

**PRACTICAL
GUIDE
TO
COMMUNICATION
FOR
JUDGES**

By Mark Segal

PRACTICAL GUIDE TO COMMUNICATION FOR JUDGES

TABLE OF CONTENTS

	Page
I. Introduction to Communication	2
II. Communication in the Judicial Setting	7
III. Communication and Managing/Resolving Conflict	13
IV. The Role of Personality in Communication and Conflict	18
V. Communication and Listening Skills	24
VI. Introduction to Emotional Intelligence	28
VII. Emotional Intelligence: Self-Awareness, Self-Management, and Assertiveness	38
VIII. Emotional Intelligence: Social Awareness, Situational Awareness, and Relationship Management	49
IX. Conclusion	60

This Practical Guide was prepared under the auspices of the USAID-funded project “Strengthening the Capacity of the Egyptian Judiciary” for the American Bar Association Rule of Law Initiative. The author alone is responsible for the contents. Cairo, Egypt, August 2018

PRACTICAL GUIDE TO COMMUNICATION FOR JUDGES

I. INTRODUCTION TO COMMUNICATION

Communication is the exchange of information between two or more parties through speech, writing, or any other suitable common medium. There are five key elements of communication. There must be 1) a sender, 2) a receiver, 3) content, 4) a process/channel, and 5) feedback. The sender and receiver (parties) should be able to identify each other. The message or content can be in any format that is mutually intelligible to the parties. The process includes both transmission and receipt, which means that the channel must be available and accessible to both parties. Feedback makes the process of communication into a mutual exchange, and completes a cycle.

The goal of communication is to share, and this usually includes some form of understanding. Effectiveness is the extent to which the message is received and understood. Efficiency refers to the optimal utilization of resources to achieve communication. In other words, efficient communication requires the minimal input of resources such as time, money, personnel, equipment, and technology.

Anything which interferes with communication is considered to be a barrier, or “noise”. When the exchange of information is performed efficiently and effectively, it means that all barriers have been overcome. Communication can either be live and in-person or through technology which overcomes separation and physical distance. When communication is live, all five major senses are or at least can be engaged. When communication utilizes technology, fewer senses are involved. It is usually visual and auditory, auditory only, or visual only (in writing or some form of sign language).

Communication is much more than a one-way process of transmission. When successful, communication is a mutual exchange of information which is simultaneous and continuous. This is the case even if one party employs verbal communication while the other party reciprocates with non-verbal communication. Good receivers send useful feedback and good senders process all feedback. The diagram to the right highlights the mutual nature of effective communication.



Communication requires a mutually intelligible and acceptable medium for exchanging information between the parties. We generally call this “language”. However, this medium can be words, signs, or signals of any kind whatsoever. Dozens of professions communicate through non-verbal signals. Historically speaking, flags, sounds from instruments, lights, fires, and even smoke signals have been used to transmit messages to distant recipients. The telegraph was the first form of electronic communication capable of transmitting messages instantaneously over long distances. Good communicators ensure that the medium or format for the information exchange is effective, efficient,

ability to possess/store it and share it. The first forms of communication most likely related to hunting, fishing, gathering food, controlling fire, cooking, building, making clothes, making tools (from stone, bone, and wood) and competing with other groups (conflict). The importance of tool-making and the intricate forms of communication which accompany it cannot be over-emphasized.

It is posited that the need to communicate abstract information was the spark for human intelligence. Abstract information includes ideas, descriptions of the past, plans for the future, specifics of pending activities, details about people, places, and things that are out of sight, maps, etc. Sharing abstract information is at the heart of human culture. The earliest cultural manifestations of the human obsession with obtaining and sharing information are found in art, music, dance, and story-telling.

HUMANS HAVE ALWAYS HAD MESSAGES TO SHARE



Throughout history, the greatest and most influential leaders in most fields have been the people who knew how to communicate. And the countries which have been most successful, domestically and in their international relations, have been those which could communicate successfully. Communication has always been at the heart of manufacturing, agriculture, commerce, transportation, science, culture, education, and governance. It is also crucial for all legal processes.

Communicators can be divided into four categories, depending on their main orientation and focus:

1. Results-oriented. What is being achieved?
2. Process-oriented. What are the procedures which should be followed?
3. People-oriented. Who is involved, and how should they operate and be treated?
4. Idea-oriented. What is the big picture, what is really going on, how will things change?

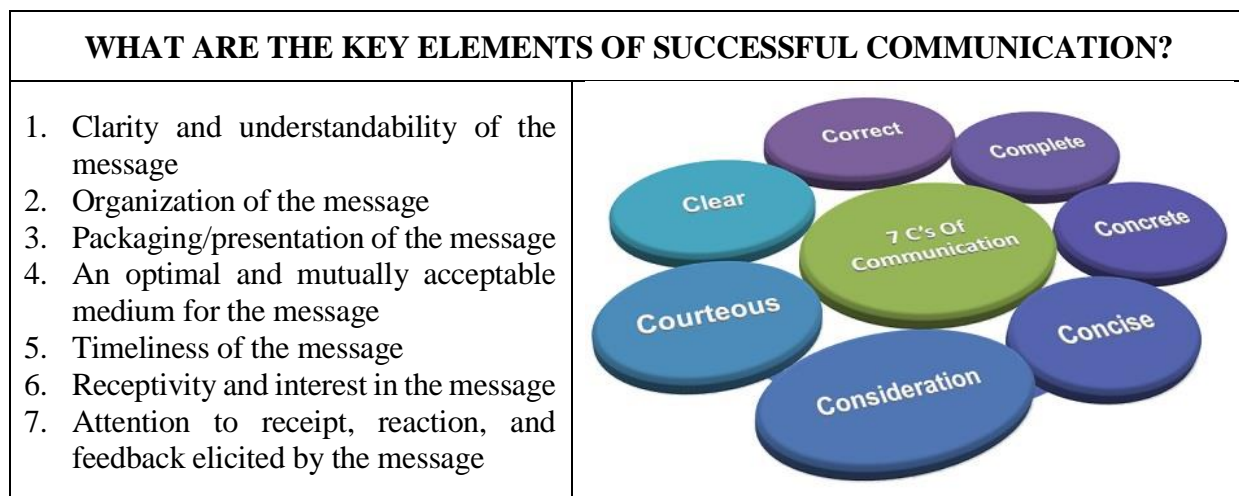
Most people combine these features, but usually one predominates. By determining which category others generally fit into, we can understand how they approach communication, and we can anticipate issues that will arise. We can also mitigate potential conflict. For example, results-oriented people and process-oriented people find each other particularly frustrating. People-oriented communicators find all other approaches to be disrespectful and de-humanizing. Results-oriented

people find all other approaches to be missing the point, and find idea-oriented people impractical and theoretical. Idea-oriented people tend to think that they have a monopoly on the big picture.

Sometimes a fifth category is added, for people who are self-oriented. For them, communication is essentially a one-way process. It is nothing more than a tool to project power, express ego, and self-aggrandize. The rights and feelings of other people are irrelevant and therefore can be ignored. In fact, other people can be disrespected and dehumanized, as they are forced to accept orders or submit to micro-management. The ultimate goal is always the same; the self-oriented person wants to control communication and the flow of information and govern others in order to get his or her own way. To quote one manager: “A team is a group of people who do what I say”.

Communication is paradoxical. On the one hand, humans can send the most complicated information imaginable about an endless supply of subjects at the speed of light to the other side of the planet. On the other hand, humans speak more than five thousand different languages, and without translation are reduced to signals, pictures, and noises. Indeed, people often cannot effectively communicate with others who speak the same language and are standing right in front of them!

Therefore, only by understanding what successful communication is and what makes communication fail can we be sure to do it effectively and efficiently.



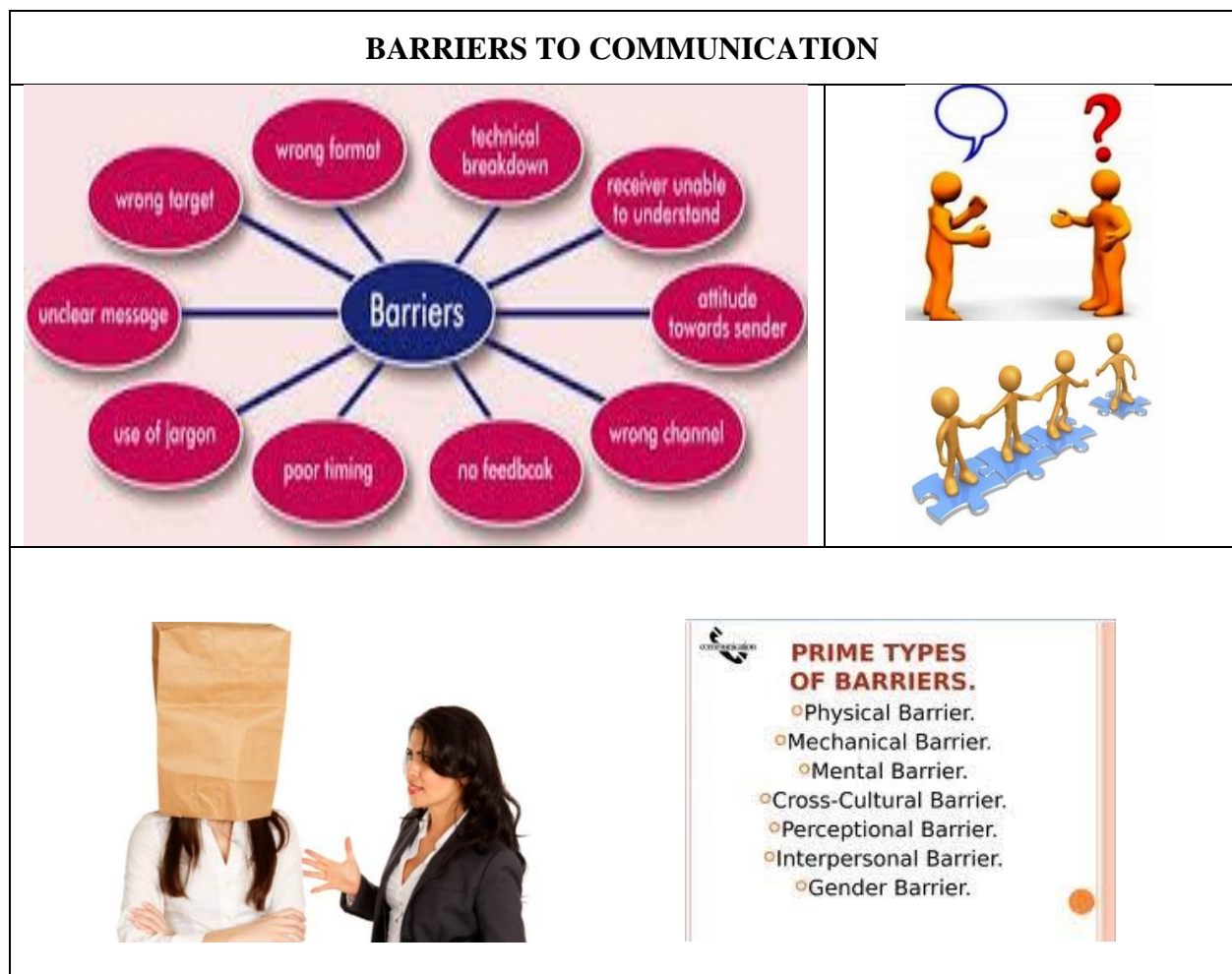
Communication can only be successful when the sender has something of value or interest to offer, and can present it in a fashion which facilitates and encourages receipt and acceptance. Communication cannot be effective if what is offered does not have value or relevance for the recipient, or if it is packaged disagreeably, or if it does not arrive on time.

Communication must always overcome barriers. Good communicators manage to do this. There are many different ways to categorize and describe barriers to communication. They differ according to the specific characteristics of the participants and the context/setting for the communication. When businesspeople, salespeople, politicians, teachers/trainers, public relations firms, promoters, and advertisers reach out to others, they constantly consider what barriers they will face and consider how to overcome them. Professionals who lack these skills or do not emphasize their use, like scientists and doctors, often have less success with communication.

Because of their central role in the judicial setting, judges must be constantly aware of these barriers, and devote great effort to designing practices and techniques that overcome them. This includes their interpersonal relationships and institutional relationships between the courts and other entities.

The principle barriers to communication include:

1. Linguistic diversity (language differences)
2. Technological factors
3. Divergent political or economic interests
4. Different socio-economic class or status
5. Lack of shared values or customs
6. Lack of confidence or trust
7. Prejudice, stereotyping, discrimination, racism, intolerance
8. Gender differences
9. Physical distance
10. Psychological factors
11. Emotions, such as aggression, greed, fear, jealousy, etc.



Sometimes the slightest mis-communication has the gravest consequences. In 1999, the National Aeronautics and Space Administration (NASA) lost a \$125 million Mars orbiter because it used metric measurements in the specs for a key piece of propulsion equipment, while the engineering team at manufacturer Lockheed Martin used English units of measurement. Faulty communication caused by this technical issue led to the complete failure of the mission. CNN quoted a senior manager who described this as “an end-to-end process problem”. That sounds very complicated and technical. However, what actually occurred was a total communication breakdown “somewhere” regarding a measurement, which was not caught/corrected through quality control.

Understanding barriers to communication is one of the key means for improving it, and therefore crucial for the work of judges. As we will see in Sections VI, VII, and VIII below, overcoming emotional barriers to communication is a major element of Emotional Intelligence, which is one of the judge’s best tools for successful communication.

II. COMMUNICATION IN THE JUDICIAL SETTING

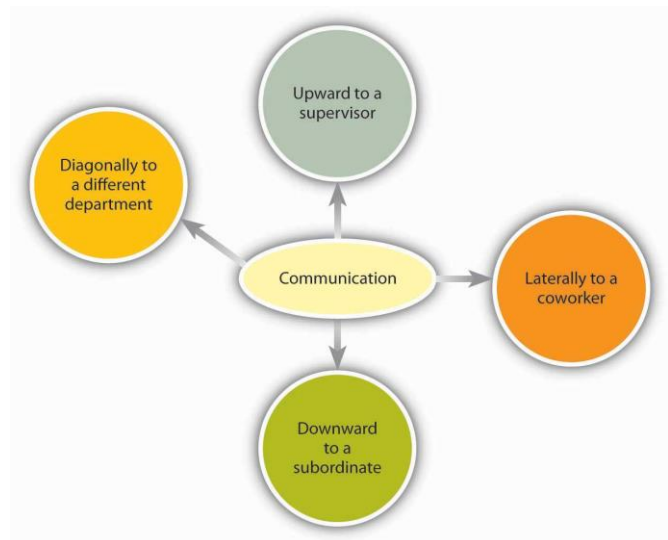
Communication is a crucial element of virtually all activities which take place in judicial settings. Litigation is essentially a form of public communication, both oral and written, with special procedural and substantive rules. It takes place a) when people bring their disputes to the attention of authorities via the court system, or b) when an individual is accused of a crime by the State and must be tried. The stakes are very high, and can include large sums of money, the viability of businesses, real property rights, intellectual property rights, the ability to live and work, the payment of fines, incarceration, parole, marital relationships, alimony, custody of children, etc.

Communication in the courtroom is not just juridical; it is also a cultural phenomenon. Culture is a key element of the setting where judges work. There are many different elements of court culture:

1. Courts have a communal culture. Judges build on communality by emphasizing a shared mission and encouraging collaboration, team work, flexibility, cohesion, and solidarity.
2. Courts have a network culture. Courts and judges are at the center of communication linkages with numerous official and unofficial institutions. Court personnel process and exchange information through official channels, technology, databases, documents, personal connections, etc.
3. Courts have an autonomous culture. Judges and court personnel carry out many different functions on their own, as professionals. Centralization is limited, since judges have a flat organizational hierarchy, with the exception of chairpersons/presidents or Heads of Courts.
4. Courts have a hierarchical culture. Rules and procedures are prioritized and play a key role in achieving all objectives. The court system has defined levels of jurisdiction that are completely hierarchical in nature. Order and accountability are emphasized, uncertainty is minimized, and conflicts are channeled. This is called “high solidarity but low sociability.”

Judicial institutions and courts are noteworthy for bringing together a wide range of personalities with very different functions and interests (that often clash). This places judges at the center of a large web of communication networks relating to all of the various judicial functions. The diverse categories of counterparts with whom judges interact on almost a daily basis include:

- Lawyers
- Litigants
- Prosecutors
- Defendants
- Victims
- Court personnel and admin staff
- Law enforcement personnel
- Investigators
- Expert witnesses from various fields
- Fact witnesses
- Governmental officials
- Representatives of NGOs
- Other judges (colleagues and panelists)
- The media (in certain jurisdictions), and
- The general public (attending hearings or learning of verdicts)



Each of these categories presents specific factors and challenges. This obliges judges to recognize and differentiate between the skills sets required for each party in a myriad of settings.

- With certain groups, such as victims, witnesses, and litigants acting *pro se* (without a lawyer) judges need to be more accommodating, understanding, and perhaps empathetic.
- With prosecutors and lawyers, judges generally need to be more authoritative and decisive.
- When acting as mediators, judges need to put their negotiation skills first, along with their ability to see behind the words to understand what litigants really want and need.
- With court staff, judges need to be supportive supervisors and co-workers, who can respect both employee rights and organizational obligations. Court staff expect judges to consider their personal needs within the context of meeting responsibilities to the court system.
- With substantive experts, judges need to be attentive and respectful, and demonstrate learning and information processing skills.
- With government officials, judges need to respect their position and role within the governmental system, while still preserving their own neutrality and independence.
- With the media, judges need to be informative but precise and cautious, maintain the decorum of their position, and respect rules on propriety and confidentiality.
- With other judges, particularly in panels, judges need to show utmost respect as they cogently express their positions and carefully consider the positions of others.

The above description is somewhat general, because the exact approach depends on the specific counterpart and circumstances. For example, judges need to treat lawyers differently at pre-trial conferences, in court-annexed mediation, and at trial. Judges require different skills with court staff when discussing employment issues in chambers as compared to logistical issues at trial. Judges need to respect the rights of the public to attend hearings, but they must exercise complete control to prevent anyone from interfering in the proceedings. Therefore, it is not just a question of using the right tools for the right counterparts. Judges must use the right tools at the right time and place. This is no small challenge, and it requires considerable attention and experience.

JUDGES CAN BUILD BRIDGES



Judicial settings are unique because many of the groups listed above must compete with each other and collaborate simultaneously. People have to protect their own interests while at the same time channeling their disputes and complying with extremely detailed rules of procedure (which are published, disseminated, and enforced). Furthermore, all aspects of disputes and all steps taken to litigate or resolve them must be documented and are subject to oversight, such as appellate review. This makes paper and electronic documents an integral part of the communication process. As if this weren't enough, all of these activities have to be carried out in very limited facilities and physical space, which is shared and put to multi-functional use.

Judges exercise three inter-related roles as they deal with their various counterparts:

1. Judges have an inter-personal role. In this context, they are leaders, figureheads, and interlocutors.
2. Judges have an informational role. In this context, they are sources of knowledge, disseminators of information, teachers, and spokespersons.
3. Judges have a decisional role. In this context they manage disputes, make decisions, and issue orders and judgments.

In fulfilling these three roles, judges communicate 1) in-person and verbally, and 2) in writing via documents which must be scrupulously prepared.

It should be pointed out that verdicts, particularly in criminal cases, are perhaps the major avenue of large-scale communication for judges. Verdicts send clear and crucial messages to the parties to the dispute, to the legal professionals involved, to the entire legal profession, and to the community at large. Such messages may well be analyzed, referred to, and relied upon for years. Verdicts also send important messages to government officials and lawmakers, particularly when they deal with administrative issues, social issues, and human rights.

Although this Practical Guide focuses mainly on inter-personal communication, it should not be seen to underestimate the importance of other forms of messaging and communication available to judges.

Taking these multiple roles into consideration, what are the most important characteristics of a good judge, and how do they depend upon communication skills?

The key personal characteristics which judges must develop and display include:

1. Integrity
2. Neutrality and impartiality
3. Solid knowledge of substantive and procedural law
4. Authority (without being overly authoritarian)
5. Ability to separate their personal and professional lives
6. Ability to focus on the case at hand
7. Self-control
8. Good listening skills
9. Good writing skills, particularly for decisions (verdicts and rulings)
10. Modesty
11. Patience
12. Gravitas
13. Commitment
14. Conscience
15. Empathy, sympathy, and compassion
16. Transparency
17. Respect

It is apparent that many of these characteristics of judges relate to or rely upon communication skills. For example, authority, good listening skills, modesty, patience, commitment, conscience, compassion, and respect all depend upon knowing how to communicate and are demonstrated to others by words and actions which are essentially communicative in nature.

Communication, judicial performance, and ethical standards for judges are intricately connected. For this reason, the key characteristics listed above can be linked to national codes of ethics for judges and to international standards relating to the conduct of judges. For example:

The **Bangalore Principles of Judicial Conduct** (2002) provide in relevant part:

- Point 3.2: “The behavior and conduct of a judge must reaffirm the people’s faith in the integrity of the judiciary. Justice must not merely be done but be seen to be done”.
- Point 5.3: “A judge shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the performance of such duties”.
- Point 6.6: A judge shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity. The judge shall require similar conduct of legal representatives, court staff and others subject to the judge's influence, direction or control.”

The **European Charter on the Statute for Judges** provides in relevant part:

- Point 1.5: Judges must show, in discharging their duties, availability, respect for individuals, and vigilance in maintaining the high level of competence which the decision of cases requires on every occasion...”
- Comment to Point 1.5: Respect for individuals is particularly vital in positions of power such as that occupied by the judge, especially since individuals often feel very vulnerable when confronted with the judicial system.

The American Bar Association Model Code of Judicial Conduct provides in relevant part:

- Rule 2.8: “A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge’s direction and control.”

See also the United Nations Basic Principles on the Independence of the Judiciary and the International Covenant on Civil and Political Rights.

It is also provident to quote from the Letter of Umar ibn al-Khattab to Abu Moussa al-Ash'ari, when he was assigned to be the judge of Kufa:

- “All persons shall equally be treated in your assembly, your countenance and your judgment, so that no noble person may yearn for your injustice nor a weak person may despair of your justice.”
- “Understand well what is stated to you where there is no text in the Qur'an and Sunnah.”
- Beware of becoming angry, impatient, tedious, or annoyed by litigants; and never refrain from settling disputes.”

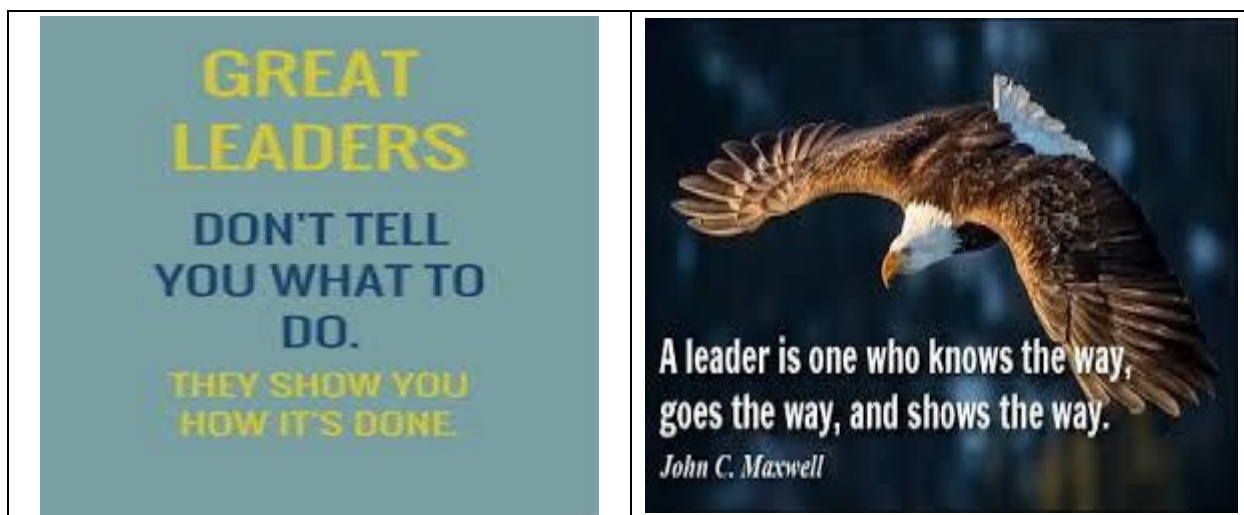
Judicial communication skills should take account of and reflect the core competencies of judges. While there are many different iterations, it is useful to identify five main competencies which all judges should develop, and continue to improve through training:

- 1) Building Knowledge
- 2) Leadership Skills
- 3) Working with Others
- 4) Performing Effectively
- 5) Delivering Justice

It is necessary for judges to fully apply their skills in each of these five areas in order to communicate effectively. Leadership skills, working well with others, and performing effectively are particularly dependent upon good communication skills. Judges who integrate their efforts to fulfill these core competencies into their interpersonal relationships will be better communicators and more successful in their work.

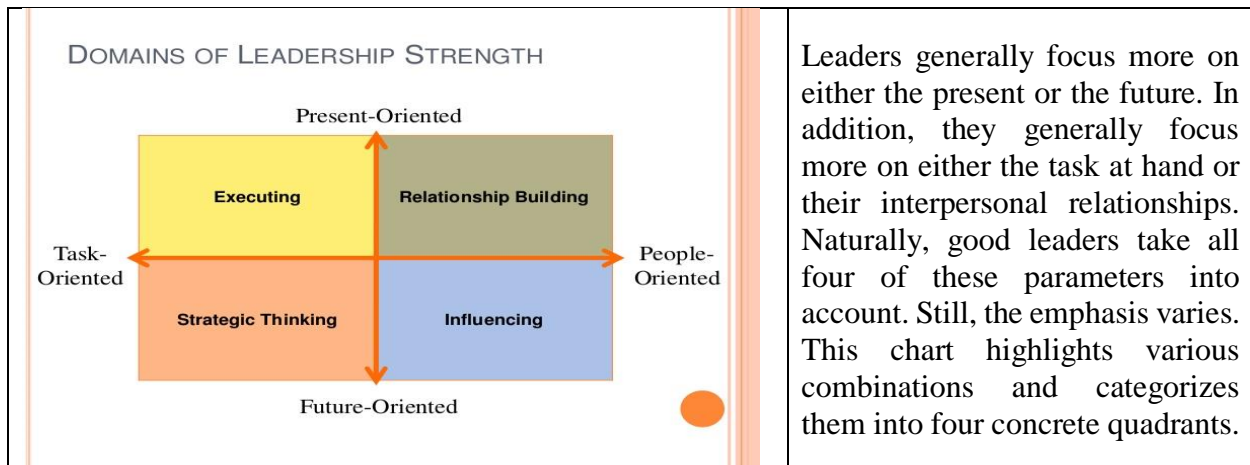
As judges demonstrate the most important personal characteristics listed above and fulfill their main competencies through effective communication, they need to combine dual roles as both leaders and managers. In this sense, the obligations of judges differ from those of most senior personnel in both the public and private sectors. For judges, many of the traits of effective leaders and managers overlap. However, they are not identical. And there are many nuances with respect to the ways judges interact with their various counterparts. Let's take a look at judges as both leaders and managers.

What are the key skills required by a leader? They include diligence, vision, charisma, creativity, flexibility, inspiration, courage, capacity to manage change, ability to innovate and experiment, imagination, decisiveness, time management, and ability to delegate. Leaders must know their job well, and also be able to think outside the box and work beyond boundaries. They should know how to set goals and get people to share their goals and act to meet them, all on a schedule.



Many of these leadership skills are extremely important for judges. First on the list is probably the ability to set goals and standards, and to get others to follow them. Decisiveness and time management skills are crucial. Ability to inspire and delegate are also extremely important. Imagination and creativity are probably less essential, at least during litigation, but can be extremely advantageous when judges act as mediators. In any event, judges need to realize that leadership skills are useless unless they are communicated. In other words, having these skills means communicating them. If leadership skills are not communicated, then others do not perceive them, and they serve no purpose. Without communication skills, leadership skills do not exist.

Furthermore, judges must exercise their leadership skills with great decorum. They are held to the highest possible ethical standards, reflected in codes of conduct and enforced through disciplinary procedures. Everything that judges do is observed, evaluated, and documented. Courts are an open forum, where people and the media can observe what takes place. In some jurisdictions, cameras are installed in the courtrooms, and hearings are broadcast. In a few jurisdictions, such as in Ukraine, observers are allowed to bring their own cameras, and make videos which can be uploaded to the internet. As a result, the slightest mistake in communication can have significant negative consequences for judges.



What are the key skills required by managers? They include being organized, rational, consultative, persistent, tough-minded, deliberate, decisive, structured, analytical, authoritative, deadline-oriented, stabilizing, empowering, and knowing how to generate confidence and solve problems. A review of these skills reveals that most of them are important for judges. Furthermore, as with leadership skills, these attributes are useless unless they are communicated, and perceived by others. Therefore, judges must demonstrate and communicate their managerial skills in order to fulfill their obligation to be efficient managers.

Finally, it is necessary to emphasize the importance of non-verbal communication skills for being a successful leader or manager. A leader acts and talks like a leader, and a manager acts and talks like a manager. When a leader enters the room, people know it. Leaders carry themselves proudly, display confidence, speak with authority, and use appropriate gestures and facial expressions. Leaders shake hands with people like leaders. Managers also need to display confidence and professionalism, in their posture, facial expressions, tone of voice, gestures, etc. Nobody will follow a leader or respect a manager who behaves in a shy manner, or who displays insecurity or nervousness through Body Language.

The diversity of judicial counterparts and the wide range of activities carried out in the courts make judges the hub of a communication network. Communication is the very essence of what judges do, as leaders, as managers, and as the focal point for the delivery of justice in the court system.

III. COMMUNICATION AND MANAGING/RESOLVING CONFLICT

Many of the daily interactions between judges and their various counterparts involve conflict and conflict management, in one form or another. Therefore, dealing with conflict (and disagreement) is an extremely important skill for judges. Many experts study conflict and the various forms of conflict between different categories of people, in the workplace, private life, and the public sphere. This makes it possible to categorize the types conflict and develop principles and practices which judges can use in order to obtain better results from their interpersonal relationships. There are advantages and disadvantages for each approach to conflict and conflict resolution. Judges need to be able to select the most effective approach, taking account of the actual circumstances and their particular personal skill sets (since no two people are the same).

There are many different definitions of conflict. They all share the basic principle that at least two parties have different and clashing opinions, beliefs, interests, desires, or approaches to an issue. The particular issue is relevant, but only one factor among many. The basic principles and challenges are comparable, whatever the source of the conflict. Indeed, it could be anything from religion to politics to money to property to who can put their car in the last parking place.

It is tempting to conclude that financial interests lie behind most civil litigation. However, this is not necessarily true. Many litigants in civil cases are looking for redemption, retribution, or the protection of rights. Personal interests can also be paramount, particularly in family law cases. In criminal cases, incarceration is a more serious threat than financial penalties. And litigants always face challenges to their reputation. The desire to protect honor can be a major source of conflict. It can be a particularly salient factor in domestic disputes and intellectual property cases.

Legal professionals can also be a major source of conflict. Prosecutors and lawyers are professionally obliged to zealously advance their positions and advocate for their clients (whether the State, the plaintiff, or the defendant). They are paid to do so, and their professional reputation and career depends upon it. People who are assertive by nature are drawn to these professions in the first place. And then, years of experience often enhance their already disputatious nature. Lawyers in particular may need to behave in a conflictual manner in order to please their clients, or convince them that the services they are receiving are really worth the price that they are paying.

Law enforcement officials can also create and exacerbate conflict. Their work brings them into regular contact with “difficult” elements of society, which they are paid to control and which they want to control. They can become frustrated with courts and defense lawyers, which stand in the way of convictions they consider warranted and supported by evidence. Indeed, they may well have participated in discovering, testing, organizing, and preparing this evidence for use at trial.

**LEGAL DISPUTES ARE CONFLICTS,
WHETHER RESOLVED THROUGH AN ADVERSARIAL TRIAL OR TRIAL BY COMBAT**



In addition to the conflict inherent in adversarial proceedings, courtrooms are also a flashpoint for misplaced or transferred emotions. Aristotle said:

“Anyone can be angry. This is simple enough. But he should be angry at the right person, without excess, at the right time, for the right causes and in an appropriate manner; and he should be sure of the results--- and that is very difficult”.

Misplaced emotions are an important cause and feature of conflict, which judges need to confront. Parties often exacerbate conflict far beyond the scope of the underlying dispute, as a consequence of the behavioral ramifications of their emotions. This often happens in domestic and family law cases. And taking out anger against the wrong party (misdirected anger) is a common feature of human interactions, particularly in the courtroom. When a party is aggrieved and feels hurt to the point of bringing the issue to the attention of a public forum, such as the courts, that anger can spill over on to other people, and end up being expressed in places that are not directly implicated. In other words, judges often need to deal with conflicts caused by anger which is not carefully directed. And lawyers, who may be disputatious by nature, sometimes utilize or feign anger in order to make a point, or give the impression of zealously representing their client.

Therefore, judges need to be experts on conflict management. This involves limiting, channeling, controlling, disarming, or otherwise mitigating conflict. Conflict management during litigation is in some ways a negotiation process. A neutral judge tries to fill in the gap and restore some measure of collaboration or trust between the parties to the dispute, after their relationship has been compromised by divergent positions, interests, behavior, feelings, or beliefs.

GOOD CONFLICT MANAGEMENT PRACTICES AND TECHNIQUES FOR JUDGES	
<ul style="list-style-type: none"> • Addressing conflict situations in an attentive and timely manner • Developing and applying sound and fair rules • Demonstrating empathy and understanding for all parties to a dispute • Acquiring all necessary and useful information • Assessing the true interests and needs of the parties to a dispute • Treating conflict as an opportunity for learning and development • Being flexible • Using positive attitudes and skills when dealing with others • Working out win-win solutions • Knowing how to get to “Yes” 	<pre> graph LR A[Conflict Resolution Skills] --> B[Creativity] A --> C[Perception Skills] A --> D[Negotiation Skills] A --> E[Stress Recognition Skills] A --> F[Process Management Skills] A --> G[Communication Skills] A --> H[Counseling Skills] A --> I[Analysis Skills] </pre>

Unfortunately, judges sometimes display sub-optimal conflict management techniques in courtrooms and during litigation. These include:

- Showing excessive emotion of any kind
- Displaying disrespect for parties/counterparts or their positions
- Failing to take into consideration the legitimate feelings of others
- Basing actions or decisions on personal motivation or factors
- Evading, avoiding, or delaying conflict which needs to be addressed
- Failing to investigate or ascertain important facts or information
- Jumping to conclusions, or failing to maintain required neutrality
- Focusing on enforcing discipline instead of motivating others to achieve results

Accordingly, judges need to have, demonstrate, and make full use of the following attributes and skills whenever they are useful in the face of conflict:

- Setting the rules or procedures for resolving specific conflicts or issues
- Knowing exactly when, where, and with whom to intervene
- Setting and sticking to a schedule for conflict resolution processes
- Making sure that all parties respect and adhere to the principles and schedule for resolving conflicts
- Communicating with and meeting the parties in accordance with the code of professional conduct (without violating rules against *ex parte* communication)
- Looking for points of agreement in order to build momentum for settling difficult issues
- Demonstrating good listening skills
- Effectively using questions to obtain information and get parties talking
- Paraphrasing what others say, in order to demonstrate understanding and disarm emotions
- Being able to see issues from the point of view of all other parties
- Using the plural “we” whenever possible, to convey an impression of inclusiveness
- Using brainstorming and creative thinking techniques
- Fashioning creative compromises
- Knowing how to secure compliance through motivation instead of coercion or discipline, whenever possible
- Knowing when to take breaks, what to do during breaks, and how long breaks should be
- Knowing when to involve or obtain input from others, such as experts or observers

Two of the most effective but least utilized techniques for managing conflict are asking questions and summarizing/paraphrasing. When judges ask questions, they show how well they have been listening, and they clarify matters or obtain additional information that they need. Good and precise questions can be extremely positive reinforcement. Furthermore, it is always important to pay attention to questions from others. What people ask can reveal more than what they state.

Summarizing or paraphrasing is an extremely useful tool which judges can employ to demonstrate that they have been paying attention, confirm their understanding, and move parties towards

consensus. Parties to a conflictual situation feel redeemed and understood when they hear a judge summarize their message by correctly completing the following sentence:

“If I understand correctly, you believe that ...”

This technique is called validation. By repeating main points or paraphrasing what has been said in different words, judges send a message that they are listening, understanding, and giving due consideration to the positions of others. Indeed, summarizing and paraphrasing are amongst the most effective techniques for lowering tension and promoting dialogue. Judges do this in their written decisions by starting out with a correct summary of the facts or the respective positions of the parties, before going on to state their ruling.



The following four-step approach to conflict management is particularly useful for judges when dealing with different counterparts in judicial settings, particularly when acting as mediators or conciliators:

- 1) Support the other person. *Focus on “who”*. Acknowledge the validity of feelings and ideas. This does not mean agreeing with a specific position. Rather, it is a validation of the right to hold it. Work to minimize resistance. Try to find out who the other person really is and how his or her personal approach influences the conflict at hand.
- 2) Discover the needs behind the desires. *Focus on “why”*. What is the real interest of the other person? Why does he or she need something? Look behind the surface to see where the person is coming from.
- 3) Determine the exact objectives. *Focus on “what”*. Specifically, what is wanted. Invite the other person to present solutions. Use “what” questions to move from problems to solutions. Inviting proposals empowers the other person, and creates engagement and participation in the search for solutions. When soliciting proposals and suggestions, it is useful to request elaboration and clarification, and present multiple options in response.
- 4) Synthesize and apply. *Focus on “how”*. Look for ways to implement solutions. Reach agreement through respect and shared commitment to implementation. Use common understanding to make the “who”, “why”, and “what” real through a practical “how”.

By applying the principles and practices outlined above, judges can improve their relationship with all of the various counterparts they have to deal with on a daily basis, and they can minimize and manage the conflictual situations which constantly arise in the judicial setting.

IV. THE ROLE OF PERSONALITY IN COMMUNICATION AND CONFLICT

Judges need to understand their own personal preferences, tendencies, and techniques (repertoire) for dealing with conflict and conflictual situations. Their personality affects their interactions with others, and this in turn affects how others respond to them. There is a close relationship between personality and conflict resolution techniques/preferences.

Everyone has his or her own approaches to dealing with conflict. Much depends upon upbringing, character, professional experience, personal experience, and other elements of personality. Genetics plays a role, as does physical health and lifestyle choices. It is necessary for judges to understand how their own personality and communication skills set influence their ability to manage conflict. Only by being aware of their repertoire of personal attributes and approaches can judges learn how to use them most effectively, and figure out how to develop new ones.

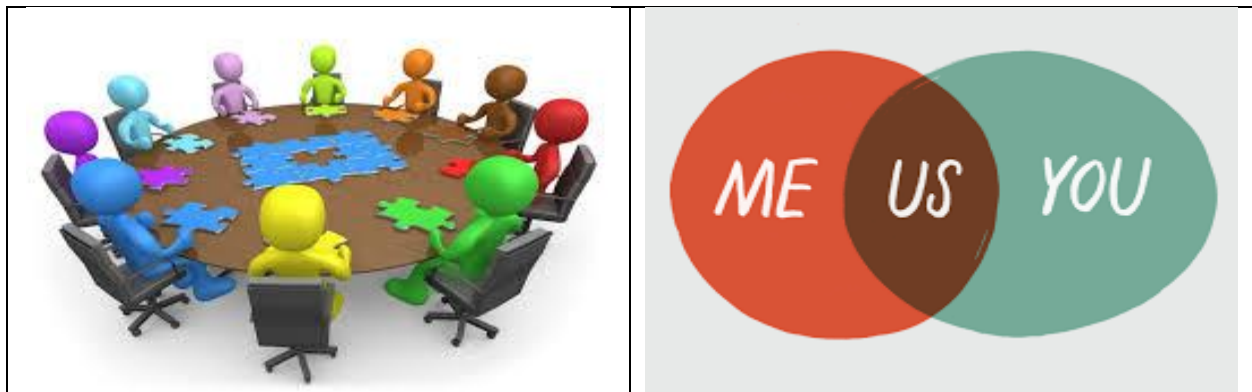
In order to understand the relationship between personality and conflict management, judges should assess and evaluate the main communication tools at their disposal. There are three main categories of tools for communication: 1) words, 2) tone of voice, and 3) actions (Body Language). Only by mastering each of them and controlling how they are used in conjunction can optimal results be achieved. The nature of the limbic system must also be understood. Our most basic instincts regularly emerge in our interpersonal interactions, and are manifested in non-verbal communication. There are hormonal and biochemical factors as well. At any given time, humans are biochemically programmed to respond to conflict through one of three modalities, and thus we choose between fight, flight, or freezing. This is especially true in the court system, given the increased levels of adrenaline associated with interpersonal contacts.

One of the best ways to categorize and understand personal approaches to conflict is through the Thomas-Kilmann Conflict Mode Instrument. This is a self-assessment tool which categorizes personality types and conflict resolution approaches. Thomas Kilmann Assessment self-administered tests and other similar exercises can be downloaded from the internet. It may be useful to take one of these tests before studying the following section.

As a self-assessment tool, the Thomas-Kilmann Conflict Mode Instrument helps people identify and understand their own particular approach to conflict and conflict management. It identifies five main approaches/strategies for conflict resolution. People can learn about themselves and others by studying these five approaches, and determining who uses which one(s) under what circumstances. The five approaches are:

1) **Collaboration/Integration.** Collaborators prefer to deal with conflict as a problem situation which engages concerned parties. Conflict management is approached as a collective effort. Collaborators are integrators, and thus they view conflict as a problem, not as a clash between parties. The best strategy is to work carefully and conscientiously with all of the parties involved

in the conflict until an optimal solution to the problem is found. Collaborators find the optimal solution by searching for a win-win outcome. One of the ways that they achieve this is by identifying, emphasizing, and prioritizing the future and the long-term benefits which result from resolution. Goodwill and positive feelings towards the other parties and the final result have great value, and can even be a major selling point for integrative solutions. Collaborators are especially useful when there are many different viewpoints, when negative feelings need to be overcome, and when consensus is required.



Collaboration/integration tends to be an effective methodology for managing conflict. It is also efficient, because it identifies common objectives and focuses on how parties can work together to achieve them. Efficiency is also promoted by the search for long-term solutions. Integration is particularly appropriate when the parties will or should maintain a long-term relationship. It is also extremely useful when the conflict is complicated and multi-levelled. When using the integration strategy for solving a dispute, it is possible to set up a framework and a platform to address the issue of how to deal with similar situations in the future.

However, collaboration/integration can take longer than other techniques, because finding common ground can be a time-consuming process. Though the odds for this strategy in most situations are high, it is not always the one selected by the parties to a dispute, because it is difficult and time consuming. Moreover, there are times when other strategies may be more useful.

Judges generally act as integrators when they mediate. Integration is seen as compatible with the role of judges and the judicial function. Judges can maintain neutrality and be respectful of the parties at all times. Since litigation is a time-consuming process, this is less of an issue. When litigation involves parties who will continue to have a relationship afterwards, judges have better chances of succeeding as integrators. When the parties come together solely as a result of a single event, such as an accident, integration loses some of its advantages.

2) **Bargaining/Compromising.** Bargainers focus on the energy of compromise to generate solutions. They always see benefits from trade-offs, and look for creative opportunities that might not be readily apparent to others. Their modus operandi is to convince parties to a dispute that everyone has to give up something in order to get something back. We must give in order to get. Compromise is the only way forward. For bargainers, everything is negotiable, and price (calculated in different ways) is the main issue. Finding a solution which is acceptable to all means

putting together a package where each party gets enough to warrant giving up what the other party really needs. It is all about the bottom line for everyone, achieved through compromise. In the end, a good deal is one where every party is relatively happy, or at the very least not much unhappier than the other parties. Thus, bargainers are particularly useful when powerful opponents square off against each other, and when both sides face time pressures.



The problem with bargaining is that it can be prolonged by parties who exaggerate the importance of something in order to obtain more when giving it up. Also, the party which is most stubborn has a definite advantage, while those who are more conciliatory by nature tend to retreat from positions more easily. Bargaining creates a major advantage for any party which does not consider time to be of the essence. Indeed, if one party faces unilateral time pressures, bargaining moves towards a less advantageous solution. Furthermore, some people tend to focus on the details of components of a package, and are less able to see the overall advantages of a package.

Bargaining is less compatible with the role of judges than integration. This is because bargaining requires a certain degree of innovation. It is difficult for judges to propose innovative trade-offs and deals without indicating their position regarding the strengths and weaknesses of different aspects of each party's case. Furthermore, judges should never be perceived to be engaging in horse-trading. On the other hand, a certain degree of bargaining allows judges to move parties towards mutually agreeable compromises. This is particularly the case if it is a dignified part of an integration process, or if the parties accept the role of the judge as a conciliator. In addition, judges who are adept at identifying the true needs of the parties and demonstrating respect for them can credibly introduce innovative ways to reach compromise and seal a deal.

3) **Competition.** Competitors fight for what they want and hold their ground. Competitors see conflict as a win-lose situation and want to be the winner. They do their best to compete and to dominate all situations in order to obtain what they want. Competitors tend to overlook or minimize the legitimate interests and needs of other parties. Indeed, causing different kinds of harm to the other party can become an objective in and of itself. Competitors do not attach importance to the long-run. Instead, they seek immediate results and the best short-term solution (for themselves).

Lawyers tend to be competitors because this type of mentality is attracted to the profession and is developed over time, and because clients often want competitors to advance/protect their interests.

Competitors get an adrenaline boost from victory, and they are willing to engage in protracted gamesmanship in order to ultimately obtain this benefit. Competitors sometimes engage in pointless competition merely to preserve their reputation, since being perceived as a winner can be as important as winning. Competition is the only possibility in winner-take-all or zero-sum games (such as political races, sporting events, tenders for a contract, getting a job, marrying a desired spouse, etc.).



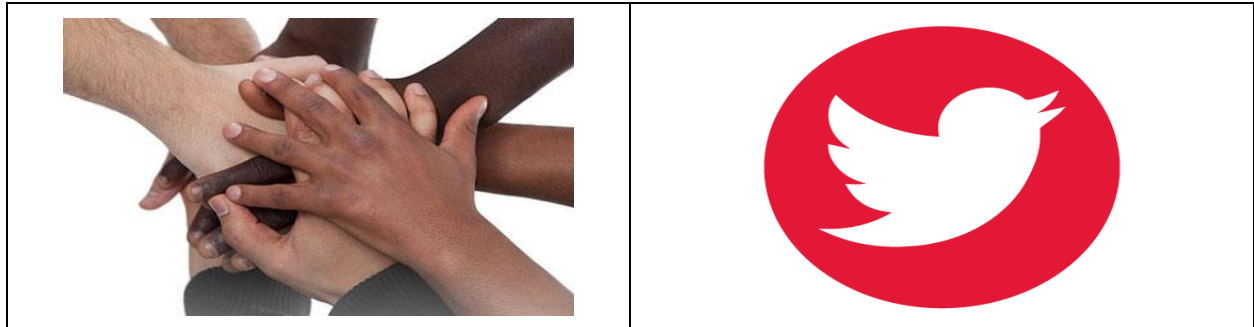
Competition in this context is unsuitable for judges, since it is incompatible with their role in the judicial process. However, judges have to deal with competitors very often. Competitors are useful if quick action is required, when unpopular but important decisions need to be made, and when vital interests are at stake. Judges need to know how to handle them. The best approach is a delicate process of combining logic, incentives, and gentle pressure to move competitors towards bargaining or integration.

Of the two, bargaining is usually the most feasible direction. This is because competitors can present a successful bargain as a victory to their client or principal. They do this by emphasizing the value of what they have won and minimizing the value of what they have given up. In other words, competitors can preserve their status in this category and be sure to save face by selling their bargains. They are much less comfortable with and capable of selling the benefits of an integrated solution, particularly when it comes to promoting long-term value.

4) **Reconciliation/Accommodation.** Reconcilers dislike conflict because they prefer harmony and peaceful co-existence. They prefer to accommodate, and if necessary sometimes even appease. This means making sacrifices for the benefit of others or to promote/preserve harmony. Reconcilers tend to be sensitive, and to understand the position of other parties, even if they do not agree. Reconcilers may try to conceal or minimize conflict, and do not like to approach any situation from a win-lose perspective. Being accepted by others and fitting in are important to reconcilers, as is reputation and long-term satisfaction.

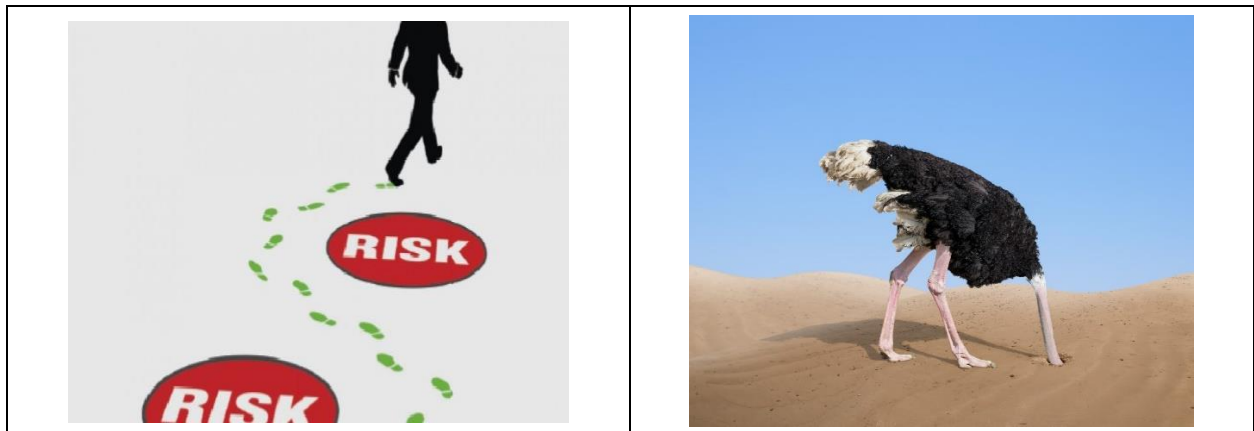
This does not mean that reconcilers are weak. To the contrary, reconcilers are strong in their own way, seeing benefits in compromise and believing that everyone is better off when people work

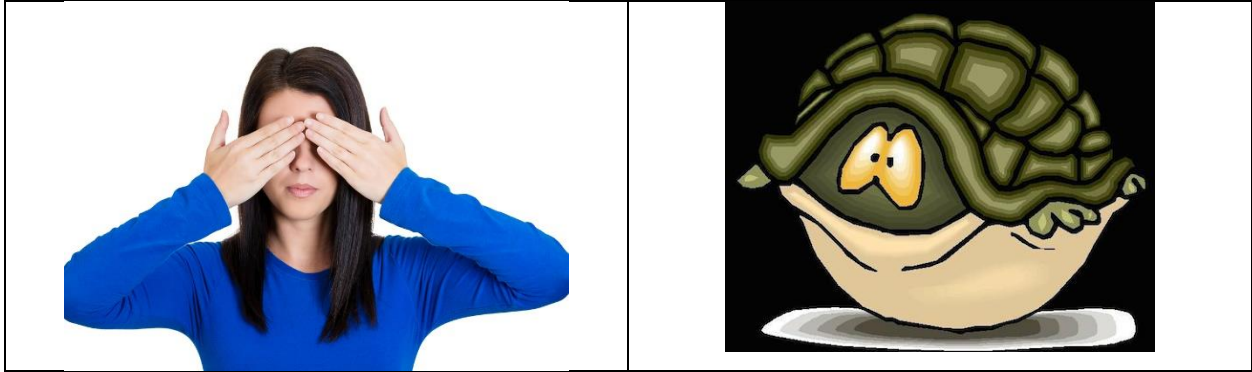
together. Because they are conflict-averse, however, reconcilers tend to end up making more compromises, particularly when facing competitors. Reconciliation is particularly useful when a temporary solution is feasible. Reconcilers can be fruitfully engaged in bargaining, since they are more likely to compromise on issues of major importance to other parties.



Judges cannot formally behave as reconcilers, since they are ultimately arbiters. But they can put certain reconciliation strategies to excellent use, and they can benefit from being seen as having certain traits of reconcilers. When judges engage in integration, they can profitably present it as a form of reconciliation, particularly when dealing with parties who are reconcilers themselves. Judges can also use reconciliation techniques to facilitate bargaining, by getting parties to compromise on the main points of their opposition. Indeed, bargaining can be particularly fruitful when each of the parties is willing to act in part like a reconciler and make concessions on a few key points that might be “deal breakers” for the other side(s).

5. **Avoidance.** Avoiders dislike conflict. They avoid it when they can and may even withdraw from it when it is inevitable. Avoiders are troubled by the tension which conflict generates, and they will sometimes devise complicated strategies to prevent or minimize conflict. Repeated avoidance tends to weaken the resolve and stamina for conflict, and it can end up exposing weakness. Competitors (and to a lesser extent bargainers) can quickly determine if someone is an avoider, since they are attuned to the actions and words which are likely from other competitors or bargainers. They also tend to take advantage of avoiders. This explains why avoiders tend to seek solace from other avoiders. To a certain extent, everyone has avoidance tendencies, although most of the time they are focused on specific kinds of conflict which are considered most distasteful. Even the most competitive people will shy away from certain kinds of conflict.

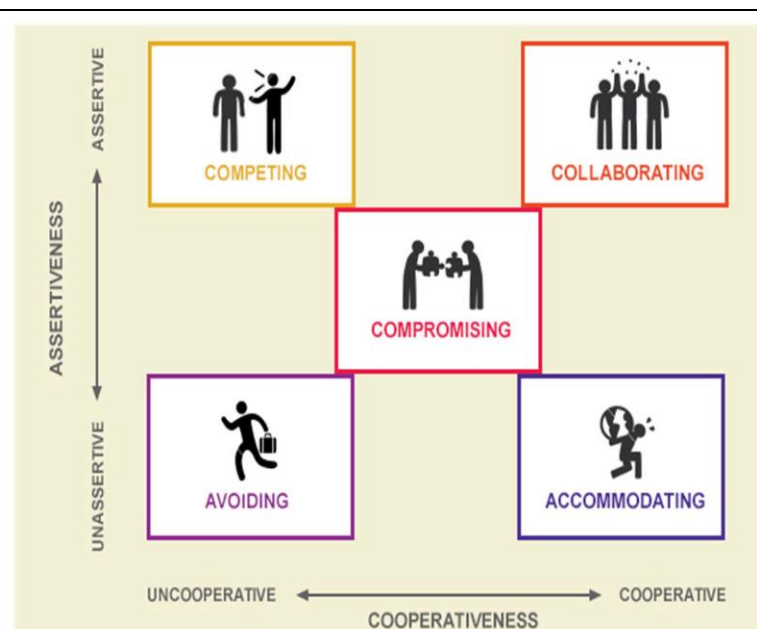




Avoiders are usually not very helpful when it comes to conflict management, particularly in the courthouse. They rarely make significant contributions to the resolution of conflicts, either their own or those of others. Judges generally prefer not to deal with avoiders, because they may require a lot of attention and coaching before acting decisively. This creates a problem for court-annexed and other forms of mediation. When time is not of the essence, and a slow pace of conflict resolution is warranted, avoiders are less problematic.

Judges can employ avoidance techniques when they wish to give others some space, when an issue is not worthy of significant attention, when people need time to cool down, or in order to put pressure on a recalcitrant party who is facing time pressure. Judges can also use this approach when they see the need for a break, or to let some time pass before taking further action. The only time avoidance is really the best strategy is when conflicts benefit from a temporary rest, or when taking action would be worse than doing nothing.

THE FIVE APPROACHES TO MANAGING CONFLICT

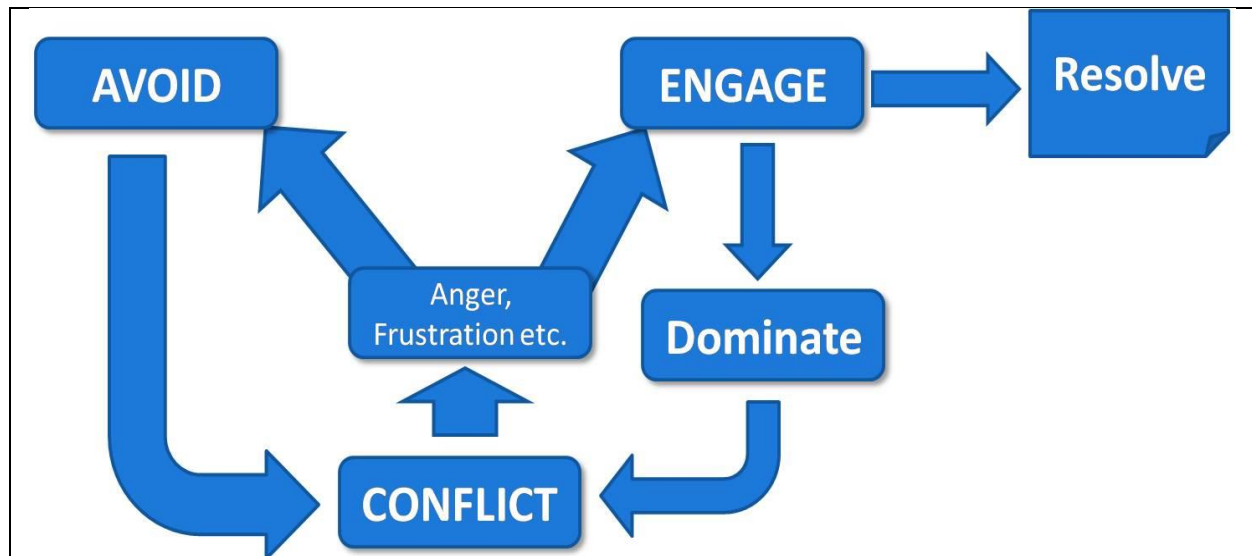


This chart demonstrates the five main approaches to managing conflict:

- 1) Collaboration/integration
- 2) Bargaining/compromising
- 3) Competition
- 4) Reconciliation/accommodation
- 5) Avoidance

It also categorizes them on the basis of their degree of assertiveness and cooperation. Judges need to carefully balance the advantages and disadvantages of each of these approaches, and to employ the best one or combination, depending upon the counterparts and the circumstances.

The following flow-chart shows the dynamics which result from the different reactions to conflict. It shows how our choices can lead to unproductive feedback loops and even hinder resolution.



Judges are better able to carry out many of their judicial functions when they fully understand the dynamics of conflict and conflict management, and can apply different strategies and skill sets based on personality to the various conflictual situations which they face.

V. COMMUNICATION AND LISTENING SKILLS

Listening is one of the most important elements of communication. This makes listening skills essential for effective communication. When we place excessive importance on delivering messages, we eviscerate communication by taking out the interactive, intuitive, mutual, and respectful elements. Good communicators know how to utilize listening skills to build rapport and manage/resolve conflicts. They also know how to demonstrate their listening skills, since it is not enough to have them if others are not aware of their existence.


Judges have a special need for listening skills because of the nature of their role in the justice system. Judges serve as arbiters who familiarize themselves with and assess all sides of a case or issue before taking a decision. Good listening skills are crucial for this purpose. This is why they are included amongst the most important characteristics of a good judge in Section II above. And in Section III, good listening skills are highlighted as a best practice for conflict management.


The key elements of effective and active listening are easy to enumerate but can be challenging to put into practice. They include:

- 1) Make a conscious decision to listen carefully
- 2) Pay total attention when someone else communicates
- 3) Make a special effort to remember, integrate, and understand information being received
- 4) Look at the message behind the message – the “why” behind the “what”

- 5) Allow speakers to finish, and avoid interrupting unless it is absolutely necessary
- 6) Avoid jumping to conclusions
- 7) Do and say things which confirm that you have been listening
- 8) Make the speaker feel understood, vindicated, and validated

There are many special techniques for carrying out these functions. For example, memory strengthening exercises and mnemonic methods such as association and the use of acronyms can facilitate remembering what others say, and help reinforce memory. Summarizing what others say is an excellent way to enhance understanding, since repetition is the mother of learning. Positive Body Language and symmetry are extremely effective for demonstrating and increasing interest and comprehension. These techniques can be practiced and improved.

EFFECTIVE LISTENING	
<p>To listen effectively and show it:</p> <ol style="list-style-type: none"> 1) Focus your attention on the speaker 2) Input the information you receive 3) Confirm what you hear and see 4) Respond directly to what has been said 	

	<h3>Listening skills</h3> <ul style="list-style-type: none"> □ Active Listening (Listening with ears, eyes and heart) <ul style="list-style-type: none"> ■ Ask good questions <ul style="list-style-type: none"> □ Clarify Meanings □ Learn about others thoughts, feelings and wants □ Encourage elaboration □ Encourage discovery □ Gather more facts and details □ Ask open ended questions 
---	--

Judges need to identify and take measures against obstacles to effective listening. They include:

- Distractions
- Boredom
- Daydreaming
- Focusing on the response before delivery of the message is complete
- Thinking faster than the speaker
- Poor technology infrastructure or connections

Listening is not understanding the words of the question asked, **listening is understanding why** the question was asked in the first place.

~Simon Sinek



Listening is not a purely “technical” or “clinical” exercise. It is possible to hear and understand words, but not really get the speaker’s message. Good listeners go beyond just getting information. They look at the big picture and the background. They determine where the speaker is coming from, what the speaker’s objectives really are, and what the real motivation is.

Perhaps the main challenge judges face during hearings is trying to listen effectively for extended periods of time. The normal maximum human attention span is twenty minutes. After that (and often before that) minds tends to wander. Prosecutors and lawyers can spend too much time making their points, and spend more time on points than they really deserve. Witnesses can also be long-winded. While judges can take measures to keep legal proceedings on track, they still end up listening a great deal of the time. Particularly in jurisdictions where judges are expected to play a neutral/passive role and avoid asking questions. On top of this, judges spend a lot of time seated, which interferes with blood circulation and muscle control. In response, judges are encouraged to be active when they listen actively, and to take short breaks whenever it is appropriate.

Because judges must be perceived to be fair in addition to being fair in fact, they need to be able to demonstrate good listening skills, not just quietly employ them. In Section III above, asking questions and summarizing/paraphrasing are specifically mentioned as important techniques for managing conflict. They are also excellent techniques for practicing and demonstrating good listening skills. Simply stated, good listening skills help manage conflict.

Questions are tools. It is always a best practice to use the right tool for the job at hand.

When judges request clarification or elaboration through a sound and respectful question, they clearly demonstrate that they have been paying attention and processing the information or message being sent their way. They also show respect and interest. This facilitates communication.

There are many different kinds of questions, and it is important to know what kind to use in different situations, to achieve the best possible results. Categories of questions include:


- Open questions
- Closed questions
- Probing questions
- Reflective questions
- Confirming questions
- Leading questions
- Multiple questions
- Rhetorical questions

In order to maintain neutrality, judges can use questions as a subtle way to make points. Open questions are best for this purpose, and leading questions are generally inappropriate.

It is often stated that there is no such thing as a stupid question, only stupid answers. However, poorly formulated or off-target questions hinder communication and can create resentment. In addition, they generate an impression of ineffective listening. Therefore, judges should pay great attention to the articulate and accurate formulation of their questions. This includes the use of follow-up questions, after allowing for ample time to provide a preliminary answer.

Non-verbal communication is one of the best ways judges can demonstrate that they are listening. Positive and encouraging Body Language makes people feel respected and encourages them to keep talking. Key non-verbal techniques for establishing rapport and showing interest include:

- Slow head nodding (fast head nodding signifies agreement and the desire to move on)
- Moving closer to the speaker or leaning forward
- Showing open hands
- Making good eye contact
- Turning the head slightly to one side (like a dog)
- Mirroring and synchronicity

	<p>Dogs turn their heads to the side to focus attention, and perhaps to hear better through enhanced differentiation of the location of sounds. It is also a sign of intrigue or being puzzled. Humans can use this gesture to show focused attention on the speaker. In addition, showing the neck is a sign of submission, since it exposes a vulnerable part of the human body. Submission can be an indication of trust, which facilitates communication.</p>
--	---

Mirroring and synchronicity are by far the best indication that communication is effective and harmonious. This occurs when posture, position, or gestures are shared. Think of marching soldiers, musicians, people playing sports, a choir singing, people dancing, etc. The test for synchronicity is that if one person makes a gesture or changes position, the other follows.

By studying the Body Language of others, judges can better understand their emotions, as revealed through the limbic system, and compare their emotions to their words, to achieve greater understanding. This is particularly important for listening, since speakers always judge their audience on the basis of how they react to what is being said, and most of that reaction is non-verbal. This understanding helps judges to communicate more effectively a) by appropriately using their Body Language and non-verbal cues, and b) by not sending unintended negative messages. Communication is not only about what we say with our words, it is largely about how we say it, with our voices, bodies, faces, and hands. The ability to utilize and interpret Body Language signals not only helps judges to be effective communicators and listeners, it is also crucial for almost everything they do.

VI. INTRODUCTION TO EMOTIONAL INTELLIGENCE

Emotional Intelligence is the ability to recognize and understand emotions and place them in the context of human interactions, in oneself (Self-Awareness and Self-Management) and in others (Social/Situational Awareness and Relationship Management). Emotional Intelligence enables people to control themselves and better connect with others, by sensing and reacting to their own emotions and those of others. Perceiving and understanding emotions makes it possible to understand others better and interact more appropriately. People are like operating systems. They can be understood by connecting with emotions that motivate and govern human interactions.

Emotional Intelligence is a combination of two distinct concepts which are not normally intertwined. As intelligence, it includes the ability to accurately and clearly know what is happening and why, to process information and behave rationally. This relies on cognitive brain functions. As emotion, it includes psychology, feelings, motivation, and personal characteristics based on life experiences. This relies on emotional brain centers and the limbic system.

Combining these two disparate disciplines creates cognitive capacity to understand and manage emotions, and emotional capacity to understand and manage intelligence. This is considered a **cognitive-behavioral approach** to communication.

This unique combination of intellect and emotion is extremely salient for legal professionals, like judges, prosecutors, and lawyers. Legal professionals tend to place great value on reason, logic (deductive and inductive), argument, and the power of persuasion. However, humans are not always dominated by or dedicated to logic, particularly when they go to court. Humans are emotional, and emotions are behind our motivation and our actions. This is particularly the case in judicial settings. As a result, judges need to go beyond logic and reason in order to be effective communicators. They need to understand how their emotions and the emotions of others can be identified and harnessed to improve relationships, minimize conflict, and achieve results.

The fundamental skills required for Emotional Intelligence are:

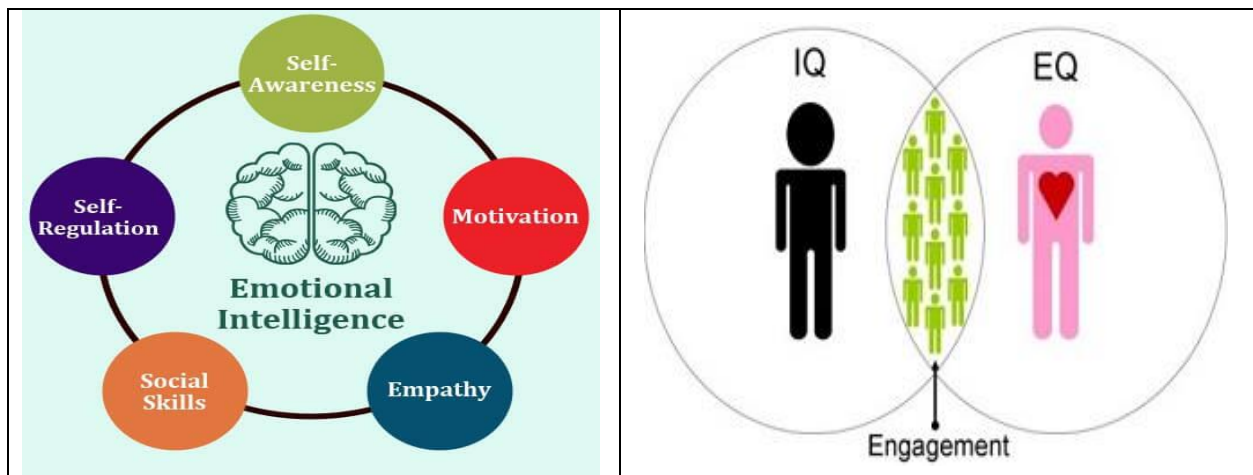
1. Awareness and understanding of emotions, and their effect on relationships and conflict
2. Ability to manage and control one's emotions in accordance with defined objectives and actual circumstances
3. Ability to determine, understand, and identify with emotions in others
4. Ability to analyze and interpret the situation and milieu, and thereby place emotions and communication in context
5. Ability to use all of these skills to better manage relationships

Judges are better positioned to apply Emotional Intelligence when they:

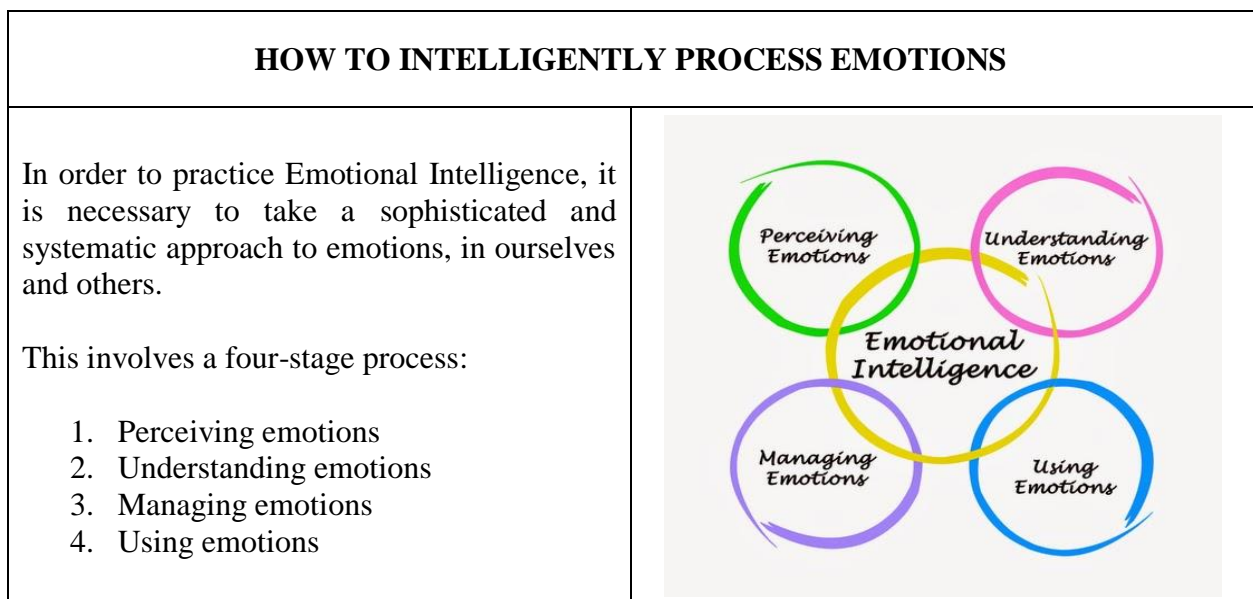
- Can exercise self-control and eliminate or channel the personal element of their approach
- Have vision regarding strategic objectives and practical tactics in interpersonal relations
- Can achieve goals by balancing cooperation/motivation and authority/discipline
- Can use authority to be motivational and inspirational
- Have empathy, sympathy, and compassion

Compassion is an extremely interesting tool. Properly channeled and manifested, it can have powerful results for responding to and managing the emotions of others. Interestingly, compassion is contagious. When one person shows it, others do too. Studies reveal that after being mis-treated, someone who is treated with courtesy is less likely to behave negatively towards others. Judges who can intelligently and carefully use compassion have a distinct advantage in their interpersonal relations.

The following charts introduce the relationship between Intellectual Intelligence and Emotional Intelligence. They do not distinguish between inward and outward orientation, or between perceiving and managing. This follows in the subsequent sections.



Emotional Intelligence is based on the intellectual assessment, processing, and utilization of emotions. Emotions are recognized and utilized for carefully designated strategic and tactical purposes.



The following chart highlights the four main components of Emotional Intelligence and characterizes them according to parameters of:

- Internal vs. external orientation. Are we directed towards ourselves or towards others?
- Recognition vs. Regulation. Are we perceiving and understanding or managing and acting?

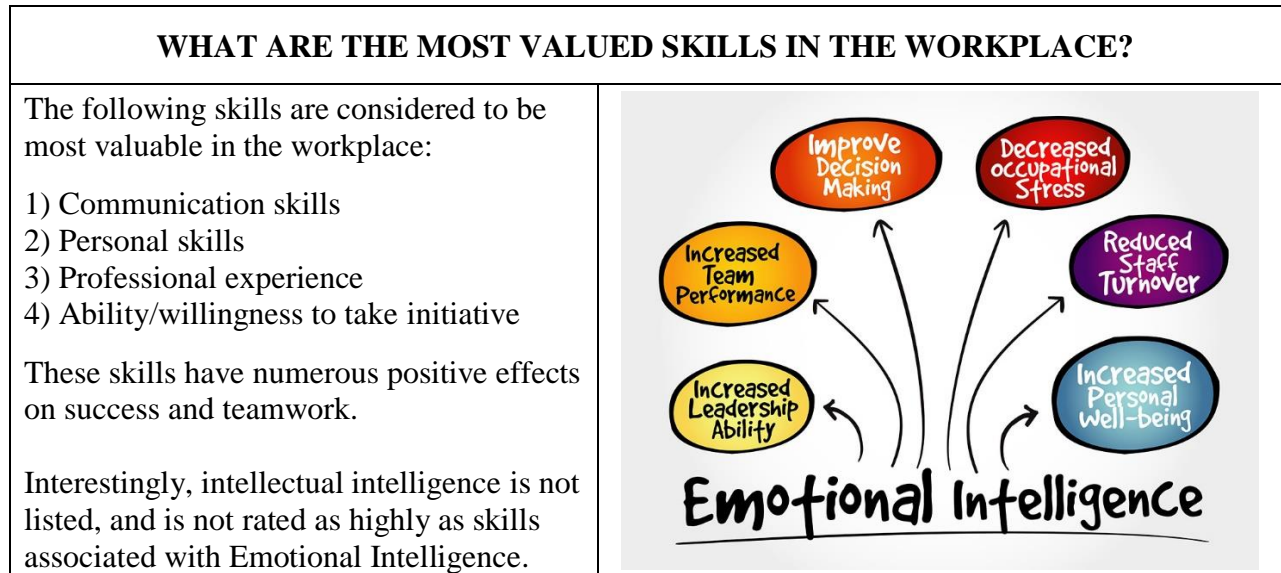


Goleman's Emotional Intelligence Model (2002)

Studies show that Emotional Intelligence is a far more important skill and also a much more reliable predictor of success than intellectual intelligence. In other words, people who have Emotional Intelligence skills are more likely to be successful and to achieve their objectives in interpersonal relations than people who are smart.

EMOTIONAL INTELLIGENCE AND SUCCESS THE FOLLOWING BEST PRACTICES ARE INDICATORS OF SUCCESS		
	Use Feedback Simplify Language Listen Actively Constrain Emotions Watch Nonverbal Cues	Check the accuracy of what has been communicated—or what you think you heard. Use words that the intended audience understands. Listen for the full meaning of the message without making premature judgment or interpretation—or thinking about what you are going to say in response. Recognize when your emotions are running high. When they are, don't communicate until you have calmed down. Be aware that your actions speak louder than your words. Keep the two consistent.

Emotional Intelligence is greatly valued in the workplace of successful organizations. Surveys regularly show that communication skills are at the top of the list.



People with Emotional Intelligence carefully observe personality traits and emotional predispositions in others, and quickly determine their nature, and how they should be dealt with. They then follow-up on this by trying to determine why it is the case. Is it a result of life experiences? Has something dramatic happened recently? Are there health issues? Is there some special cause for a particular emotion? Are there certain subjects or issues which are especially prone to bring out strong emotions? When performing this extremely valuable analysis, judges should remember that “why” can actually be more important than “what”.

The following chart indicates and characterizes some of the major personality traits that deserve attention when we use Emotional Intelligence to look at ourselves and at others.

PERSONALITY TRAITS	
POSITIVE	NEGATIVE
Relaxed and realistic attitude	Worries excessively
Motivates others with incentives	Tells people what to do
Open and confident	Reticent and secretive
Optimistic	Pessimistic
Accepts responsibility	Blames others
Willingly shares credit	Prefers to take credit whenever possible
Doesn't complain much	Complains often
Focuses on positive aspects of news	Dwells on negative aspects of news
Accepts criticism in a good spirit	Is over-sensitive to criticism
Moves out of comfort zone	Prefers to stay within comfort zone
Starts sentences with the word “and”	Starts sentences with the word “but”

Shows enthusiasm for future prospects	Is not enthusiastic about future prospects
Uses many positive adjectives when speaking	Uses many negative adjectives when speaking
Gives energy to others, adds energy in groups	Takes energy away from others
Seeks other positive people to share with	Prefers negative people to complain to

Naturally, it is simplistic to characterize emotions as either positive or negative. There is a gamut of different degrees. However, this is actually an important criterion in many settings.



Emotional Intelligence is based on and directly related to the anatomy and physiology of the human brain. Therefore, in order to understand Emotional Intelligence, it is helpful to review cerebral functionality. Conceptually speaking, the human brain can be divided into three regions:

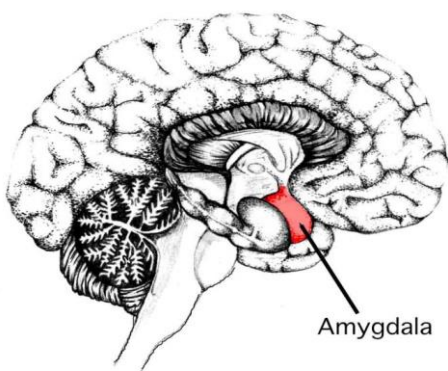
- 1) The Neocortex. The neocortex functions through thought. It is centered in the mind. It operates consciously.
- 2) The Limbic System. The limbic system functions through emotion. It is centered in the heart. It operates subconsciously.
- 3) The Basal Ganglia. The basal ganglia functions through instinct. It is centered in the gut. It operates unconsciously.

Research into the structure of the human brain has revealed that there are structural and anatomical elements of key aspects of Emotional Intelligence. Magnetic Resonance Imaging (MRI) reveals which areas of the brain are most developed in different people, and shows which areas are activated when specific activities are performed. For example, MRI studies show that altruistic people and those who enter professions where they risk their lives for others (like firefighters and emergency rescue people) have greater development of certain areas of the brain. People who are

sociopathic and antisocial show less development of these same areas. Engaging in exercises that develop empathy utilizes and develops these areas of the brain.

- The Amygdala is one of the primary sites for memory, decision-making, and emotional processing. It is a focal point for learned emotional responses and the processing of distressing stimuli. Altruistic and empathetic people have more neural activity in the amygdala, and this area of the brain tends to increase in size.
- The Orbitofrontal Cortex engages in cognitive processing and decision-making. It assesses the motivations and rewards for decisions. It also facilitates understanding of social cues such as satisfaction or discomfort of others.
- The Frontal Operculum can help to comprehend the intentions and motivations of others.
- The Somatosensory Cortex is engaged in processing visceral/physical reactions to the distress of others.
- The Inferior Parietal Lobe has functions relating to spatial awareness, and is involved in mirroring the actions and emotions of others.
- The Superior Temporal Sulcus has functions relating to social perception, understanding stories, and assessing where others are gazing and what they are looking at. It is activated by vocalizations and engages in vocal processing. It is also involved in assessing the expressions and movements of others.
- The Temporoparietal Junction distinguishes between the self and others. This includes evaluating the thoughts of others. Thus, it is involved in the assessment of morality.
- The Anterior Insula is involved in consciousness, self-awareness, and interpersonal relations. It addresses compassion, including recognizing emotion and pain in others.
- The Middle Cingulate Cortex processes emotion and links behavioral functions to motivation to promote learning. It is a focal point for recognizing pain in others.
- The Prefrontal Cortex handles executive functions, planning, cognitive behavior, decision-making, and moderating impulsive behavior. It relates thoughts and goals. The Medial Prefrontal Cortex is particularly engaged in planning and moderating social behavior, and it facilitates comparisons between individual perspectives and those of others. The Neocortex is engaged in conscious thought.

THE AMYGDALA IS A FOCAL POINT FOR EMOTIONAL INTELLIGENCE



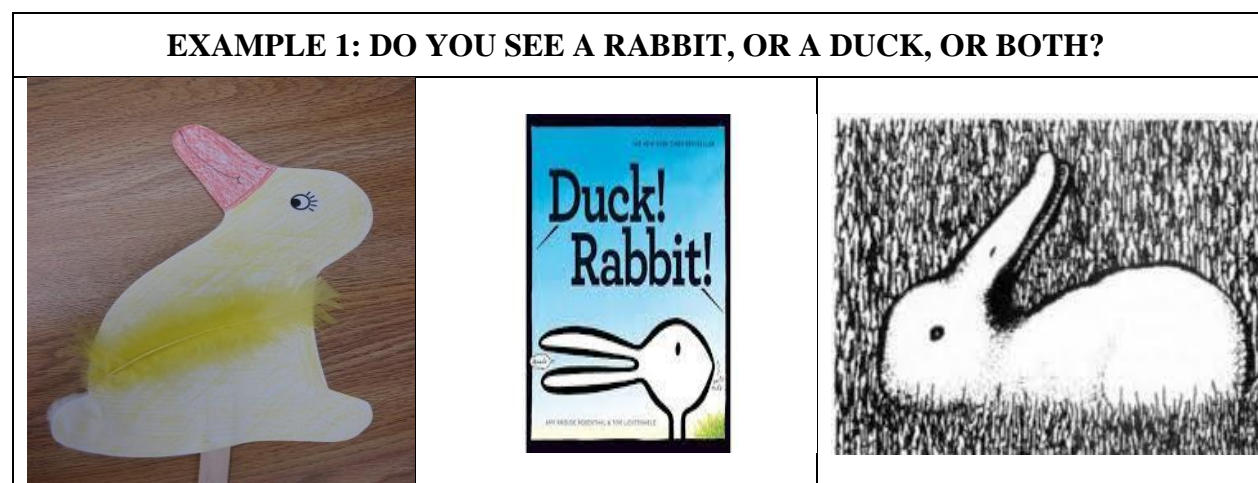
The areas of the brain included in the list above are activated and suppressed by different biological, psychological, psycho-social, and social influences and triggers. They include genetics, stress, emotions such as fear and hunger, group dynamics, discrimination/dehumanization, visual triggers of suffering, etc.

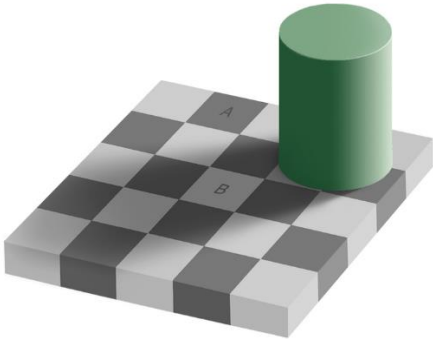
Interestingly, injuries to particular areas of the brain can cause very specific and measurable changes in cognitive capacity and behavior. This proves that anatomical structure/function and social behavior are directly and intricately related.

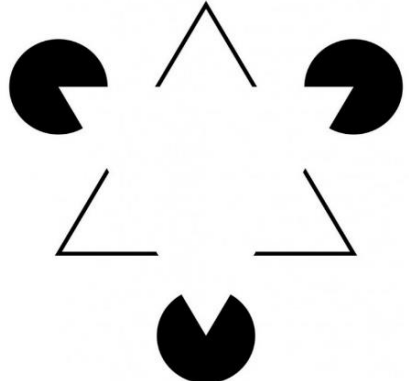
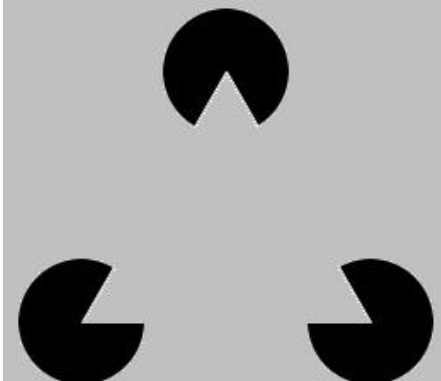
Psychological tests can be administered to measure and assess factors such as the “Empathy Quotient” of individuals. Professionals who work in the humanities tend to score higher in these tests, while professionals who work in the sciences tend to score lower. So-called “Extreme Altruists” score the highest, while psychopaths score the lowest. It is possible to develop empathy and compassion (the desire to act on empathy) through specific exercises. For example, meditating on a loved one and then extending positive thoughts to other groups can raise social sensitivity.


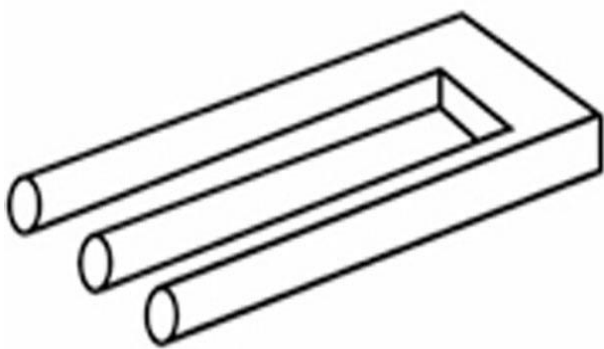
Emotional Intelligence depends upon and manifests itself through our perceptions, that is to say our senses. What we perceive depends not only on what is there, but on how we process information from our environment. Simply stated, our senses are designed to promote our survival as organisms on this particular planet. Our eyes process light in the wavelengths that come from our sun, and our ears process sounds that are within the wavelengths of our environment. Our circadian rhythms are based on the day/night cycles caused by the earth’s rotation. Our emotions are a result of how our biology processes our environment. Emotional Intelligence requires stepping back, and going behind our senses and emotions, in order to see the big picture. And it requires doing so in real time. This is called “metacognition”, or “metamood”.

This technique can be developed through perception exercises. Look at the following pictures and drawings to highlight how perception shapes our view of reality. Each picture or drawing has at least two possible interpretations, or presents an optical illusion whereby two things which are the same look different, or two different things look the same.



EXAMPLE 2: ARE THE COLORS DIFFERENT?	
<p>How many different colors are there on the chessboard? Are there different shades of dark and light?</p> <p>Believe it or not, there are only two colors on the chessboard, black and white! Cover the green cylinder to prove this.</p>	

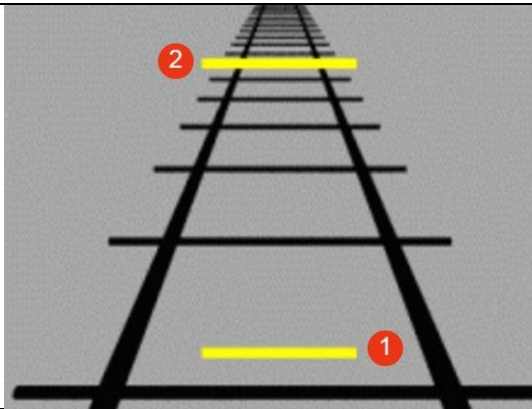
EXAMPLE 3: DO YOU SEE A BLANK TRIANGLE? IS IT REALLY THERE? (HINT – TRY COVERING PARTS WITH YOUR HAND)	
	

EXAMPLE 4: DO YOU SEE A SQUARE? IS IT REALLY THERE?	EXAMPLE 5: ARE THERE TWO TUBES OR THREE?
	

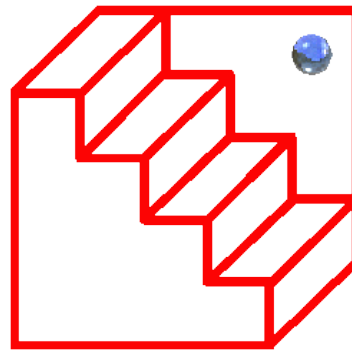
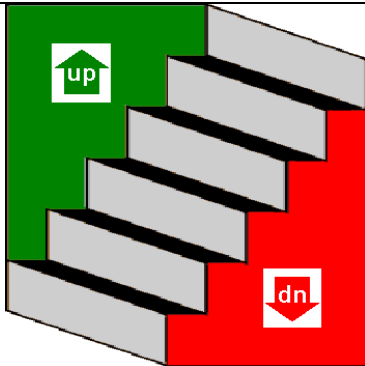
EXAMPLE 6:

Which of the two yellow bars is larger?

Or are they the same size?






EXAMPLE 7: ARE THE STAIRCASES RIGHT SIDE UP, UPSIDE DOWN, OR BOTH?

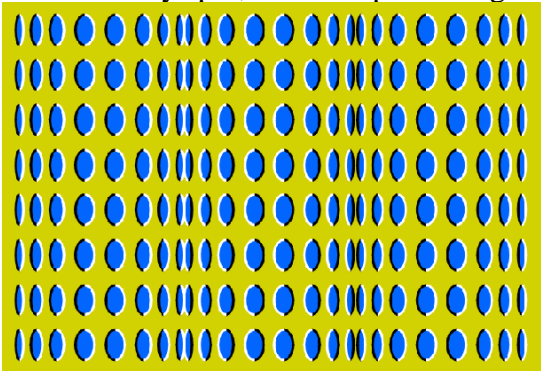



**EXAMPLE 8:
DO YOU SEE AN OLD LADY, OR A YOUNG LADY, OR BOTH?**



	<p>EXAMPLE 9:</p> <p>This is a photograph of the tunnel inside one of the pyramids.</p> <p>Is the passageway ascending or descending?</p> <p>In other words, are you looking up from the bottom of the passage or are you looking down from the top of the passage?</p> <p>For the answer, see below.</p>
---	--

<p>EXAMPLE 10:</p> <p>IS IT A SIX OR A NINE? DO THE DIAMONDS MOVE?</p>	
	 <p>Stare at the dot in the center. When you move your head forward and back, the rings move!</p>

<p>EXAMPLE 11:</p> <p>Stare at any spot, and it stops moving!</p> 	<p>EXAMPLE 12:</p> <p>Are the monsters the same size?</p> 
--	---

These exercises show that we often see what we think we see, rather than what is really there. The same can be said for emotions. We read what we are pre-disposed to read, and we are constantly reading into situations. Then, our predispositions alter or sometimes even create the reality. Emotional Intelligence offers an alternative, more realistic, more perceptive, and more practical path to understanding what is really there and reacting in the best way that we can.

Answer: the photo in Example Number 9 is taken inside the pyramid of Meidum, and the photographer is at the entrance at the top looking down into the interior below.

When judges understand the basic principles of Emotional Intelligence, they are better prepared to deal with different kinds of people in different contexts. Studies show that professionals who practice Emotional Intelligence have happier clients, and are less likely to get into trouble or be sued. In other words, Emotional Intelligence is an important skill, building upon other skills, which judges can directly apply to their treatment of a wide range of people in their daily work, in order to obtain better results. It enables judges to better understand themselves and the people with whom they interact, and thereby improve communication, and achieve greater success.

To summarize, we can identify two distinct components of Emotional Intelligence, each of which has two elements:

1. Self-Awareness and Self-Management are addressed in Section VII below.
2. Social and Situational Awareness and Relationship Management are addressed in Section VIII below.

In chart form:

SCHEMA FOR EMOTIONAL INTELLIGENCE	
COMPONENT	ELEMENT
1. Directed Inwards	Self-Awareness
	Self-Management
2. Directed Outwards	Social Awareness and Situational Awareness
	Relationship Management

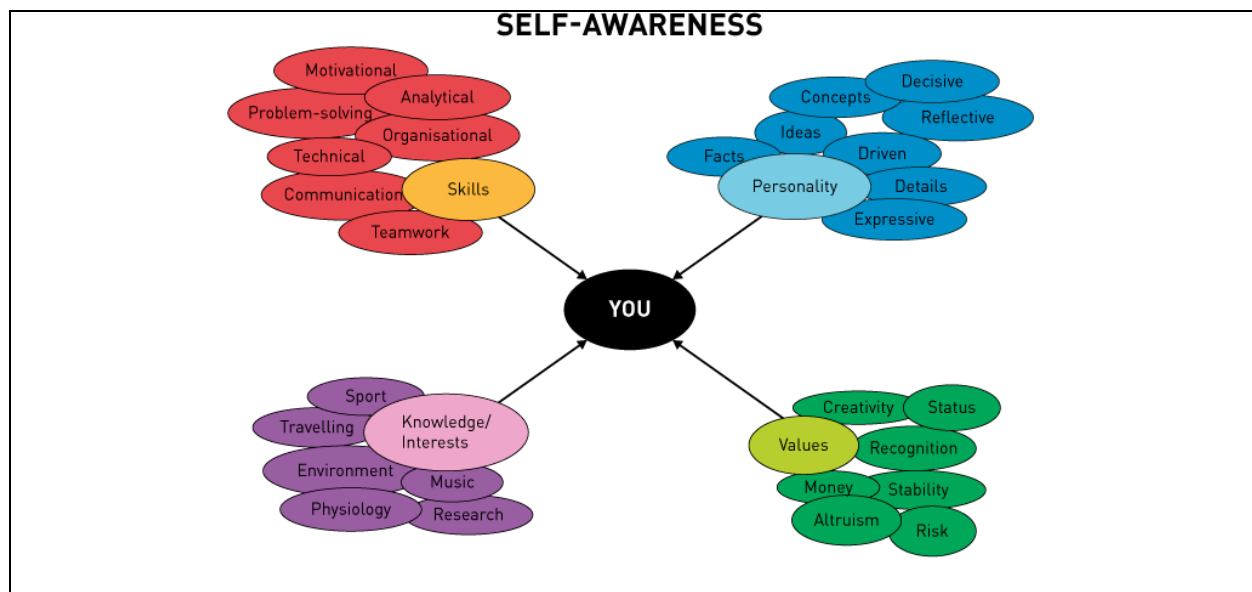
Understanding this schema provides judges the fundamental knowledge and skills which they require in order to successfully employ Emotional Intelligence in their relationships with others.

VII. EMOTIONAL INTELLIGENCE, SELF-AWARENESS, SELF-MANAGEMENT, AND ASSERTIVENESS

In order to promote positive interpersonal relations in judicial settings, judges need to use Emotional Intelligence to improve their Self-Awareness and Self-Management skills. This enables

them to select and employ the most appropriate behavior, create the right impressions, and build the strongest possible level of rapport with others. It also enables them to be more assertive and decisive when making and communicating decisions.

Self-Awareness is the ability to accurately and objectively recognize and understand a) your emotions and drives, and b) how your emotions and drives affect your behavior. This, in turn, makes it possible for you to understand how your behavior affects others. Self-Awareness is being in tune with yourself, and developing the relationship between your cognition and emotion. The key to successful Self-Awareness is being able to recognize emotions in real time, as they happen. Your cognition and your emotions need to be naturally integrated into the communication process.



Self-Awareness enables judges to know and comprehend what they are doing and why. It is all about getting to know and handle your own emotions. The first step in this process is being able to recognize, name, and categorize your emotions. To achieve this, it is necessary to integrate the functionality of the three cerebral regions/functions mentioned above, namely the neocortex, the limbic system, and the basal ganglia. Once we do this, we can anticipate and control the effects of our emotions on others.

This state of internal awareness is called “Mindfulness”. It is a form of consciousness and integration. Mindfulness develops Self-Awareness, which is the first step towards understanding and applying Emotional Intelligence.

Mindfulness is not a new concept. The aphorism “Know Thyself” is attributed to Socrates and Plato. Socrates is supposed to have said “The unexplained life is not worth living”, and to have explained that people should not devote themselves to seeking obscure knowledge about other things before knowing themselves. The phrase *γνώθι σεαυτόν* in ancient Greek was prominently placed at Delphi. However, the ancient Egyptians are also given credit for the concept. In the Inner Temple at Luxor, the initiates are told “Man, know thyself, and you are going to know the gods”.

People tend to think that they know themselves. But at the same time, most people look around at others and conclude that they do not know who they are, what they are doing, or why. Why are we so sure that we know who we are and that we understand why we do what we do? Why is it that principles which seem logical to one person have no bearing on the behavior of others? Indeed, principles guiding conduct vary wildly from one person to the next, even in the same culture. In point of fact, we are quick to see things in others, but slow to see things in ourselves.

Mindfulness is a highly valuable skill for judges. It helps judges to understand why they think certain things are right. And it helps them to effectively explain and show others what is right. This makes it an important step towards successfully managing and fruitfully navigating a wide range of interpersonal relations and potentially conflictual situations in the court setting. But why is Mindfulness such a challenge, and what can judges do to develop it?

There are a number of reasons why we lack Self-Awareness and Mindfulness:

- 1) It goes against basic animal instincts
- 2) It is not prioritized or taught to us when we are young
- 3) It is a challenging skill, and learning it inevitably cause stress and discomfort
- 4) It takes time and energy to develop, and it is much easier for us to simply act out
- 5) Developing Self-Awareness requires both sound methodology and regular practice

In order to develop Self-Awareness, start by understanding your own needs, emotions, abilities, desires, and behavioral tendencies. As mentioned above, this is a form of consciousness. Consciousness comes from asking questions regarding what is going on inside us, and what we are experiencing, and why. Once this is clarified, the next step is to frankly acknowledge and accept these emotions, as part of being human. We all have both skills and deficits. Only by accepting this can we realistically see how our emotions affect others and influence our interpersonal relationships. This lays the foundation for working to improve how our emotions and those of others are put to use. It helps us to practice intuition, and achieve meaning. Indeed, the word intuition comes from the Latin *intuir*, which means “knowledge from within”.

The questions we need to ask in order to know ourselves include:

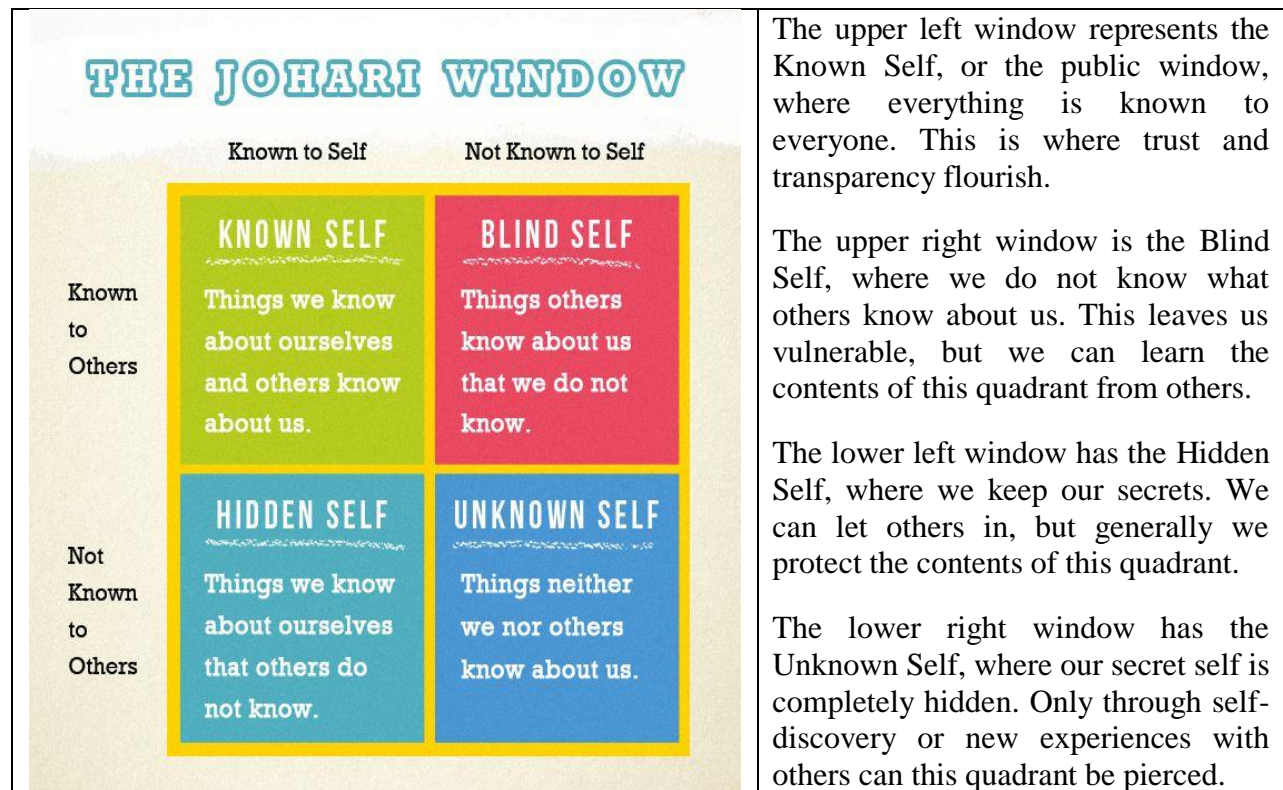
- What are the values and preferences which guide my behavior?
- What are the emotions which create my patterns of behavior?
- How do others see me, and explain my choices?
- Why do others see me so differently from the way that I see myself?
- Why do humans have so many “blind spots”?

These are challenging and perplexing questions, and they are rarely asked. Self-discovery is a voyage that is not prioritized in the hustle and bustle of modern life.

The absence of consciousness, namely unconsciousness, occurs when humans act on the basis of emotions, or fail to apply cognitive processes, and as a result do not understand what they do or why. In the book “Thinking, Fast and Slow” behavioral economist Daniel Kahneman shows that

despite our best efforts to apply logic and manage our emotional approaches to decision-making, we often go astray. We overlook the essential processes taking place inside us.

The Johari Window is a very practical paradigm for overcoming this unconsciousness, which facilitates a number of very useful exercises. It identifies four quadrants of self-knowledge, based upon four parameters, covering what we know and do not know about ourselves, and what others know and do not know about us.



Emotional integration through Self-Awareness requires mastery of the following techniques:

- 1) Being aware of emotions as they happen
- 2) Recognizing, identifying, naming, and acknowledging one's emotions
- 3) Being able to understand and accept one's emotions
- 4) Searching for the source of one's emotions
- 5) Making honest self-assessments, understanding strengths and weaknesses
- 6) Having sufficient self-confidence to be appropriately assertive
- 7) Achieving personal and professional growth through self-knowledge

Self-Awareness techniques arise from a state of mind which can be developed through practice. Specific strategies and techniques can be applied. The most commonly cited include:

- 1) Learn to become rooted in your own body and to recognize your emotions
- 2) Identify your feelings and get to know your emotions, just as you hear your thoughts

- 3) Try to feel the physical effect that your emotions have on your body
- 4) Assess how your feelings affect your actions and words
- 5) Regularly ask yourself: what has caused this feeling?
- 6) Practice self-observation: watch yourself like a hawk.
- 7) Regularly ask yourself: why am I doing this?
- 8) Use books, movies, concerts, and other cultural media to get to know your feelings
- 9) Determine what creates the strongest emotions in you, such as anger, fear, jealousy
- 10) Determine what causes your biases and prejudices
- 11) Link your thoughts, feelings, instincts, and actions
- 12) Strengthen links between your three cerebral systems, between thoughts, feelings, actions
- 13) Write down your feelings in a diary
- 14) Ask someone you trust to give you a frank assessment of your emotions and behavior

Meditation, yoga, and grounding techniques are excellent ways to increase mindfulness and develop the self-observer. Observational meditation involves learning to place awareness on a focal point, such as breathing, a thought, or information received through the senses. This helps us to monitor our thoughts, feelings, and actions. We create space between a) the thinker and the thoughts, b) the feeler and the feelings, and c) the doer and the actions. We develop the inner-observer.

Exercise:

Think about and relive a recent negative experience, perhaps when someone harmed you. Stop thinking, and then assess how you feel. Are your heart rate and breathing accelerated? Do you feel stress? Do you recognize and know the physical consequences which result from the release of cortisol by the adrenal gland in response to stress?

Now think about a recent positive experience, perhaps when someone helped you. Stop thinking, and assess how you feel. Do you recognize the effect of “feel good hormones” (like Oxytocin)?

This exercise develops the links between thoughts, emotions, and feelings, and helps increase awareness of the physical effects of emotions.

Exercise:

Write a few paragraphs about your day, what you did and how it made you feel. Or about a movie you recently saw, a book you recently read, or an event you recently attended. Now, go back and underline all of the adjectives. The famous American writer Mark Twain (Samuel Clemens) once said: “A man’s character can be learned from the adjectives which he habitually uses in conversation”. Is this true? What did your use of adjectives reveal?

Exercise:

Take a look at the following list of personal attributes:

Creative, fair, confident, loyal, focused, forgiving, caring, goal-oriented, positive, kind, honest, sensitive, persistent, patient, curious, open-minded, devoted, imaginative, spiritual, calm, dependable, hard-working, sympathetic, diligent.

Select three skills which you believe are your strongest:

1. _____ 2. _____ 3. _____

Select three skills which you would like to improve

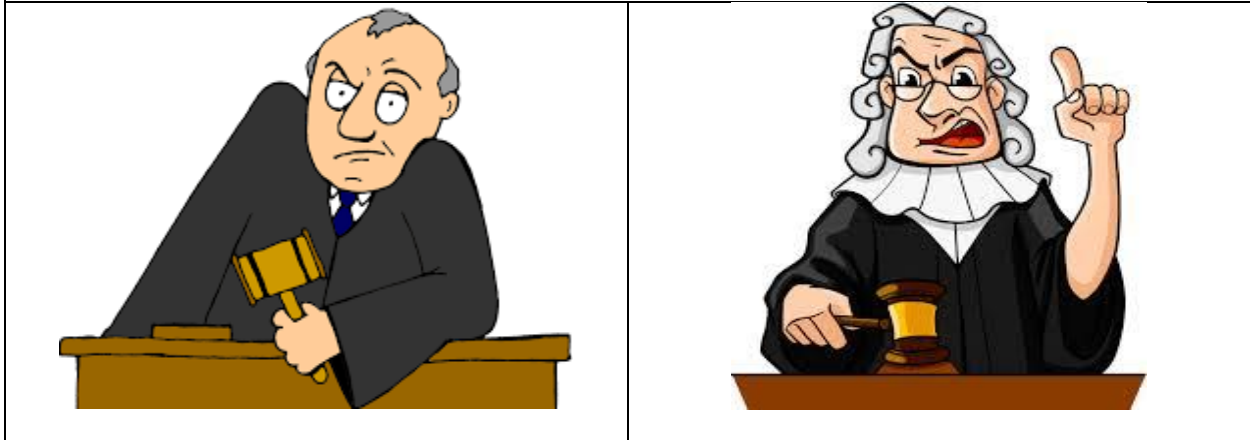
1. _____ 2. _____ 3. _____

Now, write a paragraph on why you selected each of these skills. What does this teach you about yourself?

Additional exercises for building Self-Awareness include:

- 1) Personality Tests. Take personality tests, such as the Enneagram, Myers-Briggs, or Values in Action Inventory of Strengths. Many are available free of charge on-line.
- 2) Self-Reflection. Take time each evening to sit down and reflect on your behavior for the day. What are you proud of? What are you embarrassed by? Why? How can you make the balance between these two categories more favorable?
- 3) Personal Values. Write down or engage in a stream of conscious thought about your most important core values. What does this list tell you about yourself? How well do your actions reflect your core values?
- 4) Future Vision. What is your destiny? Write a paragraph concerning something big that you would like to do in the coming years. What does this tell you about yourself? How does reflecting and planning towards this goal make you feel?
- 5) Journaling. Capture your inner thoughts and feelings in a journal. This helps to identify and objectify them.
- 6) Shadow Work. People are like icebergs, in that most of our identity is hidden below the surface. Perform exercises to bring out and get to know the subconscious feelings which so often influence your behavior. Come to grips with your own strengths and shortcomings, instead of taking the easy route of focusing on the shortcomings of others.
- 7) Externalize Inner Dialogue. Most of us live with an internal dialogue in our heads. This affects our emotional and physical state, and influences what we achieve. Externalizing this dialogue by speaking out loud can bring new insights and integrate internal emotions.
- 8) Observation Therapy. Watch or analyze someone else and try to understand why they do what they do. Now, compare this to yourself. What can you learn from others? How would you behave under similar circumstances? People are remarkably similar, no matter how much we focus on the differences.
- 9) Sounding Out. Ask for an honest assessment from a trusted friend, colleague, or coach who has the self-confidence to be frank with you. Use questions such as:
 - Which of my behaviors limit my potential?
 - How do you feel when you talk with me?
 - What am I good at?
 - What are my weaknesses?
 - How do you describe me to other people when I am not there?
 - Is there anything you don't say to me because you're afraid of my reaction?

HOW WOULD YOU RATE THESE JUDGES FOR SELF-AWARENESS?



Judges benefit from engaging in special exercises to develop their Self-Awareness. This is because judges are in many ways unique. They exercise a public function with decision-making powers having the most profound effects on the welfare of others. They are always in the spotlight. Their smallest word or action can have great importance. In some ways, they are expected to be superhuman, making decisions on the facts and law without allowing their personality or personal experiences to interfere. Only a special person can fulfill this role. Therefore, Self-Awareness for judges means coming to terms with some additional questions:

- Why did I become a judge? What attracts me to this position?
- How can I be everything to everybody and minimize regard for my own personality?
- Which of the 17 most important attributes of judges in Section II am I best at?
- Which of the 17 most important attributes of judges in Section II do I most need to improve? How can I go about improving them?
- What steps should I take to know myself better, in order to be a better judge?
- How can I get others to enlighten me about my blind spots in the Johari Window, given that people are intimidated by judges and unlikely to share sensitive thoughts?
- How can I use Self-Awareness to become a better judge?



All of the activities and exercises identified above can help you get to know yourself and understand your personality better, and thereby be a better judge. This sets the stage for Self-Management, the next element of Emotional Intelligence, where we put Self-Awareness to work.

Self-Management is the ability to control and direct one's emotions and behavior in order to effectively achieve objectives. It means using Self-Awareness to:

- a) Control emotions and predispositions
- b) Channel behavior in positive ways
- c) Stop automatically acting out internal programming (which can be misguided)
- d) Find and employ the most useful personal strengths when dealing with challenges
- e) Exercise patience, and behave deliberately and rationally

Self-Management means learning to control emotions and respond to others in the most appropriate way.

Self-Management builds upon Self-Awareness and cannot be practiced in its absence. Awareness and understanding of what makes us tick is the first step. Then we can build our capacity to control our behavior, and eventually choose/design our behavior, to improve the chances of obtaining desired outcomes. Self-Management enables judges to take an active role in directing their behavior and making it strategically sound. Research studies show that Self-Management strategies can improve interpersonal relations, productivity, concentration, academic performance, etc. In judicial settings, Self-Management strategies can be extremely useful for preventing and mitigating conflict.

KEY ELEMENTS OF SELF-MANAGEMENT	
<p>Self-Management includes:</p> <ol style="list-style-type: none"> 1) Exercising emotional self-control 2) Thinking before speaking 3) Looking before leaping 4) Counting to five before acting 5) Assessing how emotions affect actions before acting 6) Anticipating how emotions and actions will affect others, and choosing them carefully 7) Focusing on goal setting, and honestly assessing progress 	
	

Here are some additional examples and best practices of Self-Management that judges can apply:

- Consciously choose your emotions, and determine how to manifest them, instead of letting them choose and dominate you
- Never let your emotions show without exercising prior control
- Learn to defuse your emotions. “Think anger” instead of showing anger.
- Learn how to act as though you have a particular emotion because it is advantageous under the circumstances, even though you are not truly feeling it
- Practice “pausing” or delaying your response in tense situations. Take a deep breath, count to ten, or get a drink of water.
- Learn to control your breathing, and to use breathing exercises to better connect to yourself

- Listen to others and recognizing their feelings, even when you disagree with their position
- Take the opposite position or idea to your own, and see how it can be validated
- See emotions like frustration and anger not as adversaries or problems to be avoided, but as challenges that can be managed intelligently through a process of understanding
- Focus on opportunities, and how to use positive emotions to make them happen
- Recognize that every person is worthy of respect, and has something to teach others
- Exercise time management, multi-task, and control how you use your time

One of the most important and overlooked aspects of Self-Management for judges is control of non-verbal communication. Judges spend more time observing and listening than talking. At these times, judges are still communicating, but it is purely non-verbal. Even when judges do not speak, everyone is watching them, looking for clues as to what they are thinking and feeling. Because non-verbal communication is subconscious, and controlled by the limbic system, judges who do not pay attention to their non-verbal communication will invariably end up revealing potentially important information to anyone who is sophisticated or attentive enough to observe and interpret.

In some countries, lawyers handling important cases hire specialists who are exclusively dedicated to observing judges or jurors and interpreting their Body Language. What kinds of things can they learn? With basic practice, it is not hard to tell whether judges or jurors agree or disagree with a point. It is also possible to determine who is the leader or most influential person in a panel or jury, which legal or factual points should be emphasized to appeal to different people, what positions or statements are scoring points, etc. This kind of information can make the difference between winning and losing a big case.

Judges who manage their non-verbal communication can a) ensure that they send the messages they want to send and b) prevent others from gaining access to information which they do not want to share. Best practices for judges include:

- Carefully consider how your voice affects others, and what they learn from it. While it is most important to pay attention to your tone, also be sure to consider your speed, cadence, projection, and use of “phillers” (sounds like umm and uh).
- Be aware of and control your facial expressions at all times. Pay strict attention to negative facial expressions, and immediate reactions to what others say.
- Monitor and control your gestures. Anytime we move or stop moving, there is a reason (like “cerebral reset”). Learn to use gestures that complement the points you wish to make, and to avoid gestures which indicate thoughts or feelings which should not be shared.
- Pay particularly strict attention to **micro-gestures**. These prompt and short-lived responses to a stimulus are extremely revealing signals, for those who are attentive enough to pick them up. Or for those who have a video recording which can be studied in slow motion.
- Assess your posture. What are you saying by how you sit and stand? There are reasons why people hold up their head with their hand, lean forward or back, point legs and feet, etc.
- Always be aware of distances between people and your proximity to others. There are four zones around each person; intimate, personal, social, and public. Learn about them. At all times, decide which zone is most appropriate for the setting, be aware of which zone you are actually in, and be attentive to any changes in zone.



Sound Self-Management is actually a self-correcting process that improves a wide range of activities and interpersonal relations. It is also a form of self-empowerment, because it liberates judges from the vulnerability of automatic or “programmed” reactions. It means that others cannot manipulate judges or “push their buttons”, in order to elicit the reaction that they are looking for.

Sound Self-Awareness and Self-Management also enable judges to make and communicate their positions and decisions in a more decisive and confident manner. This is a key element of the authority which judges need to bring to their work and their interpersonal relations.

For purposes of Emotional Intelligence, the key terms are “decisiveness” and “assertiveness”. Judges who are decisive and can exercise assertiveness in a controlled and positive fashion are

more likely to make good decisions and follow through on them. They are more likely to be better leaders and managers, to overcome obstacles, and to achieve objectives.

Judges who are decisive and assertive in a constructive and polite way also tend to be more appreciated. Appreciation can be considered the most positive possible response to these traits. Appreciation proves that decisiveness and assertiveness have been effective, and done in the right way. A feedback loop is formed when appreciation becomes reciprocal. In addition to receiving appreciation, judges can also show it, through active listening and respectful decision-making.



What are some key attributes of decisiveness and assertiveness which judges can display? They include:

- Demonstrating confidence
- Employing positive thinking (including a positive internal dialogue)
- Thinking and speaking with appropriate specificity and detail
- Being factual and informative
- Speaking well and using coherent language (with clear enunciation and pronunciation)
- Getting to the point
- Showing respect
- Not wasting time with fruitless activities, exercises, or words
- Effectively managing time
- Making appropriate use of humor
- Correctly employing positive Body Language (good eye contact, determined facial expressions, voice control, proud posture), etc.

Judges who practice Self-Awareness, Self-Management, and decisiveness/assertiveness are better and more effective communicators, and are more successful in everything that they do. Now that we have looked at these internally directed features of Emotional Intelligence, it is appropriate to look at the externally directed features, and see how they facilitate communication.

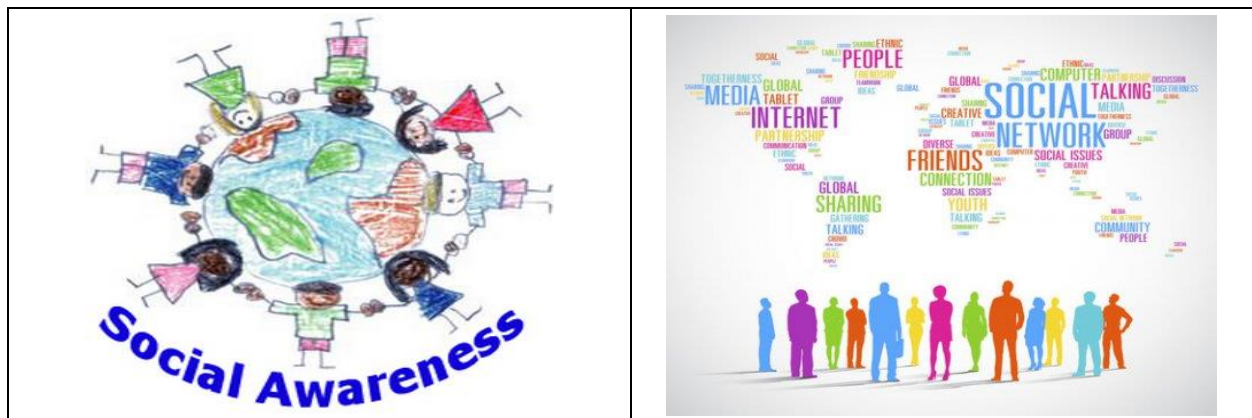
VIII. EMOTIONAL INTELLIGENCE: SOCIAL AWARENESS, SITUATIONAL AWARENESS, AND RELATIONSHIP MANAGEMENT

The second component of Emotional Intelligence is outwards directed, and focuses on understanding and reacting to the emotions of others. It has two elements, namely 1) Social Awareness and Situational Awareness and 2) Relationship Management. Once we understand and are in charge of our own emotions, we are ready to look at others. Identifying, respecting, and appropriately responding to their emotions sets the foundation for effective communication and sound Relationship Management.

Social Awareness is the ability to identify, assess, and understand the emotions and feelings of others. Social Awareness makes it possible to most effectively use one's own emotions and interpersonal skills, and thereby improve communication, resolve conflict, and manage interpersonal relations (Relationship Management).

Sometimes Social Awareness is defined to include understanding societal issues and big picture problems which affect everyone. This includes challenges like poverty, unemployment, health care, housing, education, pollution, etc. Sometimes Social Awareness is defined to focus on specific factors and issues affecting individuals. During litigation this includes specific sources of stress, such as legal uncertainty, being in uncomfortable settings like courtrooms and law offices, dealing with judges, court employees, and lawyers, etc. General and personal issues combine and interact. While respecting diversity, judges can also be aware of personal characteristics, such as nationality, ethnicity, religion, sexual orientation, membership in a vulnerable group, gender, etc. Judges can consider all of the emotions which affect the behavior of counterparts, and assess all of their possible sources.

Social Awareness is a way to comprehend others. It depends upon respecting and empathizing. Judges who are socially aware can accurately pick up on emotions, feelings, worries, and desires in other people, and understand what is really going on with them. They are attuned to the strengths and weaknesses of others. Without this skill, it is not possible for judges to identify the effect which their own words and actions have on others. They cannot understand the emotions on all sides of a dispute, and see how they feed upon and affect each other. They cannot overcome these emotions, to improve communication, conflict management, and problem solving.




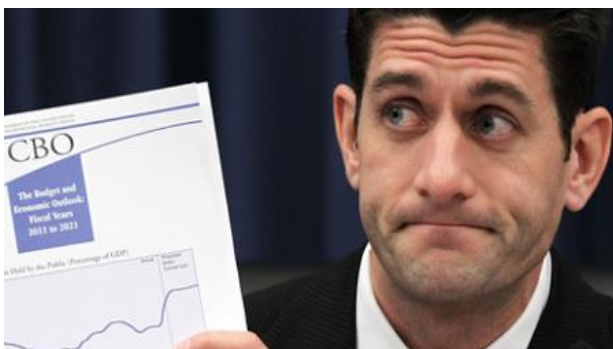
Social Awareness involves a combination of skills and capabilities, including:

- 1) Accurately and promptly identifying emotions in others
- 2) Identifying the cause(s) of emotions in others, and the factors creating the emotion
- 3) Being able to listen to others, and hear what they are really saying
- 4) Having the patience to let others finish talking, both for their sake and to gather as much information as possible
- 5) Being able to carefully observe others
- 6) Being able to tune out distractions which interfere with listening and observing. For example, this includes not talking to ourselves in our head when others speak.

With regard to listening, Social Awareness includes assessing both what others say and how they say it. As stated previously, words are just the start. Emotions are conveyed through vocalization. Judges need to focus on tone of voice, pitch, volume, cadence, pauses, and fillers.

With regard to observing others, judges benefit from paying considerable attention to non-verbal communication and clues. These include facial expressions, gestures, posture, spaces and distances, etc. They often reveal much more than words. And when there is a lack of congruence between words and Body Language, it is always highly significant.

Facial expressions are an excellent source of information. They often reveal what people are feeling about the subject they are talking about. They are also one of the main factors influencing first impressions, which are generally formed extremely rapidly. Facial expressions are particularly illustrative in emotional situations, such as legal disputes or court proceedings.

WHAT IS IN A FACE?	
	<p>Every time we make a facial expression, such as smiling or frowning, we exercise and strengthen specific facial muscles.</p> <p>Over time, our faces develop a structure which reveals the characteristics of our most frequently displayed emotions. In effect, we design and mold our faces with our emotions!</p>
	<p>Other people notice our facial features and draw conclusions, positive and negative. This is done both consciously and subconsciously.</p> <p>Facial features are one of the key factors influencing first impressions.</p> <p>People who are socially aware pick up on facial expressions and characteristics more rapidly, more regularly, and more effectively.</p>



People with naturally downturned mouths most likely have a habit of frowning. They are less likely to be received positively by others.

People with strong natural lines on their foreheads most likely raise their eyebrows to display emotion or think excessively.

Since these facial features develop over time, they become more pronounced with age.

We can learn to be attentive to ingrained facial features, our own and those of others.

Studies indicate that dogs, horses, and even goats are adept at reading human faces, and will more readily approach someone who is smiling.

Much can be learned by paying attention to people's hands. Each hand has 27 bones, meaning that more than one-quarter of the 206 bones in an adult body are located in the hands. The hands are closely connected to the limbic system, and are a center of nerve transmissions. As a result, they reflect and reveal our thoughts and emotions. This happens both intentionally and unconsciously. While certain gestures and hand signals vary according to culture, many are standard. Paying attention to what people do with their hands is a very important element of Social Awareness.

EMOTIONS AND THE HANDS





Other characteristics that reveal important information to judges include posture, demeanor, dress, accessories (briefcases and purses), shoes, jewelry, and even the way that people shake hands!

Many aspects of Social Awareness derive from rules and principles of etiquette and courtesy. There are commonalities across cultures.

What can I do to improve my Emotional Intelligence?

- To Improve your Social Awareness:
 - Greet people by name.
 - Practice reflective listening in your conversations and focus on the other person.
 - Ask open ended questions to create a greater dialog.
 - Look for opportunities to praise someone. Catch them doing something right.
 - Watch body language of others.
 - Be present with whomever you are with. Give them your attention.
 - Pay attention to the EQ of others around you.
 - Use your intuition to sense the social culture around you.

Which of the above skills and capabilities are most important for judges? Clearly, courtesy and observing the appropriate formalities are very important. Listening and observing are also crucial for effective communication. Judges who study counterparts and litigants, regularly evaluate their emotions, and learn to interpret non-verbal communication are practicing key skills relating to Social Awareness. This makes them better communicators.

Situational Awareness is the ability to assess the context in which communication takes place, and determine how it affects the participants and the process. This includes the setting, facilities, ambience, presence of others, noise, distractions, and any circumstances which can have an impact on the senses. Every conversation, meeting, activity, sport, or game takes place within

defined parameters which affect the outcome. The situation affects how the participants feel and how they interact. Therefore, Social Awareness must be combined with Situational Awareness.

Situational Awareness is predicated on the fact that communication is a continuous multi-party process that always takes place within a definite context or milieu. The setting constantly affects this exchange. It is impossible to remove communication from its context, and it is impossible to understand communication without assessing its context. This means that in order to communicate effectively, it is imperative for judges to carefully and constantly consider the immediate surroundings and the general circumstances, as they assess and deal with others.

Situational analysis includes numerous practical and logistical factors. What kind of set-up is there for the meeting room or courtroom, and how are the tables and chairs configured? Where are the people located or sitting? What kinds of chairs do people have? How are the temperature, lighting, and air circulation? Are people hungry or thirsty? Does the set-up create a positive experience? If there is technology involved, how will it affect the communication?

THE SETTING HAS A SIGNIFICANT EFFECT ON THE COMMUNICATION
(Two Examples of People Around a Table)



Context is not purely accidental. It can be influenced, and in many respects even controlled. Situational Awareness combined with strategic insight makes it possible to alter the setting in order to obtain better results. For example, it is possible to change location, invite another person to join the conversation, change the position or orientation of furniture like tables and chairs, change the medium of communication (from phone to in-person, add video to a VOIP call), etc. Much can be achieved by offering a cool beverage on a hot day or a warm beverage on a cold day.

Situational Awareness also enables us to support or gain an advantage over others. When one person selects or controls the context or setting, in their own home, office, or preferred location, they have a distinct advantage. When one person is distracted or bothered by the context and the other is not, this creates a definite disparity.

Many aspects of context in the courts are designed to enhance the stature and authority of judges. For example, placing judges in an elevated position with respect to others automatically gives them more authority. Judges also gain stature by wearing special clothing such as robes, using tools like gavels, having state insignia and emblems nearby, working beside national flags and symbols, etc.

It is important to approach context as a pragmatic issue. Being able to assess and influence the context empowers us to achieve better results in all communication. Judges should carefully consider how the setting affects others, and how they want others to feel. It is not a question of what is right or wrong, but rather how the judge wants others to be set up and to feel in order to move the agenda forward. Therefore, for example, the goal is not to automatically make others more comfortable. For a victim or expert witness, it may indeed be more productive to enhance comfort. But it may be equally appropriate to make a lawyer who talks too much feel less comfortable. Many similar decisions are affected by the need to manage time effectively.

Judges who practice Social Awareness and Situational Awareness and who pay attention to context are much more likely to be able to consistently achieve their communication objectives.

Exercise:

Practicing Social Awareness and Situational Awareness: People watching in the courts

Take a good look at the world around you in the court. We can get so absorbed in our own world that we fail to notice what happens around us, and thereby miss opportunities to learn. Observe the behavior around you. When do people in the court building walk around, where do they go, with whom do they speak, who is friends with whom, what do they eat and drink, how do they arrange their desks and chairs, and what do they put on their desks? Try doing this once per day, for ten minutes, to see what you can learn about others by observing, without engaging them directly.

Exercise:

Practicing Social Awareness and Situational Awareness: People watching in public

Along the same lines as the exercise above, but this time observing strangers in a public location. Parks and bus or train stations are good, airports are excellent. Arrivals halls are the best, since people wait for others in groups. Observe their interactions, movements, positions, posture, eye contact, facial expressions, Body Language etc. What can you tell about people from your observations? Try to be as perceptive as Sherlock Holmes.

Relationship Management is the ability to use Self-Awareness, Self-Management, Social Awareness, and Situational Awareness to improve communication and most strategically and effectively handle interpersonal relationships. It is the culmination and ultimate expression of Emotional Intelligence. It enables judges to most effectively use their own emotions and interpersonal skills to achieve their objectives. It is a highly valuable technique for judges to assess others and take control over a wide range of social interactions. In short, Relationship Management makes judges masters of their communication, and makes them more capable of performing every aspect of their important work.

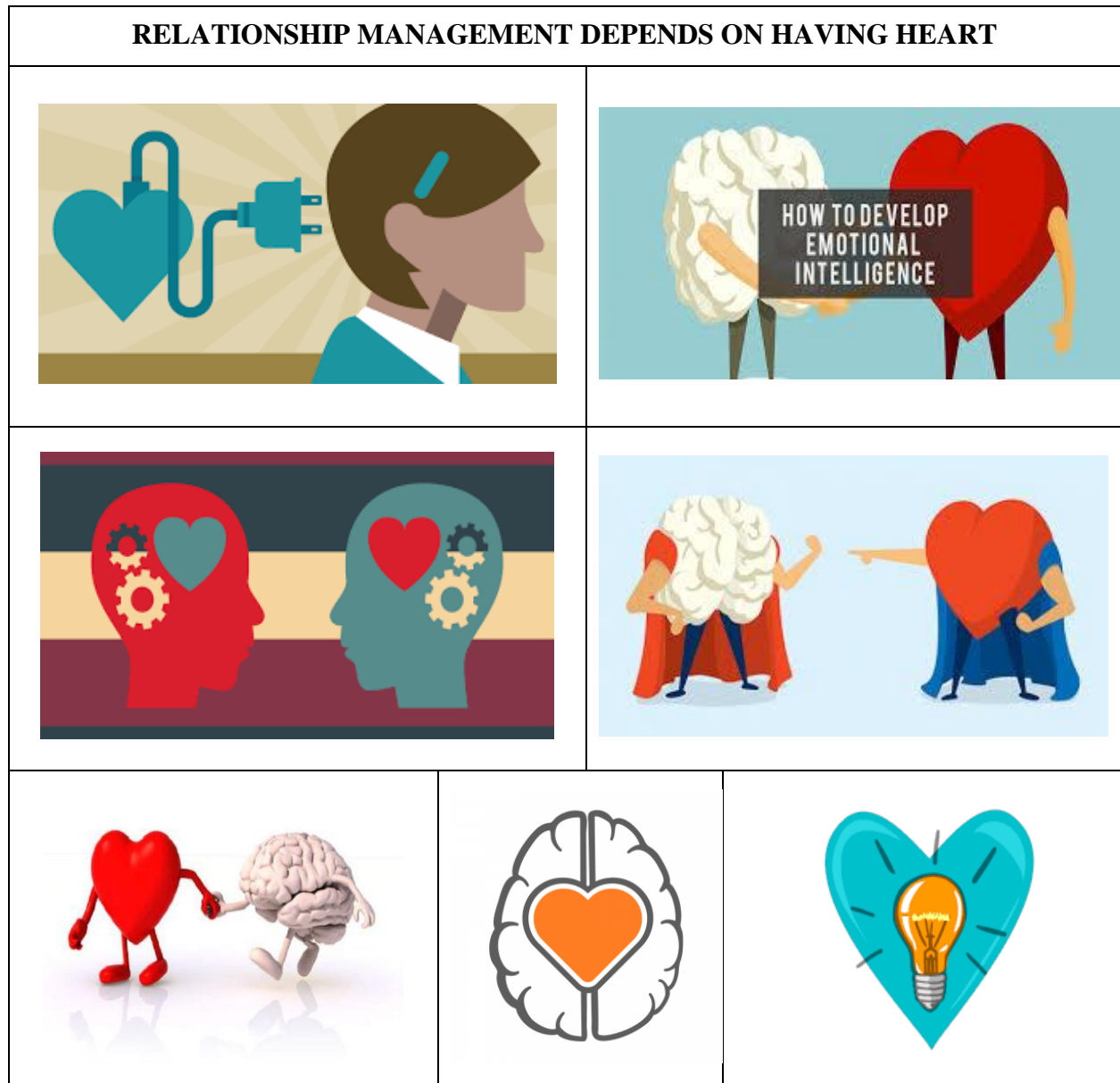
Key elements of Relationship Management for judges include:

- 1) Showing and making others feel the appropriate level of respect that they deserve
- 2) Showing and making others feel the appropriate level of acceptance, empathy, or sympathy for their position or viewpoint
- 3) Communicating to others your ability to put yourself in their shoes, when and as appropriate
- 4) Being able to achieve trust, rapport, cooperation, and deeper connections with others, as appropriate
- 5) Being able to graciously inform and advise others, and getting them to accept information and advice
- 6) Communicating open-mindedness, flexibility, curiosity, approachability, and cordiality, as appropriate
- 7) Demonstrating and making others aware of an appropriate level of concern for their welfare and for the welfare of society
- 8) Managing and defusing conflict and conflictual situations
- 9) Finding win-win scenarios
- 10) Explaining decisions with the appropriate degree of reasoning and detail
- 11) Resisting simple solutions, quick judgments, cliché answers, pro forma approaches, canned speeches, form documents, etc. in favor of a customized approach
- 12) Demonstrating a willingness to tackle important issues at all times
- 13) Being consistent, in all respects
- 14) Ensuring congruence between verbal communication and non-verbal communication, that is to say making sure that words and actions complement each other
- 15) Being able to graciously accept criticism, as appropriate
- 16) Making criticism of others constructive. Being able to turn criticism into encouragement, by pointing out things that can be done better rather than things that have been done wrong.

It should be noted that the phrase “as appropriate” appears regularly in the skills listed above. This is because the extent/degree to which these traits should be exercised depends upon the specific situation and the participants. Relationship Management is not just about regularly demonstrating certain interpersonal skills. It requires knowing how much of each skill is right at a given time. So, for example, being nice or displaying a certain degree of empathy are usually warranted, but exactly how much of these traits a judge should show in a specific situation depends upon a myriad of factors which need to be considered on the spot. This is actually a judgment call, since there is no exact formula. Nonetheless, judges should know the key traits and be able to use them, so that their adaptation to specific circumstances is as appropriate and effective as possible.

Finding win-win scenarios, mentioned in the list above, deserves special attention. Judges are often in a position to handle circumstances so as to develop and offer win-win scenarios. Many times, particularly in the courtroom, there are opportunities to mediate or narrow differences or meet various needs without litigating/disputing every single point. When judges are aware of the emotions of others and their context, and can practice Relationship Management, they are in a better position to carry out this exercise and offer win-win scenarios.

Listening to the heart is a key skill for Emotional Intelligence, and a major element of Relationship Management. After all, Emotional Intelligence means building a connection between intellect and emotion, and being guided both by what the mind thinks and by what the heart feels. Listening to the heart is also an extremely valuable skill for Social Awareness. It enables judges to better understand where others are coming from, and take account of their personal characteristics and situation. The following pictures illustrate the potential relationship between the heart and mind.



Listening to the heart and having heart are closely related to and manifested by empathy, sympathy, and compassion. These three characteristics/emotions are important for judges, especially when used judiciously and in the right circumstances. They can temper judgment and generate wisdom. This makes them potentially useful for judges in many different contexts.

JUDGES AND EMPATHY, SYMPATHY, AND COMPASSION



Empathy, sympathy, and compassion are listed as important personal attributes of judges in Section II. Should application of the law be tempered by these sentiments, as elements of “wisdom”? When judges issue sentences, decide on bail, approve plea bargains, and perform similar functions, they always take a good look at the people in front of them. During mediation, judges need to understand where the parties are coming from, and move them towards compromise. Judges require extra compassion when dealing with victims, minors, and court employees. This does not mean being soft. It means being considerate, and carefully deciding when to be tough.

Relationship Management skills make judges better leaders and managers, and improve their communication with all categories of court employees. Relationship Management skills are particularly valuable for delegation. Judges who delegate and empower co-workers allow them to assume responsibility and develop in an atmosphere of trust and professionalism. And they make co-workers feel valued. Micromanagement is one of the surest ways to generate resentment. Judges who micromanage demonstrate mistrust, and a belief that others lack competence. When dealing with court staff, the amount of authority and autonomy which judges delegate should always be commensurate with the level of professional skills each employee has. When judges treat other people like professionals and make them feel like professionals, they are more likely to do a professional job.


COLLEAGUES WHO FEEL APPRECIATED DO MORE THAN WHAT IS EXPECTED



A PERSON
WHO FEELS
APPRECIATED
IS LIKELY TO DO MORE



Another key management task that benefits from sound Relationship Management skills is making, announcing, and implementing decisions. For purposes of decision-making, Relationship Management skills help judges to establish a sound and respectful process. People will not respect a decision if they do not respect the process which led to it. There should be an appropriate level of inclusive consultation. It should be meaningful, since pro forma consultations simply engender resentment. Counterparts should know what the choices were and how the decision was made. Decisions should be explained when they are announced. This is particularly important when they involve changes to work processes and working conditions. Outside of the courtroom, judges cannot make arbitrary decisions and expect employees and official counterparts to acquiesce. If the process is respectful and meaningfully inclusive, communication and collaboration will be more effective, and implementation will be much smoother.

MANAGING A RELATIONSHIP IS LIKE MANAGING A WORLD	
Each person is like a world.	
Each person is unique, immensely valuable, and irreplaceable.	
Each person has specific knowledge, skills, and experiences which are different from everybody else.	
When judges manage a relationship well, they are managing a world well.	

Here are some key best Relationship Management practices for judges:

- Smile. In many respects, smiles are the single best tool for Relationship Management. Smiles are free, and they are a gift that keeps on giving, because people remember them. Smiles are universal, cross-cultural, and understood everywhere and in every context. As the saying goes: “the shortest distance between two points is a smile”.
- Learn and use names. Practice special techniques for remembering and retaining names. Shakespeare asked “what is in a name?” The simple answer is “Everything”. People usually like to hear their name more than other word or sound. When someone knows and uses our name, it makes us feel important, acknowledged, remembered, etc.
- Use appropriate greetings and salutations. Know how to shake hands, where to stand, how much to touch others, accepted practices for eye contact, etc.
- Be courteous and polite. Simple courtesies and pleasantries go a long way. Frequent use of “please” and “thank you” are a great start for Relationship Management.
- Respect the stages of communication. For example, in many cultures it is considered rude to talk business or raise substantive issues without first going through certain customary phrases or conversation. In some cultures, preliminary conversation should demonstrate personal interest, while in others it should relate to general topics.

- Regularly express and show gratitude. Gratitude is the feedback that keeps others doing positive and constructive things. Gratitude is an excellent investment.
- Always have a sincere complement handy. Sincere compliments open many doors. The size of the complement is not crucial. Sincerity is.
- Pay attention in meetings. Close your email and put away your phone. Listen to the people around you, observe, and learn.
- Keep a repertoire of “back pocket questions” and follow-up ideas. In social settings, if there is a lull in conversation, go to this list to generate further communication. The questions should relate to subjects which are light or of general interest. This precludes controversial topics such as religion and politics.
- Under-react to situations. Never over-react.
- Focus on the possible. Always key in on what you and others can do, not on what you and others cannot do.
- Promote learning. Make every encounter a learning experience, to the maximum extent possible.
- As Confucius said, “do not strive that people should know you, strive to be worth knowing”.

How do Social Awareness and Situational Awareness contribute directly to Relationship Management for judges? Here are some questions to probe this relationship:

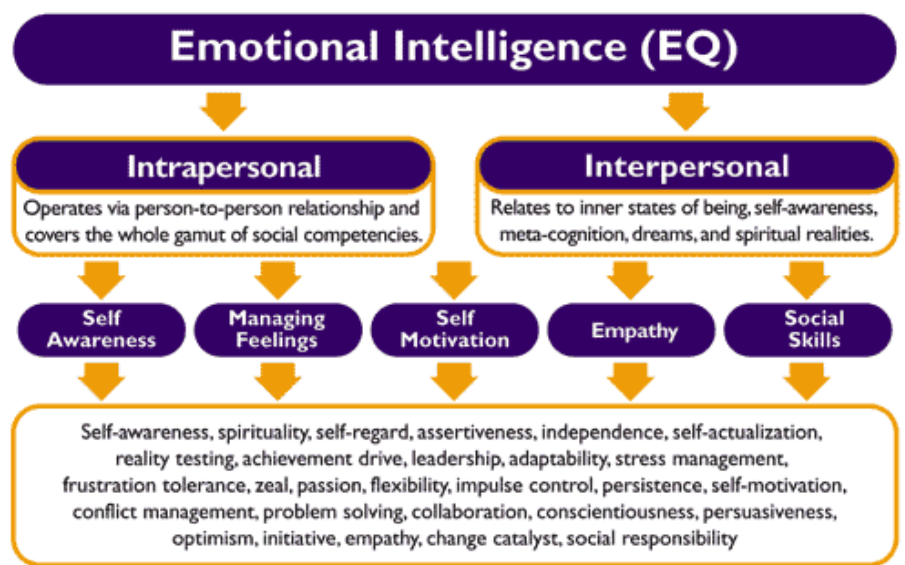
- How important is it for judges to be aware of how others see them? How can judges develop this skill? How can it be used in hearings, meetings, and conflict situations?
- How important is it for judges to select words and interactive techniques which create the impression which they wish to have on specific audiences? How can judges develop this skill? How can judges know when this skill is being effectively applied?
- How can Social Awareness and Situational Awareness be used by judges to build trust?
- How much time do judges spend each day in self-dialogue? Is this ever done when someone else is trying to communicate?
- How much attention should judges pay to explaining their decisions, as opposed to relating them? What effect does this have on others?
- What is empathy, and what role does it play in helping judges to communicate in various court settings?
- How can judges develop the capacity to experience how others are feeling?
- How can judges learn to use empathy, sympathy, and compassion as precursors to giving advice, to make sure that advice overcomes the emotional liabilities of others?

One of the key obstacles to effective communication through Relationship Management is our modern tendency to multi-task, particularly with devices like smart phones. It is difficult to communicate effectively when our attention is divided. Sensitive people feel disrespected or even offended when counterparts do not pay attention. Nonetheless, we rarely devote our full attention to one task or one person at a time.

What is to be done?

- When you meet or dine with others, put away your phone, and insist that others do so as well. Focus on the company and conversation first and foremost. For hundreds of thousands of years meetings have been used for direct communication and eating has been a communal activity. The smart phone has changed that in a decade.
- When you communicate via technology, focus on the other party and listen to what they say. Don't divide your attention between them and your computer or the road in front of you. In fact, using a phone while driving is more than disrespectful, it is unsafe.
- In all situations, try to be present. Don't think about the past (which is gone) or the future (which does not yet exist). Fully experience what is happening now.

THE BENEFITS OF RELATIONSHIP MANAGEMENT AND EMOTIONAL INTELLIGENCE



Finally, remember the key principle concerning the lasting effect of Relationship Management and Emotional Intelligence:

People may not remember exactly what you said, and they may not remember exactly what you did, but they will always remember exactly how you made them feel.

IX. CONCLUSION

Communication skills are crucial for the work of judges. Juridical and legal skills are generally considered the highest priority, and good judges must certainly be sophisticated intellectuals with strong knowledge of the law and the judicial process. However, particularly on the trial (first instance) level, good judges also need to be master communicators.

While some people are naturally better communicators than others, due to personality or upbringing, most communication skills can be practiced and learned. Unfortunately, communication skills are not sufficiently emphasized during legal education and the preparation

of legal professionals. Studying substantive law and procedural law does not in and of itself prepare judges for dealing with all of the diverse counterparts which they interact with on a daily basis. Therefore, judges need to make a focused effort to learn and improve their communication skills, both on the job and through continuing professional formation.

Developing communication skills is a process. This means that there is constant room for improvement, at any age. Every judge can enhance communication skills, and no judge knows or is capable of doing everything.

As part of this continuing process, judges can:

- Systematically study and learn about the communication process
- Master the key elements of communication and the obstacles to effective communication
- Enhance substantive knowledge and practical experience with non-verbal communication (Body Language)
- Constantly learn more about the importance of communication in the judicial setting, including activities such as holding hearings, mediating, organizing meetings, dealing with officials and representatives of other institutions, handling specific counterparts such as lawyers, prosecutors, witnesses, etc.
- Learn to most effectively use communication skills to manage and resolve conflict
- Develop greater appreciation and understanding of the relationship between personality, communication, and conflict resolution
- Practice and constantly improve listening skills
- Recognize the importance of Emotional Intelligence and cognitive behavioral approaches in a variety of settings
- Develop Self-Awareness, Self-Management, and Assertiveness skills
- Develop Social Awareness, Situational Awareness, and Relationship Management Skills
- Expand their repertoire and skill set in order to be the most effective communicator possible

How can all of this be done?

Through a combination of professional development training courses, self-study, reading, practice, consultation, observation of other judges, etc. It can be done on the job and off the job. Many skills are learned through direct observation. For example, paying serious attention to the relationship between verbal communication and non-verbal communication in the judicial setting and at home helps judges to understand others, while review of videos helps them to assess their own Body Language.

Developing communication skills is a challenge, and a constant and lifelong process. But it brings very significant results for judges, in their professional and personal lives.

END