

Nick Baker Case: The Challenges Encountered in Improving the Quality Control of Legal Interpretation in Japanⁱ

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Introduction

To date, there has been no system for certifying legal interpreters in Japan. Although a defendant's right to an interpreter is widely recognized and the provision of an interpreter has become a norm, the quality control of legal interpreting still remains a serious issue.

The trial of the Nick Baker drug case in 2006 presented several problems intrinsic to the present judicial system. Mr. Baker's defending lawyer submitted to the appeal court an expert opinion report on the accuracy of interpretation. An analysis of the tape recordings of the trial brought to light a substantial number of cases of interpretation errors. In addition to these errors, the analysis revealed two other important issues regarding the quality of the interpretation. The first is a lack of understanding among the judiciary with regard to the nature of language and interpreting, and the second is the unethical behaviour of the interpreter who did not even inform the court about her inability to interpret accurately.

Based on the analysis of the interpretation in this case, this paper will discuss the present situation within the Japanese legal system and will examine the challenges encountered by the interpreters and legal practitioners in the context of improving the overall quality of legal interpreting in Japan.

Outline of the Nick Baker Case

Mr. Nick Baker, a British citizen, was arrested upon his arrival at Narita airport on April 13, 2002, for allegedly smuggling drugs in the false compartments of a suitcase. The suitcase contained 41,120 tablets of MDMA and about 1 kilogram of cocaine. He was tried at the Chiba district court, where he was found guilty and sentenced to 14 years of imprisonment with forced labor and fined 5 million yen.

However, he appealed to the Tokyo High Court and his sentence was consequently

reduced to 11 years of imprisonment and the fine was brought down to 3 million yen.

Mr. Baker pleaded innocent throughout the proceedings. The three main points of his pleading are as follows.

- 1) He was set up by his traveling companion who was a member of a criminal organization.
- 2) He was framed by prosecutors.
- 3) His testimony was mistranslated.

This paper will examine only the last point, since the other two points are beyond the scope of its theme.

Expert Opinion Paper Submitted to the High Court

In order to prove Mr. Baker's last claim of poor interpretation, the author was commissioned by the defending lawyer to prepare an expert opinion paper on the court interpreting, and it was submitted to the appeal court. The expert opinion paper was prepared in the following manner.

* Firstly, the defending lawyer negotiated with the trial court and obtained tape recordings of the trial.

* Secondly, the author selected the portions of the tapes which recorded witness examinations of the defendant.

* Thirdly, a native English speaker transcribed the English version and the author compared it with the official court record written in Japanese.

* Finally, the author analysed the differences between them.

Although the most of the interpretation-related problems seemed to have occurred during the investigation, the recordings of the trial had to be used, because interrogations by the police or the prosecutors are not recorded in Japan. Therefore, I requested the defending lawyer to collect the data on the English proficiency, experience and background of interpreters who had interpreted during the investigation as well as of those who interpreted for the court. It was expected that by comparing the collected information, it would be possible to gain insight on the possibilities of interpretation errors during the investigation.

One of the grave flaws of the criminal proceedings in Japan is the lack of video or audiotape recordings of interrogations. This issue will be discussed later.

Factors Leading to Interpretation Errors

An analysis of the tape recordings of the trial revealed that there were many interpretation errors that made the whole trial unfair. Further, the collected data revealed

that the English proficiency and interpretation experiences of the interpreter for the court were not inferior to those of the interpreters who had interpreted during the interrogation. Therefore, it can be assumed that similar misunderstandings and mistranslations must have also occurred during the interrogation phase.

The followings are the important factors that were found through the analysis which led to misunderstandings and mistranslation.

* Defendant's heavy accent

It became clear that the interpreter for the court was unable to understand the defendant's heavy English accent. Since Mr. Baker is from Gloucestershire of England and had lived in London for a long time, his accent is characterized by a cockney type of pronunciation, which made it extremely difficult for Japanese interpreters to understand his speech. This appears to have caused considerable misinterpretation.

* Interpreter's unethical behaviour

It was also found that the interpreter for the court was unable to deal with the situation properly. Thus, often when she could not understand the defendant's speech, she directly conversed with him, asking him to repeat and clarify his statements, without asking permission from the presiding judge. Further, she did not inform the court that she was unable to understand the defendant's English. Thus, it can be stated that the interpreter's behaviour was unethical. It is this unethical behaviour which did not provide any scope for correcting the misinterpretations in the court.

Types of Misinterpretationsⁱⁱ

1. Distortion of nuances and the reduction of impact

There were cases in which the interpreter distorted nuances or reduced the impact of the defendant's statements.

Example:

* When the defendant was questioned about how often the police interpreters committed mistakes, the defendant answered, 'many times'. However, the interpreter for the court translated it as 'a few times'.

* When the defendant was questioned about the quality of the police interpreters, he answered, 'Some were not good, and some were a little better'. The interpreter, however, translated it as, 'Some were good, but some were bad'. This misinterpretation made the court believe that there were some good interpreters during the police interviews, although the defendant was trying to explain that there were no police interpreters who were good enough to correctly translate his statement.

2. Confusion caused by poor interpretation

The interpreter caused confusion by her poor interpretation during the trial.

Example:

- * The interpreter mistook the grammatical subjects of the sentences in the defendant's speeches, and it gave the impression that what the defendant was saying was incoherent.
- * The interpreter misunderstood the speech and translated it incorrectly, for example, the sentence 'Every time interpreters were different' was translated 'Every time interpreters were the same'.

In the tape, the prosecutor was heard to be angrily telling the defendant, 'What you say is completely opposite to what you said a while ago'. Clearly, the confusion caused was not the defendant's fault; rather, it was due to the mistake made by the interpreter.

3. Mistranslations which would have gravely impacted the case

Some mistakes were so serious that they would have misled the case proceedings.

Example:

- * At one instance, during the witness examination, the defendant was asked the following question: 'What did you say when the customs official at the airport asked you if he may X-ray the suitcase?' The defendant answered that he had told the customs official, 'It ain't mine'. This was translated by the interpreter as 'I don't mind'.
- * The defendant stated that he had antibiotics, which was translated by the interpreter as he had import ban drug.

In addition, there were many cases in which the defendant's very long statements were translated into extremely short sentences, omitting important pieces of information. Therefore, it would be reasonable to conclude that the interpretation in Nick Baker's trial was far from being correct, which made the trial unfair.

Judge's Opinion when Delivering the Sentencing

The above-mentioned failures in interpretation were revealed and the expert opinion paper was submitted to the appeal court. However, at the time of delivering the sentence, the appeal court judge stated his opinion with regard to interpretation as follows:

Since all the interpreters had a certain level of English skills as proved by the TOEIC scores, English proficiency tests, their experience abroad, and the certificates validating their skills (including those of state-authorized tourist guides), there is no room for doubt over the interpretation.

Clearly, the judge equated English proficiency with interpreting skills and turned a blind eye to the fact that there were many errors in the court interpretation.

As mentioned earlier, the term of imprisonment was shortened and the amount of the fine was also reduced. However, the judge did not mention the interpretation errors. Instead, he stated that since the defendant played a minor role as the carrier of the drug, he was given a lighter sentence. However, this fact had already been proved during the first trial and was not newly discovered in the appeal court. Thus, the use of this fact as the reason for the commutation implies that although the judge understood the interpretation problems, he did not want to officially discuss the issue.

The quality control of legal interpreting has been a kind of sore subject for the judiciary in Japan. They appear to evade the issue; this may be because once they officially admit that it is a problem, its ramifications would be very significant.

General Attitude Among the Judiciary Towards Legal Interpretation

Analysis of the Nick Baker case revealed the following “lacks” in the general attitude of the judiciary towards legal interpreting.

- Lack of recognition with regard to the impact of interpretation on the case.
- Lack of understanding with respect to the difference between being bilingual and being an interpreter.

These imperfections in the attitude of the judiciary appear to be present in the attitudes of most judiciaries in the world. Thus, it could be summarized that ‘the judiciary has no insight into the workings of the interpretation’.

In reality, there are many lawyers who realize the importance of providing the defendant with interpreters and consider it to be a necessary step for guaranteeing him/her the rights to the due process and equal protection under the law. However, most of them are clueless about the consequences of interpretation errors and are not aware of the fact that using poor interpreters can cause greater harm than having no interpreter at all. The most detrimental idea among them is that being bilingual is a sufficient requirement for being a good interpreter.

The factors mentioned above are those that hinder the progress towards a fairer judicial system for non-Japanese-speaking defendants. Many legal interpreters and linguists believe that proper user education would be a key issue in the future.

Issue of Visibility of the Investigation

Lack of transparency in or visibility of the investigation is one of the important issues in the Nick Baker case. This issue is rather unique to Japan, for which the

Japanese judicial system is believed to be backward.

For a long time, the issue of whether to tape or video record the process of investigation has been a largely controversial in the legal circle in Japan. The Japan Federation of Bar Association has reiterated that without the visibility of the investigation, the defendants' right to fair criminal proceedings can never be protected. They argue that since written statements prepared during the investigation are the most important evidence in Japanese courts, interpretation errors during the investigation can prove to be fatal for the defendant. Therefore, either video or tape recordings of the interrogations for checking the interpretation is necessary to protect the rights of suspects.

The Supreme Court's stance on the matter is not very clear; however, the statements made by it are rather in favor of the idea suggested by the Bar Association. However, particularly the Ministry of Justice and the Public Prosecutors Office have been strictly against this idea. The senior official at the Ministry of Justice stated the following as a reason for their objection.

Interrogations should not be recorded because the practice may intimidate suspects and make it difficult for investigators to forge the mutual trust that will encourage a confession.ⁱⁱⁱ

This means that the most important thing in the Japanese criminal procedures is to draw honest confession from the suspect and that it should be based on the mutual trust created between the suspect and the investigators during the interrogation. Tape recording will hinder this process. However, the Japan Federation of Bar Association pays no heed to this remark.

Introduction of the Citizen Judge System and its Ramifications

Now, Japan is in the midst of a major reformation of its legal system. The most noteworthy movement is the introduction of the so-called citizen judge system—a system similar to the jury system—which has been scheduled to be introduced in 2009. In this new system, lay people will have to judge the case, which will urge the judicial system to change. Citizen judges will not rely solely on the written statements prepared during the interrogation, but will also use other types of evidence such as audio-recorded statements.

Many branches of the judicial system have initiated some reforms—one of which is the introduction of a partial tape recording of the prosecutor's interrogation. Despite their stance against the audio recording of the interrogation, the Public Prosecutors Office has started this project on a trial basis at some selected branches, and they had recorded 170 cases, the kinds of cases which would involve citizen judges, between August 2006 and December 2007. From April 2008, this practice has gradually been

extended to other branches nationwide. The National Police Agency has also announced that in 2008 they would start audio recording of the police interrogation conducted at the Metropolitan Police Department and some other police stations in big prefectures. However, this attempt is criticized by the Japan Federation of Bar Association and other local bar associations. They argue that partial recording will not serve as a proof of fair interrogation since what part to record is left to the discretion of the interrogating officers and they will record only the ‘confession scene’ and they will present recordings of only such ‘safe’ parts of the interrogation to the court.^{iv}

Nevertheless, general movements towards more human rights-oriented criminal procedures will eventually make the judiciary realize that the quality control of legal interpreting is also a very important issue to address. Further, if the audio recording of the interrogation becomes a general practice, it will be possible to check the quality of interpretation during interrogation when necessary. This will be a great stride towards a significant improvement in the quality control of legal interpretation.

Conclusion: Future Prospects of the Quality Control of Legal Interpretation

The quality control of legal interpretation in Japan has encountered many challenges. As observed in the above-mentioned Nick Baker case, a combination of ignorance on the part of both legal professionals and interpreters results in serious consequences. Interpreters are responsible for clarifying their roles and the impact of interpretation errors to those who require their services. Further, it is of paramount importance that they adhere to strict ethical standards. On the other hand, legal practitioners who are well-informed about the interpreters' work must take responsibility to ensure high-quality interpreting. The quality control of interpreting can be achieved only through this transparent and open interaction between the interpreters and legal professionals.

Recently, the field of forensic linguistics is attracting the attention of Japanese researchers. Unfortunately, because of the lack of spoken data, this field has to date been lagging behind in comparison with other countries where the spoken data of the judicial process are available. With the development of the study in this field, it will be possible to convince the judiciary more about the impact of interpreting on the outcome of the case and will help the judiciary to re-examine the system.

For this purpose, it is essential that the judiciary cooperates more with the linguists and provides them more data of the proceedings. At present, even though audio recordings of interpreter-mediated trials are made, only lawyers are able to obtain permission to listen to the tapes when it is absolutely necessary for them to use the recordings for their case. If these recordings become more easily available to the linguists, they will contribute greatly to the development of this field of study. Thus, this kind of collaboration between interpreters and legal professionals will prove to be

very important for improving the quality of legal interpreting.

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- i This article is based on the presentation at the Critical Link 5 Conference held in Paramatta, Australia in April 2007. It has been revised significantly with new information.
 - ii For the details, see the website of Japan Association for Interpretation Studies. 'Opinion on the Nick Baker Case'
 - iii The Japan Federation of Bar Association, 2004, 'For Materialization of Visibility (Audio/Video Recording) of the Interrogation', p.7
 - iv The Japan Federation of Bar Association, 2007, 'For Materialization of Visibility (Audio Recording of the whole Process) of the Interrogation'
Osaka Bar Association, 2008, President's Statement: 'Call for True Visibility of the Interrogation (Video Recording of the Whole Process), instead of Partial Recording' p.1

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