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# Provision of Expert Evidence

CCMP 4027 Forensic & Analytical Computing Presentation  
University of South Australia  
April 2009

(based on content provided by NIFS course for Provision of Expert Evidence for Computer Forensic Personnel – 5 & 6 Oct 2007)

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Proof of facts to the case depends on the presentation of the **oral** testimony of eyewitnesses in court.

A witnesses' oral testimony is divided into evidence of fact (given by the lay witness) and opinion evidence (given by the expert)



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- **Evidence of Fact**; what is directly seen, heard, or felt by the witness or what the witness has actually done
- **Opinion Evidence**; draw inferences about what the witness observed or perceived



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## Introduction

- Area of maximal vulnerability
- Opportunity to assist the criminal / civil justice community in vital role
- Be a good scientist
  - Reasoned
  - Objective
  - Accurate
  - Impartial
- Professional integrity
  - be flexible, open minded but stick to your guns when needed



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## 'Expert' v Technician

- A **Technician** (or lay person) gives evidence based on facts – ie what can be determined by the 5 senses or what they have actually done;
- An **Expert** is privileged and is also allowed to draw inferences from those facts and therefore to give opinions, interpretations and to draw conclusions. This can be based on **qualifications** and/or **training** and/or **experience**.



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## Limitations of Expert Witnesses

- The witness who possesses **special knowledge**, the expert, only is permitted to express their opinions to the court *within their field of expertise*.
- An expert's opinion is admissible when it is able to furnish the Court with information which is likely to be **outside the experience or knowledge of the judge or jury**.



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## Qualifying as an Expert

- A question to be considered by the trial judge
- An expert witness may have;
  - Specific qualifications
    - Academic study
    - Qualifications
    - Publications & Texts
  - Experience eg
    - R vs Harris (1997) an aboriginal tracker with many years experience gave evidence as the recognition of various footprints
    - R vs Lam & Ors (2001) interpretation of a videoed card game



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## Qualifying as an Expert

- Develop and memorise a concise summary of education and experience:
 

*"I've been in the computer industry for 15 years, selling and supporting computers between 1992 and 1997, and completing a Diploma of Information Technology in 1998. In the same year I commenced work as an IT Professional with the Attorney-General's Department, moving to South Australia Police in 2001. For the past 4½ years I have worked with the Electronic Crime Section as an Electronic Crime Analyst and since March 2007 as the Senior Electronic Evidence Specialist."*



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## Giving Evidence

- Bowing to the coat of arms
- Oath or affirmation
- Be prepared with “lay” definitions for the procedures but don’t underestimate the jury
- Realise that the jury have seen movies and TV shows and be prepared to either build on this or explain why what they see doesn’t happen in real life.




## Preparation

- Photocopy your notes so that they may be given to the court if required rather than your original notes.
- Refresh your memory, particularly if you conducted the analysis while ago.
- If when checking notes prior to Court you find an error, notify the instructing solicitor and the Court as soon as you commence giving evidence.




## Giving Evidence

- Described by one very experienced witness as:
  - Intimidating
  - Demanding
  - Un-satisfying
  - Highly challenging
  - Intellectually rewarding




## Giving Evidence

- Be unbiased towards Prosecution / Defence. You are a witness for the Court.
- Face Counsel for questions, then magistrate or jury for reply.
- You don’t want to turn away from the bar table when things get difficult.
- You also build up a rapport with the jury. Watch the speed they and the judge are writing, you may have to slow down.





## Giving Evidence

- Don't stonewall
  - Answer questions even if they appear stupid to you
  - Don't want to look unco-operative
  - There may be a good reason you are being asked this question
  - Questions and questioning may not always make sense to you
  - Counsel for both sides have a game / case plan



## Giving Evidence

- Avoid slang/technical jargon
- If asked to identify exhibits, refer to labels (PPMS number)
- You do not have to answer the question using the same terms/language put to you
- You may ask for the question to be repeated
- Do not give guarded answers/half truths

