

Expert Witnesses

Speaking in an interview several years after his pioneering research on the Manhattan Project where atomic reaction theory was developed, scientific visionary Oppenheimer explained *that 'the scientist is free to ask any question, to doubt any assertion, to seek for any evidence'*. This thinking holds especially true when applied to the discipline of scientific evidence in a legal context.

Expert witnesses are in essence subject matter specialists; individuals that have gained detailed experience or insight into a given area to allow them to assist the court in appreciating complex facts. Whilst expert witnesses play a support function in the judicial process, their importance must not be underestimated. Unlike general witnesses, experts are allowed to sit in on the full court proceedings, ensuring they can assist the defence at any time by highlighting discrepancies and misinterpretations of evidence. Perhaps most importantly, expert witnesses are afforded the unique luxury of being able to express an opinion, based upon a specific set of facts and their interpretation as to causation or effect.

Expert witnesses may be instructed by either the prosecution or the defence; however it is fundamentally important to recognise that they must show no favouritism or bias. Experts are obligated to discharge their duty recognising and respecting a higher duty to the court and the service of justice. They are instructed as specialists, but experts for the truth and assisting judge and jury in making the right determination of the matter in front of them.

In complex criminal proceedings it is common for there to be fundamental differences of opinion between opposing expert witness. These areas of contention can go straight to the heart of the matter – such as whether a partial fingerprint found at the scene of the crime has been correctly attributed to the suspect. In such instances the proceedings can become a ‘trial by experts’, with both judge and jury being heavily persuaded by the gravity of the arguments being posed by each specialist. Advances in forensic Best Practice and the shortcomings of any procedure used to secure evidence can only be scrutinised and challenged by an expert.

It is important therefore to ensure that those instructed specialists called upon to assist in defence case preparation are duly qualified, experienced and have a proven track record of uncompromising service. Conventionally, the three pillars of education, experience and certification are benchmarks against which to measure the depth and degree of expertise. [AFENTIS FORENSICS](#) considers a further measure important: engaging in an active programme of advanced research, such that clients can enjoy access to the very latest in investigative thinking and scientific techniques.

Expert Witnesses are servants of the court in performance of a public duty. They can be a formidable tool in defence case preparations; ensuring weaknesses in the prosecution case can be identified and fully exploited for the client's benefit.

In the majority of cases where forensics play a role, such as the presence of blood or fluid residue, a defendant may naturally 'put the crown to proof' before deciding on whether to enter a basis of plea with the support of the legal team. In such cases, the defence are well advised to instruct an 'expert witness' to independently consider the case and pin-point those aspects of the evidence that best support the defence and clearly document the strengths in the prosecution submissions.

Even in matters where a guilty plea may be entered, expert assistance can provide considerable support for the purposes of mitigation and allowing considerable leniency to be shown by the courts. Consider, for instance, an individual facing charges in relation to a conspiracy to supply Class A drugs. Harry Ward, Practice Manager at [Burton Copeland Solicitors](#), commented that "careful assessments by an appointed expert could demonstrate the degree of involvement by the defendant, ensuring that any subsequent sentence from the court reflected their role in the crime; as opposed to being given a stiff sentence akin to those at the very centre of the offence."

Many solicitors do not actively seek out expert assistance, placing their clients at considerable disadvantage. Complex evidence that is exculpatory (i.e. prove innocence) can be easily overlooked by the untrained eye. When scientific evidence goes unchallenged, it becomes accepted by the courts as unassailable fact.

For a confidential consultation or to request a no obligation review of your case and associated forensic evidence submissions, please contact Joanne Davies on 0800 180 4545 or email jdavies@afentis.com