

# Adventures in Error Preservation

Justice Brett Busby  
Judge Mark Greenberg  
Scott Stolley

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## Tex. R. App. P. 33.1(a)

Timely Objection or  
Request



Sufficiently Specific



Ruled or Refused

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## Federal Standard

- “To preserve error, an objection must be sufficiently specific to alert the district court to the nature of the alleged error and to provide an opportunity for correction.” *U.S. v. Neal*, 578 F.3d 270, 272 (5th Cir. 2009)
- If not preserved, limited to plain error.

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## Scenario

- You realize before the hearing on your MSJ that most of your evidence is missing.
- You file a “Reply” and attach the rest of the evidence.
- Your opponent moves to strike the late-filed evidence.

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## Suggestion

- Ask for leave to file your evidence late, and get a ruling.
  - Denial of the motion to strike does not equal leave to file late.
- Or postpone the hearing 21 days.

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## N.D. Tex. L.R. 56.7

- “Except for the motions, responses, replies, briefs, and appendixes required by these rules, a party may not, without the permission of the presiding judge, file supplemental pleadings, briefs, authorities, or evidence.”

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20<sup>th</sup> Annual Insurance Law Institute session

"Preserving Error"