

BULLY LAWYERS

by Elizabeth A. Alston

for Prime Time CLE

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Find Balance"SM

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From the Merriam-Webster Collegiate Dictionary on-line.¹

¹bul·ly

Function: *noun*

Inflected Form(s): *plural bullies*

Etymology: probably modification of Dutch *boel* lover, from Middle High German *buole*

Date: 1538

1 *archaic a* : sweetheart **b** : a fine chap

2 a : a blustering browbeating person; *especially* : one habitually cruel to others who are weaker **b** : pimp

3 : a hired ruffian

²bully

Function: *adjective*

Date: 1681

1 : excellent, first-rate -- often used in interjectional expressions <bully for you>

2 : resembling or characteristic of a bully

¹<http://www.m-w.com/cgi-bin/dictionary>.

³bully

Function: verb

Inflected Form(s): bul·lied; bul·ly·ing

Date: 1710

transitive senses

1 : to treat abusively

2 : to affect by means of force or coercion

intransitive senses : to use browbeating language or behavior : bluster

synonym see : intimidate²

Are lawyers bullies?

Of course, not all lawyers are bullies. But are we accustomed to wielding power, and does that power taint us? Can our negative public image be partly attributed to our bullying tactics?

On very rare occasions, I have been blessed and damned with an insight into my own personality. One of these epiphanies involved a realization that my lawyering habits included bullying opponents. I was amazed and dismayed when I also understood that I actually *enjoyed* employing these tactics.

Seeking reassurance, I asked my loyal employee, Yvette: “Do you think I’m a bully?” Surely this is a safe person to ask, I must have thought subconsciously. After all, I pay her salary.

Yvette took a deep breath, and with a wry smile on her face, said: “Well, let me put it this way, Beth. You’re really good at getting what you want.”

Ah. That means yes, I am a bully. At least some of the time.

The problem with this type of epiphany is that you can never pretend it didn’t

²The other two meanings listed are:

⁴bully

Function: noun

Etymology: probably modification of French (b[œ]uf) bouilli boiled beef

Date: 1753

: pickled or canned usually corned beef

bully pulpit

Function: noun

Date: 1976

: a prominent public position (as a political office) that provides an opportunity for expounding one's views; also : such an opportunity

happen. It changes the way you look at yourself, in a painful sort of way.

In examining the ways in which I bully others, I have also become more aware when others are using bullying tactics on me. Because almost all of my clients are lawyers or judges, I started to notice that some of them were bullies too.

One of professionalism's goals is to improve the public's perception of lawyers. The professionalism movement credits anti-social behavior and Rambo tactics for this perception, and endeavors to solve the problem with rules of etiquette.

I believe that the question is much more complex than simply one of politeness. The general public views lawyers as wielders of power in a confusing maze of governmental bureaucracy, which itself has been created by lawyers. They feel themselves to be at a disadvantage in a game where the rules and language are understood and manipulated by only the major players: the judges and the lawyers. A lay person's fear and ignorance about the legal system can be easily manipulated by a skilled legal tactician, acting as a bully.

Some questions I'd like to discuss with you today are:

- What's the difference between persuasive argument and bullying?
- What's the difference between exercising legitimate authority as a judicial officer, and bullying?
- Cross-examination: is this a perfect bully opportunity?
- Are there differences between male bullies and female bullies?
 - In the way they bully?
 - In the effects of their bullying?
- Does one good bully deserve another?

- Does bullying pay?

 - Which occurs more often:
 - Winning through intimidation and bullying?
 - Winning with logic?
 - Winning with fairness arguments?

 - How do we, and how should we, react to the bullying tactics of other lawyers?

 - How do we, and how should we, react to the bullying tactics of judges?
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Have I eliminated bullying from my practice tactics? I confess that I have not. I still catch myself doing it from time to time. My resolve is to eliminate those behaviors. I have to believe that although bullying produces results, they are only short-term. In the long run, bullying undermines your credibility and is never truly persuasive.

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