

THE COURT INTERPRETER AS EXPERT WITNESS

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What Is an Expert Witness?

An expert witness is an individual with special knowledge, skill, experience, training or education who can assist the trier of fact in understanding evidence or determining a fact in issue.

An expert takes an oath, like any other witness, and has to be qualified as such; once qualified, an expert may testify in the form of an opinion if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.¹

Although expert witnesses are allowed wide latitude to offer opinion, their testimony is subject to challenge.

Interpreters as Expert Witnesses

Interpreters have to be qualified as expert witnesses to interpret in court proceedings. They take an oath or affirmation "to make a true translation" of the oral discourse as provided by Rule 604 of the Federal Rules of Evidence. The court interpreter's oath requires that the interpreter "justly, truly, fairly and impartially" act as an interpreter in the case before the court. These duties include the interpretation of everything said in the courtroom during court proceedings and, if interpreting for a witness, they include the interpretation of the oath to the witness, the questions of the Court and counsel, and the answers thereto.²

On occasion, a court interpreter may also be called as a witness to testify regarding matters about which the interpreter has special knowledge or expertise. For example, if an interpreter has prepared transcripts and translations of tape or videotape recordings, he or she may be called to testify about the translation process. An interpreter may also be called to testify on other matters related to special knowledge and skills the interpreter may have acquired in professional work.³ When testifying as an expert witness, the court interpreter is sworn as a witness, then examined to be qualified as an expert, and then is asked relevant questions about the evidence, or is asked to give an opinion based on knowledge and experience.

Oaths and Affirmations

The purpose of an oath or affirmation is "to awaken

the witness' conscience and impress the witness' mind with the duty to testify truthfully."⁴ While the interpreter's oath is to interpret fairly and impartially, the witness' oath is to "tell the truth, the whole truth and nothing but the truth, so help you God." (For an affirmation, substitute the word "affirm" for the words "solemnly swear" and "This you do affirm under the pains and penalties of perjury" instead of "so help you God.")

Offering Opinions

If a witness is not testifying as an expert, opinions and inferences are necessarily limited. Rule 701 of the Federal Rules of Evidence limits them to those "which are: (a) rationally based on the perception of the witness, (b) helpful to clear understanding of the witness' testimony or the determination of a fact in issue, and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702."

Rule 702 states that "If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case."

Presumably, this relaxation of the usual requirement of firsthand knowledge — a manifestation of the common law insistence upon the most reliable sources of information — is premised on an assumption that the expert's opinion will have a reliable basis in the knowledge and experience of his discipline.

Interpreting for an Expert Witness

When called upon to interpret for an expert witness from a foreign language into English, it is important that the interpreter prepare for the testimony by obtaining information about the case, reading the expert's report, and compiling a glossary of key terms.

In 1993 an amendment to Rule 16 of the Federal Rules of Criminal Procedure⁵ expanded federal criminal discovery by requiring disclosure of the intent to rely on

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expert opinion testimony. With increased use of scientific and nonscientific expert testimony, one of counsel's most basic discovery needs is to learn whether an expert is expected to testify. The purpose of the amendment was to minimize surprise, reduce the need for continuances, and provide the opponent with an opportunity to prepare for cross-examination. A request for disclosure under this rule triggers reciprocal discovery.

The disclosure will be in the form of a written summary indicating, in addition to the intent to call an expert witness, what the testimony of that witness will consist of, i.e., the witnesses' opinions, the bases and reasons for those opinions, including any written or oral reports, tests, investigations, and opinions of other experts in the field, and the expert's qualifications.

If any party challenges an interpreter's rendition of expert testimony, the interpreter should remain calm and relaxed. If you are the challenged interpreter, use echoic memory to write down or complement any notes you have with what you immediately remember. Analyze the challenge and reconsider your rendering. Await instructions from the court.

If satisfied with your interpretation, when asked, you may say, "I stand by my interpretation." If, after reconsidering the interpretation or consulting with a colleague, you realize that a mistake was made, simply state, "Correction accepted."

If at any time, even after more testimony has been already interpreted, you realize that a mistake was made, indicate the correction for the record, always in the third person, referring to yourself as "the interpreter."

Interpreter as Expert Witness

If an interpreter is being qualified as an expert, he or she will be asked to state education, training, skills, and experience. Be positive in detailing your studies. Probably, you devoted most of your time to language acquisition. Explain your knowledge of the languages relevant to your testimony. Talk about all the courses, workshops and seminars you have attended, and if there is an official certification in your language, state when you were so certified. If you are an active member in professional associations, mention your participation in their activities. Add any and all skills and experience that make you qualified for the testimony you are about to give.

You may first be examined out of the presence of the jury. The party calling you as a witness may have to proffer your testimony to assure the trial court of the relevance and reliability of your testimony.

Two fairly recent Supreme Court cases, *Daubert*⁶ (1993) and *Kumho Tire*⁷ (1999) have re-stated that, under the

Federal Rules of Evidence, trial judges must ensure that any and all scientific evidence testimony or evidence admitted is not only relevant but reliable. (Rule 702). General acceptance is not a necessary precondition to admissibility of scientific, specialized or technical evidence. *Daubert's* "gate-keeping" requirement applies to all expert testimony so as to ensure that an expert, whether basing testimony upon professional studies or personal experience, employs in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field.

The advice given to all witnesses applies as well to experts of any kind:

- Speak clearly and loudly.
- Don't memorize what you are going to say. Speak in your own words. Be natural.
- Listen to the questions and make sure that you are answering what is asked. Do not answer a question that you really do not understand.
- Answer only what is asked. Do not volunteer additional information.
- Offer only information and opinion that you are sure of and can justify.
- Be assertive, but not aggressive.
- Do not be argumentative.
- If you do not know something, say "I do not know," but try to be definite when you do have an answer. Try not to say "I think" or "I believe."
- If you make a mistake in your testimony, clear it up as soon as possible.
- If the judge interrupts you, or if there is an objection, stop talking immediately.
- Always be polite.

And remember: sharing your knowledge with others, as an expert witness, can be an enjoyable experience!

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(Endnotes)

- 1 Rule 702 of the Federal Rules of Evidence.
- 2 Forms of Oaths for Use in the United States District Courts, Federal Judicial Center, No. 76-4, Washington, D.C.
- 3 See: Garcia-Rangel, Sara (1984) Expert Testimony, Proceedings of the 25th Annual Conference of the American Translators Association. (Patricia E. Newman, editor) Medford, NJ: Learned Information Inc., pp. 29-34
- 4 Rule 603 of the Federal Rules of Evidence.
- 5 Fed. R. Crim. P. 16(a)(1)(E)
- 6 *Daubert v. Merrell Dow*, 509 U.S. 579, 113 S.Ct. 2786 (June 28, 1993)
- 7 *Kumho Tire Company v. Carmichael*, 526 U.S. 137, 119 S.Ct. 1167 (March 23, 1999)