

The below are general rules, often subject to obscure exceptions, and if unusual factors warrant, even the best general advice is best ignored. Still, there are things which are not news, but worth a reminder.

### Ten Simple Rules

1 - In your opening statement don't take on a burden, don't offer or promise to prove things.

2 - You are entitled to know the precise contents of jury notes, so long as they bear on substantive matters about evidence, law and the like, rather than scheduling or purely personal matters.

3 - The word "objection" doesn't preserve anything, you must specify your basis for the objection. There is an important exception: the word "objection", when spoken by a prosecutor, preserves every argument if the judge sustains.

4 - In a joint trial, if the codefendant's attorney objects, the issue is not preserved unless you formally join in the objection. And no, you can't announce at the start of trial that you each join in the other's objections. You have to repeat your agreement, even if that means doing so dozens of times. It's stupid, but it's the law. The Court of Appeals says so.

5 – [For APDs] I'd be happy to review any SORA Risk Assessments you have and make suggestions as to what points can be challenged and what the prosecution has to prove. Despite the fact that much of what I say will be bad news, it could still be worth doing.

6 - I think the best way to evaluate whether hearsay is offered for the truth of the matter asserted is to assume it's a lie, and ask whether we want to hear it anyway. If someone told the defendant "Joe just stabbed your spouse/pet/favorite curling player" and the defendant is accused of then attacking Joe, we want to know that the defendant was told what Joe allegedly did because that statement is motive for the defendant to attack Joe, even if it was a lie. If instead Joe was the defendant, accused of the stabbing, how would a lie be relevant at trial?

7 - The pattern Question - "Officer, did you talk to the complainant?" Answer - "yes." Question - "and then what did you do?" Answer - "I arrested the defendant" is called inferential bolstering. It informs the jury indirectly that the complainant made the same statements as those made at trial, and thereby improperly bolsters their credibility.

8 - The identification of the defendant from a photo array does not come in at trial (CPL 60.25 & 60.30).

9 - Bigamy is not a continuing offense, and the statute of limitations runs from the invalid marriage. Hey, I had this one.

10 - When you are done arguing points in SORA, ask for a downward departure. It doesn't cost anything, and unlike the DA, you don't have to serve advance notice of your intent to request a departure from the point score. It lets you get in whatever beneficial things there are to say about your client, and if your client appeals it helps me a great deal if it turns out that your arguments on the points were, um, not so thoroughly compelling as to command assent.