



TRIAL SKILLS WORKSHOP
Crimes Decoded: Emerging Digital Technology Litigation Strategies

Administrative Office Of The U.S. Courts
Defender Services Office Training Division

InterContinental San Francisco
888 Howard Street, San Francisco, California 94103

April 20-22, 2023

Final Agenda

Thursday, April 20, 2023

7:30 – 8:30 a.m. Registration - Continental Breakfast

8:30 – 8:45 a.m. Introduction and Welcoming Remarks
Jodi Linker, *Federal Public Defender, Office of the Federal Public Defender for the Northern District of California, San Francisco, CA*
Megan Graham, *Clinical Supervising Attorney, UC Berkeley School of Law, Berkeley, CA*
Lisa Lunt, *Attorney Advisor, Training Division, Defender Services Office, Washington, DC*

8:45 – 10:00 a.m. PLENARY SESSION 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.

10:00 – 10:15 a.m. Break

10:15 – 11:45 a.m. WORKSHOP SESSION 1: 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.

**11:45 a.m.
– 12:45 p.m. PLENARY SESSION 2: Predictive Policing – The Impact of Data & Analytics in Criminal Cases**

Hanni Meena Fakhoury, *Attorney, Moel 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.

12:45 – 2:00 p.m. Lunch – On Your Own

Bonus Lunch Session for CJA Attorneys* – Vouch for Your Voucher (Plenary)

Jessie Cook, Esq., *Jessie A. Cook Law Offices, Indianapolis, IN*

This session is primarily for CJA attorneys and will focus on the court rules and best practices for submitting expert requests to the court. This session will also cover how to write persuasive expert requests that the court will honor and fund, and how to educate the court about your theory of the case in your ex-parte submissions.

**(If you plan to attend this session, we'll be in touch on pre-ordering lunch.)*

2:00 – 3:00 p.m. PLENARY SESSION 3: Technical Cross-Examinations – Revealing the Myths Behind the “Science”

Chandra Peterson, *Trial Attorney, Federal Defenders of San Diego, Inc., San Diego, CA*

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. The ability to dispel these myths depends on forming strong, effective relationships with one’s experts and even with Government experts. It also hinges on one’s own degree of mastery of the science. Participants will also learn when and how to mount a Daubert challenge.

3:00 – 3:15 p.m. Break

3:15 – 4:30 p.m. WORKSHOP SESSION 2: What are the Coordinates to the Electronic Frontier? Understanding How to Find, Interview, Retain and Prepare an Expert Technologist for Court

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.

4:30 – 5:30 p.m. **PLENARY SESSION 4: Flipping the Script: Using Digital Technology to Fight Detention and Win Pretrial Release**
Erin Murphy, *Assistant 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.

5:30 p.m. **Adjourn for the Day**

Friday, April 21

7:30 – 8:30 a.m. **Continental Breakfast**

8:30 – 9:45 a.m. **WORKSHOP SESSION 3: 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.

9:45 – 10:45 a.m. **PLENARY SESSION 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 Strip 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.

10:45 – 11:00 a.m. **Break**

11:00 – 11:15 a.m. **DEMO 1: Qualifying Experts**
Lorinda Youngcourt, *Trial Attorney, Federal Defenders of Eastern Washington, Spokane, WA*

11:15 – 11:45 a.m. PLENARY SESSION 6: Cross-Examination: A Nuts-and-Bolts Refresher
 Hon. Jennifer E. Willis, *U.S. Magistrate Judge, Southern District of New York, New York, NY (until early 2022 Director of Strategic Litigation, Federal Defenders of the Southern District of New York)*

Effective cross-examination involves distinct tools that all lawyers can learn, refresh, and deploy. This session covers control techniques such as leading questions and one fact per statement, organization by the Chapter Method and statement charts, and some advanced techniques to be more persuasive and hold the jury’s attention.

11:45 – 12:15 p.m. DEMO 2: Cross-Examination of Government Expert
 Hon. Jennifer Willis, *U.S. Magistrate Judge, Southern District of New York, New York, NY*
 Logan Koepke, *Senior Policy Analyst, Upturn, Washington, DC (playing expert)*

12:15 – 1:30 p.m. Lunch - On Your Own

1:30 – 3:30 p.m. WORKSHOP SESSION 4: 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.).

3:30 – 3:45 p.m. Break

3:45 – 4:45 p.m. SPOTLIGHTS
Mapping Data: Steve Trush, *Board Member, Secure Justice; Director, West County Labs*
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 two 30-minute live demonstrations of emerging digital technology in criminal cases: (1) Mapping Data and (2) Mobile Forensics Data Review: Demonstration.

SPOTLIGHT 1: Mapping Data	SPOTLIGHT 2: 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>i.e.</i> , Data Dumps, GPS Coordinates).	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.

4:45 – 5:30 p.m. **PLENARY SESSION 7: Geofence Warrants 101**
 Sid Thaxter, *Senior Litigator, Fourth Amendment Center, NACDL, Washington, DC*

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.

5:30 p.m. **Adjourn for the Day**

5:30 – 6:30 p.m. **HH (Happening Hour): BYO Case To A Tech Or Trial Expert Faculty Member (optional)**



Join 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.

Saturday, April 22

7:30 – 8:30 a.m. **Continental Breakfast**

8:30 – 9:30 a.m. **PLENARY SESSION 8: Preparation and Direct Examination of Defense Technical Experts**
 Norma Aguilar, *Supervising Trial Attorney, Federal Defenders of San Diego, San Diego, CA*

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.

9:30 – 11:15 a.m. **WORKSHOP SESSION 5: Preparing a Defense Technology Expert and Conducting Direct Examination**

Participants simulate witness preparation, practice direct examinations, and receive constructive feedback.

11:15 – 11:30 a.m. **Break**

11:30 – 12:30 p.m. **PLENARY SESSION 9: Of Course Technology Perpetuates Racism: What Do You Do About It?**
 Megan Graham, *Clinical Supervising Attorney, UC Berkeley School of Law, Berkeley, CA*
 LaRonda Renee Martin, *Assistant Federal Public Defender, Office of the Federal Public Defender for the District of Nevada, Las Vegas, NV*
 Candis Mitchell, *First Assistant Federal Public Defender, Office of the Federal Public Defender for the Northern District of California, San Francisco, CA*

Joseph Ross, *Assistant Federal Public Defender, Office of the Federal Public Defender for the Eastern District of North Carolina, Raleigh, NC*

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.

12:30 p.m.

Closing Remarks / Adjournment

Additional Small Group Faculty

Kendra Albert, *Clinical Instructor and Director for the Initiative for a Representative First Amendment, Berkman Klein Center for Internet & Society, Harvard University, Cambridge, MA*

Clare Garvie, *Fourth Amendment Center Training and Resource Counsel, NACDL, Washington, DC*

Brett Kaufman, *Senior Staff Attorney, ACLU Center for Democracy, Los Angeles, CA*

Logan Koepke, *Project Director, Upturn, Washington, DC*

Bunmi Lomax, *Assistant Federal Public Defender, Office of the Federal Public Defender for the Southern District of Florida, Miami, FL*

Jennifer Uyeda, *Visiting Attorney Advisor, Defender Services Office Training Division, Washington, D.C.*