

# Mission Not Impossible: Finding Niche Medical & Scientific Experts

JANE T. DAVIS<sup>3</sup>

Countering plaintiff's defect theory, rebutting general or specific medical causation, or evaluating a claimed element of damages? The assistance of several experts will likely be required. As a defense attorney, you find yourself tasked with quickly, efficiently and effectively locating an expert. The person you are looking for must not only have precisely the education and experience necessary, but must also be willing and available to serve as an expert and be skilled at simplifying complex concepts and communicating them in an effective and winning way. In sum, the expert you must find must be not only knowledgeable, but likeable and capable of easily transferring his knowledge.

You may be lucky, and the scientific or medical topic relevant to your case may be familiar to you or may be one that regularly arises in cases you handle. More likely, however, it's in an area you have never heard of, much less explored. Defense lawyers tend to eschew services or organizations featuring experts who advertise or make their living testifying. This article will focus, therefore, on other ways to find that doctor or scientist who has just the specialized knowledge you need, but who acts as an expert either infrequently or has no prior experience acting as an expert witness. Information provided will help you identify the particular area of expertise you are seeking, then help you find someone with that specific expertise. Finally, steps you can take prior to making that first telephone call to the potential

expert to help you determine if you have indeed found an appropriate candidate will be explored.

**Defining Your Mission: Who Are You Seeking?**

Is the cardiac procedure at issue more often performed by a cardiologist or an interventional radiologist? What scientific specialty can best evaluate the animal testing that plaintiff's expert says shows toxicity? Will a neurologist or a neurosurgeon likely know more about a stroke caused by an aneurismal subarachnoid hemorrhage? How can you quickly start looking in the correct direction?

- **Evaluate Plaintiff's Expert**

Don't wait to look for your expert until you have the plaintiff's disclosure, but if you happen to know who the plaintiff is using, then start with evaluating their expert. What are her credentials? Don't just automatically limit your search to the same credentials as the plaintiff's expert, though. Plaintiff's counsel may or may not have chosen the best fit. Evaluate the fit yourself. Take the additional steps below to gather information so that you can determine the parameters of education and experience your expert will need.

- **Ask Your Client.**

Begin by asking in-house counsel if the company has had this issue come up previously. If so, what type of experts were used in that case? Even if your client doesn't want to use the same expert again, you can find out what specialty area was used and whether your client felt that was a good fit. Did the plaintiff in the previous case use someone you

should consider? Also find out whether any outside experts or consultants have been involved with the product at issue. Their credentials may signal you as to what you need, and from a practical standpoint, you need to know who has been previously involved early in the search process.

Also ask who at the company should you talk to learn more about the field? If your client employs scientists in even a remotely related field, they should be interviewed as a way to educate yourself about the field and the typical education and training of experts in that field. Learn what licenses are required in the field and who the licensing authorities are. Find out what major professional organizations service the field and if there are committees or specialty areas within those organizations that might harbor candidates. What are the top institutions that provide training in this field? What research is ongoing in the field, and who is leading it? Company employees may have specific recommendations of individuals or at least give you a better understanding of the field.

If your client employs scientists in the specific area you are seeking or if your client's employees perform the type of testing at issue, you are in luck. They will be very valuable and usually easily accessible sources of information. If your client uses outside contractors to perform work in the area, you should talk to someone at the company whose responsibilities include outsourcing this type of work. What specifications do they require when choosing a contractor? Who are the main service providers

in the field? Also, be sure to find out who your client actually uses for this type of work; you will likely want to avoid using them since they would be subject to cross-examination regarding their relationship with your client. However, you can view their website to learn, for example, the credentials of their scientists, and perhaps even talk with them about who their top competitors are.

If your issue is one for a physician and your client has a medical officer, talk with her and ask the same type of questions. If she needed the treatment involved in the case, what type of specialist would be sought? What specialty usually performs the procedure at issue? Sometimes two or more medical subspecialties may offer a particular procedure or surgery. What criteria should you use to evaluate which is the better fit for your case? What are the subspecialty areas of fellowship training in this area? What medical centers have the top rated residencies?

- **Ask Others with Medical or Scientific Training**

If your client hasn't had to address this issue previously or if your client doesn't have doctors or scientists on staff, then you'll have to pursue other avenues of information. If your firm has a nurse consultant or other scientifically trained support person, they are a terrific source of information. Perhaps your firm has an attorney or paralegal with medical or scientific training. There also may be attorneys in your firm you have client relationships with physicians or healthcare entities who may be willing to give you some direction. Seek them out.

Another source of general information on what type of expert you need can be obtained by contacting a physician you've used in the past as an expert.

A physician who you know socially or even one who treats you may be willing to answer your questions. They may be in a different specialty than what you think you need, but they will still be knowledgeable regarding the various medical sub-specialties and the parameters of their expertise, especially if they typically refer patients to specialists in that area.

- **Visit the American Board of Medical Specialties Website**

Another source of information about various medical subspecialties is the American Board of Medical Specialties (ABMS) website. The ABMS is a non-profit organization that assists approved medical specialty boards in overseeing the board certification of physicians. Its website, <http://www.abms.org>, contains, among other things, a description of greater than 145 various specialty and subspecialty areas of medicine. Information on this website can help you decide, for example, if a cytopathologist, neuropathologist, dermatopathologist, or forensic pathologist is the correct medical subspecialty to review the tissue samples in your case.

- **Consult Textbooks and Leading Treatises**

Check your firm's library, search online, or see what the local medical school has to offer in the way of leading treatises and textbooks on the subject. What are the medical or scientific specialties of the authors of the chapter that covers your area of interest?

- **Evaluate the Literature**

A Pub Med or similar search can tell you who has written on your topic or related topics. Identify the authors—the last author is usually the most senior person involved in the study; the first author is typically the person who ran the study and wrote the manuscript. The insti-

tutions from which these authors hail are usually at the beginning or end of the article. Once you have their name and institution, finding them on the internet is usually a cinch. Often their degrees, board certifications, or even CV's are available on-line, so you can easily determine their credentials. As will be discussed later, the literature may very well provide you with the names of potential experts, but even if it doesn't, you can determine the educational background and experience of people who are knowledgeable in the area.

Once you've taken these steps, you should be well on your way to knowing the educational background and training of the person you are seeking. Once you've identified the specific field, the next step is to find out who the leading experts in that field are and where they are located.

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### **Performing Your Mission: Where Are They Hiding?**

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Now that you know you need someone who is a leading expert on, for example, the ontogenesis of human metabolic hepatic enzymes or a physician who subspecializes in dermatopathology, and who is also available, personable, and an effective teacher, where do you start?

Before you begin, give some thought to finding someone not only with the requisite academic training, but also with the intangible aspects you seek. One requirement is availability. Academic physicians and scientists are usually more apt to accept work evaluating scientific issues raised in litigation than are practicing physicians and scientists employed by industry. Not that you should rule out the latter; rather, you usually simply have a higher percentage chance of finding a willing individual

among the academicians. They seem to have a bit more available time, and if you call them about an issue that fits well with their practice or research, they will often accept your invitation to become involved in something which appeals to them intellectually. The potential downside of some academics is that they may not be as skilled in interpersonal and communication skills as professionals whose livelihood is more directly dependent on repeat business from the public. If the potential expert you are considering teaches, consider entering the name on <http://www.rate-myprofessors.com>; they may have been rated by their students on a variety of levels.

As you are evaluating potential candidates, also be looking for ways to subtly evaluate their personality and effectiveness as a communicator. Professors who consistently receive “teacher of the year” or similar awards from their students usually have winning ways. Scientists who lead their national organizations or chair important committees usually have good leadership skills. Physicians who are often asked to present at meetings of their peers typically have good communication and teaching skills. As you are reviewing potential candidates look for people who not only have the expertise you need, but who have demonstrated interpersonal relationship and leadership skills that will allow them to connect with a judge and jury.

Before you embark on your search, you should, of course, also consider the geographical area that you intend to search. Most of the strategies below are designed to find an expert on a nationwide basis, although they will also likely generate international possibilities. On the other hand, your issue may be in a single case, although that’s certainly not

the norm these days. Or you may have other reasons for hoping to find an expert who is located in a certain state or region of the country. If that’s the case, there are a few strategies you may want to employ:

- **Check State Licensing Boards**

Many states provide licensing or board certification by specialty, and may even subdivide this information by county or city. This is very helpful if you are looking for a certain medical specialist in a particular geographical area. The Federation of State Medical Boards provides a free link to all fifty state medical boards’ websites at [http://www.fsmb.org/directory\\_smb.html](http://www.fsmb.org/directory_smb.html).

- **Scrutinize Professional Organizations**

Many professional organizations, societies and trade associations have local chapters or state counterparts. Visit the organization’s website to determine who the key players are in the geographic area you are seeking.

- **Review the Available Jury Verdict Information**

Review information about recent trials and settlements in your jurisdiction, especially if any similar litigation typically occurs in the area. See who has been testifying and who has prevailed.

On the other hand, if you are going to engage in a broader regional or national search, additional strategies may be employed.

- **Review Expert Databases**

DRI’s expert witness database, located on its website, is a great place to begin. Experts may be searched based on criteria including name, location, and area of specialty. Other defense organizations such as IADC and PLAC may be available as sources of information to you or to attorneys at your firm. Check them out, but if you’re still looking, keep reading.

- **Scan the Literature**

A Pub Med or other search of a medical literature database will reveal to you who has been researching and writing on your issue. There are also newer pay services such as Collexis’s Casemaker-Medical that aim to make identification of experts through literature search easier. As you are scanning the literature, also be looking out for who are your candidates’ co-authors. Look to see if your candidates are publishing with plaintiff’s experts or with persons whose position on your issue may be publicly known. Review articles may not only identify a person with deep knowledge of the area, but will also provide you with important background information on the topic. Beyond journal articles, textbooks and reference manuals are fruitful places to explore.

- **Ask Your Friends**

It’s unlikely, though possible, that you are the first person to seek an expert on your issue, even if it is ontogenesis of human metabolic hepatic enzymes. Remember to consult your firm’s expert witness database, ask others at your firm, ask trusted friends at other firms, ask members of DRI or other defense organizations, and ask your friends who are doctors or scientists.

- **Find Out Who the Leaders Are**

By now, you likely know the names of the professional organizations, trade associations, and practice groups your potential experts frequent. Investigate their leadership. Review their committees. Check out who wins their awards. Review their recent programs to see who is speaking on your topic. Many of these organizations also have specialty groups, practice area groups, or subcommittees. Match these to your topic, and you may find a candidate.

- **Review Practice Guidelines and Position Papers**

Many times professional organizations

concerned with the issue you are exploring will have issued professional practice guidelines or parameters or position papers on the topic. These are typically on the organization's website. Usually, the key leaders on the topic will have been invited to participate in the committee devoted to researching and writing these guidelines. These committees are usually quite large, often providing a treasure trove of potential experts in a wide variety of locations.

- **Check out the Top Academic Institutions** Search the internet to determine which medical schools have the highest rated residency programs in the sub-specialty area you are seeking. Oftentimes the top experts gravitate to the best programs.
- **Find Out Who is Currently Performing Research**

Who is currently performing research on your topic? ClinicalTrials.gov (<http://clinicaltrials.gov>) is a registry of federally funded and privately supported clinical trials. You can also go to the NIH website (<http://www.nih.gov>) and search the Computer Retrieval of Information on Scientific Projects (CRISP) database. Find CRISP by looking under the topic of Grants and Funding, then under Award Information and Data. You can learn who the principal investigator is on current NIH funded research, which is organized by medical topic. Perhaps you will find your expert there.

- **Use Traditional Legal Research Tools** Use familiar legal research tools – Westlaw, Lexis – to search reported cases for experts who have testified on your topic. If there has been past or current litigation on a similar topic—for example, regarding another drug in the same class or regarding a similar medical device—check Pacer and other on line court services to see if expert disclosures

or reports are available. Daubert motions may likewise provide useful information, although it may be primarily on pitfalls to avoid.

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### **Completing Your Mission: Have You Found a Viable Candidate?**

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Before you pick up the telephone and call someone who you have identified as a potential candidate, a bit of further investigation is wise. Available background information can be obtained from many public record sources, which may give you more insight into the person you are considering. Are their professional licenses current? Have they been subject to disciplinary action? Have they been quoted or interviewed by the media? Do they have outstanding tax liens? The answers to these and other questions can help tell you whether you want to make that call.

- **Review Legal Data Sources** Lexis and Westlaw searches can tell you if your candidate has testified regarding any published cases or in Daubert-related proceedings. Some specific Lexis and Westlaw databases to check are those specifically related to expert witnesses, Daubert, and briefs, such as Daubert Tracker (Lexis), EW-Docs (Westlaw), DAUBERT-Docs (Westlaw), and Briefs-All (Westlaw). Jury verdict services and agency opinions should also be checked.
- **Verify Professional Licenses** Many licensing agencies have online databases that can tell you whether your candidate's professional licenses are current and unblemished. Find out. Remember the links to all fifty state medical boards' websites are available at [http://www.fsmb.org/directory\\_smb.html](http://www.fsmb.org/directory_smb.html). If you are unsure as to all the states your candidate may be licensed in, consider obtaining a Physician Profile

and Disciplinary History Report, available for \$9.95 at <http://www.docinfo.org>.

- **Search for Media Appearances** Internet and news searches should be made to determine what appearances your candidate has made in the media. Your adversary will surely do these searches before your expert's deposition, so you had better do them first. Using Westlaw and/or Lexis News databases is a good idea since these typically cover newspapers as well as transcripts of television and radio news reports.
- **Review Expert Witness Databases** If you have not already, check expert witness databases, such as DRI, IDEX, and your firm's internal database if you have one.
- **Scan Articles Authored** Have a Pub Med search run and review what your candidate has written. Again, don't forget to consider not only what they have published, but who they have published with.
- **Check Other Public Record Sources** Several services exist which can provide you with additional public record information regarding your candidate. These reports can tell you if your candidate has declared bankruptcy, has tax liens, etc.
- **Do General Internet Searches** Again, your adversary will do this; you should do it first. In addition to general searches, try using Google Scholar (<http://scholar.google.com>) and Google Books (<http://books.google.com>), or just click on the "More" tab at the top of Google's main page. Sometimes, experts have given professional presentations or webcasts that are available on the internet. What could be better than seeing your potential candidate in action?
- **Consider Additional Sources** For candidates with significant testimonial histories, consider additional

searches. Both Lexis and Westlaw have additional expert witness databases that are available if justified by the cost.

Think about whether you should utilize Expert Profiler, Expert Challenge Report, or Expert Evaluator Report on Westlaw or Expert Witness Transcripts or Expert Witness Summaries on Lexis.

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### **Mission Accomplished?**

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Well, you won't know until you've made

that call, met the potential expert, etc. However, by using these strategies, you will likely have compiled a list of several qualified individuals who are viable candidates. You will almost certainly get turned down from time to time due to the candidate's lack of interest, busy schedule, sabbaticals, etc. If you've scoured these sources, though, you should have another qualified candidate on your list ready to take your next call. It is possible to find that scientist or

physician who has never testified before, but whose area of expertise fits precisely in your case, and who is an effective and personable communicator. You just have to know where and how to look.