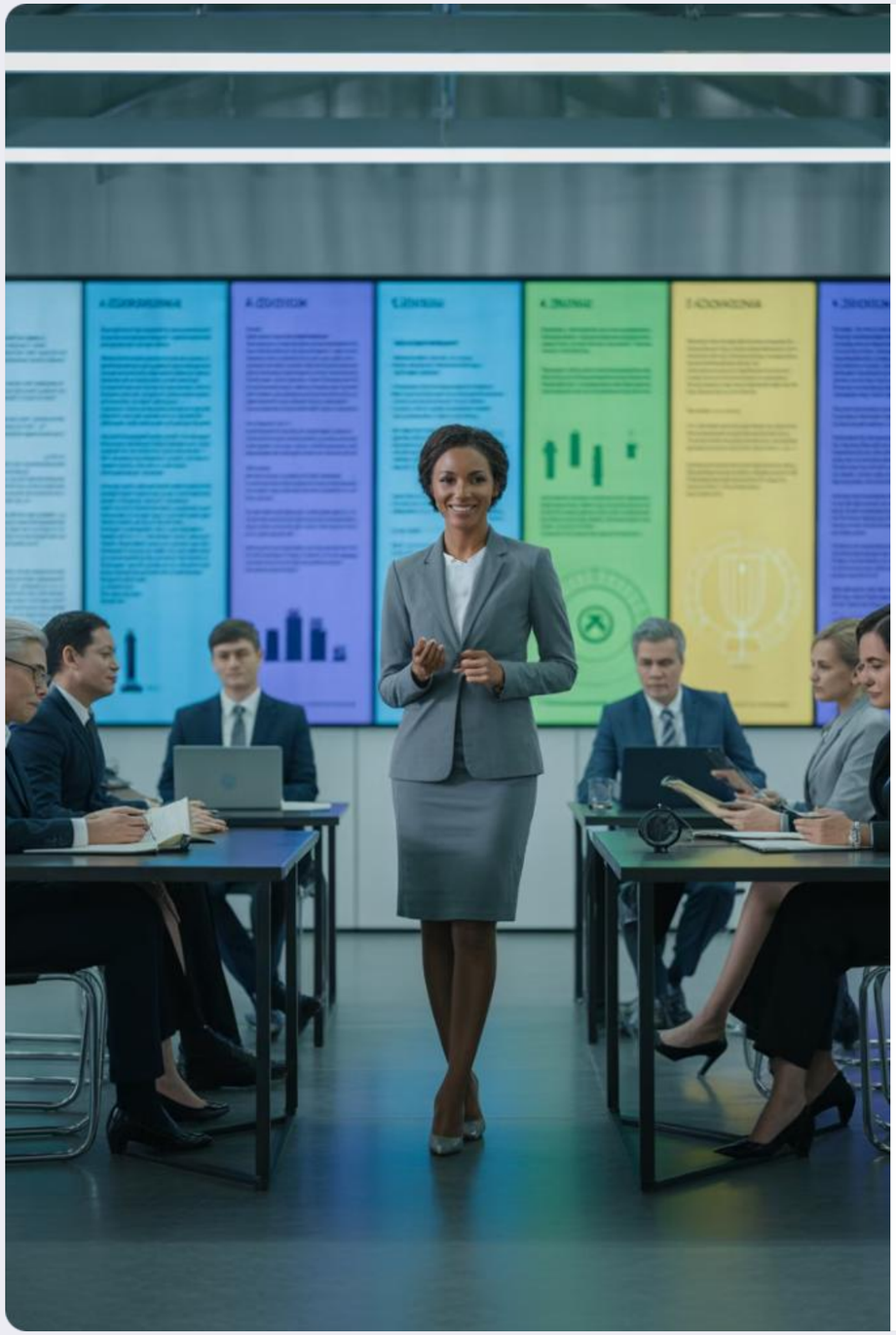


Raising and Resolving Evidentiary Objections

Welcome to this comprehensive presentation on raising and resolving evidentiary objections. Throughout these slides, we'll explore the procedural framework that governs how attorneys challenge evidence, how judges rule on these challenges, and the limited opportunities for appellate review.

The Federal Rules of Evidence establish a structured approach to identifying inadmissible evidence through the adversary system. Understanding these procedures is essential for effective advocacy, as most evidentiary battles are won or lost at the trial level with limited opportunity for meaningful appellate review.



by Roger Batchelor

Key Concepts Overview

Rule 103: Objections and Motions to Strike

Establishes the framework for challenging evidence and preserving issues for appeal

Timeliness and Specificity

Requirements for properly raising objections during trial proceedings

Offers of Proof

Procedures for defending evidence when objections are raised

Rule 105: Limiting Instructions

Mechanisms for restricting how jurors may consider certain evidence



The Adversary System and Evidence

Judge's Role

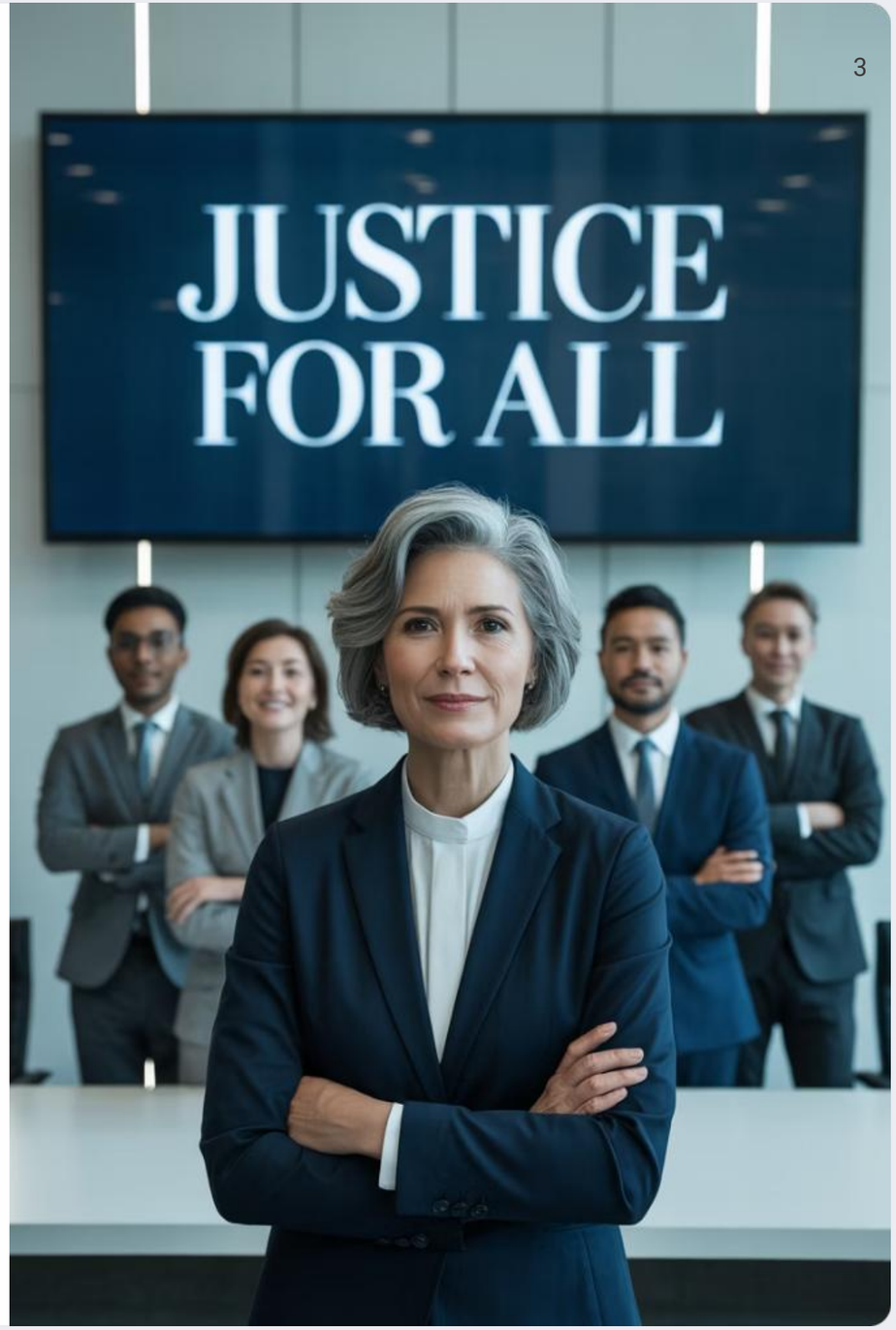
Trial judges rarely identify objectionable evidence on their own. Instead, they rely on the parties to raise objections about an opponent's evidence.

Attorney's Responsibility

Attorneys must thoroughly master the rules of evidence to effectively challenge and defend evidence on the spot in the courtroom, with few opportunities for a replay.

Pretrial vs. Trial Objections

While some evidence is challenged through pretrial motions (in limine and suppression), most evidentiary objections occur during trial itself.





Rule 103: The Appellate Perspective

Appellate Deference

Rule 103 outlines the process for disputing evidence from the standpoint of an appellate court, reflecting the strong deference that appellate judges show toward evidentiary rulings.

Procedural Requirements

The rule establishes procedural steps that attorneys must take at trial before a reviewing court will even consider evidentiary objections on appeal.

Preserving Claims

"A party may claim error in a ruling to admit or exclude evidence only if..." - this language sets up the hurdles to appellate review that define how lawyers challenge and defend evidence at trial.



Raising Objections: The Basics

Two Mechanisms

Rule 103(a)(1) establishes two ways to dispute evidence: objections (before evidence is introduced) and motions to strike (after evidence has entered the record).

Timeliness Requirement

Lawyers must object to evidence as soon as the ground for objection is known or reasonably should be known. Failure to object promptly waives the issue for appeal.

Specificity Requirement

Trial lawyers must state "the specific ground" for any objection, giving both judge and opponent notice about the basis for the challenge.

The Importance of Timeliness



Prompt Identification

Attorneys must monitor evidence closely and register objections immediately



Judicial Intervention

Allows judges to rule before jurors hear inadmissible evidence



Opportunity to Cure

Gives opponents chance to address evidentiary defects

The timeliness requirement serves multiple purposes in the trial process. As the Seventh Circuit noted, "an objection can still be deemed 'timely' if it is raised within a sufficient time after the proffer of testimony so as to allow the district court an adequate opportunity to correct any error." However, careful trial attorneys avoid pushing this envelope.

Case Study: Williams v. Lowe's Home Centers

Lawsuit Filed

Dale Williams sued Lowe's claiming injury from a defective saw

Trial Testimony

Lowe's attorney elicited irrelevant evidence about Williams' teenage crack cocaine addiction

No Objection

Williams' lawyer failed to object, later explaining he was shocked and worried objecting might highlight the testimony

Appeal Denied

Despite agreeing the evidence was inadmissible, the appellate court upheld the judgment for Lowe's due to failure to preserve the error



The Specificity Requirement

Identify Precise Grounds

Generic objections like "I object, judge" fail to preserve issues for appeal

Raise All Applicable Grounds

Raising one specific objection will not preserve other grounds for appeal



Context Exception

Specificity may be excused if basis is "apparent from the context"

Designate Specific Portions

Must specify which parts of testimony or documents are objectionable



Case Study: Owen v. Papa Don's Tavern

2

3

Incident

Brian McGee struck Matthew Owen outside Papa Don's tavern, causing serious injury

Lawsuit

Owen sued tavern owner, claiming McGee worked as a bouncer

Trial

Defense questioned witness about Owen's drinking; Owen's attorney made generic objection: "I'm going to object to that, judge"

Appeal Denied

Generic objection failed to focus magistrate's attention on any flaw and failed to preserve grounds for appeal

Case Study: United States v. Hays

Prosecution

Carol Ann Hays was indicted for equity skimming, a type of real estate fraud. At trial, the government introduced a chart summarizing fraudulent transactions.

Objection

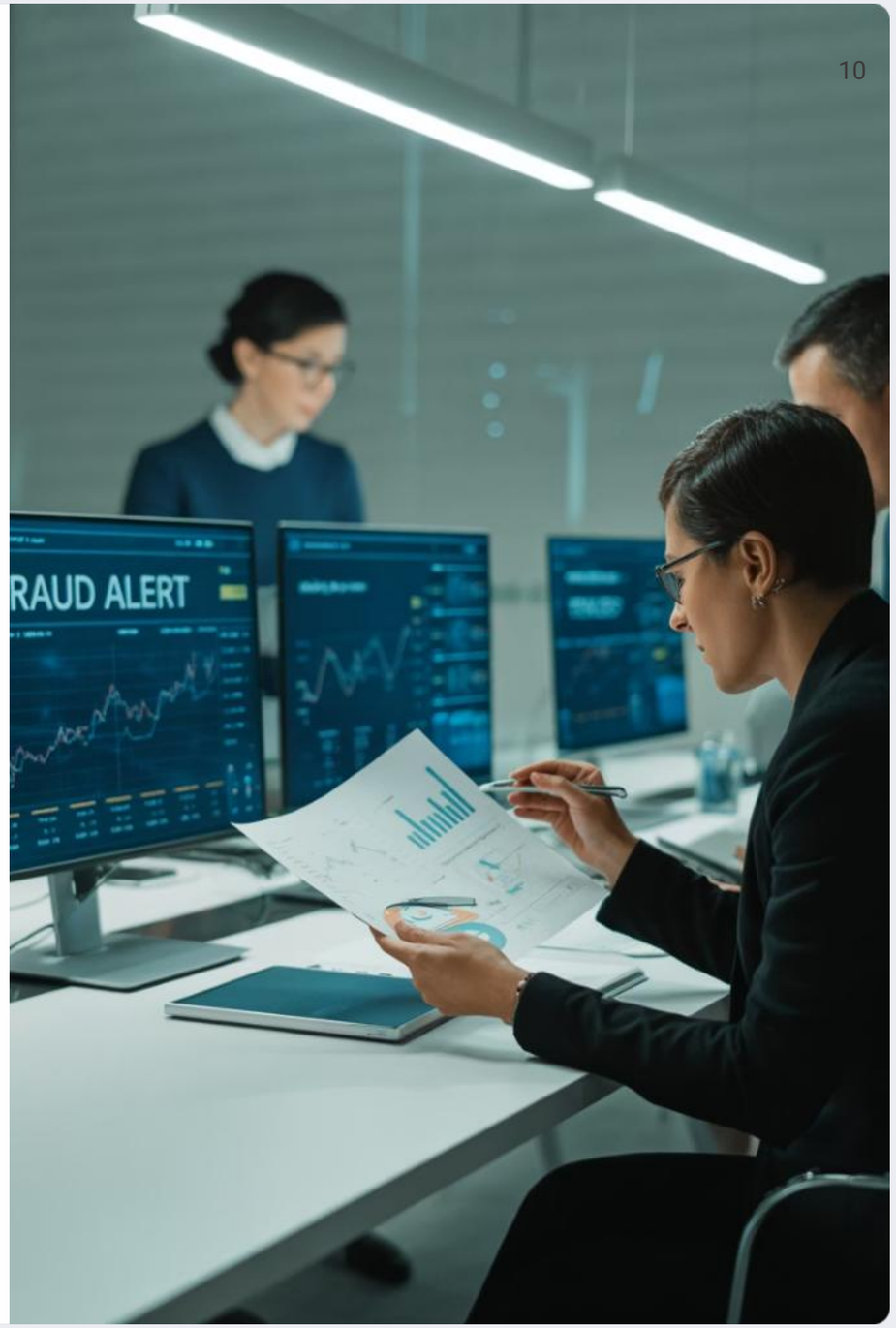
Hays objected under Rule 1006, which governs data summaries. The trial judge overruled her objection and admitted the chart.

Appeal

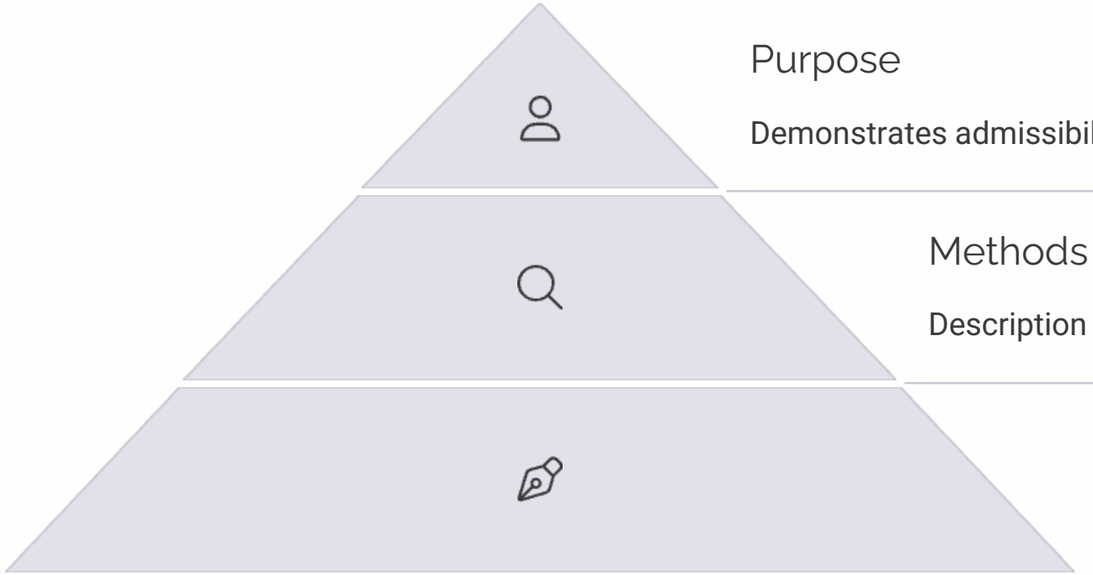
On appeal, Hays acknowledged the chart didn't violate Rule 1006 but argued it was unfairly prejudicial under Rule 403. The appellate court noted she hadn't cited Rule 403 at trial.

Outcome

The court reviewed only for "plain error" and found none, affirming Hays' conviction. This demonstrates why attorneys must raise all specific grounds for objection at trial.



Defending Evidence: Offers of Proof



Purpose

Demonstrates admissibility and preserves record for appeal

Methods

Description of evidence or demonstration with witness

Requirement

Mandatory unless substance "apparent from context"

When one party objects to introduction of evidence, the opponent makes an offer of proof to show the judge what the evidence entails. This gives the judge information needed to rule promptly and correctly on admissibility. If the opponent fails to make this offer, they waive any objection on appeal.

Judges have discretion to determine the form of the offer. Sometimes counsel simply describes the evidence, while other times an attorney may demonstrate with the witness the actual questions and answers. Careful attorneys usually make at least a brief offer of proof even when the substance seems apparent from context.

Maintaining Objections

Common Law Requirement

Historically, even after a judge overruled an objection, counsel had to announce an "exception" to preserve the issue for appeal.

Definitive Rulings

The key phrase is "rules definitively." When a judge defers ruling on a motion in limine, parties must renew objections at trial. But if the judge makes a definitive ruling, no renewal is necessary.

1

Modern Rule

Rule 103(b) abolishes the need for exceptions: "Once the court rules definitively on the record—either before or at trial—a party need not renew an objection or offer of proof to preserve a claim of error for appeal."



Shielding the Jury

Rule 103(d) Requirement

"To the extent practicable, the court must conduct a jury trial so that inadmissible evidence is not suggested to the jury by any means."

Sidebar Conferences

Attorneys "approach the bench" for discussions outside jury's hearing when objections require explanation

Jury Dismissal

For detailed arguments or offers of proof, judge may dismiss jury from courtroom

In Chambers Discussions

Complex evidentiary issues may be resolved in judge's chambers

Judicial Responses to Objections

1

Sustain Objection

Judge agrees with objection and excludes evidence entirely

Overrule Objection

Judge disagrees with objection and admits evidence fully

Partial Admission

Judge admits some portions while excluding others through redaction

Curative Instructions

Judge tells jury to disregard inadmissible evidence that was inadvertently heard

Limited Purpose Admission

Judge admits evidence for specific purposes with limiting instructions



Limiting Instructions: Rule 105

Rule Text

"If the court admits evidence that is admissible against a party or for a purpose—but not against another party or for another purpose—the court, on timely request, must restrict the evidence to its proper scope and instruct the jury accordingly."

Mandatory Nature

Note that Rule 105 uses the word "must." If evidence is admissible only for limited purposes and a party requests an instruction, the judge must give that instruction.

Common Scenarios

Limiting instructions are frequently used when evidence is admissible for one purpose but not others, or when evidence is admissible against some parties but not others in multi-party cases.



Case Study: Raney v. Honeywell

Accident

Floyd Raney was injured when gas vapors exploded while he was repairing a pipe with a propane torch

Investigation

A gas control valve on the furnace had allowed gas to escape; Raney sued Honeywell, the manufacturer

3 Evidence Issue

The valve contained a loose screw that rattled but was irrelevant to the explosion; Honeywell wanted it removed

Ruling

Judge admitted valve in original condition but instructed jury to "disregard the loose screw because it had nothing to do with the cause of the explosion"



Case Study: United States v. Scales

161

Exhibits

Government evidence against John Scales, charged with embezzling union funds

8

Co-conspirators

Who testified after pleading guilty to embezzlement

17

Other Witnesses

Additional testimony presented by prosecution

To summarize this extensive evidence, the government prepared charts outlining the charges and supporting evidence. Scales objected to these charts as unfairly argumentative. The trial judge admitted the charts but gave a limiting instruction explaining they were not themselves evidence.

The appellate court affirmed this practice, noting "there is an established tradition that permits a summary of evidence to be put before the jury with proper limiting instructions."

Effectiveness of Limiting Instructions

Skepticism

Many lawyers, clients, and judges doubt jurors can mentally segregate evidence as directed

Potential Backfire

Instructions may highlight impermissible evidence rather than restrict its use

Empirical Studies

Research raises serious questions about effectiveness and suggests possible perverse effects

System Reliance

Courts continue to rely on limiting instructions because much of the jury system depends on belief that jurors follow instructions



Strategic Considerations for Attorneys

Tactical Decision

Attorneys sometimes forego asking for limiting instructions to avoid drawing attention to harmful evidence

Cost-Benefit Analysis

Deciding whether to request a limiting instruction requires careful calculation of whether it will help or harm

Case-by-Case Approach

Attorneys may strike different balances in different cases depending on evidence and jury composition

Alternative Strategies

When foregoing limiting instructions, attorneys may address concerns in opening or closing arguments



Appellate Review: Limited Scope

1

Rare Reversals

Appellate courts rarely reverse trial decisions on evidentiary issues alone

2

Abuse of Discretion Standard

High deference to trial judge's evidentiary decisions

3

Substantial Right Requirement

Error must affect outcome of case to warrant reversal

Even when attorneys follow all procedural steps to preserve objections, appellate courts rarely reverse based on evidentiary issues. Trial judges have significant discretion in applying the Rules of Evidence, and appellate judges defer to their decisions because trial judges are more familiar with the evidence, evolving trial, and juror reactions.

Additionally, Rule 103 allows reversal only if the error affected a "substantial right" of one of the parties, meaning there must be a reasonable probability that the outcome would have been different with the correct ruling.



The "Substantial Right" Standard

Rule 103(a) Language

"A party may claim error in a ruling to admit or exclude evidence only if the error affects a substantial right of the party..."

Practical Application

An evidentiary ruling affects a "substantial right" only if there is a reasonable probability that, with the correct ruling, the outcome would have been different.

Harmless Error Doctrine

Since most evidentiary issues affect only a small part of the trial, it is unusual for any one mistake to affect the verdict. Therefore, most evidentiary missteps constitute harmless error.



Plain Error Review

1

Highest Standard

Applied when objections weren't properly preserved at trial

2

Rule 103(e)

"A court may take notice of a plain error affecting a substantial right, even if the claim of error was not properly preserved"



Requirements

Error must be "clear and obvious," affect substantial rights, and seriously affect fairness, integrity or public reputation of judicial proceedings

Courts rarely find plain errors, especially in civil lawsuits. This extremely limited review emphasizes why attorneys must properly preserve objections at trial. Without proper preservation, the chances of successful appeal on evidentiary grounds become vanishingly small.



Consequences of Limited Appellate Review

Less Definitive Precedents

Appellate opinions on evidentiary issues often are less definite than decisions on other legal points, giving lawyers significant leeway for thoughtful advocacy.

Trial-Level Focus

Evidentiary battles in practice are won and lost at the trial level. Trial lawyers must recognize problems promptly and register appropriate objections.

Knowledge Imperative

Students who seek to be litigators must internalize the Rules of Evidence completely, knowing the language, number, and policies of each rule to make intelligent arguments on the spot.

Practical Application: Objection Techniques









Effective objections require both knowledge and technique. Stand confidently when objecting, address the court respectfully with "Objection, Your Honor," and state the specific ground concisely. Be prepared to elaborate if the judge requests, citing specific rules and case law.

When approaching the bench for a sidebar, bring relevant materials and be prepared to speak quietly but clearly. Remember that timing is crucial - hesitation may result in the evidence reaching the jury before you can object.

Practical Application: Responding to Objections

Listen Carefully

Pay close attention to the specific grounds raised by opposing counsel to formulate an appropriate response.

Address Specifics

Respond directly to the grounds raised rather than making general arguments about the evidence's importance.

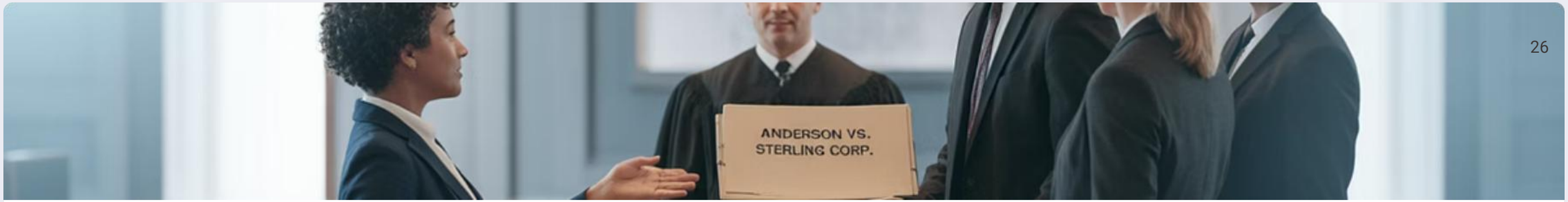
Prepare Offer of Proof

Be ready to make a detailed offer of proof explaining what the evidence would show and why it's admissible.

Consider Alternatives

If the judge seems inclined to exclude the evidence, suggest limiting instructions or modified presentation as alternatives.





Practical Application: Making Offers of Proof

Narrative Format

Describe concisely what the evidence would show if admitted

Question-Answer Format

Demonstrate with witness the actual questions and answers outside jury's presence

Document Submission

Submit documents or exhibits for judge's review as part of the record

Recorded Format

Ensure offer is clearly recorded in transcript for potential appeal

Practical Application: Requesting Limiting Instructions

Evaluate Need

Consider whether instruction will help or harm your case

Discuss Privately

Request sidebar to discuss instruction outside jury's hearing



Draft Language

Prepare specific wording for the instruction you want

Time Request

Make request promptly when evidence is admitted

When requesting limiting instructions, be prepared to explain precisely how you want the jury instructed about the evidence. Consider providing written proposed language to the judge. Remember that Rule 105 makes limiting instructions mandatory upon request when evidence is admissible for one purpose but not others.



Practical Application: Preserving Issues for Appeal

1 Make Timely Objections

Object as soon as the ground for objection is known or reasonably should be known

State Specific Grounds

Clearly articulate each basis for objection, citing specific rules when possible

Make Offers of Proof

Ensure the record clearly shows what excluded evidence would have been

4 Obtain Definitive Rulings

Confirm that the court has ruled definitively on objections and offers



Practical Application: Anticipating Evidentiary Issues



Pretrial Preparation

Review all potential evidence before trial, identifying possible objections and preparing responses. Create a quick-reference guide to relevant rules and cases for use during trial.



Motions in Limine

File motions to exclude problematic evidence before trial begins. This allows for thoughtful argument outside the jury's presence and may secure definitive rulings that don't require renewal at trial.



Team Coordination

Assign specific team members to monitor different categories of evidence during trial. Develop subtle signals to alert lead counsel about potential objections without disrupting the proceedings.

Practical Application: Handling Adverse Rulings

Adapt Strategy

Quickly adjust trial strategy when objections are overruled or evidence is excluded

Minimize Damage

When harmful evidence is admitted over objection, find ways to contextualize or neutralize it

Preserve Record

Ensure the basis for objection and ruling are clearly reflected in the transcript

Reconsideration

Consider requesting reconsideration if trial developments change the evidentiary landscape



Comparing Pretrial and Trial Objections

Motions in Limine



- **Timing (8/10):** Filed well before trial begins
- **Preparation (9/10):** Extensive research and briefing
- **Jury Awareness (1/10):** Outside jury's presence
- **Definitive Ruling (6/10):** Often preliminary or conditional
- **Flexibility (3/10):** Limited ability to adapt to trial developments

Trial Objections



- **Timing (2/10):** Immediate response required
- **Preparation (3/10):** Limited time to formulate
- **Jury Awareness (7/10):** Often made in jury's presence
- **Definitive Ruling (8/10):** Immediate and final decisions
- **Flexibility (9/10):** Can adapt to evolving evidence

This comparison highlights key characteristics of pretrial motions in limine versus trial objections on a scale of 1-10. Motions in limine offer more time for preparation and keep issues from the jury's awareness, while trial objections provide more flexibility to respond to evolving evidence and often result in more definitive rulings since the judge has full context.



Appellate Statistics: Evidentiary Challenges

<5%

Success Rate

Percentage of appeals where evidentiary rulings lead to reversal

90%

Deference

Percentage of evidentiary rulings upheld under abuse of discretion standard

<1%

Plain Error

Success rate of appeals based on unpreserved evidentiary errors

These statistics highlight why evidentiary battles must be won at the trial level. Appellate courts rarely reverse based on evidentiary issues, showing strong deference to trial judges' decisions. The extremely low success rate for plain error review emphasizes the critical importance of properly preserving objections during trial.

Key Takeaways: Procedural Framework



Timely and Specific Objections

Attorneys must raise evidentiary challenges through objections or motions to strike; either type of challenge must be timely and specific. This preserves issues for potential appeal and allows judges to rule before inadmissible evidence reaches the jury.



Detailed Offers of Proof

The party introducing disputed evidence must respond with an offer of proof that demonstrates what the evidence would show and why it's admissible. This gives judges the information needed to rule correctly and preserves the record for appeal.



Limiting Instructions

When evidence is admissible for limited purposes, Rule 105 requires judges to issue limiting instructions upon request. These instructions attempt to guide jurors in how they may consider certain evidence, though their effectiveness is debated.

Key Takeaways: Appellate Considerations



Win at Trial

Evidentiary battles are primarily won or lost at trial level

High Deference

Appellate courts apply lenient "abuse of discretion" standard

Substantial Right

Reversal requires error affecting case outcome

Master the Rules

Internalize evidence rules for effective advocacy

Appellate courts review evidentiary issues only if the complaining party complied with all procedural requirements. Even then, they use a lenient "abuse of discretion" standard and will reverse a judgment only if the trial judge's erroneous decision affected a "substantial right of the party."

This limited review emphasizes why litigators must thoroughly master the Rules of Evidence and be able to apply them effectively in the moment during trial.



Conclusion: Mastering Evidentiary Objections

Knowledge Foundation

Thoroughly learn the language, number, and policies of each evidence rule

Quick Recognition

Develop ability to instantly identify when rules apply during fast-paced trials

Persuasive Advocacy

Craft compelling arguments about rule application on the spot

Strategic Thinking

Balance tactical considerations with procedural requirements

The procedural framework for raising and resolving evidentiary objections emphasizes why good litigators must thoroughly master the Rules of Evidence. Trial lawyers challenge and defend evidence on the spot in the courtroom, with few opportunities for a replay or meaningful appellate review.