A Report by

JUSTICE

Witnesses in the Criminal Courts

Chairman of Committee

Peter Crawford, QC

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JUSTICE

(British Section of the International Commission of Jurists)

JUSTICE is an all-party association of lawyers concerned, in the words of its constitution, 'to uphold and strenthen the principles of the Rule of Law in the territories for which the British Parliament is directly or ultimately responsible: in particular, to assist in the administration of justice and in the preservation of the fundamental liberties of the individual'. It is also concerned to assist the International Commission of Jurists in its efforts to promote observance of the Rule of Law throughout the world.

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1. INTRODUCTION

1.1 The witness plays a vital part in the legal process. Without witnesses all the other people taking part in a criminal trial - judges or magistrates, jurors, barristers, solicitors, clerks, and ushers - would be left with nothing to do: only the witnesses, with their unique knowledge, can prove the facts on which the entire trial turns. In that sense, witnesses might be said to be the most important people there. Unfortunately, that is seldom the impression conveyed to the witnesses themselves. Only too often, they are treated as if no one cared much about them: told to report for duty only at the last moment; left hanging around outside the Court for hours or even days, without any help or explanation, before being called to give their evidence in unfamiliar surroundings; challenged (sometimes very rudely) on their veracity when they give it; left unthanked for their contribution; and told nothing about the outcome of the trial after the event. Perhaps it is small wonder that many people whose evidence could be crucial are very reluctant to come forward, preferring "not to get involved". That cannot be good for the proper administration of justice in a democracy under the rule of law, and that is why JUSTICE decided to set up this Committee.

1.2 The membership of the Committee included persons with experience as Crown Court judge, magistrate, magistrates' clerk, advocate in the Crown Court and Magistrates Court (both for the prosecution and the defence), and police officer.

2. TOPICS CONSIDERED

The following topics were considered and discussed by the Committee:

(a) The identification of potential witnesses and the taking of statements.

(b) Procedure to secure the attendance of witnesses at Court.

(c) The accommodation and treatment of witnesses at Court.

(d) The oath.

(e) The provision and training of interpreters.

(f) The role of expert witnesses.

(g) The calling of witnesses by the Court.

3. THE IDENTIFICATION OF POTENTIAL WITNESSES AND THE TAKING OF STATEMENTS

3.1 Encouraging witnesses to come forward

In many cases where a crime is alleged to have been committed there is no difficulty in identifying the persons who have anything useful to say about it and their names are known from an early stage to both the police and the accused person or his advisers. But it is within the experience of members of the Committee that there are other cases where an incident which gives rise to criminal charges occurs in a public place and must have been seen by a number of persons and yet no-one comes forward to give evidence either by making themselves known to the police or to the potential defendant. There appears to be a tendency for persons to wish "not to get involved". We believe the police do what they can to identify and to take statements from all persons who may be potential witnesses, and there is no doubt that in most cases where a serious crime is alleged to have occurred all reasonable efforts are taken in this direction. The police and media (e.g., their "Crimewatch" and "Police 5" programmes) are very successful in encouraging people to come forward in specific cases which attract attention. We considered whether it would be desirable to promote a national publicity campaign to encourage persons who had information relevant to any possible alleged offence to come forward, but we came to the conclusion that any such campaign was unlikely to be productive or cost-effective.

3.2 Taking of statements

Notwithstanding their training, the police need to take great care when taking a statement to avoid "constabulary" language. There is what appears to be an almost universal tendency on the part of police officers taking statements to convert the vernacular of the witness into a more formal style, employing police terminology and vocabulary.

This is entirely unnecessary and contrary to the interests of justice. It can detract from credibility of the witness. If, as sometimes occurs, the evidence of a witness is attacked at the trial and the contents of the statement become material, stilted language may lend weight to a suggestion that not only the form but the substance of the statement was put into the mouth of the witness by the police officer who took it. Of course, skill and experience are needed to ensure that all (and only) relevant material is incorporated in a statement, and that it is set down in reasonable order. A witness may well have to be guided along the path of relevance. But this does not mean that a police officer should substitute his own words for the witness's, and every care should be taken to avoid this.

4. PROCEDURE TO SECURE ATTENDANCE OF WITNESSES AT COURT

4.1 For many years the attendance of prosecution witnesses has been in the hands of the police. Presumably, responsibility for this will now be taken over by the Independent Prosecution Service, although no doubt the Service will act through the police as its agents. So far as the police are concerned, of course, it is a matter of routine in every force to have a procedure for securing the attendance of witnesses at trials. The usual practice is to send a formal notice in writing to the witness well in advance of the hearing, and to follow this up with an oral request to attend shortly before the expected date. We gratefully acknowledge the co-operation of the Police Federation in supplying us with examples of the forms which are used to request the attendance of witnesses at Court. The Committee was struck by the variety of approach shown by different police forces. Some have used language which is brusque to the point of being peremptory. In other forces the document is couched in the form of a request. In the Committee's opinion, the principle should always be to remember that a potential witness is someone who is being asked to leave his work or home to perform a public duty - and sometimes a disagreeable duty. It follows therefore that the witness:

(a) must at all times be treated with proper consideration.

(b) must be warned in sufficient time that he or she is going to be needed - or, as the case may be, is not going to be needed at all; and

(c) must be notified in reasonable time of the precise date and time at which he or she is going to be required.

So far as (b) and (c) are concerned, the Committee were told of one or two very bad cases. In one case, a witness was placed in considerable difficulty when he was informed at 2.00 a.m. that he was required to attend at the Crown Court at 10.30 a.m. that same morning. Fortunately, such cases as this are exceptional. But it must be emphasised that they should not be allowed to occur at all.

4.2 The terms of a notice to require attendance should be clear, complete and courteous. The use of peremptory language and legal jargon is to be avoided. The Committee has prepared a draft of what would in our view be a suitable form of document, which we set out as Annex A to this Report. The following points should be noted:

(a) The notice should be couched in the form of a request, albeit a firm one, and not a command.

(b) The name and nature of the matter should be clearly identified.

(c) We regard it as important that a contact name and telephone number should be given.

5. THE ACCOMMODATION AND TREATMENT OF WITNESSES AT COURT

5.1.1 For the persons who compose the tribunal, the Court staff, the advocates and the police the atmosphere of the Court is a familiar working environment. From the point of view of the witness, however, the environment is likely to be unfamiliar and may seem hostile. The witness attends under compulsion, implied if not express, and may have little or no direct interest in the subject-matter or outcome of the proceedings. The underlying principle must be that he or she should be treated with consideration and respect. It is the responsibility of the judge or chairman to ensure that the court is conducted in an atmosphere of courtesy and consideration, particularly towards witnesses. The court should always be watchful in respect of its own conduct, and also ready to intervene if an advocate should fail to treat a witness with proper courtesy.

5.1.2 The Committee took the view that the following particular matters were also of importance:

(a) Witnesses should be treated with courtesy and consideration not only by the court itself but also by police officers and court staff.

(b) It should always be made clear to a prospective witness at court where and to whom he should apply for information or guidance.

(c) Care should always be taken by solicitors or police officers in charge of cases to explain fully to witnesses problems which may affect the court in terms of the timing of hearings. The problem may be obvious to those experienced in court procedure, but baffling to those who are unfamiliar with it.

(d) A plan of the court and of the court rooms should be placed in a prominent position.

(e) Microphones should be installed in witness boxes. It should not be necessary for a witness, who is probably unused to speaking in public, constantly to be told to speak up.

(f) Proper provision should be made for physically disabled witnesses.

(g) Parking facilities should wherever possible be made available. We have noticed that where courts are provided with parking facilities it is rare for any space to be allocated to witnesses in this respect.

5.2 Information for Witnesses

The unfamiliarity of potential witnesses with court procedure could be significantly reduced, in our view, by a suitable leaflet given to them in advance. A draft of such leaflet accompanies this Report as Annex B. The Committee is of the view that a leaflet on these lines should accompany every notice to a witness to attend court and should be available for solicitors for defendants to use in respect of their witnesses if they wish. The leaflet deals with various problems which have been

encountered by members of the Committee in practice, and attempts to do so in simple everyday language.

5.3 Seating of witnesses

5.3.1 We can see no justification for the practice that a witness should normally stand while giving evidence. The formal surroundings of a court and the making of a solemn promise to tell the truth (see section 6 below) are sufficient to mark out the importance of the occasion. We do not think that requiring a witness to stand adds to the weight or reliability of the evidence. Of course, some witnesses may prefer to stand, and should be allowed to do so; and there must always be a discretion in the court to require a particular witness to stand - if, for example, their evidence is otherwise inaudible. But our view is that as a general rule witnesses should give their evidence sitting down.

5.3.2 If it becomes the practice, as we believe it should, for witnesses to give their evidence sitting down, there would be no reason for the retention of the witness box as it is now customarily provided in English courts. The structure of the witness box conceals a significant, and sometimes evidentially revealing, part of a witness's body. An open chair, accompanied where necessary by a table for documents or exhibits, would be simpler and more revealing.

6. THE OATH

6.1 The Committee considered briefly the taking of the oath by witnesses in criminal courts. The status of the oath was fully considered by our Committee on perjury which reported in 1973 in a Report called False Witness, the Problem of Perjury. That Committee called attention to the unsatisfactory position with regard to the religious oath in a largely non-religious age. It recommended that

(a) The oath in its present form should be abolished and replaced by a form of undertaking which is more meaningful, more generally acceptable and more likely to serve the cause of justice. All witnesses should be required to make the same solemn affirmation so that there is no distinction in the respect that is accorded to them.

(b) A simple non-religious undertaking to speak the truth would be sufficient to provide the necessary reminder of the solemnity of the occasion and of the importance of the information which a witness is about to give.

(c) A suitable form of words might be:

"I solemnly declare and promise that will tell the truth. I am aware that if I tell a lie I may be prosecuted."

An alternative to the last sentence could be:

"I am aware that if I tell a lie or wilfully mislead the Court I am liable to be prosecuted."

The Committee share those views.

6.2 Since our Committee reported in 1973, relatively minor changes in the administration and effect of oaths were made by the Administration of Justice Act 1977, later incorporated into the Oaths Act 1978. We think that it is a matter for regret that the opportunity was not then taken to make the more fundamental reforms which we and our predecessors in 1973 believe to be necessary and desirable. Accordingly, we repeat their recommendations.

6.3 We understand that the Magistrates' Association, the Justices' Clerks' Society and the Law Society also have long standing policies supporting the general approach adopted by JUSTICE.

7. WITNESSES WITH INADEQUATE ENGLISH, OR HEARING OR SPEECH DIFFICULTIES

The evidence of the most careful and honest witness will be useless or deceptive unless the witness clearly understands the questions which he is being asked and the tribunal clearly understands the answers. An increasing number of witnesses in the criminal courts are not sufficiently at home in English to be able either to make a statement or to give evidence, and interpreters have to be provided. The Committee regarded the arrangements for the qualification and provision of interpreters as subject to serious gaps and to be casual and haphazard in

operation. After the Committee began its exploration of this topic it became aware of the work of the Community Interpreters Project conducted under the auspices of the Institute of Linguists Educational Trust. Mrs. Ann Corsellis J.P., B.A. was kind enough to provide the Committee with an account of the work of the Project. A copy of her account accompanies this Report as Annex C. The Committee thought that this gave an excellent account of careful and well-directed work. We accept and adopt the approach there set out, and are grateful to Mrs. Corsellis for her permission to reproduce her work in this way. In the circumstances, the Committee felt it was unnecessary to pursue its own discussions any further. We would, however, wish to emphasise the importance of the responsibility, which in our view should rest on the Court, of ensuring that the purported interpreter and the witness can in truth communicate freely with each other. Cases have been brought to the attention of JUSTICE where the interpreter is fluent in the national language concerned, but nevertheless is not fully competent to interpret in the particular dialect in which the witness is at home, and is, further, unwilling to make public acknowledgment of that fact. This can result in something which is no more than a paraphrase masquerading as interpretation. Finally, we must emphasise the importance of securing adequate interpretation always. There have been one or two cases brought to the attention of JUSTICE where courts have proceeded with the trial of an unrepresented non-English speaking defendant in the absence of any interpretation. This is plainly a denial of justice. It is also a breach of the obligations under Article 6(3)(f) of the International Covenant on Civil and Political Rights, by which the U.K. is bound.

8. EXPERT WITNESSES

8.1 Definition

An "expert" witness is one who has specialised knowledge of a subject or subjects which are not within the knowledge or experience of the ordinary person. Such specialised knowledge may be acquired from formal study, practical experience or (and usually) both such study and experience. The status of expert witness carries the privilege of being permitted to offer to the Court an opinion concerning matters relevant to the issue.

8.2. The Committee have experienced a number of problems in the course of practice.

8.2.1 Some courts have been reluctant to accept as experts witnesses who are qualified by experience only and not by formal study or training. Although a court must always be careful to insist that any person who purports to give expert evidence should have the proper foundation of knowledge, the law does not lay down any specific route by which that knowledge is to be acquired. The police fingerprint expert acquires his skill by experience. His status is rarely questioned. Some of us, however, have found that courts are not prepared to grant the status of expert to other persons whose skills are similarly acquired - e.g. mechanics. There is no reason in principle why this should be so, and we think that courts should be more fully aware of the status of this type of witness.

8.2.2 A danger against which both courts and expert witnesses must be constantly on guard is the temptation for the expert to be partisan, whether consciously or unconsciously. In some fields, "expert witnesses" are experts in more senses than one: they are not only skilled in a particular branch of science or technology, they are also skilled, through practice, in giving evidence. They are called to give evidence on behalf of a particular party - frequently, but not always, the prosecution - and the temptation to lean to one side must be recognised and avoided.

8.2.3 We have come across cases where jurors have found difficulty in following the substance of reports which are presented to them orally, though available to the judge and parties in written form. We think that this difficulty could be avoided by courts being more free in exercising discretion to direct that copies of written reports which are to be given in evidence should be provided for the jury.

8.3 The Committee gave some consideration to the establishment of an independent Forensic Science Service. The forensic science laboratories now operated by certain police forces form part of the investigative machinery and their services are not normally available to anyone other than the police. The services of the laboratories operated by the Home Office are available in certain circumstances to defendants or potential defendants: but

only on the basis that the results of any investigations or experiments (whatever they may show) are made available to the police as well as to the party requesting them. The dangers of this course in an adversarial process are obvious, and in our experience it is rare for potential defendants or their advisers to call upon the undoubted skills and expertise of the Home Office laboratories. In our view an independent Forensic Science Service should be established as soon as possible, in order to improve standards in training, specialisation and accessibility to laboratories and similar facilities by Prosecutors and Defendants alike. The establishment of Forensic Science Departments in a number of universities or polytechnics and the introduction by them of a Diploma in Forensic Science would provide the nucleus of such a service.

9 COURT WITNESSES

9.1 In an English trial, the calling of witnesses lies within the discretion of the advocates for the prosecution and the defence. Although a power exists for a court to call a witness of its own motion, the Court of Appeal (Criminal Division) does not encourage its exercise, and in fact it is very rarely done. (See Reg. v. Baldwin, The Times, 3rd May 1978). Nor is a witness permitted to "call himself", even if he believes that he has relevant evidence to give. It may be known to both sides that a particular individual is in possession of information which is relevant to the issue before the Court, but neither side for tactical reasons wishes to call him. For example, it may be that what such person says is not consistent with the case advanced by either side. In that event the jury or magistrates may reach a decision on evidence which is known by both parties, but not by the tribunal of fact, to be incomplete.

9.2 A memorandum by a JUSTICE Committee on Evidence published in 1965 called attention to the unsatisfactory position in the following terms:

(1) In criminal cases the defence in particular may be forced to call a witness because his evidence on a particular matter may be vital, although by reason of his general character and perhaps his evidence on other matters, his association with the defence taints it. Such a situation may arise

even where all the parties, including the prosecution, desire the Court to call the witness, but it is not prepared to do so. The point is reinforced by the fact that the prosecution is not bound to call every witness named on the back of the indictment, though it is usual to tender them for cross-examination if the defence wishes it. The prosecution is under no sort of obligation to tender a person whose evidence may be to some extent favourable to the defence, but whose name is not on the back of the indictment. Here again, the limitations upon the right of a party to cross-examine his own witness may inhibit or prejudice both prosecution and defence.

(2) The rules regarding the cross-examination of court witnesses are vague and uncertain, and unduly limit the rights of the parties to conduct their cases effectively.

(3) More use of court witnesses will obviate much of the manoeuvring which frequently occurs. It will go some way towards meeting the criticism that the English legal system tends to resemble a game between contestants with the judge acting as an umpire, rather than a real search for the truth. It is desirable that every witness who can throw light on the issues should be brought before the court, and that if need be the accuracy and reliability of his evidence should be thoroughly probed.

9.3 In the light of the above we recommend the following:

(1) The Court should be able to call a witness on the application of a party to the proceedings even if any other party objects thereto.

(2) The Court should be able to call a witness of its own volition.

(3) Where a witness is called by the Court the following rules should apply:
(a) All parties should have the right to cross-examine witnesses generally;

(b) If the witness is called upon the application of one party only, that party should cross-examine the witness first;
(c) Otherwise the order of cross-examination should be determined by the Court.

9.4 The recommendations made by the JUSTICE Committee in 1965 were repeated and reaffirmed in a JUSTICE memorandum on this topic published as part of a JUSTICE Report, The Truth and the Courts, in 1980. We respectfully agree with the views of our predecessors and adopt and repeat their recommendations.

9.5 A related problem concerns the extent to which a witness who has been duly called should be permitted or encouraged to volunteer information about which he has not been specifically asked. Either by accident or by design, a witness is not always given the opportunity of bringing out information which might help the Court. When complaints about trials are investigated by JUSTICE it not infrequently appears that important information was known to a witness, but was not brought out at the hearing. When asked why not, the witness says that it was because he was never asked. We gave careful consideration to whether this position could be mitigated by instituting a rule, or practice, that before a witness stood down at the conclusion of his evidence he should be asked by the Court whether he had anything further to say which might help the Court. We concluded that a formal procedure on these lines was impracticable. Whatever formula was adopted would lead in our view to considerable difficulty, including the introduction of inadmissible evidence and a real danger that a trial might thereby become a nullity.

9.6 In coming to this conclusion we are in agreement with the Report of the JUSTICE Committee on False Witness, The Problem of Perjury (1980). We agree also with their view that the answer to the problem lies in the existing power of the Court to intervene, either in the course of a witness's evidence or at the end of it, with a request to expand on a particular point or to deal with a point not covered, provided that it is used only when it appears desirable. We would wish to encourage Courts to exercise their powers to ensure that all witnesses give all the relevant evidence within their knowledge, but without putting questions in such a way as to disrupt the normal course of examination by qualified advocates under the rules of our adversary system.

Annex A

(Blankshire Constabulary)

NOTICE TO WITNESS - COURT ATTENDANCE

Our reference: Police Station
Blank Road
Telephone No: Ext: Blankton

CASE: John Doe

CHARGE: Driving without due care and attention, on 1st April 1986 at Noname Crossroads, Blankton, Blankshire.

OFFICER IN CHARGE OF THE CASE:

Dear

I am writing to request you to attend .....
Magistrates' Court at .....(tel.no.....)
at ..... a.m./p.m. on ..... the ..... day
of.....1986 to give evidence as a witness in the above case. Some notes for your guidance are set out overleaf.

If you wish to claim expenses in connection with your attendance at Court please complete Form A and hand it, at the Court, to the Officer in charge of the case.

Form B should be completed by your employer if you need to claim for loss of wages.

Please detach the bottom portion of this notice and return it to me as soon as possible to confirm your attendance.

Thank you for your co-operation.

Yours faithfully,

CHIEF SUPERINTENDANT

.....

Please detach here

CASE: Address.....
.....
Date: .....

I acknowledge receipt of your letter and confirm that I will attend .....Magistrates' Court at .....a.m./p.m. on ..... the .....day of ..... 1986.

Signed .....
Name (IN BLOCK LETTERS) .....

Please return this portion in the enclosed reply-paid envelope

Annex A (2)

NOTES FOR WITNESSES

1. Any person who is likely to be able to give material evidence for the prosecution or defence may be required by summons to appear at a time and place mentioned in the summons to testify. (Magistrates' Courts Act 1980, Section 97)

2. If you do not complete and return the acknowledgment slip overleaf, a summons for your attendance may be issued. If there is any emergency which prevents your attendance, please ring the telephone number at the top of the page overleaf.

3. Expenses
Expenses may be claimed in respect of:

(a) Travel. These are refunded at the cheapest rate available. Private car expenses may be claimed where public transport is not reasonably available.

(b) Loss of earnings. If you are employed, a certificate from your employer (Form B) will be needed. If you are self-employed, some evidence of your loss of earnings will be needed.

(c) Subsistence allowances may be claimed if you are at Court all day and have to be away from home overnight.

Forms A and B deal with expenses. Please make sure they are filled in correctly.

Annex B

NOTES FOR WITNESSES

As a witness you are very important to criminal justice. If you have not been a witness before, you may find these notes helpful.

The accused person is called the defendant. The case against the defendant is prepared and presented by the prosecution.

What happens?

You will have given your name and address and you will (probably) have told your story which will probably have been written down into a "statement".

Must I come to Court?

Yes, if you are a witness the law can require you to come to Court. This is so even if you have said everything you know about the case in a written statement.

Different Courts

All cases start in the Magistrates' Court. Most of them end there. Some cases go on to Crown Court, before a judge and jury. You will be told which Court to attend and when.

Suppose my English is not good?

If your English is not good, as soon as possible you should tell the prosecution or the defence. An interpreter will be provided.

Waiting for the trial

It take time to prepare a case for Court. It is a serious matter. There are lots of cases to be dealt with. Therefore it may be some weeks or even months before you are asked to go to Court.

Coming to Court

You will have been told by letter or summons, through the post or personally, to attend the Court, at a certain place at a certain time. If you have difficulties, such as

getting off work, or being on holiday, get in touch as soon as you can with the person who sent the letter or summons. It may be possible to re-arrange the date, or even to do without your attendance altogether, if you give notice in good time. If you get a witness summons you are under a legal duty to come. There are penalties for not doing so. Make sure you get to the right Court at the right time.

Arrival at Court

On arrival go to the general information desk, if there is one, or ask an usher. There is usually a list of courts and cases displayed near the entrance. Tell the usher outside your Court what case you are in and give him your name. He will advise you. You may have to wait a little while before you are called into Court.

Can I listen to another case whilst I am waiting?

Yes. Adult criminal Courts are open to the public. But you are not allowed to listen to the case you are in before you give your evidence.

Waiting

After your case has been called you may have to wait for some time outside the courtroom. Cases take time. Witnesses have to be called in turn.

It may even happen that you are not called at all. This can happen, for example, if the defendant pleads guilty, perhaps at the last minute.

Statements and notes

Before you go into Court you can ask to see any statment you have made. But you cannot refer to it in Court.

If you made notes at the time of the incident, e.g. a car number, bring them with you. The Court will decide whether you may refer to them.

If you have any other papers, bring them to Court and show them to the prosecution or defence lawyer in charge of your case.

The Court layout

Most Courts are arranged something like the diagram below. There will also probably be places for the press, probation officers and the police, but where they are will depend on the size and shape of the courtroom.

MAGISTRATES OR JUDGE

COURT CLERK

JURY
(CROWN COURT ONLY)

WITNESS BOX

LAWYERS

DEFENOANTS

PUBLIC

Going into Court

Prosecution witnesses give their evidence first, then the defence witnesses.

When your name is called, you must go into the witness box. The usher will guide you. You must remain standing. If for any reason you find it difficult to stand, ask if you may sit down.

You will be asked to take the oath. If you have no religious belief you may "affirm" instead. This means make a solemn promise to tell the truth. You must give honest and truthful answers. You should say what you saw and heard, not what other people told you, or what you told other people.

If at any stage you feel unwell, say so.

Questions in Court

You will be asked questions by one side and then the other side, and also perhaps by the judge or chairman. Speak up so that everybody can hear you. Give your answers slowly. People may have to write down what

you say. If you do not hear or understand a question, say so, and it will be repeated. If you do not know the answer, just say so. If you are not sure, say so. If the questioner seems to be doubting your truthfulness, or "getting at" you, or "trying to catch you out", do not get upset. He or she is only trying to bring out all sides of the case. Just say what you know or believe to be true.

After giving evidence

After giving your evidence, go and sit at the back of the Court. You may not leave until the case is finished unless permission is given by the judge or chairman. If you need to leave - e.g. to get back to work - tell the lawyer dealing with your case. He will be able to ask the Court to give permission for you to go.

Once the case has started, you must not talk about it to any other witness until it is finished.

Expenses

You may be entitled to some expenses. When the case is finished, ask the usher, he will advise you.

Thanks

Your service as a witness will be valuable and important. The community is indebted to you for your time and trouble and co-operation.

Contact

The person in charge of the case is:

Name:

Address:

Telephone number:

INTERPRETATION IN THE COURTS AND THE POLICE AND PROBATION SERVICES

In 1981 the magistrates and the police and probation services in Cambridgeshire expressed concern at the unsatisfactory level of interpretation available to them.

The Institute of Linguists was approached for help and guidance. The Institute had also been approached by other statutory bodies with similar concerns for the lack of adequate, reliable interpretation at a local level. In 1983 the Nuffield Foundation generously provided funds for a two-year pilot project to develop a model for the selection, training and organisation of interpreters at a local level. The Foundation asked that the project should confine itself to one town and three service agencies. Peterborough was chosen mainly because 14% of its population is of non-English origin. The courts and the police and probation services were chosen partly because of the range of types of language used within them and partly because of the pressing need.

After widespread advertisement people came forward for language testing. The tests were based on the language requirements defined in the "Notes for Guidance for Interpreters". Some of the people tested had previously interpreted for the police and courts. The tests demonstrated that there was inadequate language competence in one or both laungages. Equally importantly, the tests showed a lack of understanding of the underlying concepts being expressed in either language. For instance, the words 'bail', 'magistrate', 'parole', 'warrant', 'summons' and 'probation' have no direct equivalents in most other languages. The often-used phrases such as 'reasonable doubt' have precise and complex legal meanings. The interpreter can only transfer messages accurately if he fully understands the concept they express and he can relate these to the background and perceptions of his clients. The interpreter must therefore be both bilingual and bicultural.

Professional conference interpreters have a lengthy training which enables them to work within any situation and an established organisational framework to work in.

The local, or community, interpreter is unlikely to have a similarly high level of language skills nor is there an established organisational framework. On this basis and with the knowledge gained from the initial testing, together with the advice and support of the groups involved, the model which was developed included the following elements:-

1. Assessment of local need for interpretation

Interpreters are not needed on a regular or predictable basis. Access is therefore required to a pool of reliable free-lance, sessional interpreters who can be available at short notice. A number are needed for each of the main languages spoken in the town. The same interpreter cannot be used by both the police and courts in the same case. There also needs to be a sufficient number to allow for interpreters' work and other commitments which would prevent them from always being available.

The languages covered so far in Peterborough are Italian, Gujarati and Urdu.

2. Selection of interpreters for training

The criteria for selection of potential interpreters include:

- sound functional oral and written skills in English and the other language.
- suitable personality.
- reputable standing within the community.

3. Training of interpreters

This took place at Peterborough Technical College. The teaching team included teachers of each language and senior training officers from each of the three services. The students' fees were on the normal F.E. scale, and the project paid for the cost of teachers in excess of the normal ratio. The training was in two parts. The first part comprised evening classes of three hours a week for two terms. These classes were devoted to enhancing both languages to an equal and acceptable level and to developing communicative skills. There was instruction in the history, structures and procedures

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of each service and a special emphasis on the vocabulary of each service. It is not possible to cover all the eventualities of possible vocabulary, but students should have developed the important capacity for knowing when they did not know and dealing with their limitations in a professional way.

The second part of the training was a two-week full-time course. In addition to the teaching team, this was directed by an experienced interpreter trainer. This section was devoted to interpreting skills, professional ethics and code of conduct.

There was an assessment at the end of the course which was carried out by linguists and a training officer from one of the services. The Institute of Linguists plans to offer a Community Interpreter Certificate on a national basis, based on the Peterborough model.

During the training the officers from the service agencies learned from the students much about different cultural perceptions and how to work with interpreters. They will pass the information on to their colleagues wherever possible.

4. Training of English-speaking personnel

It is essential that those working with interpreters are trained to use them effectively and to accommodate to intercultural communication.

5. In-service training

Regular seminars are held for trained interpreters and representatives of the three services. Work sessions are discussed, language points clarified and procedural and organisational factors discussed.

6. Organisation

A list of interpreters is kept at the control room at Police Headquarters, which is manned 24 hours a day. Details of each interpreter are kept to ensure as close as possible a language and cultural match with clients, and speedy access. Interpreters keep records of their work.

Trained interpreters are used in priority over untrained.

7. Interpreting procedures

For court work the following system has been found to meet most needs.

(a) The interpreter is contacted in advance to see if he is available on the date required. He is told not only the date, time and place of work but also the name of his potential client in case it is someone he knows well. He is also told the charge so that he may prepare any vocabulary e.g. parts of a car.

(b) On arrival in court the interpreter reports to the usher and waits in a separate room away from his prospective client.

(c) The clerk introduces the interpreter to his non-English-speaking client. The interpreter explains to the client that he is an impartial officer of the court and that he will interpret everything which is said to him. The clerk ensures, via the interpreter, that the non-English speaker is not confused by fact or procedure. The clerk may wish to see whether the services of the duty solicitor are needed in the absence of a defending solicitor. The interpreter does not offer any advice or comment himself. This pre-trial meeting gives the interpreter the opportunity to check that his client's language and dialect match his own. Court staff are learning that there is no such language as "Indian" and that some Italians in Peterborough speak the same Calabrese dialect that they arrived with 40 years ago, combined with a dash of Fen Peterborough.

(d) The clerk introduces the interpreter to the solicitors involved in the case. If the solicitors are not used to working with interpreters it may be useful to clarify procedure with them. It is difficult, for instance, for a local interpreter to deal with impassioned speeches filled with classical allusion and complex imagery.

(e) The interpreter takes the oath.

(f) The interpeter takes his place next to his client. He stands or sits when his client does. He is careful not to obscure anyone's view.

(g) Interpretation is carried out as completely and accurately as possible. The interpreter will intervene for only three reasons:-

- to ask for clarification of something he has been given to interpret to make sure he has fully understood the intended meaning.
- to inform either side that he suspects the other party may not have understood what has been said, in spite of the fact that the interpretation was correct.
- to alert the court that a relevant inference may have been missed. An inference is an item of information which it is assumed someone knows but is not stated. It can be cultural or factual.

The interpreter will only intervene after explaining to both parties why he is doing so. He will leave it to the court to decide how to proceeed subsequently. He will ask for explanations and interpret them. He will not give them himself.

(h) The interpreter will interpret everything said in court to his non-English client. The court must decide whether he should use consecutive or simultaneous whispered interpretation.

(i) The interpreter should be given a break of ten minutes in each hour. (Conference interpreters break every 20 minutes to keep up the standard of interpretation).

(j) Before the defendant leaves the court, the clerk or defending solicitor makes sure that instructions for any future arrangements are interpreted and clearly understood. It is wise to have the interpreter write them down in the client's own language and leave an English translation for the court file.

(k) The interpreter has his record book signed by the court clerk, who then makes the necessary arrangements for payment and includes waiting time and travelling expenses.

(l) The interpreter has the telephone number of a senior person in each service whom he can contact, in confidence if necessary.

(m) Clerks, magistrates and solicitors are able to

comment to the project co-ordinator on interpretation carried out and ask for specific areas to be given further improvement.

The project has been funded by the Nuffield Foundation for a further two years in order to expand and consolidate its work in three ways:

- to extend the interpreting provision in Peterborough to cover the social services, the Department of Education, welfare and local government.
- to transfer the courses covering the legal process to Cambridge.
- to act in a consultancy capacity to a similar scheme starting in Bedford.

It would be desirable if in the future the following developments could take place, which would allow for the establishment of a national scheme.

(a) A national system of assessment of skills by the Institute of Linguists or similar body, which would encourage a consistent standard of available skills. This would enable interpreters to work in any geographical area and clients (both English and non-English) would know what to expect.

(b) A national system of organisation and accessibility, possibly by computer, similar to the Australian model. This would allow access to interpreting skills in languages not necessarily available locally.

(c) The development of a higher second grade of interpreters to work in the complex and demanding situations such as the higher courts and technically difficult areas such as fraud.

(d) The establishment of a professional body for interpreters.

(e) The acceptance of the need for reliable interpretation in practice as well as principle by statutory agencies.

(f) Funds for interpreter training courses are essential to any further progress.

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