

EVIDENCE CHALLENGE

PIERCE v. SP RAILWAY CO.

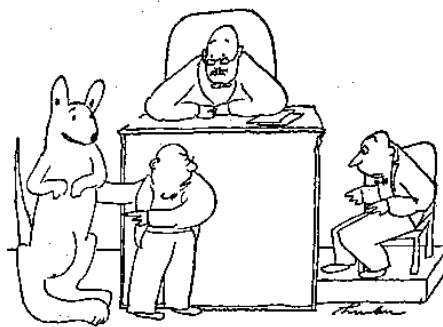
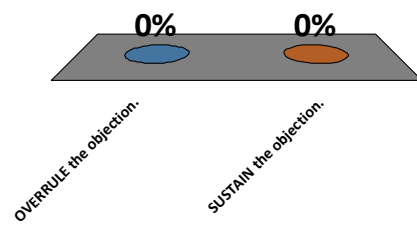
Pierce claims he suffered severe back injuries as a result of the derailment of an SP Railway car. Defendant claims Pierce's back injuries antedated the derailment. It calls an insurance company employee who interviewed Pierce several years before the derailment.

- Q: Do you recall interviewing Mr. Pierce, the plaintiff in this case, about ten years ago?
- A: It's possible I did. But I don't remember that name.
- Q: In connection with an automobile accident that he filed a claim on?
- A: I just can't remember such an interview.

- Q: I hand you what has been marked for identification as Defendant's Exhibit 16 [an insurance company memo written by one of the witness's fellow employees]. Please take a look at it. [Witness reviews document.] Please put the document aside. Do you now recall interviewing Mr. Pierce?
- Plaintiff's counsel: OBJECTION. He can't show the witness a document that someone else wrote.
- Defense counsel: It doesn't matter. A witness can refresh his recollection with anything; it doesn't have to be a document created by the witness.

The judge should:

- A. OVERRULE the objection.
- B. SUSTAIN the objection.



- A: Yes, I now remember that I did talk with Mr. Pierce. It was quite a while ago.
- Q: Do you remember what Mr. Pierce told you?
- A: To be honest, even after looking at that Exhibit number 16, I don't.
- Q: I now hand you what has been marked for identification as Defendant's Exhibit 17. [Exhibit 17 is the witness's notes of the interview of Pierce.] After looking at that, can you tell us whether you remember what Mr. Pierce told you.

- A: No, I have a hazy recollection of the conversation, but I really can't remember much about it.
- Q: Do you remember how you created Defendant's Exhibit 17?
- A: Yes. These are the notes of my interview with Mr. Pierce. My practice has always been to take detailed notes during an interview and then go back to the office and write and file a formal report. These are my notes, not the formal report.
- Q: Did you make these notes as you were speaking with Mr. Pierce?
- A: Yes.

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