

# **I Object!**

– James Eckert, Esq.

## **Exceptions**

Sometimes what you really need to do is make sure everyone knows you're not happy.

Appellate courts sometime rule that the defendant's failure to object, after a ruling was made, meant that he acquiesced in the court's ruling. Some of you learned in law school that exceptions were no longer required; some of you may have read CPL 470.05(2) which says that a protest need not be in the form of an exception and that "it is sufficient if the party made his position with respect to the ruling or instruction known to the court".

You do not need to say the word "exception", but it is important that the record reflect your disagreement with the judge's ruling. This is particularly important when you have argued in the alternative - arguing first that evidence should be kept out completely, for example, and in the alternative for a limiting instruction. Failure to make any statement after the judge has either given or agreed to give the instruction you requested may well be interpreted as agreement with the ruling admitting the evidence in the first place.

So whenever you receive half a loaf, be sure to complain for the record that you did not get the rest of the loaf, and a full deli tray with fresh condiments, not those little packages that tear wrong and are sticky anyway from who knows what.