

I Object!

– James Eckert, Esq.

Objection Specificity

"I object." "I am going to object." "Objection." "Yo, Adrian!" What do these phrases preserve when spoken by a defense attorney? Nothing whatever. In an interesting quirk of the English language, when spoken by a prosecutor, the word "objection", preserves everything (assuming the objection is sustained)(and I mean, what are the odds?). By the way, "yo, Adrian" "sustained" would preserve any argument for the prosecution as well.

It often happens that you are aware, and the Judge is aware, and even the ADA is aware, exactly what you are all arguing about. You all know the only possible objection is that the question calls for hearsay, or is leading, or perhaps calls for inferential bolstering in a crystal clear violation of *Trowbridge*. The jurors could all be whispering "*Trowbridge*" to one another. Nonetheless, if you do not add words to your objection you unlikely to preserve anything for appeal.

An objection does not have to be flowery, detailed, or even exotic. It merely needs to draw the attention of the court to the legal issue which you are raising. At times, appellate courts are generous, an objection that a procedure "violated my client's rights under the Federal and State Constitutions" was considered sufficient by the Court of Appeals. Don't count on that. Try to be specific, feel free to include several concerns in one objection. I once had a client ask that I be relieved because I was "incompetent, irrelevant and immaterial". He was drunk, but he had the right idea.

Whatever the basis, a brief description of why you are objecting can be the difference between a preserved error and an unpreserved error. As to why this is important, well, I admit that the number of reversals is small. However, it's been my experience that a Judge's ruling can be affected by the court's perception of the odds of the defendant winning a particular argument on appeal.

This is true at the close of *Huntley* or *Wade* or other hearings as well. Though often we can argue on appeal that the Judge explicitly ruled on an issue and therefore it was preserved for that reason (see CPL 470.05[2]), you don't want to count on that. The Judge might ignore your issue, or not present it as clearly as you would have. Again, just because everyone knows what the argument is doesn't mean the appellate court won't call it unpreserved.