

**NEW!**

# Lies, Coaching, and "I Don't Remember"

*Handle defiant deponents and uncooperative attorneys with these innovative discovery tactics and weapons*

Use Ashley Lipson's new **Guerrilla Discovery** to strike and parry quickly and painfully during your next discovery confrontation. This battle-proven, 600-page tactician's guide offers dozens of creative forms, checklists, arguments, and strategies. For example:

## Initial Steps

- ★ "Getting the truth out of your own client can be difficult. I have found a trick that always works. After your client has told you his side of the story, look him in the eye and say, 'I believe everything you told me. But in order to be ready for the enemy, I need you to tell me something else. When that #!\$?&! comes into court, what...?' The truth is sure to follow this question." §1.51
- ★ "Is It Discoverable?" annotated checklist. Here are fast, direct, and detailed answers to the most common discovery questions. Includes "Six Degrees of Discoverability" quick-reference chart. §2.10

## Requests for Admissions

- ★ "Countless times practitioners waltz into court, dumb and happy because they have under their arms papers labeled 'business records,' as if those papers were self-authenticating and self-admitting. They are not! This blissful ignorance, however, is counterbalanced by attorneys on the other side who, upon hearing the magic words 'business records,' lay down and assume that there are no defenses to admissibility. Both positions are incorrect." §5.34
- ★ 23 requests for admission that are specifically designed to solve document admissibility problems ignored by discovery rules and universally omitted by forms books and treatises. §5.34

## Interrogatories

- ★ "A well-drafted set of interrogatories should never receive fast answers. On the contrary, you know you have done your job when the enemy is forced to duck, weave, squirm and refuse. Take the greatest pride in questions that simply cannot be answered by the enemy." Dozens of artfully-crafted, precisely-focused, and complete sets of interrogatories are provided. They establish elements, identify and locate evidence, attack pleadings, and assail experts. Chapter 6
- ★ How to mix boilerplate and specific facts to cre-



*This \$99 book and its free CD are designed to help you efficiently and with less aggravation get more from your discovery efforts:*

- ★ Firmly establish your allegations
- ★ Learn of additional counts or causes of action
- ★ Discover and weaken the enemy's defenses
- ★ Quickly eliminate fictitious and boilerplate defenses
- ★ Obtain concessions and admissions
- ★ Coerce settlement

ate effective objections, with checklist of objections. §6.65

## Depositions

- ★ Tricks for catching liars, showing bias, not accepting evasive answers (including "I don't remember"), establishing a range for quantitative information, and generally handling difficult deponents. §10.52
- ★ How to counter verbal and nonverbal coaching, coaching off the record, and obnoxious objections. §10.53

## Shields

- ★ Here is the dream responsive pleading ... a Motion for Protective Order that contains every possible challenge to every type of discovery request. Form 12.1
- ★ Before responding, review these 12 grounds for objecting to discovery requests. Then check the lists of objections specific to each discovery device. §12.30
- ★ 16 objections to physical examinations. §9.54

And much more: implementing and countering enforcement methods, how to expose burdensome and abusive tactics, checklist for strategic non-compliance, shifting costs and burdens to the enemy, etc.

**Sample pages, list of forms, table of contents, and more inside...**



# Abbreviated Contents

## 1. **Boot Camp**

Client Interrogation, Lay & Expert Assistance, Mandatory Disclosure, Judicially Approved Forms, Attorney Initiated Discovery, The War Begins

## 2. **Strategy & Fast Answers**

Universal Orders, The Battle Plan, Pleading Dependent Strategy, Weapon Dependent Strategy, People Dependent Strategy

Is It Discoverable? Immediately Discoverable, Discoverable, Discovery Qualified, Discovery Unlikely, Not Discoverable, Never Discoverable, Every Conceivable Defense

## 3. **Electronic, Digital & Other Media**

Preservation & Destruction, Testimonial Evidence, Documentary, Real, Demonstrative

## 4. **Weapon Selection, Attack & Enforcement**

Weapons, Range & Scope, Examination of Response, Enforcement, Follow-up

## 5. **Requests for Admission**

Strategy, Constructing & Timing Your Attack, Admissions to Target & Capture, Rules, Responding to Requests, Enforcing the Requests

## 6. **Interrogatories**

Three Critical Considerations, Tips for Timing Your Attack, Information to Target & Capture, The Rules That You Need, Constructing Your Interrogatories, Responding to Interrogatories, When & How to Object, Enforcing the Requests

## 7. **Notices for Production**

Strategy, Tips for Timing Your Attack, Identifying Your Quarry, Rules, Constructing Your Demands, Responding to the Requests, Enforcing Compliance

## 8. **Demands for Inspection**

Strategy, Tips for Timing Your Attack, Dealing with Real Evidence, Five Degrees of Inspection, Rules, Constructing Your Demands, Responding to the Requests, Enforcing Compliance

## 9. **Demands for Physical & Mental Examinations**

Strategy, Constructing & Timing Your Attack, Targets, Rules, Defenses & Countermeasures, Enforcing Compliance

## 10. **Depositions**

Strategy, Parties, Lay Witnesses, Experts, Rules, Client Preparation, The Art of Cross-examination, Dealing with Obnoxious Lawyers, Defending the Deposition, Enforcement

## 11. **Defending & Responding**

Strategy & Philosophy, Strategic Compliance, Strategic Non-compli-

ance, Circumvention, Objection, Seeking Protective Orders

## 12. **Defending Discovery's Limits**

Threshold Defense Strategy, The Scope of Discovery, Boundary Defense Checklist, Inability to Comply, Jurisdictional Challenges

## 13. **Using the Work Product Doctrine**

Instant Answer Chart, The Rules That You Need, Weapon-by-Weapon Defense, Waivers, Counteroffers

## 14. **Using Traditional Privileges**

Professional, Business & Administrative, Domestic, Criminal, Work Product Doctrine

## 15. **Exposing Burdensome & Abusive Tactics**

Blackmail, Subterfuge, Hostage Trade-off, Aggressive Demands, Excessive Demands, Weapon-Specific Rules, Prepare Your Motion

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# About the Book and CD

**Guerrilla Discovery** contains 600 letter-sized pages in a sturdy 3-ring binder. 350 pages are devoted to tactics and tricks for efficiently obtaining the information you need to obtain a favorable settlement or verdict, and 250 pages offer innovative discovery forms that implement the book's suggestions.

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. You may open and modify any of the CD's forms simply by using your favorite word processor; you need not work with the CD's search program.

**\$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 update 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.

2-5 IS IT DISCOVERABLE? §2.20

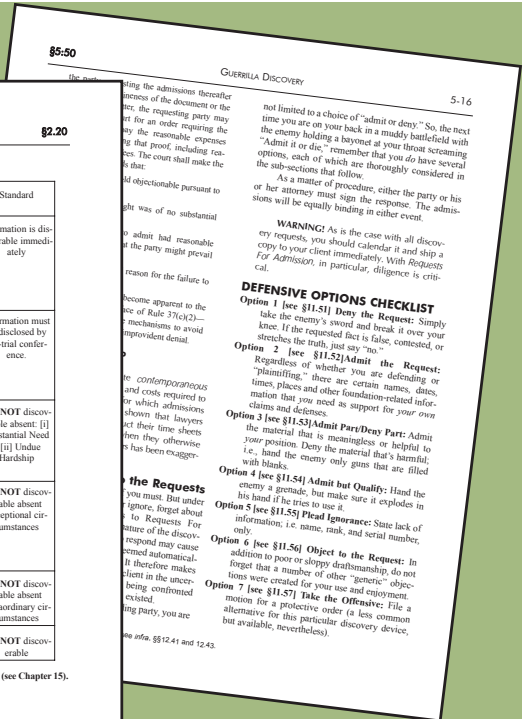
**Six Degrees of Discoverability**

Degree	Type of Evidence	Generic Description	Chances for Discovery	Standard
1	Real Evidence & Defined Items of Documentary Evidence	The "raw" or "operative" facts, including the actual physical parts or components of the incident, accident or controversy, the so-called "yes/gone elements."	Count on it! Near absolute—absent some privilege	Information is discoverable immediately
2*	Witnesses (Both Lay and Expert) Who May Testify	Information on all witnesses who may testify at trial, lay and expert. Expert witnesses are required to provide extensive information about themselves and their opinions.	Witnesses are discoverable. It's only a matter of "when" not "if."	Information must be disclosed by pre-trial conference.
3*	Ordinary Work Product	Investigative reports, witness statements, information and data generated in anticipation of litigation.	Chances are more likely than most people would anticipate	Info NOT discoverable absent [1] Substantial Need + [1] Undue Hardship
4*	Advisory Assistance	Information developed or acquired by experts, assistants or attorneys (who will not testify), in anticipation of litigation, demonstrative evidence that won't be used at trial.	Unlikely	Info NOT discoverable absent exceptional circumstances
5*	Opinion Work Product	Personal notes, research, opinions, theories, strategic memos and attorney advice.	Unlikely absent crime-fraud exception	Info NOT discoverable absent extraordinary circumstances
6	Unwritten Work Product	Information contained in the memory of an attorney	Shoehorn's chance in Needles, CA	Info NOT discoverable

\* Within Degrees 2 through 5 fall a host of privileges with varying degrees of strength (see Chapter 15).

## Quick-reference charts.

Find answers to common discovery questions in seconds instead of minutes. Detailed supportive text offers more detail.



3-3 ELECTRONIC, DIGITAL AND OTHER MEDIA §3.11

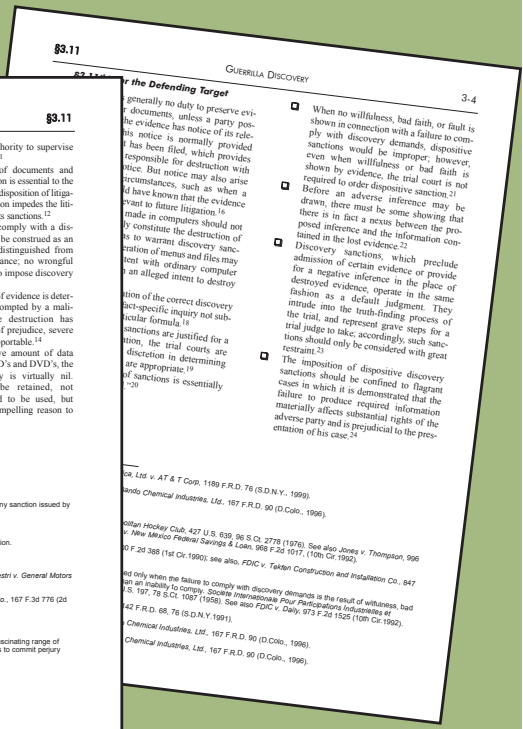
The sky-is-falling myth results from overkill occasioned by sanctions imposed upon deserving fact-followers of the first myth. This second myth, while possessing some elements of truth, also constitutes an exaggeration. Common sense, as might be expected, suggests a middle ground.

In dealing with this growing area of concern, the courts can be expected to provide some balance and guidelines.<sup>8</sup> With that in mind, let's consider some case-based ammunition for both sets of opposing soldiers.

**§3.11 Arguments and Authority**

**§3.11(a) For the Discovering Party**

- Once notice of duty to preserve evidence is provided, obligation runs first to counsel, who then has a duty to advise and explain to the client its obligations to retain pertinent documents that may be relevant to the litigation.<sup>9</sup>
- Courts have the authority to sanction a party that destroys relevant and discoverable evidence.<sup>10</sup>
- Even without a specific discovery order, a district court may impose sanctions for the spoliation of evidence, exercising its inherent power and authority to supervise the litigation before it.<sup>11</sup>
- Because preservation of documents and availability for production is essential to the orderly and expeditious disposition of litigation, document destruction imposes the litigation process and merits sanctions.<sup>12</sup>
- The willful failure to comply with a discovery demand should be construed as an intentional failure as distinguished from involuntary noncompliance; no wrongful intent need be shown to impose discovery sanctions.<sup>13</sup>
- Where the destruction of evidence is determined to have been prompted by a malicious intent, and the destruction has caused a high degree of prejudice, severe sanctions are easily supportable.<sup>14</sup>
- Because of the massive amount of data that can be stored on CD's and DVD's, the costs of storage today is virtually nil. Information should be retained, not because it is expected to be used, but because there is no compelling reason to discard it.<sup>15</sup>



## Arguments and authority.

Whether you are the discovering party or target, you can benefit from *Guerrilla Discovery's* pattern language and case law for supporting and opposing discovery requests.

# How to Catch Liars, Halt Coaching, and More

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# Battle-Tested Discovery Tactics & Weapons



Most litigation and settlement outcomes are determined in quarrelsome discovery fights. Coercion and confrontation are usually necessary to obtain evidence on the hotly-contested issues.

To help you win more of these important discovery skirmishes, Ashley Lipson's new *Guerrilla Discovery* offers dozens of clever strategies, novel arguments, direct answers, cautionary instructions, helpful timelines, tactically-annotated rules, and innovative forms that will help you:

- ✦ Capture evidence establishing your claims and defenses
- ✦ Secure admissions
- ✦ Settle issues and disputes
- ✦ Impeach the enemy and its witnesses
- ✦ Uncover what the enemy is hiding
- ✦ Learn what the enemy has on you

You receive complete and targeted sets of strategically-annotated discovery documents, complete with responses and shields for each weapon: requests for admissions, interrogatories, deposition checklists, notices for production, and notices for inspection.

\$99 brings you 600 pages and a forms-heavy CD delivering comprehensive coverage:

- ✦ Strategy, tips, and warnings
- ✦ Arguments, counter-arguments, and counter-counterarguments
- ✦ Rules, statutes, and cases
- ✦ Checklists and timelines
- ✦ Drafting directives
- ✦ Forms and sample letters

See front page for "Lies, Coaching, and 'I Don't Remember'"