

## A Witness From Another Town

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Mark Twain defined an expert as “an ordinary fellow from another town.” The U.S. Court of Federal Claims recently grappled with whether a witness was an expert in a recent rails-to-trail case in which both parties—Plaintiff, Gloria J. Jackson on behalf of a class of land owners, and the Defendant, the United States, had filed cross-motions for summary judgment. The issue on summary judgment was whether the Jackson Plaintiffs possessed a property interest or whether their predecessors-in-interest had granted a fee simple interest in the land. Both parties submitted expert witness declarations to support their motions, which included maps depicting the location of the Jackson properties overlaid by parcels from early 20th century railroad valuation maps filed with the Interstate Commerce Commission.

Jackson moved to strike a declaration filed by the Government’s witness, claiming that the Government’s witness, Cindi Straup, lacked sufficient qualifications in surveying and title examination to prepare the map in the declaration. Jackson also asked the Court to accept her witness’s declaration as more credible. The Government defended Straup’s declaration, explaining that Straup’s firm created the map using information provided by “mapping professionals with over 15 years of experience.” And in a second declaration, Straup further stated that her team created the maps using “mileposts, sources, and techniques . . . to identify the locations” and how her team associated those locations with those of the original grantors.

The Court denied Jackson’s motion to strike, explaining first that credibility determinations are beyond the province of summary judgment. In addition, the Court concluded that Straup’s declaration illuminated potential issues of material fact, which the Court believed appropriate for consideration in ruling on the cross-motions for summary judgment. Finally, the Court denied Jackson’s request to depose Straup concerning the assertions she made in her declaration.

Read full decision [here](#).