



National Association of Judiciary Interpreters & Translators

NAJIT POSITION PAPER

GENERAL GUIDELINES AND MINIMUM REQUIREMENTS FOR TRANSCRIPT TRANSLATION IN ANY LEGAL SETTING

INTRODUCTION

In a criminal or civil case, a foreign language recording may be introduced into evidence. Such a recording may be audio or video, analog or digital. The contents of the recording are memorialized in a transcript, produced by a language expert at the request of the court, prosecutor, defense counsel, or a law enforcement agency. To be reliable, a forensic transcript must meet stringent requirements. If a translated transcript is inaccurate, incomplete, or sloppy, its evidentiary value is undermined. As a result, time and resources may be wasted. This position paper sets out the requirements that NAJIT deems indispensable to ensure the production of accurately translated transcripts of forensic recordings.

[Note: A translator or language expert should never be asked in any legal proceeding to render an instant simultaneous interpretation of a forensic recording. Please see NAJIT's position paper: *Onsite Simultaneous Interpretation of a Sound File is Not Recommended*, available at www.najit.org.]

This paper aims to provide clear guidelines for the language experts who prepare transcripts ("transcriber" or "translator") as well as for those requesting such services ("client"). Please note that for the purposes of this position paper, the word "translator" refers to the person who both transcribes and translates the recording. The product — a bilingual transcript — comprises two parts: a word-for-word transcript of all language in the original recording, and the corresponding translation into English. A dual-language transcript is produced by following the work sequence outlined below.

**ASSIGNMENT IS OFFERED TO TRANSLATOR.
TRANSLATOR REQUESTS PRELIMINARY REVIEW OF
SOURCE RECORDINGS.**

Preliminary review

■ **Translator identifies task requirements and any potential problems.**

A translator must first determine what the task entails and whether any conflict or impediment exists, be it technical or ethical. The translator needs a good quality copy of the recorded material. The **client should always keep the original recording** to avoid chain of custody issues. While transcript translation may be done in-house or at a client's location, translators and clients can also easily work via fax, Internet, and e-mail.

It takes considerable time and effort to review and analyze a recording. Compensation for this preliminary review should be agreed upon. Such a review is essential so that the translator can inform the client of any information relevant to the assignment. For example, the translator will estimate how much of the content is audible, whether or not the desired deadline is realistic, and bring to the client's attention any other factors affecting accurate transcript production. A client may desire a summary or draft for informational purposes only, so as to decide later whether a complete, certified transcript is needed. In such cases, the translator should advise the client in writing that the draft or summary will be identified as such and is not intended as a final product for use in court.

■ **Translator evaluates the complexity of the assignment.**

In this step, the translator examines the recording to determine the length of the source material, the amount of actual recorded speech (excluding long periods of noise or silences), the number of speakers, audio quality and clarity, as well as the semantic, phonemic, and structural complexity of the discourse. Very large projects with short deadlines will likely require a coordinated effort by a team, adding other

levels of complexity, which will be discussed in a future publication. Since unforeseen problems may arise with equipment, audibility, or intelligibility, it is prudent for a translator to add a cushion of time to any final estimate. After a detailed review, the translator provides the client with a comprehensive and realistic estimate of the cost and delivery time.

Cost: As a general rule, the cost of a translated transcript is calculated according to industry rule-of-thumb that up to one hour of work may be needed to capture each minute of conversation in a forensic recording. The actual time taken to complete the task will vary depending on sound quality and clarity; the number of speakers; the amount and type of background noises; and the languages involved (non-Western alphabets or languages that don't read from left to right may take longer). The time estimate accounts for the fact that a thorough and reliable translated transcript involves multiple revisions, research and consultation for specialized terminology or unusual slang, and line-by-line verification of the completed translation with the transcript and the recording. Additional time built into the estimate for unforeseen complications is balanced by the translator's commitment to the client that the work will be done in the most cost-efficient manner, and that the final invoice will be based on actual time worked.

Delivery time: Forensic transcript translation is a tedious, complex task that rarely can be done continuously for eight hours a day, seven days per week. The accuracy of auditory perception is apt to diminish after long periods of concentrated listening to irregular or chaotic sound recordings. After completing an initial draft, a translator is well advised to switch to a task that does not require focused listening before proceeding to the final draft. Clients should not expect delivery time to correspond to a cost analysis divided into 8-hour days; they should recognize the cognitive strain on the listener and allow sufficient time for the transcript to be produced properly. The importance of planning ahead cannot be over-emphasized, given the complexity, the required level of accuracy, and the evidentiary nature of the product.

■ **Translator realistically evaluates ability to deliver the assignment by the desired deadline.**

Once the project has been carefully examined in light of the above factors, the translator determines whether s/he can meet the project demands. If the answer is negative,

the translator will refuse the assignment. If affirmative, the translator should consider terms and conditions that will ensure timely delivery of a quality product.

■ **Prior to commencing work on the transcript and translation, the translator and client arrive at an agreement about compensation, delivery time and any other pertinent matters. Expectations should be clarified in a written document whenever possible.**

Explicit agreements in writing will eliminate surprises and misunderstandings. At the outset, it is advisable to have a detailed, written contract signed by all parties. Subsequent communication about the progress of the work may be more informal.

THE TRANSLATOR PROVIDES A CLEAR STATEMENT OF QUALIFICATIONS.

■ **A translator is expected to accurately represent professional certifications, training, and experience.**

As of May 2009, there is no specific certification for transcription and translation work, and training opportunities in this specialty are quite limited. Given this credentialing and training gap, clients should ask the translator to detail his or her experience, extent of prior transcription and translation work, experience in testifying as an expert witness, and type of certification in translation and interpretation. When representing credentials, a translator must specify the certifying authority. In the United States, translators and interpreters may be granted nationally recognized certification by several entities.

For translators, this certification is available through the following:

- National Association of Judiciary Interpreters and Translators (NAJIT). Legal translation, in English-Spanish only.
- American Translators Association (ATA). General translation, offered in various language combinations.

For court interpreters, certification may be pursued through the following:

- Administrative Office of the U.S. Courts, which implements the Spanish-English federal court interpreter certification examination.
- Administrative office of a state court.
- Consortium for State Court Interpreter Certification (40 member states as of May, 2009; certification in various languages).

- National Association of Judiciary Interpreters and Translators (NAJIT). Spanish only.

■ In addition to formal training and certification, other skills and knowledge are desirable.

Transcript preparation and translation is an interdisciplinary field that requires translation and interpretation skills, a thorough knowledge of a variety of registers and regional variants in source and target languages, and cultural awareness of idiomatic speech. Other important qualities needed by translators who transcribe recordings are:

- a highly-tuned, perceptive ear;
- excellent writing skills in both English and the foreign language;
- analytic and problem-solving skills;
- attention to detail;
- research skills;
- specific training in, and knowledge of, transcript protocols;
- transcription and translation experience;
- ability to work well under pressure and meet demanding deadlines;
- experience in testifying as an expert witness;
- mastery of a variety of word processing software;
- neutrality and adherence to ethical standards;
- membership in one or more professional organizations.

THE TRANSLATOR HAS OR OBTAINS THE PROPER TOOLS FOR THE TASK.

Advances in technology are constantly affecting transcript production. As of this writing, the trend is toward digital video or audio source files, though a translator may also work from analogue audio or video cassette tapes. The transcription process may require access to any or all of the following tools:

- variety of word processing software (depending on client requirements);
- foot-activated standard and micro-cassette tape transcribers with variable speed and tone control and meter functions;
- video cassette recorder (VCR, VHS), preferably foot-activated;
- equipment/software to transfer the sound portion of a video file to audio cassette, CD or DVD media, or digital file;
- multiple headphones with independent volume and tone controls;
- cassette players and receivers with multiple sound controls;

- high fidelity equalizers and filtering equipment;
- high quality computer-driven speaker system;
- USB or serial foot-pedal and transcription software;
- audio software for playback and conversion and filtering of source files;
- other listening alternatives (e.g., portable cassette, CD player, car sound system);
- reference materials such as monolingual and bilingual dictionaries, subject-area glossaries, and Internet access for terminology research.

THE TRANSLATOR COMPLIES WITH ALL PROFESSIONAL RESPONSIBILITIES.

■ The translator informs all parties of any prior direct or indirect contact with the case or related cases, so as not to compromise the integrity of ongoing investigations or proceedings.

It is customary for an interpreter or translator to inform all parties of any prior work on a case. Such information is stated on the record in open court at the appropriate time, or as soon as the translator is aware of having worked on a case previously. The disclosure should be made in a general manner, such as “The translator has previously provided language services in matters related to this case.” It is up to the parties to inquire further if they wish. If any information is of a sensitive nature, with the potential to affect ongoing investigations, the interpreter may request permission to advise the judge privately.

■ The translator informs the parties and the Court of any possible conflict of interest or bias, or the appearance of such.

Beyond the obvious biases that may result from a personal connection to any party in a case, the translator has a potential role as a witness. All the rules and regulations applicable to expert witnesses apply to the translator. Generally, a language expert involved in transcript translation is precluded from also interpreting the courtroom proceedings. Ultimately, however, any such decision is left to the Court in consultation with the parties.

■ The translator is duty bound to keep in the strictest confidence all information acquired in the course of professional duties.

In the event that consultation with colleagues is required during an assignment, the translator should be careful not to disclose the identity of any of the parties or the

exact nature of the case. At all times, the translator must respect confidentiality and all rules of law that apply to the particular legal setting.

■ **The translator remains objective at all times while preparing the transcript and its translation. A translator should refrain from commenting, advising, or voicing any personal opinion regarding the content.**

Personal feelings or ideas must not taint the work product or the professional relationship between the translator and the client. NAJIT's code of ethics enshrines the canons of confidentiality, impartiality, and accuracy, among others; and the translator is obligated to abide by them. A translator must maintain professional independence and neutrality. A useful rule to ensure independence and neutrality is the concept that the resulting evidentiary product would remain unchanged were the translator to be hired by the opposing party. A contractual relationship with a party to a case does not authorize a translator to tailor the evidentiary product to the strategic needs of the contracting party. It is the duty of the translator to understand the limits of his or her role in the legal process and to educate the client in this regard.

■ **The translator may be asked to testify as an expert witness.**

If called upon to testify as an expert witness, the translator should provide the client with an up-to-date résumé detailing background, experience, and certifications. In the absence of formal standards or specific certification in transcript translation, professional information aids in establishing the translator as an expert witness. Ultimately, the court decides whether or not to qualify a witness as an expert.

■ **The translator limits work to area of expertise.**

On occasion, a client may request that a translator provide an analysis or an annotated transcript or translation of a recording. This usually arises when there is a dispute about: (1) a previous event involving foreign language interpretation (in a courtroom, custodial, interrogatory, or investigative setting); or (2) a previously submitted translated transcript. Acceptance of such an assignment places a translator in a consultant role that is completely distinct from the role of impartial translator, requiring a different kind of expertise. The role of content or linguistic analyst is not dealt with in this paper and should not be confused with the neutral role of the translator described herein.

THE TRANSLATOR PREPARES THE WORK PRODUCT IN ACCORDANCE WITH AN EXPERT'S SCOPE OF PRACTICE AND EVIDENTIARY REQUIREMENTS.

Transcript Preparation:

■ **The translator transcribes the audio content of the recording, using a three-column or table format (with or without gridlines). Lines and pages should be numbered. This standard format allows for easy side-by-side comparison of the original utterance to the translation.**

A complete transcript of all original utterances is necessary so that the validity of the translation can later be verified or challenged. The importance of producing an accurate transcript of the full content of a forensic recording cannot be overemphasized.

In the conventional three-column format, the first column (on the left) contains speaker labels. The second column contains a transcript of all recorded utterances in whatever language(s) they occurred. The third column contains the translation into English of the utterances in column two. (Appendix 1 contains a sample of the three-column format.)

[Note: In some districts, preferred practice is to display the English translation in column two and the original language in column three. This is easily accomplished with the "table" function, which permits entire columns to be copied, separately spellchecked, then moved or pasted wherever needed.]

Although at present some law enforcement and prosecutors' offices produce only an English-language translation without an original-language transcript, such practice can easily lead to confusion and error (especially if silences or unintelligible portions make it impossible to locate the original words), leaving the evidence vulnerable to challenge. A transcript of all original discourse together with its translation into English, visible in a side-by-side format, makes it possible to efficiently resolve any challenge to the translation without a need to search through a recording to locate the original utterance in order to compare it to the translation.

An accurate transcript of all foreign-language content is essential because a defendant has the right to confront the evidence and participate in his own defense. By having access to the transcript and the recording from which it was derived, a non-English-speaking defendant can

determine whether the transcript accurately corresponds to the recording, even though he may not be in a position to evaluate the accuracy of the translation.

■ **All audible content must be transcribed, unless it is unintelligible.**

Translators have an obligation to provide an accurate and complete rendering of what they hear. The transcript must be faithful and impartial, including hesitations, false starts, truncated words, repetitions, mispronunciations, background conversations, and side conversations. The translator cannot add, omit, or edit content. Simultaneous or overlapping utterances also must be transcribed.

To produce a faithful transcript, the translator must listen to the source recording in its entirety at least once to grasp the overall tenor of the conversation. Next, using foot-activated transcription equipment or software keyboard control, the translator begins to write down every word, syllable, or sound heard on the recording. Additional, repeated listening to particularly difficult segments is necessary to discern individual utterances until meaning becomes more comprehensible. Different combinations of auditory conditions and techniques must be explored — e.g., modifying volume, tone, speed, and equalizer (EQ) adjustments; changing one's relative distance from the source; using alternative reproduction equipment or software; listening at different times of day or after a rest period; and listening while driving or performing other tasks. These techniques in cumulative fashion contribute to maximum comprehension of the perceived sounds. A final review is done by playing the tape at normal speed with standard EQ settings to avoid any distortion. The translator must learn to gauge when he or she has reached the point at which little additional meaningful content can be gleaned with the expenditure of more time.

Not everything in a forensic recording is comprehensible speech. A recording may also contain interruptions, silences, pauses, background noises (such as radios, television, children playing or crying, static, or street sounds); as well as unintelligible speech or utterances that are incomprehensible, but which can be phonetically reproduced. Every sound or prolonged lack of sound must be accounted for in a forensic transcript. This is accomplished by using consistent, clear, standardized abbreviations which are listed on the transcript cover page. (See Appendix 1.)

■ **To ensure accuracy and completeness, non-verbal content is accounted for if necessary.**

Juries are frequently instructed that the recording itself is the evidence, and the translated transcript is just an aid to understanding. Nevertheless, in some jurisdictions, a judge may decide that jurors are not permitted to listen to or view forensic recordings; instead, the translated transcript is admitted as evidence. If the original videotape will not be shown in court, it may be necessary to include in the transcript general descriptions of visible gestures or occurrences. Such descriptions should be neutral, without additional qualifiers (e.g., “nods head” as opposed to “nods head affirmatively”). If the videotape itself will be shown, no visual content cues need be included in the transcript.

■ **Speakers are represented by standard markers.**

In creating a transcript, one of the translator's primary tasks is to distinguish among different voices. A transcript would be of very little use if it consisted of continuous speech with no voice differentiation. The translator makes a careful attempt to distinguish all voices.

A client may request that the translator identify voices by noting the individuals' names in the speaker column; however, generally a translator is not present during the recording and is not an expert in voice recognition. The science of voice recognition or voice identification is a separate, sophisticated field of expertise based on aural and spectrographic analysis by a trained examiner.

Standard practice is for translators to separate and label voices, distinguished by gender and order of appearance. Customary designations are “MV” (male voice) or “UM” (unidentified male); and “FV” (female voice) or “UF” (unidentified female), followed by a number indicating the voice's sequential appearance in the recording (MV1, MV2, MV3). Such markers are listed as abbreviations on the first page of the transcript. If the translator has a doubt regarding voice or gender, an indefinite label such as “UV” (unidentifiable voice) may be used, with a disclaimer on the transcript cover page, such as “*Speaker labels represent the translator's best effort to differentiate voices.*”

If a client demands that a transcript reflect speakers' names or descriptions other than as above, the translator should note on the transcript cover page “*Voice*

attributions herein were provided by someone other than the translator.” If the number of different voices is so great that numerical designations would cause considerable confusion for the reader, the translator may consider other means of indicating different speakers. Those choices should be explained and defined in a translator’s note on the transcript cover page.

Translation of the Transcript:

■ **All foreign-language content is translated. Any English-language content in the original is maintained and identified as such in the transcript.**

The translation process begins after the transcript is complete and finalized. The translation should: (1) be accurate and complete; (2) be natural and idiomatic, where appropriate; and (3) faithfully reflect the register, style, and tone of the original. Conversational, impromptu speech is typically rich in regional variations, slang, idioms, and culturally-bound language which varies among socio-cultural groups. For an accurate translation, consultation with colleagues and in-depth searching through Internet sources and specialized dictionaries or glossaries may be required. The translation should always be finalized while listening to the original audio source, since intonation and non-verbal cues affect a translator’s understanding and choice of words.

After the translation is finished, it should be reviewed at least once more to: (1) verify that all final changes have been incorporated, and (2) check for consistency in terminology, labels, symbols, notes, and abbreviations.

Any speech originally uttered in English is reflected in the translation, in the same sequence as it occurred in the conversation. English-language original utterance is distinguished from translated text by a different font, either italics or underlining. The chosen method should be indicated in a translator’s note at the top of the column or in the list of abbreviations on the cover page. (See the sample in Appendix 1.)

■ **Terminology research is documented for future reference in case it is needed for expert testimony.**

Time between project inception and the introduction of a transcript at trial can run into months or years. It is critical for a translator to keep clear notes of procedures used and sources consulted for each transcript so that information and references can be easily accessed in preparation for expert testimony. Clients should allow

translators to refresh their memories and review a work product before testifying, so that it can be accurately and appropriately defended.

The final product:

■ **With the client’s permission, the translator may consult with others in the process of finalizing the transcript.**

It is the translator’s responsibility to use best judgment in completing the assignment. However, feedback may be considered and carefully evaluated. Persons with intimate knowledge of the language or the case may provide details that further assist the translator in comprehending distorted sound or ambiguous utterances. It should be understood, however, that the translator can include in the final product **only what he or she actually hears** in the source recording.

■ **The translator must maintain the chain of custody of the work product and source material(s).**

Just as chain of custody is maintained for other evidence, a translated transcript has the same requirements. Observing a strict chain of custody will ensure that when a translator is shown a transcript and the accompanying source media, s/he will readily be able to identify the document as his or her work, and the media as the source from which it was generated. Both should bear the translator’s identifying marks and the date of submission. If recordings and work products are submitted to a court electronically, the client should verify with the translator that the materials are, in fact, the same as those used to create the transcript.

Conclusion

The aforementioned practices are designed to guarantee an accurate work product that can withstand the rigors of the adversarial system. However, transcript translation remains an area that is not uniformly regulated in courts nationwide. It falls to the translator to develop expertise, implement ethical practices, and educate all those involved in the process. Tape transcription and translation should be done in accordance with the same professional and ethical standards established for court interpreting, in addition to the standards and protocols outlined in this position paper. Further materials will be made available in NAJIT’s Translation and Transcription Manual, currently in development.

Appendix 1

FILE NAME.doc

SAMPLE TRANSCRIPT

(Three-column Format)

Tape No:

Call No.:

Date:

Time:

Participants: [information filled in by prosecutor]

ABBREVIATIONS

MV1 = Male voice 1 [Voz masculina 1]

MV2 = Male voice 2 [Voz masculina 2]

FV = Female voice [Voz femenina]

[U/I] = Unintelligible [I/I] = Ininteligible

[PH] = Phonetic [F] = Fonético

[xx] Translator's notes [Anotaciones del traductor]

Italics = Originally spoken in English [En inglés en la versión original]

	Speaker	Transcription	Translation
		[principio de la grabación]	[beginning of recording]
		[suena el teléfono]	[telephone rings]
1	MV1:	Bueno. ¿Pancho?	Hello. Pancho?
2	MV2:	Ey, soy yo. Vente rápido a Nolasvil	Yeah. It's me. Come quick to Nolasveel [PH] and
3		[F] y tráete al Burro contigo. [I/I].	bring the Burro with you. [U/I].
4	MV1:	Ándale, pues. <i>Hurry up.</i>	Okay, then. <i>Hurry up.</i>
5	FV:	[Al fondo] Está loco Juan. [I/I].	[In background] Juan is crazy. [U/I].
6	MV2:	[I/I]. <i>Bye.</i>	[U/I]. <i>Bye.</i>
		[Fin de la grabación]	[End of recording]

Certification

I, {Translator's Name} certified by _____ for Spanish-English court interpreting {No. XX - XXX} [or: licensed by _____ {No. XXX}] hereby declare that the ____ page document identified as [File Name] is a true and correct transcript and Spanish to English translation of the original recording provided to me. The transcript and translation are accurate to the best of my knowledge and belief. I further certify that I am neither counsel for, related to, nor employed by any of the parties. I have no financial or other interest in the outcome of any action related to this translation.

{Translator's Name}

State, County

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Note: All interpreters who contributed to this position paper hold either federal or state certification.

Additional reference: “Onsite Simultaneous Interpretation of a Sound File is Not Recommended,” NAJIT position paper, available at www.najit.org.

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