



POSITION PAPER
GENERAL GUIDELINES AND REQUIREMENTS FOR
TRANSCRIPTION TRANSLATION IN A LEGAL SETTING
FOR USERS AND PRACTITIONERS

INTRODUCTION

Foreign language recordings are often part of the evidence in criminal proceedings. Recordings may be audio or video, analog or digital, and reflect the speech of limited or non-English speaking individuals.

To ensure faithfulness and neutrality, the contents of the recording are transcribed verbatim by a forensic transcription expert (hereinafter TTE) charged with the task of rendering in written form every element of speech captured on the recording, including, but not limited to, repetitions, false starts, syntactic and/or semantic errors in speech, background conversations and noise, overlapping and unintelligible speech. This step is followed by a conceptually verbatim translation into English (Cordero-Esquivel & Cordero, 2009; Gonzalez, 1987b; Gonzalez, Vasquez, & Mikkelsen, 1991). This work is normally carried out at the behest of the court, prosecution, defense, or a law enforcement agency.

To have probative value when introduced as evidence in a legal proceeding or as an aid for the jury, a legally equivalent transcription translation of the original recording must be produced. This position paper sets out the requirements that NAJIT deems indispensable to ensure the production of a professional forensic transcription translation of a recording.

[Note: An interpreter or language expert should not render a simultaneous interpretation of a forensic recording on the spot in any legal proceeding. Please see NAJIT's position paper: *Onsite Simultaneous Interpretation of a Sound File is Not Recommended*, available at www.najit.org.)]

The goal of this paper is to provide clear guidelines for the language experts (TTEs) who prepare forensic transcription translations (TTs), as well as the parties (the client) who request these services.

QUALIFICATIONS OF THE TRANSCRIPTION TRANSLATION EXPERT

Transcription/translation is a hybrid of court interpreting and legal translation, requiring the TTE to have command of skills essential to both areas. The TTE is tasked with transforming an oral message into a written equivalent, accurately capturing all aspects of speech including tone, register, and intent. The TTE must not only be highly proficient in the standard usage of the source and target languages (SL and TL), but also have a strong knowledge of varying social and regional characteristics of those languages. These elements must be accurately represented orthographically. Not all interpreters are adept at transforming the spoken word into written text with the accuracy required in the legal setting.

By the same token, professional translators may lack the training to accurately transform live recorded extemporaneous speech into written form. Translators may also not be familiar with non-standard usage and jargon, as well as not being accustomed to documenting the errors and misspeaks that often color the speech of individuals with limited or no formal education. Consequently, not all translators can successfully render an authentic and accurate forensic transcription translation. Hence, the hybrid nature of this specialty.

Credentials of the Transcription/Translation Expert

A credentialed TTE (interpreter or translator) is required for legal transcription/translation work, as prescribed by the National Center for State Courts:

“Appointment of credentialed language service providers: Adopt appropriate legally binding rules, policies and procedures to **require the use of credentialed language service providers** for all court proceedings, the translation of court documents, and the **translation/transcription of audio and video recordings.**”

The TTE should be required to present certifications in interpreting and/or translation. When representing credentials, a TTE must specify the certifying authority.

As of this writing, 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 TTE to detail their experience performing transcription/translation work, as well as experience testifying as an expert witness. The TTE should provide references on request.

Existing Certifications

In the United States, translators and interpreters may be granted nationally recognized certification by several entities.

Translators:

The American Translators Association (ATA). (Offers general translation certification in various language combinations.)

Court interpreters:

- Administrative Office of the U.S. Courts, (Certification may be achieved by passing the Federal Court Interpreter Certification Examination)
- State Interpreter Certification (Certification may be achieved at the state level by passing tests developed in different languages by the National Center for State Courts. Tests are offered by individual states.)

THE ASSIGNMENT

Identifying task requirements and potential issues

A TTE must first ascertain what the task entails and whether any conflict or impediment exists, be it technical or ethical. The TTE needs the best quality copy of the recorded material available, while the **client retains the original recording** a customary chain of custody procedure. Transcription/translation may be done at a client’s specific location, but translators and clients can easily work via fax, Internet, and e-mail as well.

It takes considerable time and effort to review

and analyze a recording and the client should be prepared for this to be reflected in the final cost.

The TTE should be provided with the best quality audio available from the start. It should be clear to the TTE what the client wishes to be done regarding the transcription/translation. A client may desire a draft or summary of the contents of the sound file for informational purposes only, and will later decide whether a complete, certified transcription/translation is needed. When providing a draft of the information on the recording, the TTE must make the client aware that the draft will be identified as such, and that it is not a final product for use in court. In the case of a summary being requested, the TTE must advise the client that producing a summary calls for the TTE to make a judgement call as to what constitutes important information and what does not. This lies outside the TTE's area of expertise.

Evaluating the complexity of the assignment

Time: The TTE reviews the audio or video recording to determine audio and/or visual quality, the amount of actual recorded speech (noting long periods of noise or silences), the number of speakers distinguishable on the recording, as well as the speed, characteristics, and complexity of discourse. This preliminary evaluation will allow the TTE to calculate the time needed to complete the project and determine whether the client's deadline is realistic. Additionally, the TTE must ascertain if the work can be performed by one TTE or if a team approach is necessary.

Given that unforeseen problems may arise with equipment, audibility, visibility, or intelligibility, a cushion of time should be built

into the final time estimate quoted the client.

Cost: The industry rule-of-thumb is that one minute of recording is estimated to require one hour of work. Depending on the complexity or poor quality of the recording, performing the work could require even more time. On the other hand, if the recording is clear and simple, the work may take considerably less time in the hands of an experienced TTE.

The actual time needed to complete the task will depend on sound quality, the number of speakers, overlapping speech or background noises, dead air, and the languages involved (languages of lesser diffusion may prove more costly due to a limited number of practitioners able to perform the work and/or the challenges of transcribing the languages themselves).

Time estimates reflect time needed for the TTE to do the transcription/translation, conduct research as needed, edit, proofread, and format the final document.

The TTE should perform the work in the most cost-effective manner. The client is billed for actual time worked.

Cognitive and physical demands: Forensic transcription/translation is a painstaking, complex task that places many cognitive and physical demands on the TTE. Consequently, the TTE cannot maintain the level of concentration and auditory sharpness that is required by the transcription/translation task, continuously and for extended periods of time.

Estimated delivery times should reflect inclusion of regular periodic breaks to allow the TTE to maintain the cognitive and intellectual sharpness needed to produce an accurate

forensic transcription/translation with probative value. Making every effort to utilize time effectively, the TTE may shift tasks (researching, formatting, proofreading, etc.) to allow some distance from the actual transcription/translation work.

Accepting the assignment

Having considered the full scope of the project as previously described, the TTE may formally accept the project.

The TTE and the client agree on a fee to be paid in a timely fashion, the time of delivery and any other pertinent conditions.

There should be an explicit agreement in writing between the client and the TTE, whether it be in the form of a formal contract or through email exchanges. In either case, among the items to be documented as constituting the agreement are the agreed fee to be paid in a timely manner, a full description of the project, due dates, rate of pay, estimated number of hours authorized, and where and in what format should the final product be delivered. Having everything laid out and explicitly confirmed serves to eliminate surprises and misunderstandings in the future.

Subsequently, there may be less formal communications regarding the progress of the work.

Additional skills and knowledge

As previously discussed, transcription/translation is a hybrid specialty. In addition to having a thorough command of the different registers, regional variations, and other sociolinguistic information of the working languages, the TTE should also

possess some additional attributes:

- Acute hearing
- Excellent writing skills in both English and the source language
- Good analytic and problem-solving skills
- Eye and ear for detail
- Good research skills
- A thorough understanding of accepted transcription and translation protocols and practices
- Prior experience in transcription and translation
- Ability to work well under pressure and meet demanding deadlines
- Experience testifying in court as an expert witness;
- Good working knowledge of pertinent software
- Ability to remain neutral and adhere to ethical standards at all times

REQUIRED TOOLS AND TECHNOLOGY

Technological advances occur constantly and have an impact on the transcription/translation process. The trend is toward digital video or audio source files, though, occasionally, a TTE may 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)
- transcription software to allow control over the recording without alteration
- USB or serial foot-pedal and transcription software
- multiple headphones with independent volume and tone controls

- foot-activated standard and micro-cassette tape transcribers with variable speed and tone control and meter functions;
- video player, preferably foot-activated; video playing software may be preferable
- equipment/software to transfer the sound portion of a video file to audio CD or DVD media, or digital file
- CD players and audio receivers with multiple sound controls;
- high fidelity equalizers and filtering equipment;
- high quality computer-driven speaker system
- software for audio playback and conversion and filtering of source files;
- other listening alternatives (e.g., portable cassette, CD player, car sound system);
- monolingual and bilingual reference materials, such as dictionaries and subject-area glossaries
- Internet access for terminology research.

PROFESSIONAL RESPONSIBILITIES OF THE TRANSCRIPTION/TRANSLATION EXPERT

Divulging any prior contact with the case, whether direct or indirect

The TTE has an ethical obligation to inform the client, the Court, and the opposing party of any prior services provided in connection with the case requiring transcription/translation work. Thus, the probative value of the transcription/translation will not be jeopardized by any possible conflict of interest or appearance of impropriety. It may be necessary to offer such disclosures outside of open court to protect any ongoing

investigation.

The TTE must strive for professional independence and neutrality at all times.

THE TTE AS EXPERT WITNESS

Fed.R.Evid. 702 – Testimony by Expert Witnesses

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

(a) the expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;

(b) the testimony is based on sufficient facts or data;

(c) the testimony is the product of reliable principles and methods; and

(d) the expert has reliably applied the principles and methods to the facts of the case

The TTE must bear in mind their potential role as an expert witness. All the rules and regulations applicable to expert witnesses apply to the TTE.

THE TTE AS INTERPRETER?

A language expert involved in providing transcription/translation services in a case is precluded from providing interpreting services during courtroom proceedings, given that they may have to take the stand as an expert witness.

Were this to occur, they would then be part of the adversarial process and their neutrality as both interpreter and TTE would be compromised. There are rare occasions where unforeseen circumstances have resulted in the Court, after consulting with the parties, allowing a TTE to provide interpreting services in a trial after duly considering the rules that apply to the presence of witnesses in the courtroom. Such instances are, by far, the exception and not the rule.

The TTE takes the stand

If called to take the stand as an expert witness, the TTE should provide the client with an up-to-date résumé detailing their professional background including proficiency in the source and target languages, formal training, prior experience in transcription/translation, and professional certifications. In the absence of formal standards or specific certification in transcription/translation, professional credentials and experience serve to qualify the TTE as an expert. Ultimately, it is the judge who decides if a witness qualifies as an expert.

The TTE is ethically bound to keep all information acquired in the course of professional activity in the strictest confidence

Should the TTE need to consult with colleagues during a project, no information regarding the identity of the parties or the exact nature of the case should be disclosed.

The TTE maintains the highest level of objectivity possible during a transcription and translation project

Personal or political opinions must never affect

the TTE's work product or professional relationship with the client. NAJIT's code of ethics enshrines the canons of confidentiality, impartiality, and accuracy, among others, by which the TTE is expected to abide.

A TTE must maintain an attitude of professional independence and neutrality. To ensure independence and neutrality the TTE should feel confident that the resulting evidentiary product would remain unchanged were they to be contracted by the opposing party. A contractual relationship with a party to a case does not authorize a TTE to tailor the evidentiary product to the strategic needs of the contracting party. It is the duty of all TTEs to understand and observe the limits of their role in the legal process, and to educate the client in this regard.

THE TRANSCRIPTION/TRANSLATION MUST MEET GENERALLY ACCEPTED STANDARDS OF THE PROFESSION

The TTE transcribes the recorded audio using a three-column format (with or without gridlines). Lines and pages should be numbered, and some experts (Gonzalez (2012)) recommend the addition of a fourth column specifically for line numbers. This standard format allows an easy side-by-side comparison of the original statements and the translation.

The transcription must accurately reflect the original SL conversation on the recording. The transcription should be accompanied by a key that will help the reader understand the linguistic and sociolinguistic shifts and changes represented in the transcription. Editorial notes may be included (when necessary) to explain or justify the translation

of certain utterances. Whenever possible, the general practice is to include such information as a footnote or endnote.

These elements must be present in the transcription/translation for it to be a truly accurate representation of what is on the recording. The importance of producing an accurate transcript of the full content of a forensic recording cannot be overemphasized.

When using the three-column format, the first column (on the left) is reserved for speaker identification. The second column contains the transcribed SL utterances, and the third column contains the English translation of the utterances transcribed in column two. (Appendix 1 contains a sample of the three-column format.)

There are significant benefits to using this format to present the original SL conversation side-by-side with the English translation. First, it allows for immediate comparison of the translation to the transcription without having to search through the entire recording to locate any utterance called into question. Second, any discrepancy between the transcription and the translation is more easily apparent. Third, it allows the defendant to review the accuracy of the transcription upon which the English translation is based. This methodology is also in compliance with the best evidence rule (Article 10, Rule 1002) of the *Federal Rules of Evidence*, that requires an original document, recording, photograph, or other piece of evidence be introduced to the court to prove the contents of that same item.

Once the transcription/translation has been completed, the TTE should take measures to prevent it from being altered in any way without

the knowledge and consent of the TTE. Best practice would be to submit the document as a protected PDF or in another “read only” format, thus facilitating clear identification of the original. In instances where an excerpt from a bilingual transcription/translation is being submitted as evidence before the court, the TTE should review transcription/translation excerpt to ensure its accuracy and confirm that it is the original work submitted by the TTE.

All recorded content must be accounted for in the transcription, including unintelligible utterances

The TTE must produce a faithful and impartial transcription that reflects everything that can be heard on the recording, including hesitations, false starts, truncated words, repetitions, mispronunciations, overlapping speech, and background conversations. It is not for the TTE to add, omit, or edit content.

The TTE must listen to the SL recording in its entirety to grasp the tenor of the conversation prior to beginning the transcription. Using transcription software in combination with a foot-pedal will allow the TTE to progress more efficiently in transcribing every sound captured on the recording. Often there are particularly difficult segments in a recording that require repeated listening before the TTE perceives any meaning. When working with difficult passages in a recording, the TTE can apply different approaches to discern what is really being said, e.g., modifying volume, tone, speed, and adjusting equalizer (EQ) settings; working with different software; and even stepping away from the task at hand for a brief period before continuing with the painstaking work.

Not everything on a forensic recording is clear

orderly speech. Perceiving what is actually being said very often requires repeated multiple replays the recording. The number of times a passage is listened to is at the discretion of the TTE.

A recording often contains 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 orthographically reproduced. Every sound or prolonged absence of sound is accounted for in a forensic transcription, using consistent, clear, and standardized abbreviations listed on the key that accompanies the transcription. (See Appendix 1.)

The TTE must determine when they have reached the point where little additional meaningful content will be gleaned from repeated listening of the recording. Once this occurs, the TTE does a final review by playing the tape at normal speed with standard EQ settings to avoid any distortion.

When working with recordings of particularly poor sound quality, it often happens that listening to the recording, again, at a later date will reveal what was previously unclear.

Inclusion of non-verbal communication

When the source of the transcription is a video recording, it is critical that it be prepared while viewing the video to allow for a written description of non-verbal cues. Such descriptions should be rendered using neutral language and without qualifiers (e.g., “raises hand” as opposed to “raises hand to ask question”). Gestures such as up and down or side to side head movements, or any other non-

verbal communication that significantly affects verbal communication should be annotated in the transcription and the translation. As previously mentioned, the TTE is limited to neutrally describing the non-verbal cue without offering any interpretation of the gesture or movement.

While every effort should be made to annotate non-verbal communication, it is unrealistic to expect a written transcription to accurately depict every physical movement a person makes when involved in verbal exchanges with others.

If the video is going to be played for the jury, markers may be useful to determine which words were said at which point of the video, or simply to make sure that the transcription/translation lines up with what is seen in the video.

There is video technology available that allows presenting the translation of what is being said on the recording with subtitles, and some clients insist on it. Subtitles are perfectly acceptable, but they should not take the place of a conventionally written transcription/translation on paper.

If subtitles are used, the TTE will have to review and sign off on the accuracy of the subtitles to satisfy chain of custody issues.

Distinguishing the different speakers on a recording

The TTE is responsible for distinguishing between the different speakers on a recording to the best of the TTE’s ability, not identifying who they are.

Generally, the TTE is not present during the

making of the recording. The TTE is also not an expert in voice recognition which is a separate area of expertise requiring specialized training and equipment. Consequently, the TTE is not qualified to perform voice identification. If a client insists that the TTE identify voices by denoting them in the speaker column according to voice attributions provided by the client, the TTE should indicate in writing on the transcription cover page that voice attributions were provided by someone other than the TTE.

The accepted professional standard is that the TTE distinguish and label voices, according to gender and order of appearance. The customary designations are “MV” (male voice) or “UM” (unidentified male); and “FV” (female voice) or “UF” (unidentified female). These designations are sometimes followed by a number indicating the order of appearance of the different voices (MV1, MV2, MV3) if who is speaking is clear to the TTE. If the TTE is unable to determine which interlocutor is actually speaking at any point during the conversation, they should use the “MV or FV” designations. Should the TTE have doubts regarding a voice or gender, a non-specific label such as “UV” (unidentifiable voice) may be used, with a disclaimer on the transcript cover page, such as *“Speaker labels represent the TTE’s best effort to differentiate voices.”*

These markers appear on the first page of the transcription. Explanations or definitions of designations be provided in a translator’s note on the transcript cover page.

THE TRANSLATION IS PREPARED IN ACCORDANCE WITH EXPERT PRINCIPLES AND METHODOLOGIES

The translation process begins after the transcript has been completed and finalized. The

translation should be an accurate and faithful reflection of the transcription of the recording, and must precisely duplicate the register, style, and tone of the original.

Extemporaneous speech is typically rich in regional variations, slang, idioms, and culturally-bound language which may vary among different socio-economic groups. An accurate, unaltered, and complete translation often requires consulting with colleagues and carrying out detailed research using Internet resources and specialized dictionaries or glossaries. The translation should be finalized while listening or watching the original audio source, since intonation and non-verbal cues can significantly color the perception of the message and the words chosen by the TTE to convey it.

Upon completion, the translation should be reviewed one final time to verify that all final changes have been incorporated, and confirm consistency in terminology, labels, symbols, notes, and abbreviations.

Recorded foreign-language content is translated, while recorded English is preserved in the transcription

Utterances in English are preserved in the translation, just as they occurred in the conversation. English-language utterances may be distinguished from translated text by the use of a different font (italics) or by underscoring the text. Whichever approach is adopted, it should be indicated with a translator’s note at the foot of the page or in the key of abbreviations accompanying the transcription/translation. (See the sample in Appendix 1.)

Tracking terminology research for future reference

The time between a project's inception and the introduction of a transcription/translation at a trial can run from months to years. The TTE should be painstaking and thorough in documenting their procedures and the sources consulted when researching difficult or non-standard usage or terminology for a transcription/translation project. The information should be cross-referenced and be easily accessible should it be required for expert testimony. Keeping a running glossary is recommended both as a documentation tool and as a way to maintain consistency throughout the translation. Glossaries take on particular importance when the work is being carried out by a team of TTEs.

Clients should allow a TTE to refresh their memory of the work product by reviewing it prior to testifying, so that decisions made by the TTE can be adequately explained and supported.

Consulting with others during the final phase of the project

With the prior approval of the client, the TTE may feel it is useful to consult with individuals who have a more intimate knowledge of the language or the case, and who may be able to provide additional context to help the TTE understand distorted or ambiguous utterances.

Nevertheless, it should be absolutely clear that the information documented in the final transcription/translation should faithfully reflect **only what the TTE can actually hear** on the source language recording.

CONCLUSION

The aforementioned are best practices that should be followed to produce a valid forensic transcription/translation that can stand up to the rigorous scrutiny of the American adversarial system.

At this juncture, transcription/translation remains relatively unregulated throughout the country. It is the TTE who must develop expertise, follow ethical practices, and persevere in educating those involved in the process.

The same professional and ethical standards that apply to court interpreting, should also apply to the hybrid specialty of forensic transcription/translation, in addition to the norms and protocols outlined in this position paper.

There are some aspects of transcription/translation that were either touched upon very briefly or not included in this document. Nevertheless, they do merit more in-depth study and are worthy of being the subject of future position papers.

SAMPLE TRANSCRIPTION/TRANSLATION INFORMATION PAGE
(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] = Fonética

TTE's note: [Anotaciones del experto en transcripción/traducción (ETT)] Provide information regarding context, meaning, and cultural factors

Italics= Utterance originally in English [Declaración articulada en inglés en la versión original]

//...// = Overlapping speech [Hablan a la vez]

Voices	Transcription	Translation
	[Principio de la grabación]	[Beginning of recording]
	[Suena el teléfono]	[Telephone rings]
MV1:	Bueno. ¿Pancho?	Hello. Pancho?
MV2:	Ey, soy yo. Vente rápido a Nolasvil [F] y tráete al Burro contigo. [I/I].	Hey, it's me. Come quick to Nolasveel [PH] and bring Burro with you. [U/I].
MV1:	Ándale, pues. <i>Hurry up.</i>	Okay, then. <i>Hurry up.</i>
FV:	[Al fondo] Está loco Juan. [I/I].	[In background] Juan is crazy. [U/I].
MV2:	[I/I]. <i>Bye.</i>	[U/I]. <i>Bye.</i>
	[Fin de la grabación]	[End of recording]

Certification

I, {TTE's Name}, certified by _____ for Spanish-English court interpreting or licensed by _____, do hereby declare that the _____ page document identified as {File Name}, is a true and correct transcription and Spanish to English translation of the original _____ {duration} recording provided to me. The transcription and translation are accurate to the best of my knowledge and ability.

[TTE's Name]

State, County

*The number of columns will ultimately be determined by the TTE in keeping with task needs.

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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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