

REVIEW: **Attitudes towards intra-lingual and inter-lingual translation in courtrooms in Japan: implications for court interpreters**

Parvin Kida¹

Abstract

This paper discusses the challenges faced by Japanese court translators and interpreters, and some of the possible reasons for a lack of interest in the Japanese judicial system to ensure competent legal support for defendants who do not understand Japanese. It is argued that often the role of the interpreter is mainly to help maintain a smooth legal process rather than to provide a good understanding of the proceedings for non-Japanese speaking defendants or to guarantee their 'equitable access to justice'. By bringing up examples of the realities that exist in actual practice at the courtroom, the major issues that stand in the way are identified. The difficulties of non-professional translators and interpreters in observing accuracy in language adaptation while maintaining faithfulness to the original meaning are also exemplified. The implications of this study can be beneficial for a more deliberate evaluation of the efficacy of the current system of legal translation and court interpretation in Japan, and it is hoped that such studies may improve an awareness of the measures that may enable interpreters to render a better service to the justice system.

Keywords: Courtroom interpretation, Japanese courts, Justice, Legal translation, Non-Japanese defendants.

Introduction

Language is a crucial tool in any courtroom, and was considered a priority when the judiciary system in Japan introduced the lay judge system, '*saiban-in*', in May 2009, in which six ordinary adult citizens (above 20 years of age) are chosen randomly to work in conjunction with three professional judges to deliver a verdict (Saiko Saiban-sho, 2008: 12 and Naka et al., 2011). The Japanese judiciary system spent five years preparing an introduction to the new system in order to help with the lay judges' understanding of the special language and terminology used in the courtroom. This sudden awareness of the linguistic demands of the courtroom on lay judges who are native Japanese, and the recognition that they may be unfamiliar with legal terminology and may need intra-lingual support, is in sharp contrast to the situation that foreign interpreters for the court have faced over many decades, commonly having to solve communicative conflicts on their own in the hope of providing an adequate understanding of courtroom proceedings by non-Japanese defendants.

About 8.3% of the defendants, 5,870 out of the total number of 70,610 tried in the courts of criminal justice in 2009 were foreigners (Supreme Court of Japan, 2009: 44). Nevertheless, the court interpreters still lack the support they need in order to render a quality job. This results in misunderstandings in the inter-lingual mediations in the courtroom, though the proceedings are likely to have as profound of an impact on the life of foreign defendants as Japanese defendants who are tried in the lay judge system. Indeed, what is the role of the court interpreter in Japanese courtrooms, where almost 99% of all cases heard end in convictions?

A historical overview of the Japanese legal system:

According to the Supreme Court of Japan, the current Japanese law for criminal procedures is a mix of European and Anglo-American legal traditions (2009: 5), moving gradually from the inquisitorial model to the accusatorial (Reynolds and Flores, 2002: 5). In the Meiji period, as part of its modernization agenda, the government looked to Western models to revamp the criminal justice system. In 1880, it enacted '*chizaiho*'

¹Gifu Shotoku Gakuen University, Gifu, Japan e-mail: parvin@khe.biglobe.ne.jp

modeled on the Napoleonic code of criminal justice, which was then revised in 1890 to become the Code of Criminal Procedure '*keiji soshou hou*' which became 'the first Western style comprehensive criminal justice system in Japan (Supreme Court of Japan, 2009: 5).

Amidst the growing militarism of the 1920s, the 1922 Code of Criminal Procedure was enacted, heavily influenced by German law. The military had a hand in shaping the later legal system, as well; the New Code of Criminal Procedure of 1948, which was adopted post-World War II under the New Constitution of 1946, incorporated Anglo-American legal concepts into the general scheme of the old law in order to protect human rights. As prescribed in the Juvenile Law of 1948, family courts were also set up with their own special jurisdictions and procedures (Ministry of Justice, 1981: 9). The system did not undergo any substantial changes until 2009, when lay judges were introduced.

When does the court interpreter come into the historical record? I looked at two versions of a document published by the Ministry of Justice in 1981 and 2009, respectively. The 2009 version shows significant revision, and indicates the presence of interpreters in the courtroom, although this information is confined to two tables of statistics included at the very end of the 44-page booklet covering the years 1998-2007; it lists the total number of the accused and those who used an interpreter, followed by the number of defendants who were convicted and those who used an interpreter. The information is ambiguous, and the implications are problematic. The 2009 pamphlet indicates the presence of foreign defendants as well as interpreters in Japanese courtrooms, though it does not discuss the languages used by the 'foreign' defendants, or what crimes they were accused or convicted of. It also does not indicate if the interpreter was Japanese or foreign. In other words, in documents issued by the Ministry of Justice, the interpreter is a nebulous figure in the courtroom. I would like to bring the court interpreter into a better focus by relating to the actual challenges they face in Japanese courtrooms.

Methodology

The author of this paper came to Japan from Iran in 1979, and has worked as a Japanese-Persian interpreter for more than two decades in Japanese courtrooms in Chubu region including Nagoya High Court, Nagoya District Court, Gifu District Court, Okazaki Branch ('*shibu*') Court, and Toyohashi Branch Court. This study is partly grounded on her experience as a regular interpreter for the courtrooms and her observations over a large number of exemplary cases over this period of time, and partly on a review of associated documents and literature from different sources including academic journals and textbooks, news reports from Japanese media, etc. The author specifically compares the paradox of inter-lingual support provision to Japanese laymen in the new system of criminal rulings for Japanese defendants versus the long and continuing practice of hiring non-professional translators and leaving them with little support over the delicate and complex job of inter-lingual translation and interpretation for non-Japanese defendants.

Moreover, some of the interesting observations and experience as well as a few exemplary cases are introduced to help the readers become more familiar with some of the unique features and issues in the Japanese system of justice. Therefore the framework of this study is mainly based on a review of professional observations as a registered court interpreter as well as an academician, official documents, and literature in the form of academic papers, textbooks and news reports. All findings that might be considered subjective have been corroborated with information from academic journals and publications as well as evidence from other sources, and listed in the references and in the text.

Findings

A sudden demand for court interpreters:

In the early 80s, many Iranian workers suddenly poured into Japan, entering on tourist visas, but with the purpose of getting employed at the sort of jobs known as ‘3K’, for *kitsui* (difficult), *kitanai* (dirty) and *kiken* (dangerous), at low wages, forming the underbelly of a booming bubble economy. However, when the bubble burst in the early 90s, Japan no longer turned a blind eye to all foreign laborers staying and working illegally. Instead of simply deporting the workers most of whom were working hard to send money back to their family home, all these illegal foreign workers were taken to court. Many of the Iranian workers had a limited command of Japanese, and their arrests created a sudden and great demand for court interpreters.

There were, however, almost no trained interpreters available. Similar to an infamously common misconception in 1970s Japan that any Anglophone from the US, the UK or Canada could be an English teacher, the Japanese courts believed that anyone, such as me, who was a native speaker of a foreign language, such as Persian, with Japanese conversational skills could be a court interpreter. The courts contacted language schools to recruit translators; I was working in one at the time, and was approached by the Nagoya District Court, who was in urgent need of Persian-Japanese interpreters. I was not asked whether I had qualifications or experience in court interpreting or any other experience as a translator or interpreter, for that matter. Thinking that I was being asked to handle a special case, I accepted the offer without any hesitation, mainly out of a sense of community service. I did not even ask how much the job paid or what the job entailed. Given my naïve idea of court interpreting at the time, I assumed my role would be to simply orally convey the story of each side to the other. I had absolutely no idea that by taking this job on, I would step into a new and challenging career that would eventually lead me to reassess not only the role of court interpreters in general, but also the particular role they play in Japanese courtrooms.

Challenges facing the court interpreter in Japan:

Over the past two decades I have come to realize that there are three basic requirements to make a qualified court interpreter: 1) basic knowledge of the legal system and the jargon used only by the judicial professionals, 2) skills in translation and a good command of the source and target languages, and (3) a cultural awareness and sensitivity to cultural differences. I would like to elaborate on each of these items by offering examples from my own experiences in the courtroom.

Many of us get involved in translation activities in everyday life while traveling to or living in a foreign country, conversing with somebody from another country, surfing the internet, or reading subtitles on a foreign movie. But interpreting in the courtroom is much more complex and carries a heavy responsibility. Proper training is absolutely necessary for such a job to ensure an accurate transmission of information in the courtroom as the outcome may have a profound impact on the defendant’s life. As Erik Hertog has noted:

“Without competent qualified and experienced legal translators and interpreters there cannot be an effective and fair legal process across languages and culture. ...Reliable standards of communication across languages are therefore an essential pre-requisite to deal effectively with this increasing number of occasions when there is no adequate shared language or mutual understanding of legal system and process”. (Quoted in Mikkelsen, 2008: 82)

When the presence of court interpreters became visible in courtrooms in the early 90s, the media showed concern for the accuracy of the language and credibility of the non-professional interpreters hired for trial sessions of foreign defendants. However, in the ensuing decades, training of court interpreters has remained a low priority. Nevertheless, since the advent of the lay judge system in the Japanese judicial system in 2009, some journalists have speculated about the effects on lay judges if a foreign language is used during the trial and whether or not the understanding of courtroom proceedings would be impeded by a defendant who does not speak Japanese and hampered further by a lack of professionally-trained interpreters, which places foreign defendants as well as other parties involved in the public trial at an even greater disadvantage. However, inside the courtroom there seems to be very little concern with how well an interpreter translates from Japanese, which raises concerns on whether there can be a fair trial particularly for foreign defendants speaking an unfamiliar language.

Procedures for registering as a court interpreter:

We may review the preparations needed to become a registered court interpreter based on a two-page handout titled “to those who wish to apply as court interpreter” (*houtei tsuuyakunin-o kibou sareru kata-e*), issued by the Nagoya District Court of criminal law, and handed to applicants who wish to register as court interpreters. It reveals the following points: there is an interview to decide whether the applicant can register as an interpreter or not, however, there is no need for any special qualification, work experience, or educational background. There is also no need to pass any examination for the job. This means that even if one is a registered interpreter s/he is not considered as employed by the court. There is no contract between the court and interpreter for that matter, either, even after one has been accepted as a court interpreter. The interpreters are simply registered on a list and contacted when their services are needed. In addition, after one has been registered as an interpreter, there is no systematic policy or transparency for the assignment of cases which are decided by the judge.

After passing the first interview, applicants will observe a public hearing to evaluate their own ability whether they can actually handle the job or not. Should they decide to continue, they need to write a report of their impression on the case they have observed in the public hearing. The impression must be written in Japanese; this will allow the court to evaluate the applicant’s Japanese ability, as the purpose is to ensure smooth trial procedures. After that, there is another interview and the judge decides whether the applicant should be registered as an interpreter or not.

After one is registered, there is a mock trial for the candidate interpreter to practice before being assigned to an actual case in the court. There are also short term seminars where the experienced interpreters bring up issues that may occur during the public hearing and give advice on how to handle the issue. However, the primary purpose of these seminars is mostly providing an orientation to familiarize the new interpreters with the justice system to avoid confusion during the public trial. There is a next to nothing check of the applicant’s ability in the foreign language especially in the case of less popular languages such as Persian. The number of years living abroad (for Japanese applicants) and number of years living in Japan (for foreign applicants), and certificate of language proficiency are given consideration, which of course, are not necessarily a guarantee of one’s language ability in translating, let alone legal translation and interpretation.

Ironically, though there are no special qualifications required, it emphasizes in the end of the handout that this is a job which needs a high level of skills, and court authorities often remind the already registered interpreters that they need to constantly raise the level of their interpreting ability in the judiciary system on their own. To do so the interpreter must take an oath for each new case “I swear, according to my conscience,

that I will translate faithfully the proceedings of this court”. But there is almost no actual support for the interpreters.

Preparations before the launch of the lay judge system in 2009:

In contrast to these rather simple steps to register as a court interpreter, when the ‘lay judge’ system in Japan was launched on 15 May 2009, there was a sudden and acute awareness of the linguistic challenges found in the courtroom. According to the handbook published by the court (*‘gaido bukku saiban-in seido’*):

To prepare for the introduction of the new system, courtrooms were renovated and big display screens were installed to enable prosecutors and attorneys to show documents and other pertinent evidence visually whenever they felt it was necessary for the lay judges to have a better grasp of the documents. Furniture was replaced too; even the view from the deliberating rooms of the lay judges was scrutinized. Further, the linguistic aspect of courtroom procedure and its impact on the ability of lay judges to render judgment was given tremendous consideration. With the aim of making citizens feel at ease when participating in the new system, the Japan Federation of Bar Associations (*‘nichibenren’*) became fully active in the preparation process. To begin with, a project team was set up to simplify the difficult legal terminology. They studied the legal terms that were being used exclusively by the judicial officials, and tried to change them to vocabulary and expressions accessible and understandable to a lay judge. Professors from law schools in the United States, a country with a long history of using a jury system, were invited to give lectures, and there was even a course on how to speak (*‘hanashi kata kouza’*), in which TV announcers were invited as guest speakers to teach lawyers how to speak in a way that members of the public would find easy to understand. (Translated from the guidebook, 2006: 37)

An article in *The Daily Yomiuri* ‘No detail too tiny for the lay judges’ (23 April 2009: 3) about the final preparations by district courts for the new system demonstrates the extent to which the courts have considered the comfort of the lay judges:

“Some district courts stressed the importance of having a good view from the conference room. For example, a room at the east side of the fourth floor of the Kyoto District Court building has been chosen for its panoramic view of the mountains in Kyoto. Foliage on the grounds of the Kyoto Imperial Palace and Mt. Hiei also can be seen from the room.”

In the same article, a district court spokesman was quoted as saying: “We hope the nice scenery will provide a soothing atmosphere when lay judges are deliberating”. In the conference room at the Saga District Court, nine lay judges and other judges will be seated on expensive chairs (14,000 yen each) that had won an award for their unique design which allowed the back to naturally align with the chair and enhance a good posture. (*The Daily Yomiuri*, April 23, 2009: 3).

Meanwhile, at courtrooms in Chubu region, interpreters do not even have a space allocated to them for resting or to perhaps exchange ideas about their experiences in the courtroom, let alone a room with a view. In short, the significance of inter-lingual translation was recognized from the onset. The purpose was of course to ensure ‘justice for all’. However, this amount of attention to the linguistic demands of the courtroom, to facilitate a better understanding of legal Japanese terminology for the lay judges, stands in striking contrast to the lack of support or interest in court interpreting services for foreign defendants tried in Japanese courts. Let’s review how this lack of interest affects the quality of translation and interpretation in the courtrooms.

Some examples of misinterpretations in the courtrooms:

The ‘media’ seems to be concerned about a lack of professionalism on the part of ‘interpreters’ and a lack of interest on the part of ‘court authorities’ regarding inter-lingual misunderstandings that occur in public hearings, and the impact of interpreters’ presence on the legal proceedings. There are often articles in Japanese ‘media’ about erroneous interpretations and concern about the fairness of trials because some of these mistakes in interpretation can have serious effects on the result of the trial. I would like to review some of these mistakes which were reported in the newspapers, and how it might affect the outcome of the trial.

A well known daily, *Asahi Shinbun* (March 19, 2010) reported that according to an expert’s opinion, in the interpreting process of the trial of a foreign defendant who was charged with violation of the stimulant drugs control law in Osaka court, misinterpretation or omission of the statements of the speaker by the two interpreters of the statements of the defendant from English to Japanese, were observed on several occasions. In fact, in the case of long sentences, the rate was over 60%. The Defense Counsel demanded that the court of appeals return the case to the district court. The reason for this demand was the high possibility of the influence of the mistakes on the lay judges’ deliberations and on the verdict. The article continues by saying that the defendant was a 54 year old German woman, charged with attempting to smuggle three kilos of stimulant drugs that she was asked by an acquaintance to carry to Japan. She was caught upon arrival at Kansai Airport, indicted, and later sentenced to nine years of penal servitude and 3.5 million yen in penalties. Being born in South Africa, her mother tongue was English, so two interpreters were assigned to the case, who took turns in translating. At court, the defendant denied the charges by claiming that she was not aware what she was carrying was stimulant drugs and insisted on her innocence. However, she got a guilty verdict.

The court stated that her statements at the interrogation stage were more reliable and gave her the imprisonment verdict. In the court of appeal, to verify the accuracy and therefore the credibility of translation, the lawyer took the DVD in which the trial proceedings were recorded (in February of the same year) to the court. According to that expert’s opinion, studying the parts with a subject and predicate verb in the context, there were either mistakes or omissions in 65% (that is 40 out of 61 parts) of the defendant’s statements. The expert indicated that, as a whole, there were 34% misinterpretations (52 out of 152 parts). As an example, among the questions of the defense counsel, he asked the defendant, “as a result of your action you carried illegal drugs, how do you feel about this?” The defendant answered “I felt very bad.” The interpreter, instead of interpreting as such (*totemo warui kibun ni*), translated it as “I repent my action” (*hijouni hansei shimasu*).

The word ‘*hansei*’ (repent one’s action) has a very significant emotional implication in the justice system in Japan. In a case where the defendant is denying the charges, using the word ‘*hansei*’ can have serious consequences. When the defendant shows his/her regret for their action by saying ‘*hansei shimasu*’ (I am sorry for what I have done), it is usually considered as a favorable point for the defendant in deciding the amount of punishment and is always mentioned in the verdict. However, in the above case, obviously, the translation was quite contrary to the defendant’s claim of innocence.

Misunderstanding can also be disadvantageous to other people involved in the case such the victim’s family. *The Japan Times* (July 21, 2010: 3) reported that “many errors by a court interpreter, from slight differences in nuance to the loss of a few details, have so far been observed during the high-profile case” (“*Ichihashi trial bares translation woes*”), and added that “court refuses to admit that interpreters often lack

skills". Ichihashi's trial had already received a lot of public attention because the victim was a foreign woman from a Western country, the criminal was on the run for two years before he was caught, having plastic surgery on his face to avoid arrest, and the crime was especially cruel. In addition, it was one of the first cases with a court interpreter appointed by the court for the sake of the victim's family during the trial proceedings; the victim, a British woman, had been raped and then murdered, and her body was later dumped in a bathtub filled with mud.

According to the same article, since 2008 it has been possible for families of victims to participate actively in court proceedings, bringing their own attorneys, questioning the defendant, and expressing their opinion to the court authorities. If the family of the victim does not speak Japanese, the court needs to appoint an interpreter competent in the foreign language used in the courtroom. The court-appointed interpreter was assigned to translate not just the testimony of the foreign witness but the entire court session for the 'benefit' of the victim's family. Among the several mistakes, one example was when the mother of the victim, as a witness, was asked about the impact of her daughter's death on the family; the mother said that "she blamed herself for allowing her daughter to come to Japan", she went on to say "I could not take a bath for two years." That is apparently because of her daughter having been found in a bathtub, the article said. But the court interpreter translated it as "I cannot take back the two years." Such an error could have certainly made a difference in the judgment of a member of the lay judge panel. The article raised concern, once again, by saying "this prompted the legal professionals and linguistic experts to call on the courts to face up to the quality of interpretations when foreign nationals are involved in the court cases and to improve the training and status of interpreters."

The same article cited Professor Makiko Mizuno of Kinjo Gakuin University, a specialist in linguistic analysis of court interpretation, as saying "the courts are naïve in believing that unless there is a dispute of guilt or innocence, a loose interpretation of the testimony won't pose a major problem."

From the two examples above, while the latter could be a simple mishearing mistake, the former is about one of the most complicated issues in legal translation which is verbatim, 'word for word' translation. There are a lot of debates as to whether translation should be meaning-based or form-based. The linguists who are aware of 'culture bound language' argue over the limitations of a form-based translation and favor meaning-based interpreting. But then, there is a possibility that the intended meaning is distorted through the translation process when the interpreter alters the statement of the speaker for clarity. The above case is a caveat of the difficulty of meaning-based translation. One can realize how much skill is needed in the language adaptations for a job with such a huge responsibility. The interpreter has only a few seconds in a public hearing to use his/her judgment on the linguistic choices.

One must remember that such mistakes were detected because the foreign language used in the courtroom was English, considered as one of the major languages in Japanese courts, understood by the majority of foreigners. When a person is standing trial and the interpreter is mediating on his behalf, if the interpreter changes, adds or omits words, the intended statement may become distorted. There are no measures to check the mistakes that occur in the interpretation, especially in the case of less popular languages such as Persian. Sometimes if the defendant has enough money to pay, the defense counsel brings an interpreter to check the trial proceedings. If not, the mistakes usually go unnoticed. The only other way the court might realize that some language problem has occurred is when the defendant cannot understand the interpretation and starts asking the interpreter questions for clarification. In case the interpreter is a

novice, s/he tries to make the translation clear and the two engage in a two-party conversation, which of course, should not happen in a public hearing.

Moreover, a common misconception among court authorities is that native speakers of Japanese are preferable as court interpreters to the non-Japanese. *The Japan Times* (August 28, 2002, “*Persian-language court interpreter lives on a tight rope*”) reported on the merits of both culture and pressure for accuracy. A Tokyo District Court judge said about an interpreter, “We are relieved when we hear her interpret, so we ask her to handle difficult cases in which the defendants deny the charges.” The interpreter, on the other hand, in the same article said about her job in court, “I get frightened to enter the courtroom.” This contrast is because Japanese translators speak (nearly) perfect Japanese in the courtroom. However, given the gravity of being a foreign defendant in a Japanese courtroom, should there not be more concern for how much or how well a defendant understands the proceedings?

The court authorities should take into consideration the fact that everyone (including interpreters) who speaks a second language is almost always weaker in his/her second language than their native tongue. That is, only the presence of an interpreter in the courtroom should not be viewed as ‘enough’ to maintain the smooth running of the Japanese-language court proceedings; it certainly must also ‘benefit’ the defendant.

Lexical challenges:

Another factor which may result in erroneous interpretations in the courtroom is the lexical complexity of legal terms. The following example indicates how important it becomes for the interpreter to know the significance of key words which have legal implications, beforehand.

In a case of attempted murder once I was assigned to, there had been a fight between the defendant and the victim during which the victim was injured. The prosecutor was trying to prove that the defendant was aware during the fight that by attacking the victim he might kill him, a charge denied by the defendant. The term the prosecutor used to accuse the defendant of his intention of murder was ‘willful negligence’ (*mihitsuna kouji*). However, in the adversarial justice system, where language is an important tool, the definition of ‘willful negligence’ is not enough to fully convey the implication of the term. The word ‘negligence’ usually conjures up the idea of the absence of action. On the other hand, the word ‘willful’ means deliberate action, so one may be confused as to how these two words can go together. Although I somehow could infer that the word had legal significance, I was not sure about the meaning of this term in a criminal court case, and just gave a literal translation. Probably the defendant did not understand it fully either, and certainly in as much as the justice system in Japan has changed to include lay judges in the courtroom, such legal terms must be simplified and explained as follows: the suspect knew that the victim might die but in spite of that he attacked the victim. Okawara has written about this issue in detail (2012: 381-394).

In complex cases it is very important to convey the testimony of the defendant accurately because depending on the understanding of the defendant of the implications of the term, his testimony and the outcome of the trial can change. During this particular trial, the prosecutor asked the defendant to explain the circumstances of the fight. The defendant seemed unaware of the importance of choosing his words, and as I listened, he used the two phrases “I hit him with the sword” and “the sword nicked him” interchangeably, with no indication of whether there was any intention to injure the victim. Apparently the lawyer did not inform his client about the significance of this part of his testimony in court because the defendant was using the two expressions randomly without giving much thought to their different implications. I was not aware of the significance of the words legally but managed to make the distinctions

of the two words the defendant was using in his testimony and decided to interpret the words in Japanese as '*attata*' (the weapon hit) and '*kiritsuketa*' (I hit).

The lawyer, however, was aware of the subtle difference the prosecutor was listening for and though he could not understand what his client was saying, suggested that the interpreter was making mistakes in conveying the defendant's statement, saying, "Objection: the translator is not translating correctly." The lawyer did not even understand Persian but recognizing the Japanese translation was incriminating his client chose to protect his client by undermining the credibility of the interpreter. The legal ramifications of the linguistic choices of the interpreter are significant, but the courts do not prepare the interpreter to be alert to the implications of subtle shifts in their translation of a defendant's testimony. So the lawyer, prosecutor or judge may use the interpreter as a scapegoat for 'mistakes' embedded in testimony that Japanese speakers would not understand.

Such examples show the level of respect for the role of the interpreter as a linguistic mediator and suggest that like the defendant on trial the interpreter may also be a suspect, not to be trusted. They happen frequently because lawyers know that court translators are not professionally trained for the job and have no agency to protest against such charges. Unfortunately there is no pressure from the 'Bar' either to urge the implementation of programs for training 'qualified' interpreters.

The challenges of 'not guilty' cases:

Translation becomes more complex and crucial when the defendant denies the charges brought against him. Although it is usually difficult for a lawyer to prove his/her client's innocence, it is important for the translator to correctly convey each party's story to the other side because it can affect, at the very least, the extent of punishment. For somebody whose freedom is to be taken away, even one day makes a difference, let alone weeks or months. Among the cases I have handled, I have come across quite a few factors causing confusion in translation of denial cases.

A situation to make translation challenging involves cases that the defendant is lying or hiding the truth. In such cases, translation becomes difficult. Why? Sometimes the defendant does not answer the question being asked and gives an irrelevant answer to the question. At other times the defendant gives a deliberately vague answer. As a translator, I have found that, more often than not, the court's reaction to such answers is to wonder whether the defendant gave an answer that was lost in translation. That is, when a vague answer or irrelevant information is delivered by the interpreter, there is a tendency to be suspicious of the quality of the linguistic mediation; to see the interpreter as the source of the vague terms or irrelevant information. The defendant's lawyer especially will try to suggest that his or her defendant is trying to prove her or his innocence, but the translation is standing in the way.

There are cases where a lawyer wants to show that an interpreter is incompetent by asking the same question in two different ways and getting two different answers from the defendant. But it is probably too late and also the wrong place to give the interpreter a 'qualification' test! This kind of attitude exists mainly because the translators are not viewed as professionals. And defendants are not the only ones in the courtroom who make translation difficult with vague or irrelevant answers. Sometimes the lawyer's questions are complicated too, especially when he/she is not familiar with the interpreter present in the courtroom. From time to time the lawyer may receive a reminder from the judge about keeping the questions focused.

There are times that problems arise due to a lack of access to information. In big cases where, for example, the police discover and confiscate a large quantity of illegal drugs, the written documentation

needs to be carried in a suitcase. The questions asked by the lawyer and prosecutor, respectively, are based on these written documents which are not accessible to the translator. The only information the translator receives is the content of the indictment, the opening statement of the prosecutor, and a summary of the evidence in the case. If the lawyer is court-appointed and the defendant cannot speak Japanese, the lawyer will be accompanied by a translator when visiting a defendant in preparation for the court proceedings. This enables the translator to understand the crux of the case, which makes translation much easier, more accurate and efficient, and benefits both the court and the defendant.

When the defendant has enough money to hire a lawyer, the translator may or may not accompany the lawyer to visit the defendant before the public hearing. If the lawyer decides not to bring a translator with him, the translator's first encounter with the defendant takes place in the courtroom. In big cases, several other people (including alleged accomplices and the police investigation team) are interrogated and reports are made containing their statements and submitted to the court as evidence against the defendant. When a statement by someone is false or detrimental to the defendant, a lawyer, through his questions at the public hearing, will try to discredit it. When the translator does not know the purpose underlying a lawyer's series of questions, translation can be difficult; like reading a book in the dark, it is not easy to see the words. Nevertheless, some argue that in order to ensure the impartiality of the translator it is better if s/he does not know what a defendant had said at other times.

In one of the handouts given to interpreters during a training seminar, the proper position for an interpreter was explained as "white sheet of paper". However, the code of impartiality may have been given so much emphasis that efficiency has been forgotten. In the case of the Japanese courtroom, where translators are not necessarily trained professionals, preparation is necessary, particularly in more complex cases.

Yet another reason for errors in interpretation can be the stress of providing testimony during the police or prosecutor's interrogation, which must be cleared up in the courtroom. When a defendant is arrested for the first time, he is usually in a state of shock and sometimes very nervous, particularly when s/he feels the difference in the weight of his/her words against the assumptions of the police. Under such circumstances, communication can be difficult even when all the parties involved are speaking the same language. From time to time defendants have complained that they could not understand the translators well. If they speak Japanese to some extent, they sometimes may notice errors being made by their translator. After interrogation, the statements of the, then suspect, is made into a report which becomes evidence in the court to prove that the suspect is guilty. After reports are made, they are read to the suspect through the translator and he/she is asked to sign them. If the translator cannot read Japanese, the police or prosecutor reads it and the translator just translates orally. Sometimes, the defendant raises doubts whether the police really read what was actually written. In some cases the lawyer asks the court to summon the translator who was hired in the investigation stage to testify. But it is rare that a translator is summoned to court for testimony.

Unfortunately, another difficulty here is that it is not always the translator who made a mistake. Sometimes, a defendant tells a lie but later forgets what he had said previously and changes his statements and then puts the blame on the translator's mistake in translation. In cases like this the translator is an easy target to be blamed for. Translation in the courtroom becomes very delicate when this kind of problem occurs in the investigation and the defendant is trying to prove his innocence.

Translation problems can also occur when there has been an irregularity in the collection of evidence by the police. The lawyer will call for his defendant to be acquitted on the basis of the invalidity of the evidence. In such cases, there is a great deal of discussion about legal procedures for seizing and collecting evidence. I believe it is necessary for the translator to be familiar with the general aspects of law. In these cases, the police officer who arrested the suspect is usually summoned to the courtroom as a witness and testifies. They talk about their rank in the police force to begin with. That means that the translator needs to know these ranks if she/he wants to be precise. Here, I simply translate as the witness is a police officer.

When questions and answers between a police witness and the lawyer or the prosecutor are focused on legal procedures concerning evidence collection, for example, it is difficult for the translator if she/he is not familiar with the terms for the various procedures. For example, once there was a case where the defendant had been arrested for possession of illegal drugs for sale. The arrest had involved an undercover operation (*'otori sousa'*). The defendant had sold drugs to the undercover police officer pretending to be a customer, and had then been arrested. The problem was that I did not know that *'otori sousa'* was illegal.

Discussion

The courts have made some attempts to tackle the translation problems by arranging seminars, discussion meetings, and other kinds of gatherings. On a few occasions, these provided opportunities for interpreters to voice the actual problems they faced in the courtroom, but most of the meetings served as no more than orientation sessions for new interpreters; the court explained the procedures and what to expect to avoid confusion during public hearings. In other words, the meetings were primarily for the purpose of providing a smooth process for the sake of the system and not for the defendant, or the interpreter.

Why is the court not so interested in solving these issues? I believe a potential factor, as Mikkelsen has also mentioned in her article *'Evolving views of the court interpreter's role'* (2008:81), is related to the legal system, which has its roots in the history of criminal law of that country. So how does the legal system work in Japan?

As mentioned earlier, the current Japanese criminal procedure is a mix of European and Anglo-American legal tradition. As Atsushi Nagashima mentioned in his essay *'The accused and society'*, "the main difficulty in the administration of criminal justice in Japan seems to derive from the conflicting origins and fundamental principles contained in the present hybrid code". That is to say that the present code of criminal law was influenced greatly by Anglo-American criminal law after it was enforced in 1949. However, little has changed in some fields of procedure such as the 'function of the public prosecutor' and the 'status of the defendant' because the tradition of continental law still had its strong influence (Nagashima, 1963: 297-298).

In his essay, Nagashima talks about the major difficulties encountered in the administration of criminal justice in Japan and mentions four areas that he says "may serve to highlight these difficulties". Among them, as one of the unique characteristic of Japanese procedures, is the "very wide discretionary power granted to the public prosecutor". That means if the prosecutor thinks there is not substantial evidence against the criminal, they will not persecute the suspect. The fact that a person has been indicted and taken to court means that there was enough evidence for probable proof of guilt, "no case is now brought unless the procurator has made a full investigation of facts surrounding the crime prior to the filing of the information" (Nagashima, 1963: 299).

When a case reaches the court it is mostly to determine the amount of punishment. The very low rate of acquittals in Japan is a proof of this; according to statistics for the year 2007, for example, they were only 99 cases out of a total of 69,238, about 0.14%, with two reopened cases (Supreme Court of Japan, *outline of criminal justice in Japan*, 2009: 40). Although there is no separate statistics, in the case of foreigners, I believe, this rate is even lower. In the highly hierarchical society of Japan, the prosecutor has substantial power in the court. On the other hand, false charges by a prosecutor (*enzai*) can also be damaging to his career.

Conclusion

For the last two decades the court interpreters have been playing an important role in the judicial system. As this paper has shown, the court interpreter in Japan faces a number of challenges. The legal system in Japan went through major changes with the introduction of the lay judge system and the enlargement of the role of the defense counsel. However, not all cases are tried before the jury. Even if a foreign defendant is tried in the new system the interpreters may enter the scene with a new set of problems some examples of which have been discussed in this paper.

In my opinion the judicial system has yet to give due recognition to the vital role that the interpreter plays in the courtroom. On 15 May 2009, Japan's criminal court system changed to a lay judge system. Many detailed considerations, at probably a high cost to the taxpayer, were given into the preparation for the new system that makes one wonder, yet again, how seriously the role of the court interpreter has been considered. If Japanese speakers who are lay judges need linguistic support to understand what is going on at the courtroom, what about the needs of the interpreters who work there every day?

The extent of the final preparations by district courts to improve the comfort of the lay judges for the new system suggests the extent to which translators of foreign defendants have been ignored. For years, judges, prosecutors, defense counsels, and court clerks have sat on big and comfortable executive-style chairs with the interpreter on a small chair in the middle of courtroom at a desk the size of one used in an elementary school. During a complicated case with a lot of documentation, the desk is so small that sometimes papers fall off. Where the interpreter sits gives a clear sense of where the interpreter stands in terms of the hierarchy of the Japanese courtroom.

References

- Asahi Shinbun. 2010 (19 March). Muzai shuchou goyaku darake (無罪主張、誤訳だらけ) Court (Saiban-sho). 2011. Houtei Tsuyaku [booklet].
- Daily Yomiuri. 2009 (23 April). Pp 3 in “*No detail too tiny for lay judges*”.
- Hiraike Okawara, Mami. 2012. Courtroom Discourse in Japan's New Judicial Order. Chapter 27: 381-394 in: *The Oxford Handbook of Language and Law*, eds. P. Tiersma and L. Solan. Oxford University Press.
- Japan Times. 2002 (28 August). “*Persian-language court interpreter lives life on a tightrope*”.
- Japan Times. 2011 (23 July). Pp3 in “*Ichihashi trial bares translation woes*”.
- Kawatsu, Hiroshi, Ikenaga, Tomoki, Kaji, Nobuaki and Miyamura, Keita. 2006. *Gaido Bukku Saibanin Seido*. Tokyo: Hougaku Shoin.

- Mikkelsen, H. 2008. Evolving Views of the Court Interpreter's Role. Pp 81-94 in *Crossing Borders in Community Interpreting: Definition and Dilemmas*, eds. C. Valero-Garcia, and A. Martin. Amsterdam, Philadelphia: John Benjamins Publishing.
- Ministry of Justice. 1981. *Criminal Justice in Japan*, Japan [booklet]
- Nagashima, A. The Accused and Society. 1963. The Administration of Criminal Justice in Japan. Pp 297-9 in *Law in Japan, the legal order in a changing society*, ed. A.T. Mehren. Cambridge, Massachusetts: Harvard University press.
- Nagoya Chihou Saibansho (Nogoya District Court) (n.d.): Attachment 3, *A Short Course on Court Interpreting by Visiting Lecturer*. Nogoya, Japan [handout].
- Nagoya Chihou Saibansho (Nogoya District Court) (n.d.) Houtie tsuyakunin o kibou sareru kakae 「法廷通訳人を希望される方へ」 (a handout for applicants for court interpreting from personnel division of Nagoya District Court)
- Naka, Makiko, Okada, Yoshinori, Fujita, Masahiro and Yamasaki, Yuko. 2011. Citizen's psychological knowledge, legal knowledge, and attitudes toward participation in the new Japanese legal system, saiban-in seido. *Psychology, Crime & Law* 17 (7): 621-641.
- Reynolds, T. and Flores, A. Foreign Law, 1994. Pp 5 in *Current Source of Codes and Basic Legislation in Jurisdictions of the World*, vol. III-A Africa, Asia and Australasia, Japan. New York: William S. Hein & Co., Inc.
- Supreme Court of Japan (Saiko Saiban-sho). 2008. *Saibanin Seido Nabigeshyon*. Tokyo: Supreme Court of Japan [booklet].
- Supreme Court of Japan (Saiko Saiban-sho). 2009. *Outline of Criminal Justice in Japan*. Tokyo: Supreme Court of Japan [booklet].