

2020

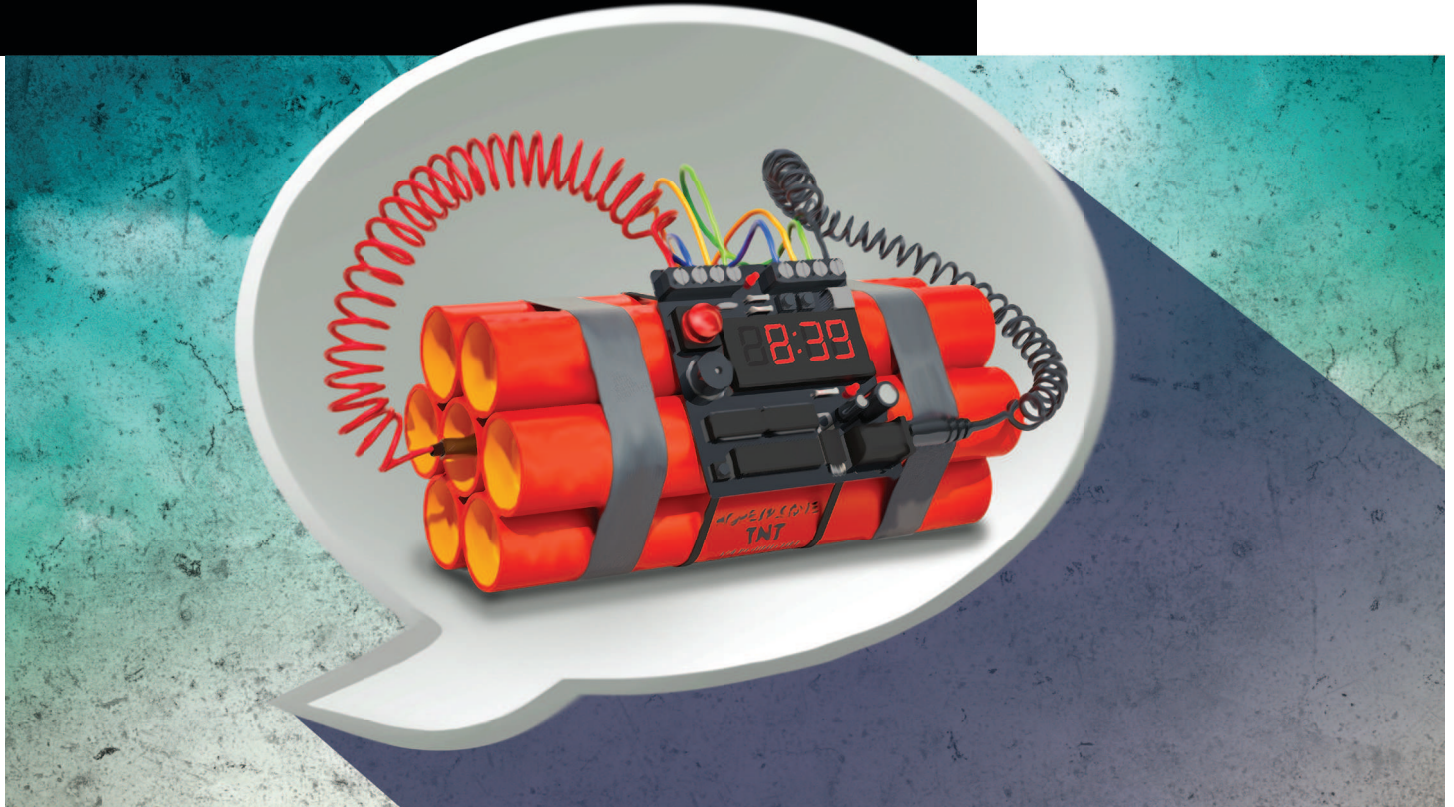
Defusing Bullies

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ADVOCACY

Defusing Bullies

We can be smart, ambitious and accomplished members of the legal profession without being jerks

BY HEIDI K. BROWN

Many individuals in our profession—attorneys, judges, clients—have high expectations of themselves, others and the profession. They are intelligent and hardworking, yet they also are kind, considerate and respectful in interpersonal interactions. Engaging in intellectual debates with these folks—tough negotiations, oral arguments, disagreements over legal strategy—feels fulfilling, motivating even.

It is not mutually exclusive to be a successful, assertive and ambitious member of our profession yet also be

nice. Contrast this with the bullying behavior that unfortunately happens in law offices, courtrooms, deposition rooms and boardrooms across the country. Law students, lawyers, legal assistants, support staff, court reporters and even judges endure bullying from individuals who often are excused as “strong personalities,” “eccentric rain-makers,” “results-driven” or “just under a lot of pressure.”

When I encountered such characters in law practice, I erroneously assumed their behavior was the direct result of me making some sort of mistake. Like, I should have been tougher, louder, better,

quicker on my feet, clairvoyant, meaner. After a decade of reflection, studying myself and how law practice affected my mental and physical health and that of colleagues, I realize, no. These people were bullies, plain and simple.

We rarely talk about how to effectively stand up to or defuse bullies in the legal profession. We lament a decline in civility. We reaccentuate standards of professionalism. But when do we teach junior attorneys how to mentally and physically recalibrate in a bullying moment, and if, when and how to substantively respond to the offender? We can do more than just talk about civility problems or advise targets of bad behavior to “just toughen up” or “just stand up for yourself.”

Taking a hard look at bullying does not mean we are going to reduce the intellectual rigor of our profession or lower standards of excellence in our work environments. Working in a legal environment obviously takes grit and

stamina. Some cases are fast-paced; others require slogging through months of discovery, and genuine last-minute crises arise. The law can be equally exhilarating and frustrating, and emotions naturally heighten. But there is a marked difference between a person in a position of strength, power or authority seeking to motivate an individual to do the best job they can versus using that influence as a weapon to cut someone down or make someone feel weak or inferior.

Merriam-Webster defines bullying as “abuse and mistreatment of someone vulnerable by someone stronger, more powerful.” Perceived power differentials can derive from variations in physical stature, employment status, social demographics, depth of legal experience, wealth and even personality type (e.g., an aggressive, extroverted, quick-to-speak individual versus a naturally quiet introvert who might need time to process a rapid-fire Socratic dialogue).

Lynne Curry, author of *Beating the Workplace Bully: A Tactical Guide to Taking Charge*, defines “workplace bullying” as “psychological violence and aggressive manipulation in the form of repeated humiliation or intimidation.” Bullying lurks in different forms.

Perhaps a more senior opposing counsel mistreats a junior lawyer by constantly interrupting her deposition, speaking over her on conference calls or using sarcasm to call attention to her purported lack of experience. Or a supervising attorney yells and slams doors around law office interns, junior attorneys and support staff, intentionally fueling a volatile office atmosphere.

More subtle bullying in the form of manipulation might involve a boss persistently keeping employees completely in the dark until the last minute about whether they need to work late again, all weekend or through holidays. It can include purposely withholding feedback about whether employees are meeting the supervisor’s expectations. It can entail cultivating an atmosphere in which the employees constantly feel they have done something wrong, but they don’t know what that “something” is.

People in positions of authority might routinely demand meetings or conference calls only to show up late or fail to appear. Bullies also might engage in gaslighting—manipulative behavior designed to push or keep an individual off-kilter, repeatedly render a person confused and make them distrust their own thought processes. Bullies gaslight by flip-flopping on opinions or decisions and making more vulnerable people question their own memories or judgment after acting in reliance upon the bully’s initial position.

As a profession already mired in “win-lose” dynamics, let’s consider methods to defuse bullies—cutting off their power source—rather than beat them. As a junior attorney, I mistakenly thought that just keeping my head down, getting my work done or focusing on my deposition/negotiation strategy and avoiding engaging with a bully was the wisest move. I wish I could go back and have a do-over. Well, numerous do-overs.

As Curry points out, many of us distrust our feelings, so we’re not exactly sure whether someone is indeed bullying us, whether we did something to deserve it (we didn’t) or how best to address it. Curry explains, “If, when you were growing up, someone taught you not to trust your feelings, the lesson you derived was that other people could disregard how you felt. This led you to believe you had no right to protest a bully’s taunts. Bullies love victims who distrust their own feelings.” Thus, if you feel like you are being bullied, a huge first step is: Trust your feelings.

Next, Curry recommends we avoid reacting right away but instead assess the situation and plan a response. In a bullying moment—whether it’s in a deposition or the office or even the courtroom—we can take a beat and pause to process what just happened. Then, we can apply the following tips and step back into the performance moment with fortitude.

Step 1: Do a mental reboot

If we feel we just experienced a moment of aggression, abuse, mistreatment,

destructive manipulation, humiliation or intimidation, let’s first catch ourselves if we start to self-blame. Notice the launch of any negative mental soundtrack and stop. Take a realistic stock of what just happened: “No, this feels like underhanded manipulation. ... No, this feels like inappropriate aggression. ... No, this feels like intentional undermining.” Then, we mentally reboot and launch a new internal soundtrack: “I worked hard to be in this professional moment. I did the work. I prepared as much as humanly possible based on my level of experience and expertise. I exercised my best judgment. I deserve to be here.”

Step 2: Find the inner athlete

Bullying behavior is intended to make us feel weak and small. Often, when we feel verbally attacked, our bodies automatically launch self-protective mechanisms.

In reflecting on the way I react physically when I feel blitzed by a bully, I realize that I subconsciously cross my arms and legs, hunch my shoulders and fold inward—as if bracing for a physical blow. Unfortunately, my body’s natural effort to protect me only exacerbates my anxiety and fear symptoms; the contraction of my physical frame blocks my energy, blood and oxygen flow. My heart races. I blush. I sweat.

So, instead of caving inward, let’s channel our inner athlete. In a bullying moment, let’s pause and notice if our bodies have shifted to self-protect. Then, let’s recalibrate with intention. Stand or sit in a balanced stance like an athlete primed to move in any direction.

Heidi Brown



Open your physical frame—shoulders back, hands and arms open, spine tall—allowing energy, blood and oxygen to flow in a productive way and power your brain.

Step 3: Cut the power source

Curry cautions, “Remain silent, and you collude with bullies.” To defuse bullies, to cut their power source, we must assert, and we can do it concisely and deftly. We’re not going to engage in a debate. We are not going to get defensive or make excuses. We are not going to try to bond. We’re going to deliver a short, concrete assertion that cuts to the chase. Consider a combination of these:

- “I perceive that you are trying to [intimidate/confuse/rattle/manipulate/embarrass/humiliate/demean/test] me.”
- “I worked hard to be here. I’m working hard right now.”
- “Raising your voice at me is the opposite of motivation.”
- “Demeaning me is not conducive to moving this case forward.”
- “My goal is to do a great job for you, but respectfully, I can’t read your mind.”

I know it might be scary to try to cut the power source of a bully, especially if we work for one, and we want and need the job. But it’s quite possible that no one has ever stood up to this person. Let’s honor the hard work we invested in our legal education and training. Let’s make our profession better. Borrowing from the great boxing champion Muhammad Ali, let’s empower ourselves to stand tall and convey: “If you even dream of [bullying] me, you’d better wake up and apologize.” ■

Heidi K. Brown is an associate professor of law and director of legal writing at Brooklyn Law School. She is the author of The Introverted Lawyer: A Seven-Step Journey Toward Authentically Empowered Advocacy (ABA 2017) and Untangling Fear in Lawyering: A Four-Step Journey Toward Powerful Advocacy (ABA 2019).

ETHICS

Just Actions, Not Just Words

The ethics argument for promoting equality in the profession

BY DAVID DOUGLASS

In 2016, the ABA took another important step in the ongoing battle to eliminate discrimination and promote diversity in the legal profession. It amended its Model Rules of Professional Conduct to declare discrimination professional misconduct, and it adopted a resolution intended to promote diversity in the legal profession. It is now time to take the next step and recognize a lawyer’s affirmative obligation to promote diversity in the profession and equality in society by adopting a new Rule 8.5, as follows:

As a learned member of society with an ethical obligation to promote the ideal of equality for all members of society, every lawyer has a professional duty to undertake affirmative steps to remedy de facto and de jure discrimination, eliminate bias, and promote equality, diversity and inclusion in the legal profession. Every lawyer should aspire to devote at least 20 hours per year to efforts to eliminate bias and promote equality, diversity and inclusion in the legal profession. Examples of such efforts include but are not limited to: adopting measures to promote the identification, hiring and advancement of diverse lawyers and legal professionals; attending CLE and non-CLE programs concerning issues of discrimination, explicit and implicit bias, and diversity; and active participation in and financial support of organizations and associations dedicated to remedying bias and promoting equality, diversity and inclusion in the profession.

Recognizing a lawyer’s professional responsibility to promote diversity and equality would be an incremental step forward in our profession’s evolution toward recognizing our professional obligations to society. By recognizing our professional responsibility to solve a problem of our making, the proposed new rule holds the promise to advance and reenergize our efforts to create a diverse and inclusive legal profession. Importantly, this concept is well-grounded in our profession’s historical role in society and in precedent. Let me explain why I believe this so strongly.

There can be little dispute that promoting diversity in the legal profession has proven to be an enduring challenge despite sincere, persistent efforts. We have made a moral case for diversity: “It’s the right thing to do.” And we have made a business case for diversity: “Our clients are demanding we become more diverse.” Both are good arguments that have advanced the cause of promoting diversity in the profession. Nevertheless, it is clear that neither approach has had the transformative impact initially hoped for because neither approach demands or empowers the legal profession as a whole to own the problem and the solution.

The nature of a moral case for diversity limits its power because morals are broad, subjective principles. Even when there is agreement on a moral principle, there can be intense disagreement concerning its application in a specific context. For example, two people can agree on the sanctity of life as a moral principle yet disagree intensely on issues such as abortion or the death penalty.

Continued on page 32