# How To Develop the Skill of Active Listening

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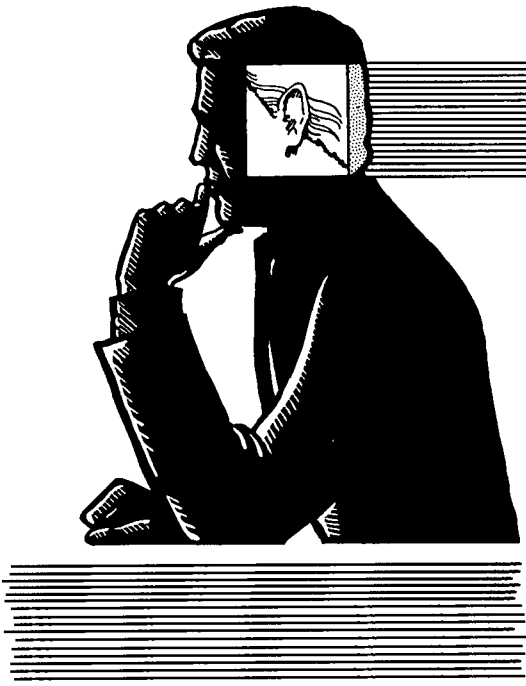

Active listening requires that an attorney listen carefully to his client's story and respond in a way that makes the client feel that he has been understood. As a result, the client is less likely to omit important facts or view the lawyer as a hostile interrogator.

MANY LAWYERS are good interviewers and counselors who can bring a problem into focus by asking probing questions. Yet lawyers can improve their interviewing and counseling skills by learning to listen actively to their clients and to delay asking questions. Active listen-



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ing is the most effective and easiest learned skill that can enable lawyers to improve their communication and rapport with their clients, increase their clients' satisfaction, and improve the preparation of cases.

Active listening is the lawyer's verbal response that reflects back to the client, in different words, what the client has just said. Lawyers can use the skill of active listening during interviews, counseling sessions, negotiations, conferences with judges, jury selections, and office meetings.

The purpose of this article is to describe the process of active listening, discuss its benefits, and provide a step-by-step approach for making active listening responses. Although examples from typical legal situations will be used, the technique of active listening can be employed almost any time two people communicate.

THE TECHNIQUE • To employ effectively the technique of active listening, lawyers must devclop two distinct skills: discrimination and communication.

**Discrimination and Communication**

Discrimination is the skill of listening to and judging accurately what a client has said. In other words, it is the ability to understand cognitively the client's statement. Thus, the lawyer's first step in active listening is to hear and understand the content and the fecling of a client's statement. The second step in active listening is really a communication skill rather than a listening skill. In this stage, a lawyer must communicate back to the client what the lawyer has heard from the client. This is called the active listening response.

Research has shown that active listening improves rapport between a lawyer and his client and encourages clients to talk. Thus, a lawyer is likely to learn more from the client and have more facts to work with in the case by employing this technique.

Active listening, however, is not easy. Hearing a speaker accurately and then immediately verbalizing, in different words, the content or the speaker's feelings is a difficult and analytic task. In this respect, active listening embraces what many people consider the essence of being a lawyer—the ability to think on one's feet or, in this case, in one's seat while interviewing.

**Content and Feelings**

A client's statement can be analyzed either from the perspective of content or of feelings.

*Example 1 (Content)*

*Client:* "The Countiss contract is the one that is holding us up. As soon as we take delivery, we can finish the job in three days."

*Lawyer:* "The Countiss contract is holding things up now."

*Example 2 (Feelings)*

*Client:* "I worry that I'll get

blamed if the Countiss contract doesn't work out."

*Lawyer:* "If the Countiss contract doesn't come through, you're afraid that you will be in trouble."

As these examples demonstrate, either the content (example 1—being held up by the contract) or the feelings (example 2—fear) in a client's statement can be the focus of the lawyer's active listening. Content is comprised of the people, places, things, and experiences that usually are considered facts. Feelings are the emotional dimensions of the client's statement. They can be expressed directly, as in, "I was shocked and hurt when my husband announced that he wanted a divorce and that he was moving out of the house," or can be implied from the facts communicated, as in, "One day after dinner, my husband announced that he wanted a divorce and that he was moving out of the house." Active listening typically connotes working with the feelings of a client. When used to respond exclusively to feelings, an active listening response often is called empathy, which is a basic listening skill for personal counseling that has enormous potential for legal counseling.

Actively listening for content is extremely useful for the practice of law, and it can be used even more frequently than actively listening for feelings. When lawyers first begin to learn and practice the technique of active listening, they usually find it easier to listen actively for content. After the enormous potential of active listening becomes apparent and lawyers become more proficient, they become more comfortable discussing feelings. Eventually, an active listening response may be directed at either the content or the feeling in a statement, or at a combination of both.

Active listening differs slightly from the normal manner of communicating in that an active listener is explicit about what he understands. In other words, a lawyer can either tell a client that he understands the client's problem or he can prove that he understands it. Active listening is simply verbal proof of that understanding.

By contrast, passive listening does not give a client any assurances that his lawyer has actually understood what was said. Typical passive listening responses are, "Hmm," "I understand," "Sure, sure," "Yes," or nods of the head that suggest the lawyer hears and understands the client. These passive listening techniques, so prevalent in conversations, require a leap of faith by a client to believe that the lawyer has actually understood him.

**PURPOSES** • The principal purposes of active listening are to build rapport with and to obtain information from the client. The lawyer thereby demonstrates that he

understands the client's view of the situation.

Gathering facts from a client is really the goal of all interviewing. Facts are critical to the practice of law because they are the building blocks of cases. A lawyer's failure to elicit important facts can lead to inappropriate legal advice and an improper choice of alternatives. Missing facts may result in a lost case or malpractice. To avoid these problems, lawyers elicit facts by using a great deal of questioning. Once the lawyer determines the type of case the client has, e.g., child custody, contract, or shoplifting, he bombards the client with questions.

Certainly at some point in the interview a lawyer must ask questions to clarify what the client has said and to seek information to test legal theories and defenses. But a lawyer cannot ask every conceivable question, and sometimes important information about the client and his legal problem is not logically connected to the problem the client first expresses. Probably every practicing lawyer has had the experience of a client dropping a factual bombshell late in the preparation of the case. When asked why he didn't tell this information to the lawyer sooner, the client often replies, "I didn't think it was important. I thought you would ask me if it was important." The client's perception that this bit of information was not important is strengthened by the typical lawyer's pattern of interviewing—an almost never-ending series of questions. Active listening can go a long way toward the accurate development of the facts of a case.

The essential difference between active listening and the way most lawyers interview clients is characterized by the difference in the client responses received after the lawyer asks a question or makes an active listening statement.

*Client:* "I bought a car from Big John's Used Car Lot a couple of months ago and the engine blew up. The car's a piece of junk now."

*Lawyer #1:* "Did you have a written contract?"

*Lawyer #2:* "It must be frustrating to have spent money for a car that doesn't run any more."

Lawyer #1 immediately takes complete control of the interview and forces the client to start answering questions on the lawyer's agenda for discussing the problem. The lawyer implicitly tells the client: "I know what is important; I will decide what we talk about." This is particularly unfortunate because the information the lawyer is asking about—the existence of a written contract—is certain to arise at some point in the interview. The client, who is rarely interviewed by a lawyer, is knocked off stride and may quickly become passive. On the other hand, Lawyer #2 provides an active listening response of both content (broken

car) and feelings (frustration). The client is clear about what the lawyer understands and is given implicit permission to discuss content, feelings, or both. The client probably senses greater rapport with Lawyer #2 and is encouraged to talk fully about the problem.

Experimental evidence has shown that speakers who receive active listening responses tend to divulge more information. Talking about feelings may also be a good way to obtain information about the underlying facts, which may be of legal significance to the case. In addition, a client who is preoccupied with feelings often cannot listen well to the lawyer and may give the lawyer inaccurate or incomplete information. Nevertheless, many lawyers fail to recognize that emotions are also critical to a client's case. These lawyers see the practice of law as a series of legal problems to be solved like puzzles, not as a means of assisting people whose problems have both factual and emotional dimensions.

This is partly explained by a lawyer's legal training. In law school, human beings who have been involved in legal problems are reduced to anonymous defendants and plaintiffs. A law student is exposed to so many legal predicaments that these plaintiffs and defendants have gotten themselves into that he has no time to worry about their emotional experiences. Indeed, if the student did concentrate on the feelings underlying these legal situations and tried to empathize with the parties, little time would be left for learning the law or the process of legal reasoning.

In the practice of law, however, an attorney is confronted with living persons, not paper plaintiffs and defendants, and remaining a detached fact finder is no longer enough. Facts and emotions are intertwined. Effective legal counseling should include empathetic understanding to help the client communicate better. This is especially important to lawyers who must rely on as few as one or two interviews with a client to learn about the client's problem.

**CLIENTS' EMOTIONS** • Having a legal problem is an emotionally trying experience. Plaintiffs voluntarily come to lawyers when they feel they have been cheated, physically injured, discriminated against, or otherwise wronged. Defendants involuntarily come to lawyers with feelings that someone wants their money or wishes to restrain their liberty. They feel unjustly accused, harassed, tormented, or, in some cases, that they were in the wrong. Any party to a suit might be embarrassed about the situation or feel foolish for allowing himself to get into the situation in the first place.

Most people are probably more reluctant to see a lawyer than to see a doctor. Potential clients may fear that a lawyer will take advantage of

them. Even a business client who may trust his lawyer may be embarrassed to have a problem he cannot handle himself or to have caused the problem through an oversight or mistake.

Finally, some clients may fear that they, their family, and friends will receive unwanted publicity if a suit is filed or the case goes to court. The possibility of having to testify in court and being subject to cross-examination may upset otherwise competent and capable professionals.

**Counseling**

Active listening also can be useful to the lawyer with a sincere personal desire to help clients through counseling. Indeed, lawyers should be counselors in the broad sense of helping clients choose between various possible alternatives. Only through good counseling, which allows a client to express his feelings, can the lawyer adequately assist him in evaluating the social, economic, and personal consequences of available alteruatives to his legal problem.

**ECONOMIC BENEFITS** • Lawyers must be businessmen as well as lawyers, and active listening makes good business sense. In the marketing of legal services, the first interview with a prospective client has changed considerably during the last decade and is often free of charge. Whether to hire a purticular lawyer is the client's decision, which will not be made until after the client has evaluated the lawyer in this first interview. Active listening, since it increases rapport, also increases the probability that the client will want to hire the lawyer.

Lawyers are likely to discover that active listening saves time. The few extra minutes spent with a client are likely to produce a wealth of additional information.

Client rapport and improved lawyer-client relations are beneficial in another business sense. Many clients are unaware that most legal cases end in negotiated, compromise settlements and that even a substantial judgment won in a civil case will be diminished by high legal expenses and contingent fees. In other words, all clients are likely to be dissatisfied to some degree with the result. If rapport between the lawyer and client remains strong, however, the client is likely to be satisfied with his lawyer. A satisfied client brings a lawyer repeat business and sends him referrals. Furthermore, a satisfied client does not file a grievance claim or institute a spurious malpractice action against his lawyer.

**ACCURACY, INTENSITY, AND FORM** • Active listening responses can be viewed from three perspectives:

• Accuracy—whether the listener correctly identified the content or the feeling expressed by the speaker;

- Intensity—whether the listener correctly identified the strength or level of the feeling expressed; and
- Form—whether an introductory phrase was used to begin the active listening response.

Examine the following active listening response for accuracy, intensity, and form:

*Client:* "I felt really weird having to face that scowling man who sold me the materials and was demanding payment right then. And I had to tell him the general contractor hadn't paid me yet."

*Lawyer:* (Attempting to listen actively.) "I can understand how you would be a bit angry with the general contractor about that."

This lawyer did not respond appropriately from an active listening perspective. The response was inaccurate, lacked the appropriate level of intensity, and, by using the introductory phrase "I can understand" as part of the form of the response, may have created additional problems.

The response was inaccurate in terms of both feeling and content. The primary feeling expressed by the client, "really weird," indicated embarrassment, not the anger that the lawyer identified. The content of the client's statement was directed toward the confrontation with the materials seller, not with the general contractor's failure to pay. In terms of intensity, the lawyer was again incorrect. Feeling "really weird" is an intense feeling, as shown by the use of and emphasis on the modifier "really." Even if the lawyer had correctly identified the client's feeling of embarrassment, the lawyer's use of the phrase "a bit" reflected back only a mild intensity of feeling.

The process of active listening is usually self-correcting, however, at least insofar as accuracy and intensity are concerned. When a client hears that his lawyer's response is incorrect, the client typically corrects the lawyer. In a sense, the client will have begun to listen actively to the lawyer. For example, the client might say, "No. I mean it was real awkward with the materials guy." No harm results from the lawyer's incorrect active listening response, if the client makes the correction. In fact, the conversation generally improves.

**Introductory Phrases**

A more correct active listening response would result if the lawyer were to drop the introductory phrase, "I can understand." This phrase frequently causes clients to say to themselves, "This lawyer can't possibly understand," which thereby disrupts the communication between the lawyer and client. Especially when differences in gender or financial or social status exist between the lawyer and client, the client may not believe the lawyer "can understand."

A lawyer's use of standard, and presumably natural, introductory phrases such as, "It seems that you feel," "As I see it," or "What I hear you saying," may seem phony, rather than empathetic, to the client. Instead of encouraging communication, the lawyer blocks it. The awkward introductory phrase attracts attention. Clients of long standing may even ask the lawyer what book he just read about communication techniques.

In short, attorneys should discontinue the practice of using these introductory phrases. Active listening responses are better without them. Rather than saying, "It sounds to me like you are very anxious about the Martell contract," a lawyer should simply say, "You're very anxious about the Martell contract." Moreover, active listening responses need not even be stated in complete sentences.

**Accuracy in Reflecting Feelings**

Accuracy of content or feelings, which is the major component of active listening, should be of paramount concern to someone who is new at active listening. Achieving accuracy in content requires practice; accuracy in feelings is another matter. Some people lack a sufficient vocabulary for accurate active listening in the area of feelings. The following list, which presents a wide variety of feelings, should be of use to lawyers:

| | | |
|---|---|---|
| *happy* | *suspicious* | *uncomfortable* |
| *caring* | *resentful* | *abandoned* |
| *depressed* | *fed-up* | *cheated* |
| *inadequate* | *bored* | *tricked* |
| *fearful* | *miserable* | *nervous* |
| *confused* | *disappointed* | *afraid* |
| *hurt* | *helpless* | *impatient* |
| *angry* | *rejected* | *worried* |
| *lonely* | *embarrassed* | *troubled* |
| *guilty* | *reluctant* | *shocked* |

Accurately reflecting a client's feelings also requires considering the client's nonverbal and voice dimensions. How the client speaks to his lawyer may be more important than what he says. Emotions may be mixed; some may be unstated. For example:

*Client:* (Speaking slowly, in a low tone, and with head down.) "I'm glad I'm able to discuss the will with you today."

*Lawyer:* "You are pleased to be here and also troubled at the same time."

This lawyer correctly reflected back both the verbal ("pleased") and the nonverbal ("troubled") messages.

Accuracy requires paying attention to the client's current emotional state.

*Client:* "When the accident first happened I was very angry, but now I'm really doing well."

*Lawyer #1:* "The accident made you mad."

*Lawyer #2:* "Life is very good now."

Although Lawyer #1 reflected past feelings, it may not be useful to discuss those feelings now. Present exploration of past feelings will sidetrack the discussion and may even put a damper on the conversation, since the client may assume those past feelings. Prior feelings should be reserved for a discussion of the assessment of damages. If talking about past feelings is not appropriate now, then Lawyer #2 makes the better active listening response by emphasizing present feelings. Active listening should not be used to focus indiscriminately on just any feeling the client brings up. The focus should have a purpose.

Although lawyers should strive to reflect accurately the statements of the client, they must be careful not to use the client's exact words.

*Client:* "I felt really bad after the job was over."

*Lawyer:* "It sounds like you felt really bad after the job was over."

The client has come to the lawyer for advice and some empathy. If the client's statements to the lawyer are merely echoed, the communication immediately breaks down, and the client becomes impatient with the lawyer. Parroting makes an active listener sound phony and reveals that the lawyer is attempting to use a communication technique.

Finally, when listening actively, the lawyer should not answer the client's question immediately. A client's question is merely verbal evidence of his confusion. As the following example indicates, active listening can be an effective response to a question.

*Client:* "Well what do you think I should do?"

*Lawyer:* "You sound concerned about what alternative to pick."

*Client:* "Yeah. You know if I go through with Dvorkin's first proposal, I'll end up. . . ."

A lawyer almost never has to answer the client's question the first time it is asked, since more remains to be learned from the client. Putting at ease the rare, insistent client who brushes off the active listening response is easy.

*Client:* "But I want to know what you think I should do."

*Lawyer:* "And I promise I will tell you as soon as I get a little more information. But first I need to know what it is that bothers you about Dvorkin's proposal."

**AVOIDING ROADBLOCKS** • To use active listening effeetively, lawyers also should become conscious of some frequently used responses that inhibit, rather than encourage, lawyer-client communication. Lawyers extensively use questions, reassurance, and advice in their communication with clients. Unfortunately, in many situations these three techniques act as roadblocks to good communication.

**Questions**

Although asking questions would seem to be the principal communication technique for an effective lawyer, questions often prevent a lawyer from getting information. Bombarding a client with questions, especially leading questions requiring only one-word answers, adversely affects a client's openness and willingness to communicate. For example:

*Client:* "Getting that contractor to add a new room to my house has sure messed up my life."

*Lawyer:* "Did you have a written contract?"

*Client:* "No."

*Lawyer:* "Is the job done?"

*Client:* "No."

*Lawyer:* Who is the contractor?"

*Client:* "Taylor Construction Company."

*Lawyer:* "Tell me more."

*Client:* "Well, that's about it."

The lawyer's questions subtly teach the client not to volunteer information by discouraging him from talking about what he thinks is important to the case. The implied message is that the lawyer asks the questions and controls the subjects because he knows what is important. The corollary is that if the subject were important, the lawyer would ask about it.

**Reassurance**

A lawyer's reassuring response also can be a roadblock, especially if the client's problem has a strong emotional component.

*Client:* "Every time I think of that guy he gets me so mad I could just, just—I don't know."

*Lawyer #1:* "Don't worry about it. You will get over it."

*Lawyer #2:* "That guy gets you so upset you are not sure what you'll do."

Lawyer #1 tries to be helpful by being reassuring, but the client will not be so easily satisfied. The client is behaving emotionally, not rationally. Talking about getting over it in the future ignores the client's present state and demonstrates a failure to see the matter from the client's perspective. If you had a headache, and someone told you that your head would feel better tomorrow, you would feel that your present feelings were being ignored. Similar attempts to make the client feel better by reassuring him that the future will be brighter or by trying to talk the client out of his feelings can hurt the lawyer-client relationship.

Lawyer #2 in the example above directly communicates his understanding by actively listening. Since the client feels that his lawyer obviously understands him, the client can talk more about these feelings if he wishes. Once the client has expressed his anger, he is able to cooperate better with the lawyer. In addition, the client is likely to discuss the facts that led to his anger.

**Advice**

Giving advice is another technique that often fails to help a client and actually becomes a roadblock. The problem with advice is that it is usually given prematurely.

*Client:* "Boy, it was sure dumb of me to give up when the salesman said I couldn't return it."

*Lawyer #1:* "Next time you should insist he take it back and return your money."

*Lawyer #2:* "You sound like you are embarrassed because you think you were taken by the salesman."

Lawyer #1 has given advice that is not useful at this time. The client is not discussing what to do the next time; he is concerned about what happened this time and how he reacted. The client's negative feelings are being cut off by this lawyer's response. The lawyer is not listening to the emotional aspect of the client's problem. By immediately telling the client how to solve the problem, the lawyer conveys the message that the client is incompetent. This may cause the client to withdraw from the lawyer and become defensive.

Lawyer #2, on the other hand, listens actively to the client in a way that promotes good communication. The client knows that he has been understood and feels that he probably can discuss his problem further if he wishes. Either now, or after he discusses his embarrassment, the client will be ready to discuss the facts that the lawyer needs.

**Useful Techniques**

These three roadblocks—questions, reassurance, and advice—certainly should not be dropped from a lawyer's repertoire of communication techniques. The lawyer should only use them after recognizing their effects. Advice and reassurance are perfectly appropriate after a client has had an opportunity to discuss his problem and after the lawyer has demonstrated through active listening that he understands the client's situation.

Bear in mind that active listening demonstrates only that the lawyer understands the client's view of the situation. It does not mean that the lawyer agrees with the client's view. For example:

*Client:* "If that guy in front of me had just driven through the yellow light, I never would have rear-ended him."

*Lawyer #1:* "I agree. It was his fault."

*Lawyer #2:* "If he had just kept going, there would be no problem."

Lawyer #1 is not listening actively; he is making a judgment. This response may later cause problems for the lawyer because he has reinforced the client's view of the situation.

Lawyer #2, on the other hand, accurately reflects back the client's statement but does not state a posi-

tion on fault. The response encourages the client to keep talking but does not agree directly with the client's position. In addition, if Lawyer #2 must later tell the client that the accident was his fault, the client is more likely to accept the lawyer's view because he can be sure that he was understood by the lawyer.

Techniques that are roadblocks in one situation can be useful in communication when the desired effect is to create a roadblock. For example, a question can be consciously used in this fashion, as when a lawyer might decide not to allow the client's feelings to be expressed.

*Client:* "Every time I think about it, I just almost can't stand it. I go to pieces. I just—just . . ." (hangs head and is close to crying).

*Lawyer:* "Now, where were you on the morning just before the accident?"

*Client:* "Let's see." (Regaining composure.) "I think I had just stopped by the drug store to . . . ."

In the above example, the lawyer's question required the client to shift to a less emotional topic and thereby blocked the emotions from being expressed. A lawyer should consider his and the client's reactions before using this technique, since a client generally feels much better after being given a chance to release the emotional tension. Allowing clients to express emotions or remaining silent during part of an interview while the client responds can be an effective interviewing technique.

CONCLUSION • By using the technique of active listening and applying the simple checks of accuracy, intensity, and form, lawyers can elicit more and better information from a client and also be sure that the information obtained is correct. Furthermore, active listening can help build rapport between lawyer and client and contribute to the improvement of the lawyer's practice.

Active listening, however, is not an invitation for lawyers to act as amateur psychiatrists or do something that is totally out of their province. If a client seems to have a significant emotional problem, he should be referred to a mental health professional.

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If the lawyer notices that the client's emotional condition is affecting their communication, it is best to comment on the client's emotional state rather than ignore it. You can easily show a client that you relate to his or her crisis simply by repeating the problem back to the client.

Clawar & Rivlin, *Are Your Clients Getting the Most Out of You?* WIS. B. BULL., May 1983, at 17, 18.

# THE LAW OF THE LAWYER

*(Continued from page 9)*

The ostensible reason for withdrawing was the client's failure to pay fees, but at the withdrawal hearing the lawyer justified his motion by his client's failure to review documents in preparation of the case. Neither reason, however, was held sufficient to justify withdrawal so soon before trial, especially in view of the extra time the lawyer had received to prepare this case. The lawyer was fined $6,500 for the extra cxpense and burden he had caused the Government by his motion. *In re Cordova Gonzalez,* 726 F.2d 16 (1st Cir. 1984).

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**DON'T PUT IT ON PAPER.** Two lawyers were less than truthful, much to their regret, in filed documents in the following cases. In *Myers v. Virginia State Bar ex rel. Second District Committee,* 312 S.E.2d 286 (Va. 1984), a Virginia lawyer was suspended for six months after he filed an estate aecounting listing his fee as $500 for work on the estate, when he actually charged his client $4,910. The lawyer claimed, but could not prove, that his bill represented non-estate work for the client, and he told his client that the Commissioner of Accounts had approved the $4,910 as a fce from the estate.

A New Jersey lawyer ran into similar trouble when, in an effort to help a client get a mortgage, he misrepresented the sale price of the house as $107,000, instead of its actual $100,000, in an application to a Savings and Loan Association. The lawyer compounded his problem by suggesting, when the seller's attorney raised questions about the $107,000 figure, that two closings—one real, the other sham—be conducted to hide the subterfuge. For his deception the lawyer was suspended from practice for one year. *In the Matter of Labendz,* 471 A.2d 21 (N.J. 1984).

**MALPRACTICE**

**THE BITTER WITH THE SWEET.** According to the Washington Supreme Court, one who practices law without a license is held to the same standards as licensed attorneys. In this case, a title insurance company's escrow closer, who was not an attorney, practiced law when she drew up certain closing documents that left plaintiff-vendors unsecured in the sale of their property in exchange for a note. The escrow closer's failure to act ethically—in working simultaneously for conflicting interests and in failing to warn the unrepresented vendors that they should obtain independent counsel—

was deemed to justify a finding of liability against the defendant for the vendors' injuries. *Bowers v. Transamerica Title Insurance Co.*, 675 P.2d 193 (Wash. 1983).

## JUDGES

**THE XYZ AFFAIR.** The Pennsylvania Supreme Court, which has been attacked in the past year for allegedly unethical conduct by some of its members, refused to hear a petition from a judicial review board member that the investigative record on an unnamed judge be made public. Under the state constitution, the court could not act until the review board took final action. The dissent complained that one of the justices in the majority should have recused himself from the vote, since everybody knew he was "XYZ," the "member of the judiciary" referred to in the petition as being under investigation. *Application of Surrick*, 470 A.2d 447 (Pa. 1983).

## MISCELLANEOUS

**IT'S PRO SE AND I'LL TRY IF I WANT TO. . .** Criminal defendants are permitted to defend themselves, but a court may appoint "standby" counsel to help them. *In McKaskle v. Wiggins*, 104 S. Ct. 944 (1984), the Court found no absolute ban against standby counsel giving a pro se defendant unsolicited advice during the trial, as long as the defendant keeps control of his case and the lawyer's intrusions do not destroy the defendant's pro se image before the jury. When a defendant does call on standby counsel, however, counsel's subsequent suggestions are presumed to occur with the defendant's acquiescence, unless the defendant expressly asks counsel to keep silent.

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**. . . YOU SHOULD TRY TOO IF YOUR PROCESS IS DUE.** When a defendant corporation's local attorney was suspended and ultimately disbarred for unethical conduct, the corporation mistakenly failed to transfer this case to a new attorney. The disbarred attorney continued to represent himself to the plaintiffs as the defendant's counsel of record and to receive service of discovery matters. He did nothing else on the case, however, and defendant only learned of its mistake when plaintiff obtained a default judgment. The default judgment was vacated since the defendant had no actual or constructive notice of the procedural omissions that produced it. A suspended attorney is no longer an agent of his client, the court reasoned, and thus service on the attorney is not constructive notice to the client. While the defendant shares some blame in this matter, it was the disbarred attorney's active fraud that kept the defendant in the dark and justified voiding the default judgment. *Lovato v. Santa Fe International Corp.*, 198 Cal. Rptr. 838 (Cal. Ct. App. 1984).