

Chapter 6

OBJECTION CREDIBILITY

*Remember this from A Few Good Men –
Jo: “Your Honor, we re-new our objection to
Commander Stone’s testimony. ...” Judge: “The
objection’s overruled, counsel.” Jo: “Sir, the
defense STRENUOUSLY objects” Judge:
“Noted.” There may be a better way to object,
even strenuously. Though this is an old article,
written when **PrimeCOLE** was merely a young
pup, the guidance remains true now that he is an
old dog.*



Chapter 6 – Objection Credibility



🎁🎁🎁 **M**y first objection in my first jury trial was less than eloquent. Realizing the State’s witness was reading from some unidentified piece of paper before answering every question, I jumped up to object based on lack of personal knowledge. For some reason, it just did not come out that way; “Your Honor, um, I noticed that the officer seems to be reading from something, huh, she shouldn’t be allowed to do that.” Properly chastised by the judge for being unable to form a valid objection, I quickly sat down.



In one fell swoop, I lost what credibility I had with the judge and came across as a bumbling fool to the jury. Of course, as a 23-year-old, third-year law student interning at the local public defender’s office, I did not have much credibility to begin with and actually was a bumbling fool. Luckily, in spite of his attorney (his Rule 9 intern), the jury acquitted my client and I lived to fight another day having learned an important lesson—object properly.

Objecting properly means avoiding “speaking (rambling) objections.” Combine courtroom inexperience with a dash of nervousness, and new attorneys tend to have difficulty translating their knowledge of the rules of evidence into intelligent objections. “Objection, hearsay,” becomes “objection, this witness doesn’t know that, he’s not a proper witness, he is just repeating what he heard ...” and on and on without the buzzword “hearsay” ever escaping counsel’s lips. Somewhere between the brain and the lips, three years of legal education evaporates.

Being able to re-establish that connection has numerous benefits. In the heat of battle, you have precious little time and few opportunities to establish credibility with the judge, members, or even opposing counsel. Being able to confidently and succinctly object tells



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all the participants that you know the rules, are prepared, and are a force to be reckoned with. It allows you to appear more experienced than you may be and results in the participants taking you more seriously as a litigator. This has at least three benefits:

- The judge will consider your arguments to be more persuasive, perhaps even the marginal ones
- Opposing counsel may not attempt to make their own marginal arguments if they suspect that you are knowledgeable enough to call them on it
- More importantly, the members will have more respect for you, which should work in your client's favor when you stand for closing argument

Not only is properly objecting important for these “stylistic” reasons, it is required by the rules. Military Rule of Evidence 103(a)(1) requires that objections state “the specific ground ... if the specific ground was not apparent from the context.” This means your objections should be lodged “succinctly, without excessive argument.”¹ For defense counsel, if you fail to object with specificity and clarity, you run the real risk of waiving objections for appeal: “Rule 103(a)(1) has taken a ‘very expansive view of waiver,’ indicating that defense counsel must pose specific and timely objections to inadmissible evidence or face waiver on appeal.”²

Sometimes, however, a “speaking objection” is tactically appropriate. Sometimes an objectionable question or answer may require you to “educate” the members why the question or answer is so heinous, especially if simply striking and instructing will not “un-ring the bell.” And sometimes opposing counsel’s question will just sound wrong but you are not sure of the proper objection. Jump to your feet and engage in a colloquy with the judge about your discomfort with the question or the answer; perhaps you will think of the proper objection while you are on your feet, perhaps the judge will bail you out. In any event, it is better to do something than remain a potted plant.

¹ Thomas A. Mauet, TRIAL TACTICS 467 (5th ed. 2000).

² Stephen A. Saltzberg, Lee D. Schinasi, David A. Schlueter, MILITARY RULES OF EVIDENCE MANUAL 21-22 (4 ed. 1997). The authors go on to note that the “plain error” doctrine can save an otherwise waived objection. But counsel should not consider the “plain error” doctrine as a safety net for inadequate trial performance.

But strive to always be prepared to properly object to objectionable questions or answers. In this regard, experience, confidence, and real-world familiarity with the evidence rules will help you object properly. To get to that point, try the following:

- **STUDY:** Mastery of the rules of evidence is the lifeblood of a trial attorney, so do all you can to know them cold. Read them, read them again, and then start over reading them the next day. Make yourself an objection “cheat sheet” or buy a commercial equivalent. Periodically review appellate decisions for real-world applications of the rules of evidence. Check with your state bar association for their schedule of continuing legal education events focused on evidentiary issues.
- **OBSERVE:** Every question asked at trial is potentially, theoretically at least, objectionable. Sit in on courts and think of potential objections to every question asked. Too bad you “youngs” do not have CourtTV available to you—that’s how I watch the OJ Simpson trial start to finish. But you do have YouTube and just search “cross examinations” and that will link you to plenty of real-life courtroom dramas to practice against.
- **PRACTICE:** Aside from actual trials, of course, moot courts are an invaluable tool. The National Institute of Trial Advocacy (www.nita.edu) hosts numerous moot-court programs across the country. And even better, shall we play a game? The next chapter of this Compendium will give you a chance to practice your objection skills in the simmering heat of a mock murder trial ... very exciting, good luck.

Ultimately, your credibility in court is based on your knowledge of the rules of evidence, and your ability to stand up and translate that knowledge into concise and intelligent objections. Distinguish yourself from your peers by objecting properly.



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