
BOOK REVIEWS

"YOU MAY CROSS-EXAMINE" — *Lewis Herman and Mayer Goldberg. The Macmillan Company (1937)*

"You May Cross-Examine" is a highly entertaining book containing a dramatic picture of the lawyer at work in the court room. It is written in a manner that also provides helpful information to the lay reader. Clever comment interspersed with anecdotal excerpts from stenographic records of trials have been so expertly organized in its 180 pages that the reader gains a more intelligent appreciation of the problems of cross-examination without the consumption of the time and energy necessary for the perusal of a text on evidence. Intended as a handbook for witnesses unacquainted with the methods and purposes of trial procedure, it nevertheless suggests to the student of law numerous techniques and devices which will prove valuable in future legal contests.

Due to the breakdown of the oath and the "insufficiency of modern psychological methods in the court room," the authors declare that cross-examination is the only efficient method of guaranteeing that truth will be obtained. When and how to cross-examine so that the lawyers may demonstrate which side is probably right; when to add purposely or inadvertently omitted facts, to impeach a lying witness, and to bring out the truth as interpreted by the cross-examiner are important phases of the problem. Since perjured testimony is offered in most proceedings, cross-examination assumes added importance as the most satisfactory method of detecting its presence. The extensive preparation by the lawyer before questioning an expert is portrayed by William Fallon's mastery of 182 gynecological textbooks in one night, so that he might meet a medical expert on an even basis.

Yet knowing when to stop is vitally important. Rufus Choate stated, "Never cross-examine any more than is absolutely necessary. If you don't break the witness he breaks you. For he only repeats over in stronger language to the jury his story." It is a bad policy to shake testimony by cross-examination which may be contradicted by the direct examination of other witnesses. In the solution of this problem there can be no set formula. Common sense and the ability to take advantage of an opportunity are the essential prerequisites of a successful examiner.

One of the most interesting chapters is devoted to the lawyers' reluctance to cross-examine women. They are positive in their state-

ments, mentally quick, and operate on a shifting basis of intuition. They change from one conclusion to another and cause the lawyer to lose sight of the hypothesis on which he has based his questions.

Discussing lie detectors, hypnosis, and the use of such drugs as *scopolamine* and *sodium amytal* as truth serums in the determination of the truth of testimony offered, the authors conclude that these and other psychological methods have not yet been developed to such a stage that cross-examination should give way before their advance.

From the court room experiences of Lord Russell of Killowen, Rufus Choate, and William Fallon and the strategy of Earl Rogers and Samuel Leibowitz, the authors have selected a wealth of incidents appropriate for numerous after-dinner speeches. The book is adequately indexed and so edited that each example forms an easily found concept, designed to demonstrate a particular point.

Herman and Goldberg introduce the reader to these famous lawyers in the introductory chapters. Through the remainder of the book they continually return to the trial lives of these same men to obtain the illustrations used in developing their hypotheses on problems of cross-examination. For this reason the casual reader feels he has come upon only a superficial survey of the subject. This impression is bolstered by the manner in which the authors have included incidents where these lawyers violated well established rules of cross-examination and were successful. The realization comes to the thoughtful reader that this book is a concrete portrayal of our system of legal analysis. Students of law continually return to a comparatively few well known cases which are precedents in the solution of new problems, just as the authors have resorted to the lives of only a few famous lawyers to prove their points. The attitude of the student of law toward old rules and principles should be just as critical as the attitude of those lawyeres when they refused to follow such rules if a new procedure would bring a desired result. If cross-examination continues to be this elastic element in our trial procedure, it will fulfill its purpose of securing the truth.

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