



# How to Manage the Investigative Function in Evaluating Expert Witnesses

by Jennifer A. Conta

**T**he late Peter Ustinov once wrote: “If the world should blow itself up, the last audible voice would be that of an expert saying it can’t be done.” Such cynicism about experts is understandable. But in our civil and criminal court systems, since the use of expert witnesses, particularly in complex cases, is a certainty, cynicism should give way to prudence.

## The Legal Context

What courts have struggled over is how to separate the qualified expert witness from the poser, and what scientific standards of admissibility to recognize. (See Allan Kanner and M. Ryan Casey, *Daubert and the Disappearing Jury Trial*, 69 *University of Pittsburgh Law Review* 281, 284-86 (2006); cf. David E. Bernstein, *The Unfinished Daubert Revolution*, 10 *Engage* 1, 35-38 (2009); see also, *Expert Witnesses and the Truth*, *The American College of*

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*Forensic Examiners*, [www.truthinjustice.org/02FPERT.htm](http://www.truthinjustice.org/02FPERT.htm): "Courts have long agonized over how to separate qualified expert witnesses from those who are incompetent or only out to make a buck.") As the use of expert witnesses has increased, federal courts have had to deal with a perceived increase in "bad" experts; i.e. experts who provide information of value to the side calling for their testimony but not necessarily evidence that is scientifically based. Accordingly, the federal courts attempted to clarify the standards for admissibility. Over time, two fundamental approaches, the *Frye standard* and the *Daubert standard*, have been adopted by the courts. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993); *Frye v. United States*, 293 F. 1013, 1014 (D.C. Circuit 1923). Some state court systems accept the *Daubert* standard (e.g., Connecticut, Indiana, Kentucky, Texas, Massachusetts, New Mexico, West Virginia, South Dakota, Oklahoma, Louisiana), others accept the earlier *Frye* standard (e.g., California, Alaska, Colorado, Arizona, New York, Pennsylvania), and others have formulated their own tests.

The *Frye* standard developed from a 1923 District of Columbia Circuit Court ruling which found that systolic blood pressure deception test results, introduced as evidence in a murder case, were inadmissible because the technology (a precursor to lie detector evidence) had not yet been generally accepted as relevant within the scientific community. The *Frye Test* directed courts to determine whether or not scientific evidence introduced has reached "general acceptance." This involves a two-step process: 1) identify the scientific discipline within which the discovery/principle has been developed; and 2) determine whether or not the larger scientific community for that discipline accepts the discovery as valid. Many states adopted this general standard, turning a skeptical eye upon novel expert evidence. The arena for both sides contesting for admissibility of evidence or expert testimony is the *Frye* hearing, a sometimes lengthy and expensive process. (*DNA in the Courtroom*, Chapter 5, Genelex Corporation, [www.healthanddna.com/dna-learning/book-5-courtroom.html](http://www.healthanddna.com/dna-learning/book-5-courtroom.html): "One result of this interpretation is that *Frye* hearings often last longer than many trials. The mother of all *Frye* hearings took place in San Diego in 1987 . . . which dragged on for a full year. While courts and attorneys are often reluctant to reveal the costs of proceedings, *Frye* hearings are expensive.")

With the adoption of the *Federal Rules of Evidence (FRE)* in 1975 (and its many counterparts in state courts), criticisms arose that the *Frye Test* opened too many doors to "discriminatory application" and violated the spirit of the *FRE*. (*Fed.R.Evid.* 702-706. Rule 702 sets forth a description of what elements characterize an expert witness or expert testimony: "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case." *Kanner and Casey, supra* p. 287.] Two decades later, in *Daubert v. Merrell Dow Pharmaceutical, Inc.*, the Supreme Court took the opportunity to address these growing concerns.

The *Daubert* case concerned Bendectin, an anti-nausea drug marketed to pregnant women. Horrific birth defects were found in some mothers who had ingested the drug and two victims, Jason Daubert and Eric Schuller, along with their parents, sued Merrell Dow. The defendants successfully removed the case to federal court and then moved for summary judgment. A defense expert had submitted evidence arguing that no peer reviewed scientific study had linked Bendectin with birth defects. The district court granted the summary judgment but the plaintiffs appealed to the Ninth Circuit which, because it found that the plaintiffs' promulgated countervailing evidence (based upon *in vitro* animal studies and secondary pharmacological research) was not yet accepted within the scientific community, upheld the District Court's finding. The plaintiffs subsequently asked the Supreme Court of the United States to review the Ninth Circuit decision, which it did.

In its decision, the Supreme Court found that *FRE* 702 did not incorporate the *Frye* test of "general acceptance," that Rules 702 and 703 provided for a more "liberal thrust." (In his discussion, Justice Blackmun argued: "The drafting history [of the *FRE*] makes no mention of *Frye*, and a rigid 'general acceptance' requirement would be at odds with the 'liberal thrust' of the Federal Rules and their 'general approach of

relaxing the traditional barriers to opinion testimony." *Daubert*, 509 U.S. at 589.) Accordingly, the Court adopted a more liberalizing standard, shifting the focus away from scientific consensus and more toward the reliability of the scientific methodology employed, a shift many thought would lead to a more permissive approach regarding the admissibility of expert testimony. Under the so-called *Daubert Standard*, expert testimony, to be admissible, was to be evaluated by the judge, acting as gatekeeper, as to both relevance and reliability. "Thus," write Allan Kanner and M. Ryan Casey, "the goal of *Daubert* was to make it easier, not harder, for plaintiffs to present novel theories to juries." (Kanner and Casey, at 290.)

Whatever we may conclude regarding standards for admitting expert testimony, however, it is clear that the time to assess an opposing counsel's expert witness is well before trial.

The assessment process always involves a carefully managed background investigation, either by staff or by hiring outside private investigators. Success at impeaching, nullifying, or otherwise defending against expert testimony will be directly related to how successfully the background investigation process is managed.

What constitutes the most efficient, effective management of expert witness background investigations? How can investigators identify and assist in exploiting the common vulnerabilities in expert witnesses? Are there hidden liabilities to be avoided in the process? What efforts are most likely to result in disclosing information that will undermine the effectiveness of the other side's expert?

The stakes are usually high in any litigation which involves the use of expert testimony. Failure to assess the witnesses called, or those called by opposing counsel, can mean the difference between a win and a loss. (See Bernstein, at 37: "The effectiveness of Rule 702 depends on enforcement by competent attorneys willing and able to expend sufficient time and resources to challenge unreliable testimony. Unfortunately, defense attorneys rarely meet this ideal. Public defenders, for example, are frequently 'inexperienced' overworked, and underpaid." (*Citing* Samuel R. Gross and Jennifer L. Mnookin, *Expert Information and Expert Evidence: A Preliminary Taxonomy*, 34 *Seton Hall L.Rev.* 141, 157 (2003).) Cf. *Advanced Trial Handbook — Cross Examination, "Impeachment of a Witness,"* at <http://caught.net/prose/advtt/hbcross.htm>:

“Unfortunately, many trial attorneys do not know how to properly impeach using depositions and inconsistent statements.”)

Consider the following examples, gleaned from civil, criminal, and administrative matters.

### **Ballistics Expert**

Joseph Kopera, an expert witness who headed the Maryland State Police firearms unit, testified in courts throughout several states as a “ballistics expert,” claiming advanced degrees he never received. His credentials were challenged by public defenders working with the non-profit Innocence Project. Kopera, 61, died of a self-inflicted gunshot wound in March of 2007, only days after being confronted with evidence of his faked credentials and one forged document. “Every case he has ever been involved in is open to question said one former Anne Arundel County assistant district attorney. “There will be a lot of prosecutors having a lot of heartburn.” (*“Police expert lied about credentials,” Jennifer McMenamin, The Baltimore Sun, March 9, 2007, www.baltimore.com/news/maryland/bal-te.md.forensics09.*)

### **Computer Forensics Expert**

“It goes to the heart of the criminal justice system,” U.S. District Judge Lawrence J. O’Neill said regarding “expert” witness James Earl Edmiston’s guilty plea on two counts of perjury. Edmiston, 36, was sentenced July 27, 2007 to one year and nine months in federal prison for lying to the court regarding his education and qualifications as a computer forensics expert. His sterling resume listed degrees which, when checked out by investigators, were not even offered by the institutions he cited. Edmiston had provided expert testimony and documents in criminal matters in several California counties. (*“Ex-witness gets 21 months in prison,” John Ellis, The Fresno Bee, July 30, 2007, www.fresnobee.com/265/story/97923.html.*)

### **Superintendent**

The East Bay School District in Emeryville, California, rocked by scandal and bankruptcy for a decade, thought it turned a new leaf in September of 2008 when it chose Stephen J. Wesley, over 26 other applicants, to be its Superintendent. Wesley was vetted for his post, which came with an annual salary of \$150,000, by an “executive search firm” retained by the California School Board Association. The search missed several “inconsis-

tencies” on Mr. Wesley’s resume. He did not have a Ph.D. as claimed, he did not earn a Master’s in theology and philosophy, Harvard University could find no record for his status as a “Fellow” there, and he did not have special educational certification in California. His resume also had failed to disclose administrative positions he held in the state of Pennsylvania, where he lost his certification in 1995 for . . . falsifying his resume. (*“School beads resume riddled with falsehoods,” Nanette Asimov, San Francisco Chronicle, September 3, 2008, http://articles.sfgate.com/2008-09-03/bay-area/17160489\_1\_east-bay.*)

### **Dean of Admissions**

On April 26, 2007, MIT Dean of Admissions, Marilee Jones, a prominent author and crusader against exerting too much pressure upon college-bound students, resigned her position when charges arose that she had lied on her resume. An anonymous phone call prompted an examination of Ms. Jones’ credentials. On the resume she had submitted to MIT, in 1980, she had claimed degrees from Albany Medical College, Rensselaer Polytechnic Institute, and Union College. After “an inquiry that took several days,” according to the Associated Press (AP), it was determined that she had no degrees from any of the schools. (*“MIT Dean Says She Lied on Resume, Quits,” Associated Press, April 27, 2007. Washingtonpost.com, www.washingtonpost.com/wp-dyn/content/article/2007/04/26.*)

### **Forensic and Behavioral Sciences Expert**

Nor are the credibility problems with some expert witnesses limited to the United States. On the basis of expert testimony from Jason Walker, head of a Victoria, B.C. health clinic, police launched an investigation for possible child abuse against the estranged husband of one of Walker’s patients. Part of that investigation involved checking into Mr. Walker’s credentials. Walker claimed to have three doctorates in forensic and behavioral sciences, and medical epidemiology. Investigators were unable to confirm any of those credentials. Furthermore, Walker, 31, claimed to have studied at numerous institutions in Canada and the United States, including Smith College, an all-women Massachusetts liberal arts school. According to a January 6, 2010 story in *The Canadian Press*, “. . . police are also

looking into whether Walker’s work could have impacted a number of cases that have already gone through the courts.” (*“BC health clinic operator charged for allegedly faking credentials,” Sunny Dhillon, The Canadian Press, January 1, 2010. http://healthandfitness.sympatico.ca/News/ContentPosting?newsitem.*)

### **Injury Mechanism Analysis Expert**

Lynchburg, Virginia physicist Saami Shaibani had carved out a successful career for himself as an expert witness in what he advertised as “injury mechanism analysis,” combining engineering, physics, and trauma medicine. As reported in a June 26, 2008, AP story, Mr. Shaibani lied under oath regarding his credentials “and now some of the convictions he helped secure are in jeopardy.” Shaibani’s “resume puffing” came to light in several cases but, after his testimony in the 2002 Wisconsin murder trial of Douglas Plude, in which Shaibani testified that Plude killed his wife by forcing her head into a toilet, his career as an “expert witness” quickly became downwardly mobile. Although questions remain about his fabricated credentials, the Wisconsin Attorney General’s office, in April of 2009, announced that it would not pursue charges of perjury against Shaibani. (*“Expert’s lies jeopardize murder convictions,” Associated Press, June 26, 2008. http://truthinjustice.org/shaibani.htm.*)

### **Double-Check All Background**

In consideration of the foregoing, it should be clear that scrutiny of an opposing counsel’s expert witnesses can often be a lethal weapon employed in advocacy for your case. But this is true only if that scrutiny, in the form of a background investigation, is sagaciously planned and implemented.

Whether you choose to hire outside investigators, or use your own legal staff to “background” the background of an expert witnesses, there are several key considerations to keep in mind.

First, as in any other phase of your case, adequate preparation is essential, long before entering the courtroom or conference room, both in terms of assessing the expert witness’ claimed credentials and in familiarizing yourself with the materials on which you will cross-examine. (“Expert witnesses are used in a wide range of litigation and their opinions are often viewed as crit-

ical—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.” *“Finding and Researching Experts and Their Testimony,”* *JurisPro.com*, revised November 14, 2007. This article provides an excellent overview of evaluating the admissibility of expert testimony and researching areas of expertise. [http://www.virtualchase.com/articles/finding\\_researching\\_experts.html](http://www.virtualchase.com/articles/finding_researching_experts.html).)

Second, according to *FRE* 806, any witness, expert or non-expert, whose testimony is entered as evidence at trial, is open to legitimate attack. The rule reads, “When a hearsay statement, or a statement defined in Rule 801(d)(2)(C), (D), or (E), has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would be admissible for those purposes if declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with the declarant’s hearsay statement, is not subject to any requirement that the declarant may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine the declarant on the statement as if under cross-examination.” *FRE* 806.

Third, in conducting a thorough background investigation of any expert witness (or, of any individual whatsoever), one critical consideration is that, according to the American Bar Association’s *Model Code of Professional Responsibility*, Rule 3-110: “A member shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence . . . The duties set forth in Rule 3-110 include the duty to supervise the work of subordinate attorneys and non-attorney employees or agents [emphasis added].” *California Rules of Professional Conduct* Rule 3-110A.

While there is insufficient space here for a comprehensive blueprint for detailed expert witness background investigations, sketching in the fundamental outlines will provide a working foundation for determining the essentials. A comprehensive background investigation proceeds in three steps: 1) on-line research; 2) public records research; and 3) targeted interviews. In many respects, this three-step investigative process corresponds to: a) the three principles embedded within *FRE* 702 (reliable data,

reliable methodology, relevant/reliable application); and b) the three areas of expert witness vulnerability which are most open to attack (lack of qualification, inconsistency, and bias).

## Online Research

The first step in evaluating an expert witness involves a thorough review of all materials provided by opposing counsel and running those materials through the filter of online research.

Usually, the expert witness is identified by opposing counsel with a professional resume, qualifications brief, or curriculum vitae (CV), professional references, and a list of cases in which the witness has testified. These documents constitute the minimal selling card which opposing counsel is normally required to provide. The expert witness sets forth in these materials what special knowledge and skills he or she has gained, where he or she has studied, where he or she obtained his or her training and experience, and why the combination of these factors provides an expert status beyond that of ordinary citizens.

The vast terrain of Internet resources becomes the first stop. The worldwide web and the growth of data aggregation services (such as ChoicePoint, LexisNexis, and Westlaw) have rendered access to countless volumes of research through a few clicks. Numerous aggregators, utilizing personal “identifiers” (such as complete names, residence addresses, and redacted Social Security Numbers) can provide information on where an expert witness has resided, when he or she was born, and where he or she makes his or her home now. This is vital information and allows for targeting *all* jurisdictions of relevance (remember the account of Superintendent Wesley above?).

As a prelude to on-site searching of public documents, data providers can also provide credible glimpses into litigation, professional licenses, property transactions, and corporate affiliations. However, records found online are normally provided in an abstracted form and are not, of course, admissible. Furthermore, because the information is repackaged, relying upon abstracted information precludes some of the subtleties and key elements available only through personal inspections of documents. In any case, online research can brightly illuminate the next step (see below) in investigating background.

Space does not allow for a comprehensive look at all Internet sources available; however, the

following Internet tools will provide a sample of how online research can sharpen the focus upon several areas of potential vulnerability regarding expert witnesses.

## Verify Credentials

Assuming that the expert witness’ CV provides detailed claims regarding education, licensing, certification, and prior involvement in lawsuits as an expert witness, much can be done online to refute or verify those assertions.

For example, in the case of an educational background, a researcher can access [www.studentclearinghouse.com](http://www.studentclearinghouse.com) to verify claims of attendance. The information obtained there should be supplemented with a telephone inquiry to the school’s Admissions Department. Fee sites include [atcredentials.com](http://atcredentials.com) and [degreechk.com](http://degreechk.com).

Licensing and certifications can be searched, for most states, at various “free” websites, such as [abica.com](http://abica.com) or [blackbookonline.com/info](http://blackbookonline.com/info), although, in many cases, free links will be provided to search-for-fee sites. In evaluating both educational and license credentials, the researcher should be on the lookout for evidence that the “expert” pursued his or her education online or through some unaccredited source, such as a “diploma mill.” State licensing and certification can normally be verified at the requisite state government website with jurisdiction over a particular profession. (Defense attorneys, or agents of defense attorneys, can search a database of experts who have been examined and disciplined at [Idex.com](http://Idex.com).)

Other sites offering a directory of public records, with links to free and for fee sites, include: [virtualgumshoe.com](http://virtualgumshoe.com); [brbpub.com](http://brbpub.com); [publicrecords.netronline.com](http://publicrecords.netronline.com); and [searchsystems.net](http://searchsystems.net).

## Publications and Media

Has your witness written scholarly articles, books, editorials, or monographs on his or her area of expertise? Has he or she been interviewed on radio, television, or Internet television? These media involvements should be identified and thoroughly reviewed in order to uncover any inconsistencies. Essential sources for checking published materials include the [lawreview.org](http://lawreview.org), LexisNexis, the United States Copyright Office, and the Library of Congress catalogue. And, although extending back only to 1998, any articles written by the expert witness might be searchable on [Looksmart’s find-articles.com](http://Looksmart.com). Not to overlook the obvious, simple

searches at google.com, amazon.com, or Barnes & Noble (bn.com) should be performed.

## Social and Business Networking Sites

Today, much of the networking that took place, in former times, at seminars, conferences, and cocktail parties, has transitioned to a growing covey of social and business affiliation websites, such as Facebook, MySpace, Ziggs, Orkut, and LinkedIn, where information is available regarding the personal and professional lives of users. These should be searched for any information regarding the expert witness. In addition, many expert witnesses, particularly those with marketing savvy, maintain their own website and/or blog site. Check out blogsites at blogsearch.google.com and clusty.com.

## Corporate Affiliations

Robert Ambrogli, editor of *IMS Expert Services Bullseye Newsletter* has this to say regarding one source frequently used but underutilized: "Anyone researching a publicly traded company would know to check the U.S. Securities and Exchange Commission's EDGAR database. But fewer think to search the EDGAR for information about individuals, even though it may contain a wealth of information. Corporate filings can provide information on an individual's business affiliations, employment arrangements, investments, and more. Even an individual's education and employment history can sometimes be tracked through EDGAR." (Robert Ambrogli, "How to Vet an Expert," *The Virtual Chase* (originally published in *BullsEye Newsletter*) [www.virtualchase.com/articles/vet\\_an\\_expert.html](http://www.virtualchase.com/articles/vet_an_expert.html).)

## The Daubert Tracker

Finally, the *Daubert Tracker* ([www.daubert-tracker.com](http://www.daubert-tracker.com)) allows for checking on the "gatekeeping history" of expert witnesses before they are deposed or retained. The database has aggregated information from more than 10,000 briefs submitted to both trial and appellate courts which relate to "gatekeeping" challenges filed to expert witness testimony.

## Public Records

The second step in evaluating an expert witness, following logically from information gleaned through online research, involves a thorough, aggressive review of public records, with a view toward identifying any lying, bias, inconsis-

tency, or character problems regarding what is claimed by and for the expert.

Researching public records is distinct from online research. It involves on-site identification, and subsequent examination of documents held by government agencies. Some researchers wrongly assume that "it's all on the Internet," and that online searching is a shortcut to background information. In fact, as valuable and effective as database research can be in achieving credible leads and economies of scale, it can never substitute for a thorough examination of extant public documents. There are several reasons for this. First, online searching cannot, in the very nature of things, directly produce anything that is admissible as evidence. Second, much of what is available online from data aggregators represents only abstracted information and is limited in scope, often eliminating minor but critical details in the original record. Finally, reliance upon data aggregation is reliance upon a long chain of data input, reduction, packaging, and sale. What online research can effectively clarify for your investigation is exactly what records you need to zero in on and obtain for examination.

This examination might include the following: real property records; tax assessment records; official records (including mortgages, liens, orders, abstracts of judgment, agreements, *lis pendans*, UCCs, and so on); vital documents (birth, marriage, death); civil litigation records; criminal cases; traffic matters; federal court records (civil, criminal, and bankruptcy); corporate filings; patents; trademarks; fictitious business names; professional licenses; certifications; bonds; affidavits; licensing authority complaint records; and an array of additional documents available (depending upon local/State disclosure laws) at public repositories.

Related to litigation records are any documents associated with the individual's role as an expert witness in prior, unrelated cases. Reviewing these transcripts could reveal inconsistencies between past testimony and testimony in your current case. Transcripts of depositions and trial testimony, affidavits, declarations, reports, reconstructions, any and all evidence submitted as an expert witness, should be obtained and reviewed. In this same connection, a review of publications, books, articles, and editorials authored by the witness as well as media accounts profiling the expert, could uncover surprising inconsistencies. A statement written or made in connection with previous

involvement in a trial or published in a book or article, may contradict an assertion made in your case.

In addition to the above records, the custodians of which are normally government entities (or court reporters), an entirely separate but equally critical category of "quasi-public records" can offer a wealth of information regarding an expert witness. For example, so-called "vertical files" available in public libraries, annual reports, affiliation/membership records, college rosters and catalogues, private collections, museums, and additional sources, sometimes ignored by researchers, can often yield important information.

Again, all of these records deserve careful examination, but the process needs to be managed with a view toward potentially undermining or impeaching the expert witness' testimony. For example, how does this professional affiliation or membership suggest possible bias on the part of this witness? How do these liens, civil judgments, foreclosures, or bankruptcies signal serious financial problems which may qualify the witness as someone whose motivation is driven toward "welfare for academics?" If this witness has been convicted of fraud or dishonesty, how credible is her testimony in this case? And as set forth in some of the examples above, puffing up or fabricating educational and professional credentials will fatally torpedo any expert witness.

To cite a specific example, in one California Superior Court case involving a construction defect, the author was asked to background an expert witness, being called by the defense, who claimed extensive knowledge and experience regarding cement fiber roofing materials. Through subsequent investigation, through public records, and interviews with colleagues and former employees, she determined that this witness, in the words of one source close to him, had "no experience at all" with cement fiber roofing (faulty claimed qualification). We further determined that the witness served predominantly as a defense expert for large developers, rarely testifying on behalf of plaintiffs (bias).

## Interviews

Finally, having accumulated as much information as possible, the third step in backgrounding an expert witness involves carefully targeted interviews. The subjects of those interviews, of course, will vary depending upon the vagaries of your case progress and the specific issues to which the expert will testify. A good starting point would

be the professional references provided by opposing counsel.

Other interview targets would include attorneys who have cross-examined the witness in previous cases, opposing experts, members of the expert witness' professional organizations, and former employees or co-workers. Media accounts often identify and quote experts who defend a position in opposition to the expert.

What distinct contributions can in-person or telephone interviews provide regarding the expert's background? For one thing, some facts about an individual never surface in public records or on websites, but are disclosed only through skillful questioning. For example, in speaking with a former colleague of the expert witness, it may be learned that there was a run-in with industry peers which, although it is not mentioned on a resume or tattled about on MySpace, may lead to information which could impeach his or her or undermine his or her credibility.

Aggressive, unrelenting inquiries by telephone can also pay huge benefits when it comes to confirming the affiliations and memberships claimed by an expert witness. The mere name of a professional group on his or her resume or the listing of his or her name on the historical archives of an organization's website does not always tell the entire story. A telephone call to the organization in question may reveal that your expert's affiliation was brief and no longer applies. Expert witnesses, in order to "beef up" the appearance of wide-ranging experience, sometimes provide a long list of "active" memberships which, when examined, prove to be outdated, or even false.

Finally, in connection with interviewing opposing attorneys who have cross-examined the expert, you will want to explore not only matters of fact regarding what the witness said, but his or her demeanor for candor and veracity. How does this expert "hold up" on the stand? What are his or her strengths and weaknesses? How does he or she react to aggressive questioning and other pressures? Does he or she project a "likeable" personality? How did the judge and the jury react to him or her?

In short, the potential value of direct contact during the background investigation, by telephone or in person, cannot be overemphasized.

## Conclusion

As the Internet age unfolds, unveiling new constellations of information and bringing new complexities to civil and criminal litigation, the

use of expert witnesses will no doubt increase as well. Due diligence demands, and the success of your case depends upon, thoroughly evaluating expert witnesses before cross-examination. The success of that evaluation is rooted in the effective management of a background investigation, including online research, public records research, and targeted interviews.

As computer analyst and science fiction writer P. J. Plauger once wrote: "My definition of an expert in any field is a person who knows enough about what's really going on to be scared." (Mr. Plauger, in a recent telephone conversation, confirmed that he wrote this for the now-defunct magazine, *Computer Language*, in his March 1983 column there.) If Plauger is even half correct, use that insight to your advantage when evaluating expert witnesses. Give them something to be scared about.



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*Jennifer A. Conta is an attorney Investigator with Batza & Associates, Inc. in Costa Mesa. She can be contacted via email at [jconta@batza-associates.com](mailto:jconta@batza-associates.com), and website [www.batza-associates.com](http://www.batza-associates.com).*