

IN THE
SUPREME COURT OF FLORIDA

IN RE: STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES (NO. 2005-7)	Case No. SC05-1961
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**COMMENTS OF
THE FLORIDA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS**

The Florida Association of Criminal Defense Lawyers (AFACDL®) supports the new Standard Jury Instructions in Criminal Cases for use in cases where testimony is provided through a translator proposed by the Committee on Standard Jury Instructions in Criminal Cases. However, FACDL suggests the following changes to the instructions as proposed.

Instruction 2.8 (Preliminary Instructions) and Instruction 2.9 (Instructions During Trial) both contain directions to jurors regarding the procedure to be followed if a particular juror questions the accuracy of an interpretation:

If, however, during the testimony there is a question as to the accuracy of the English interpretation, *you may bring this matter to my attention by raising your hand.*

(Emphasis added.) FACDL suggests three changes to this instruction. First, FACDL

submits that the jurors should be instructed that they *must* bring to the attention of the trial judge any discrepancy in the interpretation. All of the parties have a right to fair trial B which includes the right to have an accurate interpretation of the evidence in question B and if a juror believes that the interpretation is not accurate, that juror should be required to alert the court so the court and the parties can properly address the concern. Second, FACDL suggests that it may be easier for a juror to alert the trial court of the problem by writing a note as opposed to raising his or her hand. *See Diaz v. State*, 743 A.2d 1166 (Del. 1999) (A[I]t would also be appropriate to instruct bilingual jurors to discreetly advise the trial judge through the bailiff of any concerns they may have about the English translation during trial. This should be accomplished by a written note.@). Finally, the instruction set forth above contains a preface directing trial courts that it is only A[t]o be given if the jurors are to be allowed to question the accuracy of the English interpretation.@ As explained above, the right to fair trial includes the right to have an accurate interpretation of the evidence in question, and therefore FACDL submits that the instruction should be given in every case (i.e., the preface should be eliminated and the jurors should be allowed to question the accuracy of an interpretation in every case).

Instruction 2.10 (Transcript of Recording in Foreign Language (Accuracy Not in Dispute)) and Instruction 2.11 (Transcript of Recording in Foreign Language

(Accuracy in Dispute)) do not contain the language set forth above regarding directions to jurors who question the accuracy of an interpretation. FACDL submits that regardless of whether the parties agree that a transcript is an accurate translation, a juror who speaks the language in question might have a different opinion. In such a situation, FACDL submits that it is best to instruct the juror to inform the court of the discrepancy, which will at least bring the matter to the attention of the court and the parties and allow the concern to be properly addressed.¹ Accordingly, FACDL suggests that the language permitting/requiring a juror to inform the court of a discrepancy in an interpretation, which is contained in Instructions 2.8 and 2.9, should also be included in Instructions 2.10 and 2.11.

¹ FACDL recognizes that there may be circumstances where a concern is brought to the attention of the court by a juror and the court and the parties decide to adhere to the original interpretation despite the juror's concern. The instruction informs the juror that if after consideration the discrepancy remains, the juror is required to rely upon the original interpretation and to disregard any other contrary interpretation. But FACDL submits that knowledge is better than ignorance in this situation and any potential concern should *always* be brought to the attention of the court in order to allow the parties and the court to properly address the discrepancy. Obviously there may be situations where the juror is the only person in the courtroom (other than the interpreter) who speaks the language in question and therefore the only person who is in a position to question the accuracy of the translation.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing instrument has been furnished to:

The Honorable Dedee S. Costello
Bay County Courthouse
P.O. Box 1089
Panama City, Florida 32402-1089

by mail delivery this 17th day of January, 2006.

Respectfully submitted,

/s/ Paula S. Saunders

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