

## **Another Book Review from the desk of Joseph E. Badger, Bloomington, Indiana**

Steven, Ellen, Alex and Karen Babitsky. It's quite possible those names don't ring an immediate bell, but because of them we have a company known as SEAK, named, obviously, after those family members. Steve is the SEAK patriarch, Alex manages their product line and Karen is the marketing director.

One of SEAK's features is what they call a **National Directory of Expert Witnesses**, a "proven way to generate new expert witness referrals." It is not, however, what I would call the world's largest directory of experts, at least not as far as accident reconstructionists go. I searched their database for Accident Reconstruction Experts in All States and found only 28 – and none in Indiana.

But what they market and publish are books.

Steven Babitsky has been an attorney since he was admitted to the Bar in 1972, so he has had a long time to deal with and depose experts. And that prompted him to write books. A lot of books.

Babitsky has written or co-written many texts (<http://www.seak.com/webstore/default.asp>) with such titles as:

*How to Become a Dangerous Expert Witness* – Advanced Techniques and Strategies

*Cross-Examination* – The Comprehensive Guide For Experts

*National Guide to Expert Witness Fees and Billing Procedures* – The Definitive Guide to Expert Witness Fees

*How to Excel During Depositions* – Techniques for Experts That Work

But the one I thought you might be most interested in is his latest: *The A – Z Guide to Expert Witnessing* by Steven Babitsky, James Mangraviti, Jr. and Alex Babitsky.

Don't ask me why (because I don't know), but when I first received the book I started reading at the back. For those of you who have done accident reconstruction and testified at trials and depositions for years or if you are just starting out in this challenging field, you may also wish to start reading the book from the back.

Among the goodies found in the 26 appendices are sample consulting agreements, model CVs and fee schedules. There are directories of referral organizations plus the names, addresses, phone numbers and Web addresses of all the state bar associations.

This hardbound book of 626 pages teaches you such things as how to best connect with and persuade a jury, how to market yourself professionally and cost-effectively.

It helps you with testifying skill and how to handle abuse by attorneys. It explains how to bulletproof your CV and written reports.

Each of the 24 chapters has a Conclusion and if you are in a hurry, read just those... Then if you find something pertinent to your situation, you can read more about it in detail.

I found a great deal of interesting material especially valuable to those just getting into expert testifying. For instance, in the chapter on Qualifications, it explains who is qualified and who is not and cites case law.

There was the mechanical engineer – in Example 6.14 – who was found not qualified to testify as an accident reconstructionist because he didn't have any training or experience in the field. Or – Example 6.28 – an engineer found not qualified due to a delayed visit to an accident scene.

There is a chapter titled “Bulletproofing an Expert’s Report” that contains several examples of things NOT to put in a report. The authors remind readers: “Wise experts do not draw legal conclusions (for example, ‘The plaintiff was guilty of contributory negligence’). [That sentence provoked defense counsel to ask], ‘Can you please explain to the jury the four elements of negligence, Mr. Harding?’”

[I believe the authors are referring to (1) duty, (2) breach of duty, (3) causation, and (4) damages, but don't quote me.]

There is a great chapter on “Methodology.” It contains citations of well over one hundred cases where expert testimony was admissible or inadmissible. Those cases involving accident reconstructionists, engineers, biomechanics, and doctors – where testimony was excluded, barred or disallowed – make interesting reading.

Mr. Babitsky wins my prize for the World’s Best Politically-Correct Expression. In Chapter 14, “Direct Examination,” he discusses juries thus: “When preparing his responses, the expert should keep in mind that he will be attempting to persuade a jury of lay people, many of whom may be *scientifically unsophisticated*.” [Emphasis mine.]

If you have been cross-examined dozens of times, you may already be aware of much of the information in Chapter 15, but if you are relatively new to the industry, study “Cross Examination” well before you spend much time on the witness stand.

Chapter 19, “Fees, Billing, and Collections” is mandatory reading for anyone who has been stiffed by a client or made to jump through hoops in order to get paid.

And if you feel that you have ever been “abused” when giving a deposition, read the section in Chapter 24 about the attorney who was disbarred after being obnoxious to an expert witness.

I asked Mr. Babitsky if he could give only one piece of advice to an expert what would it be? He said, “Develop and stick to a protocol that you use in all of your forensic expert witness work. This will help you to do quality work and not miss crucial aspects of the case.”

What major pitfall should experts avoid? He said, “Trying to please the current client by telling him what he wants to hear despite evidence to the contrary.”

If you are pressed for time and can read only one chapter, Babitsky recommends Chapter 18, “Marketing an Expert Witness Practice.” It gives you a lot of dos and don’ts when it comes to advertising your business.

*The A – Z Guide to Expert Witnessing* is available by phone, fax or Website. The price is \$135 plus \$9 shipping. You can order by phone by calling 508.457.1111 or go to <http://www.seak.com/> and click on Webstore.

Questions? You may write to them at SEAK, Inc., P.O. Box 729, Falmouth, MA 02541 or inquire by e-mail: [Mail@seak.com](mailto:Mail@seak.com). If you would like to contact the author personally, use his e-mail address: [sbabitsky@aol.com](mailto:sbabitsky@aol.com).

(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.)