

2.8 Disputed Transcript of Recording in Foreign Language

You [are about to [hear] [watch]] [have [heard] [watched]] a recording in the [specify foreign language] language. A transcript of the recording has been admitted into evidence. The transcript is an English-language translation of the recording. The accuracy of the transcript is disputed in this case.

Whether a transcript is an accurate translation, in whole or in part, is for you to decide.

In considering whether a transcript accurately describes the words spoken in a conversation, you should consider the testimony presented to you regarding how, and by whom, the transcript was made. You may consider the knowledge, training, and experience of the translator, the audibility of the recording, as well as the nature of the conversation and the reasonableness of the translation in light of all the evidence in the case.

Although some of you may know the [specify foreign language] language, it is important that all jurors consider the same evidence. Therefore, you must not rely in any way on any knowledge you may have of the language spoken on the recording; your consideration of the transcript must be based on the evidence in the case.

Comment

This instruction is appropriate immediately before the jury hears a recorded conversation in a foreign language if the parties are unable to produce an official transcript or stipulate to a transcript; it may also be included in the concluding written instructions to the jury. The jury may consider evidence of bias and credibility as it relates to an interpreter and the interpreter's translation. *See, e.g., United States v. Abonce-Barrera*, 257 F.3d 959, 965 (9th Cir. 2001) (defense expert impeached the interpreter's credibility by testifying "that it was inadvisable to have a participant to a conversation transcribe and translate that conversation"). The court should encourage the parties to produce an official or stipulated transcript of the foreign language recording that satisfies all sides. *United States v. Cruz*, 765 F.2d 1020, 1023 (11th Cir. 1985); *United States v. Wilson*, 578 F.2d 67, 69-70 (5th Cir. 1978). If the parties are unable to do so, then they should submit competing translations of the disputed passages, and each side may submit evidence supporting the accuracy of its version or challenging the accuracy of the other side's version. *United States v. Franco*, 136 F.3d 622, 626 (9th Cir. 1998); *Cruz*, 765 F.2d at 1023; *Wilson*, 578 F.2d at 70. Regardless of whether the accuracy of the translated transcript is an issue, a juror cannot rely on any knowledge the juror may have of the foreign language spoken on the recording. *United States v. Fuentes-Montijo*, 68 F.3d 353, 355 (9th Cir. 1995).

The Ninth Circuit reviews the admissibility of foreign language transcriptions for abuse of discretion, based on the following factors: "(1) whether the district court reviewed

the transcriptions and translations for accuracy, (2) whether the defense counsel had the opportunity ‘to highlight alleged inaccuracies and to introduce alternative versions,’ and (3) whether ‘the jury was allowed to compare the transcript to the tape and hear counsel’s arguments as to the meaning of the conversations.’” *Abonce-Barrera*, 257 F.3d at 963 (quoting *United States v. Rrapi*, 175 F.3d 742, 746 (9th Cir. 1999)).

See Instruction 2.6 (Transcript of Recording in English); Instruction 2.7 (Transcript of Recording in Foreign Language); Instruction 2.9 (Foreign Language Testimony).

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