"Finding, Assessing, Managing Expert Witnesses"

A Continuing Legal Education Program for

LACBA

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Russ W. Rosenzweig

- Co-Founder/CEO, Round Table Group (formerly Thomson Reuters Expert Witness Services,) 1993-2011; 2019-present
  - Expert witness referral services to litigators
  - 6-time Inc. Magazine 500/5000 honoree
  - Featured in NY Times, WSJ, and 3 Stanford cases
  - Acquired by Thomson Reuters in 2010; re-acquired in 2019
  - Exhaustive personal network of experts, law firm partners, entrepreneurial executives, and litigation financiers

- BA Northwestern University, MBA University of Chicago
Today’s Agenda

• Expert Witness Search/Expert Engagement Best Practices
  ➢ Before the search
  ➢ Research techniques for finding experts
  ➢ Best practices for using expert witness search firms
  ➢ Researching your/opposition’s experts
  ➢ Checklists for interviewing experts
  ➢ Things that go wrong post-retention
  ➢ New developments in the expert world

Atticus Finch Destroying the Opposition’s Expert Witness
Imagine an Upcoming Expert Need…

• "A” Players v. “Average” Players
  ➢ In Life (ratio: 1.2:1)
  ➢ In Litigation: 10:1, 50:1 or 100:1
    o Multiplied by 100m+ cases filed each year in the US
  ➢ "A-level” Experts win cases, and they make others better
  ➢ It takes “A-level” experts to find “A-level” experts
Before the Search:  
Expert Engagement Criteria Checklist

- Communication Skills
- Availability/Time Commitment
- Location
- Reputation
- Potential Conflicts of Interest
- Expectations (scope of work)
- Prior Testifying Experience?
  - If so, what did he/she say?
  - Feedback from the lawyers?
  - Opposition will study transcripts
  - Prior trial or prior deposition
- Publications on the topic
- Budget/Billing Rates
- Others? Discussion
Decision Point

Outdated Methods:
- Find the expert on your own
  - “Who do we know?”
  - “Who have we used in the past?”
  - "Who does the client recommend?"
  - "Do a Google search!"

Recommended Practice:
- A collaborative, facilitated, joint effort with a skilled “expert witness researcher”
  - Complements your own internal expert search efforts
  - Speed
  - Thoroughness and rigor
  - Vetting/case-facts articulation
  - Highly favorable pricing
  - Expert “profile” reports
Finding Your Own Expert

• Traditional Method
  - “Roll Up the Sleeves” takes time and preparation
  - Personal Network
  - Referrals from other attorneys or client

• Doing Your Own Search
  - General Internet keyword search
  - Associations
  - Subscription Databases
  - Journal/Periodical/Book Reviews
  - Google Scholar
  - Patent Databases
Finding Experts Requires Thorough and Rigorous Research Using Cutting Edge Techniques
Expert Search Checklist

- Advanced Google search
- Research publications and journal archives, e.g., Google Scholar
- AI/Machine Learning: Microsoft Academic, AMiner
- Research the opposition’s experts and their prior reports/testimony
- Talent sites such as Indeed and Monster.com
- Static directories (Alm, JurisPro, Seek)
- Westlaw and Lexis/Nexis – research old cases for experts
- Trade Associations
- Linked In; Dice.com (engineering/computer science)
- Call university department chairs
- University directories
- Amazon.com – find relevant books and contact author
Mastering Google: Sample Search

• Your client is looking for a steel coil expert to determine the value of damaged steel coils and cut sheets...

• **Google allows you to create highly precise search strings that target key words and phrases in specific locations within a webpage.**

• [www.google.com/advanced_search](http://www.google.com/advanced_search)
  - File type: .pdf or .doc only

• See Google’s own explanation
  - [http://google.com/advanced_search](http://google.com/advanced_search)

• And also this interesting article:
Search String

"(steel OR steel coil) consultant" OR "steel coil expert" OR "steel* broker"

About 215,000,000 results (0.23 seconds)

- **Steel Expert Consultant - Custom Built Expert Team**
  www.kevinkennedyassociates.com
  We build it. We manage it. Call us!

- **Computer Forensics Expert - Chicago ENCE Certified Experts**
  www.f oresicon.com
  Corporate Data Investigation & PI’s

- **Spectrum Metals, Inc. - National Steel Coil Supplier**
  www.spectrummetals.com
  33 Years of Excellence

- **L.C. Steel LLC - Broker - 6038**
  www.steelspider.com/CcDirView6038.aspx - Cached
  L.C. Steel LLC - Broker - Carbon Flat Rolled. L.C. Steel LLC. Company Type, Broker. Primary Line, Carbon Flat Rolled. Email, larrycherrir@me.com ...

- **Steel Distributor Broker C.A.E.S Inc News Page**
  www.caes-inc.com/Steel%20Offers.htm - Cached
  Todays offers: September 20, 1999. ruler1.gif (5422 bytes). Hot Rolled C.Q.. 44400 lbs. .235 x 57.500 x coil. 42700 Lbs. .235 x 65.200 x coil ...
Sample Search

• Your client is looking for a drilling or petroleum engineer, located in the US/Texas, who has experience drilling off the coast of Africa…

• *Google allows you to create highly precise search strings within resumes only.*
Search String

Results 1 - 100 of about 275 for (intitle:~cv OR inurl:~cv) "(drilling OR petroleum) engineering" offshore africa (tx OR texas) -apply job.

[doc] RESUME
File Format: Microsoft Word - View as HTML
Registered as a proprietorship in Smith Co., TX: Ed G. Woods Reservoir Engineering ... Chad (Africa) Alaska, Alabama and Deep-water Gulf of Mexico ... 1977-78: Position: Division Supervising Engineer, East Texas Division, .... 1984, Overview of Offshore Engineering (EPR). 1984, Drilling Engineering Seminar (EUSA) ...
www.restechnic.com/doc/EdWoods.doc - Similar - 

Ralph W Baird Resume - 10:49am
Graduate Studies, Petroleum Engineering, University of Tulsa .... oil basins including the North Sea, South China Sea, West Africa and the Arabian (Persian) Gulf. ... Experience in U. S. Gulf Coast and Offshore Texas and Louisiana. ...
www.bairdpetro.com/ralph_baird.htm - Cached - Similar - 

Resume: Tom Stroud - 10:20am
Providing petroleum engineering services in drilling, completion and workover well operations for both onshore and offshore Louisiana and Texas. ... Houston, TX (1997 - 1998) Responsible for HES’s Directional Drilling, MWD, LWD and mud logging ... Texas, Louisiana,
And Once you Find a Promising Candidate…

- Find their contact info
- Reach out by e-mail or phone
- Have a process in place to follow up if they don’t reply
- Be available when they do call back
- Block out 30-60 minute of their time to...
  - Articulate the case facts, answer their questions, see if they’re qualified/interested
- Send them complaint and case materials for review
- Follow up/schedule additional call/interview
- Discuss/negotiate billing rates (RTG will help in this regard)
- Let the others off easy
- Manage the expert
- “Deal” with invoice disputes and payment inquiries
A Collaborative/Joint Methodology

• In depth discussion of the matter and review of the complaint
• Conduct a thorough and rigorous search independently
  ➢ Via the methodologies already described
  ➢ Via a database of 175,000 experts + personal connections with Deans and Department Chairs
  ➢ Via an exhaustive literature search using the “Author-Topic Model” (Rosen-Zvi et. al 2004) and “Co-Authorship Networks” (Newman 2004)
  ➢ Via Thomson Reuters, Lexis Nexis (full spectrum of resources), LinkedIn Premium, Patent Databases
  ➢ Via AI, network models and “Machine Learning” programmed to search vast resume and publication pools
  ➢ Via a “squadron” of “gig-economy” Ph.D. candidates in numerous fields + focus on emerging young scholars/ass
• Actually get in touch with candidates, vet them, ask for recommendations
• Negotiate billing rates on behalf of the attorney/client
• Ongoing support throughout the engagement to ensure expert is exceeding expectations and monitoring invoices
What to tell expert before/after retention

• **Before retention**
  - Parties for conflicts check
  - General facts and circumstances so expert can assess her or his own fit for the case
  - Only information already in the public record (pleadings and discovery responses)
  - No confidential information
  - General timeline of litigation so expert can assess availability.

• **After retention**
  - While there are protections to counsel communication with testifying experts, the extent of the protection is still subject to interpretation by the courts and certain communication are or may be subject to disclosure.
  - Counsel should exercise caution in communicating with a testifying expert and should be aware of the general rules related to expert communications (which will vary depending on the jurisdiction) and understand that there are a lot of gray areas.
  - Counsel may want to limit the information provided to that which they deem necessary for the expert to formulate their opinion/report. Also, counsel may want to advise experts that any communications may be subject to disclosure and encourage telephone communication for sensitive information
Double-Checking: Expert Profiles

- Transcripts
- Court appearances
- Depositions
- Challenges
- Videos
- Publications
- News stories
- Social media profiles
- Testimony Exhibits
- Court Documents

Image: My Cousin Vinny Cross-Examining the Opposition’s Expert Witness
Expert Interview Checklist

- **Introduction of All Participants**
  - Interviews often include associates, partners, and in-house counsel from the client. Expert may be a part of an “expert team” or group.

- **Disclosure of Parties and Sides**
  - Let the expert know who you represent and what side you are working for. Also disclose additional parties on both sides.
  - Find out if the expert has any conflicts with disclosed parties.
  - Ensure expert has no financial stake in the case or the company.
  - Provide expert with basic case facts, generally and specific information regarding sections of the case in which expert would be involved.

- **Case Overview and Background**
  - Discuss what it is you needed the expert to do – consulting, testify at trial (deposition, arbitration), written and oral reports, prior art search, invalidity and infringement analysis, etc.

- **Discussion of Expert Needs, Scope**
  - Education (degrees, certifications), Memberships, Work History, Publications, Expert Witness Experience (Testifying, Consulting, Expertise Challenged), Teaching/Presentations, etc.

- **Expert Credential Review**
  - Get the experts initial opinions to make sure they can support your claims.
  - Gauge expertise by discussing specific details of the industry, technology, etc.

- **Expertise**
  - Provide information on key case dates including expert disclosure, report deadlines, depositions, trial commencement, site visits, inspections, etc.
  - It may also be possible to get an hour estimate for expert as well.

- **Scheduling**
  - If the expert has experience, get references from other attorneys, ask for copies of relevant publications, get deposition transcripts if necessary, send documents for preliminary review, schedule follow up call or in-person meeting, indicate when a final decision may be made.
Deposition/Testimony Preparation

• Instruct expert to avoid appearing biased and instead appear factual and nonpartisan
• Prepare expert on how to explain complicated subject matter in a simple way for jury
• Anticipate cross-examination questions and practice responses
• Explain that opposing counsel will attempt to frame cross examination questions as oversimplified Yes/No questions. Explain that expert should elaborate
• Instruct expert to avoid using “absolutes like “This is always the case” or “without exception” or “in every instance” to protect against opposing counsel citing an exception and calling into question expert’s credibility.
• Practice techniques to fully explain answers even if opposing counsel attempts to cut expert off because she doesn’t like the answer
• Instruct expert to remain calm and professional even when being attacked. Let the attorney object to any objectionable questions
• Take a few seconds before answering. Think through the response
• Preparation is key, but you want the expert to appear authentic and not overly prepared/rehearsed.
• Instruct expert to maintain eye-contact with the jury
• If the expert will have a demonstration, make sure all the technology is in order and that the room is set up for the technology
Things that Go Wrong Post-Retention…

• 95% of problems are a result of poor communications with the expert
  ➢ … and 95% of THOSE problems are: how much it will cost and how long will it take

• “The single biggest problem with communication is the illusion that it has taken place” – George Bernard Shaw

• Sending boxes of documents without instructions

• Deadlines

• Scope/expectations

• Estimates are never binding because scope of work ALWAYS changes and experts rarely understand the full “lay of the land.”

• Timely payments of expert bills. The lack thereof creates a double standard, causes deep frustrations and demonstrates a lack of appreciation. Experts wonder if they should keep working.

• Non-diplomatically handling invoice disputes.
  ➢ “There is no WAY it should have taken THIS long and cost THAT much!”
  ➢ “It should have been OBVIOUS”
Just Launched/New Developments

• Diversity and inclusion in the expert witness ranks
  ➢ Please email us your recommendations, especially professors

• Methodologies for optimizing settlement negotiations
  (Prof. Bruce Bueno de Mesquita, et. al.)

• Including experts in settlement discussions

• Litigation finance – fast determination and optimized financier selection

• Litigation insurance

• Round Table Group’s expert witness education curriculum
  ➢ Developed by… you!
What would you like to see re: Expert Witness Training?

1) Training for first time expert witnesses
2) Excellence in report writing
3) Deposition preparation
4) Testimony training

Discuss: your recommendations?
Round Table Group
Thomson Reuters Expert Witness Services

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