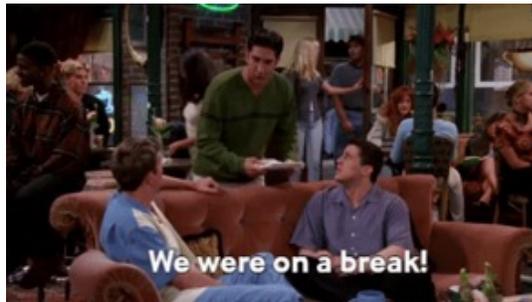


Five Friendly Appellate Hacks That Really Work

1. "We Were On A Break!" – AKA Make Your Record



If it does not appear in the record, it didn't happen! One of the most common roles played by the embedded appellate lawyer in a trial team is to protect the trial court record, ensuring that all objections are properly stated in the record, off-record statements and sidebar conversations are later stated in the record, and that rulings on all motions and objections are also stated in the record. Embedded appellate counsel can also assist with preparing and updating proof charts to ensure that there are no gaps in the trial team's presentation of the evidence, whether it be at the dispositive motion stage or at trial. Be aware of the nuances particular to each jurisdiction that require specific record preservation strategy and skill.

2. "This is all a moo point. It's like a cow's opinion, it just doesn't matter. It's moo." – AKA Get A Ruling



It is very important to remember that objecting or making a motion is not enough—you need to be sure to ask for, and obtain, a ruling on the objection or motion to properly preserve the point for appeal. Even the most seasoned trial lawyers, in the hustle and bustle of trial, will lose sight of this seemingly elementary concept. The embedded appellate counsel will assist to keep track of all objections and motions and appropriately follow up with trial counsel to ensure that a ruling is requested, that request appears in the record, and a ruling is ultimately obtained. And if the trial court is unwilling to provide a ruling, the embedded appellate counsel will work to ensure that the record properly reflects that unwillingness to rule, as well.

3. "Something is wrong with the left phalange." – AKA The Defense's Go-To Phrase for The Jury Charge: Legally Insufficient Evidence



If you don't have embedded appellate counsel, have some key phrases (based on governing legal standards) in your pocket and ready to go, particularly for important stages during the trial, such as at the jury charge phase. Another useful phrase and objection is "irrelevant and prejudicial."

4. "They don't know that we know they know we know." – AKA Prepare The Jury Charge Early



Earlier is better when it comes to preparing the draft jury charge. Don't be scrambling to do that during the trial. An earlier prepared jury charge helps you structure the presentation of evidence during trial according to the expected jury charge. It eliminates chaos and allows for things to run smoothly at trial. As Dykema Appellate & Complex Motions Team Member Chris Kratovil says, "Allow the jury charge to serve as the prism through which the evidence is presented."

5. "Dear God, this parachute is a knapsack!" – AKA There's No Better Win Than Victory in The Trial Court!



Don't think the appeal will save you! It is a statistical fact that the single best indicator of success on appeal is winning in the trial court. That must be the primary objective of the trial team and embedded appellate counsel—develop the optimal strategy to prevail before the appeal. The result in most appeals is an affirmance, so the best focus for all attorneys on the trial team is obtaining a victory below. The odds are overwhelmingly against you on appeal if you don't win in the trial court.



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