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The Critical Role of the Digital Forensic Expert Witness

BY **ROBERT B. FRIED**, SVP OF FORENSICS & INVESTIGATION, SANDLINE GLOBAL
GARY HUNT, DIRECTOR OF FORENSICS & INVESTIGATION, SANDLINE GLOBAL



PREPARATION IS KEY

While not every matter requires testimony, digital forensic practitioners must always be prepared to provide oral or written testimony about any aspects of their involvement. Written testimony may be in the form of certifications, affidavits, or declarations and oral testimony may be in the form of depositions or a courtroom appearance before a judge and/or jury.

THE INCREASING ROLE OF ELECTRONIC EVIDENCE

As a result of the increasing prevalence and relevance of electronic evidence, many matters have become reliant on the testimony of digital forensic practitioners, in relation to the identification, preservation, forensic collection and analysis of electronically stored information (ESI). The testimony may focus on specific aspects, including:

- The evidence that is involved
- Information about evidence transfers (i.e. chain of custody)
- Evidence handling and storage
- Findings and any conclusions reached

Testimony is often required by digital forensic practitioners for a variety of matters, such as employment disputes (i.e. data exfiltration, unauthorized access/hacking), stalking/harassment, and accidents/personal injury (i.e. insurance claims).

BEING STRATEGIC BUT OBJECTIVE

Effectively educating the parties involved is a key role of an expert witness. When providing testimony, digital forensic practitioners must consider a delicate balance of being strategic and objective. Any findings, opinions, and conclusions reached must be based upon the evidence, and the expert witness' years of experience. At each step

“ Any findings, opinions, and conclusions reached must be based upon the evidence, and the expert witness’ years of experience. At each step along the way, complex and technical concepts will likely need to be conveyed – including to a judge or jury, who may have varying levels of knowledge on the topics being presented. ”

along the way, complex and technical concepts will likely need to be conveyed – including to a judge or jury, who may have varying levels of knowledge on the topics being presented. Therefore, it is important that the digital forensic practitioner be technically savvy but also possess soft skills to effectively relay information, in written format (i.e. expert reports and associated exhibits) or orally. Oral testimony can be performed in-person, or remotely via video conference. How the testimony is provided may depend on the requirements of the matter and other factors, such as travel logistics and financial budgets.

MATTER TIMELINES VARY

Digital forensic practitioners may be asked to provide testimony related to non-technical aspects of their involvement in a matter, including:

- How and when they were engaged on the matter
- Any materials they were provided
- Who performed tasks related to the matter
- The fee structure of the matter, and the total of fees invoiced to date

As matters can span several years, testimony may relate to recent or past activities. Therefore, it is critical for the expert witness to be well-organized – having related documentation readily available, and being familiar with the tasks performed, findings, and conclusions reached.

A SCIENCE AND AN ART

As an expert witness, the digital forensic practitioner must be technically adept, while helping to paint the picture of the activity that occurred. One should leverage scientific methods when presenting information to the trier of fact. However, it is also important to consider the human element. For example, connecting with the audience using eye contact and body language, and

speaking clearly, precisely, and confidently – as an expert and authority on the matter. **PI**



Robert B. Fried is an accomplished expert with decades of experience performing data collections and forensic investigations of electronic evidence. He attained a BS and MS in Forensic Science from the University of New Haven. He holds and actively maintains industry certifications and is a licensed PI in Michigan, New York, and South Carolina. Robert serves on the Board of Advisors for the Masters in Investigations program at the University of New Haven, the Global Advisory Board for EC-Council's CHFI certification, and is a Fellow at The Henry C. Lee Institute of Forensic Science at the University of New Haven. He is the author of the books: Forensic Data Collections 2.0: A Selection of Trusted Digital Forensics Content and Forensic Data Collections 2.0: The Guide for Defensible & Efficient Processes.



Gary Hunt is a qualified expert in digital forensics with over 13 years of experience in the field. He is highly skilled in forensic investigations and has testified as an expert witness over a dozen times. He is particularly versed in matters involving misappropriation of company resources, theft of intellectual property, and intentional destruction of data. In his role as Director within the Digital Forensics & Investigations practice, Gary leads day-to-day operations, conducts forensic investigations, and provides expert witness and testimony services to Sandline's law firm and corporate clients. He has a reputation for taking complex technical information and breaking it down into more easily understood concepts, which will prove to be invaluable to clients.



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