

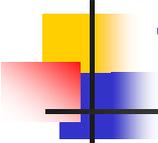
# "I OBJECT"

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## THE SCIENCE AND ART OF THE OBJECTION

### Evidence and Record Preservation

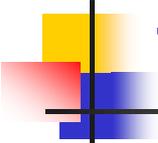
Professor Colene Robinson  
University of Colorado Law School



# The Science

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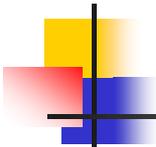
- Rules of Procedure –
  - Record Preservation
  
- Rules of Evidence
- Form of question
- Inadmissible evidence



## The Art

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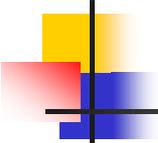
- When to object
- How to object
- How to respond to objections



## Common Objections – Form of the Question

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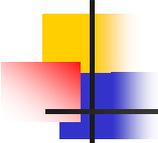
- Leading Question
- Compound Question
- Asked and Answered
- Beyond the Scope
- Assumes Facts Not in Evidence
- Argumentative



# Leading Question

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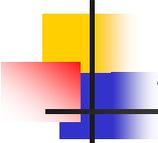
- What is it
- How to respond
- What is the fix



# Compound Question

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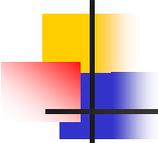
- What is it
- How to respond
- What is the fix



# Asked and Answered

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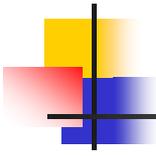
- What is it
- How to respond
- What is the fix



# Beyond the Scope

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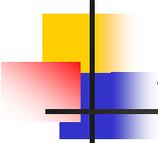
- What is it
- How to respond
- What is the fix



# Assumes Facts Not in Evidence

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- What is it
- How to respond
- What is the fix



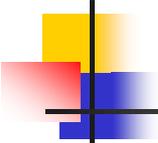
# Argumentative

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What is it

How to respond

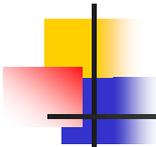
What is the fix



# Narrative

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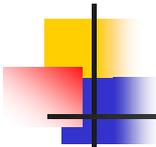
- What is it
- How to respond
- What is the fix



## Common Objections - Substance

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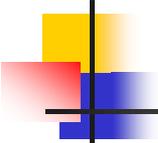
- Relevance
- Hearsay/Unfair Prejudice
- Speculation
- Lack of Foundation/Personal Knowledge
- Improper Impeachment
- Improper Character Evidence



## Relevance/Unfair Prejudice

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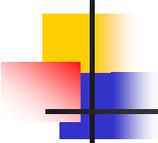
- Rule 401 - Evidence is relevant if it makes a fact of consequence more or less probable
- Rule 402 – Relevant evidence is generally admissible; irrelevant evidence is not
- Rule 403 – Relevant evidence “may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice” Also to avoid confusion, misleading jury, waste of time



# Hearsay

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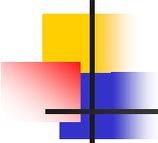
- What is it: Rule 801 – an out-of-court statement offered to prove the truth of the matter asserted
- Only admissible if not hearsay, being offered from some purpose other than truth, or fits an exception



# Drug Screen

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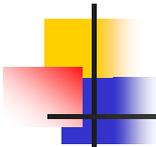
- Some things to think about.....
  - Hearsay
  - Authentication
  - Expert testimony



# Calls for Speculation

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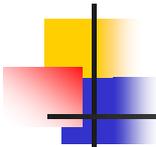
- What is it
- How to respond
- How to fix it



## Lack of Foundation/Personal Knowledge

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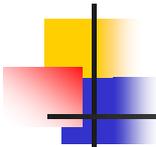
- What is it?
- How to respond
- How to fix it



## Improper Character Evidence - General

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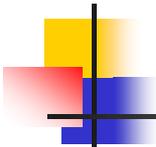
- Usually involves some generalization about the person: bully, drunk, nuts, thief, etc.
- Rule 404 – Character evidence is generally not admissible to prove a person acted in that manner



## Direct use of character

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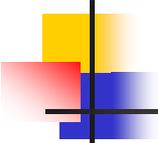
- The direct use of character evidence is rare.
- It occurs only when character is actually in issue.
- When character is an element of the case, character evidence is, of course, admissible.



# Pre-Trial Objections: Motions in Limine

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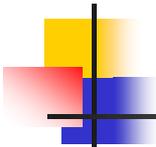
Why use them and what are the advantages



## Should I Object?

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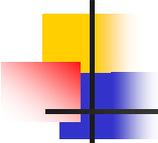
- Split-second decision
- Form objection
- Make tactical decision
- Planning



## Reasons Not to Object

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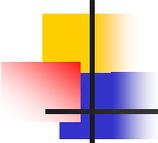
- Jurors don't like games
- What goes around comes around
- The evidence will come in eventually
- Opposing case is being damaged



# How to Object

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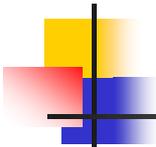
- Stand, object, state grounds



## Responding to Objections

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- Request argument
- Limited admissibility (C.R.E. 104, 105)
- Offer of proof



## Practice – what is the proper objection?

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- Asking the caseworker:
  - What is the best permanent placement for the child?
  - While on the stand via webex, it appears caseworker is referring to something or reading from something.
  - Ongoing caseworker testifies about conversation RM had with intake worker.
    - If response to objection is that it is contained in a business record, then what objection?