays and, more often, reading or listening silently as  
haunting events are portrayed and memories are jogged. Most  
leave the museum to eat a meal with a colleague or friend,  
some gather in small groups for conversation, and many retreat  
to their rooms to contemplate the experience and its signifi-  
cance in their lives and in the court system.

The following morning presents a time to leave that privacy

17. ROBERT COOPER & Q-METRICS, EQ MAP® INTERPRETATION GUIDE  
(1997).

and reflect publicly in an attempt to arrive at some shared meaning about the events of the Civil Rights Movement, the implications of those events, the lessons we have learned, the state of race relations in our country, and the level of trust and confidence in our system of justice in the United States. The chairs are drawn in a tight circle with no tables to serve as barriers between participants. As people enter the room the mood is subdued—a contrast to the usual light banter.

The experiential learning model is used as a guide for the discussion. The leader requests simply that people talk about what stood out for them as they moved through the museum. One exhibit has meaning for one person; another exhibit strikes a chord for another. Participants rarely stop with the description of a display; they usually move on to share the feelings and emotions that are evoked by the event portrayed. The tone is respectful: this group has been together for four days, and they have engaged in many activities that demanded introspection and reflections on their lives. They have reached a level of comfort with each other that is remarkable given the fact that most of them knew no one outside their own state or organization's team when they arrived. Some struggle with words to name and describe their feelings, evidence of the lack of experience in doing this. The dialogue continues as other participants identify what was learned and bring the problem of racial inequities into the present. Finally, changes that need to be made in the way we deal with each other are encouraged in order to plan strategies and develop action plans for sensitizing the court system to issues of diversity in our society.

Another group learning experience that is very powerful in increasing emotional intelligence has been used in Maryland. A judge was given the task of teaching a course to other judges on the procedures for committing an individual to an elder care facility. First, she visited such a facility and discussed her upcoming program with the director. At his suggestion, she read a book, *The Notebook*, by Nicholas Sparks, a slender novel that deals with the aging process and the onset of Alzheimer's disease in a patient. She decided to invite all of her participants to read the book prior to the class, and to hold the class at the facility to give the judges a firsthand experience.

Both the reading of the book and the visit to the facility evoke emotions. Bringing those emotions into the discussion along with a presentation of the procedural guidelines and the legal issues involved provided a much richer learning experience than the simple presentation of cognitive content could have done. The potential for developing self-awareness, empathy, and the appropriate expression of emotions moved the experience from an informative learning opportunity toward a more transformative one.

The final example comes from a training session conducted by the Center for Effective Public Policy through a State Justice Institute-funded project to promote collaboration in the criminal justice system. On the afternoon of the second day of a conference for three drug court teams, the agenda indicated a plenary session entitled "Introduction to Experiential Learning Exercise." The teams were stunned by the appearance of a "guest lecturer" in the person of Benjamin Franklin! He was appropriately attired and presented the countenance and demeanor that one would expect from Franklin. Without intro-

duction, he began to talk about his role in the founding of our nation and the degree of collaboration that was required to write the constitution and other documents. He told of discussions and disagreements with John Adams, George Washington, and Thomas Jefferson, and how each one of them eventually had to give up something in order to achieve their goal of a new country.

At the conclusion of his talk, each team was given metro passes, a map of the national Mall in Washington, and disposable cameras. Their assignment was to keep the team together, negotiate the Metro system, choose what spots on the Mall they would visit that demonstrated collaborative efforts or heralded individuals who had been instrumental in those efforts, choose a place to eat dinner together, and return to the hotel.

The following morning a facilitator led the group in an exercise asking them to describe their experiences. Without prompting, many participants mentioned their emotional response to various parts of the exercise: intimidation by the newness of the Metro system, frustration in deciding what sites to visit—even where to eat! There was also recalling of emotions regarding places like the Lincoln Memorial, the Vietnam Memorial, the Supreme Court building, and the photography exhibits at a Smithsonian building. The group was amazingly open in naming and discussing their emotional reactions. Bringing the discussion back to the principles of collaboration that govern the operation of drug courts today, the group moved on to discuss ways the experience could influence their work.

While the examples discussed above all involved formal judicial education in a group, emotional intelligence can also be developed by a single individual in a self-directed and informal learning situation using the experiential learning model. Lucille was present in a small group of individuals working on a project that involved an institution's response to racial inequality. The multiracial group chose to open the meeting by having each person introduce himself or herself and by telling about his or her interest in this program. Lucille, in describing her experience, used the phrase, "those people" in reference to African-Americans who had first integrated her school. While there was no reaction from anyone in the group, Lucille was uncomfortable with her choice of words. A couple of days later, she mentioned it to two members of the group and expressed her humiliation and her disappointment with herself. This self-awareness and ability to reflect on her remark indicated a high level of emotional intelligence. Her willingness to share her feelings about herself with others as she tried to perceive how her words might have been received, and to get feedback from her colleagues, enabled her to project and plan what she would say and how she would present herself if a similar situation arose again. This process of reflection and

**Emotional intelligence can also be developed by a single individual in a self-directed and informal learning situation using the experiential learning model.**

introspection is essential if one is to increase competence in emotional intelligence and present oneself with authenticity and integrity.

Judicial branch education can provide a vehicle through which emotional literacy can be developed. It can give judges and other court personnel an opportunity to “name the feeling” in order to be more conscious of our affect and what drives our decisions and our behaviors. Connecting what we know and what we feel, we believe, will result in right action.

## CONCLUSION

Sartre said, “Hell is other people.” It would probably be best for judges to stay away from the bench on days when they agree with him! They can’t always do that, though, so learning how to identify that feeling and manage it productively is important. “The research suggests that a technically proficient executive or professional with a high EQ is someone who picks up—more readily, more deftly, and more quickly than others—the budding conflicts that need resolution, the team and organizational vulnerabilities that need addressing, the gaps to be leaped or filled, the hidden connections that spell opportunity, and the murky, mysterious interactions that seem most likely to prove golden—and profitable.”<sup>18</sup>

In our society, the court system is quickly becoming a formative institution, performing functions previously relegated to home, family, religious institutions, and schools. Even the healing community is making its way into the court system with the advent of drug courts and other forms of therapeutic jurisprudence. A judge’s leadership skills are critical in managing the changes in the system, the integrated relationships

that develop as well as the impact on their own work. Those most successful will lead with their head *and* their heart.

In Tahiti, there may not be a word for sadness. Nevertheless, the emotion is there with all the attendant signs and behaviors. What is missing is a language, a word that describes the feeling causing the behavior associated with sadness. This kind of literacy is important to develop here regarding emotional intelligence, an awareness and a language for communicating the connection between our cognitive brain and our affective brain, our mind and our heart, and the result that kind of learning can have on our work and our lives.



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18. COOPER & SAWAF, *supra* note 8, at xi.