

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 [official] 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 where parties are unable to stipulate to a transcript. The court should encourage the parties to stipulate to a 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. *Cruz*, 765 F.2d at 1023; *Wilson*, 578; F.2d at 70; *United States v. Franco*, 136 F.3d 622, 626 (9th Cir. 1998).

Jurors should be instructed to rely only on the English translation, not on any knowledge they may have of the foreign language spoken on the recording. *United States v. Fuentes-Montijo*, 68 F.3d 353, 355 (9th Cir. 1995).

See also Instructions 1.12 (Jury to be Guided by English Translation/Interpretation); 2.6 (Transcript of Recording in English); 2.7 (Transcript of Recording in Foreign language); and 2.9 (Foreign Language Testimony).

Revised Mar. 2018