

Finding and Researching Experts and Their Testimony

Third Edition – November 2014

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Co-Authors' Note

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Several of us got into some discussions about the need to research experts thoroughly. During those discussions, we exchanged our knowledge of not only the resources to search but also effective strategies on how to use the information found. In the end, we realized that none of us was aware of a truly-comprehensive resource that detailed all the various ways to learn about experts. Accordingly, in the spring of 2007, we wrote the First Edition of this White Paper.

In February 2009, we updated the paper to highlight new resources that had emerged (as well as delete references to older, non-functioning sites), acknowledge new applications and strategies, and relate more failures to vet experts thoroughly.

In the past five years, technologies have changed dramatically, more sites have come and gone, and – of course – failures to vet continue to occur. Accordingly, we have taken it upon ourselves to provide a detailed update to the paper, resulting in this Third Edition.

We hope you find this White Paper to be a valuable resource and return to it regularly.

I. Introduction

Many years ago, an Arizona trial court judge overturned a jury's verdict, ordered a new trial and sanctioned the defendant *over half a million dollars* because the defense expert had lied about his qualifications. Importantly, the judge based his decision to sanction on his expectation that the defendant would have conducted thorough research *on its own experts*:

This court opined that defendant . . . knew or should have known of the falsity of its own expert's credentials, but could not conclude that [defendant] in fact knew. This court has been persuaded by plaintiffs' motion for reconsideration that "should have known" warrants sanctions."¹

Expert witnesses are used in a wide range of litigation and their opinions are often viewed as critical – frequently making or breaking a case. As a result, many trials have turned into a battle of the experts. Yet despite their importance, few attorneys take the time to utilize the proper resources to find the right experts, evaluate their credentials, and/or assess the admissibility of their testimony.

The purpose of this article is to suggest various types of online resources that can be used to find experts, gather information about them (whether one's own or the opposing party's), and assess the admissibility of their testimony – as well as tips and strategies on how the information uncovered might be utilized. In addition, to assist in research efforts, a few (but certainly not all) potentially-relevant websites have been included. However, note that because many of the resources discussed (e.g. agency opinions, verdict reports, etc.) are available from a wide variety of free and commercial vendors, such as LexisNexis[®] (see, e.g., Lexis Advance²), Thomson Reuters (see, e.g., WestlawNext), and Bloomberg Law[®], generally such providers are not constantly repeated as possible sources of information, unless their being a provider of that specific type of information is not manifestly obvious.³

One final note of caution: be wary of outrageous marketing claims. Some vendors will tout that they can provide you *all* of the information you need to identify, select or impeach an expert. Nothing could be further from the truth. In fact, some products marketed via such claims actually miss relevant, and relatively easy-to-find, information about many experts – providing you with far less than what is promised. The simple upshot is that, although several fairly-comprehensive products, platforms and services exist, we have yet to find one that does it all. So when evaluating resources, adhere to the well-known maxim: "if something sounds too good to be true, it probably is."

II. Finding a Potential Expert

A brief word of advice on the subject of finding a potential expert: *do it as soon as you possibly can*. From precluding the opposition, to helping frame the issues, to assisting in evaluating the opposing expert, the benefits to be gained from early retention are significant and worth the effort.⁴

A. Learning about the Subject Matter

In order to know what questions to ask a potential expert, one should conduct some basic investigation into the relevant topic of expertise. Of course, such research might also lead to the names of potential experts in that field.

1. Library Websites

a. Online Catalogs

Library websites are an excellent place to begin the search to find information about the subject matter and to find potential experts. Start by searching libraries' online catalogs for books and journals on the subject at issue. For example, a search for "handwriting identification" on the Library of Congress's

website will return the names of potential experts, the title and date of their publications, and cross-references to other works by each author. Pay particular attention to this information – someone who writes extensively on the subject at issue may make an ideal candidate to serve as an expert.

Possible Sites: www.Libdex.com; catalog.loc.gov; www.worldcat.org

b. Commercial Databases (Free Access)

In addition to making their own catalogs available online, many public libraries also offer free access to some external “pay” databases. Ordinarily, all you need to access these databases from a computer is a library card and an Internet connection. Just a few of the types of databases offered by some libraries include:

<i>Academic Search Premier</i>	<i>ProQuest</i>
<i>Newspaper / Periodical Articles</i>	<i>Reference USA</i>
<i>Business Source Premier EBSCO</i>	<i>Business Directories (e.g. Standard & Poor's, Hoovers, etc.)</i>
<i>Gale's Biographies</i>	<i>JSTOR</i>
<i>Physician's Desk Reference</i>	<i>Marquis Who's Who</i>

2. Medical Websites

The National Library of Medicine (“NLM”) is an excellent place to find materials in all areas of biomedicine and healthcare, including biomedical aspects of technology, the humanities, and the physical, life, and social sciences. According to its website, the NLM houses millions of items — including books, journals, technical reports, and manuscripts. Moreover, the site, along with its associated services (i.e. “PubMed” and “MedLine Plus”), contains links to medical encyclopedias, full-text news stories, articles, and free publications, as well as information on how to order those materials.

In addition, every branch of medicine has its own professional association with an accompanying website, oftentimes offering article databases and membership directories. The website of the American Board of Medical Specialties is one of the best places to look for links to these associations.

Possible Sites: www.nlm.nih.gov (PubMed/MEDLINE); www.webmd.com; www.abms.org (requires registration); www.boardcertifieddocs.com (charges organizations to verify physician certifications)

3. Bookstore Websites

Whether looking for information or for potential experts, commercial websites can be powerful research tools. For example, a recent search for “construction safety” at Barnes and Noble’s website returned over 1,000 results. The listing for each book includes a synopsis, the author’s name, a table of contents, a note from the publisher about the work, and, in many cases, reviews of it. In addition to books, the same search on Amazon’s website found manuals and reports written by potential experts.

Possible Sites: www.amazon.com; www.barnesandnoble.com; www.abebooks.com; www.bigwords.com

4. Articles

Many legal portals provide access to articles by legal professionals that discuss expert witnesses. For example, law.com, the legal portal of American Lawyer Media (“ALM”), provides access to full-text articles from its various publications – but only to its subscribers (while also providing synopses of those articles for non-subscribers and the opportunity for them to view a limited number of articles via free registration).

The Index to Legal Periodicals & Books (H.W. Wilson) and Legal Resources Index (electronic version of Current Law Index (Gale) are searchable electronic indexes of legal periodical articles containing information about experts. Most of the information consists of article citations from major law reviews, bar association journals and legal newspapers. These citations include an article's title, author, source, and subject headings. Various indexes to legal periodicals, along with the full text of articles can be accessed from many library websites and commercial providers.

Articles written by experts may also be found through Google Scholar. Launched in 2009, this service provides a way to broadly search for scholarly literature, including articles, theses, books, abstracts and court opinions. These documents have been collected from academic publishers, professional societies, online repositories, universities and other websites. Google Scholar may be searched with Boolean, proximity, and phrase searching, as well as through its advanced search function.

Some expert witness directories such as JurisPro and Hieros Gamos provide free access to articles written by experts, and many trade associations publish online newsletters and some provide either the full text of or extracts from articles. For example, the Accident Reconstruction Communications (ARC) Network, a professional organization for those in the accident reconstruction industry, has a monthly newsletter with articles authored by experts. This website also has an active discussion forum that includes opinions posted by various accident reconstructionists.

Possible Sites: www.Law.com; www.JurisPro.com; www.hq.org; scholar.google.com; www.accidentreconstruction.com

B. Tracking Down the Best Expert for the Case

1. Search Engines: Their Value and Their Limits

Search engines such as Google, Bing, Yahoo, etc. tend to be over-inclusive instruments for finding expert witnesses, unless the search query is precisely tailored. Accordingly, be sure to utilize their advanced search features. For instance, searches in quotes will look for the exact phrase entered, thereby yielding more precise search results. Similarly, by using the "Advanced search" function of Google, one can retrieve Adobe Acrobat PDF files, Microsoft Word documents, and Microsoft PowerPoint presentations.

For relevancy purposes, it is also important to remember that the first few results on Google (and other search engines) are often "paid listings." Anyone can pay to have the top spot for such terms as "OSHA expert."⁵ It is also worth noting that the results retrieved through some search engines are dependent on the order in which the search terms are entered. For instance, a search of "Robert Smith" will return different results than a search of "Smith Robert." Accordingly, if a search on a particular subject is not working, try re-ordering the search terms.

Do not forget that some search engines tailor one's search results to his/her search history and location.⁶ Because of this "filter bubble," two researchers who run the exact same search at the exact same time via the same search engine will retrieve different lists of results, sometimes dramatically. Accordingly, when trying to find an expert, be sure to not only click through to the second and even third page of results but also try several variant searches.

Because the Web is a mostly un-policed forum, the information found through search engines varies extraordinarily in quality and may be inaccurate or biased. Sometimes an uncovered website is clearly a parody (consider the website for the Pacific Northwest Tree Octopus⁷). However, other misinformation is not as clearly evident. Recall the incident several years ago when Sarah Palin stated that Paul Revere, on his famous midnight ride, rode through the towns ringing bells and warning the British that the revolutionaries were arming themselves. Almost immediately thereafter, her supporters and detractors waged a "war" on Wikipedia with respect to the modification of the Wikipedia page of Paul Revere to reflect those comments.⁸

Some judges have acknowledged the unreliability of information on the Web.⁹ As stated by one judge: “[t]he accuracy and reliability of information from the Internet is highly questionable.”¹⁰ While general Web searches are of course de rigueur in any search for finding and evaluating experts, every care should be taken to make sure the information is accurate and truthful. One should always ask: who, when, why, what, and with what authority? Another judge recently called out reliance on Wikipedia specifically:

[P]laintiffs’ supposed authority for their position is singular. They quote Wikipedia. Since Wikipedia is an online reference cite [sic] that permits anyone to upload any article, without any review of its accuracy, it cannot be used as reliable authority for virtually any proposition.”¹¹

Accordingly, such general Web searches may have limited utility for purposes of finding or evaluating an expert.

Possible Sites: www.google.com; www.bing.com; www.yahoo.com

2. Product Searches

Searching for the name of a product at issue will likely lead to information about it, and potentially to the names of knowledgeable experts. For instance, if an attorney who had a personal injury case involving a Weatherby brand rifle were to search Google for “Weatherby rifles,” he/she would find leads to the website of the manufacturer, the names of distributors, articles about the gun, upgrades, and safety notices.

Even more information about companies, suppliers, and products can be found at the ThomasNet site, which has gathered company information from registrations of companies in its “industrial buying guides.” This free online directory provides access to commercial and industrial suppliers, indexed by product and service categories. One can search for a product, service, brand name, or company name. For example, a search for “bicycle pumps” leads to profiles for manufacturers, including each company’s description, its mailing address, phone number, fax number, website address(es), amount of assets, employees, and the name of the parent company.

Possible Sites: www.thomasnet.com/suppliers

3. Expert Witness Referral Companies

Expert witness referral companies maintain databases of professionals who are available for expert witness assignments. The benefits of using these services is their large size and the variety of their databases, so one can save a lot of time looking for experts. The downside is that one has to contact the referral company to get information for the expert, and then pay an additional fee to retain that expert. Moreover, use caution when a company represents that it has thoroughly vetted a recommended expert.

Possible Sites: www.tasanet.com; www.forensisgroup.com; www.elitemedicalexperts.com; www.ims-expertservices.com; www.trexpertwitness.com

4. Expert Witness Directories

Expert witness directories allow one to browse for consultants in a particular area of expertise and contact them directly, and because the experts usually pay a listing fee, the search is free. Such directory listings often contain valuable information about experts, including: areas of expertise, educational background, professional experience, and information about the lawsuits in which they have testified (e.g. whether the expert typically testifies for plaintiffs or for the defense).

Many bar associations, such as the Los Angeles County Bar Association (Southern California Directory of Experts & Consultants (www.lacba.org)) and the Bar Association of San Francisco (www.sfbar.org/register) have online directories of expert witnesses. Many commercial expert witness directories also exist. For example, Seak.com provides free information about a variety of experts to attorneys, businesses, reporters, insurance companies, judges, librarians, and the media. That website includes contact information for the expert, a short biography, and a link to the expert's e-mail address and website. Many of the large legal portals, such as Law.com, Hieros Gamos and Findlaw also have online directories with short biographies and links to the expert's website.

Built by practicing attorneys, the JurisPro Expert Witness Directory (www.JurisPro.com) is a free national online directory of expert witnesses in thousands of categories. Visitors to JurisPro are able to view and download the expert's contact information; listen to the expert speak, view the expert on video, link to the expert's website; obtain the expert's full *curriculum vitae* ("CV") available for download or print; read articles that the expert has written that discuss his/her areas of expertise; review the expert's background as an expert (e.g. how many times the expert has testified, how often for the plaintiff versus for the defense, etc.); and obtain contact information for the expert's references.

Possible Sites: www.JurisPro.com; www.seakexperts.com; www.expert4law.org; www.sfbar.org; http://marketcenter.findlaw.com/expert_witnesses.html; www.almexperts.com; www.hgexperts.com; www.expertpages.com; www.martindale.com; www.morelaw.com/experts/search; www.almexperts.com; www.juryverdicts.com/experts/index.html

5. Verdict Reports

Verdict reports are summaries of lawsuits that have either been tried to decision by a judge/jury or settled non-confidentially. A verdict report usually contains the case name, case number, date of decision, "topic" (e.g. medical malpractice, employment discrimination, etc.), result (i.e. did the plaintiff(s) or defendant(s) win?), the amount of the judgment (if any), the alleged injury, jurisdictional information (i.e. state and county where the lawsuit was tried), name of judge, name of attorneys, a brief summary of the facts, a listing of the experts who were used by the parties and other miscellaneous information about the lawsuit. Verdict report companies usually solicit this information from attorneys who want to report a favorable result in one of their lawsuits for "marketing" purposes.¹² Nonetheless, such reports can be used to find experts in a particular field.

Well over a million verdict reports now exist online, but one will likely have to turn to a pay website to access the various collections. One of the few free, searchable, nationwide jury verdicts websites is *morelaw.com*, which has a collection of verdict reports dating back to December 1996. One can search that database by "defendant's expert," or "plaintiff's expert", or by state or word.

The National Association of State Jury Verdict Publishers (NASJV) website is a portal for many jury verdict publications. The data from this website is obtained from two dozen independent reporters responsible for approximately thirty publications in the United States. A table and map show the jurisdictions covered, and according to the website, its "expert witness directory" contains the names of nearly 40,000 experts who have testified in civil trials across the United States. Searches, however, can only be conducted by clicking on an alphabetical listing of experts – Boolean search functionality is not available. The search results only include the expert's name, area of expertise, and a link to the jury verdict publication in which the expert's information appears. It is then necessary to contact that publication to retrieve further information, for which a fee is charged.

VerdictSearch provides access to verdict reports from American Lawyer Media. Although "featured verdicts" can be viewed for free, access to ALM's entire database of over 175,000 verdicts requires a subscription.

Of course, almost all of the jury verdict publishers (one notable exception being the Cook County Jury Verdict Reporter), license their content to either or both LexisNexis and Thomson Reuters, enabling those companies to offer more-comprehensive research opportunities. In fact, the collection available from LexisNexis now exceeds well over one million reports.

Possible Sites: www.morelaw.com; www.juryverdicts.com; www.verdictsearch.com; www.jvra.com

6. The “Invisible Web”

According to various search engine experts, the top search platforms fail to locate 95% or more of the pages on the Web.¹³ These “un-indexed” pages are often referred to as the “Deep Web” or the “Invisible Web” and are rarely retrieved by the casual “search engine” researcher.¹⁴ Searching the Web can sometimes seem like trying to finding a needle in a haystack or dragging a net across the surface of the ocean: although a great deal may be found, a wealth of information remains hidden, and therefore, is missed.¹⁵ This “Invisible Web” includes databases on the websites of colleges/universities, hospitals, and associations -- places which may prove fruitful when it comes to finding experts.

a. Colleges and Universities

College and university websites are excellent sources for finding and evaluating experts. These websites should be searched directly, as individual faculty members’ biographies often do not appear in general search engine results. For example, the Florida State University College of Medicine has set up separate websites for many of its professors, detailing their practice areas, contact information, photos, education, publications, research projects, associations, committees, honors and awards.

By clicking on the aforementioned “Advanced search” button on Google, one has the option to search only on the websites of particular colleges or universities. This facilitates quick searches of different schools without having to learn how to navigate each university’s website.

Possible Sites: www.clas.ufl.edu/au/; www.utexas.edu/world/univ/alpha (*alphabetical list of colleges and universities*); www.utexas.edu/world/univ/state (*list of colleges and universities by state*)

b. Healthcare Facilities

The Joint Commission on Accreditation of Healthcare Organizations’ website is a directory of thousands of healthcare organizations, including ambulatory care facilities, assisted living facilities, behavioral healthcare facilities (such as chemical dependency centers and development disabilities organizations), HMOs, home care organizations, hospitals, laboratories, long-term care facilities, and office-based surgeons. Many such facilities and organizations have excellent directories of their doctors. For example, on the Children’s Hospital of Boston website, a search for “cardiology” in Boston yields a list of numerous doctors (and nurses), with photographs, contact information (including e-mail), and each doctor’s professional certifications and educational background.

The U.S. News and World Report’s ranking of best hospitals is another excellent website if you are looking for a doctor with a particular area of expertise. Because the ranking is also conducted by discipline and sub-discipline, you can quickly locate centers of excellence in specific areas.

Possible Sites: www.jointcommission.com; www.childrenshospital.org

c. Associations

An association exists for virtually every profession, field, and interest – and within those associations are potential experts. A good place to find information about associations is through the “Associations

Unlimited Database” (otherwise known as the “Encyclopedia of Associations”). Access this database for free through the websites of some university and public libraries, including the Los Angeles County Public Library (valid library card required). Specifically, that database has information about thousands of international, national, regional, state and local membership organizations in all fields. These listings provide information about each organization, its membership, and contact information for its director. Such a database can be extremely helpful for finding experts in rather obscure fields, such as hang gliding or petroleum packaging.

Possible Sites: www.publiclibraries.com; www.lapl.org

III. Evaluating an Expert

The “formal” rules governing the discovery of information related to experts are usually fairly limited. In almost every jurisdiction, the opposing party must disclose the name and expertise of any experts that party intends to use during the trial.¹⁶ In addition, oftentimes the expert must also disclose prior lawsuits on which he/she worked, publications, and any reports produced by that expert for the lawsuit at hand.¹⁷ But that is usually the limit of information that is formally exchanged.

It is therefore extremely important for one to go “outside the rules” to find out as much as possible about that expert. As David M. Malone and Paul J. Zwier write in their book “Effective Expert Testimony”:

Before deposition, the attorney is clearly free to direct his graduate students or other assistants to investigate earlier testimony and earlier publications and to read them all with the issues of the present case in mind. If the attorney has been so fortunate as to find other counsel who have opposed this expert in their cases, they may be able to provide him not only with transcripts but also with copies of exhibits prepared by that expert, or at least used by the expert, which will foreshadow the expert presentation that he is likely to face at deposition and trial. All of this discovery is conducted “outside the rules” to the extent that it is not governed by rule-imposed deadlines or limitations.¹⁸

One should gather as much information as possible before retaining an expert or prior to deposing the opposing party’s for several reasons. First, one should try to uncover any information that can be used to discredit his/her own expert. Are the expert’s qualifications inaccurate? Did the expert say something different in another lawsuit involving similar facts? Has the expert ever been disqualified? Second, information obtained about an opposing expert might be used to gain a tactical advantage during a deposition or at trial. In fact, some creative attorneys will track down personal information about an expert in an effort to make sure that the expert is aware that the attorney has thoroughly researched that expert and, therefore, he/she must be extremely accurate in his/her testimony else be caught by that seemingly “knowledgeable” attorney.

Notably, if any language on the expert’s CV seems inexact or vague, further investigation is warranted. For example, if the expert has a more common name (e.g. Thomas Jones) and only refers to himself/herself in that way – without any recitation of a middle initial or the like, that expert may be deliberately trying to hide something negative. Similarly, if a college or university listed on the CV is identified without specificity (e.g. is “Cornell” the Ivy League university in Ithaca, New York or the private liberal arts college in Iowa?), you may want to inquire further, prior to digging even deeper as discussed below.

A. Finding Claimed Credentials

Whether you are considering retaining a particular expert or need to learn more about the opposing party’s expert, it is important to verify credentials. Just last year, an expert on Syria was dismissed from her job with the Institute for the Study of War because she did not, in fact, have a Ph.D. from Georgetown University, as she had claimed in her official biography.¹⁹ Similarly, a partner with Paul Hastings (though

not an expert) was suspended from practice for three years and dismissed by his firm when it came to light that his academic qualifications (i.e. degrees from Oxford and Harvard) were lies.²⁰

In fact, the extent of falsification of CVs among all individuals is stunning. According to the website Statistic Brain, a widely-reported 2013 study conducted by Accu-Screen, Inc, ADP and the Society of Human Resource managers “reported that 46% of employment, education and/or credential reference checks conducted revealed discrepancies between what the applicant provided and what the source reported.”²¹ Older studies tell a similar sad story. Many years ago, ResumeDoctor.com conducted a study of over 1,000 CVs over a six-month period and discovered that over forty percent of them contained at least one significant inaccuracy relating to dates of employment, job titles or education, and over twelve percent contained two or more errors.²² Similarly, a survey of 2.6 million job applicants verified by Avert, Inc. (which specializes in job screening and selection) revealed that forty-four percent lied about their work experience, twenty-three percent fabricated credentials or licenses, and forty-one percent lied about their education.²³

Perhaps the lure of high fees, or perhaps something else, has caused some so-called experts to inflate their credentials. For instance, it was reported in early January 2011 that an expert witness testified falsely as to the contents of his CV, claiming to have a degree that he, in fact, did not receive from the institution in question.²⁴ Similarly, in an opinion issued June 10, 2010, it was noted that an expert admitted to being an environmental planner, and not an environmental scientist as was listed on his CV – something the judge characterized as “inconceivable.”²⁵ As a final example (though only for the purposes of this paper – as numerous other recent examples exist), an immunologist was accused of “resume padding” as a result of numerous misstatements on her CV.²⁶

1. Identity and Location

In order to evaluate credentials, you must first verify the expert’s correct name – and the information provided on an Expert Witness Designation prepared by opposing counsel is not necessarily reliable for this purpose. Although opposing counsel isn’t likely to intentionally misspell an expert’s name (thereby making it harder to find background information) even a typographical error or uncertainty regarding a middle name or initial could cause you to spend hours searching in vain. Accordingly, make sure that you have the expert’s name (and all variants); public records may assist you in uncovering them.

In addition, don’t overlook other information available through public records, such as where the expert has lived over the years. If an expert has moved around often, it could be an indication that the expert is trying to avoid licensing problems in a particular location (or locations) and, therefore, a more expansive research effort is warranted.

Possible Sites: www.merlindata.com; www accurint.com

2. The Expert’s Current Website

Once the expert’s name has been verified, his/her professional website should be carefully reviewed (if a search engine does not locate the expert’s website, try simply entering the expert’s name or company name as a dot com (e.g., expertname.com)). Many experts post their full CV, prior litigation experience, speaking engagements, references, memberships and professional affiliations, and authored works. Is anything embarrassing or contradictory on the website? Are there things missing from the website that might provide a lead to something interesting regarding the expert’s past. Does the expert proclaim that he/she is “the leader in the industry” or put forth similar bravado that could affect how the jury perceives him/her? When conducting such research, imagine how a jury would react if pages from the expert’s website were displayed as exhibits at trial - because they very well might be.

3. Archived Websites

It may be possible to find older versions of an expert's website that since have been revised or even deleted. Archive.org's "Wayback Machine" (also known as the "Internet Archive") is a digital archive of the Web and other information on the Internet. One can utilize the "Wayback Machine" to access snapshots of over 400 billion pages that have been saved since the 1996. Although not every version of every website has been preserved, it is a possible way to find inconsistencies between different versions of an expert's website.

Archived versions of a website, obtained via the "Wayback Machine" have been ruled admissible.²⁷ For example, recently the Supreme Court of Missouri affirmed a lower court's determination that a party's expert had testified falsely as to his credentials. That determination had been made based on a website posting that had been subsequently deleted prior to the expert's deposition.²⁸ Although the Wayback Machine was not referenced in the opinion, it serves as a good illustration of how old versions of websites and information thereon are often never really erased.

Possible Sites: www.archive.org

4. Expert Directories

When it comes to initial credential-gathering efforts, don't stop with just the expert's website; always go on to determine whether or not that expert has a listing in an expert (or other professional) directory. Such directories provide a wealth of information about experts, including (sometimes) a list of lawsuits on which the expert has worked (a "testimonial history"), and this information can be compared to what that expert has provided through formal discovery efforts (as well as at his/her website). Has the expert included embellished information in the directory in an attempt to better market his/her services? A simple comparison of the information provided by the expert with his/her directory listing might reveal such discrepancies.

Possible Sites: www.JurisPro.com; www.SEAk.com; www.martindale.com; www.hq.org; www.almexperts.com/ExpertWitness; www.expertpages.com

5. Social Networking Sites

Social networking websites are still among the largest areas of content growth on the Web. For example, the business-oriented LinkedIn has more than 300 million registered users.²⁹ On social networking sites, individuals create their own online "profile" and share information about their interests so others can read about them. On these sites, a treasure trove of information about an expert can often be uncovered, including: professional background, employer, specialties, education, recommendations, publications, associations, contact information, and even a link to his/her website. As this information is usually posted by the expert, social networking sites can be a boon to one who needs to obtain background information on experts.

Other factors should be considered when searching social networking websites. For instance, many social networking sites (e.g. Facebook) require one to have an account to retrieve the maximum amount of information. Moreover, although most Facebook users create their profiles using their real names, how much information is available to you depends on the creator's Facebook privacy settings. It is also possible to use Google's Advanced search feature to limit search results to just the Facebook domain.

Though searching social networking website is recommended, avoid initiating requests to "friend" or "connect" an expert. Some local bar associations and ethical guidelines restrict collection of information on social networking websites regarding parties, potential jurors, *and other participants in the judicial process*. Although you should feel free to troll publicly-available portions of those websites, you might still

want to be careful and use various tools or privacy settings to avoid having the expert (or retaining attorney) become aware that you have looked at their social networking website.

Possible Sites: www.linkedin.com; www.facebook.com; plus.google.com; www.twitter.com; www.zoominfo.com

6. Old CVs

Because some experts may tweak their CVs over time, another place from which to gather an expert's credentials are CVs filed in prior lawsuits. Searching collections of court-filed documents as well as online docket databases (e.g. from LexisNexis CourtLink and Thomson Reuter's CourtExpress) may yield such documents.

Possible Sites: www.courtlink.com; www.courtexpress.com

B. Verifying Credentials

Once an expert's claimed credentials are uncovered, they must be verified. This is particularly important if you've compared the expert's current CV to the expert's credentials listed elsewhere (e.g. on his/her own website, in a directory listing, in an old CV, etc.) and discovered a discrepancy amongst all that information.

1. Educational Background

It may be possible to verify an expert's degree by calling the Registrar's Office of the appropriate college or university, but most of those institutions require a release and social security number before they will verify an individual's attendance date and whether any degrees were conferred. Whereas this information is usually easy to get from an expert you are retaining (via a release form included as part of the retention agreement), it is likely almost impossible to obtain from an opposing expert (though, if an opposing expert has nothing to hide, perhaps a refusal is not a foregone conclusion?). Another option is to use one of the several online services which allow you to verify attendance and whether the expert received a degree (or degrees). Although these online services will not cover every college and university in the United States, they often have a list of those that participate in their services.

The National Student Clearinghouse ("NSC") appears to have developed the largest foothold in the arena of degree verification and, in fact, is the sole purveyor of degree-verification services for many major universities. Although no fee is associated with registration with the NSC (but formal registration *is* required), fees for actual verification efforts vary, depending on NSC's contract with the school (\$6.00 to \$12.00 per verification). Also, note that, because the NSC is reliant on the individual institutions to deliver results, a lag time between the request and results may occur.

Another issue which has received a lot of publicity lately, is the existence of "degree mills" – non-accredited colleges and universities that sell degrees, primarily through the Web – such as "life-experience" degrees.³⁰ The State of Oregon has been very aggressive in combating these degree mills and offers a list of colleges and universities whose degrees are not acceptable for those seeking employment with the State. Several other states, including Michigan, now maintain similar lists. A little extra effort, often at a minimal cost, can help to either avoid retaining an expert whose credentials are invalid, or identify an opposing expert who does not have the background and training claimed in his/her CV.

Possible Sites: www.studentclearinghouse.com

2. License and Specialty Certification Information

Licensing information can be found online for virtually all fifty states and can easily be searched to verify the current status for any license an expert claims to hold. In addition, many organizations, such as the American Medical Association, the American Board of Medical Specialties and the American Board of Surgery, have their own websites where one can check the certification status of experts.

SearchSystems (which is a pay site, though it represents itself, in some ways, as being free) provides access to thousands of public record databases. By running a search for the type of record (e.g. license or certification), the jurisdiction (e.g. Ohio), and the occupation (e.g. accountant), one can retrieve a list of databases where the licensing information can be found. In fact, many certifying organizations either have an online listing of experts and their certifications or are willing to verify an expert's certification(s) telephonically.

When reviewing licensing information or certification, be on the lookout for suspicious language. Words such "resigned," "restricted" and the like should raise questions and prompt further investigation. Moreover, be sure to review the expiration date of the license or certification – it should be a matter of concern if the expert in question has failed to renew the license but represents that he/she is currently licensed.³¹ Whereas a lapsed license may indicate that an expert once practiced in the area but has since moved to another location, words such as "suspended" or "surrendered" are often an indication of disciplinary action or other reason for the expert to have been forced into surrendering his/her license. Why that expert was forced to do so may be of extreme importance – to both you and your client.

Finally, be sure to verify even your own expert's credentials – just because your expert says he/she is licensed as something or certified as a something else, *you must double check that information*. Consider the VIOXX lawsuit in which the judge had to overturn a defense verdict and order a new trial because he found out that the defense expert had misrepresented his credentials by testifying that he was currently certified in internal medicine and cardiovascular disease when, in fact, those certifications had recently lapsed.³² Importantly, a relatively-easy search through certification information available from the American Board of Medical Specialties would have revealed that inconsistency to defense counsel.

Possible Sites: www.searchsystems.net; www.brbspub.com/pubrecsites.asp; www.craigball.com/hotlinks.html; www.abms.org (requires registration)

3. Disciplinary Records

Nothing can be more discrediting to an expert than a reprimand or license revocation for (or even just an allegation of) professional misconduct, especially if the misconduct goes to his/her credibility, such as a fraud or perjury conviction.

All state governments and some professional associations maintain records of professional misconduct, and these records are sometimes available via the Web. Because the myriad of possible sites to search, it is impractical to search them individually. Accordingly, the best approach to take when pursuing disciplinary records is to first utilize public records to identify both an expert's current/prior residences and professional licenses. Thereafter, focus subsequent research on those states, professions and organizations with which the expert is affiliated.

It is sometimes possible to do a national search for an expert's disciplinary history on an occupation-by-occupation basis. For instance, for medical doctors, search the Federation of State Medical Board's website (www.fsmb.org). It should be noted, however, that some disciplinary actions are purged after a given period of time. So, for example, if the policy of the board or association in question is to remove records after ten years, the record of an expert who was disciplined in 2000 may not appear on a board's or association's website in 2014.

Finally, some expert-research services, such as LexisNexis' Expert Research on Demand ("EROD"; fka IDEX) and Thomson Reuter's Expert Intelligence Reports, provide an effective means to gather and share information about expert witnesses, including disciplinary actions. These services do the legwork, tracking down disciplinary actions and sanctions information.

Possible Sites: www.idex.lexisnexis.com; www.legalsolutions.thomsonreuters.com/law-products/solutions/expert-intelligence-reports; www.healthgrades.com; www.fsmb.org; www.mbc.ca.gov/Consumers (California Only)

4. Publications (aka Authored Materials)

Many medical and technical experts write articles for journals (or are cited in articles written by others for such journals) – in fact, it is oftentimes because these individuals are published in journals that they are considered to be experts. So, when searching for background information on an expert, be sure to search through technical journals to see what, if anything, can be retrieved with regard to that expert. However, when conducting such investigation, be aware of some of the shenanigans in which a few experts are (or have been) engaged.

a. Ghostwritten Materials

Ghostwriting is an alarming trend that seems to be emerging with respect to the work of some experts. As noted recently, "[Ghostwritten articles] are often used in litigation . . . to credentialize an expert witness."³³ Although the prevalence of such a practice cannot be determined, one recent article stated a pharmaceutical company "hired a marketing firm to ghostwrite articles attributed to academicians who had done little to no work."³⁴ And some experts who have claimed authorship of such materials have been exposed.³⁵

b. Unidentified Works

Although, per most local court rules, experts are supposed to disclose a complete list of their authored works to the opposing party,³⁶ some experts are lax in satisfying this requirement. Accordingly, look for all authored works and then compare those findings to the list supplied by the expert. Was an uncovered work not listed by the expert? If so, it could be just an oversight or something more significant.

c. "Repurposed" Works

Many experts are retained for lawsuits that are very similar and, therefore, are tempted to use a single report for both (or more) lawsuits – with just slight (if any) variation. It does happen; anecdotal stories abound. Some of those instances have been memorialized in lawsuits. In one case, attorneys wrote in a Motion Limine about an opposing expert: "[u]nder close examination, [the expert] revealed the 'seven' papers are really five as two in the list are basically repeats with only minor changes."³⁷

d. Criticized Works

Just because a purported expert has authored an article does not mean that that article is accurate. Search not only publications but other materials to uncover discussions of an expert's publication(s). For example, in 2013 a news website reported that the underpinnings of a widely-touted paper authored by two high-profile academics was "wrong on its face."³⁸ Having a paper published can certainly add to an expert's credibility, but that credibility can be severely damaged if that paper is shown to be inaccurate.

e. Exaggerated Numbers of Works

Finally, a search for publications may simply serve as a double check as to the list of authored works submitted by the expert during the course of formal discovery. Boasting or exaggerating as to the number of published works is not an unheard of practice when it comes to experts, but sometimes such

claims can come back to haunt an expert – something that occurred several years ago with respect to a prominent mold expert.³⁹

Possible Sites: www.nlm.nih.gov/bsd/pmresources.html; advance.lexis.com (to access the Elsevier Full Text Journals database); scholar.google.com

C. Uncovering Case-Related Information

After verifying an expert's "credentials," research various types of case-related information to not only compile a litigation history for purposes of a "FRCP 26(a)(2)(B) Disclosure Verification" but also uncover Daubert challenges, prior statements (e.g. transcripts, reports, etc.), and more. What's a "FRCP 26(a)(2)(B) Disclosure Verification"? It's simply a fancy name for the process of identifying all the lawsuits in which the expert has worked and then double-checking that compilation against the list provided by that expert pursuant to that federal rule (or analogous state rule of discovery). This effort is necessary because some experts, through mere negligence or outright deception – perhaps to hide "bad" information – fail to disclose some of their prior lawsuit work. Such a failure, if brought to light, can be damaging:

The Court finds especially disturbing [the expert's] failure to disclose . . . recent testimony he provided in a 2008 case [citation omitted], in which the federal district court judge excluded his expert testimony on Daubert gatekeeping grounds because the methodology [the expert] used to arrive at his expert opinion was suspect. . . . [The expert] sought to ascribe it to an inadvertent mistake. The Court is not convinced. . . . [T]he Court can only conclude that the failure was a deliberate effort to bury negative information.⁴⁰

Such a list of lawsuits can be put together by searching case opinions (and Daubert Tracker Case Reports – discussed more in depth, below), dockets, verdict reports and more. Of course, those case-related sources can also be used for other purposes as well, as discussed below.

1. Court Opinions

Case opinions can sometimes prove fruitful when it comes to learning about an expert. For example, many court opinions that mention experts discuss excluding their testimony for one reason or another. If an expert's testimony has been excluded from a prior lawsuit, such information might be used to get that same expert's testimony excluded from one's lawsuit on the same or similar grounds.

Opinions can reveal other useful information about an expert. Consider the opinion in which the court noted that "Frequently, [the expert] did not answer questions as they were asked."⁴¹ Such a revelation might clue one into the fact that the expert in question tends to be evasive when testifying, thereby enabling preparation of an effective examination.

And don't forget to look internationally. For instance, it is not that uncommon for an expert based in the United States to work on, and testify in, lawsuits in Canada (and vice-versa). Searching databases of Canadian case opinions simply makes good sense.

Several search techniques can be used to search opinions effectively. For instance, in the initial search, enter only the expert's last name. However, if the expert's last name is more common, include his/her first name as well – separated from the last name with a proximity connector (e.g. "/3"). In almost all instances, do not include the expert's middle name or middle initial (in case the expert does not use it or does not use it consistently). In short, start the search as broadly as you dare and then narrow your results later. To narrow your search, add keywords describing the expert's area of expertise ("toxic!") to your search.

Possible Sites: www.bna.com/bloomberglaw; advance.lexis.com; next.westlaw.com

2. The Daubert Tracker™

The Daubert Tracker creates reports (“Daubert Tracker Case Reports” or “DTCRs”) which summarize opinions addressing the admissibility of expert witness testimony. Each summary is put into a chart, that identifies the case name, the case number, the expert’s name, the expert’s area of expertise, the attorneys, the judge, a summary of the court’s decision (e.g. testimony inadmissible) and more.

These reports offer three significant advantages over a search through case opinions.

First, a case opinion that addresses the admissibility of expert testimony may not specifically mention the expert in question by name. DTCRs actually identify the name of the expert, even when the associated case opinion does not.⁴² This is a distinct advantage over case opinions.

Second, DTCRs cover more opinions than those typically available by online services. For instance, very few state trial court opinions are currently available online, yet DTCRs cover some state trial court opinions. This means that a DTCR user is able to cast a wider, and different, net than when searching regular case opinions.

Third, the Daubert Tracker conducts name “verification”, identifying misspelling of an expert’s name in an opinion, and correcting it in the DTCR. For example, toxicologist Alan Done was incorrectly identified as “Allen” in at least two case opinions, and “Allan” in another.⁴³ Daubert Tracker was able to correctly report that all three case opinions referred to the same toxicologist.

Daubert Tracker is available through its own website, and is licensed through LexisNexis, Thomson Reuters and TrialSmith.

Possible Sites: www.dauberttracker.com⁴⁴

3. Full Dockets (Including Access to Briefs & Motions)

Federal courts have implemented electronic filing, which has made the Public Access to Court Electronic Records system (aka “PACER”) a valuable tool. Specifically, because the dockets of federal courts are online at PACER, motions, briefs and other pleadings filed with the federal courts (over 500,000,000) are available online (at a per page cost).

According to the PACER site:

You may search by case number, party name, social security number, or tax identification number in the U.S. Bankruptcy Courts. You may search by case number, party name or filing date range in the U.S. District Courts. You may search by case number or party name in the U.S. Courts of Appeals.

So, with a list of federal lawsuits in which an expert has appeared, one can retrieve the docket sheet from each case and search it (online) for any reference to the expert. Moreover, more recent docket sheet entries have links to a PDF of each of the filings.

Unfortunately, two significant problems affect the use of PACER. First, one has to already have a list of lawsuits in which the expert has participated, so if one does not have a list, or the expert in question has not been completely truthful in the list provided, some information could be missed. Second, docket entries do not always specifically mention the expert by name, making it difficult to identify which documents truly relate to the expert (e.g. does that “Motion to Exclude” relate to the expert or to something else?).

These problems, however, are not insurmountable. For instance, with respect to the first downside of PACER, commercial vendors have made the PACER dockets full-text searchable. Specifically, LexisNexis® CourtLink® (via Lexis Advance) gives one the capability of searching through dockets of lawsuits filed in the federal courts (as well as various state courts), and some of those dockets go as far back as the mid-1980s. Thomson Reuter's CourtExpress and Bloomberg Law offer similar services (though with more limited coverage). So by simply searching for the expert's name, one might uncover a wide variety of information about an expert, including motions (e.g. "Motion in Limine to Exclude the Testimony of Expert Smith"), orders (e.g. "Order Granting Motion in Limine to Exclude the Testimony of Expert Smith"), expert reports, affidavits, declarations, CVs, etc. – and might even uncover lawsuits in which the expert has been involved, even if that expert failed to make that disclosure.

With respect to the second downside of PACER, several online legal services, such as LexisNexis, Thomson Reuters, Bloomberg Law, and even the Daubert Tracker, offer full-text searchable databases of motions, pleadings and briefs filed in both state and federal court. Though none of these databases are comprehensive, they do enable one to search them in order to uncover court filings that mention the expert.

Finding the brief filed in support of a motion in limine to exclude an expert can provide valuable information as to why an effort was made to exclude an expert. Was his/her background insufficient for the area of expertise he/she were addressing? Were there validity issues with the expert's claimed background/education/licensing? Has the expert's methodology been called into question? Finding even one or two of these briefs, opinions or motions might give you a direct insight into an expert or into someone else's appraisal of him/her. For example, in a recent lawsuit, plaintiff's counsel filed a motion in limine to limit an expert's testimony because, among other things, the expert relied on "an article from Wikipedia (which he testifies is an authoritative source) in formulating his opinions[.]"⁴⁵

Possible Sites: www.bna.com/bloomberglaw/; advance.lexis.com/; www.llrx.com/courtrules/; pacer.gov/; next.westlaw.com

4. Verdict Reports

Verdict reports that mention a particular expert can be analyzed and possibly used to draw conclusions about him/her. For instance, after reviewing a number of verdict reports, you might uncover potential bias – the expert always seems to testify for plaintiffs or defendants, or the expert has testified for a particular party or attorney on numerous occasions.

Expert bias exists. For example, a study of 492 X-rays used by plaintiff's lawyers as a basis for asbestos claims showed that whereas X-ray readers hired by plaintiff's lawyers found evidence of possible asbestos-related abnormalities in 95.9% of the X-rays, independent radiologists found evidence of possible asbestos-related abnormalities in only 4.5%.⁴⁶

In addition, information contained within a verdict report might lead to additional information about the expert. For instance, you could use the case name and number listed in a verdict report, along with the jurisdictional information, to have someone track down the file from the lawsuit to search for more information about the expert. Or, if the names of the attorneys are listed in the report, you might contact them to ask them for their impressions of the expert. In short, how you use the information found online about an expert is only limited by your creativity.

5. The Expert's "Words" (i.e. Transcripts of Testimony, Reports, etc.)

An expert's case-related words (which can be found in a variety of formats, including transcripts, reports, affidavits and declarations) can be used in a variety of ways.

a. Transcripts of Testimony

The obvious use of transcripts is to find inconsistencies amongst what the expert is prepared to say in the pending lawsuit and what that same expert has said previously. However, you can use transcripts in other, creative ways as well.

Previously, a recommendation was made to compare an expert's current CV to older versions; use transcripts in a similar vein. Specifically, compare what the expert has testified to as being his/her qualifications and consider whether that testimony matches up to the credentials listed in that expert's CVs (whether present or past).

No free, centralized database for expert witness transcripts exists, but "for pay" options are available. First of all, both LexisNexis and Thomson Reuters have created databases of transcripts. These collections, though not comprehensive, offer access to hundreds of thousands of transcripts (both full and partial). In addition, some expert research services (such as EROD) offer to obtain transcripts (oftentimes anonymously) upon request.

For those firms affiliated with either the plaintiffs' bar or the defense bar, other options exist. Expert witness transcripts are available for a fee to defense attorneys who are members of the Defense Research Institute (aka "DRI"). On the plaintiff's side, the AAJ Exchange makes available to its members a database (developed by submissions from its members) of tens of thousands of transcripts. The commercial service TrialSmith document database purports to have has over 500,000 transcripts and is jointly sponsored by more than fifty-two trial lawyer associations and litigation groups. Each group encourages its members to contribute depositions and other documents to TrialSmith. One can run a free search on the website for a particular expert, and then view or download the transcripts immediately from the TrialSmith website (as well as briefs/motions, case opinions, list messages and more)

As an alternative, try directly contacting lawyers who have worked with (or against) a particular expert, and request a copy of the deposition transcript from them. Most attorneys keep their own expert witness transcripts, and would be willing to share (provided, of course, the favor is returned some day). For example, AAJ posts the contact information for each member who provides information about an expert. The experts themselves often list on their websites the names of the attorneys with whom they have worked in the past on their website – or you can simply ask the expert for a list of references.

In addition, online services such as the DRI and EROD offer "histories" of prior inquiries concerning an expert witness. Because these services obtain the inquirer's name, address, litigation information and more, you can use them to contact prior inquirers to see if they have any transcripts, reports, publications or other materials they may have gathered on the expert you are researching – whether from their litigation or from others gathered as they prepared their case.

Possible Sites: www.dri.org; www.justice.org; www.trialsmith.com

b. Reports and Affidavits / Declarations

An expert's old reports, affidavits and declarations can be used in many different ways. For instance, those documents, which (just like transcripts) are the "words" of the expert, can be used to uncover inconsistencies. However, you should also be aware that some experts get lazy and repurpose old reports, while claiming that they were uniquely created for the current litigation:

[The expert], an author of 14 books on sports economics, told attorneys in a pretrial deposition that he produced a unique report on the Sonics' situation after researching the situation, seeking up-to-date opinions from other economists and spending 20-25 hours writing the paper.

But Taylor put page after page of [the expert's] Seattle report on a screen, adjacent to a 2005 report [the expert] prepared for a similar case involving the Anaheim Angels.

The wording was virtually identical in both reports, with "Anaheim" or the "Angels" simply replaced by "Seattle" or the "Sonics."⁴⁷

This situation involving the Seattle Supersonics and the Anaheim Angels is not unique. Many attorneys have encountered similar situations, especially involving medical experts.

Repurposing is not limited to an expert's own works. Keep in mind that information is readily available online and, therefore, easily plagiarized. In fact, recently it was reported that the U.S. government's expert on China and economic espionage "allegedly copied parts of 13 pages of this 19-page report from Wikipedia entries on China's economy, high-technology development plan and Communist party."⁴⁸

6. Video Testimony

Video of an expert's testimony in court or at deposition may be sometimes found on YouTube or, on the expert's website. Yahoo and Google have added tabs to allow users to search for video. For example, running a Yahoo video search for a computer forensic expert may retrieve extracts from video-taped depositions.

Possible Sites: www.youtube.com; video.search.yahoo.com; video.google.com

D. Finding & Reviewing Non-Case Statements

Uncovering an expert's prior opinions/statements on a topic is an essential component of thorough vetting. But you should look beyond just opinions expressed in litigation. Statements made outside of litigation can sometimes be very damaging to an expert and, therefore, should not be overlooked.

1. News

Because many news databases now include transcripts of interviews, they are a valuable source to search through in order to find an expert's prior non case-related statements.

Consider the prominent handwriting expert who gave several interviews to the press in which he stated that he was 99.9% certain that John Mark Karr wrote the ransom note found in connection with the JonBenét Ramsey murder – and was so certain that "he was staking a large part of his reputation on his judgment[.]"⁴⁹ This claim was damaging, as John Mark Karr was never charged with the crime. Such comments cannot be found in the "usual" places (i.e. case opinions, trial transcripts, etc.); they are only found through a search of news databases. Similarly, a search of a different expert's name through the news turned up an article that revealed that he had been fined for contempt of court in Canada. Apparently, he had told a Canadian judge that he could not testify during a certain two-week period because he had to be in another jurisdiction to testify in other lawsuits during those weeks. In fact, he was in that other jurisdiction having a romantic rendezvous with his new girlfriend.⁵⁰

You can often learn of an expert's opinions, through not only articles but also other types of information, including radio and television interviews, letters to the editor, and even blog postings (though blogs aren't technically news). Yet despite the existence of such a potentially-fruitful resources, they are often underutilized when it comes to researching experts.

"News" is available from commercial vendors and via the Open Web. Both LexisNexis and Thomson Reuters provide huge news databases containing tens of thousands of different news sources, including more than just newspaper and magazine articles. In fact, such databases even contain transcripts from

television and radio shows (e.g. CNN, 60 Minutes, 20/20, CBS Evening News, National Public Radio, etc.), articles from specialized legal news sources, and other sources (e.g. blogs).

A free, alternative approach to searching commercially-available databases is to visit the “News” portion of Google, Bing or Yahoo and then conduct a keyword or name search. Be aware, however, that those databases are not nearly as inclusive of news sources (e.g. Google searches about 4500 news sources) as the databases available from the commercial vendors. And when it comes to experts, this lack of coverage can be critical. For instance, a November 1992 article from the *Washingtonian* magazine relates how a judge had ruled that a particular damages expert had given false testimony.⁵¹ A search on that’s expert name through Google News, however, fails to retrieve that news article – and that expert is still testifying today. On the other hand, Open Web search engines can locate tens of thousands of news sources that are not traditionally collected by large commercial database vendors.

Note, however, that the recent ruling of the European Court of Justice (“ECJ”) – if adopted in the United States – could significantly hamper those who look to Google News for archived news information. In May 2014, the ECJ issued a ruling requiring Google to modify (even delete) particular search results upon request of entities such as individuals and companies. As of August, 2014, Google had received requests from over 250,000 people and companies to remove negative references⁵² – and that number is certain to grow significantly. Though very speculative at this juncture, the adoption of the ECJ’s ruling in the United States could modify one’s reliance on Google News (and perhaps even other Open Web search platforms) as a viable resource in the context of researching experts.

Also keep in mind that one still may have to pay to access some of the articles identified (e.g. to retrieve a 1999 article from the Chicago Sun-Times, found via Google, costs \$2.95). Running a search at the website of a particular news source is another alternative. For instance, a list of newspapers and magazines and their links can be found at newslink.org. Some online newspapers and magazine require a registration, which is often free, whereas others charge to view and download articles.

Finally, it is worthwhile to run a search for an expert name on a specific news website, especially those for newspapers in the expert’s locality. For example, after a free registration, a search on the Los Angeles Times’ website for a particular psychologist retrieved a story about a kidnapping. This psychologist testified regarding the memory of a five year-old’s eye-witness to the crime. The article reported that this psychologist had worked as an expert witness in more than 300 criminal trials. He also provided a quote in this story as to the reliability of child eye-witnesses. This is important information to have if one were going to retain or depose this expert, especially if the case involved that particular topic.

Possible Sites: newslink.org; www.latimes.com; news.google.com; news.yahoo.com

2. Congressional Information and Other Government Documents

Because some prominent experts appear before Congress to testify or do work for Congressional Committees, information about them can be uncovered through a search of congressional records and documents. Other experts, along with other professionals and scientists, sign letters that are sent to Congress regarding certain issues. Insights as to an expert’s political position, even if not directly relevant to the issues involved in the pending lawsuit, may be of tactical value. To search full-text through state and federal government documents (simultaneously or separately), consider usa.gov.

Possible Sites: thomas.loc.gov; www.usa.gov

3. Discussion Board Posts

It may be possible to find an expert’s opinion on a particular subject by searching postings on discussion boards (otherwise called “Usenet” postings). For instance, through Google Groups, one can access more than 1 billion messages dating back to 1981. Using the “advanced search” button, searches can be run

by the expert's name, the subject matter, or the expert's e-mail address. Keep in mind, however, that many postings are made anonymously, or with pseudonyms, and that people often change their e-mail addresses.

Such a search can be quite useful as some experts do not know that their posts are public. For example, one attorney allegedly found a post by an opposing expert which read: "I do not know anything about the subject matter of the case. Please help." That post was extremely damaging to the expert when he was cross-examined.

Possible Sites: groups.google.com; groups.yahoo.com

4. Blogs

Some experts post their opinions on blogs. Such blogs are often linked to from an expert's website or found through search engines. Justia's "Blawg Search" allows one to browse thousands of law-related blogs, including information about expert witnesses. One can also be alerted to new blog postings by subscribing to the Atom or RSS feeds found on the blog.

Because blogs are often casual in nature, quickly written and rarely peer-reviewed, one can sometimes find statements that are detrimental to an authoring expert. Such unfiltered opinions can lead to strong cross-examination material. Moreover, comments posted by others to an expert's blog entry may provide guidance on how to go about attacking that expert's testimony.

Possible Sites: www.google.com/blogsearch; www.blogsearchengine.org; www.expertwitnessblog.com; blawgsearch.justia.com; www.abajournal.com/blawgs

5. Patents

For experts who are engineers, scientists or the like, a search through patent information might prove fruitful by yielding damaging statements. An older, but high-profile, example comes from one of the ballot-contest lawsuits that was heard in Leon County, Florida in 2000. During the trial, then-Governor Bush's attorneys called to the stand an expert on voting machines. He was called because he had helped design the punch card voting devices used in many of the contested counties in Florida. Called to counter, among other claims, the assertion made by then-Vice President Gore that chad buildup from prior elections could prevent a voter in a subsequent election from completely punching out a chad, the expert defended the use of the punch card voting devices and deemed them reliable.

However, during his cross-examination, Gore's attorney confronted the expert with a patent he obtained on October 27, 1981 for a "new and improved" version of the voting devices used in the Florida election. In the "Background of the Invention" portion of the patent application, the expert had made several potentially damaging statements, such as:

Incompletely punched cards can cause serious errors to occur in data processing operations utilizing such cards.

* * *

If, however, the voter does not hold the voting punch straight up and down when punching, it is possible under certain temperature and humidity conditions to pull the template toward the voter a few thousandths of an inch, sufficient to prevent complete removal of the chad when the stylus is inserted. This can produce what is called a "hanging chad," as the chad-piece of the card is still attached to the card by one or two of the frangible holding points.

* * *

It must be emphasized that the presence of even one incompletely punched chip in a run of several thousand tabulating cards is in most cases too great a defect to be tolerated.

* * *

Therefore, the material typically used for punch boards in punch card voting can and does contribute to potentially unreadable votes, because of hanging chad or mispunched cards.

Pat. No. 4,297,566. Gore's attorney used the expert's own words to support Gore's position:

Stephen Zack (attorney) : Any incompletely punched cards can cause serious errors to occur in data-processing operation utilizing such cards. Is that a fair statement of what you said?

The Expert: That is correct.

As reported by the *New York Times*: "The effect of [the expert's] testimony was written plain in the strained facial expressions of the Bush legal team[.]"⁵³

Possible Sites: www.uspto.gov

E. Finding & Reviewing Other Information

1. Search Engines

A broad-based search through the Open Web, conducted through a powerful search engine, may retrieve information – whether professional or personal – that might be of use when evaluating an expert. An expert's personal website, articles, research projects, presentations, speaking engagements, blogs, and even postings on discussion boards can oftentimes be found by simply conducting a search for the expert's name on a search engine such as Google or Bing. Once a search is run, one may produce better results by accessing the advanced search menu. Use that function and include the expert's full name, including his/her middle initial, if known. Because many people share even the most unusual of names. Finally, one should, of course, verify any information before relying on it.⁵⁴

Possible Sites: www.google.com; www.bing.com

2. Agency Opinions

Many experts (particularly doctors and economists) appear before not only courts but also various agencies. This means that one should search through agency opinions as well as court records. After identifying agencies before which an expert has appeared, contact those agencies and ask for the expert's reports or transcripts of the expert's testimony – looking for any information contained therein that contradicts what the expert might be prepared to say during the current litigation. Although many agencies enable one to search opinions at their websites, such an effort can be quite time consuming. An alternative is to utilize commercial vendors (e.g. LexisNexis and Thomson Reuters), which have databases that combine opinions from numerous agencies, thereby making them all searchable simultaneously.

Possible Sites: www.statelocalgov.net; www.usa.gov

3. Law Reviews Articles

Law review articles sometimes quote experts, cite to their works, and/or discuss their testimony, so searching a database containing law reviews can sometimes be a good source of information about experts. As most law reviews are not free online, for comprehensive law review searching use the services of commercial vendors, like LexisNexis, Thomson Reuters, HeinOnline, or a library's free remote database.

Possible Sites: www.lawreview.org; www.lawreviews.org

4. Public Records

Individual public records databases can reveal a lot about an expert. For instance, an expert's financial situation might be revealed by how much his/her house cost, as detailed in mortgage or deed transfer records – or even in a recent bankruptcy filing. Knowing such information may help to ascertain matters such as whether the expert makes his/her “living” by being an expert (i.e. he/she is a professional expert) or even to discredit the expert (e.g. an economist who has filed for bankruptcy might not be viewed as being authoritative). What type of car(s) that expert owns will be listed in motor vehicle registrations. Voter registration records may reveal a political party affiliation. The list goes on and on.

However, products incorporating “smart” technology (aka analytics – enabling connections to be drawn between seemingly unrelated information) may be necessary to uncover possibly the most-revealing piece of information about an expert – a conflict of interest. On at least two occasions, we've heard stories of instances in which an expert had a familial relationship with a key player in litigation. In the first, general counsel ordered outside counsel to retain a particular expert – who outside counsel discovered, post-trial, was the brother-in-law of the general counsel. The second example involved an expert who had co-written an article with the brother-in-law of the party he was assisting. Such “in law” (or “degree”) relationships are often difficult to uncover, unless one utilizes a more-sophisticated (aka “intelligent”) public records product, which is able to make the appropriate (and revealing) connections amongst individuals.

Individual public records databases can be accessed via a number of different sites, but more-sophisticated products are rarer and almost always require payment. The best bet to research a particular public records database is at the website of the appropriate local governmental (e.g. state, county, city) agency. Companies that claim to provide free access to public records usually don't. For instance, SearchSystems purports to have links to over 55,000 databases and is searchable for free by record type, jurisdiction (e.g. state, county, city) and even zip code. However, once the initial summary information is displayed, a fee to retrieve the detailed information is required. To conduct a multi-jurisdictional search of public records or a multi-record type search (e.g., criminal records together with bankruptcy records, etc.), you will need to become a subscriber to one of the commercial investigative databases available from companies such as LexisNexis (i.e. Accurant or SmartLinx) or Thomson Reuters (i.e. PeopleMap). These products (which are searchable by a wide variety of criteria including; name, address and phone number) usually provide a more-complete profile of an individual (i.e. expert), providing details as to relatives, political affiliation, financial situation and even criminal records (which should be searched, as some experts have engaged in significant criminal activity).⁵⁵

Possible Sites: www.searchsystems.net; www.brbpub.com/pubrecsites.asp; www.knowx.com/rapsheets; www.craigball.com/hotlinks.html

5. Political Persuasion

It may be possible to learn an expert's political persuasion by researching his/her campaign donations. By learning the expert's political slant, one might be able to gauge his/her views on a number of topics, such as tort reform.

The Federal Elections Commission tracks federal political campaign contributions over \$200. Using the advanced search function on its website, one can tailor a search by name, city, state, and zip code. This information might also lead to finding information about the expert's former employers.

Possible Sites: www.fec.gov; www.searchsystems.net; ocf.dc.gov/dsearch/dsearch.asp; beta.followthemoney.org

6. Case Filings

Knowing what, if any, lawsuits an expert has been a *party* to may be quite valuable. For instance, many medical experts are parties to lawsuits because they are practicing doctors, and, as such, get sued. If a medical expert has been found liable for malpractice in a prior lawsuit, that information could be used in a cross-examination. Commercial online services are continuously expanding their coverage of state courts, and those services and PACER offer a way to search federal court filings.

Because not every lawsuit that has been filed by, or judgment that has been rendered for/against, an expert has a court opinion associated with it, one should search through databases containing summary docket and judgment information. A summary docket database contains basic information about a lawsuit that has been filed in a particular jurisdiction. Such basic information usually includes the case number, the names of the parties, when the lawsuit was filed, the type of lawsuit (e.g. medical malpractice, securities fraud, etc.), the status of the case (i.e. whether the case is closed), the names of the attorneys representing the parties, and some other miscellaneous information. In contrast, judgment databases contain information about lawsuits in a particular jurisdiction that have actually been resolved. A judgment or lien record contains information about the debtor (i.e. the person or entity that owes/owed the money), the creditor (i.e. to whom the money was/is owed), the amount owed and some other basics.

If the jurisdiction where the expert practices is not available online or is not covered by one of the online legal services, consider calling the clerk of the court for the county where the expert practices. The clerk may be able to tell you over the telephone if there has been any litigation in which the expert was a named party. If verbal confirmation is not available, you might be able to submit a written request (along with a fee) to obtain such information. If submitting such a request, plan ahead, as the response time can vary greatly from a matter of days to (in the worst cases) well over two months.

Possible Sites: www.bna.com/bloomberglaw; advance.lexis.com; www.llrx.com/courtrules; pacer.psc.uscourts.gov; next.westlaw.com

7. Audio

It is important to have a clear understanding of why an expert is being retained. Will the expert only consult on the matter, or will he/she be asked to testify at a deposition or at trial? If the expert will ultimately be called to state his/her opinion before a decision maker, then consider the point articulated by Harry Beckwith in his book, "The Invisible Touch":

Communication is not a skill, it is *the* skill.

Jurors are very rarely persuaded by credentials alone – in fact, most jurors will say that the qualifications of opposing experts "cancel each other out." In his book, Mr. Beckwith cites a jury survey conducted by DecisionQuest, a jury consulting service. The results found that jurors sided with one expert over another

because one expert *more clearly communicated his/her expertise*. Mr. Beckwith summed up this result with a simple idea held by jurors:

“If you’re so smart, why can’t you speak clearly?”

Accordingly, it is very important to understand what type of appearance the expert will make. Some experts have included streaming video of themselves on their own websites to enable attorneys to see them in action. In addition, at least one expert directory allows you to both see and hear the listed expert.⁵⁶

Some experts have even created podcasts, which allows listeners to download audio files to play them back when it is convenient for them. Like other kinds of content available via the Web, podcasts cover a wide array of topics and are relatively easy to create.

Two ways to find podcasts are (1) to use an online directory of podcasts, such as Podcast Alley or Blawg (click on the “Podcast” category) or (2) by simply using a search engine and adding the word “podcast” to a keyword search. In fact, a recent search of Google for “podcasts,” retrieved nearly 65 million results.

Possible Sites: www.JurisPro.com; www.podcastalley.com; www.blawg.org; www.apple.com/itunes/podcasts

F. Expert Witness “Services”

The Expert Witness Profiler is a comprehensive expert witness background report detailing references to specific experts in case opinions, Daubert Tracker Case Reports, jury verdict reports, briefs and other case-related documents (including access to transcripts where available). This resource includes personal information such as the expert’s political persuasion, interests, and opinions posted on websites. One can use the Expert Witness Profiler to research an expert’s professional background, including his/her disciplinary history, licenses and certifications.

Similar services are provided by LexisNexis, through its Expert Research on Demand offering, and Thomson Reuters’s Expert Intelligence Reports.

Possible Sites: www.expertwitnessprofiler.com; www.idex.lexisnexis.com; www.legalsolutions.thomsonreuters.com/law-products/solutions/expert-intelligence-reports;

G. Monitoring the Expert

The evaluation of the expert’s credentials should not end at retention or revelation. Monitoring those credentials until the end of the lawsuit is important. In one example, between the time the expert was retained, and the trial, the expert pled guilty to lying about his military record. Retaining counsel and his team had no idea, until the defense cross-examined the expert on the stand, in front of the jury.⁵⁷

IV. Evaluating the Admissibility of Types of Expert Testimony

It is obviously important to research the qualifications and backgrounds of individual experts, however, it is also necessary to research the admissibility of testimony from the expert’s discipline as a whole, as well as the specific area of expertise, topic or sub-discipline on which the expert will be rendering an opinion.

A. Researching the Admissibility of Commonly-Seen Disciplines/Areas of Expertise

In both civil and criminal litigation, experts from certain professional disciplines are so routinely retained and commonly seen in the courtroom that their testimony is generally less subject to challenge. For

example, in commercial litigation, a claim of lost profits which is being made by the plaintiff will require the retention of a financial expert, either an accountant or an economist. In medical malpractice lawsuits involving birth injuries, it is almost inevitable that both sides will retain a pediatric neurologist.

In such instances, the retaining attorney may be lured into thinking that he/she should be less concerned about the need to thoroughly research the entire class of expertise. However, this type of presumption could be quite dangerous; it is a necessity to determine how the retained expert's methods and opinions conform to or deviate from other experts from the same discipline who are testifying on the same topic. In addition to employing all of the standard research tools previously discussed, a simple and useful practice that one should employ is to have the prospective expert explain in his/her own words how questions about "the science" behind his/her methods would be addressed. If the expert is unfamiliar with basic "Daubert" or judicial "gatekeeping" concepts, or cannot clearly articulate the basic methodology used to arrive at his/her opinions, one should think twice before formally retaining the expert.

B. Researching the Admissibility of Emerging Disciplines/Areas of Expertise

If an expert will be offering testimony involving a novel or emerging theory, or one with significant controversy concerning its scientific legitimacy, the entire class of the testimony relating to the theory must be researched. Even if the expert's general discipline is well-respected and not normally vulnerable to challenge and the expert's qualifications and reputation are impeccable, if the expert is giving testimony in an area that is novel and/or controversial, it is incumbent for the attorney to work alongside the expert to plan for an inevitable challenge.

A good example of a class of expertise where the theory and science behind the class is emerging is trauma-induced fibromyalgia. Whereas Fibromyalgia Syndrome is an accepted and recognized diagnostic category and rheumatology (the medical discipline most often involved in the treatment of Fibromyalgia Syndrome) is well-recognized and accepted, expert testimony that physical trauma can cause Fibromyalgia Syndrome is highly controversial. Although numerous studies support a causative link between trauma and Fibromyalgia Syndrome, other studies do not. This example points to the important steps one must take in researching an expert who is going to be giving testimony in an emerging area:

- * Know the science behind the theory: Attorneys presenting testimony in an emerging area should be thoroughly acquainted with all major studies done and papers written on the topic.

- * Know the case law: Every effort should be made to avail oneself of all major opinions and decisions that have been written on the admissibility of testimony in the emerging area.

- * Know the jurisdiction: Standards for admissibility vary from one jurisdiction to the next and those standards will have a significant impact on the tack taken in arguing for or against admissibility of novel or controversial testimony.

- * Know the court/judge: The best indicator of future admissibility of a novel or controversial opinion is the established tendencies of the court or judge with respect to novel testimony in general and specifically the class of testimony at hand.

- * Know the expert: When presenting novel testimony, it could be argued that the best safeguard against exclusion would be to select an expert whose testimony on the topic has already been admitted.

V. Conclusion

It is more than just good practice to research experts thoroughly, it's a professional responsibility and might be malpractice if not completed comprehensively. First of all, judges demand it. Consider the case of the attorneys in Chicago who discovered, *after the jury had rendered its verdict*, that the opposing expert had falsified his credentials (e.g. an engineering degree from West Point). The judge rejected those attorneys' request for a new trial and reminded them of their duty to conduct thorough research:

"In preparing a case for trial," [Judge] Gordon explained, "many attorneys take for granted that when an expert provides a CV that everything in the document is true. However, it is plaintiff's job in preparing a case for trial to learn as much as possible about an adverse party's expert witness, including verifying his qualifications as an expert."⁵⁸

Judge Gordon's words are echoed by those of another judge, United States District Court Judge Nancy F. Atlas:

CAUTION: Never retain, use, or list in court pleadings an expert without thoroughly researching the individual.⁵⁹

Perhaps more importantly, failure to perform adequate research may have malpractice implications. For instance, a California Court of Appeals recently ruled that an attorney has certain responsibilities with respect to the retention and handling of experts, and that the failure to adequately discharge those responsibilities could subject that attorney to a claim of professional negligence.⁶⁰

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Myles Levin, CEO of the Daubert Tracker, first developed an interest in "evidentiary gatekeeping" cases in 1999, shortly after founding MDEX Online, Inc., a full service medical legal consulting firm and the holding company of the Daubert Tracker. Himself a former testifying vocational expert and principal in a litigation consulting company, he became aware of the significance and implications that "gatekeeping" had for all participants in the litigation process- attorneys, experts and judges alike. He came to realize, however, that there was no central repository of information and documents concerning these cases, despite the fact that "gatekeeping" activity was often a "linchpin" in successful or failed litigation. After validating his concepts with the litigation and forensic community, he developed a team of database programmers, web developers and legal researchers and launched Daubert Tracker in August of 2002. Since then, the product has been received very favorably and has received significant attention in state bar association journals, legal newspapers and from attorney and expert associations. Myles can be reached at mlevin@dauberttracker.com or 866-528-3300 (ext. 100).



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- ² To access Lexis Advance, go to advance.lexis.com.
- ³ For other tips on how to use the Web to find experts, obtain background information about them, and conduct all sorts of factual research, see Levitt, Carole & Rosch, Mark, *The CyberSleuth's Guide to the Internet* (12th Edition), 2012 (www.netforlawerays.com).
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- ⁶ To learn more: www.ted.com/talks/eli_pariser_beware_online_filter_bubbles.
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- ¹⁷ See, e.g., F.R.C.P. 26(a)(2)(B).
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- ²⁰ Weiss, Debra. "BigLaw lawyer's 'jolly impressive' resume lied about education at Harvard and Oxford," *ABA Journal* (Legal News Now), October 10, 2013.
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- ²² "Honesty the best policy on resumes," *Denver Post*, February 26, 2006.
- ²³ Buckhoff, Thomas. "Preventing fraud by conducting background checks," *The CPA Journal*, November 2003.
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- ²⁵ Gyrodyne Co. of Am., Inc. v. State of New York, 957 N.Y.S.2d 636 (N.Y. Ct. Claims 2010).
- ²⁶ Snyder v. Sec'y of the HHS, 2009 U.S. Claims LEXIS 193 (Fed. Claims Feb. 12, 2009).
- ²⁷ See Telewizja Polska USA Inc. v. Echostar Satellite 2004 U.S. Dist. LEXIS 20845, 17-18 (N.D. Ill. Oct. 14, 2004) (rejecting plaintiff's claims that pages from the "Wayback Machine" were unreliable, and holding the pages were not hearsay as the Web pages were not "statements."); Netbula LLC v. Chordiant Software Inc. 2009 U.S. Dist. LEXIS 25372 (N.D.

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- ⁴¹ John Doe 21 v. Sec'y of Health and Human Servs., 2009 U.S. Claims 471, *53 (2009).
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- ⁴³ Blum v. Merrell Dow Pharms., Inc., 1996 Phila. Cty. Rptr. LEXIS 122 (Phila. Ct. C.P. 1996) (expert listed as both "Allan Done" and "Alan Done" is actually Alan Done, and the correct name is noted in the related DTCR).
- ⁴⁴ Recently, because of the emergence of online docket repositories, both federal and state, as well as the databasing of motions, pleadings and briefs, the Daubert Tracker has been able to add a substantially larger volume of unreported opinions to its collection.
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- ⁵⁶ On the JurisPro website visitors can see a photo of the expert, and hear the expert speak through streaming audio. This allows the visitor to learn how that expert presents himself/herself. The JurisPro directory also includes the expert’s full CV, contact information, link to their website, articles, references, and prior litigation experience.
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- ⁵⁸ Garmisa, Steven P. “Expert’s credentials questioned too late to trigger new trial,” *Chicago Daily Law Bulletin*, October 6, 2004.
- ⁵⁹ Atlas, Hon. Nancy F. & Atlas, Scott J. “Finding, Preparing, and Defending an Expert in the Age of Judicial Gatekeepers,” *Tips from the Trenches*, December 19, 2001 (an exclusive online publication for the ABA Section of Litigation) – found at: tiny.cc/t4bsnx.
- ⁶⁰ See *Forensis Group, Inc. v. Frantz, Townsend & Foldenauer*, 130 Cal. App. 4th 14 (Cal. App. 2005). See also, Wilcox, Wendy L. & Weber, Christopher J. “Department: Barristers Tips: Dodging the Pitfalls of Qualifying an Experts,” *Los Angeles Lawyer*, September 2005 (“Failure to monitor the expert and the expert’s opinion could subject counsel to litigation on the other side of the table[.]”).