

FROM THE PROSECUTOR'S POINT OF VIEW: Ten Tips on Using Court Interpreters in Child Witness Cases

by Matt Hardy

Here in abridged form are helpful suggestions for interpreters, judges, prosecutors and defense attorneys.

1. Whenever possible, use neutral court certified interpreters who are trained in the rules of court interpreting.

When interpreters fail to adhere to these rules, prosecutors can quickly lose control of the examination and the courtroom. For defense attorneys who subscribe to the old adage, "if you can't convince 'em, confuse 'em," this lack of control is an invitation to mischief. Prosecutors should educate themselves by checking professional court interpreter associations and court rules for standards designed to minimize these problems.

2. Choose an interpreter who is familiar or willing to become familiar with the specific culture, slang and idioms of the child witness.

When children are asked to discuss subjects in court that may never be discussed openly in their culture—such as sexual matters—the only words they know may often be street slang. Interpreters who are otherwise fluent, but who are unfamiliar with the cultural context of their witnesses' choice of words, may be forced into giving literal but wholly misleading interpretations.

3. Go over the facts of the case, the questions to be asked and the problems to be anticipated with the interpreter before interviewing the child.

Interpreters need background information on the case to be able to establish rapport with witnesses and anticipate testimonial problems. Any subjects of anticipated testimony such as police reports, medical reports, witness interview tapes or transcripts and photographs should be reviewed by interpreters. Likewise, questions to be asked and any evidence that witnesses will have to refer to or handle should be discussed with interpreters.

Preliminary decisions should be made on how prosecutors will phrase their questions and how witnesses can communicate the meaning of any particular phrases or terms to the jury. For example, if a street slang term is to be used to describe the word "vagina," prosecutors need to know how the slang term will be translated into English or whether the slang term itself will be used in the translated English sentence. Follow-up questions to communicate the fact that the slang term means female genitalia would need to be considered.

4. Work with the interpreter to make sure that the questions you ask the child witness in court remain short, non-technical, concrete and simple in structure—even when interpreted.

The basic rule of questioning children remains the same regardless of language: simple is always better. However, words do not always translate simply on a one-to-one basis. *Molestar* in Spanish does not mean "to sexually molest," as one might expect, but simply "to bother."

Differing cultural practices (e.g., using landmarks to give directions, the metric system, etc.) can make some concepts difficult to translate as well. A simple question in English will not necessarily become a simple question in a foreign language. Assuring "simplicity" may require a lot of preparatory work for both prosecutor and interpreter.

5. Use the same interpreter for child witnesses throughout the process including pre-trial interviews, courtroom testimony and post-trial impact statements.

Cutting through all the problems of language and culture to establish rapport with witnesses takes time. This rapport should give child witnesses a sense of security and confidence during their testimony. To reduce any potential for miscommunication, child witnesses should consistently have the same interpreter in every situation.

6. Repeat and reinforce the rules for testifying through an interpreter so as to thoroughly familiarize child witnesses with court procedure.

For prosecutors to maintain control of a case, they must be able to proceed on a question and answer basis. Child witnesses must be taught that interpreters are not allowed to do anything but repeat what others (including the witnesses themselves) say in court. Pre-trial preparation should therefore include practice runs in which prosecutors ask questions, interpreters translate the questions for the child witnesses, and the child witnesses answer the questions. Child witnesses should be instructed to address any non-testimonial statements or questions to the lawyers or the judge, and not to the interpreter.

7. Advise the judge and the court reporter that you will be presenting a child witness through an interpreter and obtain the court guidelines for such testimony in advance.

One of the basic principles of using interpreters is that everybody has to accept the English language record that is generated by the interpreters' words. (Interpreters are subject to an oath to interpret accurately.) Problems can arise, however, when jurors or defense attorneys decide that the interpreters are not interpreting correctly. Jurors should be instructed that they must accept the interpreters' version of the testimony and disregard any translations they may have done on their

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own. Defense attorneys should be instructed that they must not question the interpreters about any particular interpretation while the witness is on the stand. Ordinarily, cross-examination should provide all the opportunity that defense attorneys need to determine what child witnesses "really meant" on direct examination.

8. Have the court take frequent breaks. This is for the benefit of the interpreters as well as the witnesses.

Testimony can be as exhausting for interpreters as it is for child witnesses. Judicial standards for determining when a break is appropriate ("She looks all right to me!") do not always take into consideration the kinds of subtle problems this exhaustion can cause. Interpreters are also not the best judges of their own exhaustion levels. Prosecutors should evaluate the needs of their witnesses and interpreters in this area, and ask the court to address the subject pre-trial.

9. Have the testimony monitored by someone who is fluent in the child witness' language and familiar with his/her culture.

No matter how much preparation is done, things can always go wrong in court. Especially in areas that cannot be carefully covered in advance, such as cross-examination, interpretation problems can result in child witnesses giving seemingly contradictory and even nonsensical answers. Trial prosecutors usually have too much going on in their minds to be able to monitor the interpretation process even if they are bilingual. Ideally, a bilingual police or CPS investigator who has interviewed the child in his or her own language should sit through the testimony to monitor the interpretation process.

10. Facilitate the interpretation process by controlling the pace of your questioning, articulating clearly, and insisting that defense attorneys ask properly phrased questions during cross-examination.

Interpretation is necessarily a slow and sometimes tedious process. Prosecutors have a tendency to try to speed up the process by talking faster, "stepping on" interpreters' answers (i.e. asking a new question before the interpreter has finished giving the answer to the previous question), or slurring words together—all of which just makes things worse. SLOW DOWN. Cross-examination should be controlled with basic "form of the question" objections such as "compound" or "ambiguous." In fact, a major reason to have interpretations monitored at counsel table is to allow prosecutors to interpose these objections when witnesses become confused due to the way questions are interpreted. Finally, in those jurisdictions that require that all questions to child witnesses be "age appropriate," prosecutors should urge the court to focus on whether the questions are indeed age appropriate "as interpreted." As the adage goes, "if you don't know where you're going, you may end up somewhere else." Prosecutors who do not know how their words are passed on to their child witnesses run the risk of ending up "lost" in their own courtrooms. Interpretation problems must

CALENDAR

July 10, 2004. Minneapolis, MN. ATA Seminar on Medical Translating and Interpreting.

Information: www.atanet.org.

August 14-16, 2004. Grand Island, NE. NATI Conference *New Voices from the Plains*.

Information: www.natihq.org.

August 28, 2004. Seattle, WA. ATA Seminar on Business of Translation and Interpreting.

Information: www.atanet.org.

September 24-26, 2004. Guadalajara, Mexico. International Translators' Day Conference of the Organización Mexicana de Traductores.

Information: www.omt.org.mx.

September 28-October 1, 2004. Washington, D.C. 4th Cultural Competency Conference *Quality Health Care for Culturally Diverse Populations*.

Information: www.diversityRx.org/ccconf.

October 13-16, 2004. Toronto, Canada. ATA 45th Annual Conference. Information: www.atanet.org.

October 27-30, 2004. Las Vegas, NV. ALTA Annual Conference. Information: <http://www.utdallas.edu/research/cts/alta.htm>.

November 18-21, 2004. Chicago, IL. ACTFL Annual Conference. Information: www.actfl.org.

November 25-28, 2004. Magdeburg, Germany. FIT International Forum *Interpreting and Translating — Contributing Factors to a Fair Trial*.

Information: liese-katschinka@eunet.at.

May 13-15, 2005. Washington, D.C. NAJIT 26th Annual Meeting and Educational Conference.

July 10-15, 2005. San Antonio, TX. RID National Conference. Information: www.rid.org.

August 2-7, 2005. Tampere, Finland. XVIIth FIT Statutory and General Congress.

Information: www.fit-ift.org.

be addressed immediately whenever a case involving a non-English speaking child witness arises. ▲

[Matt Hardy is a Senior Attorney at APRI's National Center for Prosecution of Child Abuse. NAJIT thanks The TAPIT Times and the American Prosecutors Research Institute for permission to reprint this article. For the complete text and full references, go to http://www.ndaa-apri.org/publications/newsletters/apri_update_vol_11_no_12_1998.htm.]