

Three stages of interpreting in Japan's criminal process

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Abstract. *There are three main stages in Japan's criminal process involving interpreters: interrogations by the Police, interviews conducted by the Public Prosecutors Office, and the criminal trial, heard either by a professional judge (or judges) alone, or together with the so-called 'lay judges.' Even though these three stages may eventually form a single judicial process, the expectations of the interpreter, as well as the interpreting techniques, vary, thus making legal interpreting in Japan a multi-faceted and demanding endeavor. This paper gives an overview of the Japanese legal interpreting process exploring the various aspects that emerge during the three stages.*

Keywords: *court interpreting, criminal process, interpreting modes, Japan, legal interpreting, police interpreting.*

Resumo. *Há três estágios principais no processo criminal envolvendo intérpretes no Japão: interrogatórios policiais, depoimentos conduzidos pelo Ministério Público e julgamentos de processos criminais, julgados por um ou mais juízes profissionais, ou em conjunto com os juízes chamados de 'lay judges'. Mesmo que estes três estágios possam, eventualmente, fazer parte de um único processo judicial, as expectativas dos intérpretes, bem como as técnicas de interpretação, variam, tornando a interpretação jurídica no Japão uma tarefa exigente, com esforço multifacetado. Este artigo oferece uma visão geral do processo de interpretação jurídica no Japão, explorando vários aspectos que emergem durante os três estágios.*

Palavras-chave: *interpretação em tribunais, processos criminais, modalidades de interpretação, Japão, interpretação jurídica, interpretação em delegacias.*

Introduction

'Legal interpreting' is a broad term that includes a vast number of different legal genres, in which interpreters play a crucial role. According to Tsuda (2008: 136), this term in Japan is applied to interpreting practiced not only in courtrooms, but also to interpreting during other stages of the penal process, which occur before, during and after the trial. Thus, interpreters find themselves working for the Police and the Public Prosecutors Office (PPO), the Bar Associations (during lawyer-client conferences), prisons and other correctional facilities, as well as the Immigration Bureau, the Ministry of Justice and other legal entities.

In other words, the term refers to interpreting in all situations in which a foreign national (or, more precisely, any person not fluent in the Japanese language) finds him- or herself a suspect, a defendant or a witness in the legal process.

Most studies of legal interpreting in Japan, however, focus on the courtroom, probably due to the fact that the trial is the only easily accessible part of the penal process. On the other hand, in some common law jurisdictions, interpreting during police interrogations (or interviews) is also a major field of research. These studies often discuss the underuse of impartial qualified interpreters (Berk-Seligson, 2000), the problem of 'verballing' (fabrication of the suspect's statement by the police), intentional or not (Gibbons, 1990; Hall, 2004), and the issue of communicating the suspects rights (Nakane, 2007).

Such analytical linguistic research, however, is highly improbable in Japan. This is because unlike in some common law jurisdictions, such as the U.K. and (some states of) Australia (Gibbons, 2003), the video- or audiorecording of police interrogations is not commonplace in Japan (it is currently at the 'experimental' stage). Further, even if they existed, such recordings would not be easily available to researchers, thus leaving them with virtually no verbatim data to base their study on. Therefore, a scholarly discussion of police interpreting in Japan can only address how the interpreting process is actually conducted, on the basis on reports and insights derived from interpreters (including the author) and the small amount of available literature, rather than on verbatim linguistic data.

One of the unique aspects of the legal interpreting practice in Japan (unique in that it is rarely mentioned in the literature about other jurisdictions) is that interpreters are also present during interviews conducted by the Public Prosecutors Office, while the suspect is (usually) held in police custody. The interpreter may be present either during a 'regular' interview, where the prosecutor listens to the suspect's side of the story, or during the so-called 'detention hearing,' which involves not only the prosecutor but also a judge, and whose purpose it is to enable the judge to decide whether or not to grant the prosecutor's request to extend the period of detention.

In the following sections differences in the interpreting practice in these three stages will be discussed focusing on how the setting impacts on the interpreter's work. First, however, the process of registering and appointing legal interpreters will be described, thus showing some striking differences between how the interpreting job is performed and managed in Japan and in some English-speaking countries.

Registering and appointing legal interpreters

The issue of the lack of an accreditation system for legal interpreters

There is no accreditation system for court interpreters and translators in Japan. This is one of the most commonly raised issues relating to interpreting in legal settings, and the need for such a system is discussed by both academics and lawyers. In an opinion submitted in 2013 to the Supreme Court of Japan by the Japan Federation of Bar Associations, implementing such a system is noted as the first condition for improving the quality of interpreting services as well as securing the defendant's human rights (Japan Federation of Bar Associations, 2013: 1).

It could be argued, however, that such accreditation systems hardly solve all the problems related to court interpreting. As Berk-Seligson demonstrates in her extensive research, even in jurisdictions with such systems, the quality and accuracy of court interpreting are far from perfect, even for a language used in the U.S. courts as frequently as

Spanish (Berk-Seligson, 1990: 5). Similar reports come from Australia, where interpreters have been found to make significant alterations to original utterances (Hale and Gibbons, 1999). The U.K., too, faces interpreting-related problems. Even though in England and Wales court interpreters are certified, their services have recently been outsourced to a commercial agency, which leads to certain problems: “the evidence emerging from the courts and the interpreting profession is that un-assessed, unqualified and inexperienced interpreters are being sent to courts where they are found to be unable to cope with the work” (Fowler, 2012: 37).

That being said, the issue of the lack of a proper mechanism to secure professional and quality interpreting in Japan is naturally a serious one. It leads to two basic questions: 1) how is the work of legal interpreters organized and managed? and, 2) how is the work of interpreters evaluated? As Tsuda (2002: 9) reports, “[t]he High Courts maintain a List of Court Interpreters, but this listing is done by the court and no registration is required by the interpreters themselves (...) There is no standard procedure for checking the competence of court interpreters” (Tsuda, 2002: 10). Moreover, the transcript based on court recordings is only made in Japanese, therefore, there is no way of assessing how well (or how badly) the interpreter interpreted from and/or into Japanese.

Registration and appointment

Each legal institution concerned (i.e. the Police, the PPO and Courts) has their own interpreters' lists. Thus, in order to work for all of them, an aspiring interpreter needs to be “registered” on three separate lists. Further, except for the lists kept by the courts, these databases are not centrally managed, which means that if one wishes to work for the Police or the PPO in different parts of the country, they need to have their name listed in separate databases managed by the jurisdictions in question.

Naturally, authorities in different parts of Japan are in contact with one another, so gaining access to the interpreters' list from other jurisdictions is not problematic. Nevertheless, this system is a serious hurdle for interpreters, who need to be listed anew in a different jurisdiction, should they, for example, change the place of residence. Further, the need for foreign languages varies depending on the jurisdiction, and so, an interpreter who has been active in a certain part of Japan, might not even get enlisted in the new jurisdiction, should the legal authority in question deem that the demand for their language is already sufficiently provided for. Moreover, some legal entities only register interpreters who are capable of working with two or more foreign languages. In other words, such separate databases with information on interpreters seem to work for legal authorities, but not for interpreters (which may be a reason for interpreters themselves to argue for a centrally managed registration system).

How does one become a legal interpreter in Japan, then, given the situation described above? Anyone who wishes to work in the field needs to submit their resume and other documents to the legal institution they wish to work for. Afterwards, the candidate is invited to an interview, where a test in the foreign language concerned is conducted and the interviewee's motivation discussed. These tests may vary in form and complexity depending on the jurisdiction and the legal institution in question. In the author's case, the test conducted by the Police included written translation both into and from Japanese and English, whereas the one by the court consisted of only translation of a short legal text from English into Japanese. By contrast, no test at all was conducted at the PPO – the enlistment was made solely on the basis of an interview (in Japanese). The tests

and interviews are usually conducted by members of the judiciary, officers or staff of the legal institution in question, in charge of interpreting-related matters, (for example, Osaka Prefectural Police has an Interpreting Center in charge of enlisting, managing and appointing interpreters).

Naturally, foreign language proficiency diplomas or having lived in a country where the language in question is spoken can be an advantage, however, there are no clear criteria that would be decisive in the enlisting process. Should the interviewer in charge deem that the candidate is suitable for the job, their name will be registered in the database managed by the institution in question. Such interpreters are contacted (and appointed) directly by these institutions for each case involving a non-Japanese speaking suspect, defendant or witness. Since interpreters are appointed directly, there is no need for any agent to come in between, and so, they receive remuneration for their services directly from the authorities they work for. As a Survey¹ ('the Survey' hereunder) by the University of Shizuoka Court Interpreters Research Team ('USCIRT' hereunder) finds, however, lack of clear details or a basis for calculating the interpreting fees are reasons for interpreters' dissatisfaction (University of Shizuoka Court Interpreters Research Team, 2013: 54).

The choice of the language of interpreting

One of the most important issues for foreigners involved in the penal process is the choice of the right interpreting language. Naturally, appointing an interpreter in a language of which the suspect or the defendant does not possess a sufficient command, nullifies the point of having the interpreter in the first place, but in some cases this is exactly what happens. The International Covenant on Civil and Political Rights, to which Japan is a signatory, states:

In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail **in a language which he understands** of the nature and cause of the charge against him (...) (emphasis added).

The highlighted wording is crucial. There are no clear criteria determining what level of proficiency would guarantee adequate comprehension of the legal discourse. Naturally, this issue is problematic mainly for two categories of subjects (or a mixture thereof): 1) those who speak rare languages, and 2) those who come from a multilingual country or background.

With regard to the first category subjects, since the authorities (the Police and the PPO) are fighting against time when conducting their investigations, finding an interpreter in the defendant's primary language, skilled enough to work in the legal setting very often proves simply impossible. Therefore, 'official languages' of the subjects' home countries or 'lingua francas,' such as English, French or Spanish, are often used during investigations and subsequent court proceedings, despite the fact that the subject's command of the language might not be very high. This is often the case for subjects of African origin (from countries such as Nigeria or Uganda), whose mother tongue (for example, Igbo, Hausa or Luganda) is usually different from the country's official language (i.e. English).

The matter of the subjects of the second group is somewhat more complex. The reasons for the erroneous choice may vary, but in many cases, they can probably be attributed

¹2012 Court Interpreters in Japan. Survey Report.

to what Haviland (2003) refers to as 'language ideologies.' This implies that the authorities appointing the interpreter have various fixed ideas about certain countries and languages, which impact on their choice of the interpreting language. This, of course, may happen in many jurisdictions, not just Japan. Conley and O'Barr comment on the case of a Mixtec-speaking witness analyzed by Haviland (2003), who was not sufficiently fluent in Mexico's official language – Spanish, and thus had serious problems with communicating with the District Attorney during the examination:

What was happening here? One possible interpretation is that the district attorney was an idiot. How complicated is it to understand that there are people in Mexico who speak indigenous languages? That such languages are radically different from *all* European languages? That an interpreter who speaks Spanish does not necessarily speak every language found in every Spanish-speaking country? (1998: 152)

Of course, as Conley and O'Barr justly note, "[a] related practical issue is how much linguistic competence and sophistication courts can be expected to have" (Conley and O'Barr, 1998: 154). This can be applied to investigative authorities as well. It would be unreasonable to expect these institutions to have a vast knowledge of the ethnic and linguistic diversity of numerous countries, but, nevertheless, an erroneous choice can have serious consequences. As an interpreter working with Tagalog informs, such errors often happen with suspects and defendants from the Philippines. Even though the country has an established 'national' language ('Filipino,' which is largely based on Tagalog), it is not the first language of many Filipinos, who speak a wide variety of languages such as Cebuano or Ilocano.

Naturally, should such a subject be completely incapable of using their country's official language, communication problems would surface rapidly. The problem, however, lies with subjects, who have *some* but an *insufficient* command of the language. According to the interpreter mentioned above, the issue of an erroneously chosen language of interpreting can sometimes surface as late in the penal process as the trial itself. Consequently, this means that the subject of the process has been interrogated (or interviewed) in a language they did not have sufficient command of. This raises questions about the credibility and reliability of documents (written statements) produced by the Police and the PPO citing what the suspect 'stated' at the investigative stage.

Stage one: police interpreting

Interpreter in between but not neutral

Even though in Japan, as in other jurisdictions (Berk-Seligson, 2000), interpreting can be performed by police officers themselves (Tsuda, 2002), it is my experience as an external police interpreter, that even suspects with a fairly good (conversational) command of Japanese are usually provided with interpreting services. This might misleadingly suggest that such *external* interpreters are expected to be neutral. However, as newly registered police interpreters are informed, their job is to facilitate communication between officers and suspects during interrogations, meaning that they are to assist *the officers* (they are expected to interpret fairly and accurately, though). Therefore, everything that the suspect states during the interrogation must be rendered into Japanese. On the other hand, not all

statements by police officers are to be interpreted for the suspect (for example, the officer may ask the interpreter questions about the suspect's country or language). This does not mean that interpreters 'side' with police officers and take on an interrogative or accusatory attitude towards suspects. What it does mean, however, is that different institutions define the interpreter's role in different ways.

The police interpreters are usually seated between the interrogating officer and the suspect (and not, for example, beside the officer), thus emphasizing their not being part of the police organization. The Police are allowed 72 hours before sending the case over to the PPO. Should the prosecutor in charge decide to request the court to extend the detention period, the suspect may spend up to 20 more days (added to the original 72 hours) in custody, before any charges are pressed.

The investigation (and interrogation) continues throughout this period, during which the interpreter keeps on working under conditions that leave a lot to be desired, as interrogation rooms in Japanese police stations are usually far from spacious. The interpreter usually sits by the shorter side of the table, so that the officer and the suspect face each other. This leaves the interpreter with hardly any desk-space- there is often only enough space left on the table for the interpreter's notepad.

The main technique used during interrogations is consecutive interpreting. The officer questions the suspect and notes down their answers and then produces the suspect's written statement. This raises the question of how accurate such statements are (in other words, how much of the statement is actually the suspect's own translated words), and consequently, on the issue of 'verballing' discussed in the subsequent subsection.

Production of the written statement and the verballing issue

Since suspects' written statements taken during interrogation may later be used as evidence in court, they are of unquestionably high importance, which makes the issue of verballing a potentially serious threat. Further, as the suspect has no right to have an attorney present during the interrogation (they do, however, have the right to remain silent), the only parties present are the officer(s), the suspect and the interpreter. This is crucial, as interrogations in Japan are rarely recorded, and the written statement is often the only record of what the suspect said to the police officers.

As Gibbons reported more than twenty years ago, there was a serious issue of dubious credibility of suspect statements in the Australian state of New South Wales. Such manufactured evidence (or 'verbals') was often challenged by defense attorneys, "on the assumption that there is a distinct possibility that their client has been 'fitted up'" (Gibbons, 1990: 230). This does not mean that such misrepresentations of the suspect's statements are always made in bad faith. As Hall (2004) suggests:

[B]ecause of the unreasonable expectations of these regulations [which require the suspect to accept the written version of their earlier interaction with the police], interviewers are placed in a position in which it is difficult for them to avoid misrepresentation of suspects (...). (2004: 45)

This situation seems to be similar to what is happening during suspect interrogations in Japan. After the interrogation has been finished for the day, the police officer produces a written version of the suspect's statement. Since this document is to be used as evidence in further stages of the criminal process, it must meet certain formal and linguistic requirements (as to style, register etc.). Therefore, it could be argued that the suspect's written

statement is to some extent a police-manufactured product by default (for example, in one case the author worked on, the suspect asked the interrogating officer to be allowed to write the statement himself using his own words that would be later on translated into Japanese, but was informed that such methods are unheard of). Naturally, some defense counsels try to challenge these statements in court, just like their Australian counterparts, but such claims seem to be rarely accepted by judges, since, after all, suspects have the right to refuse to sign the document, should they find that it does not represent what they stated during the interrogation.

Naturally, should such a document be presented to the suspect through 'the interpreter-filter,' some information can literally get 'lost in translation,' as no written translation of the Japanese original is made. Presentation of the statement can be done in two ways: 1) the officer reads the statement out loud in chunks and gives the interpreter time to interpret these portions consecutively, or 2) the officer simply passes the document in Japanese over to the interpreter, which they in turn sight-translate for the suspect. Should the suspect decide that (the interpreted or sight-translated version of) the written statement represents their words accurately and has no errors (in case it does, however, corrections are made), they sign the document and put their fingerprint on every page (the interpreter, too, puts their signature on the statement). Such written statements (together with other investigative documents) are then sent over to the PPO, which, too, will question the suspect and decide whether or not to indict them.

Stage two: interpreting at the public prosecutors office

Interpreting during the suspect's interview

Interviews by the PPO and the Police are conducted in a similar manner. One of the more significant differences, however, is that prosecutors have access to evidence and documents already collected by the Police (Hayakawa, 2008: 26). It is also noteworthy that unlike during the police interrogations, in the PPO interviews interpreters are expected to demonstrate a neutral attitude (Tatsumi, 2008: 118). Another difference is that, according to the author's experience as both interpreter in and observer of court hearings, recordings taken during these interviews seem to make their way to the courtroom as evidence far more frequently than the ones taken during police interrogations. This might suggest that prosecutors record their interviews more often than police officers. For example, in a trial in which the author served as an interpreter, the video of the defendant (then only a suspect) being interviewed by the prosecutor was played during the court hearing. This video included the whole unedited interview session (approximately one hour long) and was meant to demonstrate that the prosecutor did not intimidate the suspect in any way and that, consequently, the suspect's statement given to the prosecutor at the investigative stage was credible and reliable (this is because the defendant tried to recant some of the earlier statement). In the video, one could see both the interviewing prosecutor and the suspect, and hear the interpreter's voice (the interpreter's face, though, was not shown in order to conceal their identity). Such recordings are usually used by the investigative authorities to demonstrate how the interview was conducted and what the suspect stated verbatim (as these are video-recordings it would be hard to argue that the statement was 'verballed' in any way).

Before the prosecutor's interview starts, the interpreter receives a copy of 'alleged facts of crime.' Just as the name suggests, this document discusses what the interviewee is

suspected of, and the circumstances and some details of the alleged crime. The interpreter has a few minutes to go through the text or produce a prompt written translation of it, before the handcuffed suspect with a security cord tied around their waist comes escorted into the office.

The interview then begins with four people present in the room: the prosecutor, the suspect, the prosecutor's clerk and the interpreter. After confirming the suspect's identity and other basic information, the prosecutor asks the following question: 'Do you understand the [foreign language] spoken by the interpreter?' As simple as this question sounds, it has serious implications for the interview and the evidence produced. Even though lack of a clear affirmative answer should probably end the interview, unfortunately, this is not always the case. In one of the cases the author worked on, an Indian suspect replied 'more or less' in Japanese. Nevertheless, the interview continued with the interpreter using English, to which the suspect responded with a smattering mixture of English and Japanese. What was even more alarming was that the wording of the written statement produced after the interview read: 'I understand the interpreter's English *well*' (emphasis added). Unfortunately, there is not much interpreters can do in such situations, except for trying to interpret as clearly and comprehensibly as possible. One can only hope that this case was a rare exception and not the common practice.

Other aspects of interpreting for the PPO are also similar to the work for the Police. The question – answer sequence is interpreted consecutively and after the interview is completed, the written statement produced is sight-translated or interpreted consecutively and (after potential corrections) signed by the suspect.

Detention hearings: from the PPO to the courthouse and back

Should the prosecutor decide that the suspect's detention period ought to be extended (in order to secure an unobstructed investigation), they need to file a request to the court. The grounds for such requests are usually flight risk or probability that the suspect might try to conceal evidence or obstruct the investigation in other ways. The court must then decide whether or not to grant the request, based on an interpreted interview with the suspect conducted by a judge.

What this means for the interpreter is that they move between the PPO and court on the same day, accompanying the suspect and escorted by police officers. Since the questioning is conducted by two separate institutions (first the PPO and then the court), the interpreter receives remuneration from both of them. However, as the interpreter is called in and appointed by the PPO, they do not have to be registered at court as well to work during the court interview.

After the (consecutively interpreted) detention hearing, the suspect and the interpreter are escorted back to the PPO, where, after a while, the suspect is informed about the results of the procedure. Even though the total interpreting time usually amounts to less than 1 hour, the whole process takes up most of the interpreter's day, due to long waiting time in between. Should the prosecutor's request be granted and should they decide to press the charges, the case will reach the next phase in the criminal process, the trial.

Stage three: Japan's bilingual courtrooms

Interpreter impartiality

Probably nothing impacts on the power relations and defines expectations towards the interpreter as overtly as the physical setting of the courtroom itself. In other words, where

the interpreter sits defines who he or she 'works for.' As a consequence, due to different attitudes towards the interpreter's role, different jurisdictions choose different solutions to the location of the interpreter. In this respect Japan seems to have chosen an approach somewhat different from that of many common law countries. Figure 1 below demonstrates a simplified layout of a typical Japanese courtroom with the interpreter seated by side the court clerk.

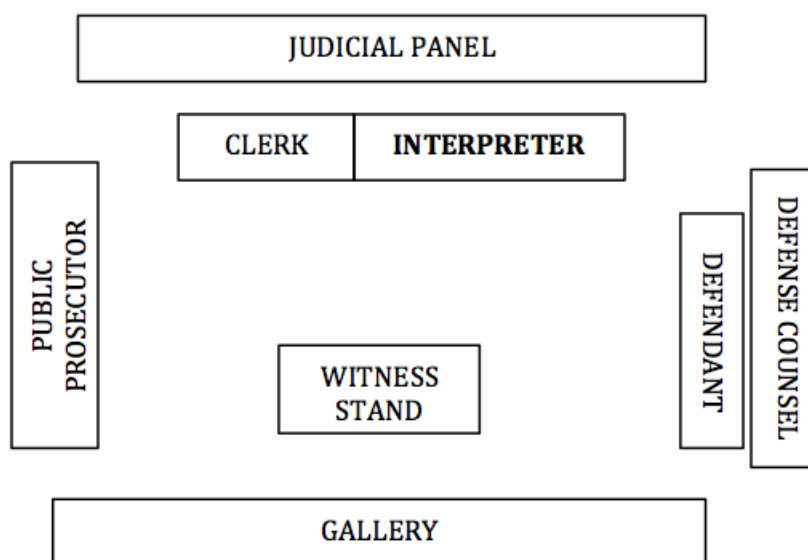


Figure 1. Simplified layout of a typical Japanese courtroom.

Certain aspects of the courtroom layout may vary slightly from the ones shown in 1, depending on the courthouse or the case tried: 1) The Judicial panel may consist of a) one judge, b) three judges or c) three professional and six lay judges; 2) location of the prosecutor's and defense counsel's seats may be opposite to the ones shown, and 3) defendant may be seated next to their defense counsel instead of sitting in front of them as in the Figure. Further, there may be more than one prosecutor, and/or defense counsel, as well as interpreter involved, as is often the case in lay judge trials (the *Lay Judge System*, or the *Saiban-in System* allows the general public to take part in criminal trials dealing with graver² crimes. The judicial panel composed of three professional judges and six *saiban-in* (or 'lay judges') deliberates and decides on the guilt or innocence of the defendant, and the punishment together). Nevertheless, it seems that in all criminal cases and all courtrooms in Japan, the interpreter's location is always the same, namely that they are seated next to the court clerk (either on their right or left side), facing the witness stand (and consequently the defendant, who takes the stand during examination).

Such location of the interpreter can have serious implications on how the interpreter is viewed by both the adversaries in the trial and the defendant. According to Mouri (2013: 231), this location aims at securing the interpreter's physical safety in case the defendant gets violent (interestingly, the interpreter is the only participant working in the courtroom not covered by labor insurance). As she argues, however, it may just as well sabotage their impartiality (which the interpreter in criminal trials is expected to demonstrate), since the

²Such as homicide, rape or drug trafficking for profit etc.

defendant has to face the interpreter just like the judicial panel, thus possibly making the interpreter seem as the defendant's opponent (Mouri, 2013: 233).

Mouri (2013) seems to agree with Berk-Seligson (1990) in that the interpreter should be located next to the defendant (or witness during examinations), as is often practiced in courts in the U.S., in the U.K. (Fowler, 2012), or in Hong Kong (Ng, 2013). Whether one shares this view or not, it is certain that the physical location of the interpreter defines not only their role in the eyes of the participants but also the interpreting techniques used during the trial. In some common law countries, since the interpreter is located next to the defendant, it is mainly the defendant that the interpreter is 'working for.' Further, this physical vicinity allows the interpreter to use simultaneous interpreting, usually in the *chuchotage* (or 'whispering'/'whispered interpreting') form. The subsequent subsection will discuss how the above layout of Japanese courtrooms determines, which interpreting techniques are used during criminal trials.

Interpreting modes used in Japan's criminal courtrooms

According to Berk-Seligson there are three main interpreting modes that court interpreters are expected to be able to perform: consecutive, simultaneous and summary interpreting (Berk-Seligson, 1990: 38). Even though the technique generally used in U.S. courts is consecutive interpreting, simultaneous interpreting "is used at the counsel table, whereby the interpreter interprets for the defendant or litigant what the attorneys, judge, and English-speaking witnesses are saying" (ibid.). The third mode, summary interpreting, "is to be kept to a minimum in court interpreting, and is restricted to highly technical legal language (...) difficult to follow even for a native speaker of English" (Berk-Seligson, 1990: 39).

In Hong Kong, on the other hand, the main mode used by interpreters (in cases where the defendant or witness is the linguistic minority) is simultaneous interpreting (usually in the form of *chuchotage*). According to Ng, this mode enables the interpreter, who usually either sits or stands by the defendant, "to remain less intrusive and thus invisible throughout the trial, though it would be difficult, if not impossible, to monitor the quality of the interpretation" (Ng, 2013: 90). Consecutive interpreting, on the other hand, is used mainly to render utterances by the (for example, Cantonese-speaking) defendant into the language of the court, i.e. English. With this mode, "the interpreter is brought into the foreground, and ostensibly assumes a participant role in the interaction" (ibid.).

Consecutive interpreting

Court interpreting in Japan is performed using interpreting modes rather differently than in the U.S.A or Hong Kong. Consecutive interpreting is used for all witness and defendant examinations, not just for utterances from the foreign language into the language of the court. It can be performed in two ways, based on the judge's discretion (or the interpreter's request) and on whether the witness under examination is speaking in Japanese or in the foreign language.

In the first method used for Japanese speaking witnesses, the prosecutor, the defense counsel or the judicial panel asks the original question (Q) in Japanese, which the witness answers (A). When the Question-Answer sequence in Japanese is completed, the interpreter interprets (I) it into the foreign language (the 'Q-A-I' method).

The other method used in the consecutive mode can be expressed with the acronym 'Q-I-A-I.' With this method, an attorney (or the judicial panel) asks the question, which

the interpreter renders from Japanese into the foreign language. The witness waits for the interpreter to finish the interpretation and then answers the question, which in turn is interpreted into Japanese. Naturally, during examination of non-Japanese speaking defendants (or witnesses) only the latter method (Q-I-A-I) can be applied. Should the question, the answer or the whole Q-A sequence be too long for the interpreter to remember (the interpreter is allowed and expected to be taking notes, though), they may ask the court to instruct the speaker to cut the utterance into smaller chunks. Naturally this interpreting mode takes more time than, for example, simultaneous interpreting, as well as, in Ng's terms "brings the interpreter into the foreground," but is the preferred mode during court proceedings, probably because it is believed to be more accurate and because it allows easier monitoring of the interpretation.

'Simultaneous (-ly progressing) interpreting'

The simultaneous interpreting mode is almost never used during criminal court proceedings in Japan (if used at all). Even though, as Tsuda (2009: 4) reports, interpreters working during the first lay judge trial against a non-Japanese speaking defendant (held in September 2009), "alternately and simultaneously interpreted [a document read out by the prosecutor]," this seems to be a highly rare exception in the courtroom interpreting practice. Further, during this same trial, other documents read out by the attorneys were sight-translated by the same team of interpreters rather than interpreted simultaneously (ibid.).

Reading out documents by lawyers is a very common (or even essential) procedure during criminal trials in Japan. These documents include the indictment act (document introducing pressed charges and applicable penal codes), opening statements and closing arguments, evidence lists and other documentary evidence presented throughout the hearing. Reading such documents in Japanese and then having the interpreter render them consecutively would naturally take a lot of time. This is where wireless technology proves useful. While the attorney is reading out their document, the interpreter *simultaneously* reads out the translation of that document. In other words, no interpreting process is taking place at all. Even though the Courtroom Interpreting Handbook issued under supervision of Japan's Supreme Court, explicitly states that "[the wireless system] allows for the interpretation to be progressing simultaneously [to the attorney's reading out the original] (...) [but] it is different from the so-called 'simultaneous interpreting,'"³ (Hosokai, 2011: 23) some judges and lawyers erroneously refer to this as *simultaneous interpreting*.

Naturally, in order for the interpreter to be able to read out the translated text, they need to receive the Japanese originals in advance. Depending on the attorney or judge, however, the documents can reach the interpreter as late as the morning of the scheduled hearing, or, in even worse cases, be not delivered to the interpreter at all. Should this happen, the interpreter is left with no other choice but to perform sight-translation (of a document they are seeing for the first time) during the hearing. Interestingly, according to the results of the Survey mentioned in the previous section, these documents got longer as a consequence of the implementation of the Lay Judge System (University of Shizuoka Court Interpreters Research Team, 2013: 55), since lay judges (who are not legal experts) are believed to need more detailed (and thus, more lengthy) explanations on various aspects of the case. Naturally, this leaves interpreters with a heavier workload and, consequently,

³Translated by the author.

less time to prepare the translation (University of Shizuoka Court Interpreters Research Team, 2013: 55).

Between sight translation and consecutive interpreting

Aside from cases of sight translation described in the preceding sections (i.e. cases of presenting the suspect's written statement after the police interrogation or PPO interview, or when the interpreter was not allowed enough time to prepare the translation of longer documents presented in court), this technique can also be used in court hearings during presentation of other (usually shorter) pieces of evidence by the attorneys. It is often practiced during lay judge trials, when, as mentioned in the previous subsection, all materials must be presented clearly and comprehensibly to the *saiban-ins*.

While the attorney explains the contents of these materials, they are also usually displayed on big screens installed in the courtroom visible to all participants of the trial (including observers in the gallery), or (depending on the nature and contents) only on smaller monitors placed in front of the (professional and lay) judges, the attorneys and the court clerk. Since the interpreter is sitting by the clerk's side, they have easy access to the contents displayed on the monitor as well.

Thus, there are two sources of input for the interpreter: the attorney's voice and the contents displayed on the monitor. It could be argued, therefore, that this is not 'pure' sight translation, but rather a mixture of sight translation and consecutive interpreting. This is because even though the interpreter sees and interprets the contents presented on the screen, they still wait for the attorney to finish talking before they start the interpretation. Attorneys, on the other hand, aware of the interpreter's presence, often try to cut their explanation into smaller chunks, thus making it easier for the interpreter. As these materials usually include information consisting of numbers, dates or names of places and people, and since the interpreter sees them for the first time, this mixed interpreting mode based on two input sources allows for an accurate interpretation and prompt detection and correction of potential interpreting errors.

Summary interpreting

Berk-Seligson's third mode – summary interpreting – seems to be used in Japan more often than in the U.S., however calling it frequent would be an overstatement. This method is usually applied when the three judicial parties (the court, the public prosecutor and the defense counsel) discuss legal or procedural issues, or when one of the attorneys has raised an objection.

Interpreting these discussions may take various forms. First, the judge may instruct the interpreter to wait for the parties to finish the discussion. Should this be the case, the judge may afterwards summarize the issues discussed and the conclusions, and then instruct the interpreter to render this summarized version to the defendant. On other occasions, the judge may simply expect the interpreter to summarize the conclusion for the defendant. Some interpreters, however, believe that their job is to *interpret* and not summarize lawyers' discussions, and assertively request the presiding judge to do the summarizing, which they then interpret. Either way, due to the very nature of summary interpreting, not every utterance is rendered in its full form and length, and consequently, there is a hazard that some important pieces of information will not be conveyed to the defendant.

Concluding remarks

Legal interpreting is a demanding job in any country and setting. Depending on the institution appointing the interpreter, however, the interpreting process can be conducted in different ways with the use of different techniques and, consequently, accompanied by different challenges and constraints.

As the preceding sections have demonstrated, in all three settings discussed, consecutive interpreting is the prevailing mode in the legal interpreting practice in Japan. While sight-translation is commonly used for documents read out during police interrogations and PPO interviews, the so-called 'simultaneously progressing interpreting' (or, in other words, reading out translations of documents), is frequently practiced in courtrooms. Thus, due to physical conditions (including the interpreter's location) of the venues the interpreting process takes place, modes like simultaneous interpreting (for example, in the form of *chuchotage* as is often the case in Hong Kong) are virtually not practiced at all in legal interpreting in Japan. Moreover, due to different expectations towards interpreters and their role in the legal process, they may be viewed as an impartial and neutral entity or an assistant to one of the sides (as is the case for police interpreters).

One of the more significant differences between legal interpreting in Japan and other jurisdictions is the lack of an accreditation system for interpreters. Whether one advocates for or against the implementation of such a system, the fact of the matter is that lack of a mechanism for monitoring the quality of interpreters is a serious issue. Thus, it seems that Japan's legal institutions will have to revise their views on interpreting, in order to improve this far from perfect situation. This would also require interpreters to reflect on their own attitudes towards their work – they would have to be open to both scrutiny and the (sometimes critical) evaluation of their performance.

This is not to imply that the legal interpreting practice in Japan is of low quality or that the legal authorities are oblivious to its difficulties and dangers, though. Nevertheless, it should be borne in mind that there is always room for improvement and that changes might work to the advantage of subjects of the penal process, legal professionals and interpreters alike. These changes, however, can be implemented only if the parties involved engage in the debate. Thus, research into legal interpreting based on the participation of scholars, interpreters and legal professionals can provide the most powerful arguments to initiate such discussions and the consequent changes, hopefully leading to a better administration of justice.

References

- Berk-Seligson, S. (1990). *The Bilingual Courtroom*. Chicago: The University of Chicago Press.
- Berk-Seligson, S. (2000). Interpreting for the police: Issues in pre-trial phases of judicial process. *Forensic Linguistics*, 7(2), 212–237.
- Conley, J. and O'Barr, M. (1998). *Just Words: Language, Law and Power*. Chicago: The University of Chicago Press.
- Fowler, Y. (2012). *Non-English-speaking defendants in the Magistrates Court: A comparative study of face-to-face and prison video link interpreter-mediated hearings in England*. , Aston University, Birmingham.
- Gibbons, J. (1990). Applied linguistics in court. *Applied Linguistics*, 11(3), 229–237.
- Gibbons, J. (2003). *Forensic Linguistics. An Introduction to Language in the Justice System*. Oxford: Blackwell Publishing.

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- Hale, S. and Gibbons, J. (1999). Varying realities: Patterned changes in the interpreter's representation of courtroom and external realities. *Applied Linguistics*, 20(2), 203–220.
- Hall, P. (2004). Prone to distortion? Undue reliance on unreliable records in the NSW police service's formal interview model. In J. Gibbons, V. Prakasam, K. V. Tirumalesh and H. Nagarajan, Eds., *Language in the Law*, 44–81. New Delhi: Orient Longman Private Ltd.
- Haviland, J. (2003). Ideologies of language: Some reflections on language and U.S. law. *American Anthropologist*, 105(4), 764–774.
- Hayakawa, Y. (2008). Sōsa to kōhan ni okeru shihōtsūyaku (Legal interpreting during investigations and court hearings). In M. Tsuda, Ed., *Hōmu tsūyaku hon-yaku to iu shigoto*, 19–40. Osaka: Osaka University Press.
- Hosokai, (2011). *Hōtei tsūyaku handobukku. Jissen-hen (Eigo) (Court Interpreting Handbook. Practical Edition [English])*. Tokyo: Hosokai.
- Japan Federation of Bar Associations, (2013). Hōteitsūyaku ni tsuite no rippō teian ni kansuru ikensho (Opinion on legislative proposal regarding court interpreting). [online] http://www.nichibenren.or.jp/library/ja/opinion/report/data/2013/opinion_130718_3.pdf.
- Mouri, M. (2013). Kuraianto to no kankei kara mita hōteitsūyakunin (Court interpreters from the perspective of their relations with clients). *Journal of Inquiry and Research*, 97, 225–236.
- Nakane, I. (2007). Problems in communicating the suspect's rights in interpreted police interviews. *Applied Linguistics*, 28(1), 87–112.
- Ng, E. (2013). *The Atypical Bilingual Courtroom: An Exploratory Study of the Interactional Dynamics in Interpreter-Mediated Trials in Hong Kong*. , Aston University, Birmingham.
- Tatsumi, M. (2008). Shuhigimu, chūritsu, kōheisa (Confidentiality, neutrality, fairness). In M. Tsuda, Ed., *Hōmu tsūyaku hon-yaku to iu shigoto*, 117–122. Osaka: Osaka University Press.
- Tsuda, M. (2002). Non-Japanese speaking suspects/defendants and the criminal justice system in Japan. *Japan Association for Interpreting Studies*, 2(2002), 1–14.
- Tsuda, M. (2008). *Hōmu tsūyaku hon-yaku to iu shigoto*. Osaka: Osaka University Press.
- Tsuda, M. (2009). The newly implemented judicial reform in Japan and the impact on legal interpreting and translation. EULITA Conference.
- University of Shizuoka Court Interpreters Research Team, (2013). *2012 Court Interpreters in Japan Survey Report*. Shizuoka: University of Shizuoka Court Interpreters Research Team.