

ASSET PROTECTION

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Steps in Investigating Potential Asset Protection Clients

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Considering the civil, criminal, and ABA problems that can result from actions undertaken by an ill-chosen client, professionals should thoroughly investigate unknown clients to nip the risks in the bud.

Does this problem sound familiar? A businessman approaches you to become a client, and although the potential client's inquiry has come on a corporate letterhead, both the client and his firm are unfamiliar to you. It is up to you to determine whether this person meets your new-client standards as a legitimate businessperson. Geographical distance only compounds the problem, and increases the fear that a potential client is hiding part of his or her past or present.

As corporate investigators, we are often assigned to develop background information on people both in the United States and overseas. This information often includes the answers to questions such as the following:

- What is publicly known about a person? Does this match what he says about himself?
- Does this person have hidden problems in his past?
- Is this person's net worth what he says it is?
- What business is he in, and is it an ongoing, legitimate enterprise?

We typically follow a three-tier approach to answering these questions: first by searching a number of online databases of publications and public records, then by

searching courthouses and other repositories of public records for past lawsuits and other information, and finally by conducting discreet interviews with people—such as former partners, associates, or employees—who might be knowledgeable and talkative.

The Public Record Search

The on-line information world is leaping ahead with more data becoming publicly available via computer modem every month. You can now dial into a startling amount of material quickly and discreetly. These databases include everything from Swiss corporate records to the name of the golf club to which a Japanese executive belongs, from yacht registrations to Nevada divorces.

In the United States, databases such as Autotrack can retrieve relevant filings about an individual from more than two billion public records throughout the country in a matter of minutes. These government-records databases, where available, can supply litigation abstracts, corporate affiliations, business credit reports, bankruptcies, liens, judgments, Uniform Commercial Code (UCC) filings, and property ownership of people and businesses.

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In several jurisdictions, we can retrieve vehicle ownership and driving records.

Information from overseas is also becoming more easily obtainable. For example, a Swiss service called Teledata, which profiles every company in the Swiss Register of Commerce, can search under an individual's name to yield a list of all the Swiss companies with which he or she is affiliated. In Britain, it is often possible to determine through public records whether a particular individual owns stock in a particular company.

With these sources, it often takes no more than a few hours to determine whether someone is giving a false address, for example, or is making other questionable representations.

The Press Search

Virtually everyone in a leadership position in the business world has been in the news somewhere. While they may not have attained levels meriting profiles in *The New York Times* or *The Wall Street Journal*, they are likely to have expressed their opinions or been cited in trade journals ranging from *Billboard* to *Progressive Grocer* (both of which, by the way, are accessible online). Searches of trade journals are a good way to develop a record of someone's career and at the same time verify a resume.

We also check on-line reports filed with the Securities and Exchange Commission. Proxy statements and annual reports often give thumbnail job histories of the executives of publicly held corporations—as well as revealing whether they own 5% or more of any public companies.

Through searches like these, we learned recently that a candidate for a top-level executive position had been arrested and convicted in the 1980's for attempting to sell a supercomputer abroad in violation of the U.S. Foreign Export Control Act, and he had served time in prison.

Although on-line searches provide information quickly, not every publication is available through this means. In these situations, we also recommend an examination of local news coverage for a close look at how someone is perceived in his or her community. Admittedly, these searches are more difficult. Small papers usually do not allow outsiders to have access to their morgues, but local libraries often keep clippings of people and businesses in the area.

As a routine policy, we like to go back 10 to 20 years, if possible, and get access to the most freewheeling press outlets,

such as *Private Eye* in London. In these and other overseas situations, where on-line access is difficult, we turn to local clipping services, which may have access to newspaper libraries and other sources of published articles.

Example. In a recent case, a financial institution was negotiating a deal with a businessman who was the head of a union pension fund. As it was about to close the deal, the bank heard rumors that its partner had connections to organized crime 20 years earlier. Online searches were fruitless, because information that old is rarely computerized. But we located a labor racketeering expert who steered us to a story in a small, community newspaper that was not on Lexis-Nexis or the other computerized services. (The would-be partner indeed had been associated with a well-known mob figure.)

The Internet is also providing a new and often potent resource for our investigations; its global reach has allowed us to search obscure publications from Germany to Indonesia, which have provided us with critical information. (Be sure to budget for the cost of translation.)

For example, we subscribed to one Internet news group dealing with Asia in which we found a posting that recounted disparaging remarks that the subject of our inquiry made publicly about a particular ethnic group.

Searching for Hidden Problems

In our background checks on individuals, we have frequently discovered inaccuracies about age, military record, or education. These can offer a telling insight into character. The aforementioned searches of motor vehicle or voter registration records can provide accurate information about birthdays, and a Freedom of Information Act request sent to the National Personnel Records Center in St. Louis can usually provide information about service in the Army or other branches.

Making false claims about college degrees, however, is significantly more common. Although these seem easy to check—university registrars routinely answer requests about degrees by telephone—we have found some people who have evaded disclosure by telling a well-worn story about why their schools don't have records of them. Our advice in this

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situation is to press both the candidate and college relentlessly; we have had the experience of exposing a lifetime false claim of a degree, and in one case, the subject whom we exposed said no one had ever pressed him that hard before.

Past Litigation of Asset Protection Clients

Nothing may be more telling in taking the measure of a stranger, and especially a potential asset protection client, than a complete understanding of his or her litigation history. An inspection of past lawsuits can provide a good perspective on someone's business character—whether as a plaintiff who has brought actions against partners or other associates, or as a defendant who has been accused of non-payment of debts or fraud. It is not uncommon for these types of claims never to have reached a news publication, and for a potential client or partner to fail to disclose them.

One good on-line resource for examining litigation history is Public Access to Court Electronic Records (PACER), the U.S. government's service to search district court and bankruptcy court dockets. While these on-line searches may be unwieldy—covering the whole country requires dozens of searches—other services such as Courtlink are beginning to provide interfaces to these records that are easier to use.

For state court litigation, we turn to a number of specialized databanks. For example, in New York, New Jersey, Pennsylvania, and Maryland, Superior On-Line provides the most thorough coverage; in California, on the other hand, we search a database called CDB Infotek.

In one case, a search of a specialized database of securities and banking regulatory actions, which we check routinely, found that two developers were the subjects of orders of prohibition filed by the Office of Thrift Supervision. This gave us enough information to retrieve the relevant documents from OTS files, which would have been otherwise impossible to find.

Criminal Histories

Past criminal conduct is somewhat more difficult to ascertain—there is no readily available source to check criminal history systematically. But in some states, such as

Florida, services like Autotrack can search both conviction and incarceration records.

We recently found through this service that the subject of one inquiry had been arrested for battery. Using this information as a guide, we obtained court records relating to his arrest and discovered that this individual had tried to expunge his arrest record during business negotiations with our client.

We also recommend discreet checks over the telephone to determine whether the subjects have ever fought the IRS in U.S. Tax Court or served time in a federal prison.

In a background check of a New Jersey man who had worked as a stockbroker we had enough time to turn to a simple and inexpensive source of background material: Freedom of Information Act requests. From the Securities and Exchange Commission, we learned that he had testified in a deposition in an old case, and we obtained that file. We also routinely query the National Association of Securities Dealers' disciplinary data on broker-dealers we are investigating.

Determining Assets

We are often asked to check whether someone really has the assets they are claiming to own. Our first step is to look at publicly available real estate records—subtracting mortgage amounts from purchase prices on property such as homes or commercial buildings can quickly give an idea of a person's equity in the property—a key indicator of financial status.

Real property and UCC filings from most states are accessible by computer, and some of them can search multiple state filings at once, allowing you to locate vacation homes as well as primary residences.

Another quick indicator of financial status as well as personal style is the kind of car parked in someone's driveway. CDB Infotek carries information from most states' motor vehicle departments that will include not only car ownership, but also driving records, in which drunk-driving tickets and accidents are noted.

Of course, access to information varies from one country to another. In a recent matter, we were seeking the corporate affiliations in Britain, if any, of a British citizen doing business in the United States. We found British company information, including lists of officers and directors, corporate linkages, and annual reports in British databases. We learned

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our subject had ties to several previously unknown corporations. Using databases of British publications, we learned that several of these companies had gone into receivership, but that one had recently gone public on the London equivalent of the OTC market, and that he held a substantial number of now-valuable shares.

Business Affiliations

If you already know your potential client's primary business affiliation, you may have run a Dun & Bradstreet report on his or her company. Even so, we also suggest turning to services like Nexis or Dialog that can perform full-text searches of the Dun & Bradstreet database—you can search under an executive's name to see whether he or she is mentioned anywhere in a D&B report, not just as a CEO or officer.

We also regularly use a number of other ways to develop information about someone's corporate affiliations. Public record database providers such as Autotrack allow you to search incorporation records from most states in the country, and with one search, it is possible to find out whether someone is listed as an officer or director in state records anywhere.

With these searches, we've frequently found that even executives who spend their whole careers at one large company will incorporate a "doing business as" entity at their home addresses. By identifying such side businesses, this kind of search can flag important self-dealing issues between companies, or, at minimum, lead you to ask the candidate about how much time he or she spends on "outside" matters.

Often, what seem to be the most narrow and specific sources of data turn out to be the most useful. In one instance, we were asked to determine an Indonesian company's footprint outside Indonesia. We searched a database called PIERS Exports, which tracks the manifests of freighters' shipping cargo in and out of 62 U.S. seaports, and suddenly had a comprehensive picture of its global business relationships. This kind of information can be an invaluable start when trying to determine the relative wealth of a private business.

Overseas Inquiries

The database services that many institutions use routinely, such as Nexis or Dialog, have no single counterpart for information from overseas, but all of them have valuable international sources buried in their on-line libraries. For example, Data-Star, which we recommend for searches abroad, offers a German database called "Wer Gehört zu Wem" (Who Belongs to Whom) that lists the ownership, including major shareholders and partners, of some 11,500 entities.

In other instances, we turn to local sources. In a Latin American case, we were looking for information about whether a failing company was selectively paying off its creditors, and if so, by what method. Publication databases in the United States turned up nothing, so we called a clipping service in Argentina. We hired them to search publications in Latin America, and the stories he provided, when translated from Spanish, opened up several new avenues of investigation.

But often enough, despite the distances and difficulties inherent in international investigations, it is possible to do much of a background check from the United States. We recently looked at a Scottish businessman described as "a good talker," who had convinced a U.S. firm to invest in a deal he was pitching. At the last minute, the firm decided to look into his background. We went online to look at corporate documents from the Great Britain, then hired someone in Scotland to collect local news articles for us.

One Scottish article listed a company he had cited as a potential business partner; we called this firm, and they told us to look closely at certain public records in Scotland. In court files, we learned that he had had a bankruptcy, and in those filings we discovered he had been accused of fraud.

In summary, there is no longer any need to rely solely on a potential client's own offerings or a cursory background check when choosing whether to take on a new client. With computers, local researchers, and some focused interviewing, it is well within the grasp of any practitioner to attain the level of comfort necessary to make informed decisions. ■