

Expert Witness Research Methods and Data Sources

May 2018



 Expert Witness Profiler

The logo for Expert Witness Profiler features a white icon of a person's head and shoulders inside a dark grey square, positioned to the left of the text "Expert Witness Profiler" which is written in a white, sans-serif font.

Introduction

Whether you are an attorney, paralegal, law librarian or legal researcher, any legal professional who works in the expert search and research arena must surely notice that the space is highly fluid, dynamic and evolving at a near dizzying pace.

Almost weekly, a new product, service, company emerges and each touts the latest and greatest approach for solving the expert location and research conundrum. It's really no surprise. The old adage, "litigation in the United States is a battle of experts" is arguably still largely true. Interestingly, however, expert witness research and retention techniques continue to be highly variable and fragmented and even vary widely among legal professionals in the same firm.

With these phenomena as a backdrop, we decided that a comprehensive survey would be of great utility to better understand how legal professionals actually now identify and research experts.

The survey was completed by 580 legal professionals with varying roles in their firms and representing firms of varying sizes and orientation. The survey respondents have one thing in common: all are deeply involved in the day in and day out practice of litigation.

Demographics of Survey Respondents

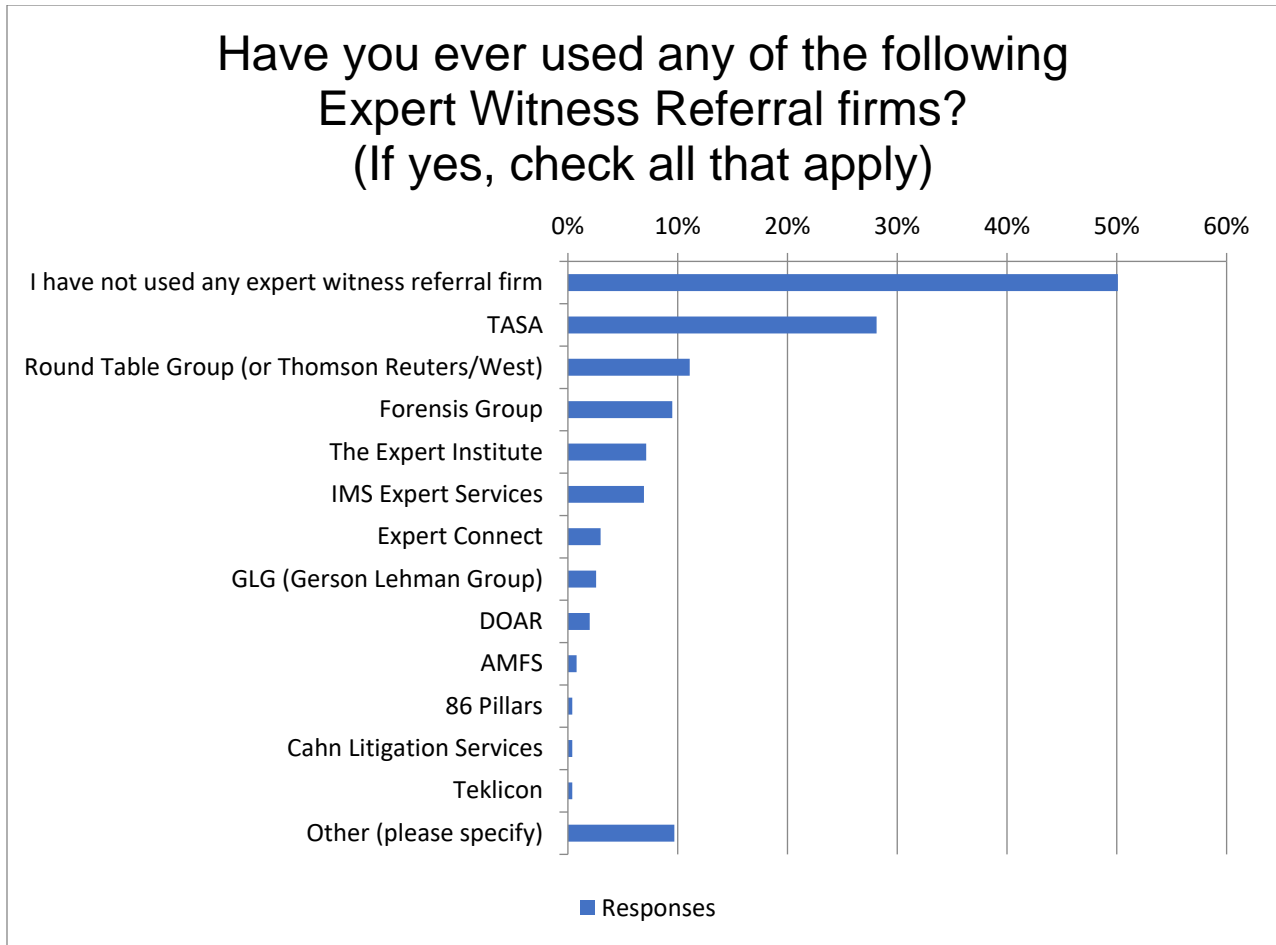
A total of 580 people responded to the survey. Of those, 65.3% personally conduct research on expert witnesses and 20.0% supervise research conducted by others. 11.4% of the respondents request others to perform research for them. The majority (81.5%) of the respondents are attorneys. The remainder list themselves as librarians/information professionals, claims or knowledge management professionals.

Many respondents (48.6%) are from small firms (2-49 attorneys) and 18.0% are from medium firms (50-199 attorneys). Members of large firms (200+ attorneys) make up 16.9% of the respondents. The remaining respondents are solo practitioners or work for corporate law departments or insurance companies.

Survey respondents are primarily based in the United States. Respondents reside in the South (31.4%), the Midwest (27.0%), the Northeast (20.0%) and the West (19.8%). There were 7 international professionals that completed the survey.

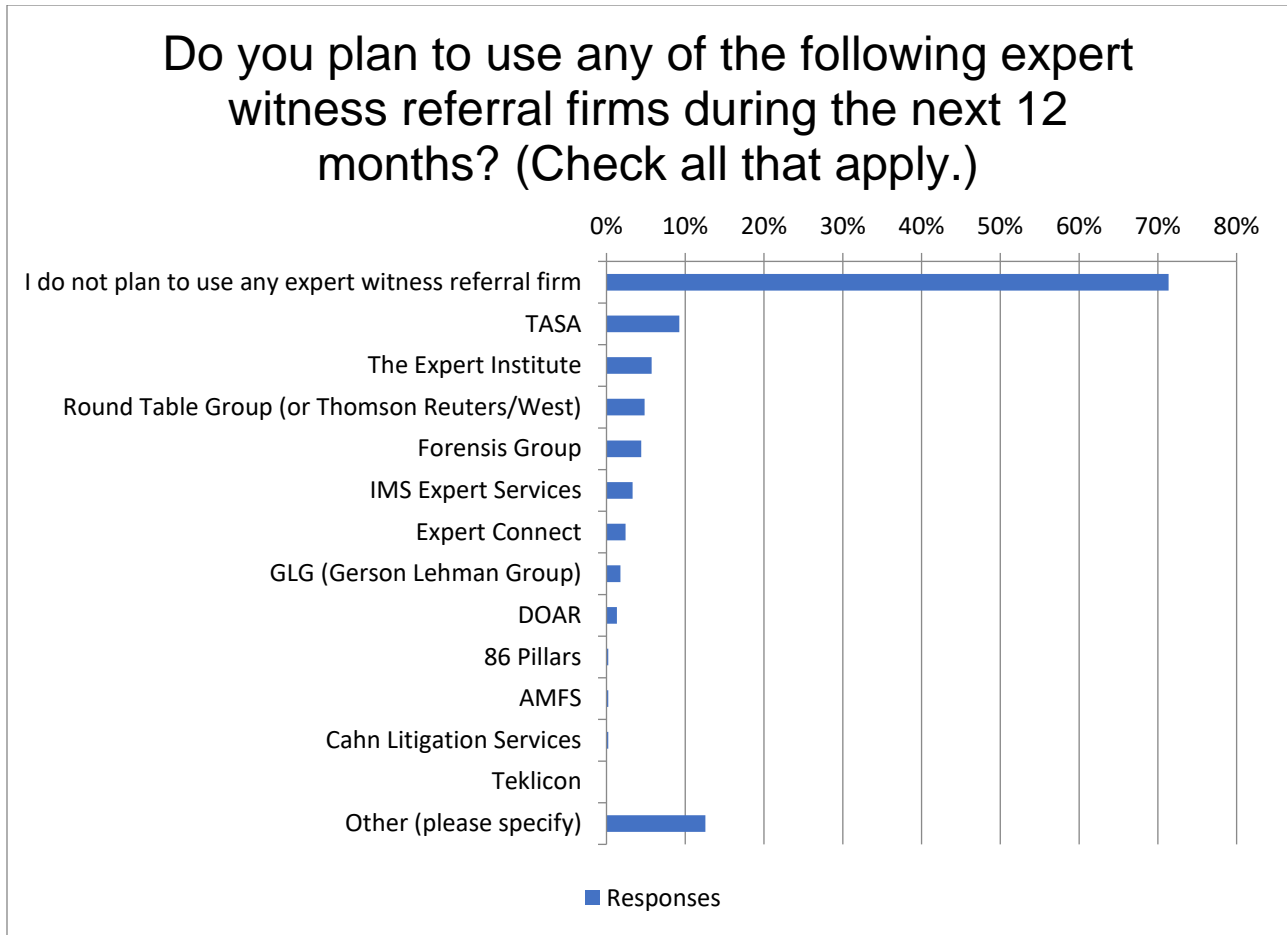


Performing a Google search is the most common approach used to locate an expert with specific expertise. Other top methods include sending inquiries to colleagues either inside or outside the firm, as well as searching internal databases. The majority of respondents prefer to perform search themselves, as opposed to using an outside search firm. Other write-in answers include searching Amazon for authors of books on the needed expert subject matter, seeking referrals from other experts and researching trial transcripts.



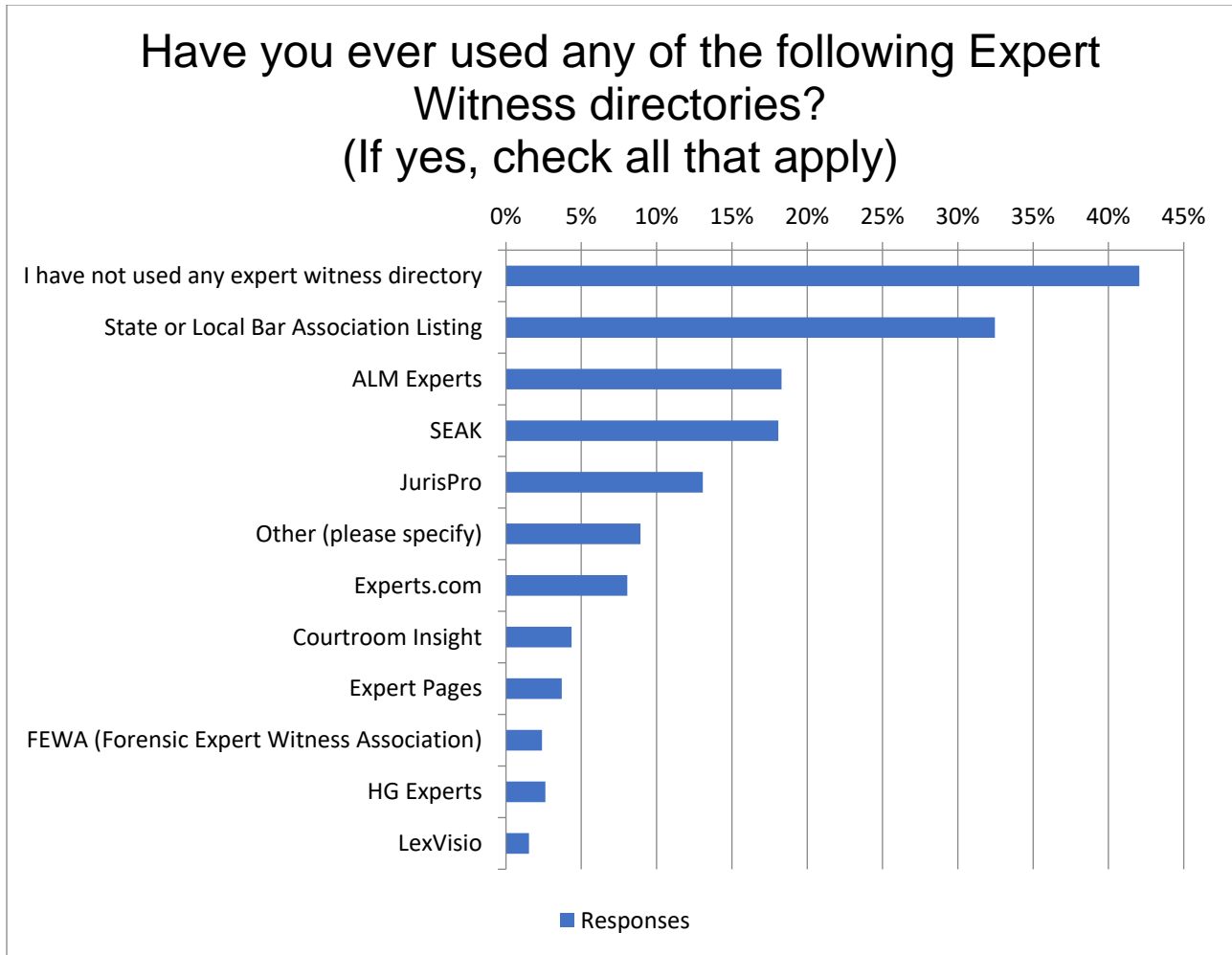
Over half of the respondents to this question (50.1 %) have never used an Expert Witness Referral firm to acquire an expert witness. Of those that have used such a service, 28.1% have used TASA for their referrals. The Round Table Group (Thomson Reuters Expert Witness Services) is the only other firm to have been used by more than 10% of the respondents.

One response typifies an overall sentiment expressed by many respondents: “I use such outfits only if I cannot come up with a local/regional expert from my own experience or referral from other counsel. Word of mouth (is) a much more reliable source.” Other respondents indicate that they have located experts by turning to an independent firm that employs a team of experts, such as Robson, Charles River Associates and others.

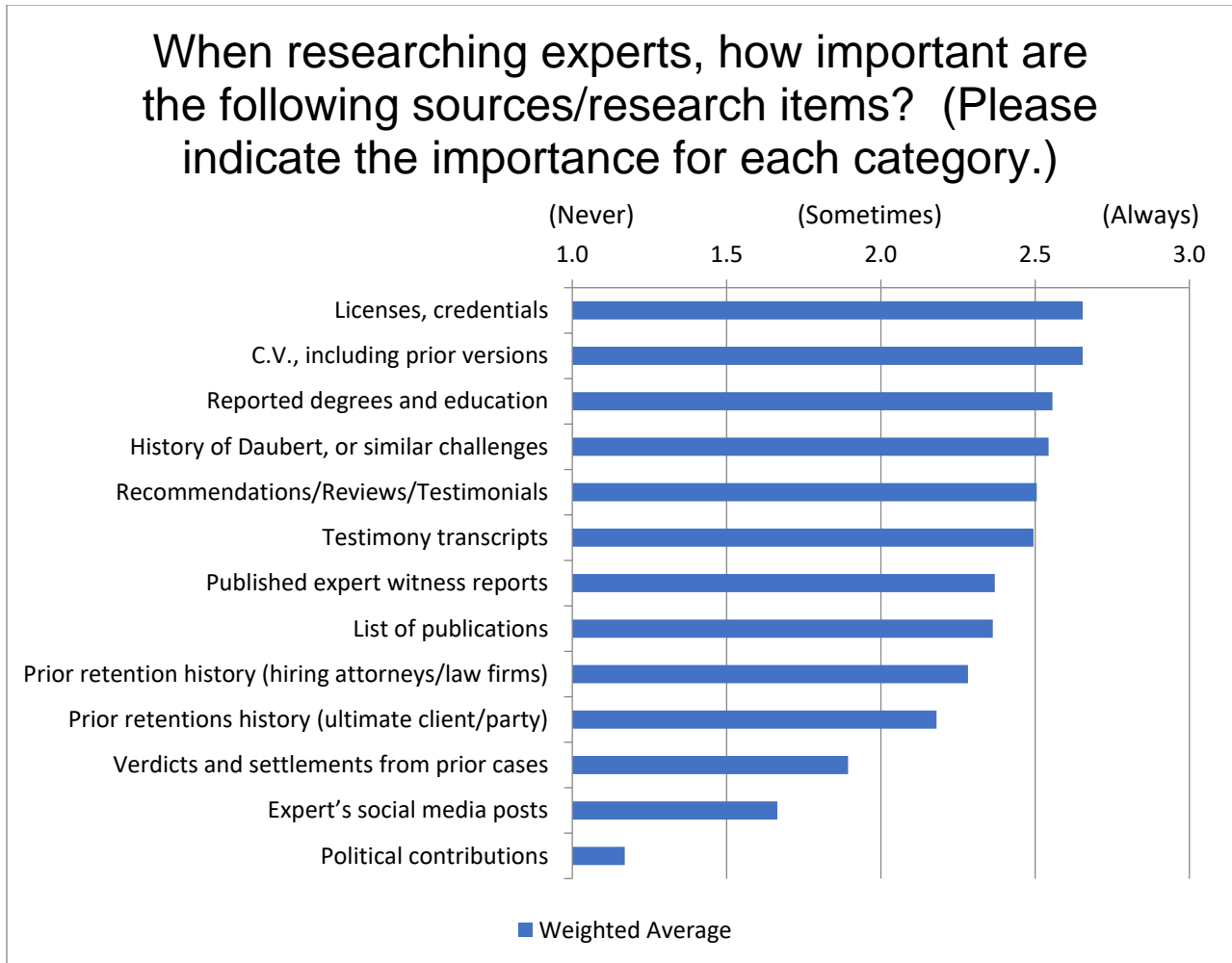


Consistent with the last question, 71.4% of respondents do not plan to use any expert witness search service provider during the next 12 months. The three most mentioned providers for those respondents planning to use one were TASA, the Expert Institute and Round Table Group (Thomson Reuters Expert Witness Services).

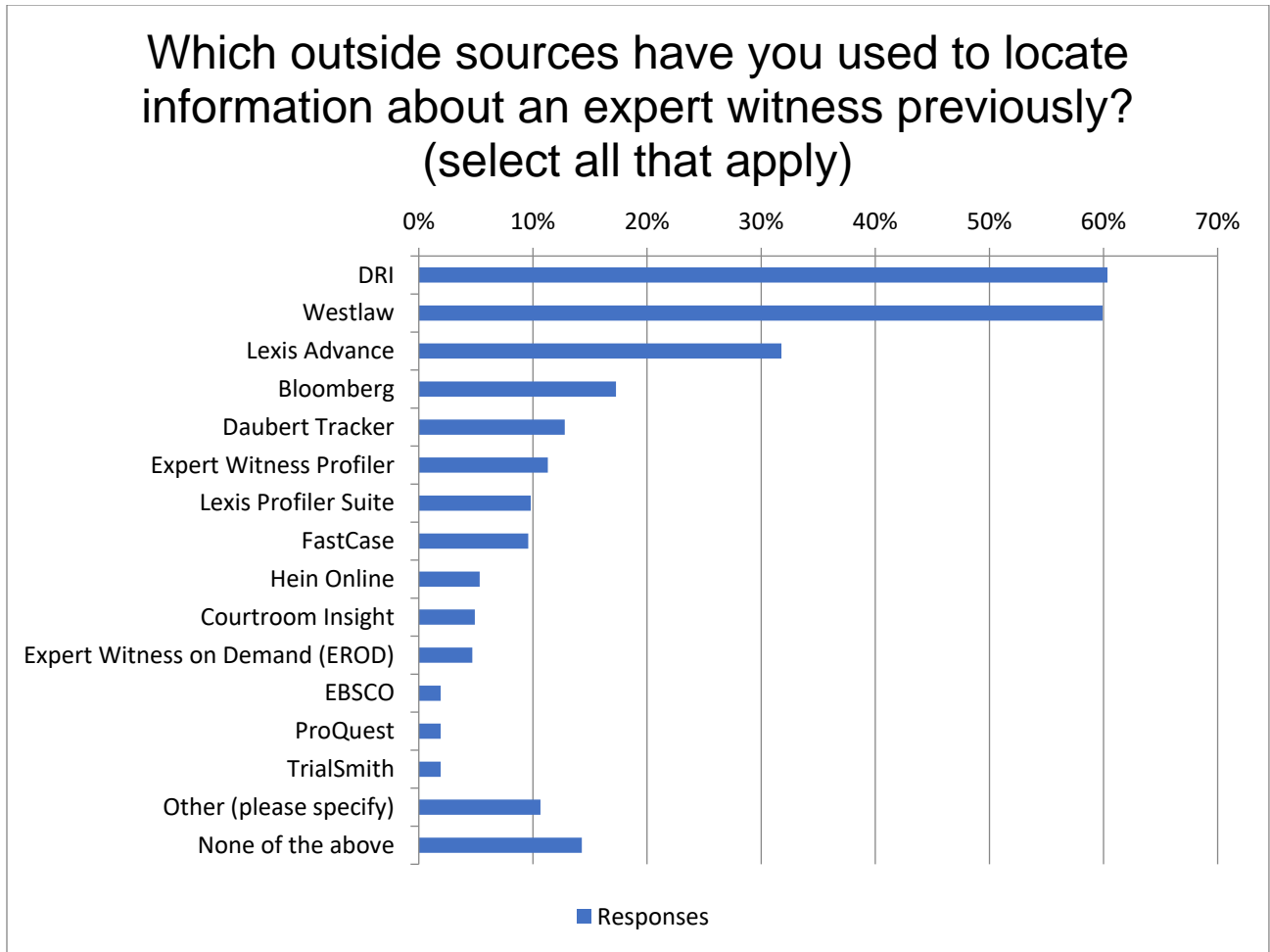
One respondent noted concerns about using experts obtained via an expert witness referral firm—“I have always had a hard time using referral firms on the defense side particularly. After one jury trial where the plaintiff used a service, and we brought that out on cross, one of the jurors commented that ‘once we heard they got their expert from Experts R Us, they lost a lot of credibility.’ So, until there is some sort of a work around where the service perhaps finds the expert, but is not directly involved, I will have a difficult time getting too enthusiastic.”



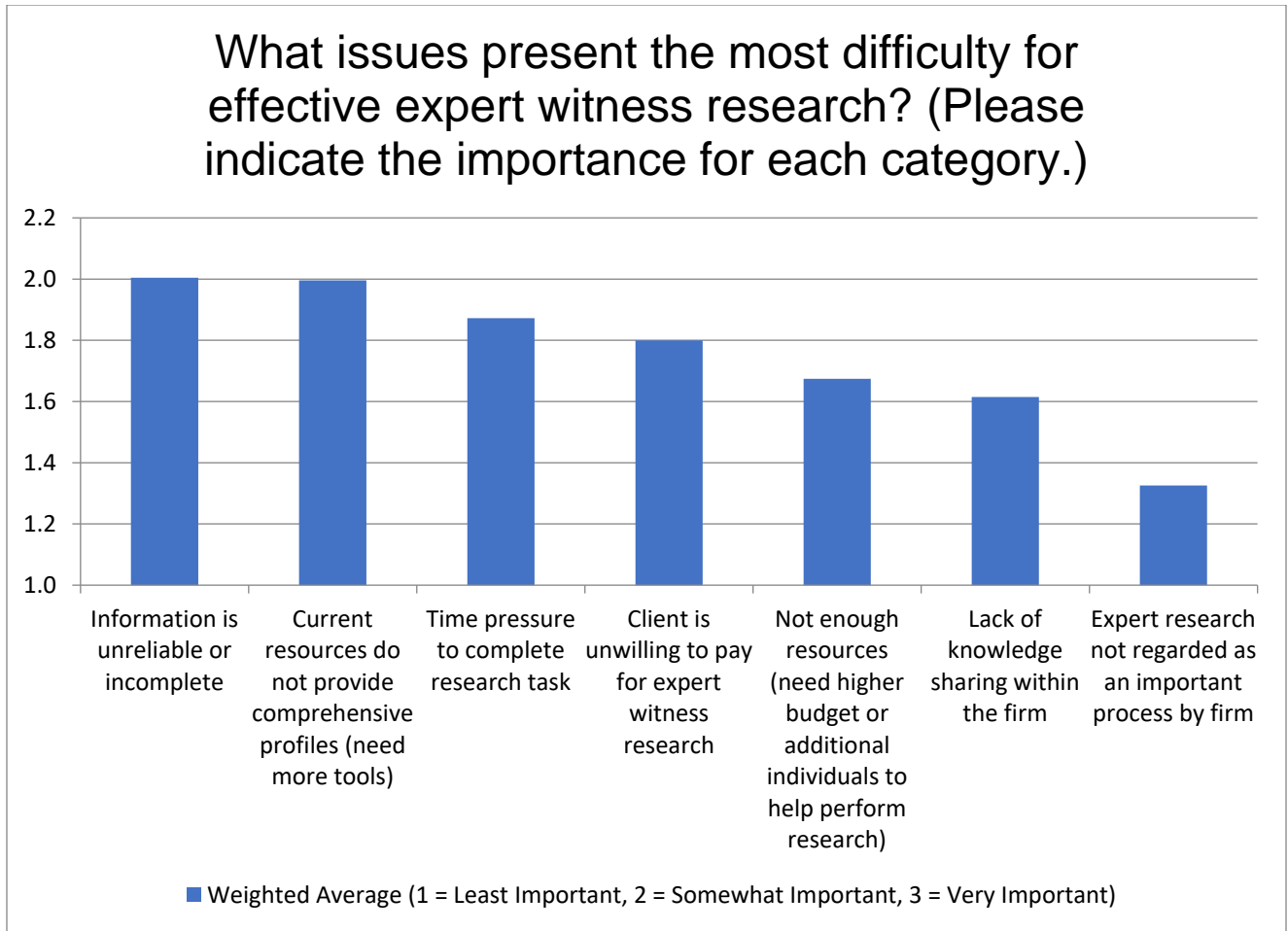
42.1% of respondents have never used an expert witness directory. Of those that have, nearly one-third prefer to use a state or local bar association listing. Only three of the listed firms: ALM Experts, SEAK and JurisPro were used by more than 10% of those taking the survey. The most popular “Other” mentions include the DRI list server and state defense bar association database.



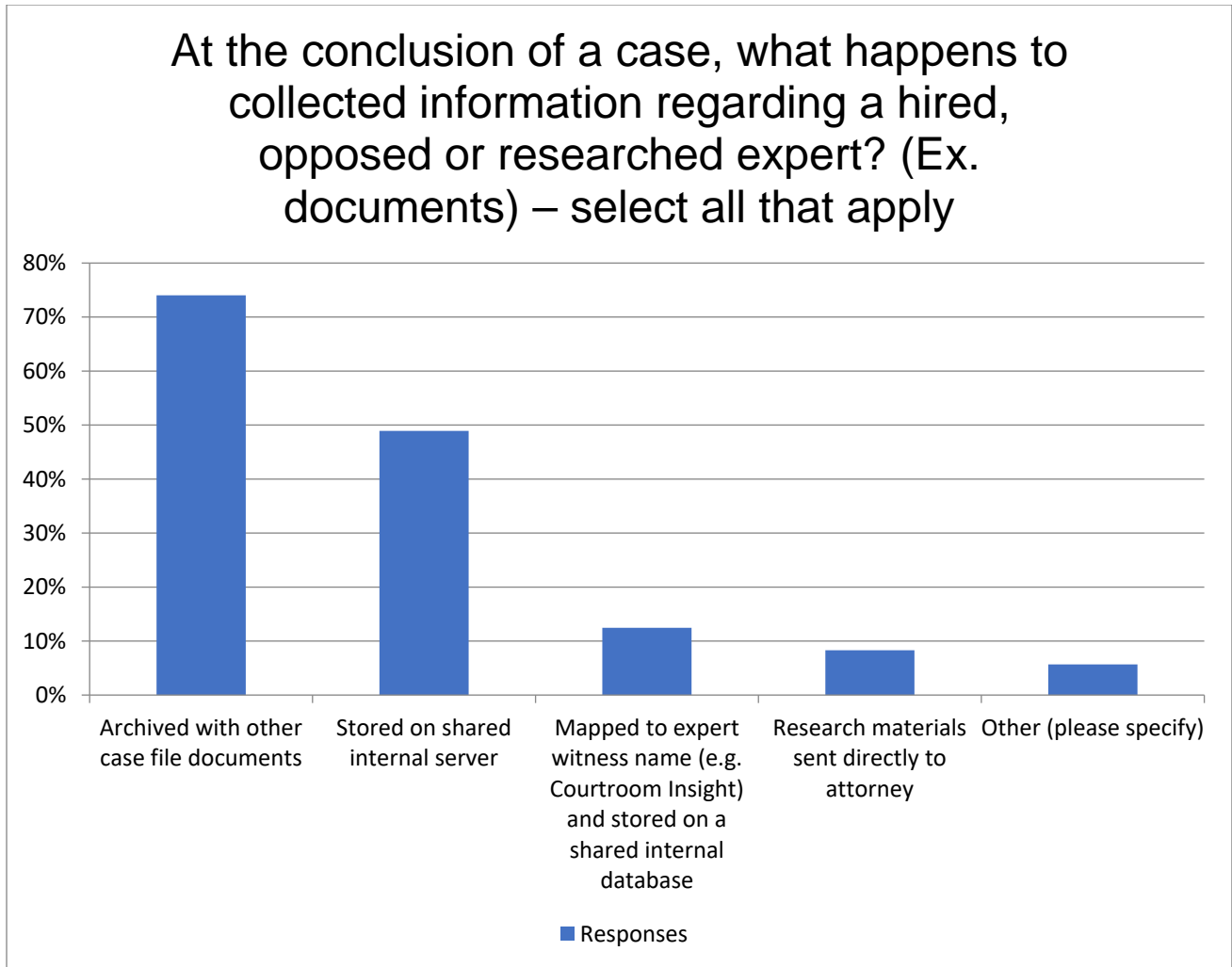
There are many important evaluation criteria outlined by expert witness researchers. Verifying licenses and credentials is the top priority, followed closely by confirming details found on curriculum vitae. Authenticating degrees and education ranked third in importance, followed by vetting of Daubert or similar challenge outcomes, when available. Recommendations, reviews and testimonials from other attorneys who have direct experience working with the expert are the next most valuable piece of information followed closely by testimony transcripts.



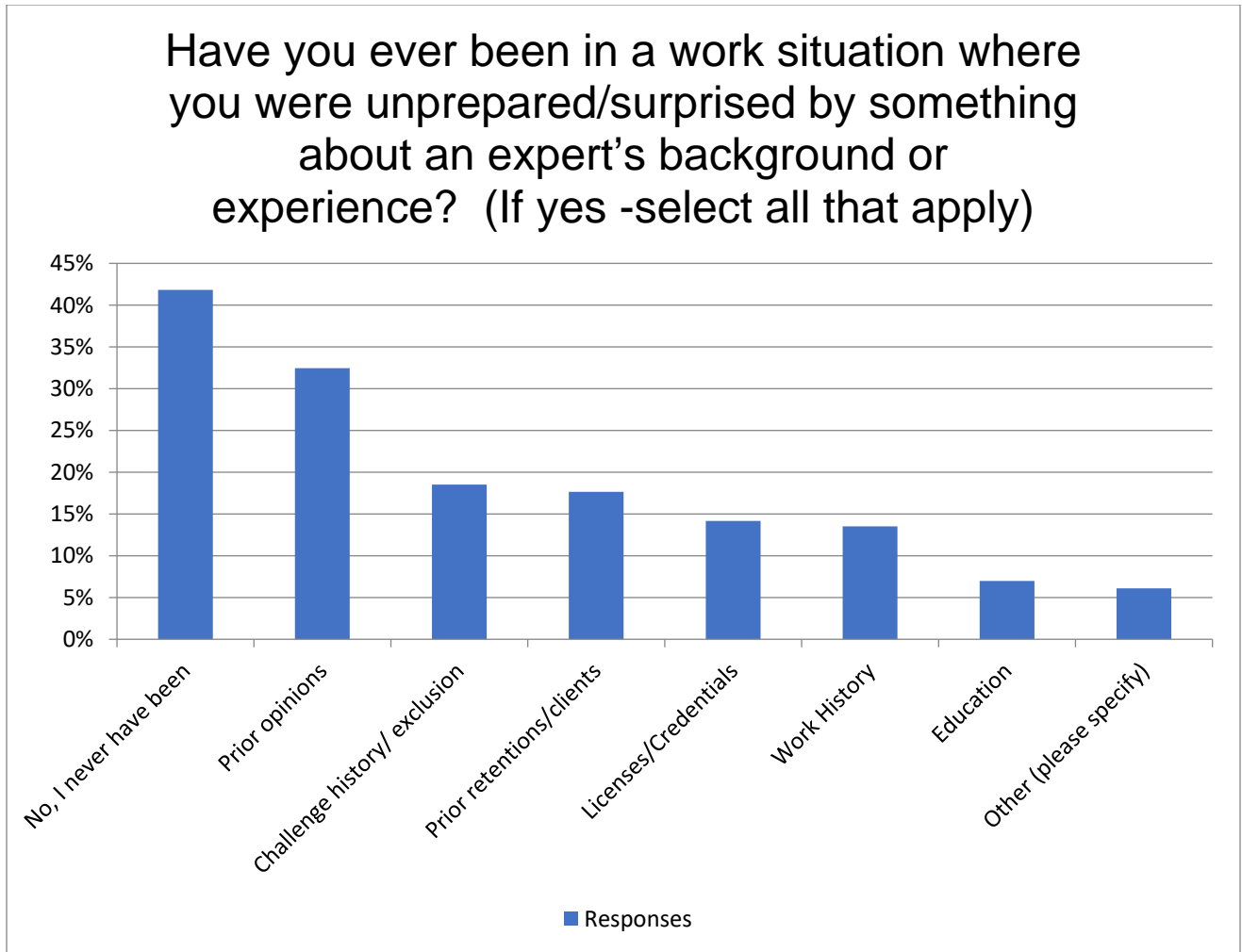
When searching for information on expert witnesses, the majority of those taking the survey turned to DRI (60.3%) and Westlaw (59.9%) to research experts. Lexis Advance was the third most popular resource with 31.8% of respondents using its service. Bloomberg was used by 17.3% of respondents and Daubert Tracker data was relied upon by 12.8% of respondents. Expert Witness Profiler, Lexis Profiler Suite and Fastcase were all used by approximately 10% of those taking the survey. Those that indicated they used “Other” sources mainly utilized a state or regional defense association database.



Issues that present the most difficulty during effective expert witness research are unreliable or incomplete information and a lack of sufficient research tools. One popular mention includes difficulty in assessing an expert’s level of experience in testifying. Time pressures to complete the research and client’s unwillingness to pay for expert witness research are the next two biggest roadblocks facing respondents. Challenges to effective research can be summed up by one respondent who stated “there is no best place to go for all experts.”

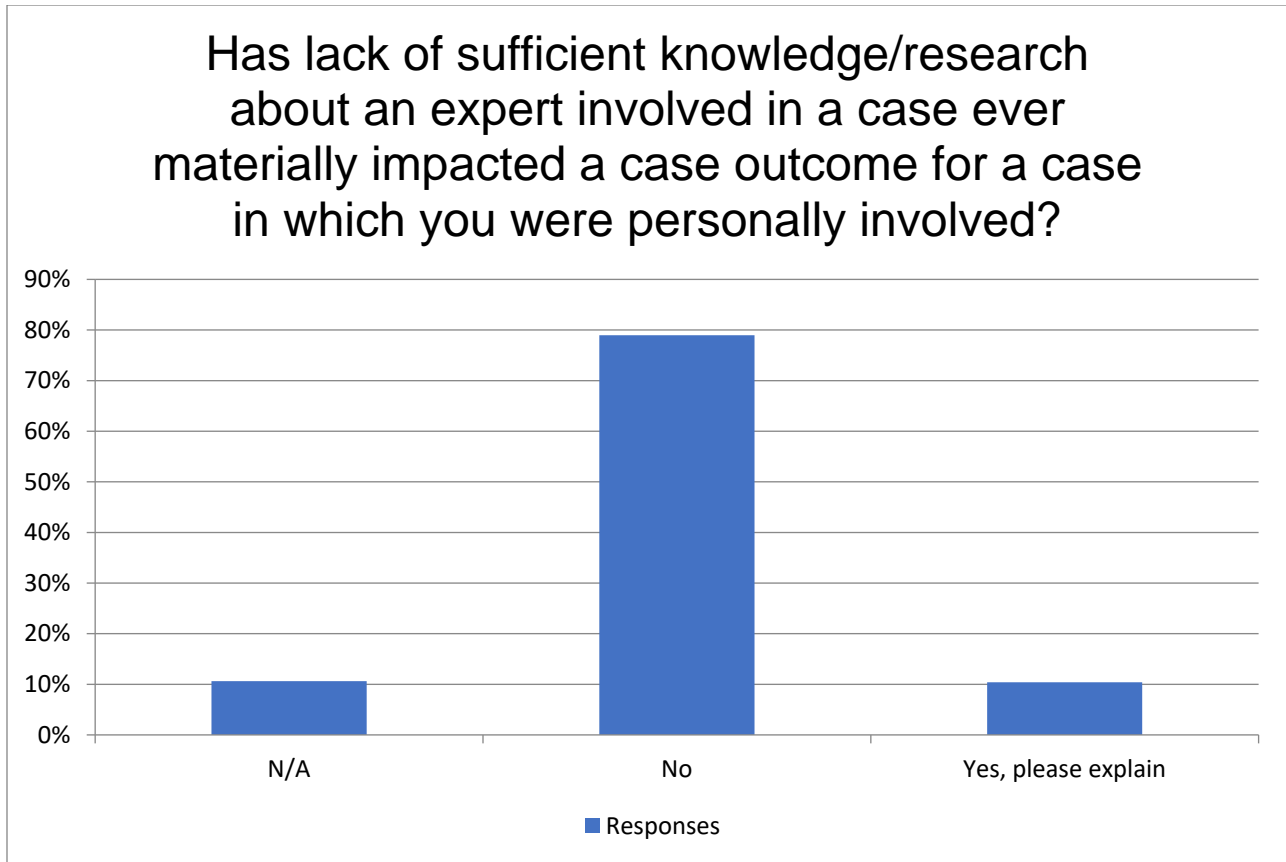


At the conclusion of a case, the majority of respondents file all expert witness information away, along with the case file. The problem with this approach is that, often, no one else knows which experts have been researched, which files contain the information and the extent of the research. In many cases, research may end up being repeated for subsequent matters. In others, attorneys may not be aware that an expert has already been retained or vetted. Other respondents collect their expert witness research information in an internal electronic database, thereby making it available to others in the future.



Almost 60% of respondents have been surprised by at least one aspect of an expert's background or expertise. 32.5% of those taking the survey have been surprised by prior opinions and 18.5% have been surprised by the expert's challenge history or exclusions. Attorneys also have been surprised during trial with discrepancies involving other seemingly straightforward, easy to obtain information such as an expert's work history and education.

Further, several respondents reported being surprised by an expert's criminal history, lawsuits involving the expert, malpractice suits, plagiarism and falsified curricula vitae. These findings reiterate the critical importance of thoroughly vetting an expert witness.



Fortunately, only 10.4% of respondents report being involved in cases that were directly impacted by insufficient knowledge about expert witnesses. The two most commonly reported situations involve prior testimony containing conflicting opinions and misstated licenses or credentials. Specific examples include the following:

- An expert's credentials had been restricted between the time he was retained/deposed and the date of trial.
- An unlicensed expert who claimed his license was valid was impeached.
- An expert misled counsel about his experience as an expert witness and completely folded during his deposition.
- An expert published several articles that contained opinions which contradicted his opinion in the case.
- An expert let his engineering license lapse prior to testifying at trial.
- Opposing counsel had not vetted its expert and was unaware of several troubling Daubert challenges and testimony exclusions.
- A purported nurse providing medical bill review was not licensed.
- A highly regarded and recommended expert did not testify well before the jury, although he performed fine during his deposition.

About the Authors

Mark Torchiana is co-founder and CEO of Courtroom Insight, which offers an expert witness knowledge management solution to law firms and legal organizations. The platform provides a systematic, organized approach to managing an organization’s knowledge about expert witnesses. In addition to founding Courtroom Insight, he has over 20 years of experience providing forensic accounting litigation support and expert witness services.

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Myles Levin is founder and CEO of the Daubert Tracker and Principal of Expert Witness Profiler. Since its launch in 2002, Daubert Tracker’s collection of “evidentiary gatekeeping” cases has received significant attention in the legal community. Expert Witness Profiler offers custom research services using advanced tools and techniques to locate difficult to find information about expert witnesses. He is a former testifying vocational expert and principal in a litigation consulting company.

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