

# Identifying and Evaluating Expert Witnesses

by Hazel L. Johnson



The growth in the number and complexity of lawsuits that rely on technical data, coupled with mandated standards on the use of scientific evidence espoused in the U.S. Supreme Court's *Daubert*<sup>1</sup> and *Kumho Tire*<sup>2</sup> decisions, makes it essential that lawyers use every resource to identify appropriate experts and to assess those of the opposing party. This article will review sources that can assist an attorney who is trying to find or evaluate an expert.

## Literature Searches

By consulting library catalogs and indexes of scientific journal literature, a lawyer can gain insight into the subject and begin a preliminary list of potential experts. Most university and many public library catalogs are available through the library's Web site. Virginia library catalogs with links can be found at the Virtual Library of Virginia (VIVA) Web site.<sup>3</sup> The Library of Virginia maintains a page of links to public libraries in the state.<sup>4</sup>

Searching an index of literature relevant to the subject matter (scientific, economic, medical, etc.) can also provide guidance on cutting-edge issues and potential experts. Most indexes to scholarly literature are not available without paying a subscription fee. However, academic and public libraries frequently make that type of index available to individuals who hold

library cards, are alumni of the institution or are members of "friends of the library" groups. The best strategy for finding relevant materials is to identify an institution that has a strong academic program in the desired subject area (e.g., Virginia Tech or Virginia Commonwealth University for engineering materials, the University of Virginia or Medical College of Virginia for medical materials), and check that library's Web site for available indexes and requirements for gaining access to them.

One major exception to the "it's not free on the Internet" scenario is PubMed,<sup>5</sup> the National Library of Medicine's index of medical literature. Another is FindArticles,<sup>6</sup> which provides references to thousands of articles. Searching these sites, as well as access to the full text of some of the articles, is free, and links and subscription instructions are provided for materials that require payment. With the exception of some of the articles included in FindArticles, most of the references will be citations only, but the original publications are often available at a local library. By using the search function to identify articles of interest, you may then check with a library for copies. Literature searches are also valuable once an expert has been identified, as an expert may have publications that are not reflected on his or her curriculum vitae (CV). Consulting an index can help identify both potential experts and any materials that the expert may not be disclosing on a CV.

Consider using other types of literature for identifying and validating an expert witness. Litigation reports that are produced by publishers like Andrews, Mealey's and Harris Martin<sup>7</sup> focus on pending litigation. They include copies of complaints and other pleadings, reports on expert witness testimony and news about the subject. Topics include insurance, specific toxic torts, drugs and medical devices, employment and securities.

## Directories

There are a number of reliable directories listing individuals who actively offer their services as experts. General directories provide information on a wide variety of specialties. Among the more prominent general directories are Jurispro,<sup>8</sup> Experts.com,<sup>9</sup> American Lawyer Media's database of experts<sup>10</sup> and The TASA Group.<sup>11</sup> The expert must pay to be listed in each of these titles. These directories are Internet based and are free to search. ALM's directory also includes a print component that is distributed with its legal newspapers—*National Law Journal*, *Texas Lawyer*, etc. Each site categorizes the services the expert provides and offers the ability to search by specialty and location. Jurispro and ALM often include links to an expert's CV or Web site, articles by the expert and photographs. TASA requires the attorney to contact the company and describe the expertise needed. Then TASA will make referrals from a group of independent experts who are

included in their registry. Searching the TASA Web site provides only the number of experts they have listed and their geographic location.

Specialty directories, including trade association membership directories, offer focused lists of experts. Individuals in these directories might not be interested in testifying as an expert. The most comprehensive list of associations is the *Encyclopedia of Associations*, available at most large public and university libraries and as a database on Lexis and Westlaw.<sup>12</sup> It includes listings for over twenty thousand nonprofit associations. Other possible resources for trade associations are on the Web site of the American Society of Association Executives.<sup>13</sup> This site offers a searchable directory of associations and allows searching by word within the association name.

**Membership Organizations**

Plaintiff and defense organizations usually maintain repositories of materials on experts. The materials frequently include copies of the expert’s CV, deposition testimony and transcripts. On the national level, DRI<sup>14</sup> and Idex<sup>15</sup> provide materials for the defense bar and the Association of Trial Lawyers of America<sup>16</sup> and TrialSmith<sup>17</sup> focus on the plaintiff bar. Membership in the organizations is required for access. Typically, searching is free, but there are fees for obtaining copies of documents from the repository. These services allow the attorney to speak with other attorneys about their experiences with the expert. The Virginia Trial Lawyers Association offers its members access to a database of depositions as well as the ability to search e-mail archives for discussions about the expert.<sup>18</sup>

**Case Law, Dockets, Verdicts and Settlements**

An important factor in identifying and evaluating an expert is the extent to which the individual has testified previously. If an expert’s CV is unavailable, or if you do not have access to membership organizations, there are other research options available. A search of case law often provides references to an expert’s testimony. This may be of interest if the expert’s testimony or credentials have been challenged. Using one of the commercial legal databases<sup>19</sup> is the best way to approach this type of research. Another approach is

to use the subscription service Courtlink<sup>20</sup> to search the content of docket sheets for suits filed in the federal courts—a way to locate instances in which the testimony of an expert has been challenged.

Reports of jury verdicts and settlements can also provide insight into the subject matter testimony of an expert as well as the frequency of testimony. Unfortunately, there is no comprehensive database of verdicts and settlements, since publishers rely on self-reporting by the lawyers involved in a lawsuit. Both Lexis and Westlaw include several verdict/settlement databases that provide coverage for various parts of the country. If the expert testifies nationally, a comprehensive search is necessary. Virginia verdicts and settlements are covered by *Virginia Lawyers Weekly*.<sup>21</sup> The publication offers the ability to search the paper’s archives to 1993, and a subscription to *VZW* is needed to use this service.

**Other Resources**

Consider checking general news sources<sup>22</sup> for news reports on an expert’s testimony. In a high-profile case, the local paper may offer analysis of the expert’s work. An expert may have presented testimony before Congress. This may be covered in general news, but a search of the *Congressional Record* at Thomas (the Library of Congress’s database of congressional material)<sup>23</sup> is a better option. Is the expert involved in research that might produce a patentable device? If so, search the patent databases at the United States Patent and Trademark Office.<sup>24</sup> Does the expert possess a professional license that is relevant to the testimony? The Council on Licensure, Enforcement and Regulation Web site<sup>25</sup> links to international licensing boards. Some will provide a name-searchable database of individual license holders. These searches can be limited by geography. More global searching is available by using the public

records databases on Lexis or Westlaw or a service like Accurint.<sup>26</sup>

Would it be useful to investigate the personal background of the expert? If so, search for lawsuits filed against the expert personally,<sup>27</sup> outstanding liens,<sup>28</sup> criminal records,<sup>29</sup> property ownership,<sup>30</sup> political affiliation,<sup>31</sup> bankruptcy filings,<sup>32</sup> or corporate affiliations.<sup>33</sup> ⚡

Endnotes:

- 1 *Daubert v. Merrell Dow Pharmaceuticals Inc.*, 509 U.S. 579 (1993)
- 2 *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999)
- 3 [www.vivalib.org/cfapps/lib1.cfm](http://www.vivalib.org/cfapps/lib1.cfm)
- 4 [www.lva.lib.va.us/whoware/directories/valib/libweb.asp](http://www.lva.lib.va.us/whoware/directories/valib/libweb.asp)
- 5 [www.ncib.nlm.nih.gov/entrez/query.fcgi](http://www.ncib.nlm.nih.gov/entrez/query.fcgi)
- 6 [www.findarticles.com](http://www.findarticles.com)
- 7 Andrews Publishers is now a subsidiary of Thomson West. Information about their products can be found at: [west.thomson.com/store/product.asp?product%5Fid=Andrews+Reporters](http://west.thomson.com/store/product.asp?product%5Fid=Andrews+Reporters). They are also available through Westlaw. Mealey’s is a subsidiary of LexisNexis. Information on their products can be found at: [www.mealeys.com/index.html](http://www.mealeys.com/index.html). These materials are available through Lexis. Information on HarrisMartin products can be found at [www.harrismartin.com](http://www.harrismartin.com).
- 8 [jurispro.com](http://jurispro.com)
- 9 [www.experts.com](http://www.experts.com)
- 10 [www.almexperts.com](http://www.almexperts.com)
- 11 [www.tasanet.com](http://www.tasanet.com)
- 12 *Encyclopedia of Associations* is included in the “Legal Reference Materials” database listing on LEXIS. Its database identifier on Westlaw is EOA. Before using, you should determine whether they are included in your firm’s contract with the services.
- 13 [www.asaenet.org](http://www.asaenet.org)
- 14 [www.dri.org](http://www.dri.org)
- 15 [www.idex.com](http://www.idex.com)
- 16 [www.atla.org](http://www.atla.org)
- 17 [www.trialsmith.com](http://www.trialsmith.com)
- 18 “VTLA Beats VSB to Punch in Providing Online Research”, *Virginia Lawyers Weekly*, Sept. 26, 2005, at 1.
- 19 Fastcase, Lexis, LOISLAW, Westlaw offer this capability



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- 20 [www.courtlink.com](http://www.courtlink.com)
- 21 [www.virginialaw.com](http://www.virginialaw.com)
- 22 Lexis and Westlaw include large databases of newspapers. Many newspapers are making their content available on the Internet, sometimes with extensive archives and for free. Good sources that identify papers with an Internet component are the US Newspaper List ([www.usnpl.com](http://www.usnpl.com)) and [Onlinenewspapers.com](http://Onlinenewspapers.com). ([www.onlinenewspapers.com](http://www.onlinenewspapers.com)). Searching Google News ([www.google.com/news](http://www.google.com/news)) is another option.
- 23 [thomas.loc.gov](http://thomas.loc.gov)
- 24 [www.uspto.gov/patft/index.html](http://www.uspto.gov/patft/index.html)
- 25 [www.clearhq.org](http://www.clearhq.org)
- 26 The availability of information on professional licenses is a function of state law. Lexis includes professional license information from twenty-seven states, Westlaw from all states and Accurint ([www.accurint.com](http://www.accurint.com)) from forty-nine states.
- 27 Resources include the case law databases (see *supra* note 19) as well as docket sheet databases such as Courtlink (see *supra* note 20).
- 28 Lien information is available through the public records databases on Westlaw, Lexis or Accurint.
- 29 A nationwide database of criminal records is not available; however Westlaw, Lexis and Accurint have a good collection of data. Additionally, some states, counties or municipalities may make criminal data available on their Web site.
- 30 See *supra* note 28
- 31 Lexis and Westlaw offer databases of voter registration information. Both are found in the "Public Records" database listing. Voter registration records for twenty-seven states are currently included. Voter registration information for twenty-one states is available through Accurint.
- 32 PACER ([pacer.psc.uscourts.gov](http://pacer.psc.uscourts.gov)), the federal court's system for docketing provides excellent access to bankruptcy records. An account is required, but the system is "pay per view." A nationwide debtor search can be performed in the National Party/Case Index ([pacer.uspci.uscourts.gov](http://pacer.uspci.uscourts.gov))
- 33 The Securities and Exchange Commission's Web site ([www.sec.gov](http://www.sec.gov)) and its Electronic Data Gathering Analysis and Retrieval (EDGAR) system data provide access to information on corporate filings, including the names of boards of directors. There are a number of inexpensive commercial services that provide access to EDGAR data and offer more sophisticated search capabilities than the SEC site. The public records databases on Westlaw and Lexis also offer access to comprehensive corporate information on the state level or most states provide minimal search capabilities for their corporate data.
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