Dealing with: Reporters, Clients and Lawyers

By Ir Dr George Greene

30 minute presentation and then questions
Dealing with reporters

Your desire to help inform the public is probably counteracted by the risk of being misquoted.

Most reporters want stories that will please their editors and sell newspapers.
They almost always have an angle or preconceived idea about a story when they call.

My reply to a phone call from a reporter is normally either:
“I would like to help you but I have no detailed information about this incident. I could talk in more general terms but not about this incident.”

If they want to talk in more general terms then suggest they come to your office.
or

“I would like to help you but I have been engaged to assist in the investigation of this incident.

I will prepare a report for my client but I cannot discuss this particular incident.”
Another approach is to build a relationship of mutual trust with a reporter but this is time consuming and still may not work.

Preparing a press release in conjunction with a HKIE Division may be better but will also take time.
Preparing a feature article for the paper may work but it is unlikely to be timely or printed in full.
Dealing with clients

First of all, remember the same words may have different meanings outside of the University.

In particular time frames are much shorter.
The word “soon” may mean next week if not tomorrow and “long term” may involve months but not years.

Clarify this as soon as possible.
There are a very wide range of clients, types of issues and size of problems but I have found that the following general approach worked well in most cases.

1. On first contact, find out what the client is asking.
2. Assist in redefining the problem more closely but from the client’s point of view.

3. Assess the likely scope of work and refer clients to other parties if appropriate. Accept your limitations and seek assistance of other people and companies.
4. Offer to make a preliminary assessment and prepare an early report to keep time and costs under the client’s control.

Very often a preliminary report is sufficient to meet the client’s needs.
5. If proceeding with a case, discuss and agree upon costs, deliverables, follow up meetings and completion date.

If the scope of work is not well defined, quote on an hourly basis.
6. Maintain an evidence based investigation that is logical and as thorough as the constraints allow.

7. Determine what happened, how it happened, why it happened and if possible how it could be prevented in future.
Dealing with solicitors

This is a concern of some engineers.

It should not be.

Your reputation is important regarding the acceptance of the report and certainly when going to court.
A solicitor’s job is to win the case.

He or she is not concerned with your reputation or your integrity.

They may ask you to modify your report or even leave out entire parts that they feel are not sufficiently helpful to their client.
If this happens I simply request that the solicitor obtain a letter from the barrister making the same request.

I have never received such a letter.

The barrister is retained to provide the best possible legal advice to the client and wants to know the weak as well as the strong points of the case.
A barrister would never want to be seen having had undue influence on an expert witness.

The solicitor is not necessarily your friend but the barrister usually is your friend on this particular aspect.
If you have written a report that is independent, thorough, based on evidence, logical and leads to clear conclusions you should not have significant worries about going to court as an expert witness.
Rather than an expert witness, you may also be appointed as a technical advisor to the legal team.

In that case your work, discussions and written papers would be privileged and you would not be called as an expert witness.
You would assist in the interpretation of expert reports and might be asked to sit in court during examination, examination in chief and reexamination of experts to assist Counsel.

An expert witness does not have privilege so all documents and discussions are disclosable in court.
Meetings of experts can be agreed by both parties or be ordered by the court.

The purpose of the meeting of experts is to save time in court by identifying points of agreement that can be accepted by both parties and points of disagreement that will have to be argued in court.
The purpose of a meeting of experts is not to form a joint report. You are not negotiating on behalf of the party.
Separate experts are normally appointed by the two sides in a dispute.

However the parties can chose to jointly appoint an expert or the court can direct the parties to appoint a single expert.
In some cases the court can appoint a single court expert with or without the approval of the parties concerned.

It is a bit confusing but there are specific rules that are laid out very carefully.
Under the revised civil court procedural rules an expert report to be disclosed to the court must be verified by a statement of truth signed by the expert.

“I believe that the facts in this [name of document being verified] are true and the opinions expressed in it are honestly held.”
A false statement may be punished as contempt of court.

There is also a code of conduct for expert witnesses included in the civil procedural rules.
If you prepare a report for one party and it is seen by the solicitor as being unfavourable to his party he may decide not to use the report.

This would not stop the second party from consulting the same expert to produce an independent report for the second party.
That report would be based on the evidence provided by the second party.

No party has property in a witness.

If put in this position I would seek specific guidance.
I have tried to highlight some points of interest but I limited the content to allow time for your questions.

Questions?
Lessons in becoming a good expert witness – Handout is available

Code of conduct for expert witnesses - Handout is available

Courses offered in Hong Kong normally in March and November by The Academy of Experts – listing could be made available
Thank you for your attention and for your active questions.