

Jordan and Knight in ABA Litigation Journal: Calibrating Objections from Voir Dire Through Verdict

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PRACTICES Litigation

Haynes Boone Litigation Partners [Jason Jordan](#) and [Chris Knight](#) authored an article for the American Bar Association's Spring Litigation Journal exploring the strategic considerations behind objections at every stage of trial, from voir dire through verdict.

Read an excerpt below.

Objections at trial present an uneasy tension: Object too little and you waive error; object too much and you may lose credibility. While trial counsel is often focused on jury perception, appellate counsel is focused on preserving the record for the next stage. And good appellate counsel knows when it's time to make some noise.

Knowing when to make noise starts with the fundamental procedural rules governing preservation of error. These rules typically require contemporaneous, specific objections, an adverse ruling, and—in some instances—an offer of proof before an appellate court will review a complaint under standards any more forgiving than plain error. This knowledge must be coupled with the wisdom that objecting at every opportunity may appear obstructive to jurors, lead to comments or instructions that repeat the offending matter, and undermine counsel's overall rapport with the judge. As with many decisions, can does not necessarily mean should.

Deciding when to object is a balancing act. It is not just a legal calculation but a strategic one. It is an exercise of judgment that requires counsel to weigh the potential benefits of error preservation against the risks of alienating the fact finder, disrupting narrative flow, and inadvertently highlighting harmful evidence.

This article aims to provide guidance for counsel in making these sometimes difficult judgment calls. It goes through each stage of trial—beginning with voir dire and continuing through the verdict—and, for each stage, discusses common grounds for objection and strategic considerations that may inform how to proceed.

Voir Dire: Setting the Table and Preserving It

The voir dire process can vary substantially from state to state and court to court. But in general, courts have broad discretion over the process, including who will question the venire panel and how. Navigating these varied procedures presents one of the first opportunities to evaluate potential objections.

First impressions matter, and voir dire can lead to a very good or very bad first impression. Strategic voir dire practice thus involves considering more than just the legal propriety of questions and objections. Counsel should also assess their potential effect on the venire panel. Early objections in front of prospective jurors may come across as disruptive or defensive. To minimize this risk, we have found it can be helpful to ask for a sidebar or bench conference, especially in circumstances when the underlying concern is drawing undue attention to sensitive issues.

If there are areas that you believe are important to explore with prospective jurors (such as biases unique to your case, views on awarding certain types of damages, or other specific points), consider raising these in writing (and perhaps again on the record) before voir dire begins. If an inquiry into one of these areas is foreclosed, you may register an objection to preserve error. Reversal based on a court's failure to ask or allow voir dire questions is rare, but not impossible, if you have properly brought the topic to the court's attention and explained why it's important.

Similarly, if a court limits questioning in a way that impairs the ability to probe for cause—whether by limiting the time or the scope of counsel's inquiry—then it is important to make this clear on the record, and counsel can boost their position for appeal by proffering the questions they believe should have been asked.

To read the full article from the ABA, click [here](#).