

Cooley

Dealing with Jerks,
Bullies and Incivility in
Legal Practice

Presented by Michelle Greer Galloway
To ACC
On February 15, 2023

attorney advertisement

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Overview

- Bullying Among Lawyers
- Competency and Bullying/Incivility
- Costs of Incivility
- High Functioning Teams: Respect and Relationships (Teams)
- Bullies, Targets and Bystanders
- Strategies to Deal with Toxic People
- Interventions and Organizational Change



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Bullying By and Of Lawyers

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Bullying in Law: International Stats



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Who is Bullied?

Statistics: the largest-ever survey on bullying and sexual harassment in the legal profession



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Targets Don't Report

Targets do not report. In:
57% of bullying cases and
75% of sexual harassment cases,
the incident is never reported.



Targets don't report due to:
the status of the perpetrator,
fear of repercussions and the incident
being endemic to the workplace.

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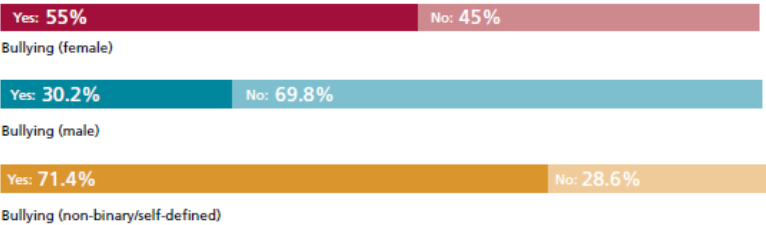
Us Too? Bullying and Sexual Harassment in the Legal Profession May 2019

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Targets by Gender

Figure 11: bullying (gender)

Have you ever been bullied in the workplace?



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Bullying and Size of Firm

Figure 13: bullying prevalence by law firm size*

Have you ever been bullied in the workplace? Yes



*Gender-weighted

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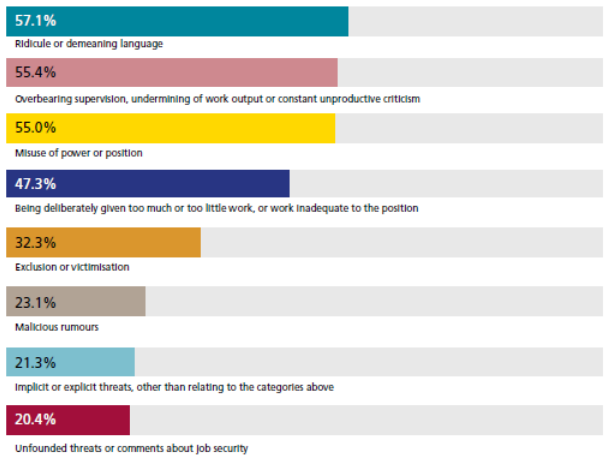
Us Too? Bullying and Sexual Harassment in the Legal Profession May 2019

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Types of Bullying in Law

Figure 18: bullying prevalence by type



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Power Imbalance and Silence

Fear-fueled silence, power imbalance perpetuate bad behavior at law firms

BY LAUREN STILLER RIKLEEN

AUGUST 21, 2018, 6:00 AM CDT

Reporting on survey by the Women’s Bar Association of Massachusetts (WBA) reported in, *Survey of Workplace Conduct and Behaviors in Law Firms*.

“The survey demonstrated that sexual harassment, bullying, hurtful humor, and disparaging remarks are generally not reported, but instead are buried by the fears of the victim and the implicit—and sometimes explicit—threats of the perpetrator.”

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Incivility

2nd Circ. Boots Atty For Discourtesy After 3-Min. Hearing

By Mike LaSusa

Law360 (December 11, 2019, 11:13 PM EST) -- In a startling three-minute hearing Wednesday, a Second Circuit panel ordered an attorney out of the courtroom for lobbing sarcastic remarks and then refusing to drop his demand for rebuttal time.

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Incivility in Law

- *Baker v. All State Insurance*, Case No. 2:19-cv-08024-ODW-JC, Memo of Points and Authorities in Support of Allstate's Ex Parte Application (Nov. 26, 2019).
- Example of email received in case:
 - "Fuck you crooks. Eat a bowl of dicks." (Declaration of Peter H. Klee, Ex. 1, p. 5)

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Attorney's Explanation

23. The undersigned sought to employ a confidential negotiating tactic by employing harsh language and provocative insults against counsel for ALLSTATE, out of an interest in trying to resolve this case only. The undersigned recognizes that perhaps some of the language "crossed the line" of civility and was offensive and inappropriate. With that said, the language used was "for effect," similar to bluster or "puffery" and was not intended to actually be considered personal insults. At no time did the undersigned threaten or intend to threaten defense counsel, their co-workers or families with harm. The undersigned apologized to defense counsel and the Court and represents and warrants that such language will not be used by the undersigned again in this matter. The undersigned's clients had absolutely no idea about or input in the language allegedly used by the undersigned. It would be extremely unfair and prejudicial to hold them to account in any way for the indiscretions of their counsel, who may have used some inappropriate language out of frustration and anger.

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Lawyer Targets Leave To

Targets are leaving unsupportive workplaces.
65% of respondents who have been bullied and
37% of respondents who have been sexually harassed
left or are considering leaving their workplaces.



Us too? Bullying and Sexual Harassment in the Legal Profession,
International Bar Association

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Law Firm Headlines

- *Proskauer Rose top brass fly in to grill ‘bullying’ London partner*, rollonfriday.com (Feb. 10, 2023)
- *Biglaw Firms Think They’re Paying Associates Enough Money to Deal With Toxic Partners*, abovethelaw.com (Sept. 1, 2022)
- *Ex-Roche Freedman Partner Must Face ‘Bullying’ Allegations*, law360.com (Jan. 28, 2022)
- *Baker McKenzie Ex-JoBurg Head to Depart Following Bullying Claims*, law.com (Sept. 7, 2021)

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Duty of Competence, Ethics Rules and Bullying

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ABA Model Rule 1.1 Competence

- “A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”

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CA Rule 1.1 Competence

- “(a) A lawyer shall not intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services with competence.
- (b) For purposes of this rule, “competence” in any legal service shall mean to apply the (i) learning and skill, and (ii) mental, emotional, and physical ability reasonably* necessary for the performance of such service.”

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CA Attorney Oath of Admission

- Amended 2014 to add:
 - “As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy and integrity.”

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California Report

- “Discourtesy, hostility, intemperance, and other unprofessional conduct prolong litigation, making it more expensive for the litigants and the court system. Moreover, incivility among lawyers extends beyond litigation, interfering with, if not derailing, transactions of every kind. It can create toxic workplaces. And unfortunately, young lawyers, women lawyers, lawyers of color, and lawyers from other marginalized groups are disproportionately on the receiving end.”
 - Initial Report of the California Civility Task Force. By California Lawyers Association and California Judges Association (Sept. 2021)

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ABA National Task Force on Lawyer Well-Being

- *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change* (August 2017)
 - “To be a good lawyer, one has to be a healthy lawyer. Sadly, our profession is falling short when it comes to well-being. The two studies referenced above reveal that too many lawyers and law students experience chronic stress and high rates of depression and substance use. These findings are incompatible with a sustainable legal profession, and they raise troubling implications for many lawyers’ basic competence. This research suggests that the current state of lawyers’ health cannot support a profession dedicated to client service and dependent on the public trust.”

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Dealing with Bullies (Litigation Focus)



Taking the High Road

How to Deal Ethically with Unethical Bullies

By Francine Friedman Griesing

A study in the 1980s, the U.S. District Court for the Northern District of Texas identified a "toxic" practice of professional bullying, commenting that

Depth sharing inquiries, we find that valuable judicial and attorney time is consumed in needless, unnecessary and dangerous practices between lawyers... [and] increasing these inquiries twice the steps from being necessary to complete transactions.¹

Despite judicial condemnation, attorneys throughout the country still use sharp practices and aggressive tactics and most opposing counsel and parties with them.²

However, all attorneys are subject to the professional and ethical rules of the forum in which they practice. The rules must be promulgated on the federal, state, local, alternative dispute resolution, and other ethical judge level. As explained below, the American Bar Association's (ABA) Model Rules of Professional Conduct (Model Rules) and their state counterparts impose ethical obligations on counsel to behave professionally, even while indirectly advocating for their clients. All practitioners should consult the rules of the jurisdiction in which they practice as the state of the attorney's requirements may deviate from the Model

Rules. Moreover, the Federal Rules of Civil Procedure and 28 U.S.C. § 1027 provide mechanisms with which attorneys may challenge, or stand up to, opponents whose litigation style lies outside the bounds of ethical and legal practice.

This article will cover several ethical issues arising out of aggressive litigation practices and present an array of tools to use when dealing with opposing counsel who cross the ethical line. It will cover situations in which, opposing counsel make material misrepresentations to the court, file frivolous claims and motions, threaten the taking of discovery or the abandonment of a case, harass opposing counsel, contact your client without your knowledge, or use abusive tactics during settlement negotiations. It will also highlight how the display of emotional and hostile behavior against opposing counsel and the strategies between domination and bullying in the practice of law.

Justice Advocacy, Professional Misconduct, and Reporting Requirements

Many attorneys operate under the misconception that the Model Rules serve as an excuse for the them to abuse, mistreat or mistreat of their clients. Some even pretend the misconception with the belief that justice advocacy requires abuse, mistreatment, bullying, harassment, and a win at all costs attitude.

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Defusing Bullies

Practice Matters



edited by
BLAIR CHAVIS & LIANE JACKSON
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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. BROSOWSKI

Many individuals in our profession—attorneys, judges, clerks—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—rough 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," "trailblazers" 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, bolder,

quicker on my feet, chairwreath, 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 encourage standards of professionalism, but when do we teach junior attorneys how to mentally and physically react 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

NALP: New Research

NALP Foundation Launches New Study of Incivility within the Legal Industry

The NALP Foundation is pleased to announce the launch of a new study that explores **incivility within law firms** and policies and procedures that exist in law firms for reporting and addressing incivility. This

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ABA Model Rule 1.3 Requires Diligence, Not Zeal

- Rule 1.3 was changed to require:
 - “A lawyer shall act with reasonable diligence and promptness in representing a client.”
 - Comment to Rule 1.3
 - “A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. A lawyer is not bound, however, to press for every advantage that might be realized for a client.”

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ABA Model Rules Preamble

- “[2] As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client’s legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client’s position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. As an evaluator, a lawyer acts by examining a client’s legal affairs and reporting about them to the client or to others.”

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Model Rules and Manifestations of Bullying

- Rule 3.3: Candor Toward the Tribunal
- Rule 3.4: Fairness to Opposing Party & Counsel
 - A lawyer shall not “(d) in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party; . . .”

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Model Rule 8.4

- Rule 8.4: Misconduct
- It is professional misconduct for a lawyer to:
 - a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
 - b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
 - c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation

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Model Rule 8.4(g)

- It is professional misconduct for a lawyer to:
- (g) engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law. This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude legitimate advice or advocacy consistent with these Rules

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ABA Rule 8.4 to Challenge Bullying

- “Model Rule 8.4(g) provides some measure of redress for sexually harassing conduct by lawyers that may otherwise not be addressed by Title VII or state anti-discrimination laws. An advantage of using 8.4(g) to address sexually harassing behavior, rather than Title VII or a more restrictive professional ethical rule, is that it protects a broader swath of people with whom a lawyer interacts in a professional capacity. Particularly, it would encompass colleagues and employees, clients, opposing counsel, court personnel, and witnesses. The rule also applies more broadly to the potential settings, including courts, law offices, and bar association activities.”
- Wendy N. Hess, *Addressing Sexual Harassment in the Legal Profession: The Opportunity To Use Model Rule 8.4(g) to Protect Women from Harassment*, U. of Detroit Mercy L.Rev (Summer 2019)

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ABA Rule 8.4 to Challenge Bullying

- “Using professional ethics rules to respond to lawyers’ sexually harassing behavior makes particular sense because the “legal profession is largely self-governing.” Rather than having lawyers escape accountability for their sexually harassing conduct that might not meet Title VII’s high bar, the legal profession can instead take the opportunity to hold itself to a higher standard of professionalism.”
 - Wendy N. Hess, *Addressing Sexual Harassment in the Legal Profession: The Opportunity To Use Model Rule 8.4(g) to Protect Women from Harassment*, U. of Detroit Mercy L.Rev (Summer 2019)

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Model Rule 8.3

- Rule 8.3: Reporting Professional Misconduct
 - “(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.”

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NYSBA Civility Standards: Non-Litigation Settings

Updated transactional and other non-litigation standards include:

- A lawyer should not impose deadlines that are more onerous than necessary or appropriate to achieve legitimate commercial and other client-related outcomes.
- A lawyer should focus on the importance of politeness and decorum, including such elements as the formality of the setting, the sensitivities of those present and the interests of the client.
- A lawyer should be careful not to proceed without proper authorization or otherwise imply that authority from the client has been obtained when such is not the case.

<https://www.nysba.org/capstandards/>

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Lone Wolf Problems Within Firms

The biggest obstacle to lawyers' working smoothly in teams with technology, business, and finance professionals is:

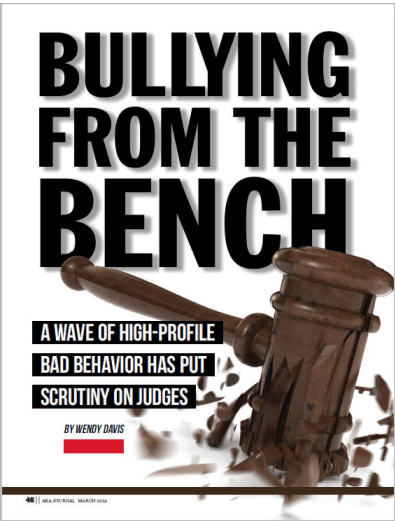


<https://adamsmithesq.com/2019/10/question-of-the-month-report-why-dont-lawyers-play-nice-with-others/>

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Judges Bullying



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Bullying by Clients

Clients are bullying lawyers, consultant says; would these comebacks turn the tables? BY DEBRA CASSENS WEISS OCTOBER 2, 2013, 11:00 AM CDT

- “Law firms can be toxic places to work, and the reason often is the tone set by angry and entitled clients, according to a business psychiatrist and consultant.
- Writing at the HBR Blog Network earlier this year, psychiatrist Mark Goulston says he sees an increasing amount of toxicity in law firms. The problem can often be traced to clients who set the tone, he says. Partners who are unable to push back or fire a profitable client, he says, “will often take it out by ‘kicking the dog’ in the form of yelling at their associates or staff. I’ve even seen some turn to drugs, alcohol and a variety of unhealthy habits to redirect their frustration.” The Careerist notes Goulston’s observations and his advice.”

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Questions

- Think of a time when you have experienced abuse by opposing counsel
- Did the outcome change in any way due to opposing counsel’s behavior?
- Why did opposing counsel act that way?
- *What about the reverse – a time when you were not civil?*

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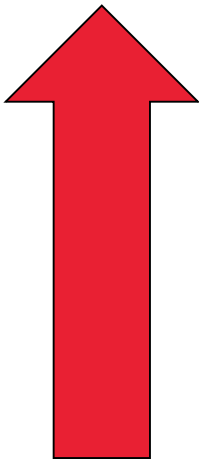
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Incivility Costs Are High

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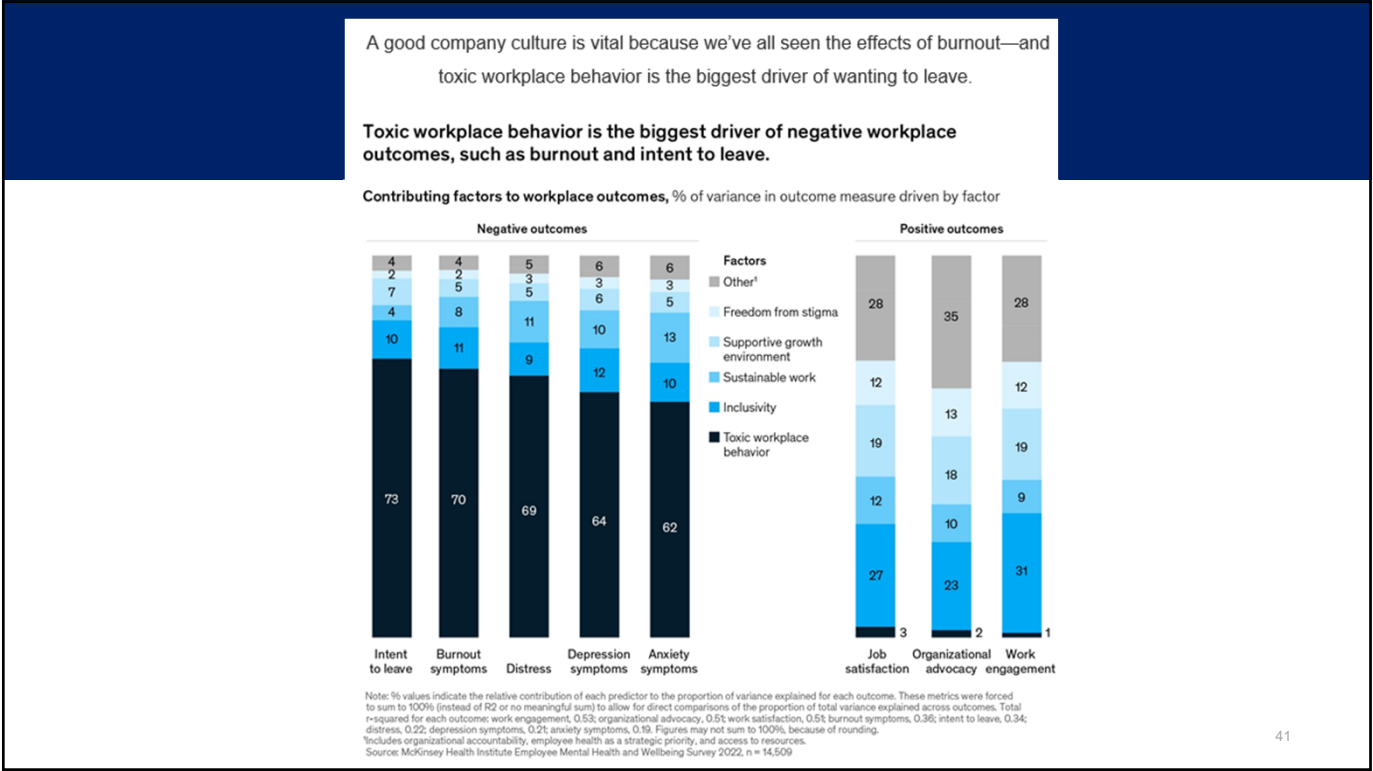
Bullying in Pandemic



Ex. UK bullying
allegations up 44%
year over year
Source: Workplace
Bullying Claims
Surge in WFH Era,
Bloomberg.com
(July 10, 2022)

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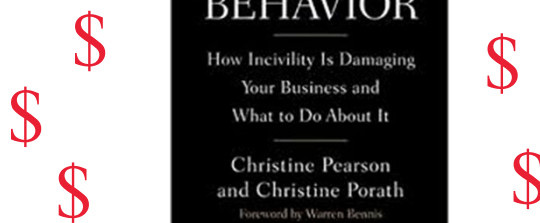
In Response to Incivility . . .

- 48% intentionally decrease work effort
- 47% decrease time at work
- 38% intentionally decrease quality of work
- 80% have lost time to ruminating about incivility
- 66% performance declined
- 78% lowered commitment to the organization
 - See Christine Porath and Christine Pearson, *The Price of Incivility*, Harvard Business Review (Jan.-Feb. 2013)

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Costs to Organization

- Increased employee complaints and grievances
- Increased customer complaints
- Decreased productivity
- Decreased engagement
- High absenteeism
- Higher medical costs
- Attrition



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Total Cost to US Businesses?

- 20% of US employees left jobs in past five years due to toxic cultures
- Turnover cost > \$223 billion
 - *Society for Human Resource Management (SHRM 2019)*

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Estimated Costs of One Bully

The estimated costs were:

• Time spent by Ethan's direct manager: 250 hours	valued at \$25,000
• Time spent by HR professionals: 50 hours	valued at \$5,000
• Time spent by senior executives: 15 hours	valued at \$10,000
• Time spent by the company's outside employment counsel: 10 hours	valued at \$5,000
• Cost of recruiting and training a new secretary to support Ethan	\$85,000
• Overtime costs associated with Ethan's last-minute demands	\$25,000
• Anger management training and counseling	\$5,000
Estimated total cost of asshole for one year	\$160,000

- *The No Asshole Rule*, at 47
- Includes a list of factors to consider in calculating total costs at 48-50

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Bully Be Gone – Improves Overall Performance

- When a high performer who is a bully leaves, the remaining team’s overall performance may be improved
 - See Janet Walsh, Laura Persky, and Ken Pinnock, *The Effect of High Performing Bullying Behavior on Organizational Performance: A Bullying Management Dilemma*, Global J. of Business Research (2019)

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Costs to Individuals – Targets and Bystanders

- Physical: pain, illness; sleep disturbance; self-medication/addiction
- Mental/emotional: anxiety; depression
- Decreased self esteem; family stress



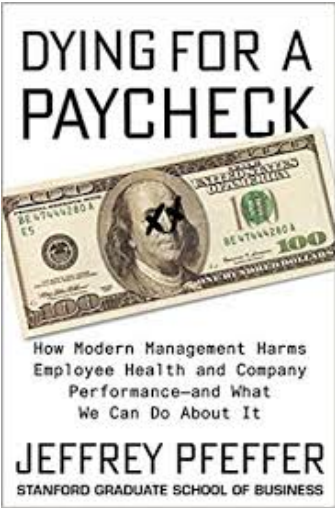
**HEALTH
RISK**

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Costs of Incivility

- Health care cost burden in US is from chronic disease (diabetes/cardiovascular)
- Primary cause of diabetes, cardiovascular disease and metabolic syndromes come from stress
- Biggest source of stress is the workplace



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Potential Legal Liability

- A hostile work environment
 - Unwelcome act either verbal or physical
 - Based on employee's protected status
 - Severe and pervasive to create hostile, offensive, or abusive environment

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Other Organization Costs

- Reputation – it says more about organization than individuals
- Lack of response leads to more bullying

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Is It Bullying?



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Gen Z Workforce

- Grew up with school anti-bullying messages
- Less willing to rationalize mistreatment
- More focus on structures that enable abuse
 - See Linda Rodriguez McRobbie, *The bullies are back*, [strategy-business.com](https://www.strategy-business.com) (Summer 2022)

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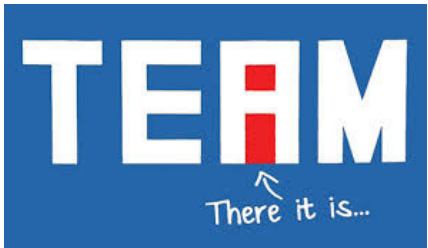
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Respect and Relationships: Teams that Succeed

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There Is An “I” In Team



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Team Defined

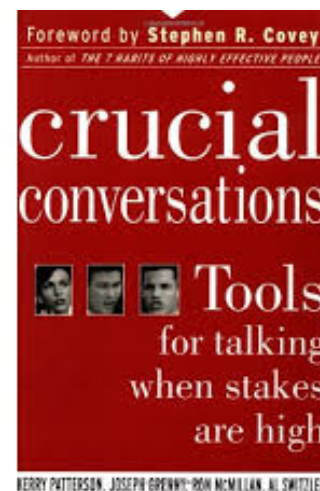
- *“A team is a small number of people with complementary skills who are committed to a common purpose, set of performance goals, and approach for which they hold themselves mutually accountable.”*
 - Jon R. Katzenbach, Douglas K. Smith, *The Discipline of Teams*, HBR (2005)

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R E S P E C T

- “Respect is like air. As long as it’s present, nobody thinks about it. But if you take it away, it’s all that people can think about.”



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R E S P E C T

- In study of 20,000 employees, when they felt respected by leader, they reported
 - 92% greater focus and prioritization
 - 55% more engagement
 - See Christine Porath, *How Rudeness Stops People From Working Together*, Harvard Business Review (Jan. 20, 2017)

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What Do Employees Want?

- Respect beats
 - Recognition
 - Appreciation
 - Communicating vision
 - Feedback
 - Opportunities for growth and development
 - See Christine Porath, *How to Succeed at Work When Your Boss Doesn't Respect You*, Harvard Business Review (June 22, 2016)

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What Makes A Respectful Workplace?

- Communication is open and civil
- Cooperation – we work toward common goal
- Fairness – differences acknowledged and valued
- Conflicts addressed

WHERE
RESPECT
HAPPENS

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Google Study: How Not Who

- 180 teams
- “*Who* is on a team matters less than *how* the team members interact, structure their work, and view their contributions.”
 - See <https://rework.withgoogle.com/blog/five-keys-to-a-successful-google-team/>

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Team Relationships Key

- “70% of the variance between the lowest-performing teams, which we call *saboteur teams*, and the highest-performing teams, or what we have labeled *loyalist teams*, correlates **to the quality of team relationships** – not some or most of the relationships, but ***all*** of them.”
 - Abby Curnow-Chavez, *4 Ways to Deal With a Toxic Coworker*, Harvard Business Review (Apr. 10, 2018)

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Loyalist Teams

- “106 times more likely to give each other feedback”
- “47 *times more likely* to work hard to build and maintain trust”
- “125 times more likely to address unacceptable team behaviors promptly”
 - Abby Curnow-Chavez, *4 Ways to Deal With a Toxic Coworker*, Harvard Business Review (Apr. 10, 2018)



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Civility 101

- Say “Hi” -- acknowledge/greet others
- Please and thank you
- If you can’t say something nice
- Listen
- Be inclusive
- Apologize
- Do not shift responsibility or blame

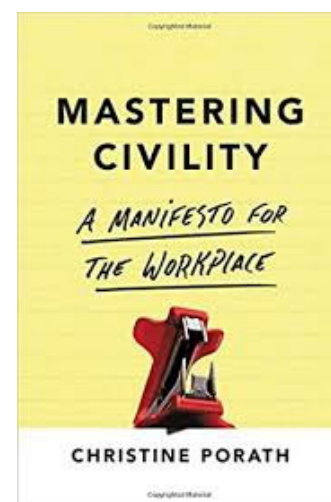
GOOD
MANNERS
COST
NOTHING

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The First Step is Civility

- Quiz and discussion questions for team
- Take the quiz at
www.christineporath.com/assess-yourself/



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Some People Take A Different Approach: Bullying and Bullies

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A Range of Behaviors



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Defined

- “Workplace Bullying is repeated, health-harming mistreatment of one or more persons (the targets) by one or more perpetrators. It is **abusive conduct** that is:
 - Threatening, humiliating, or intimidating, or
 - Work interference — sabotage — which prevents work from getting done, or
 - Verbal abuse”
- <https://www.workplacebullying.org/individuals/problem/definition/>

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Bullying Defined

- “Abuse and mistreatment of someone vulnerable by someone stronger, more powerful, etc.: the actions and behavior of a bully” Meriam-Webster
- Goals
 - Humiliate
 - Intimidate or coerce
 - Exclude – social pain

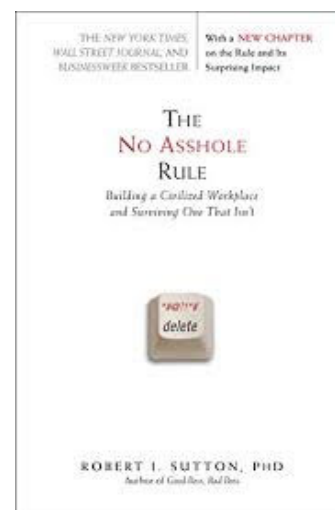


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Definition

- “Test One: After talking to the alleged asshole, does the ‘target’ feel oppressed, humiliated, de-energized, or belittled by the person? In particular, does the target feel worse about him- or herself?”
- Test Two: Does the alleged asshole aim his or her venom at people who are less powerful rather than at those people who are more powerful?”



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2019 Monster Survey

- 94% of employees said they had been bullied in the workplace
- 51% said they were bullied by a manager or boss
 - *New Study Says Workplace Bullying On Rise: What You Can Do During National Bullying Prevention Month*, Forbes (Oct. 11, 2019)

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Spotting a Bully

- Criticizes
- Blames others
- Unreasonable demands
- Takes credit for other's work
- Threats
- Social exclusion of others
- Reminder: can be cyberbullying



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Screamers and Schemers

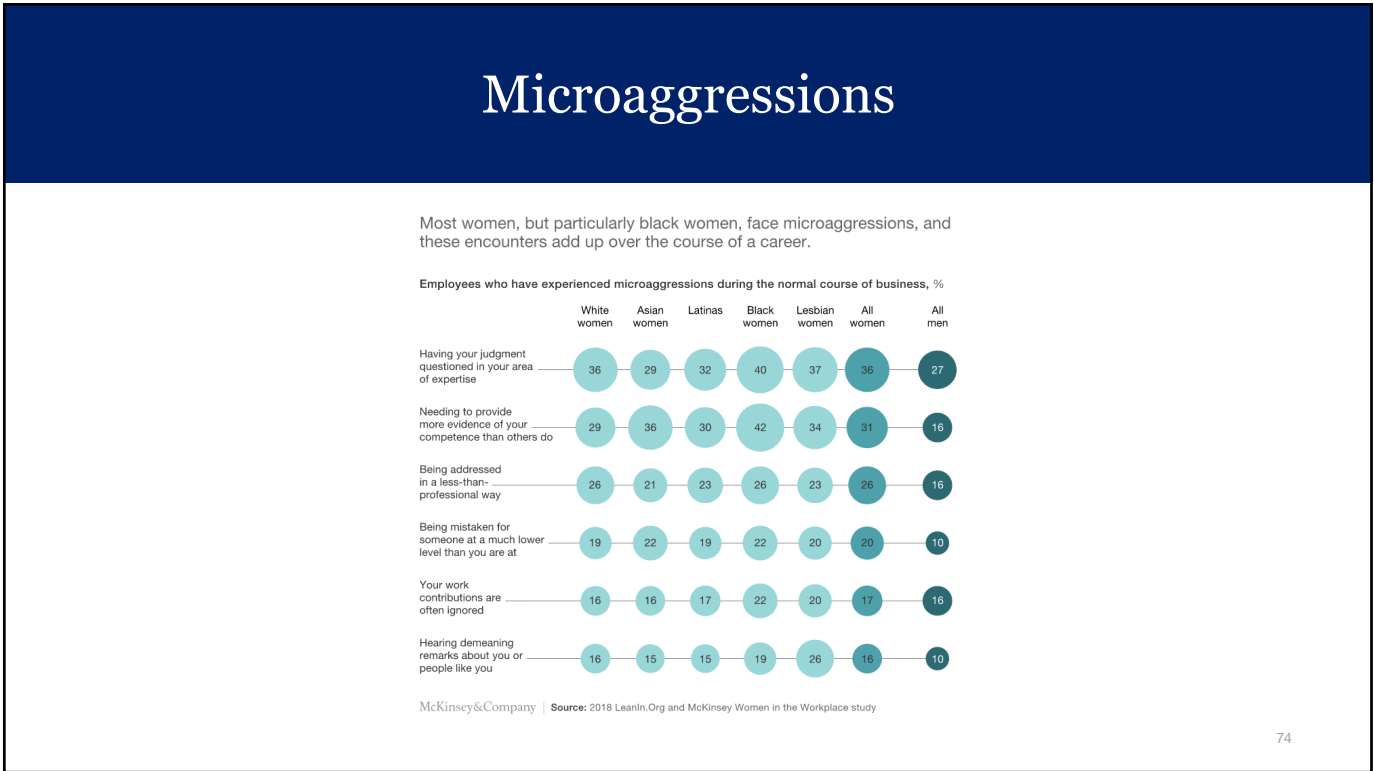
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|---|---|
| <ul style="list-style-type: none">• Screamers<ul style="list-style-type: none">• Yelling• Lying• Make them suffer | <ul style="list-style-type: none">• Schemers<ul style="list-style-type: none">• Plotting• Gaslighting• Smear campaign |
|---|---|
-
- See Ludmila N. Praslova, Ron Carucci, and Caroline Stokes, *How Bullying Manifests at Work – and How to Stop It*, Harvard Business Review (Nov. 4, 2022)

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Targets

- Strengths can be threatening to others
 - Superior technical skills
 - Superior social skills
- Target may provide an “easy” target
 - Over disclosing (to build relationship)
 - Overinvest in work as personal identity
 - See Gary Namie, Ruth Namie, *Risk Factors for Becoming a Target of Workplace Bullying and Mobbing*, Chapter in Maureen Duffy & David C. Yamada (Eds.) *Workplace Bullying and Mobbing in the United States* (2018)

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High Potentials Bullied Too

- Significant organizational problem if leads to attrition of key performers
- Supervisors with high Social Dominance Theory scores reinforce inequality between groups -- they seek to maintain power, status
 - These individuals will bully high performers who are a perceived threat to status in the organization
- Tips
 - Show respect for supervisors rank
 - Share the spotlight with supervisor
 - See Sherry Moss, *Why Some Bosses Bully Their Best Employees*, Harvard Business Review (June 7, 2016)

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Bullying of Managers

- Yes -- it happens
- Male and female managers report similar levels of incivility from others
- Stronger perceived impact for female managers when incivility from those higher up
 - See Camilla Holmvall, et al., *Incivility Toward Managers: Gender Differences in Well-Being Outcomes*, Equality, Diversity and Inclusion: An Int'l Journal (2019)

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Bystanders

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Mobbing

- Afraid of becoming target(s), others surround bully and tacitly participate
 - A cycle of exclusion



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Bystanders

Wording of the Question: How did most of the witnesses react to the repeated mistreatment of their targeted coworker?

Table 9.

Responses	Proportion	Percentage
Privately aided the target/victim	.1574	16%
Publicly helped the target/victim: corroboration, reported incidents	.1049	10%
Attempted to intervene or resolve: talked to perpetrator and/or management	.1132	11%
Called in the union that helped	.0193	2%
Did nothing	.3950	40%
Isolated/ostracized/avoided the target	.1353	13%
Sided with the perpetrator: ended relationships with the target/victim	.0361	4%

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Why People Don't Speak Up

- Futile
- Dangerous
 - Become the target of bully
 - Negative performance evaluation
 - Undesirable assignment
- Someone else will act – social proof
 - See Francesca Gino, *Why It's So Hard to Speak Up Against A Toxic Culture*, Harvard Business Review (May 21, 2018)

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Strategies If You Encounter a Challenge

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Reclaim Your Power

- You have choice
 - About how you feel
 - About how you let it impact/influence you
 - About how you act

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Reinforce Shared Goals

- Each person committed to
 - Organizations goals
 - And to success of the other
- Mutual responsibilities
- Mutually accountable
 - Allen R. Cohen and David L. Bradford, *Influencing Up*, at 34

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Increase Supervisor Dependence on You

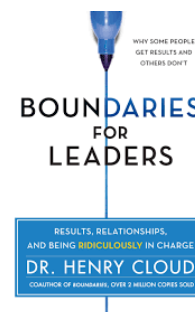
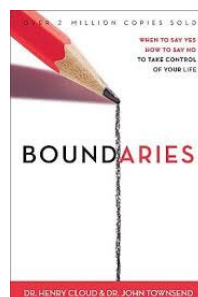
- Increase supervisor dependence on your work
 - Make yourself indispensable to supervisors' goals
 - Form a "coalition" of support from those supervisor already values
 - See Hui Liao, Elijah Wee and Dong Liu, *Research: Shifting the Power Balance with an Abusive Boss*, Harvard Business Review (Oct. 9, 2017)

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Boundaries

- Know your values
- Communicate limits clearly
- Bring up violations right away
- Stay in your lane



- See Greg McKeown, *The Emotional Boundaries You Need at Work*, Harvard Business Review (July 24, 2014)

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State Your Position

- Factually
- Respectfully
- Examples:
 - I think we can resolve this without raising voices
 - The report had all of the components you listed in your email
 - I prefer direct feedback – whether positive or negative. In the future, please talk to me about it

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Avoid Triggering Bully's Threat Response

- Depersonalize your comments
- Avoid accusations – use questions
- Allow others to respond

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Possible Statements/Interventions

- Informal
 - “We don’t talk like that here.”
- Awareness
 - “I’m concerned about what I heard because”

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Possible Responses

- Interesting. I’m going to think on that and get back to you.
- What would you like to see? Think about it and schedule a time to discuss.
- When you say ____ I feel you are attempting to prevent me/our team from ____.
- I believe that your criticisms and allegations lack substantive evidence.

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Key Questions

- Help me to understand
- “I’m curious, what evidence brought you to that conclusion?”
 - See Mark Murphy, *9 Words to Stop Negative People from Sucking the Energy Out of the Room*, Forbes (Apr. 22, 2018)
- What did you mean by that?
- But you must watch your tone!

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Stay In Your Lane

	INTENT	IMPACT
ME	Known	?????
YOU	?????	Known

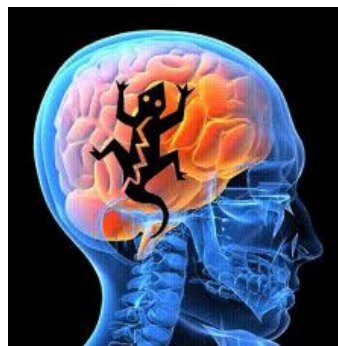
WE JUDGE OURSELVES
ON OUR INTENT
AND
WE JUDGE OTHERS ON
THEIR IMPACT

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Handling Your Own Threat Response

- Labeling
- Normalizing
- Reordering
- Repositioning
- Reframing



See David Rock, *Your Brain at Work*,
Scene 7 (2009)

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It's Not Personal?

- It feels personal. Don't take it that way.
- Others' statements are not necessarily true.
- It's temporary.
- Lower your expectations. How low can you go?
- Detach.⁹⁴



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Escalating to the Boss (Re Coworker)

- Focus on the work
- Examples:
 - “Thanks for sharing that Laura had concerns. I’ve looped back with her on it. If you hear more from her, please let me know or encourage her to come talk to me directly.”
 - “I’m a little confused about Tom’s role on Project X. I’ve spoken to him directly about the overall tone in those meetings, as he appears disengaged or frustrated in our meetings when you’re not there. I’d welcome any guidance on how to understand where this falls on his priority list.”
 - See Amy Jen Su, *How to Handle A Colleague Who’s a Jerk When the Boss Isn’t Around*, Harvard Business Review (Nov. 22, 2016)

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To the Boss Or HR: Make the Business Case

- Bring documentation
- Do not focus on the emotional case – you may trigger a threat response
- Start with the business case
 - How is behavior impacting the bottom line?

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Interventions and Organizational Change

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Lawyer Incivility – Why?

- Zealous advocacy?
- Poor training?
- Business/economics of lawyering?
- Affirming political, class, and gender identities?
- See Melissa Mortazavi, *Incivility as Identity*, 2020 Mich. St. L. Rev. 939 (2020).

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CEO Ousted

Ron Gutman, the founder of HealthTap, was removed from the company and from the board after an outside law firm hired by the board, Crowell and Moring, was “receiving concerning reports by employees about Ron’s conduct as CEO,” according to a memo sent Tuesday to employees and seen by **Recode**.

The board did not specify the nature of his conduct in the note to employees, but a separate termination letter to Gutman obtained by **Recode** alleged he “committed acts of intimidation, abuse, and mistrust, and that [he] repeatedly mistreated, threatened, harassed and verbally abused employees.”

“This leaves us with no choice but to fire you,” the letter reads. “The toxicity you introduced into the workplace ends now.”

<https://www.recode.net/2018/5/1/17306084/ron-gutman-fired-healthtap-investors-venture-capitalists>

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CEO Messages

EMOTIONAL BAGGAGE

Away's founders sold a vision of travel and inclusion, but former employees say it masked a toxic work environment

By Zoe Schiffer | @ZoeSchiffer | Dec 5, 2019, 11:00am EST

Illustrations by Grayson Blackmon and Will Joel

#monogramming-foil

Jump

Sarah's visit and tutorials.

The Verge

Steph Korey 4:33 PM

Can we ask one of the account managers to send us photos of all gold foil monogrammed luggage tags for approval before they get packaged for fulfillment? And if they can demonstrate a week of 100% perfect luggage tags they can begin proceeding without our sign off? @ops

Steph Korey 4:33 PM

If we need to ask Nick himself to be sending us the photos for sign off at this point I think we should

Steph Korey 4:34 PM

If whoever is doing these luggage tags is brain dead enough to package up and send a tag that clearly has incomplete letters it seems extremely unlikely to me that a retraining on SOPs if going to be a sufficient set of next steps for us to ensure that 100% of our customers are getting perfect luggage tags

Steph Korey 4:35 PM

These are a representation of our brand and company and if a single additional customer gets an imperfect luggage tag I am personally overtaking oversight of the monogramming program from the @ops team

4:36 PM

@steph Absolutely. Was just about to write an email to Quiet to follow up our visit and will include in that for moving forward

Thread

#cx-shipping-comms

of 1 Day is also an option, for any order that wouldn't already arrive in 2 business days. Let us know how you need us to adjust!

Steph Korey Nov 21st, 2018

@steph @ops there needs to be strategic reasons for recommendations

Steph Korey Nov 21st, 2018

if we were just going above and beyond we could send them all 10 free suitcases

Steph Korey Nov 21st, 2018

what about our promise isn't being upheld and how do we uphold it

Steph Korey Nov 21st, 2018

that is the strategic perspective we expect from anyone above the senior associate level here

Steph Korey Nov 21st, 2018

or we could send them all 100 free suitcases, that would be REALLY above and beyond

Steph Korey Nov 21st, 2018

we need to reach out to customers who are wondering where there tracking number is since it's been more than one business day, and what we do for them and what we say to them needs to make sense given all of the relevant context and info. It is not a blanket one-size-fits all situation. I would understand this recommendation from an associate or senior associate, but to be completely candid this is not the level of thoughtfulness we expect from a Manager

Add a reply

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CEO Steps Down

Away CEO is stepping down In light of reports of toxic culture

Megan Rose Dickey

@meganrosedickey / 4:26 pm PST • December 9, 2019



Comment

Tech Crunch

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Training – Awareness (Self and Others)

- Asked why are you uncivil
 - 25% blamed organization for lack of training on listening and feedback
 - See Christine Porath, *How Rudeness Stops People From Working Together*, Harvard Business Review (Jan. 20, 2017)
- Civility Training
 - Business etiquette; email etiquette
 - Diversity awareness
 - Inclusion and cultural sensitivity

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Training – Conflict Management

- Train in methods for disagreement
 - Improved decision making
 - Cognitive biases
 - Feedback
 - Difficult discussions

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Intervention: CREW

- **Civility, Respect, and Engagement in the Workplace (CREW)**
 - “The two effective studies rated as moderate (4, 7) focused on workplace incivility. Both involved a multi-component, six-month intervention called CREW (Civility, Respect, and Engagement in the Workplace). CREW is a facilitator-led series of group-based exercises, designed to allow participants to explore social relationships in their work group and in particular civil and uncivil communication.”
- See M. Hodgins, S. MacCurtain, and Patricia Mannix-McNamara, *Workplace Bullying and Incivility: A Systematic Review of Interventions*, Int'l J. of Workplace Health Management (2014)

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Intervention: Bystander Interventional Models

- Facilitated group discussions focused on five steps for bystanders:
 - Notice the event
 - Interpret event as hurtful
 - Responsibility for intervening
 - Know how to intervene
 - Implement intervention
- See Susanne M. Jones, *Bystanders to College Bullying: An Application of the Bystander Intervention Model* (July 2019) available at https://conservancy.umn.edu/bitstream/handle/11299/206677/Danielson_umn_0130E_20528.pdf?sequence=1&isAllowed=y

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Final Thoughts

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Questions?

- Michelle Greer Galloway
 - Contact Michelle at mgalloway@cooley.com or 650-843-5161

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Conclusion

These materials are intended as an introduction to the subject matter covered in the presentation. The presentation and the materials contained herein do not attempt to provide legal advice for any particular situation. Each particular situation must be analyzed individually in light of all of the surrounding facts and circumstances. Because of the complexity of the legal issues that will always arise in connection with the subject matter hereof, it is critical that counsel be involved. These materials are provided for educational and discussion purposes only and are not to be copied, used or distributed outside of this seminar without the express written consent of Cooley LLP. Copyright Cooley LLP and Michelle Greer Galloway 2023.

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