

Untreated Hearing Loss: Risky Business in the Courtroom

By Homer Mullins and Sergei Kochkin

Ruth believed she was at the top of her game, performing at her best after 25 years with a large law firm in a major East Coast city. Her practice group had responsibility for trying complex, multidistrict litigation cases, primarily in the area of toxic torts with high-dollar damage claims based on dense fact patterns.

Hearing Loss? What Hearing Loss?

Until recently, the only problems Ruth had ever experienced with her hearing occurred on the day following the occasional rock concerts she attended in college. She would wake up with a loud ringing in her ears that would last for several days, then disappear. Her hearing would then return to normal.

Then, about six years ago, Ruth began to notice some difficulty understanding what other people were saying to her. She heard sounds coming from a person but could not make out the exact words. If she felt reasonably comfortable doing so, she would nod her head agreeably during the course of a conversation to keep it going smoothly. If she was not sure what had been said, she thought she was smart enough to correctly “read” the situation and get away with providing a plausible response, if needed, based on her best educated guess. That usually seemed to work, although occasionally after she responded in that fashion, she noticed a pause in the conversation that went on just a bit longer than she thought required by context. Whatever the problem, she swore to herself that she would never wear hearing aids or do anything else that might be seen as a weakness by clients and exploited by

her opponents. The only persons she had ever known to wear hearing aids had been the most elderly members of her family and their friends. She was far from being ready to give in to anything that might stigmatize her as handicapped. She would do whatever was required to keep up appearances as a tough competitor.

Through the years, Ruth put into play some adaptive behaviors to counter suspicions that she might have a hearing problem. For example, she devised a strategy to deflect attention from her uncharacteristic reluctance to participate in conversations. Either by starting a new conversation on a topic with which she was intimately familiar, or joining one just underway, Ruth would guess what people were saying, respond, and stay credibly involved. After a socially acceptable period, she would duck out of that conversation and repeat the process with a new audience.

Ruth knew she was at the end of her rope one day in court when her opponent objected to the introduction of some electronic records. In that jurisdiction, like many others at that time, the law surrounding the admissibility of this type of evidence was not well settled. Her opponent cited a brand-new case, as yet unpublished, that squarely supported his position and sat down. All eyes were on Ruth. After making her “stock” response on the admissibility of such records, she knew immediately by the facial expressions of those who were listening that she had not connected. After a lengthy pause, the judge asked if she had anything else to offer. Ruth informed the court she was finished but offered to brief any issues the court had particular concerns about. The judge reserved ruling and then asked the attorneys and the court reporter to meet with him *in camera*.

In chambers, the judge acknowledged that he had known Ruth for many years and was personally familiar with the high quality of her work and her reputation for good character and as an ethical and tough opponent. However, based on some of her reactions and responses—or lack thereof—to matters raised at the trial during the last few days, he had some serious concerns about her cognitive health and her ability to continue representing her client. Specifically, he noted that despite his numerous admonitions, she had continued to interrupt him during the proceedings, answered questions from the bench on occasion in a voice so loud as to be disrespectful, and of greatest concern to him, had responded to arguments from

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opposing counsel in such a peculiar fashion that he wondered whether they had been tuned in to the same channel. Ruth was stunned. The jig was up. She knew exactly why the judge was upset. She should have seen this coming years ago. He ordered her to submit a brief within 48 hours, including affidavits and any other evidence she had, to show cause why the case should not be mistried with Ruth's client to pay costs and attorney fees.

Back at her office, Ruth's problems had been known to staff, clients, and colleagues for some time. She would ask for repeats of things previously said or interrupt people when they were still talking. Sometimes, standing in a small group, she would remain mute with a pleasant, though empty expression showing not a clue that someone had asked her a question and was awaiting a response. Ruth's colleagues respected her and were sensitive about saying anything that might offend her, such as, "have you *heard* about . . ." or "I'll keep an ear to the ground." Her partners were becoming concerned about liability issues; despite her many assurances to the contrary, Ruth simply did not understand a substantial portion of what was said to her. Her colleagues had begun to route important communications through Ruth's secretary, followed by a confirming memo.

Not surprisingly, the same sort of activity had been going on at home. Because arguments over the volume on the television had become so frequent, Ruth had given up watching TV with her family. In social situations, people had become uncomfortable being around her; they did not know enough about communicating with hearing-challenged persons. For example, when guests would arrive at her house for social gatherings, they would greet Ruth, looking directly at and speaking loudly to her, carefully enunciating each syllable. Then, much to Ruth's annoyance, they would move into the living room and essentially ignore her for the rest of the evening. When she got off-track trying to follow a particularly interesting piece of family news, Ruth's request for a repeat would be met with such comments as, "oh, it wasn't important," or, "I'll tell you later." The shifting dynamics of her interpersonal relationships baffled her. Ruth felt alone, isolated, and was becoming depressed, drinking more than she ever had.

Ruth had continued to insist that her hearing "wasn't all that bad." She assured all concerned that at the point her hearing loss became "serious" enough, she would gladly present herself to professionals for treatment.

Well, after what happened in the judge's chambers, Ruth was ready to admit that her problem was "serious" now.

Getting Help

Of course, Ruth is fictitious. But her predicament is not. Untreated hearing loss can cause serious, career-threatening problems for lawyers. And the social and emotional consequences of delaying treatment can be just as dire.

According to the Better Hearing Institute (BHI), the incidence of hearing loss among licensed attorneys in the

United States is slightly more than 13 percent, or approximately 148,000 lawyers. In fact, the majority of people with hearing loss are below retirement age and still in the workforce. On average, people wait between seven and ten years (and often longer) from the onset of symptoms until they have their hearing evaluated by a qualified professional. During this period, hearing deteriorates so gradually that they habituate to the loss and may not even realize the extent of its severity. At some point, they may become aware of the problem, yet continue to deny its existence, and, as a consequence, forgo treatment (which for 90 to 95 percent of these individuals would consist of hearing aids).

To make matters worse, four out of five people who could benefit from hearing aids decide not to wear them. Conditioned by America's fixation on youth and vitality, these people would never consider a remedy that might suggest they are growing old. Furthermore, hearing loss is often associated with persons who move and think slowly. So, rather than "give in" to hearing aids and the stigma they symbolize, some people attempt to "pass" for hearing by faking understanding with a nod of the head or inserting such words as "right" or "okay" at appropriate places in a conversation.

"Bluffing," as some call it, was exactly what Ruth was doing in court when her train derailed. Rather than preserving her credibility, she was left exposed and humiliated. This unfortunate incident illustrates the irony behind bluffing. Instead of fooling colleagues into thinking they are fully functioning persons in the hearing world, people bluffing through significant hearing loss actually can appear slow, tentative, socially inept, confused, disorientated, and arrogant. Had they spotted the signs and taken charge of their hearing loss early on, they might have had the opportunity to be fitted with hearing aids (which today can be hidden within the ear canal and are virtually invisible), which could have obviated the need to bluff in the first place.

Untreated hearing loss can have serious social and emotional repercussions. As seen in Ruth's case, social isolation often results in increased drinking and other forms of self-medication. Also at risk are longstanding relationships with friends and family, who grow weary of attempting to communicate with someone challenged by so obvious a problem, yet so unwilling to take any corrective action.

In a collaborative study with the National Council on Aging (NCOA), the BHI's Sergei Kochkin found definitive evidence that hearing aids can mitigate the serious impact of untreated hearing loss. According to the study, "impressive improvements in the social, emotional, psychological and physical well-being of people with hearing loss . . . [were found, providing] strong evidence for the 'value' of hearing instruments in improving the quality of life of people with hearing loss." Among the positive affects of hearing aid usage were improved interpersonal relationships; reduced communication difficulties; lower incidence of depression and anxiety symptoms; and, in cases of severe to profound hearing loss, improvement in cognitive func-

tioning. Of special note not just to attorneys but to all breadwinners in the hearing-challenged population is this finding: Hearing aid users, particularly those with higher levels of functional loss, have significantly more earning power and report that they have “plenty” of discretionary income more often than non-users. In a recent study of close to 44,000 households confirming the 2000 study, the BHI discovered that untreated hearing loss resulted in significant losses in income; however, more importantly, hearing aids were shown to significantly mitigate income loss for those with hearing challenges.

Hearing loss is insidious, and therein lies the greatest danger for lawyers. Years can pass before lawyers even realize they have a problem. And when they do, there’s an almost irresistible tendency, owing largely to competitive pressures, to ignore it. Lawyers must resist that temptation by reminding themselves of the distinct possibility that they are misinterpreting conversations, or worse, not hearing them at all. It’s one thing to have heard a comment and ask for clarification, if needed. It’s quite another when the comment is not heard at all and the lawyer doesn’t know to ask questions. The lawyer is then in the unenviable position of not knowing what he or she doesn’t know.

Consider the impact of delayed treatment on your effectiveness as advocates for your clients, not to mention its adverse effects on quality-of-life issues for yourself. Pay attention to your hearing. Be proactive in identifying the signs of hearing loss, especially the comments and reactions of others. If you have, or suspect that you have, any condition that is compromising your hearing, have it checked right away by a qualified hearing health professional. In some cases, you may be needlessly hampered by a medical condition that is completely reversible. In other, more complicated cases, digital hearing aids, together with other assistive listening devices and augmented in appropriate cases by emerging advances in Bluetooth technology, can help you maintain your edge in this highly competitive environment. By far the worst decision you can make is to ignore the signs of hearing loss and do nothing. By so doing, you could be placing your clients at risk for unwanted outcomes. You may also be subjecting your career to unnecessary stress during its peak period of development, with significant professional implications for yourself and those with whom you practice. **GPSOLO**