

# Top ten things trial lawyers can do to make appellate lawyers love them

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I object

File  
motions

Get  
rulings

File jury  
charges

File  
MNTs

Things you can do to make your client have a fighting chance on appeal, and for appellate lawyers to send you candy. Ok, maybe not candy, but certainly booze.

- 1) Texas rule – I object!
- 2) Next step - I want a limiting instruction!
- 3) Final step – I move for mistrial!
- 4) Now, if you are denied anywhere along the road here, you are preserved..yay!
- 5) You can object to the court's failure to rule on either a motion or an objection. That also preserves whatever your complaining about.
- 6) You can file written objections and offers of proof in Q and A form.

TEXAS IS  
A LITTLE  
DIFFERENT.  
READ TRAP 31

# HOW TO WIN THROUGH THOROUGH WHINING

- Two objectives for evidence –keeping it out or getting it in!
- To exclude things, under TRAP 33.1 you must make a timely specific objection, citing the grounds and pointing out what it is you want kept out.
- You should cite things so that all your grounds are included, for instance “Your Honor, this statement is hearsay. It also is irrelevant under 402, and it is far more prejudicial than probative under 403. It violates my client’s right to confrontation under the Sixth Amendment and Article I, section 10 of the Texas Constitution, and our right to due process under the Fourteenth Amendment and due course of law under Article I, section 13.

- Getting your evidence in
- Step one – relevant evidence is supposed to be admitted, so figure out why your evidence is admissible. For instance, consider TRE 902, which makes certified public documents self authenticating.
- Step Two - Who will authenticate your evidence? What if you need to enter texts/jail letters/cell phone records?
- Can you use the State's witnesses to get in your evidence?
- Step Three – make a bill or proffer if your evidence is excluded. You must preserve either testimony or evidence you wish to introduce or you have waived review!

EVIDENCE  
WORKS BOTH  
WAYS – YOU  
NEED TO GET  
YOUR THEORY  
IN BEFORE  
THE JURY, SO  
HOW WILL  
YOU DO THAT?

## **Tips for error preservation**

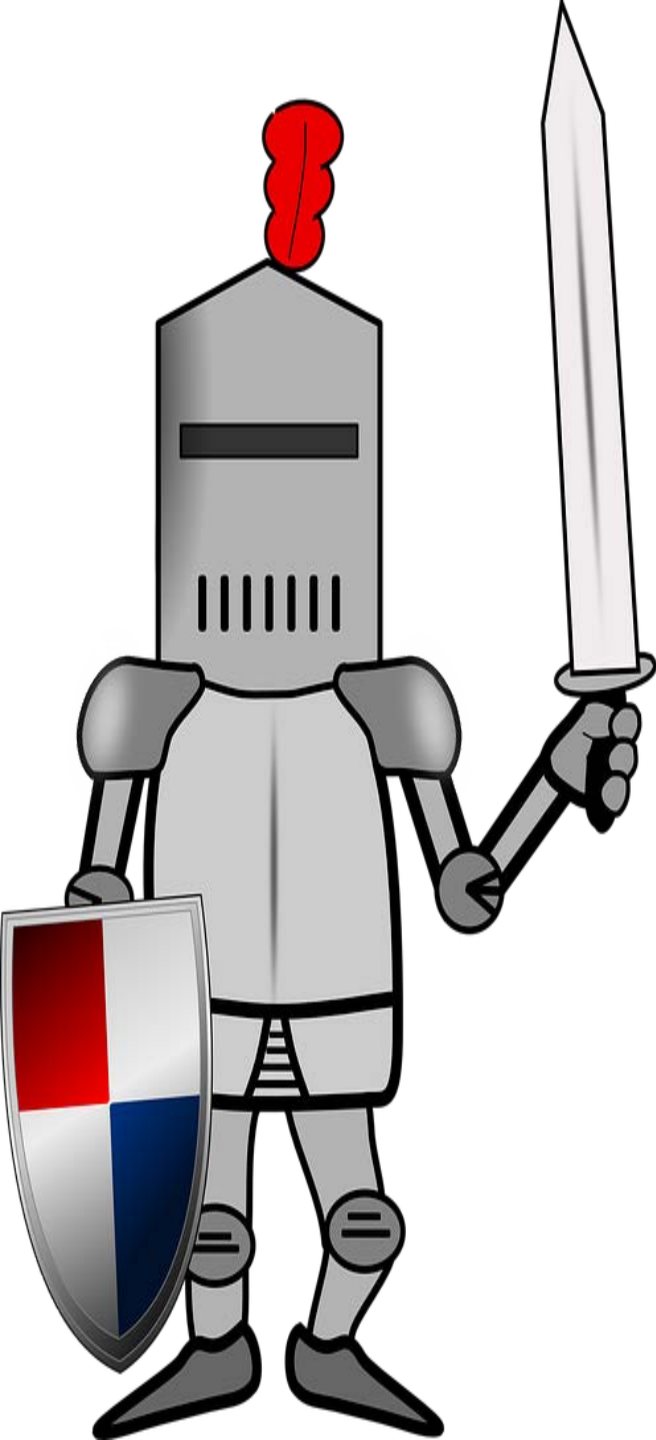
Never let the judge do things off the record or in chambers.

Never hold a jury charge conference at the bench without the court reporter.

File written jury charges or dictate them into the record.

Remember to get bills and proffers done before the jury gets the case





Punishment evidence  
- Rebutting the State's  
case by attacking priors  
and using motions under  
37.07!

Object to the priors, do not  
stipulate, hold hearings  
outside of the presence of  
the jury

If you cannot rebut then  
explain the circumstances,  
unless they suck!

MNT as a way to help your client

File it with affidavits

Present it within ten days

Request a hearing

Enter evidence, including the affidavits

Work with an appellate lawyer and do not forget to withdraw!



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## TOP TEN THINGS TO DO

1. Prepare written objections
2. Get rulings
3. Object to failure to rule
4. Make bills and proffers
5. File written jury charges you request
6. Make your objections constitutional
7. File motions to exclude evidence, not just suppression but 702 motions for their experts
8. Record jury charge conferences
9. Challenge their punishment case and hold hearings on their proposed punishment
10. File MNTs and be sure you take to get an appellate lawyer to help if needed



SAY IT WITH ME –  
“I OBJECT”

GET THEM  
ON THE  
RECORD!

QUESTIONS?

WE ARE HERE TO HELP

CALL US! Email us!

713-444-2826

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