Virtual
Trial Skills Workshop

Crimes Decoded: Emerging Digital Technology Litigation Strategies

Administrative Office of the U.S. Courts,
Defender Services Office Training Division

October 25 - Nov. 2, 2021 ~ Draft Agenda

We are pleased to present the second virtual Trial Skills Workshop/Crimes Decoded: Emerging Digital Technology Litigation Strategies (TSW/CD). This program is unique in that it pairs experienced trial skills faculty with technologists in presenting content and leading small group sessions. In contrast to the in-person 2½-day program, virtual TSW/CD is a live course that engages participants over the course of six days, from Monday, October 25 - Thursday, October 28, 2021 and Monday, November 1 - Tuesday, November 2 (see calendar below).

To capture the energy of our speakers and promote community connections, this virtual course will be entirely live. Participants will meet in video rooms for 11 live presentations, 5 workshop sessions, 2 demonstrations, a coffee talk where we invite participants to seek advice on any active cases from our experienced faculty, and an optional social gathering. Each of the six days of this workshop starts at 1:00 p.m. ET and ends by 5:00 p.m. at the latest.

As with our traditional in-person workshops, in small group sessions participants will get on their (virtual) feet and practice skills and receive peer feedback. Participants should expect to complete homework prior to Workshop Sessions II-V.

We have a limited number of spots in this workshop; therefore, each participant must commit to actively attending all live presentations and demos (10½ hours total) and workshop sessions (7¾ hours total).

Thank you for joining us on our second virtual iteration of TSW/CD.

October / November 2021 ~ TSW: Crimes Decoded / Draft Calendar

Monday	Tuesday	Wednesday	Thursday	Friday
1:00-1:15 Intro 1:15-2:30 Presentation 1 2:30-2:45 Break 2:45-4:00 Workshop I **1:00-4:00 (3 hrs)** 25	1:00-2:15 Workshop II 2:15-2:30 Break 2:30-3:30 Presentation 2 3:30-3:35 Break 3:35-4:35 Presentation 3 4:35-4:40 Break 4:40-5:30 HH/break (optional) **1:00-4:30 (3.5-4.5 hrs)** 26	1:00-2:30 Workshop III 2:30-2:45 Break 2:45-3:45 Presentation 4 3:45-3:50 Break 3:50-4:50 Presentation 5 **1:00-4:50 (3.8 hrs)** 27	1:00-1:15 Demo 1 1:15-2:15 Presentation 6 2:15-2:30 Break 2:30-2:45 Demo 2 2:45-4:00 Presentation 7 4:00-5:00 Coffee Talk (optional) **1:00-4:00/5:00 (3-4 hrs)** 28	29
1:00-3:00 Workshop IV 3:00-3:15 Break 3:15-4:15 Presentation 8 **1:00-4:15 (3.25 hrs)** Nov. 1	1:00-2:30 Spotlights 2:30-2:45 Break 2:45-4:30 Workshop V **1:00-4:30 (3.5 hrs)** Nov. 2	3	4	5

Monday, October 25, 2021

1:00 – 1:15 p.m.	**Introduction and Welcoming Remarks**

Catherine Crump, *Assistant Clinical Professor of Law & Director of the Samuelson Law, Technology & Public Policy Clinic, UC Berkeley School of Law, Berkeley, CA*
Megan Graham, *Clinical Supervising Attorney, UC Berkeley School of Law, Berkeley, CA*
Lisa Lunt, *Attorney Advisor, Training Division, Defender Services Office, Washington, DC*

All times are in Eastern Daylight Time.

1:15 – 2:30 p.m. **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.

2:30 – 2:45 p.m. **Break**

2:45 – 4:00 p.m. **WORKSHOP SESSION I: Building the Custom CPU for Your Case**

Meeting in small groups for the first time, participants will fact-bust and develop themes and theories in the model case.

4:00 p.m. **Adjourn for the Day**

Tuesday, October 26, 2021

1:00 – 2:15 p.m.	**WORKSHOP SESSION II: What are the Coordinates to the Electronic Frontier? Understanding How to Find, Interview, Retain and Prepare an Expert Technologist for Court**

All times are in Eastern Daylight Time.

Participants 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.

2:15 – 2:30 p.m.	**Break**

2:30 – 3:30 p.m.	**PRESENTATION 2: Predictive Policing – The Impact of Data & Analytics in Criminal Cases** Hanni Meena Fakhoury, *Attorney, Moeel Lah Fakhoury LLP, 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.

3:30 – 3:35 p.m.	**Break**

3:35 – 4:35 p.m.	**PRESENTATION 3: Flipping the Script: Using Digital Technology to Fight Detention and Win Pretrial Release** David Wasserman, *Deputy Federal Public Defender, Office of the Federal Public Defender for the Central District of California, Los Angeles, CA*

Learn how to expose the weaknesses of the digital evidence that the Government presents at a Release hearing. As it seeks to overwhelm the judge with references to cell site location information, gigabytes of digital data in your client's phone and a very clear social media trail, you will obtain tools to cause the judge to question the foundation of this evidence. This session will include strategies for using your own digital evidence to support release. In all kinds of cases, including complex ones, key provisions of the Bail Reform Act are routinely misinterpreted or ignored at initial appearances and detention hearings, resulting in the improper detention of our clients. This session--especially designed for cases involving digital evidence--will include a thorough discussion of these misconceptions and reinforce your ability to fight detention, beat the presumptions, file bond motions, and obtain release.

4:35 – 4:40 p.m.	**Break**

4:40 p.m.	**Adjourn for the Day**

4:40 – 5:30 p.m.	**Social Hour (optional)**

Join faculty and colleagues in **The Holding Cell**, our virtual coffee shop/pub/café for a totally optional gathering. Bring your favorite beverage and snack, and we'll take a break together.

Wednesday, October 27, 2021

1:00 – 2:30 p.m.	**WORKSHOP SESSION III: Mapping the Data is Not Equal to Mapping the Person – Bail & SR Violation Arguments Related to Social Media, Data Analytics and Location Tracking**

All times are in Eastern Daylight Time.

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.

2:30 – 2:45 p.m.	**Break**
2:45 – 3:45 p.m.	**PRESENTATION 4: 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*

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.

3:45 – 3:50 p.m.	**Break**
3:50 – 4:50 p.m.	**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.

4:50 p.m.	**Adjourn for the Day**

Thursday, October 28, 2021

1:00 – 1:15 p.m.   **DEMO 1: Qualifying Experts**
TBD

1:15 – 2:15 p.m.   **PRESENTATION 6: Technical Cross-Examinations – Revealing the Myths Behind the "Science"**
Kasha Castillo, *Supervisory Attorney – Trial Team Leader, Federal Defenders of San Diego, Inc., San Diego, California*

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.

All times are in Eastern Daylight Time.

2:15 – 2:30 p.m.   **Break**

2:30 – 2:45 p.m.   **DEMO 2: Cross-Examination of Government Expert**
TBD

2:45 – 4:00 p.m.   **PRESENTATION 7: Of Course Technology Perpetuates Racism: What Do You Do About It?**
TBD

Building on the previous plenary presentations, this panel will discuss how you can actually spot and litigate issues of race presented by the Government's use of technology in your case. People often assume that use of technology mitigates bias and they trust it to lead to race-neutral results. But as previous talks explain, that is rarely—if ever—the case. Once you know that, what are you supposed to do about it? This panel will talk about strategies, issues, and approaches to litigating issues of race when challenging technology at the different stages of your clients' cases, from release hearings to sentencing.

4:00 p.m.   **Adjourn for the Day**

4:00 – 5:00 p.m.   **Coffee Talk: BYO Case To A Tech Or Trial Expert Faculty Member (optional)**

Join any one of our wonderful faculty members to brainstorm an aspect of your own case. Take advantage of the brain trust in one room to understand more deeply the discovery you received or start to form a litigation strategy in your case. Two heads are always better than one.

Monday, November 1, 2021

1:00 – 3:00 p.m.   **WORKSHOP SESSION IV: Cross-Examinations**

All times are in Eastern Daylight Time.

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.).

3:00 –3:15 p.m.   **Break**

3:15 – 4:15 p.m.   **PRESENTATION 8: Preparation and Direct Examination of Defense Technical Experts**
Norma Aguilar, *Supervisory Attorney – Trial Team Leader, Federal Defenders of San Diego, Inc., San Diego, California*

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.

4:15 p.m.   **Adjourn for the Day**

Tuesday, November 2, 2021

1:00 – 2:30 p.m.	**SPOTLIGHTS** **Mapping Data:** Steve Trush, *Deputy Director of Citizen Clinic, Center for Long-Term Cybersecurity at UC Berkeley School of Information, Berkeley, CA* **Geofence Warrants 101:** Mike Price, *Senior Litigation Counsel, Fourth Amendment Center, NACDL, New York, NY* **Mobile Forensics Data Review ~ Demonstration:** 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) Geofence Warrants 101, and (3) Mobile Forensics Data Review: Demonstration.

SPOTLIGHT 1: Mapping Data	SPOTLIGHT 2: Geofence Warrants 101	SPOTLIGHT 3: Mobile Forensics Data Review: Demonstration
The presenters will illustrate and discuss the basics of data visualization. This spotlight will help Defenders understand how to organize, categorize & present data (*i.e.*, Data Dumps, GPS Coordinates).	Geofence warrants are a new way of identifying the mobile devices that were in a given area, such as a crime scene. They are also likely unconstitutional. This talk is a brief overview of what they are, how they work, and how to challenge them.	Learn the basics of how to review and analyze mobile device evidence processed by the government or by an independent forensic examiner. Using a popular free tool (Cellebrite Reader) we will show you how to search, filter and generate reports in a hypothetical case.

2:30 – 2:45 p.m.	**Break**
2:45 – 4:30 p.m.	**WORKSHOP SESSION IV: Preparing a Defense Technology Expert and Conducting Direct Examination** Participants simulate witness preparation, practice direct examinations, and receive constructive feedback.
4:30 p.m.	**Closing Remarks / Adjournment**