

BOOK REVIEW

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Review of: *Cross-Examination: The Comprehensive Guide for Experts*

REFERENCE: Babitsky S, Mangraviti JJ. *Cross-examination: The Comprehensive guide for experts*. SEAK, Inc., 2003, 432 pp.

Courtroom testimony with its intense adversarial setting is one of the most feared aspects of being a forensic scientist because no one likes to have their statements, opinions, and reasoning challenged, and here it is the heart of the proceeding. It is so off-putting that some new criminalists change their careers rather than prepare themselves to meet the challenges offered. This is the book I wish I had 30 years ago. Aimed at expert witnesses testifying in both civil and criminal trials, it explains the *process* of testimony and cross-examination so that the witness can prepare to give the most effective testimony. Such preparation may not quell all the fears but at least reduce them. As one colleague used to put it, “get all the butterflies flying in formation.”

The authors are both principals in the litigation training firm SEAK, Inc. and have been leaders in the numerous professional seminars that firm has offered on expert reports, testimony, negotiations, and the like. The book is logically presented from chapters on how attorneys prepare for cross-examination, to how the expert should prepare, how jurors perceive experts, what experts can (and can't) be asked on cross, to proactive strategies (i.e., *sometimes* a good offense is the best defense). It is filled with examples (many apparently excerpted from real trial transcripts) and those are very useful. One failing is a tendency for the authors to slip into “lawyer speak,” and these examples clarify the issues for us non-lawyers. There are many legal citations offered to support claims and reinforce suggestions, but they do not add much to the understanding of the reader. The whole book probably could have been considerably shorter and easier to read had the authors used numbered footnotes rather than full legal citations. This is especially true in Chapter 7, “Legal Limitations to the Scope of Cross-Examination,” where there are over 60 pages of legal citations whose usefulness to the expert witness reader would be minimal. (The entire chapter is best suited for the lawyer using an expert witness rather than the witness.) There are very few occasions where an expert witness would dare offer a legal citation in support of his or her testimony!

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The authors use an “Executive Summary” style of presentation for each chapter where the introduction is a “Reader’s Digest” version of the contents to follow. Chapter 1 is in fact such a summary of the entire book. For “executives” this means only having to read 20 or 30 pages of a text, but for those of us who really read a text from cover to cover, it is a little confusing. One finds oneself thinking, “I’ve read these very lines before, in fact, several times before. Why am I reading them again?” A number of the examples, however, are useful in making several points in different chapters, so one can hardly blame the authors for including them in several chapters.

Many of the examples used are from civil litigation, and those of us who focus strictly on criminal cases may find their minds wandering. But the issues raised are usually equally valid for both civil and criminal, prosecution (or plaintiff) and defense. Some of the “errors,” however, made by experts are so awful, reading them is like watching a train wreck. Even if you don’t understand the technical details, you can see a disaster coming. It is shocking to read some of the responses offered by experts, but good lessons are learned. (We can only hope those involved learned them, too.)

Chapter 9, entitled “How to Answer Trick and Difficult Questions,” is very instructive. It offers 75 common, yet difficult, questions and offers several responses to each. The responses are cleverly classified as: “Novice,” “Direct,” “Aggressive/Defensive,” “Inflexible,” “Artful,” or “Jail.” This is really helpful because the reader can visualize one’s own response and see how it plays in context.

As instructors, the authors have distilled out a lot of useful thoughts, suggestions and examples from a wide range of courtroom experiences that would make this text an excellent resource for training “new” expert witnesses. A variety of groups and agencies offer such training. This is certainly easier (on the witness) and faster than the old method of sending novices off to court with minimal guidance and preparation, hoping they don’t damage the case or themselves too badly in the first few dozen appearances. Even those who have been bloodied in numerous courtroom frays can learn from this nicely presented text.