

### Confessions of a Recovering Bully

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**P**racticing law is difficult, but bullies can make it impossible. Bullies drive good people from our profession and are a big reason many people dislike lawyers. I should know — I'm a recovering bully myself.

I have spent a lot of time thinking about bullies and why they act the way they do. I find that bullies are rigid and unwilling to compromise. It's not that they can't understand the needs of others. In fact, bullies are often keenly aware of the needs of others but will go out of their way not to meet them. Bullies run over the top of people. Bullies engage in unnecessary but exasperating power struggles over routine matters. For a bully, compromise is a sign of weakness. But why? What happens along the way to create a bully? Or, are some lawyers born bullies? Can bullies be tamed — or at least contained? To answer these questions I must first share my own story as a bully.



I started out as a criminal defense lawyer. I often felt powerless. It seemed like the law, prosecutors, police officers, and judges were biased against my client. I took this personally. I thought I was the only one who

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understood due process, freedom, and the voice of the powerless. When a prosecutor tried to unilaterally dictate a plea bargain, I concluded that this lawyer was purposefully trying to humiliate my client — and me. I reacted as a bully. For example, when I had the next opportunity, I forced that same prosecutor to put in extra effort jumping through the proof hoops for something ultimately unimportant — even though it caused a police officer to miss a shift on the beat. I justified my conduct as being tough, but it was actually abusive.

I stewed and became self-righteous. I thought my adversaries were institutionally dealt a superior litigation hand and I was impotent to do anything about it. I underestimated my own power. Occasionally I was dealt an ace in the hole. Unfortunately, I lacked the insight to play the card any way differently than the

adversaries I disliked the most. Emotionally I knew it was wrong, but I was stuck: if I was doing God's work, my opponent must be the Devil, right? I resented a few zealous prosecutors so much I mirrored their despotism. It made me miserable. I was trapped.

So, as a backdrop to my own bullying, a common thread was my own insecurity, anger and fear. I hated losing — perhaps more than I enjoyed winning. I found I had a mean streak. I was doing all the wrong things to become the lawyer I wanted to be. Fear and anger did, however, have their upsides: they motivated me to work hard. I found myself winning cases. Courtroom victories, however, did not often bring the joy I expected. They seemed shallow.

As my professional journey progressed, I concluded that sometimes the deck was indeed institutionally stacked against my clients. I slowly

let go of my anger at injustice so it would not consume me. I gradually learned to resist my first impulse to get even with those who I feel have wronged me or my client. I've concluded you can never get even. It's not worth trying. I vowed to not become what I disliked. Over time I found the practice of law with this approach infinitely more rewarding. This is why I decided to share my experience with you. I do not think my struggle with my inner bully is unique. I hope to help others find their voice for justice more quickly than I did. While age itself will often temper the zeal of youth, not all bully lawyers mellow with time. Over and over I witness (and read bar disciplinary reports about) tyrannical lawyers. They try to justify their selfishness by claiming they are just vigorously discharging legitimate obligations. Instead, they are causing people to dislike them — and all of us. We cannot allow bullies to hold our profession hostage: our work is too important.

As years went by I became a keen observer of other lawyers. The ones I respected the most — David Nevin, Pete Erbland, and Walt Bithell, for example — were, unlike me, not angry all the time. They went out of their way to treat people with respect — just like the way I wanted to be treated. I came to conclude that not only can “nice” co-exist with “effective,” but they are indispensably interconnected. It's called professionalism. For most of you, I state the obvious. For those of you who wake up and go to bed angry, I urge you to try a different path. Although my mean streak has not been fully exorcised, I sleep better now.

As I tried more cases I reevaluated what is important for litigation. For example, needless discovery disputes

exhaust me. Sure, at times we have a duty to object to discovery requests and seek protective orders, but most discovery objections are made without any legitimate basis. Discovery abuse may not seem like bullying behavior. I find no difference, however, between a leave-no-stone-unturned, scorched earth litigation strategy and someone yelling at me on the phone: neither moves the dispute towards resolution and the proponent is 100% mistaken on the efficacy of the tactic. The discovery bullies — like the phone-yelling bullies — get away with what they can and blame others when called out. The adversaries I respect and fear the most bend over backwards to get me legitimate discovery. I now try to do the same.

Over the next several months as your president I hope to explore this bullying dynamic — and what we can do about it. Please send me strategies you have developed to deal with difficult colleagues, (tim@moscowattorney.com). Your five Idaho State Bar Commissioners, along with Bar Counsel Bradley Andrews, all of whom have considerable litigation experience, are dedicated to publicly addressing the challenges bullies present. This fall at our regional roadshows we will be offering a free CLE on dealing with the difficult adversary.

I am under no illusion: there always have been, and always will be, bullies. Litigation can be contentious and exhausting; it can bring out the worst in us. Nevertheless, if we acquiesce to bullies we reward their behavior. If we emphasize the unacceptability of bullying — and then demonstrate professionalism to our new lawyers — we can make a lasting difference. Of this I am convinced. Stay tuned.

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### About the Author

**Tim Gresback** grew up in Minnesota with 11 brothers and sisters. After he graduated from law school in Washington, D.C., he clerked for Justice Stephen Bistline. He now represents people injured in car crashes. In 2012 he was named ITLA Trial Lawyer of the Year. He is certified as both a civil and criminal trial specialist. He is a past president of the Idaho Trial Lawyers Association as well as the Idaho Association of Criminal Defense Lawyers. He serves on the Idaho Supreme Court Evidence Committee and taught trial advocacy at the University of Idaho College of Law for 10 years. He is helping to raise funds for a full-size community ice rink in Moscow, where he lives with his wife Dr. Sarah Nelson and son Luke.