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**In re: Standard Jury Instructions in Criminal Cases/
In re: Standard Jury Instructions in Civil Cases
SC05-1961/SC05-1999**

THE COURT, SUBJECT TO JUST MAKING SURE MY COLLEAGUES AGREE, WE ARE GOING TO HEAR THE LAST TWO CASES WHICH ARE JUST TEN MINUTES EACH, NOW, BUT NOT TAKE A RECESS. THANK YOU. IF THE LAWYERS FOR BOTH THE CIVIL AND CRIMINAL JURY INSTRUCTIONS COME UP, WE CAN HOPEFULLY DEAL WITH THOSE TOGETHER. MY COLLEAGUES SAID TO BE SURE THAT 20 DOESN'T BECOME 40. IT SEEMS LIKE WE HAVE A COMMON ISSUE HERE AND REALLY, WHATEVER WE DECIDE NEEDS TO BE SIMILAR OR EXACTLY EQUAL, SO WE ARE GOING TO DO, LET'S, YOU WILL PUT TEN MINUTES ON FIRST. OKAY.

MAY IT PLEASE THE COURT. JUSTICE, JUSTICES. I AM TERRY TERRELL, CIRCUIT JUDGE IN THE FIRST CIRCUIT, AND HERE AS THE CHAIR OF THE FLORIDA SUPREME COURT COMMITTEE ON CRIMINAL CASES.

JUSTICE: LET'S GET TO THE ISSUES SINCE YOU DON'T HAVE MUCH TIME.

YES, SIR.

JUSTICE: WAS THERE A PROBLEM IDENTIFIED THAT NEEDS TO BE CORRECTED?

YES, SIR. WE FILED A MOTION IN RESPONSE TO THE COMMENTS FROM THE FLORIDA ASSOCIATION OF DEFENSE ATTORNEYS WHICH WE WOULD ASK THE COURT TO ACCEPT. OUR MEETING TO ADDRESS THOSE COMMENTS BY THE ASSOCIATION OCCURRED ON MAY 12. WE FILED THE RESPONSE AND RECENTLY FILED THE MOTION.

JUSTICE: MY QUESTION IS, WAS THERE A PROBLEM WITH THE CURRENT PRACTICE IN THE COURTS, REGARDING JURY REACTIONS TO THE TRANSLATORS AND INTERPRETERS THAT HAD TO BE ADDRESSED. IS THERE AN ISSUE IDENTIFIED THAT IS ENDEMIC TO THE STATE REGARDING TRANSLATORS AND INTERPRETERS THAT WE NEED TO ADDRESS? IT SEEMS LIKE THE COMMITTEE WAS OF TWO MINDS ON THAT ISSUE, ONE PART SAYING THERE IS REALLY NO PROBLEM HERE -- ISSUE, ONE PART SAYING THERE IS REALLY NO PROBLEM HERE.

I THINK I CAN SPEAK ON BEHALF OF THE COMMITTEE. WE ARE HAVING EXPERIENCE IN SOUTH FLORIDA ALREADY AND NOW HAVING EXPERIENCE IN NORTH FLORIDA WITH PERSONS COMING IN AND PRACTICING FROM OTHER PARTS OF THE WORLD, AND SO IT IS AN ISSUE BUT NOT A DRAMATIC ISSUE, ALTHOUGH IN MY EXPERIENCE IN MY PART OF THE STATE, ALTHOUGH THERE IS MORE EXPERIENCE IN TRIALS INVOLVING DEFENDANTS, WITNESSES AND DISCIPLINE.

CHIEF JUSTICE: WHAT HAPPENS NOW? YOU HAVE A CRIMINAL DOCKET. IF THERE IS A TRANSLATOR, ARE JUDGES JUST LEFT TO THEIR OWN DEVICES AS TO WHAT INSTRUCTION TO GIVE? ANOTHER BAR PUBLISHES THE JUDGE'S HANDBOOK. WE HAVE AN INSTRUCTION THAT WE GIVE TO INTERPRETERS IN CASES AND THE JUDGE IS IN CHARGE OF THE DYNAMICS OF THE TRIAL.

CHIEF JUSTICE: WHAT IS INSTRUCTED IF THEY DON'T AGREE WITH THE TRANSLATION? ARE THEY TOLD ANYTHING?

THE COMMENTS SUBMITTED ALONG WITH THE MEMORANDUM, IT APPARENTLY HAPPENS

OCCASIONALLY. THERE ARE A FEW CASES ON THE TOP. BUT WHEN IT DOES HAPPEN, I SUSPECT THAT LEARNED TRIAL JUDGES RESPOND APPROPRIATELY. THEY WILL RECESS, BRING THE JUROR OUT, CONDUCT THE HEARING, MAKING A RULING AND GIVE DIRECTION.

JUSTICE: BUT AS IT IS DONE NOW, EITHER IN OPENING VOIR DIRE INSTRUCTIONS, THEY ARE NOT INSTRUCTED ON THE ISSUE. THEY DON'T KNOW THAT THEY CAN ASK A QUESTION AND RAISE A HAND, SO IT ONLY COMES UP IN THE JURY SUMMATION.

JUSTICE: LET ME ASK A QUESTION WITH RESPECT TO PROPOSED JURY INSTRUCTION 211, WHICH IS WHERE APPARENTLY --

THE TRANSCRIPT IS IN DISPUTE?

RIGHT, AND THEY ARE GOING TO ADVISE THE JURY, AND IT IS UP TO THEM TO DECIDE WHETHER THE TRANSLATION IS INACCURATE. DON'T WE HAVE A PROBLEM THAT YOU HAVE GOT FOUR JURORS WHO DON'T SPEAK THE LANGUAGE. WE HAVE GOT TWO JURORS THAT DO. AND HOW IS THAT JURY GOING TO MAKE A DETERMINATION AS TO WHICH IS ACCURATE AND WHICH IS NOT? IT SEEMS TO ME THAT ONE, THEY ARE GOING TO BE DEPENDENT ON WHAT THE TWO BILINGUAL JURORS SAY, AND HEAVEN FORBID IF THEY ARE IN DISPUTE.

THAT IS INHERENT PROBLEMS IN ALL OF THESE SITUATIONS BUT THIS WILL REALLY IS NO DIFFERENT THAN ANY OTHER CASE WHERE THERE ARE IN EFFECT EXPERT WITNESSES. WE GIVE JURORS DIRECTION ALL THE TIME FOR INSTANCE --

JUSTICE: SHOULDN'T AN INTERPRETER BE CONSIDERED TO BE AN EXPERT WITNESS? AN EXPERT WITNESS IS --

THEY ARE.

JUSTICE: DEVELOPED. I UNDERSTAND THAT MAY BE THE REALITY, BUT IT SEEMS -- THE REALITY, BUT IT SEEMS CONCEPTUALLY TO ME THAT WHAT INTERPRETERS ARE INTENDED TO BE IS MERELY TRANSLATING FROM ONE LANGUAGE TO ANOTHER, AND THAT SOMEBODY, OBVIOUSLY IS GOING TO HAVE TO SETTLE ON MEANING.

HOPEFULLY THIS WOULD HAPPEN RARELY. WE NOW HAVE A LIST OF CERTIFIED INTERPRETERS. THE INSTRUCTIONS 2.-- INTERPRETERS. THE INSTRUCTIONS 2.10 TALKS ABOUT PARTICULARLY WHERE THE TRANSLATION IS NOT IN DISPUTE, AT LEAST AMONG THE PARTIES, WE ARE ENCOURAGING THE PARTIES TO TRY TO GET IT RESOLVED PRETRIAL WHERE IT DOES NOT OCCUR IN TRIAL. THESE INSTRUCTIONS ARE DESIGNED TO DEAL WITH THE DYNAMIC WHERE A JUROR DURING THE TRIAL, SUDDENLY REALIZES I DON'T THINK THAT IS WHAT IS BEING SAID.

JUSTICE: WHAT HAPPENS IN ANY OTHER AREA WHERE THERE IS A WITNESS TESTIFYING ABOUT A SPECIALTY THAT THE JUDGE AND THE ATTORNEYS KNOW LITTLE OR NOTHING ABOUT, BUT ONE OF THE JURORS HAPPENS TO KNOW ABOUT IT. IT IS A CHEMIST TALKING ABOUT CHEMISTRY, AND ONE OF THE JURORS KNOWS ABOUT CHEMISTRY AND SAYS I KNOW THAT TESTIMONY IS WRONG. THAT IS NOT THE WAY IT HAPPENS. IT HAPPENS THIS WAY.

TYPICALLY I WOULD SUSPECT, JUSTICE CANTERO, THAT THOSE ISSUES WOULD BE ADDRESSED IN VOIR DIRE AND THERE WOULD BE AN EXPLORATION OF WHETHER OR NOT THE WITNESS OR THE JUROR COULD LISTEN TO THE TESTIMONY AND MAKE A DECISION BASED UPON THE EVIDENCE AND FOLLOW THE COURT'S INSTRUCTIONS.

JUSTICE: SO ISN'T A FOREIGN LANGUAGE JUST ANOTHER SPECIALTY THAT SHOULD BE INCLUDED WITH EVERYTHING ELSE? WITH THE SAME JURY INSTRUCTION THAT IT IS THE EVIDENCE BEFORE YOU THAT MATTERS.

I THINK ONE COULD MAKE THAT POLICY DECISION. THIS COURT REQUESTED BOTH THE CRIMINAL INSTRUCTIONS COMMITTEE AND THE CIVIL INSTRUCTIONS COMMITTEE TO PROPOUND PROPOSED INSTRUCTIONS IN THESE AREAS, WHICH WE HAVE DONE .

JUSTICE: AND HALF OF THE COMMITTEE SAID WE DON'T REALLY NEED IT BUT HERE IT IS ANYWAY. WE HAD SERIOUS CONCERNS ABOUT WHETHER THERE WAS ANY STATUTORY RULE OR OTHER REQUIREMENT FOR THESE RULES.

CHIEF JUSTICE: WE ASKED YOU TO COME BACK WITH THOSE , SO DON'T --

JUSTICE: BUT THE PROBLEM IS YOU DIDN'T HAVE CASE LAW TO FOLLOW.

VERY LITTLE. SCATTERED ACROSS THE STATE.

JUSTICE: THAT IS WHAT I AM TRYING TO UNDERSTAND. WE ARE UNCERTAIN THAT WE WANT TO PROVIDE THESE BECAUSE WE DON'T HAVE GUIDING LAW AND WE DON'T MAKE THE LAW, OR THIS IS NOT A PROBLEM AT YOU WILL ALL, AND THE SILLY BUNCH UP IN TALLAHASSEE ARE ASKING US TO DO SOMETHING THAT IS STUPID .

MY READ OF THE DISCUSSION WAS THAT IT WAS A COMBINATION OF BOTH, IN ALL CANDOR.

JUSTICE: CAN I ASK ONE QUESTION. THERE SEEMS TO BE A LITTLE BIT BOTH IN THE CIVIL AND CRIMINAL, WITH REGARD TO HOW. IF WE HAVE A RULE , HOW THE JURORS ARE SUPPOSED TO COMMUNICATE THAT, RAISE THE HAND OR SLIP A NOTE. I AM CONCERNED ABOUT SLIPPING NOTES AND WHETHER IT WILL BE AFTER THAT WITNESS IS GONE AND YOU CAN'T GO INTO IT. AND I AM JUST WONDERING --

THAT IS WHY THE COMMITTEE RECOMMENDED THAT WE MAIN WITH THE LANGUAGE PROPOSED IN THE -- THAT WE REMAIN WITH THE LANGUAGE PROPOSED IN THE INSTRUCTION , RAISE A HAND, AND THE JUDGE WOULD ASK THE JUROR TO WRITE IT DOWN OR CONDUCT AN EXAMINATION IN THE COURTROOM OUT OF THE PRESS -- PRESENCE OF THE OTHER JURORS. THAT WOULD BE MY EXPERIENCE THAT I AM FAMILIAR WITH.

CHIEF JUSTICE: JUSTICE BELL AND JUSTICE QUINCE.

YOU ARE REALLY UNFAMILIAR WITH THE TAPE RECORDING. I UNDERSTAND WHEN WE HAVE UNDERCOVER ACTIVITY AND YOU HAVE A TAPE RECORDING AND SOME OF THEM ARE HARD TO UNDERSTAND. WHEN THEY ARE IN ENGLISH WE RELY ON A JURY TO INTERPRET WHAT THE TRANSCRIPTION MAY BE. THAT PROBLEM BECOMES MORE PRONOUNCED IF THE CONVERSATION IS IN A LANGUAGE OTHER THAN ENGLISH , FOR SOME. IS THAT WHAT THIS IS INTENDED TO ADDRESS?

YES, SIR .

JUSTICE: I AM MORE CONCERNED ABOUT THE PROBLEM THAT WE HAVE, IF YOU HAVE THE STATE WITH A TRANSLATION AND THE DISSENT HAS A TRANSLATION, AND THESE INSTRUCTIONS SEEM TO SAY THAT WE ARE LEAVING IT UP TO THE JURY TO DETERMINE WHICH OF THE TRANSLATIONS?

AS WITH ANY OTHER EXPERT WITNESS SITUATION, THAT OCCURS IN COURTS IN THIS STATE EVERY SINGLE DAY.

CHIEF JUSTICE: WE HAD A CASE THAT HAD TO DO WITH A TRANSCRIPT OF A TAPE RECORDING, AND I THINK IN GETTING GUIDANCE FROM THE OTHER FEDERAL COURTS, THAT WE ACTUALLY

SAID THAT, WHEN THERE WAS COMPETING TRANSLATING, THAT THE JUDGE, THAT THAT OUGHT TO BE AN ISSUE FOR THE JUDGE TO DECIDE RATHER THAN THE JURY, AND MY CONCERN IS, IF WE LEAVE TOO MUCH, LIKE IN A FOREIGN TRANSLATION TO A JURY, THAT THERE IS GOING TO BE MORE REASON FOR PREEMPTORY CHALLENGES OF FOREIGN, YOU KNOW, SOME BODY WHO SPEAKS TWO LANGUAGES, BECAUSE LAWYERS WILL SAY, WELL, THEY WILL HAVE OTHER KNOWLEDGE.

THAT IS AN INHERENT UNDERLYING PROBLEM IN THIS ISSUE. I SUGGEST THAT YOU MAY WANT TO, AND I AM NOT SPEAKING FOR THE COMMITTEE ON THIS, BUT YOU MAY WISH TO EXCLUDE 2.11 AND GIVE FURTHER DIRECTION ABOUT HOW TRIAL JUDGES SHOULD DEAL WITH THAT ISSUE AS A MATTER OF LAW. THAT MAY BE AN APPROPRIATE RESPONSE.

JUSTICE: WHAT WOULD THE JURY, THE REASON THIS CONCERNS ME IS WHAT WOULD BE THE BASIS FOR THE JURY TO MAKE A DETERMINATION AS TO WHICH OF THOSE TRANSCRIPTIONS --

THEY WOULD LISTEN TO THE TRANSLATORS. THEY WOULD CONSIDER THEIR EXPERIENCE AND Demeanor, JUST LIKE WE DO -- Demeanor, JUST LIKE WE DO WITH EVERY OTHER EXPERT WITNESS IN A TRIAL. WE HAVE EXPERTS SAY, FOR INSTANCE, IN A MEDICAL MALPRACTICE CASE, THIS WAS MEDICAL MALPRACTICE AND THE OTHER EXPERT WOULD SAY NO.

JUSTICE: PART OF THE PROBLEM IS IF WE ALLOW A KEY AGREEMENT, AND WE ALLOW THE JUDGE TO MAKE THE DETERMINATION OF WHAT WAS SAID, AND WE ALLOW THE JUDGE DETERMINE THE ISSUES IF YOU HAVE A CONSTITUTIONAL ISSUE VERSUS A JURY DETERMINATION.

I THINK THAT IS A DEBATE HOW TO RESOLVE THAT, WHETHER IT A MATTER OF FACT FOR THE COURT TO RESOLVE OR FOR THE JURORS TO RESOLVE. WE HAVE AGREEMENTS FROM THE CDL AND HAVE RECOMMENDED THAT THE LANGUAGE USED, THE LANGUAGE REGARDING JURORS' RAISING QUESTIONS IF THEY HAVE A CONFLICT, THE INSTRUCTION PROPOSES THE WORD "MAY" AND THE COMMENT FROM THE FACDL PROPOSES THE WORD "MUST" AND THE COMMITTEE RECOMMENDS CHANGING IT TO USE THE WORD "SHOULD" CONSISTENT WITH THE LANGUAGE IN THE REASONABLE DOUBT INSTRUCTION.

JUSTICE: "SHOULD" IS KIND OF VAGUE. EITHER YOU ARE ALLOWED TO DO SOMETHING UNDER THE RULES OR ARE PROHIBITED FROM DOING SOMETHING UNDER THE RULES, BUT YOU ARE SAYING IF YOU DO IT, IT IS IN CONFLICT WITH HOW --

SOME JUDGES WOULD USE THEIR DISCRETION TO SAY YOU MUST OR YOU SHALL. THE LAST THING IS THE FACDL HAS REQUESTED THE LANGUAGE GIVING JURY INSTRUCTIONS SHOULD BE INCLUDED IN INSTRUCTIONS 2.10 AND 2.11. WE ARE IN AGREEMENT WITH THAT AS A COMMITTEE AS A WHOLE AND BELIEVE THAT IN THIS WAY IT CAN BE ADDRESSED BY THE COURT PRIOR TO THE JURY GOING BACK IN THE JURY ROOM AND TALKING ABOUT IT WITHOUT GUIDANCE FROM THE TRIAL JUDGE. THANK YOU.

JUSTICE: ONE LAST COMMENT. IS THERE ANY REASON THAT THERE SHOULD BE DIFFERENT INSTRUCTIONS IN ANY WAY, FROM CIVIL TO CRIMINAL AT ALL? CAN YOU THINK OF ANY REASON AT ALL?

NO.

CHIEF JUSTICE: THANK YOU VERY MUCH. AS MY COLLEAGUES HAVE SAID, WE WOULDN'T TAKE A BREAK UNLESS 20 BECAME 40, BUT IT IS VERY HARD TO CONTROL THIS GROUP HERE, SO MR. EVERMAN, AS YOU KNOW THAT -- MR., AS YOU KNOW THAT HAVING BEEN HERE, IT SOUNDS AS THOUGH YOUR SUGGESTIONS HAVE BEEN AGREED TO BY JUDGE TERRELL AND THE COMMITTEE.

CORRECT. MAY IT PLEASE THE COURT. MICHAEL EFFERMAN ON BEHALF OF THE FLORIDA

ASSOCIATION FOR CRIMINAL DEFENSE LAWYERS AND SEATED WITH ME IS THE CO-CHAIR OF THE FACDL AMICUS COMMITTEE. I WOULD LIKE TO ADDRESS INSTRUCTION 2.11, AND IT IS TRUE THAT WHEN WE HAVE AN ENGLISH TAPE THIS COURT SAID IN MARTINEZ IF THERE IS A TRANSCRIPT MADE OF THAT TAPE AND A QUESTION AS TO ACCURACY OF THAT TRANSCRIPT, PRETRIAL THE COURT MUST DETERMINE WHETHER OR NOT THE TRANSCRIPT IS ACCURATE AND DECIDE THE ISSUE AND EITHER GIVE THE TRANSCRIPT OR NOT GIVE IT, BUT OF COURSE WITH AN ENGLISH TAPE, THE TAPE ITSELF IS THE BEST EVIDENCE. WHEN WE HAVE A FOREIGN TAPE, THE COURTS HAVE SAID THIS IS A FOREIGN TAPE THAT IS NOT THE BEST EVIDENCE. THE TRANSLATION OF THAT TAPE WILL BE THE BEST EVIDENCE IF THAT MAKES SENSE. OBVIOUSLY THE JURY PROBABLY CAN'T UNDERSTAND THE TAPE. THEY CAN ONLY UNDERSTAND THE TRANSLATION. WE ARE IN FAVOR OF 2.11 BECAUSE EVERY FEDERAL COURT THAT I FORM AWARE OF THAT HAS RULED ON THIS ISSUE HAS SAID THAT, IF YOU HAVE TWO DIFFERENT TRANSLATIONS, TWO DIFFERENT INTERPRETATIONS OF WHAT THE TAPE SAYS, IT IS UP TO THE JURY TO DECIDE.

CHIEF JUSTICE: THAT IS CRAZY THOUGH! THERE IS NO WAY, UNLESS YOU HAVE THE KNOWLEDGE OF THE LANGUAGE, THAT YOU CAN MAKE AN INFORMED DECISION. I MEAN, IT, I MEAN, JUST BECAUSE THE FEDERAL COURTS DO IT, AND AGAIN IN DEFERENCE TO WHAT EVER MIGHT OCCUR IN OTHER AREAS, WE WOULDN'T, IF SOME BODY HAD A SCIENTIFIC BACKGROUND, SAY TO, YOU KNOW, IF YOU DON'T AGREE WITH WHAT THE EXPERT SAYS, JUST TALK TO JOE SMITH, BECAUSE HE IS THE SCIENTIST, WHICH IS ESSENTIALLY WHAT WOULD HAPPEN IS THE PERSON THAT CAN UNDERSTAND THE LANGUAGE WOULD END UP CONTROLLING THE ISSUE FOR THE JURY, BECAUSE HOW ELSE WOULD YOU MAKE THAT DETERMINATION?

MY QUICK RESPONSE IS I WOULD ANSWER THAT IN TWO WAYS. ONE YOU COULD HAVE A POLICE OFFICER WHICH QUESTIONS AN INDIVIDUAL. THE POLICE OFFICER IS BILINGUAL AND THE TRANSLATION OFFERED BY THE STATE IS FROM THE POLICE OFFICER AND THE DEFENSE OFFERS A DIFFERENT TRANSLATION. THOSE TWO TRANSLATIONS ARE GOING TO BE KEY IN WHAT THE DEFENDANT MACH SAID DURING THE INTERVIEW AND IN THAT SITUATION THE DEFENSE MAY ARGUE, LOOK, OUR TRANSLATOR IS OFFICIAL AND YOU SHOULD BE LEAVE OUR TRANSLATOR OVER WHAT THE POLICE OFFICER SAID.

CHIEF JUSTICE: WHAT IF THE JUDGE MAKES THAT DECISION?

IF THE JUDGE MAKES THAT DECISION AND RULES IN FAVOR OF THE STATE, AT THAT POINT THE DIFFERENT TRANSLATION WILL NOT BE PRESENTED TO THE JURY AND THE DEFENSE WILL NOT BE ABLE TO MAKE THE ARGUMENT THAT PERHAPS THIS IS A DIFFERENT DIALECT OF A DIFFERENT LANGUAGE. PERHAPS IT IS SPANISH BUT SPANISH IS SPOKEN DIFFERENTLY IN SOUTH AMERICA THAN IT IS IN EUROPE AND OUR TRANSLATOR IS CERTIFIED IN THIS PARTICULAR DIALECT AND THIS PARTICULAR AREA.

CHIEF JUSTICE: HAS IT HAPPENED?

IN THE FEDERAL COURTS, APPARENTLY AT LEAST THE INSTRUCTION HAS BEEN APPROVED BY -- JUST SKUS ISN'T THAT A LITTLE DIFFERENT --

JUSTICE: ISN'T THAT A LITTLE DIFFERENT PROBLEM THAN HAVING A TAPE TO WORK WITH THOUGH?

I AM SO RRY ?

JUSTICE: ISN'T THAT A LITTLE DIFFERENT PROBLEM AS OPPOSED TO HAVING A TAPE AND WHAT THE TAPE SAYS, BECAUSE THE TAPE IS GOING TO BE THERE IN THE COURTROOM.

THE JURY, OF COURSE, WON'T BE ABLE TO UNDERSTAND THE TAPE.

JUSTICE: I UNDER BUT IS THAT NOT DIFFERENT THAN A POLICE OFFICER ATTEMPTING TO RELATE HIS TRANSLATION AS MORE OF A FACTUAL DETERMINATION THAN IT IS IF YOU HAVE A TAPE OF WHAT NO CARRIER RING CONNECT 115200 SAY BOTH VERSIONS MUST BE GIVEN TO THE JURY AND THE JURY WILL DECIDE , SO THERE IS NO REASON FOR THE JURY NOT TO ADOPT 2.11.

CHIEF JUSTICE: SO IS THE ISSUE ABOUT WHAT THE QUALIFICATIONS ARE OF THE TRANSLATOR, CAN THE JUDGE MAKE A DETERMINATION ON WHETHER , NOW THAT WE HAVE CERTIFIED TRANSLATORS , THAT IT HAS TO COME THROUGH A CERTIFIED COURT TRANSLATOR , OR YOU DON'T THINK THAT FOR DUE PROCESS CONCERNS THAT YOU COULD IMPOSE THAT FOR A DEFENDANT ? DO YOU THINK A DEFENDANT HAS THE RIGHT TO THEIR OWN TRANSLATION?

SURE. I THINK A GOOD DEFENSE ATTORNEY IS ALWAYS GOING TO GO AHEAD.

CHIEF JUSTICE: SO THAT WOULD MEAN IN THE COURTS, TOO, YOU ARE GOING TO HAVE THE ABILITY TO SAY WE ARE NOT GOING TO AGREE WITH THE OFFICIAL COURT REPORTER?

IF THERE IS A TAPE COMING IN IN A FOREIGN LANGUAGE AND THE STATE IS OFFERING THEIR VERSION OF WHAT THAT TAPE SAYS, I THINK IT IS INCUMBENT UPON THE DEFENSE ATTORNEY TO MAKE SURE THAT THAT ATTORNEY IS ACCURATE .

JUSTICE: I THINK PART OF THE PROBLEM THAT YOU RUN INTO , ESPECIALLY IN THE DRUG CULTURE , THERE IS SLANG AND CODE WORDS USED ALL THE TIME MAY NOT BE SOMETHING YOU WOULD SEE IN THE LANGUAGE DICTIONARY, SO THERE ARE DISPUTES OVER THAT IN CULTURE.

IN MY LAST SECONDS , FACDL ALSO WOULD REQUEST THAT EVERY TIME THERE IS A SINGLE LANGUAGE TRANSLATION, THAT THE INSTRUCTION REGARDING THE JURY BEING ABLE TO QUESTION THE ACCURACY OF THAT TRANSLATION , THAT INSTRUCTION SHOULD BE GIVEN. WE THINK IT IS VERY IMPORTANT THAT, IF THE JUROR HAS SOME --

JUSTICE: HOW WOULD THE JURY DO THAT? HOW WOULD THE JUROR MAKE KNOWN HIS OR HER UNEASINESS WITH THE TRANSLATION , WITHOUT THIS SPILLING OVER INTO THE JUROR THAT IS THERE?

I THINK THE COMMITTEE SUGGESTED RAISING YOUR HAND. WE HAVE NO PROBLEM WITH THAT I THINK IF THE COURT HAS ALLOWED NOTE TAKING, THEN WRITING DOWN A NOTE AND GIVING IT TO THE BAILIFF WOULD BE MAYBE MORE DISCREET , BUT EITHER WAY, I THINK IF THE JUROR HAS THAT QUESTION, IF THERE IS GOING TO AND FOREIGN LANGUAGE TAPE PLAYED , THE JURORS SHOULD BE TOLD THAT THEY MUST BRING ANY DISCREPANCY IN THE TRANSLATION TO THE ATTENTION OF THE COURT.

CHIEF JUSTICE: BUT IT HAS TO BE DONE IMMEDIATELY, BECAUSE UNLESS THERE IS DIGITAL WHICH WOULD THEN GET BOTH, WOULD HEAR BOTH THE SPANISH AND THE ENGLISH , THE ONLY OFFICIAL VERSION WOULD BE THE ENGLISH, SO UNLESS IT IS IMMEDIATE.

I AGREE . IF THE INSTRUCTION NEEDS TO BE AMENDED TO SAY THE COURT NEEDS TO IMMEDIATELY LET THE JURY KNOW , I WOULD AGREE WITH THAT, BUT PERHAPS THE DEFENSE ATTORNEY DID NOT GET ANOTHER INTERPRETER AND PERHAPS THE DEFENSE ATTORNEY IS NOT AWARE THAT THERE IS A DIFFERENT TRANSLATION. IF THE JURY IS WEAR OF A DIFFERENT TRANSLATION , THE PARTIES NEED TO DEAL WITH IT RIGHT AWAY AND MOVE ON THEY CAN GO TO THE SIDE BAR AND I THINK IT IS CITED IN THE MATERIALS WHERE THE TRANSLATORS AGREE THAT THE JUROR'S INTERPRETATION WAS CORRECT AND IN THAT SITUATION , OF COURSE, WE WANT THE ENTIRE JURY TO BE TOLD THAT , YES , THIS INTERPRETATION WAS NOT RIGHT ORIGINALLY AND WE ARE GOING TO GO AHEAD AND CHANGE THAT, BUT IT IS BETTER FOR THE PARTIES TO HAVE KNOWLEDGE OF THE ISSUE AND BE ABLE TO DEAL WITH IT AT THAT TIME AS

OPPOSED TO HAVING THE ISSUE COME UP LATER. THANK YOU VERY MUCH FOR YOUR CONSIDERATION.

CHIEF JUSTICE: JUDGE LOUIS. WE WILL GO, ALL BY YOURSELF.

MAY IT PLEASE THE COURT. TERRY LOUIS, CIRCUIT JUDGE HERE IN THE SECOND CIRCUIT. I DON'T KNOW HOW MUCH I CAN ADD TO WHAT YOU HAVE ALREADY ASKED.

JUSTICE: CAN YOU IDENTIFY ANY PROBLEMS YOU HAVE SEEN IN THE SECOND CIRCUIT AND HOW YOU DEAL WITH THOSE PROBLEMS?

I WILL SAY YES. LET ME SPEAK ON BEHALF OF THE COMMITTEE. WE DID SEE A PROBLEM ACROSS THE STATE ANECDOTAL EVIDENCE, IF YOU WILL. THAT THERE IS NO INSTRUCTION RIGHT NOW, AND THE JUDGE WILL JUST HAVE TO WING IT BASICALLY IF YOU COME IN AND YOU HAVE THAT SITUATION. YOU MENTIONED, I THINK JUSTICE WELLS, ABOUT WHEN YOU HAVE GOT FOUR JURORS THAT SPEAK ENGLISH AND TWO THAT SPEAK SPANISH, THEY ARE GOING TO HAVE TO RELY ON THOSE TWO. WHAT IF THOSE TWO DO NOT AGREE? -- TWO DECIDES AGREE? -- DISAGREE?

JUSTICE: AND ASSUMING THE EXPERT TESTIMONY THAT THE JUROR MAY DISPUTE BECAUSE HE HAS THE SAME KNOWLEDGE, SHOULDN'T IT BE THAT THE TRANSLATION THAT YOU SEE IS THE OFFICIAL RECORD AND YOU MUST RELY ON THAT, EVEN IF YOU DISPUTE IT?

I THINK THAT IS CRUCIAL, AND THAT IS CONSISTENT WITH BOTH THE CRIMINAL AND THE CIVIL, THAT AT THE VERY LEAST, EVEN IF YOU DON'T SPEAK THE LANGUAGE, YOU MAY SPEAK A LITTLE BIT OF IT OR UNDERSTAND A LITTLE BIT OF IT, THERE IS A TEMPTATION TO SAY I DON'T THINK THAT IS RIGHT, SO THERE SHOULD BE AT LEAST AN AUTHORITY INSTRUCTION TO THE JURY THAT WE WANT YOU TO CONSIDER ALL OF IT, CONSIDER THE SAME EVIDENCE.

JUSTICE: WOULDN'T THAT ADDRESS THE CHIEF JUSTICE'S CONCERN ABOUT PREEMPTORY CHALLENGES OF PEOPLE WHO SPEAK FOREIGN LANGUAGES, BECAUSE NOW IT WOULD BE IRRELEVANT IF YOU SPEAK FOREIGN LANGUAGE, YOU STILL HAVE TO CONFORM TO THE OFFICIAL TRANSLATION?

WELL, I THINK THERE WAS A CASE IN WHICH JUSTICE KENNEDY TALKED ABOUT HE WAS ADDRESSING THE CONCERN THAT THEY WERE KNOCKING OFF OF THE JURY, FOREIGN-SPEAKING PERSONS, AND HE SAID THAT IS ONE WAY TO ADDRESS THE CONCERN OF AN ATTORNEY IS TO LET THEM ADDRESS IT VOIR DIRE.

CHIEF JUSTICE: THEY ACTUALLY SAID STATING A PROSECUTOR'S CONTINUING TO STRIKE BILINGUAL JURORS DESPITE THE FACT THAT A BILINGUAL JUROR COULD DISPUTE AN ENGLISH INTERPRETATION, SHOULD BE TAKING INTO ACCOUNT WHEN DETERMINING WHETHER THE SITUATION WAS REALLY NEUTRAL. I THINK THAT WOULD SPEAK TO ALL JURORS WHO SAY --

JUSTICE: BUT YOUR SITUATION DOESN'T ADDRESS MR. PROBLEM ADDRESSING THE FACT THAT THERE ARE TWO DIFFERENT TRANSLATIONS, ONE FROM THE DEFENSE AND ONE FROM THE PLAINTIFF.

THAT IS TRUE THAT THE COMMITTEE DID NOT ADDRESS THAT -- ADDRESS THAT EXAMPLE. THE DEFENSE LAWYER AND THE PLAINTIFF'S ATTORNEY AND THE DISAGREEMENT BETWEEN THE LAWYERS. THIS WOULD ONLY ADDRESS THAT SITUATION IN WHICH THERE ARE JURORS.

CHIEF JUSTICE: BUT WHAT IF YOU HAVEN'T CONSIDERED THAT AS AN EXPERIENCED TRIAL JUDGE. DO YOU THINK THAT IS A KIND OF THING WE WANT JURORS TO BE DECIDING BETWEEN TWO COMPETING TRANSLATIONS AS OPPOSED TO THE JUDGE MAKING THIS DECISION?

NOT SPEAKING ON BEHALF OF THE COMMITTEE BUT AS A TRIAL JUDGE THAT PRACTICES, THAT IS A VERY INTRIGUING THING. AS A MATTER OF FACT, WE DID HAVE LAWYERS ON OUR COMMITTEE THAT SAID THEY HAD THAT. I FORGET NOW WHAT THE TRIAL JUDGE DID IN THAT CASE. I CAN SEE THE ARGUMENT FOR BOTH SIDES. I CAN SEE THE ARGUMENT THAT, WELL, IT IS LIKE AN EXPERT WITNESS AND YOU DO IT LIKE YOU WOULD ANY OTHER EXPERT WITNESS. ON THE OTHER HAND, AN OFFICIAL COURT INTERPRETER IS NOT AN EXPERT WITNESS. IT IS THERE TO ASSIST THE COURT AND ASSIST THE JURY IN UNDERSTANDING, SO I CAN ALWAYS SEE THE ARGUMENT THAT IT SHOULD BE SOMETHING THAT SHOULD BE RESOLVED. WHETHER IT IS THROWN TO THE JURY JUST LIKE AN EXPERT WITNESS, I WOULD PROBABLY LEAN IN FAVOR THAT THE COURT SHOULD RESOLVE IT, AND EVEN THOUGH WE ARE AT A DISADVANTAGE LIKE WE ARE ANYWHERE ELSE, IF WE DON'T UNDERSTAND THE LANGUAGE OR TECHNOLOGY OR SCIENTIFIC PRINCIPLES, YOU STILL HAVE TO MAKE THAT DECISION WHEN YOU DECIDE WHETHER CERTAIN EVIDENCE COMES IN UNDER THE FRYE TEST.

JUSTICE: ISN'T THIS A LITTLE DIFFERENT FROM THE TAPE BECAUSE THE TAPE MAY BE A PIECE OF EVIDENCE AND WITH REGARD TO DISPUTE OF WHAT THAT EVIDENCE DOES, AS OPPOSED TO TESTIMONY IN YOUR COURTROOM, BECAUSE YOU HAVE A LOT OF TOOLS AVAILABLE, WITH ADDITIONAL QUESTIONING AND YOU CAN APPROACH IT IN SO MANY DIFFERENT WAYS IT SEEMS TO ME THAT THOSE ARE REALLY DIFFERENT. THEY MAY BE RELATED BUT THEY REALLY PRESENT DIFFERENT, UNIQUE PROBLEMS THAT ONE HAS AN EASIER SOLUTION BY JUST ASKING MORE QUESTIONS ABOUT WHATEVER IT IS ABOUT THAT WORD THAT MAYBE IN DISPUTE OF THE WITNESS, THEN A COMMON SOLUTION, BUT THE TAPE, THE TAPE IS A DIFFERENT ANIMAL.

I AGREE. IT IS A DIFFERENT THING. I SUPPOSE YOU COULD HAVE OTHER AVENUES THERE TO QUESTION THAT, TOO, AND I GUESS THE KEY QUESTION IS ARE YOU GOING TO RESOLVE THAT BY LETTING THE JUDGE HEAR ALL THE EVIDENCE AND THE TESTIMONY AND COME UP WITH THE OFFICIAL VERSION THAT GOES TO THE JURY, OR WILL YOU LET THE JURY JUST DECIDE FROM ALL OF THE COMPETING?

JUSTICE: WHAT DO YOU DO ON APPEAL? THAT COULD BE THE KEY QUESTION, THE KEY WORD. WHAT DO YOU DO ON SUFFICIENCY OF THE EVIDENCE IN THESE CASES, IF YOU DON'T HAVE?

I THINK YOU PRESUME THE TRIAL COURT IS CORRECT.

CHIEF JUSTICE: JUSTICE BELL HAS A QUESTION.

IS THERE ANY REASON THE CIVIL AND CRIMINAL SHOULD NOT READ EXACTLY THE SAME?

I DO NOT THINK SO. I MEAN, I HAVE HEARD DISCUSSIONS IN TERMS OF JURORS ASKING QUESTIONS, AND I THINK THERE IS A TENDENCY FOR FOLKS INVOLVED IN CRIMINAL LAW TO THINK OR NOT BE AS RECEPTIVE TO JUROR QUESTIONS IN GENERAL, BUT I PERSONALLY DON'T SEE A DIFFERENCE.

CHIEF JUSTICE: THANK YOU VERY MUCH. APPRECIATE THE WORK OF BOTH THE STANDARD, I KNOW THAT CRIMINAL JURY INSTRUCTION COMMITTEE HAS BEEN VERY ACTIVE THIS YEAR AT OUR REQUEST, AND APPRECIATE JUDGE TERRELL, YOU HAVING TAKEN OVER, AND YOU WERE CHAIR OF THE CIVIL, NO, YOU ARE JUST HERE AS SORT OF THE, OKAY. WELL, HE DID A GOOD JOB IN SENDING YOU AND THANK YOU VERY MUCH. THE COURT WILL BE IN RECESS UNTIL NINE O'CLOCK TOMORROW MORNING.

MARSHAL: PLEASE RISE.