



SPOTLIGHT

Summer 2013 NEWSLETTER

Issue: 9

SUMMER 2013

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ALDONYS
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You'll find
details,
updates
and more
items
about
ALDONYS

In This Issue

WHAT'S
HAPPENING at
ALDONYS

President's
Message

As you will see below, we have plenty of new information to share with you and, we want to encourage you to become a contributor to SPOTLIGHT. There's room for your articles, photos and comments in the next issues. Take advantage of the opportunity and get involved in this publication. Help us be a better reflection of all your work and your professional achievements.

Accept this invitation to contribute news about your own work and new developments at your organization. What are the issues you see us facing and what solutions are you proposing? Your input is key!

ADVERTISE RIGHT HERE - where hundreds of people you are aiming to reach, look for the latest information about how you can solve problems, address security issues, and provide effective investigations. For additional information, contact Gil Alba, Membership Chairperson at gilalba@msn.com.

UNLIKELY
CAMERA ANGLES

People In The
News

The Albany
Report

Smile You're on
Candid Camera

The Legislative
Report

GOT PHOTOS?

Share Photos of What
You've Been
Doing

Send in
digital
photos (JPEGs
are easiest).

Let's get you
into the next
newsletter
along with
your
colleagues
and
associates.



February 12, 2013 - ALDONYS Installation Dinner

On February 12, 2013 ALDONYS welcomed our new Board at an Installation Dinner held at Opia in New York City. Senator Lee Zeldin (second from left) conducted the swearing in for Gil Alba, Lisa Dolan, Tom Ruskin and Mario Doyle.

President's Message

Welcome to our ALDONYS Newsletter Summer 2013

Dear Friends and Colleagues,

We're immersed in mid-summer 2013 and looking ahead to the balance of the year including preparations for fall events that can affect all of us in the industry.

**FIND OUT
ABOUT
UPCOMING
MEETINGS
and
EVENTS**

Check the
ALDONYS
Website for
details at:

www.aldonys.org

Clearly, we have concerns about the profession, its growth and legislative initiatives that are crucial to our interests. However, in addition:

- As it continues getting easier for just about anyone to gather detailed information from web searches and social media, including government agencies, will the concept of "confidential" or what must be excluded from consideration, slip to the sidelines? As professionals we have always been concerned about operating within the boundaries outlined in law. It does not appear that the rest of the world is concerned, so we MUST be. Further, there doesn't seem to be significant consequences when the boundaries are crossed. What does that mean for our industry down the road?
- We are impacted by the SAFE legislation and are actively working to change the portions of the law that adversely affect our ability to properly protect our lives in trying conditions. The current limits on the number of bullets that we can load in a magazine may be the difference between life and death.
- On a daily basis, many of us find ourselves competing against those who don't have the professional approach of ALDONYS members and yet they are securing contracts and doing well. Will we continue to step aside for these people? ALDONYS takes a stand and we will continue our fight to make unlicensed activity a felony. However, we will also have to consider whether district attorneys will consider these activities worthy of prosecuting.
- When we look at the number of NYS licensed private investigators vs. ALDONYS membership, we can do better. Talk to someone you know today about becoming a member. We need your assistance. Now!
- As more Baby Boomers retire from law enforcement ranks, many find logical career moves in becoming Licensed Detectives. I bring this up because if the thousands who are projected to join our ranks also bring high technology skills, there could be an interesting paradigm shift. Further, the increased numbers coming from national and federal positions, may support a move toward getting greater coordination among individual state licensing agencies so that regulations are more realistic and better reflect the breadth of work we actually do.

The newsletter is our forum. We are interested in what you have to say. Please communicate with us about what you consider to be good educational topics and suggestions for speakers at our regular meetings.

Use SPOTLIGHT to get yourself published. It's an ideal venue for getting your articles into print. Use the published material as part of your advertising materials - the credentials that help differentiate your firm from the others.

Looking forward to your input and to your help in building our success recruiting more and more licensed detectives to join ALDONYS ranks
Sincerely,

Mario

Mario J. Doyle, CPP
President



Senator Lee Zelden congratulating Mario J. Doyle, CPP
on being elected President of ALDONYS

ALDONYS MEETING NEWS

MAY 2 2013 GENERAL MEMBERSHIP MEETING in NEW YORK CITY

**On May 2, 2013
ALDONYS hosted a
general
membership
meeting at Opia in
New York City. The
event featured Jeff
Pagano, ESQ who
spoke about
"Compliance
Strategy - How to
Remain, and Take Advantage of Your
Status as a Compliant Employer"**



**Jeff Pagano is presented with a Recognition Plaque
by ALDONYS President Mario J. Doyle, CPP**

JUNE 18 2013 GENERAL MEMBERSHIP MEETING on LONG ISLAND



**On June 18, 2013
ALDONYS hosted a
general membership
meeting at City Cellar in
Nassau County on Long
Island.**

**John R. Capece, Chief of
Detectives of the Nassau
County Police
Department, was our
guest speaker and Chief
Capece informed the
audience about important
updates.**

**Mario Doyle, President of ALDONYS, is pictured above presenting
a speaker plaque to Chief of Detectives, Nassau County Police Department, John Capece.**

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Our NEXT ALDONYS MEETING

**is a General Membership Meeting on
September 18, 2013. It will take place in
White Plains.**

Date: Wednesday, September 18, 2013

Location: Buon Amici

**Address: 238 Central Avenue,
White Plains, NY 10606**

Board Meeting: 4:00pm

Meet and Greet: 5:30pm

Meeting: 6:00pm

**SPECIAL GUEST SPEAKER is Dr.
Michael J. Bescia**



**Dr. Michael J. Bescia, Executive Medical Director
of New York's Calvary Hospital.**

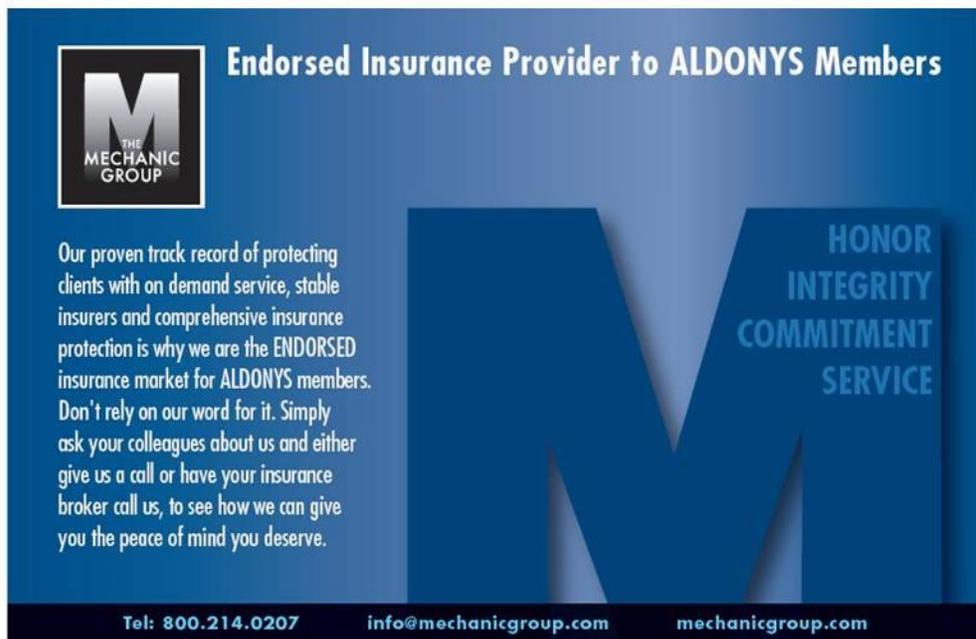
**If you have never been to an ALDONYS meeting
or have not attended for a period of time, do not . . . I repeat, do not
miss this opportunity. ALDONYS is very fortunate to have Dr.
Michael Bescia agree to speak at our meeting.**

**Dr. Bescia is known for his invention of a revolutionary procedure
that is a milestone in the treatment of kidney disease;
it made hemodialysis accessible to patients saving millions of
lives.**

**Listed #3 by the NY Post as the 10 Best Things About New York,
Dr. Bescia recently returned from Jerusalem and other parts of
the world on speaking engagements. At Christmas Eve's midnight
mass at St Patrick's Cathedral in NYC, the Cardinal asked Dr.
Bescia to say the prayer at the podium. He is a friend of law
enforcement and is looking forward to meeting all of us.**

***..... the above note from Gil Alba, ALDONYS Vice President of
Investigations***

Please register to attend: info@aldonys.org
The cost to attend this event is \$50 per person and includes a 3 course buffet dinner, soft drinks, coffee and tea (cash bar).
Payments are accepted by check, cash or credit card (processing fees apply).



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MEMBERSHIP REPORT

From Gil Alba

**Membership Chairperson and VP of Investigations,
ALDONYS**

Dear Members:

ALDONYS has some of the finest security specialists and private investigators in the country. Our meetings provide you with opportunities to network with the top professionals in our field. Join us for these events. Take advantage of our membership meetings and educational events - bring your business cards.

New Members in 2013:

Kevin Connolly
Marilyn Greene
Erica Harrison
Steven Lucas
Dominick Manzi
Heather Morigerato
Thomas Whelan
Howard Sacks

We welcome the new members and also look forward to seeing members who have not attended for a period of time. Put the meeting dates on your schedule! We also hope that you will do more than just show up. Take the challenge to become involved. **ALDONYS** is our organization. We want your ideas and input ----- get involved.

With the development of new more effective sophisticated technology, the security and investigations industry has become increasingly complicated. Current events remind us that law enforcement, security specialists and investigators have to think 'outside the box' in order to make an impact.

Recently the U.S. has experienced:

*Sandy Hook Elementary School Shooting - What's needed? Armed security?
Safe rooms?
Boston Marathon Bombings - How to stop terrorists? More cameras?
Awareness?
Ohio Kidnapping of Three Women - Found Alive after 10 Years - Can this be prevented?*

*Mid-West Severe Weather Devastation-Improved evacuation plans?
Underground shelters?*

IRS, Chief Richard Weber said: "We are entering the cyber age of money laundering, hacking."

In New York City we are prime targets for terrorists. A wide array of security and investigative methods are continually being enhanced. The need has never been greater.

We've seen increased use of cameras designed to detect abnormalities in suspicious packages and machinery (developed by private industry) that 'sniffs out' explosives. There is talk of using drones. The next Super Bowl will be in the New York metropolitan area. It's essential that law enforcement and the private security industry work together to ensure a safe event. And overall, we all strive to make this great country of ours that much safer.

For **ALDONYS**, we also want prominent dynamic speakers for our events that can address issues relevant to the physical security guard industry and the challenges facing private investigators. Please bring your speaker suggestions to my attention. (gilalba@msn.com or info@gilalba.com). See you at the next meeting!

Gil Alba



Senator Lee Zeldin Congratulates Tom Ruskin

Unlikely Camera Angles

By Bob Kingsley

While investigators wisely look for active video cameras and recording devices when conducting investigations, we seldom find that golden nugget of information we're seeking.

Unlike Hollywood story lines that show crisp, clear high-definition color action video as the crime unfolds, by the time cases find their way to the desks of private investigators often any video evidence captured by area cameras is now long gone. It may be that the normal practice of over-writing the images

with new material every so many hours or it may be any number of other factors.

Because there is a lack of video evidence doesn't stop you from taking advantage of favorable positioning that can be gained from just knowing there is a camera, its fixed location and its vantage point.

Some time ago, I was investigating a case of attempted murder. It was alleged that my client left his home in the early hours of the morning, drove to the home of his estranged girlfriend's new boyfriend, fired multiple gunshots into the boyfriend's house and then drove back to his residence.

Because both properties were in a very rural area, there was only one way to get there; on a lone, two-lane road. As I surveyed the drive, I noticed a stone quarry with multiple cameras on the property. I stopped, introduced myself to the owner and asked to see the camera images on his computer system. He was very cooperative and sure enough, one of the roof cameras showed a clear view of the road in front of the business; the same road my client would have had to drive on in order to commit this crime.

I asked the quarry owner if the police investigators had spoken with him or made inquiry about the cameras and he said that they had not. Too much time had passed for any video evidence that might have been recorded to have been preserved. However the fact that the police failed to seek out this potential evidence proved to be quite compelling. After all, the camera would have captured not only the image of the vehicle, but the time at which the vehicle passed by, in both directions. This would have put a nice big bow on the case. The fact that the police did not pursue that easily-obtainable and damning evidence left a lot for a jury to consider.

The angle to be pursued in this case was to suggest to the jury that the reason police did not seek this evidence was because they had already drawn their conclusions, thought they had a rock-solid case and as a result became blinded to continuing to pursue the matter.

Taken a step further, it could be suggested that the police failed to produce this evidence for fear of ruining their own case, as the lack of any images that night would have effectively ruled out my client.

Now, whenever I see a camera anywhere near the area I am investigating, I immediately think about many ways in which to bring that camera into play, whether we have images or not. Cameras not only take pictures, they can paint them as well.

Robert Kingsley is Senior Investigator at King Enterprises in Binghamton NY. He can be reached at: (607) 722-1079 or: Bob@CrashKing.com.

ALDONYS Person of the Year Dinner



Senator Greg Ball with Theresa Balfe, accepting the ALDONYS Person of the Year Award

On March 8, 2013 Senator Greg Ball (R-Patterson) was named **Person of the Year** by the **Associated Licensed Detectives of New York State**. Outgoing president of the group, Theresa A. Balfe said: "The Person of the Year award recognizes a person who exemplifies our commitment to public security; a person who stands out above the rest; a person who demonstrates true professionalism and integrity. This person, our Person of the Year, is Senator Greg Ball."

PEOPLE IN THE NEWS

Lisa Dolan, CPP, Board Member of ALDONYS was named **Chair of Women In Security**, one of the many ASIS International Councils.

The ASIS Women in Security's (WIS) mission is to provide support and assistance to women in the security industry as well as to inspire those interested in entering the security industry through tailored programming and mentoring. Lisa is the President of People's Accident Information Service, Inc. d/b/a Securit, a licensed private investigations and security firm.

Thomas F. Whelan announced the 2012 founding of Whelan & Whelan LLC, a licensed private investigation firm and business consulting group in Central New

York. Tom serves as COO at Whelan & Whelan LLC and has almost twenty years of experience in domestic and business intelligence, international personal background investigations and asset investigations. He was Director of Investigations and Director of Corporate Recruitment and Training for a NY-based investigative firm and was Director of Background Investigations for an employment screening firm Fort Lauderdale FL. He holds a private investigator license in FL and NY. Tom is a Summa Cum Laude graduate from John Jay College of Criminal Justice. He is an ALDONYS, ASIS International and NCISS member.



Joe Biondo, Dan Sepulveda and Robert Auletta with Senator Lee Zeldin.

MEMBERSHIP DRIVE: Bring in a new Member and Save \$25 on your 2014 Membership Renewal

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- Colleagues with shared interests
- A strong voice in Albany bringing our perspective to legislators and lawmakers.

Offer Expires: August 31, 2013

EVALUATING WHETHER BENEFITS OUTWEIGH EXPENSES and EXPOSURES *Serving Papers in New York City* By Mark Fogel

An issue for Private Investigators who may serve more than five papers annually in New York City is that we may be required to obtain a license from the NYC Department of Consumer Affairs either as an individual process server or, if we hire people to serve for us, as a process serving agency. NYC Department of Consumer Affairs (hereinafter "DCA") has imposed extremely strict requirements to do this work. Some examples are:

- We may need to be separately licensed to serve process, which then requires that we take a test to be able to serve. There significant costs: the test (\$75), licensing (\$350 every two years) and city fingerprinting at DCA offices (\$75).
- We may need an additional bond either in the amount of \$10,000 for an individual or \$100,000 should we act as an agency.
- We will have a mandatory requirement that all services be GPS recorded through an independent third party firm (at an additional cost).

- We will have to have recorded each attempt, completed serve, filing of papers, etc. in an excel file reported to DCA.
- We will have to keep all records for seven years, including copies of all affidavits of service.
- Should we have our employees serve process, we as an agency and they individually must keep independent records of their work. We are then required to do monthly reviews of their work (to verify that they actually served the defendants) on random dates selected by the DCA.
- Should an employee improperly serve, incorrectly record a service in their log, inadvertently forget to excel list their service or not GPS a serve; then we would be required to report this to the DCA which exposes the employee to fines and censure.

All these are in addition to NY State requirements and regardless of the correctness of the affidavit of service filed... Failure to comply with these strict liability rules can (and does) lead to fines, suspension or revocation of license, public censure, etc.

Although I don't have data on how many of us serve papers for attorneys or other clients, it is important that we all become familiar with these detailed rules and determine if we want to do this type of work in New York City. The amounts that we can charge may not justify our entry into serving papers in NYC as a regular part of our offerings or continuing with these services where DCA rules apply.

Mark Fogel's company is: Forensic Private Investigations, Inc. He can be reached at: [516- 252-1477](tel:516-252-1477) or by fax at: [516 323 7993](tel:516-323-7993).

THE ALBANY REPORT

What's Happening in Albany that Will Affect Your Business

From Fred Altman

This legislative session was dominated by two main bills. The Private Investigator unlawful practice bill was introduced as **ALDONYS** request by Senator Lee Zeldin. The bill would increase the penalty for the unlicensed practice of the business of private investigator from the present Class B misdemeanor to a Class E felony and it would direct enforcement to local district attorneys in addition to the New York State Attorney General.

The bill passed the Senate with overwhelming bi-partisan support. We requested Assemblyman Robin Schimminger to sponsor and introduce the bill in the Assembly, which he did. Assemblyman Schimminger is chairman of the Economic Development Committee which is the first stop for this bill. He promptly passed the bill in his committee and reported it out to the Codes committee chaired by Assemblyman Lentol.

Although we received no opposition from third parties or special interest groups, either in the Senate or the Assembly, an issue was raised at the eleventh hour by the Assembly Program & Counsel staff stating that they were concerned with what they called the "proliferation of felonies in New York". At their request we provided additional information showing that all professional licenses issued by the Department of Education as well as professional licenses issued to attorneys and many other professional licenses issued throughout the State do contain felony level violations for unauthorized practice.

We were asked whether we would accept an increase from a Class B misdemeanor to a Class A misdemeanor. We declined since that would provide little additional incentive to prosecute. Another compromise was discussed that would increase the penalty for a first violation to a Class A misdemeanor and then for a second violation to a Class E felony. After consultation with the **ALDONYS** Board it was agreed to stick to our guns and continue to request an immediate increase to a Class E felony. We will therefore continue to pursue this objective throughout the off session and seek to pass the bill as drafted in the new session. We have commitments from both Senator Zeldin and Assemblyman Schimminger to continue to support the bill.

The second major bill was the NY SAFE ACT of 2013, also known as the Assault Weapons bill. This bill was passed on the first day of the legislative session under the authority of the Gubernatorial 'message of necessity'. It has been the subject of much controversy as it contained a number of errors, the most glaring of which was that it would have immediately criminalized police officers. This was obviously unintended but was the result of hasty passage without an opportunity for careful examination, debate and deliberation on the bill.

Among many objections filed by many opponents, **ALDONYS** requested an exemption of the seven round magazine limit for registered armed security guards. We were able to get our exemption language into a bill (A3304-c; Couch) and it was circulated throughout the Senate and Assembly leadership and key members as well as to the Governor's Counsel.

Our argument in a nut shell, is that armed security guards are often the 'on the scene first responders' whereas police officers have to be summoned to the scene. Placing these security personnel at an immediate disadvantage endangers their lives and those of the people they are there to protect.

In the end the magazine capacity exemption was made only for active and retired law enforcement personnel. The political and media frenzy surrounding this bill made further amendment this session impossible.

We will request introduction of an amendment bill again in the next session.

Frederick M. Altman, Esq.
Altman and Associates
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"Smile, You're on Candid Camera..."

By Frank Piazza

Video is now playing a role in many of your clients' cases. And, if not handled correctly it can actually hurt your investigation. At our company, we offer both audio and video forensic services that have proven valuable: Enhancement, Analysis, Image Extraction, Expert Testimony. We hope by sharing a few tips this article will give you a basic understanding about best methods for gathering and preparing video evidence.

We are often asked by private investigators and lawyers as to the best way to capture video evidence for their clients. My first question will usually be "surveillance, security or CCTV footage?" There is a difference:

Surveillance video is footage taken by a person or group that is actively participating in the recording of events as they happen. Usually, there is a predetermined location where equipment is set up for the purpose of recording specific, identified targets and/or persons. Many times these cameras are handheld and are manually controlled. The quality can range from poor to excellent. Footage is recorded in a universal or proprietary file format.

Security video is footage taken by DVR (Digital Video Recorder) units that control cameras mounted on the sides of public buildings, inside stores, or homes, etc... They are fixed cameras and are set to record local events 24 hours a day. Most systems are digital although occasionally a tape-based system is used. These units have limited storage capacity and the user/owner is responsible for managing the unit's settings. Quality can range from poor to satisfactory. Footage is usually recorded in a proprietary file format.

CCTV (closed, circuit, television): Footage recorded on these systems can be accessed by multiple users from numerous locations and is monitored as the events take place. Footage is stored to a remote, offsite location for archiving purposes. These units are usually maintained and staffed by the installer or a specialized security company since they contain many features not found in simpler security video systems. The quality can range from poor to very good. Footage is recorded in a proprietary or universal file format.

Universal Formats - video files that are easily accessed by basic computer systems. They can be viewed using a common media player such as Windows Media Player, Quicktime or VLC Player (my favorite) to name a few.

Proprietary Formats - video files created exclusively with software that can only be viewed within the software that created it. These files will not play in common media players and it can be very difficult to decode these files.

What determines video quality? There are several factors including: the environment where the cameras are recording, settings, camera lenses, screen size, hardware, compression, distance to objects and the transfer process to name a few. The best systems to date have recorded 720p but newer systems are now shipping with the ability to record in an HD1080 format. These new systems should improve clarity and details. We'll wait and see...

In the end, the quality of the video (or lack of quality) is likely what will prompt a call to an expert to sort it out. Your expert should be prepared to identify the type of video he/she has been handed. The expert should also be able to determine whether or not any errors may have taken place during the transfer of the files from the recording unit.

Many times I am handed footage that has been incorrectly copied from a DVR device. Or, a DA will hand over a disc made by their technical unit with numerous problems that need to be fixed. Even "copy-of-a-copy" footage that has been compressed is a common problem that needs to be addressed. Whenever possible I will always ask for the original version of the footage. A digital, clone copy is usable as well.

There are some investigators who have the ability to edit video and create DVD discs on their own. Sometimes the attorney or client is satisfied with the investigator playing a post-production or forensic role by editing portions of the footage. But, if a case has the potential to go to trial call in an expert to sort out and manage all of the footage and provide a detailed report or affidavit describing the process in detail.

We do love getting phone calls from people asking whether or not we have the ability to get as good results as NASA or Hubble Space Laboratory. I promise you NASA doesn't even know where to begin with this low-quality footage. It is a specialty and having extensive experience handling these files is the best way to show expertise in this field -if a case is going to trial, your video evidence is going to trial as well.

Sometimes we handle hundreds of hours of evidence per month. Our techniques are practiced and perfected and our state-of-the-art equipment and software is thoroughly tested and proven.

What's in your Toolbox?

Private investigators may be asked to collect security footage. So, what can you do as an investigator that ensures you capture the footage correctly and take the necessary steps to ensure the files are as best as they can be? You're going to need a toolbox with a few things in it:

1. Thumb drive or Flash drive (maybe two) (USB)
2. CD-R/DVD-R discs (at least three of each)
3. A video-capture device (this connects via USB to your laptop) and the necessary cables to connect the device to the DVR unit, and a laptop.

Having all three items will enable you to cover all bases in case things do not go smoothly. All in all, you'll need at least 90 minutes to make sure you get what you need.

Here are a few tips:

1. Make sure you have the time/date range selected to ALL cameras (you may come across 4, 8, 16, 24 camera systems). Even though the event may only take place on one or two cameras you should make sure you get them all.
2. Capture additional footage before and after the event. Minimum 15 minutes or the entire day if necessary.
3. Save both the files and software to your disc AND thumb drive as a backup.
4. If the system supports "export as AVI" then perform this function as well.
5. Whenever the system asks you about the quality of the file, always save as BEST quality.
6. Confirm on your laptop the files play back and they have been captured correctly.
7. If none of these options work you may need to capture the footage in real time by using your capture device and the line out from the unit (this is an advanced method but, may be your only option).
8. Audio: Most units don't record audio but, every once in a while you will come across recorded audio as well. Make sure to take the proper steps to capture the audio! The menu should have these options.

While most DVR units are similar in their system menu do not be surprised if you need a manual to figure out how to get at the files. And, remember many of these units auto-erase themselves after a chosen time period so, making sure copy the material ASAP is usually the best way to go.

Of course, other issues show up all the time and sometimes you just can't be prepared to deal with them at the onset. Anything you can do to assist your expert or client will make the case go well and ultimately play

an important role in the investigation. By following these tips now, you can be sure your client or expert is able to view the event in as best quality available

Frank Piazza is a court-qualified expert in audio and video enhancement, image extraction, authentication and analysis. He has participated in numerous trials and investigations and has provided expert testimony in courts throughout the United States. He is a member of the Audio Engineering Society, American Guild of Court Videographers, Society of Motion Picture Television Engineers and the New York State Criminal Defense Lawyers. Frank can be reached via email: fpiazza@legalaudio.com, by phone: [212-873-8772](tel:212-873-8772), or website: www.legalaudio.com.



Former ALDONYS Presidents Robert Tucker and Jack Goldsborough
at the Person of the Year Dinner

THE LEGISLATIVE REPORT

By Bruce Hulme

Cellphone tracking: Is it "junk science"?

At his trial last year on federal kidnapping and conspiracy charges, prosecutors sought to introduce cell tower evidence purporting to show that calls placed from defendant Antonio Evans' cellphone could have come from his aunt's house, where the victim was thought to have been held for ransom. Prosecutors and law enforcement routinely introduce cell tower evidence to place a defendant in the vicinity of a crime.

Evans was one of three men charged in a scheme to kidnap the 15-year-old son of a Chicago-area junk dealer whom they thought was wealthy and hold him for a \$450,000 ransom. The youth was snatched off a street on his way to school by two men in April 2010 and held in the basement of a Chicago home for 36 hours before being freed unharmed.

"What made the Evans case unusual was the fact that the defense even put up a fight to keep the cell tower evidence out of the trial, this according to a June 1, 2013 article entitled: "Prosecutors' use of mobile phone tracking is 'junk science,' critics say" by Mark Hanson in Law News. The attorneys representing Evans presented evidence supporting that techniques by which cell tower evidence is determined are not scientific.

"Such testimony usually goes unchallenged, presumably because most defense lawyers either accept at face value prosecutors' assurances that cell tower evidence is scientific or because they don't know enough about the underlying technology to understand its limitations. And, on the few occasions that it has been challenged, the courts have always let it in," according to the article. That is, until U.S. District Judge Joan H. Lefkow of Chicago, who tried the Evans case, took an in-depth look at the cell tower evidence the government was proposing to use and found it wanting. She wrote that "multiple factors can affect the signal strength of a tower" and an FBI special agent's "chosen methodology has received no scrutiny outside the law enforcement community." As a result, in an August 29, 2012 opinion and order, she concluded that the government had not demonstrated that testimony was reliable.

Critics of cell tower tracking say the decision is long overdue. It marks the first partial defense victory against the use of such evidence on Daubert grounds, the test formulated in the 1993 U.S. Supreme Court case *Daubert v. Merrell Dow Pharmaceuticals*. That test says that the judge should rule on the admissibility of scientific information submitted to assist the fact finder. It is used by federal and most state courts to determine the admissibility of expert testimony. Critics hope the case represents a turning point in the courts' general tendency to submit when dubious scientific techniques such as cell tower tracking are proffered.

The article also quotes Michael Cherry, the CEO of Cherry Biometrics, a Falls Church, Va.-based consulting firm that has led the legal assault on cell tower tracking, calling it "junk science" and indicating that it should never be admitted in any court for any reason. He claims cell tower tracking is an easily disproved technique, which has been around for a decade or more, and is routinely being used in court.

"No one who understands the relevant science would ever claim that data from a single cell tower can be reliably used to specify the location of a caller at the time a particular call is made," he says. Still, in 2011, the nine largest cellphone carriers in the U.S.

responded to 1.3 million requests from law enforcement for subscriber information of all kinds, including cell tower records.

Cell tower records, also known as call detail records, are the billing records cell companies use to keep track of their customers' calls. They show the date and time of all calls made or received, the numbers called, the duration of each call, and the cell towers used to begin and end a call. And those requests have been rising at an annual rate of 12 percent to 16 percent in the past five years.

Cell tower records are not completely worthless. They can tell whether a person who has denied being in the coverage area of a particular tower at a given time was lying. However, they can not tell you where within that coverage area the caller was. In some areas, the caller could have been anywhere within a 420-square-mile vicinity of a particular tower. Cell tower records, unlike Global Positioning System technology, were never designed to be used for tracking purposes. But not all cellphones are equipped with GPS technology, which can pinpoint a caller's location down to a radius of about 50 meters, leaving cell tower records the only way of tracking a phone without it.

Prosecutors in the Evans case stated the significance of the ruling was limited. They were allowed to put on evidence indicating that Evans' cellphone repeatedly connected to two cell towers directly east and west of his aunt's home. They also put on testimony from an admitted co-conspirator who said Evans helped plan and take part in the kidnapping scheme and was with him at his aunt's house when the calls in question were made. The evidence included the proposed testimony of FBI special agent Joseph Raschke, a recognized expert in cellphone analysis, who was expected to testify that by comparing the call detail records for Evans' cellphone with the location of the two towers it connected to, he could narrow the location of Evans' cellphone to an area the size of a few city blocks, one his aunt's home falls squarely in the middle.

After an evidentiary hearing, Judge Lefkowitz allowed Raschke to testify about how cellular networks operate. She said such testimony would help the jury narrow the possible location of Evans' cellphone during the course of the alleged conspiracy. However, she refused to allow Raschke to testify that calls made from Evans' cellphone could have come from the basement of his aunt's home because he hadn't demonstrated to her satisfaction that cell tower tracking is scientific.

The judge stated that Raschke's testimony was based on the erroneous assumption that a cellphone will always connect to the tower with the strongest signal—usually the one closest to the phone when the call is made. Yet there are a variety of factors that determine which tower a phone will connect to, including weather, topography, physical obstructions, tower maintenance and whether the phone is being used indoors or out.

The judge also stated that Raschke had offered no proof that the tracking technique works, other than his assurances that he and other FBI agents have successfully used it to find people both living and dead, and had done so with a "0 percent" rate of error. Evans, the defendant, claimed that the cellphone registered to him had been purchased in his name by another co-defendant, who has also pleaded guilty and is awaiting sentencing. He knew the co-defendant through the drug trade. He also pointed out that he, unlike his two co-defendants, had not been captured on surveillance cameras making ransom calls from various pay phones in the Chicago area.

Cell tower records can provide a "general indication" of where a call was made down to within a few hundred yards under certain conditions, but may be too imprecise to place a caller inside a constitutionally protected space, such as a home.

Evans was acquitted.

LEXISNEXIS to Pay \$13.5M Class Action Settlement

In March, it was learned that LexisNexis Risk & Analytics Group, Inc. will pay \$13.5 million and overhaul its Accurant background search products to settle a nationwide class action that claimed it sold reports to debt collectors without following consumer protection laws. Under the proposed settlement some 31,000 class members of the class will receive payment from the \$13.5M settlement. LexisNexis will also separate its sale of Accurant for Collection reports which were not treated as "consumer reports" as defined by the Fair Credit Reporting Act. It was alleged LexisNexis sold the reports without any permissible purpose to do so and without certification of a lawful purpose required by the FCRA, thus depriving consumers of their rights to be protected from unlawful sale of their reports to third parties and not having the right to dispute, and have corrected, inaccurate information in those reports.

The complaint was filed in the United States District Court for the Eastern District of Virginia; Richmond Division, by Erika A. Godfrey, Summer Darbonne, Shamoon Saeed, Arthur B. Hernandez, Gregory Thomas Berry, Timothy Otten, and Rickey Millen against LexisNexis Risk & Information Analytics Group, Inc., Reed Elsevier, Inc., and Seisint, Inc. An order was entered by U.S. Judge James R. Spencer on April 26, 2013. (Civil Action 3:11-CV-754) The details are at: <http://ia600802.us.archive.org/23/items/gov.uscourts.vaed.273842/gov.uscourts.vaed.273842.1.0.pdf>

Security Guard Committee Report Lisa J Dolan, CPP, Vice President Security ALDONYS Chair of Security Guard Committee August, 2013

Those who know me are aware that my favorite mantra is: "If you run a business and you're not involved in politics, then politics will run your business". Two issues of legislation in this recent session are certainly evidence of this statement and I am proud to report that ALDONYS has been working tirelessly regarding these, one which is potentially a great impediment to the security industry and the other is a significant win for our industry.

The two dominant issues that have been under consideration and have received attention are the Assault Weapons Bill (NY SAFE ACT 2013) and the Private Investigator Criminal Enforcement Licensing Bill (S 4000- Zeldin; A6538-Schimminger)

For those who do not attend our meetings regularly, I want you to know that ALDONYS is on the front lines taking a proactive position with the legislators in Albany through Fred Altman, our attorney, as well as Bruce Hulme, our legislative guru.

Background on the PI Criminal Enforcement Licensing Bill:

The P.I. licensing bill (Zeldin Bill) would increase criminal sanctions from a Class B misdemeanor to a Class E felony and specifically direct criminal enforcement to local district attorneys. The bill was first introduced by Senator Lee Zeldin. At our request it was introduced as a 'same-as' in the Assembly by Assemblyman Robin Schimminger. The bill passed the Senate last week and was referred to the Assembly Economic Development Committee of which Schimminger is Chairman. It now has to be scheduled for a committee agenda. A meeting is expected in May but the date has not been set. Neither sponsor has, to this point, received or heard any objections to the bill.

Update on the NY SAFE Act 2013

We are all aware that the passage of the New York Secure Ammunition and Firearm Enforcement (SAFE) Act of 2013 which resulted in several unintended or unanticipated consequences. In order to have armed security guards and Private Investigators exempt from the limitation on the amount of rounds carried in the magazine, we need a Chapter Amendment.

Fred Altman submitted a Position Memo on the NY SAFE Act 2013 Request for Exemption. The position memo requested the legislators support favorable action to exempt a category of first line responders from this provision on the seven (7) round magazine requirement for New York State licensed Private Investigators and New York State Registered Armed Security Guards categorizing them as "first line responders".

At the present time there is activity in both houses on the assault weapons bill regarding the formulation of a chapter amendment. Our position memo has been widely distributed including to Governor's Counsel. Our follow up continues with leadership and key members in both houses. Legislation affecting the security industry affects all of us. Please consider getting your colleagues to become ALDONYS members as well. And get involved. We need your support.

Thank you!

Lisa J Dolan, CPP

Vice President ALDONYS -Security

Chair- Security Guard Committee ALDONYS



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Sincerely,

Mario J. Doyle, CPP
ALDONYS PRESIDENT