

Building Trial Notebooks

Volume 1

The notebook system, forms, and
guidance for litigation, from case intake,
through discovery, to final argument

By Leonard Bucklin

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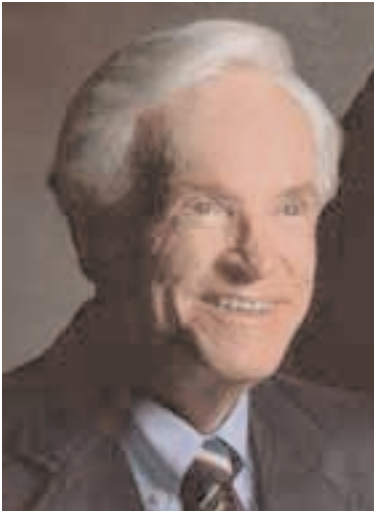
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STAFF

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About the Author



Leonard Bucklin has been identified by the International Academy of Trial Lawyers as one of the top 500 trial lawyers in the U.S. He has been a trial attorney in offices in four states, and has been involved in litigation and trials in many additional states. His clients have been both plaintiffs and defendants. He is a member of the Million Dollar Advocates Forum because of success for plaintiffs, yet because of defense work for over 35 national insurers and self-insurers in various states, trial firms in which he has been senior counsel have been recommended to insurance companies in Best's Recommended Attorneys. He has been lead counsel in hundreds of trials and dozens of appeals.

Bucklin created and polished his litigation techniques over decades of trial work. He is the author of over fifteen journal articles and books in which he shares those litigation and trial techniques with lawyers.

Bucklin enjoys living in Phoenix, where direct air connections are available to the six different states where his six children now live.

Foreword to This Notebook System Volume

The intention of this volume of *Building Trial Notebooks*¹ is simply stated. I want you to have a compact and powerful trial notebook, ready to guide and support you throughout the entire course of litigation, not just at trial. Volume 1 of *Building Trial Notebooks* provides the construction plans for the best trial notebook.

Inevitably, in short instructions and commentaries of this kind, the author must appear dogmatic. I confess to the use of unqualified summations and assertions.

“I ask the reader, if he finds in this work anything superfluous or erroneous, to correct and amend it, or pass it over with eyes half closed, for to keep all in mind and err in nothing is divine rather than human.” Hudson, *A Treatise of the Court of Star Chamber*, 239 (1621).

I am indebted to my partners and associates and legal assistants through the years. They have used my system of trial notebooks, made suggestions for additional forms or text, and have shown me that the system works for all types of litigation.

I am grateful to those trial lawyers or legal assistants who have taken the time to express their comments and tell me of the use they have made of the forms and notebook system. It affords me a compounded pleasure of authorship. Thank you.

Leonard Bucklin

¹ “Building Trial Notebooks” is a trademark of Leonard Bucklin, identifying his articles, forms, and texts giving advice to lawyers.

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Why You Should Use a Trial Notebook

Confidence and organization are the attributes of a winning trial lawyer. A trial notebook will give you both.

Building Trial Notebooks is a system of organization for litigation. Its forms, divider tabs, and guiding discussions allow you (indeed, these materials almost force you) to prepare in an organized manner. When you get to a deposition, a mediation, or a court, everything will be in order so that you will have purpose, drive, and power.

Today a trial notebook is not just for trial; it is a way of organizing for litigation. It has all the basic information you need for any litigation task at hand. From the time the client is accepted, your trial notebook shows you what you have done, what you need to do, and when you need to do it. Your trial notebook has your materials for depositions, deposition arrangements, settlement conferences, appearances before the motions judge, and, of course, trial. Throughout the litigation, you will have the equivalent of a very thick primary file folder, organized by tab divisions.

I developed the *Building Trial Notebooks* system for use in a busy litigation practice that covered five states. I refined it over many years. The system has been used in plaintiffs' cases that allowed me to become a member of the Million Dollar Advocates' Forum. And the system has been used by my law firms and me in doing defense work for more than 35 insurers and national self-insurers. The system has been battle-tested for use in any state, and for use by either plaintiffs or defendants in litigation.

How It Works

The system will improve your success ratio and save you time. How? It keeps you organized. Organization is power. And power wins good settlements because power wins trials.

For example: You know what the crucial facts are and what you must do next — even when you only have 15 minutes to jump to the file and then start talking to a witness, the client, or the adverse attorney. At the end of the deposition, you know you did not forget to ask a critical question. At a settlement mediation, you get the attention and respect of the other side. At trial, after examining your own witness, you know the testimony has covered the points you wanted to make. After the trial, the jurors compliment you on being organized and knowledgeable.

A good trial notebook assists attorneys and their support staff in maintaining control over the litigation. It assists with the evidence and rebuttal of evidence. It will move you forward on the plan that you have prepared, and help you respond to unanticipated issues or arguments that arise during the case.

The organizing power of a trial notebook comes to full flower at trial. Your notebook will organize all the materials that will be presented at trial. Every exhibit and witness

can be, and should be, accounted for in the trial notebook. Your final notes for what each separate witness has to say should be in one place – not scattered throughout a pile of papers or only in your memory.

If you look at the most successful trial lawyers, you will see that most of them use some sort of trial notebook system. They do not go into court with a pile of file folders in front of them on the desk. In front of them is a notebook. They use it because a notebook is efficient and keeps them organized.

Alternate Methods Work Poorly

Yellow pads do not work well for organizing witness notes before trial. A yellow pad cannot easily be changed and updated. And with yellow pads, neither you nor your secretary knows whether the notes on Witness Jones are halfway back in the pad, or scattered on three different places in the yellow pad because you talked to Jones three different times. A notebook allows an easy sheet modification or changes about a witness when a new item needs to be added to the notebook before, during, or after the deposition, settlement session, or trial. An added bonus is that when your secretary or legal assistant gets new information, if you have a trial notebook system, he knows where to put the new information. You will find he put it where you need it (not in a bunch of loose sheets stuck on top of your yellow pad).

Laptop computers do not work well in examining witnesses at trial. Physically, it just does not work well for the examining attorney to type on the computer and cross-examine a witness at the same time. The entire flow of the questioning is bad if you are tied to the computer. And as a matter of appearance — well, the jury is not impressed if you spend time typing at a keyboard. Certainly, laptops do not work well in running up to the judge's desk during trial, or going out into the hall to talk to a witness, or preparing a witness at a restaurant during a lunch recess. Notebooks win in those situations.

Notebook binders project efficiency because they are! They win hands down over file folders for holding most of the information you need in questioning a witness or talking to the judge. A maxim of office management is that if you have to touch more than five pieces of paper to find what you want, something is wrong with your filing system. If you take the time to page through five papers placed in a file folder, you have taken 5 to 30 seconds for what looks like fumbling. Moreover, you tend not to retrieve information if it cannot be found both easily and quickly. A 5-30 second delay in the middle of the questioning of a witness cannot be tolerated if you are a first-class trial lawyer. A notebook system, with tab dividers, is about five times faster than using a series of file folders for the same materials. So the solution to eliminate fumbling is a trial notebook that allows you to page quickly while talking.

Elimination of fumbling is the result of preparation. The attorney who gives the impression of knowing and *not* fumbling looks the most prepared. People who *look* prepared are the naturally chosen leaders of discussions for those people who do not know the content of the subject under discussion. The mediator in settlement, the judge in

motions, and the jury at trial do not know the content of the case. They are all looking for a leader to guide their view of the case. For the mediator, the judge, and the jury, preparation is the element that translates in their minds as the badge of a leader that they can trust. They do not want to make a statement or give a response that will make them look silly or unreasonable. Unconsciously they believe that a prepared person will lead them down a path where they will not look foolish if they follow. They therefore believe, in the back of their mind, that the solution to not looking silly or unreasonable is to follow the lead of a well-prepared person. So get the psychological edge — be organized and look like the best prepared person in the room.

When to Begin

Start your litigation notebook when the case first becomes active in your office. Then you will be able to be more efficient in your use of office staff. You already know that law office management experts tell you to do something each week on each case. You already know that every client wants something done on his case every week. You have been excusing yourself to yourself by thinking that you do not have the time to work on each case every week. If you have 35 active files, you cannot spend (on the average) more than one hour a week on each case. So when one case takes up ten hours of your time, nine other cases do not move forward. The solution to more consistent case movement is using your litigation notebooks at the start of the case.

Your notebook is the key to having work done on more cases each week. All you have to do is instruct your secretary and legal assistant that when you are out of the office, or they have any spare time, to look in the trial notebooks for your cases, review the litigation checklist behind “Plan,” and start working on what needs to be done next. We will talk more about that when we discuss the “Plan” section of the trial notebook.

I want to mention a personal benefit I found in using trial notebooks in my task as manager of my time in working dozens of open cases. A trial notebook system allowed me to go from case to case and pick up where I left off a week ago or a month ago. I could do efficient work on the case for an hour, or — better yet — look and see what needed to be done and assign others in the office specific tasks to do on the case the next day or week. To gain that manager’s advantage, you must have a uniform litigation system from case to case, and a uniform place for you and your staff to find the case information. The trial notebook is that system, and the trial notebook is that place.

When a case does get called for trial, if you started a notebook at the time the case came into your office, you will be ready for trial quicker, better, and smarter. Now go out and get organized on your next case!

Building Trial Notebooks

Volume 2

The tips, tactics, and forms
of Power Litigation™
to move you faster, better, and smarter

By Leonard Bucklin

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Managing Editor
James Publishing, Inc.
3505 Cadillac Ave., Suite P
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STAFF

Editor: Anne Loughman
Production: Amanda Winkler

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Foreword to This Power Litigation™ Volume

Power Litigation¹ moves you faster, better, smarter than your adversaries. Power litigators are not necessarily more intelligent than the average lawyer. Instead, there are two characteristics that set power litigators apart from most lawyers.

- ✓ Power litigators are *better* organized, a major advantage; and
- ✓ Power litigators run *ahead* of the pack, actively ahead of their adversary and moving surely toward their objective.

Volume 1 of *Building Trial Notebooks* gives you the trial notebook system of power litigators. Volume 1 gives you the organization of power litigators. From your base of using trial notebooks for organizing your case, let's move on to the techniques of Power Litigation™.

Volume 2 of the *Building Trial Notebooks* set is devoted to giving you help and advice on handling the course of litigation, not only handling one case, but also the entire way you organize your litigation practice. We give you proven tips and tactics, and the power of forms. You will:

- ✓ Move from passive waiting for the next step in the litigation to actively pushing your adversary and keeping him/her responding to you; and
- ✓ Move, in every step of the litigation, with the confidence that comes from knowing the tactics of top litigators.

In Power Litigation™ we bring you the things they did not teach you in law school, things that will help you achieve deposition, settlement, and trial success, put money in your pocket, and leave the satisfaction of a job well done in your mind.

Always reach for this book when you need ideas, a power technique, or a litigation form. Right now, here are two suggestions. First: read, right now, the detailed table of contents in Volume 1 of this book. Doing that will not take you much time. The short time so spent now will be an investment in providing later recall of where you can find what you need. Second: read a chapter or two of this book on a regular basis (to increase your knowledge). It's the best CLE time you'll spend.

This volume — Power Litigation™ — makes suggestions on how attorneys can achieve success for their client in the process of litigation. These suggestions summarize

¹ "Power Litigation" and "Bucklin Trial Notebooks" are each trademarks of Leonard Bucklin, identifying his articles, forms, and texts giving advice to lawyers.

the experiences of my life in litigation, or the teachings of other trial attorneys or the experts in other fields (e.g., psychology), on the best approaches to solve practical problems and reach desired objectives. Where I have been able to give credit for the origination of an idea, I have done so. However, it is impossible for me to recall where I first formed or first learned many of the tactics which I have used over decades handling litigation or supervising other attorneys.

I know well that, on some suggestions on how to best proceed, I am presenting only one view among many possible alternatives. Lengthy discussions, with pro and con, have their place in scholarly literature, but that place is not here. Here, I intend to give busy practitioners the best suggestions in a readable length of pages. Thus, this book does not present academic, lengthy, arguments. If any suggestion seems dogmatic, this is an effect of compression in writing, not of my illusion that there is only one way to do litigation.

I ask you to consider whether what I say seems reasonable, and, if so, to try the suggestions in your own practice. The proof of whether an approach to litigation is superior for your purposes is not whether it has worked for many fine trial lawyers, but rather whether it works for you.

Good litigating!

Leonard Bucklin

Acknowledgments

I want to specially thank certain persons. James Pawell of James Publishing Company has been generous in his compliments and wise in his suggestions to me during the years spent writing this book and its supplements. His compliments have been gratifying; his suggestions have embodied good judgment. The editors for *Building Trial Notebooks* have, over the years, been exceptional, efficient, and cheerful. The staff members listed on the copyright page of this volume have continued that tradition of James Publishing Company.

I have been pleased that a number of good attorneys have volunteered that something written by them could be placed in this text. Where they have done so, I have indicated their contribution at the point where their words have been used.

Leonard Bucklin

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