
Legal Interpreter Certification in a Global Japan

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Abstract

The present essay discusses the critical issue of legal interpreters' training and certification in Japan. Besides leading to serious judicial errors (Berk-Seligson, 1990), the use of unqualified and/or uncertified interpreters may result in violations of fundamental human rights. The lack of certification or legal training instruments for legal interpreters in Japan suggests that despite a constant increase of the number of foreign nationals in Japan, the judicial system is yet unprepared to deal with a growing incidence of criminal cases involving foreigners. Japan's ongoing interest in globalization against the backdrop of a rapidly ageing society and an increased need for foreign labor force imposes the necessity of fundamental changes in the status and qualifications of Japanese legal interpreters.

1. The necessity of certification in legal interpretation.

According to Gonzalez et al,

Legal interpretation refers to interpretation that takes place in a legal setting such as a courtroom or an attorney's office, wherein some proceeding or activity related to law is conducted. Legal interpretation is subdivided according to the legal setting into (1) quasi-judicial and (2) judicial interpreting or what is normally referred to as court interpreting. (1991:25)

According to articles 7 and 10 from The Universal Declaration of Human Rights on the obligation of the ratifying states to guarantee equality before the law and a fair trial, a foreign suspect who does not have enough proficiency in the language of the trial must be assisted by an interpreter (International Covenant on Civil and Political Rights CCPR, Part III Art. 14 Para. 3 (a) and (f) and Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 14). While these provisions are being formally observed, the problems regarding the quality of the interpretation offered to foreign defendants have yet to be solved. We will refer to the problem of certification for legal or court interpreters in Japan and the United States, two countries whose judicial systems as well as expertise in dealing with legal matters involving foreign nationals differ.

Legal interpreters have long been regarded as belonging to the larger category of community interpreters, or individuals who work in the public service centers (police or immigration departments, social welfare, medical facilities, educational institutions, etc.) and facilitate the communication between authorities and lay people (Wadensjö, 1998, Carr et al, 1997). However, it must be stressed that community interpreters, or 'natural interpreters' as Harris (1977) calls them, are not necessarily trained interpreters, but people of various professions who offer their services voluntarily and often without payment. As a

consequence, in many countries, including Japan, legal interpreters are selected from among laypersons with virtually no specialized training in interpreting or in the legal field. This has led to a situation where many uncertified bilinguals have been practicing a profession which should be approached with maximum professionalism and ethical standards, especially since the slightest error, partiality or nuance may be important in swaying the judge's or the jury's decision.

According to international agreements, foreign suspects have upon their arrest the right to be promptly informed of the cause of their apprehension and their rights. During the investigation that follows the apprehension, the suspect must answer detailed questions regarding the circumstances of the purported crime. If the suspect cannot understand and/or express himself well enough in the language of the investigation, the presence of an interpreter is absolutely necessary. The Code of Criminal Procedure and the Court Organization Law stipulate that in Japan the language of investigations and public trials is Japanese (Taki, 2004, p. 21). Moreover, in the Japanese judicial system, the suspect must sign a written confession, which is his/her own version of the circumstances that led to the crime. Unlike common-law trials, where oral evidence is the crucial part of the process, in the Japanese system written evidence, including the defendant's confession, which is drafted in Japanese and sight translated for corroboration, is given more weight than the verbal testimony of the suspect in court, making it "justice without a trial", and the trials themselves, "little more than 'rituals' for 'ratifying' police and prosecutor decision" (Johnson, 2004, p. 9). In the case of a foreign suspect with insufficient Japanese language proficiency an interpreter is needed to sight translate the confession and obtain the suspect's signature. An interpreter is also indispensable for the preparation of the suspect's defense and to inform the defendant about court proceedings and the verdict.

It is of utmost importance that the suspect be guaranteed the right to an interpreter not only in form, but also in reality. Just the simple presence of an interpreter is not sufficient. The right to due process, stipulated in the Declaration of Human Rights, requires the presence of a *qualified* interpreter, who must be able to effectively assist the defendant through the judicial process. Unlike other fields, where errors and approximations are more or less admissible, legal interpretation requires high professional and ethical standards, which can only be acquired and maintained through a rigorous training and testing system.

There are wide disparities in the criteria of legal interpreters' selection and certification worldwide, from a virtual lack of standards in countries like Finland, Italy, France, Japan, Korea, to more or less rigorous systems in countries such as South Africa, Germany, Australia, United States, Poland, Canada, Switzerland and The International Criminal Court (Villeneuve, 2003, Mikkelsen, 2006e). Likewise, there is a divergence in the way the profession is looked upon. While in some countries the legal interpreter is regarded as a certified legal expert, in others he is regarded as any bilingual person who is willing to help the court proceedings, even if he may be related to or previously acquainted with the suspect (Villeneuve, 2003).

2. Misconceptions about interpretation.

The common fallacies below come to mind when referring to legal interpretation. These do not only relate to the way legal interpreters are perceived by the general public, but also to the selection and registration of legal interpreters with the courts.

1. Any bilingual person can work as interpreter.
2. A bilingual attorney or investigator makes the presence of an interpreter unnecessary.

3. Defendants cannot do much to defend themselves (Grabau, 1996).

In regard to the first fallacy one could say that interpreters have generally been regarded as translation machines, or bilingual persons who are able to establish a spontaneous and effortless word transfer between two languages. As Repa (1991) pointed out,

From time immemorial, an untrained bilingual person was brought into the court to help with the understanding of evidence given by a foreigner... It was not until the sixties and seventies in North America that a complete lack of structure in court interpreting was gradually recognized as an issue. (p. 595)

What most laypersons including judges ignore is that, as Newmark stressed, while lexical items are “more or less translatable” legal interpretation works with two distinct legal systems, where items peculiar to the source language (and legal system) are “more or less untranslatable” into the target language (1973, emphasis mine). Referring to legal translation, Sarcevic pointed out that “most existing studies on legal translation deal primarily if not exclusively with terminology...thus giving the false impression that legal translation is a mechanical process of transcoding, i.e. substituting words and phrases of the source legal system by corresponding expressions of the target legal system” (1997, p. 22). Even if substitution were more or less possible, there is seldom a word-for-word correspondence in legal translation, “the basic unit of translation” being “not the word but the text” (Sarcevic, 1997, p. 22). As Becerra (2002) remarked,

Translators and interpreters cannot translate a legal term without first knowing what the term means, nor can they translate the term if they do not know the corresponding term in the target language, or at least how to succinctly define it. Through comparative legal studies, the translator must first draw parallels between the source and target legal systems, and then find the different labels that attach to the parallels (p. 8).

Dictionaries or glossaries are of little use in legal translation or interpretation without an in depth understanding of the context of usage, which is different in every legal system.

One very important issue every legal interpreter must be aware of is that of accuracy and faithfulness in interpretation, or the so-called “legal equivalence” (Gonzales, 1991). In their *Theory and Practice of Translation* (1974) Nida and Taber asserted the existence of two kinds of correspondence in translation, formal correspondence and dynamic correspondence. While formal correspondence, or the so-called “gloss translation” aims at preserving faithfully the form and content of the original, dynamic correspondence refers to the relationship between the target receptor and message, which must match substantially the relationship between the original receptor and message. In legal translation/interpretation the condition for achieving *legal equivalence* is that, besides dynamic equivalence, the legal interpreter must strive to preserve the formal components of the source language speaker, such as the style and register of speech (Mikkelsen, 1996, emphasis mine).

The interpretation must be “accurate, faithful, and complete without summarizing, adding, embellishing, or omitting anything spoken or written” (Framer, 2005). The *Code of Professional Responsibility of the Official Interpreters of the United States Courts* provides that “every spoken statement, even if it appears nonresponsive, obscene, rambling, or incoherent should be interpreted” (Hewitt and Lee, 1996). This is also an ethical issue, which is related to the interpreter’s obligation to be impartial. Other items of the Code include completeness, representation and qualification, impartiality, confidentiality, scope of practice, assessing and reporting impediments to performance and professional development (Hewitt, 1995). However, in an insightful study based on interviews with a number of Japanese legal interpreters Nadamitsu (2001) pointed out that cultural differences may lead a judge to

interpret some of the defendants' verbal and non-verbal messages as disrespectful, although they would be fully acceptable in their own culture, a situation which may have a negative impact on the verdict. In her opinion, the interpreter should provide explanation when necessary and adapt his interpretation so that it does not bring unnecessary prejudice to a defendant who, besides lacking in language skills, is not familiar with the foreign judicial system. She concluded that, in order to ensure a fair and unbiased trial, the legal interpreter must abandon his role of invisible translation machine and take up a more active stance of cultural mediator. This is a controversial issue, which contradicts Framer's view of interpreters as "officers of the court", whose duty is not to make the suspect understand the content, but only to interpret what is being said without "conveying affectionate or intimate discourse to a non-English speaker or advocate for a defendant or victim" (Framer, 2005, p. 5).

Besides the need for a faithful and accurate rendering of the message, legal interpreting may require simultaneous/consecutive interpretation or sight translation skills. In the case of interpreting in the US courts, both simultaneous and consecutive modes are required, while in Japan interpreting is performed mainly in consecutive mode, with sight translation skills necessary for translating the suspect's confession. Apart from receiving theoretical and practical training in court-specific procedures and terminology, interpreters learn the cognitive and verbal skills necessary for each interpreting mode and the code of conduct essential for people who work in this profession. Not every bilingual layperson can or should be allowed to undertake the task of performing legal interpretation without being well trained in interpretation, experienced in the legal field and well aware of the risks of inaccurate, incomplete or biased interpretation (JAIS, 2005a).

In relation to the second fallacy, it has been assumed that a bilingual attorney or investigator makes the presence of an interpreter redundant. However, as we mentioned earlier, legal interpretation is not only a matter of language transfer, but must also be fair and impartial (Mikkelson, 1996, Hewitt 1995, JAIS 2005b). This is the reason why a bilingual investigator cannot simultaneously play the part of accuser and unbiased interpreter.

The third fallacy referring to the defendants' inability to contribute substantially to their own defense, contradicts the suspects' fundamental right to defense counsel. The defendant must be able to communicate effectively with his attorney to prepare his defense (CCPR Part III, Art. 14, Paragraph 3 (b)). As will be shown further on, several cases in Japan suggest that judicial police and the investigators consider it redundant to inform the foreign suspect of his rights in a language that he can understand, thus hindering the fairness of the legal process and depriving the suspect of his fundamental rights of remaining silent and of seeking counsel.

3. Legal interpreters' certification in the United States.

In the US, a country with a wider cultural and linguistic representation than Japan, the Federal Court Interpreter's Act, passed in 1978, recommends the use of "*certified* and otherwise *qualified* interpreters" (my emphasis), stressing the necessity of "certifying interpreters based on the results of *criterion-referenced performance examinations*" (28 U.S.C. § 1827 (a) (b) (1) [my emphasis]). A certified interpreter is "an individual who has passed an oral and written examination, such as the federal court interpreter's examination, or an examination that has been shown to be valid and reliable" (Hewitt, 1996). The Court Interpreter's Act came in the wake of the 1970 decision, *United States ex rel. Negron v. New York* 434, F.2d 386 (2d Cir. 1970) that a defendant whose English skills were insufficient had the constitutional right to be assisted by a *competent* interpreter throughout the proceedings (LaVigne and McCay 2003 [my emphasis]).

In most of the cases, however, the judge is the one who decides whether a defendant needs the services of an interpreter and also whether an interpreter is qualified for the job. As few judges are qualified enough to assess an interpreter's skills, certification remains the sole quality assurance instrument. According to the Act, non-certified interpreters can be used if "no certified interpreter is reasonably available, as determined by the presiding judicial officer" (28 U.S.C. § 1827 (d), (1)). While certification is not an absolute guarantee that the interpreter can provide a completely accurate rendering of the proceedings, the presence of a certified interpreter ensures not only that baseline professional standards are observed but also that the person is bound by a code of ethics (LaVigne and McCay, 2003).

The most immediate effect of the Federal Court Interpreter's Act was the creation of the Federal Court Interpreter Certification Examination (FCICE) in 1980, which "introduced to the court interpreting environment the concept of performance-based interpreter testing, which is based on rigorous testing practices" (FCICE Examinee Handbook, 2006, p. 3). Among the qualifications required for becoming a court interpreter is an educated, native-like mastery of both working languages and an ability to perform the three modes of interpreting: consecutive interpreting, simultaneous interpreting and sight translation. Court interpreters must be able to interpret simultaneously utterances spoken at a speed of 160 words/minute and are required to have good listening, retention and note-taking skills for consecutive interpreting. For testing purposes, the candidates may be required to interpret consecutively utterances as long as 50 words. For example, the English-Spanish Federal Examination is comprised of two parts: written and oral. The written examination, which is divided into English and Spanish sections, tests the candidates' skills at reading comprehension, usage, error detection, synonyms, and best translation of a word or phrase. The English-Spanish oral examination determines "whether a person seeking certification is minimally competent for immediate work in the federal courts" (FCICE Examinee Handbook, 2006, p. 30). The examination has five parts: sight translation from English to Spanish, sight translation from Spanish to English, consecutive interpreting from Spanish to English and from English to Spanish, simultaneous interpreting into Spanish of a monologue speech, and simultaneous interpreting into Spanish of a witness testimony. The texts are based on actual court transcripts and documents. In this way the examiners test the ability of the candidates to perform tasks which are similar to those they will encounter in court.

The poor pass rate of the exam (8.8% in 1980 and 4.7% in the second administration) indicates its very high standards (Gill and Hewitt, 1996). On the other hand, another certification program, introduced in the mid-1980s in California, had a high pass rate due to excessively low standards; its difficulty level was increased afterwards, leading to inconsistencies in the quality of certified interpreters (Mikkelsen and Mintz, 2006). Other states have followed California's example and introduced legal interpreters certification programs. A State Court Interpreter Certification Consortium was created in July, 1995, by the National Center for State Courts and the states of Minnesota, New Jersey, Oregon and Washington (Gill and Hewitt, 1996). As of 2006, the Consortium membership has expanded to 36 states¹ (National Center for State Courts, 2006).

4. Legal interpretation in Japan.

Despite its efforts towards a so-called "internationalization" of the country, and the increasing wave of

¹ Alaska, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Iowa, Illinois/Cook County, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, and Wisconsin.

foreign visitors and migrant workers, Japan's judicial system is not prepared to deal with the challenges of globalization. Although the demand for legal interpreters has grown substantially over the past decade, which resulted in the relatively large number of 3,665 interpreters registered with the Japanese courts as of 2004, there are few if any guidelines for the selection and training of professional interpreters (Nagao, 2001). Like in the US, in Japan "[s]election is left largely to judges, who may ask about the backgrounds and education of interpreters, but who are rarely qualified to assess their linguistic abilities" (Asahi Shimbun, Feb. 17, 2003) .

In the long term it is expected that with the sharp decrease of birth rate and rapid ageing of Japanese society the number of foreign migrant workers will increase gradually, which may pose a major challenge to the Japanese judicial system. Several facts suggest that Japan is yet unprepared to face increasing cultural and linguistic diversity, at least from the viewpoint of legal interpretation. These are:

1. Lack of training courses for legal interpreters
2. No certification standards
3. Arbitrary selection and registration of interpreters by the judges
4. No 'check interpreter' system
5. No instruments for making interpreters responsible for their interpretation
6. Flawed judicial system, which attaches utmost importance to the written confession signed by the foreign suspect without fully understanding its content.

Ministry of Justice statistics show that the number of foreign nationals apprehended for various crimes in Japan is on the increase. As Figure 1 below illustrates, in 2003 out of the 12,555 judicial cases involving foreign nationals, 11,116 required interpretation or translation (including sign language translation), which is about double the number of cases requiring interpretation in 1994.

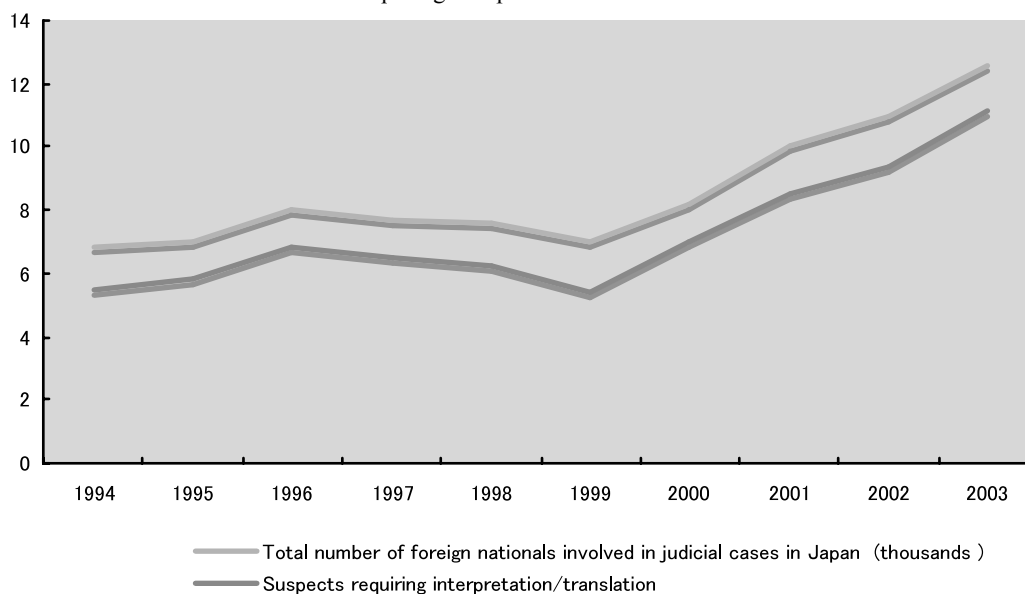


Figure 1. Judicial cases with translation or interpretation (1994-2003). Source: Ministry of Justice. 2003 White Paper on Crime (Heisei 16 Nenban Hanzai Hakusho), Chapter 2, Section 2, Part 4, Figure 1-2-2-9, 2004.

The table and the chart below show the distribution of languages that were used in the translation/interpretation of judicial cases.

Language	Cases involving foreign nationals
Chinese	4,585
Korean	1,420
Tagalog	847
Thai	621
Spanish	573
Portuguese	481
Persian	398

Table 1. The language representation of foreign suspects and witnesses involved in judicial cases. Source: Ministry of Justice. 2003 White Paper on Crime (Heisei 16 Nenban Hanzai Hakusho), Chapter 2, Section 2, Part 4, 2004.

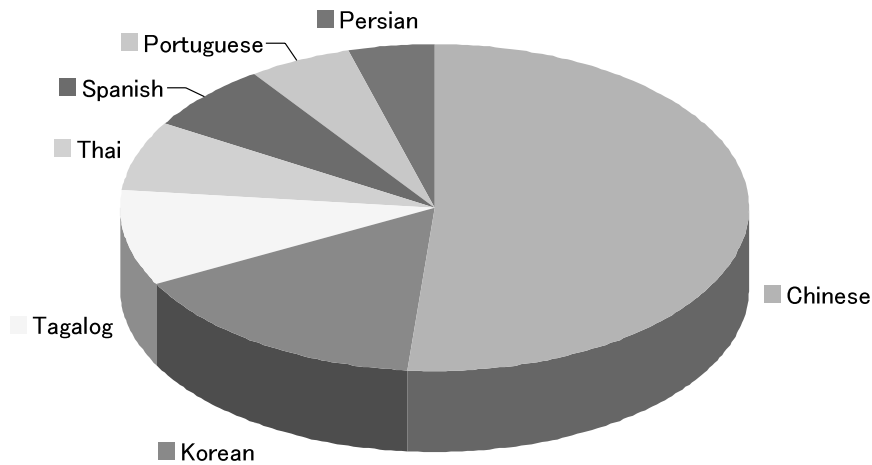


Figure 2. Distribution of languages in cases requiring interpretation/translation. Source: Ministry of Justice, Source: Ministry of Justice. 2003 White Paper on Crime (Heisei 16 Nenban Hanzai Hakusho), Chapter 2, Section 2, Part 4, 2004.

Despite the increasing numbers of judicial cases involving foreigners, the US Department of State Report on Human Rights Practices in Japan (2005) points out that there are no guidelines that guarantee the “acceptable quality of communications between judges, lawyers, and non-Japanese speaking defendants, and no standard licensing or qualification system for certifying court interpreters. A trial may proceed even if the accused does not understand what is happening or being said. Foreign detainees frequently claimed that police urged them to sign statements in Japanese that they could not read and were not translated adequately” (p. 3). This is an infringement of the Japanese Constitution, which provides that “[n]o person shall be compelled to testify against himself” (Art. 38.1) (Inoue, 1991, p. 281-283), and the Code of Criminal Procedure, which provides that “confession made under compulsion, torture or threat, or after prolonged arrest or detention, or which is suspected not to have been made voluntarily shall not be admitted in evidence” (Code of Criminal Procedure, Art. 319).

Amnesty International denounces the failure to ensure interpretation facilities for foreign suspects, or even when these are provided, “the interpreters appear to be biased in favor of the authorities” (Amnesty International, 1997, p. 2). Moreover, the absence of a translation of the written confession in the suspect’s language puts the acceptability of the document under serious doubt, since an amateur interpreter can, intentionally or otherwise, distort the facts as he sees fit.

Legal interpreting in Japan is more community interpreting than an independent profession. If the demand for interpreters exceeds the number of internal interpreters available, or if the courts cannot secure a registered interpreter for a particular language, legal interpreters may be recruited from external sources, such as university lecturers, mass media and court websites (Taki, 2004, Tanaka et al. 1994). Often the same interpreter who assisted the suspect during the police investigation stage has to assist him in court as well, which contradicts one of the fundamental ethical principles proposed by JAIS (2005). Moreover, police train their judicial interpreters internally (Taki, 2004). In Japan, police officers are considered qualified to serve as legal interpreters if they hold the second grade certificate of the so-called EIKEN (Society for Testing English Proficiency – STEP), which corresponds to a score of 500 in the TOEIC test (Test of English for International Communication) (Mitsui, 1996, Taki, 2004). Moreover, allowing police officers to provide interpretation services for foreign suspects is a grave infringement of judicial procedure.

The official web site of the Supreme Court of Japan provides a detailed explanation of the process of selection of legal interpreters, pointing out that, “no certification is necessary, but besides a high level of interpretation skills, any language certification, overseas study experience or interpreting experience is considered” (my translation). Prior to submitting an application, possible candidates are encouraged to attend court hearings to familiarize themselves with the level of language required for interpretation. The application is followed by an interview with a judge who decides whether the interpreter is competent or not. No testing is mentioned at this stage, and no details are given about the criteria involved in judging the suitability of the candidates. Successful applicants are registered with the court and attend seminars and training courses which are meant to familiarize them with the nature and content of criminal cases, difficulty of interpretation, etc. During this preparatory period they are assigned easier cases and as they gain more experience, they receive more complex ones. Unlike in the US, where the interpreters must possess certification to prove that they are competent *prior to* their registration with the Federal Court, in Japan legal interpretation training starts *after* the interpreter has been approved and registered as such with the court. Again, the fact that during the preparatory period Japanese interpreters are assigned real cases leads to an increased incidence of errors and unethical behavior.

Some of the well-known cases involving foreign nationals illustrate that the lack of rigorous standards in interpreting leads to judicial mistakes that are hard if not impossible to identify. The so-called Urawa case, in which a foreigner was charged with arson and also with overstaying his visa, is a case in point (Urawa chihou saibansho 1991, p. 53-4). The court acquitted him due to the investigators’ failure to inform him in a language he could understand of his right to remain silent and retain defense counsel. Moreover, it was ruled that the investigators took advantage of the defendant’s misunderstanding of the Japanese judicial system and had made him sign a false confession (Taki, 2004, p. 25). It must be added that the frequent practice of making foreign suspects sign and fingerprint confessions written in Japanese and sight translated by the interpreter should be considered hearsay evidence, and therefore should not be accepted as trial evidence (International Bar Association Report, 2003, p. 93).

Such human rights violations due to omission or to the interpreter’s incompetence are unfortunately frequent, as the Japanese Association of Interpretation Studies has stressed in an analysis of the Nicholas Baker case (JAIS, 2005). Baker, a British national, was arrested in April, 2002, at Narita Airport and charged with drug smuggling. He was not assigned an interpreter, but was instead interrogated by a financial officer whose English language abilities were as low as EIKEN Level 3 (junior high school level) (International Bar Association Report, 2003). Although the suspect denied any involvement, claiming that the suitcase where the narcotics had been hidden was not his and that he had no knowledge of any drugs,

the statement drafted after the interrogation read that (1) he had purchased the suitcase himself five years ago and (2) he was aware of the narcotics in the suitcase. He was declared guilty and was sentenced to 14 years imprisonment. The defendant appealed the ruling on grounds of the interpreter's incompetence; however, the Chiba District Court rejected the appeal arguing among other things that,

... as for the investigation stage interpreters, even those with low scores have received scores [...] of 715 in TOEIC (Test of English for International Communication) or "EIKEN" Level 2 qualifications, and are engaged in interpretation on a daily basis. The others have experience of living for five years in England, or have studied in high school, university or graduate school in the United States, have such high marks on TOEIC as 960 or 920, and/or have "Special A" certificates on the United Nations English Examination, or "EIKEN" Level 1, and all of them are engaged in interpretation on a daily basis (International Bar Association Report, 2003, p. 96 original translation)

Unfortunately, the absence of any other material proof of the investigation, such as videotapes or other evidence except the Japanese confession makes it extremely difficult to prove the low quality of the interpretation.

The Japanese Association of Interpretation Studies (JAIS), including several experienced legal interpreters such as Makiko Mizuno and Hiromi Nagao, has been in existence for the past 15 years. Pointing out that Japan's legal interpreting is thirty years behind Canada and the US, Nagao (2001) suggested that the following measures should be considered for improving the status and professional standards of court interpreters in Japan:

1. Creating a certification system
2. Providing more learning materials
3. Improving interpreters' wages
4. Introducing a professional code of conduct
5. Increasing training opportunities

In regards to point 4, the Association has proposed a code of conduct, based on the codes of ethics of NAJIT (National Association of Judiciary Interpreters and Translators) and AUSIT (Australian Institute of Interpreters and Translators Incorporated), and which lists principles such as accuracy, impartiality and fairness, professional demeanor and confidentiality (JAIS 2005). As Taki (2004) pointed out, certain improvements can be seen in the issue of foreign citizens' rights. First, translations of legal documents have been introduced in the past decade, informing the suspects of the right to retain defense counsel, the implications of the pre-detention questions by the judge and the outline of the indictment. Second, a certain concern for the training of the legal interpreters was manifest in the distribution of glossaries of legal terms, and introduction of training sessions for the legal interpreters by the criminal justice institutions. Third, it has become increasingly possible for two separate interpreters to be assigned to the investigation and court stages of one case, giving the suspects a better idea of the two distinct parts of the judicial process and also reinforcing the principle of impartiality and detachment on the part of the interpreters. Fourth, for future reexamination purposes, the audio recording of the interpretation in court has become, in principle, increasingly possible. This may help identify possible errors in interpretation; however, the confession, the so-called "heart of Japan's criminal process – the pump that keeps cases circulating in the system" (Johnson, 2004:10) is still obtained and drafted in the absence of any other audio or video records of the process, which makes it extremely hard to prove that the interpreter was not competent enough for the assignment or that the facts contained in the written confession do not correspond with the suspect's verbal confession.

By way of conclusion, one can only hope that the positive, albeit insufficient, steps taken by Japan towards making its judicial system more flexible will be followed by more consistent measures for a more

precise and rigorous definition of the profession of legal/court interpreter and that the judicial process involving foreign nationals will observe not only in form but also in substance the foreign suspects' fundamental right to due process and fair trial.

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