

EVIDENTIARY OBJECTIONS

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Uses & Rules

- ⦿ Objection – Formal protest raised in court.
 - Violation of the rules of evidence
 - Other procedural law
- ⦿ Typically raised
 - After the opposing party asks a question
 - Before the witness answers
- ⦿ Judge will rule on the objection
 - Sustained – judge agrees and disallows the question
 - Overruled – judge disagrees and allows the question
- ⦿ Federal Rules of Evidence (FRE)
 - www.law.cornell.edu/rules/fre
- ⦿ California Evidence Code (CEC)
 - <http://www.leginfo.ca.gov/>

Speculation

- ◎ FRE Rule 701: If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:
 - **(a)** rationally based on the witness's perception;
 - **(b)** helpful to clearly understanding the witness's testimony or to determining a fact in issue; and
 - **(c)** not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.
- ◎ FRE Rule 702: A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:
 - **(a)** the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
 - **(b)** the testimony is based on sufficient facts or data;
 - **(c)** the testimony is the product of reliable principles and methods; and
 - **(d)** the expert has reliably applied the principles and methods to the facts of the case.

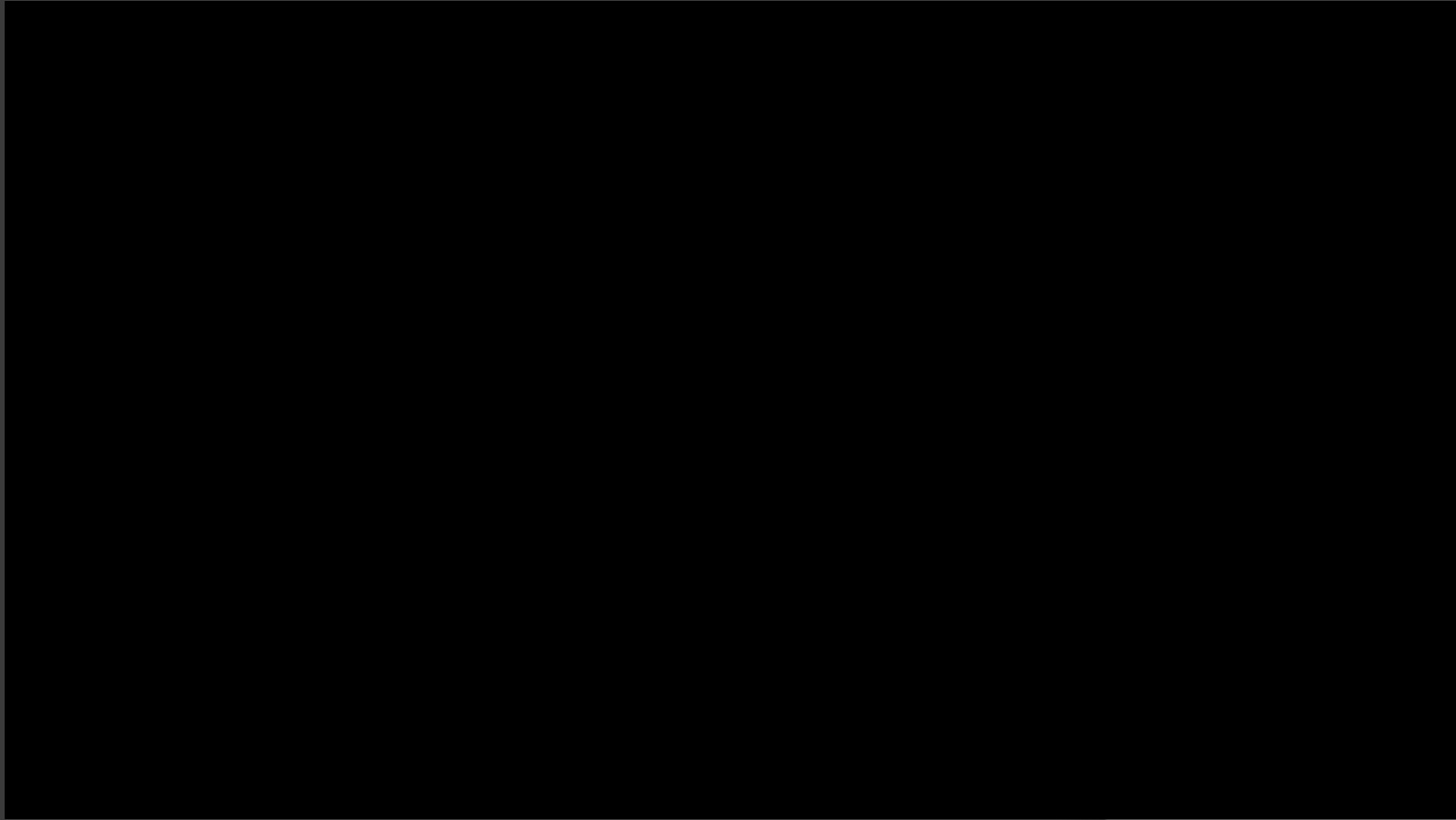
People of the State of California v. Orenthal James Simpson



Relevance

- ⦿ Include – FRE Rule 401: Evidence is relevant if:
 - **(a)** it has any tendency to make a fact more or less probable than it would be without the evidence; and
 - **(b)** the fact is of consequence in determining the action.
- ⦿ Exclude – FRE Rule 403: The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

State of New Hampshire v. Sam Dodson



Leading

- ◎ FRE Rule 611(c): **Leading Questions.** Leading questions should not be used on direct examination except as necessary to develop the witness's testimony. Ordinarily, the court should allow leading questions:
 - (1) on cross-examination; and
 - (2) when a party calls a hostile witness, an adverse party, or a witness identified with an adverse party.
- ◎ CEC 767(a): Except under special circumstances where the interests of justice otherwise require:
 - (1) A leading question may not be asked of a witness on direct or redirect examination.
 - (2) A leading question may be asked of a witness on cross-examination or recross-examination.
 - (b) The court may, in the interests of justice permit a leading question to be asked of a child under 10 years of age or a dependent person with a substantial cognitive impairment in a case involving a prosecution under Section 273a, 273d, 288.5, 368, or any of the acts described in Section 11165.1 or 11165.2 of the Penal Code.

State of Tennessee v. Jessie Dotson



Argumentative

- ⦿ FRE Rule 611(a) **Control by the Court; Purposes.** The court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to:
 - (1) make those procedures effective for determining the truth;
 - (2) avoid wasting time; and
 - (3) protect witnesses from harassment or undue embarrassment.
- ⦿ CEC Chp 5, Art 2, § 765(A): The court shall exercise reasonable control over the mode of interrogation of a witness so as to make interrogation as rapid, as distinct, and as effective for the ascertainment of the truth, as may be, and to protect the witness from undue harassment or embarrassment.
- ⦿ An argumentative question challenges the witness about an inference from the facts in the case.

Arizona v. Jodi Arias



The People of The City of Elyria (Ohio) vs Donna Brown



