

THE FASCINATION AND FRUSTRATION OF JUDGING INTERPRETED TESTIMONY AT TRIAL

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"Translation is at best an echo."
George Borrow, English author,
1803-1881

Jurors serving on a trial that requires testimony interpreted into English find this jury service even more demanding than the burdens imposed from a typical trial. Visualize the following: A trial that involves international parties presenting testimony in Mandarin, with court certified interpreters on opposing sides, and both trial teams having counsel present who speak Mandarin, as well as some jurors who have knowledge of the Chinese dialect. Consequently, jurors report that this courtroom environment proves to be both fascinating, frustrating, and, at times, intense.

Technically, "interpretation" involves oral explanation of transforming one language to another, whereas "translation" involves the written process of language exchange.

Post trial interviews of the actual jurors impart jurors' insight, observations and impressions of the interpretive process of presenting evidence.

This newsletter also includes reflections offered by mock jurors who were also exposed to an abbreviated version of the same case just weeks before trial began. Indeed, the expressed opinions are In Jurors' Own Words.

Interpreter Translates Oral Testimony; Jurors Ponder Credibility of the Process

Both the actual and mock jurors assert mixed reviews about whether they find it difficult or easy to judge the credibility of witnesses based on interpreted testimony. Jurors acknowledge that the overall time was extended because oral testimony took twice as long to put into evidence. More optimistically, some jurors report that the process seems "fascinating," however, these jurors are not bilingual in the Mandarin dialect.

Accordingly, Mandarin speaking jurors find witnessing the interpretive process more tedious and frustrating. It is typical for the court to instruct that the testimony presented in English should be the only language considered in evidence. For those jurors with knowledge of Mandarin, the process of hearing interpreted testimony requires more concentration and focus because they have to discard their own translation and accept only the subject interpretation.

"We were instructed that we were not to consider Mandarin testimony for our deliberations. We should only consider the interpreted version in the English language. This puts all jurors on a level playing field. There were a couple of jurors who understood Mandarin." Female juror, not conversant in any Chinese dialect, however, in other languages.

"In some instances, there are no words in English to explain what was said in Mandarin." Male juror, with some knowledge of Mandarin.

With both sides having counsel who speak Mandarin, the process can result in disputes and corrections during the line of questioning. Therefore, with the interpretation component what develops is a circular process of eliciting testimony. Specifically, the procedure involves the question, translation, response and interpretation; then, the objection and dispute by one of the attorneys as to the substance of the translation, concluding with a repeat of the question and interpretation.

"There were two interpreters and two different styles. One had more of a tone to her voice and the jury was able to feel that she was talking like the witness. That interpreter made fewer errors in the translation. [Counsel] was able to understand English and Mandarin so with errors or inconsistencies, he would make the interpreter repeat or go back. In some instances, it would have had a different meaning if words were missed. Both attorneys were attentive to the accuracy of translation." Female juror who speaks other languages but not Chinese dialects.

"We were told to base our verdict on what the interpreter said, what came out of the interpreter's mouth. Was it what the witness intended? You don't know if the witness understood English and knew enough to know that there could be some misrepresenting of what was said through the interpretation." Male juror with some knowledge of the Mandarin dialect.

The fact that interpreters are certified by the court assures most jurors that the translations are trustworthy, despite some mistakes, interruptions, and timing difficulties. Those jurors fluent in the dialect admit that the translation may "be close" but not completely accurate. Regardless of some perceived inaccuracies, these jurors try to make conscious efforts not to let the attorneys' disagreements over word meaning influence their decision making.

"They [the interpreters] are trying to do their jobs, they are not intentionally skewing. They are sworn under oath. Capability is important. You try to see if they got the meaning right. It is a hard job. One interpreter did not take notes at the beginning, so she did not catch everything." Male juror, fluent in Mandarin dialect.

Critical Characteristics When Judging the Credibility of a Witness

Whether a case involves translated testimony or not, jurors determine credibility on the level of detail that certain witnesses are willing and able to provide. When jurors claim that they capture no expression of emotion through the interpreter, they look to the expression in the eyes of the witness in response to the witness receiving the question from the interpreter. Jurors look to the emotional gestures and facial expressions that the witness conveys while responding back to the interpreter.

"When the witnesses spoke before the translation [to English], I looked to how they spoke from the question, and their body language in reaction. It is easier to read people on the stand because you got [the testimony] in two parts." Female juror with no knowledge of the Mandarin dialect.

As in any trial whereupon jurors judge witness credibility, they focus on confidence, facial expressions, poise, composure, and pace of response. The witness' tone of voice helps the jury gauge the reactions to the questions, along with any change in posture, annoyance or irritability. Universally, body language and eye contact predominate as critical indicators of witness credibility regardless of whether or not an interpreter is required. With interpretation taking place, inflections, potentially critical to the meaning of a response, can be lost in translation.

"It was difficult to judge credibility. The way the witness will say something and then pause, where the witness pauses with words, and the inflections—all that is lost when listening to an interpreter. [The jury] cannot take that into account, and cannot tell this with the statement interpreted. So, it can be hard to tell if someone is being credible." Male juror who speaks a "little bit" of Mandarin dialect.

Since nuances and inflections may be lost or altered by interpretation, jurors study the interaction between the witness and interpreter for any signs of confusion based on their facial expressions and body language. In terms of proximity, it appears proper and not a distraction for the interpreter to sit next to the witness, and assist in finding supporting evidence within the exhibits. This gives an appearance of teamwork in their communication with each other.

As such, jurors perceive that the task of the interpreter should be to maintain impartiality by showing no expression as the question unfolds, wait for the witness or lawyer to finish their thought, not search for words, and translate. Jurors observe that when an interpreter writes everything down, this shows attention and accuracy to the testimony.

To make it easier for the jury to hear, the microphone should be placed in front of the interpreter since only words from the interpreter's mouth can be considered evidence.

A Court Interpreter Offers Advice to Counsel

A certified court interpreter, not involved with this case profile, refers counsel to **Government Code section 27293** for the law on the use of interpreters and certification of translated documents. This interpreter reveals that the biggest challenge that a court interpreter faces is to interpret counsel's "long circling questions" which oftentimes repeat or even misstate the witness' previous testimony before the actual question is posed to the witness. This certified interpreter's advice to counsel: "Ask shorter direct questions."

Conclusion

Language is universal, and when communicated through an interpreter, jurors develop certain impressions that they take with them into the deliberation room. It is advisable for counsel to consider the following findings when a trial necessitates having an interpreter:

1. Jurors who speak the translated language seem to have less patience with the interpretive process, and claim to try and not nit-pick the interpretation, but ultimately do just that.
2. An effective interpreter attempts to match the voice emotion and other expression of the witness. This is accomplished with an interpreter who has a deeper knowledge of the case, rather than one who is a "pinch hitter" or on-call interpreter.
3. The interpreter should be encouraged to take notes as the line of questioning unfolds, for in jurors' minds, this appears to ensure accuracy.
4. Jurors rely on the expressions and emotions from the witness' eyes to sense and gauge integrity. Indeed, the apparent trust and respect between the interpreter and witness proves critical to promoting the appearance of credibility of the entire process.
5. Consider those jurors who have no familiarity with the translated language for they approach the interpretive process with more tolerance and curiosity compared with those jurors who have some knowledge of the language.
6. First time jurors may be less likely to feel impatient with the extra time necessary for interpretation, as they have little basis of comparison. Repeat jurors express annoyance at the lengthier process.
7. Unemployed jurors, who have no immediate employment prospects, voice a willingness to serve as jurors perhaps to alleviate boredom; they are less likely to complain about the extra time that an interpreted presentation of evidence requires.

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