Finding and Researching Experts and Their Testimony

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I. Introduction

For over twenty years, the District of Columbia's police department looked to a narcotics expert for authoritative testimony in criminal trials. In fact, the expert reportedly testified in thousands of cases. But a few years ago, it was discovered that the expert was anything but – he pleaded guilty to charges that he had been lying regarding his credentials. He didn't have a pharmacology degree, nor did he have a license to practice pharmacy. Had it not been for a lawyer who decided to conduct a thorough investigation of the expert, he might still be out there testifying today.[i]

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

The purpose of this article is to suggest various 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. In addition, to assist in research efforts, some potentially-relevant web sites have been included. However, note that because many of the resources noted (e.g. agency opinions, verdict reports, etc.) are available from commercial vendors, such as LexisNexis® (see, e.g., LexisNexis® Total Litigator, a task-based research platform that includes a entire subpage devoted solely to researching experts[ii]), such full-service providers are not repeatedly listed as possible sources of information.[iii]

II. Finding Experts

A. Learning about the Subject Matter

In order for a researcher to know what questions to ask a potential expert, that researcher 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.

1. Library Web Sites

a. Online Catalogs

Library web sites are an excellent place to begin the search to find information about the subject matter and to find potential experts. Start by searching their online catalogs for books and journals on the subject at issue. Pay particular attention to whom the author/authors are – someone who writes extensively on the subject you are researching may make an ideal candidate to serve as an expert in your case.

Note that many library web sites allow the researcher to search their catalog for specific topics. For example, a basic search on the Library of Congress's web site using the term "handwriting identification" will return over 10,000 books and other publications. These results include not only each potential expert's name, but also the title and date of publication, where it was published, and cross-references to other works by that author.

Possible Sites: *sunsite.berkeley.edu/Libweb*; *catalog.loc.gov*

b. Commercial Databases (Free Access)

In addition to libraries providing their online catalogs over the Internet, many public libraries also offer their patrons free access to some online pay databases. Ordinarily, all you need to access these pay databases from your home or office computer is a library card and an Internet connection. The following list of databases includes just a few of those offered by some libraries:

Articles from newspapers / periodicals (full-text)
Gale's Biographies
Oxford English Dictionary
Physician's Desk Reference
Reference USA
Business Directories (e.g., Standard & Poor's)

2. Medical Web Sites

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 web site, the NLM houses 6 million items — including books, journals, technical reports, and manuscripts. Moreover, the site, along with its associated services "PubMed" and "MedLine Plus," contains links to medical encyclopedias, full-text news stories, articles, and free publications listed on the Internet, as well as information on how to order articles that must be purchased.

Every branch of medicine has its own professional association along with an accompanying web site, many of which have article databases and membership directories. The web site of the American Board of Medical Specialties is one of the best places to look for links to these associations.

Possible Sites: *www.nlm.nih.gov; www.webmd.com; www.abms.org*

3. Bookstore Web Sites

Whether looking for information or for potential experts, commercial web sites such as Amazon.com or barnesandnoble.com can be powerful research tools. For example, a recent search for "construction safety" at Barnes and Noble's site returned 669 results. The listing for each book includes a synopsis, the author's name, the table of contents, a note from the publisher about the work, and, in many cases, reviews of the book. In addition to books, the same search on Amazon.com found manuals and reports written by potential experts.

Possible Sites: *www.amazon.com*; *www.barnesandnoble.com*

4. Articles

Over ten million full-text articles covering a wide variety of subjects and dating back to 1998 can be found at Looksmart's FindArticles.com. Similarly, some expert witness directories such as JurisPro and Hieros Gamos provide free access to articles written by experts. Many trade associations publish online newsletters and some provide either full-text 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 site also has an active discussion forum that includes opinions posted by various accident reconstructionists.

Possible Sites: *www.findarticles.com; www.ingentaconnect.com; www.jurispro.com; www.hg.org; www.accidentreconstruction.com; www.apa.org/psycarticles (psychology); scholar.google.com;*

www.phptr.com/articles/index.asp?st=45190&rl=1 (technical engineering); www.bpubs.com/Economics/ (economics)

B. Tracking Down The Best Expert for Your Case

1. Search Engines: Their Value and Their Limits

Search tools such as Google tend to be over-inclusive instruments for finding expert witnesses, unless the search query is precisely tailored. Accordingly, 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.

For relevancy purposes, it is also important to remember that the first few results on Google are often "paid listings." Anyone can pay to have the top spot for such terms as "OSHA expert."[iv] It is also worth noting that the results retrieved through some search engines are dependent on the order in which the search terms are entered. For instance, a search of "Robert Smith" will return different results than a search of "Smith Robert." Accordingly, it may be worthwhile to run an expert's name both ways to ensure that all of the most-relevant results are retrieved. And if your search on a particular subject is not working, try re-ordering your search terms.

Also, remember that because the World Wide Web is mostly an un-policed forum, the information found through search engines may be inaccurate. A well-publicized recent example involved the collaborative encyclopedia Wikipedia.[v] Accordingly, such general web searches should not be looked to as the final word regarding an expert.

Possible sites: *www.google.com; www.yahoo.com*

2. Product Searches

Searching for the name of a product at issue will likely lead to information about it, and potentially to the names of knowledgeable experts. For instance, suppose an attorney had a personal injury case that involved a Weatherby brand rifle. A search on Google for "Weatherby rifles" leads to the web site of the manufacturer, the names of distributors, articles about the gun, upgrades, and safety notices.

Even more information about companies and products can be found at the ThomasNet site (formerly known as Thomas Register), which has gathered company information from registrations of companies in its "industrial buying guides." This free online directory covers over 72,000 product headings and more than 186,000 company listings. After a free registration, one can search for a product, service, brand name, or company name. For example, a search for "bicycle pumps" lead to profiles for manufacturers, including each company's description, its mailing address, phone number, fax number, web site address(es), amount of assets, employees, and the name of the parent company.

Possible sites: *www.thomasnet.com*

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 the user has to contact the referral company to get information for the expert, and then pay an additional fee to retain that expert.

Possible sites: *www.tasanet.com; www.forensisgroup.com; www.medquestltd.com; www.amfs.com; www.ims-expertservices.com*; *www.roundtablegroup.com*

4. Online Expert Witness Directories

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

Many bar associations, such as the Los Angeles County Bar Association and the San Francisco Bar Association, have online directories of expert witnesses. Many commercial expert witness directories also exist. For example, Experts.com provides free information about a variety of experts to attorneys, businesses, reporters, insurance companies, judges, librarians, and the media. This site includes contact information for the expert, a short biography, and a link to the expert's e-mail address and web site. Many of the large legal portals, such as Martindale-Hubbell®, Law.com, Hieros Gamos and Findlaw also have online directories with short biographies and links to the expert's web site.

Built by practicing attorneys, 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; and 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.

Possible sites: *www.JurisPro.com; www.expert4law.org; www.sfbar.org; www.experts.com; www.findlaw.com; www.martindale.com; www.almexperts.com/ExpertWitness/; www.hg.org*

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?) and 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. The verdict report companies usually solicit this information from attorneys who want to report a favorable result in one of their lawsuits for "marketing" purposes.[vi] Obviously, such reports can be used to find experts in a particular field.

Though there are hundreds of thousands of verdict reports now online, only a few free, searchable nationwide jury verdicts web sites exist. For instance, morelaw.com has verdicts and settlements dating back to December 1996, and one may search that database by "defendant's expert," or "plaintiff's expert."

The National Association of State Jury Verdict Publishers (NASJV) 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. According to the web site, its "expert witness directory" contains the names of nearly 40,000 experts who have testified in civil trials across the United States. Searches, however, can only be conducted by clicking on an alphabetical listing of experts – Boolean search functionality is not available. The search results only include the expert's name, area of expertise, and a link to the jury verdict publication in which

the expert's information appears. It is then necessary to contact that publication to retrieve further information, for which a fee is charged.

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

6. The "Invisible Web"

According to various search engine experts, the top search tools fail to locate 95% or more of the pages on the Web.[vii] These "un-indexed" pages are often referred to as the "Deep Web" or the "Invisible Web" and are rarely retrieved by the casual "search engine" researcher.[viii] The "Invisible Web," such as those databases on the web sites of colleges/universities, hospitals, and associations, offers researchers fruitful places to find experts.

a. Colleges and Universities

College and university web sites are excellent sources for finding and evaluating experts. These web sites should be searched directly, as the individual faculty member's biography usually does not appear in search engine results. For example, the Florida State University College of Medicine has set up separate web pages for many of its professors, including a short video (in mpg form) of the professor, his or her *curriculum vitae*, publications, class schedules, research projects, links the professor thought were interesting, and, for some professors, even their hobbies. A search on this site retrieved a Florida biochemistry professor who specializes in protein engineering, enjoys Formula One auto-racing, and has a link to a Japanese Sumo wrestling web site. One might utilize such personal information when chatting with the professor prior to a deposition.

By clicking on the "advanced search" button on Google, the user has the option to search only on the web sites of particular colleges or universities. This facilitates quick searches of different schools without having to learn how to navigate each university's own web site.

Possible sites: *www.clas.ufl.edu/au/*

b. Healthcare Facilities

The Joint Commission on Accreditation of Healthcare Organizations' web site is a directory of nearly 18,000 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. And many healthcare facilities and organizations have excellent directories of their doctors. For example, on the Children's Hospital of Boston web site, a search for cardiologists in Boston resulted in 44 listings, each with photographs, contact information (including e-mail), and the doctor's professional certifications and educational background.

If you are looking for a doctor with a particular area of expertise, an excellent web site is that of the U.S. News and World Report's ranking of best hospitals. Because the ranking is also done by discipline and sub-discipline, you can quickly locate centers of excellence in specific areas.

Possible sites: *www.jointcommission.com*; *www.childrenshospital.org*

c. Associations

For virtually every field and interest there is an association – and within those associations are potential experts. The best place to find information about associations is through the "Associations Unlimited Database" (otherwise known as the "Encyclopedia of Associations"). This database can be accessed

online free through the web sites of some university libraries and public libraries, provided one has a library card for that institution. As an example, by going to the Los Angeles County Public Library's web site and entering a library card number, one can access this database and find information for approximately 460,000 international, national, regional, state and local membership organizations in all fields. These listings provide information about the organization, its membership, and contact information for its director. Such a database can be extremely helpful for finding experts in rather obscure fields, such as hang gliding or petroleum packaging.

Possible sites*: www.lapl.org*

III. 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 researcher to go "outside the rules" to find out as much as possible about that expert. As David M. Malone and Paul J. Zwier write in their book "Effective Expert Testimony":

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

The smart researcher gathers as much information as possible before retaining an expert or prior to deposing the opposing party's for several reasons. First, the researcher wants to uncover any information that can be used to discredit his or her own expert. Are there any inaccuracies about their qualifications? Did that expert say something different in another lawsuit involving similar facts? Has that 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 him/her and, therefore, that expert must be extremely accurate in his/her testimony else he/she be caught by this seemingly "knowledgeable" attorney.

A. Reviewing Credentials & Professional Information

Whether you are considering retaining a particular expert or need to learn more about the opposing party's expert, it is important to verify credentials. Studies suggest that falsifying credentials on a resume is not a rare occurrence. Recently, ResumeDoctor.com conducted a study of over 1,000 resumes over a six month period and discovered that over 40 percent of the resumes contained at least one significant inaccuracy relating to dates of employment, job titles or education, and over 12 percent contained two or more errors.[x] Similarly, a survey of 2.6 million job applicants verified by Avert, Inc. (which specializes in job screening and selection) revealed that 44 percent lied about their work experience, 23 percent fabricated credentials or licenses, and 41 percent lied about their education.[xi]

Perhaps the lure of high fees, or perhaps something else, has caused some so-called experts to inflate their credentials. For instance, on March 3, 2005, it was reported that an expert who had testified at a

trial in Minnesota had been charged with three counts of perjury for, among other things, claiming that he had received a Ph.D. in clinical psychology from the University of Wisconsin-Madison when, in fact, he never attended the university.[xii] On February 24, 2005, it was reported that an Alabama private investigator, who had been used by defense counsel as a forensics expert, had been arrested and charged with perjury. Despite the fact that the "expert" had sworn under oath that his resume was truthful, it was determined that he did not, in fact, have a medical degree from Harvard, a doctorate from MIT or a Texas medical license.[xiii,xiv]

Accordingly, it is imperative that a researcher check the credentials of both the opposing party's experts *and* his/her own. The following resources may be of some use in that regard.

1. Identity and Location

Expert Witness Designations prepared by opposing counsel are not necessarily a reliable means of identifying an opposing expert witness. Would opposing counsel intentionally misspell an expert's name, making it harder to find background information? Maybe (or maybe not) intentionally – but even a typographical error can cause you to spend hours searching in vain.

Public record database search services that are kept current are a very valuable way to verify not only the full name of the expert, but oftentimes will help you identify all the locations where an expert has lived. If you find that an expert has moved around often, this could suggest that the expert is trying to avoid licensing problems in a particular location (or locations). Much of the publicity concerning a national database of licensure information for doctors (which is not available to the public) has focused on physicians that had their license revoked and simply moved to a new state. Some physicians have even done this multiple times. Many times, experts will be licensed in locations where they are going to testify, regardless of whether they live there or not. If a testimonial history shows an expert as having appeared in 8 different state courts, the agency handling appropriate licensing for each of those states should also be searched. To ensure you locate a *complete* licensure history for an expert, start by searching databases that index professional licenses in all 50 states and that allow you to search all states simultaneously. The professional licensing department for each state where an expert has resided will show if their license is still current, if it has lapsed, if it was revoked or suspended, and in some states, whether there were any disciplinary actions. Some states, such as Florida, even allow you to search for malpractice insurance claims.

Possible Sites: *www.merlindata.com*

2. Educational Background

Whether you are considering retaining an expert or investigating an expert named by opposing counsel, verification of an expert's educational background has become an important part of every researcher's preparation work.

Sometimes you can verify an expert's degree by calling the Registrar's Office of the appropriate college or university, but some universities and colleges require a release and social security number before they will verify an individual's attendance date and whether any degrees were conferred. Obviously, this will be easier to get from an expert you are retaining, as you can include the release form as part of the retention agreement. Several online services allow you to verify attendance and whether they received a degree (or degrees). Although these online services will not cover every college and university in the United States, they often have a list of those that participate in their service.

The other issue to address, and which has received a lot of publicity lately, are "degree mills" – non-accredited colleges and universities that sell degrees, primarily through the Internet. 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 lists of colleges and universities whose degrees are not acceptable. A little extra effort, often at a minimal cost, can help avoid retaining an expert whose credentials are invalid, or can identify an opposing expert who does not have the background and training they are claiming in their *curriculum vitae*.

Possible Sites: *www.osac.state.or.us/oda/unaccredited.aspx; www.michigan.gov/documents/Non-accreditedSchools_78090_7.pdf*; *www.studentclearinghouse.com*

3. Search Engines

Once an expert's name, location and educational background have been verified, search engines can again be used to research that expert's background and qualifications. An expert's personal web site, articles, research projects, presentations, speaking engagements, blogs, and even postings on discussion boards can be found by simply conducting a search for the expert's name on a search engine such as Google. To produce better results, use the advanced search function and include the expert's full name, including his or her middle initial, if known. Be aware that many people share even the most unusual of names. Researchers should, of course, verify data before relying on it.

Possible Sites: *www.google.com*

4. Expert Directories

As noted above, expert witness directories provide a wealth of information about experts. Importantly, this information can be compared to the information that expert has provided through formal discovery efforts. Has the expert included misleading information about his/her credentials in his/her attempt to market his/her services through a directory? A simple comparison of the information provided by the expert with his/her directory listing might reveal such a discrepancy.

5. The Expert's Web Site

An expert's personal web site should be carefully reviewed prior to retaining that expert. If a search engine did not locate the expert's web site, try simply entering the expert's name or company name as a dot com (e.g., expertname.com). Many experts post their full *curriculum vitae*, prior litigation experience, speaking engagements, references, memberships and professional organization affiliations, articles and/or newsletters on their web sites. But when reviewing an expert's web site, keep in mind that opposing counsel can do so as well. Also, be aware that experts' web sites are sometimes little more than self-promotion, so tread carefully. Is there anything embarrassing or contradictory on the site? Does the expert pronounce that he or she is "the leader in the industry" or put forth similar bravado that could affect how the jury perceives the expert? Imagine how the jury would react if the pages of the expert's web site were displayed as exhibits at trial, because they very well might be.

6. License and Specialty Certification Information

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 (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. Finally, many certifying organizations also have either an online listing of experts and their certification, 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.[xv] Whereas a lapsed license may indicate that an expert once practiced in the area but has since moved to another location, words such as "suspended" or "surrendered" are often an indication of disciplinary action or other reason for the expert to have been forced into surrendering his/her license. Why that expert was forced to do so may be of extreme importance – to both you and your client.

Possible Sites: *www.searchsystems.net*; *www.brbpub.com/pubrecsites.asp*; *www.craigball.com/hotlinks.html*; *http://indorgs.virginia.edu/portico*

7. Publications

Many medical experts write articles for medical journals (or are cited in articles written by others for medical journals) – in fact, it is oftentimes because these individuals are published in medical journals that they are considered to be experts. So, any researcher who is gathering background on a medical expert must be sure to search through medical journals to see what, if anything, can be retrieved with regard to that expert. In addition, such a search may serve to double check the list of authored works submitted by the expert during the course of formal discovery.

8. Disciplinary Records

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

All state governments and some professional associations maintain records of professional misconduct, and oftentimes these records are accessible via the Internet. Although some private companies have attempted to aggregate this information into searchable mega-databases, the array of disciplines and myriad of "attitudes" the governments have towards making such information available online preclude utilizing those databases as the only place to go.

Idex has created an internal database of experts who have been reviewed and disciplined by jurisdictional licensing boards. To access this database, one must be an Idex member and a defense attorney (or work on behalf of a defense attorney).

Possible Sites: *www.Idex.com; www.choicepoint.com; www.healthgrades.com; www.knowx.com; www.santacruzpl.org/readyref/files/time/drdiscpl.shtml (California Only); www.healthcarechoices.org/profile.htm*

9. News

News databases can be an incredible source of information, sometimes very damaging, about experts. Consider the prominent handwriting expert who gave several interviews to the press in which he stated that he was 99.9% certain the John Mark Karr wrote the ransom note found in connection with the JonBenet Ramsey murder – and was so certain that "he was staking a large part of his reputation on his judgment[.]"[xvi] This damaging claim (remember – John Mark Karr was never charged with the crime) can't 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 cases during those weeks. In fact, he was in that other jurisdiction having a romantic rendezvous with his new girlfriend.[xvii]

Within news sources, researchers 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 aren't technically news). Yet despite the existence of such a potentially-fruitful resource, many researchers fail to consider the news when they research experts. .

One of the largest commercially-available news databases (available from LexisNexis) 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.

An alternative (and free) approach to searching commercially-available databases is to visit the "News" portion of Google or Yahoo and then conduct a keyword or name search throughout many news outlets. Be aware, however, that Google and Yahoo's News databases include only the most current 30 days worth of news. Visiting the web site of a particular news source and running a search there is another alternative. For instance, a list of newspapers and magazines and their links can be found at newslink.org. Some online newspapers and magazine require a registration, which is often free, whereas others charge to view and download articles.

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

Possible Sites: *newslink.org; www.latimes.com; www.daypop.com; news.google.com; news.search.yahoo.com/news*

10. Discussion Board Posts

It may be possible to find an expert's opinion on a particular subject by searching postings on discussion boards (otherwise called "Usenet" postings). For instance, by clicking on the "Groups" tab on Google home page, one can access more than 1 billion messages dating back to 1981. Using the "advanced search" button, searches can be run by the expert's name, the subject matter, or the expert's email address. Keep in mind, however, that many postings are made anonymously or with pseudonyms, and that people often change their e-mail addresses.

Possible Sites: *groups.google.com*

11. Filings (Summary Dockets & Judgments)

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, a thorough researcher should search through databases containing summary docket and judgment information. A summary docket database contains basic information about a lawsuit that has been filed in a particular jurisdiction. Such basic information usually includes the case number, the names of the parties, when the lawsuit was filed, the type of lawsuit (e.g. medical malpractice, securities fraud, etc.), the status of the case (i.e. whether the case is closed), the names of the attorneys representing the parties, and some other miscellaneous information. In contrast, judgment databases contain information about cases 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.

12. Congressional Information and Other Government Documents

Because some more-prominent experts sometimes appear before Congress and 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 Firstgov.gov.

Possible Sites: *thomas.loc.gov; www.firstgov.gov*

13. Law Reviews Articles

Because authors of law review articles sometimes quote experts, cite to their works, and/or discuss their testimony, a database containing law reviews can also sometimes be a good source of information about experts. Not all law reviews are online for free, so for a more comprehensive law review search, use the pay sites, LexisNexis or Westlaw, or your library's free remote databases.

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

14. 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, Westlaw, or Merlin. 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, as some experts have engaged in significant criminal activity, including at least one fairly-prominent expert who has a felony drug conviction.

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

15. Patents

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

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

> Incompletely punched cards can cause serious errors to occur in data processing operations utilizing such cards.
>
> * * *
>
> If, however, the voter does not hold the voting punch straight up and down when punching, it is possible under certain temperature and humidity conditions to pull the template toward the voter a few thousandths of an inch, sufficient to prevent complete removal of the chad when the stylus is inserted. This can produce what is called a "hanging chad," as the chad-piece of the card is still attached to the card by one or two of the frangible holding points.
>
> * * *
>
> It must be emphasized that the presence of even one incompletely punched chip in a run of several thousand tabulating cards is in most cases too great a defect to be tolerated.
>
> * * *
>
> Therefore, the material typically used for punch boards in punch card voting can and does contribute to potentially unreadable votes, because of hanging chad or mispunched cards.

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

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

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

Possible Sites: *www.uspto.gov*

16. Audio

It is important to have a clear understanding of why the expert is being retained. Will this expert only consult on the matter, or will he/she be asked to testify at a deposition or at trial? If this 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 the 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 her expertise*. Mr. Beckwith summed up this result with a simple idea held by jurors:

> "If you're so smart, why can't you speak clearly?"

Accordingly, it is very important to understand what type of appearance the expert will make. Some experts have included streaming video of themselves on their own web sites to enable attorneys to see

them in action. In addition, at least one expert directory allows you to both see and hear the listed expert.[xix]

Podcasts are the latest phenomenon in delivering audio content to listeners to share one's expertise or opinions. Think of it like "radio delivered via the Internet." Instead of listening to a live broadcast, however, listeners download audio files to their computers to play them back when it is convenient for them. Like other kinds of content available on the Internet, podcasts cover a wide array of topics and are relatively easy to create. Most podcasts are saved in the MP3 format, allowing maximum portability and flexibility in playing back those files.

Two ways to find podcasts are (1) to use an online directory of podcasts, such as Ipodder.org, The Blogs of Law, or Blawg.org (click on the "Podcast" category) or (2) by simply using a search engine and adding the word "podcast" to your keyword search. In fact, a recent search of Google for "podcasts," retrieved nearly 9 million results

Possible Sites: *www.JurisPro.com; www.ipodder.org; www.theblogsoflaw.com; www:blawg.org; www.apple.com/itunes*

B. Uncovering Case-Related Information[xx]

1. Court Opinions

After verifying "credentials," a researcher 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 researcher 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., 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 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 researcher's lawsuit on the same or similar grounds.

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

Several search techniques can be used to search opinions effectively. For instance, in the initial search, enter only the expert's last name. However, if the expert's last name is more common, include his/her first name as well – separated from the last name with a 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.

Possible Sites: *www.lexisone.com*; *www.findlaw.com/casecode*

2. The Daubert Tracker™

But not all case opinions specifically mention an expert by name. Instead, the authoring judge might only refer to the expert as "plaintiff's expert" and leave it at that. Such an omission renders that potentially-

fruitful opinion almost worthless to the investigative researcher who is searching for a particular name. And that's where the Daubert Tracker can help.

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.

Moreover, these reports offer three significant advantages over a search through case opinions. First, as noted previously, a case opinion that addresses the admissibility of expert testimony may not specifically mention the expert in question by name. DTCRs actually identify, by name, who that expert is (even when the associated case opinion does not) – a distinct advantage over case opinions (e.g. Waggoner v. Amoco Prod. Co., 1999 U.S. App. LEXIS 3416 (10th Cir. 1999) refers to expert testimony but does not give the name of the expert in question; the relevant DTCR indicates who the expert is).

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

Third, the Daubert Tracker also conducts name "normalization" – that is, because judges sometimes misspell an expert's name in an opinion (e.g. Alan Done, a toxicologist, has had his first name spelled "Allen" in at least two case opinions and "Allan" in at least one), the Daubert Tracker double checks the spelling of each expert's name and corrects it in the relevant DTCR, if appropriate. So, it knows that the Allan Done referenced in Blum v. Merrell Dow Pharms., Inc., 1996 Phila. Cty. Rptr. LEXIS 122 is actually Alan Done, and the correct name is noted in the related DTCR.

Possible Sites: *www.dauberttracker.com*[xxi]

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

As the federal courts continue to implement electronic filing, the Public Access to Court Electronic Records system (aka "PACER") – continues to grow as a valuable tool.[xxii] Because the dockets of almost all federal district and bankruptcy courts are online at PACER (though only those of about half the federal appellate courts are), many motions, briefs and other pleadings filed with the federal courts are available online (at a per page cost).

In terms of PACER's functionality, a user can either search dockets of an individual court (by clicking on "Links to PACER Web sites") or search multiple courts simultaneously (by clicking on the "U.S. Party/Case Index"). So, with a list of federal cases in which an expert has appeared, a researcher can retrieve the docket sheet from each case and search it (all online) for any reference to the expert. Moreover, more recent docket sheet entries have links to a PDF of the filing itself.

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

These problems, however, are not insurmountable. For instance, with respect to the first downside of PACER, commercial vendors have made the PACER dockets full-text searchable. Specifically, LexisNexis® CourtLink® gives the researcher the capability of searching through dockets of cases filed in the federal courts (as well as various state courts), and some of those dockets go as far back as the mid-1980s. Westlaw's CourtExpress offers a similar service (though with more limited coverage). So by simply searching for the expert's name, a researcher might uncover a wide variety of information about an

expert, including motions (e.g. “Motion in Limine to Exclude the Testimony of Expert Smith”), orders (e.g. “Order Granting Motion in Limine to Exclude the Testimony of Expert Smith”), expert reports, affidavits, declarations, resumes, etc. – and might even uncover cases in which the expert has been involved, even if that expert failed to make that disclosure to the researcher.

With respect to the second downside of PACER, several online legal services, such as LexisNexis, Westlaw and even the Daubert Tracker, offer full-text searchable databases of motions, pleadings and briefs filed in both state and federal court. These databases enable a researcher to search them in order to uncover court filings that mention the expert.

Finding the brief filed in support of a motion in limine to exclude an expert can provide valuable information as to why an effort was made to exclude an exert. Was his/her background insufficient for the area of expertise he/she were addressing? Were there validity issues with the expert’s claimed background/education/licensing? Has the expert’s methodology been called into question? Finding even one or two of these briefs, opinions or motions can give you a direct insight into someone else’s appraisal of the expert you are investigating.

Possible Sites: *www.lexisnexis.com/courtlink/online; www.llrx.com/courtrules; pacer.psc.uscourts.gov*

4. Case Filings

Knowing what, if any, lawsuits an expert has been a party to may be quite valuable to a researcher. 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 may be valuable to the researcher. Commercial online services are continuously expanding their coverage of state courts, and both those services and PACER offer a way to search federal court filings.

If the jurisdiction where the expert practices is not available online or is not covered by one of the online legal services, consider calling the clerk of the court for the county where the expert practices. The clerk may be able to tell you over the telephone if there has been any litigation in which the expert was a named party. Some Clerk’s offices will charge a fee, requiring that you send them your request, along with payment for the fee they charge. If this is the case, then you will need to plan ahead, as the response time can vary greatly from a matter of days to (in the worst cases) well over two months.

Possible Sites: *www.lexisnexis.com/courtlink/online; www.llrx.com/courtrules; pacer.psc.uscourts.gov*

5. Verdict Reports

A researcher who finds verdict reports that mention a particular expert can then analyze those reports and possibly draw conclusions about him/her. For instance, after reviewing a number of verdict reports, a researcher might uncover potential bias – the expert always seems to testify for plaintiffs or defendants, or the expert has testified for a particular party or attorney on numerous occasions. And make no mistake about it, expert bias exists.[xxiii]

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

6. Agency Opinions

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

Possible Sites: *www.lexisone.com; www.statelocalgov.net; www.firstgov.gov*

7. Transcripts

To date, there is no free, centralized database for expert witness transcripts. For defense attorneys, full text copies of the expert's testimony are available for a fee from IDEX, which has built its database of deposition transcripts through submissions from its own members. Electronic versions of some documents can be viewed and downloaded directly from this site at a reduced price. Expert witness transcripts are also available for a fee to defense attorneys who are members of the Defense Research Institute (aka "DRI").

On the plaintiff's side, the ATLA[xxiv] 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, ATLA 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 researcher can simply ask the expert for a list of references. One can then find and contact that attorney through Martindale-Hubbell.

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

Possible Sites: *www.idex.com; www.dri.org; www.atla.org; www.trialsmith.com*

8. Video

Yahoo, Google, and AltaVista have added tabs to allow users to search for video. For example, running a Yahoo video search for a computer forensic expert may retrieve extracts from video taped depositions.

Possible Sites: *www.yahoo.com; www.altavista.com/video; www.video.google.com; www.youtube.com*

IV. 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.

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

In both civil and criminal litigation, experts from certain professional disciplines are so routinely retained and commonly seen in the courtroom that their testimony is generally less subject to challenge. For example, in commercial litigation, a claim of lost profits which is being made by the plaintiff will require the retention of a financial expert, either an accountant or an economist. In medical malpractice 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.

B. 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 along side 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 Fibroymyalgia 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.

V. 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."[xxv]

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.[xxvi]

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.[xxvii]

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Michael Brennan is a Research Analyst at the largest law firm in Michigan – Miller, Canfield, Paddock & Stone, which is headquartered in Detroit. For the past eight years, Mr. Brennan has used his law degree and research experience to specialize in locating potential experts for clients and investigating experts named by opposing counsel. In addition, Mr. Brennan oversees Miller Canfield's in-house collection of expert witness materials, covering over 6,000 experts and containing in excess of 10,000 transcripts. The 2 million page collection is the largest collection of expert witness information in Michigan and one of the largest in the United States.

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David Dilenschneider is a Director, Industry Relations (Litigation) for LexisNexis. Prior to joining LexisNexis, David was a litigator for almost six years with Vorys, Sater, Seymour and Pease LLP in Columbus, Ohio and practiced primarily in the areas of ERISA litigation, commercial and business litigation, asbestos litigation and criminal law. He conducts presentations to demonstrate how litigators can best utilize the valuable resources available online and has conducted such presentations for thousands of attendees in cities all across the country – including presentations to offices of 20 of the top 25 law firms in the NLJ 250 as well as to smaller and boutique law firms. David has also presented at programs conducted by the National Institute for Trial Advocacy ("NITA") and served as a speaker at prominent legal-education conferences (e.g. the Litigation Technology Summit (New York City), LegalWorks (San Francisco) and others), at bar association meetings (e.g. New Mexico, Orange County, Louisiana, etc.), and at law schools (e.g. Harvard, Stanford, Northwestern, etc.).

Myles Levin
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Myles Levin, CEO of the Daubert Tracker, first developed an interest in "evidentiary gatekeeping" cases in 1999, shortly after founding MDEX Online, Inc., a full service medical legal consulting firm and the holding company of the Daubert Tracker. Himself a former testifying vocational expert and principal in a litigation consulting company, he became aware of the significance and implications that "gatekeeping" had for all participants in the litigation process- attorneys, experts and judges alike. He came to realize, however, that there was no central repository of information and documents concerning these cases,

despite the fact that "gatekeeping" activity was often a "linchpin" in successful or failed litigation. After validating his concepts with the litigation and forensic community, he developed a team of database programmers, web developers and legal researchers and launched Daubert Tracker in August of 2002. Since then, the product has been received very favorably and has received significant attention in state bar association journals, legal newspapers and from attorney and expert associations.

Carole Levitt
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Carole Levitt is President of Internet For Lawyers. She is a nationally recognized Internet research guru, author and speaker. She has co-authored two editions of *The Lawyer's Guide to Fact Finding on the Internet* (http://www.internetfactfinder.com) first published by the ABA in 2004 and revised in 2006. She has also co-authored eight editions (1999-2006) of *The Cybersleuth's Guide to the Internet: Conducting Effective Investigative & Legal Research on the Web* (http://www.netforlawyers.com/prod01.htm). Carole serves on the ABA LPM Executive Council and on the ABA LPM Publications Advisory Board. She is the past chair of the California State Bar's LPMT Section. Carole's former careers range from a California attorney to a Pepperdine School of Law Legal Research and Writing Professor to a law librarian in Chicago and Los Angeles.

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Jim Robinson is an attorney, Education Chair for the California State Bar Law Practice Management and Technology section, and founder of JurisPro Inc. (www.JurisPro.com), a free resource to find and research expert witnesses. JurisPro maintains a database of over 75,000 expert witnesses, and provides a free online directory of expert witnesses in over 4000 areas of expertise. Prior to founding JurisPro, Mr. Robinson specialized in construction defect, personal injury, and business litigation for both plaintiffs and defendants. Mr. Robinson is a member of the California Bar Association, American Bar Association, Defense Research Institute, American Trial Lawyers Association, Los Angeles County Bar Association, and is technical support member for expert witnesses for the Consumer Attorneys of California. Mr. Robinson is a professional speaker and author. He has been a keynote speaker at several legal technology conferences, and has written extensively on expert witnesses, legal research, and the Internet.

[i] Miller, Bill. "D.C. Police Expert Admits Perjury; Top Witness in Narcotics Cases Pleads Guilty to Lying About His Credentials," Washington Post, February 11, 2000.
[ii] To access Total Litigator, go to litigator.lexisnexis.com and click on the "Gather Intelligence" tab.
[iii] For other tips on how to use the Internet to find experts, obtain background information about them, and conduct all sorts of factual research, see the ABA-published book, *The Lawyer's Guide to Fact Finding on the Internet* (3rd edition 2006) authored by Carole Levitt and Mark Rosch (www.internetfactfinder.com).
[iv] Paying to be listed as the number one expert in one's field could be an issue in the cross-examination of that expert.
[v] "It's online, but is it true," USA Today, December 7, 2005.
[vi] Note, however, that the new "LexisNexis Verdicts and Settlements" database at *lexis.com*®, is put together via independent investigations conducted by Mealey's™.
[vii] Bergman, Michael K., "The Deep Web: Surfacing the Hidden Value," BrightPlanet.com, July 2001.
[viii] Parts of the "Invisible Web" are becoming more visible now that Google, Yahoo, and other search engines began indexing PowerPoint presentations, Word documents, and Excel spreadsheets
[ix] Malone, David M. & Zwier, Paul J. "Preparing to Depose the Expert," Effective Expert Testimony, Chapter 6.
[x] "Honesty the best policy on resumes," Denver Post, February 26, 2006.
[xi] Buckhoff, Thomas. "Preventing fraud by conducting background checks," The CPA Journal, November 2003.
[xii] "Purported expert on sex offenders faces charges over false credentials," Duluth News-Tribune, March 3, 2005.
[xiii] "Expert witness' resume not the whole truth," The Associated Press State & Local Wire, February 24, 2005.
[xiv] Check out Blog 702 (daubertontheweb.com/blog702.html) to monitor instances of expert perjury.
[xv] 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).
[xvi] Kilzer, Lou. Writing analyst was disqualified; Judge challenged expertise of man linking note to Karr," Rocky Mountain News, August 23, 2006.
[xvii] "Toxicologist fined for contempt on deceiving judge and jury," The Lawyers Weekly, August 17, 2001.
[xviii] "Contesting the Vote: The Scene," New York Times, Dec. 4, 2000.
[xix] On the JurisPro web site 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 or herself. The JurisPro directory also includes the expert's full curriculum vitae, contact information, link to their web site, articles, references, and prior litigation experience.
[xx] Also consider the new LexisNexis Expert Witness Summaries database, which list known cases in which an expert has testified and also summarize challenges to that expert's testimony.
[xxi] Also available via *lexis.com*.
[xxii] Importantly, note that by late 2006, most federal courts will have their dockets available via the Case Management/Electronic Case Filing system (CM/ECF), which is replacing PACER.
[xxiii] A recent study of 492 X-rays used by plaintiff's lawyers as a basis for asbestos claims showed that whereas X-ray readers hired by plaintiff's lawyers found evidence of possible asbestos-related abnormalities in 95.9% of the X-rays, independent radiologists found evidence of possible asbestos-related abnormalities in only 4.5%. "Study points to abuse," National Law Journal, November 01, 2004.
[xxiv] Note that ATLA recently changed its name to "American Association for Justice."
[xxv] Garmisa, Steven P. "Expert's credentials questioned too late to trigger new trial," Chicago Daily Law Bulletin, October 6, 2004.
[xxvi] 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
[xxvii] See Forensis Group, Inc. v. Frantz, Townsend & Foldenauer, 130 Cal. App. 4th 14 (Cal. App. 2005).