TRIAL SKILLS WORKSHOP III:
CRIMES DECODED: EMERGING DIGITAL TECHNOLOGY LITIGATION STRATEGIES

ADMINISTRATIVE OFFICE OF THE U.S. COURTS
DEFENDER SERVICES OFFICE TRAINING DIVISION

Virtual Program with Live Small Group Sessions

September 18-24, 2020

Agenda (Draft 7/24/20)

Trial Skills Workshop III is the first of the Training Division’s workshops to be redesigned for a virtual experience in light of the restrictions on in-person gatherings. Rather than a 2½-day program, TSWIII will be a course that engages participants in multiple ways over the course of 7 days, from Friday, September 18 through Thursday, September 24, 2020.

Asynchronous materials—videos and other media—will be posted in a learning management system called Canvas, permitting participants to watch and read them at their own pace. Participants are expected to provide feedback in a variety of ways on content that they have watched and read. Presenters who were scheduled to give live talks for this program are simply using a different medium, video, to present.

Synchronous learning will be composed of four live 90-minute small group sessions led by skilled co-facilitators. These will be held from 3:30 – 5:00 p.m. EDT daily Monday, September 21 – Thursday, September 24, 2020. As with our traditional in-person workshops, participants will get on their (virtual) feet and practice skills and receive peer feedback. Participants may bring their own case if it fits certain criteria to this program or use the model case for workshop.

We have a limited number of spots in this workshop; our expectation is that each participant will complete all asynchronous segments and be present at all live small group sessions (six hours).

Thank you for joining us in this new iteration of Crimes Decoded.
Introduction to the Workshop
Lisa Lunt, Attorney Advisor, Training Division, Defender Services Office, Washington, DC
Megan Graham, Clinical Supervising Attorney, UC Berkeley School of Law, Berkeley, CA

75 mins PRESENTATION 1: Track, Tracking, Tracked
John C. Ellis, Jr., Attorney at Law, San Diego, CA

Law enforcement’s aggressive tracking of cell phones has become a powerful and widely used surveillance tool for both federal authorities and local police. Law enforcement claims that a person’s location can be pinpointed to a smart phone in a pocket using historic cell site location information (CSLI). Some in law enforcement describe these devices as “the virtual biographer of our daily activities.” Not so fast! Use of CSLI contains pitfalls, misleading data and misunderstood technology which may lead to erroneous conclusions by law enforcement, attorneys, and most importantly, juries. This presentation will help attorneys identify these pitfalls, help elucidate the issues, the technology and the problems with over-reliance on CSLI, and present strategies for attacking the reliability of law enforcement opinions about your client’s location based upon cell phone use. This presentation will also address issues involving other forms of electronic surveillance and identify resources to find experts in digital technology and explain key questions to screen and retain an expert.

60 mins PRESENTATION 2: Predictive Policing – The Impact of Data & Analytics in Criminal Cases
Hanni Meena Fakhoury, Assistant Federal Defender, Federal Public Defender Office for Northern District of California, Oakland, CA

This plenary explores police investigation tactics related to Data & Analytics, fusion centers, data sharing across government agencies and private sectors. We will discuss litigation strategies to preclude or limit the use of this information in court.

60 mins PRESENTATION 3: Let Me Use your Face for a Moment – Understanding Emerging Biometrics and Compelled Facial Recognition
Clare Garvie, Senior Associate, Center on Privacy & Technology, Georgetown University Law Center, Washington, DC
Juval O. Scott, Federal Public Defender, Western District of Virginia, Charlottesville, Virginia

This session will define and explore facial recognition and biometrics, describe how this technology presents in our cases, and explore some of the privacy implications & 5th Amendment challenges.
WORKSHOP SESSION I: What are the Coordinates to the Electronic Frontier? Understanding How to Find, Interview, Retain and Prepare an Expert Technologist for Court

Participants will meet in their small groups to fact-bust and develop themes and theories in either their own or the model case. They will identify expert technologists needed in the case, identify records to collect and practice effectively screening and interviewing expert technologists to comprehend what is needed to understand the technology utilized in preparation for contested hearings.

15 mins  
DEMO: Qualifying Experts
To be announced

15 mins  
REFRESHER: Bail Reform Act
David Wasserman, Deputy Federal Public Defender, Office of the Federal Public Defender for the Central District of California, Los Angeles, CA

WORKSHOP SESSION II: Mapping the Data is Not Equal to Mapping the Person – Bail & SR Violation Arguments Related to Social Media, Data Analytics and Location Tracking

Participants will practice making effective arguments using digital evidence to support hearings under the Bail Reform Act. Participants will also learn how to mitigate social media and location tracking evidence in contested hearings. Each participant will also demo qualifying a witness.

90 mins  
SPOTLIGHTS
Mapping Data: Steve Trush, Deputy Director of Citizen Clinic, Center for Long-Term Cybersecurity at UC Berkeley School of Information, Berkeley, CA
ESI Records: Mike Price, Senior Litigation Counsel, Fourth Amendment Center, NACDL, New York, NY
TBD: Sean Broderick, National Litigation Support Administrator, Defender Services Office, Training Division, Administrative Office of U.S. Courts, Oakland, CA

Participants will rotate through three 30-minute live demonstrations of emerging digital technology in criminal cases: (1) Mapping Data; (2) ESI Records, and (3) TBD.
HAPPY HOUR

75 mins
PRESENTATION 4: Technical Cross-Examinations – Revealing the Myths Behind the “Science”
To be announced

Emerging digital technology in criminal cases is full of ideas and opinions that pass for “science” in the courtroom. This session will explain the foundations of effective cross-examinations and reveal some of the prevailing myths and assumptions that can be undercut through cross-examination.

30 mins
DEMO: Cross-Examination of Government Expert
To be announced

WORKSHOP SESSION III: Cross-Examinations

In this session, we will focus on the chapter method of crossing a technologist by identifying known areas of weakness that usually fall into several broad categories. Participants will develop crosses on particular types of challenges (i.e., insufficient expertise, insufficient scientific validation, bias, etc.).

60 mins
PRESENTATION 5: First You Must Compel – Excluding Technology Involving Black Box Algorithms
Megan Graham, Clinical Supervising Attorney, UC Berkeley School of Law, Berkeley, CA

This plenary will explore common litigation themes in technology that uses black box algorithms. Through the lens of a DNA STRmix case, participants will learn about technology in criminal cases, learn how and
why it is important to compel source code, understand Daubert challenges to black box algorithms, and identify key questions to ask from discovery exchange to contested hearings.

60 mins  
**PRESENTATION 6: Preparation and Direct Examination of Defense Technical Experts**  
Jason Ser, Assistant Federal Defender, Federal Defenders of the Southern District of New York, Inc., White Plains, NY  
Direct examination provides another opportunity to advance the theory of the case and defense story. This session will address techniques for preparing your expert technologist, practicing direct and cross, and preparing for obvious questions. It will also cover how to persuasively present your technologist’s testimony in the courtroom, including the use of chapters, detailed facts, keeping the focus on the witness, and effective organization and transitions.

15 mins  
**DEMO: Direct Examination of a Defense Expert**  
To be announced

90 minutes  
Live session  
Sept. 24, 2020  
3:30 – 5:00 p.m.  
EDT

**WORKSHOP SESSION IV: Preparing a Defense Technology Expert and Conducting Direct Examination**

60 mins  
**PRESENTATION 7: Slipping into DMs and Landing in Hot Water – Ethics, Social Media and the First Amendment**  
Callie Glanton Steele, Senior Litigator, Federal Public Office for the Central District of California, Los Angeles, CA  
This session will focus on the intersection between Ethics, Social Media and the First Amendment.

**Conclusion**  
Lisa Lunt, Attorney Advisor, Training Division, Defender Services Office, Washington, DC  
Megan Graham, Clinical Supervising Attorney, UC Berkeley School of Law, Berkeley, CA