

Finding and Researching Experts and Their Testimony

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Co-Authors' Note
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Many years ago, we were discussing the need to thoroughly research experts. We discussed not only which resources to search, but also effective strategies on how to use the information found. In the end, we realized that a truly-comprehensive resource that detailed all the various ways to learn about experts did not exist. Accordingly, in 2007, we wrote the First Edition of this White Paper to meet that perceived need.

Since then, this paper has been updated several times, to highlight new resources that have emerged (as well as deleting references to older, non-functioning websites), acknowledge new applications and strategies, and pass along examples of the real consequences of failing to effectively vet experts. This Fourth Edition reflects our latest views. We hope you find it to be a valuable resource and return to it regularly.

I. Introduction

The opposing party has identified its expert witness. That expert's testimony had been deemed unhelpful by a judge in a prior lawsuit because of both its "uncertainty" and its equivocating nature. Moreover, that same judge stated that the expert's testimony was unreliable because he had used "selective blindness" and "cherry pick[ed] the data."¹ Obviously, such a prior ruling (and commentary) with respect to the expert is potentially very damaging – but how would one find that possibly-damaging information?

The purpose of this paper is to recommend various types of online resources that can be used to locate the right expert, gather information about him/her (whether one's own or the opposing party's), and assess the admissibility of that expert's 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 identified. Many of the resources discussed (e.g. agency opinions, verdict reports, etc.) are available from a wide variety of free websites and commercial vendors, such as LexisNexis[®] (see, e.g., Lexis Advance), Thomson Reuters[®] (see, e.g., Westlaw), and Bloomberg Law[®]. As such, these websites and providers are not constantly repeated, unless it is not obvious that these resources provide such information.²

One note of caution: be wary of outrageous marketing claims. Some vendors will tout that they can provide *all* of the information needed 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 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 everything. 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 word to the wise on the subject of finding a potential expert: *do it as soon as possible*. Many benefits result from early expert identification and contact, including: possibly precluding the opposition from retaining a particularly-coveted expert, assistance in framing the issues, evaluation of the opposing expert, and more.³

A. Learning about the Subject Matter

In order to know which 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 a search to find information about the subject matter and 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 Los Angeles Public Library website will return the names of authors, the title and date of their publications, and related titles. 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.lib-web.org/united-states/public-libraries; www.lapl.org; catalog.loc.gov; www.worldcat.org; nypl.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 for-fee databases. Most of these databases are full-text and are regularly updated. With a library card, these online databases can be accessed remotely.

Every library offers a different group of databases. Just a few of the types of databases offered by some libraries include: Academic Search Premier, a scholarly database of science, engineering, and technology publications; JSTOR, which provides access to a digital library of more than 10 million academic journals, books and articles; and business directories such as Standard & Poor's and Hoovers.

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 website, 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 gain access to 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: *nlm.nih.gov (PubMed/MEDLINE); webmd.com; abms.org (requires registration); boardcertifieddocs.com (charges organizations to verify physician certifications)*

3. Bookstore Websites

Whether looking for information or potential experts, commercial websites can be powerful research platforms. For example, a recent search for “construction safety” at the Barnes and Noble website returned over one hundred 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. Textbooks on a particular subject can also be found on many websites, including bigwords.com.

Possible Sites: *amazon.com; barnesandnoble.com; abebooks.com; 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 with the opportunity to view a limited number of them upon free registration).

The Index to Legal Periodicals & Book” (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 about a particular subject matter may also be found through Google Scholar. This platform 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.

Finally, some expert witness directories such as JurisPro and Hieros Gamos provide free access to articles written by experts on particular subjects, 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 which includes opinions posted by various accident reconstructionists.

Possible Sites: law.com; jurispro.com; hg.org; scholar.google.com; 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 platforms for finding expert witnesses, unless the search query is tailored precisely. 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 isolate the results to retrieve only Adobe Acrobat PDF files, Microsoft Word documents, or Microsoft PowerPoint presentations.

Of course, it is also important to remember that the first few results on Google (and other search engines) are often paid or manipulated to be there. Anyone can pay to have the top spot for such terms as “OSHA expert.”⁴ 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.” With that in mind, 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.⁵ Because of this “filter bubble” phenomenon, 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 Open Web is a mostly un-policed forum, the information found through search engines varies extraordinarily in quality and may be fake, inaccurate or biased. Sometimes an uncovered website is clearly a parody (consider the website for the Pacific Northwest Tree Octopus⁶). However, misinformation is not always clearly evident. For instance, after the downing of the Malaysia Airlines jet in the summer of 2014, a Wikipedia page was created, stating that the plane was shot down by terrorists. However, within an hour of the creation of that page, someone in the Russian government altered the page to say that the plane had been shot down by Ukrainian soldiers.⁷

Some judges have acknowledged the unreliability of information on the Web.⁸ As stated by one judge: “[t]he accuracy and reliability of information from the Internet is highly questionable.”⁹ Although general Open Web searches are of course *de rigueur* for finding and evaluating experts, every care should be taken to make sure the information is accurate and truthful. Recently, a judge shut down a major law firm’s request that he take judicial notice of a definition from Wikipedia by quoting that website’s disclaimers and then stating:

Suffice it to say that this is not one of the rare instances in which Wikipedia might be a proper authority to cite in a legal brief.”¹⁰

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

Possible Sites: *google.com; bing.com; yahoo.com; slideshare.net*

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, upgrade notifications, and safety notices.

Even more information about companies, suppliers, and products can be found at the ThomasNet website, which has gathered company information from registrations of over 500,000 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 tire pumps” leads to profiles for manufacturers, which may include each company’s description, website address, number of employees, annual sales, and key personnel (who might be able to serve as expert witnesses).

Possible Sites: *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 a fee to retain that expert. Moreover, use caution when a company represents that it has thoroughly vetted a recommended expert.

With the emergence of the shared economy and the online marketplace model, it was only a matter of time before legal services would be bought and sold on the Internet. Following this trend, the Expert Witness Exchange was launched in February 2017. As with all online marketplaces, buyers (of expert witness services, i.e. litigators) and sellers (experts) can come together to transact business, using the most modern matching and analytics technologies available.

Possible Sites: *expertwitnessexchange.com (coming soon); tasanet.com; forensisgroup.com; elitemedicalexperts.com; ims-expertservices.com; trexpertwitness.com; theexpertinstitute.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). Other websites include peer reviews of experts.

Many bar associations, such as the Los Angeles County Bar Association (Southern California Directory of Experts & Consultants) and the Bar Association of San Francisco have online directories of expert

witnesses. Many commercial expert witness directories also exist. For example, seakexperts.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](http://HierosGamos.com), and [Findlaw](http://Findlaw.com) also have online directories with short biographies and links to the expert's website.

The JurisPro Expert Witness Directory 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: jurispro.com; seakexperts.com; ncavf.com; sfbbar.org; almexperts.com; hgexperts.com; courtroominsight.com

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.¹¹ Nonetheless, such reports can be used to find experts in a particular field.

No one central depository for jury verdicts exists. As a result, one will likely have to turn to a pay website to access the various collections.

Zarin's Jury Verdict Review Publications maintains over 100,000 verdicts and settlements. Searching the database is free, but to get the full report, payment is required. One can order an individual report (\$30) or opt for a day pass (\$199), allowing for the downloading of up to ten articles. Zarin's also offers a yearly Litigation Support Plan Option which includes not only everything online but also one hardcopy subscription to the Jury Verdict Review & Analysis newsletter, as well as three call-in professional searches (with up to five articles for each assisted search).

The National Association of State Jury Verdict Publishers website is a portal for many jury verdict publications. The data from this website is obtained from two dozen independent reporters responsible for approximately twenty-nine publications in the United States.

VerdictSearch provides access to verdict reports from ALM. Although "featured verdicts" can be viewed for free, access to ALM's entire database of over 180,000 verdicts requires a subscription. It also offers a Research on Call service and a one day pass (\$495) option.

Of course, almost all of the jury verdict publishers 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: jvra.com; juryverdicts.com; verdictsearch.com

6. The “Invisible Web”

Searching the Open 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.¹² In fact, 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 researcher who uses only the well-known search engines.¹⁴

a. Colleges and Universities

College and university websites are excellent sources for finding and evaluating experts. Their 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 areas of expertise, 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: searchenginesmarketer.com/list-of-university-and-college-websites/; doors.stanford.edu/~sr/universities.html

b. Healthcare Facilities

The Joint Commission on Accreditation of Healthcare Organizations’ (the accrediting agency for thousands of health care 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 profiles 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.

Because their ranking is organized by discipline and sub-discipline, the U.S. News and World Report’s ranking of best hospitals (from a potential 5,000 medical centers) is another excellent website if one is looking for a doctor with a particular area of expertise.

Possible Sites: jointcommission.com; childrenshospital.org; health.usnews.com/best-hospitals/rankings

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”) which includes over 456,000 organizations.¹⁵ 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.

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

d. Expert Witness Knowledge Management

Although finding experts through referrals is common, few firms maintain a system to organize and share internal experiences, research and expert-retention data. Accordingly, some firms rely upon Courtroom Insight, which provides a customized expert witness knowledge management solution that organizes and integrates external content and services with a firm's internal data. Demand for these types of knowledge systems is expected to increase due to the proliferation of expert witness data and higher client expectations.

Possible Site: courtroominsight.com

III. Evaluating an Expert

The "formal" rules governing the discovery of information related to experts are fairly limited. In almost every jurisdiction, the opposing party must disclose the name and expertise of any expert that party intends to use.¹⁶ In addition, often the expert must 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 beyond what the rules require 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?), further investigation is necessary.

A. Finding Claimed Credentials

Whether one is considering retaining a particular expert or needs to learn more about the opposing party's expert, it is important to verify credentials. For example, 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 claimed 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. Several years ago, the Statistic Brain website, noted that a widely-reported 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 or lie about their credentials outright. For instance, one expert testified under oath that he had a master's degree, top-secret clearance from the federal government, and worked at NASA. In reality, he did not have a master's degree, he did not have top-secret clearance, and NASA denied any involvement with him.²⁴ Similarly, when another expert admitted to being an environmental planner, and not an environmental scientist (as was listed on his CV) – the judge characterized the deception as “inconceivable.”²⁵ As a final example (note that numerous other recent examples exist), after a firearms expert killed himself upon discovery that he had falsified his credentials and training, a defendant, whose conviction was based, in part, upon that expert's testimony, filed a motion for a new trial citing as newly discovered evidence those fraudulent credentials.²⁶

1. Identity and Location

In order to evaluate credentials, one 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 that 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 one to spend hours searching in vain.

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.

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

Several courts have expressly ruled that archived versions of a website obtained via the Wayback Machine are admissible.²⁷ Similarly, the Supreme Court of Missouri affirmed a lower court's determination that an expert had testified falsely as to his credentials because a posting on a prior version of his website has been deleted prior to his 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 Witness 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 comparison of the information provided by the expert with his/her directory listing might reveal such discrepancies.

Possible Sites: jurispro.com; seakexperts.com; hgexperts.com; almexperts.com; expertpages.com

5. Social Networking Websites

Social networking websites are still among the largest areas of content growth on the Web. It is estimated that 81% of Americans have a social network profile (think: Facebook, Twitter, etc.), and almost two billion people use social networks worldwide.²⁹

Social networking websites can be a boon to one who needs to obtain background information on experts. On these websites, 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. Moreover, posts on such websites are often informal and quickly written. Participants in online social networks tend to share personal information freely in their profiles. It is often forgotten that the intended audience members (e.g., their online friends) are not necessarily the only people who can see it – depending on how users set up their privacy settings in their accounts, their profiles might be open to anyone.

Although one should feel free to troll publicly-available portions of those websites, avoid initiating requests to "friend" or "connect" with an expert, as some local bar associations and ethical guidelines restrict searching through information on the social networking websites of parties, potential jurors, and other participants in the judicial process.

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

6. Old CVs

Some experts fail to diligently update their CVs over time. Such a failure has caused at least one court to exclude an expert.³⁰ Accordingly, one should seek out all the CVs an expert has filed in prior lawsuits. Searching collections of court-filed documents as well as online docket databases (e.g. from LexisNexis CourtLink, Thomson Reuter's CourtExpress, and Bloomberg Law) may yield such documents.

Possible Sites: <https://courtlink.lexisnexis.com>; courtpress.com

B. Verifying Credentials

Once an expert's claimed credentials are uncovered, they must be verified. This is particularly important if one has compared the expert's current CV to that 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 the entries.

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 one has retained (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 one to verify attendance and conferment of 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 \$20.00+ 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 is the existence of "degree mills" – non-accredited colleges and universities that sell degrees (such as "life experience" degrees), primarily through the Open Web.³¹ 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 on his/her CV.

Possible Site: studentclearinghouse.com

2. License and Specialty Certification Information

A vast amount of licensing information can be found online and can be searched to verify the current status of a license an expert claims to hold. Many professional associations and organizations, such as the American Medical Association (AMA) and the American Institute of CPAs (AICPA) have their own websites where one can check the certification status of experts who assert that they are licensed or certified by those organizations. The American Board of Medical Specialties is the most authoritative place to verify the board certification of medical doctors.

SearchSystems (which is a pay website, 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 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.³² 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 a similar reason that caused the expert to surrender his/her license. Why that expert was forced to do so may be of extreme importance – to both oneself and one's client.

Finally, be sure to verify even your own expert's credentials – just because your expert says he/she is licensed or certified, *one must double-check that information*. Consider the VIOXX lawsuit in which the judge had to overturn a defense verdict and order a new trial when he discovered 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.³³ Importantly, a relatively-easy search through certification information available at the American Board of Medical Specialties website would have revealed that inconsistency to defense counsel.

Possible Sites: searchsystems.net; brbpub.com/free-public-records; craigball.com/hotlinks.html; abms.org (requires registration); aicpa.org/forthepublic/findacpa/pages/findacpa.aspx

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 fraud or perjury. All state governments and some professional associations maintain records of professional misconduct, and these records are often available via the Web.

Currently, no reliable central repository of disciplinary actions against licensed professionals seems to exist. And because a myriad of possible state-operated websites exist, it is impractical to search them all individually. Accordingly, the best approach to take when pursuing researching possible disciplinary actions against experts is to first utilize public records to identify the expert's current/prior residences and professional licenses. Once a list of licenses and residences has been compiled, it becomes easier to focus subsequent research on those states, professions and organizations with which the expert is affiliated.

Nonetheless, it is sometimes possible to do a national search for an expert's disciplinary history on an occupation-by-occupation basis. For instance, for disciplinary actions against medical doctors, one can search the Federation of State Medical Board's website. 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 2006 may not appear on a board's or association's website in 2017.

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

Possible Sites: fsmb.org; texpertwitness.com/expert-background-research/; healthgrades.com; www.mbc.ca.gov/Consumers (California Only); expertwitnessprofler.com; idex.lexisnexis.com

4. Publications (aka Authored Materials)

Many medical and technical experts write articles for journals (or are cited in articles written by others) – in fact, it is often 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 determine 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 experts engage.

a. Ghostwritten Materials

Ghostwriting is an alarming trend that seems to be emerging with respect to the work of some experts. As noted several years ago, “[Ghostwritten articles] are often used in litigation . . . to credentialize an expert witness.”³⁴ 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.”³⁵ And some experts who have claimed authorship of such materials have been exposed.³⁶

b. Predatory Publications

As in any industry, the publishing industry has its own issues with disreputable providers. In the academic publishing sector, some companies have developed a business model whereby authors are charged a fee to have an article published – but no peer review or any of the other normal editorial processes associated with legitimate academic publication is conducted. Retained experts themselves may publish articles in these publications as a way of boosting their apparent authoritativeness and the legitimacy of their opinions; or, alternatively, they may cite articles from these questionable publications to support and bolster their own opinions. Attorney Michael Hoenig of the law firm of Hertzfeld & Rubin has written extensively on this topic and even coined the phrase “Trial by Literature.” And Jeffrey Beall, a librarian at the University of Colorado, used to maintain a list of so-called predatory publications called “The Beall’s List” (but, for unknown reasons, that site has been taken down). Regardless, although no formal list of predatory publications now exists, one should look carefully and critically at the nature and quality of the expert’s own publications as well as the publications on which he/she relies.

Possible Sites: wame.org/identifying-predatory-or-pseudo-journals; http://herzfeld-rubin.com/publ_complexlitigation_20151120.htm; en.wikipedia.org/wiki/Predatory_open_access_publishing

c. Undisclosed Works

Although most local court rules require experts to disclose a complete list of their authored works to the opposing party,³⁷ 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, such as an attempt to hide a contrary point of view. For instance, a federal judge recently noted that the expert’s expressed opinion regarding class effects was not evidence based, and was directly contrary to the findings of her own peer-reviewed, published research.³⁸

d. “Repurposed” Works

Because many experts are retained for lawsuits that are similar to others they have worked on, they may be tempted to use a single report for all those similar lawsuits – with only slight (if any) variation. In the same vein, some experts author multiple articles and get them all published, even though they are

virtually identical to each other (i.e. only minor variations – perhaps even just the title – exist). In one such instance, it was shown that the expert did not write as many papers as he claimed, as two in his list were basically “repeats with only minor changes.”³⁹

e. Criticized Works

Just because a purported expert has authored an article does not mean that that article is accurate. So 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.”⁴⁰ 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.

f. Exaggerated Numbers of Works

Finally, a search for publications may simply serve as a confirmation of 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 them – something that occurred several years ago with respect to a prominent mold expert.⁴¹

Possible Sites: nlm.nih.gov/bsd/pmresources.html; scholar.google.com

C. Uncovering Case-Related Information

After verifying an expert’s credentials, research all the various types of case-related information available – such as case opinions, Daubert Tracker Case Reports, dockets, verdict reports, and more. Conduct such research to not only compile a litigation history for purposes of a “FRCP 26(a)(2)(B) Disclosure Verification” but also uncover (both successful but even unsuccessful) Daubert challenges, prior statements (e.g. transcripts, reports, etc.), and more.

What’s a “FRCP 26(a)(2)(B) Disclosure Verification”? It’s simply an informal name for the process of identifying all the lawsuits in which an expert has worked and then double-checking that compilation against the list provided by that expert pursuant to the federal (or analogous state) rule which requires an expert to disclose his/her prior casework. 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 casework. 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.⁴²

Such a list of lawsuits can be put together by searching case opinions (and Daubert Tracker Case Reports), dockets, verdict reports and more.

1. Court Opinions

In terms of uncovering case-related information, the first step is to simply run the expert’s name through a database of case opinions, as they 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 own lawsuit on the same or similar

grounds (or might provide a caution as to retaining that expert for one's own purposes). In fact, a search through opinions is precisely how the damaging prior rulings referenced in the Introduction to this White Paper were uncovered.⁴³

Similarly, a search through opinions may reveal exaggerations about an expert's claimed experience. For example, recently a court noted:

At the hearing, plaintiffs claimed that [the expert] had used IS-4 in numerous prior engagements, . . . but identified only one example[.] . . . Notably, that case was settled before [the expert] was ever qualified as an expert, and despite plaintiffs' claim that [the expert's] testimony "led to the [] settlement," [the expert's] qualifications do not appear to have been on the front of the court's mind when it issued the Final Order and Judgment approving settlement[.]⁴⁴

Of course, opinions can also reveal other useful information about an expert. Consider the opinion in which the court stated that "frequently, [the expert] did not answer questions as they were asked."⁴⁵ 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.

Do not forget to look internationally, as 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. One option is to enter only the expert's last name in the initial search (e.g. < flotz >), and then narrow down the retrieved set of results through the inclusion of additional variants (e.g. < dr or expert or sam! /5 flotz >). However, if the expert's last name is more common, include his/her first name in the initial searches well (e.g. < dan! /3 johnson >). 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 broadly and then narrow your results later. Moreover, one can be cost-effective by searching multiple experts simultaneously and then using post-search filters and subsequent searches to extract information about each particular expert.

Possible Sites: *bnac.com; advance.lexis.com; 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, an 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 opinion does not.⁴⁶ This is a distinct and helpful feature.

Second, DTCRs cover more opinions than those typically available by online services. For instance, 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 a misspelling of an expert's name in an opinion, and correcting it in the DTCR. For example, toxicologist Alan Done is incorrectly identified as

“Allen” in at least two case opinions, and “Allan” in another.⁴⁷ Daubert Tracker recognized that all three case opinions referred to the same toxicologist.

Daubert Tracker is available through its own website, and is licensed by publishers/organizations such as LexisNexis, Thomson Reuters, TrialSmith and Courtroom Insight.

Possible Site: dauberttracker.com⁴⁸

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

Electronic filing is utilized by most federal courts,⁴⁹ and a numerous state courts. Accordingly, accessing such electronic docketing systems can be a valuable way to glean even more information about an expert. In particular, armed with a list of lawsuits in which an expert has appeared, one can retrieve the docket sheet from each case and search it (online) for any references to the expert. Moreover, many recent docket sheet entries often have links to a PDF of each of the filings.

Unfortunately, two significant problems affect the use of most electronic docketing systems. 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 a provided disclosure, 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/someone else?).

These problems, however, are not insurmountable. For instance, with respect to the first downside, commercial vendors are making more and more electronic dockets full-text searchable. For instance, 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 him/her, 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 identify those lawsuits in a disclosure.

With respect to the second downside, 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 federal and state 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.

Such searching through electronic dockets can provide a powerful supplement to searching merely case opinions. For instance, recently the U.S. Tax Court issued an Order discussing how an expert had lied during cross-examination – but the Order does not mention the expert by name.⁵⁰ A search for that matter in the electronic docket system of the U.S. Tax Court, however, reveals that key detail.

Moreover, 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 him/her. Was his/her background insufficient for the area of expertise he/she was 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, motions or even opinions might give one 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 testified as being an authoritative source) in formulating his opinions[.]”⁵¹

Possible Sites: advance.lexis.com; westlaw.com; bna.com; pacer.gov (also note that some court websites provide docket searching (though usually only by party name or case number))

4. Verdict Reports⁵²

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, one might uncover potential bias – perhaps 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 telling study from many years ago 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%.⁵³

In addition, some of the details contained within a verdict report might lead to additional information about the expert. For instance, one could use the case name and number listed in a verdict report, along with the jurisdictional information, to track down that lawsuit’s docket in an attempt to uncover more information about the expert. Or, if the names of the attorneys are listed in the report, one might contact them to ask them for their impressions of the expert. In short, how one uses the information found online about an expert is only limited by one’s creativity.

Possible Sites: advance.lexis.com; westlaw.com; bna.com; www.morelaw.com; verdictsearch.com; juryverdicts.com (listing numerous verdict report publishers); jvra.com (also note that many local bar associations provide access to state-specific collections)

5. The Expert’s “Words” (i.e. Transcripts of Testimony, Reports, etc.)

An expert’s words, as expressed during the course of lawsuits (which can be found in a variety of formats, including transcripts, reports, affidavits and declarations), can be used in a variety of ways to discredit an expert.

a. Transcripts of Testimony

As one attorney recently noted:

“What you do when you have an expert who’s testified a thousand times is you have to obtain those transcripts,” . . . The more transcripts you have, the more ammo, and “the more likely you’re going to find something in those transcripts that will be inconsistent with something that’s testified [to] in your case[.]”⁵⁴

Thus, as noted, use transcripts to find inconsistencies amongst what the expert is prepared to say in the pending lawsuit and what that same expert has said previously. Finding such an inconsistency can be extremely damaging:

[The expert] testified falsely according to the well-established principles of accident reconstruction Dr. Skelton had already testified to as well as his own testimony in the [prior] Ciccione case and his own training materials.⁵⁵

Transcripts, however, can be used in other, creative, ways as well. For instance, 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).

Free, centralized databases of expert witness transcripts do not seem to exist, but several "for pay" options are available. First of all, many commercial vendors 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 TrialSmith document database purports to have has 600,000 transcripts and is jointly sponsored by more than sixty 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 (as well as briefs/motions, case opinions, list messages and more).

As an alternative, consider directly contacting attorneys who have worked with (or against) a particular expert, and requesting a copy of the 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— or one 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, one 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 being researched – whether from their litigation or from others gathered as they prepared their case.

Possible Sites: *dri.org; justice.org; trialsmith.com; idex.lexisnexis.com*

b. Reports and Affidavits / Declarations

An expert's old reports, affidavits and declarations can be used in many different ways. For instance, because those documents are (just like transcripts) the "words" of the expert, they can be used to uncover inconsistencies. However, one 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."⁵⁶

This situation involving the Seattle Supersonics and the Anaheim Angels is not unique. Many attorneys have encountered similar situations, especially with respect to 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."⁵⁷

Some companies such as Jurilytics will peer review an expert's report. For example, when a litigator wants to get an opposing expert excluded, he/she can arrange for a blind peer review of the opposing expert's report under work-product protection. If the peer review is critical, work-product protection can be waived, resulting in a devastating basis for exclusion. Peer review improves upon this ad-hoc experiment by providing much greater credibility given that the reviews are done blindly -- the reviewers do not know the hiring party or the expert/author. Such peer review can also be used to "pressure test" a first draft of one's own expert's report. This can reveal weaknesses while there is still time to make changes.

Possible Site: jurilytics.com

6. Video Testimony

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

Possible Sites: 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 one 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[.]"⁵⁸ 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.⁵⁹

One 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 and social media postings (though blogs and social media posts aren't technically news). Yet despite the existence of such potentially-fruitful resources, they are often underutilized when it comes to researching experts.

News sources are 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 various Open Web search engines (e.g. Google, Bing, Yahoo, etc.) and then conduct a keyword or name search. Be aware, however, that those databases are not nearly as inclusive (e.g. Google searches several thousand 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.⁶⁰ 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 some 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 Open Web search engines for archived news information. In May 2014, the ECJ issued a ruling requiring such search engines to modify (and, in some instances, delete) particular search results upon receipt (and acceptance) of requests from entities such as individuals and companies.⁶¹ According to one website, as of December, 2016, Google had received requests from over 650,000 people and companies to remove negative references⁶² – and that number continues to grow. Though very speculative at this juncture, the adoption of the ECJ's ruling in the United States could hamper one's reliance on such Open Web search platforms as a viable resource in the context of researching experts.

Because no true global search through all news sources can be run, it can sometimes be worthwhile to run a search on the expert's name at a specific news website (which may require registration – often free) – especially those for newspapers in the expert's locality. For example, 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 the 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 lawsuit involved that particular topic.⁶³

Possible Sites: *news.google.com; yahoo.com/news (also consider searching individual newspaper/magazine websites (a list of which can be found at newslink.org))*

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: congress.gov; 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). Keep in mind, however, that many postings are made anonymously, or with pseudonyms, and that people often change their e-mail addresses. Nonetheless, such a search may be useful as some experts do not realize 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 Site: groups.yahoo.com

4. Blogs

Some experts post their opinions on blogs. These 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 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: blogsearchengine.org; expertwitnessblog.com; blawgsearch.justia.com; 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 misspunched 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[.]"⁶⁴

Possible Site: uspto.gov

E. Finding & Reviewing Other Information⁶⁵

1. Search Engines

A search through the Open Web 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, social media information and even postings on discussion boards can oftentimes be found by simply conducting a search for the expert's name in a search engine. Notably, when embarking on such a search, one should be sure to utilize several different search engines (e.g. Google, Bing, Yahoo, etc.) because each engine employs its own, independent, algorithm to retrieve information from the Open Web – meaning that one may get different results, depending on which engine is used.

After the initial search is run, one may produce better results by accessing an 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.⁶⁶

Possible Sites: google.com; bing.com; duckduckgo.com; yahoo.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. Of course, 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: statelocalgov.net; usa.gov

3. Law Review Articles

Law review and bar journal articles often quote experts, cite to their works, and/or discuss their testimony. In order to conduct more-thorough searching through law review articles, consider using the services of commercial vendors (e.g. LexisNexis, Thomson Reuters, HeinOnline), a law library's free remote database, or even the "Free Full-Text Online Law Review/Journal Search" offered by the American Bar Association's Law Practice Division, which purports to search:

The free full-text of over 400 online law reviews and law journals, as well as document repositories hosting academic papers and related publications such as Congressional Research Service reports. Several of the law reviews and legal journals (such as the Stanford Technology Law Review), working papers, and reports are available online only.

Possible Sites: westlaw.com; advance.lexis.com; scholar.google.com; americanbar.org/groups/departments_offices/legal_technology_resources/resources/free_journal_search.html

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. Familial relationships might be uncovered. 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.⁶⁷ 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 websites, 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.), one must become a subscriber to one of the commercial investigative databases available from companies such as LexisNexis (i.e. Accurint 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).⁶⁸

Possible Sites: searchsystems.net; brbpub.com/free-public-records; craigball.com/hotlinks.html (compiling various free and fee public records websites)

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: fec.gov; 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.

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 lawsuits that have been filed in particular jurisdictions. 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 resides/practices. The clerk may be able to relate if there has been any litigation in which the expert was a named party. If verbal confirmation is not available, one might be able to submit a written request (along with a fee) to obtain such information. When 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: *advance.lexis.com; westlaw.com; bna.com; pacer.gov (also note that some court websites provide docket searching (though usually only by party name or case number))*

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. Fortunately, 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 one to both see and hear the listed expert.⁶⁹

Some experts have even created podcasts, which can be downloaded as audio files and listened to at another time. 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: *jurispro.com; podcastalley.com; apple.com/itunes/podcasts*

F. Expert Witness “Services”

The Expert Witness Profiler is an 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 transcripts where available). This resource includes personal information such as the expert’s political persuasion, interests, and opinions posted on websites. One can also 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: expertwitnessprofiler.com; idex.lexisnexis.com; www.expertwitnessprofiler.com; www.idex.lexisnexis.com; texpertwitness.com/expert-background-research/

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.⁷⁰

Many Open Web and commercial research platforms offer the capability to have new "results" sent immediately to a researcher's email. For instance, Google offers an Alert feature which notifies the researcher of new websites, etc. identified by Google which satisfy one's query. Similarly, many commercial research platforms offer this capability. It is good practice that one, after running an initial search, set up an alert to avoid having to run additional, repetitive, searches in the future.

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 not only the admissibility of testimony from the expert's discipline as a whole but also the specific area of expertise, topic or sub-discipline on which the expert will be rendering an opinion.

A. 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. This type of presumption, however, could be quite dangerous, as 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. Emerging Disciplines/Areas of Expertise

If an expert will offer 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, 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 one to work alongside the expert to plan for an inevitable challenge.

A good example of a class of expertise where the theory and science has been challenged in the past 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 was highly controversial. Although numerous studies support a causative link between trauma and Fibromyalgia Syndrome, other studies do not support that conclusion. While engaged in the process of researching experts and their testimony, one must continue to be aware of the larger issues that are critical to overall success in the particular case.

While important in all lawsuits which involve experts, in situations where the expert might give testimony in less commonly-seen disciplines, one must be particularly sensitive to some additional factors, including;

- * Knowing the science behind the theory: Attorneys presenting testimony in less commonly-seen areas may need to be more thoroughly acquainted with all the research studies performed and papers written on the topic.

- * Knowing the law: Attorneys should know the major opinions and decisions written on the admissibility of testimony involving a particular expertise. This is especially important in less commonly-seen areas, because the Judge may not be as aware of those subjects.

- * Knowing the jurisdiction: While knowing the standards for admissibility is always critical and vary from one jurisdiction to the next, those standards may have a more significant impact on the tactic taken in arguing for or against admissibility of novel, controversial, or less-seen areas of testimony.

- * Knowing the court/judge: Knowing the court/judge is always important in preparing to select and introduce an expert's testimony; when the area is less well trodden, it is especially useful to be sensitive to the tendencies or nuances of the court or judge with respect to novel testimony in general and specifically the class of testimony at hand.

V. Conclusion

It is more than just good practice to research experts thoroughly, it's a professional responsibility and even might be malpractice if not completed comprehensively. First of all, judges demand it. Consider 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."⁷¹

Perhaps more importantly, failure to perform adequate research may have malpractice implications. For instance, several years ago a California Court of Appeals 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.⁷²

United States District Court Judge Nancy F. Atlas summed it up best:

Never retain, use, or list in court pleadings an expert without thoroughly researching the individual.⁷³

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¹ See Kljajic v. Whirlpool, 2017 U.S. Dist. LEXIS 70784, 2017 WL 1862640 (N.D. Ill. 2017); see also, *infra*, III.C.1 and endnote 43.

² 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* (14th Edition), 2016 (available at www.netforlawyers.com).

³ To learn more, see Reisz, Lisa & Dilenschneider, David, "Early Case Assessment: Get Experts Involved from Day One," May 2010 (available at: <http://www.lexisnexis.com/vsanalyzer/files/VSA-Early-Case-Assessment.pdf>); archived at web.archive.org/web/20170726175026/http://www.lexisnexis.com/vsanalyzer/files/VSA-Early-Case-Assessment.pdf).

⁴ Paying to be listed as the number one expert in one's field could be an issue for the cross-examination of that expert.

⁵ To learn more, see https://www.ted.com/talks/eli_pariser_beware_online_filter_bubbles (archived at: https://web.archive.org/web/20170726175353/https://www.ted.com/talks/eli_pariser_beware_online_filter_bubbles).

⁶ See <http://www.zapatopi.net/treeoctopus/> (archived at: <https://web.archive.org/web/20170726175615/http://zapatopi.net/treeoctopus/>).

⁷ See Lowensohn, Josh, "Russia spotted editing Wikipedia page about downed Malaysia Airlines jet," *The Verge*, July 18, 2014 (archived at: <https://web.archive.org/web/20140719010234/http://www.theverge.com/2014/7/18/5917099/russia-spotted-editing-wikipedia-page-of-downed-malaysia-air-jet>).

⁸ Baker, Daniel, "A Jester's Promenade: Citations to Wikipedia in Law Reviews, 2002-2008," 7 *ISJLP* 361, Winter 2012; Gerken, Joseph, "How Courts Use Wikipedia," 11 *J. App. Prac. & Process* 191, Spring 2010; Miller, Jason C. & Murray, Hannah B., "Wikipedia in Court: When and How Citing Wikipedia and Other Consensus Websites is Appropriate," 84 *St. John's L. Rev.* 633, Spring 2010; Peoples, Lee, "The Citation of Wikipedia in Judicial Opinions," 12 *Yale J. L. & Tech.* 1, 2009-2010; McIntosh, Brittany, "Gamecocks Spur Trouble in Jury Deliberations: What the Fourth Circuit Really Thinks about Wikipedia as a Legal Resource in *United States v. Lawson*," 64 *S.C. L. Rev.* 1157, Summer 2013.

⁹ Trademark Props. v. A&E TV Networks, 2008 U.S. Dist. LEXIS 87731, *7 n2, 2008 WL 4811461 (D.S.C. Oct. 28, 2008).

¹⁰ Samaratunga Family Trust v. Am. Tower, Inc., 2017 U.S. Dist. LEXIS 79255, *7 and n.1 (W.D. Tex. May 24, 2017)

¹¹ Note, however, that LexisNexis and some other publishers create verdicts via independent investigations.

¹² Bergman, Michael K., "The Deep Web: Surfacing the Hidden Value," *BrightPlanet.com*, July 21 (available for download at <https://web.archive.org/web/20170728183613/https://brightplanet.com/2012/06/the-deep-web-surfacing-hidden-value/>); see also, en.wikipedia.org/wiki/Deep_web.

¹³ *Id.*

¹⁴ Parts of the “Invisible” (or Deep) Web are becoming more visible since Google, Yahoo and other search engines began indexing PowerPoint presentations, Word documents and Excel spreadsheets.

¹⁵ Access this database for free through the websites of some university and public libraries, including the New York Public Library and the Los Angeles County Public Library (valid library card required).

¹⁶ See, e.g., Federal Rule of Evidence 702(a).

¹⁷ See, e.g., Federal Rule of Civil Procedure 26(a)(2)(B).

¹⁸ Malone, David M. & Zwier, Paul J., “Preparing to Depose the Expert,” *Effective Expert Testimony*, Chapter 6.

¹⁹ Taylor, Gus & Dinan, Stephen, “Scholar who wrote on Syrian rebels fired for lying on resume; Kerry, McCain used her work for arguments,” *The Washington Times*, Sept. 12, 2013.

²⁰ Weiss, Debra, “BigLaw lawyer’s ‘jolly impressive’ resume lied about education at Harvard and Oxford,” *ABA Journal (Legal News Now)*, Oct. 10, 2013 (available at: http://www.abajournal.com/news/article/biglaw_lawyers_jolly_impressive_resume_lied_about_education_at_harvard_and_oxford/; archived at: https://web.archive.org/web/20140129200802/http://www.abajournal.com/news/article/biglaw_lawyers_jolly_impressive_resume_lied_about_education_at_harvard_and_oxford/).

²¹ See [statisticbrain.com/resume-falsification-statistics](http://www.statisticbrain.com/resume-falsification-statistics) (archived at: <https://web.archive.org/web/20120318064537/statisticbrain.com/resume-falsification-statistics>).

²² *The Wire*, “Honesty the best policy on resumes,” *Denver Post*, Feb. 26, 2006.

²³ Buckhoff, Thomas, “Preventing fraud by conducting background checks,” *The CPA Journal*, Nov. 2003.

²⁴ Lambert, Evan, “‘Expert’ witness may have lied about credentials,” Sept. 22, 2016 (video available at: <http://www.fox13news.com/news/207233678-video>).

²⁵ *Gyrodyne Co. of Am., Inc. v. State of New York*, 28 Misc.3d 1202(A), 957 N.Y.S.2d 636 (N.Y. Ct. Claims 2010).

²⁶ *Mayes v. Maryland*, 2010 U.S. Dist. LEXIS 11474, *6, 2010 WL 4238149 (D. Md. Oct. 26, 2010).

²⁷ See *Telewizja Polska USA, Inc. v. Echostar Satellite Corp.*, 2004 U.S. Dist. LEXIS 20845, *17-18, 2004 WL 2367740 (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”); *Nebula, LLC v. Chordiant Software, Inc.*, 2009 U.S. Dist. LEXIS 25372, 2009 WL 3352588 (N.D. Cal. March 20, 2009) (plaintiff ordered to disable robots.text blockage to allow defendant to retrieve archived pages through the Wayback Machine).

²⁸ *March v. Midwest St. Louis, L.L.C.*, 417 S.W.3d 248 (Mo. 2014).

²⁹ “Percentage of U.S. population with a social media profile from 2008 to 2017,” Statista, 2017 (available at: <https://www.statista.com/statistics/273476/percentage-of-us-population-with-a-social-network-profile/>).

³⁰ See *AD Inv. 2000 Fund LLC v. Comm’r, T.C. Memo*, 2016-226 n.2 (U.S. Tax Court Dec. 14, 2016) (“On March 16, 2016, during a trial conducted by another Division of the Court, in *Tucker v. Commissioner*, T.C. Dkt. No. 12307-04 (filed July 14, 2004), voir dire of [the expert] revealed that he had

not updated his curriculum vitae with respect to certain aspects of his employment history and the trials in which he had testified in the prior four years. As a result, we did not permit [the expert] to testify in that case”).

³¹ See “LinkedIn Resume Fraud: Do Employers Check Degrees?” GetEducated.com (available at: www.geteducated.com/life-experience-college-degree/305-linkedin-professionals-found-listing-life-experience-degrees-on-resumes).

³² Hasemyer, David, “Surgeon’s credentials as witness scrutinized,” San Diego Union-Tribune, December 28, 2005 (reporting that an expert was being investigated for *implying* that he was currently certified by the American Board of Surgery, even though his certification had lapsed over a dozen years earlier).

³³ See In re Vioxx Prods. Liab. Litig., 489 F.Supp.2d 587, 591-92 (E.D. La. 2007).

³⁴ Stern, Simon & Lemmens, Trudo, “Legal Remedies for Medical Ghostwriting: Imposing Fraud Liability on Guest Authors of Ghostwritten Articles,” 8 PLoS Med. No. 8, Aug. 2, 2011.

³⁵ Osher, Christopher and Brown, Jennifer, “Giving away the pharma,” Denver Post, April 14, 2014.

³⁶ See Fauber, John & Kissinger, Meg, “Side Effects – Are Doctors’ Loyalties Divided? UW Linked to Ghostwriting,” Journal Sentinel (Milwaukee), Jan. 25, 2009 (the author discussed in the article has testified as an expert in several lawsuits, including Rush v. Wyeth, No. 4:05cv497 (E.D. Ark.)).

³⁷ See Federal Rule of Civil Procedure 26(a)(2)(B)(iv) (“a list of all publications authored in the previous 10 years”).

³⁸ In re Zoloft (Sertraline Hydrochloride) Prods. Liab. Litig., 26 F.Supp.3d 449, 460 (E.D. Pa. 2014).

³⁹ White v. State Farm Fire & Cas. Co., No. 07-1871, 2009 U.S. Dist. Ct. Motions LEXIS 82228 (W.D. La. Dec. 30, 2009).

⁴⁰ Smith, Yves, “Linchpin Pro-Austerity Paper Rife with Errors: Recomputed Results Show No Growth Hit from High Government Debt,” Naked Capitalism, Apr. 16, 2013 (available at: <https://www.nakedcapitalism.com/2013/04/linchpin-pro-austerity-paper-rife-with-errors-recomputed-results-show-no-growth-hit-from-high-government-debt.html>); archived at: <https://web.archive.org/web/20130419043632/https://www.nakedcapitalism.com/2013/04/linchpin-pro-austerity-paper-rife-with-errors-recomputed-results-show-no-growth-hit-from-high-government-debt.html>); see also Moseman, Andrew, “Journal Trolled With Study About a Fake Disease From Seinfeld,” Popular Mechanics, April 27, 2017 (available at: <http://www.popularmechanics.com/science/health/news/a26249/journal-seinfeld-disease/>); archived at: <https://web.archive.org/web/20170427214131/http://www.popularmechanics.com/science/health/news/a26249/journal-seinfeld-disease/>).

⁴¹ Fisher, Daniel, “Dr. Mold,” Forbes, April 11, 2015 (despite an expert’s claim to have authored “hundreds” of scholarly articles, a search through the PubMed database turned up less than seventy) (available at: <https://www.forbes.com/forbes/2005/0411/100.html>); archived at: <http://web.archive.org/web/20160804093935/https://www.forbes.com/forbes/2005/0411/100.html>).

⁴² Siegel v. Warner Bros. Entm’t, Inc., 2009 U.S. Dist. LEXIS 66115, *16-17, 2009 WL 2014614 (C.D. Cal. July 8, 2009) (emphasis in original). See also, Doblar v. Unverferth Mfg. Co., 185 F.R.D. 258 (D.S.D. 1999) (engineering expert sanctioned for failing to disclose approximately 200 lawsuits in which he had testified); Elgas v. Colorado Belle Corp., 179 F.R.D. 296 (D. Nev. 1998) (motion to strike expert designation granted because designated expert failed to list other lawsuits in which he had testified).

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- ⁴³ See Kljajic v. Whirlpool, 2017 U.S. Dist. LEXIS 70784, 2017 WL 1862640 (N.D. Ill. May 9, 2017).
- ⁴⁴ In re Pella Corp. Architect & Designer Series Windows Mktg., Sales Practice & Prods. Liab. Litig., 214 F.Supp.3d 478 (D.S.C. 2016).
- ⁴⁵ John Doe 21 v. Sec’y of HHS, 2009 U.S. Claims LEXIS 471, *53, 2009 WL 3288295 (Jan. 16, 2009).
- ⁴⁶ See, e.g., Waggoner v. Amoco Prod. Co., 172 F.3d 880 (table case), 1999 U.S. App. LEXIS 11571, 1999 WL 110675 (10th Cir. 1999) (refers to expert testimony but does not give the name of the expert in question; the relevant DTCR indicates the name of the expert).
- ⁴⁷ Blum v. Merrell Dow Pharms., Inc., 33 Phila. 193, 1996 Phila. Ct. Rptr. LEXIS 122, 1996 WL 1358523 (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).
- ⁴⁸ 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.
- ⁴⁹ For federal dockets, consider the Public Access to Court Electronic Records (“PACER”) system, found at www.pacer.gov.
- ⁵⁰ See Estate of Michael J. Jackson, et al. v. Commissioner, No. 17152-13 (United States Tax Court April 28, 2017) (2017 TN 82-64).
- ⁵¹ See Markuson v. Saterbo, No. 2008-CA-7367, 2013 FL Cir. Ct. Motions LEXIS 2542 (Fla. Cir. Ct. Aug. 23, 2013).
- ⁵² Verdict reports are one-page summaries of lawsuits that have (usually) proceeded through trial or been non-confidentially settled.
- ⁵³ Behrens, Mark & Goldberg, Phil, “Study points to abuse,” National Law Journal, November 1, 2004.
- ⁵⁴ Salvatore, Cara, “Tips For Using A ‘Career Witness’ To Win A Trial,” Law360, July 25, 2016 (available at: bit.ly/2ahj21y; archived at: https://web.archive.org/web/20170628211433/https://www.law360.com/employment/articles/816804?nl_pk=fc3f7ff6-2d87-48ef-8a5a-4dec337fe20b&utm_source=newsletter&utm_medium=email&utm_campaign=employment) – subscription to Law360 may be required to access).
- ⁵⁵ State v. Ellington, 151 Idaho 53, 75, 253 P.3d 727 (2011).
- ⁵⁶ Johns, Greg, “City Witness Crossed Up. Sonics Lawyer Stymies Sports Economist,” The Seattle Post-Intelligencer, June 18, 2008 (available at: <http://www.seattlepi.com/news/article/City-witness-crossed-up-1276898.php>; archived at: <https://web.archive.org/web/20170529220019/http://www.seattlepi.com/news/article/City-witness-crossed-up-1276898.php>).
- ⁵⁷ Gullo, Karen, “Wikipedia-Using Professor Riles Corporate Spying Defense,” Bloomberg, November 21, 2013.

⁵⁸ Kilzer, Lou, “Writing analyst was disqualified; Judge challenged expertise of man linking note to Karr,” Rocky Mountain News, August 23, 2006.

⁵⁹ Oakes, Gary, “Toxicologist fined for contempt on deceiving judge and jury,” The Lawyers Weekly, August 17, 2001.

⁶⁰ “Doctors Cheer Olender Reveal,” Washingtonian, November 1992.

⁶¹ Travis, Alan and Arthur, Charles, “EU court backs ‘right to be forgotten’: Google must amend results on request,” The Guardian, May 13, 2014 (available at: <https://www.theguardian.com/technology/2014/may/13/right-to-be-forgotten-eu-court-google-search-results>; archived at: <https://web.archive.org/web/20140513151755/https://www.theguardian.com/technology/2014/may/13/right-to-be-forgotten-eu-court-google-search-results>).

⁶² See McNamee, Joe, “Google’s forgetful approach to the ‘right to be forgotten,’” EDRi, Dec. 14, 2016 (available at: <https://edri.org/googles-forgetful-approach-right-forgotten/>; archived at: <https://web.archive.org/web/20161214170030/https://edri.org/googles-forgetful-approach-right-forgotten/>).

⁶³ Just keep in mind that one still may have to pay to access some of the articles identified at a specific news website.

⁶⁴ Barstow, David & Filkins, Dexter, “Contesting the Vote: The Scene; For the Gore Team, a Moment of High Drama,” The New York Times, Dec. 4, 2000 (available at: <http://www.nytimes.com/2000/12/04/us/contesting-the-vote-the-scene-for-the-gore-team-a-moment-of-high-drama.html>; archived at: <https://web.archive.org/web/20150527131902/http://www.nytimes.com/2000/12/04/us/contesting-the-vote-the-scene-for-the-gore-team-a-moment-of-high-drama.html>).

⁶⁵ Although some investigative resources are noted in this section, the resources one looks to for information is really only limited by one’s creativity. Consider, for instance, the cms.gov/openpayments website, which enables researchers to uncover potential conflicts of interest of doctors who have been wined and dined, had their travel/lodging (for conferences) covered, etc. by (especially pharmaceutical) companies.

⁶⁶ For example, in *Campbell v. Sec’y of HHS*, 59 Fed. Cl. 775, 781 (2006), the judge determined that procedures employed by the Special Master were fundamentally unfair. In particular, the judge noted that the articles found on the Web, including some from not only Wikipedia but also WebMD and other purported reputable sites, did not “remotely” meet the requirement of reliability – due primarily to those sites “disturbing” disclaimers.

⁶⁷ Interestingly, in *May v. Strecker*, 453 N.W.2d 549 (Minn. Ct. App. 1990) the court held that an attorney’s failure to reveal his marriage to the expert witness he retained on behalf of his client was not adequate grounds for a new trial.

⁶⁸ See, e.g., Ellis, John, “Former expert witness pleads guilty to perjury; Once a courtroom darling, man faces 10 years in jail for faking qualifications,” Fresno Bee, May 5, 2007 (expert had been convicted of perjury in the mid-1990s).

⁶⁹ 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 his/her website, authored articles, references, and prior litigation experience.

⁷⁰ Stephenson, Correy, “First plaintiff’s Botox victory results in \$15M verdict in District Court, Oklahoma County, Okla.,” *Lawyers Weekly USA*, May 24, 2010.

⁷¹ Garmisa, Steven P., “Expert’s credentials questioned too late to trigger new trial,” *Chicago Daily Law Bulletin*, Oct. 6, 2004.

⁷² See *Forensis Group, Inc. v. Frantz, Townsend & Foldenauer*, 130 Cal. App. 4th 14, 29 Cal. Rptr. 3d 622 (Cal. App. 2005). See also, Wilcox, Wendy L. & Weber, Christopher J., “Department: Barristers Tips: Dodging the Pitfalls of Qualifying an Expert,” *Los Angeles Lawyer*, Sept. 2005 (“Failure to monitor the expert and the expert’s opinion could subject counsel to litigation on the other side of the table[.]”) (available at: <https://www.lacba.org/docs/default-source/lal-back-issues/2005-issues/september-2005.pdf>; archived at: <https://web.archive.org/web/20160415192745/http://www.lacba.org/docs/default-source/lal-back-issues/2005-issues/september-2005.pdf>).

⁷³ Atlas, Hon. Nancy F. & Atlas, Scott J., “Finding, Preparing, and Defending an Expert in the Age of Judicial Gatekeepers,” *Tips from the Trenches* (an exclusive online publication of the ABA Section of Litigation), Dec. 19, 2001 (available at: <http://jhguth1942.tripod.com/sitebuildercontent/sitebuilderfiles/gatekeepers.pdf>; archived at: <https://web.archive.org/web/20150830025850/http://jhguth1942.tripod.com/sitebuildercontent/sitebuilderfiles/gatekeepers.pdf>).

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