

鑑識會計實務中無資力被告專家證人 訴訟支援權之研究

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摘 要

本文透過比較法分析，簡介美國法上之專家證人制度與專家證人報酬之給付，並由美國法上標竿案例 *Ake v. Oklahoma* 案談起，探討無資力之被告在刑事訴訟案件中是否具有專家證人訴訟支援權、其權利之範圍，以及在肯認具有專家證人訴訟支援權之前提下，應如何尋找有意願之專家證人及其專家報酬之經費來源。針對我國現行財經刑事訴訟支援之實務運作，本文透過質性訪談研究方法，訪談具有鑑定人經驗之會計教授、會計師，以及財經刑事訴訟律師，透過其等對於實務運作現況之觀察與評析，探討我國於財經刑事訴訟案件中無資力被告聘請鑑定人訴訟支援之需求性、尋求鑑定人之管

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道、鑑定人報酬之給付與經費來源、應否賦予被告選任鑑定人之權利，以及點出我國刑事訴訟制度中可能存在檢察官裁量權應否擴大、認罪協商制度之落實、法院詰問制度之運作等議題，以就我國現行實務運作現況為呈現，並為我國學術與實務界之參考。

關鍵詞：專家證人、財經犯罪、鑑識會計、訴訟支援權、無資力被告

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The Right of the Indigent Defendant to Expert Assistance in the Criminal Cases

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Abstract

This article introduces the expert witness in the United States legal system and analyzes the leading case: *Ake v. Oklahoma*. The purpose of this research is to study whether an indigent defendant has the right to expert assistance in the criminal cases. To be more specific, how they can exercise this right, how to find an expert who has the willingness to assist the case, and what is the financial resource to support this legal system. To deeply understand the legal system and litigation situation in Taiwan, this study adopted the interview research method and provided the perspective of accounting professor, accountant, and the litigation attorney. Based on their professional opinion, to further analyze the demands of the indigent defendant to hire an expert, whether should the legal system to endow defendant the right to elect their expert. On the other hand, it probably exists some critical issues

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in Taiwan's legal system, such as the discretion of the prosecutor, the plea bargaining system and the right of Judges to interrogate the expert witness.

Keywords: Expert Witness, Financial Crime, Forensic Accounting, Litigation Support, Indigent Defendant