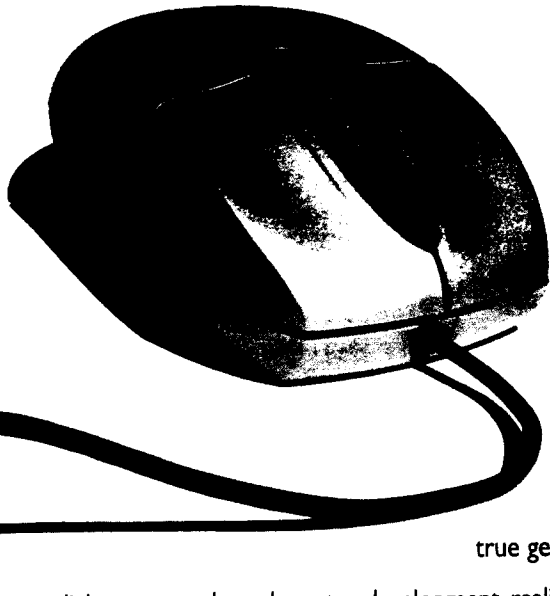


THE TRUE GEN



Truth and the Internet

by Alvin M. Podboy

The Internet: Is what we see and read true? One of my favorite authors is Ernest Hemingway, who tried to deliver the genuine truth through his fiction. He often referred to this as a quest to deliver “the true gen.” He wanted the reader to feel that what he wrote was true—through fantastic dialogue, complete character development, realistic scenes and a believable story. And for me, his quest succeeded—I lived his fiction as if it were truly genuine.

Such faith in Hemingway's words and vision is safe, indeed expected; however, while blind faith in what we see and read on the Internet may be expected by authors, it can be far from safe or prudent.

John Podhoretz in the May 10 online edition of *The New York Post*¹ writes about “the mass media meltdown.” Podhoretz describes how Hollywood was in a panic after nine straight weeks of lower box office sales. He reports terrified major newspaper editors and publishers as their circulation declined. He mentions television networks reeling as their viewership plummeted. Podhoretz even talks about the fairly recent talk radio format audiences falling and music stations being pressured to cut their advertising. He looks at the recording industry as being in “tatters” with no new stars or no new music. Podhoretz believes that the reason is alternative information in entertainment has reached critical mass. He believes that we have delivery choices like never before—through the Internet, Tivo[®], digital video recorders and satellite radio—when and how we want it. However, a reason he did not discuss is a lack of trust in the mainstream media.

Two recent examples are the CBS/Dan Rather report on President Bush's National Guard story and *Newsweek*'s report on “flushing” the Koran.

The alternative media bloggers quickly dismantled both stories. They recognized the main stream media's reporting fiction and drove a new agenda. However, is the new media completely trustworthy? A recent law-lib list posting dated May 5, 2005, gives a wonderful example of the dangers of Internet search reliance under the subject heading, “In Defense of Stupid Users.”² He states:

“Think of the reference 101 example of the patron who is being audited and wants to defend themselves [sic] by arguing that income tax is illegal. Google will helpfully, and without editorial comment, provide the user with links to websites discussing ‘the Ohio argument’ and similarly dubious schemes. The user is now happy, having gotten the exact information they were asking for. But has the user's information need been satisfied? Is the user ‘savvy’? And, was the simple tool the best one for the job?”

This example is a great one. Google has answered the question. However, is the material true and is it trustworthy? Does the user realize

that the answer might not be true? The law-lib poster correctly observes “...for many users, a simple tool like Google will be adequate. However, I think it is wrong to think that just because a user is happy their information need has been met.”

Other examples are easy to find. Powerline blog on February 6, 2005, posted a story entitled, “Bill Moyers smears a better man than himself.”³ Powerline refers to a January 30 *Minneapolis Star Tribune* op-ed article based on a Moyers' speech. Moyers, while discussing President Reagan's first secretary of the interior, James Watt, referred to an online environmental journal. He quoted the online journal, which quoted Watt stating before Congress, “that protecting natural resources was unimportant in light of the eminent return of Jesus Christ.” The online journal, however, quoted Watt as saying, “After the last tree is felled, Christ will come back.” The problem is that what Moyers wrote and quoted is untrue. Powerline states that what Secretary Watt actually said was, “Absolutely. That is the delicate balance the Secretary of the Interior must have to be steward for the natural

¹ John Podhoretz, *Mass Media Meltdown* NEW YORK POST ONLINE EDITION (May 26, 2005), www.nypost.com

² Posting of Erik Adams, eadams@shepherdize.com, to law-lib @ ucDavis.edu (May 5, 2005) (copy on file with author)

³ John Hinderaker, Bill Moyers smears a Better man than Himself,

POWERLINE (Feb. 6, 2005), <http://powerlineblog.com/archives/009475.plp>

⁴ Students then search for information offline. CNN.com (Dec. 9, 2004), <http://www.cnn.com/2004/TECH/Internet/12/09/always.onlin.reliable.ap/index.html>

⁵ Deborah Fallows, Search Engine Users, PEW INTERNET & AMERICAN LIFE PROJECT (Jan. 23, 2005), <http://www.pewinternet.org>

⁶ David G. Masse, *The ABC's of Authentication*, SUMMIT 97 BACKGROUND PAPER ON AUTHENTICATION, (1997), <http://www.callacbd.ca/1997summit/author-masse.html>

resources of this generation as well as future generations. I do not know how many future generations we can count on before the Lord returns, whatever it is we have to manage with a skill to leave the resources needed for the future generations." The *Minneapolis Star*, the online environmental journal, and Powerline all are on the net. What is true?

We have become a nation of Internet searchers. We quote from the net and we have faith and trust in what we find. CNN.com reported in a December 9, 2004, article entitled, "Students shun search for information offline."⁴ They "go to Google, search and scroll results, click and copy." The article points out that young people know that information on the Internet is plentiful, instant and unreliable. They recognize that they need skills to discern the truth. However, the article demonstrates that they fail to check multiple sources, are unclear of the origin of their sources and are unaware of commercial influence. They are also unaware that often times the information has a collaborative assembly. What they appreciate however is that the Internet no longer gives them one-sided textbook views. The Pew/Internet and American Life Project has an interesting report dated January 23, 2005, entitled "Search Engine Users: Internet searchers are confident, satisfied and trusting – but they are also unaware and naive."⁵ Senior Research Fellow Debra Fallows reports that Internet users are very positive about their online search experiences, that search engines are very popular and searching the Internet is one of a user's earliest activities. She observed that most users quickly feel comfortable with the act of searching and feel in control. Internet users are confident in their skills and happy with the search results. Users trust search

engines and feel they are a fair and unbiased source of information. The above examples give a scary view of where our general research skills are headed and our reliance on unauthenticated Internet sources. How much more important do these issues become when applied to legal research?

Google offers several definitions of authentication:

"The verification of the identity of a person or process.... Security measures designed to establish the validity of a transmission, message or originator.... The process of determining whether someone or something is in fact, who or what it claims to be.... Any of several methods used to provide proof that a particular document received is actually from the individual it claims to be from.... The process of determining genuineness."

All of these definitions involve some issues of Internet authentication.

David Masse, in an article entitled, "The ABC's of Authentication,"⁶ describes some of the roots of the issue. He talks about the differences between analog and digital information. He describes our old analog world as an ink on paper, real and tangible world. He demonstrates that the purpose of information defined and dictated its printed format. As examples, he gives the daily or newspaper format, the monthly magazine format and the goal of con-

We have become a nation
of Internet searchers
We quote from the net
and we have faith and
trust in what we find.

servation over long periods of time deed format. He describes our traditional legal information, such as law reports, as being prepared and published by reliable sources either government or private and being type-set. He states that other characteristics were that there were large numbers of copies. There were bound volumes that had wide distribution. Masse concludes that the "truth" of the documents was not questioned because the preparation and distribution was a complicated and expensive process. The process authenticated the content.

Our digital world is unquestionably different. Digital information normally appears on a computer screen. Masse reminds us that the computer dominates the production of the information. He also confirms what we know, that the computer is now ubiquitous. Originally, he demonstrates that the computer was used to produce printed copy as with LexisNexis⁷ and Westlaw⁸. Now, however, a digital form of publication can be created, recorded and stored in vast quantities at astonishing speed. Digital information allows

linkage of information and relation to information that is, as Masse points out, nonlinear. It is also not only textual but visual and aural. Digital resources have what he calls "stark" economic efficiency. The PC is a one-stop publishing tool that gives the author worldwide distribution without editors, publishers, printers, distributors, carriers and book sellers. The benefits of digital information also come

with some serious risks. There is no essential originality to the document. The digital document itself cannot supply authentication as a part of its production and distribution system.

Digital information comes in two environments: closed and open. The **closed environment** has the most similarities with the old analog world. There the risk of alteration of documents can be managed and controlled. Examples are LexisNexis and Westlaw. They are password protected; they are reasonably secure and in many ways similar to analog publishing. They are a trusted source.

In the **open environment** – that of the Internet – most of those controls are absent. Information is vulnerable. It comes from both public and private production. It can be protected but only at a cost. Some methods of protection include encryption,


Continued on page 23

true gen

digital signatures and public key infrastructures. These are coming to the Internet, but they will not be inexpensive.

Other solutions include weak authentication. **Weak authentication** is "digital paper." An example is PDF format. Digital paper is tamper-resistant but not tamper-proof - with effort and skill it can be replaced by a complete forgery. Another interesting solution is the business process method. In the **business process method**, the record is relatable to other documents. Each series of documents tells a story. One document leads and builds on the next in context going from informal drafts to formal drafts: consultation drafts, public comment, comments on drafts, final drafts, approved drafts and disseminated products. The business process solution offers not only a method of authentication of documents but a wealth of detailed information.

The third solution to authentication is to remember your traditional research skills, both analog and digital. Remember as Professor Bob Berring and Elizabeth Edinger have taught us—evaluate all your research tools. Most common errors in legal research rely on blind reliance on a specific research tool. Never take your information for granted. Look at the features of your information. How was it put together? When was it compiled? When was it updated? What is the publisher's purpose? Do you know how to use it? Do you understand its composition? Is it timely? Look at your information and how it relates to the larger research universe. How do the cases, statutes, regulations, legislative history, treatises and articles all interrelate? Don't rely on just one or two sources.⁷

Remember when performing legal research or any research on the Internet to "travel with care." Keep a healthy skepticism and remember to always question your results! 

⁷ Robert Berring and Elizabeth Edinger, FINDING THE LAW 317-320 (11th ed. 1999)



Alvin M. Podboy is a library administrator with Baker and Hostetler LLP and is a frequent author of articles on the topics of legal technology, legal research and law library management.

He can be reached at

apodboy@bakerlaw.com or (216) 621-0200.



**LITIGATION NEEDS? RELAX.
VISUAL EVIDENCE / E-DISCOVERY LLC
IS RIGHT AROUND THE CORNER.**

Since 1987, Visual Evidence / E-Discovery LLC has built its reputation as one of the nation's leading full-service creators of award-winning demonstrative evidence for use in the courtroom. We're in downtown Cleveland, ready to handle your electronic discovery needs for small cases as well as complex litigation.

Now used in courts and cases nationwide, EDD eliminates weeks of costly document production while converting millions of pages into a seamless, searchable archive. We can create a paper-free computerized catalog of documents, e-mails and images at costs significantly less than national vendors.

Whether you are just filing a case or ready for your day in court, Visual Evidence / E-Discovery delivers compelling evidence, creative options and winning solutions . . . whenever and wherever you need it.



VISUAL EVIDENCE / E-DISCOVERY LLC

1140 Euclid Avenue Cleveland, OH 44115
PH 216.241.3443 800.310.0981
FX 216.615.4920 www.vevidence.com

PARTNERS IN YOUR LITIGATION EFFORTS