



BEST PRACTICES FOR RECORDED EVIDENCE IN A NON-ENGLISH LANGUAGE

1. Recorded Evidence in a Non-English Language

At times, one side will attempt to introduce audio or video-taped evidence during a court proceeding involving a Limited English Proficient (LEP) speaker that is in a non-English language without the benefit of a translation. Examples may include 911 emergency calls, voice messages, or video-taped police interrogations conducted by bilingual officers. The proponent of the evidence may ask the court to direct the onsite interpreter to interpret the non-English recording into English for the record instantaneously instead of producing a translation.

What are the problems with this practice?

Interpreting on the spot or extemporizing in court is different from interpreting for a live speaker. Due to certain qualities associated with this form of evidence and the lack of opportunity to prepare adequately, it is difficult for the interpreter who is asked to produce an instantaneous interpretation to carry out his/her duties.

Format of the evidence

Common characteristics with this type of evidence that may prevent an interpreter from rendering an accurate and complete interpretation instantaneously include:

- Poor quality of the recording
- Overlapping voices and sounds
- Unintelligible portions of the recording or high level of background noise
- Lack of opportunity to request clarification of a word or ambiguity

Without access to tools used to enhance the sound quality or the time to research an ambiguous word or phrase, the interpreter may be forced to produce mediocre results thereby compromising his/her duty to render an accurate and complete interpretation.

Replaying the recording in front of fact-finder

Often when a translator transcribes a source, he/she must re-play sections repeatedly in order to understand the message. If an interpreter does this in front of a jury, it could be confusing to the jurors. Ordinarily, the standard unit of measure to produce a quality transcript/translation (T/T) is one hour of work per minute of sound.

Neutrality of the interpreter is compromised

The interpreter works for the court and should be seen as an extension of the court. Requiring the interpreter to provide an interpretation of evidence introduced by a particular side aligns him/her to that particular side.

Interpreter as potential witness

The interpreter who is asked to provide an instantaneous interpretation may be called as a witness to explain or defend the interpretation therefore compromising his/her duty to be objective.



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What is the Recommended Practice?

The court should not ask an interpreter to render an instantaneous interpretation and should explain to the attorney(s) and/or parties why this task is inappropriate for the court interpreter to carry out. The recommended practice is for the moving party to produce a forensic T/T of the non-English recorded evidence prior to submitting it to the court in accordance with Wis. Stat. §901.09.¹ Transcription/translation is a specialized discipline which employs knowledge of the T/T process, access to the proper tools, and the time to produce a quality product. A sample T/T is provided below so the court is familiar with the general format and items it would include.

If the situation involves an emergency circumstance such as a Temporary Restraining Order (TRO), the court may require the LEP party to testify as to what is said being said on the recording and have the testimony interpreted by the court interpreter for the record.

Sample Transcript – Spanish (Three-Column Format)

FILE NAME.doc

Tape No.:

Call No.:

Date:

Time:

Participants: [Information filled in by DA]

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 las versión original]

	Speaker	Transcription	Translation
		[principio de la grabación]	[beginning of recording]
		[suena el teléfono]	[telephone rings]
1	MV1:	Bueno, ¿Pancho?	Hello. Pancho?

¹Wis. Stat. §901.09 Submission of writings; languages other than English, Comment Section.

The better practice when offering such evidence is for a party to offer a written transcript of the recording, to aid the jury or the court in understanding the recording. Sometimes the transcript is received as evidence, but not always, and in any event the recording is considered primary and the transcript merely an aid. If a party offers in evidence a recording accompanied by a transcript, this rule governs the transcript.

Resources:

“General Guidelines and Minimum Requirements for Transcript Translation in any Legal Setting,” NAJIT Position Paper (2009)

“Onsite Translation of a Sound File is not Recommended” NAJIT Position Paper (2006)



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2	MV2:	Ey, soy yo. Vente rápido a Nolasvil [F] y tráete al Burro contigo. [I/I]	Yeah, it's me. Come quick to Nolasveel [PH] and bring Burro/the donkey with you [U/I]
3			
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

Best Practice:

Court Interpreters assigned to interpret during a given proceeding **shall not** be used as expert witnesses to evaluate, during that proceeding, the quality of a previously completed interpretation or translation provided for audio, video or written material originally in a language other than English. The party wishing to question or evaluate the quality of an interpretation or translation for the record shall arrange for a qualified individual to serve as an expert witness during the proceeding.

2. Recorded Evidence in English

Audio and video files recorded in English that will be played in open court for a case involving a Limited English Proficiency (LEP) party or juror should be reviewed by the interpreter(s) who will be providing language services for that hearing prior to the proceeding in chambers.

Court interpreters assigned to a given proceeding shall inform the judge if they are unable to provide an on-site interpretation of audio or video recordings, or sight translations of written documents in English. This can be due to:

- Length of material
- Quality of recording or legibility of written document
- Number of speakers or signers
- Variety of accents or regional variations
- Sufficiency of contextual information
- Degree of deviation from standard forms of language
- Level of audio or video intrusions and distractions
- Degree of technicality or specialization of vocabulary and content

Best Practice:

Provide a transcript whenever possible. Always allow the interpreter to become familiar with recorded evidence and let the interpreter(s) make a determination whether an impediment to performance exists if no transcript is provided.



3. Sight Translation of Text Messages or Social Media Posts

Sight translation is a hybrid mode that requires the interpreter to render the contents of a written document orally. Usually, interpreters are required to use this mode of interpretation when dealing with legal documents written in English or the non-English language that are generally long and formal in nature. Interpreters are advised to take some time to read and understand the written document first and then interpret it. In addition, interpreters may be required to sight translate letters written in the non-English language into English. However, a new level of complexity is introduced when an interpreter is asked to sight translate text messages or social media posts. These messages pose a real challenge because they often lack context, are frequently interspersed with sarcasm, foul language, disguised threats, and do not conform to standard syntax. They are regularly misspelled, and they contain a lot of acronyms that require a solid knowledge of the culture of the individuals involved in the communication.

Best Practice:

Text messages and social media posts are extremely difficult to sight translate despite their apparent simplicity. Therefore, the court interpreter should not be asked to sight translate them; instead, the party introducing the texts and media posts on the record should provide a certified translation.

Payment of Translations:

Refer to Wis. Statute 901.09(03) for translations **from a non-English language into English**. Keep in mind this statute applies to situations where the evidence introduced is originally written in a language other than English.

Wis. Statute 901.09(3) Submissions of Writings in Languages other than English:

The court may require a party offering into evidence a translation under [sub. \(1\)](#) or an alternative translation ordered by the court under [sub. \(2\)](#) to bear the cost of the translation.

Translations can be secured by utilizing the Department of Administration contract:

<https://vendornet.wi.gov/Contract.aspx?id=bdd88642-437b-ef11-9058-00505684483d>

Questions?

Contact the Wisconsin Court Interpreter Program:

Alexandra Wirth

Alexandra.wirth@wicourts.gov

608-266-8635

Office of Court Operations, Suite 410

110 East Main Street

Madison, WI 53703