



## Jurisprudence Section - 2012

### E12 Selecting and Verifying Experts

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After attending this presentation, attendees will understand and recognize the use of available resources and strategies for locating and evaluating experts.

This presentation will impact the forensic science community by enabling interested persons to readily obtain background information and history of the expert witness.

Litigation periodically requires expert testimony to explain technical or scientific issues that are a substantive part of the case. Attorneys handling these types of cases will need to engage an expert or defend against one. The Supreme Court said in its *Daubert*<sup>1</sup> opinion that expert witness testimony is the most persuasive evidence. Experts, in some circumstances, are permitted to state opinions regarding the ultimate issue of case.

Expert testimony is regulated by Federal Rule Evidence 702 and state counterparts. Federal Rule of Civil Procedure 26 requires additional disclosures by attorneys regarding the experts they retain, including records of past contributions to literature, litigation performance, and other documentary evidence. The applications of these rules reveal information about experts to assist federal judges fulfill their gate keeping role as defined by *Daubert*. The same disclosures give attorneys a framework for discovery and litigation strategies.

There are numerous sources for locating expert witnesses. These include traditional print directories that list experts, commercial research services, such as Lexis and Westlaw, and various expert witness directory sites available through the Internet. Each source has different advantages and disadvantages. One factor that is common to all of them; however, is reputation.

Print directories from a reputable source, such as Martindale-Hubble, have a history and some editorial control over the listings. The disadvantage of print; however, is its information cannot be changed or updated until a new edition appears.

Lexis and Westlaw also perform some editorial control over expert listings in their database by licensing content from other commercial providers. The fact that both of these research services would license content from others, rather than create their own, implies that they would attach their high reputations for accuracy to these listings. Lexis, for example, licenses content from the Daubert Tracker, a respected Internet site for expert research.

Lexis and Westlaw have an additional research advantage through their leverage of extensive collections of case law and litigation documents, acting as a comprehensive source for research on individual experts. A researcher can search categorical material on expertise, locate resumes, access prior reports and other documents filed with courts. Additional analytical tools are available to evaluate an expert's performance. The disadvantage is that they require expensive subscriptions to access this content.

The internet has any number of expert directory sites. Many of them are businesses, which sell other legal services, such as continuing legal education materials. These sites often use expert directories as a draw to advertise other services to attorneys. As such, these sites tend to encourage individuals to list their services as a way of increasing the size of their roster, without offering any kind of oversight on qualifications. Too often attorneys only rely upon these listings or the person's resume to assess the expert's qualifications. Expert witness directories, or agencies, generally do not verify credentials and the background of the expert. Therefore, it is necessary for the reviewing attorney to conduct additional research using other information sources to confirm the listed expert's background and suitability. The selection and pretrial examination process must validate the expert witness' credentials, credibility, competency, and charisma.

This presentation will offer strategies for selecting and evaluating experts. It will cover available sources of experts, including the Internet, commercial research services, and other sources. It will detail ways to explore and corroborate the background of potential experts, taking into consideration additional points such as an expert's personality, communication skills and ethical obligations. It will also take into account how to locate materials that document an expert's record. An expert's viewpoints on a technical subject are often available in his or her scholarship. This type of literature is usually the more difficult type of material to assemble compared to litigation documents. The presentation will offer strategies locating and acquiring copies of scholarship. The selection and verification of experts is integral to litigation and corresponding success or failure – it should not be minimized.

#### Reference:

<sup>1</sup> *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 595 (1993)

#### Experts, Credentials, Selection