This is a book about cross-examining psychiatrists and psychologists in civil cases. Similar to my book *Cross-Examining Doctors: A Practical Guide*, Second Edition (ALI ABA, 2010), this is a book of experience. As in that book, I have used real transcripts, unedited, to demonstrate the good and not-so-good approaches to cross-examination.

I was trained in a traditional, large Midwestern law firm with a large trial practice. I had the benefit of senior trial lawyer mentors who had tried hundreds of jury trials. I was taking expert depositions during my first year at the firm and trying cases as first chair within two years. Sadly, those opportunities do not exist today. Few lawyers have 100 jury trials in civil practice, and it is well-documented that fewer opportunities to try cases exist today.¹

My effort here is to preserve some of the knowledge, techniques, and approaches of lawyers with vast experience. Preserving this record of transcripts will enable those of us who have less experience because of the circumstances of today’s practice to have the benefit of our predecessors’ thinking on these issues. Actual transcripts, raw though they may be, show how it looks in actual practice without authorial shaping of questions and answers. Such reshaping reads well and is entertaining but does not reflect actual practice. One historical transcript has been included here: the cross-examination of Dr. Binger in the Alger Hiss Trial of 1950. It illustrates some of the approaches addressed in this book but also shows that these successful approaches have not changed over the decades.

As noted, these are civil cases. My firm had a large workers’ compensation practice, so those transcripts are included, along with an equal

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number of personal injury case transcripts involving psychological claims and issues. Most of these transcripts are from my firm but, to create some balance, I have also included transcripts of cross-examinations by other highly skilled lawyers. I have placed more emphasis on substantive areas of cross-examination than on technique, although technique is always a part of the skill set. The focus here on substantive areas is driven by the somewhat unique position that psychiatrists’ and psychologists’ opinions hold in the medical/legal world. First, their opinions, although sometimes based on testing, are primarily based on the subjective activity of talking to their patients. Therefore, the accuracy of historical facts becomes even more important.

Relatedly, psychiatrists and psychologists are notoriously “slippery” witnesses, and it is difficult to fit their opinions into objective criteria. Some familiarity with the American Psychiatric Association’s Diagnostic and Statistical Manual (DSM-5) and with psychological testing is helpful and, in some cases, necessary. However, in the vast majority of everyday cross-examinations in civil cases, the scientific cross-examination based on the DSM or testing is limited. Nonetheless, I have included several examples of DSM and psychological testing cross-examinations.