

How to Shorten Trials, a Reading List

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USE NOTES: These materials apply to bench trials and jury trials, and to nearly every field of law. A PDF copy of this List, with live web links, is available and updated at the Civil Jury Project at NYU School of Law web site <https://civiljuryproject.law.nyu.edu/>, select "Resources." For all California appellate cases cited in this List, visit <http://www.courts.ca.gov/opinions-slip.htm>, select link [Official Reports Opinions \(Searchable 1850-Present\)](#), and enter citation.

American Bar Association, *Principles for Juries & Jury Trials* ("Principle 12" re "Conducting a Jury Trial") (rev. 2016), Chicago, IL.

http://www.americanbar.org/content/dam/aba/administrative/american_jury/2016_jury_principles.authcheckdam.pdf. See also, commentary on "Principle 12" (from 2005 version) at http://www.americanbar.org/content/dam/aba/administrative/american_jury/final_commentary_july_1205.authcheckdam.pdf, pp. 89/142 through 91/142.

Brown, Hon. R.S., *Juxtaposed Expert Testimony ["JET"]*: *A New Way to Hear from the Experts* (2012), in *Forum*, Vol. 42, No. 6, Nov./Dec. 2012, pp. 12-15, Sacramento, CA: Consumer Attorneys of California. (JET testimony described.) See, <http://jet-trials.org/>, (description, forms, and video examples of JET). See also, all references in this Reading List to "back-to-back," "hot tub," and "concurrent expert" evidence or testimony.

Brown, Hon. R.S., *Juxtaposed Expert Testimony: A Proposal to Benefit California's Judicial System* (2012), in *Verdict*, Vol. 2, 2012, pp.14-16, Sacramento, CA: Association of Southern California Defense Counsel. <http://www.ascdc.org/pdf/ascdc%2012-2.pdf>

Butt, A.E., *Concurrent Expert Evidence in U.S. Toxic Harms Cases and Civil Cases More Generally: Is There a Proper Role For "Hot Tubbing"?* 40 *Houston J. Int'l L.* 1 (2017). <http://www.hjil.org/wp-content/uploads/Butt-FINAL.pdf>

California Codes, <http://leginfo.legislature.ca.gov/faces/codes.xhtml>

- *Code of Civil Procedure ("CCP")*:

- §§ 128 subd. (a) and 187 (judicial powers to control litigation processes).
- § 437c, (summary judgment of case and summary adjudication of claims or defenses).
- § 437c(t) (summary adjudication of non-dispositive but trial-shortening issue or claim).
- §§ 597; 597.5; 598 (discretion to order special defenses or other issues tried first).
- §§ 630.01-630.11 (voluntary expedited jury trials ("EJTs")).
- §§ 630.20-630.30 (mandatory EJTs in limited civil cases).
- § 631.8 (motion for judgment upon one party's completion of evidence).

- *Evidence Code*:

- § 320 (duties of judges to regulate the order of proof).
- § 352 (discretion to exclude evidence based upon weighing listed factors including time).
- § 765 (duties of judges to control examination of witnesses).
- §§ 1520—1523 (secondary evidence rule; see also, Imwinkelried, et al., *infra* in this list).

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- *Penal Code*, § 1044 (duties of judges in criminal trials, including expeditiousness).

- *Probate Code*:

§ 800 (in probate cases, court has full powers of superior court, including CCP § 128).

§ 1000 (civil rules of practice and CCP apply when Probate Code is silent).

§ 4520(b) (in power of attorney probate cases, court has full powers of superior court).

§ 17001 (in trust cases in probate, court has full powers of superior court).

§ 17206 (broad powers to handle petitions re internal affairs of a trust).

California Crane School, Inc. v. National Com. for Certification of Crane Operators (2014) 226 Cal.App.4th 12, 17-22 (affirms pretrial order limiting length of a civil jury trial, and an in-trial order denying rebuttal opportunity as "late", consistent with pretrial order).

Civil Jury Project at NYU School of Law, *Fact Sheet: Back-to-Back Experts* (2016), at Project's web site <https://civiljuryproject.law.nyu.edu/>, select "Research", then "Trial Innovations," or <https://civiljuryproject.law.nyu.edu/wp-content/uploads/2016/10/Exh-2-Back-to-Back-Experts-Fact-Sheet-4.10.16.pdf>

Civil Jury Project at NYU School of Law, *Fact Sheet: Limiting Length of Trials* (2016), at Project's web site <https://civiljuryproject.law.nyu.edu/>, select "Research", then "Trial Innovations," or <https://civiljuryproject.law.nyu.edu/wp-content/uploads/2016/10/Exh.-2-Juror-Fact-Sheet-Time-Limits.pdf>

Clement v. Alegre (2009) 177 Cal.App.4th 1277, 1281, 1291-1294 (courts' expectations re effective meeting and conferring, in discovery; can apply as well to pretrial and trial conduct).

Diamond, S.S., *How Jurors Deal With Expert Testimony and How Judges Can Help* (2008), in *Journal of Law and Policy*, Vol. 16, Issue 1, Article 4, pp. 47-67, Brooklyn, NY: Brooklyn Law School. <http://brooklynworks.brooklaw.edu/cgi/viewcontent.cgi?article=1164&context=jlpl>

Edmond, G., *Merton and the Hot Tub: Scientific Conventions and Expert Evidence in Australian Civil Procedure* (2009) 72 *Law and Contemporary Problems* 159-190 (Winter 2009), Durham, NC: Duke University School of Law. (Critical evaluation of concurrent expert testimony.) <http://scholarship.law.duke.edu/lcp/vol72/iss1/9>

Fisher, Daniel, *Litigator Pushes Mutual-Disarmament Pacts to Cut Costs* (2012) *Forbes*, Jersey City, NJ. <http://www.forbes.com/sites/danielfisher/2012/03/07/litigator-pushes-mutual-disarmament-pacts-to-cut-costs/#655423dd6df4>

Hannaford-Agor, P. and N.L. Waters, *Estimating the Cost of Civil Litigation* (2013), in *Caseload Highlights*, Vol. 20, No. 1, Jan. 2013, pp. 1-8. Williamsburg, VA: NCSC. http://www.courtstatistics.org/~media/Microsites/Files/CSP/DATA%20PDF/CSPH_online2.ashx. See related charts "Hours Expended by Attorneys, Paralegals and Expert Witnesses..." http://www.ncsc.org/~media/Microsites/Files/CSP/DATA%20PDF/csp_h_2013_tablesv1.ashx. NOTE: These web sites both download slowly.

Hannaford-Agor, P., *Measuring the Cost of Civil Litigation: Findings from a Survey of Trial Lawyers* (2013), in ABOTA's *Voir Dire*, Spring, 2013, pp. 22-28; Williamsburg, VA: NCSC. <http://www.ncsc.org/~media/Microsites/Files/Civil%20Justice/Measuring%20the%20cost%20of%20civil%20litigation.ashx>

Howe, W.J. III, and J.E. Hall, *Oregon's Informal Domestic Relations Trial [IDRT]: A New Tool to Efficiently and Fairly Manage Family Court Trials* (2017), in *Family Court Review*, Vol. 55, Issue 1, Jan. 2017, pp. 70-83, © John Wiley & Sons. (Cont. next page.)

<http://onlinelibrary.wiley.com/doi/10.1111/fcre.12263/full>, or for easier reading, <http://onlinelibrary.wiley.com/doi/10.1111/fcre.12263/epdf>. See also, IAALS discussion on IDRTs with many useful links including to Oregon courts, at <http://iaals.du.edu/blog/oregon-domestic-relations-trial-pilot-and-iaals-resource-center-model-discussed-family-court>.

Huang v. Hanks (2018) 23 Cal.App.5th 179. (Court has inherent power to dismiss claims that are patently frivolous, even without express statutory authority. Should also apply to affirmative defenses and cross claims.)

Imwinkelried, E.J., M.A. Mendez and B.S. Gaal, *Document Summaries in Court* (2012), in California Lawyer (May 15, 2012), vol. 67, pp. 37-39, San Francisco, CA: State Bar of Calif.; or <https://law.stanford.edu/>, find "Publications" under "Research;" or <http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/270513/doc/slspublic/Document%20Summaries%20in%20Court.pdf>.

In re Welding Fume Prods. Liab. Litig., No. 03-17000, slip op. at pp. 44-45 and fn.39 (N.D. Ohio Aug. 8, 2005) (Dkt. No. 1353). (Concurrent expert testimony applied by trial court in threshold hearing with opposing experts, per *Daubert v. Merrell Dow Pharmaceuticals, Inc.* (1993) 509 U.S. 579. https://www.gpo.gov/fdsys/pkg/USCOURTS-ohnd-1_03-cv-17000/pdf/USCOURTS-ohnd-1_03-cv-17000-0.pdf

Jones Day (Emmerig, J., J.D. Hanify and M. Legg), *Room in American Courts for an Australian Hot Tub?* (April 2013), Boston, MA: Jones Day. (Concurrent expert testimony described. See especially text accompanying fn. 9: hot-tubbing can *cut expert testimony time by 50% to 80%*.) www.mondaq.com/unitedstates/x/237192/court+procedure/Room+In+American+Courts+For+An+Australian+Hot+Tub; or www.jonesday.com/room_in_american_courts/#

Kabateck, B. and D. Scott, *Just Try It!* (2013), in Forum, Vol. 43, No. 6, Nov./Dec. 2013, pp. 12-15, Sacramento, CA: CAOC. <https://www.caoc.org/index.cfm?pg=ArtIndex13>, find by month and volume number.

Kloczko, J., *Time Limits, Jury Sensitivity Discussed to Shorten Trials* (2016), in Daily Journal, Oct. 17, 2016 (Editorial ID: 951603), p. 1. <https://www.dailyjournal.com/articles/253904>; or, sign into account and search for the Editorial ID number only).

Lamb, P.J., *10 Things Judges Can Do to Help Business Litigation to Be More Efficient and Less Expensive* (2014), in ABA's Legal Rebels newsletter, April 24, 2014. Reproduced with permission in Conference of Chief Justices Library. <http://ccj.ncsc.org/Civil/Resources/Library.aspx>, find sub-title "Trial", select link [Ten Things Judges Can Do to Help Business Litigation Be More Efficient and Less Expensive \(2014\)](http://www.abajournal.com/legalrebels/article/10_things_judges_can_do_to_help_business_litigation/?utm_source=maestro&utm_medium=email&utm_campaign=daily_email); or, www.abajournal.com/legalrebels/article/10_things_judges_can_do_to_help_business_litigation/?utm_source=maestro&utm_medium=email&utm_campaign=daily_email.

Lemley, M.A., J. Kendall and C. Martin, *Rush to Judgment? Trial Length and Outcomes in Patent Cases* (2013), in AIPLA Quarterly Journal, Vol 41, No. 2, Spring, 2013, pp. 169-204, American Intellectual Property Law Association (AIPLA), Arlington, VA. (Study of 624 patent trials either by jury (466) or by court (158) concludes (p. 187) "... *trial length seems to have no effect on outcomes at all.* [Emphasis added.]") <http://ssrn.com/abstract=2217690>, and Download; or https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2217690, and Download.

Martin, L.K., *Seven Stipulations to Streamline Your Hearing—Without Compromising Your Client* (2013), in ACFLS Family Law Specialist, Summer 2013, No. 2, pp. 44-45, Sacramento, CA, California Association of Certified Family Law Specialists. https://www.acfls.org/?page=archived_newsletters, locate year and number on list.

Mattice, Hon. M., *Can We Shorten This Trial?* (2014), in California Litigation, Vol. 27, No. 1, Spring 2014, pp. 24-27, San Francisco, CA: Litigation Section, State Bar of California. <http://calawyers.org/Sections/Litigation/Publications/California-Litigation#v27n1>; or <https://www.manatt.com/Manatt/media/Documents/Articles/Cal-Lit-27-1-2014-screen1.pdf?ext=.pdf> (pp. 24-27).

Mattice, Hon. M., *Just Try It – Efficiently!* (2014), in Forum, Vol. 44, No. 5, Sep./Oct. 2014, pp. 28-29, Sacramento, CA: CAOC. <https://www.caoc.org/index.cfm?pg=ArtIndex14>, find by month and volume number.

Robinson, M.P., Jr., and B. Broillet, *Saving the Civil Jury Trial* (2016), in Daily Journal, Oct. 28, 2016 (Editorial ID: 951826), p. 1.; <https://www.dailyjournal.com/articles/289151>; or, sign into account and search for the Editorial ID number only).

Robinson, M.P., Jr., *The Death of the Civil Jury Trial* (2014), in Daily Journal, May 8, 2014 (Editorial ID: 935067), p. 1. <https://www.dailyjournal.com/articles/265857>; or, sign into account and search for the Editorial ID number only).

Schiller, Hon. B.M., *Streamlining Civil Jury Trials* (2018), in "Jury Matters" (newsletter of the Civil Jury Project at NYU School of Law), Vol. 3, Issue 1, Jan., 2018, p. 4. <http://files.constantcontact.com/6bee8079601/7174c62c-ccc5-40d1-95be-b6ee8130aca4.pdf>; or <https://civiljuryproject.law.nyu.edu/>, select "Resources," then "Newsletters."

Sipes, D., M. Oram, M. Thornton, D. Valluzzi and R. Duizend, *On Trial: The Length of Civil and Criminal Trials* (1988), Williamsburg, VA: NCSC. ISBN: 0896560864. (Includes ideas for shortening trials (pp. 65-86) that are still valid today.) <http://cdm16501.contentdm.oclc.org/cdm/ref/collection/ctadmin/id/40>

State Bar of Calif., *California Attorney Guidelines of Civility and Professionalism* (2007). <http://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Ethics/Attorney-Civility-and-Professionalism>, select [Attorney Guidelines of Civility and Professionalism \(Civility Toolbox\)](#).

Superior Court, Los Angeles, *Tools for Litigators* web site. Resources and forms for judicial officers and attorneys, see Voluntary Efficient Litigation Stipulations link to [Stipulation and Orders - Motion in Limine](#); or <http://www.lacourt.org/division/civil/CI0037.aspx>

Susman, S.D. and T.M. Melsheimer, *Trial by Agreement: How Trial Lawyers Hold the Key to Improving Jury Trials in Civil Cases* (2013), Dallas, Texas, American Board of Trial Advocacy; reproduced with permission in Conference of Chief Justices Library. <http://ccj.ncsc.org/Civil/Resources/Library.aspx>, find sub-title "Trial", select link [Trial by Agreement: How Trial Lawyers Hold the Key to Improving Jury Trials in Civil Cases \(2013\)](#).

Susman, S.D., *Trial by Agreement: Agreements for Opposing Counsel* (web site with multiple document models, re trial and pretrial agreements, based on federal and/or Texas law, but easily adaptable to California and other states). <http://trialbyagreement.com/>

Yarnall, M.A., *Dueling Scientific Experts: Is Australia's Hot Tub Method a Viable Solution for the American Judiciary?* (2009), comment in Oregon Law Review, Vol. 88, No. 1, pp. 311-340, Eugene, OR, University of Oregon School of Law. <https://scholarsbank.uoregon.edu/xmlui/handle/1794/10373>, and "download."