

MAKING AND MEETING OBJECTIONS

1) OBJECTIONS MUST BE TIMELY. You must object at the earliest opportunity, as soon as the grounds become apparent.

a) If the grounds are apparent from the question, you should object to the question before the witness answers. For example:

Q: "Isn't it true that the defendant's brother is a terrorist who was arrested for sending money to Al-Qaeda?"

Atty: "Objection, irrelevant and prejudicial."

b) If the grounds are not apparent until the witness testifies, you should object to the answer before the next question is asked. For example:

Q: "What did you do next, officer?"

A: "We put a tap on the defendant's phone because we knew his brother was a terrorist who was arrested for sending money to Al-Qaeda."

Atty: "Objection, irrelevant and prejudicial."

2) OBJECTIONS MUST BE SPECIFIC

a) Tell the judge exactly what you object to. E.g.:

"I object to testimony about the defendant's brother..."

b) State the controlling rule, e.g.:

"... on the grounds that it violates Rule 403..."

c) Where a rule has subparts, state which one you rely on, e.g.,

"... and is unfairly prejudicial."

d) Argue or explain why, using the concepts found in the rule, e.g.,

"The brother is not involved in this case, so whatever little probative value this has will be substantially outweighed by the unfair prejudice of bringing up a highly emotional subject like Al-Qaeda."

3) A MOTION TO STRIKE IS REQUIRED IF THE JURY HAS ALREADY HEARD THE EVIDENCE.

Q: "What did you do next, officer?"

A: "We put a tap on the defendant's phone because we knew his brother was a terrorist who was arrested for sending money to Al-Qaeda."

Atty: "I object to and move to strike the testimony about the defendant's brother on the grounds that it violates Rule 403 and is unfairly prejudicial. The brother is not involved in this case, so whatever little probative value this has will be substantially outweighed by the unfair prejudice of bringing up a highly emotional subject like Al-Qaeda."

4) RESPONSES TO OBJECTIONS.

- a) No procedural rule requires that you do anything to respond to an objection. You may simply remain silent and let the judge rule.
- b) If you respond (make an argument for admissibility) the same principle of specificity applies. You must specify which evidence you think is admissible, what Rule you rely on, and where in the text do you find language supporting admissibility.

5) THE JUDGE MUST RULE ON THE OBJECTION.

- a) When an objection has been made, the judge must treat it like any other motion, and rule on the merits of the particular legal arguments made.
- b) If the judge sustains the objection, the evidence is excluded.
- c) If the judge overrules the objection, the evidence is admitted.

6) OFFER OF PROOF.

- a) If you lose an objection, and your evidence was excluded, you must make an offer of proof that places the substance of the excluded evidence into the record.
- b) Complicated version. The jury is removed from the courtroom, and the witness is questioned exactly as if the jury were present.
- c) Simple version. The attorney submits a written or oral summary of the excluded evidence out of the hearing of the jury.