

SUGGESTED ANSWERS TO "ANATOMY" TRANSCRIPT, PART 1. If you have any others, email them to me and I'll add them to the list.

1. (a) The best objection is something to do with expert testimony. No foundation laid that opinions in report are scientifically reliable, based on adequate data, or was arrived at by following reliable procedures.

(b) Hearsay is rarely a good objection. This is almost certainly going to be a business record or an official record. One could object on hearsay grounds because no foundation has yet been laid, but it's a weak objection.

(c) Remember with documents to always look for three things -- authentication, hearsay exception, and whether one can object to any of the contents.

2. (a) Irrelevant and confuses the issues (Rule 403). Whether Quill was fertile is not related to any material issue.

(b) Also could object along the same lines as (1) -- no foundation that this opinion is scientifically reliable, based on adequate data, or was arrived at by following reliable procedures.

3. (a) Irrelevant and confuses the issues (Rule 403).

(b) Improper expert opinion outside his expertise because it asks about what tactical use a lawyer might make of the evidence.

(c) Improper lay opinion because not helpful to the jury nor are lawyer tactics within common experience.

4. Admissible to impeach the witness's testimony by showing it is likely to be biased in favor of prosecution.

5. (a) Improper authentication. No foundation that photos are a fair and accurate depiction of what Quill looked like at a relevant time, i.e., when he was shot and before the autopsy.

(b) Rule 403 prejudicial effect unlikely because the photos are highly relevant -- they show the dead body and this is a murder case.

6. (a) Irrelevant and both confuses the issues and raises unfair prejudice (Rule 403). No issue yet to which her appearance is relevant. Until either the defendant or his expert witness testify that there is some connection between Laura's appearance and the defendant's actions, the only purpose for the photos would be to garner sympathy.

7. (a) Irrelevant and confuses the issues (403) because the defendant is not charged with the intimidation of Paquette.

(b) Or, inadmissible act of character under 404(b). This is not as good, because the prosecution will argue this is going to show intent and state of mind.

8. (a) Inadmissible lay opinion. No foundation that he knows Manion well enough to make a rational conclusion about his mental state.

(b) Lack of personal knowledge is not as good an objection, because the question asked how Manion appeared, not what was actually in his head.

9. No foundation of personal knowledge that he was present and in a position to observe Quill's whereabouts all night.

10. Character evidence (how many shot he "usually" had).

11. Paquette's understanding of the meaning of words seems completely irrelevant.

12. (a) Inadmissible character evidence.

(b) Could also argue improper opinion because no foundation laid that Paquette knows Quill well enough to form a reliable opinion about him.

13. (a) Irrelevant and confuses the issues (403), because this is circumstantial evidence that Quill had a guilty conscience or was afraid of Manion, but Quill's state of mind is not in issue.

(b) Obviously not hearsay because it was a request, not a statement of fact.

14. (a) Irrelevant and confuses issues. No issue in the case revolves around Quill's shooting ability.

(b) Maybe character evidence. This is a pattern of behavior, but it does not seem to be offered to prove conduct in conformity (good marksmanship the night of the crime).

15. (a) No personal knowledge about what other people know.

(b) Irrelevant for reason described in #14.

16. Irrelevant and confuses the issues. There is no issue in the case having anything to do with soldiers singing.

17. (a) Move to strike line 337, as it now appears the witness had no personal knowledge.

(b) Weak but plausible to object on hearsay grounds. The testimony does not actually contain a summary of what the tourists said, so lack of personal knowledge is the better objection.

18. Lack of personal knowledge as to whether any other officers had been called in on the case earlier.

19. Improper opinion of Manion's mental state. Just observing his demeanor, especially since the witness does not know Manion, is not enough personal knowledge upon which to base a reliable opinion as to whether he was or was not surprised.

20. Although vaguely worded, it is pretty obvious that the "someone" refers to the prosecutor. Evidence that the witness's testimony has been influenced is admissible to impeach the credibility of that testimony.

21. (a) None of the potential objections are very good. You might try a relevancy (403) objection because whether Laura was hysterical and had been beaten is not clearly related to the question of whether Manion thought she had been raped and therefore confuses the issues.

(b) Alternatively, that the opinion "badly beaten up" is too vague to be helpful.

22. (a) Irrelevant (403) what she told the police. It is not a material dispute whether she was in fact raped and beaten, only whether Manion thought she had been. Therefore, how she looked to Manion and what she told Manion would be relevant, but what she told the police would not be, and would only confuse the issues.

(b) Hearsay objection pointless because it's an excited utterance (says she was still hysterical).

23. (a) Irrelevant, confuses the issues and might cause unfair prejudice (403). Because the results of the test are not admissible (no proof of scientific reliability), asking whether she took the test has no tendency to prove any material fact.

(b) Part credit if you argued that there was no foundation showing the test to be scientifically reliable or properly conducted.

24. Improper opinion. The opinion is not based on any personal knowledge. The witness does not have enough information to form such an opinion. The opinion is not helpful to the jury because credibility is a matter solely for the jury.

25. (a) Can make the same objection as #24.

(b) Also, improper character evidence -- honesty is a character trait.

26. (a) Irrelevant (403) and confuses the issues. Laura's state of mind is not at issue and what she wants does not matter.

(b) Hearsay objection pointless because it's a statement of state of mind.

27A. (a) Irrelevant and prejudicial (403) because it invokes religion.

(b) Possibly hearsay because I can't think of an exception, but hearsay is still less good as an objection.

27B. (a) No foundation of personal knowledge.

(b) Irrelevant and misleads jury (403) because what kids use road for has nothing to do with what Quill used it for.

28. (a) What was stated in the newspaper is irrelevant. I don't think you even need 403.

(b) No foundation that newspaper reporter had personal knowledge of what doctor found.

(c) Hearsay.

(d) No foundation that conclusion was reliable, based on adequate data, and arrived at through proper procedures.

29. (a) Improper opinion. Asks for a purely legal conclusion.

(b) Irrelevant and confuses the issues. The question is whether Manion thought Quill sexually attacked his wife, not whether what Quill did technically constituted the crime of rape.

30. Irrelevant and unfairly prejudicial (403).

31. Improper opinion (using word "deliberately"). Inadequate personal knowledge to state an opinion of what was on Laura's mind. Opinion not limited to outward appearance.

32A. (a) No foundation that he has adequate personal knowledge to form such an opinion.

(b) Irrelevant whether she was drinking and unfairly prejudicial because it involves alcohol.

32B. (a) No foundation that he has adequate personal knowledge to form a rational opinion. Opinion too vague to be helpful.

(b) Irrelevant (Quill isn't entitled to rape Laura just because she flirts with him) and unfairly prejudicial because it involves sex.

33. (a) Irrelevant and confuses the issues. To ask about a series of events other than the one at issue requires a foundation of similarity of circumstances. The examples Biehler uses suggest shoelessness during the day at waterfront activities, and this is night time in a bar.

34. (a) Excited utterance. She had just been raped and was hysterical.

(b) Not for truth but for effect it had on Manion's state of mind.

35. Irrelevant, confuses the issues, unfairly prejudicial. To ask about similar but unrelated events requires a foundation of substantial similarity of circumstances. Killing in wartime is not the same.

36. Character evidence. A pattern (killing plus no lapse of memory) offered to prove conduct in conformity (that he had no lapse of memory this time either and his defense is phony).

37. No foundation she had personal knowledge of what he meant -- even for a wife, it's hard to know what's going on inside someone else's brain.

38. (a) Irrelevant and unfairly prejudicial because it involves divorce and implies adultery.

(b) Specific act of character evidence barred under 404(b).

39. Same as #38.

40. Irrelevant and unfairly prejudicial because it involves religion.

41. (a) Irrelevant character evidence.

(b) Not enough personal knowledge to enable her to make rational conclusion about the integrity of people in general who do not adhere to church doctrine.

42. No foundation of personal knowledge.

43. Improper opinion because not based on any particular perception of the witness. She does not have enough information to make a rational conclusion.

44. Character (pattern of behavior).

45. Asking about a habit (always), not just a tendency, so admissible under Rule 406.

46. (a) Character evidence. Asking about a pattern of behavior.

(b) Irrelevant and confuses the issue. Manion is on trial for killing Quill and whether Laura sat in his car a year ago is of no probative value except to try to get the jury to speculate about her character.

47. (a) Character (pattern).

(b) Irrelevant whether she wears panties on other occasions and unfairly prejudicial because it involves sex.

(c) Probably totally irrelevant whether she was wearing panties on that night. It does not help prove or disprove any issue in the case.

48. Character.

49. (a) Lack of personal knowledge as to why Manion acted as he did.

(b) Character (trying to establish pattern of violent jealous rages)

(c) Improper to prove character by specific acts (Rule 405).

50. (a) Inadmissible character evidence, 404(b) (specific act offered to insinuate that Manion, not Quill, beat Laura on night of crime).

(b) Irrelevant and confuses issues under 403 because no foundation that this prior event happened under substantial similarity of conditions.

51. No personal knowledge what another was thinking.

52. No foundation for expert opinion. No testimony that he reached his conclusion in a reliable manner, based on adequate data, following reliable procedures.

53. Improper legal opinion outside the scope of the witness's expertise as a doctor.

54. No foundation for expert opinion. No testimony that he reached his conclusion in a reliable manner, based on adequate data, following reliable procedures

55. No personal knowledge what another was thinking.

56. (a) No foundation these convictions occurred within past 10 years.

(b) No foundation that all these were adult felonies. Given witness's testimony that he was in reform school as a juvenile, it is likely that one or more of these convictions was actually a juvenile adjudication

57. Offered to impeach credibility to show poor memory and or tendency to lie because it contradicts his earlier testimony that he had no adult criminal record.

58. Impeaches the witness for bias in favor of the state and self-interest.

59. Improper lay opinion; requires an expert. This is a specific conclusion not within common experience.

60. Witness has testified to making adequate observations to support the opinion. This is the kind of rational common opinion people draw. The opinion form will be helpful to the jury because degrees of "convenience" are hard to articulate.

61. (a) Insufficient authentication. They are apparently being offered as the very panties Laura was wearing that night, but the witness is unable by either direct or circumstantial evidence, to establish that.

(b) No testimony that they are still in the same condition as they were the night of the crime.

(c) No evidence that their torn condition arose the night of the crime, especially since they have since been in a rag bin.

(d) Hearsay objection pointless because labels aren't hearsay.

62. (a) Irrelevant whether this witness thought Quill raped Laura.

(b) No foundation she had any basis in personal knowledge for the opinion

(c) Hearsay objection pointless because it's a statement of her state of mind.

63. (a) Improper opinion. No foundation she had any basis in personal knowledge for the opinion.

(b) Irrelevant what witness thinks about the source of the panties.