SUBJECT-MATTER INDEX

A

Active voice, 215–216 Administrative notice, as evidence, 44–48 Alien, as term, 3n12 Amendment, of application, 16–17

amendment of, 16–17 confidentiality and, 37

Application

"Are you..." questions, 65–67
Argumentativeness objection, 132, 135–136
Aristotle, 215
Asked and answered objection, 101–104, 133, 138, 183
Authentication, of evidence, 33, 39–43, 129

B

Badgering, 133, 138–139
BIA. See Board of Immigration Appeals (BIA)
Biden, Joe, 1–2
Board of Immigration Appeals (BIA),
1, 3
administrative notice and, 45–47

administrative notice and, 45–47 cross-examination and, 128–129 evidence and, 29–30, 45–47 expert witnesses and, 145, 155, 163 offer of proof and, 115–116 redirect and, 189

Burdens of proof, 4–5

administrative notice and, 45 case analysis and, 22–23 closing argument and, 220 confidentiality and, 37 convictions and, 43 cross-examination and, 191, 194–195

direct examination and, 51–52, 55–56, 65
hearsay and, 35, 112
leading questions and, 95
theory of case and, 232

\mathbf{C}

Case analysis

cross-examination and, 208 direct examination and, 52, 69 experts and, 146 nuts and bolts of, 20–21 objections and, 93, 113–114, 140 proof charts in, 22–28 theory of case in, 19–20 timing of, 21–22 witness preparation and, 232

Case Flow Processing, 9
Cases. See removal cases
Citations, in closing argument, 220–
221

Closing argument

active voice in, 215–216 argumentation in, 209–213 case analysis and, 20–21 citations in, 220-221 concluding, 220 conclusions in, 209–213 cross-examination and, 194–197, 199, 201, 206 emphasis in speech in, 224–225 enunciation in, 224 eye contact with judge during, 223 facts in, 209–213 gestures in, 225 hand gestures in, 225 objections and, 132, 136 opening statement vs., 15 OPLA's best arguments in, 219 organization in, 216–220

persuasion in, 215
pitch of voice in, 224
posture in, 225
practical tips for delivery of, 223–226
redirect and, 187–188
requesting, with judge, 222–223
respondent's arguments in, 218–219
roadmap of argument in, 217–218
standing for, 225
storytelling in, 213–216
tempo in, 224
themes in, 214–217
voice in, 224–225
volume of voice in, 224
weaknesses in, 219

Clothing, of witnesses, 229–230 Completeness, 33 Conclusions

in closing argument, 209–213 facts vs. evidence vs., 23–26

Confidentiality, evidence and, 36–37 Confusing questions, 134–136 Constitution, U.S., 1 Convictions, proof of, 42–43 Credibility

explaining importance of, to witness, 233–234 importance of establishing, 5–7 memory and, 83

Cross-examination

closing argument and, 194–197, 199, 201, 206
common OPLA witnesses in, 191–194
conducting of, 191–208
constructive, 195–196
content of question in, 199–201
destructive, 196–197
of expert witnesses, 208
form of question in, 197–199
impeachment in, 204–208
length of question in, 201–202
mechanics of, 194–195
by OPLA, 39, 128–144, 178–179 (See also redirect examination)

organization in, 202–204 preparing witness for, 244–247 purpose of, 195–197 questions in, 197–202

D

Department of Homeland Security (DHS), 1–2, 1n3. See also Office of the Principal Legal Advisor (OPLA) **DHS.** See Department of Homeland Security (DHS) "Did you..." questions, 65–67 **Direct examination** avoiding poor, 65–74 commenting on testimony in, avoiding, 72–73 double negatives in, 70 exhaustion of topic in, 55 exhibits in, 74–76 foundational questions in, 58–59 headnotes in, 52–55 laying foundation in, 59–60 listening in, 62–63 long questions in, 71–72 looping in, 61-62 negative facts in, eliciting, 63-64 negatives in, 70 open-ended questions in, 56–57 organization of, 51–55 preparing respondent for, 234–236 questioning techniques in, 55-63 question preparation for, 80–81 refreshing recollection in, 85-89 rehashing, in redirect, 183–185 showing documents/items to witness in, 87–90 taglines in, 60–61 techniques, 52 wide-open questions in, 69 **Double negatives, in direct** examination, 70

Dress, of witnesses, 229–230

Due process, 29–30 **Due Process Clause,** 29

 \mathbf{E}

Emphasis, in speech, in closing argument, 224–225 Enunciation, in closing argument, 224 EOIR. See Executive Office for Immigration Review (EOIR) Evidence

administrative notice as, 44–48 authentication of, 33, 39–43, 129 best evidence rule, 124-125 citation, in closing argument, 220–221 confidentiality and, 36–37 convictions as, 42–43 demonstrative, 32 documentary, 31–32, 121–130 facts not in, objection for, 111–112, 137–138 facts vs., vs. conclusions, 23–26 Federal Rules of Evidence, 29, 31–33 hearsay, 33–36 in Immigration Court Practice *Manual*, 48–50 marking of exhibits into, 15 objection to mischaracterization of, 104–105, 136–137 opinion testimony as, 38 original documents "rule" and, 124– personal knowledge as, 38 privilege and, 33, 36-37 proof charts and, 23–26 relevance of, 33–34 rules of, 29-50 soft impeachment and, 76–80

Executive Office for Immigration Review (EOIR), 1

evidence and, 48–50 registration, 7–8

Executive Office for Immigration Review (EOIR) Immigration Benchbook, 29–30 Exhaustion of topic, in direct examination, 55 Exhibits, in direct examination, 74–76 Expert witnesses

avoiding jargon with, 165 Board of Immigration Appeals and, 144 categories of, 166–173 challenging proposed, 155–157 conclusions of, 166 conversational testimony with, 163cross-examination of, 208 eliciting opinion of, 161–166 establishing basis of opinion of, 162– 163 in Federal Rules of Evidence, 33 on home country conditions, 166–169 introducing, 148–150 legal conclusions by, 174–175 on medical diagnoses, 167, 171–173 on mental health, 167, 169-171 opinions they cant give, 173–175 planning for testimony of, 146 qualifying, as expert, 146–157 questions in qualification of, 150–155 "teaser" and, 149-150 tender and, 158–161, 173–174

Eye contact, 223

F

Facts

in closing argument, 209–213 conclusions *vs.*, 73–74 *vs.* evidence *vs.* conclusions, 23–26 negative, in direct examination, 63–64 not in evidence, objection for, 111–112, 137–138

31–33, 43, 95, 130, 197–198

Fifth Amendment, 29, 36–37

Foreign records, in authentication of evidence, 41–42

Foundation, objection for lacking, 111–112, 141–142

FDE: See Federal Pulse of Excidence

Federal Rules of Evidence (FRE), 29,

FRE. See Federal Rules of Evidence (FRE)

G

Gestures, in closing argument, 225 *Giglio* request, 193–194

H

Hand gestures, in closing argument, 225

Headnotes

in cross-examination, 196, 202–204 in direct examination, 52–55, 69 expert witnesses and, 146, 150–154, 164 objections and, 99–102 in redirect examination, 181–182, 184

Hearing. See also cross-examination; direct examination; redirect examination

conduct of, 14–18 preparing respondent for OPLA's role in, 244–247

Hearsay, 33–36, 38

indicia of reliability and, 125–126, 128 objections, 112–113, 143–144

Home country conditions, 6, 26, 45, 159–160, 167–169

I

ICE. See Immigration and Customs Enforcement (ICE)

ICPM. See Immigration Court Practice Manual (ICPM)

IIRAIRA. See Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA)

IJ. See immigration judges (IJs)

Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA), 45

Immigration and Customs Enforcement (ICE), 1–2, 140, 193–194

Immigration and Nationality Act (INA), 2–6, 30–32, 36, 42–43, 116, 128, 144, 148, 194

Immigration Court Practice Manual (ICPM), 3

conduct of hearing in, 14 evidence in, 48–50 experts and, 147 objections in, 121, 124 redirect and, 189 witness lists in, 12

Immigration judges (IJs), 1

administrative notice and, 44–45 burdens of proof and, 4 closing argument request to, 222–223 clothing and, 229–230 in credibility assessment, 5–7 disallowing refreshing of memory, 90 eye contact with, in closing argument, 223

headnotes and, 54 not allowing redirect, 188–189 opening statement and, 15 as vindicator, 213–214 witness interaction with, 231–232 witness list and, 12 witness memory and, 83

Impeachment, witness, 33, 76–80, 204–208

INA. See Immigration and Nationality Act (INA)

Indicia of reliability, 125-128

Interpreter, 236

J

Jargon, with expert witnesses, 165. See also legalese **Judges.** See immigration judges (IJs)

K

Knowledge, personal

as evidence, 38 objection to lack of, 105–107, 141

L

Law. See also specific laws citations, in closing argument, 221 in proof chart, 27–28 sources of, 2–4 substantive, essentials, 2–7

Leading questions, 33, 56–57, 95–97, 133-134

Legal conclusions, by expert witnesses, 174–175

Legalese, in redirect, 185. See also jargon

Life cycle, of removal case, 8–9 Listening, in direct examination, 62–

Long questions, 71–72 Looping, 61-62

M

Marking, of exhibits into evidence, 15 Marks, Dana Leigh, 17 **Matter of Y-I-M,** 6–7

Medical diagnoses, expert witnesses **on,** 167, 171–173

Memory

credibility and, 83 in direct examination, 85–90 documents/items to refresh, 87–90 preparing to refresh, 90 refreshing, 83–91, 243–244 rules for refreshing, 84–90 soft impeachment and, 79–80 strategies for respondents with poor, 242-243

Mental health, expert witnesses on, 167, 169–171 Mischaracterization of evidence **objection**, 104–105

N

Narrative, objection to calling for, 98– Negative facts, in direct examination, **Negative inference,** 137–138, 179–181 Negatives, in direct examination, 70 Noncitizen, as term, 3n12 Non-lawful permanent resident (non-LPR)

country condition experts and, 167 direct examination and, 53 in proof charts, 23 relevance objections and, 113 in theory of case, 20 topic exhaustion and, 55

Note-taking, in cross-examination, 180 - 181Notice to Appear (NTA), 8, 12, 16

0

Objections

argumentativeness, 132, 135–136

asked and answered, 101–104, 133, Office of the Principal Legal Advisor **(OPLA),** 1–2, 9 138, 183 assuming facts not in evidence, 111case analysis and, 20–21 112, 137–138, 141–142 common witnesses of, 191–194 badgering, 133, 138–139 cross-examination, 39, 128–144, 178– benefits of making, 119–120 179 calls for narrative, 98–101 exhibits and, 15 calls for speculation, 107–109, 142– experts and, 147-148, 155-156 143 hearsay and, 35-36 common, 94–114 objecting to documentary evidence of, compound, 97-98 121 - 130to compound questions, 134 objections by, 93–94 to confusing questions, 134–136 redirect examination and, 177–178 in cross-examination, 178–179 untimely filing by, 121–124 to cross-examination by OPLA, 130– **Open-ended questions,** 56–57, 66–67 **Opening statements,** 14–15, 210–211, declarant not subject to cross-225 examination, 128–129 **Opinion testimony, 38** to documentary evidence, 121 **OPLA.** See Office of the Principal Legal to form of question, 95–105, 133–139 Advisor (OPLA) hearsay, 112-113, 143-144 Original documents "rule," 124–125 improper lay witness opinion, 109– 111, 143 lack foundation, 111–112 P lack of authentication, 129 lack of personal knowledge, 105-107, Personal knowledge 141 as evidence, 38 lacks indicia of reliability, 125–128 objection to lack of, 105–107, 141 to leading questions, 95–97, 133–134 Persuasion, in closing argument, 215 making, 119–144 mischaracterizes evidence, 104-105, Pitch, of voice, in closing argument, 224 136–137 Police reports, 35 offer of proof and, 115–116 Post-traumatic stress disorder preparing for, 93-94 (PTSD), 79–80, 170–171 preparing respondent for, 244 privileged communication, 140-141 Posture, in closing argument, 225 **Primacy**, 51, 183, 216 relevance, 113-114, 140 Privilege, evidence and, 33, 36–37 responding to, 93–117 **Privileged communication, objection** strategic, 144 for, 140–141 to substance of question, 105–114, **Proof charts,** 22–28, 113, 146 139-144 **PTSD.** See post-traumatic stress sustained, options in case of, 114–116 disorder (PTSD) unfair prejudice, 130 to vague questions, 134–136

Offer of proof, 55, 90, 115–116

Q

Questions

to avoid, 65–72 compound, 134 confusing, 134-136 in cross-examination, 197-202 in direct examination, 55–63, 65–74 in expert qualification, 150–155 foundational, 58-59 laying foundation for, 59-60 leading, 33, 56-57, 95-97, 133-134 long, 71–72 objections to form of, 95–105, 133– objections to substance of, 105–114, 139-144 open-ended, 56–57, 66–67 preparation of, for direct examination, 80 - 81question starters, 57–58 in redirect, 182–183, 187–188 rephrasing, soft impeachment and, 77– that asks for conclusions vs. facts, 73– 74 vague, 134-136 wide-open, 69

R

Recency, 51, 183, 216 Records, official, in authentication of evidence, 39–42

foreign, 41–42

Redirect examination

goal of, 179–181 headnotes in, 181–182 judge not allowing, 188–189 legalese in, 185 negative inferences and, 179–181 note-taking during cross and, 180–181 preparing respondent for, 247–248 questions in, 182–183, 187–188 rehashing direct in, 183–185 scope of, 177–178, 188 too many questions in, 187–188 without plan, 185–187

Relevance

of evidence, 33–34 objections for, 113–114, 140

Removal cases

conduct of hearing in, 14–18 life cycle of, 8–9 personnel involved in, 10–11

S

Soft impeachment, 76–80 Speculation, objection to calling for, 107–109, 142–143 Standing, for closing argument, 225 Storytelling, in closing argument, 213–216

T

Taglines, foundational, 60–61 Tempo, in closing argument, 224 Tenders, with expert witnesses, 158– 161, 173–174 **Testimony.** See also evidence; expert witnesses; witnesses commenting on, in direct examination, 72 - 73conversational, with experts, 163–164 implausible, 239-242 inconsistent, 80, 83 mischaracterization of prior, objection for, 136–137 opinion, 38 telephonic, 12–13 video, 12–13 Themes, in closing argument, 214–217

Theory of case, 19–20, 120, 232–233

U

Unfair prejudice, objection for, 130

V

Vague questions, 134–136 Voice, in closing argument, 215–216, 224–225 Volume, of voice, in closing argument, 224

W

"Were you..." questions, 65–67 "What happened next", 67–69 Wide-open questions, 69 Witnesses. See also cross-examination; direct examination; expert witnesses addressing implausible testimony of, 239-242 calling, 17 dress for, 229–230 explaining "basics" to, 227-232 explaining format of hearing to, 230– 231 explaining importance of credibility to, 233–234 explaining internet-based hearings to, 229 explaining logistics to, 228–229 explaining substance of claim to, 232– 234 explaining theory of case to, 232–233 explaining "the record" to, 234 in Federal Rules of Evidence, 33 immigration judge and, explaining interaction with, 231–232 impeachment of, 33, 76–80, 204–208 interpreter testimony, 236 lay, objection to opinion of, 109–111, 143

list, 12 of OPLA, common, 191–194 preparation, 227–250 preparing for cross-examination, 244– 247 preparing for decision, 248–249 preparing for direct examination, 234– 236 preparing for objections, 244 preparing for OPLA role in hearing, 244–247 preparing for redirect, 247–248 refreshing memory of, 83–91, 243– 244 telephonic testimony of, 12–13 types of, 11–13 video testimony of, 12–13