



Finding and researching experts' online resources

Online resources can help you find experts, assess the admissibility of their testimony and, yes, impeach them.

Excerpted by
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Despite the importance of expert witnesses in litigation, few plaintiff attorneys take the time to utilize the proper resources to find the right experts, evaluate their credentials, and/or assess the admissibility of their testimony. The purpose of this article is to suggest various online resources that can be used to find experts, gather information about them (whether your own or the opposing party's), and assess the admissibility of their testimony – as well as tips on how the information uncovered might be utilized. This article is excerpted from the white paper: *Finding and Researching Experts and Their Testimony*, authored by Michael Brennan, David Dilenschneider, Myles Levin, Carole Levitt and Jim Robinson. The white paper can be read in its entirety at www.expertwitnesswhitepaper.com.

Learning about the subject matter

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

excellent sources for learning the subject matter to know which questions to ask a potential expert are library Web sites, free commercial databases, and medical Web sites.

Library Web sites are an excellent place to begin the search to find information about the subject matter and to find potential experts. With a library card, many public libraries offer free access to articles, full text periodicals, and business directories such as Standard & Poor's. One can also access databases such as "Encyclopedia's Unlimited" and find information for approximately 460,000 international, national, regional, state and local membership organizations in all fields. Such a database can be extremely helpful for finding experts in rather obscure fields, such as hang gliding or petroleum packaging.

Tracking down the best expert for your case

Search tools such as Google tend to be over-inclusive instruments for finding expert witnesses, unless the search query is precisely tailored. Also, according to various search engine experts, the top search tools fail to locate 95 percent or more of the pages on the Web.¹

It is therefore unwise to only rely on online search engines to find experts.

When one does use search engines, be sure to utilize the advanced search features that are available. For instance, searches in quotes will look for the exact phrase entered, thereby yielding more precise search results than those without. Similarly, by using the "Advance Search" function on Google, a user can retrieve Adobe Acrobat PDF files, Microsoft Word documents, and Microsoft PowerPoint presentations.

There are a number of online expert witness directories available on the Internet. Several bar associations, such as Los Angeles County Bar Association (www.expert4law.org), and San Francisco Bar Association (www.sfbar.org/register) maintain expert witness directories. Also, several legal portals, such as Findlaw (http://marketcenter.findlaw.com/expert_witnesses.html), and Law.com (www.almexperts.com/ExpertWitness) have expert witness directories. Expert witness only Web sites include www.Seak.com, www.Expertpages.com, and JurisPro.com. Plaintiff's counsel who visit JurisPro, for example, are able to find experts in over 5000 areas of expertise for free; view and download the expert's contact information; link to his or her Web site; obtain the expert's full *curriculum vitae* available for download or print; read articles that the expert has written that discuss his or her areas of



expertise; review the expert's background as an expert witness (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.

Experts can also be found in verdict reports. The National Association of State Jury Verdict Publishers (NASJV) www.juryverdicts.com Web site is a portal for many jury verdict publications. The data from this site is organized from two dozen independent reporters responsible for 29 publications in the United States. A table and map show the jurisdictions covered. The site contains the names of experts who have testified in civil trials across the United States. The search results only include the expert's name, area of expertise, and a link to the jury verdict publication in which the expert's information appears. The attorney can then purchase the verdict report to get the expert's contact information.

Evaluating the potential expert

The "formal" rules governing the discovery of information related to experts are usually fairly limited. In almost every jurisdiction, the opposing party must disclose the name and expertise of any experts that party intends to use during the trial. In addition, oftentimes the expert must also disclose prior lawsuits in which he/she worked, publications, and any reports produced by that expert for the lawsuit at hand. But that is usually the limit of information that is formally exchanged. It is therefore extremely important for a plaintiff's counsel to go "outside the rules" to find out as much as possible about that expert.

Licensing

Licensing information can be found online for virtually all 50 states and can easily be searched to verify the current status for any licenses they claim to hold. In addition, many organizations,

such as the American Medical Association, the American Board of Medical Specialties and the American Board of Surgery, have their own Web sites where one can check the certification status of experts. Search Systems' www.searchsystems.net (which is now a pay site) links to over 35,000 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), the user can retrieve a list of databases where the licensing information can be found. Using the metasite Portico, one can verify licenses for occupations such as doctors, contractors, architects and more.

News

News databases can be an incredible source of information, sometimes very damaging, about experts. Within news sources, plaintiff's counsel can often learn an expert's opinions, through not only articles but also other types of information, including radio and television interviews, letters to the editor, and even blog postings (though blogs are not technically news). One of the largest commercially-available news databases (available from LexisNexis www.lexis.com) contains about 18,000 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.

Public records

Public records can reveal a lot about an expert. For instance, an expert's financial situation might be revealed by how much his/her house cost, what type of car that expert drives or a recent bankruptcy filing. Voter registration records may reveal a political party affiliation. To conduct a

multi-jurisdictional search of public records or a multi-record type search (e.g., criminal records together with bankruptcy records, etc.), you will need to become a subscriber to one of the commercial investigative databases such as LexisNexis (www.lexis.com), Westlaw (www.westlaw.com), or Merlin (www.merlindata.com). These People "finder" resources (which are searchable by name, address and phone number, among other criteria) may reveal alternative names (a.k.a. aliases) used by the expert. Company information may disclose conflicts of interest. Even criminal records should be searched (try Rapsheets.com), as some experts have engaged in significant criminal activity, including at least one fairly-prominent expert who has a felony drug conviction.

Court opinions

After verifying "credentials," plaintiff's counsel should search court opinions (i.e. "case law") to find prior lawsuits in which that expert has been involved. This information can be useful in several different ways. First, the plaintiff may be able to determine whether the opposing party's expert has testified in any lawsuits (as an expert) that were not disclosed on the list of lawsuits provided by the expert during the course of formal discovery (as required by many rules of civil procedure). Believe it or not, some experts, through mere negligence or outright deception – perhaps to hide "bad" information – fail to disclose some of the prior lawsuits in which they were involved. (See, e.g., *Doblar v. Unverferth Mfg. Co.* (D.S.D. 1999) 185 F.R.D. 258 [engineering expert sanctioned for failing to disclose approximately 200 lawsuits in which he had testified]; *Elgas v. Colorado Belle Corp.* (D. Nev. 1998) 179 F.R.D. 296 [motion to strike expert designation granted because designated expert failed to list other cases in which he had testified].) Second, 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 the plaintiff's lawsuit on the same or similar grounds.

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

The Daubert Tracker creates reports (DTCRs) that summarize opinions addressing the admissibility of expert witness testimony. Each summary is put into a chart, which 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. DTCRs identify the name of the expert, even when the associated case opinion does not. DTCRs also covers more opinions than those typically available by online services. For instance, very few state trial court opinions are currently available online, yet DTCRs cover some state trial court opinions. The Daubert Tracker also double checks the spelling of each expert's name and corrects if it is misspelled.

Deposition transcripts

On the plaintiff's side, the American Association of Justice (AAJ)² Exchange makes available to its members a database of over 10,000 expert witnesses,

and over 15,000 transcripts. This database is developed by submission from its members. The commercial service TrialSmith document database is jointly sponsored by more than 52 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 their site for a particular expert, and then contact the company (if one is a member) to get copies of that transcript.

As an alternative, try directly contacting lawyers who have worked with (or against) a particular expert, and request a copy of the deposition transcript from them. Most attorneys keep their own expert witness transcripts, and would be willing to share (provided, of courses, the favor is returned some day). For example, AAJ posts the contact information for the member who provided information about that expert. The experts themselves often list the names of the attorneys with whom they have worked in the past on their web site – or the plaintiff's counsel can simply ask the expert for a list of references. One can then find and contact that attorney through Martindale-Hubbell.

Evaluating the admissibility of types of expert testimony

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

Researching the admissibility of commonly-seen disciplines/areas of expertise

In both civil and criminal litigation, experts from certain professional disciplines are so routinely retained and commonly seen in the courtroom that

their testimony is generally less subject to challenge. For example, in commercial litigation, a claim of lost profits which is being made by the plaintiff will require the retention of a financial expert, either an accountant or an economist. In medical malpractice cases involving birth injuries, it is virtually inevitable that both sides will need to retain a pediatric neurologist.

In such instances, the retaining attorney may be lured into thinking that he/she should be less concerned about the need to thoroughly research the entire class of expertise. However, this type of presumption could be quite dangerous, so it is incumbent upon the retaining attorney 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 all retaining attorneys should employ is to have the prospective expert explain in his or her own words how questions about "the science" behind their 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 or her opinions, the retaining attorney should think twice before formally retaining the expert.

Researching the admissibility of emerging disciplines/areas of expertise

When an expert will be giving 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 needs to be researched. Even if the expert's general discipline is well-respected and not normally vulnerable to challenge and the expert's qualifications and reputation are impeccable, when the expert is giving testimony in an area that is novel and/or controversial, it is



incumbent on the attorney to work alongside the expert to plan for an inevitable challenge.

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

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

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

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

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

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

Conclusion

It is more than just good practice to research experts thoroughly; it's a responsibility. First of all, judges demand it. Consider the case of the attorneys in Chicago who discovered, *after* the jury had rendered its verdict, that the opposing expert had falsified his credentials (e.g. an engineering degree from West Point). The judge rejected those attorneys' request for a new trial and reminded them of their duty to conduct thorough research:

"In preparing a case for trial," [Judge] Gordon explained, "many attorneys take for granted that when an expert provides a CV that everything in the document is true. However, it is plaintiff's job in preparing a case for trial to learn as much as possible about an adverse party's expert witness, including verifying his qualifications as an expert."³

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

CAUTION: Never retain, use, or list in court pleadings an expert without

thoroughly researching the individual.⁴

Perhaps more importantly, failure to perform adequate research may have malpractice implications. For instance, a California Court of Appeals recently ruled that an attorney has certain responsibilities with respect to the retention and handling of experts, and that the failure to adequately discharge those responsibilities could subject that attorney to a claim of professional negligence.⁵

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Endnotes:

¹ Bergman, Michael K., "The Deep Web: Surfacing the Hidden Value," BrightPlanet.com, July 2001.

² Note that ATLA recently changed its name to "American Association for Justice."

³ Garmisa, Steven P. "Expert's credentials questioned too late to trigger new trial," Chicago Daily Law Bulletin, October 6, 2004.

⁴ Atlas, Hon. Nancy F. & Atlas, Scott J. "Finding, Preparing, and Defending an Expert in the Age of Judicial Gatekeepers," Tips from the Trenches. December 19, 2001 (an exclusive online publication for the ABA Section of Litigation) – found at: <http://jhguth1942.tripod.com/sitebuildercontent/sitebuilderfiles/gatekeepers.pdf>

⁵ See *Forensis Group, Inc. v. Frantz, Townsend & Foldenauer* 130 Cal.App.4th 14 (Cal.App. 2005).

