

Confessions of a Recovering Bully

Tim Gresback President, Idaho State Bar Board of Commissioners

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

I resented a few zealous prosecutors so much I mirrored their despotism. It made me miserable. I was trapped.

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.

I find no difference, however, between a leave-no-stoneunturned, 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.

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.



Are Bullying Lawyers Psychopaths?

Tim Gresback President, Idaho State Bar Board of Commissioners



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 welladjusted. 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 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

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 principles 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 steadyhanded 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.

Tim Gresback, current ISB president, is a past president of the Idaho Trial Lawyers Association as well as the Idaho Association of Criminal Defense Lawyers. He is certified as a civil trial specialist. 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 lives with his wife, Dr. Sarah Nelson, and son, Luke, in Moscow.





Deposition Bullies, Witness Coaching and Discovery Abuse

Tim Gresback President, Idaho State Bar Board of Commissioners

he deposition has been noticed up. The witness is sworn. The lawyer is making great headway:

Q: Just before the crash you were traveling at about 35 mph?

A: Yes.

Q: The speed limit was 25 mph?

A: Yes.

Q: And when you entered the intersection, your light was red, correct?

Just before the witness concedes this vital point and agrees, the defending lawyer interrupts the client and blurts: "If you remember."

This scenario is played out too often. What's the problem? It's cheating.

Somehow it has become acceptable in some circles to interrupt a deposition just when the discovery tree is bearing juicy fruit. By interrupting, the defending lawyer is impermissibly coaching the witness. In essence the lawyer tells the witness, "Your testimony is killing us. I advise you to say that you don't remember — try to follow my lead." If this type of coaching does not strike you as inappropriate, imagine if a lawyer interrupted a witness in front of a jury with an "if you remember." The judge would likely come unglued and the jury would resent the interjection. What, then, has become of our discovery process that we tolerate this improper witness coaching?

Somehow it has become acceptable in some circles to interrupt a deposition just when the discovery tree is bearing juicy fruit. By interrupting, the defending lawyer is impermissibly coaching the witness.

Coaching is often caused by insufficient witness preparation. Instead of giving the witness an idea of the likely questions prior to the deposition, the lawyer fails beforehand to prepare the witness and tries to save the day with improper coaching. Another cause for coaching is that some lawyers do not know it is wrong. Attorneys hate to sit back and be silent as their case goes down the tubes. In desperation some lawyers regress to coaching. I urge judges to impose swift and severe sanctions when this occurs. Deposition abuse, however, is not limited to witness coaching.

Idaho Rule of Civil Procedure 30(d)(1) states: "Any objection during a deposition must be stated concisely and in a non-argumentative and non-suggestive manner." Unfortunately, this rule is routinely violated. Some bullies try to derail a deposition with a critique of the other lawyer's method: "Your question is a bad one because it's ambiguous and my client doesn't know if you are

talking about the initial contact or after the third car entered the intersection. If you ask a clear question my client will give a clear answer." An inquiring lawyer has a right to get an answer to a question — even if the question is awkwardly asked. Once the defending lawyer coaches or adds other improper comments, the deposition is at the crossroads. The inquiring lawyer must think quickly. If, in response, the inquiring lawyer loses control and ups the emotional ante, a full-blown deposition mud fight can break out. For example, the inquiring lawyer often joins the uncivil fray: "Don't tell me what questions to ask, young lady. I've been at this since you were in grade school!" Now the original offender likely escapes consequence because the counterpart has answered the unprofessionalism with more unprofessionalism. How do we avoid this all too common breakdown of civility?

Fundamentally, we must know the rules for depositions. Unfortunately, many lawyers mistakenly believe depositions are minor league practice for major league evidentiary trial objections. Many lawyers do not know - or conveniently forget — the grounds for objecting are extremely limited at a deposition. Deposition objections are frowned upon for good reason. We want information to be efficiently gathered; a deposition too encumbered with objections becomes worthless. One valid objection at a deposition is that the question calls for privileged information. This is not very common. Privilege objections usually do not cause a problem.

A second legitimate ground for an objection, however, is a great source of deposition abuse. It is the "form of the question" objection. Our rules permit this interruption for a critical policy reason. If a deposition witness later dies or moves away and becomes unavailable, the deposition can be introduced at trial as substantive evidence. Suppose, however, the deposition witness is asked a question that would be objectionable at trial, such as a question that is compound, argumentative, or assumes facts not in evidence. At trial the Court would either have to exclude the answer or allow it notwithstanding its evidentiary flaw. To avert the harsh extremes our rules allow the lawyer at deposition to object to the form of the question so the inquiring lawyer has an opportunity to "cure" the defect, by rephrasing the question, and ask it without the flaw. If the defect in the deposition question is not "cured," then the answer will likely be inadmissible at trial.

Other objections are routinely — but improperly — made at depositions. For example, objections such as hearsay and

relevance which go to the admissibility of the answer cannot be cured by rephrasing the question. No objection needs to be made at the deposition; admissibility can be taken up in court. Unfortunately, lawyers are not using the form objection for its intended purpose. Instead, form objections are being made to disrupt the flow and impact of a deposition. Like witness coaching, it's cheating. To ameliorate this abuse, we should allow a lawyer to waive the opposition's obligation to make the form objection. Many lawyers, like me, would rather risk trial inadmissibility to gain a deposition unencumbered by incessant objections.

The most effective way to stop deposition abuse is to gently remind your adversary at the outset that you will not, during the adversary's depositions, interrupt legitimate questions by coaching. Once your deposition gets underway, if the other lawyer objects, look not at the lawyer but the witness and gently say, "Please answer the question." Repeat the question if necessary, but don't look at the other lawyer — stay locked on the witness.

Bullies not only are abusive at depositions but also in written discovery. Suppose a party seeks a copy of any written statement the plaintiff made at the scene of the crash. All too often the following type of specious response is made to a request for production under rule 34(a). Here's a typical response: "Objection. The question is vague and ambiguous. It also seeks work-product material and invades the attorney/ client privilege. In addition, the question is overly burdensome and cumulative and violates the state and federal constitutions. Without waiving said objection, please see the attached statement given to the police officer."

This type of discovery bully uses boilerplate gobbledygook to hedge: maybe I'm hiding evidence, maybe I'm not. I am giving you something. If I am hiding evidence and I get busted I'll try like heck to hide my thievery of justice under my boilerplate objections. Besides, you can't file a motion to compel on every case — you won't be able to afford it. Judges are reluctant to intercede and I will play that to my advantage.

Discovery abuse is so rampant I sometimes don't even request it because it isn't worth the bother. In Oregon there are no interrogatories. Nor does Oregon have expert or lay witness disclosure. I cannot say Idaho's level of justice is better. We sometimes have legitimate discovery disputes that require us to make objections and seek a protective order. By and large, however, discovery abuse has diminished the honor of our process: let's restore it.

Tim Gresback, current ISB president, is a past president of the Idaho Trial Lawyers Association as well as the Idaho Association of Criminal Defense Lawyers. He is certified as a civil trial specialist. 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 lives with his wife, Dr. Sarah Nelson, and son, Luke, in Moscow.



LETTERS TO THE EDITOR: TAKING A STAND AGAINST BULLYING

Professionalism takes a collaborative approach

Dear Editor,

In reading the President's articles in *The Advocate* on bullying, one portion in particular resonated strongly with me — "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." So true. What a tremendous loss for our profession.

I would classify myself as one of the "problem-solving collaborators" referenced in the article. I concede that at times in the past 23 years of practicing law, I have been close to wanting to pitch this profession and everyone in it. During those times, being a bartender in Fiji seemed really, really attractive. At some point, each of us does a personal analysis and decides whether this short life we are given should be filled with the toxicity that is present in almost every day of our work.

I have chosen to stay; not because I enjoy the abuse, but because my life is enriched by helping others. I stay for my clients. Each time the Bully frustrates me, I remind myself of why I stay — when a client walks out my door relieved because they handed off their problems to me, I feel good. When a client trusts me to solve a problem, I am honored, humbled, and motivated.

When I call opposing counsel early in a case, to explore resolution, and I am met with a "brick wall," an unwillingness to consider the opposing concerns and discuss solutions, or no verbal communication at all, I admit, I become frustrated. More

and more, over the past decade, I have watched emails and letters replace telephone communication and in-person meetings. More and more, the first communication in a case is a written demand or a threat. rather than a cordial conversation to determine if a quick, cost effective, and appropriate resolution can occur. We can jump to incorrect conclusions by reading an email rather than having a phone conversation, in which inflections and context can be gauged. We need to journey back to conversations as our first line of approach.

We should not adopt a no-holds-barred, take-no-prisoners, antagonistic approach. We should work professionally and courteously to prepare the case and submit it to the fact finder for a decision. That is why we have a judicial system — for someone else to decide our issues and outcomes when we cannot do so ourselves. These proceedings are adversarial, yes — but, they do not need to be acidic or acrimonious. Webster's Dictionary defines "adversarial" as "involving two people or two sides who oppose each other."

As in a sporting event, "adversarial" does not mean that the competition must be hostile, nasty, or unprofessional. Good sportsmanship is a tenant that should carry from the field to the courtroom. I've walked away from trials with great affinity and respect for my opposing counsel, and I've walked away thinking opposing counsel should be barred from the profession.

It is my hope that the Bar's push for civility among our ranks gains traction in our professional community and makes a positive impact. I enjoy working collaboratively with another attorney to solve our clients' problems. Those moments make me happy, fulfilled, and proud to be a lawyer.

Erika Grubbs Winston & Cashatt Coeur d'Alene

Bullying affects subordinates and friends, too

Dear Editor,

I'm grateful that the ISB is starting a public conversation among Idaho attorneys to address bullying within our profession. The hardest parts of this job for me are the antagonism and pressure to characterize everything as a win or loss. As you discussed, the bullying between opposing counsel is an obvious issue. We can also look closer to home and see how we treat our colleagues within a firm, including junior attorneys, paralegals, and assistants. Many high performing lawyers are very good at exploiting the failures of others and hiding their own weaknesses — that's how they win cases. As a result of being very good at those things, they can become overly critical of and condescending to their subordinates, jumping on their mistakes instead of being helpful or supportive. Unfortunately, these workplace tactics often bleed into personal lives and we treat our lovers and friends to similarly toxic conversations. When examining bullying behaviors in our profession, we should look at how we communicate to people both on and off "our team."

This conversation has the potential to create some real healing in our communities. When lawyers treat each other better, will clients do the same? By increasing the amount of positive and productive interactions we create, I believe we can do a lot

LETTERS TO THE EDITOR: TAKING A STAND AGAINST BULLYING

to reduce the pain and confusion suffered by people in distress, experiencing shifting priorities, and coping with life changing decisions.

> Kelsey Jae Nunez Kelsey Jae Nunez LLC Boise

The best lawyers solve problems, not create them

Dear Editor,

The columns of ISB President Tim Gresback in the last two issues of The Advocate have been some of the most honest and helpful I have read. I look forward to an open dialogue among our colleagues on the ideas and suggestions discussed.

To me, the finest practitioners of the law are those who zealously represent the interests of their clients while doing so with competency, integrity, respect, and morality. They focus on resolving the problem in a way that is acceptable in the long run — many times "resolving" rather than "solving" the matter. They attend to the problem rather than the personalities and they can disagree without it becoming a competition or personal.

The practice of law can certainly be done in a disruptive way but such an approach is much less pleasant, has fewer intellectual and spiritual rewards, and distributes far less happiness for all involved. An attorney, with the great power and responsibility that comes with that, should be a healer and problem solver.

There is plenty of harshness and injustice in this world. An attorney, no matter who they serve, should not contribute to it.

> Randy Fife City of Idaho Falls Idaho Falls

Working with a bully takes skill

Dear Editor.

I found the article Confessions of a Recovering Bully to be refreshingly relevant and candid. As an attorney, I have dealt with several bullies over the years both in my dispute resolution practice and in my transactional practice. Bullies are so difficult and shattering to spirits and psyches that I have become determined to figure out how to crack their code. That is why I devote an entire segment of my dispute resolution workshops to dealing with the bully personality (something I call "Busting the Bully").

Tricks and tools for busting bullies come from understanding them from the inside out. The bully operates from a different paradigm than most people. Their world is one of scarcity, not abundance; of fear, not security; and of suspicion, not trust. Win/lose is the operative paradigm, not win/win. The bully sees threats everywhere. It is as if they live in a war zone even though no one else wants to fight. It is impossible to change their minds on this, so part of the engagement with a bully has to be the powerful fight: not disrespectful, not abusive, but powerful. Bullies respond to power and will make concessions to powerful opponents. Stand strong and don't be too nice. Find leverage to trigger fear in the bully because bullies often back off or compromise when fearful.

I like to think of bullies as army tanks. They fire out missiles and let nothing in. That means they don't listen, they don't negotiate reasonably, they attack, they diminish, they don't take responsibility, and they fire out their one-sided, black and white view of things and call it Reality. Again, it is war for the bullies.

In war, people don't talk about gray areas and compromise. Your most powerful tool with a bully is to stress your facts and leverage points and keep it simple and strong. Stay away from the gray.

On the bright side, bullies are real people who crave connection and don't have much because they are so difficult. Connection is leverage so while fighting the fight, always be respectful and always try to find some point of connection. Then build it. Build it every day, every way you can. Talk about the connective point every time you talk to the bully. In the end, most bullies can't help but cave to connection, allowing the paradigm to soften and some peace to enter the warzone.

Rebecca B.W. Anderson Jones Gledhill Fuhrman Gourley, P.A. Boise

Professionals deserve referrals; bullies do not

Dear Editor,

All attorneys swear to represent clients with "vigor and zeal." There's nothing wrong with using the law and rules to their full extent to represent clients vigorously and zealously, but it crosses the line of professionalism when attorneys attempt to use bullying and intimidation as tactics to achieve their client's objectives. Attorneys that bully others are the reason for most negative lawyer stereotypes and jokes. They make the entire profession look bad, which is why I make it a point to never refer a potential client to such an attorney.

> Robert J. Taylor Taylor Law & Mediation PLLC Mountain Home



Eight Lessons From the Bullying Road Show

Tim Gresback President, Idaho State Bar Board of Commissioners

or the last several months, our state bar has undertaken an initiative to address the detrimental effects of bullying on our profession.

The effort culminated in November when the Commissioners explored the challenges of dealing with bullies in Road Show CLEs presented in each judicial district, masterfully moderated by Bar Counsel Brad Andrews. Although each district has its own character, there were several common take-aways.

Bullying occurs in varying degrees and we all do it

Because we've all been on the receiving end of a bully's wrath, it may be natural for us to initially divide the bullying world into "us" and "them." As Commissioner Dennis Voorhees pointed out, bullying is often a matter of degree and we all bully in some way — and often regret it. We may be reluctant to talk about the issue for fear of being labeled as a hypocrite.

Lawyers are inclined to view themselves as heroes; when we do, we can easily vilify our opponents and characterize every action as malicious

If I'm a hero, then my opponent must be a villain. Litigators often construct this hero narrative; it may fuel bullying. However, not every

As Bar Counsel Brad Andrews observed, there is no rule protecting the names of witnesses and identification of pertinent documents as an attorney's "secret privileged thoughts."

hard-nosed opponent is a bully. When we're dealt a bad legal hand, it's tempting to resent the opposition for playing its cards. Winning a hand is not the same as showboating and taunting the other side. If we recognize this dynamic we're less likely to overreact and perpetuate a cycle of ill-will.

We must filter email so it does not become a weapon for snark

President-elect Trudy Fouser shared how a simple scheduling disagreement quickly devolved into her opponent's mean email rant. In response, she crafted a lengthy, pointed and brilliant response which she proudly shared with her partner and husband, Jack Gjording. He read it and complimented Trudy on her prose. Then he advised her to delete it, which she did. Similarly, Twin Falls attorney Jarom Whitehead has a 24-hour rule: whenever he drafts an email critical of a colleague, he makes himself wait at least a day before sending it. Usually he ends up deleting it or toning it down substantially. Trudy and Jarom teach us that civility is not capitulation.

Financial self-interest fuels bullying

Suppose a client delivers a hefty retainer and a compelling tale of injustice — exactly what we crave. The client expects results and the attorney wants to deliver. Unfortunately, from the outset lawyers often set an expensive litigation course without first exploring the possibility of a quick and inexpensive resolution to the dispute. Instead, the too-common first choice is to lob inflammatory and untested accusations at the other party. With such an incendiary opening volley, the other lawyer may feel trapped: either respond tit-for-tat or be perceived as weak. Although listening intently to a client is an indispensable skill, reflexively assuming that the story is factually bulletproof is foolish. Coeur d'Alene attorney Erika Grubbs suggests that instead of initially sending an aggressive letter or email making immediate demands and threats to a colleague, try a phone call, introducing yourself, and exploring the possibility of resolving the dispute expeditiously. This simple technique should become our routine professional protocol.

Bad mentors model bullying

New lawyers tend to mirror the conduct of the boss. We enter practice eager to impress and enthusiastically demonstrate that we're team players. Unfortunately, most new lawyers lack the experience and confidence to see that their mentors are sometimes deeply flawed. For example, Commissioner Kent Higgins explained that our rule limiting the number of interrogatories may have been instituted in part because of a mentor of his with a reputation for going overboard. Before the rule, this was not uncommon.

Bad mentoring not only sets a poor example for the enthusiastic protégé, but it can also sour the new lawyer's budding love for the law. The protégé not only witnesses abusive behavior at the courthouse, but can also be on the receiving end of the bully's wrath back at the office.

Bullies speciously object to routine discovery

A consistent complaint throughout the state is the problem in getting routine discovery information. Many attorneys provide boilerplate, specious objections to legitimate written interrogatories and deposition questions. As Bar Counsel Brad Andrews observed, there is no rule protecting the names of witnesses and identification of pertinent documents as an attorney's "secret privileged thoughts."

Clients bully, too

Commissioner Michelle Points observed that bullying is not limited to lawyers. She has had clients try to bully her into pursuing untenable positions. She learned that, although it's not easy to stand up to a difficult client, she feels better when the client clearly knows her boundaries. If the client refuses to respect her, Michelle declines representation. Similarly, for years Don Burnett from the U of I College of Law has implored law students not to allow future clients to "strip mine" their reputations by acquiescing to unreasonable directives. We would be wise to follow Michelle's advice and Don's admonition.

The end of the beginning

In undertaking our bullying initiative, we knew the effort would not permanently solve our challenges in dealing with bullies. The effort is ongoing. Hardcore bullies will always drain our profession. As District Judge Juneal Kerrick astutely observed, "Bullies are profoundly selfish." Bullies are well-known to judges and lawyers alike. "We all know who they are," Lewiston attorney Karin Seubert noted. We must continually teach civility through example.

For years Don Burnett from the U of I College of Law has implored law students not to allow future clients to "strip mine" their reputations by acquiescing to unreasonable directives.

If you are interested in exploring the bullying initiative further, all of the articles and letters to the editor are posted on the ISB website, as is the following link to the video of the Boise Road Show CLE, Managing a Bully Without Becoming One: https:// www.youtube.com/watch?v=VP2LII sqU4U&feature=youtu.be.

I wish you well in responding appropriately to the challenges from bullies. I hope our initiative has shed some light on bullying and has provided you with new tools to be a fierce but fair advocate.

Tim Gresback, current ISB president, is a past president of the Idaho Trial Lawyers Association as well as the Idaho Association of Criminal Defense Lawyers. He is certified as a civil trial specialist. 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 lives with his wife, Dr. Sarah Nelson, and son, Luke, in Moscow.

