

JOHN C. BUCHANAN
CAROLE D. BOS
with **FRED I. HELLER**

**How to
Use
VIDEO
in
LITIGATION**

**A Guide to Technology,
Strategies and Techniques**

HOW TO USE VIDEO IN LITIGATION: A Guide to Technology, Strategies and Techniques

John C. Buchanan and Carole D. Bos
with Fred I. Heller

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Dedication

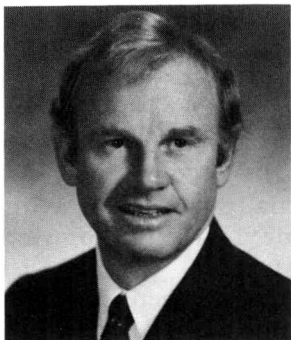
We feel as though we have just returned from a long, monumentally difficult journey. Sometimes we wondered if we would ever make it back. We've spent five years on our journey, and we know it's been hard for our families. Patience wasn't something we alone had--so did they, and we thank them for it. The results of our journey--this book--is dedicated to our families. It is especially dedicated to Jim and Sheila. They understood when the journey took longer than we expected. They cared when we were frustrated. They tried to be patient when we had to isolate ourselves from our hectic law practice. They understood that long and lonely weekends for them would be the only way we could finish our manuscript. It is because of that and our appreciation for their part in helping to make this book a reality, not just a dream, that we dedicate our work to them.

Grand Rapids, Michigan

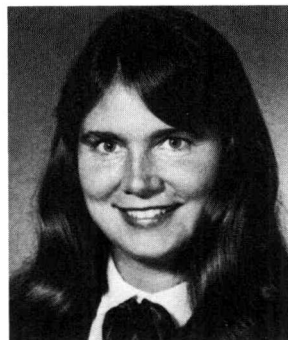
Our special dedication, and the reason why we wrote this book, is two-fold. We believe in trial by jury. All the work we have done in this book is dedicated to the preservation of our civil jury system. It is the best in the world. Our judicial system has problems--but the problems are not caused by juries, and their elimination must never be the solution. Our problem is clogged dockets and long delays resulting in inefficient justice. We wrote this book with the hope that our work would somehow help to improve the quality of justice in this country and to speed up the trial process. We dedicate our efforts to that end.

Grand Rapids, Michigan
Merrick, New York

THE AUTHORS



JOHN C. BUCHANAN received his B.A. from Michigan State University and his law degree from the University of Michigan. He uses video extensively in his trial practice and has received large settlements and jury verdicts as a direct result. One of the first trial lawyers to use a video camera in court to project evidence, Mr. Buchanan presented "still" exhibits, such as photographs and documents, for simultaneous viewing by the witness and the jury. This novel use of the medium attracted local media attention. Mr. Buchanan lectures on the use of video applications and trial practice techniques nationally and for the Michigan Institute of Continuing Legal Education. In addition to early experimentation with day-in-the-life documentaries, he served as Chairman of the ABA's Video Equipment Committee from 1981-1983. Mr. Buchanan is a Fellow of the International Academy of Trial Lawyers and the American College of Trial Lawyers.



CAROLE D. BOS received her B.A., with high honors, from Grand Valley State College of Arts & Sciences and her law degree, cum laude, from Thomas M. Cooley Law School. Her analytical writing ability won her the distinction of Breen Scholar during her college years. Mrs. Bos uses video extensively in her trial practice with large settlements and jury verdicts as a direct result. She and her pioneering work in the legal-video area were the subject of a 1984 PBS documentary produced by New Tech Times. Her work in this field is also featured in *Women Trial Attorneys in Action*, a book by Janine Warsaw (Prentice-Hall, Inc., 1986). In addition to experimentation with day-in-the-life documentaries, she lectures nationally on the use of video applications in the trial process. She currently serves as a member of the Michigan State Bar Communications Committee and has been a Regional Director of the Federal Bar Association since 1984.

TOGETHER Mr. Buchanan and Mrs. Bos have been pioneers in the field of legal-video. They have co-authored several articles on the subject for various legal publications. Buchanan & Bos, P.C. is a Grand Rapids, Michigan civil trial firm emphasizing major personal injury cases and complex commercial litigation for both plaintiffs and defendants. The firm has had much success with video in both the plaintiff and defense representation.

FRED I. HELLER is a New York trial attorney who has devoted his professional career to the development and use of legal-video. He has produced over a hundred legal documentaries which have met with resounding success by the trial attorneys who have utilized his services. As a partner in the New York City lawfirm of Speiser & Krause, he achieved similar results in his own cases. He left that firm in order to devote his professional time exclusively to the production of legal documentaries. Mr. Heller has served as an expert witness on the question of admissibility of these documentaries, both for applications he has produced and as an impeachment expert on the work of others. His current professional affiliation is President of Heller Associates, Ltd., Merrick, New York.

Acknowledgments

This book began as a small handbook for lawyers only. We had experimented with videotape in our practice and wondered why more lawyers weren't using it. We realized that the concept was too new--most lawyers either didn't realize that videotape could be used in the law at all or they didn't know how to properly use it. We decided to teach them with a book.

We spent nearly a full year just researching the subject of videotape in the law. At the beginning, we had never heard of Judge James L. McCrystal and his idea of prerecorded videotape trials. Much of our knowledge resulted *after* we began to work on this project. We realized how limited our own use of the medium was compared to the potential spectrum.

Our work has taken us across the country, and we have met many people who have helped us. Without them, the depth of this book would not have been possible. Most importantly, our colleague, Fred I. Heller, has helped to shape our thinking. He is an attorney who, as president of Heller Associates, Ltd., Merrick, New York, has devoted his career to legal-video. Fred has had extensive experience with many different types of legal applications, especially those where video is used as a form of demonstrative evidence: the legal documentary. He has also had much experience regarding the admissibility of tapes, both in testifying as an expert concerning videotapes produced by his company and as an impeachment expert on tapes produced by others. We have spent hundreds of hours with him--discussing philosophies, concepts, techniques, and procedures. We have changed his thinking--and he ours--on important points. You will receive the value of this collaboration. We have thought all of the issues through, and have tried to answer all the questions you might raise in response to those issues.

We also want to say thanks to Lynne Heller. Her husband has sat through soccer games, softball games, and just about everything else, with a copy of the manuscript. We thank her and the rest of the family for their patience.

We have talked to court reporters and video technicians. They told us that they, too, needed guidance in this area. We talked to major manufacturing companies who wanted to learn more about effective use of video in their industries--particularly with reference to litigation. They needed guidance, too.

As a result, we had to change our initial thinking on the kind of book we would write. It had to be a book not just for lawyers and judges, but also for video technicians, court reporters, educators, manufacturers, insurers, and students. That presented us with an even more difficult task: How could we write a book on a technical subject that would be read by such varying groups of people? We never intended to use "legalese." As lawyers, we know how tedious it is to read that kind of text. We had to eliminate some of the tools lawyers prefer--like numbering the subsections. We didn't think that would be helpful for you who will study our work.

We decided to use a "novel" approach. Because this book includes so many ideas and covers the full spectrum of video in law that we know about, it should be read in its entirety. That's the only way you will fully understand the potential of this medium in the law. Acknowledging that most law books are *not* read from cover to cover, we decided this one had to include many hypotheticals and illustrations. We have written it like a novel, trying to explain the complicated concepts and technical jargon in straight-forward, uncomplicated English. For those of you who are used to legalese, numbered subsections, and highly technical legal analysis, we ask that you understand our objective. We felt extensive endnotes would hinder, not help, our readers' understanding; we have used them only in Chapter 15, which could not be effective without them.

Others have also pioneered in this subject, and we thank them for their work. We have read nearly everything that has been written on the subject. Our work is, therefore, not just ours, but the collective result of much thinking by others. Most notably, those individuals include Judge James L. McCrystal, Ann B. Maschari, Thomas J. Murray, Jr., Gregory P. N. Joseph, Earnest Short, Guy Kornblum, and others. Our special thanks on technical matters to Guy E. Ortileva for

his invaluable discussions and to Lee Harrison for his computer-generated animation ideas. A special thanks also to our friend and colleague, Michael F. Kelly, who worked with us in the early days of our efforts. He experimented with the concepts on some of our mutual cases and encouraged us to tackle the enormous project of writing this book.

We also want to thank all of our secretaries who have typed parts of our manuscript over the years. Many of them deserve special credit: Mary (Kay) Osbon, Debra Kovalevich, Hilda Frasier, Linda VanderStel, and especially Esther Peckover. We want to thank them for being patient with all our rewrites.

A special thanks to the Thomas M. Cooley Law School Library. They let us use important reference texts for long periods of time. That was indispensable to our research effort. Thanks also to the National Center for State Courts for similarly loaning their reference texts to us.

Our research assistants worked with us to analyze the law regarding videotape depositions. Thanks especially to our associate, Lois M. Ens. The National Research Group conducted an exhaustive study for us on the law of videoevidence--particularly Chapter 15. Our special thanks to these individuals for helping with that difficult task.

A special thanks to Williams & Works of Grand Rapids, Michigan, consulting engineers, for contributing the artist drawings. This firm provides investigative engineering services, demonstrative exhibits for lawyers, and routinely produces outstanding exhibits for our office.

Many others have helped us with this monumental labor--we thank all of them, as well. A project of this magnitude, which synthesizes a great deal of ideas and thought, is never just the product of a few individuals.

It is our sincere hope that our work will have a positive impact on the way our civil-jury system works. We have tried to present to our readers all of the ways we think video technology can help to cure some of the problems technology itself has created. Now all of us face a difficult task: to grapple with the issues and *make* the system work better.

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PART ONE

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