



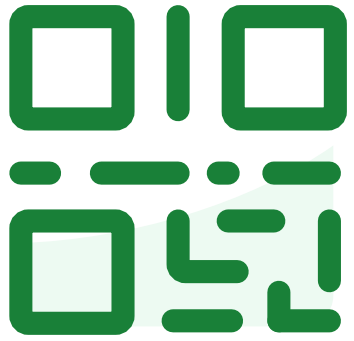
SACRAMENTO COUNTY BAR ASSOCIATION

TRIAL ADVOCACY CONFERENCE · OCTOBER 1, 2026

Using Discovery at Trial

Avoiding Mistakes and Maximizing Persuasive Impact

Hon. Lauri Damrell



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How many civil cases have you taken to trial?



ROADMAP

What We'll Cover

1



**Governing
Framework**

2



Pretrial Preparation

3



Trial Strategy



I

The Governing Framework

How each discovery device comes into evidence at trial



FRAMEWORK — A

Depositions

- Impeachment (CCP § 2025.620(a))
- Adverse party — any purpose (subd. (b))
- Unavailability (subd. (c))
- Experts on video (subd. (d))
- Completeness (subd. (e))





FRAMEWORK — B

Requests for Admission: Conclusive, Not Weighed



Depositions & Interrogatories

Evidence to be weighed by the jury like any other testimony.



Requests for Admission

Conclusively established against the admitting party — no contrary evidence is admissible absent leave to withdraw or amend.



FRAMEWORK — C

Interrogatory Answers

- Usable only against the responding party
- Availability of responder is no objection
- Weighed, not conclusive





FRAMEWORK — D

The Evidence Code Backbone

- § 1220 — party admissions
- § 1235 — prior inconsistent statements
- § 771 — refreshing recollection
- Admissions could prove the whole case





II

Pretrial Preparation

Targeted issues that cause trouble at trial if missed





**Do you currently build a proof matrix
when litigating a case?**

NEGLIGENCE SERIES

400	Negligence	
401	Basic Standard of Care	
405	Comparative Fault of Plaintiff	
418	Presumption of Negligence per se	
426	Negligent Hiring, Supervision, or Retention of Employee	
430	Causation: Substantial Factor	
431	Causation: Multiple Causes	

MOTOR VEHICLES AND HIGHWAY SAFETY SERIES

700	Basic Standard of Care	
706	Basic Speed Law (<u>Veh.</u> Code, § 22352)	
707	Speed Limit	
709	Driving Under the Influence	

Claims Matrix

Claim/Element	Plaintiff's Argument	Possible Defense	Witnesses	Documents	Possible Objections/Notes
NEGLIGENCE (CACI 400)					
Bob Smith was negligent					
Per se: not driving at reasonable speed (CACI 706, 707)					
Per se: under the influence (CACI 709)					
Paul Jones was harmed					
Linda Jones was harmed					
Bob Smith's negligence was substantial factor in <i>causing</i> harm (see also CACI 3927 and 3928)					
COMPARATIVE FAULT (CACI 405)					
Paul Jones was negligent					
Paul Jones's negligence was a substantial factor in causing his harm					



PRETRIAL — A

Trial-Proof Your Written Discovery

- Treat verified response like sworn trial exhibit
- No duty to update, but you have right to supplement
- Deeming an initial answer binding requires prejudice + no justification + meet-and-confer





PRETRIAL — B

Lock In Your Expert Depositions

- Protect your own expert: concise and complete declaration
- Box in opposing expert: "Are these your only opinions?"
- Object by motion in limine, not trial ambush





Video Depositions: Reserve the Right in the Notice

- Notice must reserve right
- Written notice of intent to offer
- Usable even if witness is available to testify





PRETRIAL — C

Serve Supplemental Discovery Before It's Too Late

- No duty on the other side to update stale answers
- The fix is yours: §§ 2030.070 & 2031.050
- Serve final discovery ~60 days before trial





PRETRIAL — D

Evidence Sanctions: Know the Real Test

- Mere failure to produce is NOT enough
- Be ready to prove you asked for it
- Requires: a violated court order OR willfully concealed or false answer
- An evasive answer → move to compel





Waiver by Failing to Include on Trial Exhibit/Witness List

- No single statute makes omission automatically fatal
- LR 2.98: requires meet and confer, but no express exclusion sanction (but see LASC Local Rules 3.25(f)(1), 3.52)
- Real risk: the court's inherent authority, or willful misuse





III

Trial Strategy

Using discovery effectively to maximize persuasive impact





Finalize Your Proof Matrix

- Element → document → authenticating witness
- Plan authentication now; documents don't authenticate themselves
- Use it to spot gaps, MILs, and sequencing



Trial Exhibit Worksheet

Exhibit No.	Description	Who Will Authenticate?	Potential Objections/Notes
1	Sutter Medical Center ER Records – Intake notes, physician and nurse reports, imaging orders, and initial diagnosis.		
2	MRI Scans of Paul Jones' Cervical Spine – Radiologist's report confirming herniated discs.		
3	Records from Dr. Benjamin Adler (Orthopedic Surgeon) - Pre - op evaluation, surgical notes, post - op follow - up reports.		
4	Physical Therapy Records - Session notes and functional assessments from Dr. Marcus El - Amin.		
5	Medical Bills and Invoices – All treatment costs from ER to surgery and rehabilitation.		
6	Neck Surgery Consent Form – Signed by Paul Jones before his October 2024 surgery.		
7	Paul Jones' Payroll Records from Bank of Sacramento – Before and after the accident to establish lost income.		

Witness Worksheet

Witness Name	Offered By	Description	Device to Secure Appearance (if any)	Documents	Possible Objections/Notes
Paul Jones		Plaintiff; recollection of accident, nature and extent of injuries/damages			
Linda Jones		Paul's wife; will testify about the impact of the accident on Paul's life and her own damages from quitting her job			
Bob Smith		Defendant; recollection of accident and events leading up to accident			
Officer Dana Reyes		First responder at the scene; will testify about accident scene, observations, and possibly field sobriety assessment (if any).			
Tina Morales		Bystander who witnessed the crash from a bus stop at the intersection.			



Build a Witness Notebook

- Discovery responses + transcript, tabbed to expected testimony
- Outline annotated with exact page-and-line cites





TRIAL STRATEGY — B

Lock In the Case With RFAs

- Narrow issues and remove uncontested facts before jury selection
- Deemed admissions available on nonresponse
- Read admitted RFAs into your case-in-chief





True or false: you can impeach a witness with their denial of a request for admission.



TRIAL STRATEGY — B

You Cannot Impeach With an RFA Denial

- A denial is a litigation position, not a fact
- Not admissible, even as a prior inconsistent statement
- *Victaulic Co. v. Am. Home Assurance Co.*





Preserve Cost-of-Proof Sanctions Leverage

- § 2033.420: recover fees for proving a wrongfully denied fact
- Keep a running "denied fact / trial proof" log
- File the motion promptly





III-C



Using Depositions Effectively at Trial

Adapted in part from Hon. Mark V. Mooney, L.A. Superior Court, CAALA Advocate, June 2022



DEPOSITIONS — OVERVIEW

Three Ways In, One Framework

- Unavailable witness — § 2025.620(c)
- Adverse party — § 2025.620(b)
- Impeachment — § 2025.620(a)





DEPOSITIONS — Unavailable Witness

Practice Tips for Unavailable Witnesses

- Ask deponent's city of residence at depo
- Review transcript carefully, select only needed portions
- File/serve excerpts in advance; don't wait until morning of trial to provide page/line designations



Reading the Adverse Party's Deposition

- No unavailability or impeachment purpose required
- Substantive evidence: can carry a prima facie case
- Follow the 4-step ritual, every time →

- 1) Request permission to read
- 2) Identify page/line
- 3) Let opposing counsel object
- 4) Wait for judge's go-ahead



DEPOSITIONS — DEFENDING

Defending Use of Your Own Client's Deposition

- Don't be dramatic: it signals importance to the jury
- There are few real grounds to keep § 2025.620(b) testimony out
- If it's coming in anyway, say "no objection" promptly





Have you ever tried to impeach a witness and it completely fell flat?



DEPOSITIONS — EVIDENCE CODE § 770

§ 770: The Key to Clean Impeachment



Subdivision (a)

The witness is given the opportunity to explain or deny the statement.



Subdivision (b)

Satisfied simply because the witness has not yet been excused from giving further testimony in the action.



DEPOSITIONS — MECHANICS

The Mechanics of Impeachment

- Lay basic foundation (date, oath, opportunity to review)
- Read the inconsistent testimony under § 770(b), then move on
- Don't confuse this with refreshing recollection (§ 771)



DEPOSITIONS — THE PERSUASIVE FRAME

Commit, Credit, Confront

1

Commit

Pin the witness to
today's trial testimony.

2

Credit

Same oath, same
counsel, full opportunity
to review.

3

Confront

Read the verbatim
page-and-line, then
move on.



DEPOSITIONS — JUDGMENT CALLS

Timing, Materiality, and Presentation

1

Timing is unforgiving once a witness is excused

2

Not all impeachment is created equal

3

Presentation is everything — pre-mark and index



DEPOSITIONS — PRESENTING EXCERPTS

Visual Reinforcement, Sequencing, and Completeness

- Blown-up excerpts or synced video/transcript outperform recitation
- Space impeachments across cross; don't front-load them
- Reading part invites the response; read enough for context





III-D

Other Trial Tips

General tactics that apply across the length of the trial





OTHER TRIAL TIPS

Turn the Opponent's Witness Into Your Witness

- Cross isn't only for discrediting
- Use the adverse witness to tell your own story
- Example: the records custodian who authenticates your exhibit





OTHER TRIAL TIPS

Corroborate, Don't Just Contradict

- Interrogatory answers aren't only for impeachment
- Use them where they align with your theory
- Same witnesses, dates, or figures the other side already named





OTHER TRIAL TIPS

Control the Expert Battle Both Ways

- Your own expert: refresh with the deposition (§ 771) if testimony drifts
- Opposing expert: lock in scope before probing weaknesses (§ 2025.620(a))





OTHER TRIAL TIPS

Don't Overuse Discovery and Lose the Jury

- Long verbatim readings without context bury the point
- Discovery is a tool for a specific persuasive moment
- Use tight excerpts and explain why each one matters





Thank You

Questions & Discussion