

Hippard Novice Competition Breakdown

First words out of your mouth: "Tom Jones and Jane Smith for the plaintiff, Mr. Client. We are ready to proceed, Your Honor, pursuant to a few housekeeping matters and a motion in limine in 3 parts." We usually do 3 housekeeping matters per side.

HOUSEKEEPING:

1. May we question from the seated position?
2. May we move about the courtroom freely during open and close?
3. May we assume that all exhibits have been pre-marked? (If you ask, you better have them pre-marked)
4. And, all witnesses have been pre-sworn?
5. May we invoke the rule? (Know the rule #... Rule 615. The 'rule' is that all witness be kept out of the courtroom during testimony of other witnesses and not be allowed to speak to each other about the case. The exception here is parties and 'any person whose presence in the courtroom is essential the presentation of our case.' This is used most frequently in regards to expert witnesses that will need to evaluate additional facts as they unfold during the presentation of each parties' case in chief.)
6. Your Honor, as you know, pursuant to FRCP 51 (Criminal: Federal Rules of Criminal Procedure Rule 30), the jury charge may be read prior to or after closing arguments. For purposes of this trial, we ask that the jury charge be read prior to closing arguments.
7. Prosecution: Assume defendant been arraigned?
8. Fallback: Ask for brief recess at the close of Plaintiff/Prosecution's case in chief.

MIL: "Your Honor, as you know this is a case about..." Be persuasive but BRIEFLY lay out the relevant facts for your MIL.

"That concludes our MIL, we are ready to proceed with opening statements."

FOUNDATIONS:

Pictures& Diagrams

- I'm showing you Plaintiff's Exhibit A,
- Without going into the contents, do you recognize Exhibit A?
- What is exhibit A?
- Does Exhibit A fairly and accurately depict the x on the day it was taken?
 - (no foundation w/o date)
- At this time we would like to offer into evidence Plaintiff's exhibit A and tender to opposing counsel
- *Watch for hearsay if picture shows a sign, for example, and ALWAYS consider relevance objections.

Tangible Items

- Showing you Exhibit X, w/o going into contents do you recognize?
- What is it?
- Is it the same or substantially the same as when (date found, seen, etc.)
- Consider chain of custody: how do you know it's the same? (Marked with initials, been in property locker, etc.)

Documents

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Letter

- Showing you X, w/o going into contents, do you recognize?
- Is it a true and correct copy of the letter you sent on or about (date)?

Business Record

- Showing you what has been marked x, without going into its contents, do you recognize it?
- What is it?
- Is it same or substantially same as when you first ?
- Is this record kept in the regular course of business?
- Is it part of the regular business practice to create this report?
- Was this report made *at or near* the time of the event described herein?
- Was it made by a person with personal knowledge of the events?

Expert

- Have you formed an opinion in this case?
- And is that opinion based on your Skill, Knowledge, Training, Experience?
- And is it based on the types of information relied upon by other experts in your field?
- Is your opinion based on a reasonable scientific probability?
- Before we get into your opinion, could you tell us a little about what you reviewed?
- Go through the research they did and then, at the end, lay predicate a second time. This time your last question is always, "What is your opinion in this case?"
- *Daubert: TRAP - Testing, Rate of error, Accepted in field, Peer Review

Statements

- At this time we'd like to offer the statement of Sandy Freeze into evidence as Plaintiff's Exhibit X
- *Anticipate objections - Goes to Independent Legal Significance, for example, if a contract
- Not Hearsay because not offered for the truth but the mental state of Absolute when entering K
- (Best Evidence Rule would mean offering the lease itself)

Offer of Proof

- YH, May I make an Offer of Proof?
- *Ask that the jury be constructively removed from the court room.
- Comes now, Plaintiff xxx, by and through his Attorney of record, xxx, and if allowed will show the following:
- *Use Q&A format to offer everything you were overruled on...
- That concludes the P/D's offer of proof.
- At this time, YH, I would reurge that this information be submitted to the jury.
- *You likely will not win but remember that the jury is out and ask that they be allowed to return. If granted, ask that they return to the courtroom and then ask all the same questions a second time.

Stricken, etc:

- Objection (sustained)
- Move to Strike testimony (sustained)
- Instruct jury to disregard (sustained)

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- Move for a new trial (this step is ONLY on defense: have to keep going until you get an adverse ruling or the record is not preserved for appeal)

Motion for Judgment as Matter of Law: 50 b 59 a

- Plaintiff has failed to prove prima facie case (probative force is so weak)
- Insufficient evidence for a reasonable juror could conclude...
- No evidence of duty of Plaintiff to...
- No damages
- In criminal cases: Motion for Acquittal
- Defense makes motion at close of P's case in chief and at close of D's case in chief
- Common motions: P has failed to produce enough evidence of a certain element, failed to establish venue, failed to identify the defendant

COMMON OBJECTIONS:

To Questions:

- Leading
- Calls for hearsay
- Calls for narrative
- Violates best evidence rule
- Calls for a privileged communication
- Calls for a conclusion
- Calls for an opinion (by an incompetent witness)
- Repetitive (Cumulative) (NOT Asked and Answered)
- Assumes facts not in evidence
- Confusing/Misleading/Ambiguous
- Speculative
- Compound Question
- Argumentative
- Improper characterization
- Misstates evidence/Misquotes witness
- Improper impeachment
- Form

Objections to Answers:

- Irrelevant
- Immaterial
- Privileged
- Conclusion
- Improper Opinion
- Hearsay
- Narrative
- Improper characterization
- Unresponsive

Objections to Exhibits:

- Irrelevant
- No foundation
- No authentication
- Violates best evidence rule (for unoriginal documents)
- Contains hearsay
- Prejudice outweighs probative value (for inflammatory exhibits)
- Contains inadmissible matter (mentions insurance, prior convictions)