

Another Book Review from the desk of Joseph E. Badger

At first glance, it might appear that the book “How to Excel During Depositions: Techniques for Experts That Work” was written mainly for doctors. Wrong. Whether you’re an engineer, an academician, or a law enforcement crash investigator, if you do accident reconstruction and end up in a deposition hot seat or on the witness stand in a courtroom, you should check out this book.

The 227-page text is appended with five appendixes and an index, for a total of 284 pages.

In case you ever wondered why we are deposed in the first place, well, according to the authors, “The theory is that if all parties know all there is to know about the other side’s case, they will be able to evaluate the merits and weaknesses of the case rationally and settle the matter.”

There are all sorts of interesting items in what’s called the Federal Rules of Civil Procedure that you may search through at <http://www.law.cornell.edu/rules/frcp/>; however, Chapter One in “How to Excel During Depositions” covers the high points.

You will find over a dozen subsections under the topic “Dispositions and Discovery.” Taking the time to review these would be worth your while, but authors Steven Babitsky and James Mangraviti, Jr. give you their insights on how to do well in depositions and not get caught off-guard.

Throughout the text the authors give you snippets of advice such as “Your role as an expert is not to argue evidence or procedure. You are *not* an advocate and will lose credibility if you appear to be one.”

The authors offer many examples of typical questions and answers from depositions that end in valuable lessons such as “The expert’s deposition testimony will be used to impeach him at trial if he attempts to change his answers on [an] issue” and “Expert witnesses are well advised to avoid flip, clever or joking remarks. Such remarks lessen your credibility as a witness and will accordingly lessen your value to the attorneys that retain you.”

You may read the above lessons and say, “Duh,” because they seem so obvious, but you will be surprised how many of the lessons you may have forgotten... or haven’t yet learned.

You will also read WHY the authors tell you to do things this way or that. For instance, they remind you that “It is your role as an expert witness to provide your best, honest opinion based on the information that has been provided to you. *It is not your role to resolve all factual disputes in the case.*” [Emphasis mine.]

They offer some instruction in the matter of handwritten notes. “Experienced experts have learned not to make such notations.” However, if you make them, be careful not to destroy them lest you appear to be hiding something... and do NOT destroy them AFTER receiving a subpoena to produce.

There are other good tips under the heading “Private Notes” and “Cover Letters.”

One more tip, if you work for a firm that does the billing, find out how much they bill in your cases so when it comes time to testify you’ll know the amount. After offering a couple of exchanges from two depositions, another of the book’s lessons states “Note how evasive the experts appear over questions that could have and should have been answered simply and directly.”

Other valuable hints include those about not “getting burned” by off-the-record remarks made during breaks in your deposition. The authors also list some advantages and disadvantages to conducting the deposition in your office as opposed to the attorney’s office or at some neutral location.

Have you ever been stiffed by an attorney who took your deposition and either didn’t pay you at all or delayed sending payment for months? That’s called “expert abuse.” You may want to read Chapter 9 first. Under the heading “Abusive Questioning,” it covers such topics as Repetitive Questions, Demeaning and Sarcastic Remarks. Then they discuss “Nonpayment of Fees.” Good reading.

Speaking of fees, the book devotes all of Chapter Seven to “Setting Your Fee, Billing, and Collecting.” Good luck.

You can read more about the book at <http://www.seak.com/webstore/default.asp>. You can even read a considerable amount of excerpts – free!

But get the whole book. It’s \$59.95 plus \$9 s&h and available at the aforementioned website.

(About the reviewer: Joseph E. Badger is an internationally known accident reconstructionist who has had over 100 articles published in such periodicals as *Law and Order* magazine, *Accident Reconstruction Journal*, *Accident Investigation Quarterly*, and others. Having retired after 20 years with the Indiana State Police, Mr. Badger resides in Bloomington, Indiana.)