



Eight Lessons From the Bullying Road Show

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For 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

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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 be-

fore 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 sug-

gests 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.

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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=VP2LIIsqU4U&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.

