



From the President

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SECK LAW



## How did you learn the rules of evidence?

### WHERE DID I LEARN THE RULES OF EVIDENCE? NOT IN LAW SCHOOL

I have always had a love for learning. Reading was my favorite pastime, and I found exploring new topics interesting and fun. But when it came to most of my first-year law school courses, namely contracts and real property, learning felt like a chore. The subject matter of most of my first-year courses was dense and felt inapplicable to my life. I longed for the day when I could take the “real” law school courses like criminal law and constitutional law. Imagine my excitement during my second year of law school when I was finally able to take a course essential to trial lawyering – Evidence. Imagine my disappointment when I received my mid-term grade (which shall remain undisclosed).

#### The teacher

I had an excellent evidence professor. His name was Gary Williams, and he knew evidence backward and forward. Professor Gary Williams made evidence come alive with real-life examples and scenarios. His class was one of the more popular ones to take. I would hear people say about his evidence class, “It isn’t easy, but you will definitely learn evidence.” Well, despite Prof. Williams’s natural teaching abilities, I came close to failing my mid-term. By the time I graduated, I still could not tell you, clearly and succinctly, what hearsay is (or the exceptions) because, frankly, I couldn’t wrap my head around the “truth of the matter asserted” part of it. So, how did I learn evidence? In the trenches (i.e., the courtroom) one objection at a time.

#### The application

My first few “real” trials felt like a train wreck. I say real because I participated in mock trial competitions in law school and learned the anatomy of a trial. In truth, I had no real understanding of what it felt like to have a real case fall apart in a real courtroom, in front of a real

judge, next to a real defense attorney who wanted to beat me really badly.

During trial, I would do and say things that would draw an objection. It wasn’t just an objection here and there or every now and then. No, it felt like a tsunami of objections. I was being pummeled, and I deserved it.

It was evident that I did not know the rules of evidence. I would ask leading questions of my client and open-ended questions of my defendant. In a rush to get testimony in, I would skip over critical foundational questions. To make up for forgetting to add someone to the witness list (or failing to identify and depose someone qualified to give certain testimony), I would attempt to get the testimony in through someone who had no business giving said testimony. I would ask percipient witnesses how they felt about seeing or hearing something, only to discover their feelings about anything were irrelevant.

Objection after objection, sustained and overruled, I learned a new evidence rule. An impeached witness. A disqualified expert. An inadmissible photograph, document, or statement. There was a lesson in each. It is only through literal trial and error that I learned what hearsay is and each of its beautiful exceptions. The most profound lessons, I learned through error.

#### The lesson

One moment in the courtroom with my teenage client stands out. On cross-examination, my client was asked about events leading up to an altercation between my client and a teacher that left my client injured. The defense attorney wanted to know what was said, who said what, and how each person reacted. I knew there had been an altercation, but not how it started. I knew the version of the story my client had shared with me, but not what he had shared with others. I was afraid of what my client would say,

but more so of what the defense attorney knew that perhaps I did not. I watched, helplessly, as my client was interrogated. I felt ashamed as he was impeached, repeatedly. Never was it more clear to me the importance of diligent pre-trial discovery and the necessity/utility of mastering the rules of evidence. I know that had I done things differently, I could have saved my client the tears, trauma, and agony of feeling trapped and defeated in that moment.

It took me years to learn how to examine a witness without drawing an objection. It took me even longer to appreciate and understand that laying the foundation for the admission of critical testimony and evidence begins long before we step into the courtroom. It begins in the very critical stage of discovery. It’s through discovery that we unearth what is essential to winning our case and begin to map out that strategy. I also learned the rules of evidence are not only a sword. They can serve as a shield to protect your client. I learned these lessons in the courtroom. Most of the time, the hard way.

After years of practicing and with multiple trials under my belt, I will admit that I still do not feel as though I have mastered the rules of evidence. But I love them. Each one of them. And with each trial and newly published opinion, I’m learning more. I also learn from my brilliant colleagues, some of whom penned articles for this issue. It is for this reason that the “Evidence and Discovery” issue of the Advocate is one of my favorites. CAALA makes it possible for us to share what we have learned with others. I’m thankful to the authors for sharing their experience, expertise, and wisdom. Prof. Williams, if you’re reading this, I’m thankful for you, too. You may not have been successful in teaching me rules of evidence, but you taught me to respect them and to master them. ☑