

8. Recommended Protocol for Forensic Transcription and Translation

Given the vital role of FTT evidentiary material in the legal outcomes for linguistic minorities, it is imperative to use an empirically valid FTT protocol and legend to ensure transparency of the recorded event, and to produce an accurate, comprehensive final forensic transcription/translation. Regrettably, the courts have not yet recognized that equal access to the justice system for LEPs depends not only on competent court interpreting services, but also on the quality of FTT evidentiary materials (see **Section 2**).

This section offers a comprehensive protocol for the production of FTT evidentiary documents, informed by scholarship (Cal-Meyer, 2010; Fishman, 2006a; González et al., 1991, 2008b; Marty, 2010; NAJIT, 2009a), as well as by pioneers and builders of best practice in the field. We propose an FTT protocol which can serve as a guide to produce accurate and legally acceptable FTT documents that ensure the constitutional rights of LEP defendants. The proposed FTT model provides the necessary steps and methods for the FTTS to navigate the procedural and linguistic complexities of the FTT process. The protocol's methodology is supported by linguistic and sociolinguistic theory and consistent with legal evidentiary requirements, professional interpretation/translation standards, and ethical principles of court interpretation (see **Chapter 44**). The overarching goal of this protocol is to ensure that every FTT document admitted into evidence in a court of law is prepared under rigorous standards, from the transcription of the original audio/video recording to the translation of the transcription.

The systematic approach explicated in the protocol serves to facilitate the work of the FTTS, with the ultimate goal of improving efficiency and product reliability by: (1) offering a set of basic principles to ensure that the final FTT product reflects the most accurate and objective rendition of the language heard and observed in the original audio/video recordings; (2) providing a comprehensive framework that addresses and provides solutions for common challenges; (3) identifying key linguistic and sociolinguistic aspects of the interaction that require documentation; and (4) recommending a legend to ensure consistent, linguistically sound marking of speech characteristics and errors. Moreover, the protocol addresses all aspects germane to the preparation of FTT documents, ranging from the initial assessment of logistic and technological aspects of the job (e.g., optimizing the audio/video data) to the more cognitive and sociocultural facets of the assignment. Notably, the transcription and translation phases are treated individually to highlight their distinct requirements.

The protocol requires the use of a legend (discussed in **Section 9**), which is a set of codes that permits FTTSs to document all relevant linguistic, sociolinguistic, pragmatic, and discursive meaning of a recorded event. Founded upon best practice and a sound linguistic framework, the legend enables triers of fact to perceive the content and dynamics of the authentic speech interaction, including contextual, environmental, and paralinguistic elements, and communicative breakdowns and failures. As illustrated in **Section 2, Example 2**, without the consistent application of a legend, important features of the interaction are masked or lost.

If properly applied by law enforcement and prosecutorial agencies and FTTSs, the protocol will advance the level of competence and professionalism in the field of FTT. By fostering sociolinguistic and pragmatic awareness, the protocol trains the FTTS to be conscious of all the dimensions of speech communication. Through the protocol's multidimensional framework, the practitioner can make objective, fully informed decisions regarding the production of the most accurate rendition when faced with transcription/translation challenges. Not only does this heightened awareness enhance the validity of the overall FTT final product, but it also provides the FTTS with the ability to articulate the rationale underpinning transcription/translation choices. Moreover, the theoretical framework, methodology, and marking requirements of the protocol will enable the FTTS to critically review and revise her own work, as well as to respond effectively to formal challenges by the opposing party, the judge, or other FTTSs regarding the validity of any FTT product. Used correctly, the protocol promotes a level of preparedness that will enable the FTTS to confidently address any questions, and to readily locate and explain disputed items in an organized manner, thereby reducing confusion and courtroom disruption.

The protocol is presented in four sequential parts: (1) the preliminary steps; (2) the transcription phase; (3) the translation phase; and (4) the final product phase.

8.1 Preliminary Steps

Because decisions made during the preliminary stage determine subsequent steps and final outcome of the FTT product, careful attention to preparatory considerations is of the utmost importance. The following section offers guidelines to help the FTTS navigate some extraordinary circumstances that may arise in the preliminary stage, such as unrealistic client expectations, requests to process isolated utterances, and assignments that require expert knowledge beyond the scope of standard FTT work.

8.1.1 Ethical Obligations in Accepting or Declining an Assignment

Sound professional judgment must be exercised before accepting any FTT assignment. Ethical practice requires the FTTS to assess the materials for FTT processing and to ensure that there is sufficient time to properly address all the phases of the FTT process required to complete the job. The FTTS should not be timid about requesting additional time to review the audio/visual materials before committing to the task. Throughout the FTT process, it is the FTTS's duty to uphold all professional responsibilities, including full disclosure of prior work done on a particular case or any other potential source of bias or conflict of interest, as well as confidentiality and objectivity. The FTTS is advised to decline any assignment if, after a preliminary appraisal of the recording materials, she concludes that the assignment exceeds her linguistic and subject-matter expertise and competency.

8.1.2 Extraordinary Circumstances and Ethical Considerations

- Do not accept forensic translation assignments that require the omission of the transcription phase.

Preparing a translation directly from the SL recording, omitting the transcription phase, is a serious violation of FTT protocol and should be avoided. FTTSs must prepare a transcription in the SL and then translate into the TL (see **Section 1.1**).

- Carefully consider assignments from defense attorneys or prosecutors who are requesting selective FTT services within limited time frames, such as identifying, transcribing, and translating targeted, isolated utterances, or “fishing” for any incriminating or exculpatory language in the audio/video recordings.

In cases involving recorded evidentiary material derived from LEP communications, most lawyers are not able to independently identify utterances or passages that would be of value to their cases. Thus, attorneys may request the assistance of an FTTS to assess whether the materials have probative value and to perform a partial or complete transcription/translation. There are other urgent scenarios, such as precipitous court hearings, that do not permit enough time to transcribe and translate the entire recording as prescribed by the protocol. Regardless of the motivation behind an urgent request for selective FTT work, the FTTS has the ethical responsibility to inform the client of key professional duties pertinent to the request. The following examples illustrate typical FTT scenarios and recommend appropriate ethical responses:

Scenario (1): An attorney asks an FTTS to verify whether or not the voice saying the SL equivalent of “I told you not to hit him” is the voice of her client.

FTTS's Response: Although the utterance in question may appear easily identifiable, voice identification requires listening to voices in context rather than one isolated string of words. The FTTS must emphasize that in order to identify particular voices and their corresponding utterances, as well as ascertain the content of these utterances within the context of the discourse, it is imperative to listen to/view the entire recording. This procedure permits the FTTS to match grammatical speech, style, and register with the speaker in question in order to assess key exchanges, statements, or passages within the larger discourse. The recommended protocol is that the FTTS listen to the materials and tag designated voices (e.g., **MV1**=male voice 1, **MV2**=male voice 2) and match them with corresponding utterances. This permits the parties to decide or argue

which voice belongs to whom (see **Section 8.2.2.d**). Misattribution of speaker identity is a common error in FTT and has highly detrimental ramifications.

Scenario (2): An attorney asks for an examination of the Miranda delivery to determine whether the client knowingly, intelligently, and voluntarily waived his constitutional rights.

FTTS's Response: Because Miranda rights can be invoked at any time during an interrogation, it is necessary to listen to, view, and then transcribe/translate the entire investigative event. Moreover, the questioning style of the law enforcement officer throughout the entire interrogation, and in particular any errors introduced by putative interpreters, provide useful information for attorneys and triers of fact regarding the defendant's understanding of rights and thus the voluntariness of the entire statement. If the client refuses this request, the FTTS should explain that listening to and viewing the entire recording is professionally and ethically required to determine the parameters of the entire Miranda speech event. Furthermore, the FTTS should be able to explicate the benefits to be obtained from a full transcription/translation, including: **(1)** all language preceding the delivery of the Miranda statement (from the beginning of the recording to the actual delivery of the Miranda warnings); **(2)** the actual Miranda delivery itself; **(3)** any confirmatory questions and waiver statements; **(4)** any clarifications, questions, and answers; and **(5)** any references to the Miranda rights at any point in the interrogation.

8.1.3 Assessing the Scope of Work

In considering an assignment, the FTTS should assess the materials and the scope of work. Obtaining a copy of the recorded materials from the client is fundamental in evaluating sound quality and identifying any foreseeable difficulties or technical requirements. It is a recommended practice for the FTTS to listen to the recording using her own equipment. To avoid chain of custody issues at a later time, the client should retain possession of the original recording (Fishman, 2006b), and the FTTS should obtain a copy. The following are the recommended steps to assess the scope of work.

8.1.4 Listening to/Viewing the Recording

- Listen to/view enough of the recording to sample the sound and picture quality, the nature of the conversation, aural/auditory characteristics identifying each participant, the speed of the discourse, the linguistic characteristics, the degree of interactional complexity, language variety and register (e.g., specialized and technical vocabulary, and argot), idiomatic expressions, speech patterns, specific circumstances surrounding the speech event, and any other salient features.

Listening to and viewing the recording provides insight into the complexity of the required transcription/translation, permitting the FTTS to estimate the time required to complete the work and to determine whether the deadline is realistic. Listening to a representative sample of the materials will also serve to determine whether there is a need for audio/video enhancements or a team approach.

8.1.5 Using a Team Approach

- Use a team approach when deadlines, amount and/or complexity of material, recording quality, or language variety are beyond the scope of an individual's ability to complete the assignment.

A team approach is highly advisable and often required to minimize error and to yield the most valid and accurate FTT product possible, especially when the assignment demands specialized subject or linguistic knowledge, or when the workload and time frame exceed the ability of one FTTS. The Minnesota Supreme Court Interpreter Advisory Committee (1999), for example, has recognized the value of utilizing two qualified translators on the same translation document. Once a team approach is considered necessary, the FTTS must assemble a team, estimate the costs, and present the proposal to the client for approval. The FTTS initially contacted for the assignment will typically become the team leader, unless other arrangements are made among team members. After the team leader obtains permission from the client to share materials with potential team members, the group should discuss logistical issues such as content and quality of materials, potential challenges, time constraints, division of labor and responsibilities, and compensation. While clients may agree to pay team members individually, it is common practice for the team leader to be paid directly and she in turn subcontracts and pays other team members. It is best practice for FTT specialist to have a formal business partner who is a native speaker in the nondominant language of the hired FTT specialist. Thus, both informant and the primary FTTS would be covered by confidentiality and attorney-client privilege.

A team approach requires planning and active communication to ensure that all team members adhere to the same standards, work collaboratively under the same linguistic and sociolinguistic principles, and use an agreed-upon methodology and common legend. **Best practice requires that the team leader has the responsibility of ensuring overall consistency and accuracy of the FTT product.** All team members must have ample knowledge of the substance and material contained in the audio/video recordings, and must be aware of important new findings and developments from other members while the work is in progress. Working outside these parameters increases the risk of producing a disjointed final FTT product that does not have textual unity, cohesion, or coherence, thus lacking accuracy. In addition, adherence to shared theoretical constructs and methods enables all FTT team members to answer questions accurately if called individually to testify.

8.1.6 Estimates and Costs

- Use professional translator/interpreter rates to calculate costs of FTT projects, i.e., bilingual transcription/translation projects.

There have been serious misunderstandings among courts and other legal agencies about the marked differences in skill sets required for forensic transcription—that is the bilingual and analytical transcription required in FTT—versus ordinary English transcription. In order for due process and equal access to be granted to indigent LEP communities using the courts, it is in the best interest of courts and legal agencies to have a firm and clear understanding about the significant differences in skill sets required to perform forensic transcription involving a foreign language. As explicated in **Section 7**, FTT of bilingual custodial interrogation recordings and other surveillance recordings demand a highly specialized series of skills, experience and training, discernibly distinguished from ordinary transcription. The transcription/translation of audio/video legal recordings involving foreign languages squarely requires the use of professional credentialed, certified interpreters and translators working as FTT specialists, which in turn calls for the FTT specialist to receive the standard compensation of certified interpreters and translators.

- Calculate a realistic estimate for a standard FTT assignment, taking into account all relevant costs projected based on the preliminary review of the materials.

Costs should reflect the number of hours required for the FTTS and/or the subcontractor(s) to: (1) perform the transcription/translation; (2) apply the legend; and (3) edit, proofread, and format the final product. Additionally, the estimate should include any expenditures for digital enhancements (e.g., voice clarification and noise reduction), and all other expenses related to improving the quality of the submitted materials, if the client is unable to provide this service. If recordings are not provided for preliminary review, inform the client that a cost estimate based on a cursory appraisal of the material is subject to change upon an appropriate assessment of the materials.

- Calculate costs for urgent assignments requiring rushed delivery on a case-by-case basis.

In extraordinary circumstances, or when the FTTS is asked to perform transcription/translations within an extremely limited time frame, it may be reasonable to negotiate an extra fee due to the nature of the request and or the need for subcontracting an FTTS.

- Do not compromise the quality of the FTT process only to meet the deadline or to avoid losing the bid and/or the client.

In negotiating fees, the FTTS has to seriously consider whether the deadlines can realistically be met, given the client's expectations. If the deadlines are problematic, the FTTS must uphold her professional obligation to inform the client about the need for more time and team assistance in order to produce FTT finished projects, according to professional FTT protocol (e.g., an SL transcription is always required before producing a translation). If these conditions cannot be met, then it is strongly recommended that the FTTS turn down the assignment. Rushed transcription/translations are more susceptible to human error and more likely to yield suspect evidentiary material.

8.1.7 FTT Work Requiring FTT Master-Level Expert Analysis and Testimony

FTTSs are often asked to look for particular language items with any possible probative value and to process only the portions of linguistic interest from the recording. This type of assignment calls for an FTT Master-Level specialist (see **Section 3.3**) who has the linguistic and legal expertise to perform the required analysis and render expert testimony. Before accepting such an assignment, the Master-Level FTTS should ask for case materials and an indication of precisely what is expected of her. This step will help determine the level of expert qualifications required to adequately address the task. FTTSs are ethically bound to reject assignments that go beyond the scope of their expertise, requiring legal and other knowledge they may not possess. FTTS without legal training are advised not to accept such assignments as they are outside of their scope of expertise.

An FTTS may be requested by either the defense or the prosecution to identify critical utterances related to the individual target of an investigation. Rather than asking the FTTS to find any material that could have incriminatory or exculpatory value, the attorney should be very specific, as in these examples: (1) "There is a question regarding my client's whereabouts at the time of the alleged crime. Please look for language that would provide any information about the defendant's location at the time of the alleged crime." (2) "The target of this investigation is alleged to have participated in a conspiracy involving the XYZ gang. Please identify any

statements regarding his intention to do business with members of the XYZ gang, his participation in any gang-related activities, or self-attributions as an associate of the XYZ gang.”

Like any expert who is called to testify, the FTTS must similarly follow sound methodology that yields a reliable product and accurate conclusions, as required by legal evidentiary rules (see **Section 5**). Regardless of the requesting party, the FTTS should explain to the client that the selected passages must be transcribed and translated in accordance with FTT protocol and procedure. This includes documenting all corresponding linguistic and sociolinguistic contexts depicted in the audio/video recording. It is possible to extract, transcribe, and translate selected segments of the audio/video recording if the extracted selection is supported by the larger linguistic and sociolinguistic context. If the focus is only the isolated passage in question, there is a risk that what is heard and seen and then transcribed and translated is not what it appears to be, and in fact, is a misrepresentation of the actual utterance(s). In examining the target passages, the following comprehensive steps are called for: **(1)** a cursory “listening scan” of the recordings to search for instances (including gestures in the case of video media) that explicitly or implicitly make reference to specific acts, behaviors, or allusions that may have probative value; **(2)** the identification of any content of interest (e.g., “I already told you that it’s coming on Friday, but I need the other ten thousand that we talked about the other day.”); **(3)** a thorough review of the entire recording to further ascertain the meaning of the suspect utterances within a larger context; **(4)** transcription and translation of the target passages along with the contextual discourse preceding or following them, the length of which varies according to the characteristics of the discourse and recording; and **(5)** an expert report with inquiry questions, methods, and findings, along with supporting documentation from the transcription/translation as well as empirical or theoretical sources.

Most importantly, FTTSs or Master-Level FTTSs cannot permit a client’s expectations to bias their expert analysis of the linguistic events. FTTSs must safeguard impartiality, objectivity, and ethical responsibilities at all times in the process of identifying possibly incriminatory or exculpatory material.

8.1.8 Accepting the Assignment

After considering all aspects of the scope of work and any possible ethical conflicts, time, and cost factors, the FTTS formally accepts the assignment, using the following as a guide:

- Obtain an agreement in writing.

After assessing the scope of the work and before beginning the assignment, the FTTS is strongly advised to request and sign a written contract. In the contract, all terms should be clearly stated, along with any special considerations. The contract should facilitate payment for services in a timely manner and provide a record of the mutual agreement, should a question arise. In the absence of a formal contract, email correspondence confirming the transcription/translation project can also serve as a written contract. Like a formal contract, the email contract should include: **(1)** the nature and scope of the transcription/translation including a clause regarding early termination due to case disposition; **(2)** due dates or time limits; **(3)** any identifying information (e.g., case number, names of the parties involved, and correct spelling of any proper names and places mentioned in the recording); **(4)** the rate of pay, estimated hours to complete the work, and the total amount of fees or hours not to be exceeded; **(5)** purchase order number or billing code (many

government agencies require that a code from their finance department be issued before work can commence); (6) where and in what format to deliver copies of the final product; and (7) invoice specifications (e.g., where the invoice should be sent). It is important to obtain confirmation of the assignment in writing in order to avoid the possible payment conflicts created case by developments such as an early plea agreement or a stipulation between the parties that terminate the need for an FTT.

- Inform the client of any routine practices such as the possibility of consulting with partners or colleagues to solve transcription/translation problems.

If the FTTS does not need to work with a team on a particular project, it is still advisable to inform the client that part of the FTT process may require consultation with colleagues in order to produce an accurate transcription/translation. The client can then present any confidentiality restrictions that may limit this practice.

8.2 Phase One of the FTT Process: Transcription

The first phase of the FTT process involves the transcription, meaning the act of transcribing or transliterating audio/video data into readable text (see **Section 6.2**). Without the critical step of transcribing the speech event into textual form, an accurate and verifiable translation is not possible (see **Section 1.1**). Although certain external factors (e.g., deficient audio/video quality or interfering background noise) have the potential to adversely affect the accuracy of a transcript, FTTSs have a professional obligation to produce an accurate transcription that represents the actual recorded speech event—every verbal utterance, human vocal sound, and background noise—as faithfully as possible, including language errors, performance features, and paralinguistic elements (see **Sections 1.1** and **6**). It is imperative for FTTSs and legal actors to understand that adding or omitting information or cleaning up speech, or documenting what was meant rather than what was said, does not conform to the standards of transcription practices presented here. Instead, a complete and accurate transcription must be prepared which will then be transferred to the translation. Unless these two steps are performed, false evidence will be created perpetuating error from the transcript into the translation, with the potential of dramatically altering the outcome of a case.

Transcription of the audio/video material is just as arduous and time-consuming as the translation—if not more so—because it is a multimodal task requiring close attention to various levels of meaning. Meaning is conveyed not only through semantic and grammatical meaning, but also through the various phonological properties of speech, including intonation of entire utterances. For this reason, FTT requires multiple playbacks, often under difficult listening conditions, and simultaneous recording of data into the computer. On average, for every one minute of audio/video recording, one hour of transcription work is required (NAJIT, 2009a). However, meticulous attention to detail in the transcription phase facilitates the translation process by highlighting, in advance, the portions of the recording that require particular attention. Once the transcription is solidified and every ambiguity has been investigated and resolved, the translation process can proceed with more efficiency.

8.2.1 Preparing for the Transcription Process

Before beginning the transcription, the FTTS should adhere to the following standards.

8.2.1.a Use Only High Quality Equipment

- Regardless of recording format (audio/video), use only high quality transcribing equipment, software, and stereo components. Replay recordings as many times as necessary to enter data accurately and completely, including all paralinguistic features and significant sounds.

8.2.1.b Adopt a Comprehensive Legend

- Use a linguistically sound and comprehensive legend to provide textual and contextual information necessary for the client to access the recorded speech event. Code symbols play a major role in constructing meaning and frequently are the only way to highlight key information not directly articulated by the participants.

Because language does not exist in a vacuum, but in a multidimensional co-occurrence of linguistic and sociolinguistic events, and because spoken language cannot be fully represented in writing, it is fundamental to adopt a legend that effectively conveys all information from the recording. Founded upon a theoretical framework and best practice in the field, the proposed FTT legend consists of a set of codes necessary for the FTTS to systematically document all relevant linguistic and sociolinguistic meaning of a recorded event. As a scaffolding tool, a legend facilitates a sequential process of reconstructing and laying out meaning from the recorded source data to the written medium. Additionally, legend symbols are objects of representation because they reflect explicit verbal and nonverbal information captured in the recorded interaction. Therefore, it is imperative to employ a legend that facilitates the coding of relevant linguistic and sociolinguistic features in order to effectively and accurately transmit meaning, beyond grammatical forms, to the parties and triers of fact. With a proper legend, triers of fact can perceive the content and dynamics of the authentic speech interaction including contextual, environmental, and paralinguistic elements. Consider the case of custodial interrogations: without the consistent application of a sound legend, important features of the interaction are masked or lost, such as failed Miranda deliveries, incorrect interpretations by a putative interpreter, and communication breakdowns. Failure to capture these errors prevents triers of fact from understanding incongruent suspect responses and detecting the co-option of this miscommunication as incriminatory evidence.

Recognizing and properly documenting vital linguistic and sociolinguistic information following a protocol that includes a legend is a skill that an FTTS must develop. Some practitioners may not appreciate the value of applying a comprehensive legend and may choose to forego the use of one altogether, or use a legend that is so limited in scope that it does not provide the range of symbols necessary to convey accurately the communicative exchange. Another extreme would be to use a code system that is too detailed, or one that is not explained clearly in a legend. A comprehensive legend yields a final FTT product of substantial evidentiary value, and is helpful in cases in which the translation and the transcription are not performed by the same practitioner. For a model legend containing code symbols typically used in FTT work, see **Section 9**. Since the forensic transcription code system is still in a semi-standardized stage, the FTTS can

supplement the existing system with symbols that are deemed necessary to convey meaning, as long as their code is clearly explained in the legend.

8.2.1.c Use a Four-Column Format

- Use a four-column format in which the first column (on the left) contains the line number; the second column contains the speaker labels; the third column contains the verbatim transcription of all utterances spoken in the SL as well as relevant contextual information, i.e., legend symbols; and the fourth column contains the English translation. The legend containing all symbols used in the FTT document should be conveniently available in the document to assist any client’s reading.

The four-column format includes: (1) line number for easy reference, (2) speaker identity (either by name or using legend symbols, as specified in **Section 8.2.2.d**), (3) transcribed SL, and (4) English translation of the transcription. Line numbers facilitate readability, reference, and review. The line numbers can coincide with each speaker turn, or, following the legal convention, numbering by line regardless of speaker turn may also be used. For a model of transcription/translation format see **Section 8.4.2**.

8.2.1.d Need for Six-Column Format for FTT Document Review

Use a six-column format for review of an existing transcription/translation.

Master-Level FTTSs are occasionally called to review and provide corrections in an existing transcription/translation document. The best protocol depends upon the degree or number of errors and the needs of the client. For example, if a one-hour custodial interrogation has pervasive errors, deletions, distortions, and additions throughout the transcription and translation document, best practice is to inform the client that the SL recording has to be re-transcribed and re-translated in its entirety because it would be too time-consuming and disorganized to mark every error in the flawed original transcription/translation document. However, in some cases, the significant deletions, distortions, or other errors occur only in certain portions of the transcription/translation document, or the client expresses an interest only in certain parts of the transcript. In these instances, the FTTS should utilize a six-column format by adding two extra columns for the corrected transcription and for the corrected translation. The complete six-column format contains line number, voice identification, original transcription, original translation, and the FTTS's corrected transcription and translation, as in the example below:

Line	Speaker	Original Transcription	Original Translation	Corrected Transcription	Corrected Translation
1	MV1:	<i>Supé que estaba perdido cuando trajeron al [U] policía.</i>	I knew I was lost when they brought the [U] police.	<i>Supé que estaba jodido cuando trajeron al perro policía.</i>	I knew I was screwed when they brought the police dog.

8.2.2 Transcribing Audio/Video Recordings

Transcribing audio/video recordings requires a multitude of tasks, each phase building upon the careful work of the preceding phase.

8.2.2.a Review the Entire Recording

Before commencing the transcription process, a preliminary listening/viewing of all recorded materials is required.

- Undertake a preliminary listening/viewing of the recording one time without transcribing, applying critical listening skills to become familiar with the story line, participants' roles, number of speakers, voices, accents, speech patterns, places, nicknames, context of conversation, unusual word usages, technical disruptions, and special circumstances that might impinge upon the case.

The preliminary listening/viewing process enables the FTTS to contextualize the entire interaction and to obtain a coherent grasp of the topic, situation, and participants. This process requires critical listening skills, which entails listening for and identifying key words and phrases that can illuminate basic information regarding the speech event and speaker intentions. The preview of the recorded material is instrumental in answering fundamental questions about the discourse: Who did what, to whom, when, where, why, and how?

8.2.2.b Take Notes During Preliminary Listening

- Take notes during this phase in order to identify utterances or exchanges that are problematic, ambiguous or require special attention. These notes can guide more thorough attention to salient details and serve as tools for active listening, for aiding the memory, or for referencing a particular statement when discussing the case with a colleague or client.
- Take note of the numbers shown in the audiotape/video counter to mark the location of a particular observation or question about the content or the recording. This practice saves time should the FTTS need to retrieve a particular point in the recording later.

8.2.2.c View Video Even if Audio Provided Separately

- Whenever available, the videotape should always be viewed along with the audiotape to capture any body language or gestures that may have significance for the case. Although audio recordings often have a better sound quality, the FTTS should request a copy of the video recording and incorporate relevant visual information in the FTT document.

Even if there is access to a separate audio recording of better sound quality, viewing the video is paramount to transcribing the speech event. The contextual linguistic and visual details

provided by the videotape are essential for properly addressing any uncertainty or ambiguity and are helpful in voice identification. Even when the FTTS is only undertaking the translation portion, she should still request the original SL recording(s), both video and audio, to be able to verify certain problems originating in the transcription phase. Adhering to this standard prevents errors with adverse legal consequences, such as those presented in **Section 2, Example 3**.

8.2.2.d Assign Identities

- Assign identities to the different speakers in the order that they appear (e.g., Male Voice 1 (**MV1**); Female Voice 1 (**FV1**); Male Voice 2 (**MV2**); Female Voice 2 (**FV2**)).

If speakers are readily identifiable, as in video recordings of custodial interrogations, names can be used. Where speaker identities are unknown, the protocol requires the use of generic identifiers, e.g., Female Voice 2 (**FV2**). In instances where the names have been provided by the client or by someone else (e.g., an investigator), the following should be noted on the transcript: “Names of the participants were supplied by Detective X/Mr. X, attorney for Y.” For the transcription/translation of a custodial interrogation transcript, with a video supplied, it is helpful to the client for the FTTS to provide the identities, such as detective names (distinguishing if possible, the interrogator from the police employee acting as the interpreter) and defendant names.

Discerning the different voices on the recorded conversation is a major challenge for the FTTS, especially at the beginning of the transcription phase. Listening to the SL recording familiarizes the FTTS with basic information, such as the number of speakers, each individual’s voice and speech characteristics (e.g., speech rate, pitch, intonation, pronunciation, and speaking styles) and other significant features. Voice identification is one of the most sensitive parts of the FTTS’s work because there may be a dispute between the defense and prosecution as to who said what, and misattribution of utterances to an individual can create false evidence (see **Section 2, Examples 1 and 2**).

The audiotape must be listened to as many times as necessary before, during, and after transcription until there is reasonable certainty that the speech attributions match the actual identity of voices. Using phonetic features and other speaker variables (e.g., style, variety, and register) is the most reliable and direct method to identify speakers’ voices in recorded conversations. Other effective ways to identify voices include careful attention to conversational cues such as turn-taking and participant roles (who controls the discourse), as well as noticing relevant linguistic patterns such as textual cohesion, and other salient features of the linguistic interaction. Overlapping speech requires particular attention as it can easily obscure important exchanges and interfere with correct voice identification.

8.2.2.e Follow Standard Typographical and Orthographical Conventions

- Transcribe the SL recording adhering to accepted typographic and orthographic norms for each language, such as spelling, diacritics, punctuation, and capitalization.

Seemingly innocuous orthographic mistakes can be consequential. Spelling errors, incorrect use of diacritic markers, and inconsistent or poor use of punctuation all contribute to a distorted transcription, which then carries over to the translation. As a result, the authentic speech event is misrepresented and the final product is invalid. For example, the absence or placement of a comma can make a significant difference in the meaning of a sentence. Similarly, incorrect punctuation of direct speech can obscure important information relating to attribution of statements and consequently guilt or innocence. Note the difference in meaning between, “He said I was an idiot when I did that,” vs., “He said, ‘I was an idiot when I did that.’” In many languages, incorrect use of diacritic markings can also dramatically alter the tense and aspect (e.g., indicative and subjunctive) of a statement or question, leading to confusion or misinterpretation by judges, lawyers, and juries who rely on FTT products in their determination of the facts. It is vital that the FTT document the actual speech of the participants in the SL recording without reflecting errors resulting from poor transcription/translation work (Claus, 2005b).

8.2.2.f Play Short Portions at a Time, Using Critical Listening

- Play a short segment of the recording and stop at the end of a whole unit of meaning (often a complex sentence) or when you have reached the limit of what you can recall. This approach facilitates critical listening. Replay the recording as often as necessary in the process of transcribing the data. Depending on the length of the utterances, a workable segment of speech can constitute one question-and-answer sequence or other exchange between two or more people, one complex question, or one extended response.

A critical listening strategy for difficult passages is to selectively listen for: **(1)** larger units of meaning; **(2)** sound units to distinguish word boundaries, noting unintelligible and overlapping speech; **(3)** paralinguistic features such as raised volume, intonation, pitch, and stress to identify questions, declarative statements, or imperatives; **(4)** hedges (e.g., “maybe,” “I think”), fillers, hesitations, false starts, pauses, and silence; **(5)** grammatical and performance errors; and **(6)** language variety and register, codeswitching, borrowed words, pidginization, and culturally bound terms and expressions. Consulting notes taken during the preliminary listening/viewing stage will facilitate capturing macro-level discourse topics and themes as well as contextual information.

8.2.2.g Document What is Said/Heard (Mirror the Tape)

- Transcribe all verbalized language heard on the SL recording, as well as all paralinguistic and nonvocal sounds.
- Document exactly what is said, including any speech mistakes, repetitions, incomplete sentences, pauses, use of incorrect or nonstandard speech, code switching, borrowings, pidginized forms, and interlinguistic proficiency errors (errors resulting from lack of competency in the (L2, second language) or from (L1, native language interference)).

- Use legend symbols to mark all errors made by the speakers in the recording (e.g., mispronounced words that change meaning, misconjugated verbs that change the representation of actions, or invented words that cause confusion).

8.2.2.h Document Every Feature of the Recorded Event

- Identify and document sections of the recording that are blank or where there is electronic interference. Apply the proper legend symbol and include the time lapse or position on the tape counter (e.g., [SIL 13 minutes], or [b: electronic interference from #237 to #498]).

8.2.2.i Safeguard the Validity of the FTT Product from Conflict of Interest

- Do not consult with or seek the assistance of the interrogating police officer(s) or undercover officer(s) who may have been present during the original recording.
- Do not allow personal bias to affect the FTT process and final product.

The FTTS has the ethical duty to protect the integrity of the evidence by not permitting police interrogators, police interpreters, or any other parties involved in the case to influence her work. The task is not to produce a transcript of everything that was allegedly said according to all the interested parties, but rather “to produce a transcript of *what, in [the FTTS's] opinion, can be heard (and understood) on the recording*” (Fishman, 2006b, p. 23). Regrettably, using police interrogators or other personnel as consultants to clarify, provide content, or determine the meaning of a particular word or phrase in the SL recording is a common practice that leads to biased transcriptions and translations in which material not in evidence in the recording is improperly transcribed and translated (see **Section 4**).

8.2.2.j Capture Speech Variety/Do Not Standardize Language

- Document verbatim the speech from the SL recording(s). This means a faithful and accurate documentation of speech variety and register without converting speaker’s language into the standard received variety. Standardizing language can create false evidence. For example, it would be improper to transcribe in the following way:
 - (1) “want to” for “wanna”
 - (2) “don’t have any” for “ain’t got none”
 - (3) “*pues*” [well] for “*pos*” [reduced form for “well”]
 - (4) “*ast*” [like this] for “*asina*” [archaic form for “like this”]

8.2.2.k Capture and Mark all Errors/Do Not “Clean Up” Errors

Because of the interdependence of the transcription and translation process in the marking of speech error, the treatment of speaker error in transcription and translation are presented here together:

- Faithfully transcribe all errors made by any speaker, including errors made by putative interpreters or allegedly bilingual interrogators. Do not predict or “clean up” or sanitize speakers’ language. To do so misrepresents the original exchange and provides false evidence of the comprehensibility of the speaker’s message/delivery.
- If the error is significant and would not be understandable to a native speaker with minimal or no formal education, the FTTS should apply the conventional legend symbols in the transcription: [sic], [NSW] for non-Spanish word, [NEW] for non-English word, [WSW] for wrong Spanish word, or [WEW] for wrong English word (see **Section 9** for legend). These legend symbols can be easily modified for use with other languages.
- Once the error has been marked in the transcription, the invented or wrong word should be transferred to the translation column exactly as it was spoken (phonetically) and then marked accordingly, using the above symbols and [Garble] to indicate the lack of meaning to a native listener of that language of the lexical item or phrase, as in **Example 1** below.
- Use [pro] to mark a mispronunciation in the transcription and the translation, if the error will likely not interfere with meaning.

Errors committed by putative interpreters or allegedly bilingual interrogators are often overlooked or misrepresented, thereby obscuring information of evidentiary value (see **Section 2.1**). Therefore, it is of utmost importance that the FTTS preserve these communication failures in the transcription/translation to yield a true transcription/translation that can be relied upon by triers of fact and lawyers. Many practitioners are not aware of the detrimental consequences of the putative interpreter’s error on a suspect’s comprehension of critical rights, accusations, charges, questions, and statements (see **Section 2.1**). Neither do they consider the fear and stress of the defendant in these high-stakes interrogation settings, which diminish the defendant’s ability to decipher the intended but severely distorted meaning. By marking these egregious language errors, FTTSs make visible for attorneys and triers of fact the failure to provide understandable Miranda rights and the general lack of communication. The type and severity of the error and the extent of its relevance within the speech event should dictate the appropriate marking according to the legend (see **Section 9**), as well as the amount of time and effort allocated by the FTTS to indicating how the error obscured comprehensibility of a question or statement.

Often, putative interpreters invent words through mispronunciation, misuse of a word, or by using false cognates or other means to compensate for their foreign language deficiency, which results in creating nonsensical statements. These invented words or phrases are predictably unintelligible to native speakers. Therefore, FTTSs must display the error in the transcription and translation (with [sic] or [NSW] or [WSW]) to indicate that the word has been invented, as illustrated in **Examples 1** and **2**.

In the translation column, the non-Spanish word [NSW] should be repeated as it was originally uttered and documented with a bracketed note calling attention to the meaningless word, using the legend codes [Garble] and [NSW], as shown below in **Example 1**:

Example 1: Non-Spanish Word (NSW)

Line	Speaker	Transcription	Translation
14	DETECTIVE:	... <i>Si usted no puede prosocionar [sic] un abogado, uh, usted tiene el derecho de...que un abogado...</i>	...If you cannot <i>prosocionar</i> [Garble-NSW] an attorney, uh, you have the right to...that an attorney...

Prosocionar is not a word and has no meaning in Spanish. Therefore it is marked as “Garble” and “Non-Spanish Word.” This word is very likely a limited Spanish speaker’s approximation of *proporcionar*, which also does not provide the intended meaning of the Miranda in this case and instead implies that the defendant has to furnish a lawyer (to someone else). In this example, it was critical to capture this error in that it not only interfered with communication, but also obstructed the delivery of the right against self incrimination. It is not recommended to provide a translation of the word the speaker may have intended, as it might wrongly imply that the suspect could have extrapolated the meaning. In our next example, neither the spoken word nor the possible intended word denotes the meaning of the right to an attorney.

Example 2: Non-Spanish Word

Line	Speaker	Transcription	Translation
1	DETECTIVE:	<i>Tiene el derecho de implorer [sic] un abogado.</i>	You have the right to <i>implorer</i> ¹ [Garble-NSW] an attorney.

¹Primary meaning of similar sounding Spanish words, *implorar*, “to beg,” or “to implore” or *emplear*, “to employ.”

In this example, the Detective invents a word (*implorer*) that does not exist in Spanish and that sounds like another word in Spanish (*implorar*), which means “to beg” or “implore” in English, or *emplear*, “to employ,” which also provides the incorrect meaning. Neither the invented word nor the word it approximates in Spanish carries the meaning of the right to consult an attorney before questioning. However, because of the strong phonetic similarities between *implorer* and *implore*, and *implorer* and *emplear*, the FTTS could insert a footnote providing possible intended meaning of these non-Spanish words.

Putative interpreters also use words that exist but do not make any sense in the context. These wrong, out-of-context terms are generally random vocalizations made by developing language learners in an attempt to fill in the blanks when they do not know or cannot retrieve an appropriate word. To the contrary, these attempts obstruct meaning. **Examples 3 to 5** below provide examples of the use of the wrong word, a second language acquisition error commonly committed by putative interpreters, producing statements that are incomprehensible to defendants or victims.

Example 3: Wrong Spanish Word (WSW)

Line	Speaker	Transcription	Translation
14	DETECTIVE:	<i>Entonces, es usted tiene el derecho de...de encañar [sic] silencio.</i>	So, it’s you that has the right to...to push liquid through pipes [Garble-WSW] silence.

Note. González, 2009b, p. 6.

As discussed in **Section 1.3**, the example above was “cleaned up” by a police transcriptionist. The example is used here to show the proper marking of a word that exists in the foreign language, but has no meaning in the context. In this case, the word *encañar*, which means, “to push liquid through pipes,” was wrongly used by the putative interpreter to express “remain,”

which completely distorted the right to remain silent. In such cases, the FTTS has a duty to mark the incorrectly used word as [sic] in the transcription column to indicate the error. In the translation column, the wrong meaning should be inserted along with the code [Garble-WSW] to indicate to the reader what the defendant actually heard. Using this protocol, the FTTS can effectively and efficiently mark the error and easily demonstrate that the detainee was not informed of his constitutional right against self-incrimination. As **Work Example 2** in **Section 4** shows, a footnote can be used to indicate other possible meanings and references.

Example 4: Wrong Spanish Word (WSW)

Line	Speaker	Transcription	Translation
17	DETECTIVE:	<i>Vamos a cargar [sic] a usted con asesinato.</i>	We are going to load you up [Garble-WSW] [gram] with murder.

In **Example 4**, the putative interpreter uses a false cognate *cargar* to convey “to charge”, as in a criminal accusation. The word *cargar* actually refers to “charging,” as in “charging batteries”, in addition to “load.” It is very doubtful that a poorly educated defendant who has little to no knowledge of the U.S. justice system could understand that he was being formally charged with murder or could even take it to be meant as a threat by police.

Example 5: Wrong Spanish Word

Line	Speaker	Transcription	Translation
86	DETECTIVE:	<i>¿Cómo le hizo estas injurias [sic]?</i>	How did he/she insult [Garble-WSW] you?

In **Example 5**, the putative interpreter uses the word “insults” for “injuries,” which completely obstructed the detective’s intended meaning of discovering whether a woman had been injured by her husband. Consequently, the fact that the woman had been physically abused by her husband was not revealed until an FTTS correctly documented the error.

Example 6: Wrong Spanish Word (WSW) and Non-Spanish Word (NSW)

Line	Speaker	Original/Corrected Transcription	Original Translation	Corrected Translation
340	DETECTIVE:	<i>Okey. Ahm, entiendes que...vamos a poner...a este ejemplo en una, una, -¿Cómo se llama? - un data base. ¿Una dada [u][sic]?</i>	OK. Um, you understand that...we'll put...this [gram] example in a, a- what's it called?- a data base. A dada [sic] [ph][U]	OK. Um, you understand that...we'll put ... this example [Garble-WSW] in a, a—what's it called?—a database ¹ [Garble-NSW]. A <i>dada</i> ¹ [Garble- NSW] [ph][U]?

¹ The Spanish term for database is *base de datos*.
 Note. González, 2009c, p. 100.

Example 6 illustrates the communication breakdowns that routinely occur when a putative interpreter’s proficiency in Spanish is so limited that he invents language and randomly uses Spanish words incorrectly in order to express meaning. The garbled, fractured utterance, which was not comprehensible to the defendant, represents the detective’s attempt to gain voluntary consent for extracting a DNA sample (González, 2009b). An analysis of errors committed in this utterance demonstrates that the detective effectively precluded an adequate informed consent to a

DNA sample, exacerbating the suspect's already confused perception of the interrogation and the information presented to him. Among the many errors in this example, the detective used the Spanish word *ejemplo* ("example") instead of the Spanish word for "sample," (*muestra*). The detective also code-switched, using the English word "data base." Then he attempted to say the word in Spanish, using *dada*, which is a Spanish word that is the past participle of the verb *dar* [to give]. Taking into account the entire context of the interaction, and in consideration of the fact that the detective used *dada* as a noun, not a verb, the FTTS chose to mark this word as a non-Spanish word. Note also that in an effort to capture the incomprehensibility of this interaction, the FTTS used the appropriate symbols (**NSW**, **WSW**, and **Garble**) to convey the degree of the putative interpreter's deficient Spanish and the level of incomprehensibility.

On the other hand, if a foreign language word is mispronounced (but still recognizable) or misconjugated (but comprehensible), the FTTS should display the malformation of the word by spelling it phonetically and offering a translation that mirrors the mispronunciation or malformation of the word. Using her expertise, the FTTS should determine whether the form could be readily and easily inferred from the context by a native speaker with basic-level education, as demonstrated in **Example 7**:

Example 7: Misconjugation or Mispronunciations that May Not Interfere with Meaning

Speaker	Transcription	Translation
MV1	...y cuando él regresó ¿tú le ofrezaste [pro] dinero?	...and when he came back, did you offeraided [pro] money?

In this example, the verb *ofrecer* (to offer) is incorrectly conjugated in the past tense as *ofrezaste* instead of the standard *ofreciste*. The question for the FTTS is to determine whether a native Spanish speaker with basic education could recognize the meaning within the context. In this example, the suspect would probably be able to infer the meaning of *ofrezaste* from the context or from a recognizable past tense pattern. Once this determination is made, then the FTTS can categorize this item as a mispronunciation rather than as a non-Spanish word. However, the FTTS should represent the word as it was spoken through orthographic representation in the transcription and mark it as a pronunciation error and then, in the translation column, make a good faith attempt to preserve the significance of the error in the translation with an equally erroneous English conjugation (e.g., "offeraided"). This is an important protocol because the greater number of mispronunciations, linguistic distortions, and invented words, the greater the likelihood that the suspect has been excluded from linguistic presence. Therefore, each mispronunciation, linguistic distortion, invented word, or wrong use of words must be meticulously documented.

8.2.2.1 Accurately Transcribe Speech, Errors, and Cultural Terms, and Apply the Legend Symbol [sic] in the FTT for Particular Speaker Features

- When a speaker error occurs or an unusual language variety is used in the recording, apply the legend symbol [sic] in the transcription column and preserve it also in the translation.
- Apply legend symbol [sic] to mark grammatical, structural, semantic, and performance errors in the transcription. Also use [sic] to indicate regional or idiosyncratic variance, culturally bound terms and expressions, pidginized forms, or

borrowings that may not have an established meaning or may not be considered common usage (even within a given variety).

- If assigned only to the transcription phase, use the legend symbols to specify the type and nature of error or variance and mark it in the transcription column.
- Make sure to represent these errors and other features in the translation; they may also require an FTTS footnote if additional explanation is warranted, such as in the case of a culturally bound term.

8.2.2.m Document Linguistic and Paralinguistic Features

- Attend to significant paralinguistic properties of speech, such as intonation, pitch, and stress, in order to identify questions, declarative statements, or exclamations.
- Preserve all hedges, pauses, fillers, false starts, repetitions, silences, or dysfluencies which may provide important information regarding the speaker's language proficiency or other characteristics significant to triers of fact.
- Document significant shifts in speech rate following the legend; it is important to identify accelerated or decelerated speech if it has implications for comprehensibility of the utterance, or if it is influencing the tone and nature of the discourse.

Failure to document paralinguistic features produces an invalid and unreliable transcription/translation that misrepresents potentially significant evidence. For example, transcribing a question as a statement can have grave consequences: Compare “**I** did it?” vs. “**I did** it.” While the question indicates that a suspect did not do it, the statement may indicate that he did it (depending on other sociopragmatic elements). By failing to pay close attention to intonation, stress, and pitch, the FTTS may inadvertently conceal or distort important information about speaker attitudes, nuances of meaning, or other crucial elements. For example, emotional vocalizations such as screaming should be shown through the use of an exclamation mark if it is indisputably evident. Some practitioners suggest the use of capitalization to represent language that is spoken in a loud voice compared to the rest of the speaker's volume, as shown in **Table 40.9**.

Discernible paralinguistic features, such as sighing or a distinguishable gesture on a videotape, should also be represented. The FTTS must exercise caution, however, as the transcription should not attempt to attribute additional meaning through markers such as use of italics (aside from denoting foreign language use), boldface, quotation marks, or underscoring, which would ascribe special character to those words.

Careful documentation of hedges, pauses, fillers, false starts, and repetitions provides important information to triers of fact regarding the defendant's linguistic and cognitive abilities, as well as level of meaningful participation or credibility. An utterance such as, “We, ne-...uh...I-I-don't know, who um, um, driving,” could provide important information regarding English language proficiency, (lack of) knowledge of events, and level of participation, as well as the defendant's state of mind at the time (being fearful or nervous during questioning).

8.2.2.n Pay Attention to Discoursal Features such as Turn-Taking, Overlapping Voices, and Other Characteristics

- Carefully observe turn-taking between the speakers in order to ascertain whether a unit of speech is carried over one or several speaker turns. Mark with ellipses [...] the speaker’s continuing discourse throughout several exchanges. Use lower case with ellipses to denote continuing speech.
- Mark speaker interjections and interruptions through the use of [//]
- Mark faster than normal speech through the use of <text>
- Mark slower than normal speech through the use of >text<
- Mark prolongations of vowels or utterances with a :::

Consult the legend offered in **Section 9** for a listing of the codes used below to document certain linguistic (elongated words and phrases), paralinguistic (pauses), and discoursal (interruptions) information.

Table 40.9
Marking Discoursal Elements

Line	Speaker	Transcription	Translation
345	MV1:	<i>okay, yo este...yo venía saliendo de la barra...//</i>	okay, I, uh...I was coming out of the bar...//
346	MV2:	//<< y ¿qué pasó? >>	//<<and what happened?>>
347	MV1:	<i>...crucé pa' la gasolinera...</i>	I walked across to the gas station...
348	MV2:	<i>...y:::nd...?</i>	...a:::nd...?
349	MV1:	<i>...de repente vi que iba un carro cuando se chirriaron las llantas, se me reculó...</i>	...suddenly, I saw a car going, and when the tires screeched, it backed up towards me...
350	MV2:	<i>¿QUE SE TE QUÉ?</i>	WHAT IS IT THAT IT DID?
351	MV1:	<i>...y me pegó por aquí, me tiró pa'l suelo y yo estaba dando vueltas...</i>	...and it hit me about here, it threw me to the ground and I was rolling/spinning...

Table 40.9 illustrates the marking of continuing speech through several exchanges through ellipses, interrupted speech, accelerated speech, elongated utterances, the use of vernacular [v], the use of capitalization for shouted or raised volume speech, capturing reduced forms (*pa'*), and offering two possibilities for ambiguous words. Precisely marking the attempts of a speaker to finish expressing a thought even through several exchanges assists the reader of the transcript in understanding the coherent idea the defendant was attempting to express, despite the continuous interruptions by the other speaker.

- Use brackets to show the beginning and the end of the overlapping dialogue in both speakers’ turns, as in the following example.

Table 40.10
Overlapping Dialog

Line	Speaker	Transcription	Translation
60	MV1:	<i>Él es su hermano...[[U] el amigo ...</i>	He’s his brother...[[U] the friend ...
61	MV2:	<i>no, no, el nombre] de tu amigo.</i>	no, no, the name] of your friend.
62	MV1:	<i>¿Dónde es que tú tenías sangre, en [tu ropa?//</i>	Where is it that you had blood, on [your clothes?//

63	MV2:	// <i>TODO,</i>] <i>todo todo el cuerpo .</i>	// <i>EVERYWHERE,</i>] all over all over my body.
----	------	--	--

Note that the utterances of **MV1** and **MV2** overlap in lines 62 and 63. The use of the brackets makes it easy for readers to identify overlapping dialogue and provide a more authentic representation of the speech events. Overlapping occurrences are significant elements of the communicative exchange (discourse) taking place between the interlocutors. Overlapping carries pragmatic meaning, as does crying, yelling, pauses, certain backchannels, “uh-huh,” vocalizations, interjections and many other paralinguistic elements. For example, overlapped speech clearly marked will convey the notion of a possible occurrence of a forcible interlocutor, a disparity of power between interlocutors, or simply, a random or intended disruption on part of the interjecting speaker. This is especially important and applicable when working with FTTS of custodial interrogations. It is the responsibility of the readers, i.e., attorneys and triers of fact, to process and interpret the crucial information within the context of the overall discourse, and according to their own knowledge and life experience. However, it is the obligation of the FTTS to lay out all critical information in the document. Leaving out discursal pieces of evidence, such as overlapping and other pragmatic signals constitutes a flagrant disregard for due process.

In the case of multiple voices on a given recording, the FTTS will have to listen to the same portion repeatedly in order to distinguish verbal content. In the event that more than one voice is heard at the same time, multiple playbacks are necessary. This process permits the practitioner to concentrate on one voice at a time and filter out interfering voices. The repetition of the playback, an attuned ear, and context will assist the FTTS to decipher overlapping speech. It is important to remember that contextual cues work along with auditory input to disambiguate the words of each speaker. Ultimately, the FTTS must identify and match all the utterances to the corresponding designated voices or include an FTTS note if unable to do so. If some words are recognizable in an overlapped passage and it is impossible to ascribe them to any speaker, the FTTS should insert the intelligible speech or words and indicate that it was not possible to determine who uttered the words.

8.2.2.0 Denote Silence via Application of the Legend [SIL]

- Use the legend symbol [SIL] to denote silence.
- Refrain from the use of [i] inaudible to denote silence as it may mislead the FTT client to believe that there was an utterance in the recording that the FFT specialist missed.

Denoting silence is as important as denoting any linguistic or paralinguistic sound unit, as silence also carries significant meaning. Use the legend symbol [SIL] to identify physical silence or gaps in dialogical turn-taking situations (e.g., conversations and interrogations) to distinguish them from unintelligible responses. It should be stressed that periods of silence or the absence of an expected reply during a turn-taking sequence can provide critical information for attorneys and triers of fact. Marking silence is particularly important in transcribing custodial interrogations of LEP individuals by putative interpreters. Depending on the linguistic and sociolinguistic context, silence can indicate a range of meanings, such as: (1) lack of comprehension due to a suspect’s limited English proficiency or to the interrogator’s and putative interpreter’s poor foreign language proficiency; (2) insufficient time for a suspect to process information and respond; (3) lack of response due to a distressed or confused state of mind; (4) agreement; or (5) a deliberate refusal to speak. Considering the significance of silence, the conventional way of noting a lack of reply as

“inaudible”—[i]—is not recommended because it is misleading. Attorneys and triers of fact may erroneously conclude from the use of [i] that a reply was given, but the FTTS was unable to hear it. Marking silence as [SIL] therefore prevents false representation of the speech exchange.

8.2.2.p Denote Unintelligible Utterances via the Application of the Legend [U]

Use the legend symbol [U] to indicate unintelligible utterances that are hard to discern in the recording, either because of the recording/replaying equipment, or because of the speaker’s unclear, faint, or low-volume delivery.

Do not use hyphens [---] to indicate the number of missing words in an unintelligible unit because these hyphens can be misleading; when speech is unintelligible, it is impossible to distinguish words from syllables, and guesswork results in an unreliable FTT document.

While silence [SIL] has a broad range of meanings directly related to the communicative event in the forensic recording, unintelligible [U] pertains only to the FTTS’s inability to report or to transcribe an utterance in the recording. If a speaker does provide an answer, but the FTTS is unable to hear it clearly for any reason, she should mark this answer using [U] to signify an inability to understand or hear the utterance well enough to decipher the meaning.

8.2.2.q Document Background Conversation and Noises

- Document any and all sounds from the SL recording (e.g., squeaks, squawks, steps on gravel, doors slamming, music, traffic noises).
- Transcribe all discernible speech, including background conversations or utterances.
- If a background conversation is present but unintelligible, document its presence by using the legend, indicating where it begins and ends within the larger discourse being transcribed.

Capturing background noise or utterances enables a party who has not heard the SL recording to envision the scenes recorded in the transcript. As Fishman (2006b) suggests, if the sound is obvious, the FTTS should identify and describe it: [Car horn]; but, if the sound can only be identified by someone present when the recording was made, merely describe the sound itself: [Clicking sounds] and not [Sound of automatic pistol being loaded] (p. 495). Discernible background utterances should also be transcribed (e.g., [a phone conversation in the foreground, and **MV2** speaks to an unidentified third person/male (**UMV**) in the background.]). Providing further information about the origin or significance of particular sounds should be left to the prosecutor or defense attorney to explore.

8.2.2.r Document Any Visual Cues Evident in Video Recording

- Document nonverbal content such as gestures and other body language if evident in the SL video recording.

Video recordings offer an additional layer of information since actions and gestures can be helpful in disambiguating verbal cues. Therefore, descriptions of visible gestures (e.g., [nods head

up and down]) should be included, keeping in mind not to use qualifiers which could imply a value judgment (e.g., [vigorously nods head in agreement]). Relying on a videotape allows the FTTS to produce a higher quality transcription/translation, because viewing body language assists in the decoding of meaning.

Visual images provide invaluable information required to decipher otherwise ambiguous meaning. The meaning of ambiguous statements can be clearly distinguished by careful observation of accompanying gestures. For example, the meaning of the phrase *para que se pare* [so it gets hard] is clear when accompanied by an arm gesture denoting a male erection (see **Section 2, Example 3**). Video recordings also reveal multiple cues about the sociolinguistic context, important for judges and juries in the process of fact finding and determining guilt. For example, observing a defendant using a tissue to dry some tears while attempting to say something may provide the needed contextual information to clarify an ambiguous utterance. The FTTS should transcribe the articulated words along with the gesture (e.g., [raising a tissue to his face]), and any other vocalizations (e.g., [crying sounds]) with a corresponding legend symbol and notation. The documentation of nonverbal information in the transcript is valuable because it enables triers of fact to understand the speaker's utterance within its full communicative context, and aids them to construct a representational image of an actual event.

8.2.2.s Keep a Record of Unfamiliar Terms

- Keep a record of any new jargon, specialized terminology, or language variants encountered and where they appear in the transcript. Document the reference works used to support the transcription/translation choice.

Documenting vocabulary and language usage improves efficiency during the production of the transcription/translation and it promotes professional development. This record is an indispensable tool in cases in which the FTTS is called to defend the FTT document in court.

8.2.2.t Review the Preliminary Transcript Against the Recording

- Once the preliminary transcript has been completed, play the entire recording again several times and compare the written text with the content of the SL recording. Listening to or watching the recording and simultaneously reading the text assists the FTTS to edit and check for omissions or other errors.

Reviewing the preliminary transcript against the recording can reveal a number of transcription errors, including incorrect voice attribution and omissions or additions of content or paralinguistic features. Likewise, overlapping speech and other sounds that were initially unrecognizable and were labeled “unintelligible” may be distinguishable during the final playbacks. When the FTTS realizes that an omission has been made, the recording should immediately be paused and the missing information inserted. This process should be repeated as many times as necessary. Only when the FTTS is convinced that there are no omissions or errors, and that she exhausted every means of discerning ambiguous words and vocalizations, is the transcription ready for translation.

8.2.2.u Consult and Verify

- Seek assistance from partners or colleagues to discern a word or utterance that is difficult to understand. If, having consulted with a colleague(s) who asserts understanding of an utterance, the FTTS continues to be unable to independently verify the item, the contested portion of the recording should be transcribed as “unintelligible” (Fishman, 2006b). If the FTTS can “hear” with certainty or infer that the proposed solution fits the context, then she can include it in the transcription/translation. In cases of still unintelligible utterances, the FTTS may try listening on other types of equipment. Sometimes, much less sophisticated devices yield surprisingly good results.

An FTTS working independently is advised to seek assistance from colleagues about problematic passages. If another FTTS hears a particular utterance and the questionable rendition can be objectively verified by the FTTS requiring assistance, then the final, indisputable rendition can be included in the transcription. The FTTS must be prepared to testify under oath that the contents of the transcription represent what she heard in the SL recording.

8.2.2.v Perform Final Playback and Review

- Replay the entire recording one last time and compare it to the transcript, making sure that every sound (or relevant gesture in case of a video recording) is accounted for. Before undertaking the final review, waiting a day or more is advised.

8.3 Phase 2 of the FTT Process: Translation

When translating the forensic transcription into the TL, it is essential to follow general principles governing translation in combination with relevant professional and ethical standards of court interpreting. As discussed in **Section 1.1**, the primary goal of the translation phase is to yield an accurate, meaningful, and contextualized rendition of the speech transcribed from the SL recording. The translation therefore faithfully and meaningfully conserves the style, tone, language level, and intent of the speakers. All colloquial expressions, slang, improper grammar, and profanities recorded in the transcript should be translated into their TL equivalents, without editing, so that officers of the court and triers of fact have a true impression of the linguistic, sociocultural, socioeconomic, and education level of the speakers.

Ideally, the person or team preparing the transcript also completes the translation phase of the FTT assignment. However, FTTSs are frequently hired to perform only the translation portion of the task. Since the skills of the court interpreter and the translator converge in the task of FTT, as discussed in **Section 1**, the FTTS must address a unique set of challenges that require an understanding of the relationship between grammatical and pragmatic meaning (see also **Chapter 27**).

Grammatical meaning derives directly from the words, phrases, clauses, and sentences encoded in the SL message. However, the full meaning of an utterance requires considering the setting or circumstances surrounding the exchange and the speaker's intention or the function of

the utterance in the larger discourse. Meaning beyond the grammatical constituents constitutes pragmatic meaning, which transcends the sum of the words. Pragmatic meaning does not suggest that the words themselves are not meaningful, but rather that the full meaning of an utterance is determined by the combination of grammar and the social dynamics (e.g., speaker relationships, intentions, power dynamics) in which the utterance took place (see **Chapter 26, Section 3.1**).

Because the construction of meaning depends on grammatical as well as pragmatic elements, and because speech converted into text gives rise to a hybrid form of text (namely spoken text represented by orthographic script) the forensic translation process should never rely exclusively on the transcription. Even superior transcriptions that meet all FTT standards will not always convey all information that was taken for granted at the time of transcribing. For example, sometimes punctuation marks and legend symbols are properly inserted while converting speech to text, and yet, when the translating process begins, the same punctuation and symbols become ambiguous, for they lose their power to represent the full architecture and context of the speech in interaction as when heard directly from the source. This is in part because of a natural tendency—but wrong assumption—that the punctuation used during the transcription process will suffice to represent later in the translation what was heard and seen in the recordings. Experience has shown time and time again that FTTSs, including those who do the transcription themselves as well as FTT translators who are commissioned to do just the translation work, always have to go back to the recorded speech to rediscover cues that the written transcription alone is not unlocking or delivering. Re-listening to the audio/video interaction allows the FTTS to have a better ‘picture’ of the utterance cued up for translation. The written transcription alone often falls short in providing aural information loaded with meaningful value, such as phonological information (intonation and prosodic patterns), grammatical form and meaning (delivery of speakers’ words and sentences), illocutionary force (i.e., intended message, pragmatic meaning), and information about the sociolinguistic context in which each utterance fits with their adjacent pairs and within the broader discourse (pragmatic meaning). Only through listening to the ‘live’ recorded interaction will the FTTS be equipped to represent in the TL (via the translation) all the meaningful information of what was said in the SL and how it was said.

Since the potential for unwarranted ambiguity is too high if the translation is processed with the transcription as the only reference, and because the risk of adding, omitting, or distorting the message is too great, it becomes imperative to always listen to the recorded materials while going over the transcribed text when translating. This assists the FTT in “catching” every relevant nuance that needs to be translated. It should be noted that punctuation, exclamations, and interjections, are not universal and thus they can be misleading during the translation process if not heard directly in the source recording. In other words, utterances written in the transcription will always need to be listened to again before they can be translated, especially those utterances accompanied by punctuation marks, interjections or legend symbols, not to mention key utterances with legal value.

For all the reasons explained above, when it comes to the translation process in FTT it is essential to bear in mind that transcriptions (transcribed texts) are indeed the templates for the translation process, but the recordings are the main source.

It is important to note that the translation process should never limit searching for equivalent pairs of lexical items in vocabulary lists or bilingual dictionaries, as these searches are not always productive or reliable, given the nature of spoken language versus written language. Grammatical, pragmatic, social, and cultural considerations are mandatory when converting SL

phrases, sentences, utterances, and performance features such as errors, self-repairs, paralanguage (e.g., hedges, fillers, false starts), and other linguistic and nonlinguistic features into the TL.

8.3.1 Preparing for Translation

Whether or not the FTTS has been part of the transcription phase, the following protocol is advised for the translation phase. Adhering to these guidelines provides the structure and a compilation of considerations necessary to produce a valid and reliable FTT document, one that will enable triers of fact to make sound decisions based upon best evidence and protect the legal rights of LEP defendants.

8.3.1.a Review All Original Recordings (Audio and/or Video) Before Beginning Translation

- Request all original recordings (audio and/or video) for review. This is especially critical when the FTTS has been hired only to perform the translation portion of the process and the original transcription may have been completed by a nonprofessional, thereby making it suspect and potentially unreliable.
- Begin to translate only when the final transcription process is complete or when the transcription has already been thoroughly reviewed and corrected.

Translators usually have no access to the original interrogation recording, and rely solely on the police transcripts. However, if the FTTS receives the transcription of unknown quality, she must review the transcription against the original recordings before beginning the translation work (even if this entails more work and thus a higher fee). FTTSs who encounter problems obtaining source materials should remind clients of chain of custody obligations (see **Section 8.3.1.b**). The original recordings will provide the contextual information necessary to fully understand the communicative event and its individual utterances. If there is a significant discrepancy between the transcription and the recordings, the FTTS has the duty to notify the client and request a correct(ed) transcription before beginning the translation. Otherwise, the translation will be based on an inaccurate representation of the recording.

8.3.1.b Maintain Chain of Custody

- If you are commissioned to perform only the translation portion of an FTT assignment, request the source media along with the transcription in order to authenticate the final translation product.

A major problem in the field of FTT is that practitioners commissioned to perform a translation are routinely denied access to the original SL recording and are only given the transcription. If the FTTS has difficulty accessing the original recordings, she should invoke chain of custody rules for best evidence, which require keeping these source recordings together with the transcription. Access to the source materials ensures that the FTTS can verify that the transcription is a valid and reliable rendition of the SL recording before undertaking the translation portion of the FTT process.

8.3.1.c Use a Four-Column Format

- Insert the translation into the four-column format described in **Section 8.2.1.c** and supply the legend to the readers of the document.

The FTTS who is commissioned only with the translation portion should request from the client/transcriber the digital transcription in order to produce an FTT document that incorporates both the transcription and the translation for easier access to the linguistic data (see **Section 8.4.2**). The use of this format promotes readability and allows for efficient comparison of the discourse with other versions, should a challenge arise.

8.3.2 Performing the Translation

To produce an accurate, meaningful legally equivalent translation, the FTTS must employ the careful methodology discussed below.

8.3.2.a Conserve Meaning, Style, Register, and Intent

- Translate the transcription without editing, summarizing, deleting, or adding meaning while conserving the style, register, tone, and intent of the speaker. The “meaningful legal equivalence” standard pertains to FTT because of its potential use as forensic evidence.

As discussed in **Section 6**, FTT work is governed by the same standards of performance and ethical responsibilities as court interpreting. The goal of forensic translation is to achieve legal equivalence, which means the conservation of not only the content of the original message, but also the style and manner of the original discourse. A verbatim or literal translation can yield an almost meaningless product. However, a “conceptual verbatim” translation permits triers of fact, who often rely solely on the FTT, to have complete access to the entire speech interaction submitted as evidence. The FTTS performing the translation must keep foremost in her mind the fact that the final translated document may be used as key evidence in a criminal case (see **Section 1.3**) and that she may be called as an expert witness to defend her work.

8.3.2.b Capture Speech Variety, Including Standard and Nonstandard Usage

- Conserve local and regional variation, including standard and nonstandard language usage, as diligently as possible using appropriate equivalents and orthography. Do not translate nonstandard SL speech into a TL standard equivalent because this would misrepresent the sociolinguistic characteristics of the speaker, as well as mask linguistic deficiencies on the part of putative interpreters or allegedly bilingual interrogators.

8.3.2.c Conserve Speaker Meaning and Intention by Providing Pragmatic Equivalents

- Prioritize meaning over form in the translation process in order to capture speaker meaning or implication of key information not directly articulated by the participants, but reasonably inferred by the FTTS, using linguistic, sociolinguistic, sociocultural, and pragmatic expertise.

In order to achieve meaningful legal equivalence, it is the FTTS’s responsibility to convey in the translation all of the ideas represented in the discourse, faithfully including sociolinguistic and pragmatic content embedded in the language used in context. Achieving pragmatic equivalence in a translation requires looking beyond the linguistic elements of an utterance to capture “what the speaker means or implies rather than what she or he literally says” (Baker, 2011, p. 235). Therefore, the practitioner must prioritize meaning over form; that is, factor in other crucial information such as the function of the item in the larger discourse (e.g., filler, negation, affirmation). Finding verbatim equivalents in the TL without considering the function of a particular word, phrase, or exchange will result in the distortion of the intended meaning of the SL utterance. Careful attention to deciphering linguistic and paralinguistic signs within the context of a speech event will assure a pragmatically accurate meaning.

For example, in addition to its typical function as a negative particle, *no* in Spanish sometimes functions as an affirmative response to a question. It is common to hear Spanish speakers answering questions with what appears to be a negative response when, in fact, they are answering in the affirmative, as in the following exchange:

Line	Speaker	Transcription	Translation
1	MV1:	<i>¿Estaban amontonados en la van en la cual lo transportaron?</i>	Was it crowded in the van you were transported in?
2	MV2:	<i>No, pues veníamos como sardinas, todos amontonados, no nos podíamos mover.</i>	<u>Oh</u> , yes, we were crowded like sardines, all on top of each other; we couldn’t move.

As this example shows, FTTSs must recognize that even a lexical item such as “no,” that appears to have a definite semantic value, acquires a different meaning when used in a different context, such as in the example above.

8.3.2.d Conserve Paralinguistic Features

- Convey the form and meaning of all paralinguistic elements in the translation, including pauses, hedges, self corrections, false starts, and emotion expressed in tone of voice, word choice, intonation, stress, and volume, consistent with the transcription (and FTT coded symbols).

The faithful transfer of paralinguistic features from the SL transcription to the TL is just as important as accurate translation of linguistic elements. Paralinguistic features convey a wealth of information regarding speaker intention, ambivalence, equivocation, and certainty, as well as indicating linguistic competence, comprehension, and presence during the speech event. Triers of fact use paralinguistic information to make judgments regarding the recorded speakers’ veracity, trustworthiness, and credibility. Unfortunately, these data can be misconstrued by triers of fact who possess little to no knowledge of cross-cultural communication and predictable cultural responses to interrogation by authorities. These data also shed light on the completeness, accuracy, and comprehensibility of the Miranda rights delivery and can demonstrate the lack of coherence

and, thus, meaning in the delivery of these rights and interrogation questions by a putative interpreter.

8.3.2.e Conserve all Speaker Errors

- Faithfully translate all errors made by any speaker, paying particular attention to errors made by putative interpreters or allegedly bilingual interrogators. Do not “clean up” or sanitize speakers’ language. To do so misrepresents the original exchange and provides false evidence of the comprehensibility of the speaker’s message/delivery.
- If the error is significant and would not be understandable to a native speaker with minimal to no formal education, the FTTS should apply the conventional legend symbols [**sic**], or [**NSW**] for non-Spanish word, [**NEW**] for non-English word, [**WSW**] for wrong Spanish word, or [**WEW**] for wrong English word (see **Section 9** for legend). These legend symbols can be easily modified for use with other languages.
- Once the error has been marked in the transcription, the invented or wrong word should be transferred to the translation column exactly as it was spoken (phonetically) and then marked accordingly, using the above symbols plus **Garble** to indicate the lack of meaning of the lexical item or phrase.
- Whether the error interferes with meaning or not, make a good faith attempt to conserve the error in the TL by providing a linguistically equivalent translation and using the appropriate legend symbol.

See **Section 8.2.2.k** of the transcription phase of this protocol for a full discussion on the importance and treatment of capturing speaker error in the transcription and translation phase.

8.3.2.f Preserve Culturally Bound Terms or Other Information via FTTS Notes

- Convey the meaning of culturally bound terms in the translation by preserving the SL word in italics in the translation column and include an FTTS note.

Example 1: Preserving Culturally Bound Terms

Line	Speaker	Transcription	Translation
1	MV1:	<i>La bogotada llega el miércoles.</i>	The <i>bogotada</i> ¹ will arrive on Wednesday.

¹**FTTS Note:** The *-ada* ending in Spanish is an intensifier that refers to the root word and denotes a large quantity. Here the term refers to something that will arrive from Bogotá.

Culturally bound terms have no direct equivalent in the TL and require the use of an FTTS’s knowledge in order to properly convey their meaning and the use of an FTTS note (see **Section 8.3.3**). The purpose of the FTTS note is to provide the indispensable cultural clarification and proximate equivalents in the TL (if they exist) necessary to transfer conceptual content from one language/cultural milieu to another.

8.3.2.g Capture Vernacular Usage Through the Symbol [v] and Footnotes, as Needed

- Denote vernacular usage in the translation through the use of the legend symbol [v]. If it is pervasive throughout the discourse, include an FTTS note explaining the nonstandard variety of language used by the individual and what it might imply about his or her social or educational background.

To achieve transparency in the forensic translation, the FTTS should indicate sociocultural information that is communicated by the language of the speaker that would otherwise go unrecognized by the consumers of the FTT document. FTTSs should be cautious about providing nonstandard English equivalents for nonstandard usage in the foreign language. For example, if a Spanish-speaking individual uses *pa'* (reduced form for “to”), *'onde* (reduced form for “where”), and *traiba* (irregular conjugation for “had”), many practitioners contend that FTTSs should refrain from translating those forms into nonstandard forms in English. Their argument centers on the stigma that could attach to the speaker through the use of any particular social variety. However, bringing the vernacular to the attention of the consumers of the FTT is helpful to provide more insight into the identity of the speaker.

8.3.2.h Preserve Idioms, Proverbs, Metaphors, and Common Slang Terms

- Use the closest TL equivalent to conserve the meaning of idiomatic expressions, proverbs, metaphors, or common slang terms. If no equivalent exists in the TL, the meaning can be conveyed through paraphrasing or circumlocution. If, after doing research, the FTTS finds that the meaning of an idiom, proverb, metaphor, or slang term cannot be explained, the FTTS should provide a literal translation.

A translation can never convey the exact intent of a speaker in the original SL text/recording. Nonetheless, the FTTS should make the best effort to provide an accurate translation. The characteristics of spoken language, including the use of idiomatic expressions, common slang, and metaphors, present unique translation challenges for FTTSs. **Best practice requires utilizing the closest equivalent in the TL. If there is no equivalent expression in the TL, the FTTS is advised to provide a nonliteral translation, using paraphrase or circumlocution, that effectively preserves the SL expression’s intended meaning** (as held in *U.S v. Gonzalez*, 2004; see also **Section 5.5**). If the meaning of the SL expression cannot be ascertained, the FTTS should provide a literal translation and include an FTTS note explaining the rationale (e.g., “Literal translation is provided because no equivalent was found in the TL”) (see **Chapter 27, Section 3.2**).

8.3.2.i Translate Argot Using Primary Denotation

- In cases involving argot (slang terms, idioms or “code” that are only understood by particular groups or small sections of the population) in the SL, always maintain the term’s primary or commonly known meaning.

- Conserve the argot term in the SL in the translation column and insert an FTTS note providing the primary denotation of the term.
- Notify the client of possible secondary meanings.

As discussed in **Section 5.5**, the courts have determined that the way in which the FTTS should translate ordinary slang and idiomatic expressions differs from the protocol for translating argot. The double meanings inherent in argot pose a difficult problem because one meaning of the term in question may be perfectly innocuous, while the other meaning is extremely incriminating. This is especially true of drug slang, in which drugs are deliberately referred to with harmless sounding words such as “horse” (for heroin) and “grass” (for marijuana). While these examples were once drug argot, they have transitioned into common slang usage in American English. A translation challenge arises when the FTTS encounters genuine drug argot whose meaning is known only to a small group of people, or confined to a particular region or country, or a particular trade. The FTTS's linguistic knowledge and best professional judgment should guide the determination of whether the term in question constitutes argot or common slang. Among the factors that should be considered is the extent to which a term or word is accepted across state, regional, or national boundaries. Another complicating factor is the ephemeral nature of slang and argot, which makes ascribing a particular meaning that much more suspect. When faced with this dilemma, an FTTS may be inclined to translate these terms or expressions into the TL without indicating the slang or argot meaning. In any case, the FTTS should exercise extreme caution before translating an argot term into the equivalent argot in the TL, even in contexts where the argot term would fit perfectly, as it has been legally determined that providing the equivalent in the TL is prejudicial and constitutes expert witness testimony. Fishman (2006b) offers an instructive example:

The Spanish word for lard, “manteca,”...in at least some parts of the Latino world, is also a well-known slang expression for heroin. Even where it is obvious in the context that “manteca” is being used to describe an illicit substance, not lard, the translator should translate it as “lard.” To translate it as “heroin” could mislead the jury into believing that the conversants were far more explicit than they actually were. (p. 515)

We recognize that this stance appears to be in conflict with the obligation of the FTTS to provide a contextually accurate translation that takes into account sociolinguistic and pragmatic meaning. However, as Fishman (2006b) contends, refraining from providing the argot meaning prevents the highly prejudicial impact that secondary meanings of the terms may have, and it preserves the integrity of the translation and the credibility of the FTTS, who can subsequently be called by either the defense or the prosecution to offer or counter the secondary meaning as part of expert testimony.

A similar linguistic problem is presented by the current common practice among FTTSs to include both the primary denotation and the secondary meaning of a term by means of a footnote. However, Benmaman and Framer (2010) assert that “translators should not be allowed to ‘decode’ the tape” (p. 157). A translation which does not merely translate, but also infers meaning from argot, risks being ruled inadmissible and constitutes expert testimony. Thus, the suggested protocol for FTTSs working with argot is to conserve the term in the SL in the translation column and insert an FTTS note explaining the primary denotation of the term. This practice preserves the intention of the *Gonzalez* (2004) opinion, which mandates preserving the primary denotation of argot and assigning the establishment of any possible secondary meaning to expert testimony. The FTTS may then be employed by the party as an expert witness on foreign drug code, provided

the FTTS possesses the requisite qualifications. This approach is also in keeping with the ethical responsibility of FTTSs to remain impartial and maintain accuracy.

8.3.2.j Provide an Appropriate Translation for a Polysemic Term

- Use contextual information as well as primary meaning to select the best TL equivalent for a polysemic SL term.

Polysemic terms are words with multiple meanings. In order to select the most coherent and appropriate translation, the polysemic term in question must be carefully examined within its linguistic context (the statements that precede and follow it), with judicious consideration of the topic of conversation and the pragmatic context. In the example provided below, because of the highly contrasting denotations of the polysemic term *quisistes* [**sic**], the FTTS should have considered the primary meaning of the term to construct the most accurate translation. **Table 40.11** illustrates the egregious translation errors that can occur when this protocol is violated.

Table 40.11

Excerpt from a Review of an Erroneous FTT with Corrected Transcription/Translation

Line	Speaker	Original Transcription	Original Translation	Corrected Transcription	Corrected Translation
437	DETECTIVE :	... <i>Ella nos dijo ...que estaba contigo solo y que quisistes tener sexo con ella. Ésa no- Mira, eres hombre. Ésa no es, ésa no es un delito ¿verdad?</i>	...She told us...that she was with you by yourself and that you tried [gram] to have sex with her. That one isn't- Look, you're a man. That one's not, that [gen] one's not a crime, right?	... <i>Ella nos dijo ...que estaba contigo solo y que quisistes tener sexo con ella. Ésa no- Mira, eres hombre. Ésa no es, ésa no es un delito ¿verdad?</i>	...She told us...that she was with you only and that you wanted [gram] to have sex with her. That one isn't- Look, you're a man. That one's not, that [gen] one's not a crime, right?

Note. González, 2009c, p. 67, line 437.

In this particular case, it is clear that the failure to select the primary meaning of the polysemic term altered key evidence and had a deleterious effect on the outcome of this case, supporting the imposition of the death penalty. If the translator had followed a sound linguistic protocol, she would have come to a more reliable and accurate translation of the term. To do this, she should have considered the first or primary meaning of *querer*, which, according to the *Diccionario de la Lengua Española* (2010), is *desear* [desire/want] or *apetecer* [a wish to do something]. The denotation *intentar* (*tratar de*) [to try] is the fifth definition in the dictionary. When used in the preterit (*quisiste*), the meaning is ambiguous (Butt & Benjamin, 2004); it could mean either “wanted” or “tried to.” More importantly, an examination of the broader linguistic evidence present throughout the interaction clearly shows that, in this specific context, the phrase does not refer to an actual “attempt.” Additionally, considering the defective Spanish proficiency of the putative interpreter, the translator should have been cautious about ascribing the most inflammatory meaning to the polysemic term. For the translator to derive this meaning from the context, the detective would have had to ask, *¿Intentaste tener sexo con ella?* [Did you try to have

sex with her?]. Proper protocol in this situation would require the FTTS to be guided by the sociolinguistic and rhetorical context of the detective’s question, and, if the polysemic term is unclear, to select the term with the most (legally) neutral connotation within the context. In this case, the linguistic, pragmatic, and discoursal context all point to the use of the primary denotation for the Spanish term *querer* (“wish/want to”), which also happens to be the most neutral term. There were no contextual cues that would support adopting the more incriminatory meaning of the term. If the FTTS cannot clearly distinguish the intended meaning, she should offer both possible meanings.

8.3.2.k Provide Dual Meaning if Context Does Not Support One Choice

- Provide both meanings (use “/”) for a phrase if the context does not support the choice of one equivalent over another alternative translation. Include an FTTS note stating the rationale.

The example below illustrates a common FTT dilemma in translating a term (*me asaltaron*) for which neither the first meaning nor the contextual information is sufficient to select only one rendition. In **Table 40.11**, bold font indicates the utterances under analysis.

Table 40.12
Translation of a Dual Meaning SL Utterance

Line	Speaker	Transcription	Translation
17	MV1:	<i>...no, en los bomberos en donde está la [U]...</i>	...no, at the fire station, where the [U] is located...
18	MV2:	<i>¿Qué necesitas, qué necesitas?</i>	What do you need, what do you need?
19	MV1:	<i>...en los bomberos, aquí me asaltaron ahorita...</i>	...at the fire station, here I was assaulted/mugged just now ...
20	MV2:	<i>¿Te asaltaron? ¿Dónde? ¿Qué direc-...?</i>	You were assaulted/mugged? Where? What addr-...?

In the 12-minute recorded 911 emergency call submitted for translation, the FTTS decided not to translate the term *asaltar* with a higher degree of specificity because the contextual information in the source language (Spanish) was insufficient to infer whether the translation into English should have been “assault” or “mug.” In vernacular and standard Spanish, *asaltar* means “to mug” or “to hold up with intent to rob (frequently while armed)” or “to attack.” Neither the 911 caller nor the dispatcher alluded to money being stolen, people being robbed, or other referents that would have assisted the FTTS to disambiguate the meaning of *asaltar*. The confusion may have arisen because of conflicting meanings for the same word used by the two speakers. The caller may have been using the term *asaltaron* consistent with the Mexican Spanish meaning (to mug or to hold up with intent to rob, frequently while armed), while the Spanish-speaking dispatcher might have been using the term to mean “assault,” without implying the intention to rob. Recognizing that the **MV1** caller requested a Spanish-speaking dispatcher, the FTTS could have concluded that **MV1** is a native Spanish speaker who would most likely use the term *asaltar* consistent with the common Spanish meaning. However, under the circumstances, it was impossible to determine whether one or both of the speakers are referring to an assault or to a mugging, because the FTTS did not hear any reference to personal property being taken. Because

there is no certainty regarding how the meaning of the term is being coded and decoded by these two interlocutors, the FTTS correctly chose to offer both words "assaulted/mugged" as renditions.

8.3.2.1 Follow Standard Conventions of TL in the Translation

- Follow all typographical and orthographical rules of the TL in the translation, including diacritics.

Line	Speaker	Transcription	Translation
49	MV1:	...ah, <i>camiseta blanca</i> ...y...y una <i>muchacha</i> ...ya aquí ya llegó el <i>señor</i> [U].	...ah, a white T-shirt and...and...and a girl...here, the man has just arrived [U].

The above is an example of a term that has several possible English translations. The Spanish word *camiseta* can refer to a number of different kinds of shirts (e.g., jerseys, tank tops, or undershirts). Given the lack of context, the FTTS chose the most generic TL equivalent for *camiseta* in English: “T-shirt.” Note that the orthographic conventions in each language are also preserved in the transcription/translation above. *Camiseta* is a one-word term in Spanish, while “T-shirt” is a two-word hyphenated phrase in English with two alternative spellings (with or without a capital letter “T”). A third possible spelling of “tee-shirt” was not selected because of its significantly lower frequency of occurrence in English corpora, which can be checked by referring to the *Corpus of Contemporary American English* (Davies, 2008) or conducting Internet searches.

8.3.2.m Add Required Subject Pronoun when Translating from [+Pro-drop] to [-Pro-Drop] Language

- Translate with proper inclusion of pronoun reference when translating from an SL (e.g., Spanish) that allows for omission of a subject pronoun into a TL (e.g., English) that does not.

The pro-drop parameter refers to the omission of the subject pronoun. Languages like Spanish and Italian are [+**pro-drop**], whereas English or French are [-**pro-drop**]. A prevalent translation problem occurs when the subject of the verb in the [+**pro-drop**] language is ambiguous. In the following example, the verb *estar* [“to be”] in Spanish can refer to four different subjects and the subject is unclear from the grammatical structure and the context. Therefore, the FTTS has to conserve the ambiguity by indicating all possibilities in the translation, as in the excerpt below.

Line	Speaker	Transcription	Translation
98	MV1:	<i>Cuando estaba en la camioneta, ¿estaba vivo o muerto el señor?</i>	When you/he/she/it were/was in the truck/van, was the man dead or alive?

Note. From González, 2010b, p. 30, line 98.

The first *estaba* (was/were) may appear to refer to the man (*señor*) mentioned immediately afterwards (“When the man was in the truck/van, was he alive or dead?”). However, after examining prior and subsequent utterances, the *estaba* (was/were) could refer to the person being asked the question (“When you were in the truck/van, was the man alive or dead?”). It could also refer to a third person or item in the van (“When he/she/it was in the truck/van, was the man dead

or alive?"). Since the ambiguity is not clarified from the context, it becomes necessary to add all the possible pronouns (you/he/she/it) and their corresponding verb forms (was/were).

8.3.2.n Preserve Ambiguous Language in the Translation

- Preserve ambiguous SL utterances by translating them into similarly ambiguous TL equivalents.

Ambiguous questions or statements often lead to misunderstanding or communication breakdown. Miscommunication occurs more frequently when one or more of the participants have limited language proficiency. Preserving the ambiguity or communication breakdown in an FTT document is important because it may have evidentiary value (e.g., in disputing the attribution of an action or the conclusion drawn by police interrogators, or in providing evidence of poor language proficiency of putative interpreters). The following example illustrates the appropriate conservation of ambiguity in the translation:

Line	Speaker	Transcription	Translation
27	MV1:	<i>O sea...[U]...tú traías la arma [U] ...tú le jalaras. [U]</i>	In other words...[U]...you had the [gram] weapon [U]...you would pull [U]

The speaker's originally ambiguous utterance was correctly translated into equally ambiguous English. The utterance is particularly challenging to the FTTS due to its incompleteness, lack of a clear context, and use of *le*, which can be both a direct and indirect object complement referring to either an inanimate object or a person as the receiver of the action. The FTTS has an obligation to preserve the ambiguity and proceed cautiously to prevent adding or deleting information. Adding to the meaning, or any attempt to clarify, violates the principles of translation and may introduce false incriminatory evidence.

8.3.2.o Consult Resources to Construct Accurate Translations

- To aid translation, seek out information or clarification from resources including glossaries, dictionaries, the Internet, and colleagues, especially native speakers or persons familiar with particular regional varieties and specialized terminology.

Competent FTTSs must have a reference library of dictionaries and glossaries at their disposal to investigate denotation, connotation, current usage, and regional variation. The FTTS must always strive to find the most linguistically and pragmatically appropriate equivalent. A systematic approach to finding, organizing, and applying relevant linguistic information is essential. Often, the most appropriate equivalent is not found in dictionaries, which usually lag behind actual usage, sometimes by decades; and the dictionary, depending on the type, may only provide a standard definition of a term. FTTSs should utilize all available print and electronic resources, including language corpora available for a variety of languages, such as the *Corpus of Contemporary American English* (Davies, 2008) or *Corpus del Español* (Davies, 2002), and Internet and professional listservs, to support their professional practice (see **Chapter 41**). In addition, the FTTS should consider joining a professional organization to network with a cadre of colleagues to share resources and expertise.

FTTSs should also create and continually update their own professional glossaries, incorporating all language learned from previous assignments and adding new connotations and denotations to reflect current usage. Storing and organizing this information is facilitated by programs such as Microsoft Word or Excel. One benefit of these programs is that they allow FTTSs to customize the kind of information that is most useful to their work, and to organize the accumulated linguistic information by case topics, regional language variety, case names, dictionary citations, frequency of occurrence, and current slang, just to name a few.

8.3.3 FTTS Notes

Just as there are occasions when the court interpreter needs to provide an explanation of a term when interpreting courtroom testimony, occasionally the FTTS has to annotate the transcript and/or the translation of a recording. Because languages are culturally and grammatically bound and the transfer of meaning may call for cultural bridging, it is necessary to include explanatory information in order to achieve a contextually accurate translation. **Best practice in the field (Benmaman & Framer, 2010) supports annotating the transcript when the FTTS needs to clarify the translation of a particular word choice or expression.** Practitioners who have aesthetic or other more serious concerns regarding “adding information not present in the SL recording” need to reconceptualize their understanding of the purpose and nature of FTTS notes. To be most helpful, FTTS notes should be used only when necessary and should be concise. Their role is to make the SL content more transparent and accessible to monolingual consumers of the FTT product by providing necessary linguistic and cultural clarification. It is important to remember that it is the FTTS’s responsibility to represent every element of what she hears, sees, and understands according to her knowledge, experience, and expertise. Proper use of the legend will reduce the need for unwarranted use of FTTS notes.

8.4 Phase 3 of the FTT Process: Final Product

- Carefully review the translation against the transcription to ensure that there is no missing information and that any errors introduced by the FTTS have been corrected. The final product should follow the recommended four- or six-column format (**Sections 8.2.1.c and 8.2.1.d**) and must represent only what the FTTS faithfully documented via transcription and translation.

The final translation should be compared against the transcription to ensure that there is no missing information and that all errors have been corrected. A final review of the translation against the audio/visual recordings is recommended, as it often reveals nuanced meaning that might have been missed. The FTTS’s final product should be rigorously proofread, including a review of: **(a)** grammar, syntax, punctuation, spelling, and style; **(b)** the correct application of legend symbols; and **(c)** the FTTS notes. The orthographic conventions of each language should be assiduously followed.

8.4.1 Expect to Defend the Forensic Transcription and Translation in Court

- Be prepared to undergo cross-examination and defend the FTT product and process in court.

Throughout the entire transcription/translation process, the FTTS should anticipate having to defend her FTT document and methodology in court. Systematic adherence to the guidelines and methods prescribed in this protocol is the methodology that an FTTS can rely on in expert testimony. The protocol is fundamental to producing a transparent, comprehensive FTT product that can easily be reviewed by a third party. Additionally, the FTTS should document the methodology used throughout the FTT process to determine, for example, the meaning of a particularly difficult term, or the rationale for the translation of certain grammatical, semantic, or pragmatic features. This documentation will facilitate court testimony and cross-examination. When the FTTS is called to testify in court, thorough preparation is required to withstand challenges by the defense or the prosecution, each of whom will attempt to give a certain slant to the communicative exchange transcribed/translated from the original recording. Frequently, the defense or the prosecution insists that certain sounds represent certain words. The FTTS should resist all attempts by others to influence the transcription/translation choices regarding the specific meaning of words in the original recording. As a general principle, it is good to bear in mind that FTTSs can only testify to their own best perception of the vocalizations, sounds, and linguistic details as documented in the FTT.

8.4.2 Model Transcription/Translation Document: Formatting and Application of Protocol and Legend

To facilitate easy reference, the FTT protocol recommends the use of a four- or six-column format with line numbers incorporated and pages numbered. This suggested style aids the side-by-side comparison of the original content of the transcription to the translation, thereby promoting readability and reducing the probability of FTT error. **Table 40.13** offers a four-column transcription/translation model.

Table 40.13
A Model Transcription/Translation

Line	Speaker	SL Transcription: Spanish	TL Translation: English
57	MV1:	<i>...y, ¿porqué 'tas tan escamado?</i>	...so why are you sweatin' it so much?
58	MV2:	<i>Pos, no...este...es que...</i>	Well, no...uh...it's just that...
59	MV 3:	<i>Mira, todo está listo...yo mismo le dije a...</i>	Look, everything's set up...I myself told ...
60	MV 2:	<i>'Ta suave... 'ta suave...yo nomás...este...</i>	It's cool...it's cool...I just...uh...
61	MV1:	<i>Betito, mira, yo no te voy a chingar...</i>	Betito, look, I'm not going to screw you over...
62	MV2:	<i>Yo sé...yo sé...pero yo no conozco a ese vato y...</i>	I know...I know...but I don't know that dude and...
63	MV2:	<i>¿Y qué?...tú sabes que el lo-. el loco [U] allá con tu ruca.</i>	So what?...you know that foo-...that fool [U] over there with your old lady.
64	MV3:	[U] [Loud motor in background]... <i>¿Cuánto traes?</i>	[U] [Loud motor in background]...How much you got on you?

65	MV2:	<i>Aquí traigo 2 kilos [U]...yerba.... La carga, este, la carga está en mi camioneta.</i>	I've got 2 kilos here [U]...yerba ¹ The load, uh, the load is in my <i>camioneta</i> . [FTTS Note: The term <i>camioneta</i> may mean a station wagon, pickup truck, camper, or van; it is not clear from the context which type of vehicle is meant.]
66	MV3:	<i>¿Cuándo le dijistes que [U]? ¿Hoy domingo o mañana martes? [sic]</i>	When did you tell [gram] him that [U]? Today Sunday or tomorrow Tuesday? [sic] [Electronic noise from 4:23 to 4:48 on the tape counter].
67	MV1:	<i>Vámonos, pues.</i>	Well, let's get going.

¹ Primary denotation of *yerba* is "weeds."

Note that the transcript shows incomplete utterances, which are faithfully reflected in the translation, and that no attempt is made to improve the grammar or language level. The legend has been used to demonstrate the presence of electronic noise, background noise, and instances of unintelligible utterances. Idiomatic language and casual speaker style have been carefully conveyed through the use of sociolinguistic and pragmatic equivalents. In addition, the FTTS provided several equivalents for the term *camioneta* because this term refers to a variety of types of vehicles in English. The FTT specialist provided the possible meanings of a linguistic item as an FTTS Note within the text; however she has the option of providing the same information in a footnote.

The most important aspect of this example is the treatment of the drug argot term *yerba* according to legal requirements (see **Section 8.3.2.i**). Legal requirements dictate that foreign language terms be preserved in the translation column, with a primary dictionary denotation of the term provided in a footnote. This practice signals to the clients that the untranslated word requires attention and possibly more linguistic analysis. While the term may have a specific meaning in the drug context, the FTTS is not permitted by law to “decode” the alleged argot meaning because of the prejudicial effect. The defense and the prosecution can elicit testimony from expert witnesses (including the FTTS) to clarify the meaning of those untranslated terms.

8.4.3 FTT Introductory Briefing

The FTTS may attach a brief statement to the FTT document to inform readers about some apparent inconsistencies in the text of the transcription and translation, such as the following:

FTTS Introductory Note:

Any apparent awkwardness in the English translation column is not the product of translation error or lack of accuracy. In an attempt to preserve grammatical and pragmatic features as much as possible without altering meaning, it was necessary to replicate into the target language (English) irregularities and natural inconsistencies found in the source language (Spanish), as well as errors of interpretation, if an oral interpreter participated in the speech interaction. In instances where the Spanish source is ambiguous and garbled, the translation deliberately replicates garbled or ambiguous passages. Please refer to the FTT Legend for explanation of codes used in this forensic transcription/translation.

8.4.4 Certification of the Transcription/Translation

The final transcription/translation must be certified by the court so that it meets the relevancy, competency, and reliability tests for admission as evidence. In order to minimally meet the criteria of these tests, the FTTS must provide a signed and sworn statement that she is qualified to perform the work, used all of her skills and abilities to complete a faithful and accurate version for official use, and that she has certification credentials (if any). The signed statement is then attached to and forms part of the final FTT document. Below are two examples of certification of accuracy statements, with the underlined portions representing required information.

Example 1:

FORENSIC TRANSCRIBER/TRANSLATOR’S STATEMENT

I, Pilar Cal-Meyer, hereby certify: a) that I have transcribed 49 minutes of audio recording contained in an audio Compact Disc labeled “Interview Juan Felix” of speech mostly in Spanish, and, b) that I have translated such transcribed text from Spanish into English to the best of my ability, knowledge, and expertise. I further swear that the attached document is a true and accurate transcription and translation of the audio format.

NOTE

The foregoing certification of the FTT does not apply to any reproduction of same by other means, unless under direct control and/or direction of the certifying forensic transcriber/translator linguist.

DATED: August 25, 2011

Signature of Transcriber/Translator
Pilar Cal-Meyer, M.A., Applied Linguistics
Certified Court Interpreter of Massachusetts

Example 2:

CERTIFICATION OF ACCURACY

I, _____ [name of FTTS], certified by the Administrative Office of the United States Courts for Spanish-English court interpreting [certification agency], do hereby declare that I have transcribed and translated [indicate what part of FTT completed] the audio/video recording of the Border Patrol interview of Material Witness, Hilaria Chavez-Bustillos [type of recording and witness name, if applicable], in the case of the United States v. Florencia Perez [case name, if applicable], from the Spanish language to the English language [identify source and target languages] and hereby certify that this is a true and correct transcription and translation to the best of my knowledge and ability.

November 10, 2010 [date]

Signature

Example 3:

CERTIFICATION OF ACCURACY

I, _____, certified by the Administrative Office of the United States Courts [certification agency] for Spanish-English court interpreting, do hereby declare that I have transcribed the audio recording of a video deposition of material witness G----- [type of FTT work completed and name of witness, if applicable], in the case of USA v. Lynn Jones, CR 11-343434-TUC-ABC [case name, if applicable], and hereby certify that this is a true and correct transcription to the best of my knowledge and ability.

November 18, 2010 [date]

Signature

Currently, an FTT document can be certified by the court in several ways. In some jurisdictions, only interpreters who are court staff or daily contractors who have been qualified by the court can produce court certified documents. In these jurisdictions, attorneys and other parties are urged to use the court qualified or certified interpreters in the first instance to avoid inadmissibility issues. In other courts, if the practitioner possesses a government agency certification, such as federal or state court interpreting certification or another nationally recognized certification, and this is attested to in the sworn statement, then the interpreter's work is certified for purposes of court use. In some state courts, the interpreter must submit the document to the clerk of court for processing as a court document, exhibit and/or for imaging. Finally, in a few jurisdictions, the interpreter assignment office, a supervisor, or the director of the office of court interpreting services has the responsibility for ensuring reliability of FTT documents for court use.

Regardless of the method used to certify documents for official use, all documents used in court must still be submitted by attorneys under the rules of evidence to ensure their authenticity. Many FTTSs erroneously believe that once a document has been certified, their work cannot be challenged. However, certifying a document does not immunize the person who produced the work from impeachment as an expert. Should there be any challenges to the accuracy, completeness, or soundness of the transcription/translation, the FTTS can be called to the stand to testify and account for the submitted document. For a discussion of the role of an FTTS as expert witness, see **Section 5.3** of this protocol and **Chapter 18, Section 3.2**.

8.4.5 Need for Reform in the Court Certification Process of FTT Documents

Obviously, the court certification process lacks the serious quality control necessary to ensure that FTT work is properly carried out. Given the unique linguistic and translation challenges involved in the complex nature of FTT processing, and the serious legal consequences of erroneous custodial interrogation and investigatory evidence, the court certification of FTT documents should be reformed. The goals, protocol, standards, and methods offered in this chapter provide the criteria needed to assess the quality of this critical evidentiary material (see **Section 5** and **Chapter 21, Section 9**). As suggested throughout this volume, federal and state certified interpreters with appropriate expertise, as well as FTT Master-Level specialists, should be utilized by the court to review all FTT documents for adherence to professional standards. The quality control work of such experts could save the court costs arising from unnecessary motions and hearings relating to contested FTT evidence, increase case disposition significantly, and assure equal treatment of LEP persons under the law.

9. Recommended Forensic Transcription/Translation Legend

In order to produce a valid and reliable transcription/translation that meets rigorous evidentiary standards, it is critical to develop and apply a legend that can provide the consumers of the evidence a visual representation of the speech event as it actually occurred. The use of a legend in FTT brings vital information to the forefront by conveying textual and contextual information contained in recorded speech events. Legend symbols serve as scaffolding tools in constructing meaning, with the aim of assisting triers of fact and other parties to better understand information embedded in the discourse. The primary duty of the FTTS is to capture all elements of an interaction and to mark paralinguistic and sociolinguistic elements that may not be explicitly stated, but are present and do carry meaning. While over-marking is certainly to be avoided, omitting vital information violates the duty of accuracy, which is the overarching responsibility of an FTTS. Popular arguments against marking discursal elements based on concerns for readability or aesthetics are linguistically unsound and should be ignored.

Legend symbols enable the practitioner to unobtrusively and economically mark in the FTT a variety of verbal and nonverbal language behaviors present in the original recording, which may ultimately have probative value. These language behaviors include all linguistic and paralinguistic elements as well as the variety, style, and performance features and errors of the speakers. Furthermore, legend symbols are the optimal way to conserve vital information that is frequently omitted or underrepresented, such as nonverbal actions, pauses, silence, and hesitations. The explanatory power of the legend reduces the need for constant footnotes and commentary.

The legend presented below is based on the combined experience of Master-Level FTTSs and sociolinguistic practice, and it addresses both the linguistic and the sociolinguistic aspects of communication that must be taken into account in order to fully represent not only individual exchanges, but also the overall context of the interaction. The legend comprises five domains: (1) Speaker Errors and Speaker Variation, (2) Paralinguistics: Verbal and Nonverbal Language Behavior, (3) Discourse Features, (4) Environmental and Acoustic Noises, and (5) FTTS Editorial Notes. While there are other areas of analysis than those identified here, they exceed the scope of general FTT practice.

The legend aims to be compact, economical, and direct, providing a system that is both comprehensive and reasonable in scope. While the legend offers a wide variety of codes, it does not attempt to provide a symbol for every possible linguistic and contextual item that may occur in an investigative recording. The FTTS can tailor the implementation of the symbols to match an assignment's specific needs, and, by applying professional judgment, additional symbols may be used if needed.

Fundamentals Recommended FTT Legend (2012) [González, Vásquez, & Mikkelson, 2012; Unrestricted Use with Citation]

1. Speaker Errors and Speaker Variation

Group A:

[form]	Formal second-person verb form
[gen]	Error in gender marker

[gram]	Grammatical error, not specifically indicated by the other symbols
[inf]	Informal second-person verb form
[num]	Error in number agreement
[pers]	Lack of concordance between personal pronoun and verb
[pl]	Plural marker
[pro]	Error in pronunciation

Group B:	(Modify code <u>S</u> for any source language)
[WEW]	Wrong English Word, causing meaning obstruction
[NEW]	Non-English Word—used by LEP person, causing meaning obstruction
[NSW]	Non-Spanish Word, causing meaning obstruction
[WSW]	Wrong Spanish Word—word/meaning not applicable in the context, causing meaning obstruction
[Garble]	A word that does not exist in Spanish (or English when an LEP person is trying to convey something in English); a word which makes no sense in the context; a distorted pronunciation of a Spanish word that will likely be incomprehensible to a native speaker; used in combination with [NEW], [WSW], and [NSW]

Group C

[CS]	Codeswitching
[v]	Vernacular
[nonn]	Nonnative usage at the phrasal/clausal level likely to obstruct meaning

2. Paralinguistics: Verbal and Nonverbal Language Behavior

[wh]	Whisper
[sigh]	Sigh
[dis]	Disfluent repetition—repetitions of whole words or parts of words, prolongations of sounds, or complete blockages of sound, such as stuttering
[nvb]	Nonverbal behavior (State specific behavior within the bracket in transcription and translation) <u>Examples:</u> [cough]; [sneeze]; [yawn]; [laugh]; [cry]; etc.
[g/m]	Gesture/movement (State specific gesture/movement and effect on spatial distance between the participants, if relevant) <u>Examples:</u> [uses both hands, palms facing each other, to indicate length of object]; [PO leans in, close proximity to the interviewee]

3. Discourse Features

[,]	Comma, denoting micro pause. Note: [] not necessary within text ; used here only for readability
[...]	Slightly longer pause than standard. Note: [] not necessary within text
[p]	Lengthy pause (> 3 seconds: Indicate specific duration)
<text>	Faster than normal speech rate for particular speaker in sample
>text<	Slower than normal speech rate for particular speaker in sample
[SIL]	Silence (Indicate specific duration)
[text text]	Overlapping discourse: Use brackets to note where overlapping begins in one speaker turn and where it ends in the following speaker turn
...	Ellipses used to show speaker utterance is not completed and continues turns
//	Indicates that a speaker is taking the floor by interjecting or by abruptly interrupting; mark the interruption where it starts
:::	Colon(s) Indicates prolongation of a vowel sound or utterance
ALL CAPS	Capitalized text indicates shouted or increased-volume speech

4. Environmental and Acoustic Noises

[b]	Background noise (State specific background noise in translation) <u>Examples:</u> [dog barking]; [screaming tires]; [background music]; [moving a chair] Background Conversation: Indicate beginning and ending of intelligible or unintelligible background conversation using counter numbers or times.
[e]	Electronic noise (if discernible, describe noise and duration if significant) <u>Examples:</u> [scratchy noise four minutes]; [white noise]; [cracking noises]

5. Editorial Notes

<i>italics</i>	English utterance(s) spoken in Spanish context, or vice versa
[FTTS Note]:	Supplemental information re: meaning, context, or cultural significance. Short notes can appear in text; longer notes should be footnoted
[ph]	Phonetic spelling
[sic]	As stated, despite error
[U]	Unintelligible utterance—heard but cannot distinguish meaning (note duration when greater than 3 seconds)

10. Policy Recommendations for the Professionalization of FTT Practice and Regulation

A thoughtful review of the information presented in this chapter makes it abundantly clear that there is a need for professionalization and certification of the subfield of Forensic Transcription and Translation. Three central issues inform the policy recommendations that are offered below: (1) the significance of FTT products in the legal outcomes of LEP persons; (2) the challenges and shortcomings of current practice in the field in meeting legal and ethical standards; and (3) the lack of existing certification and training standards to ensure the superior language proficiency and translating skills required to perform FTT work. Based on a comprehensive review of the field and related research, the following policy recommendations are offered to guide the professionalization of this specialized field and to ensure the production of forensic transcription/translations that meet evidentiary standards of reliability, competence, relevance and admissibility.

Professional interpreter organizations and individual interpreters should pursue the following policy agenda:

- (1) Establish minimum qualifications, testing, and certification for Forensic Transcription and Translation specialists (see **Section 3**).
- (2) Follow linguistically sound protocol and procedure, including the use of standardized legends, in the performance of FTT and adhere to court interpreting standards—meaningful legal equivalent and legal evidentiary requirements (see **Section 10**).
- (3) Recognize and respect the role of certified court interpreters as language access specialists (as recommended in **Chapter 18, Section 3.3.1**) who can assist the court by monitoring FTT products to ensure that they meet the appropriate legal and professional quality standards. Courts are encouraged to consider seriously the evaluations and suggestions of court interpreters in regard to deficiency of FTT documents submitted into evidence (see **Section 2.2**).
- (4) Advocate for courts to develop a court rule and/or a legally mandated protocol to ensure the materiality and reliability of FTT documents submitted into evidence.
- (5) Advocate against the use of untrained, untested, noncertified lay persons, police personnel or other alleged bilinguals who lack proper FTT skills, qualifications, and training to undertake such tasks (see **Section 2**). Government entities should require that any employee assigned to perform FTT be accredited or certified. This would ensure that the highest standards of professionalism prevail.
- (6) Educate judges and attorneys regarding the standards and qualifications necessary to perform FTT, in addition to informing them of the required methodology to produce a valid and reliable FTT document (see **Sections 5, 6, and 8**).