

Pretrial matters

- Approach the bench with a benchbook that includes a copy of the affidavit, all the exhibits, and a copy of ROE
- Movement around the well: May attorneys be presumed to have freedom of the well during arguments and examinations?
- Approach bench, witnesses, and opposing counsels: We would also like to ask for Your Honor's preference of attorneys approaching the bench and witnesses, when should we ask for permission?
- Preference on obj: When sustained, automatically stricken or motion to strike?
- Invoke Rules 603 (all witnesses are constructively sworn in) and 615 (constructive sequestration of all witnesses except for a designated party representative), the party representative for Prosecution/ Defense is xxx.
- Identify Stipulations and case laws: Your Honor, at this time, we would like to direct your attention to case law xxx, stipulations xxx, and/or special instructions xxx.

Entering an exhibit into evidence

Show the exhibit

"Your honor, permission to approach the opposing counsel with what has been previously marked as exhibit xx?"

"(While walking towards opposing counsel's table) Let the record reflect that I am now showing opposing counsel a copy of exhibit xx"

Lay foundation of the exhibit

"Your honor, permission to approach the witness with a copy of exhibit xx."

"Mr/ Ms..., if I were to show you a copy of (exhibit's name), would you be able to recognize it?"
(Confirm the end of each affidavit/report for each witness' knowledge)

"What is this?"

"How do you recognize it?"

"Is this a fair and accurate copy of (exhibit's name)?"

"Has this been changed or altered in any way since the last time you saw it?"

Offer the exhibit into evidence

"Your honor, at this time, the prosecution/plaintiff/defense enters exhibit xx into evidence."

Tendering a witness as an expert witness

Foundation

702a: educational background & work experience

702b: facts and evidence

702c: reliable method

702d: reliably applied to this case

"Your honor, at this time, we would like to tender xxx as an expert witness in terms of xxx"

Speculation

Definition: The witness is speculating other's state of mind.

How to argue against: rationally based perception/ sensory perception

More of Rule 602, not Speculation

Lack of personal knowledge: the witness can't/ don't know sth not related to state of mind

Lack of foundation: the witness can/ do know, but hasn't shown that they have the knowledge

Improper character evidence

Definition: evidence of a witness' character or character trait cannot be admissible to prove action in conformity therewith

How to argue against: does not show propensity/ action in conformity therewith

Hearsay

Definition: an out of court statement offered for the truth of the matter asserted

Exceptions (are hearsay, but admissible):

1. Present sense impression: "this bottle of water is a bit cold"
2. Excited utterance: (angrily) "I'm gonna kill him!"
3. Then-existing mental/ emotional/ physical state: "You know what, I plan to rob the bank today"
4. Medical diagnosis: "I told my doctor that I was having hallucinations"

Statements that are not hearsay:

1. Offered for effect on the listener: "She said I'm an idiot, so I was super angry"
2. Offered for subsequent actions: "That woman said the suspect was in yellow, so the police looked for people in yellow"
3. Rule 801 (d)(2) Opposing Party Statement: statements of the **opposing** party representative are not hearsay

Substantially more prejudicial than probative

How to argue: inflames the passion of the jury, prejudicial value substantially outweighs probative value

How to argue against: high bar, opposing counsel has to prove to you that prejudicial value substantially outweighs probative value

Impeachment

Impeachment by contradiction: This happens when the witness' answer contradicts their affidavit.

Ask the question again.

(If insist on the wrong answer) We would like to show the opposing witness a copy of their affidavit.

(Show the opposing counsels, Judges, and then the witness the affidavit)

There should not be any annotations or highlights in the affidavit used for impeachment!!!

Is this a fair and accurate copy of your affidavit?

Is this your signature at the end of this affidavit?

You know that you have the right to change or amend the affidavit until the opening statement of today's trial?

You have taken the oath to tell the truth and nothing but the truth, is that correct?

Now let me direct your attention to Line xxx. I'll read it out loud while you read it silently.

Now let me ask the question again...

Impeachment by omission: This happens when the witness' makes up something not in the affidavit.

Is this a fair and accurate copy of your affidavit?

Is this your signature at the end of this affidavit?

You know that you need to include everything related to this case in your affidavit?

You have taken the oath to tell the truth and nothing but the truth, is that correct?

Tell me, where in your affidavit says xxx?

Demeanor in court

Captain says "All rise" when the judge enters the court, and say "Good day/ morning/ afternoon, your honor" together.

Always say "Yes, your honor" after the judge gives you an answer or gives a ruling.

Always stand up when talking to the judge.

Don't say sorry, say "May I ask for the court's indulgence and xxx."

In the end, remember one thing:

"Fake it till you make it"