



Object and Respond with Authority

1,800 Recent Cases

Ideally suited to the demands of trial and last-minute trial preparation, *California Objections* provides a time-saving alternative to lengthy treatises. Its concise but well-supported text puts the rules and cases at your fingertips. And its practical orientation guides you through the realities of evidentiary battles.

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California Objections is more than an evidence book. In addition to evidentiary objections, you'll find objections to jury selection, opening statement, closing argument, jury charges, judicial conduct and more. Coverage of all significant trial objections—from jury selection through directed verdict—gives *California Objections* vastly greater practical value than an evidence-only book.

Delivers More than Objections

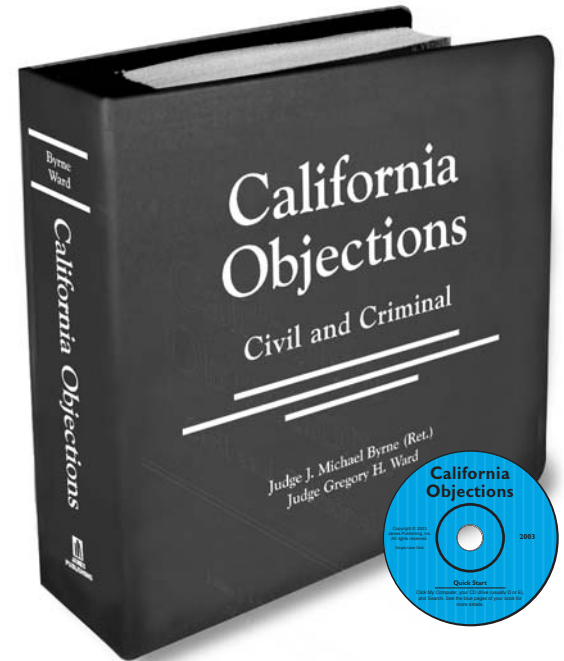
The scope and breadth of *California Objections* far exceeds the mechanics and arguments of making and meeting objections. Rules, definitions, distinctions, scope, weight, advice from the bench, examples, and procedures are provided for key evidentiary issues. Principles are extensively supported with case authority, and the underlying scholarship will impress you.

From pretrial proceedings through expert testimony to summation, the practical coverage in this new trial practice book will quickly earn its inexpensive keep.

Most evidentiary rulings are within the judge's discretion, and are made in seconds. Bad rulings are almost never reversible. As a result, victory usually goes to the lawyer who can prevail on the big objections in the heat of battle.

The key to winning evidentiary debates is objecting and responding with arguments and supporting authority at your fingertips. That is where Judges Gregory Ward and Michael Byrne's *California Objections* can help.

It uses a courtroom-friendly format to cover **125 objections** with clear and concise explanations, trial-tested tips, persuasive arguments, and supporting cases.



The free full-text CD requires no installation before use, and may be searched by key words, case names, or topics.

Book and CD cost \$99.

Designed for Eve-of-Trial and Courtroom Use

When time is short, *California Objections* delivers quickly with:

- ◆ Pattern objection language
- ◆ How to respond when faced with the objection
- ◆ Comments on how the rules apply
- ◆ Practice tips and cautions with detailed advice from the bench
- ◆ Arguments and strategies to support your objection
- ◆ Tactics and arguments to counter your opponent's objection
- ◆ Recent case cites, with a synopsis of each case

Sample pages and table of contents inside...

Organized for Quick Access

§13:10

California Objections

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I. Principles

§13:10 Applicable Rules

All of the items discussed in this chapter are defined as writings under Evid. Code §352. The rules for admissibility and authentication of writings are outlined in Ch. 14, and are applicable to the foundation needed to admit the evidence discussed in this chapter. The cases cited in this chapter indicate that the trial court has broad discretion to admit these types of evidence, and that one type of reproduction is treated the same as another. See *People v. Hart* (1999) 20 Cal. 4th 546, 615-616, 85 Cal. Rptr. 2d 132 (foundation for pictures and crime scene video). The evidence should be admitted if it could assist the jury in understanding and evaluating the evidence. *People v. Ramos* (1997) 15 Cal. 4th 1133, 1169-1170, 64 Cal. Rptr. 2d 892. Issues of relevance and materiality under Evid. Code §§210 and 352 are consistent themes in most of the cases cited. For objecting on the basis of relevance generally, see Ch. 8; for objecting that evidence is more prejudicial than probative, cumulative, will unduly consume time, etc. under Evid. Code §352, see Ch. 8.

If received into evidence, the items are admitted as independent evidence for any legal purpose, including corroboration or to establish a foundation such as a corpus delicti. *People v. Ochoa* (1998) 19 Cal. 4th 353, 411-413, 79 Cal. Rptr. 2d 408.

Many of the cases cited in this chapter are opinions resulting from death penalty trials. If the prosecution can have reproductions admitted in a death penalty trial, an advocate in a civil case should be able to have them admitted in a civil trial in which a person's life or liberty is not at stake. However, the civil bar does not regularly make adequate use of these cases in argument and thereby limits the impact of their presentations.

§13:20 Demonstrative Evidence Distinguished

Demonstrative evidence is prepared for use in the courtroom as opposed to physical evidence, such as a photograph of the murder scene. Demonstrative evidence is relevant as a visual aid to explain or illustrate testimonial evidence. Photographs and audio and

video recordings can be demonstrative evidence as well as substantive evidence. For demonstrative evidence, see Ch. 16.

II. Objections

§13:30 Photographs and X-Rays

OBJECTION, YOUR HONOR. THE PHOTOGRAPH IS INADMISSIBLE BECAUSE IT [LACKS ADEQUATE FOUNDATION] [IS INACCURATE OR MISLEADING] [IS IRRELEVANT] [IS CUMULATIVE] [IS UNDULY PREJUDICIAL].

COMMENTS

Generally, photographs are admissible if they tend to prove or disprove a disputed or material fact, to illustrate or elucidate other relevant evidence offered or to be offered. Evid. Code §210 (definition of "relevance"); *People v. Hart* (1999) 20 Cal. 4th 546, 615-616, 85 Cal. Rptr. 2d 132; *People v. Scheid* (1997) 16 Cal. 4th 1, 13, 65 Cal. Rptr. 2d 348. If otherwise admissible, photographic evidence should be excluded only if its sole purpose is to arouse the emotions of the jury and to prejudice the party against whom they are offered. See Evid. Code §352 (discussed in Ch. 8); *People v. Mendosa* (2000) 24 Cal. 4th 130, 171, 99 Cal. Rptr. 2d 485 (photographs of murder victim at scene showing bullet wounds were admissible). Photographs including x-rays admitted into evidence may be viewed by the jury just like other exhibits. *Sinz v. Owens* (1949) 33 Cal. 2d 749, 759, 205 P.2d 3.

The trial court has broad discretion to admit or exclude relevant photographs. *Akers v. Miller* (1998) 68 Cal. App. 4th 1143, 1147, 80 Cal. Rptr. 2d 857. The pictures will not be excluded merely because they are cumulative to testimony if they are relevant to corroborate the oral evidence. *People v. Smithley* (1999) 20 Cal. 4th 936, 973-974, 80 Cal. Rptr. 2d 243.

To lay a proper foundation for admissibility, the proponent must show that the photographs are fair and accurate representations of the persons, places, scenes, or subjects portrayed, although they need not be completely accurate. The existence of possibly conflicting scenes goes to the weight of the photographic evidence rather than its admissibility.

Pattern Objections

Model language for 125 objections. Big headings and logical organization take you to the right objection in seconds.

Comments

The application, scope, and purpose of the governing rules in straightforward language.

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Photographs, Recordings & X-Rays

§13:30

People v. Garcia (1988) 201 Cal. App. 3d 324, 329, 247 Cal. Rptr. 94. The exact date and place portrayed in photographs need not be established for the admission of the pictures if witnesses can testify that they illustrate conditions or objects relevant to the trial. *Smith v. ACandS, Inc.* (1994) 31 Cal. App. 4th 77, 92, 37 Cal. Rptr. 2d 457.

A person with the requisite knowledge of the facts may authenticate a photograph by identifying the subject of the photograph and verifying that it accurately represents the matter depicted. *People v. Bowley* (1963) 59 Cal. 2d 855, 859, 382 P.2d 591. Under some circumstances, as, for example, when a high degree of precision is involved, it may be useful to the trier of fact for the witness to describe exactly how the photograph was taken to determine its accuracy. In most cases, however, anyone familiar with the item represented may testify to the accuracy of the photograph; the witness need not know when or how the photograph was taken. *People v. Doggett* (1948) 83 Cal. App. 2d 405, 409, 188 P.2d 792.

Medical X-rays, CT scans, and other diagnostic

(1992) 2 Cal. 4th 489, 524, 7 Cal. Rptr. 199. If the pictures were taken close up to the victim or showed contortions or a pool of blood, the court would have to weigh their gruesomeness and the potential effect upon the jury. *People v. Scheid* (1997) 16 Cal. 4th 1, 13, 65 Cal. Rptr. 2d 348.

Photographs or any evidence may be used by a proponent even if the other side offers to stipulate to the fact or issue justifying the item because the question the jury might otherwise have had. *People v. Ochoa* (1998) 19 Cal. 4th 622, 677, 55 Cal. Rptr. 2d 26. A stipulation or a representation may not be used to limit an advocate's ability to "present a more colorful story with descriptive richness." *People v. Scheid* (1997) 16 Cal. 4th 1, 16, 65 Cal. Rptr. 2d 348. Both of the cases cited above involved an evaluation of prejudicial effect and cumulativeness under Evid. Code §352; see Ch. 8.

MAKING THE OBJECTION

- Before stating the objection, consider asking for an in limine examination regarding the proffered photograph to determine if there are any inaccuracies or misleading features.
 - In assessing whether to object to a photograph, consider the following factors:
 - Does it distort the size, distance, or relationships of objects depicted?
 - Is it a complete picture of the area surrounding the object or of the lighting at the time of the event?
 - Were changes made to or at the scene between the time of the incident and the time the photograph was taken?
 - Has it been magnified or reduced in size so as to create a distortion? Was a zoom or wide-angle lens used that might create a distortion?
 - Is it relevant to a material issue in the case?
 - Is it cumulative or prejudicial pursuant Evid. Code §352?
 - Was it requested but not produced during discovery pursuant to Code Civ. Proc. §2031 or Pen. Code §§1054.1, 1054.3?
- If any of these considerations are present, or if introduction of the photograph will be prejudicial to your case, request an in limine hearing. The court may resist delaying the trial to find the photographer. A voir dire of the witness through whom the exhibit is being introduced is usually sufficient. However, if

expert witness usually displays the X-ray, CT scan, or other image using a shadow box, and explains the meaning of the image to the jury. Since X-rays are internal photographs, they are subject to the same foundation rules as other photographs, and are admissible when explained by a competent witness. *Sinz v. Owens* (1949) 33 Cal. 2d 749, 751, 205 P.2d 3.

When inflammatory or gruesome photographs are relevant to a material issue at trial, the court has broad discretion to determine whether the probative value of the photos outweighs any prejudice. *People v. Carpenter* (1997) 15 Cal. 4th 312, 385, 63 Cal. Rptr. 2d 1; *Akers v. Miller* (1998) 68 Cal. App. 4th 1143, 1147, 80 Cal. Rptr. 2d 857; see *People v. Lucas* (1995) 12 Cal. 4th 415, 449, 48 Cal. Rptr. 2d 523 (when relevance is demonstrated, question as to whether jury should be permitted to view photographs of victim, dead or alive, is addressed to sound discretion of trial court). The fact that other evidence, including testimony, may be available is a factor in deciding whether the photographs are cumulative, but it is not dispositive when the photograph shows proof of facts established by the oral evidence. *People v. Ramos* (1997) 15 Cal. 4th 1133, 1169, 64 Cal. Rptr. 2d 892.

The potentially shocking nature of the evidence is not in itself a basis for exclusion. *People v. Thomas*

Objection Tactics

Use these arguments to fight admission of the opposition's evidence, or to minimize its impact. Included are alternative strategies and what you need to put on the record.

§13:30

California Objections

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- Was it requested but not produced during discovery pursuant to Code Civ. Proc. §2031 or Pen. Code §§1054.1, 1054.3?
- If any of these considerations are present, or if introduction of the photograph will be prejudicial to your case, request an in limine hearing. The court may resist delaying the trial to find the photographer. A voir dire of the witness through whom the exhibit is being introduced is usually sufficient. However, if you produce a witness who can dispute the accuracy of the depiction, the court may be willing to grant a one or two day continuance to secure the photographer's presence. Generally any conflicts in the evidence will be submitted to the jury.
- As a last resort, offer to stipulate to the contents of the picture or the underlying issue that makes it relevant.

RESPONDING TO THE OBJECTION

- The court should admit your photograph if it establish through a knowledgeable witness that the photograph:
 - Is a fair and accurate representation of the item or scene in question.
 - Is probative and not misleading or prejudicial.
- If the court is reluctant to admit the photograph because changes have occurred between the time of the incident in question and the time the photograph was taken:
 - Argue that the essential elements are unchanged, or that the change is not relevant to the point for which the photograph is offered.
 - Assert that the objections go to weight, not admissibility.
 - Argue that opposing counsel will have ample opportunity to point them out during cross-examination.
- Ask for or accept a cautionary or limiting instruction.
- If opposing counsel claims the photographs are cumulative or inflammatory, argue the court should admit at least some of the pictures because proper depiction of the injury or previous condition is best achieved through the visualization provided by the photographs and that the probative value outweighs any prejudice.
- In response to a claim of improper exchange during discovery, argue that opposing counsel had

an opportunity to take a photograph or that the photograph is attorney work product or material prepared for litigation. For attorney work product or material prepared for litigation, see Ch. 10.

PRACTICE TIPS

Give the jury time to look at the photographs. If you publish photographs to the jury, stop questioning to allow the jury an opportunity to concentrate on the testimony and the pictures. Be sure not to allow opposing counsel to show the jury pictures during your examination of a witness.

Use aerial photographs whenever appropriate. Use aerial photographs whenever a large area is referred to in the testimony.

Use large blow-ups in front of the jury that show the scene or evidence during testi-

mony. When examining a witness, the jury will be able to follow the testimony and stay interested if pictures and diagrams shown the witnesses are large enough for them to observe during the testimony. The smaller copies can then be admitted as exhibits to continue the combined impact of the testimony and pictures into the deliberations. Make sure the pictures are large enough to be easily handled and discussed by the jurors. Small, fuzzy copies have much less impact.

CASES

Accuracy
People v. Garcia (1988) 201 Cal. App. 3d 324, 329, 247 Cal. Rptr. 94. A witness testified that a photograph was similar to the sketch drawn at the witness's direction. The picture may not have been completely accurate, but since the opponent had a chance to cross-examine the witness to show any inaccuracies, it was admissible and the existence of possible conflicting inferences went to the weight to be given the evidence.

Relevancy [Evid. Code §210]
People v. Box (2000) 23 Cal. 4th 1153, 1198-1199, 99 Cal. Rptr. 2d 69. Photographs of the murder victim

Practice Tips

Elevate your advocacy with the cautions, strategies, and advice from the bench offered here.

Responsive Arguments

Never let an unforeseen objection catch you flat-footed again. Anticipate, preclude, and meet objections with the authors' expert strategies for counter-attack.

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About the Authors

Gregory H. Ward has served as a Judge of the Santa Clara County Superior Court since 1990. He has presided over hundreds of jury and nonjury trials in civil, criminal, juvenile delinquency and juvenile dependency cases.

Prior to his appointment to the Superior Court, Judge Ward was in private practice in Palo Alto, California. He also served as a trial attorney for the United States Department of Justice, Organized Crime & Racketeering Division, in Chicago and San Juan, Puerto Rico, and as an Assistant United States Attorney in San Jose, California.

Judge Ward graduated from Harvard Law School and the University of California, Santa Cruz. He lives in San Jose with his wife, Jo Anne, and their son, Nathan.

James Michael Byrne is a private mediator and arbitrator for ADR Services. In March 2003 he retired after serving 20 years as a Los Angeles' Superior Court Judge. While presiding in Pasadena and Downtown Los Angeles Civil fast-track courts, Judge Byrne tried an average of 15-20 civil jury trials a year.

Judge Byrne is an active lecturer to both Bench and the Bar, specializing in Evidence and Trial Tactics. He has presented lectures on Hearsay and Privileges as part of the Los Angeles Superior Court Civil Judges' education program, and a program on trial issues at the Civil Law Institute for civil court judges from throughout the state.

From 1969 until 1983, Judge Byrne was a trial attorney and later a supervising attorney in the Los Angeles and Sacramento District Attorney offices. Judge Byrne graduated from Loyola Law School and Loyola-Marymount University.

About the Book & CD

California Objections contains 22 tabbed dividers and 550 letter-sized pages in a sturdy looseleaf binder. 125 objections are supported with practice tips from the bench, pattern objection language, arguments to use when objecting and responding, and 1,800 recent cases. Underlying principles and rules are explained, with citations to governing authority.

Included at no extra charge is an intuitive, full-text CD which requires no installation before use. It may be searched by key word, case name, or topic.

\$99 buys the book and CD. The book is updated annually for \$69 with replacement pages and a new CD. Both the book and its updates are sold on a 30-day trial basis, and may be returned if not to your liking. The update service may be cancelled at any time.

Abbreviated Contents

1. Objection, Motions & Related Procedures

Principles, Procedures, Pretrial Preparation, In Limine Motions, Motion to Strike, Motion for Mistrial

2. Jury Selection

Party Has Waived Right to Jury Trial, Jury Panel Not Drawn from Representative Cross-Section of Community, Juror Is Not Eligible for Service or Disabled Juror Has Not Been Accommodated, Juror Should Not Be Excused for Hardship, Court Has Imposed Unreasonable Restrictions on Voir Dire by Counsel, Improper Voir Dire by Counsel, Improper Challenge to Individual Juror, Unconstitutional Exercise of Peremptory Challenges

3. Jury Conduct & Management

Concealing Bias During Voir Dire, Discussing Case, Inattentiveness, Receiving Information Outside Court

4. Order of Proceedings

Motion for Bifurcation or Separate Trials, Motion to Reopen, Rebuttal Evidence

5. Opening Statement

Arguing Case, Erroneous Matter, Personal Attacks, Injection of Self, Inflammatory Statements, Failure to Set Forth Claim, Financial or Personal Circumstances, Insurance Coverage, Settlement Negotiations, Subsequent Repairs

6. Witness Competence

Oath or Affirmation Not Given, Infancy, Mental Impairment, Lack of Personal Knowledge, Drug-Induced or Hypnotically Refreshed Testimony, Judge or Juror or Attorney as Witness

7. Witness Examination

Improper Leading Question, Calls for Narrative Response, Argumentative, Beyond Scope of Prior Testimony, Asked and Answered, Assumes Facts Not in Evidence, Answer Is Nonresponsive, Ambiguous or Confusing or Vague Question, Compound Question

8. Relevance & Prejudice

Irrelevant Evidence, Proof of Preliminary Facts to Establish Relevance, Relevant Evidence is Prejudicial or Time Consuming or Likely to Confuse or Mislead Jury

9. Hearsay

Hearsay, Hearsay within Hearsay, Admissions, Declarations Against Interest, Prior Statements of Witness, Spontaneous or Contemporaneous or Dying Declarations, Statement of Mental or Physical State, Business Records, Official Records, Former Testimony

10. Privileges

Self-Incrimination, Attorney-Client, Attorney Work Product, Physician-Patient, Psychotherapist-Patient, Privilege Not to Testify against Spouse, Confidential Marital Communications, Clergy-Penitent, Sexual Assault Victim-

Counselor, Official Information and Informant Identity, Other Privileges

11. Character & Habit

Character or Reputation, Habit or Custom

12. All Physical Evidence

Lack of Foundation, Exhibition of Person to Show Injury or Body Condition, Jury View of Premises or Scene of Incident

13. Photographs, Recordings & X-Rays

Photographs and X-Rays, Videotapes and Motion Pictures, Sound Recordings

14. Documents

Authentication, Secondary Evidence, Public and Business Documents and Records

15. Parol Evidence

Charts, Diagrams, Graphs or Maps; Models; Demonstrations, Simulations, Recreations or Experiments

17. Expert Witnesses

Lack of Qualification, Province of Court and Jury, Inappropriate Hypothetical Question, Scientific Evidence, Lay Opinion

18. Alternative Methods of Proof

Taking Judicial Notice Is Improper, Applying Presumption Is Improper, Testimony Inconsistent with Admissions, Testimony Inconsistent with Stipulation

19. Disqualification of Judges & Judicial Conduct

Court's Comments on the Evidence, Conduct or Comments Showing Bias or Prejudice, Disparaging Counsel, Examining Witnesses

20. Attorney Conduct

Arguing Objections in the Jury's Presence, Failure to Comply with Ruling or Order, Attacking Counsel or Party or Witness, Improper Comment, Presenting Material Not in Evidence

21. Closing Argument

Matters Not in Evidence, Demonstrative Materials Not in Evidence, Commenting on Failure to Testify or Produce Evidence, Injecting Self or Personal Belief, Vouching for Witness Credibility, Misstating the Law, Personal Attacks, Racial or Political or Religious Comments, Wealth or Poverty or Self-Interest, Collateral Sources, Settlement, Personal Reference to Juror

22. Submission to Jury & Deliberations

Improper Communications with Jury, Improper Response to Request for Evidence, Improper Response to Request for Instructions, Coercion of Deadlocked Jury, Juror's Failure to Follow Instructions, Juror's Inability or Refusal to Deliberate, Consideration of Information from Outside of Court, Improper Experiments by Jury

JUST PUBLISHED!

Making and Meeting Objections

Don't let opposing counsel's objections block the admission of your critical evidence. And don't be caught unprepared when opposing counsel offers evidence you could obstruct—if you made the proper objection.

Whether you are in the courtroom or preparing for trial, **California Objections** will help you use the rules of evidence to your client's advantage.

Judges Gregory Ward and Michael Byrne (Ret.) masterfully detail **125 objections** with pattern objection language, scope of governing rules, practice tips and cautions, arguments for making and responding to objections, and **over 1,800 recent cases**. Now you can more readily:

- ◆ Preclude trial objections through motions in limine
- ◆ Evaluate the admissibility of the opposition's evidence
- ◆ Preserve the record for appeal
- ◆ Decide when to object and when to remain silent
- ◆ Respond to objections on the spot and with authority
- ◆ Draft briefs on evidentiary objections and motions
- ◆ Prevent jury exposure to adverse inadmissible evidence



Objections, responses, arguments, tips, and cases

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