

## What Happens When Lawyers Tell Lies

When opposing counsel deliberately shade the truth, it helps to understand the psychology of narcissism.

**A** quick voice-vote: How many of you litigators have seen your opposing counsel deliberately misstate important facts to a court—and then brazenly keep right on doing it, even after you called them out? Wow! Sounded like just about everyone.

Another vote: How many of you have yourselves deliberately misstated important facts to a court? Silence. Mmmh.

Coincidence? I don't think so.

As a litigator myself, I can easily think of two examples when opposing counsel did just that.

When I was a very young lawyer handling my first evidentiary hearing, my client, whose alimony obligations I

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### Ethics

was trying to reduce, had a housing allowance of \$4,000 per year as a government employee living abroad—which we fully disclosed. The lawyer for my client's former wife kept bringing up the allowance, and each time he did so, somehow what came out of his mouth was \$40,000; not \$4,000. Each time I had to stand up and correct him. Surely, stating the wrong number once could be an honest slip, but how could one explain the repetitions?

Much later in my career, in a hotly contested lawsuit, opposing counsel repeatedly accused me in motions papers of "altering documents," without bothering to mention that the so-called "alterations" were plainly marked redactions pursuant to the rules, properly identifying in each instance the claim of privilege being invoked.

I wondered, what are these lawyers thinking? Even from a Machiavellian standpoint, how could they expect to gain anything from such easily rebuttable distortions?

### PSYCHOPATHOLOGY?

So as a lawyer who would have called out in response to the first voice vote and remained quiet for the second, I went to someone who I thought could explain this phenom-

enon. That's right—a psychiatrist. And he was not at a loss for words.

Richard A. Ratner, a board-certified psychiatrist since 1973, has many lawyers as patients in his clinical work and also serves as a forensic psychiatrist in bar disciplinary cases and other types of litigation. He says a lot of "psychopathology" takes place in litigation, for a variety of reasons.

First, he notes that lawyers generally, and litigators in particular, tend to "have generous helpings of narcissism," which he says can be both good and bad. Narcissistic people, he states, "want to go out of their way to shine and make themselves look terrific." This is a good thing to the extent it motivates them to work hard and be prepared.

The problem, he says, comes when you put such people in the crucible of litigation, which after all is a competition with winners and losers. He says that this competition aspect creates a polarization of issues, and for narcissistic people, places their fragile egos directly onto center stage.

Dr. Ratner explains that extremely narcissistic people are so "needy for the affirmation of success," that the idea of losing is seen as unbearable. They will therefore use the psychological defenses of "rationalization" and "denial" to enable themselves to intentionally mislead—and even lie—if they believe that is the only way to win.

Dr. Ratner states that as a result of this rationalization and denial, they do not see themselves as having done anything wrong. Instead, they see themselves as justified because they were acting for a "higher purpose." (This may be one reason why neither you nor I responded to the second voice vote.) He explains that the power of rationalization can be enormous. It can even be seen in such horribly extreme examples as when the killing of innocent civilians by terrorists is seen as "heroic."

### LAWYER, HEAL THYSELF

It is useful to understand this dynamic in our adversaries so we know what we are up against and see the ele-

ment of insecurity and desperation driving such behavior. It is also useful, however, to examine ourselves and look for similar symptoms.

None of us likes to lose and nearly all of us, at times, get carried away in litigation by a certain “bunker mentality,” through which we see our side as “good” and the other side as “bad.” Dr. Ratner says that it’s important to take one’s own temperature during the course of a contentious case to assess whether you have maintained perspective. One good way to do this, he says, is to discuss the case with a colleague, or at least to take time to calmly review the record and look at the facts.

Indeed, I recall instances where I have feverishly scrawled angry epithets in the margins of my copy of opposing counsel’s briefs, filled with righteous certainty that they have misstated the record or mischaracterized a court decision—only to review the record, or look up the cited case, and see that, at least to some degree, they had a valid point that needed a thoughtful answer.

Without taking a few moments to review the record or read the cited case, I might have been prepared to lunge out with angry misstatements of my own. Who knows? Perhaps at times I have done so.

Being aware of Dr. Ratner’s observations provides a tool for us to periodically look at ourselves, which should work to our benefit by allowing us to avoid court sanctions, see the strengths of an opponent’s case, or simply avoid looking silly.

Our clients want us to fight hard—and to win. But we can do that best if we keep our wits and see reality. If that requires putting our egos in check, so be it. After all, it’s doctor’s orders.

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