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FOREIGN LANGUAGE TAPE RECORdings as Potential Court Evidence: How to Ensure Quality & Admissibility

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ape recordings that are included as evidence can range from simple recorded statements for an insurance claim on a vehicular accident to the undercover recordings made on a body wire in a sting operation. The courts from civil to criminal are very accustomed to attorneys offering tape recordings as evidence. They are popular with attorneys because they are active as opposed to passive evidence. And if at all possible for them to be played at the trial, they make a more memorable impact on a jury than written exhibits ever could.

But a tape recording as evidence looses all of its appeal if the speakers are not speaking English and the tape has not been correctly transcribed and translated. More and more judges are throwing out tapes that are riddled with errors and omissions. And now, after so many experiences with poor work, litigators have caught on to how to challenge such a tape as inadmissible. The result is not only the loss of that specific evidence but if it was key (such as a confession) then the entire case can be thrown out. You will also have angry judges

who will take it out on the attorneys, who will then take it out on whoever hired the translator. If that is you ... you can loose your client.

In my more than twenty years in this profession I have translated hundreds of hours of tapes; both audio and video. I am often called to serve as an Expert Witness to verify or challenge the translation of tape transcripts. Every time I learn that the translator was not qualified before being hired, I can count on finding faulty work. Here are a few tips to follow that will help you eliminate the risks involved with translated tape recorded evidence. One is to know how to qualify a person for this kind of work. You also need to know what is involved in the translation of these kinds of tapes and then what you can and cannot expect as a final product.

The most demanding and difficult work

This type of work is the most difficult component of my field: legal interpreting (the spoken word) and translating (the written word). It is a complete myth to think that

just because a person can speak a language they can interpret much less do quality tape work. Tape work is done by translating and transcribing, but we actually combine both procedures and do them as one. So, essentially a legal interpreter has the best experience to do this work. This person needs years of experience of trials, hearings, depositions, sworn statements that are everyday work in judicial interpreting to be able to recognize the common, and the slang language used by a variety of people. Interrogations, confessions and even recorded sworn statements often include legal terminology that is unique. Omissions have strict legal implications that translators in other fields don't have to concern themselves with, so they actually can, will and do paraphrase or change what is originally said.

Advance preparation is key

Take a little time before a last minute need for a tape to be translated. Start a file of translators and

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interpreters, including their resumes, expertise, rates and terms A good source of professional interpreters is The American Translators Association. They have an online directory of interpreters and translators at: http://www.atanet.org/ tsdmain.htm, which lists members by specialization, experience and geographical location with addresses, phone numbers and e-mail addresses. Or you can look up professional translators in the yellow pages. Make sure to request that they submit a resume to you. Consider it a red flag if a translator does not have a resume to present; it demonstrates a lack of business expertise and discipline. Make tape work and legal experience your first priority. Check the references and ask about the basic elements such as were they on time and professional. Often interpreters provide continuos poor work without ever being stopped. Don't let agencies make a sweeping statement that qualifies all of their staff equally. Inform the candidate that you will expect them to provide the service and to not dole it out. Verify fees and rates and terms up front to avoid last minute surprises. An interpreter will and can hold the product for payment upon presentation if that was agreed to beforehand.

If you have a qualified candidate for tape transcription ask for a sample of the format in which they provide the transcript and make sure it is acceptable for your needs.

The Format

It is important that the printed product is clear and easy to follow or it will loose credibility. When presented to the judge or jury as an exhibit, more than likely only one section will need to be read but the whole transcript has to be admitted. You don't want the lawyer standing in court fumbling around trying to find that one section.

The format should be in transcript form and double-spaced. It should be printed on plain paper, and not on letterhead. Each page should be titled with the words "Tape Transcription and Translation" and further tape identification which can be the name of the investigator supplying the tape, the case style or cause number or however the investigator has identified the investigation. On each page the tape itself (if more than one) and the side of the tape should be identified, such as "Tape Three Side B." As a personal preference, I start a fresh page for each new conversation such as later times or dates

even if on the same tape. This is because each new conversation can be considered different evidence.

For simple recorded statements the transcript can identify the speaker and the investigator but it should be noted that these names were provided to the translator by said investigator. For tapes being submitted or considered for trial, I do not ever identify speakers on a tape by name. Translators and interpreters cannot know and prove up that a voice on a tape is a specific person. Many litigators today rely on voice experts to identify a person on a tape, and they will also use these people to challenge any stranger identifying their client based on hearsay. To avoid any possible misidentifications I prefer to list them as "Male Voice One," "Female Voice Two," and so on. I do not try to distinguish between child and adult.

The following terminology is used within the transcription to indicate that a word or group of words could not be identified and so transcribed. Even if a couple of syllables are missed from a word we are left with guessing or estimating what the person meant to say. This is not an option for a product

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which will come under the scrutiny of the court.

- (Inaudible) is used when words can not be heard. This can be due to sounds or noises that drown out the speaker for example, slamming doors, car horns honking, gun shots, anything crashing, explosions, squealing tires and sirens. It is also used when the tape recorder fails or cuts off temporarily. Speakers at a distance may not be heard although they will be responded to by other voices. It is also used when a speaker's voice trails off at the end of their sentence.
- → (Unintelligible) is used when words were spoken

but can not be specifically deciphered. Again, the inclination to suppose what the rest of the sentence was or what a person would say in such a circumstance is unacceptable. This can be caused by human sounds that interrupt or coincide with the spoken word such as coughing, sneezing, crying while talking, choking or gagging, screaming and mumbling. A body wiretap microphone can rub against clothing and muffle parts or complete words.

Mixed Language) This indicates that the sentence includes words spoken in English or even another secondary language. You

can request that these words be underlined to demonstrate the persons use of certain words in English.

How We Do This

The procedure is to listen to each sentence over and over again until what is said is clear to us. Sometimes even one or two words will have to be replayed before the rest of the sentence falls into place. We have to replay a section whenever a speaker talks really fast, when two or more people talk over each other or when they speak in whispers. Often whispering is ignored by transcriptionists, but if the volume can be turned up and the speed slowed down a whispered sentence can be understood. It is

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when two people are talking over each other as long as the two voices are distinguishable and if they are speaking at the same decibel level. It is actually harder to identify one word by itself than it is to decipher a group of words. People inflect more when speaking several words and they speak more clearly this way. It is advisable to provide a contact person who is familiar with the tape interview itself for any questions.

When time is not a factor, some people transcribe the tape directly in the foreign language and then translate the written transcript into English. Others, including myself, prefer to translate the audio into English directly while listening. Once completed the transcripts are proofread and printed up.

Here are the factors that affect our ability to produce an accurate rendition of all intelligible and audible speakers:

→ Deadline and Turnaround Time

As a rule, an eight-minute segment of a borderline quality recording can take no less than an hour to transcribe and translate. So, if you need us to give you a quote in advance, remember that we need to listen to the whole tape first in order to know what we are facing. As with all contract work, the shorter the deadline and the more difficult the tape, the higher the price. Please note there is a limit on quality work if a deadline is too short. In cases where the deadline was impossible, I have supplied an affidavit to that effect for the purposes of requesting a continuance, which was granted.

→ Audio quality of the tape itself

Certain kinds of tapes are more reliable than others. For example, micro cassettes and copies of copies can reduce the song *Mary Had A Little Lamb* to undecipherable dribble. Use quality, full-sized cassettes, if available, and insist that quality copies be provided to you and thus to us. Never send the only original tape to a translator.

Broken language

Sometimes a person who is only partially bilingual does an interview. Broken language is a result of a speaker not having the full fluent command of the language. Examples include a sentence in a foreign language that suddenly includes words in English given as examples of what the speaker is trying to say because they don't know the translation. Sometimes they will add a foreign language prefix or suffix to a verb in English to force it to translate; for example in broken Spanish "pushear" for to push or "bloque" for a street block. Incorrect usage also indicates a poor command of the language. The Spanish word "pescuezo" means the neck of a chicken or fowl, but I often hear it used in cases of a neck injury to a human. On a more serious note, I often see the incorrect translation of "to deny" and "to refuse" substituted with "don't really want." When we hear these words we have to translate them verbatim and the result is a very confusing and sometimes funny transcript. With a lot of broken language, even a short tape can take much longer to complete because of all the translators notes that have to be added.

Avoid throw-down interpreters at all costs

Quite often I come across interviewers or available employees conducting an interview who are thought to be bilingual but don't have a full command of the language of the witness or claimant. I like to call them "throw down interpreters." Once they start to face the tedious difficulties of tape translation, in frustration they will invent words or actually use totally incorrect terms. This will ruin the translation of a sentence that otherwise made perfect sense. It is also common for them to skip parts because they do not understand long-winded or rapid-fire responses.

One of the causes of this is that second or third generation immigrants in this country are often expected by employers to have the same translating skills as a native speaker without ever being qualified. They claim to be bilingual. Either out of fear of demotion or a desire to not make waves in the company, they will take on the task without any training. After the product is proven to be riddled with mistakes and the case possibly lost, time and time again, I hear the same admission—"I didn't have any experience doing this kind of work."

John Hagy IV, Private Investigator with South Texas Investigations in San Antonio, shares his encounter with this problem. "I have had experiences where you show up to the appointment and come to find out, at the last minute, that the subject is not fluent in English. So, you have to rely on an employee of the firm who acts as an interpreter in the direct line of communication

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To the Board of Directors and Mamber of TALI:

Special Kindness & Thought Julies you gave during my illness.

Special Kindness & Thought Julies you gave during my illness.

The Glowns were brown ful and all the Caller, e-mails one lards

Were so wonderful. When I count all my special blowings,

Were so wonderful. When I count all my special blowings,

I always start with Thought of all the Wonderful Grains I'm

Mache in TALI. all Through the years. TALI is like an

extended Jamily to me — not many peeper have that, and I wont

extended Jamily to me — not many peeper have that I do.

All of you to know that I am so very Thought That I do.

Thank you gain, naomi

Naomi – We love you and wish you the best for a speedy recovery!!

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between me and the subject. Later on, when listening to the tape, it is obvious to me that there was ambiguity between what I was asking and what was actually being interpreted because the subject's response was unrelated to the question. The result was the tape was not as valuable as it could have been despite the cooperation and information the subject was willing to provide."

Tape translation and transcription requires skill and experience.

To guarantee a professional product, search out qualified professionals in advance and keep a list ready.

When setting up a budget and timeline, take into account how we work and what you have given us to work with, to avoid last minute brick walls. This way the tape evidence will be just as valuable in translated form as it was when it was originally recorded.

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Diane E. Teichman has been interpreting and translating professionally and for the legal community for over 20 years. She provides consultation and is an expert witness. As President of Linguistic Services in Houston, Texas she

qualifies and trains contract staff for work in 20 languages. She has authored several articles and lectures on Working with Interpreters. She is the Administrator of the Interpreters Division of the American Translators Association besides being an avid Hot Air Balloonist. She can be reached at Speakeasy@PDQ.net or at 281-445-3119.

