



## How To: What to do after you say, 'Objection!'

By: Nancy Crotti June 5, 2014 0

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Lawyers and judges often complain about how television shows and movies depict courtroom behavior. For the sake of drama, TV and movie lawyers lean into jury boxes, stand too close to witnesses, and make long-winded objections.

Making objections properly requires a solid understanding of the rules of evidence, the ability to think quickly and predictively, and knowledge of the particular court in which the case is being heard, according to University of Minnesota clinical law professor Brad Clary.

"I teach them always, if possible, to know your audience, and that includes the relevant judge they're appearing in front of," said Clary, a former trial lawyer.

He also asks students to consider carefully whether an objection is worth making. If so, Clary advises they make it quickly, precisely and confidently. Tentativeness ranks among the chief mistakes law students make in practicing objections, according to Clary.

"It's almost like a student adds a question mark at the end, like 'Hearsay?'" he said.

Practicing lawyers also make the mistake of omitting all the reasons why they could object to a particular statement or piece of evidence. For instance, something that is objectionable as hearsay might also be irrelevant, Clary said.

"I'm trying to teach students to be willing to think through the whole way down the trail, not just the first part and then stop," he added. "If you snooze, you lose."

Attorney Sarah Sicheneder considers making objections an art form. She spends one to four days a week in court as a prosecutor for the cities of Hugo, Lake Elmo, Lakeland and Marine on St. Croix. Sicheneder is an associate at Johnson & Turner, a small firm with offices in Forest Lake, Woodbury and Lake Elmo.

"You always need to be objecting if you think there's evidence or an argument that's coming into the record that's not appropriate for some reason," she said. "I think attorneys who aren't prepared oftentimes are making unfounded objections. They're not anticipating where another attorney is going to want to present evidence that they're going to want to object to."

Counsel sometimes objects for the wrong reason, according to U.S. District Judge Donovan Frank, a 30-year veteran of the bench.

"Let's say the objection (is) 'foundation' and the judge may be thinking, 'I would have sustained the objection if they said, 'hearsay,'" Frank said.

What rankles Frank more are attorneys who employ speaking objections, immediately launching into an explanation of their objection without being asked by the judge.

"The speaking objection is what gets lawyers in the most trouble in front of a jury," Frank said. "You'd never know that from watching TV shows, because it's always a narrative with a little speech given."

He also has problems with more tight-lipped attorneys, who cite no reason for their objection.

"Most judges will respond in a negative fashion if a lawyer (merely) says 'Objection,'" Frank said. "Well, 'Objection?'"

Most judges will respond in a negative fashion if a lawyer (thereby) says, "Objection." Frank said, "Well, 'Objection': What is the basis of the objection...?"

Frank even had an attorney say, "Wait a minute." The judge then asked if he had an objection.

Lawyers must also consider the effect their objections might have on a jury, according to Clary. Some lawyers fear that evidence to which they have objected will prejudice the jury, even if the judge sustains the objection.

They should also realize that jurors dislike bench conferences, in which they cannot hear what the lawyers and judges are saying, Frank said. Frank, who called himself "a poster child for my confidence in juries," has not found that to be the case when he has advised a jury to disregard information that spurred an objection.

"I believe that juries follow cautionary or limiting instructions," he said. "I can cite numerous examples where I know they've followed that limiting instruction when some highly prejudicial things came out, because if they wouldn't have, they would have reached a different result."

Frank has a standing rule that lawyers who know that opposing counsel plans to bring up objectionable information raise their objections before the jury enters the courtroom. A lawyer can also file a motion in limine, asking the judge to exclude the information before the trial begins. The judge may sustain or deny the objection or delay a decision until the witness testifies, Frank said.

Most judges give lawyers more leeway if the jury is not present, he added. Despite the errors he recounted, Frank said he believes law schools are preparing their students well for the courtroom.

"Law schools understand they have the responsibility to teach the substantive law and trial practice," he said. "That clinical and practical experience working with lawyers is critical."

Students in Clary's evidence course go through many courtroom exercises, taking turns as counsel and judges. Some students are intuitively more adept than others, but Clary hopes they all leave his course with their instincts trained. It takes years of practice to be a polished trial lawyer, he added.

Clary knows this first-hand. As a young lawyer, he once failed to stand when making an objection in federal court.

"The judge said, 'Mr. Clary, I cannot hear you,'" he said. "I never made that mistake again."

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