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ENDING THE EPIDEMIC OF ACCIDENTAL PERSONALITY DISORDER DISCRIMINATION BY WELL-MEANING MEDIATORS

Dan Berstein, Hannah Diamond,# and Philip T. Yanos⁺*

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I. INTRODUCTION / ABSTRACT

People who have or appear to have mental disorders encounter rampant bias and stigma, including from mediators.¹ This article focuses on some of the most heavily stigmatized mental health problems - personality disorders - and how some mediators discriminate against parties based on their guesses and assumptions that those parties may have these conditions.

First, we review how mediators' negative attitudes toward parties with personality disorders are not a surprise, considering the high degree of provider stigma persons labeled as having personality disorders face even from their own clinicians, who often denigrate them as dangerous, unchangeable, and warranting social exclusion.²

Next, we explore how the ethics of dispute resolution as well as general anti-discrimination laws make it an ethical and legal violation for dispute resolution professionals to engage in this kind of discrimination.

We then examine how unconscious bias, and lack of awareness of mental illness discrimination, lead well-meaning mediators to nonetheless violate these ethical standards.

From that sympathetic lens, understanding that mediators do not intentionally try to dehumanize parties with mental illnesses, we present tangible evidence of how pervasive personality disorder discrimination has become in the dispute resolution world including a qualitative exploration of the mediation literature discussing parties with these disorders using both clinical language and proxy labels.

We also present a review of mediation websites mentioning narcissistic personality disorder and examine the stigmatizing language contained in 93% of them.

We conclude by providing tools that mediators and other professionals can use to think critically before labeling, excluding, and mistreating parties who may have personality disorders - as well as initiatives to help rectify the wide dissemination of stigmatizing materials. These tools are linked to free training supplements any mediator can access to ensure they do not inadvertently engage in mental illness discrimination.

II. PERSONALITY DISORDERS AND PERSONALITY DISORDER STIGMAS

Personality disorder diagnoses have a unique history in psychiatric classification in the Diagnostic and Statistical Manual of Mental Disorders (DSM) as well as the International Classification of Diseases (ICD).³ Prior to the DSM-5 (published in 2013),⁴ these diagnostic categories were placed on a separate "Axis" from other mental disorder categories (Axis II, rather than Axis I), and were seen as deeply

1. See PHILIP T. YANOS, *WRITTEN OFF: MENTAL HEALTH STIGMA AND THE LOSS OF HUMAN POTENTIAL* (2018).

2. Sarah R. Masland et al., *Destigmatizing Borderline Personality Disorder: A Call to Action for Psychological Science*, 18 *PERSP. ON PSYCH. SCI.* 445, 447 (2022).

3. Peter Tyrer et al., *Classification, Assessment, Prevalence, and Effect of Personality Disorder*, 385 *LANCET* 717, 718 (2015).

4. AM. PSYCHIATRIC ASS'N, *DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS* 5 (5th ed. 2013).

ingrained and resistant to change.⁵ These diagnoses were, and still are, often seen as a catch-all diagnosis applied to people written off as “difficult.” People labeled with these conditions have often been regarded as impervious to clinical intervention and unpleasant to work with.⁶ Most egregiously, rather than being told they had a clinical condition that was not their fault, people with diagnoses of personality disorders frequently were and still are told they have a “bad” character or moral deficit.⁷ As one of us was told during clinical training, “if you have a personality disorder, then the problem is you,” meaning the problem is seen as being who that person is (in contrast with other mental disorders where symptoms are perceived as distressing and something that the person would like to change). Although “Axis II” no longer exists in formal classification, and personality disorder diagnoses are no longer in a separate category from other diagnoses, many clinicians still often adhere to the idea that personality disorders are fundamentally different from other types of mental disorders.⁸

Each of the current diagnostic labels for personality disorders (e.g. borderline, antisocial, narcissistic, histrionic, depressive, avoidant, dependent, schizoid, schizotypal, paranoid, and obsessive-compulsive) have their own set of criteria for diagnosis. A common theme is that clinicians see these individuals as being mildly or severely “defective” in their interactions with others without realizing that their behaviors are contributing to their problems. Similarly, clinicians continue to have trouble making these assessments, particularly when noting that personality disorders often coincide with other mental health problems as well.⁹ In part because of the complicated history of people experiencing these diagnoses as a form of rejection and exclusion from their own clinicians, these disorder labels are controversial in their use and application. However, they can also be useful for many who are able to receive helpful treatments to resolve difficulties in their daily lives.

Historically, personality disorders have been heavily stigmatized, with one 1988 study showing that psychiatrists who received case vignettes where the only difference added was a history of a personality disorder wound up rating those people as manipulative, difficult, annoying, non-sympathetic, and undeserving of resources as well as being more likely to dismiss their requests for admission and expressions of suicidality.¹⁰ A 2015 replication of the study found that this stigma persisted among psychiatric trainees, despite many efforts over the years to destigmatize these mental health conditions.¹¹ For instance, in 2003, the UK launched a *Personality Disorder: No Longer a Diagnosis of Exclusion* initiative to combat the longstanding and enduring psychiatric stigma that sees patients with personality

5. AM. PSYCHIATRIC ASS’N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 4 (4th ed., 1994).

6. See Daniel Ring & Sharon Lawn, *Stigma Perpetuation at the Interface of Mental Health Care: A Review to Compare Patient and Clinician Perspectives of Stigma and Borderline Personality Disorder*, 12 J. MENTAL HEALTH 56 (2019).

7. Ron B. Aviram et al., *Borderline Personality Disorder, Stigma, and Treatment Implications*, 14 HARV. REV. PSYCHIATRY 249, 252–55 (2006).

8. *Id.*

9. J. Christopher Fowler et al., *Differentiating Bipolar Disorder from Borderline Personality Disorder: Diagnostic Accuracy of the Difficulty in Emotion Regulation Scale and Personality Inventory for DSM-5*, 245 J. AFFECTIVE DISORDERS 856, 857 (2019).

10. Glyn Lewis & Louis Appleby, *Personality Disorder: The Patients Psychiatrists Dislike*, 153 BRIT. J. PSYCHIATRY 44, 45–49 (1988).

11. Dimitrios Chartonas et al., *Personality Disorder: Still the Patients Psychiatrists Dislike?*, 41, BJPSYCH BULL. 12, 14–16 (2017).

disorders as the “service users no one likes” and who seem impossible to treat.¹² Now, as recently as 2022, these efforts continue, including a call to action to destigmatize borderline personality disorder, in particular - emphasizing a need for professionals to exercise more care in how they write about this condition, and publications to likewise take measures to stop propagating guidance rooted in stereotypes and stigma.¹³ Similar efforts are increasing to counteract the stigma frequently attached to narcissistic personality disorder (NPD), using previous initiatives focused on borderline personality disorder as inspiration with a focus on helping clinicians stop stigmatizing patients with NPD despite clinicians’ frustration with their patients’ perceived sense of superiority, resistance to critical feedback, and indifference to the effects of their actions on others. These behaviors are often considered hallmarks of the disorder.¹⁴

Being diagnosed with personality disorders also impacts diagnosed individuals’ sense of self-worth. For instance, there is evidence indicating that people diagnosed with borderline personality disorder (BPD) internalize negative stereotypes at levels higher than people with other mental disorders.¹⁵ One study found that people diagnosed with BPD showed higher levels of internalized stigma than people diagnosed with schizophrenia, major depression or anxiety disorders.¹⁶ Research routinely finds that internalized stigma has a substantial deleterious effect on self-esteem and hope for the future.¹⁷

III. ETHICAL AND LEGAL RULES PROHIBITING MEDIATOR DISCRIMINATION BASED ON PERSONALITY DISORDERS

The pervasive stigma toward personality disorders and other mental health conditions has great relevance for mediators. Mediators are ethically bound to be consistent in how they approach and treat parties rather than succumb to any kind of bias.¹⁸ This means they must treat all parties impartially, regardless of whether the party has a mental health problem or disability. This professional requirement of impartiality is codified in the Model Standards of Conduct for Mediators, which have been endorsed by the American Bar Association (ABA), American Arbitration Association (AAA), and Association for Conflict Resolution (ACR).¹⁹ Standard II.B.1 states “A mediator should not act with partiality or prejudice based on any participant’s personal characteristics, background, values and beliefs, or performance at a mediation, or any other reason.” Clearly, a mediator would violate this ethical obligation if they acted in a partial or prejudicial manner toward a party

12. Hanna Pickard, *Responsibility Without Blame: Empathy and the Effective Treatment of Personality Disorder*, 18 PHIL., PSYCHIATRY, & PSYCH. 209, 210 (2011).

13. Masland et al., *supra* note 2, at 451–54.

14. See Erika Penney et al., *Opinion Piece: Therapist Stigma towards Narcissistic Personality Disorder: Lessons Learnt from Borderline Personality Disorder*, 3 AUSTL’N CLINICAL PSYCH. 63, 65 (2017).

15. Nicolas Rüsch et al., *Self-Stigma in Women with Borderline Personality Disorder and Women with Social Phobia*, 194 J. NERVOUS & MENTAL DISEASE 766, 766–73 (2006).

16. Ales Grambal et al., *Self-stigma in Borderline Personality Disorder – Cross-sectional Comparison with Schizophrenia Spectrum Disorder, Major Depressive Disorder, and Anxiety Disorders*, 12 NEUROPSYCHIATRIC DISEASE & TREATMENT 2439 (2016).

17. Philip T. Yanos et al., *The Impact of Illness Identity on Recovery from Severe Mental Illness: A Review of the Evidence*, 288 PSYCHIATRY RSCH. 1, 4 (2020).

18. See MODEL STANDARDS OF CONDUCT FOR MEDIATORS (AM. ARB. ASS’N, AM. BAR ASS’N, ASS’N FOR CONFLICT RESOL., 2005).

19. *See id.*

based on that party's personal characteristics, or supposed "defects" in functioning which may imply they have a personality disorder.²⁰

Beyond this ethical standard, there are broader legal rules from the Americans with Disabilities Act (ADA) which prohibit discrimination toward anyone merely perceived as having a mental impairment, regardless of whether they have some sort of actual mental disorder diagnosis. More specifically, the ADA prohibits inappropriate inquiries or assessments as to whether someone has a psychiatric disability, eligibility criteria that screens out parties who may have such a disability, disparate treatment toward a party who seems to have such a disability, or the denial of requests for reasonable process adjustments based on someone having the disability.²¹ Put simply, mediators are not allowed to provide a different kind of treatment to a party based on knowing or perceiving them as having a personality disorder or other mental disorder. These prohibitions are rooted in both the ethics of the field and the civil rights laws in the United States, such as the ADA.

IV. WHY PEOPLE DON'T PERCEIVE PERSONALITY DISORDER STIGMA AND DISCRIMINATION

Despite the ethical and legal standards prohibiting mediators from acting in a biased way based on parties' mental health, the practical reality is that discrimination toward mental illnesses abounds in mediation. This is, in part, because many practitioners are not sensitive to this type of discrimination.²² Studies show that people tend to believe discrimination based on mental illness is acceptable in contrast to that toward other legally protected classes of people.²³ This explains why there have been unintentionally discriminatory guidance materials that are widely disseminated through the mediation field by respected dispute resolution organizations.²⁴ Work is ongoing to help various institutions address the harmful guidance they have published and make changes so it no longer singles out people perceived as having mental health problems for disparate treatment.²⁵ Perhaps the hardest

20. *Id.* at 4.

21. Americans with Disabilities Act, 42 U.S.C. § 12101.

22. Note that another reason that this misconduct abounds is that the alternative dispute resolution field has a general lack of accountability and oversight for misconduct. See Michael Moffitt, *Ten Ways to Get Sued: A Guide for Mediators*, 8 HARV. NEGOT. L. REV. 82 (2003), which provides an overview of this potential problem and suggests possible paths for a potential lawsuit.

23. Lauren Gonzales et. al., *Microaggressions Experienced by Persons with Mental Illnesses: An Exploratory Study*, 38 PSYCHIATRIC REHAB. J. 234, 236–39 (2015).

24. See Dan Berstein & Maria Volpe, *Uncovering and Addressing Mental Health Bias in Dispute Resolution: Some Observations*, 73 DISP. RES. J. 1 (2018); Dan Berstein & Maria Volpe, *Bringing Dispute Resolution Tools to the World of Mental Health*, 75 DISP. RES. J. 79 (2021) [hereinafter Berstein & Volpe, *Bringing Dispute Resolution Tools*]; Dan Berstein, *How to Help Parties with Disabilities Without Discriminating*, MEDIATE.COM (June 7, 2020), <https://mediate.com/how-to-help-parties-with-disabilities-without-discriminating/> [hereinafter Berstein, *How to Help Parties with Disabilities*]; Dan Berstein, *On Professional Practice: Preventing Unintentional Discrimination in Dispute Resolution*, AM. BAR ASS'N (Jan. 19, 2023), https://www.americanbar.org/groups/dispute_resolution/publications/dispute_resolution_magazine/2023/january/on-professional-practice/; DAN BERSTEIN, MENTAL HEALTH AND CONFLICTS: A HANDBOOK FOR EMPOWERMENT (2022).

25. See Dan Berstein, *Five Strategies Dispute Resolvers Can Use to Vet Professional Guidance and Prevent Misconduct*, 40 ALTS. TO HIGH COST OF LITIG., 177, 178 (2022) [hereinafter Berstein, *Five Strategies*]; Dan Berstein, *Mental Illness Discrimination Breakthroughs at Mediate.com*, AM. BAR ASS'N (Oct. 26, 2022),

discrimination to change is that directed at personality disorders, in large part because people often see these conditions as separate from traditional mental health problems and they have normalized the idea of rejecting people who seem to have aberrant personality traits without explicitly making the connection to these people potentially having disabling mental health problems.

It is helpful to understand more deeply how well-meaning mediators might not realize that they are engaging in discrimination toward personality disorders. Some reasons that well-meaning mediators and others do not realize it is discrimination include:

- the use of proxy labels which obfuscate the reality that the parties are being profiled as potentially having mental health problems;
- the emphasis on disclaimers that purport the practitioner is not diagnosing;
- the casual usage of mental health terminologies without realizing they connect to people with disabilities;
- the nice-seeming paternalism of the practitioners that mask the discrimination underlying the tactics;
- the fear of challenging behaviors often inappropriately scapegoated on mental health problems;
- the systemic biases that lead people to believe that separating people with mental health problems for different treatment is okay;
- the secrecy tactics that make it harder for people to have accountability or broader awareness of the problem;
- and the desire to blame difficulties on problems within the party.

We explore each of these phenomena in the sections below, because it is important to appreciate that mediators perpetuate this discrimination because of the societal context surrounding personality disorders, misunderstandings, and negligence rather than any deliberate malice.

A. Proxy Labels

One big reason people do not realize they are discriminating against people with mental disorders is because they are taught to use language that obfuscates this reality. There are many different terms that are effectively proxy labels for someone

https://www.americanbar.org/groups/dispute_resolution/publications/JustResolutions/october-2022/mental-illness-discrimination-breakthroughs-at-mediate-com/ [hereinafter Berstein, *Mental Illness Discrimination*].

who shows aberrant behavior that is likely symptomatic of a mental disorder, and specifically personality disorders. We have decided to focus on three of the most common ones - “difficult,” “toxic,” and “high conflict” - to demonstrate how these terms actually are used to profile parties who have mental disorders.

For one example of how the word “difficult” is used this way, it is helpful to refer to the book *Handling Difficult People* by Jon P. Bloch.²⁶ This book is designed to teach people how to spot and avoid difficult people and begins by identifying ten colloquial “personality types” to watch out for including ones such as the “constant complainer” or “the two-face.” These are terms that are very similar to the colloquial labels psychology books often ascribe to people with personality disorders such as histrionic and borderline disorders.²⁷

Next, take the word “toxic.” Chase Hill wrote a book called the *Toxic People Survival Guide*, which is subtitled with specific personality disorder labels such as “narcissists” and “sociopaths.”²⁸ Similarly, a review of a 2015 Harvard study about toxic workers explains that, though the study did not use the term personality disorder, the descriptions map onto the personality disorder constructs from another book about toxic coworkers that specifically focused on personality disorders.²⁹

Then there is the phrase “high conflict.” Many articles suggest there are four signs to look for to determine if someone is “high conflict” - blaming, all-or-nothing thinking, intense emotions, and extreme behavior.³⁰ Yet these are all signs of personality disorders. They map onto the Shedler-Westen Assessment Procedure (SWAP-200) personality disorder test instrument used by clinicians to diagnose personality disorder problems.³¹ The purpose of this instrument is to identify personality disorders, and it includes prompts such as:

- “Tends to blame others for own failures or shortcomings”³²
- “Tends to idealize certain others in unrealistic ways; sees them as ‘all good’” and “Tends to see certain others as ‘all bad’”³³

26. See JON P. BLOCH, *HANDLING DIFFICULT PEOPLE: EASY INSTRUCTIONS FOR MANAGING THE DIFFICULT PEOPLE IN YOUR LIFE* (2013).

27. *Id.* at 43–56, 99–112.

28. See CHASE HILL, *TOXIC PEOPLE SURVIVAL GUIDE: HOW TO DEAL WITH DIFFICULT, NEGATIVE, OR MANIPULATIVE PEOPLE, HANDLE NARCISSISTS AND DISARM SOCIOPATHS* (2021).

29. Bill Eddy, *The New Elephant in the Room: What All Professionals Need to Learn About Personality Disorders*, HIGH CONFLICT INST. (Jan. 4, 2023), <https://www.highconflictinstitute.com/hci-articles/the-new-elephant-in-the-room-personality-disorders> (“While they did not use the term personality disorder, their description of such workers are similar to those in the Toxic Coworkers book about PDs in the workplace.”).

30. Michael Lomax, *Dealing with High Conflict People*, MICHAEL LOMAX, <http://www.michaellomax.ca/dealing-with-high-conflict-people/> (last visited Jan. 8, 2024).

31. *Shedler-Western Assessment Procedure*, SWAP, <https://swapassessment.org/> (last visited Jan. 8, 2024).

32. Hermie Zalman et al., *Alliance Challenges in the Treatment of a Narcissistic Patient: The Case of Alex*, 22 RSCH. PSYCHOTHERAPY: PSYCHOPATHOLOGY, PROCESS & OUTCOME 212, 214 (2019).

33. Sayrn R. Levy et al., *Patient Personality Characteristics and Therapeutic Integration: Treating Borderline Personality and Emotionally Dysregulated-dysphoric Personality Features*, 25 RSCH. PSYCHOTHERAPY: PSYCHOPATHOLOGY, PROCESS & OUTCOME 173, 181 (2022).

- “Emotions tend to spiral out of control, leading to extremes of anxiety, sadness, rage, excitement, etc.”³⁴
- “Tends to show reckless disregard for the rights, property, or safety of others.”³⁵

Each of these bullets, in order, correlate to those four signs for spotting “high conflict” people - blaming, all-or-nothing thinking, intense emotions, and extreme behavior. As these labels get used and re-used they become further attenuated from their origin as describing clinical mental health impairments. People who are being taught to use these four indicators to guess if someone is “high conflict” have no reason to suspect they are actually assessing the party using clinical indicators, and that the term “high conflict” is a proxy label for someone with a personality disorder. Yet a review of the literature shows this is the case - that people who write about “high conflict people” or “high conflict personalities” are often even adding text to discuss four or five specific personality disorders they believe are denoted by that term.³⁶

Using proxy language has the effect of masking the reality that these are people with mental disorders, and it leads to the casual amplification of stereotypes and discrimination. People are taught they should denigrate, exclude, or dehumanize a group of people based on this group’s perceived characteristics, which means that people with traits associated with personality disorders are stigmatized and discriminated against, regardless of whether the discriminators know why it is happening.

This discrimination is even more insidious because it appears rational on its face. Take the book *Dating Radar*, which was written by mediation experts who believed that they should help people avoid ever having romantic relationships with “high conflict people.”³⁷ A book about avoiding dating people with mental disorders might not seem acceptable on its face, but this book seems appropriate or even useful because it uses the term “high conflict people” instead of “people likely to have mental disorders.” Quotes such as, “Believe us when we say that you will regret having chosen someone with a high-conflict personality to be the other parent of your children,”³⁸ might be easier to identify as a call for social exclusion if they translated the term and said “you will regret having chosen someone with signs of a mental disorder to be the other parent of your children.”

The final section of this article addresses tools to help correct the inadvertent discrimination. Several people said that they had not realized their programs about

34. Jonathan Hinrichs et al., *Personality Subtypes in Adolescent and Adult Children of Alcoholics: A Two Party Study*, 199(7) J. NERVOUS MENTAL DISORDER 487, 502 (2011).

35. Jonathan Shedler & Drew Westen, *Dimensions of Personality Pathology: An Alternative to the Five-Factor Model*, 161 AM. J. PSYCHIATRY 1743, 1747 (2004).

36. Karen F. Nordlinger, *Personality Disorders and High-Conflict Litigation*, 67 ADVOCATE 173, 176 (2009); *High Conflict Personality*, ADR TIMES (Oct. 23, 2023), <https://www.adrtimes.com/high-conflict-personality/#content> (noting “people with Cluster B personality disorders seem to be drawn into high-conflict litigation” though adding it is not all people with these disorders, but rather a subset); Kathie S. Nichols, *Breaking Impasses: Strategies for Working with High Conflict Personalities*, 20(4) AM. J. FAM. L. 226, 228 (2007) (“Most high conflict personalities fit the criteria of Cluster B personality disorders”).

37. See BILL EDDY & MEGAN HUNTER, *DATING RADAR: WHY YOUR BRAIN SAYS YES TO “THE ONE” WHO WILL MAKE YOUR LIFE HELL* (2017).

38. *Id.* at 28.

“high conflict personalities” were actually targeting people with mental disorders, and this is how they wound up publishing inappropriate material advising illegal, discriminatory, and stigmatizing actions.³⁹ One clear effect of using this proxy language is that many people are unwittingly amplifying stereotypes and discrimination without realizing it.

B. Disclaiming the Act of Diagnosing

Proxy labeling makes it hard enough to notice problems, but the reality that mediators are engaging in armchair diagnoses regarding clinical disorder symptoms gets further obfuscated by the fact that the guidance material sends mixed messages about whether this is happening at all. For instance, a 2021 book by Michael Lomax and Bill Eddy introduces a “New Ways for Mediation” model designed specifically for use with people who have mental impairments associated with personality disorders and related traits.⁴⁰ In *Mediating High Conflict Disputes*, the authors stress they are not technically diagnosing while also introducing their framework for providing ad-hoc profiling of people who show symptoms of these mental health problems:

Throughout this book we will often refer to the abbreviated term HCPs, to mean high conflict people or people with high conflict personalities. This is not a diagnosis, but a shortened term for people with this intense pattern of conflict behavior. We understand that this term does not describe a full person, just as the term alcoholic or diabetic or Californian or Texan does not describe a whole person. It is not meant in any way to be judgmental, but rather practical in recognizing a pattern of behavior that needs a different type of approach by mediators and other professionals.⁴¹

The authors stress that this is not a diagnosis, but rather detecting a pattern (which is what diagnosing is). Further, they then liken the term to clinical diagnoses of alcoholism or diabetes, implying that it is a clinical diagnosis. Later on in the

39. For instance, the American Bar Association Section of Dispute Resolution published the following podcast and linked a website about “emotional predators” that likened people with personality disorders to “turds.” When contacted about this stigma, the host of the podcast wrote explaining they were surprised by this linkage and rhetoric. Resolutions: A Podcast About Dispute Resolution and Prevention, *Why Traditional ADR Approaches Fail with High Conflict Parties*, Am. Bar Ass’n Section Disp. Resol. (Aug. 2023). Note that the American Bar Association was alerted to this podcast, and it was removed. Another person promoted a book called “BIFF for CoParent Communication: Your Guide to Difficult Texts, Emails, and Social Media Posts” on their shelf behind them in Zoom meetings. When contacted to learn more about their views of the BIFF method for briefer communication, they were surprised to realize this book actually talks about targeting people with personality disorders and related problems (it began by saying “[t]his book stands on its own, or you can also get the original BIFF book (2d Edition, as described above), for its broader application including non-parenting situations and explanations of high conflict personalities” and it also described the people to BIFF as HCPs (“we think of them as high conflict people (HCPs)”) – and says, “[t]hroughout the book we will mention some of the common predictable behavior of HCPs”). This person said they would like to use the BIFF techniques for more brief communication without thinking of it as writing certain people off as having high conflict personalities. There have been many other instances where people have been surprised to realize that behind the label “high conflict person” or “high conflict personality” there is a link to people with mental disorders.

40. See BILL EDDY & MICHAEL LOMAX, *MEDIATING HIGH CONFLICT DISPUTES* (2021).

41. *Id.* at 28.

same chapter, the language becomes clearer though it still contains confusing contradictions:

People with high conflict personalities often have personality disorders, which is a mental health diagnosis. We are not teaching you how to diagnose a personality disorder. Diagnosing personality disorders is a complex task reserved for licensed mental health professionals who are providing counseling or other psychological services. We want to briefly explain personality disorders to help you have a general background understanding in order to know what to expect from them, what not to expect from them, what not to do, as well as what to do in working with high conflict people.⁴²

Here the authors' language became clearer as they explicitly acknowledge that people they label as "high conflict personality" are actually often people with clinical personality disorders. Again, they say it is not diagnosing because that is something reserved for clinicians, while continuing to explain that they are teaching you about personality disorders so you can profile them, form expectations about them, treat them differently, and so on.

The practical reality is that individuals are being labeled as "high conflict people," connoting they likely have personality disorders, and then treated differently based on that label. However, the language from that excerpt muddies the waters and makes people think that it is not technically diagnosing when, for all practical purposes, it actually is. It is labeling people with a term that acts as a proxy for a suspected personality disorder diagnosis (or related personality disorder symptoms). It also implies that it is okay or even good to discriminate against "high conflict people," when of course it would be illegal and unethical to discriminate against people who seem to have mental health diagnoses because the Americans with Disabilities Act prohibits disparate treatment based on regarding someone as having a disabling mental health impairment.⁴³

This semantic wordplay can be seen throughout a wide range of dispute resolution literature and seems to have given many people a sense of permission engaging in quasi-diagnoses. For instance, Pepperdine University's Caruso School of Law currently has a course listing called "Special Topics the Psychology of Conflict: High Conflict Cases" taught by Stephanie Blondell, who is the Faculty Director of the Straus Institute for Dispute Resolution.⁴⁴ This course description does not say it is teaching people to diagnose personality disorders, but rather students will learn "an overview of five high-conflict personality patterns" and "how to identify patterns of behavior in high-conflict cases, and ways in which to manage those patterns."⁴⁵ The five high-conflict personality patterns actually map onto five clinical personality disorders - antisocial, narcissistic, histrionic, borderline, and paranoid personality disorders.⁴⁶ Yet because the syllabus calls it "patterns" to "identify"

42. *Id.* at 29.

43. See Stephen F. Befort, *Let's Try This Again: The ADA Amendments Act of 2008 Attempts to Reinvigorate the Regarded as Prong of the Statutory Definition of Disability*, 2010 UTAH L. REV. 993, 997 (2010).

44. *Special Topics in the Psychology of Conflict: High Conflict Cases*, PEPP. CARUSO SCH. L., <https://law.pepperdine.edu/straus/training-and-conferences/professional-skills-program/malibu/psychology-of-conflict.htm> (last visited Jan. 8, 2024).

45. *Id.*

46. *Id.*

and “manage,” it is harder to appreciate that these are clinical disorder symptoms being identified and that managing these people means treating them differently based on perceived patterns that are explicitly derived from five psychiatric diagnoses.

Similarly, an article in Family Law Magazine begins by cautioning people not to stereotype by diagnoses, which seems like it is anti-stigma and anti-profiling:

Can we refrain from allowing our own biases from influencing our representation of people who might present with a personality disorder or some other mental health issue? In terms of biases, we must also be mindful of the stereotypes that flow from certain diagnoses. Focus on such stereotypes potentially closes off the mind to other possibilities that may be present in a given case. We need to focus on facts and observable behaviors, not speculation and the labels tendered by our client who may simply be playing armchair psychologist.⁴⁷

Yet these authors continue by giving advice that attorneys should consider diagnoses, concluding by saying:

Our duty, at all times, is to do constant reality checks, to be cognizant of whether one or both of the parties has a personality disorder. Are they persuasive blamers? There may be no need to prove a diagnosis in a given case. Instead, we should be mindful of personality patterns, and how to best manage potentially high conflict personalities in the context of litigation, to preserve and protect the best interest of children.⁴⁸

Throughout the literature about these personality disorders, many authors present conflicting narratives, sometimes cautioning against diagnosing and stereotyping, and other times teaching ways to label and stigmatize folks with these conditions. Amidst all of this confusion, it makes sense that people are unclear that they are perpetuating mental illness stigmas and perpetrating illegal discrimination.

C. Casual Use of Terms

Another problem is that many people have gotten into the habit of casually using mental health terms, even diagnostic ones, without believing they are literally meant to connote disorders, or realizing their power. As such, words like “narcissist” or “bipolar” can become a sort of colloquial slang to describe aberrant behavior without necessarily believing the person qualifies for a technical diagnosis.

This casual usage of mental health diagnoses as disparaging terms that are not necessarily clinical has led people to believe it is not wrong to write someone off as having a mental health problem. Yet this still can amount to “regarded as” discrimination under the ADA, because the ADA does not actually define disabilities based on specific diagnostic condition labels - especially when it comes to assessing

47. Elisa Reiter & Daniel Pollack, *Take New Clients with A Psychological Grain of Salt*, FAM. LAW. MAG., <https://familylawyermagazine.com/articles/take-new-clients-with-a-psychological-grain-of-salt/> (May 3, 2022).

48. *Id.*

whether there has been discrimination.⁴⁹ When it comes to discrimination, the question becomes whether the person believed another person had a mental impairment that was disabling. Even if the colloquial use of these terms is not technical diagnosing, it still amounts to hunting for mental impairments of some kind - as denoted by the terminology. The important thing to remember is that, whether someone is using a casual term like “narcissist” to profile someone as different or they are using a clinical term like “narcissistic personality disorder” or a proxy label like “toxic” - any of these terms are likely still referring to that person’s awareness that the person they have labeled is aberrant. That means it is a sign that the labeler believes the other person has a mental health impairment.

From a legal liability perspective, whether a colloquial term amounts to true discrimination is an issue for courts. One court looked at an e-mail that said “to diagnose insanity would mean to find there is a brain” and they decided that insult did not amount to discrimination because the court did not believe perceived intelligence was the same as saying the person was not able to think.⁵⁰ But records showing that a social worker’s supervisor had told people the social worker could not make good choices because she was so anxious were seen as a sufficient basis to make the case that the supervisor thought they were disabled.⁵¹ Even if people use diagnostic terms colloquially without meaning to reference a clinical disorder, if they are referring to their real belief the person is impaired in some way, it could still mean they are legally regarding them as disabled.

In Lomax and Eddy’s *Mediating High Conflict Disputes*, they expand their language from personality disorders to also discuss other conditions in a section called “Other Mental Disorders.” They write:

While we focus on personality disorders and methods for working with high conflict personalities in this book, there are several other mental disorders with some similar patterns of dysfunctional interpersonal behavior at times. People with bipolar disorder, depression, high anxiety, addictions, schizophrenia, trauma history, ADHD, autism spectrum, brain injuries, and other disorders can usually benefit from the same tips and method we are going to provide in this book.⁵²

Here the authors lump together a kitchen sink of mental illnesses to include on top of the personality disorder focus for their model of different mediation for parties presumed to be unable to handle normal mediation processes. While this language appears to have come from a clinician as opposed to a layperson colloquially using the label, there is still a casualness to tossing in these other disorders that also demonstrates the effect of people throwing these terms around without realizing that they could be triggering stigma and discrimination concerns.

This casual usage also normalizes societal discrimination against people who have mental disorders. If we think of the term “narcissist” not as a diagnostic term but as a synonym for “jerk” or “selfish,” then it is only natural to think it makes sense to avoid people with these labels. After all, it is not discriminatory to treat someone differently because they are selfish. Thus, this blurring between clinical

49. See Befort, *supra* note 43, at 994.

50. *Furry v. Lehigh Valley Health Sys.*, 902 F. Supp. 2d 645, 654 (E.D. Pa. 2012).

51. *Ingram v. D.C. Child & Fam. Servs. Agency*, 394 F. Supp. 3d 119, 122 (D.D.C. 2019).

52. EDDY & LOMAX, *supra* note 40, at 22.

terms and colloquial adjectives makes it easy for people to discriminate on the grounds of perceived mental health disorders without realizing it.

D. Nice-Seeming Paternalism

Another problem that makes it hard to realize that there is discrimination is that the practitioners who are engaging in it are actually friendly, nice, and supportive mediators who do not realize their tactics are discriminatory and would never want to discriminate. One example of this phenomenon comes from David Hoffman, a pre-eminent mediator and Harvard Law School instructor, who had used the “high conflict people” framework for a time but then ultimately moved away from it because he realized it was pathologizing the parties and treating them as disordered. His 2022 Internal Family System conference remarks tell the story of how nice and empathetic the mediator who used this approach is, in contrast to the underlying problem with the approach⁵³:

In our world of mediation, we have a clinician - clinical social worker - named Bill Eddy who is also a lawyer and a mediator who has written some absolutely wonderful material about high conflict people. So he just bundles together all of the kinds of character-ological disorders using the DSM model and says ‘these are people who find themselves in conflict a lot.’ And he recommends bonding, structure, reality testing, consequences and he elaborates on each of those topics and provides mediators with - I think - very good tools for how to work with conflict-prone people. But the problem with this model - and I talked to Bill Eddy about this personally - is that this model tends to pathologize the parties in mediation. And I know that Bill does not do that - I’ve watched him on videos doing actual mediations and he is a very empathic mediator. But the model basically presupposes that we’re okay and the people we’re working with are not okay if they are enmeshed in conflict or they are repeat players in conflict.⁵⁴

Indeed, it makes sense that David Hoffman initially noticed a discordance between the niceness of the practitioner and the impact of these pathologizing tactics. The New Ways for Mediation model, as detailed in *Mediating High Conflict Disputes*, contains that same type of disorienting kindness. Take this quote as an example:

Because of their lack of social self-awareness and lack of change, working with people with personality disorders or traits requires different strategies and skills, but can be successful if you understand more about them.⁵⁵

This is one of a great many possible examples of friendly-sounding rhetoric to describe something that is actually quite demeaning and discriminatory. First, there

53. David Hoffman, *The Self-Led Mediator: Using IFS in Dispute Resolution*, Presentation at the IFS Institute Annual Conference (Oct. 22, 2022).

54. *Id.* (transcript on file with author).

55. EDDY & LOMAX, *supra* note 40, at 33.

is the presumption that people with these disorders would never be able to be socially self-aware or change and the idea that they require a different model of practices from normal mediation. Yet this is written in the sincere perspective of trying to help these parties by making a process adaptation. Dismissive paternalism, or mediators trying to exert control or make decisions for parties they believe need help, runs rampant throughout the literature on parties with personality disorders and related traits. However, it can be hard to detect because some of the negative presumptions about people with mental health problems make it seem only natural to need to do something different for these parties. Yet these parties did not come looking to be diagnosed by their mediator, and they did not ask for the mediator to treat them differently - they came expecting the impartiality that is the core of mediation.

Paternalism is not new to the world of mediation or the general world of mental disorders. What is distinct, when it comes to personality disorders, is that practitioners see a need to disconnect from parties they guess have personality disorders, so they impose extra structures on the session, or limit the amount of communication with these individuals, relative to their normal friendliness and accessibility. This disconnected paternalism is distinct from the normal paternalism we imagine when someone is overly involved, offering extra assistance, and making themselves more available because they believe someone is disabled.

Take the example of an attorney mediator who made a point, on their website, of advertising that they will not turn people with personality disorders away.⁵⁶ She begins by sharing how there are frequent debates amongst family mediators about whether it is appropriate to take cases with clients with personality disorders and she writes how she will not turn away any of these cases because she wants to help these parties.⁵⁷ Yet the post continues to say that mediator-attorneys who refuse the cases have legitimate concerns, and that high conflict clients require the mediator to have special skills, including a “detailed and clear framework for high conflict clients to work within.”⁵⁸

The message is clear - many people believe they are helping individuals with personality disorders by imposing special structures and limits on them - distinct from the paternalistic over-involvement we may expect in other situations. The idea that this is presented in a friendly, supportive manner helps explain why people have not realized it can be discrimination.

E. Fear of Challenging Behaviors

Because of the stigma associated with personality disorders, many people fear individuals labeled with these conditions (or they end up guessing that the people they fear have these diagnoses). This phenomenon is somewhat ubiquitous in the literature of personality disorders and mediation, but is perhaps not captured any better than by the book *5 Types of People Who Can Ruin Your Life: Identifying And Dealing With Narcissists, Sociopaths, And Other High-Conflict Personalities*. This

56. Unmani Saraswati, *Why I Will Never Stop Taking High Conflict Mediation Cases*, MEDIATION OFFS. S.F./OAKLAND (Apr. 23, 2022), <https://mediationoffices.net/why-i-will-never-stop-taking-high-conflict-mediation-cases/> [<https://web.archive.org/web/20230329182100/https://mediationoffices.net/why-i-will-never-stop-taking-high-conflict-mediation-cases/>].

57. *Id.*

58. *Id.*

book was written by a mediator and therapist, and the website from the publisher describes it by saying:

“When a high-conflict person has one of five common personality disorders—borderline, narcissistic, paranoid, antisocial, or histrionic—they can lash out in risky extremes of emotion and aggression. And once an HCP decides to target you, they’re hard to shake.”⁵⁹

The book itself begins by making you scared of people with these disorders:

So can you trust the person you’re dating? The new employee at work? The investment adviser? Your uncle, who wants to sell you insurance? The new, handsome minister? The political candidate on TV? You have to decide - often in seconds - based on very little information. Here’s the good news: You can trust 80 to 90 percent of people to be who they say they are; to do what they say they’ll do; and to follow most of the social rules that help us live together. Now, the bad news: There are five types of people who can ruin your life. They can ruin your reputation, your self-esteem, or your career. They can destroy your finances, your physical health, or your sanity. Some of them will kill you, if you give them the opportunity. These folks make up about 10 percent of humanity - one person in ten. In North America, that’s more than thirty-five million people. Eventually it’s very likely that one will decide to target you. That’s why it’s important for you to read this book now.⁶⁰

Right away, the stigmatizing nature of this book was recognized, while also being minimized. Publisher’s Weekly reviewed it by explaining how the book scares people about these disorders:

In this thought-provoking but overextended guide to identifying and avoiding conflict-prone people, Eddy (coauthor of *Splitting*), a social worker, discusses clinically recognized personality disorders. Though Eddy cites the DSM-V as suggesting that 15% of all people have such a disorder, his book only concerns the 10% of people with ‘high-conflict’ personalities (HCPs.) Eddy states that his mission is to protect the reader from becoming such a person’s fixation, or ‘target of blame.’ Eddy focuses on five personality disorders: borderline, narcissistic, paranoid, antisocial, and histrionic. At times, the book can feel a bit like a safari guide, with discussions of ‘spotting’ each type. Eddy’s examples tend to the extreme: Ted Bundy and Bernie Madoff are used as representatives of antisocial personality disorder and “terrorist leaders” in general as embodiments of narcissistic personality disorder. Eddy’s repetitive rhetoric about how those with high-conflict personality types ‘ruin lives’ will likely strike mental-health

59. *About 5 Types of People Who Can Ruin Your Life*, PENGUIN RANDOM HOUSE, <https://www.penguinrandomhouse.com/books/553315/5-types-of-people-who-can-ruin-your-life-by-bill-eddy-lcsw-esq/> (last visited Jan. 8, 2024).

60. BILL EDDY, *5 TYPES OF PEOPLE WHO CAN RUIN YOUR LIFE* 5 (2018).

advocates as overly stigmatizing, though he does urge readers to exercise compassion as well as caution.⁶¹

Here again is the example of that layer of nice paternalism atop the discrimination. Publisher's Weekly notes how sensationalized the examples are for these different disorders, and how mental health advocates would see this as overly stigmatizing while also mentioning that there are notes of compassion as well. This lip service to compassion gives cover to the fearmongering and stigmatization that permeate the book. Many writings encouraging discrimination toward people with personality disorders blend the notes of fear with disclaimers of kindness, and that helps this material gain further traction and ultimately seem okay to people - as it did in this Publisher's Weekly review.

F. Structural Discrimination Norms

It makes sense that mediators, many of whom are trained attorneys, may fall into the pattern of inadvertently discriminating against participants they perceive to have mental disorders, such as personality disorders, because this kind of discrimination is baked into our society and, more specifically, the law. Corrigan, Markowitz, and Watson documented the structural or institutional discrimination affecting people with mental illness, which is actually codified in policies that may not always intentionally discriminate against people with mental health problems but effectively have that impact.⁶² Their work found laws restricting voting, holding elective office, serving for jury duty, parenting, and remaining married as well as examples of discrimination in non-legal areas such as the media or private medical research.⁶³ One simple way to look at this reality in practice is to note that, according to the American Bar Association, 37 states still consider mental health status when evaluating the fitness of new bar applicants.⁶⁴ Work is being done to reduce that level of scrutiny penalizing people for having mental health conditions, but the work of changing these policies and others is still young and ongoing.⁶⁵

With personality disorders, specifically, there are many areas of structural codified discrimination that directly lead to discriminatory legal outcomes. Perhaps the

61. *5 Types of People Who Can Ruin Your Life: Identifying and Dealing with Narcissists, Sociopaths, and Other High-Conflict Personalities*, PUBLISHERS WKLY. (Nov. 6, 2017), <https://www.publishersweekly.com/9780143131366> (reviewing BILL EDDY, *5 TYPES OF PEOPLE WHO CAN RUIN YOUR LIFE* (2018)).

62. Patrick W. Corrigan et al., *Structural Levels of Mental Illness Stigma and Discrimination*, 30 SCHIZOPHRENIA BULL. 481 (2004).

63. *Id.* at 482–85.

64. *Mental Health Character & Fitness Questions for Bar Admission*, AM. BAR ASS'N (Sept. 29, 2023), <https://www.americanbar.org/groups/diversity/disabilityrights/resources/character-and-fitness-mh/>.

65. For instance, the New York State Bar Association recently was successful in getting New York to remove intrusive mental health questions. Christian Nolan, *Law School Grads in NY Won't Face Mental Health Inquiry*, N.Y. STATE BAR ASS'N, <https://archive.nysba.org/mentalhealthinquiry/> (last visited Nov. 26, 2023). The American Psychological Association has called for the removal of these types of questions. *APA Calls for Removal of Mental Health Questions on Applications to Practice Law*, AM. PSYCH. ASS'N (Aug. 7, 2023), <https://www.apa.org/news/press/releases/2023/08/mental-health-questions-attorneys>. The American Bar Association Resolution 105 called for their removal. David Jaffe & Janet Stearns, *Conduct Yourselves Accordingly: Amending Bar Character and Fitness Questions to Promote Lawyer Well-Being*, 26 AM. U. WASH. COLL. L. 1, 5–6 (2019).

most striking is that having a personality disorder can increase the chances of receiving the death penalty.⁶⁶ Personality disorders have been seen, by judges, as aggravating factors that suggest the death penalty is warranted.⁶⁷ This makes personality disorders unique among mental health diagnoses, which are usually treated as mitigating factors. For instance, the Ninth Circuit, the Illinois Supreme Court, the Florida Supreme Court, and the California Supreme Court have all seen personality disorders as permissible evidence of an aggravating factor suggesting the death penalty is warranted.⁶⁸ A doctor testifying as a medical expert advocated that people with borderline personality disorder could be dangerous in the future because of the prejudiced assumption that they do not want to “admit they are weak and vulnerable” and therefore are not likely to adhere to treatment, which they suggested would have to be intensive given the beliefs of difficulty in treating the condition.⁶⁹ In another example case, the attorneys decided not to share testimony from a doctor discussing their client’s mental health as a potential mitigating factor because they believed the clinician’s depiction of antisocial and borderline personality disorders would be aggravating in sentencing.⁷⁰ The court upheld this as strategic behavior, reinforcing the idea that a personality disorder diagnosis could make a defendant more likely to be executed.⁷¹

There are many areas of law where people are penalized for mental health conditions including personality disorders, so this historical backdrop of structural discrimination adds to the barriers people face in realizing personality disorder discrimination is a problem.

G. Keeping the Practice a Secret

Another challenge is that this discrimination is largely hidden through explicit instructions to keep the labeling a secret, often under the paternalistic frame of protecting the parties from being upset. Much of the literature surrounding personality disorder profiling suggests that the practitioners ought to keep this a secret from parties who are guessed to possibly have mental health impairments related to these

66. See generally Frank R. Baumgartner & Betsy Neill, *Does the Death Penalty Target People Who are Mentally Ill? We Checked.*, WASH. POST (Apr. 3, 2017, 8:00 AM), <https://www.washingtonpost.com/news/monkey-cage/wp/2017/04/03/does-the-death-penalty-target-people-who-are-mentally-ill-we-checked/> (“[p]eople who are executed have a far higher rate of mental illness than does the general public.”); see also Dale F. Ogden, *Executed for Their Disabilities*, 39 U. LA VERNE L. REV. 304, 305–326 (2018).

67. See, e.g., *Row v. Miller*, 591 F. Supp. 3d 778, 864 (D. Idaho 2021); see generally *Atwood v. Ryan*, 870 F.3d 1033, 1063 (9th Cir. 2017).

68. Ogden, *supra* note 66, at 320.

69. *Nelson v. Quarterman*, 472 F.3d 287, 304–05 (5th Cir. 2006).

70. *Row*, 591 F. Supp. 3d at 810.

71. *Id.* at 791 (“ASPD and sociopathy are usually on the aggravating side”); *Id.* at 810–11 (“It was Cahill’s understanding that it was a bad thing to have your client diagnosed with antisocial personality disorder. He considered that to be a mental health diagnosis that could be helpful as far as being mitigation, but would have worried more about it being considered an aggravating circumstance in a generic sense (that their behavior perhaps could not be modified in the future). Cahill and Myshin decided not to order a report from Dr. Beaver because his conclusions were negative and would be more aggravating than mitigating at sentencing. Myshin said: ‘The things he had to say were not positive so we did not use him.’ Cahill said: ‘And what was damaging about Dr. Beaver was that basically Robin’s personality style, as I recall, was consistent with the State’s theory in this case, which is that she was, you know, dependent upon men. And her dependency for this John Blackwell, this new boyfriend, could have contributed to her to doing everything they said that she had done.’”).

conditions.⁷² This is often presented paternalistically as a way to avoid upsetting these parties, and this secrecy norm can be another reason that mediators are not realizing personality disorder discrimination is a problem. While it may seem like keeping a secret would imply that there is more volition or deliberate intent to discriminate against these individuals, it is important to keep in mind that many people genuinely think they are keeping the secret as a way to avoid triggering these people without viewing it as they are doing something illegal or nefarious.

This secrecy can create problems. In Mediate.com's "Inside the Mediation Room" podcast hosted by Michael and Karen Aurit, Bill Eddy tells a story of the lengths he had to go through to avoid overtly labeling a party during a mediation.⁷³ Below is an excerpt from the YouTube transcript:

I'll give you a real quick example. In the middle of a mediation once, the wife in frustration turns to me and - apparently she'd read a book or two of mine - and she said, 'Bill, you and I both know he's a borderline narcissist, what are you going to do about it?'

And so that's one of those, like, stay calm moments and I glanced at the husband and he was, like, frozen and what's really interesting is I think she may have had some of those traits and I think he had some other traits but what I said was, you know, this is mediation - you must have read one of my books about court - and in mediation, I'm really focused on what you each propose rather than trying to figure out, you know, people's personalities (which is true I really want to focus on what they propose). So I kind of wiggled out of that one but the idea is don't label them even in a caucus.⁷⁴

In this case, the practitioner says that they had noticed personality disorder traits in both parties, but told them that they were not trying to figure out people's personalities. This was hard to do because one of the parties had read the mediator's books about acting differently when guessing a party has a "high conflict" mental health impairment like borderline or narcissistic personality disorder symptoms – and they explicitly asked the mediator to act on those labels. He therefore had to "wiggle out" by suggesting the book was not applicable here and saying that he is

72. For instance, *Mediating High Conflict Disputes* introduced four "Fuhgeddaboutits (What NOT to Do)" and the fourth one is "FUHGEDDABOUT telling them they have a high conflict personality." EDDY & LOMAX, *supra* note 40, at 25–28. On their website, the Law Offices of Harris and Literski likewise says this should be a "private working theory" and "do not tell the other person." Law Offices of Harris & Literski, *How to Respond to High-Conflict People*, HG.ORG, <https://www.hg.org/legal-articles/how-to-respond-to-high-conflict-people-54642> (last visited Jan. 8, 2024). Keithley Law writes "don't tell them," and explains part of the reason is that these people are presumed to be "engrained," "fixed," and they "lack the insight necessary to accept responsibility for the world around them" so do not try to tell them. *5 Ways to Deal with High Conflict People While Living Under the Same Roof (Narcissists, Borderline Personalities, and Other Cluster Bs) During the COVID-19 Pandemic and Afterwards*, KEITHLEY L. (Mar. 11, 2021), <https://www.keithleylaw.com/blog/2021/march/5-ways-to-deal-with-high-conflict-people-while-l/>.

73. Bill Eddy et al., *Inside the Mediation Room: Guest Bill Eddy*, MEDIATE.COM (Mar. 31, 2022), <https://mediate.com/inside-the-mediation-room-with-michael-and-karen-aurit-guest-bill-eddy>.

74. Bill Eddy et al., *Inside the Mediation Room - Episode #2 - Bill Eddy - March 29, 2022*, YOUTUBE (Mar. 31, 2022), https://www.youtube.com/watch?v=PdVEn9r_uC4&t=2893s.

not focused on figuring out peoples' personalities – going to great lengths to follow the model of keeping those hunches secret.

This wall of secrecy makes it harder for people to openly discuss the problems with this labeling process and makes it harder for parties to realize there may be an ethics breach from the mediator, so it perpetuates the inadvertent discrimination.

H. The Desire to Blame Difficulties on the Parties

Another reason people perceive parties as possibly having personality disorders or related traits, and thereby requiring different treatment, is because mediators who are frustrated with difficult cases would rather explain the problems as a problem with the party instead of their own struggles as a mediator. There is a helpful explanation of this phenomenon from Bill Eddy's seminal book, *High Conflict People in Legal Disputes*, in which Eddy describes his personal journey to creating the high conflict personality theory:

Of the cases that went to court, I started to see a pattern. It was rare that the parties couldn't agree on the law. More often, they couldn't agree on the facts. One or both parties was misbehaving or misperceiving. Substance abuse, child abuse, domestic violence, and lying about money were the primary issues, but in the cases that went to court one or both parties were stuck in the belief that 'it's all your fault.' Since the vast majority of my cases resolved out of court, it became clear to me that this rigid "it's all your fault" position didn't come from the divorce, but from within. It had more to do with the personalities of these parties. From the above experiences and many others like them, I have become convinced that undiagnosed and untreated personality disorders are driving much of today's litigation - and that this trend is rapidly increasing.⁷⁵

Put simply, mediators adopt a perspective that challenging cases are due to mental disorders. Many guidance documents share the mantra "it's not you, it's them," when discussing "high conflict people" or other terms for people with personality disorders, tracing all the way back to those original stigmas mental health providers had when they wrote off their patients as being difficult and having these stigmatized personality disorders.⁷⁶ Here, in the case of the origins of this "high conflict personality theory," Eddy explains above that the cases he could not resolve in mediation - the ones that went to court - must have been due to untreated personality disorders. He writes that he knows this because parties would not budge and do a "give and take" on their interpretation of the facts in cases involving substance abuse, child abuse, domestic violence, or financial malfeasance. The passage explains his belief that if a party thinks there is a definitive right or wrong to fight over

75. BILL EDDY, *HIGH CONFLICT PEOPLE IN LEGAL DISPUTES* 6 (2009).

76. For example, see the foreword of *Mediating High Conflict Disputes*: "The authors, supportively and repeatedly, remind the reader that most of the unhelpful conflict that arises when dealing with HCPs is created by the HCP, not by the practitioner ("Remember, it's not you, it's them!"). EDDY & LOMAX, *supra* note 40, at 2; see also Steven P. Dinkin, *High-Conflict Personalities: Navigating the Maze*, SAN-DIEGO UNION TRIB. (July 28, 2019, 5:00 AM), <https://www.sandiegouniontribune.com/news/mediate-this/story/2019-07-25/high-conflict-personalities-navigating-the-maze> ("the issue that you might find yourself battling over with an HCP is likely not the real issue.").

- an “it’s all your fault” – then their being firm in their positions means these people might have problem personalities. The book goes on to explain how a subset of people with Cluster B personality disorders and traits are the ones who comprise these “high conflict people” and it explores how their personalities are at fault for causing the problems in mediation.⁷⁷

Many different practitioners similarly have found themselves believing in the theory that their clients who are challenging to them must have something wrong with them, and this theme is present across the literature on personality disorders in law and mediation.

V. EXAMPLES OF PERSONALITY DISORDER PREJUDICES AND DISCRIMINATION IN MEDIATION LITERATURE

We reviewed a wide array of mediation literature, and broader law literature surrounding conflicts related to those that mediators face, to find examples of published guidance that directs mediators and legal professionals to discriminate against parties who show signs of personality disorders. The result is summarized in the next section presenting excerpts of these statements, across a variety of different types of disparate treatment. We selected one excerpt from each category in an attempt to efficiently demonstrate the breadth of different types of discrimination, across a wide variety of sources. For the purposes of this section, we are describing any type of disparate treatment as discrimination but this may not be illegal discrimination as defined by particular federal, state, and local laws.

Note that many of the examples below direct mediators or lawyers to explicitly discriminate against parties they perceive as having mental health impairment linked to personality disorders and related personality disorder traits. We still describe this as “accidental,” “inadvertent,” or “unintentional” discrimination under our logic from the prior section, which explored eight different ways that mediators might not realize that these types of disparate treatment toward parties with mental health problems is actually discrimination. However, it is important to recognize that these are all tangible examples of written, published content explicitly directing disparate treatment toward people who are regarded as having mental disorders. Therefore, each of these are examples of blatant discrimination that we believe happened accidentally and unintentionally, because these practitioners were not sensitive to the reality that mental illness discrimination is a problem, an ethical violation, and an illegal activity. Our goal is to show how these accidents can have significant effects on mediation practice, and ultimately create disadvantages and burdens to parties who are regarded as having personality disorder symptoms.

77. EDDY, *supra* note 75, at 26–28. This book goes on to identify types of HCPs matching specific disorder labels. *Id.* at 29 (“Not everyone with a personality disorder becomes a high-conflict personality (HCP). Only those who are also persuasive blamers seem to become HCPs.... From my experience, observations and legal research, the persuasive blamers most often involved in high-conflict disputes come from Cluster B personality disorders.”).

i) Avoiding Them

“How can you spot HCPs early on, instead of being caught by surprise? How can you avoid marrying them, hiring them, working for them, living next door to them or any other number of bad situations?”⁷⁸

ii) Screening Them Out

Individuals with borderline, narcissistic, and antisocial personality disorders are the ones lawyers are the most apprehensive about when I consult to them. But they are not the only problematic personality disorders. Those on the histrionic-dependent end of the spectrum may be more difficult for a lawyer who is comfortable setting limits on an angry, demanding client but uncomfortable responding to uncontrolled weeping. Clients with paranoid or passive-aggressive styles can test a lawyer’s wits as she tries to find a way to relate helpfully to the client. Again, it is for the individual attorney to determine which of these disorders he or she can tolerate and manage. The important thing at initiation of the case is to determine whether one is present. Generally, personality disorders are recognizable by their pervasiveness. The personality style will dominate an individual’s speech, thoughts, mood, feelings, and behavior.⁷⁹

iii) Regretting Serving Them

Had you known then what you know now, you never would have accepted the case. Sometimes, however, you are stuck with the case and have to make the best of it. These are the 10% of clients who cause 90% of your grief. Attorneys have told me in mediation about the pain, agony, and mental torture they go through with difficult clients.⁸⁰

iv) Bonding Less With Them

“The first step is managing the level of bonding. The mediator must adopt an arms-length bond due to HCP’s tendency to require excessive attention and time.”⁸¹

78. Bill Eddy, *How to Quickly Spot High-Conflict People*, PSYCH. TODAY (Nov. 21, 2017), <https://www.psychologytoday.com/us/blog/5-types-people-who-can-ruin-your-life/201711/how-quickly-spot-high-conflict-people>.

79. Sanford M. Portnoy, *Client Selection with Potentially Difficult Clients: How to Know When to Take the Case*, 16 AM. J. FAM. L. 235, 236 (2002).

80. Paul Fisher, *Identifying and Managing Difficult, High-Conflict Personality Clients*, 26 PROB. & PROP. 56 (Jan./Feb. 2012).

81. Andressa Bortolin & Jared Lee, *ODR and Virtual Mediation: High Conflict People in Online Mediation*, MEDATE.COM (Dec. 1, 2020), <https://mediate.com/odr-and-virtual-mediation-high-conflict-people-in-online-mediation/>.

v) *Assuming Their Conflict is Caused by Their Personality*

“Among this group the conflict is driven by personalities rather than the issues or amount of money involved.”⁸²

vi) *Dismissing Their Disputes As Illegitimate*

Steven P. Dinkin, founder of the National Conflict Resolution Center, wrote a San Diego Union-Tribune article describing “high-conflict personality as ‘a concept that overlap with personality disorders or traits,’” and encourages mediators to “identify an HCP” and “mitigate the damage they can cause.” He stresses that “the issue that you might find yourself battling over with an HCP is likely not the real issue.”⁸³ He concludes by saying that sometimes with an HCP the best option is to turn your back on a conflict by saying “We’ll have to agree to disagree about that” and ending the conversation.⁸⁴

vii) *Never Asking Them How They Are Feeling*

High conflict people chronically feel helpless, vulnerable, weak, and like a victim-in-life.... This means that you shouldn’t even ask them how they are feeling.... If you want to make small talk before you get started or at the end of a mediation session, talk about a subject like the weather, traffic or plans for the weekend. An open-ended “how are you feeling today” can easily run into trouble, as it opens up looking at how helpless, vulnerable, weak and like a victim-in-life they feel.⁸⁵

viii) *Giving Them Different Orders in Court*

Judge Warren Davis explained receiving training, as a judge, to craft orders differently based on people having personality disorders: “He walked you through the DSM 5, the different major personality disorders, how they present in court, how they react and, how you as a judge craft your orders accordingly.”⁸⁶

Judge Davis explains that he made people presumed to have personality disorders follow an order to say their child’s name every 45 minutes:

Let me let you guess when we deal with our personality disorders - and let’s just talk about narcissists right now: they are not the least bit interested in what the law says. They are entirely interested in talking about themselves and heaping blame on the other side. I know - when I used to talk with, we call them baby judges, baby judges just starting out. And I

82. Nichols, *supra* note 36.

83. Dinkin, *supra* note 76.

84. *Id.*

85. EDDY & LOMAX, *supra* note 40, at 27–28.

86. Co-Parent Dilemmas Podcast, *Narcissists and the Court: A Conversation with Judge Warren Davis*, at 39:15 (May 15, 2022), <https://www.cpdilemmas.com/43-narcissists-and-the-court-a-conversation-with-judge-warren-davis/> (transcribed using Amazon Web Services).

tell - I got an ironclad rule in these type high conflict cases and that is every 40 - at least once every 45 minutes - the parent or the attorneys have to mention the child's name. It helps them stay grounded because they don't talk about the needs of the child.⁸⁷

ix) Profiling Them Based on Their Presumed or Disclosed Disorders

A 2013 Family Law Course companion chapter from State Bar of Texas 39th Annual Advanced Family Law Course, demonstrates the depths of instruction to make assumptions about “high conflict parties” having mental disorders.⁸⁸ This chapter provides detailed separate guidance sections of how to recognize borderline personality disorder, narcissistic personality disorder, histrionic personality disorder, and antisocial personality disorder. Note that it is generally illegal under the Americans with Disabilities Act to make inquiries or examinations designed to determine if someone has a disabling mental impairment such as these disorders⁸⁹ – yet this section is one of many guidance documents that do encourage people to try to notice signs of mental disorders and make guesses that parties may have them. Going further, this document continues by advocating treating these “high conflict” parties differently including getting less emotionally hooked on the assumption they are “so charming, desperate and driven that they can achieve a high level in the bonding process with the professional.”⁹⁰ The chapter also recommends having added skepticism in case they are lying, stressing that people with these “high conflict” mental health impairments believe that “‘winning’ is the end goal...regardless of the truth.”⁹¹ It also encourages disorder-based assumptions such as the idea that the person who seems to have borderline personality disorder may lie “out of anger or to retaliate against the other for ‘abandoning’ them” while someone presumed to have narcissistic personality disorder may lie “to put the other party down and to boost themselves.”⁹² Additionally it posits that someone you guess has antisocial personality disorder “fabricates very detailed events to use the court to get revenge against the other party” while someone you think has histrionic personality disorder “engages in fabrication as part of their highly dramatic personality.”⁹³ There are also specific, separate sections about how to defend against “high conflict people” who are profiled as having each of these specific disorders.

x) Manipulating Them By Exploiting Their Symptoms

If you can, make them the hero—but only in private. Narcissists are preoccupied with power and truly believe they are special and unique. They live for attention and admiration. Want them to do

87. *Id.* at 14:14.

88. Beth Maultsby & Kathryn Flowers Samler, *High Conflict Family Law Matters and Personality Disorders*, in STATE BAR OF TEXAS 39TH ANNUAL FAMILY LAW COURSE (2013), <http://gbfamilylaw.com/wp-content/uploads/2014/03/Beth-High-Conflict-Family-Law-Matters.pdf>.

89. U.S. DEP'T JUST., CIV. RTS. DIV., ADA TITLE III TECHNICAL ASSISTANCE MANUAL (1993) (“III-4.1300 Unnecessary inquiries. The ADA prohibits unnecessary inquiries into the existence of a disability.”).

90. Maultsby & Flowers Samler, *supra* note 88, at 12.

91. *Id.*

92. *Id.*

93. *Id.*

something? Tell them how great they are at it and watch them perform. Better yet, praise their performance in front of others. Just keep it real, please.⁹⁴

xi) Keeping Secrets From Them

Telling them this is not advised. Remember everything that has been said in the prior chapter: they don't have self-reflection and instead respond defensively; they are stuck trying to prove that they are right and that others have wronged them in the past; and they have great difficulty managing upset emotions.⁹⁵

xii) Communicating Less With Them

“The best way to communicate with a high conflict personality is to be brief...”⁹⁶

xiii) Deliberately Provoking Them to End the Relationship

As soon as you realize you have a high-conflict personality client that is causing difficulty, begin building a case for termination. There will be reasons to fire the client, but they must be objective, not personal, and within professional boundaries...When the client does not want to meet or speak with you, require the client to meet you frequently.⁹⁷

xiv) Threatening Them

One article “urge[s] the threatening of lawsuits against HCPs in order to make it clear to them that their lives will be exposed if they continue with their bullying tactics. An HCP will not respond unless the consequences are clearly brought home to him or her.”⁹⁸

94. Darrell Puls, *Scorched Earth Clients: Mediating with High Conflict People*, MEDIATE.COM (Nov. 12, 2018), <https://mediate.com/scorched-earth-clients-mediating-with-high-conflict-people/>.

95. EDDY & LOMAX, *supra* note 40, at 28–29.

96. BIFF: *Quick Responses to High Conflict People*, THOMPSON FAM. L., <https://www.familylaw-fla.com/articles/biff-quick-responses-to-high-conflict-people-their-personal-attacks-hostile-email-and-social-media/> (referring to BIFF responses, which are responses designed as quick, friendly ways to reduce or end communication with people who are seen as “high conflict people” who are likely to have personality disorders and related traits, or other mental conditions, as explained by Bill Eddy in *BIFF: Quick Responses to High Conflict People*).

97. Fisher, *supra* note 80, at 61.

98. Nordlinger, *supra* note 36.

xv) Imagining They Have No Sense of Humor Besides Cruelty

“They do not understand what others find humorous and either do not tell jokes or their jokes fall flat. The only time you will see them in a belly laugh is when it is at the expense of someone else.”⁹⁹

xvi) Assuming They Are Not Human

Albert Bernstein likens these personalities to emotional vampires and indeed there are some similarities. When you first meet them, they walk, talk, and look like every day ordinary people. Much like vampires, these personality types are most dangerous in the dark. While they do not rise from their coffins at night, they do walk into your office and end up in the court room with you or against you.¹⁰⁰

xvii) Scrutinizing Them as Dishonest

“Do not expect them to tell the truth; “truth” is whatever they happen to say at a given moment, even if it directly contradicts what they said only moments before, which they will deny ever saying.”¹⁰¹

xviii) Treating Them as a Threat

“Get everything in writing with as much detail as possible. The narcissist is an expert at finding loopholes and exploiting them to his own benefit. The tighter the settlement agreement (if you get one), the better for everyone.”¹⁰²

xix) Becoming More Formal

In my mediations, I tend to be much more informal, in my attitude, in my posture and how I proceed. But with someone I suspect of having a high conflict personality, who might be influenced in a positive way by a person in authority, I would probably have him call me judge. I can always get more informal, but if you start informal then you can’t get formal. So in my initial insight into the case, if I think I’m dealing with a high conflict personality, I tend to be more formal because I want to use a more authoritative voice. I’ve gotten to be more “evaluative” in my mediations with a situation like that.¹⁰³

99. Puls, *supra* note 94.

100. Nichols, *supra* note 36, at 230.

101. Puls, *supra* note 94.

102. *Id.*

103. Bill Eddy, *Interview with a Retired-Judge Mediator*, HIGH CONFLICT INST. (July 27, 2013), <https://www.highconflictinstitute.com/hci-articles/interview-with-a-retired-judge-mediator> (quoting an interview with Judge Susan Finlay).

VI. REVIEW OF “NARCISSIST” IN MEDIATION WEBSITES

As part of our work understanding the ways personality disorders are treated in the world of mediation, we conducted a review of the top 95 Google search results for the term “narcissists” and “mediation,” using a scraping tool called thruu. Appreciating that the stigmatizing, identity-first language labeling people as “narcissists” has become popular in the field, our goal was to understand how websites described people using this term.

Our research protocol excluded 21 results that were gateways to other content such as restricted journal articles, podcast downloads, or beginning pages that linked to many different articles or messageboards. We also excluded 33 results which did not address dispute resolution. This left 41 remaining results. 38 of these websites (or 93%) used overtly stigmatizing language in addition to using the word narcissist. This was language that demonized people based on perceived mental health conditions, and encouraged readers to think negatively or even avoid people who the reader thinks might have narcissistic personality disorder or related traits. The language they used included the following harmful messages:

People with personality disorders (ex. NPD) are sub-human and do not have feelings like normal people

- “Narcissists are by far the most unoriginal species on the planet. They are not complex beings and are not motivated by the same things non-narcissistic people are; pain and pleasure.”¹⁰⁴
- “Clients with high-conflict personality disorders understand the world differently. Their world bears little resemblance to ours. What they say is their reality, no matter how far from the truth/facts it may be.”¹⁰⁵
- “Understand that the narcissist does not experience the same emotions as you do.”¹⁰⁶

Assume that people with personality disorders (ex. NPD) will do things that hurt you

- “One of the most important things to remember when you’re dealing with a narcissistic individual is that they are going to try to twist the truth and lie to get their way.”¹⁰⁷

104. Randi Fine, *How to Disarm a Narcissist During Divorce Mediation*, NARCISSIST ABUSE SUPPORT, <https://narcissistabuse.com/how-to-disarm-a-narcissist-during-divorce-mediation/> (last visited Jan. 10, 2024).

105. Puls, *supra* note 94.

106. *Id.*

107. Jennifer J. McCaskill, *Divorce Mediation isn’t Easy with a Narcissistic Ex*, LAW OFF. OF JENNIFER J. MCCASKILL (Jan. 21, 2021), <https://www.jjmccaskill.com/blog/2021/01/divorce-mediation-isnt-easy-with-a-narcissistic-ex/> [<https://web.archive.org/web/20210227191054/https://www.jjmccaskill.com/blog/2021/01/divorce-mediation-isnt-easy-with-a-narcissistic-ex/>].

- “Never underestimate a narcissistic spouse. If you let your guard down, your spouse will strike.”¹⁰⁸
- “Narcissists use tactics such as gaslighting to manipulate and gain power. If you’ve been in a relationship with a narcissist, you know what this looks like.”¹⁰⁹
- “It’s important to keep in mind that narcissists will always have a plan. That plan will always be to take you down, smear you, and make you miserable.”¹¹⁰
- “Before you step onto the battlefield with the devil himself (or herself), make sure you are educated, empowered and strategic.”¹¹¹

Note that we are not suggesting people who exhibit any of these awful behaviors should not be held accountable for them. Rather, the point is that it is wrong to profile people with clinical disorders as automatically being presumed to engage in despicable behavior instead of letting the observed behavior speak for itself. The danger in writing off entire communities of people living with mental disorders is in perpetuating harmful stigmas and stereotypes that result in people losing social opportunities because they are presumed, by virtue of their disability alone, to be dangerous.

People with personality disorders (ex. NPD) are inherently divisive, controlling, and abusive

- “The strategy of a narcissist is to separate you from all others as much as possible and for you to surrender to what they want. Control. Power.”¹¹²
- “Narcissists are so crazy-making that they make you doubt the truth. This kind of behavior is called gas-lighting and it’s a form of emotional abuse.”¹¹³

108. Hossein Berenji, *Divorcing a Narcissist: Tips, Tools, and What to Expect*, BERENJI & ASSOCS. (May 12, 2021), <https://www.berenjifamilylaw.com/divorcing-a-narcissist-tips-tools-and-what-to-expect>.

109. *Divorcing a Narcissist: What to Expect*, OPEN SPACE MEDIATION (May 23, 2021), <https://www.openspacemediation.com/divorcing-a-narcissist-what-to-expect/>.

110. Rebecca Zung, *Get Leverage when Negotiating with a Narcissist*, DIVORCE MAG, <https://www.divorcemag.com/blog/get-leverage-when-negotiating-with-a-narcissist> (Aug. 15, 2022).

111. *Mediating with a Narcissist*, ONE MOM’S BATTLE, <https://www.onemomsbattle.com/mediating-with-a-narcissist> (last visited Mar. 13, 2024).

112. *Divorcing a Narcissist in Louisville - Proven Strategies for Success*, DODD & DODD ATT’YS, <https://www.doddattorneys.com/divorcing-narcissist-louisville/> (last visited Jan. 10, 2024).

113. *How to Get a Narcissist to Reveal Themselves*, WEINBERGER DIVORCE & FAM. L. GRP. (Nov. 8, 2017), <https://www.weinbergerlawgroup.com/blog/divorce-family-law/get-narcissist-reveal/>.

- “They’ll use various tactics to get their way, and they don’t mind having to turn to manipulation or even abuse to make that happen.”¹¹⁴

Again, we note the importance of anyone engaging in harmful or abusive behaviors be held responsible for those behaviors. However, when people presume someone of a certain mental disorder diagnosis will automatically be dangerous based just on that diagnosis - this is clear bias that is not suitable in the world of mediation, contrary to all ethical guidance, and harmful throughout all social contexts.

People with personality disorders (ex. NPD) should be excluded from dispute resolution processes

- “Mediation is probably not going to be an option when divorcing a narcissist.”¹¹⁵
- “Most family lawyers encourage couples to mediate or resolve their issues without going to court. But this won’t work in a narcissistic relationship.”¹¹⁶
- “If someone is suffering from NPD at the higher scale, then mediation is unlikely to be successful.”¹¹⁷
- “There are three big reasons why narcissists do not suit the mediation process: They can’t empathize. Which means they can’t work towards a compromise – they can’t see that you have needs separate from their own. They can’t fail. The narcissist will come to the negotiating table with what they want. Achieving anything different will be seen as a failure. So, it’s impossible to have a constructive discussion about a fair outcome. They can’t take responsibility. When/if things go wrong, it’s never their fault. They are always the victim. Mediation relies on a conversation between two people with equal power. If one party refuses to accept responsibility for the consequences of any of their actions, it’s a non-starter.”¹¹⁸

114. *Divorcing a Narcissist Isn’t Easy*, MACDOWELL L. GRP., <https://www.macdowelllawgroup.com/blog/divorcing-a-narcissist-isnt-easy-macdowell-law-group-p-e-.cfm> (last visited Jan. 10, 2024).

115. Berenji, *supra* note 108.

116. *How to Deal with a Narcissist in Court Proceedings*, ADZ L., <https://adzlaw.com/family-law/2021/06/11/how-to-deal-with-a-narcissist-in-court-proceedings/> (last visited Jan. 10, 2024).

117. Polly Gavins, *Narcissistic Personality Disorder and Mediation.*, ABINGDON FAM. MEDIATION (June 22, 2022), <https://www.abingdonfamilymediation.co.uk/narcissistic-personality-disorder-and-mediation/> [<https://web.archive.org/web/20220714181624/https://www.abingdonfamilymediation.co.uk/narcissistic-personality-disorder-and-mediation/>].

118. Emma Heptonstall, *Divorcing a Narcissist? Your Must Read Guide to Your Options*, EMMA HEPTONSTALL DIVORCE COACHING (Feb. 14, 2022), <https://www.emmaheptonstall.com/divorce-coaching/divorcing-a-narcissist/>.

- “Unfortunately, mediation most likely will not work when a narcissist sits on the other side of the table.”¹¹⁹

Denying someone access to services based on their presumed mental disorder diagnosis, with a specific perspective that they are too disabled by that condition to function in the process, is contrary to the Americans with Disabilities Act.¹²⁰ Of the websites that do acknowledge that mediation is possible for these individuals, many suggest the mediation happen in a certain, different way based entirely on the fact that one party has NPD. This is disparate treatment on the basis of a perceived mental health condition and is potentially an ADA violation.

Some websites suggest automatically using the process of shuttle mediation, where the parties are in separate rooms and a mediator goes back and forth between them.¹²¹ Another urges lawyers who represent people with NPD in mediations to be wary of their own client and “not become an extension of their abuse.”¹²²

A Slur for a Clinical Condition

These websites used the term “narcissist” interchangeably with NPD, a recognized diagnosis found in the DSM-5. Calling someone a narcissist as opposed to a person with NPD is an inherently stigmatizing framing. By using identity-first language instead of person-first language, these websites dehumanize anyone labeled with that term. Moreover, because these are often armchair diagnoses as opposed to disclosed conditions, these websites are often using psychopathology as a way to sensationalize behaviors and reinforce prejudices. People hearing the word narcissist bring their own set up of assumptions and biases to the term, which may have little or nothing to do with the DSM definition of NPD. Using the term narcissist to refer to people with NPD, is imbuing people with all the negative cultural stereotypes that exist around the term narcissist. By calling people suspected of having NPD narcissists, these websites are affirming that people with NPD have all the negative characteristics that are associated with narcissism as a non-medical term including egoism and self-centeredness.

119. *A California Divorce Attorney Shares Tips on Divorcing a Narcissist*, SEABROOK L. OFFS., <https://www.seabrooklawoffices.com/an-experienced-california-divorce-attorney-shares-tips-on-divorcing-a-narcissist/> (last visited Jan. 10, 2024).

120. 42 U.S.C. § 12182(b)(1)(A)(i) (“[D]enial of participation. It shall be discriminatory to subject an individual or class of individuals on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of an entity.”).

121. *Will Mediation Work With a Narcissist?*, BURNHAM L. (Nov. 12, 2021), <https://burnham-law.com/help-center-articles/will-mediation-work-with-a-narcissist/>; Patricia Fersch, *Mothers: How To Litigate Child Custody With A Narcissist?*, FORBES (Sept. 10, 2020), <https://www.forbes.com/sites/patriciafersch/2020/09/10/mothers-how-to-litigate-child-custody-with-a-narcissist/>; Supriya McKenna, *The Certainty Project – a new way to avoid court delays involving a narcissist*, CERTAINTY PROJECT, <https://www.thelifedoctor.org/the-certainty-project-a-new-way-to-avoid-court-delays-in-divorces-involving-a-narcissist> (last visited Jan. 10, 2024).

122. Karin Walker, *Narcissism and Family Law – a practitioner’s guide*, YESTEM (Apr. 6, 2021), <https://yestem-info.randvatar.com/article/narcissism-and-family-law-a-practitioner-s-guide> [<https://web.archive.org/web/20230417033935/https://yestem-info.randvatar.com/article/narcissism-and-family-law-a-practitioner-s-guide>].

Similarly, by conflating narcissism and NPD, these websites are encouraging people to diagnose others as having a mental health disorder without any examination by a medical professional. This encouragement to diagnose others shows up in more overt ways on these websites as well. Many of the websites list the DSM criteria without context for parties to use in diagnosing each other.¹²³ Some websites even go so far as to tell people how to “recogniz[e] a narcissist” using their own interpretations of the DSM criteria, or even invented criteria.¹²⁴

The fact that so many webpages casually use the stigmatizing term “narcissist” when discussing mediation and the possibility of mediation for parties diagnosed with NPD, also shows that this stigmatizing language is normal in the ADR world.

VII. TOOLS TO HELP MEDIATORS STOP INADVERTENT PERSONALITY DISORDER DISCRIMINATION

Now that we have demonstrated the pervasiveness of this problem through our broad review and our focused review on narcissism, the question is how can we address these problems in a constructive way. Most mediators who engage in personality disorder discrimination are doing so without an awareness they are potentially violating the law, compromising their ethics, and hurting a legally protected class of people. That means there is a lot of promise that, with education about the problem, they will be motivated to take action to remedy it. There are several different kinds of tools that can help them do that including mental health empowerment tools, party education tools, tools to prevent inadvertent discrimination, and tools to change inappropriate policies and publications.

A. Mental Health Empowerment Tools

There are many resources that can help practitioners develop procedurally fair processes to ensure they treat parties in non-discriminatory ways.¹²⁵ These include resources that teach mental health communication skills such as appreciating and supporting the wide variety of mental health choices while also being mindful of party privacy rights.¹²⁶ They also include resources to address challenging behaviors with impartial plans responding consistently to observed behaviors without linking them to guesses about a party’s mental health.¹²⁷ Finally, they include resources that provide accessibility options without becoming paternalistic or invasive, and without singling out people who seem to have mental disorders.¹²⁸ Through the use of these tools, mediators can be prepared to respond to disclosures,

123. See e.g., *id.*; see also Steven Menack, *Is Mediation Viable When Divorcing a Narcissist?*, DIVORCE L. & MEDIATION (June 7, 2022), <https://divorcelawandmediation.com/is-mediation-viable-when-divorcing-a-narcissist/>; see also *Divorcing a Narcissist: What to Expect*, *supra* note 109.

124. Belinda Jones, *Recognizing a Narcissist*, FAM. MEDIATION TR., <https://www.thefamilymediationtrust.org/blogs/recognising-a-narcissist> (last visited Jan. 10, 2024) [<https://web.archive.org/web/20230209064620/https://www.thefamilymediationtrust.org/blogs/recognising-a-narcissist/>]; *How to Deal with a Narcissist in Court Proceedings*, *supra* note 116.

125. BERSTEIN, *supra* note 24; Berstein & Volpe, *Bringing Dispute Resolution Tools*, *supra* note 24, at 79–93.

126. *Mental Health Communication and Conflict Resolution Resources*, DISP. RESOL. IN MENTAL HEALTH INITIATIVE, <http://www.drmhinitiative.org/> (last visited Jan. 10, 2024).

127. *Id.*

128. *Id.*

accusations, and suspicions. These tools are all available at no cost through the CUNY Dispute Resolution Center's Dispute Resolution in Mental Health Initiative at www.drmhinitiative.org, thanks to funding from the American Arbitration Association – International Centre for Dispute Resolution Foundation.

B. Party Education

One reason discrimination can flourish is the ignorance of parties, who often have trouble even understanding what mediation is.¹²⁹ Several people have suggested that it might be helpful to educate parties about their rights in mediation so they can spot and address misconduct.¹³⁰ In that same spirit, the Mental Health Safe Project has developed resources to help parties who may be mistreated based on guesses they are showing signs of personality disorders.¹³¹ Copies of these tools are included below.

Signs Your Mediator May Be Treating You Differently¹³² (And May Think You're Showing Signs of a Mental Disorder)

They're dismissing your concerns

Some mediators have been trained to think parties with personality disorder traits don't have legitimate disputes, and their conflicts are instead due to their supposed disorders.

Their communications are brief

Some mediators have been trained to use briefer responses when they believe parties seem to have personality disorder traits.

They aren't discussing your feelings

Some mediators have been trained to not even ask "how are you feeling" when they believe parties seem to have personality disorder traits.

They seem to be hiding something from you

Many mediators who make guesses that parties are showing traits of personality disorders have been trained to keep this a secret to avoid the inevitable backlashes from revealing they are doing this.

129. Kristen M. Blankley et al., *ADR is Not a Household Term: Considering the Ethical and Practical Consequences of the Public's Lack of Understanding of Mediation and Arbitration*, 99 NEB. L. REV. 797, 799 (2021).

130. Jeff Kichaven, *Mediator Bill of Rights*, LAW360 (Dec. 5, 2012), <https://mediate.com/the-mediation-advocates-bill-of-rights/>.

131. *Difficult, Toxic, or High Conflict?*, MENTAL HEALTH SAFE PROJECT, <https://mhsafe.org/toxic/> (last visited Nov. 30, 2023).

132. *Id.* (tool accessible at <https://bit.ly/NoticeMediatorDiscrimination>).

They seem to blame you for everything

Many mediators who make guesses that parties are showing traits of personality disorders have been trained to assume any problems are due to the “high conflict parties” instead of being attributable to mistakes from the mediator or from other parties.

Their suggestions seem to be about reducing contact with you

Much of the professional guidance about people showing personality disorder traits suggests that these people be socially excluded - do not date, marry, have children with, hire, or be close friends with people who seem to show signs of these disorders.

Responding When Your Mediator Treats You Differently¹³³**Avoid Asking If You Have Been Profiled**

Many of these practitioners may have been taught to hide what they are doing to avoid complaints from the person who has been labeled “high conflict.” As such, it may be difficult if not impossible to convince a practitioner to admit they have formed a “private working theory” about you. They also may have been taught to see any complaints as another sign you’re “high conflict” and assume that your complaints are due to mental disorder traits rather than that they’re legitimate.

Instead, Ask About The Mediator’s General Practices and Trainings

Since it might be difficult to receive an admission that these people have been operating on a theory that you have a mental disorder, it is helpful for you to learn the practitioner’s general policies, ethical standards, and trainings - ideally in writing. You have a right to ask for this information to learn about the mediator’s practices, and if you do it by e-mail you can have some records of what kind of treatment to expect before the person has as much of an opportunity to guess you might have mental disorder traits.

E-mail Asking a Mediator About Their Practices and Training

“Thank you for your help so far and for your being available as a mediator. I have been doing some research and I have learned that different mediators practice differently, using different styles of practice and abiding by different ethical and legal standards. Would you mind

133. *Id.* (tool accessible at <https://bit.ly/NoticeMediatorDiscrimination>).

sharing any information you can about how you practice? These are the three questions I've been asking all potential mediators:

- How would you describe your style of practice?
- What legal and ethical standards do you follow in your practice?
- Have you received any specialized training (ex. for high-conflict cases)?

If you could also share any material I can read and review describing your typical policies that would be helpful so I can understand you and your practice. Thank you again for your help sharing information with me”

Ideally, you would get this information as soon as possible before they meet you or learn the facts of your case and begin assessing your behavior and guessing you are “high conflict,” “difficult,” or “toxic.” The goal is to normalize asking this question so they do not add this to a possible profile they may be forming that makes them believe this is part of a pattern of you being high-conflict.

Keep Written, Objective Records of Times You Were Treated Differently

You can notice any of the signs from the “Signs Your Mediator May Be Treating You Differently Checklist” to realize you may have been treated differently. If a practitioner has labeled you as a potential HCP, they may have been taught to assume any problem is you and not them. That means that any complaint you raise to them may get recorded into their profile dismissing your views as those of an HCP. Therefore, it may not be productive to make direct allegations.

What to Document

- **A succinct summary** of what happened including the behavior you experienced and any points of comparison (ex. contrasts with policies you were told, or how another party was treated)
- **An explanation of how it hurt you** including any difficulties you experienced feeling comfortable, and any pain or stigma
- **A suggestion of what could have helped you**

You can send this message to someone you trust, in writing, promptly after the event. You might tell them, “Thank you for offering to be supportive as I experience difficulties in my conflict. Today I had some challenges with my mediator that I wanted to share with you to get it off my chest and possibly get any ideas from you.”

You can also send this message to concerns@mhsafe.org so there are records you shared these concerns with another person. Don't assume it has been received or read without receiving a written reply.

Ask the Mediator to Adjust Their Behavior Without Calling it Profiling

Mediators are duty-bound to honor a party's self-determination and should be receptive to requests for changes. Try saying, "I am still learning about how mediation works. I appreciated that this is a process where I get to make choices. I noticed that so far, [This] has happened. Going forward, can we try [That] instead? I would prefer [That]." It may be better to e-mail the mediator this note between sessions, so they have time to process without being defensive and so you have a clear, written record of your sharing what happened, your requesting the change, and your receiving their response. Asking for the change like this saves you a conflict while you are upset, and you can always still hold them accountable later if you believe they discriminated.

Consider Stigma Mediation

The Mental Health Safe Project has compiled a roster of volunteer mediators who can help you try to work out a collaborative solution if you believe the mediator is profiling you inadvertently and without malice, and if you are open to a non-punitive resolution. Alternatively, if you would like to file a disparate treatment complaint under the Americans with Disabilities Act, you can learn how to do that at www.mhsafe.org

C. Preventing Inadvertent Discrimination

One reason personality disorder discrimination happens is practitioners are operating with wide discretion, on a case-by-case basis, and their unconscious biases lead them to treat some parties differently on this dimension as well as many other diversity categories. There are tools that can help mediators avoid all kinds of inadvertent discrimination by ensuring that they are consistent in how they practice. These act as a supplement to the mental health empowerment resources presented earlier.

Below is a link to a preventing inadvertent discrimination checklist that was presented at a 2022 American Bar Association webinar program, "How You Can Prevent Inadvertent Discrimination in Dispute Resolution":
<https://bit.ly/PreventDiscriminationChecklist>.

D. Tools to Update Inappropriate Publications and Policies

The Mental Health Safe Project has been doing work to generate updates to inappropriate content, including content that is promoting and perpetuating discrimination toward personality disorders.¹³⁴

i) Direct Advocacy Tools

It can be challenging to get publications and policies updated for a number of reasons, including the logistical strain and defensiveness on the part of publishers and authors. A five-item framework for vetting professional guidance was originally published in CPR's Alternatives to the High Costs of Litigation,¹³⁵ and the Mental Health Safe Project has its own version.¹³⁶ It encourages mediators to look for problematic content by avoiding deference to publisher or author reputation, noticing when content singles out an identity (such as having a mental health problem), being skeptical of guidance that suggests keeping secrets from parties (such as guidance about noticing high conflict mental impairments and keeping it secret), applying ethical limits before welcoming potentially harmful practices into the big-tent of mediation, and creating normal practices of updating guidance that has problems. This document serves as a roadmap and an example of ways to update harmful guidance.

Our hope, in preparing this article, is that it can similarly be used by mediators as a tool to help convince their agencies, associations, and publications to update inappropriate guidance that inadvertently targets people with mental disorders, including signs of personality disorders and other problems, for different treatment.

ii) Case Study Exercise: Shifting from Mental Disorder Labels to Objective Behaviors

We have collaborated with the author of one article on personality disorders in family court to distill the challenging behaviors from the labeling and encourage others to do the same. This resulting case study exercise has been included below. This exercise has been disseminated for comments from experts in conflict resolution and high conflict disputes and piloted for a classroom exercise as well. It is included below:

Background

A study of challenging behaviors related to personality disorders, "**Confronting the Challenge of the High-Conflict Personality in Family Court**,"¹³⁷ describes many challenging behaviors suspected to be linked to undisclosed mental

134. *Id.*

135. Berstein, *Five Strategies*, *supra* note 25, at 177–78.

136. MENTAL HEALTH SAFE PROJECT, *supra* note 131 (tool accessible at <https://drive.google.com/file/d/1YNMgjy3FHifte63MkvC5qi9iiF4Kn7tS/view>).

137. Esther Rosenfeld, & Michelle Oberman, *Confronting the Challenge of the High-Conflict Personality in Family Court*, 53 FAM. L. Q. 79, 82 (2019).

disorders and suggests a need for systemic changes and education to address these challenges.

The study is based on confidential in-person interviews with family law professionals who shared their perspectives about challenges believed to be associated with an initial focus area of narcissistic personality disorder before broadening to other mental disorder diagnoses.

The Mental Health Safe Project (MH Safe) connected with Esther Rosenfeld, one of the authors, to discuss ways to achieve the article's emphasis on mitigating "the dangerous risk that naming these personality traits as deviant will trigger unfounded bias" while also addressing the behavior concerns that are often presumed to be related to mental disorders. Based on these discussions, MH Safe is developing resources to address these behaviors without linking them to mental health stigmas. This involves a 3-step process:

Step 1: Avoid Assumptions About Mental Disorders

Resist making assessments or conclusions about whether a challenging behavior is potentially caused by a mental disorder, symptom, or diagnostic mental health signs.

There are common ways people label parties as potentially having mental disorders

Example labels from the article include "high conflict," "difficult," "toxic," or "HCPs" (words that were associated with people with mental disorders). The study also mentioned diagnostic signs such as emotional intensity, all-or-nothing thinking, behavior labeled "abnormal," or a blaming perspective.

These backstories often aren't useful

The study found "it is the rare case where there is an actual diagnosis on the record in family court." Mental health backstories also can shift the focus onto generalizations about the person or mental illness stereotypes instead of addressing the specific behaviors at hand.

Guessing someone may have a disorder can also trigger liability

Treating a person differently based on perceiving them as having a mental health impairment associated with any of these informal or clinical labels could be evidence of "regarded as" discrimination under the Americans with Disabilities Act.¹³⁸

Step 2: Address Behaviors

Focus on the specific behaviors identified as challenging, such as this list of nine challenging behaviors derived from the article:

138. Equip for Equality, *ADA Coverage Beyond Actual Disabilities: Regarded As, Record Of, and Association*, GREAT LAKES ADA CTR. 1 (Apr. 2018), https://www.adagreatlakes.org/Publications/Legal_Briefs/Briefno38_Beyond_Disability_Association_Regarded_As_Record.pdf.

- Protracted Disputes
- Extensive Discovery
- Client Dismissiveness Toward Other Perspectives
- Clients Reject Information from Their Lawyer that Contradicts Their Narrative
- Resistance to Settlement
- Judges Rotate Off Protracted Cases
- Judges and Others Not Trained in Responding to Challenging Behaviors
- Attorney Concerns About Malpractice Suits and Litigious Behavior
- Attorney Feelings of “High Alert” of Possible Emotional Escalation from Parties

Step 3: Plan Interventions

Catalog interventions for each of these behaviors that are based on observed, objective behavior-based criteria instead of generalized assessments or conclusions about any party’s mental health situation. Research to complete the following chart is ongoing.

<u>Problem</u> <i>(Challenges that make court processes more stressful, more costly, and less safe)</i>	<u>Criteria</u> <i>(Observed behaviors that prompt action to address a challenging situation, that should be agnostic of mental health labels or signs)</i>	<u>Solution</u> <i>(Interventions that can be used once the criteria for taking action has been observed, with a goal of applying them consistently regardless of a party’s race, gender, sexual orientation, or psychiatric disability)</i>
Protracted Disputes		
Extensive Discovery		
Client Dismissiveness Toward Other Perspectives		
Clients Reject Information from Their Lawyer that Contradicts Their Narrative		
Resistance to Settlement		
Judges Rotate Off Protracted Cases		
Judges and Others Not Trained in Responding to Challenging Behaviors		

Attorney Concerns About Malpractice Suits and Litigious Behavior		
Attorney Feelings of “High Alert” of Possible Emotional Escalation from Parties		

iii) Stigma Addendum Campaigns

Recognizing that there are many situations where it is not possible for people to remove harmful content, we have also piloted efforts to provide “addendum” content to help supplement these programs to hopefully correct misconceptions and prevent discrimination. Some of the educational materials that were used in past stigma addendum campaigns are available at www.mhsafe.org/preventing. This page includes a 13-minute replay of an anti-discrimination program at the Mediate.com mental health conference and a “Preventing Mental Illness Discrimination” resource guide with links to many tools for noticing and preventing biases as well as tools for developing procedurally fair practices. It also includes a 48-minute program on how “Toxic, Difficult, and High Conflict” labels can inadvertently target people with personality disorders and other mental disorders in discriminatory ways, along with resources to help.

We have approached two professional associations that had disseminated discriminatory content about personality disorders through their conference programming, as well as one popular narcissism expert who has a large following on YouTube and other platforms. All three demonstrated varying levels of receptivity to the idea, and we are hopeful this will ultimately be a fruitful way to make a difference in reducing unintentional discrimination toward personality disorders.

At the time of this writing, a more recent example stigma addendum campaign outreach happened with Bob Bordone, a prominent mediator and Harvard Law professor, who operates a popular conflict resolution YouTube channel that has amassed over 2,000 subscribers and 100,000 views. We contacted Professor Bordone about a “How to Prepare for Mediation with a Narcissist” video he had produced that advocated social exclusion for people presumed to show signs of narcissistic personality disorder. The video said “Narcissists only care about themselves, and their interests, and they don’t make mistakes. And so, one of your goals whenever possible is try to leave that mediation with as little continuing contact with them as you can.”¹³⁹ Through an e-mail dialogue, Mr. Bordone shared that this video topic was suggested by his producers because narcissism is such a trending topic, and that this video wound up becoming Bordone’s second most popular video. However, we were able to share information with Mr. Bordone about how that casual language usage masks profiling done to socially exclude and otherwise discriminate against people who have aberrant behaviors due to clinical conditions.

139. Bob Bordone, *How to Prepare for Mediation with a Narcissist*, YOUTUBE (Jan. 30, 2023), <https://www.youtube.com/watch?v=3ZQgZArRyxg>.

Mr. Bordone said he would take that feedback to his producers to help inform how they approach future videos.

The addendum campaign model has some challenges. The underlying problematic content is still circulating and it still spreads misinformation that teaches people to engage in social exclusion and other forms of discrimination toward personality disorders. Moreover, the changes made sometimes end up becoming superficial window-dressing that still allows discrimination to spread.

For instance, the well-regarded Mosten Guthrie Academy promotes a training that profiles people with personality disorders. According to a 2021 Newswire announcement, the training was described as:

“In this 12-hour training, Bill Eddy will provide training in five high conflict personality disorders and managing high conflict individuals. He will present his new approach to mediating such disputes: New Ways for Mediation. This approach includes several paradigm shifts from ordinary mediation by not relying on insight, expression of emotions or discussions of the past.”¹⁴⁰

Here we see that parties with these five personality disorders are going to be treated differently from ordinary mediation because there is no reliance on insight, expressing emotions, or discussing the past contrary to normal mediation. We contacted Mosten Guthrie and explained the problems with the model, and following this outreach they changed the way they describe the training. Their website now reads:

In this 12-hour training, Bill Eddy will provide a background on high conflict behavior and then he will present his new approach to mediating such disputes: New Ways for Mediation®. This approach includes several paradigm shifts from ordinary mediation by not relying on insight, expression of emotions or discussions of the past.¹⁴¹

Thus, the same model is being taught to treat people differently upon seeing them as “high conflict,” they are just being taught in ways that are less noticeable because they removed the “personality disorder” language.

By contrast, we have seen greater changes when advocating with some other contexts. A 2015 Harvard Law School course had a session about the “Psychology of Mediation” which addressed “personality disorders and other mental health problems” and contained readings covering the high conflict people model for legal disputes.¹⁴² Our outreach led the instructor, David Hoffman, to remove that material from future syllabi.

140. Susan E Guthrie LLC, *Mosten Guthrie Academy Partners with Leading High Conflict Expert, Bill Eddy for Innovative Training*, EIN NEWSWIRES (Oct. 14, 2021, 9:30 AM), https://www.einnews.com/pr_news/553781054/mosten-guthrie-academy-partners-with-leading-high-conflict-expert-bill-eddy-for-innovative-training.

141. *Bill Eddy High Conflict Mediation Training*, MOSTEN GUTHRIE, <https://mostenguthrie.com/bill-eddy-high-conflict-training/> (last visited Jan. 10, 2024).

142. David Hoffman, *The Psychology of Mediation Course Syllabus*, HARV. L. SCH. (Jan. 29, 2015), <https://law.missouri.edu/wp-content/uploads/2019/07/Hoffman-Mediation.pdf>.

Mediate.com has published a series of articles advising discrimination toward parties with personality disorders including some cited here.¹⁴³ When they were contacted in 2021, they invited a response article to be posted on the website and they went on to do a large amount of work trying to make improvements, as chronicled in the American Bar Association's *Just Resolutions Newsletter* profile of the breakthroughs they made, which culminated in a conference about mental health that was framed with language focused on reducing and preventing inadvertent mental illness discrimination.¹⁴⁴ Because they perceive limits in their role of regulating content, they have kept content that advises personality disorder discrimination on their website. But they have also published the first addendum article explaining why that content is discriminatory, back in 2021.¹⁴⁵

The best practice would be to remove the content teaching discrimination. However, stigma addendum campaigns have proven to be very effective awareness tools and incremental steps toward that goal.

VIII. CONCLUSION - WE CAN END THIS DISCRIMINATION EPIDEMIC

As upsetting as it is to realize the pervasiveness of personality disorder discrimination embedded in the world of mediation, the fact that this happened inadvertently and that most mediators have good intentions, including a desire to help parties with mental health problems, means that there is a great deal of hope. This article has done more than just demonstrate, qualitatively and systematically, that these biases against people who seem to show signs of personality disorders are powerful and common, and that they contribute to tangible discrimination. We have also presented tools that well-meaning mediators can use to make a difference - tools that help them adjust their practices to shift toward mental health empowerment, tools that allow them to educate parties so they can be more communicative about their rights, tools that prevent inadvertent discrimination, and tools that will assist them in working with publishers and trainers to improve policies and publications. In developing and sharing these resources, we have seen a high level of receptivity that makes us optimistic about the potential for growth within the field. Moreover, we have seen that efforts to rectify this hard-to-notice mental disorder discrimination led to positive changes that make the process more equitable for everyone, across all diverse groups. Thus, our vision for next steps is one where all practitioners have opportunities to improve how they practice so they can prevent and mitigate problems like this personality disorder discrimination epidemic.

We hope that this article can help spread these resources widely, and we are available to help anyone who is interested in making these improvements. Please contact us at www.mhsafe.org/personalitydisorders.

143. See Berstein, *How to Help Parties with Disabilities*, *supra* note 24 (reviewing some examples).

144. Berstein, *Mental Illness Discrimination*, *supra* note 25.

145. Berstein, *How to Help Parties with Disabilities*, *supra* note 24.