

2.7 Transcript of Recording in Foreign Language

You [are about to [hear][watch]] [have [heard][watched]] a recording in the [specify foreign language] language. Each of you [has been] [was] given a transcript of the recording that has been admitted into evidence. The transcript is an English-language translation of the recording.

Although some of you may know the [specify foreign language] language, it is important that all jurors consider the same evidence. The transcript is the evidence, not the foreign language spoken in the recording. Therefore, you must accept the English translation contained in the transcript and disregard any different meaning of the non-English words.

Comment

The Committee recommends giving this instruction immediately before the jury hears a recorded conversation in a foreign language if the accuracy of the translation is not in issue. As the court noted in *United States v. Franco*, 136 F.3d 622, 626 (9th Cir. 1998):

The district court also correctly held that the relation between tapes and transcripts changes when the tapes are in a foreign language. When tapes are in English, they normally constitute the actual evidence and transcripts are used only as aids to understanding the tapes; the jury is instructed that if the tape and transcript vary, the tape is controlling. *See United States v. Turner*, 528 F.2d 143, 167-68 (9th Cir. 1975). When the tape is in a foreign language, however, such an instruction is “not only nonsensical, it has the potential for harm where the jury includes bilingual jurors.” *United States v. Fuentes-Montijo*, 68 F.3d 352, 355-56 (9th Cir. 1995). We therefore have upheld a trial court’s instruction that a jury is not free to disagree with a translated transcript of tape recordings. *See id.*

For a discussion regarding unintelligible recordings, *see United States v. Rrapi*, 175 F.3d 742, 748 (9th Cir. 1999).

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