

Foreword to the Fourth Edition

The first edition of this book was published hardbound in 1986 and it was 73 chapters in one volume. The second edition was 1993 and was also one hardbound volume with 87 chapters. Then it moved to paperback versions 1999–2006 with 102 chapters. It was supplemented as a paperback, too, 2007 to now, to seek to keep the cost of the book reasonable. This fourth edition has 113 chapters and is at least three times as long as the first edition.

The trial handbooks started with Lawyers Cooperative Publishing in the early 1970s, or even sooner. (LCP merged into Thomson in 1999.) The early books followed a format. Over time and as local needs developed, many of them expanded on the original format as the authors felt necessary. There are now 27 state trial handbooks, and Illinois, for example, has six volumes for civil, criminal, homicide, and sentencing.

For more than a decade, I've been hearing from readers that this Trial Handbook needs practical trial advocacy instruction because, as they said, this book was what they needed to get through their early or later more complicated trials. That was not, however, how trial handbooks were normally done. I thought it a great idea, but did we have the time and space to do it in? It's been 12 years since the last edition, and this fourth edition was time.

So, based on that user feedback, this trial handbook also includes practical trial advocacy issues for newer lawyers to help them with their first few trials. As stated in § 1:1, trial advocacy materials are included in several chapters, but it is cautioned that what appears here is and can be only an overview to pique the reader's interest. A chapter in a trial advocacy book could be 40 pages long, but here it is 6-8 sections and maybe only 6-8 pages. It is intended to be the best parts of what was cited or quoted, and it isn't as good as the detailed original material. In my view, however, it's at least enough to carry a young lawyer through his or her first few trials. But still: read books on trial practice and get all the trial advocacy CLE you can. You can never stop learning. More about that below.

Second, the research references in this edition are greatly expanded. This is more than just a trial handbook: It is intended to be a mini Am. Jur. to aid lawyers in briefing pretrial, trial, and appeal issues and giving them more law to rely on during the trial. Some chapters were reorganized to enable readers to find answers quickly in the heat of a trial. This is the product of my

45 years of trial experience in at least 350 jury trials and doing and reading enumerable appeals on what was or was not a preserved error and then knowing how to preserve error and something as complicated as whether to object. You've got 8-10 seconds to decide: do you object or not, and, if so what do you say? You can't be taught that here, but maybe you can anticipate the right answer by (1) knowing the law in the first place, and (2) then having the experience to know the difference between an objection that matters and one that doesn't. So, my own journey through trials leads us to this Fourth Edition with far more practice oriented information than any trial handbook reader has seen before. I'm not the same lawyer I was in 1985–86, and how cases are tried isn't the same either.

Third, in some areas of law, before there was merely one section of the book that became chapters of their own here because of the growth of the law or the needs of lawyers. See, e.g.:

- theories and themes (Chapter 8 with 9 sections)
- *Batson* challenges (Chapter 19 with 10 sections)
- constructive possession (Chapter 57 with 9 sections)
- confrontation of witnesses (Chapter 82 with 16 sections)
- *Brady* doctrine (Chapter 89 with 7 sections)
- conduct of the defense (Chapter 90 with 15 sections)

Also, some sections were reduced because of changes in the law; some were greatly increased if necessary.

An important aside: When I was in the Prosecuting Attorney's Office in Little Rock, 1973–79, there was no organized trial practice CLE in Arkansas that I recall seeing until about the last year when I did one on the "new" rules of evidence. About 1975, I did prevail upon the office to send me to a weeklong trial advocacy CLE in Chicago that was a virtual boot camp and set me on this path – it started me on being a real lawyer, not just one in name only, with at least a clue as to what I was doing.

Wilbur C. "Dub" Bentley was the Chief Deputy Prosecuting Attorney back then; he was my mentor and we didn't know it. He graduated from the old Arkansas Law School (now Bowen) in 1952. He learned by having done it with the Air Force JAG before and during the Vietnam War, serving a second time 1953–1970 after a WWII stint in the Navy. Dub and I tried several cases together, and I watched him with juries in cases with others. He was a good teacher and he saw potential in me, and he gave me good courtroom instincts.

And his subtle teachings and insight are why this is dedicated to young trial lawyers, like we all are now or once were.