

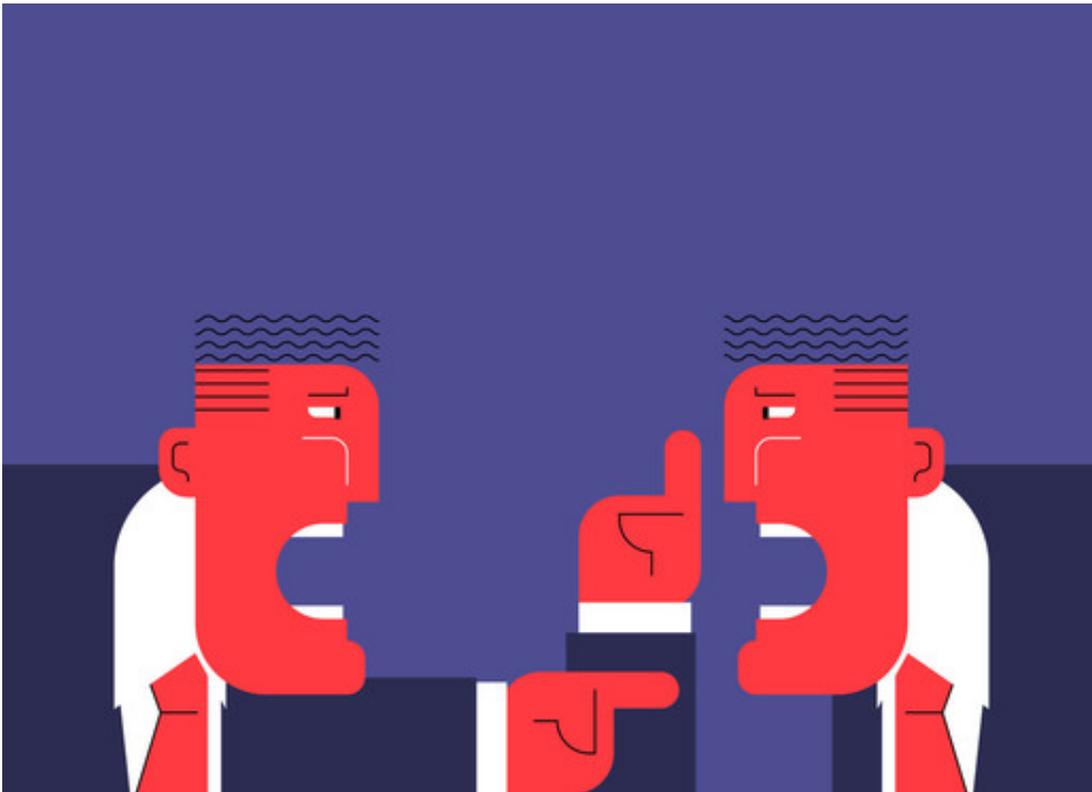
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Lawyers Behaving Badly 2016: Deposition Edition

Ross Todd, The Recorder

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Evidently some lawyers and litigants don't understand what it means to be "on the record" during a deposition. Either that or they don't mind being caught saying or doing something untoward, ridiculous or downright horrible.

Every year stories surface of lawyers and witnesses lobbing insults—or nearby objects—at each other during depositions when things get contentious. Although 2016 was an outlier in many ways, it followed suit when it came to lawyers and litigants behaving badly.

The following lowlights stand out:

A NUTTY CLAIM



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Seeking sanctions demonstrates a certain amount of animosity toward an opponent. Trying to get your opponent arrested takes it to a whole different level.

The Florida Bar this year [filed a complaint](#) against Bernardo Roman III for allegedly making a false 911 call in an attempt to get his opposing counsel in a legal malpractice case locked up. Roman accused Paul Calli of Calli Law in Miami of deliberately shoving pistachios in the face of his assistant—who has a nut allergy—during a deposition.

According to the bar, Roman's assistant was actually forced to leave the deposition to seek care for an allergic reaction after the nuts were left out in a conference room by a judge. More than an hour after she left, Roman called police claiming Calli had pushed the pistachios in his assistant's face and placed them in her lunch. The bar claims that Calli would have been arrested if not for the intervention of two judges.

Roman allegedly fired his assistant after she refused to back up his story.

KEEP YOUR COOL

Coffee can provide a pick-me-up during a long, grueling deposition.

But picking up coffee and [throwing it at opposing counsel](#) mid-deposition probably takes the whole pick-me-up thing a little too literally.

That's what allegedly happened this summer in a case involving San Francisco-based startup Loop AI Labs Inc. and Italian tech company Almax SRL, according to court filings and a transcript.

Venable partner Thomas Wallerstein, who represents Almax, accused opposing counsel Valeria Calafiore Healy of Healy LLC of cursing at him and hurling her coffee toward him after a heated exchange at a deposition in Boston. Healy, who had earlier begun videotaping the deposition with her cell phone, claimed that Wallerstein was harassing her witness.

In her reply to Wallerstein's motion for sanctions, she also pointed out one key fact that he had omitted from his motion for sanctions: She was drinking iced coffee rather than the hot stuff.

WHO'S SORRY NOW?



U.S. Magistrate
Judge Paul
Grewal.
Photo: Jason
Doiy/ALM

After Peter Bertling of Bertling & Clausen in Santa Barbara, California, told opposing counsel that it wasn't "becoming of a woman" to raise her voice at him during a contentious expert deposition in a wrongful-death suit, he failed to take a judge's hint that he should say "I'm sorry."

In the sanctions proceedings that followed, Bertling wrote that he would apologize to opposing counsel "if I offended her by referring to her as a 'woman' instead of as an 'attorney.'" That [didn't sit well](#) with then-U.S. Magistrate Judge Paul Grewal of the Northern District of California. After Bertling failed to apologize in court papers and at a follow-up hearing, Grewal wrote that Bertling had only offered "a halfhearted politician's apology" and ordered him to donate \$250 to the Women Lawyers Association of Los Angeles Foundation.

"A sexist remark is not just a professional discourtesy, although that in itself is regrettable and all too common," wrote Grewal, who has since left the bench for an in-house position at Facebook Inc. "The bigger issue is that comments like Bertling's reflect and reinforce the male-dominated attitude of our profession."

LEADING QUESTIONS ... AND ANSWERS

When coaching a witness, it's probably best to stop short of hand signals.

Plaintiffs lawyers in a fraudulent-conveyance lawsuit in federal court in Dallas accused their opposing counsel of [mouthing words to a witness](#) during a deposition to influence testimony and using hand signals to signal when to stop answering. The defense lawyers, Gregory Shamoun and Stephen Khoury, also allegedly told their client to leave the room midquestion.

Shamoun and Khoury called the allegations against them "baseless" and "smear tactics" by the plaintiffs. But a federal magistrate judge partially granted a motion for sanctions against them, and ordered their client to sit for another deposition. The judge also awarded the plaintiff's request to be reimbursed for lawyer time and travel to the earlier deposition.

Maybe try Morse code next time.

GET ON WITH IT, ALREADY



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And finally, a [cautionary tale](#) for lawyers who think that delay is just another word for depose.

When tobacco defense attorney Luis Suarez of Boies, Schiller & Flexner took more than five hours to depose a smoker's oncologist in a wrongful-death case in Florida, a state court judge said it was the "type of practice that gives the entire bar a black eye."

Ouch.

Plaintiffs had complained that Suarez, representing Philip Morris USA Inc., had spent two hours asking about treatment the plaintiff received before the doctor ever saw the patient and asked four times if the doctor understood that he was under oath. Brevard County Circuit Judge Charles Roberts actually gave defendants two additional hours to depose the doctor, but ruled that the tobacco defendants had to pay for the additional time themselves.

"The word needs to go out to the entire bar that these things cannot be countenanced by the court and they make us all look bad," said Roberts at a hearing in October.

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