

BOOK REVIEW

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Review of: *Law for the Expert Witness, 3rd ed.*

REFERENCE: Bronstein DA. *Law for the expert witness, 3rd ed.* Boca Raton, FL: CRC Press (Taylor & Francis Group), 2007, 120 pp.

The fact that this slim book of barely 210 pages of printed text made it to its third edition might be taken as an indication of its usefulness. And it probably has sufficient material in it that informs the experienced and sophisticated nonlawyer expert. But the utility of the book could have been greatly enhanced by the distillation, in nonlegal terms, of explanations useful to an expert, instead of the all-pervasive verbatim quoting of federal rules and excerpts of court decisions without author analysis, commentary, or practical examples. The author of the book, an experienced educator, certainly has the skills and know-how to do so. This reviewer will detail the topics covered, so that prospective readers can decide whether the information it contains may be helpful to them despite its limitations.

The procedural issues in Part I—the first seven chapters—are mostly verbatim quotes from procedural rules and case law decisions. Author discussions consist basically of introductory comments and transition paragraphs between quoted matter. In readers' efforts to extract useful material from legal text, they are given virtually no assistance by the author.

As an example, except for a brief introduction and several transition sentences, the 18 pages of Chapter 2 are taken up entirely with verbatim quotes from Federal Rule of Civil Procedure (FRCP) 26 on discovery in civil cases and excerpts of three court decisions, one of which is inapplicable to experts because it deals with sanctions courts may impose upon parties for nondisclosure. Despite promises in the introduction that the expert witness-reader would not have to "digest" large doses of unadulterated legal language," the nonlawyer is likely to experience difficulties extracting useful concepts from quoted legal text, printed without analysis and commentary. Indeed, less than two pages are actually written by the author, a fact that applies to almost every chapter in the book.

There is no commentary offered on how the rules apply depending on the role an expert plays in litigation: as experts called to be witnesses, nonwitness consulting experts, informally consulted experts who were not retained, or experts who obtain information independently. Since the entire tome only deals with federal civil litigation, there is of course no mention of discovery in criminal cases, where totally different rules apply and where one also must consider the interplay between constitutionally mandated discovery and rule- or statutory discovery practices under either the federal rules of criminal procedure, state rules (which may vary

considerably from the federal model) as well as the United States Supreme Court mandates on criminal discovery.

Chapter 3's nine pages deal with depositions in civil cases. It contains less than one page of author text; the remainder simply quotes from FRCP 30 and contains excerpts from a deposition and a court decision in two tort cases. No advice is given to experts on how they should frame their answers, how a deposition is handled technically, how objections interposed by a lawyer are handled, or on the advice an expert is likely to receive from the lawyer prior to being deposed.

In a similar vein are Chapters 4 and 5 on interrogatories, subpoenas, and on sanctions for failure to satisfy discovery demands. They contain, combined, less than two pages of author text. The remainder of the 16 pages of the chapters comprises quoted materials from FRCP 33 through 37 and three case excerpts in—what else—federal civil cases.

One would expect some useful advice for experts in the three-page Chapter 6 on Pretrial Conferences, yet, all it contains is a verbatim FRCP 16 on scheduling and managing the pretrial conference. Finally, in Chapter 7, the author deals with burdens of proof and of persuasion, presumptions, and the origins of the rules of evidence in about three pages, along with a page-long quote of Federal Rules of Evidence (FRE) 401, 402, and 403 on relevance. Since the book only deals with civil matters, there is no mention of the prosecutorial burden of proof beyond a reasonable doubt in criminal cases and its meaning. That concludes the first part of the book.

Part II, comprises 14 chapters for about 100 pages, minus 10 blank pages and two full-page illustrations of Michigan county courtrooms. It deals with the law of evidence, but lest you expect some instruction, it does so in same manner as in the earlier chapters: by simply printing FRE rules and court decisions without explanation. So that prospective readers may determine whether that content is of sufficient interest even though merely in rule form, the subjects covered are: who is an expert; the form of questions to an expert; experiments and chain of custody; common knowledge and routine practice; real evidence; exhibits and demonstrations (surprisingly, this five-page chapter contains three pages of author text!); hearsay and its exceptions (five chapters); and the best evidence rule. The final chapter in this section is: A "Real" Case, and is simply another verbatim four-page trial court decision.

Throughout Part II, the tome simply prints 25 federal rules of evidence without analysis or commentary, as well as 19 court decision excerpts. Besides introductory or transition comments, no author examples are supplied on how the various rules are interpreted or when they may apply to expert witnesses.

The landmark United States Supreme Court cases of *Daubert v. Merrell Dow Pharmaceuticals* and *Kumho Tire v. Carmichael*, cases that have been and are the bane of expert witnesses nationally and the subject of many expert witness educational seminars throughout the United States, are mentioned in less than one page,

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but without analysis or illustrations on how they came about, what they mean, and how they are being applied to various expert disciplines. If there were ever court decisions where experts might be interested in reading the actual words of an opinion, these two decisions were “it.” Yet, neither case was analyzed.

In Part III, which includes the concluding two chapters on “Direct Examination” and “Withstanding Cross-Examination,” the author finally give about eight pages of advice to prospective experts with only one brief, and largely superfluous, FRE quote.

Lest the reader be misled, the author explained clearly in the Introduction that “Law for the Expert Witness is not discursive in nature.” If expert witnesses expect to find illustrations on how the

many court rules may apply to their own practices, there will be disappointment. The quoted rules and court cases are not analyzed as to their practical impact on experts. Readers are left to reach their own conclusions on their impact.

The global usefulness of the book is further limited by the fact that the entire book only deals with experts in civil cases. If you are a criminalist, forensic pathologist, drug chemist, or other crime laboratory specialist—individuals who, collectively, comprise a significant if not majority segment of the AAFS membership and journal readership—do not expect to find much of direct application to your expert witnessing practice in this otherwise attractively printed tome.