

How To Harness The INFORMATION EXPLOSION

By James F. Boccardo, Richard Alexander and Michael Kennedy

Winning litigation turns on accurate information. Having the right information at the right time often can mean the difference between success or failure. Finding a "smoking gun" that your opponent claims never existed can turn a sow's ear into a silk purse. A case in point:

On July 14, 1978 San Jose youth Steven Throop suffered severe electrical burns when he climbed up on a boxcar parked on Consolidated Rail Corporation's (Conrail) mainline in Washington, D.C. The District of Columbia follows the rule of strict contributory negligence, which precludes anyone who contributes to an accident from recovering. In addition, District of Columbia law requires no duty to a trespasser. Although these rules virtually ensured an absolute defense for the railroad, Conrail eventually settled for \$8.5 million.

Knowing where to look, to whom to talk, and what to ask enabled Throop's attorneys to discover, among other

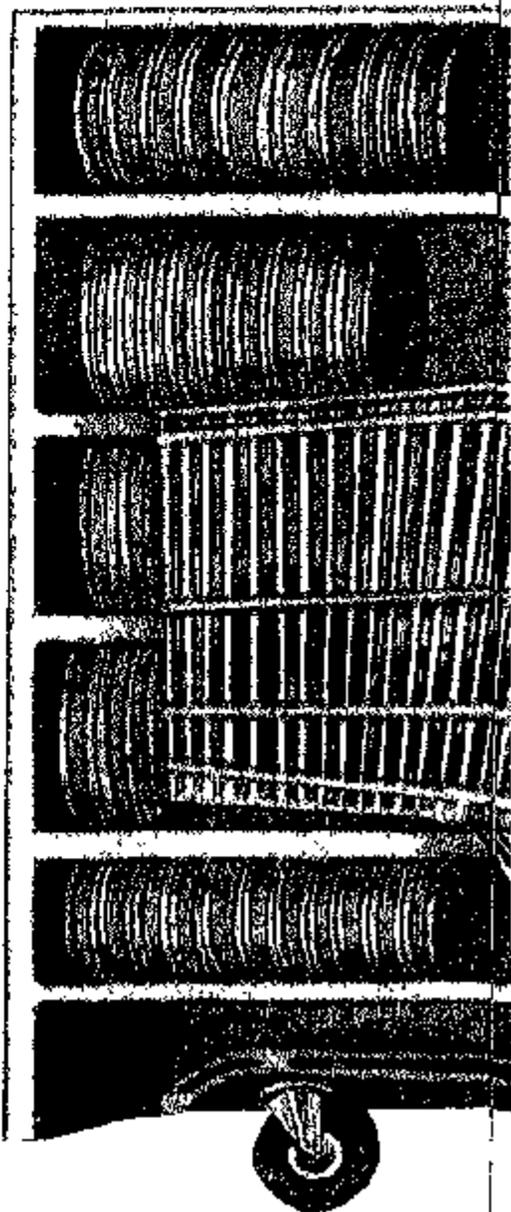
things, applicable government standards, Conrail's own regulations and safety requirements, and a detailed history of the company's electrification project. Conrail had denied notice of prior accidents and opposed discovery designed to determine the railroad's accident history. However, a valuable record of previous accidents similar to Throop's was uncovered proving Conrail's purposeful failure to make any safety alterations despite an accident rate of chronic proportions.

Finding such information used to take weeks or months of dogged legwork to uncover. Now with a creative mind and the use of computer databases, it usually can be found in days, and sometimes hours. It is a matter of harnessing the information explosion and making it work for you.

Pressured by severe time restraints, many attorneys have enlisted the aid of information brokers to help them determine whether certain information is available, if it can be found quickly, who the experts are in the field and where they can be located. These brokers are part of the fast-growing information industry that has made a business of collecting, organizing, and selling information. With the aid of such a broker and the new computer technology, thousands of sources of information from around the world are now readily accessible to the attorney who needs them.

Government Sources

In proving the plaintiff's case, a plethora of federal and state statutes, regulations, and safety orders concerning a variety of products and activities



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will assist. Not only may a statutory scheme such as the Consumer Product Safety Act provide for a direct civil remedy, but counsel may also locate agencies concerned directly with a product that can serve as a basis for gathering further information.

The US Consumer Product Safety Commission, an independent federal agency whose main purpose is to reduce injuries, issues consumer product safety rules and can ban hazardous products. It maintains an Injury Information Clearing House to investigate and disseminate data relating to the cause of injuries associated with consumer products. Both general and model specific information are available.

The National Technical Information Service of the US Department of Commerce supplies a wide range of technical information and has a computerized literature search service. Its database is also available commercially through a number of vendors and information brokers.

The Occupational Safety and Health Administration (OSHA) publishes numerous regulations and pamphlets on workplace safety and health standards, the use of industrial substances, and safety in industrial and construction operations.

Another source of information on regulated substances is the Environmental Protection Agency, which has the authority for air, water, and pesticide standards.

Information concerning standards for various products and materials is available from the Office of Technical Information and Publications of the National Bureau of Standards.

The Food and Drug Administration (FDA) should be contacted in cases involving food, drugs, medical devices, or cosmetics. The FDA establishes the standards for regulated products and also has information on drug ingredients and food and drug manufacturing methods.

Electronic products that may emit radiation are regulated by the Bureau of Radiological Health, which has information concerning research, testing, and recall campaigns.

The National Highway Traffic Safety Administration develops and issues safety standards for all new cars, conducts research on accident prevention, investigates motor vehicle defects, and enforces notification of defects to owners of records. Numerous publications are produced by the administra-

tion for consumers and their lawyers. The Federal Highway Administration is concerned with improving highway safety and conducts highway safety research relating to trucks and buses. The Transportation Research Board will conduct a computerized search and furnish abstracts of all engineering articles pertaining to highway topics.

The US Coast Guard sets standards, makes factory inspections, and conducts investigations of consumer complaints of defective boats. The Coast Guard notifies boat owners when defects are found.

Some other federal agencies that can assist the plaintiff's lawyer are the Federal Aviation Administration, the National Transportation Safety Board, and the US Fire Administration (part of the Federal Emergency Management Agency).

The legislatures of most states have provided standards for a broad range of products and local OSHA offices may issue safety orders regarding such things as aerial trams, elevators, high voltage electricity, tunnels, and window cleaning.

State police or the highway patrol should be checked for regulations concerning the use and equipment of motor vehicles. Most state fire marshals issue fire safety standards and basic building design and construction standards.

Local government agencies also can prove helpful. City and county building departments, licensing bodies and the like, often issue the rules and regulations that control the situation being litigated. This possibility is often easily overlooked.

Private Sources

Counsel also should take advantage of the enormous amount of safety and accident prevention information published by insurance organizations. The Factory Mutual Engineering Corporation of Norwood, Massachusetts publishes a catalog of books, pamphlets, and films on the prevention of industrial accidents, as well as data on preventing losses by fires, explosions, and machinery accidents.

The American Insurance Association maintains an engineering and safety service and has pamphlets concerning a wide range of accident prevention topics.

Technical and scientific information can be located in several indexes that

contain references to scientific books, articles, and reports on almost every product manufactured. The Applied Science and Technology Index, Engineering Index, and Science Citation Index should be checked. The latter two are available in database form.

The National Safety Council, National Fire Protection Association, American National Standards Institute, American Chemical Society, American Society of Mechanical Engineers, American Water Works Association, and the Manufacturing Chemist's Association all have scientific and technical data.

The Automotive Safety Foundation in Washington, the Transportation Safety Department of Calspan in Buffalo, New York, and the Highway Safety Research Institute in Ann Arbor, Michigan, all do research in the field of automobile design. The Society of Automotive Engineers in Warrendale, Pennsylvania maintains a complete library on automobile components and safety standards, and produces a commercially available database.

Expert Advice

The search for information is often an arduous task and in many cases will be assigned to an expert in the field. Finding a qualified expert at the outset is usually the major factor in successfully proving your case.

Several of the jury verdict reporters, in addition to monthly reports of verdicts, publish valuable indexes of all experts who have testified during the preceding year. In the case of the *California Jury Verdict Reporter*, the list is indexed by name and field and is cross-referenced to the reported verdict.

Esoteric subjects requiring expert assistance often defy definition due to the difficulty in locating qualified experts. Here an information broker can be invaluable. An in-depth computerized literature search can produce a list of authors in virtually any field, or, at a minimum, should lead to qualified experts willing to consult with attorneys. The broker also can pre-screen potential experts for the attorney.

In a recent case involving a vintage fire hose coupling that failed when placed under pressure, all identifying marks had been obliterated by use and the manufacturer was unknown. A literature search uncovered a San Diego author, an expert on fire hose coupling

threads, who was able to identify the small Wooster, Ohio manufacturer from a photograph of the coupling. After service the manufacturer admitted that the coupling had been originally designed with set screws to prevent failure, but that this safety device had not been utilized until after field complaints confirmed the need for this feature. This information flowed from a few hours of effort by an information broker, a telephone call, and a short letter to the author.

Computer Data Sources

While WESTLAW and LEXIS continue to revolutionize the way lawyers do legal research, a growing number of attorneys are realizing that a vast array of non-legal databases exist that can help them obtain the facts they need to document their cases. There are currently more than 300 of these non-legal databases on the market, making the breadth of available information astonishing. Most of the databases are interactive and relatively easy for the uninitiated to use. A creative mind and a knack for keyword strategy allows the attorney to progress from everyday, pedestrian language to the sophisticated terms of art used to index the documents in the database. These terms then can be used to retrieve the documents in the database that are on point.

Unlike WESTLAW and LEXIS, which are full-text systems, most non-legal databases are either bibliographic or numeric. The bibliographic databases provide brief abstracts of source materials and enough information to locate them. The numeric databases provide financial and statistical information, usually in tabular form. In virtually any area of research the computer databases often will provide just the information needed.

Products liability. For the attorney specializing in products liability, databases can be used to locate studies of, for example, the force-deformation characteristics of motorcycle helmets, OSHA regulations for stepladder construction, and news stories concerning the Dalkon Shield. Such databases as COMPENDEX (engineering), STANDARDS AND SPECIFICATIONS, NATIONAL TECHNICAL INFORMATION SERVICE, and SOCIETY OF AUTOMOTIVE ENGINEERS are helpful. More specialized databases, such as RUBBER AND PLASTICS RESEARCH ASSOCIATION AB-

STRACTS, also provide information on the products, processes, and producers in specific industries.

Personal injury. Personal injury specialists can access a number of databases to research topics such as tire and seat belt failure, the slipperiness of a specific shoe sole material, the incidence of pinch point accidents involving trash compacting equipment, and information on accidents occurring at railroad crossings. Among them are SAFETY, TRANSPORTATION RESEARCH INFORMATION SERVICE, and TOXLINE. Again, more specific databases, such as SPORT, can be used to document special types of injuries.

Attorneys specializing in medical malpractice can search non-legal databases for topics such as the proper procedures for fetal heart monitoring, unnecessary mastectomies, and possible

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links between trauma and Lou Gehrig's Disease. MEDLINE, MENTAL HEALTH ABSTRACTS, and BIOSIS are the major databases for this field. Attorneys wanting information specifically about drugs, including clinical testing reports, side effects, and recommended dosages, should also be familiar with PHARMACEUTICAL NEWS INDEX and INTERNATIONAL PHARMACEUTICAL ABSTRACTS. Another database, RINGDOC, is especially useful for locating reports on drug chemistry.

Criminal law. Criminal law attorneys will find the NATIONAL CRIMINAL JUSTICE REPORTING SERVICE and the CRIMINAL JUSTICE PERIODICAL INDEX databases helpful in researching such topics as disputes over the legal limit of alcohol in the blood before a person is considered to be driving under the influence, unsanitary prison conditions, and juvenile justice. A more

specific database, CHILD ABUSE AND NEGLECT, is also available.

Patents. There are now more than a dozen patent databases. Patent attorneys wanting to verify patent infringement, the use of a selected brand name, or inventions similar to that of a client can turn to these. The various CLAIMS and PATLAW databases cover US patents as well as those from selected foreign countries. International patents are classified in INPADOC, and those dealing with petroleum refining are collected in APIPAT, a database developed by the American Petroleum Institute.

Labor. Labor attorneys should be familiar with LABOR STATISTICS and LABORDOC. The former is a numeric database providing time series statistics generated by the Bureau of Labor Statistics. The latter is a bibliographic database covering worldwide labor-related literature in such areas as management, law, and environment.

Corporate. Corporate, securities, and business attorneys now can locate financial information on a publicly owned company, securities violations committed by a particular broker, or news coverage of a merger between two previous competitors with the aid of the NEW YORK TIMES INFORMATION BANK II, DOW JONES, AMERICAN BANKER, DISCLOSURE, PREDICASTS, STANDARD & POOR'S NEWS, and MAGAZINE INDEX databases. Many industries are treated in depth in specialized databases as well, such as WORLD TEXTILES, CHEMICAL INDUSTRY NOTES, and COFFEELINE.

Those attorneys engaged in specialties involving either monitoring or tracing the history of regulations or legislation now can do so easily without having a person in Washington or the state capital. Federal and State Associates Reporting Services Inc. constructs a customized database for each of its clients using its massive databank of information on proposed legislation and regulation on both the state and federal level. Each client can select as many specific areas to track as desired, and the resulting databank can be altered easily to accommodate changing circumstances. VOTES provides the results of roll call votes in the US Congress by bill and member name. CONGRESSIONAL RECORDS ABSTRACTS, FEDERAL REGISTER ABSTRACTS, FEDERAL INDEX, CONGRESSIONAL INFORMATION SERVICE, and GOVERN-

MENT PRINTING OFFICE MONTHLY can be used to track proposed legislation and regulations in a more direct way. Most of these databases also are helpful for compiling legislative histories, which can be valuable in determining legislative intent and in locating experts in a given industry.

Environmental. Environmental attorneys can research via computer such topics as the success of government-sponsored river cleanup projects, the effects of PCB spills on the environment, and safety of nuclear power plants. ENVIRONMENTAL BIBLIOGRAPHY, DOE ENERGY, ENERGYLINE, POLLUTION ABSTRACTS, and SELECTED WATER ABSTRACTS are all helpful.

Access to Computer Data Sources

While the sources of much of the preceding information are not new, the use of computer technology has made them far more accessible to today's attorney.

For example, the National Technical Information Service has been estab-

lishing reports from government-funded research for decades. Yet tracking down specific information was for many years a long and frustrating task. Now a computerized index to these reports often makes this information available in minutes to the experienced researcher.

Attorneys can gain access to the various databases in a number of ways. If a law firm already has a WESTLAW terminal or a word processor with a communication modem, the lawyer may be able to dial up these systems directly on the phone. A number of libraries and government agencies will perform searches of their in-house databases as well as databases to which they may subscribe. There also is a growing number of information brokers who include computer access in their research services.

Exceptionally well-qualified information brokers now are available to find and package all types of information into reports tailored to meet an attorney's specific needs. These brokers are of two types. The first—general information brokers—have mastered the art of locating all types of information quickly through the use of computers,

personal contacts, and traditional research methods. The second type specializes in locating information in specific fields, such as biology, patents, or medicine. Either type may focus on servicing a particular market section, be it business, the legal profession, or government.

Conclusion

In today's practice, the smart attorney must learn to harness all the information resources available. Thorough research utilizing everything from probing interrogatories to information brokers and/or computerized literature searches often provides that essential competitive edge. Attorneys in almost all areas of legal specialization encounter client problems for which the resources can be useful. This is true in a counseling, as well as a litigation, context.

To date, it has been mostly the larger law firms that have taken advantage of the information explosion. While many sole practitioners and smaller firms view this development as a threat, others have been quick to gain sophistication in using the new information technology and industry to become more competitive with their larger counterparts. These attorneys realize that proper factual research often can make the difference between winning and losing. And these days, who can afford to lose?T

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