



Longbranch Research Associates *presents:*

So-Called Experts

a book always in progress & free

by Stephan Michelson

Chapter 15

Finding Experts

as of October 24, 2017

Sometimes you need an expert. If you are buying a home, not any lawyer will do. You need a real estate lawyer. Most general automobile repair shops do not sell tires. For that you go to a specialist, a tire store. We might want to think that “specialist” equals “expert,” but we know better. The doctor who failed to see my torn rotator cuff in his reading of my MRI was a specialist in sports medicine, where such tears are common. The guy with whom I opened an account at UBS was more of a specialist in getting customers than in doing well by them. In my statistical consulting, I several times told clients to do to me what I did with UBS. “I cannot help you with this case” I said. “Fire me.” They did.

I said something else. “If you pursue litigation in this case, you will lose. Try to settle.” In *every* case in which that now former client went to trial, he (it) lost. I was the sort of expert these law firms needed. I had given the right advice. But they were not seeking expert advice. They did not listen when they got it.

When we seek real experts, the question is, would we know one when we found one?

Elizabeth Cady Stanton, the famous abolitionist, called Lincoln “Dishonest Abe” in a letter she wrote to Wendell Phillips in 1864, a year after Lincoln had freed the slaves in rebel states and only months before he would engineer the Thirteenth Amendment. She bemoaned the “incapacity and rottenness” of his administration to Susan B. Anthony, worked to deny him renomination, and swore to Phillips that if he “is reelected I shall immediately leave the country for the Fijee Islands.”¹

¹ Mark Bowden, “Abraham Lincoln Is An Idiot,” 311 *The Atlantic* 5:40 (June, 2013). The subtitle of this article is “The difficulty of recognizing excellence in its own time.”

Like Hillary Clinton regarding her senate vote to invade Iraq, Stanton did realize, later, that she had been wrong. Being right is half the expert's struggle. Being right *at the right time* is the other half.

The Adversarial System

Cory Maples, found guilty of murder, was sentenced to death in Alabama. His mother contacted the famous international law firm Sullivan and Cromwell, where two attorneys took the case *pro bono*. They filed for a writ of *habeas corpus* in federal court, arguing that Maples previously had deficient counsel, and that the judge's instructions to the jury were faulty. They articulated a panoply of "errors" common to such requests, asking the federal court to over-rule the state court. The state argued that this motion should not be considered, but it was.

Seventeen months later, it was denied.² A certain amount of time is allowed from such a denial for attorneys to appeal. If they do not file in that period, they lose that right. Notice of denial was sent to the two New York attorneys, as well as to local counsel. Not to Maples himself, because if a person is represented by counsel, communication from the court goes to the counsel. Now begins a series of very non-expert inactions.

- The New York lawyers had both left the firm, both failing to tell local counsel or the Alabama court that they would no longer be associated with the case.
- They had transferred the case to other attorneys at Sullivan and Cromwell, but those attorneys did not notify the court in Alabama that they now wanted to be counsel of record.
- Local counsel did nothing, expecting the New York lawyers to file an appeal. (When an out-of-district lawyer takes the case, the law in Alabama, and most places, requires that there also be a local attorney. That attorney traditionally does nothing, and this one was following in that tradition.)
- Rather than forward the notice to the now departed lawyers (as per Sullivan and Cromwell policy), or direct it to the substitute in-house lawyers (which

2 For the state's rejection of post-conviction relief, see *Maples v. Allen*, 885 So.2d 845, Court of Criminal Appeals of Alabama (2004). This denial was affirmed by the Alabama Supreme Court, 758 So.2d 81. Maples then appealed to federal court, for a writ of habeas corpus, denied in an unpublished opinion. That decision was upheld in *Maples v. Allen*, 586 F.3d 879 (11th Cir.) 2009. The full story is told there.

would have been a better policy), the mail clerk returned the notice, unopened, marked (essentially) undeliverable.

- The clerk of the court in Alabama made no special effort (say, by calling local counsel) to be sure that Maples' attorneys knew that the clock was running.
- Time ran out. Maples has no more right to appeal the denial of *habeas corpus*.

It is hard to have sympathy for Maples, who admits that he did the deed, and appeals only his death sentence. Still, a life is at stake. The Alabama court's obligation is only to notify counsel of the decision. When there are multiple counsel, "notification" occurs when any one of them is notified. Having received only two of the three letters back, the state believed it gave proper notice. But shouldn't loss of communication with New York counsel trigger some sort of action? We now know that Maples still had willing—all be it inexpert—representation in New York. Having failed to notify the court that they had taken the case, they were useless.

Besides wondering about the Sullivan and Cromwell rule to forward mail concerning a case that remains in the firm, but with different lawyers, one must question how well they train their mail-room personnel. At least four professionals (local counsel, two Sullivan and Cromwell attorneys, and at least one to whom the case was transferred) could not get basic communication right. And there are at least two clerks, one in New York, one in Alabama, who care nothing for the substance of what is passing through their hands, only to get it *out* of their hands. Is it really too much to ask of people that they become good at their jobs?

This is hardly the only case in which a client has had to pay the price for his lawyer's errors. The home and business of Todd and Carrie Zappone were searched and seized in 2012, under warrant, by the Internal Revenue Service. Money was taken, which the Zappones wanted back. They filed an administrative claim

On February 11, 2015, the IRS mailed letters denying the claims via certified mail to [attorneys] Fedor and Arnold. The letters advised the lawyers that their "client[s] may contest this determination and bring suit against the United States in the appropriate United States district court no later than six months after the mailing of this notification."³

³ Two indented quotations from the Sixth Circuit opinion, *Zappone v. United States*, ___ F.3d. ___ (Sixth Cir. September 7, 2017).

When they received this notice, Fedor and Arnold no longer represented the Zappones. However, no one had notified IRS of the change in their attorneys, and the notice was not returned as undeliverable. The suit the Zappones filed the next October was determined by the district judge to be time-barred. They appealed to the Sixth Circuit, which agreed with the district court.

[T]he Zappones could have taken the appropriate steps to notify the IRS of their change in attorney, see 26 C.F.R. § 601.505, but they failed to do so. "Ignorance of the legal process alone will not provide the basis for an equitable tolling claim." *Jones v. General Motors Corp.*, 939 F.2d 380, 385 (6th Cir. 1991)(citing *Campbell v. Upjohn Co.*, 676 F.2d 1122, 1127 (6th Cir. 1982). The Zappones therefore fall far short of establishing diligent pursuit of their rights.

That is, when you engage an "expert" who is *not* expert, you are at fault.

On The Job

Presumed experts were engaged to gather evidence from the room in which Michael Jackson died. Expert procedures for gathering physical evidence are well known. One puts on a pair of latex gloves, picks up an item (a bottle, a syringe, etc.) and places it in a sealable plastic bag. Better procedure is to photograph the piece in place, first. Whether that is done or not, a record is made (what is it, where it was found). Then the gatherer is supposed to take off those gloves and put on others.

Why such a fuss? The first gloves are donned to protect the evidence from the gatherer. The replacement gloves protect the next piece of evidence from the first. Without replacing the gloves, one could transfer DNA, for example, from one place it existed to another where it had not, thereby corrupting the evidence.

The person who collected objects from the Michael Jackson scene apparently did not use gloves at all, or not constantly. One of her fingerprints was found on a syringe. This isn't a matter of high level expertise. It is a failure to be good enough to do one's job.

Here is another example of a search for expertise in a humble, every-day situation. Brent Harold asks whether roofing felt should be laid over the plywood, under the shingles of a standard roofed house. To learn how to build a house, he bought a book. He writes:

The first step of roofing, the book said in no uncertain terms, involved the application of roofing felt . . .

Then he read in the directions on the package enclosing the shingles:

that the paper was not, as far as this company was concerned, a necessary step, and that in fact their shingles might work better without it.⁴

He then consulted local builders, some of whom “scoffed at my rookie naivete.” *Of course* you lay down the roofing felt! Others, however, had already noticed that if the felt was a backup water-proofing system, nailing through it was sure to destroy its effectiveness. As I discussed with respect to fire inspectors (in Chapter 9), people “know” what they have been told more than they know what is correct. In Chapter 12 I asked how radio talk-show hosts seem to “know” so much, and concluded that they do not. This nagging question, where does real knowledge come from, and who has it, lies behind the concept of expertise. Even in constructing a house.

Brent also questions whether Tyvek is superior to caulking plywood seams. Dupont’s claims for Tyvek are modest, but no builder would forego its use. Dupont has been successful in getting prospective purchasers to demand it, and that is more important to builders than the technical question whether it is cost-effective.

Expert In What?

In just about any subject you can name, some people know more than others. Some may know enough to be called “expert.” “I am *the* expert on opium-smoking paraphernalia,” Steven Martin informed Nick Paumgarten.⁵ He may be, but the subject of this chapter is, if one wanted to engage such an expert, how would one find him? How do we distinguish “people who imagine themselves wise” from people who are?⁶

I have been writing about people with obvious titles, like mailroom clerk, lawyer, builder. The lawyer should know judicial procedure. One can find laws and cases in a library, or on the internet, but knowing what form to file where, and when, is more difficult to determine. Before anything else, that is what lawyers are supposed to know. Then, in a case, a lawyer wants an expert judge-convincer, not an expert analyst, as his “expert.” I quoted Melvin Belli in Chapter 9 on this topic. Lawyers are very clear about what they seek in an expert, stating criteria that are more easily met than real expertise.

4 Brent Harold, *Life As A House*, Seaboard Press (2011) at 112-113.

5 See Nick Paumgarten, “Where There’s Smoke,” *The New Yorker*, June 25, 2012 at 28.

6 Phrase from Paul Krugman, “Not Enough Inflation,” *New York Times*, May 3, 2013.

The neophyte builder perhaps needs advice from a real estate agent—who knows what buyers want—more than from an “expert” builder. I have already discussed the fallacy of looking to builders for expert advice, because few of them ever revisit their creations to find out what actually worked. There is strikingly little expertise in the subjects we should care about. By leaving expertise to so-called experts, consumers do not get the expert service we think we have paid for. Poor Cory Maples could not even get notice of the time he had to file an appeal, due to the inexpertness of his attorneys and various clerks. Meanwhile, Nick Paumgarten finds a real expert (I assume) in opium paraphernalia.

Consider Chalmers Johnson, who looms large in the history of United States’ far east (China and Japan) foreign policy, especially as conducted by the CIA. He supported the Vietnam war until he started thinking about its unintended consequences.

He recanted former positions—“In retrospect, I wish I had stood with the [Vietnam] antiwar protest movement. For all its naïveté and unruliness, it was right and American policy wrong.”⁷

Johnson, along with Robert MacNamara and others, understood—but oh so late—what a disaster Vietnam had been. They did not think so when they had power to affect it, when they were considered “experts,” when their opinions had authority. Those who did understand the tragedy that was unfolding were considered ignorant and naive, although it turns out they were wiser than the “experts” who were dispensing bad advice.

People in “expert” positions—people whose advice is sought by others—often ask the wrong questions. I have offered plentiful evidence for this proposition in this book. Designers and critics ask if a chair looks good, not if it is comfortable; if a hot water pot will add to our table décor, not will it be safe to use. “Experts” discourage signage to tell you how to use a door, despite splendid designs that lack only that element.

I will bypass here that obvious first question, expertise in what. I bypass it because I cannot deal with it, not in this forum, not at this level of generality. But it is the most important task in searching for an expert: Be sure you know what actual expertise you are looking for. If the best statistical analyst is not the best witness, do you choose the best presentation of a mediocre case, or the best case

⁷ See Chalmers Johnson, *Blowback*, Macmillan (2000, 2nd edition 2004). Indented quotation from his obituary in 291 *The Nation* 24:3 (December 13, 2010). The quotation contained therein is un-sourced.

with a mediocre presentation? If the best electrician is difficult to get along with, and you are managing a construction project, which is the more important characteristic, his skills or his cooperation?

I will assume we have defined the nature of the expertise at issue. We want everyone we come in commercial contact with to be good at what he does, but this is competence, not expertise. The mail deliverer should take the package to the right address, the sandwich maker should not confuse mayonnaise with horse radish sauce, etc. Go into a garden or general hardware store and ask for diatomaceous earth. In most instances you will get a blank stare. But they do sell it. Shouldn't sales people know their merchandise? Being good at what you do should be a source of pride and self-satisfaction. It should be the least of what everyone strives for. I do not understand why it is not. But expertise is more than this.

Expertise and Knowledge

Let us not confuse expertise with knowledge. One may have knowledge *about* a subject without having any expertise *in* it. That is, without being able to use that knowledge constructively in a particular situation. Something that appears to be knowledge is easily available in this internet age. However, once someone delves into a topic on the internet, he/she quickly realizes that it takes something else, something over and above having all these words, data, and pictures, to make use of them. First, much that poses as information is not, as quickly becomes evident when one article on a topic contradicts another. Which is to be believed, if either? The one written by a real expert, of course. But that tautology is not informative. We do not know who the real expert is, so we still do not know what to believe.

Michael P. Lynch takes this difficulty to an extreme, arguing, perhaps in jest, that the massive availability of words posing as facts creates more problems than it solves. Suppose someone pulled the plug. "No one would really know anything anymore, because no one would know how to know," summarizes Jill LePore.⁸ We have to agree how one would know that something is true, or it makes no sense to debate it. Politics is one area in which the art of convincing people that X is true is more important than the truth of X. If X is true, and we care that others learn X from us, they require access to the facts supporting X, and be able to comply with the rules of truth discernment. That declaring X, even if it is provably false, gathers votes, is an indication of the failed democracy in which we live.

8 Michael P. Lynch, *The Internet Of Us*, Liveright/Norton, 2016. Review by Jill LePore, "After The Fact," *The New Yorker*, March 21. 2016 starts at 91.

My experience as an expert witness covers all of this ground. First, I have to have a method by which I determine fact from data. I may have to describe and argue for my method, but let's say I am correct in some objective sense. That is not the end. Now I have to convince someone who does not understand my method that I have arrived at the truth. To philosophers, "truth" derives from a syllogism, or interactively from a dialectic. But expertise involves facts, not just logic. Philosophical argument is not the answer.

A true expert in statistics in law must not only have a method, and must not only be able to demonstrate to statisticians the merits of his method, but must be able to translate all of that to people who do not speak his language: judges and juries. Yet those who look for such an expert determine whom to choose from their credentials, from their resumes. It is no wonder that they choose badly.

The point is that mastery of "knowledge" is not the same thing as expertise. True expertise involves filtering out that which pretends to be knowledge, retaining that which is.⁹ I ran into many so-called experts in legal cases who had the kind of knowledge discussed by philosophers, but were not experts. They did not do well that which they were engaged to do, regardless of their credentials. I describe some of these cases at www.LongbranchResearch.com. These descriptions are dominated by the misconceptions of the opposing "experts." Little of what I did was brilliant, much to my disappointment. It simply was expert.

Really? An Expert?

The first question under the heading "Searching For Experts" becomes, do you really want an expert? Did BP—British Petroleum—really want experts at drilling a well in the Gulf of Mexico? If so, why did they shrug off the advice they were given, in April of 2010, that their drilling was unsafe? When BP challenged the U.S. government's estimate of how much oil leaked into the Gulf of Mexico, do you suppose they engaged anyone whose measure agreed with the government—or was even higher?¹⁰ Apparently there are whole industries—law being only one—in which the client is not seeking expert advice. Clients seek someone who has a credentialed

9 Tom Nichols confuses people who can spout this received "knowledge" with people who know when not to—real experts. See *The Death of Expertise*, Oxford University Press (2017). He thus disparages lay-people who question this "knowledge," many of whom have found errors in the pronouncements of so-called experts. By defining "experts" as "professionals," he extinguishes the difference.

10 Dina Cappiello, "BP Challenge to Oil Spill Size Could affect Fine," *The Huffington Post*, December 3, 2010; John Collins Rudolf, "BP Is Planning to Challenge Estimates of Oil Spill," *The New York Times*, December 4, 2010 at A15.

facade of expertise, who will be seen as experienced, and considered competent. More than this—a real expert—could be trouble.

Elizabeth Warren describes a banking industry report alleging that federal bankruptcy protection was nothing more than a hidden tax.¹¹

I'd spent nearly twenty years sweating over every detail in a string of serious academic studies, agonizing over sample sizes and statistical significance to make certain that whatever I reported was exactly right. Now the banks just wrote a check, commissioned a friendly study, and purchased their own facts.

When George Bush was looking for economics expertise in 2000, to assist his forthcoming presidency, he looked to Larry Lindsey, whose past pronouncements had been demonstrably wrong. Paul Krugman has suggested that “Mr. Bush values loyalty above expertise.”¹² And indeed, in many areas besides law—politics being one of them—expertise is not what is being sought, at all. Barack Obama has done no better, consulting with economists who had been consistently wrong about the operation of credit markets, or the efficacy of spending reductions to counter a recession. Was the President really looking for informed advice? Perhaps he, too, valued loyalty above expertise.¹³

To want an expert means that there is such a thing as expertise. We cannot all investigate all parties to financial affairs. We look to “rating agencies” (Standard & Poor, Moody, Fitch) to be such experts. They all rated as AAA—that is, the highest in credit-worthiness—the bundles of mortgages that swept through Wall St. in 2008. You remember, the mortgage “derivatives” that led to the famous banking crisis and rescue by the federal government. Why would the derivatives be better than the underlying mortgages that could not be paid, that led to defaults? No one knew who owned what mortgage. Banks had not done the required paper work, which they then tried to back-date, using people hired at \$10 an hour to sign papers they were not given time to read, with false names of bank vice-presidents. That is forgery, for which no bank executive has ever been convicted, or even tried. They were expert at not being penalized for their crimes.

When one of these agencies (S&P) down-graded U.S. government debt in August, 2011, bond prices went up. Did no one listen, or was the rating simply not

11 Quoted in Jill Lepore, “The Warren Brief,” *The New Yorker*, April 21, 2014, p. 96 (quotation at 100).

12 Paul Krugman, *The Great Unraveling*, W. W. Norton (2003) at 404.

13 Evan Osnos, “The Biden Agenda,” *The New Yorker*, July 27, 2014: “Above all, though, the Obama-Biden relationship was built on loyalty” (at 48).

believed? I think the latter—it was now recognized that ratings agencies are not experts. Wall Street Banks and other houses that invest in fixed income securities do their own rating. If you are good at it, you work there, not at a rating agency. Paul Krugman and others called them out on it:¹⁴

America's large budget deficit is, after all, primarily the result of the economic slump that followed the 2008 financial crisis. And S.&P., along with its sister rating agencies, played a major role in causing that crisis, by giving AAA ratings to mortgage-backed assets that have since turned into toxic waste.

Nor did the bad judgment stop there. Notoriously, S. & P. gave Lehman Brothers, whose collapse triggered a global panic, an A rating right up to the month of its demise. . .

And in those rare cases where rating agencies have downgraded countries that, like America now, still had the confidence of investors, they have consistently been wrong. Consider, in particular, the case of Japan, which S.&P. downgraded back in 2002. Well, nine years later Japan is still able to borrow freely and cheaply. As of Friday, in fact, the interest rate on Japanese 10-year bonds was just 1 percent.

Before downgrading U.S. debt, S.&P. sent a preliminary draft of its press release to the U.S. Treasury. Officials there quickly spotted a \$2 trillion error in S. & P.'s calculations. And the error was the kind of thing any budget expert should have gotten right.

So these people are now pronouncing on the credit-worthiness of the United States of America?

Others defended S&P, but with a metric I think is inappropriate. Consider an institution that rates, let us say, 20 firms a day, 100 a week, all at AAA. Let us suppose that one of those firms, one out of a hundred, every week, fails. Do we say these ratings are 99 percent accurate? Or do we say they missed every single failure? You will be told the former, but I think the latter is the better measure.

The first question was whether the party that says it is looking for an expert really is. The second question asks if those posing as experts really are; but more importantly, by what metric should we evaluate them to determine if they are? This is not easy, but I suggest that "averages" are not the way. What we want from our experts is that, at important times, they see what we non-experts do not see, and that they tell us. The metric we should use would be to count only disagreements

14 Paul Krugman, "Credibility, Chutzpah And Debt," *New York Times*, August 7, 2011. The order of some of these sentences was rearranged for this quotation.

between a particular expert and the average, the commonly held view. Among those events, how many times was the so-called expert “right”?

“We” would have liked management of the Federal Bureau of Investigation (FBI) to have listened to its field agents who, in 2000 and 2001 found it strange that some people were taking flying lessons while not learning how to take off or land. Management would not approve following up such reports.¹⁵ FBI management may fail to follow up many reports of no real interest, saving us money by doing so. They may do well, on that average basis. Being unable to distinguish serious from simple cases, they have missed several big ones. They had information leading to suspect Tamerlan Tsarnaev, one of the (April, 2013) Boston “marathon bombers,” of planning some bad activity. He convinced them, in an interview, that he was harmless. No, he wasn’t.

We want regulatory agencies to be staffed by experts. If those agencies do not know what they are doing, they are wasting our money and letting us think we are safe when we are not. Does the Food and Drug Administration really screen out dangerous drugs? Does it require accurate labels on food? When a package lists the sugar content, it does so “per serving.” The size of a serving, however, is widely regarded as a joke. No one eats that little per consumption event.

The National Highway Safety Administration takes reports from automobile companies of complaints from consumers. Can they put these reports together to detect serious safety issues? Apparently not.¹⁶

“We,” the public, would like federal coal mine inspectors to be at least as expert as the coal mining companies. The companies, on the other hand, want them *not* to be expert. “We” then need to be expert at managing government so the inspectors really are expert, the companies are told to do things that really make mines safer, and they comply with sensible safety regulations. That is surely what government is for, but that system fails. There are too few inspectors, they have too little authority, but also, they are not all experts. Or even competent. We have mine

15 See Andrew Hacker, “How He Got It Right,” *LX New York Review of Books* 1:16, January 10, 2013.

16 Hilary Stout, Danielle Ivory and Matthew L. Wald “Auto Regulators Dismissed Defect Tied to 13 Deaths,” *New York Times*, March 9, 2014. The authors tell us:

Failure to recognize a pattern in individual complaints has been a problem for the safety agency before. In the late 1990s, it was criticized for failing to detect a wave of highway rollovers in Ford Explorers with Firestone tires, a problem that was eventually linked to 271 deaths.

Congress passed a law in 2000 telling the auto companies to report consumer complaints. Still, the safety agencies cannot discern a problem from the data. Surely the “left” is correct that we want government to supervise nationwide safety. Just as surely, the “right” is correct that government consistently fails at this task.

accidents that, we later learn, were easily predictable and preventable. We should respect owners' reluctance to cooperate with inspections, to the extent that they benefit no one. The issue should not be adversarial. It is, partly, because the regulations are not written by real experts with a clear goal to foster safety.¹⁷ I have to comply with many nonsense regulations in my weaving mill. Whoever wrote those regulations never operated a mill, and thus could not have been an expert. Only real expertise can cure the errors of omission and of commission, of which there are so many that "inspection," which should be welcomed, is ridiculed.

Institutionally Selected Experts

In many instances we rely on institutions to select experts for us. For example, J. C. Y. Watt, Chairman, Department of Asian Art at the Metropolitan Museum of Art in New York City would be one such institutionally chosen expert. Eliot Weinberger, writing a review in the *New York Review of Books*, "fled" the catalog of an exhibit curated by Mr. Watt, "to sources that seemed more reliable."¹⁸ In a letter, Watt objected. Weinberger replied:

Mr. Watt's letter raises the question of whether an unrefined nobody, an "anyone" ... should be permitted to review an exhibition organized by an expert such as himself.

Weinberger's answer, and just as obviously mine, is yes, of course. Credentials and expertise are not the same thing. "As an ordinary reader," the sarcastically self-deprecating Weinberger notes, "I found the catalog unhelpful." Perhaps Watt had knowledge, but not expertise. In Chapter 1 I found reviews of chairs unhelpful if the reviewer has not assessed their comfort. Financial web-sites that list a stock's dividend, but not the ex-dividend date, are also unhelpful. "Help" is exactly what we want from our experts, where "we" excludes attorneys, oil companies and others discussed above. I just want to understand what I am seeing a little better with your assistance than I would on my own. If a museum cannot select an "expert" who can effectuate that, perhaps he is no expert; and neither is the museum's management.

I have suggested that the role of the military general is not to formulate policy, but to formulate strategy, and estimate how successful it is likely to be. If generals

17 See http://www.huffingtonpost.com/2010/04/06/west-virginia-mine-explos_n_526810.html from April 6, 2010, for example. The Upper Big Branch mine had been found wanting. The mine inspectors had some expertise, but not enough, and not backed up by the government bureaucracy, to shut the place down.

18 Weinberger's review is "Xanadu In New York," *New York Review of Books* December 23, 2010. Watt's letter of complaint, and Weinberger's reply, from which all quotes here emanate, are in the January 13, 2011 issue (Volume 58, No. 1) at 65.

are not expert at that—and they have seemed not to be—then I do not know how legislators and administrators, whose role *is* to determine policy, can do so. Let us not confuse roles. As described in Chapter 12, the talking heads who deride legislators for not being military experts do not understand what either the legislators or the generals are supposed to do, what they are supposed to be experts at.

If we expect our legislators to gain what information an expert policy-maker would need from the so-called military experts with whom they consult, why do we systematically elect people who are incapable of performing that function? Who ever asks of a prospective legislator if he has the expertise to do the legislative job he seeks? Wouldn't that be what we would ask of any other job applicant? And what does it take to become a multiple-star general? Apparently not expertise in military affairs. Furthermore, once you are there, you stay there. No assessment, no accountability. Very much, in Thomas Ricks' analogy, like university tenure.¹⁹

Sometimes, as I have noted, the selecting parties do not want actual expertise. However, sometimes they do, but no candidate has it. Sometimes, such as in elections, the selectors do not know what expertise the winner should have, and cannot evaluate who has what expertise anyway. No one has framed his campaign that way. Often in politics, as in corporations, a position is a reward for service, not an assessment of capability. And then we are shocked at how inexpert they are!

I do not have to tell you about the number of times the auto repair facility was unable to fix my car, or the number of those times when they said they had. You have been there. We rely on drug companies at the very least to keep their drugs pure and in correctly labeled bottles—but we know this does not always happen.²⁰ Because eventually a whistle-blower may be rewarded for his good deed, *Forbes Magazine*, always backing the little guy, calls whistle-blowing, the reporting of fraud, a “hell-bent pursuit of jackpot justice.”²¹ If you are truly expert at something, and that something happens to be crimes committed by others, it may be considered wrong (by whom? by the perpetrators?) to profit from your expertise. But if you are committing the crimes, well, buyer beware.

19 Thomas Ricks, *Firing 'The Generals' To Fight Better Wars*, The Penguin Group (2012).

20 GlaxoSmithKline “agreed to pay the US government \$750m to settle civil and criminal charges that it manufactured and sold adulterated drug products.” *The Guardian*, October 27, 2010. The whistle-blower, Cheryl Eckard, was of course fired by the drug company, after persisting in telling them that their manufacturing processes were faulty, news they did not want to hear.

21 Neil Weinberg, “The Dark Side of Whistleblowing,” *Forbes*, March 14, 2005, on line at <http://www.forbes.com/forbes/2005/0314/090.html>.

Heroes and Ayn Rand

As if the “objectivist philosophy” of Ayn Rand were not sophomoric enough, its flourishing in the 21st Century is not based on whatever meaning lies within it. In Rand’s novels there is one super hero, a person who is truly expert at what he does, while those around him at first fail to recognize the gifts possessed by their insightful leader. Perhaps we do not elect the wrong people to congress: Rather, we are slow to recognize their superior skills. Rand wants us to believe that we, the common people, come around, eventually. That does not square with reality, in which incumbents are traditionally re-elected regardless of merit, of which most have little.

At heart Rand presents a “greed is good” point of view. Selfishness serves the public interest. The point is presumably anti-Communist, arguing against the concept that, as we all contribute to society’s well-being, perhaps we should all benefit from it. Rand wrote tributes to capitalism, especially its resultant inequality in outcomes, justified by inequalities in individual accomplishments. Inequality, this “philosophy” contends, is the inevitable (and beneficial) result of some people being better than others, damn it.

Some people surely do have bold new ideas, some of which turn out to be good ideas. If a society is to benefit from those individuals’ ideas, it needs to encourage and reward them. However, purveyors of bold, even just correct ideas are not rewarded for them in politics. Power and creativity are different things, as congress taught us when they revoked air traffic controller cutbacks required by the “sequester” they had voted for. Meals On Wheels could be cut back, and Head Start, and even some military expenditure (though not for tanks which the military did not want, but Ohio officials did). Airport delays, however, were intolerable. If people did not learn how corrupt the political system is in 2013, it could be that they never will.

Rand’s first problem is the uni-dimensionality of her portraits. There is the great man, surrounded by mediocrity. One person may indeed be a better architect than others, but among his staff there is a better cook, a better accountant, a better manager of people, a better coordinator of construction, probably even a better draftsman. Temple Grandin, who one might think is hobbled with autism, in fact has made remarkable contributions stemming from her particular understanding of animals. “I spent hours experimenting and then testing my designs,” she writes, expressing what any innovator in any field would, that hard work is as important as

inspiration.²² She has not only shown how her ideas make animals happier, but how following her advice would make slaughterhouses more profitable. One might think that her expertise would be sought, her ideas followed. That is seldom so.²³

Grandin lacks the charisma of Ayn Rand's characters, but not their pioneering quality. By bundling creativity, expertise, physical beauty (handsomeness) and a dominating personality, Rand's fiction confuses the issue. The fact is that we are inexpert at selecting our experts. We are often seduced by the cover, having little or no understanding of the book. Our selection of religious and political leaders illustrates our inabilities as much as our selection of lawyers and accountants. We do not know if people are good or just persuasive, whether their speeches have content or only style. Rand offers no clue how to differentiate between these attributes.

Also, Rand does not know if inequality does in fact correlate with merit, however merit might be defined. Are the managers of large corporations—making millions of dollars a year—the creative people who make those corporations run? Are they even particularly good managers, coordinating the creative super-heros, directing their talents?²⁴ Perhaps most of them suppress more good ideas than they nourish, and lose their best talent through inattention.²⁵ What induced the Bank of America to purchase Countrywide Financial, a disaster about to happen—and which did happen as a part of the Bank? Suppose a company is doing half as well as it could have, but is profitable and growing. Who would fail to reward senior management? Who would kick them out? Corporate bankers lost billions of dollars in 2008. No bank president (except, ultimately, at Bank of America) was fired.

Bank of America knew how bad the Countrywide portfolio was. They consulted Wall Street lawyers (at the law firm Wachtell, Lipton), asking whether they were

22 Temple Grandin in the Forward to Sy Montgomery, *Temple Grandin*, Houghton Mifflin, 2012.

23 See Temple Grandin and Catherine Johnson, *Animals Make Us Human: Creating the Best Life for Animals*, Mariner (2010).

24 Think of the lessons from the television series "Thirty Something," in which at first it appeared that of the two lead characters, one was a creative genius and it was not clear what the other did, besides encouraging his friend. As the series progressed, we learned that "creative talent" abounds. It is a commodity to be purchased and harnessed to a larger concept. The scarce resource in business is management, the ability to select the right goal, focus groups of people on it, schedule it, achieve it. The seemingly less talented of the two characters emerged as the meaningful force, the compelling creator of value. Steve Jobs, who did not design or code, but surely was Apple's greatest asset, may well have been one model, Steve Wozniack the other, for these characters.

25 Let us not forget John Sculley, who was the CEO of Apple from 1983 through 1993, its worst years. Apple's president, Mike Markkula, thought that Steve Jobs was an unsatisfactory CEO. As I mentioned in a previous chapter, the Board of Directors agreed. Jobs was out of the company. What terrible decisions!

obligated to tell shareholders the bad news. Wachtel's answer? No, you are not. The reasoning? Bank of America could have been sued for sharing correct information with shareholders, thereby not following the advice of the "experts" it consulted. This is absurd. As those "experts" were wrong, why is their advice protected? Indeed, how can they be called "experts"? It is the job of the expert-seeker to find real experts. It is not his job to take the advice of non-expert poseurs. Ken Lewis, the CEO of Bank of America should have been fired far earlier than he was because, by letting the so-called "experts" define the rules, he failed to do his job.²⁶

Most odd about Rand's novels is that although this single great, creative man is set apart from others, he needs the support of the masses—and he wins it by means of a brilliant exposition explaining why his ideas are better than everyone else's. An exposition brilliant yet accessible to these mediocre myrmidons. Howard Roark does this. John Galt does this. Rand, in expounding her philosophy, would quote from her characters—from those self-explanation speeches. So we have to ask, are we to see her central characters as correct because they won over the approval of the people, or did they win over the approval of the people because they were correct? Or did they win the approval of the people because "leadership" is a quality distinct from what one is leading? Despite Rand's claims that these were superior people, perhaps their superiority was in convincing others that they were superior.²⁷

If there is a societal problem in Rand's fantasies, it is not with the incentives in place to reward expertise. And it is not in a conflict between the "ignorant masses" and the people destined to lead them to greatness. It is in the decision-making process, whereby experts are not selected or their advice is not taken. Whether the right executives were fired from *The New York Times* when it was discovered that a reporter, Jason Blair, had fabricated his stories, it is certainly correct that the fault lay at the executive level, at the level that allowed this activity to infect the *Times* for over a year. Rupert Murdoch closed *News Of The World* when it became known that reporters had hacked into telephones and bribed police for leads. The result was the loss of 200 jobs by people who had nothing to do with this. Those in charge at the

26 I cannot give references to every one of these events, but a search of "Bank of America" with "Wachtel, Lipton" and "Ken Lewis" should get you there. See also Sydney Finkelstein, "Why Ken Lewis Destroyed Bank of America," *Forbes*, March 3, 2009. Finkelstein concludes that whatever experience Lewis had was not training for taking over a brokerage (Merrill-Lynch) or a mortgage originator (Countrywide).

27 As I discussed in Chapter 12, Rush Limbaugh in many ways, and often, tells his audience how good he thinks he is. He is better at convincing listeners that he is "Excellence In Broadcasting" personified than at being excellent in broadcasting, but the former skill is more important. So, for example, on November 6, 2012—election day—Limbaugh declared that the polls and the pundits were wrong, that Mitt Romney would win the presidency, and win big. During the remainder of the week, he blamed voters for his error.

time of those actions, who since had been promoted into top management, retained their employment until the scandal reached the stage of a House of Commons investigation, and some long past that.

Consider also the falsification and then cover-up in the accounts of the death of Pat Tillman in Afghanistan, for which no one of high rank has ever been prosecuted or even disciplined. Only from the persistence of his family do we even know this cover-up happened. How can we have an excellent system when so many resources are dedicated to hiding errors?

Our institutions punish those far down the decision chain for bad so-called expert advice given to and accepted by persons high up the chain. John Yoo, after writing the rationale used by the Bush administration for “extraordinary” questioning methods (arguing that what everyone knows to be torture is not really torture) went on to become a tenured professor of law at the University of California at Berkeley. Some of the jailers who at least thought they were following orders, under Yoo’s rationale, went to prison.

By and large, people at the top avoid the consequences of their actions. The problem, in all institutions, is choosing the right people for leadership positions. Their job is not usually to create solutions, but to define the problem and choose among the solutions that are offered. That should mean getting advice from real experts. Unfortunately, little effort is put into figuring out what the problem is and determining who has *real* expertise in solving it. We do not do well at finding people who make good decisions, or at eliminating those who make bad ones.

As discussed in Chapter 10, I suggest that The Peter Principle is more enlightening than anything Ayn Rand ever wrote.²⁸ The Peter Principle is not only succinct and understandable, it is most likely correct. The principle suggests that merit in performing one kind of task is rewarded by assigning a different kind of task, and so the individual progresses from success to success until, ultimately, like Ken Lewis at Bank of America, he fails. The reader of an Ayn Rand work is not supposed to identify with someone buried within the organization, only with the super-hero at the top where, of course, he belongs. Unless he did all preceding tasks well, but not this one.

One of the best examples of The Peter Principle is Alan Greenspan, a devotee of Ayn Rand’s ramblings, and one-time chairman of the Federal Reserve. It was easy

28 Laurence J. Peter and Raymond Hull, *The Peter Principle*, Morrow (1969)

for him to think that the leaders of large banks were particularly deserving fellows, who would create a new finance system that would drive the United States economy. Part of this was true—they drove the United States economy down to a level from which it will take years to recover. Some made millions—some, billions—of dollars doing it. One could hardly blame them. Given the opportunity, who among us would not do the same? But one can blame Greenspan, whose job it was to take a larger view, the view of the economy as a whole. Strange position for a Randian to hold, as Rand would say there should be no such job. And, it seems, there wasn't.²⁹

In short, sometimes the people making the decisions do not really want expertise, and at other times they profess to want it, but do not know what it is. It follows that they do not know how to find this elusive quality, although they would all say they know it because they have it. How did such people get to be the decision-makers? Sometimes because they were not very good at it, and so never advanced further. Experience may be a contra-indicator of excellence.

Are There Experts?

There is a third problem. The first two assume that there are experts, and that some people could identify them, if they wanted to. The first problem is that those persons doing the selecting may not really be looking for expertise. The second is that perhaps they are, but they themselves lack the expertise required to make the proper selection. The wrong people are assigned to that job. The third problem asks if there *are* experts in certain fields. Is there someone who knows whether tar paper should be put under shingles? Not who has an answer to the question, but who has the *right* answer to the question?

Plaintiff and defendant both sell blended yarns, such as mohair, silk and cashmere. Plaintiff alleges that defendant's "cashmerino," supposedly a blend of merino wool (55%), non-natural microfiber (33%) and cashmere (12%), in fact contains no cashmere. One retailer sent samples of yarns to a reputed test laboratory, which reported that no cashmere fibers were present.

That would seal the deal, if that lab could be relied upon. If its staff were experts at determining the source of fibers. A reasonable procedure would have been to send samples of the same yarns to two other labs, to get some idea of the reliability

29 Greenspan was not alone in urging deregulation of finance. He was, however, alone in being in a position to see the necessity of regulation *and do something about it*. You do not put a pacifist in charge of the military, an oil lobbyist in charge of the Department of the Interior, or a Randian in any position where the government is supposed to regulate industry. Unless you are trying to subvert these functions.

of the tests. Foregoing such testing, plaintiffs chose to use a lab run by a professor of bioengineering at the University of Massachusetts at Dartmouth. He had chaired industry committees, and published peer-reviewed articles. Who would deny him the title of “expert”?

This so-called expert had participated as a tester in an experiment in which yarn of known composition—known because it was blended by those conducting the tests—was sent to laboratories. Results varied. One example is a 90% wool, 10% cashmere blend in which this expert found no cashmere. The judge summarized:

Thus, while the 100% cashmere and 100% yak fibers were correctly identified, Professor L...’s test results were off by a wide margin for every single blended yarn or fiber. Most often, the amount of cashmere was significantly under-reported.

This is not, apparently, a distinguishing feature of this particular expert. Determining the composition of mixed-fiber yarn is not easy.

Of the 200 tests conducted (5 samples x 40 laboratories), only 29 tests were accurate within three percentage points of the actual value for the fibers (wool, cashmere, yak, and angora).³⁰

The problem, concludes the judge, “appears to be industry-wide.” But exactly what is the problem? Is there no believable test, or no believable *testing* of fiber blends?³¹ Plaintiff’s expert was excluded from testifying, as he should have been, but it is not known whether any other expert would have fared better. A larger question is whether we consumers can believe yarn-blend labels. It does no good to have laws on the books—which we have—limiting the use of the word “cashmere” to actual cashmere fibers, if no one can reliably determine whether a particular yarn has any. It does no good to have courts determining who is “expert” in a field if no one is.³²

Writing about natural dyes, Michele Wippinger says:³³

Natural dye extracts can be thickened for painting or printing. [We have] tested many thickeners and [have] found gum tragacanth to be the most effective for natural dyes.

30 *Cascade Yarns, Inc. v. Knitting Fever, inc. et al.*, 2012 WL 5194085 (W.D. Washington, 2012).

31 Cashmere is hair (not wool) from certain places (the neck) on certain species of goats. Like alpaca, shearing produces both fine and course (“guard”) hairs. The guard hairs are to be extracted in the spinning process. Much of the difference in quality of cashmere, therefore, is in the expertise of the spinner.

32 If testing for cashmere or alpaca, and fiber counts include guard hairs, the reported percentage is meaningless.

33 Michele Wippinger, *Natural Dye Instruction Booklet*, Earthhues (2002) at 16.

By 2010, this was known not to be true. Guar gum is now known to be the most effective and cost-effective thickener. Some expertise is time-dependent. One expects that Wippinger will make that change in an updated version of her informative booklet. The expertise you learned in school ten years ago is gibberish now. True experts must continue to learn, and not be bound by either concepts antithetical to such learning (as the Catholic church was to astronomy) or the notion that they already possess the requisite knowledge to solve any problem (as so many statistical experts have been).

Time works to make obsolete what you learned in school. However, in that time you can improve your knowledge and skills. When you look back to advice you gave years ago, to how “expert” you were then, compared with now, you see how tentative “expertise” is. SAS, the largest corporation in North Carolina, and probably the largest purveyor of statistical analysis software in the world, wisely advertises (to statisticians) that it will perform statistical tests you did not learn in school. Having a PhD in statistics is no guarantee that you are an up-to-date expert. The field is constantly changing.

In Chapter 9, on Education, I referred to Diane Ravitch’s turn-around concerning educational standards espoused by the federal government. The question remains, was she an expert when she supported them, or did she become more expert when, later, she rejected them? The many “experts” who supported the Vietnam or Iraq wars, and then changed their minds, have not demonstrated that they could do better with a new problem than they did with these problems. They now want to be seen as latter-day experts. Why shouldn’t we see them as slow thinkers, wrong when it counts? Why should we believe that they are better just because now, having had a lot of help, they are right?³⁴

The third problem may be that no one, at the time it is needed, has the correct information. Everyone is operating on what they have been told. Much of it was as wrong as the advice I wrote about in the Introduction to this book, that my father should bathe his eyes each night in boric acid. Or as wrong as the notion that ulcers are the product of stress when, we now know, they are the product of bacteria.

34 Bill Keller, an opinion writer for the *New York Times* in 1993, supported our incursion into Iraq. In 2011, on his return to the *Times*, he writes “President Bush got it wrong. And so did I.” (“My Unfinished 9/11 Business,” *New York Times Magazine* September 11, 2011 at MM36.) Tony Judt had referred to liberals who supported the Iraq war as “Bush’s Useful Idiots,” *New York Times*, September 21, 2006. Those idiots were not experts then, and should not now, years later, pretend to be, unless they can prove that they are.

Perhaps, an extension of the third problem, someone really is an expert, but the world has not come to recognize him or her as such. So the third problem might be better stated that *no one known to those who need him/her* is an expert. Elizabeth Marshall Thomas wanted to observe the behavior of deer.³⁵ She put out food for them, so she could get to know them as individuals. “Experts” told her not to do this, just as they had told her to shoot a bear that had been hit by a truck. She would not shoot the bear, which survived; and her observations on deer were written into

a glorious achievement, giving new meaning to what it is both to be human and to be alive on this planet of wonders.³⁶

The so-called experts were not experts at all. Ms. Thomas was.

Defining The Expert's "Area"

A fourth problem is that the area of needed expertise may not be defined well enough. Thickener is not even mentioned in Dominique Cardon's 778 page encyclopedic tour of natural dyes through many continents and cultures, five years after Wippinger's booklet. Why? Because Cardon is a scholar, an investigator. As she tells us,³⁷

This book gathers together the currently available knowledge on the dyestuffs obtainable from some 300 plants and 30 animals.

Cardon is an expert on dyes, not on dyeing. Her book tells us what these dyes are, how they are processed from natural sources—plants and animals—but not so much the intricacies of how they are to be used. Specifying what you want an expert to be expert in is not a simple matter. Before you make dye extracts from natural materials, consult Cardon. But before you *use* them to dye fabric, consult Wippinger, although her latest book may be wrong, out of date. So many so-called experts are.

The chairman of the Yale statistics department was engaged to do a data analysis in a case alleging that the state of Connecticut selects juries systematically excluding Hispanics. He assured his clients that the evidence supported their allegation that the way juries are formed does discriminate against Hispanics. The fact is that jury selection, which in Connecticut draws people from places based on Census counts, *over-samples* large cities (Hartford, New Haven, etc.), which is where

35 Elizabeth Marshall Thomas, *The Hidden Life of Deer: Lessons from the Natural World*, Harper (2009).

36 Tim Flannery, “Getting to Know Them,” review of four books in 57 *New York Review of Books* 7 (April 29, 2010) at 16, referring to Elizabeth Marshall Thomas, *The Hidden Life of Deer: Lessons from the Natural World*, Harper (2009)..

37 Dominique Cardon, *Natural Dyes*, Archetype Publications Ltd. (London, 2007) at xiii.

Hispanics live. It was biased *toward* finding Hispanics and getting them on juries. It systematically did the opposite of what this so-called expert testified that it did. The judge, finding no merit in this “expert’s” testimony, admonished:

A concern for husbanding precious judicial resources dictates that a decision, in the future, to challenge the array anew be predicated on facts warranting judicial intervention.³⁸

How could such a distinguished “expert” be so wrong? He surely was an expert in theoretical statistics, but he was not an expert data analyst. He asked the wrong questions. In some instances he expertly answered those questions, but they provided no information to the judge about the issues at hand. Many an expert statistician has failed as an analyst in litigation. His client thought skill in one was skill in the other. It is not.

Although not universal, I find this strikingly often true about academics. It seems so obvious, to go to the local university to find expertise on a subject. Yet, like physicians, academics often know the literature, which describes what others have done and what they have said about what they have done. Academics may not know how to do what the literature is about, or how to discern which of those articles were actually informative. For example, it seemed at the time to make sense to turn to economists to assist in the British Tariff Reform Campaign of 1903. Later, A. W. Coats reviewed their work. R. H. Coase summarized:

Coats’s study shows that the entry of the economists into the tariff controversy did not raise the quality of the debate . . .³⁹

Nor have more modern “experts” done better at understanding the world around them.

Of all the professions held in esteem in modern society, few seem to have fallen as far from grace as the so-called “expert.” Academic economists are blamed for being disconnected from the real world and failing to see the economic crisis brewing. International scholars are lambasted for their inability to forecast the Arab Spring or the eurozone crisis. Banking regulators are viewed with distrust since the financial crash unmasked their ineptitude. Experts in many fields have joined the unsavory ranks of

38 *Connecticut v. David Gibbs*, 1998 WL 351903 (Conn.Super.) at *28.

39 R. H. Coase, “The Appointment of Pigou as Marshall’s Successor,” 15 *Journal of Law and Economics* 473 (1972) at 485. See A. W. Coats, “Political Economy and the Tariff Reform Campaign of 1903,” 11 *Journal of Law and Economics* 181 (1968).

politicians, Wall Street executives and telemarketers in the public's eye.⁴⁰

What is wrong is that these people are called “experts” because they express opinions on matters which do require expertise. If those opinions turn out to be wrong, they were not experts. No one seems to notice. No one reviews the record, asking how “expert” they were. All have been chosen for their credentials—by academic departments, by regulatory agencies, by news reporting organizations. These people who select “experts” are as good or bad as the experts they have selected. And they, also, are not evaluated on that basis.

Are There Experts Anywhere?

The time academics spend researching dyes is not time spent dying cloth. Real expertise on that subject—on natural dyes, not manufactured dyes—is sometimes found in a little storefront in Asheville, North Carolina called “Cloth Fiber Workshop,” but never at the nearby University of North Carolina at Asheville, and seldom at any other university. It is found in other countries and, in the United States, among crafts people who do not want to use manufactured dyes. They have devised ways to mordant, dye and fix without resort to harsh chemicals.

Jane Palmer at Noon Design in Chicago will tell you that hers is the only natural dye facility in the United States.⁴¹ Jane Palmer does not know about Table Rock Llamas Fiber Art Studio in Colorado. It would be easier if these entrepreneurs were in academia, going to conferences, reading papers, making it their job to gather knowledge about who uses what kind of dye, where. That is what academics do—in some fields. To the extent they do it well, collecting that knowledge has value. But that is not what crafts people do. And because these are separate worlds, it turns out that academics often do not do their information collecting very well. They perform their other function, dissemination, even less well.⁴² Few college fiber arts departments teach about natural dyes, or invite crafts-people in to do so.

Real expertise in statistical analysis for litigation can be found among the people who have done it. Even in that set of people there are few real experts. Does having built 1200 houses make you a *good* builder, or only an experienced builder?

40 Elif Shafak, “Europe at a Crossroads,” *The New York Times*, June 24, 2012.

41 <http://www.treehugger.com/files/2010/04/first-natural-dye-production-house-in-america-opens-in-chicago-video.php>

42 I thought *The Center For Craft, Creativity and Design*, of which I once was a board member, was founded to take on this very task, assembling, documenting and disseminating craft knowledge. An important mission. Unfortunately, it has since decided that this is not what it most cares to do.

When we talk about expertise, we do not mean experience. We mean quality. Which continues to leave open the question: What is it, and how do we find it?

There are two general rules: First, one is unlikely to find a real expert statistical analyst for a legal issue in academia—much though many professors, confusing knowledge about the craft with expertise in the craft, claim to be just that. Second, seeking such expertise in the private sector, where it does indeed reside, leads to the real possibility of finding people who have steered their careers towards satisfying their clients, not doing what their clients will claim they have done—objective analysis of the facts—and done expertly.

On the first point, I find many references to, but little compelling criticism of those so-called experts' work. The job of the academic is to know *about* things, who did what. Knowing who did such things *well* requires a different skill. Academic knowledge does not lead to being a very good statistical analyst one's self, and apparently not to being very good at understanding what those who testify did wrong or might have done better. Academic knowledge of dyeing or weaving does not a dyer or weaver make. Being good at literature criticism does not imply being a good writer. If there are professors of construction, you can bet they believe that every house should be wrapped with Tyvek and that felt paper should be laid under roof shingles—but have no measurements of the difference either makes.

Which leads back to what I have been saying throughout: The existence of non-experts who pose as experts, in itself, is for the most part harmless. The harm is done when someone who needs an expert selects and listens to a non-expert. The difficult tasks are locating, and then assessing the candidates. That job that is inevitably assigned to a person who not only is not one of them, but who has no skill at selection. It is true that John Sculley made one of the worst business decisions ever, to isolate Steve Jobs and force him out of Apple. But it is also true that it was Steve Jobs who selected John Sculley to lead Apple.

We all find ourselves in this position at some time in our lives. We have to determine who is the real expert, whose advice we should take. In the television series on HGTV (Home and Garden), "Holmes On Homes," Holmes comes into a renovation that has been botched by the previous contractor. HGTV has laid its reputation on the line that Holmes really is expert. I think HGTV has chosen well. Interestingly, one of the things Holmes is most expert at is in calling in trade experts—the right person to rewire, the creative tile man to resurface, etc. Once again we see that the scarce resource is not the creative talent, it is the person who

can identify what skills are required, and can distinguish between real skill and credentials. Exercising sound judgment, knowledge of and the ability to assess resources, combined with stern management, Holmes selects the people who will do the work, then sets and hold them to a high standard. He gets the job done right, more than he does it himself. And so, following the tradition of cast-offs from PBS' "This Old House," he has moved on to advertising, where he makes money certifying that this product or that really does the job. He may be right, but I no longer believe him.

Academic Credentials

It is distressing to find, in law schools everywhere, professors who teach about the lawyer-expert relationship without ever tackling the issue of how you know if you are dealing with a real expert. This is an example of the never-ending confusion between credentials and expertise. The label "professional" does not help, as many professionals are not experts.

Where does the label "professional" come from? Writing about ornithologists:

Professionals commonly demarcate themselves from amateurs by a specialized vocabulary . . .⁴³

The activity in many fields can be considered a sort of conversation. Any conversation that goes on long enough will develop its own vocabulary. Someone who appears to know that vocabulary can pose as a professional, as a person immersed in the conversation, even among professionals. By "expert" I mean someone who knows *and can apply* the content, as well as the language of a field of study. Professionals know the accepted "wisdom" of a field. Experts challenge that wisdom.

It is distressing to find professors in fiber arts departments, who teach courses in weaving, who know no CAD software in which professionals write their weave files. Perhaps worse are those who claim to know the software, but are actually incapable of making files that can be run on an industrial loom. Slack ends? What is that?

Yet there are actual designers working in such mundane positions as designing automobile upholstery (someone has to do it), who could instruct students not only what considerations to account for in constructing a file, not only how to make a file that works, but on how the industry deals with design, how to "sell" a design to an automobile company, etc. Not that most designers are experts. They seem not to be.

43 Robert O. Paxton, "Birds: The Inner Life," in LX *The New York Review of Books* 1:30, January 10, 2013 at 31.

Most designers use formulas, design to the standards of a particular mill, and therefore do not extend those standards. They use the weaves they find at the mill—in itself a good thing—leaving themselves without the skill to make their own weaves. Yet, even if most commercial designers are not experts, there are experts among them, and seldom elsewhere.

Academia seems to have no way to take advantage of true expertise in most fields. What academic fiber department would look to ten years as a designer of automobile upholstery as a credential? No, they look to exhibits juried by people like themselves, non-experts who have gained the approval of other non-experts. The only institution I know that systematically invited winning statistical experts in important cases to present their work to others (at luncheons in Washington, DC) was my analysis firm Longbranch Research Associates (then, Econometric Research, Inc.). I thought it was important to know real experts, to learn from them. No law school, no statistics department, has ever had such a program.

The Anointed

If the timing is a third problem—assuming the search is being conducted for expertise that does exist—and being specific about the area in which expertise is needed constitutes a fourth problem in finding it, I have alluded here to a fifth: There is a cadre of people designated to have it, who anoint or certify others as having it, when none of them does. And so we see the students of incompetent data analysts coming into the world as certified data analysts; and the students of fiber arts professors getting entry positions in other academic institutions, when they do not actually know how to design and effectuate anything beyond hand-weaving, if that. Incompetence masquerading as expertise begets more of the same, because we have a certification process called “academia.” As I described in Chapter 9 on education, people in that process protect their own, excluding others with real expertise. Yet this is where outsiders looking for expertise go.

Of course the world is not so simple. An academic not only should know his/her field, but should be able to explain it. Surely many expert performers lack expository skill.⁴⁴ They are better off where they are than entering into an academic position. However, even though many would rightly be rejected, there would hardly ever be a teaching opportunity for most of these highly skilled but not credentialed

44 An engaging television advertisement by Federal Express makes this point. “You didn’t bring Carl with you” the incredulous co-worker asks on the telephone. Carl had been identified as an expert on presentations, meaning knowing what tools are available to assist the presenter. Here he is, making a presentation, something he does not do well at all.

people, even the ones who could light up a classroom. It is the credential, not expertise, that leads to the job.

I concluded fifty years ago that academic institutions did not house the most creative, skilled experts. That understanding was a critical part of my decision to leave academia, to “go private.” I have found time and again, in fields far removed from data analysis, that I was correct about that. Nor am I the only person who left academia to get out of a mediocre intellectual environment into one that housed real expertise. It is only right, though, to discount my statements about it by the fact that this is what I did. It could be self-justification.

Other people may say otherwise, that academia, by and large, is the repository of the real expertise that others need to learn. That could be true in some fields. What is surely true, however, is that this is what academics claim. They are as biased in their view of academia as I am, but there is one difference: I have lived in both worlds. No, there is another difference. In my particular field, the end of a project, unless the parties settle, is a contest. If one wants to generalize, one might collect data on cases in which one side’s expert was an academic, the other side’s expert was not. The score would be based not on which side ultimately won the case, for there is more to a case than experts. The score would be based on which expert gained favor with the judge; which, if either, was determined to be “right.”⁴⁵

No one has ever done such a study. The periodicals in which such a study might be published are themselves run by academics who would resist the appearance of anything that questioned their expertise.

This is not a theoretical statement. I was so appalled at the graphic an opposing expert placed into evidence—that same chairman of the Yale University statistics department—that I sent his graphic, and my reformulation, to Howard Wainer who, at that time, wrote a regular column about statistical graphics for *Chance*, a publication of the American Statistical Association (ASA). Howard wrote an article about this professor’s litigation graphic, praising my recasting of it. The

45 There is not always a contest between experts. Judge Posner writes, Dr. Russell is an expert, but fails to indicate, however sketchily, how he used his expertise to generate his conclusion. Mere conclusions, without a “hint of an inferential process,” are useless to the court.

Thus University of Arizona Professor Stephen T. Russell, holder of an “impressive curriculum vitae” such that he will be considered an “expert” under the law, demonstrates no expertise in his report in this case. No expert, academic or not, is listed for the other side. *Zamecnic v. Indian Prairie School District*, 636 F.3d 874, 7th Cir. 2011, at 881.

article was rejected. *Chance* would not publish an article that made a full professor of statistics look bad. Thereupon I cancelled my ASA membership.

Howard eventually did publish the article as a chapter in a book.⁴⁶ He told me that the editor of *Chance* would not publish the piece because the professor had applied too much “heat.” I did not ask for details. The name should be “The Academic Statistical Association.” Its claim to be interested in advancing the science is a sham. It advances only the interests of its academic members.⁴⁷

I will conclude this anti-academic diatribe (my second—see Chapter 9 on Education), with a story illustrating the points I have made here. Only slightly edited, this is the story I told in a report where I was urging the court to find the other side’s expert incompetent. As that expert was a Yale professor, I thought I might soften the judge to my conclusion by telling him about yet *other* inept Yale professors. This story describes one.

We might remember Nicholas Hengartner, from the Yale statistics faculty, testifying in a Florida court, televised live on C-SPAN in 2000, in what became *Bush v. Gore*.⁴⁸ Hengartner claimed that he could project, from the 22 percent of the precincts already recounted, that if the increase in Gore votes continued apace, a net six hundred would be added to Gore’s statewide total. That would be enough to change the election result.

In the precincts recounted, Gore had won 75 percent of the pre-recount votes. In the county as a whole, he had won 48 percent. So the recount up to the point at which it stopped was unlikely to be representative of the additional votes Gore would get were it completed. The sample from which Hengartner was projecting was biased. His projection surely exaggerated the benefit Gore

46 Howard Wainer, *Graphic Discovery: A Trout in the Milk and Other Visual Adventures*, Princeton University Press (2008), Chapter 12: “No Order In The Court.” Howard failed to inform me that he had published the article, and misspelled my name. He may be an expert on graphics, but not on professional relations. Nor did he identify the creator of the bad graphics I had improved. It is Professor David Pollard. Copyright be damned—I have placed a copy of Howard’s article on www.LongbranchResearch.com.

47 This story of an academic applying pressure to a journals to suppress embarrassment pales in comparison to those told in Chapter 5 of Richard H. Sander and Stuart Taylor, Jr., *Mismatch*, Basic Books (2012). They describe attempts to suppress publication of an important study (by Sander) indicating that affirmative action admissions to law school did not serve those who got them.

48 *Gore v. Harris*, 2000 WL 1770257 (Fla Cir. Ct. 2000), stopping vote recount; certified by Florida Court of Appeal for Supreme Court of Florida review (2000); reversed and remanded, 772 So.2d 1243 (Supreme Court of Florida 2000); Florida decision stayed pending further action as *Bush v. Gore*, 531 U. S. 1046 (2000) staying Florida Supreme Court decision; 531 U.S. 98 (2000) (per curiam), reversing Florida Supreme Court and ending recount.

would obtain from the complete recount. Hengartner had made a simple, but fatal, error. The court rejected his conclusion.⁴⁹

The expert who explained Hengartner's error to the judge came from the private sector. Similarly, although the Yale professor's work in my case was accepted into evidence, mine prevailed.

The Consequence of An Action

Justice Felix Frankfurter, thinking that federal courts did not have the expertise to set the congressional districts of a state, predicted what would happen if the Supreme Court declared the current districts invalid:

Of course no court can affirmatively remap the Illinois districts so as to bring them more in conformity with the standards of fairness for a representative system. At best we could only declare the existing electoral system invalid. The result would be to leave Illinois undistricted...⁵⁰

The solution, he suggested, lay with the voters:

The remedy for unfairness in districting is to secure State legislatures that will apportion properly, or to invoke the ample powers of Congress.

Justice Rutledge, concurring, mentions "the possibilities for collision" between branches of government, resulting in a constitutional crisis. How could the Court force state legislatures to do anything?

Today, we think this hesitance is absurd. We look to courts for constitutional protection, for remedies to unfair actions by other branches of government. We even let the Supreme Court determine who was elected president!⁵¹ This turnaround in the Court's position—in its opinion of its own responsibility and expertise—happened only 16 years after it refused to interfere with legislative redistricting, in *Baker v. Carr*.⁵²

Just two years later the Supreme Court held that the Equal Protection Clause of the Fourteenth Amendment required

49 Let me emphasize here, as I did in that report, that Hengartner was otherwise an excellent statistician. The question before the court was whether he was an expert in what the judge needed to know. I think the Florida recount should have continued, but I can understand that the judge, being irritated by such a flawed argument for that position, shut it down.

50 *Colgrove v. Green*, 328 U.S. 549 (1946) at 553. Next quotation from the same source, at 556.

51 See the above-cited *Bush v. Gore*, 531 U.S. 98 (2000) (per curiam).

52 *Baker v. Carr*, 369 U.S. 186 (1962).

substantial equality in all its legislative districts. Apportionments were adjusted without any of the political-judicial conflict that Justice Frankfurter had feared. Chief Justice Warren said later that the districting cases were the most important of his years on the Court.⁵³

What expertise the justice system has, or can have, is a continuing question. Describing Justice Brennan,

It was after years of reviewing the facts of individual cases that he concluded, along with Justice Marshall, that the death penalty could not be administered justly.

I disagree that because we have not devised a good death-penalty system, we cannot. Should we stop building bridges because some fall down? Should we give up on regulating mine safety because the safety inspectors so often do not take clearly needed action? That paradigm, followed by many non-expert “experts,” is illogical.

The fact remains that we execute innocent people. Once again, the proper metric of our expertise is not that *most* executions are of truly guilty murderers. The system is a failure if *any* innocent defendant is executed, regardless how many guilty ones are. Whether there should be a death sentence is a separate question. But if there is one, it must not execute innocent people.⁵⁴

The Press

Reporters look for experts to lend an air of authority to their stories, or to opine on the consequences of the event being reported. That is, reporters are not considered expert *enough* themselves. They have to seek another opinion.

The most enraging moment for any correspondent writing about Iraq, Afghanistan or Yemen is to turn on the television and see some “talking head” pontificating about the conflicts. The self-declared expert is always glib, self-assured and irredeemably ignorant about what is going on. They are usually supportive of

53 Anthony Lewis, “The Most Skillful Liberal,” 58 *New York Review of Books* 6, April 7, 2011. The title refers to Justice William Brennan, who would have been appalled at how the Court’s powers to assure “equity” ultimately became used. I think the second case to which Lewis refers is *Wesberry v. Sanders*, 376 U.S. 1, February, 1964. On June 15, 1964, several other redistricting cases were decided, the Supreme Court thereby emphatically stating its intent to police this area. Next indented quotation from the same source.

54 Despite all the “expert” attention to this question, a simple, direct remedy is available. The jury denotes a sentence. Interpose between the sentence and the penalty the requirement that the defendant must admit his guilt. He cannot be executed if there is any doubt, and the ultimate doubt comes from his word. When he says “Yes, I did it,” that doubt is erased. If the system is ever found to have executed an innocent person, it would be because he committed “suicide by cop,” a well-known event that, although unfortunate, cannot be considered the system’s failure.

whatever line the government, American or British, is trying to sell. There is no health check on their credentials. Bookers who engage them for appearances on TV and radio never seem to run a simple check on their knowledge by asking when they were last in the country they claim to know so much about.

It is worse in the US than in Britain, where the best of American reporters are supposed to amplify their descriptions and justify their analysis by quoting some purportedly independent expert. When missiles were falling on Baghdad in 1999 I remember watching a highly experienced correspondent crawl through falling shrapnel to use a satellite phone. He told me: "My paper insists I call a think tank in Washington to find out what is happening."⁵⁵

Any large-scale story seems to require "expert" opinion, although any opinion can be found for any proposition. One writer in Britain tells us:⁵⁶

Long ago, in another journalistic galaxy, I had to comment on the wave of gruesome accusations leveled against relatives during the great panic over physical and sexual cruelty in families that marked the dying days of the Thatcher era. The fuming ranks of "experts" seemed split between those who detected Satanic male beasts at every suburban hearth, and others who thought Britain in the grip of a family-breaking witch hunt led by dogma-crazed social workers.

If we look to newspapers, the wide variety of what they call "facts" might lead one to think there is no such thing as expertise. Perhaps columnists and op-ed pieces exist to help us. From columnists we can expect a consistent point of view. Few, however (I have noted the absurdities propounded by Thomas Friedman in Chapters 9 and 11) are experts in any area we can name. Some (Paul Krugman has detractors, but look at the facts—he has been consistently correct) are. Nonetheless, we look to columnists more for opinions than facts, and opinions may be held by anyone. I read columns to learn how people perceive the world, whether they are correct or not.

It is reasonable to believe that op-ed columns exist to provide authoritative information on clearly defined topics.

The purpose of an op-ed is to offer an opinion. It is not a news analysis or a weighing of alternative views. It requires a clear

55 Patrick Cockburn, "Yemen And The Perils of Exaggeration," *Counterpunch*, November 5-7, 2010.

56 Boyd Tonkin, "A Week In Books," *The Independent*, September 29, 2006.

thesis, backed by rigorously marshaled evidence, in the service of persuasive argument.⁵⁷

Who gets to be an op-ed writer?

Authority matters. Readers will look to authors who have standing, either because they have expertise in their field or unique experience of a subject.

Do we believe that the editor has determined the writer's expertise? The editor knows the writer's credentials, and presumably has evaluated his/her writing. Yet many op-eds are insipid, inept. Selecting experts—if that is what newspapers seek—is not easy.

Government Policy Advice

To think that an elected official would be expert in anything, other than getting elected, would be foolish. But what *is* this expertise in getting elected? It is espousing an ideology that induces the most votes, that people respond to. Catering to a self-defined, self-identifying group of the population might not lead to good government, but it is necessary in our system.⁵⁸ The most needed skill we would want elected officials to have is to be able to distinguish true expertise from false. When they are to write and vote on legislation, over and above the things that these legislators believe on faith rather than on fact, they must choose the right “experts” to listen to. Can they?

The governor of Virginia designated April, 2010, as “Confederate History Month.” Honoring “heroes” of the Civil War, his proclamation failed to mention slavery.⁵⁹ After a national uproar, he apologized and withdrew his proclamation. It is silly to think he did not know what he was doing, to whom he was catering. Be at one with Virginians who celebrate secession, and you will be re-elected. Some who commented on the *New York Times* article noted that we celebrate Columbus Day without shedding a tear for the natives who preceded Columbus, and were summarily swept aside. Descendants of those natives do shed such tears, but there are few of them. By and large it is the winners who celebrate. People can usually be counted on to honor their ancestors, even if their ancestors were dishonorable.

57 Bret Stephens, “Tips For Aspiring Op-Ed Writers,” *New York Times*, August 26, 2017. Next quotation from the same source.

58 Ezra Klein discusses this “group-think” phenomenon in “Unpopular Mandate: Why do politicians reverse their positions?” *The New Yorker*, June 25, 2012 at 30.

59 See Katherine Q. Seelye, “Celebrating Secession Without the Slaves,” *The New York Times*, November 29, 2010.

This Virginia proclamation honored the losers, the should-have-been and were losers. Governor McDonnell was not being inexpert, catering to Civil War buffs, pretending that secession was about states' rights. It was about the "right" of a state to permit slavery. He just was not being expert in what we might want a governor to be expert in, say, statesmanship. Or an understanding of history. Or honesty. Or equality.

The harm non-experts in high places can do is most easily demonstrated, if not by the war against Iraq, then by the Vietnam war. It seems certain that John F. Kennedy was set to withdraw "advisors" from Vietnam, extricating the United States from an entanglement that anyone could see would do neither us nor anyone else any good.⁶⁰ After Kennedy's assassination, Lyndon Johnson retained the advisors Kennedy had collected, and followed those who advised to continue, even deepen, the war. Decades later some of those advisors came to see the errors of their ways.⁶¹ Kennedy, apparently, was able to distinguish expert advice from bad advice, whereas Johnson, unfortunately, was not. He knew the war was a mistake but decided, in a political context, to ignore that knowledge.⁶²

Suppose the position is "Deputy Mayor for Policing," and its occupant is Stephen Greenhalgh. The city is London, England. The time is a few months before the start of the 2012 summer Olympics, where "policing" can be expected to be not only important, but of international note. Greenhalgh "repeatedly confessed that he was 'no expert' on policing."⁶³ Perhaps Greenhalgh is exactly the right person for the job, proclaiming not his expertise, but his willingness to learn. It is London's mayor Boris Johnson's job to select good deputy mayors. We now know that the mayor and his appointee both did well, despite Greenhalgh's modesty and lack of credentials.

Even though academic institutions shelter and even encourage mediocrity, it is, however, one place that designated decision makers look. It is interesting that, in the United States, an alternative to academia has become established, mostly in and around Washington, D.C. The Brookings Institution is considered a Democratic

60 Evidence that Kennedy was about to reverse policy before he was assassinated comes from Gordon Goldstein, *Lessons In Disaster: McGeorge Bundy and the Path to War in Vietnam*, Holt (2010). That "anyone" could have determined what staying in Vietnam would produce comes from my having read a State Department white paper urging deeper involvement, in 1960. I immediately became a vocal opponent of the war, years before it was a war. The State department's argument, presumably the best that could be made, was that bad.

61 See the previous note for a reference to McGeorge Bundy's awakening. Robert McNamara detailed his own realizations in *In Retrospect: The Tragedy and Lessons In Vietnam*, Times Books (1995).

62 See Mark K. Updegrave, "Lyndon Johnson's Vietnam," *New York Times* February 24, 2017.

63 Peter Dominiczak, "Mayor backs 'no expert' deputy," *The Evening Standard*, June 22, 2012.

think tank housing advisors and perhaps cabinet secretaries in waiting. The American Enterprise Institute, or the Heritage Foundation, or the Cato Institute might be thought of as comparable Republican sanctuaries. People with money have wanted to concentrate ideological thinking in places where it would be available to government. That does not mean, however, that these institutions house expertise. Senator Olympia Snow saw these non-academic think tanks for what they are:

You can find a think tank to buttress any view or position, and then you can give it the aura of legitimacy and credibility by referring to their report.⁶⁴

We can say the same thing about politics as I have said about law, medical research, you name it: No one searches for a real expert, only a confirming one. How many fields, covering how many people, can be described this way? Being an expert in such a field is not pleasant. One is always swimming upstream, delivering something your client is not interested in.

There are real experts in most fields—people who know the subject both widely and deeply, people who can solve problems, at least point you in the right direction. Experts know that the Civil War was about slavery. Anyone who denies this cannot be believed about anything. Knowing something about a subject is not the same as being expert in it, but provides a screening test. We expect our expert selectors to impose such a minimal test on candidates posing as experts. Is this a relevant standard for politicians? Political parties, like courts, end up with no real experts, because real experts find no reward there. Politicians do not want expertise, they want compliance. I am wrong to suggest that we ask of our politicians that they learn how to select experts, because they have no interest in doing so.

Describing the fact that few experts are to be located in colleges and universities is little help. Saying that if you want to know about natural dyes, the real experts are in Colorado, Illinois or North Carolina is idiosyncratic knowledge I am happy to pass along. It is little better than advising that if you want to find real experts in cars you should probably look around the speedway in Charlotte, North Carolina.

That seems obvious enough, but it could well be wrong. The most interesting new idea in automobiles is being developed at Tesla Motors in California. Not in academia, and not related to NASCAR. My conclusion remains: Finding real expertise is difficult. You might have to wander through a field for years before stumbling on

64 Quoted by Ezra Klein, "Unpopular Mandate" 2012, at 33.

to a lead that directs you towards the right place, where the right person is doing the work that interests you.

Did I hear you say Angie's List? Home Advisors? There is an obvious need to disseminate knowledge about who really can do the job he/she promises. That is, if it *is* knowledge. How do we judge the "information" we receive about someone else's expertise? Rather than looking to "experts" to tell us who is expert, we can look to others like us who have had the experience we are seeking. In the past—the real or the mythological past—this was what a "community" was all about. Our neighbors knew who did what well, and shared their information. Both companies advertise that this is what they do—pass along the information a savvy neighbor would have. Do such neighbors no longer exist, or do we not know our neighbors? When a "community" may be made up of people who have never met, we develop institutions that perform this function. We may have to pay for it.

I noted in Chapter 3, on Health, that doctors pretend to be experts on patient care, though I would rather hear from patients. I suspect that the rise of the "amateur" opinion will be our salvation. I read customer reviews of computer monitors, cameras, automobiles, washing machines, etc. I do not read them *exclusively*—David Pogue and Molly Wood are among the best reviewers of hi-tech gadgets—but some amateur comments contain practical, useful information. There is no place a lawyer can go to get user-assessments of experts, and no reliable place a person can go to get user-assessments of lawyers. When a professional, a specialist, needs an expert, even if an "Angie's List" approach would be beneficial, people will not spend their time, or risk their reputations, providing relevant information. But when you or I, consumers wanting advice on a prospective purchase of a good or a service, look for a place to get it, the best place might well be where others like us, not "expert" advice-providers, describe their experiences, and their opinions.

Unfortunately, non-experts have figured this out. They write reviews of themselves (or manufacturers write reviews of their products) masked as ordinary folk with a story. Any route to telling us about who the experts are, or what the truly good products are, will be undermined by the commercial interest inherent in that information.

The important point of this book is to be skeptical when confronted with so-called experts. Many of them are like the contractors whose work Holmes on HGTV

has to redo. Finding the right one is hard work. Then directing him or her is hard work.

Attorneys are not willing to do this work, assuming they could. Heads of academic departments think the experts should be applying to them, not that they should be out looking for talent. In the play “La Bete,” the princess (as originally written, the prince) discovers a street performer who galvanizes what must have been an unarticulated malaise about how boring her own theater company has become. When we meet her Moliere—the current writer, director, actor—we are willing to believe that he is not the expert she should want as the head of her company. Her malaise was well-founded. But when we meet the boorish upstart Valere, and actually see some of his “creativity,” we know that the princess has failed in her next task, that of selecting a true expert to lead her company.



Indeed, in the play, Valere himself articulates the problem of the decline of standards, and especially of creativity, in the theater. The Princess has confused the person who led her to articulate the problem with a person who could solve it. Engaging the critic to become the performer, she acts like an owner who

would promote the local sports writer to replace the manager of his baseball team.⁶⁵

65 “La Bete” is by David Hirson. Photograph of actors in the New York production, Mark Rylance and David Hyde Pierce, is uncredited in the review by Michael Billington in *The Guardian*, July 8, 2010