

Interpreters as the official “voice” of the limited language proficient in judicial proceedings

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Abstract: This paper addresses the question of whose version of interpreted testimony is to be considered official when members of the jury have some knowledge of the non-court language, and explores the philosophical and legal underpinnings that inform the debate. Globalization, migration, and multilingualism have all contributed to a situation in many countries in which it can no longer be assumed that the court interpreter is the only individual in a legal proceeding with the skills to understand oral testimony produced in a language other than the language of the court. Given the large Spanish-speaking community in the United States, this issue has been one that the judicial system has had to consider. The approach taken by legislators and judicial officials at both the State and federal levels may provide a starting point for the debate in other countries, such as Spain, that are facing a similar situation.

Key words: interpreting, translating, court interpreting, legal language, linguistics

Working with court interpreters has become commonplace in many judicial systems around the world. The debate as to whether or not an interpreter should be provided to individuals who do not share the language of the Court has been put to rest, and there has even come to be some consensus on who should *not* be used as an interpreter, even if there is not complete consensus on who should be. Providing interpreting services in legal proceedings is meant to put linguistically different individuals on equal footing with those who find themselves in similar circumstances but do not have to face linguistic barriers. In some judicial systems, court interpreters are expected to serve as mere language “conduits”, transferring the words of defendants and witnesses as literally as possible into the language of the court, and in others they are expected to be cultural as well as linguistic mediators and make the necessary formal and pragmatic changes in a message so that it will be understood by the judge, attorneys and jury members in the same way it would be if the individual in question spoke the language of the court. Regardless of which perspective prevails in a given system, one underlying assumption is often shared, and that is that in gene-

Resumen: En este trabajo tratamos el tema de cómo se determina la versión “oficial” del testimonio interpretado cuando miembros del jurado u otros participantes en un juicio entienden el idioma interpretado. También presentamos los conceptos filosóficos y jurídicos que subyacen la praxis. La globalización, la migración y el multilingüismo han producido una situación en muchos países en que el intérprete judicial ya no es la única persona que comprende el testimonio oral dado en un idioma que no sea el oficial del tribunal. En los Estados Unidos, puesto que hay muchos hispanoparlantes, este tema ha sido objeto de debate a nivel federal y nivel estatal. Las decisiones tomadas por los legisladores y juristas sirven como punto de partida para el debate en torno a esta cuestión que se está llevando a cabo en muchos otros países que, como España, tienen que enfrentarse a una situación similar.

Palabras claves: Interpretación, traducción, interpretación judicial, lenguaje jurídico, lingüística

ral terms, the participants in legal proceedings are monolingual and have no knowledge of the “other” language being used. It is assumed that the defendant or witnesses for whom the interpreter is called are non-speakers of the language of the court, and that the judge, counsel and jury members do not know the language used by the defendant. On an abstract level, this is an acceptable assumption and perhaps even the one that should be used when scheduling interpreting services. However, in reality, it only holds true in a limited number of cases. Many countries have stable and substantial immigrant communities in which languages other than the majority or national language are spoken. Eventually, these languages become part of the linguistic fabric of the community. In other countries, two or more languages share co-official status, and many members of society are partially or fully bilingual in both the regional language and the “national” language. Furthermore, in an increasing number of countries around the world, both of these circumstances exist. Finally, the study of foreign languages has become obligatory in many school systems, and speaking another language has become a sign of social standing. Therefo-

re, in many countries the general population is not only quite linguistically diverse, but also increasingly “bilingual,” at least to some degree.

Spain is an interesting case in point. There has been a marked resurgence of support for what are called the “historic” or regional languages and their dialects that share co-official status with Castilian Spanish in many parts of the country: *galego* in Galicia, *euskera* in the Basque Country, *catalá* in Catalunya, *valenciano* in Valencia, *ibicenco* in Ibiza, *mallorquí* in Mallorca, *la llengua asturiana* in Asturias, and so on. Government programs at both the national and regional levels have promoted the “recovery” of these languages, many of which had suffered greatly during the years of linguistic repression in the Franco era. These languages are now fully recognized, taught in school, and in some areas, have surpassed the “national” language – *castellano* – in popularity and usage. There are constitutional guarantees and federal and regional laws protecting the people’s right to use them in almost all facets of life, with incentives both in educational programs and in the workplace for those who need or desire to improve their level of proficiency. The fact that the study of one or two foreign languages is compulsory from elementary school on has also contributed to the increase in the number of bi— or multi-lingual individuals.

In the United States, bilingual individuals who speak a language other than English in their homes are known as heritage speakers. While there is still discussion as to the exact definition of a heritage language and whether or not that definition should include indigenous as well as ancestral languages, there has been some consensus on a working definition of a heritage speaker for academic and research purposes. According to this definition, a heritage speaker is a person “who is raised in a home where a non-English language is spoken, who speaks or merely understands the heritage language, and who is to some degree bilingual in English and the heritage language.» (Valdés, 2000: 1). Most heritage speakers of minority languages in the United States are quite fluent in English while their level of fluency in their home language varies depending on several factors including immigrant generation status. Studies show that with each generation, knowledge of the heritage language decreases¹. (Wiley

& Valdés, 2000; Veltman, 1983; Kloss, 1998). However, awareness of the importance of maintaining heritage languages has grown alongside the civil rights and cultural awareness movements since the 1960’s with the result being more bilingual education programs in schools, and language conservation and development programs specially designed for heritage speakers at many universities throughout the country.

The language usage patterns of heritage speakers in the United States provide evidence of the diglossia that exists in these speech communities. In linguistics, diglossia refers to situations in which two languages coexist and are used by a large number of speakers. One is considered of high prestige and is generally used in institutional settings, for business and commerce, and in formal texts. The lower prestige language is used in the home, in personal exchanges, and in informal settings. The high-prestige language is usually the majority or national language and the lower-prestige language the minority or vernacular language. The first tends to be the more formalized, and its forms and vocabulary often ‘filter down’ into the vernacular or minority language, though often in a changed form, although we are seeing an increasing trend towards cross-infiltration with more elements of the minority language filtering “upwards” into the majority language as well. However, it is still true that in many cases, the high prestige or majority language is studied in the school system, producing fully literate users, while the lower prestige or minority language remains a spoken language with very limited, if any, formal instruction offered in educational settings. When there is instruction in the minority language, the teaching methodology is often not adapted to the specific needs of heritage speakers, and traditional language acquisition programs have not proven to be effective for heritage speakers. (Crawford, 1999; Tse, 2001; Rhodes & Branaman, 1999). However, there seems to be a growing awareness of the importance of speaking more than one language in the United States, and the trend has been towards promoting the maintenance of heritage languages and encouraging second language acquisition among the general public. As was shown earlier, in Spain, the recovery and promotion of regional languages is even stronger, and the emphasis put on acquiring languages so as to remain competitive in the context of the European

¹ In the editor’s introduction to a special issue of the Bilingual Research Journal (Fall 200, Volume 24, No. 4) the following asseveration is made: “Facing the domination of English in the broader society, it is not surprising that linguistic assimilation into English has been accompanied by sweeping language loss. Typically, there has been a three generational shift to English. Among immigrant language minorities the characteristic pattern has been that the first generation acquires some English while remaining strongest in the native tongue; the second generation usually becomes bilingual with more developed literacy skills in English because English

is the language of instruction; and the third generation has a tendency to become English speaking with little or no capability in the language of the grandparents. However, in recent decades, the shift to English and concomitant heritage language loss appears to be happening at an ever more rapid pace. This pattern is by no means limited to the United States. Linguistic assimilation into dominant languages accompanied by language loss, death, or even «genocide» is a global phenomenon.”

Union, has produced a situation in which bi— and multi-lingualism is definitely on the rise.

When these realities are viewed from the context of the judicial system, several interesting questions arise. For example, there are many cases in which a defendant comes before the court with a partial knowledge of the language to be used in the proceedings. This is an individual who has resided for a certain period of time in the country and has become functional on a conversational and survival level in the national language. However, he clearly cannot be compared with a native speaker, and so a determination must be made as to how to determine if he has sufficient knowledge of the language used in the proceedings to be able to guarantee that his due process rights are being respected and that he is able, for example, to understand the charges brought against him, participate in his own defense, confront witnesses, and so on, all without the assistance of an interpreter.

It is important to remember, however, that given the circumstances described above, the defendant is not the only party to legal proceedings nowadays who is partially proficient in the languages being used in a court case. It has become more and more common for a judge, attorney or member of the jury to have some knowledge of the language being used by a defendant or witness giving testimony in a language other than the official language of the court. The interpreter is no longer the only person who comprehends both the language of the court and the language of the defendant. Thus, the interpreter's renderings come under scrutiny—either deliberately or as a matter of course—by other participants in the proceedings. At first, this may seem to be advantageous since there has always been some question as to how to monitor the quality of an interpreter's output when no one else in the courtroom could speak the two languages involved in the legal exchange. Only in the most obvious of cases, when an answer clearly did not correspond to the question posed or when a very long answer was rendered as a simple yes or no, could a question be raised as to the accuracy of the interpretation. Even in these cases, it was difficult to say with any certainty just where the alleged error lay. Would there not be more guarantees in place if a judge, attorney or jury member could understand both the testimony being given and the interpretation rendered? Would it not be possible to avoid serious error and therefore possible miscarriages of justice? While the obvious answer may seem to be a simple yes, it is important to remember that there is another serious issue to be considered, and that is whose understanding or interpretation of testimony given in a language other than the official language of the court is to be considered official when discrepancies arise? In other words, whose voice will be the official voice of the limited-language-proficient individuals in court proceedings?

In the United States, this issue has been examined and debated in many state judicial systems as well as at the federal level. The increasing number of heritage speakers and their presence in the legal profession and on juries has brought this issue to the forefront of the debate on the role of the interpreter in legal proceedings. Judges, attorneys, and jurors all play a pivotal role in the unfolding of a court case and wield a certain power in the courtroom: judges as those who through their authority manage the proceedings and rule on procedural issues as they arise; attorneys as those who craft the case and lead the other participants through the maze of information and evidence that is presented; and jurors as the 12 individuals who are ultimately responsible for determining and declaring a defendant's innocence or guilt. The focus of this paper will be on this last group and how the language competence of members of the jury, when incorrectly used, might have an impact on the outcome of a trial.

It is important to remember that trial by a jury of your peers is standard in the United States, and that the vast majority of cases are tried before a 6 or 12 member jury. In certain cases, bench trials are held either because the defendant waives his right to a trial by jury or because the rules of procedure allow it. In Spain, bench trials prevail, and there is still an active debate as to the validity of jury trials even though they are stipulated in the Spanish Constitution of 1978. In spite of the doubts that some jurists have about the effectiveness of this option, cases involving very serious crimes such as homicide, assault and embezzlement are currently heard by juries. This, together with the increased emphasis on oral testimony in both civil and criminal cases in Spain, makes language mediation in court a key issue in both countries.

Juries by their very definition are made up of individuals who do not have any special preparation in the law. The inherent fairness of being judged by peers, by a group of people similar in situation and circumstance, with no interest in the case and armed only with a sense of logic and fair play is one of the underlying concepts of the jury system. However, societies have also organized systems by which to establish laws that people should follow and procedural rules for dealing with instances in which laws are violated. The common man—the juror—is not expected to be familiar with the exact wording of the law or with the procedural rules that apply. This is why judges are present in jury cases, and it is they who ensure that legal proceedings are carried out properly. Thus it is the responsibility of the judge to inform members of a jury of procedural rules and limitations on their conduct and to remind them throughout the proceedings of the proper way to proceed. In Spain, juries are given a series of questions that they have to answer in order for their decisions to be considered valid. In the United States, jury instructions are

given at the outset of a court case, at any point during the trial that a judge feels it is necessary, and immediately before deliberations begin. Often standard instructions are developed and adopted and are used systematically to ensure uniformity and coherence throughout the district or state judicial system. These are known as model jury instructions, and there are examples that specifically address the issue of interpretation and translation, as we will see below.

There is a basic legal—and common sense—concept that states that all those sitting in judgment of an individual accused of a crime or offense should consider the same evidence. When evidence is given in the form of oral testimony or written documentation in a language other than the language of the court, a translation or interpretation must make that evidence available to the court, the attorneys involved in the case and the members of the jury. If some of the members of the jury happen to understand the non-court language in which testimony is given, they have direct access to that evidence while other members of the jury do not. In many cases, this need not be a problem, but when a discrepancy arises between what a juror has understood when listening to direct testimony and what he or she has heard the interpreter produce, the potential for problems grows. This situation has been compared to one in which a physician sitting on a jury does not agree with the physician who has been called as an expert witness to give testimony about a medical condition or an injury. If that physician tells his fellow jurors during deliberations what he feels is incorrect about the expert witness's testimony, his role has changed from being a jury member to being an expert witness himself. Expert witnesses must be qualified and recognized as such by the court, and a jury member has not been scrutinized for those purposes. Therefore, even though the physician's qualms may be justified, it is not his place to try to convince his fellow jurors that the testimony given was erroneous². By the same token, a bilingual member of a jury has not been qualified as a language expert, and it should not be assumed that his or her understanding or interpretation of the testimony given is more accurate than that given by the interpreter. On the other hand, there is no doubt that interpreters do make mistakes that jurors (or attorneys or judges) detect and that these mistakes may affect the outcome of the trial. Therefore guidelines had

to be established to cover all contingencies, and in many jurisdictions, as mentioned above, they have come as instructions to the jury. A perusal of the scope and wording of selected instructions related to interpreted testimony provides an overview of the problems, real and potential, that have been identified and addressed.

In the United States, the judicial system is two-tiered, with jurisdictional authority shared between the federal and state judiciaries. Federal law supersedes state law, but 99% of the court cases tried in the United States are heard in state courts and 95% of the judges working in the judicial system are state court judges. (Friedman, 2004). There are 11 federal court divisions, called circuits, which hear cases involving constitutional issues or interstate or transnational conflicts. Cases involving illegal border crossings, drug smuggling, treaty violations and so on are heard in federal courts. The Administrative Offices of the U.S. courts establishes the guidelines for the use of interpreters in federal courts, but the courts themselves, through judicial rulings, develop and modify courtroom practices. For example, the Ninth Circuit of the Federal Court System, which is the largest district covering most of the western states and Hawaii and Alaska, addresses the issue of non-English language testimony in Section 1.13 of its Model Jury Instructions for criminal cases (Ninth Circuit Model Jury Instructions). The following is what is actually read verbatim to jury members and is given at the outset of a trial when the judge knows testimony may be given by witnesses who do not share the official language of the court:

Languages other than English may be used during this trial.

The evidence you are to consider is only that provided through the official court [interpreters] [translators]. Although some of you may know the non-English language used, it is important that all jurors consider the same evidence. Therefore, you must base your decision on the evidence presented in the English [interpretation] [translation]. You must disregard any different meaning of the non-English words. (Ninth Circuit Model Jury Instructions)

Similar wording is provided for jury instructions in civil cases, but in this case the instruction is given immediately prior to testimony by a non-English speaking witness and the language used is identified:

You are about to hear testimony of a witness who will be testifying in [language used]. This witness will testify through the official court interpreter. Although some of you may know [language used], it is important that all jurors consider the same evidence. Therefore, you must accept the English translation of the witness' testimony. You must disregard any different meaning. (Ninth Circuit Model Jury Instructions)

² Example provided by Carol Meredith of the California Court Interpreter's Association and attributed to Yolanda Portal, who was instrumental in getting a judge to write a ruling about relying only on the interpreter's version of testimony. This ruling was then adopted by the Judicial Council of California.

The court has also considered evidence presented in the form of a written transcript of a recorded oral exchange. When the transcription reflects an exchange in a language other than English, it must be translated and made available to the court. The court then instructs jurors as to what information they may consider:

You are about to listen to a tape recording in [*language used*]. Each of you has been given a transcript of the recording that has been admitted into evidence. The transcript is a translation of the foreign language tape recording.

Although some of you may know [*language used*], it is important that all jurors consider the same evidence. The transcript is the evidence, not the tape recording. Therefore, you must accept the English translation contained in the transcript and disregard any different meaning. (Ninth Circuit Model Jury Instructions).

This instruction, in a very straightforward manner, states that it is the transcript of the conversation, and not the recording, that is to be considered as evidence. This instruction is meant to be given immediately prior to the jury hearing a tape-recorded conversation in a foreign language. The guidelines also reiterate that if there is no dispute as to the accuracy of the translation of a tape-recording of a foreign language conversation, the jury must be told that it is "not free to disagree with a translated transcript of a tape-recording."

These instructions are based on federal case law. For example, the ruling in *United States v. Franco*, 136 F.3d 622, 626 (9th Circuit, 1998) stipulates that jurors are to be instructed to consider only the version of testimony given by the interpreter. In *United States v. Fuentes-Montijo*, 68 F.3d 352, 355-56 (9th Circuit, 1995), the court recognizes that a previous standard for dealing with recorded evidence must be modified when that evidence involves communication in a language other than English. If prior to this case the standard was for jurors to give precedence to the recording itself over the written transcript of that recording, this case, which involves an exchange in Spanish, shows that that standard is clearly not applicable to these circumstances. The ruling states that:

when faced with a taped conversation in a language other than English and a disputed English translation transcript, the usual admonition that the tape is the evidence and the transcript only a guide is not only nonsensical, it has the potential for harm. (*United States v. Fuentes-Montijo*, 68 F.3d 352, 355-56 (9th Circuit, 1995).

Several state judicial systems have adopted jury instructions similar to the federal ones, but in some cases with

a great deal more detail. These instructions are also based on case law from the state in question. For example, in California, the ruling in *United States v. Fuentes-Montijo*, 68 F.3d 352, 355-56 (9th Circuit, 1995), established that it is misconduct for a juror to retranslate for other jurors testimony that has been translated by the court-appointed interpreter. The ruling states specifically that:

It is well-settled a juror may not conduct an independent investigation into the facts of the case or gather evidence from outside sources and bring it into the jury room. It is also misconduct for a juror to inject his or her own expertise into the jury's deliberation. (*United States v. Fuentes-Montijo*, 68 F.3d 352, 355-56 (9th Circuit, 1995), p. 303).

The ruling goes on to address what the proper course of action would have been for a juror who believed that an error in interpretation had been committed:

It [the juror] believed the court interpreter was translating incorrectly, the proper action would have been to call the matter to the trial court's attention, not take it upon herself to provide her fellow jurors with the 'correct' translation. (*United States v. Fuentes-Montijo*, 68 F.3d 352, 355-56 (9th Circuit, 1995) p. 304).

As a result of this ruling, the current instruction to be given to jurors regarding interpreted testimony reads:

Some testimony will be given in [*insert language other than English*]. An interpreter will provide a translation for you at the time that the testimony is given. You must rely solely on the translation provided by the interpreter, even if you understand the language spoken by the witness. Do not retranslate any testimony for other jurors. If you believe the court interpreter translated testimony incorrectly, let me know immediately by writing a note and giving it to the [clerk/bailiff]. (Introductory Instructions. California Judicial Council. Section 108)

Note the precise indication as to how to make any concerns known to the judge and the specific admonition to refrain from "retranslating."

In Florida, the Florida Supreme Court asked the Committee on Standard Jury Instructions to submit a report proposing alternative Standard Jury Instructions in Civil Cases on the use of interpreters. The Committee offered two alternative proposals for consideration. They both address several stages of the process and provide instructions to the jury for each phase. For example, the Preliminary Instruction given at the outset of the trial is general in terms and simply informs jurors that one or more of the witnesses may testify in a language other than English and that the only evidence that they may consider is that provided by the official court interpreter(s). The wording is similar

to that of the other examples we have seen. The next instruction comes just before a witness testifies. In this admonition, the judge informs the jury of the State's obligation to appoint a qualified interpreter:

The law requires that the court appoint a qualified interpreter to assist a witness who [does not readily speak or understand the English language] [has an impairment of hearing or speech] in testifying. The interpreter in this case is [name of interpreter]. [He] [She] does not work for either side in this case and is completely neutral in the matter. [He] [She] is here solely to assist us in communicating with the witness. [He] [She] will repeat only what is said and will not add, omit, or summarize anything. The interpreter's oath will not be administered to [him] [her] (The Florida Bar News, 2005).

This is a very complete instruction. First, it recognizes that both spoken language and sign language interpreting must be provided when necessary. It also recognizes that a witness may be partially functional in the language of the court when it includes the words "readily" and both "speak and understand" in its definition of someone eligible for interpreting services and uses the word "impairment" of either "hearing or speech" rather than more absolute terms such as deaf and mute. It further states that the interpreter appointed must be qualified and identifies him/her by name to the jurors (thereby lessening the sensation of the interpreter as a conduit or machine). The instruction makes clear that the interpreter is neutral and will give a complete and accurate interpretation of the testimony given. Finally, the jurors are informed that the interpreter is required to take an oath, which reads as follows:

Do you solemnly swear or affirm that you will make a true interpretation to the witness of all questions or statements made to [him/her] in a language which that person understands, and interpret the witness's statements into the English language, to the best of your abilities, So Help You God? (The Florida Bar News, 2005).

According to the proposal, when a non-English speaking witness is about to testify, the judge would once again remind jury members that:

You are about to hear testimony of a witness who will be speaking in [identify language]. The witness will testify through the official court interpreter, who will translate the testimony into English. You may only consider the official English translation in deciding your verdict. Some of you may understand [identify language] and may have a question as to the accuracy of the English translation. It is important, however, that all jurors consider the same evidence. Therefore, you must rely only upon the official English translation as evidence in this case and disregard any other contrary interpretation that might be given to the testimony. (The Florida Bar News, 2005)

Finally, the judge would once again admonish the jurors just before they begin their deliberations, that they are only allowed to consider the official court interpreter's rendition of any testimony given in a language other than English.

The alternative proposal includes all of the instructions outlined above and adds one more. By means of this sixth instruction, the judge tells jurors what they should do if they feel an error has been made:

If you have a question as to the accuracy of the English translation of a witness's testimony, you may bring this matter to my attention by raising your hand. You should not ask your question or make any comment about the translation in the presence of the other jurors, or otherwise share your question or concern with any of them. I will take steps to see if your question can be answered and any discrepancy resolved. If, however, after such efforts a discrepancy remains in your mind, I emphasize that you must rely only upon the official English translation as provided by the official court interpreter, and disregard any other contrary interpretation. (The Florida Bar News, 2005)

This instruction is perhaps the most important, and its inclusion seems quite logical and necessary. Its exclusion would leave a glaring gap in otherwise detailed instructions. It is difficult to see how giving instructions limiting the use of one's knowledge would help ensure justice is done if the instructions do not include a mechanism for trying to resolve the honest doubts that may arise in a juror's mind during the course of a trial. It is also interesting to note that the instruction recognizes that even after honest attempts are made to resolve any discrepancies, doubts may still remain, and in this case, the juror must abide by the interpreter's rendition and not share his or her doubts with the other members of the jury. Although no indication is made in the ruling as to how a question posed by a juror might be resolved, there are cases in which academics, researchers, linguists and other interpreters have been consulted in order to clarify confusions and ascertain the exactness of an interpretation.

In the report which contains these alternate proposals, the committee members also address what is clearly the most salient issue related to these situations, and that is the issue of whether jurors can really be expected to be able to disregard something they heard and understood when it is in conflict with the official version. The committee members wrote:

General concerns over the ability of bilingual jurors to set aside their own understanding of what a non-English speaking witness has said in favor of the official English interpretation can be addressed by full inquiry into the issue during jury selection. (The Florida Bar News, 2005)

The "full inquiry" approach is one that is used frequently during the selection process or *voir dire* of potential jurors when areas of possible discrepancy come up. For example, potential jurors are sometimes asked if they have a personal opinion about the law that is to be applied in a particular case, especially if the case is related to a controversial social issue. Thus potential jurors might be asked if they agree with the laws as they stand on euthanasia or abortion or possession of drugs, etc. and if they say that they do not, they are asked if they feel they can judge the case and apply the laws that are in force at the time in spite of their own opinions. This inquiry into a juror's self-perception as to his ability to abide by the rules of the game, so to speak, is one method that is used to try to ascertain who is capable of abiding by court rules and guidelines and who is not. Thus, in terms of bilingual jurors, a potential jury member might be asked during the selection procedure if he feels capable of putting aside his own understanding of testimony when it conflicts with the official version. Of course, the mere fact that someone states that he is willing and able to do so, does not negate the obvious fact that once something is heard, it is impossible to completely erase that information from one's memory or completely neutralize the impact that hearing it has made. Nevertheless, at least one study done on this issue showed that bilingual individuals «are affected by the English interpretations that they hear, which means that to a large extent they are able to minimize the effects of tuning in to the foreign language testimony. In effect, they are able to comply with the desire of the Court in so doing.» (Berk-Seligson, 1990:196).

An ancillary issue, but one that merits attention, is the interesting fact that this proposal was published both on paper and on-line and the court "invited all interested persons to comment on the committee's proposals," establishing a period of time for the reception of comments and suggestions in any format. This public consultation has allowed members of the interpreting community as well as jurists and members of the public at large to comment on the work done by the committee. This can not help but improve the tenor of the final proposal and ensure that there is some consensus among all interested parties as to the final wording of the guidelines.

All of the above stands as proof that interpreting in courtrooms and other legal venues is a highly complex undertaking, fraught with the potential for error. As the Interpreters Office of the United States District Court, Southern Division of New York states in its publication on "How Judges Can Promote Flawless Interpretation":

Interpreters always use judgment and common sense in choosing from among several possible interpretations of a phrase. Context always contributes to the decision

about choice of words. Some errors are inevitable because the interpreter is not as fully aware of the context as the witness. In addition, some witnesses do not express what they mean. (Interpreter's Office, USDC-SDNY).

If this is true for court interpreters, who are experienced, trained, and aware of the possible pitfalls involved in the interpretation process, it is doubly true for a juror who is not only uninformed about interpreting issues, but is often woefully under-informed about legal issues related to evidentiary and procedural rules. Virtually any practicing court interpreter can recount an anecdote involving a bilingual juror interjecting a comment or information regarding an interpretation. Donna Whitmann, a practicing interpreter in Tucson, Arizona, and director of interpreting services for the Pima County Superior Court system for many years, recounts two illustrative tales. In one case, the interpreter was quite fatigued after having worked non-stop an entire day and actually blanked out on the translation of the word handcuffs. A juror blurted out "esposas" in Spanish and was immediately admonished by the judge for interrupting the proceedings and usurping the role of the interpreter. It was only after the interpreter explained to the judge that the juror's spontaneous interjection had actually assisted her that the judge relented. However, in a similar situation, the reaction of the interpreter was just the opposite. In this case a juror actually questioned the interpreter's version of the testimony given. The interpreter reacted badly, becoming very angry at the juror, even to the point of insulting him in open court. These incidents show that the inclusion of specific instructions on how to proceed when situations such as the ones described above occur would help maintain decorum and efficiency during legal proceedings.

Finally, it is important to mention that it is not only jurors who need to be reminded about applying their own knowledge of other languages in court cases. With the advent of more and more bilingual attorneys coming from the very ethnic and speech communities that defendants come from, the issue of attorney intrusion into the interpreting process in courtrooms has also become quite thorny. This issue is more complicated, perhaps, than the issue of jury members using their own knowledge because attorneys, in addition to being partially or fully bilingual, are indeed versed in the law and understand the implications of any type of conduct during legal proceedings. However, they also know the case they are trying very well, and if they have been dealing with a defendant or witness directly in the non-court language, they know perhaps better than the interpreter the nature of the witness's testimony. Thus they may be uniquely able to detect interpreter error. However, attorneys are not specifically trained to serve as interpreters, are not always

aware of the difficulties of language transfer, even though they can communicate in both the language of the court and the non-court language, and above all, they are not impartial participants in the proceedings. If the arguments presented above attesting to the attorney's ability to detect error were to be accepted, by the same token it would be reasonable to argue that an interpreter with much experience in the courtroom, who has witnessed and participated in many cases, who has perhaps read or studied the law but who is not a qualified attorney, should be able to interject opinions and raise doubts as to the quality and appropriateness of the attorneys' performance in the courtroom. An intromission of this type would clearly be unwelcome and summarily rejected, and the interpreter would be vigorously admonished. However, it is unlikely that an attorney would be treated in the same way if the tables were turned. Nonetheless, the de facto recognition of bilingual attorneys as interpreters or language experts in court cases is diminishing. In the publication mentioned above on "How Judges Can Promote Flawless Interpretation" a clear pronouncement is made on this issue. The position taken by this organization is that "judges should keep in mind that attorneys are not language experts and have particular interests at stake" in the event of a sidebar to discuss alleged erroneous interpretations. Furthermore, an attorney's primary role in trying a case should not be complicated by adding another area of responsibility. In the United States *ex rel. Negron v. New York*, 434 F.2d 386 (2d Cir. 1970), the ruling stated that:

For defense counsel to cross-examine witnesses, listen to testimony and objections of the prosecuting attorney, hear rulings and remarks of the presiding judge and simultaneously render an accurate and complete translation to his [client] is an impossible task. (*United States ex rel. Negron v. New York*, 434 F.2d 386 (2d Cir. 1970).

This sentiment can also be found in an Ohio state case (*State v. Sanchez*, 1986 WL 4949, Ohio App. 8 Dist.) in which the judge recommended in the ruling that attorneys not be used to interpret court proceedings because they "cannot function effectively in their duty as attorneys and perform interpreter duties at the same time." The judge further recognizes that "they are not trained or possess the skills required for court interpretation."

This review of practices in the United States shows the serious attention that has been given to this increasingly common occurrence in courtrooms. In Spain, although similar circumstances exist, especially in the autonomous communities which have two official languages and thus the potential for a substantial number of cases in which some of the witnesses testify in Castilian Spanish and others in the regional language, no such standardized practice has yet been put into place. If we consider the

increasing number of non-Spanish speaking or limited-proficiency speakers of Spanish that now permanently reside in Spain and the fact that Spain is one of the most heavily visited countries in Europe, coupled with the growing popularity of English, French or German as active second languages among many professionals, the number of instances in which the interpreter is not the only person in the courtroom who understands the testimony of non-Spanish proficient witnesses is on the rise. The issue of whose voice is the official voice of these limited-Spanish speakers must be addressed, and when it is addressed, it will become clear that if interpreters are to be trusted to speak for those who cannot speak for themselves, they must be trained and qualified and fully aware of their responsibilities and the consequences of their actions. Only then will the judicial system be able to guarantee that justice will indeed be done.

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