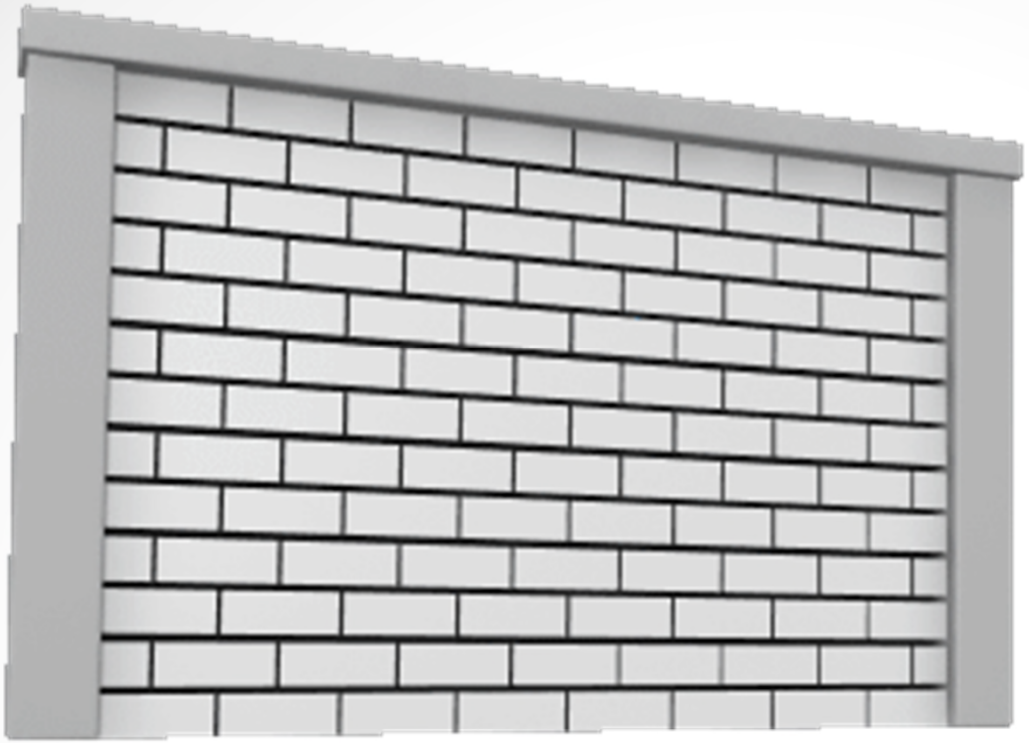
Evidence in Bankruptcy Court: IT'S NOT FOR SISSIES!



- By: Chief Judge Cynthia A. Norton, W.D.MO.



Part I:

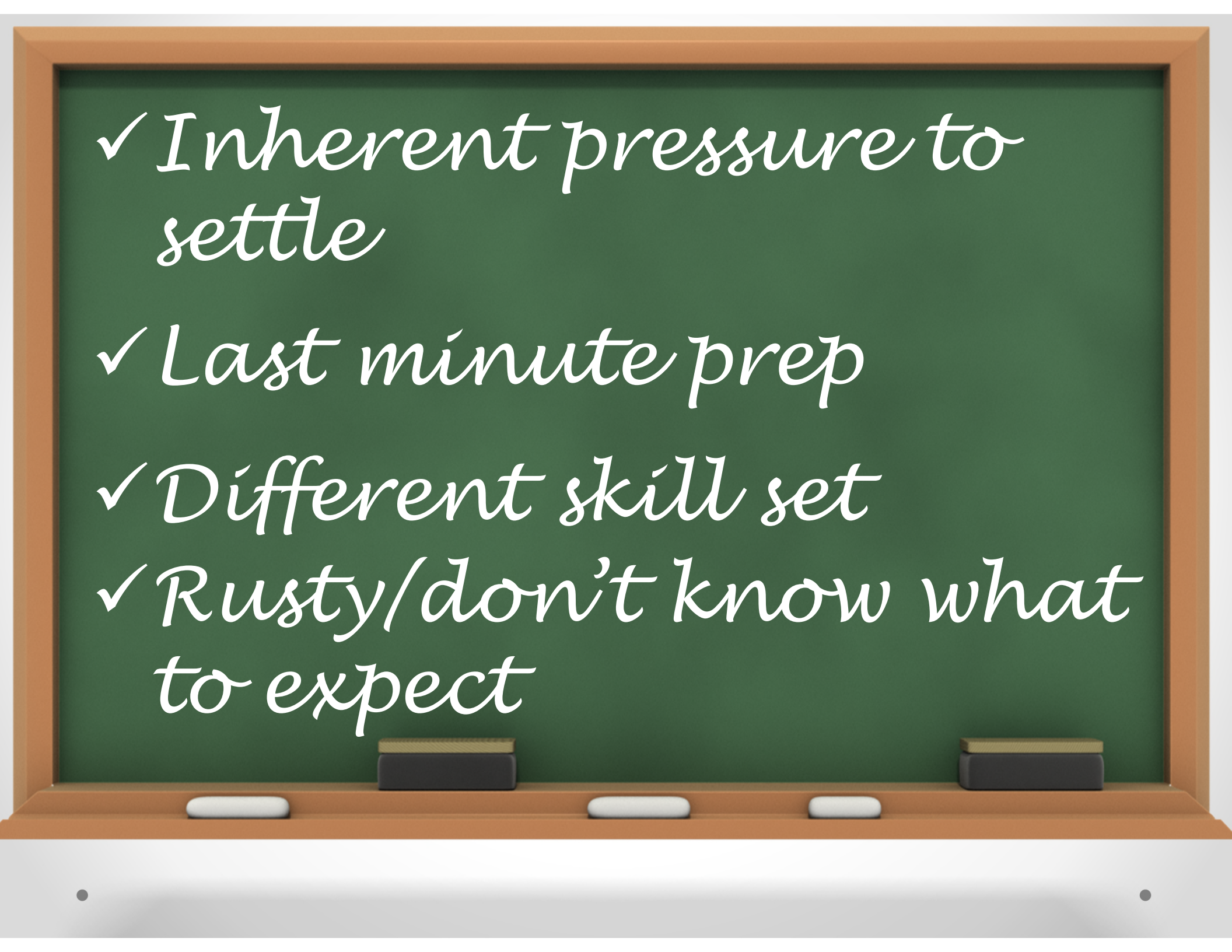
Conquering Your Fear

Why do we fear evidence?



Why do we fear evidence?



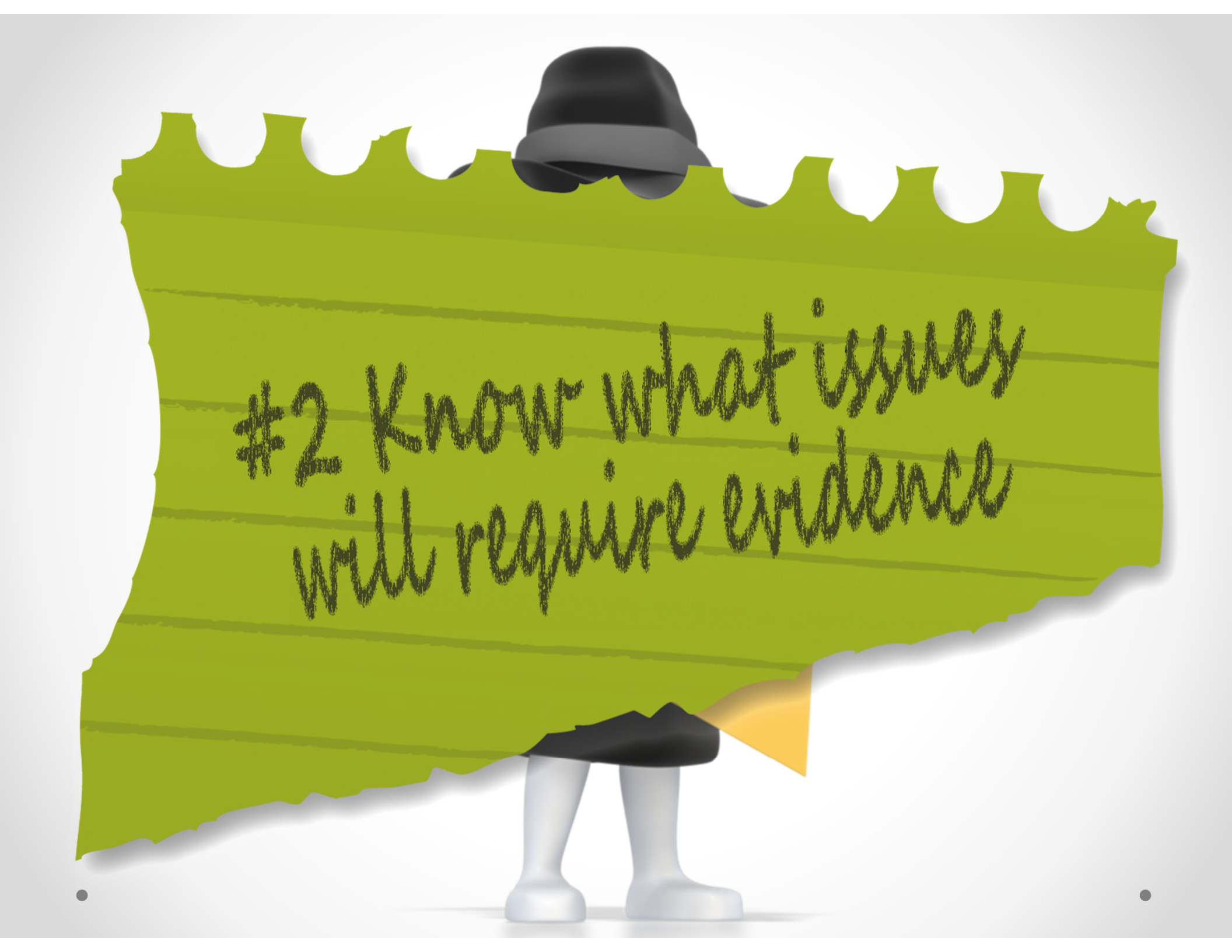

✓ Inherent pressure to settle
✓ Last minute prep
✓ Different skill set
✓ Rusty/don't know what to expect

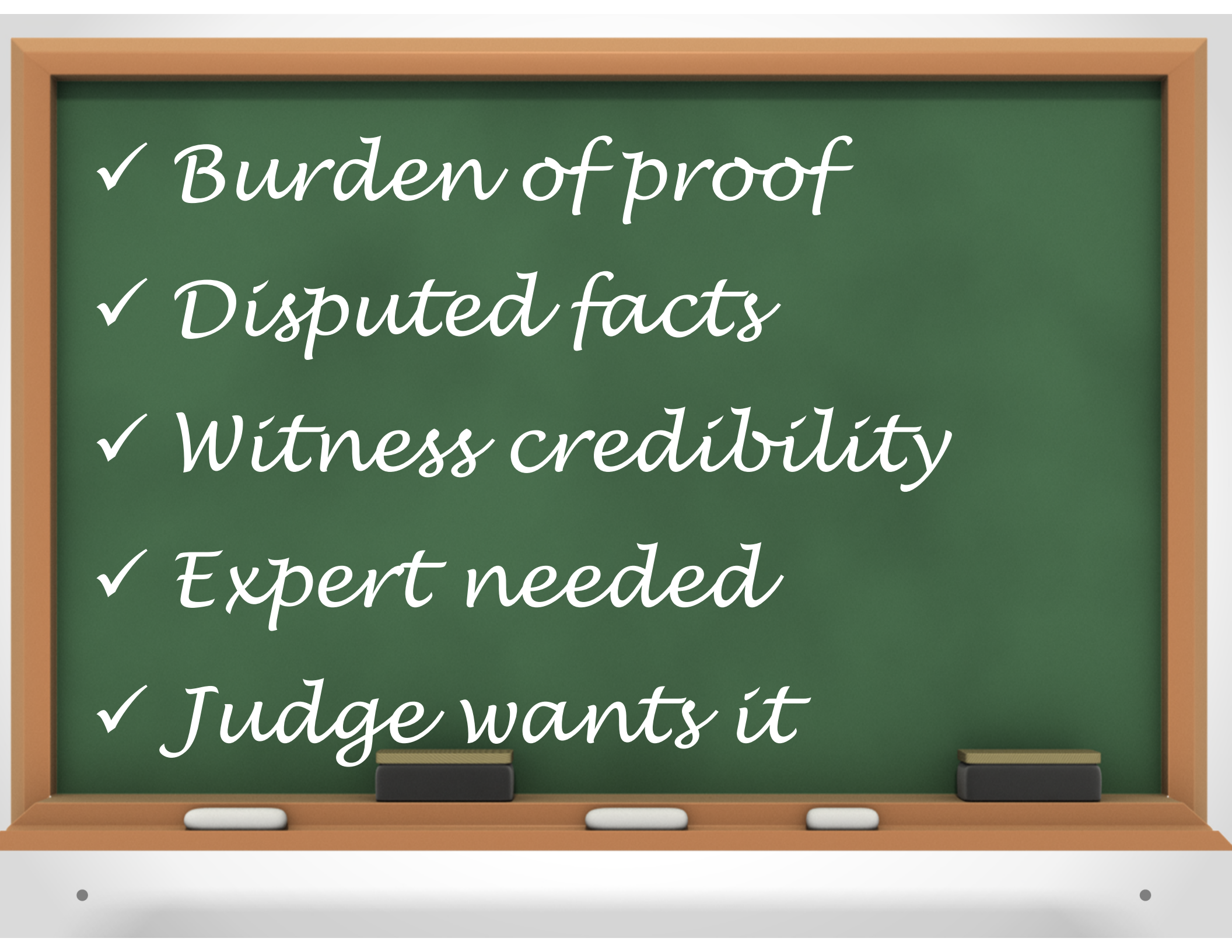



TOP SECRET


#1 Start with a
well-drafted pleading

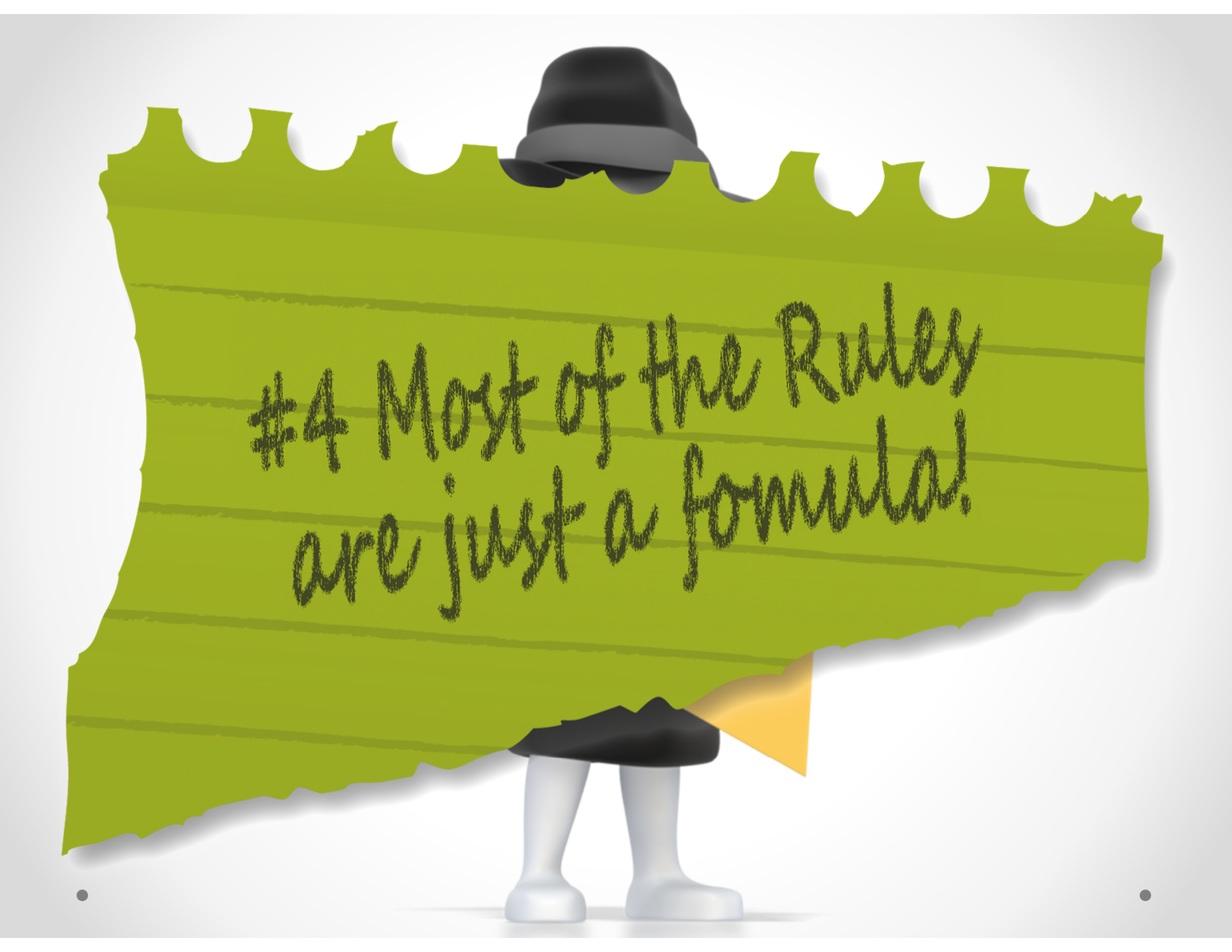

Three-legged stool supporting your relief:
1. Predicates
2. Facts
3. Law


#2 Know what issues
will require evidence

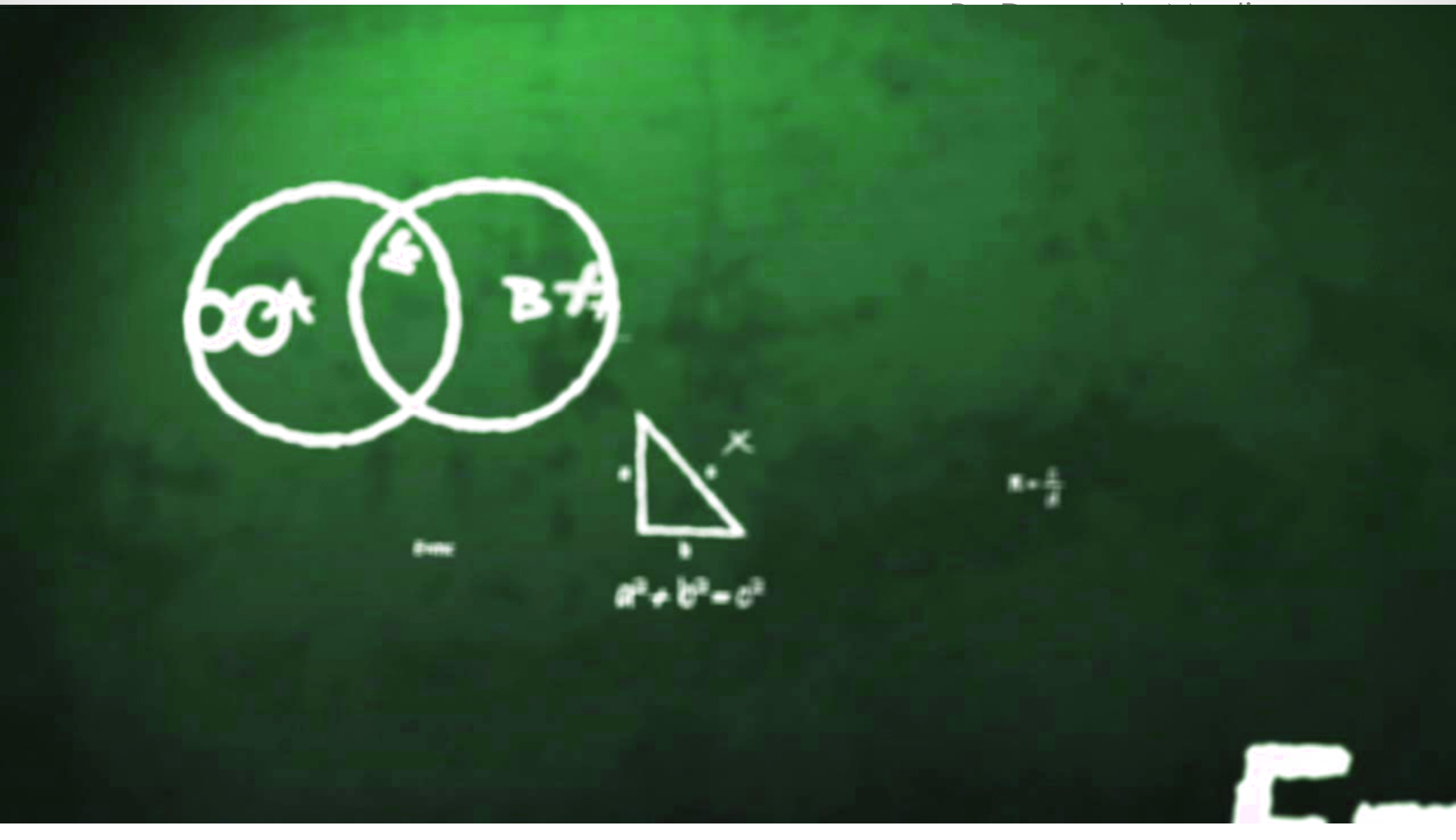

✓ Burden of proof
✓ Disputed facts
✓ Witness credibility
✓ Expert needed
✓ Judge wants it


#3 You don't need
to know all 68 FRE!


✓ Judicial Notice
✓ Relevance
✓ Witness Rules
✓ Hearsay
✓ Authentication
✓ The Judge's Favorites


#4 Most of the Rules
are just a formula!

Not This Kind of Formula!



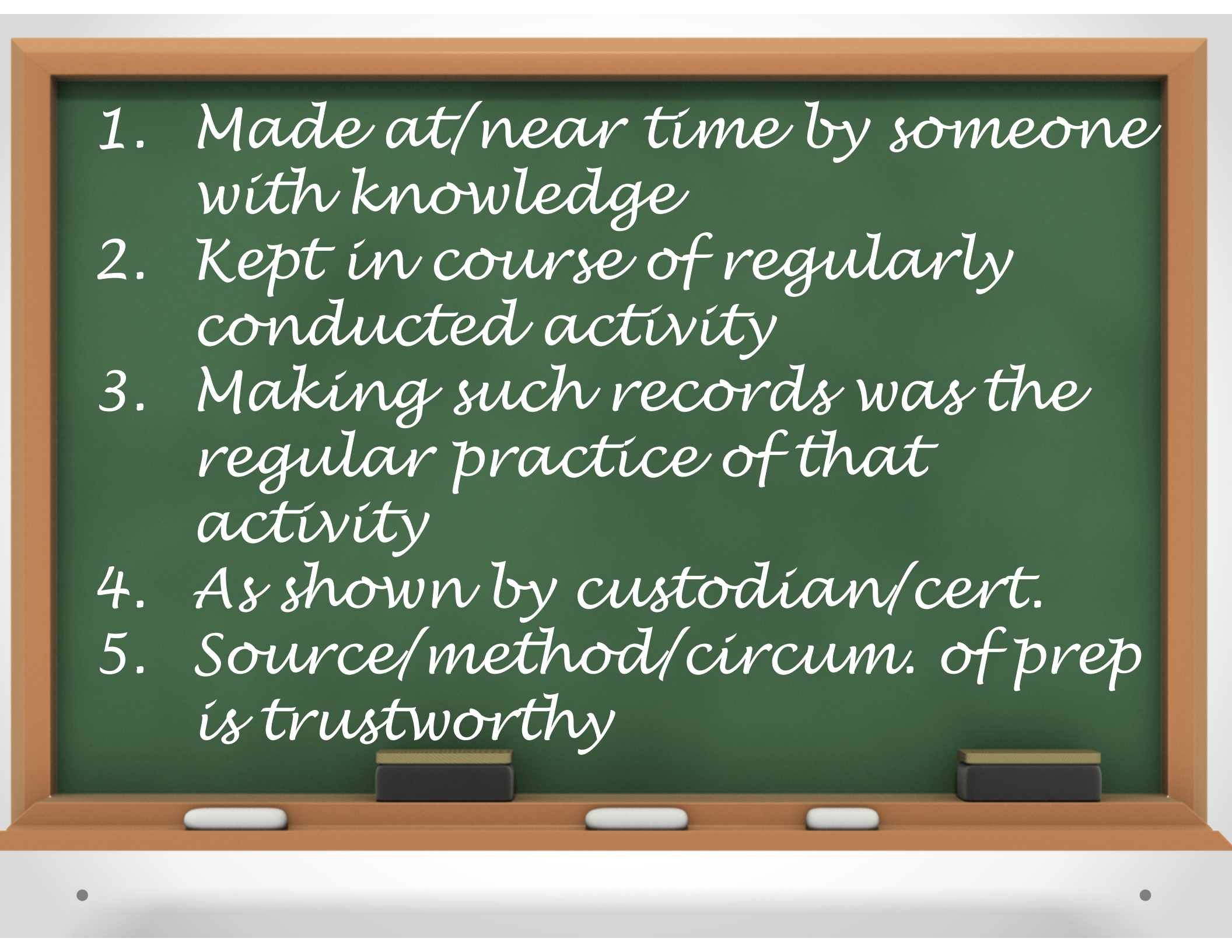
Foundation Formula



- **Relevance**
- **Competent witness**
- **Authentic**
- **Not subject to exclusion**

FRE 803(6) Business Records




1. Made at/near time by someone with knowledge
2. Kept in course of regularly conducted activity
3. Making such records was the regular practice of that activity
4. As shown by custodian/cert.
5. Source/method/circum. of prep is trustworthy


WHERE?
WHO?
WHAT?
WHY?
HOW?
WHEN?

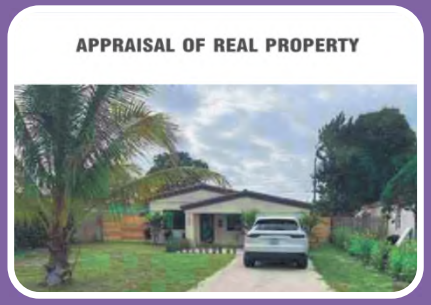
In the absence of a stip with opposing counsel,
are any of the following admissible?



Exhibits offered by a lawyer without a witness?

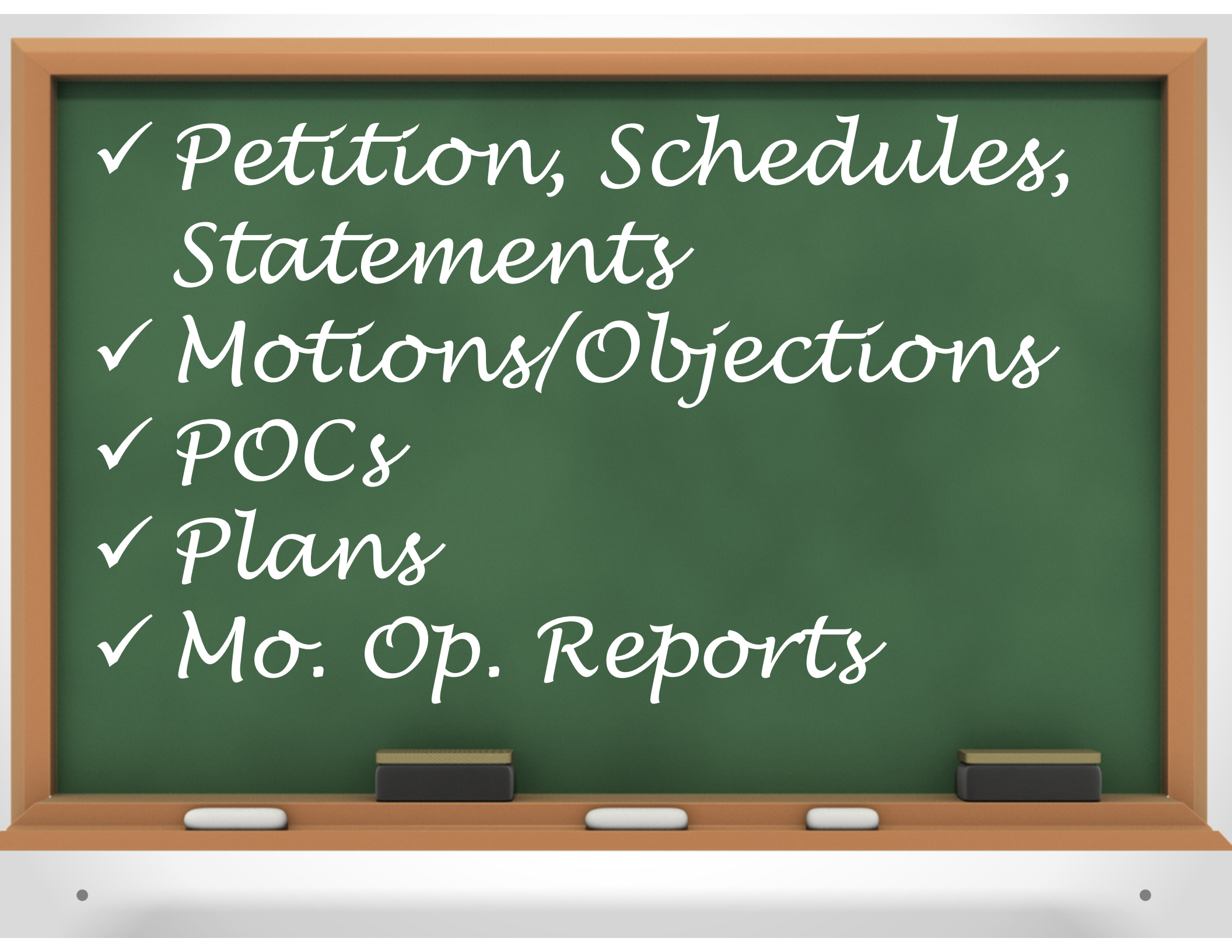


The Appraisal as a business record of the Bank?



The Appraisal itself?

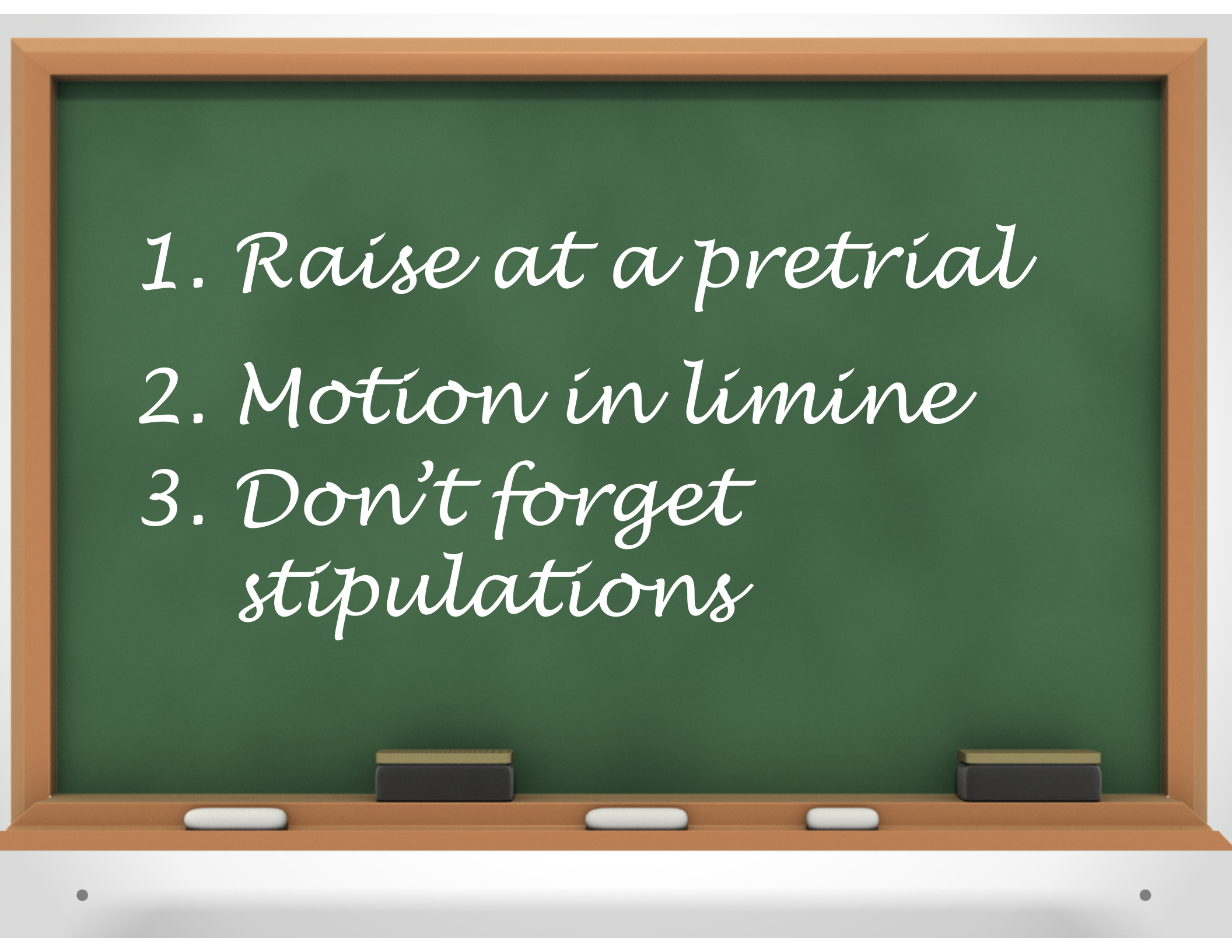

#5 Mine the record
for opposing party admissions!


✓ Petition, Schedules, Statements
✓ Motions/Objections
✓ POCs
✓ Plans
✓ Mo. Op. Reports


#6 Don't forget
Rule 26(a)


1. Rule 26 applies in Adv. Proc./contested matters
2. Mandatory disclosures
3. Scope of discovery
4. Sanctions for failure


#7 Help us!
Seek our guidance

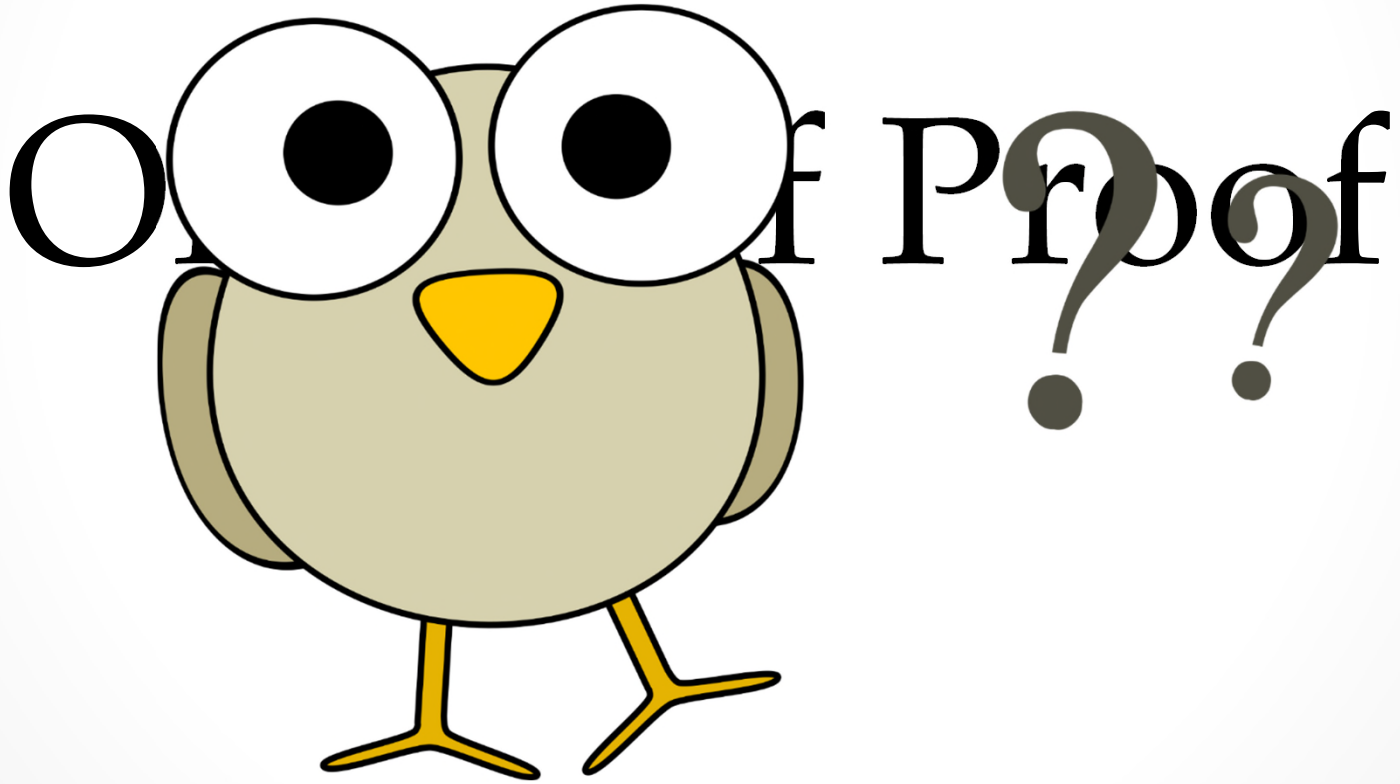

1. Raise at a pretrial
2. Motion in limine
3. Don't forget stipulations

Part II

• • •

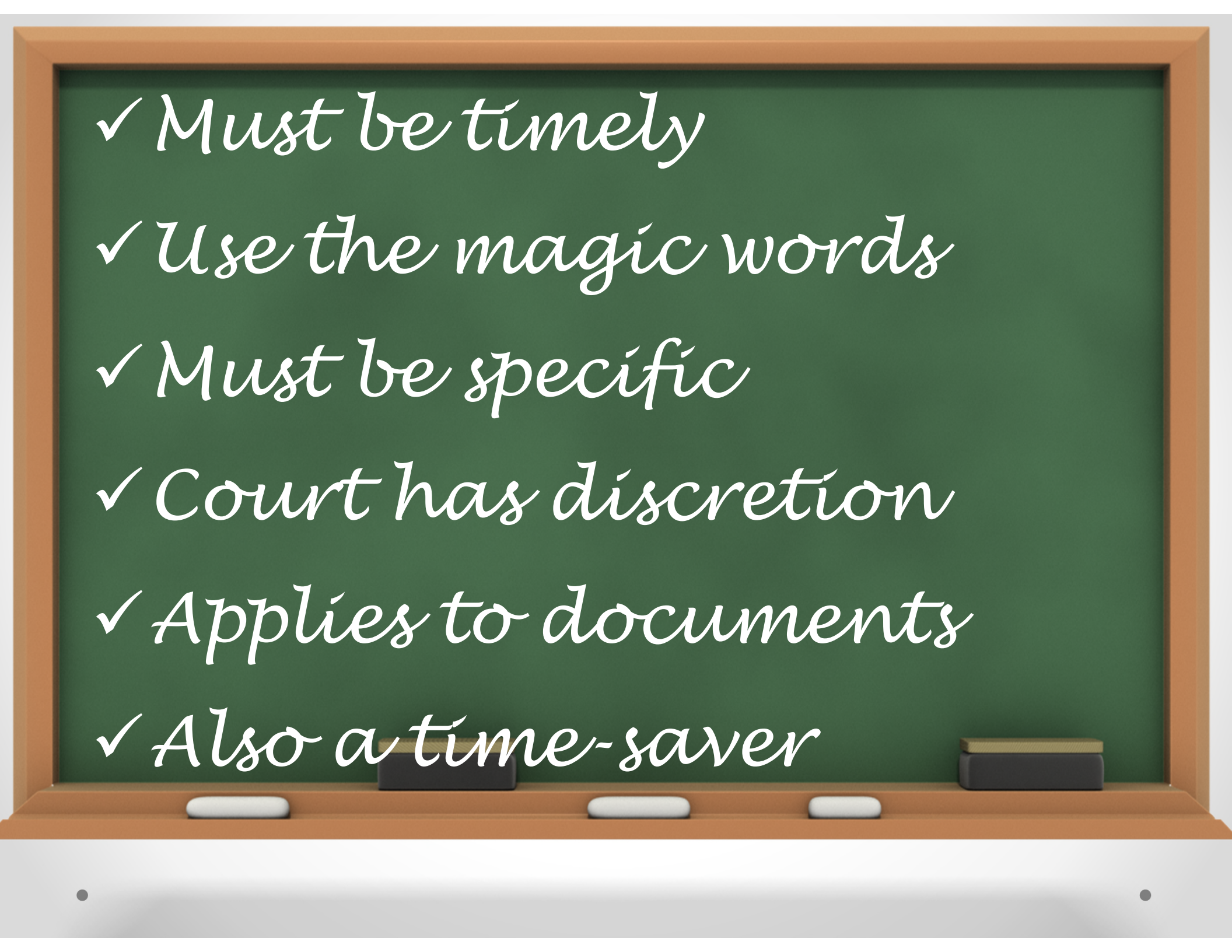
Select Evidentiary Issues

What are Proffers?



FRE 103: Preserving Error




✓ Must be timely
✓ Use the magic words
✓ Must be specific
✓ Court has discretion
✓ Applies to documents
✓ Also a time-saver

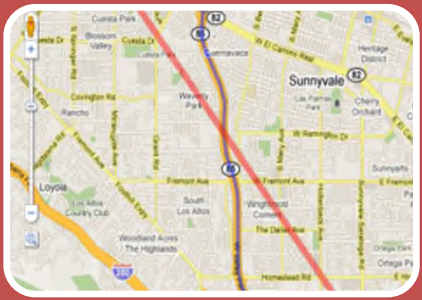
Remember to practice!



FRE 201: Judicial Notice



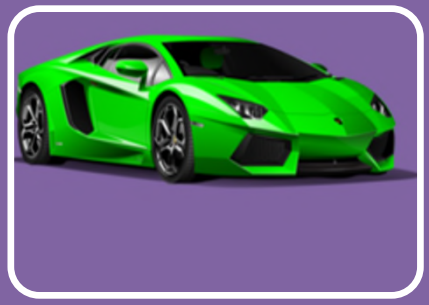
Can I take judicial notice of:



Distance between courthouses/locations?

5	Receipt for Voluntary Petition (Chapter 11)(1 429.25 dollars. (re: Doc #1) (Fulks) (Entered: 04
4 (1 pg)	Application to Pay Filing Fee in Installments Fil (Entered: 04/18/2019)
3 (1 pg)	Individual Chapter 11 Case: List of creditors wh Richard Bluebaum III , Anissa Faye Whittle-Mo
2 (1 pg)	No 'Declaration Re: Electronic Filing' is require (Fulks, Robyn) (Entered: 04/18/2019)
1 (10 pgs)	Chapter 11 Voluntary Petition for Individual. (Fi Disclosure Statement due by 8/16/2019. (Fulk

Court file?



Value of property in the schedules?

FRE 613: Impeachment with Prior Inconsistent Statement

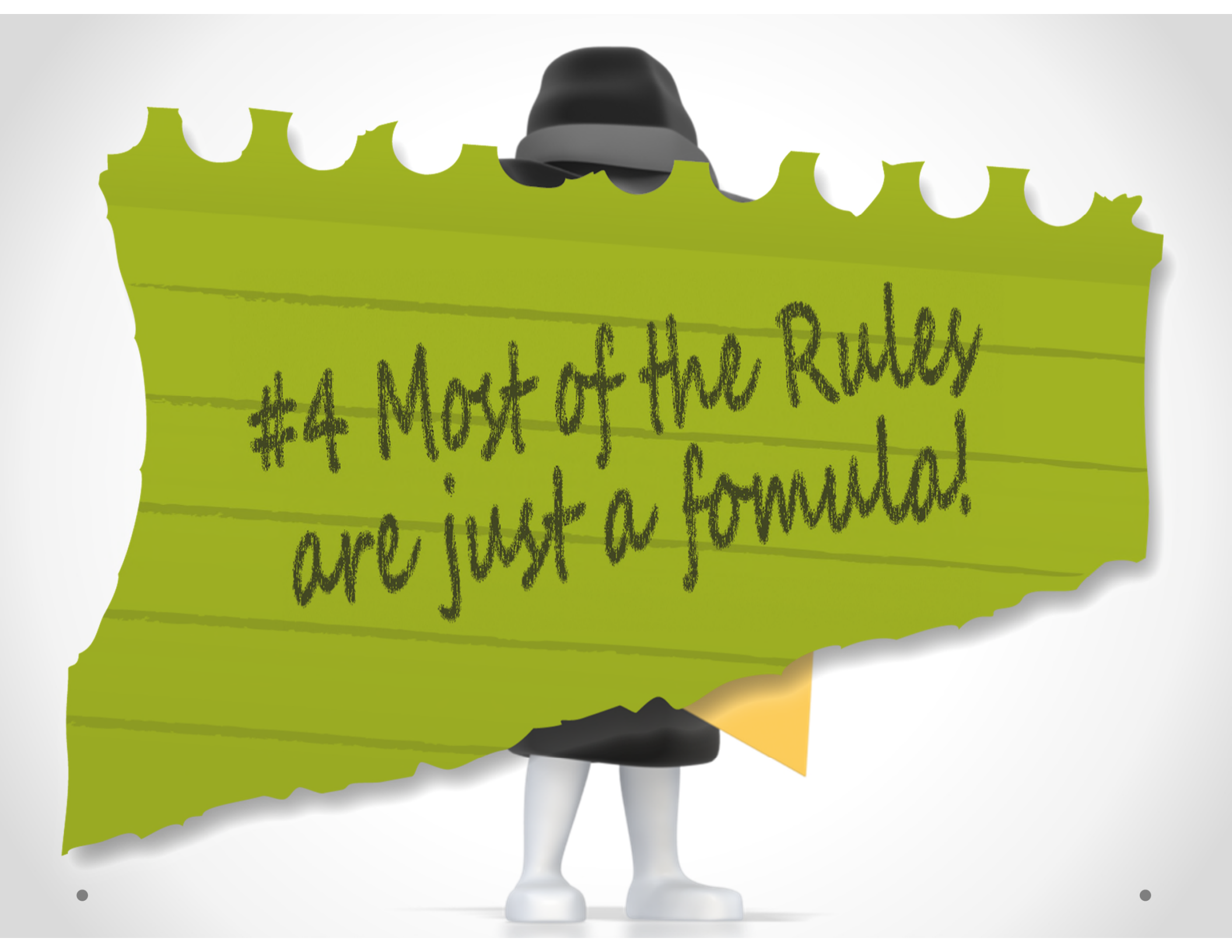






Which are proper impeachment questions?

1. **Well, that's not what you said at your deposition, was it?**
2. **Didn't you tell me the light was red at your depo? Were you lying then or are you lying now?**
3. **Why are you saying the light was green when you previously said it was red?**
4. **Judge, I have a deposition transcript where she said the light was red!**
5. **Your Honor, I'd like to offer into evidence this transcript where she said the light was red**


#4 Most of the Rules
are just a formula!

Impeachment Formula



- Confirm
- Credit
- Confront



Film Credits

Actors

HON. CYNTHIA A. NORTON	Debtor Wendy
JEFFREY MERRITT, Law Clerk to Judge Norton	Trustee Lawyer
JOE PESCI	Cameo Appearance as Wendy's Lawyer

Production

JEFFREY MERRITT, Law Clerk to Judge Norton	Camera
JEFFREY MERRITT, Law Clerk to Judge Norton	Video Editing
JEFFREY MERRITT, Law Clerk to Judge Norton	Sound Editing
JEFFREY MERRITT, Law Clerk to Judge Norton	Closed Captioning
ERICA GARRETT, Law Clerk to Judge Norton	Costume Design
MIRANDA SWIFT, Intern to Judge Norton	Production Assistant

Location

Filmed on location, Charles Evan Whittaker U.S. Courthouse
Kansas City, Missouri

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See You in Court!

