

Wisconsin Court Interpreter Program Guidelines for Recorded Evidence and Limited English Proficiency

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 try to ask the court to direct the onsite interpreter to interpret the non-English recording into English for the record instantaneously, rather than appropriately producing a certified transcript and translation in preparation for the proceedings.

WHAT ARE THE PROBLEMS WITH THIS PRACTICE?

Listening to and understanding audio and video evidence presented in court is often difficult, if not impossible, even when such evidence is presented *in English*. It is due precisely to this difficulty that judges and juries are often given English-language written transcripts to guide them in their understanding of what is being said on an audio or video exhibit. An interpreter who is presented with a non-English language recording in court and directed to interpret it faces the same difficulty in understanding the audio or video that English-speakers do with English-language exhibits. If the interpreter is directed to interpret an audio or video exhibit during court proceedings, he/she cannot guarantee any level of accuracy in her rendition, and any such on-the-spot rendition should not be considered an official rendition.

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 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 will produce mediocre results thereby compromising his/her duty to render an accurate and complete interpretation.

Replaying the recording in front of the fact-finder

Often when a translator transcribes a source, he/she must re-play sections multiple times 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 is one hour of work per minute of sound.

Interpreter as potential witness

The interpreter who is asked to provide an instantaneous interpretation may find his/her interpretation challenged by the opposing party, and thus may be required to be called as an expert witness to explain or defend the interpretation. Generally, a language expert may not also interpret the courtroom proceedings, and therefore the interpreter would need to recuse himself/herself from the case at this point in order to avoid the appearance of conflict of interest or bias.

WHAT IS THE RECOMMENDED PRACTICE?**Non-English Language Evidence**

The court should refrain from asking the onsite 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 Transcription and Translation (T/T) of the non-English recorded evidence prior to submitting it to the court in accordance with Wis. Stat. §901.09.¹ During the pre-trial phase, it is recommended that the court inform parties and their attorneys of their duty to produce a T/T that should be made available to the court, jury, and onsite interpreters before the trial.

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 being stated on the recording and to have the testimony interpreted by the onsite interpreter for the record.

English-Language Evidence

If the court is requesting the onsite court interpreter to perform an instantaneous interpretation of English-language evidence that will be played in open court to the jury, the interpreters should be given an opportunity to listen to the recording in chambers to determine if they are able to do a competent job. If the interpreters determine they cannot render an accurate interpretation due to the reasons mentioned previously, the court should consider the interpreters' opinion and decide whether to continue or proceed with the case.

SAMPLE TRANSCRIPTION AND TRANSLATION: SPANISH (THREE-COLUMN FORMAT)

Transcription/translation (T/T) is a specialized discipline that employs knowledge of the 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.

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 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 [F] y	Yeah, it's me. Come quick to Nolasveel [PH]
3		traete al Burro contigo. [I/I]	and 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

ⁱ **Wis. 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.

Other 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)

"Court Interpreter Services Non-English Sound Recording Evidence Interpretation Guideline," and "Interpreting Concerns When the Court Interpreter is Asked to Interpret non-English Recorded Evidence into English" (Oct. 26, 2010 Memoranda), Oregon Judicial Department

"Guidelines for audio-recorded, video-recorded, or written materials in languages other than English" (July 26, 2016 Memorandum) New Mexico Administrative Office of the Courts Language Access Services