



Forensics Experts and the Law

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You may not think of it now, but at some point in your legal career, you may need to consult with an expert in the field of forensics. However, this is no longer limited to murder cases and DNA evidence that you may see on CSI each week. The new field of “technical forensics” involves the ever-growing computer world, and you may find yourself relying on them or other forensics experts in cases where their input may prove useful.

This week at Law Crossing, we will discuss the different types of forensic sciences, how a forensics or technical expert could assist you in your research, and the basic legal evidentiary concerns surrounding forensic evidence. A general knowledge of forensics can absolutely help you in your legal career, and it should not be taken lightly just because you’re not litigating DNA-related cases.

Luckily, there are many CLE programs addressing forensic evidence. We would recommend taking such a course. You have to take a certain amount of CLE anyway, right? So, it’s a win-win situation. You fulfill your state bar requirements and learn some things that could affect the way you practice and how you search for evidence.

Computer Forensics

We live in a world run by computers. We rely on them for basic communication, record keeping, bill paying, and even entertainment. In the U.S. alone, more than 3.5 trillion emails are transmitted per day. Computers have become extensions of ourselves; they track our actions and leave a digitally imprinted copy of our daily lives. Computer forensic experts are able to collect this data, which can make or break your case.

Moreover, they are able to uncover electronic data that was thought to be deleted. Digital footsteps of mistakes, misdeeds, actions, and communications are unearthed long after they are forgotten...long after you “think” you deleted them. Many people mistakenly assume that once they hit delete or empty their recycle bin, then their digital footprint

is erased, but computer forensic experts are able to collect this information nonetheless.

Thus, an expert could assist you in any case where a computer is involved. In our modern world, it’s hard to imagine any crime that does not involve a computer in one way or another. We’ve all recently heard of high-profile cases where defendants used the Internet to plot maps of their actions, to check weather reports, to stalk via email, and to hack into the computers of others. The list goes on and on, and a computer forensics specialist could be used every single time. There are also white-collar crimes, civil cases, and menial disagreements like divorce. Whenever an aggrieved person needs to prove that someone communicated with someone else in a less-than-ethical way (such as a wife proving that her husband sent flirtatious emails to his secretary 40 times a day), a computer undoubtedly will be examined.

A forensic technologist is a computer expert who is able to uncover, collect, group, and record any digital information. You simply tell them what type of evidence or information you are hoping to uncover. After setting your parameters, the expert will find the applicable data and provide you with the information. They can recover long-deleted files. They can find whatever websites a person visited. They can tell when a person logged onto a computer, sometimes providing people with alibis in this manner.

There is very little information that they cannot discover, and this has proved quite

irritating for virtually anyone who thought he or she was safe simply by clicking on the delete key.

Electronic Evidence Companies

After transferring data to a CD or DVD, the evidence then goes to an electronic evidence company, who can neatly organize, sort, and index the information into a readily usable format. You may not need this service if the quantity of digital information is small or manageable. However, many times you may encounter a virtual mountain of digital information. In this instance, the services provided by an electronic evidence company would prove invaluable.

Larger data-collection firms will provide both forensic experts and electronic evidence-collection services. Otherwise, you will need to search for two different reputable firms with the proper certifications, experience, and knowledge. Depending on where you live, you may find several right near your office, or you may have to scour the Internet and find one in a nearby city. As we all know, evidence must be collected properly in order to be admissible, and the companies with the better reputations will also know this and keep meticulous records of all their actions.

When searching for a legitimate digital forensics expert, analyze their professional resumes and specifically look for certifications, length of experience, how many times the expert has testified, and in which courts the expert has qualified. There are hundreds of certifications, and one can easily be misled into believing that certain experts are more



knowledgeable than they really are.

First, look to see if they are an EnCase Certified Examiner (EnCE). This is the most credible certification currently available. In addition to the EnCE certification, be sure to verify that the expert has plenty of additional certifications. These certifications could include those from Microsoft, as well as various network-administration credentials.

Even when experts do have enough certifications to meet your needs, which indicates they have the proper experience and knowledge, you should still always ask to see their client list. Talk to previous customers. Interview the expert. Let them tell you how they can help you recover the wanted digital evidence.

You should also ask about budgeting concerns. Digital expert services may prove invaluable, but they are also quite expensive. As with anything, if you don't carefully monitor this service, you may find your bill larger than you ever imagined. Set a budget and tell the service what you expect. This forethought may save you unneeded future financial frustration. Follow your Contracts 101 basics and get this all in writing.

Finally, go with the company that puts you at ease--after all, you really don't need any additional worries or frustrations. A digital expert should make your life easier, not create more problems.

Other Areas of Forensics

In addition to digital forensic analysts, there is also a wide variety of forensic experts in every field. Are you working on a design-defect case? A construction case? A slip-and fall-case? No matter the field, there are experts waiting for your business.

For example, say you have a case involving poor construction of a home, which caused property damage or injury during an earthquake. A forensics construction expert could analyze the home, making sure that the

concrete was installed properly and the framing was correct and could detect if the wood was properly treated before used. The expert should be able to pinpoint why the damage occurred and at what point the construction entity failed in creating a safe habitation, as well as where and when the entity deviated from industry standards.

Forensic Evidence in Court

Evidence must be relevant and reliable, and there is no exception for forensic evidence. In many jurisdictions, a judge in a pretrial Daubert hearing determines the admissibility of forensic and scientific evidence. The judge will determine if the evidence is reliable and thus admissible by determining if the collection procedure was proper.

Experts with legal experience will make the evidentiary process easier for you and the court. An expert should understand how evidence should be collected and safeguarded and documented from a legal standpoint.

We hope you've gained a little insight into the value of forensic evidence. At the very least, we hope you will no longer think of forensic evidence as merely a human corpse on a coroner's table. Just remember the basic definition of the word forensic itself: the use of science to solve legal problems. Science embodies so much nowadays, and you're doing your profession a disservice by not considering the entire scope of forensics.