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Introduction

Anthony Sonnett, Ford Motor Company’s trial attorney, had nearly completed his cross-examination of Barry Wilson. After listening to Mr. Wilson describe how he showers, catheterizes, and frequently repositions his paralyzed wife, following an accident in which her Ford Explorer rolled over and fractured her spine, Mr. Sonnett posed his final question to Mr. Wilson: “The silver lining, to the extent that there could be one, it has brought you and Benetta [Mrs. Wilson] and the family closer together?” Mr. Wilson responded: “I think where we were together before, we are together after. I don’t think it’s done more for us. I think it’s – I don’t think it’s a benefit or a plus in any way. I am sorry, I don’t think I can see it that way.”¹

The jury returned a verdict against Ford for \$4.6 million in economic losses, \$105 million in noneconomic losses, and \$246 million in punitive damages. Reviewing the verdict on appeal, the California Court of Appeal honed in on Mr. Sonnett’s “silver lining question” and noted, “This question implied that the family should find a silver lining in what befell Mrs. Wilson. It may very well have been viewed as callous by the jury and might explain, in some manner, the actions of the jury in rendering a verdict so out of line with the amounts requested by the Wilsons’ own counsel.” The question, the court stated, “might well have inflamed the passions of the jury.” Concluding that the award against Ford was excessive, the court reduced the noneconomic damages award to \$18 million and lowered the punitive damages award to \$55 million.

¹ *Benetta Buell–Wilson, et al., Plaintiffs and Respondents v. Ford Motor Company et al., Defendants and Appellants*. Nos. D045154, D045579. Court of Appeal, Fourth District (San Diego), Division 1, California. March 10, 2008. As Modified on Denial of Rehearing April 10, 2008. Review Granted July 9, 2008. Review Dismissed, Cause Remanded April 22, 2009. Liptak, Adam. (2007, February 19). When lawyers and juries mete out punishment. *The New York Times*.

The silver lining question, according to Adam Liptak, the Supreme Court correspondent of *The New York Times*, “was a legal classic that has echoed through the appeal of the case.” “The Wilsons’ case,” he opines, “suggests that a lot can turn on little things, including flat-footed lawyers and stupid questions.”²

Attorneys can argue endlessly about the appropriateness and impact of the silver lining question. That argument obscures the fact that judgment calls like the silver lining question permeate a lawyer’s daily existence and are not resolvable by statutes, rules, regulations, appellate court opinions, or practice guides. These judgment calls are invariably subjective and inherently dangerous; they tend to be more personal than rule-based, more intuitive than empirical. They require a broader set of skills than technical legal knowledge and analysis and necessarily implicate “soft skills” like sensitivity, discernment, empathy, perspective-taking, and foresight.

In making these judgment calls, whether cross-examining a witness or negotiating contract terms, attorneys rely heavily on their personal experiences and their sense for people. They ask themselves imponderable questions: How am I coming across to everyone else in this room? Do they trust me? What do they expect of me? Have I realistically assessed this challenge? Am I adequately prepared? Is my sense of what is happening here affected by how I feel about something else today? What will I do if I fail here? This book is about these types of questions – how we pick the questions to ask ourselves about ourselves, how accurately we answer them, and how we can improve the soft skills that are ignored in educational testing but turn out to be dispositive in life.

Attorneys’ careers pivot on their soft skills. These seemingly intangible qualities enable us to understand, motivate, and direct ourselves and recognize, respect, accommodate, and adapt to the needs, values, and feelings of other people. Attorneys who progress to leadership positions rely on soft skills to perceive, assess, and replicate the circumstances in which people feel safe and inspired to collaborate with colleagues, experiment with potentially better methods and techniques to complete their assignments, express and realize evolving aspirations, and assume new responsibilities. Although legal education emphasizes technical skills like research, writing, analysis, advocacy, and substantive legal knowledge, it is the soft skills that most frequently distinguish an exceptional attorney from an ordinary attorney. As Lynne Hermle, a leading employment law attorney and partner at Orrick, Herrington & Sutcliffe, explains, “How you connect with people, win people

² Liptak, *supra* note 1.

over, despite their suspicions about you, how clients learn to like and trust you, all of those things are much more important than law school will ever tell.”³

Despite the evidence consistently demonstrating that soft skills predominate over technical skills, many attorneys disparage and neglect soft skills. Surveys of clients and their attorneys and large-scale assessments of attorney personality indicate that the very concept of attorney soft skills strikes some as oxymoronic, like putting obligate carnivores on a vegetarian diet. Consequently, and much to the chagrin of people who work or live with attorneys, attorney soft skills are often ignored or underdeveloped. As law professor Deborah Rhode observes, “Lawyers lacking in ‘soft skills’ tend to devalue their importance rather than address their absence.”⁴

The purpose of this book is to correct attorneys’ deficiencies in soft skills. It aims to enhance attorney performance through the key soft skills of self-awareness, self-development, social proficiency, leadership, wisdom, and professionalism.⁵ By emphasizing those soft skills, the book provides both a map and a vehicle for developing the skills essential to self-knowledge and fulfillment, organizational respect and accomplishment, client satisfaction and appreciation, and professional improvement and distinction.

This first chapter introduces many general concepts that facilitate the development of soft skills, and it answers five threshold questions:

1. What are soft skills?
2. What is the difference between soft skills and “emotional intelligence?”
3. Are soft skills important?
4. Do highly intelligent people need soft skills?
5. Can soft skills be learned?

The chapter concludes by describing the organization and previewing the themes of this book.

³ Broderick, Pat. (2011, May 11). Lynne Hermle. *San Francisco Daily Journal* [Special Edition, Daily Journal Supplement, Top Women Litigators], p. 7.

⁴ Rhode, Deborah. (2013). *Lawyers as leaders* (p. 5). New York: Oxford University Press.

⁵ The chapter sequence is generally consistent with, but not intended to replicate, Hogan and Warrenfeltz’s “domain model” with four categories of skills that, at least conceptually, build upon each other: intrapersonal skills (self-awareness, self-esteem, resiliency, and self-control); interpersonal skills (perspective-taking, empathy, and anticipating others’ actions); leadership skills (recruiting, retaining, and motivating a team, persistence and promoting a vision); and work skills (planning, organizing, coordinating, innovating, compiling, and selecting). Hogan, R., & Warrenfeltz, W. (2003). Educating the modern manager. *Academy of Management Learning and Education*, 2, 74–84.

WHAT ARE SOFT SKILLS?

In a general sense, soft skills are to hard skills as software is to hardware. Software is an intangible product that enables us to accomplish a specific task, while hardware is a tangible device that enables the software to operate. Software and hardware are interdependent; software is virtually useless without hardware, and hardware can only perform basic functions without software.

Soft skills and hard skills, like software and hardware, are interdependent and often viewed as intangible and tangible. Soft skills include subjective abilities, traits, and habits like empathy, communication, resilience, leadership, and self-development, while hard skills include more fact-based capabilities like technical proficiency, accounting, subject matter knowledge, and quantitative assessment.⁶

Exceptional performers in most organizations recognize the necessity of developing both soft and hard skills. They deftly integrate these dual capabilities in providing products and services to clients, embodying the values, standards, and principles of their disciplines, and leading their organizations by example, ideals, and determination. Exceptional performers tend to be “bimodal,” toggling easily and rapidly between areas of the brain associated with planning and logical reasoning and areas involved in social and emotional thinking.⁷ “While being technically proficient at one’s craft is essential for both professionals and organizations,” explains Christina Martini, Chair of the Chicago Intellectual Property Practice Group at DLA Piper, “it is no longer enough.”⁸

In the legal profession, the characteristics commonly associated with soft skills include “intrapersonal and interpersonal competencies such as practical problem solving, stress management, self-confidence, initiative, optimism, interpersonal communication, the ability to convey empathy to another, the ability to see a situation from another’s perspective, teamwork, collaboration, client relations,

⁶ The difference between soft skills and hard skills, notes Nassim Nicholas Taleb, can be viewed as the difference between “know-how” and “know-what” or “techné” (craft) and “episteme” (knowledge, science). Know-what, he notes, is “more prone to nerdification.” Another distinction is made between tacit and formal knowledge. Taleb states that “thinkers of the Austrian school, to which [Friedrich] Hayek belonged, used the designations *tacit* or *implicit* precisely for that part of knowledge that cannot be written down, but that we should avoid repressing.” Taleb, Nassim Nicholas. (2006). *The black swan* (p. 182). New York: Random House.

⁷ Blackman, Andrew. (2014, April 27). The inner workings of the executive brain. *The Wall Street Journal*.

⁸ Martini, Christina. (2011, March 22). Emotional intelligence: Driving success in today’s business environment. *Intellectual Property and Technology News*. Retrieved from www.dlapiper.com/en/us/insights/publications/2011/03/emotional-intelligence-driving-success-in-todays_/.

business development, and the like.”⁹ Hard skills, in contradistinction, tend to be associated with traditional proficiencies emphasized in law school: “legal research and writing, legal analysis, oral and written advocacy, knowledge of substantive law and doctrine, as well as the ability to marshal and summarize facts, apply rules of law to facts, reach and articulate legal conclusions, brief cases, and distinguish cases.”¹⁰ Again, we see that soft skills and hard skills are interdependent. An attorney’s soft skills in communication and problem solving are virtually useless without the substantive legal knowledge necessary to competently provide legal services; and an attorney’s hard skills in knowing the governing statutes and regulations are nearly worthless without the ability to communicate that knowledge to a client and use that knowledge for effective problem solving.

It is often difficult to distinguish soft skills from hard skills because both terms are imprecise and no consensus exists regarding their categorization.¹¹ Reflecting the widespread frustration with the imprecision of “soft skills,” education writer Anya Kamenetz finds that employers “commonly use ‘soft skills’ to include anything from being able to write a letter, to showing up on time and having a firm handshake.”¹² To develop a clearer conceptual sense of soft skills and hard skills, we may benefit from visualizing them on a spectrum of traits and capabilities rather than struggling to fit them into discrete categories. Table 1.1 shows how we would place soft skills on six spectrums for different types of intelligence, knowledge, and abilities. These six spectrums are practical intelligence–analytical intelligence; procedural knowledge–declarative knowledge; tacit knowledge–explicit knowledge;

⁹ Daicoff, Susan. (2015). Teaching relational skills: The evidence. In Maranville, Deborah, Bliss, Lisa Radtke, Kaas, Carolyn Wilkes, & Lopez, Antoinette Sedillo (Eds.). *Building on best practices: Transforming legal education in a changing world* (p. 316). New Providence, New Jersey: LexisNexis.

¹⁰ Ibid.

¹¹ Heckman, James J., & Rubinstein, Yona. (2001). The importance of noncognitive skills: Lessons from the GED testing program. *The American Economic Review*, 91(2), 145–149. Heckman, James, Stixrud, Jora, & Urzua, Sergio. (2006). The effects of cognitive and non-cognitive abilities on labor market outcomes and social behavior. *Journal of Labor Economics*, 24(3), 411–482. See Garcia, Emma. (2014, December 2). *The need to address noncognitive skills in the education policy agenda* [Briefing paper #386]. Washington, DC: Economic Policy Institute. (“To our knowledge, however, such a list does not yet exist, and indeed, this can represent one major challenge to moving this field forward. The lack of such a classification delays the development of metrics to measure and assess skills, and the design of strategies to nurture them. Additionally, crafting such a list likely engenders controversy, in terms of which skills belong on the list, and how we can know this in the absence of proper metrics.”)

¹² Kamenetz, Anya. (2015, May 28). Nonacademic skills are key to success: But what should we call them? *NPR Higher Ed*. Retrieved from www.npr.org/sections/ed/2015/05/28/404684712/non-academic-skills-are-key-to-success-but-what-should-we-call-them.

TABLE 1.1. *Soft skills, hard skills, and their relation to types of intelligence, knowledge, abilities, and competencies*

Soft Skills		Hard Skills
Practical Intelligence <i>Ability to apply knowledge to “real-world” problems</i>	–	Analytical Intelligence <i>Ability to solve test problems</i>
Procedural Knowledge <i>Knowledge of procedures and strategies; knowing “how”</i>	–	Declarative Knowledge <i>Knowledge of facts, principles, and laws; knowing “that”</i>
Tacit Knowledge <i>Ability to accomplish tasks</i>	–	Explicit Knowledge <i>Knowing facts and rules</i>
Fluid Intelligence <i>Ability to reason, solve problems, manipulate concepts, theories, and abstractions</i>	–	Crystallized Intelligence <i>Knowledge of facts, memory, and retrieval of data and events</i>
Noncognitive Abilities <i>Critical thinking, problem-solving skills</i>	–	Cognitive Abilities <i>Arithmetic reasoning, paragraph comprehension, mathematical knowledge</i>
Behavioral Competencies <i>Leadership, teamwork, and communication-related competencies</i>	–	Technical Competencies <i>Occupation or industry-specific behaviors, skills, and knowledge</i>

fluid intelligence–crystallized intelligence; noncognitive abilities–cognitive abilities; and behavioral competencies–technical competences.¹³

Psychologist Robert Sternberg illuminates the extreme points on these spectrums as he describes the differences between analytical intelligence (hard skills alignment) and practical intelligence (soft skills alignment). “Analytical intelligence,” he states, “can loosely be translated as IQ; it emphasizes the ability to solve test problems.” Practical intelligence, on the other

¹³ Sternberg, Robert. (2003). *Wisdom, intelligence, and creativity synthesized*. New York: Cambridge University Press. Heilman, Kenneth. *Creativity and the brain*. Hove, United Kingdom: Psychology Press. Simonton, Dean. (2009). *Genius 101*. New York City: Springer Publishing Company. Ericsson, K. Anders, & Charness, Neil. (2006). *Cambridge handbook of expertise and expert performance*. New York: Cambridge University Press. Page, Scott. (2008). *The difference*. Princeton, New Jersey: Princeton University Press. Klein, Gary. (2009). *Streetlights and shadows*. Cambridge, Massachusetts: MIT Press. Heckman, & Rubinstein, *supra* note 11. Heckman, Stixrud, & Urzua, *supra* note 11. Berman, Lori, & Bock, Heather. (2012). Developing attorneys for the future: What can we learn from the fast trackers? *Santa Clara Law Review* 52, 875. Baumeister Roy F., Schmeichel, Brandon J., & Vohs, Kathleen D. (2007). Self-regulation and the executive function: The self as controlling agent. In Kruglanski, A. W., & Higgins, E.T. *Social psychology: Handbook of basic principles* (2nd ed.) (pp. 516–539). New York: Guilford.

What Is the Difference between Soft Skills and “Emotional Intelligence”? 7

hand, “captures a person’s ability to apply scholarly knowledge to real-world situations.” As an example,

a person of high practical intelligence can apply her tools when confronted with how much wood to buy to build a deck, but may perform poorly on a math problem. A person with low practical intelligence may be able to solve calculus problems for the area under a graph and then buy five times as much paint as needed when redecorating a room. These two people may marry. If so, all will be fine.¹⁴

Although we would like to think of ourselves as possessing both soft skills and hard skills, research indicates that this cognitive dream team is less common than we may assume. A negative correlation exists between tacit knowledge and crystallized intelligence, for instance,¹⁵ and “general intelligence and practical intelligence are orthogonal: the presence of one doesn’t imply the presence of the other.”¹⁶ As Malcolm Gladwell, the author of the best-selling book *Outliers*, notes, “You can have lots of analytical intelligence and very little practical intelligence or lots of practical intelligence and not much analytical intelligence.”¹⁷

WHAT IS THE DIFFERENCE BETWEEN SOFT SKILLS AND
“EMOTIONAL INTELLIGENCE”?

In everyday conversations, we often use the terms “soft skills” and “emotional intelligence” interchangeably. This mashing of the two concepts, however, obscures their distinct meanings, functions, and applications. Since this book emphasizes both emotional intelligence and soft skills, let’s make sure we understand how emotional intelligence is defined and how it differs from the broader category of soft skills.

Daniel Goleman popularized the term “emotional intelligence” in his book of the same name, published in 1995. In that book, Goleman asserts that personal success is more strongly determined by emotional intelligence than IQ.¹⁸ He defines emotional intelligence as consisting of five basic emotional and social competencies: (1) self-awareness (recognizing moods, emotions, and drives; using emotions to guide decision making; and realistically assessing abilities and confidence levels); (2) self-regulation (handling emotions to facilitate task performance; delaying gratification and redirecting impulses to achieve goals; being conscientious; and recovering from

¹⁴ Page, *supra* note 13. ¹⁵ Sternberg, *supra* note 13 at 58.

¹⁶ Gladwell, Malcolm. (2008). *Outliers* (p. 101). Boston, Massachusetts: Little, Brown & Company.

¹⁷ *Ibid.*

¹⁸ Goleman, Daniel. (1995). *Emotional intelligence* (pp. 35–36). New York: Bantam Books.

emotional distress); (3) motivation (taking initiative; striving to improve; persevering through setbacks; and understanding preferences to move toward goals); (4) empathy (sensing other people's feelings; understanding others' perspectives; and establishing rapport with people); and (5) social skills (accurately reading social situations; interacting smoothly with other people; handling emotions in relationships; and using social skills to persuade, lead, negotiate, and resolve conflict).¹⁹

Psychologists John Mayer and Peter Salovey, whose research deeply influenced Goleman, present a roughly similar definition of emotional intelligence: "Emotional intelligence is the ability to perceive emotions, to access and generate emotions so as to assist thought, to understand emotions and emotional knowledge, and to reflectively regulate emotions so as to promote emotional and intellectual growth."²⁰ Mayer and Salovey regard emotional intelligence as a component of social intelligence, enabling us to "monitor one's own and other's feelings and emotions, to discriminate among them, and to use this information to guide one's thinking and actions."²¹

Emotional intelligence, not surprisingly, is centered on emotions and does not encompass the broader set of capabilities that we call soft skills. Emotional intelligence may be regarded as a subset of soft skills, but it is not a surrogate for them. Soft skills, as we saw earlier, include self-development, initiative, decision making, project management, professionalism, and other traits and habits that may be enhanced but are not circumscribed by emotional intelligence. Many of the critical soft skills and competencies discussed in this book lie outside the ambit of emotional intelligence: creativity, foresight, expertise, accountability, open-mindedness, problem solving, professionalism, innovation, strategic planning, and courage, to name just a few.

ARE SOFT SKILLS IMPORTANT?

In 1992, "technical mastery" was identified as the most important competency in a survey of business, government, education, and nonprofit leaders.²² Twenty

¹⁹ Ibid. at 43. Goleman, Daniel. (1998). *Working with emotional intelligence* (p. 318). New York: Bantam Dell. Goleman, Daniel. (2004, January). What makes a leader. *Harvard Business Review*.

²⁰ Mayer, J. D., & Salovey, P. (1997). What is emotional intelligence? In Salovey, P., & Sluyter, D. J. (Eds.). *Emotional development and emotional intelligence: Educational implications* (p. 5). New York: Harper Collins.

²¹ Salovey, P., & Mayer, J.D. (1990). Emotional intelligence. *Imagination, Cognition and Personality*, 9, 185, 189.

²² Van Velsor, Ellen, & Wright, Joel. (2012, October). *Expanding the leadership equation: Developing next generation leaders* (p. 4). Greensboro, North Carolina: Center for Creative Leadership.

years later, when the survey was administered again in 2012, technical mastery was no longer among the five most important competencies, having been displaced by these soft skills: self-motivation/discipline, effective communication, learning ability, self-awareness, and adaptability/versatility.²³ When asked to identify the competencies that will be most important “ten years from now,” the leaders again identified soft skills: adaptability/versatility, effective communication, learning agility, multicultural awareness, self-motivation/discipline, and collaboration.²⁴

The priority currently placed on soft skills is supported by extensive research demonstrating that soft skills may be more important than hard skills in achieving professional success.²⁵ Daniel Goleman, in his comprehensive analysis of the relative importance of intelligence, technical skills, and emotional intelligence, found that “emotional intelligence proved to be twice as important as the others for jobs at all levels.”²⁶ Emotional intelligence, moreover, “played an increasingly important role at the highest levels of the company.”²⁷ As individuals assumed greater responsibilities within a company, the importance of soft skills increased, as Goleman explains: “When I compared star performers with average ones in senior leadership positions, nearly 90% of the difference in their profiles was attributable to emotional intelligence factors rather than cognitive abilities.”²⁸

Other studies suggest that emotional intelligence may play a significant but smaller role than Goleman found, accounting for 30–60 percent of occupational performance.²⁹ But, consistent with Goleman’s research, the other

²³ Ibid. ²⁴ Ibid.

²⁵ See McClelland, David C. (1973, January). Testing for competence rather than for intelligence. *American Psychologist*, 28, 1. McClelland, David C. (1998, September). Identifying competencies with behavioral-event interviews. *Psychological Science*, 9(5), 331. Bradberry, Travis, & Greaves, Jean. (2009). *Emotional intelligence 2.0*. San Diego, California: TalentSmart. Gladwell, Malcolm. (2002, July 22). The talent myth. *The New Yorker*. Goleman, Daniel. (2013, December). The focused leader. *Harvard Business Review*. Goleman (1998), *supra* note 19.

²⁶ Goleman (2004), *supra* note 19. ²⁷ Ibid. ²⁸ Ibid.

²⁹ O’Boyle, Ernest, Humphrey, Ronald, Pollack, Jeffrey, Hawver, Thomas, & Story, Paul. (2011). The relation between emotional intelligence and job performance: A meta-analysis. *Journal of Organizational Behavior*, 32, 788–818. Bharwaney, G., Bar-On, R., & MacKinlay, A. (2007). *EQ and the bottom line: Emotional intelligence increases individual occupational performance, leadership and organizational productivity*. Bedfordshire, United Kingdom: Ei World Ltd. Bradberry & Greaves, *supra* note 25. Neels, Gretchen. (2009). The EQ difference. *Legal Management*, 28(2), 44, 46. Murphy, Mark. 2011. *Hiring for attitude*. New York: McGraw-Hill Education. Lynn, Adele B. (2008). *The EQ interview: Finding employees with high emotional intelligence*. New York: AMACOM.

studies also document a major increase in the effect of emotional intelligence when leadership abilities are evaluated separately from general occupational performance. In these other studies, emotional intelligence appears to account, on average, for 67 percent of leadership performance, somewhat less than Goleman's attribution of 90 percent.³⁰

Concordant with this research regarding the relative importance of emotional intelligence, numerous studies find that soft skills like character, grit, perseverance, drive, and energy exert a remarkably powerful effect on personal achievement and financial performance.³¹ Summarizing her extensive studies and related studies of grit and correlated character strengths like self-control and optimism, psychology professor Angela Duckworth states that “in every field grit may be as essential as talent to high accomplishment.”³² Her research corroborates earlier research demonstrating that “drive and energy in childhood are more predictive of success, if not creativity, than is IQ or some other more domain-specific ability.”³³ Applying these concepts in a practical, business context, Gary Smith, president and chief executive officer of Ciena, an international broadband and telecommunications company, comments, “I think a lot of people pay attention to the technical stuff and the hard stuff about whatever discipline they're in. But it's the softer side that will get you every time if you're not paying attention to it. It's probably the biggest determinant of whether you're going to be successful.”³⁴

Soft skills are no longer regarded as incidental attributes of successful people; soft skills have been proven to be essential for nearly all successful executives and professionals. Studies demonstrate that people who score high in assessments of their soft skills earn more income and generate more profits

³⁰ Bharwaney, Bar-On, & MacKinlay, *supra* note 29.

³¹ Kaplan, Steven N., Klebanov, Mark M., & Sorensen, Morten. (2012, June). Which CEO characteristics, and abilities matter? *The Journal Of Finance*, 67(3), 973–1007. Hogan, Joyce, Hogan, Robert, & Kaiser, Robert B. (2011). Management derailment: Personality assessment and mitigation. In Zedeck, Sheldon (Ed.). *APA handbook of industrial and organizational psychology* (Vol. III) (pp. 555–575). Washington, DC: American Psychological Association. Deming, David. (2015). *The growing importance of social skills in the labor market* [NBER Working Paper No. 21473]. National Bureau of Economic Research. Chamorro-Premuzic, T., & Furnham, A. (2003). Personality traits and academic exam performance. *European Journal of Personality*, 17, 237–250.

³² Duckworth, Angela L. (2007). Grit: Perseverance and passion for long-term goals. *Journal of Personality and Social Psychology*, 92(6), 1100. See Duckworth, Angela L. (2016). *Grit*. New York: Scribner.

³³ Winner, Ellen. (1997). *Gifted children: Myths and realities* (p. 293). New York: Basic Books.

³⁴ Bryant, Adam. (2015, October 3). Gary Smith of Ciena: Build a culture on trust and respect. *The New York Times*.