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## Behind Closed Doors

### *Interpreting Jury Deliberations*

Sabine Michael

Sometime last year I posted on my bulletin board a newspaper article about a Florida judge who permitted a Spanish monolingual juror to serve on a jury. It may just be a matter of time, I thought, before that happens in Pinal county.

Although I agreed with the Florida judge's reasoning, that it is a constitutional right not to be excluded from jury duty, I wondered whether an interpreter in the jury room might dilute, taint, or violate the secrecy of the deliberation process. My speculations were not purely academic. Pinal county is in rural central Arizona, population approximately 180,000, nearly a third of Hispanic origin. I am one of two Spanish staff interpreters in the Superior Court, a court of general jurisdiction. In addition to covering our six courtrooms, I am responsible for scheduling and providing interpreter services for the eight Justice Court Precincts in our county. (A justice court is not a court of record, but a court of limited jurisdiction which handles criminal and civil matters.)

In our court, we came close several times to seating a Spanish-speaking juror. Since we are a small court, it is usually the jury commissioner or presiding judge who asks us to interpret for a potential juror. Unlike many other jurisdictions, we fall under the supervision of the court administrator and not the clerk of the court. The various court departments are actively encouraged to contact us any time they need interpreting services. Twice I was called to interpret for potential jurors whose native language was Spanish, to see whether they would feel confident to serve on a jury if the proceedings were interpreted for them. Both times, the prospective

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## Cook County Headed for First Contract Negotiations

### *63 % of Voting Interpreters Chose Chicago Newspaper Guild Representation*

Kathleen M. Orozco

History was made on March 20th, when Cook County court interpreters, along with Chicago Newspaper Guild staff and court management representatives, gathered in the Illinois Labor Relations Board conference room in downtown Chicago. The mood was one of optimism and confidence after a highly organized campaign for contract representation.

A vote for Guild representation had been taken in December of 2001. Due to the difficulty of setting up polling places in far-flung courthouses for 110 interpreters of over 50 languages (many of whom do not work every day, and most of whom do not always work at the same job site), interpreters had mailed in their ballots.

The 3-month lag between the mail-in ballot election and the official Labor Board vote count was due to two attempts by the Chief Judge's office (the interpreters' employer) to dispute the interpreters' proven employee status. In June of 2001 the Chief Judge's office requested

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**BEHIND CLOSED DOORS** Continued from page 1  
jurors declined. On another occasion, a judge wanted to address a juror whose first language was German to see if she wanted my assistance during trial (German is my native language). I was out interpreting elsewhere, but the juror declined to be assisted, saying that it would make her uncomfortable, and asked to be excused from jury duty.

Last year, a lower court in our county had a DUI [driving under the influence] case in which a Justice of the Peace did not dismiss a potential juror who spoke only Spanish. That person was assisted by an interpreter throughout the voir dire but then was struck through the attorneys' peremptory challenges. The Justice of the Peace told me afterwards that she would have accommodated the juror throughout the trial.

This past December, I was working on a trial for aggravated assault involving a Spanish-speaking defendant and Spanish-speaking victim. During jury selection, a predominantly Spanish-speaking woman was seated. Neither counsel exercised a challenge for cause, nor did the judge dismiss her on the basis of the language issue. When jury selection was completed—this was an eight-person jury with two alternates—she was still in the box.

#### The Trial

Luckily, in our county, we have the luxury of being able to approach the judge in chambers, especially on matters that arise during trial. Thus, I was able to approach the judge regarding the juror who required interpretation. Since interpreters were already in the courtroom to interpret the proceedings for the defendant into Spanish, the juror could easily be provided a wireless portable unit over which to hear the trial testi-

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### The less attention drawn to interpreters, the better, according to judge.

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mony. The court felt that the less attention drawn to the language assistance, the better. It was decided that prior to deliberations, the judge would both instruct the jury regarding the presence of an interpreter during deliberations, as well as administer an oath to the interpreters and admonish them not to participate in the deliberation process. (The oath, admonition and jury instructions appear at the end of this article.)

Neither attorney voiced any objection to this procedure. A colleague and I interpreted throughout the trial,

which lasted four days. During breaks, the juror would leave the listening device on her seat. Since she spoke some English, it was not necessary for an interpreter to accompany her on breaks.

#### The Deliberations

Due to the size of our jury rooms and the sensitivity of the issue, I suggested that during deliberations the two interpreters not go in as a team, but rather switch during the jury's breaks. Both counsel and the judge found this acceptable.

We used a wireless transmitter with a microphone, and the juror had an ear piece with a receiver. When I first entered the jury room, I chose an empty chair in a corner near the coffee pot, within eye-contact of the non-English speaking juror. It turned out to be near the person who was chosen as foreperson. All instructions by the foreperson were easy to hear and the juror needing my assistance did not stand out in any way, thanks to the equipment. The fact that I was sitting quietly in

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### The interpreter in the jury room did not distract the jury from its task.

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my chair whispering into a microphone did not seem to distract anyone. The judge had already instructed them to speak one at a time. As some of the evidence was passed around to be examined, the juror would summon me with her eyes, without interrupting the conversation, and I would approach to sight translate documents for her or to interpret her questions and remarks to the rest of the jury.

Due to the confidential nature of the deliberations, I will not go into further detail except to say that the deliberations lasted less than thirty minutes. Seasoned interpreters will automatically know how to comport themselves in a jury room. We need a notepad, a pen, and common sense. If a juror addresses the interpreter personally, it is a simple matter to say swiftly but kindly that the interpreter cannot discuss any matter during deliberations.

#### Impact on the Jury

As far as I could tell, the presence of an interpreter in the jury room had only a marginal impact on the other jurors. Sitting apart from the jury table, I kept within our role, to be as unobtrusive as possible. An interpreter's presence did not stop the jurors from speaking freely, voicing their opinions or concentrating on the task at hand. From a linguistic standpoint, the job was routine, but certainly, each trial will have a unique set of jurors, ideas, opinions and difficulties.

Permitting interpreters in jury deliberations may have far-reaching consequences, not so much in smaller jurisdictions like ours, but in larger cities where the number of potential Spanish monolingual jurors is certainly much higher. Interpreter coordinators may have to struggle to provide adequate coverage in states

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### Large cities may have interpreter shortages or other factors to consider.

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where court interpreters are few. The right of a citizen to participate in a jury will have to be weighed against other factors, such as cost and available personnel. Modern technology, however, makes it possible to assist several parties in the same trial without needing additional interpreters. If interpreters are already being provided for the defendant, it is not an extra burden to assist a juror. However, if no party other than the juror needs language assistance, resources may be needed more elsewhere.

The whole experience felt a little unreal, like being thrown into a movie. Until then I could only guess what jury deliberations were like because they have always been shrouded in mystery. It was the only area left in judicial interpreting that I had not set foot in, having interpreted previously in army court-martials and court proceedings in my native Germany, and once during a Grand Jury session.

This case was the first in Arizona and in our county in which a non-fluent English speaker was accommodated on a jury. In the words of the Hon. Boyd T. Johnson, the judge presiding over the trial, "We just did it." I am sure that if the situation came up again, it would be handled in the same way. By then we may have gained more insights into the procedure from other courts where it is done on a regular basis. We certainly will impart what we gained from this experience to other courts.

One thing, however, is certain: the defendant was truly judged by a jury of his peers.

*[The author is court interpreter for Pinal County Superior Court in Florence, Arizona.]*



### POSTSCRIPT: PINAL COUNTY SUPERIOR COURT Re: Jury charge on interpreter's role in deliberations room.

The interpreters are permitted only to interpret. You are prohibited from interjecting your opinions, your thoughts, or your questions. Your sole purpose in the jury room during deliberations is to interpret for the assisted juror.

#### Oath for Interpreters In Jury Deliberations

You do solemnly swear that you will faithfully translate from English into Spanish and Spanish into English during the deliberative proceedings and discussions in this cause, and will not participate in, contribute to or discuss jury deliberations, other than to render verbatim translation thereof for the assisted juror when called upon to do so, to the best of your ability, so help you God?

#### Jury Instructions Regarding Assisted Juror

The Jury and the interpreters are hereby instructed that the interpreters will be allowed into the jury room during deliberation. The interpreters, however, will not participate in the jury's deliberation in any manner except to facilitate communication between the assisted juror and the other jurors. The interpreters are not part of the jury. Do not construe the assisted juror's words when spoken by the interpreter as those of the interpreter. Two different interpreters may be present during deliberations. However, only one will be present at any one time. They will substitute for each other at periodic intervals. In order to ensure full participation in deliberations by the assisted juror, each juror needs to bear in mind that the interpreter can only interpret one conversation at a time. Remember that it is important that all jurors participate fully in the jury deliberations. So, when possible, please do not speak over each other during your deliberations. The interpreters are prohibited from involving themselves in this case in any manner. That includes any type of conversation with any member of the jury panel about anything that goes on in the courtroom. Please do not try to engage them in any such discussion, or in any conversation at all, except for the purpose of communicating with the assisted juror.

The interpreters are bound by a strict code of ethics. They shall keep all information related to their assignment confidential. The interpreters shall not counsel, advise, or interject personal opinions. The interpreters, as individuals, may not discuss this case with anyone, including jurors, at any time before, during or after deliberations, except in their role of interpreting for the assisted juror.