

'Bullying' Behavior Isn't About Associates' Gender—It's About Inexperience

Blaming gender for what is really a lack of experience does a disservice to those very women who are told, and must come to believe, they can hold their own against anyone in a courtroom, including, of course, much older men.

By Janie Byalik
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In a recent op-ed in this publication, a distinguished member of the New Jersey bar advised fellow lawyers to help “end the bullying of junior women attorneys” by calling out such behavior when they see it. I certainly agree that true sexism needs to be identified and eradicated wherever it arises. However, I do not believe that it is fair to refer to the behavior the writer identifies as the “bullying” of junior female attorneys, because such bullying has everything to do with junior associates’ inexperience in the face of seasoned and occasionally ostentatious adversaries, and nothing to do with gender. And I worry that the message the op-ed sends is not one that empowers women, particularly young female attorneys.

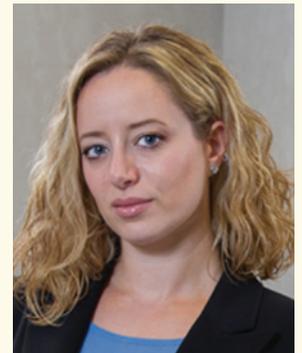
We have all been there—men and women—young and green, bright-eyed and bushy-tailed junior associates, enthusiastically stepping up to argue a motion or take a deposition only to encounter an arrogant adversary who makes it his or her mission to derail your efforts at every turn. Those types of encounters are not specific to junior women, nor should they be classified as bullying. Bullying implies an imbalance of power. Blaming gender for what is really a lack of experience does a disservice to those very women who are told, and must come to believe, they can hold their own against anyone in a courtroom, including, of course, much older men.

Like the writer, I, too, am a female litigator, practicing now for 14 years. I climbed the ranks from a junior associate in Big Law in the Big Apple to

now a partner at a medium-sized firm in New Jersey. In my 14 years of practice, I have certainly experienced my share of embarrassment borne of inexperience. But I never attributed it to my gender. I simply chalked up those encounters to the simple fact that an adversary was capitalizing on my inexperience rather than falling victim to the gender-bias mentality. I never considered it bullying. Instead, I simply made it my business to ensure that the mistakes I made would not happen again (although, of course, they did).

I remember defending my first deposition a few years out of law school. It was a large, multi-party case, with numerous defendants, all of whom were represented by male attorneys. I was the only female in a room (other than the court reporter) out of what must have been a dozen lawyers. I asked some questions. Naturally, I fumbled and stumbled. I never bothered to look up and around to see who was snickering and whispering. I knew what I did was not up to par, and I also learned what I needed to work on for next time.

One of my first appellate arguments before the New Jersey Appellate Division was a case that I had taken over from a lawyer who had since left the firm. He had written and filed all the briefs. I prepared furiously. I was even able to dig up helpful case law that was not



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cited in our appeal briefs that I thought I could use to impress the appellate panel with my knowledge of the law. When I got up to recite that law, however, I was immediately shut down by a male judge who criticized me for not having included the case law in the appeal briefs (that I did not write). Again, lesson learned and I moved on.

In another instance, a male adversary had a habit of communicating with me in what can only be described as a condescending manner. I never once stopped to ponder whether my adversary's tone or behavior would have been different if I was a man. I was always of the view that he was particularly defensive because his case was weak. And rather than get upset at his antics, I pressed on with the case full steam and even had some fun highlighting his emails to me for the court.

When I was a midlevel associate, the managing partner handed me a case for a friend of his who got swindled by a local car dealership. What should have been nothing more than writing a few letters morphed into a full-blown AAA consumer fraud arbitration. The dealership's expert witness, a male mechanic, threw me no bones during what was my first ever cross-examination, and my adversary, an experienced and slightly pompous trial lawyer sneered while I staggered and stumbled through my prepared outline questions. To make matters worse, the male arbitrator looked like he had completely checked out every time I spoke. I stammered my

way through the witness examinations. The arbitration was daunting but the experience invaluable. In the end, I won. That same male arbitrator who I thought slept through half of the hearing wrote a brilliant (in my view anyway) opinion granting my client his full amount of damages, trebled, and awarding me statutory legal fees.

A tough judge, an unpleasant adversary, an uncooperative witness are all inevitable encounters in this profession. There will always be people who try to throw you off your game, disrupt your flow, or underestimate you. Experience has taught me strategies for dealing with all kinds of adversaries, pleasant, horrific and everything in between. It has also taught me that obnoxious behavior from adversaries (men and women alike) is seldom personal, often a sign of weakness, and a powerful stimulus if you keep your cool. It can also be funny. Nothing undermines a blowhard more than laughing when he's screaming.

Certainly, there are situations where true harassment or discrimination occurs, and I would be the first to condemn those actions. Women who experience real discrimination should speak out, and those that see it happening certainly should take action. But correlating a challenging situation faced by many junior associates, male and female alike, to an attack on one's gender is not fair and not true. More than that, it sends the wrong message—that female attorneys are weak and should be treated differently than their male counterparts, which is the opposite of empowering. It is condescending.

We talk a lot about gender equality, but true equality comes from the recognition that you—the junior female associate—have the power to do it all, as well as and better than the men across the table from you, and with time and experience you will. You do not need a male adversary to pull you aside at a deposition to confirm that you are doing a good job. An award of treble damages and attorney fees works much better.

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