

**Trial Objections
and
Preserving the Record
for Appeal**

The Process

- **Something happens***
- **You object timely**
- **Response is made**
- **Court rules**
- **Offer of Proof?**
- **Admonishment?**
- **Case proceeds**

Why Make Objections?

- **To keep evidence out**
- **To preserve the record**
- **Other purposes**

Why You May Not Want to Object

- **It really doesn't matter**
- **The Jury or Judge is getting angry**

Where to Make Objections

- **At Counsel Table**
- **At the Bench**
- **Outside the Presence of the Jury**

How to Make Objections

- **Stand Up**
- **Be Heard**
- **Be Clear, Concise & Convincing**

Faculty Objections

- 1. The horse is out of the barn**
- 2. That dog won't hunt**
- 3. Beating a dead horse**
- 4. Oh no he didn't**
- 5. All hat no cattle**
- 6. Ain't nobody got time for that**
- 7. Stay in your lane**

TOP 10 OBJECTIONS

1

PRIVILEGE

Practice Tips

- **Raise early**
- **Ask to approach**
- **Don't disclose in objection**

2

HEARSAY

Described as, “*a monument to the power of all kinds of legal educators to turn a basically simple idea into a tangle of language so obtuse it becomes difficult to think or talk about with clarity and simplicity.*”

- Prof. James W. McElhaney

A skilled lawyer can almost always fashion a non-hearsay purpose for even the most flagrantly prejudicial out-of-court declaration

3

LEADING

- ***Preliminary Q or Cross***
- ***The Q suggests the A***

4

**ASKED AND ANSWERED
CUMULATIVE**

5

MIS-STATES TESTIMONY

6

RELEVANCE

#7

403 PREJUDICE

8

FOUNDATION

- **Is the evidence what the proponent claims it to be**
- **Is the evidence generally reliable?**
- **Is the evidence trustworthy?**

Practice Tips

- **Self-authenticating records still must be relevant**
- **Lay foundation during depositions**

The type of questions you ask are critical:

- **Are you familiar with...**
- **How are you familiar...**
- **Can you identify...**
- **Have you had the opportunity to hear...**
- **Did you observe...**
- **Do you recognize...**
- **Were the documents prepared in the ordinary scope of business...**

9

DAUBERT OBJECTIONS

10

SUBSEQUENT REMEDIAL MEASURES

Admissible For:

- **Ownership**
- **Control**
- **Notice**
- **Feasibility**

MOTIONS IN LIMINE



Bryan A. Garner ✓

@BryanAGarner

Follow



No: lawyers treat "in limine" as fully anglicized. Hence no italics. Always check the current Black's Law Dictionary.

Individual-1 @c_burch

.@BryanAGarner I share your aversion to unnecessary Latin phrases, but for a motion "in limine," should I italicize? Even in the title?

9:44 AM - 17 Jan 2017

9 Retweets 17 Likes



5



9



17

in limen

“at the threshold”

Cassells Latin Dictionary 319 (1957)

When? At the Threshold

- **File Opening**
- **Motion to Strike**
- **Ahead of Trial**
- **During Trial**

and don't forget discovery motions

How? Strategically

- **Test**
- **Target**
- **Title**
- **Try Again**

*and don't **Tick Off** the Judge*

What if?

Admonishment, (almost) every time
Mistrial, in the extreme

OFFERS OF PROOF

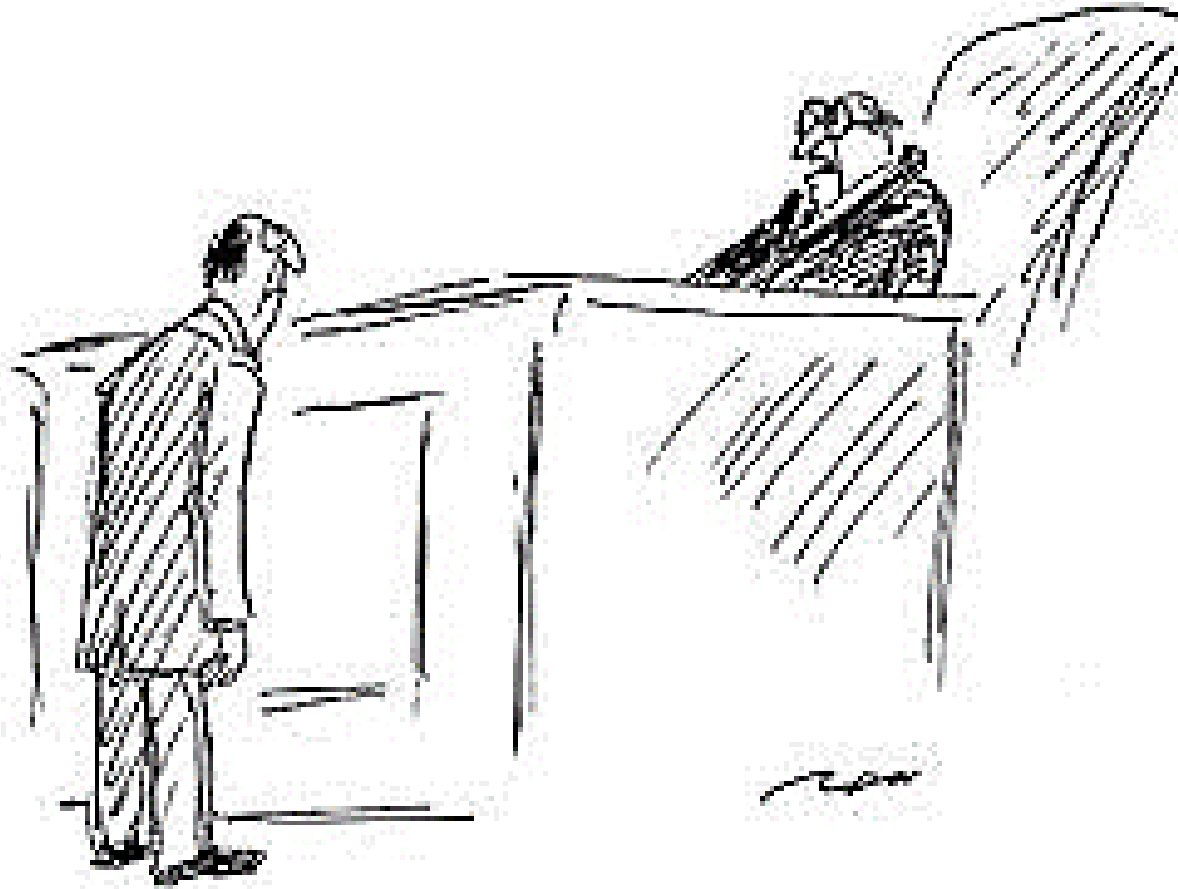
Part of a judge's job is to listen.

When a judge refuses to hear a party's offer to prove, she not only abdicates the duty to listen, but she calls into question the principle of fundamental fairness, which requires that parties....receive every reasonable opportunity to make their case.

Today we hold that a...court abuses its discretion when it denies a party's legitimate request to make an offer of proof.

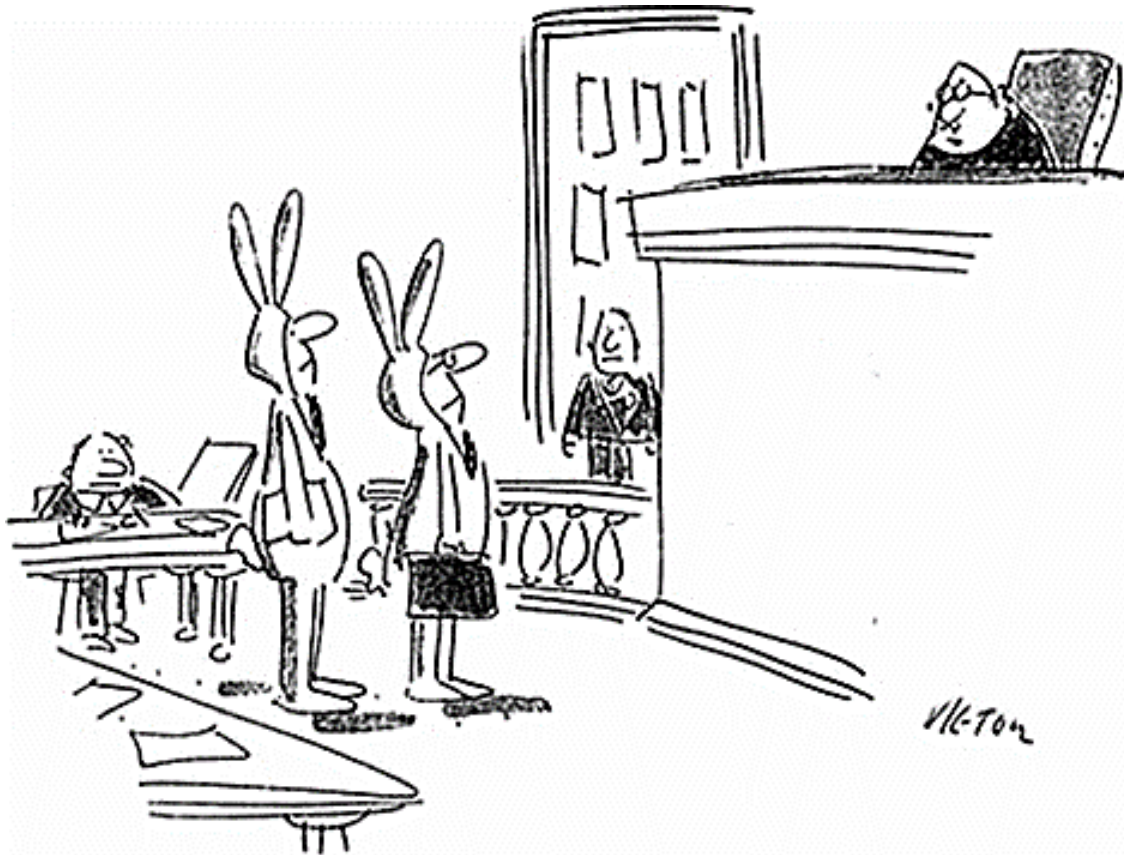
Bedolla v. State, 123 N.E.3d 661 (Ind. 2019)

When?



"And don't go cobining to some higher court."

How?



*"Before we go on, could I speak to opposing counsel
in my chambers?"*

How?

- **Nature and content**
- **Purpose and relevance**
- **Foundation and competency**
- **Legal basis for admissibility**