



### Are Bullying Lawyers Psychopaths?

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**W**hat causes some lawyers to bully? Do bullying lawyers have a psychological disorder that feeds mean behavior?

According to Oxford University's Professor Kevin Dutton, whose work I'll discuss more in a minute, the legal profession has the second largest percentage of psychopaths, trailing only corporate CEOs. Is there something about our profession that attracts psychopaths? This month I will discuss the relationship between bullies, psychopaths, and lawyers. As shocking as it may initially sound to you, a lot of lawyers possess many attributes of a psychopath — and this can actually be a good thing.

Over the last several decades, the definition of psychopath has evolved. In *The Mask of Sanity* (1941), Hervey Cleckly pointed out that among psychiatric patients at the Veterans Administration in Georgia, some appeared confident, friendly, and well-adjusted. Cleckly laid the modern framework for describing, assessing, and thinking about psychopaths.

*The Mask of Sanity* went through several editions, including the important fifth edition in 1976. Cleckly outlined 16 behavior characteristics of a psychopath. In 1980 the American Psychiatric Association, building on Cleckly's work, revised their diagnostic manual to include this definition of the disorder:

Individuals [with it] are arrogant and self-centered, and feel

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privileged and entitled. They have a grandiose, exaggerated sense of self-importance and they are primarily motivated by self-serving goals. They seek power over others and will manipulate, exploit, deceive, con, or otherwise take advantage of others, in order to inflict harm or to achieve their goals. They are callous and have little empathy for others' needs or feelings unless they coincide with their own. They show disregard for the rights, property, or safety of others and experience little or no remorse or guilt if they cause any harm or injury to others. They may act aggressively or sadistically toward others in pursuit of their personal agendas and appear to derive pleasure or satisfaction from humiliating, demeaning dominating, or hurting others. They also have the capacity for superficial charm and ingratiation when it suits their purposes. They profess and demonstrate minimal investment in conventional moral princi-

ples and they tend to disavow responsibility for their actions and to blame others for their own failures and shortcomings.

Does this describe some of the lawyer bullies you've encountered?

Psychopaths lack empathy and an inner police officer. Their brain scans show little or no response to grotesque images, nor are they revulsed by rotten smells. Males outnumber female psychopaths by roughly 20 to 1. As to what causes psychopathy, psychologists are divided on whether psychopaths are born or made. Those who believe psychopaths are products of their environment point to the high percentage of psychopaths who have endured childhood abuse. The nature proponents point to psychopathy running in families.

Psychopaths give clinical psychiatrists fits: no treatment is particularly effective. In this age of medication, no pill has been devised to cause empathy. Psychotherapy is usually not effective because the psychopath will almost never concede anything is wrong. Punishment does not deter psychopaths because they do not rec-

ognize that their behavior requires modification. Although prison may protect the public from the criminal psychopath, it does almost nothing to rehabilitate.

Our profession is not riddled with full-blown, sometimes violent, dangerous psychopaths. Your idea of a psychopath might include Anthony Hopkins's portrayal of Hannibal Lecter in *Silence of the Lambs*. However, there is no simple definitive test to determine whether a person is a psychopath. The diagnosis requires clinical judgment. Like autism, however, psychopathy is now viewed along a spectrum.

Recently a newer category has arisen in discussing this spectrum: the "functional" psychopath. In *The Wisdom of Psychopaths* (2012), Professor Dutton contends that functional psychopaths possess many of the attributes that fuel success for the CEO or lawyer: coolness under pressure, fierce determination, supreme self-confidence, and social charm. Dutton points out that some leaders, like Presidents John F. Kennedy and Bill Clinton, exhibited distinctive psychopathic traits. For Dutton, functional psychopaths are not a social negative but a social positive.

If Dutton is right and many of us — to different degrees — possess the socially beneficial attributes of the psychopath, it may have a profound effect on how we approach the lawyer bully. When facing the machinations of a bully, we might mistakenly use techniques that would only change the behavior of those who are not on the spectrum: a give-and-take discussion; information about consequences; and verbal disapproval. Psychopaths are not embarrassed; they have no shame. A lawyer on the receiving end of psychopathic bullying is wasting time when trying to appeal to the perpetrator's non-existent sense of empathy. You can't reason with a psychopath either. While most of us would

lose sleep if we got a letter from bar counsel, a psychopath dismisses it as an inconvenience caused by those who just don't get it.

Civility seminars don't reform a functional psychopath. It's useless to beg them to be nice. Instead, we must show them how cooperation will be rewarded — and better yet, convince them that it was their idea.

Over the years I've seen wonderful lawyers who are effective problem-solving collaborators. I've also encountered brilliant, hard-charging, uncompromising trial attorneys. The former are often driven from the profession by the latter. Like the rare pitcher who can also hit home runs, effective collaborators who also win landmark verdicts are few and far between. Instinctive collaborators experience professional frustration when they are sent into trial with gladiators. It may make sense, early in our careers, to assess if one style is clearly a good fit for our particular makeup.

Collaborators might not make the best criminal trial defenders. Our system correctly demands that a defender, when appropriate, convincingly look the jury in the eye and explain how the prosecutor failed to prove guilt beyond a reasonable doubt — even when the client has confessed confidentially. A collaborator might be unnerved by graphic autopsy photos which a functional psychopath could take in stride. Similarly, when I'm on the operating

table getting a nasty tumor removed from my frontal cortex, I don't care about my surgeon's bedside manner and welcome the confident steady-handed functional psychopath. I'll go elsewhere for the post-op hug.

Perhaps lawyer bullies fall into two camps. The first type scores high on the psychopathic spectrum. The second is on the other end of the spectrum and is saddled by fear. The fear-based bully, unlike the psychopath, lacks self-confidence and sometimes, in an effort to compensate, comes on too strong. Unlike the psychopath, the fear-based bully feels terrible when called out for inappropriate behavior. Unlike the psychopath, the threat of appropriate consequences for a fear-based bully is extremely persuasive — the remorse is genuine.

I've seen this dichotomy in the attorney disciplinary cases that have come before me in my role as Commissioner over the last two years. Some lawyers apologetically bend over backwards to acknowledge a misdeed and make it right. Others approach the disciplinary process as a misguided assault on their supreme vision for justice.

Next month I'll delve deeper into how to deal with bullying lawyers. The good news is that not every lawyer you tussle with is a dangerous psychopath. In the meantime, beware of the super-confident bullying lawyer void of empathy. The stick won't help — use the carrot instead.

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