MASSACHUSETTS LAWYERS WEEKLY

Learn how to make objections quickly, clearly and effectively

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Like everything else that happens in a trial, making effective objections requires some care. And even though objections normally have to be made almost instantaneously, that does not mean that preparation is unnecessary or unimportant.

1. **Preparing for objections**

- **Be ready.** Certainly there will always be surprises at trial. And objections to the form of a question, such as a leading or compound question, usually can't be anticipated. But substantive objections, such as the admissibility of a document or the relevance of a line of inquiry, usually can. And those are the ones that matter most.

Don't just focus on your own case. Think about what your opponent is likely to do and how you might respond. Outline your arguments and have them immediately available. Be ready with a short memorandum or a photocopy of a case, if need be.

The ability to think on your feet is an important characteristic of a good trial lawyer, but it is not a substitute for careful anticipation and preparation.

- **Be poised.** You likely will have only a split second to rise to your feet and object. Be poised to do so, both mentally and physically. Don't sprawl back in your chair, with your legs crossed; it will take time for you to straighten up and get to your feet, and (as your grade school teacher might say) such a posture is not conducive to paying close attention.

Sit upright, at the edge of you chair, feet on the ground, ready to rise.

- **Listen**. Objections have to be timely. To accomplish this, you have to be focused, listening with some degree of intensity. Many times you'll know that the question is objectionable before it's even finished. Begin to stand up, to draw the court's attention.

Occasionally, you may even want to object before the question is finished, although normally you should not interrupt your opponent.

During your opponent's direct examination, you should be listening in particular for leading questions — that is, questions that suggest the answer. Here are some tips for recognizing leading questions:

- Almost never leading: Questions starting with "Who"; "What"; "When"; "Where"; "Why"
- Often (but not always) leading: Questions starting with "Did"; "Have"; "Were" (or "Didn't"; "Don't"; etc.)
- Always leading: Questions starting with "It's true, isn't it …"; "It's fair to say that …"; "Would you say that …"; "You would agree that …"

And questions ending with "… isn't that true?"; "… right?"; "… correct?"

The great majority of leading questions on direct examination begin with the word "Did." Whenever you hear your opponent use that word to start a question, prick up your ears and start to rise. It's probably going to be leading.

2. **Making objections**

Objections should be stated clearly and directly. Speak up, but don't shout. You're not on TV. Make your objection calm and professional. Avoid eye-rolling, sighing, or other expression of exasperation or frustration.

3. **Content of objections**

Most judges require that objections be made in succinct form, either by using the word "objection" or by adding a shorthand description (such as "objection — hearsay").

It is rarely necessary to cite a specific rule of evidence by number. The judge is normally concerned that no legal argument take place before the jury. Many judges will also want to minimize the number and length of sidebar conferences in order to keep the case moving along.

4. **Timing of objections**

Objections need to be timely. If you're objecting to a question, do it before the answer comes out. If for some reason you're slow on the trigger, and the jury hears the answer, move immediately to strike it. If it's really bad, ask for an instruction to disregard the answer.

For reasons that are not clear, many lawyers believe it is improper, or perhaps impolite, to interrupt an opening statement or a closing argument with an objection. Instead, the lawyer will wait until the argument has concluded and make an objection at sidebar. This is almost always a mistake.

If your opponent is making an improper argument, you should try to stop it right then and there. If you need a corrective instruction, the time to do it is now. Plus, by waiting, you are forcing the judge to rewind his or her mental tape and try to reconstruct what was said, which may be difficult. If you need to object, don't wait.

5. **Reacting to objections**

If the judge sustains an objection to your question, don't panic. It's often hard to think clearly on your feet, especially if you're inexperienced. Even if you know what was wrong with the question, it may be difficult to formulate a proper one on the spot.

Needless to say, the more prepared you are, the less likely this is to happen. The best preventative medicine is to ask proper questions.

If you're genuinely confused by the ruling, or you think you need to explain the issue to the judge, ask to be heard at sidebar. Some judges may refuse to explain or let you be heard; you have to deal with that as best you can.

Many lawyers just seem to give up when an objection is sustained. But objections are sometimes sustained for narrow or technical reasons. A slightly different angle of attack (such as rephrasing the question) may succeed. Don't quit just because you hit a speed bump.

If the judge overrules or sustains the objection — whether it is your objection or your opponent's — say nothing in response. Don't say, "Thank you" or "Yes, your honor." Especially avoid saying anything if you are on the losing end of the ruling. The judge is not likely to take kindly to comments such as "Very well" or "As your honor pleases." Never let your frustration show.

6. **Purpose of objections**

Finally, don't forget what you're trying to accomplish. Of course, you may be trying to keep something out of evidence. You also may be trying to force your opponent to obey the rules.

But you're also preserving an issue for an appeal. If you get an unfavorable ruling, you may need to protect the record by making an offer of proof. This is accomplished by stating (at sidebar, of course) what the expected answer to the question would have been, or asking that the excluded document be marked for identification.

Objections are a critical part of trial practice. Learn how to make them quickly, clearly and effectively.

Previous installments of Tried & True can be found here. Judge F. Dennis Saylor IV sits on the U.S. District Court in Boston. Prior to his appointment to the bench, he was a federal prosecutor and an attorney in private practice. Daniel I. Small is a partner in the Boston and Miami offices of Holland & Knight. He is a former federal prosecutor and teaches CLE programs across the country.