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Title:

The Newly Implemented Judicial Reform in Japan and the Impact on Legal Interpreting and Translation

Introduction:

[PPP Slide No. 1: Title Page]

Japan implemented this year a major judicial reform with the introduction of a jury system --- the last among the G8 countries to do so. One of the major one is officially termed as *Saiban-in* System, or Lay Judge System where the ordinary citizens are given a responsibility of participating in criminal court proceedings for serious cases such as homicide, rape, arson, and narcotics violation. Then three professional judges and six lay (or citizen) judges join together not only to hear testimonies and evaluate evidence, but also to deliberate and make collective decisions both on guilt and, if and when found guilty, on the sentencing. The lay judges are required to be present in scheduled court hearings as well as deliberations that last usually for three to five consecutive days.

This new system has had a great impact on court interpreters in cases where defendants have limited Japanese language ability. Because of the nature of the cases to be tried, time pressure on all parties involved, in this new situation, the need for even the lay judges to understand properly what the non-Japanese speaking defendant/s or witness/es have to say, it becomes all the more necessary to have qualified interpreting and

translation.

While only around 10 percent of cases are expected to be litigated with the aid of court interpreters, perhaps now, this is the opportunity for Japan to seriously consider a public certification system, and at the same time examine for an enactment of the Legal Interpreters and Translators Law to set clear rules and regulations as to how interpreting and translation services are to be provided in Japan. On what grounds will the court decide to appoint the interpreter/s? Will the interpreter/s be appointed during the “pre-trial arrangement proceedings” that usually require 3 to 6 months? What duties and responsibilities are to be expected from them and how are they supposed to carry them out?

With an over 23-year background of being a practicing court interpreter, the author of this paper hopes to list the major challenges and issues at hand in order to clarify the situation of court interpreting in Japan

Seven Wonders of Translation for “*Saiban-in*” ?!

Please see the PPP Slide No. [2: **Cover and Back-cover of a Brochure**]. The right side, which is the cover page, reads <By May 2009 Start of the *Saiban-in* System> On top of the left side, which is the back cover, it reads “The objective is for a faster, friendlier, and more reliable justice system in which the general public can all participate.” And at the below, there are addresses, telephone numbers and web pages of three principal institutions of justice, namely Supreme Court of Japan, Ministry of Justice --- its external organ is the Public Prosecutors’ Office ---, and Japan Federation of Bar Associations.

Would you still need an English translation for *Saiban-in* ? Yes, I suppose, but they did not probably think the translation was possible as no equivalent concept existed.

At any rate, this is a copy of ten page brochure published in English to explain the newly introduced criminal trial procedure.

So what is *Saiban-in* System, or who are the *Saiban-in*?

According to sources other than above mentioned three legal authorities, the word *Saiban-in* System is already translated in at least six various manners:

[PPP Slide No. 3: Listing the below.]

1. Japanese Jury System;
2. Japanese Quasi-Jury System;
3. A Mixed Jury System for Japan
4. Japanese Lay Jury System;
5. Japanese Lay Assessors System;
6. Citizen Judge System in Japan; or
7. Lay Judge System in Japan.

Aren't they all trying very hard to interpret and translated the word *Saiban-in*? Some six months after the initiation of this new system, it appears that the most widely used English translation is "lay judge system." So hereunder, let me use it. But let me not go to enquire further what is the translation of the word *Saiban-in* in Chinese, Korean, Filipino (Tagalog), Portuguese, Spanish, and other often used languages by the court interpreters in Japan. Unfortunately, we do not have ample time to examine them.

Lay Judge Trial

The lay judge system, as part of Japan's judicial system reform that is called a major reform once in a century time, has just been introduced since May 2009, while the first lay judge trial with a foreign defendant was held only in last September at Saitama District Court, right north of Tokyo.

It meant a trial at the first instance court, i.e., the district court. The criminal proceeding was held wherein six lay judges, together with three professional judges heard the prosecution and defense, examined the evidence presented, made deliberations among these nine "judges," determined whether the defendant was guilty or not-guilty, and since he was found guilty, there was a majority decision on the punishment. The trial was held in three consecutive days, and on the fourth day the sentencing of 5 years of imprisonment with forced labor was actually rendered.

Cases when the Lay Judge Trial is required.

[PPP Slide No. 4: The Listing of the below]

By the way, in the newly introduced lay judge system, the typical cases are as follows:

- * Abandonment by a Person Responsible for Protection Resulting in Death
- * Arson of an Inhabited Structure
- * Homicide
- * Kidnapping for Ransom
- * Rape
- * Robbery Resulting in Bodily Injury or Death
- * Unsafe Driving Resulting in Death
- * Violation of Stimulant Drugs Control Law with a commercial and profit-making intent

Languages and Interpreters in Courts in Japan

[PPP Slide No. 5: The Circle Graph]

The Circular Graph of the latest available statistics from the Supreme Court of Japan show the “major” languages used in the Japanese legal system. Of the 5,767 defendants in 2007, No. 1 was Chinese (mostly Mandarin-Chinese, but include other Chinese languages) which accounted for some 32% of the total, No. 2. was Korean which was some 13%, Filipino (also known as Tagalog) was nearly 12%, and followed by Portuguese (mostly for Brazilian of Japanese ancestry), Spanish (mostly for the Latinos of Japanese ancestry), Vietnamese, Thai, Persian (or Farsi for Iranians), English and Indonesian. And some 30 or 40 other languages are also used less frequently. Japan has indeed become a multi-lingual society. The interpreters, according to the Supreme Court of Japan, are listed under each of 8 High Court jurisdictions and the number of listed interpreters, namely the candidates for court interpreters, was around 4,000 covering 56 languages, as of April 2008.

Courtroom Setting

[PPP Slide No. 6: Photo of the Courtroom 1]

At this stage, let me show you the image of the court before the current judicial system reform. There still exist this type of the courtroom, and they are used for the cases that are not lay judge trials.

Next Photo [PPP Slide No. 7: Another Photo of the Courtroom 2] is an image of the courtroom for the lay judge system.

I was fortunate enough to be able to observe last September the first lay judge trial with a foreign defendant. I would now like to share with you my observations. There was a team of two court-appointed interpreters present throughout those proceedings, sitting, from the point of spectators' position, before the elevated seats of the lay and professional judges but near and beyond the table of the four prosecutors. Facing them on the other side of the court room was the table for the two defense counsels. The defendant, most of the time sat right on the left of the defense counsels and moved to the center witness table only when he was directly questioned.

Interpreters in Action

At times when the prepared documents such as the opening statements both by the prosecutors and by the defense counsels, and the list of evidence were read, the interpreters alternately and simultaneously interpreted and the voice was relayed through the so-called wireless microphone-earphone system. For your information, there are at least two possible interpreting methods here. One is to just read loud, not so loud for practical reasons because the prosecutor or defense counsel is speaking loud to the 9 lay and professional judges within the same courtroom, the already translated and printed-out translation. Another possibility, as it actually happened is that the more experienced interpreter had to make the sight interpreting reading over ten pages of documents that are full of legalese.

When the closing arguments by the prosecutors and by the defense counsels were read in the afternoon of the third consecutive day trial, the final revised versions were handed to the team of interpreters only

during the lunch break. The interpreters had to do the sight interpreting while at the same time reading partly the translated text.

When the witnesses such as the victim and the mother of the defendant were examined and cross-examined, when the defendant was questioned by the defense counsels, prosecutors, lay judges as well as professional judges, and when the defendant at the end of the entire hearing on the third day made the final statement, the interpreters again alternately and consecutively interpreted to and from Japanese, that is, the language of the court in Japan.

On the first-day trial, which happened to be Monday, the hearing was commenced at 1:32 in the afternoon because the lay judge screening was conducted during the morning. Of the 45 candidates who were “ordered by the court” to appear at the district court that morning, six lay judges and two auxiliary lay judges were selected to serve only for the four day trial.

The court on the first day adjourned at 3:57 p.m. The second day, the court was in session from 10:01 a.m. until 3:28 p.m., while there was an 80 minute lunch break and a few short recesses. On the third day, the court was again in session from 10:00 a.m. until as late as 4:50 p.m. I became very tired just to take notes, but how much more for those two court interpreters who performed an excellent teamwork. Anyway, the interpreters commuted to the district court for the 4th straight day, and were given the fairly long sentencing for them to read and get ready to translate just about one hour before.

Working Conditions and Environment

My educational guess, as I did so because no officially disclosed document is available, that the court interpreter in Japan would receive the equivalent of 100 Euros per hour. So if the court lasted, let us say, five hours during one particular day, the total payment including the actual transport cost and the fixed stipend *per diem*, could be well over 530 or so Euros. I wonder if the amount is small or large comparing with those in European countries.

At any rate, it should be mentioned that the time and effort for

translation of the documents delivered to the team of interpreters one week before or just one night before, are not directly compensated as the translation fee even if an interpreter works overnight without getting a wink of sleep.

With the principle that the court interpreter has to interpret any and all spoken speeches inside the courtroom, both of the two interpreters in the above-cited case had to keep concentrating long straight hours for four consecutive days. They also had to skillfully employ different methods of interpreting such as simultaneous, consecutive and sight translation. I said that they were alternately interpreting, yes, but the other one was always present to check the other and occasionally support when necessary to guarantee the accuracy and correctness.

As the court interpreter in Japan is required to make an oath saying “I swear, according to my conscience, interpret faithfully and truly.” No more, no less. In truth, the expectation for the quality is high. And yet, in Japan, there is no system of officially certifying the qualification of the court or any other form of legal interpreting and translation. Instead, the courts keep the roster of listed, not registered, candidates for court interpreters. And on case by case, the court clerk would make a telephone call and ask if one is available or not. There must be a de-facto ranking of the good and better interpreters, from the point of view of the court, but the listing itself is not made public.

Recent Lay Judge Trials

[PPP Slide No. 8: Newspaper article headlines]

Of the ten most recent lay judge trials where the defendants were the foreigner, four were Robbery Resulting in Bodily Injury cases and six were cases of Violation of Stimulant Drugs Control Law with a commercial and profit-making intent and at the same time Violation of the Customs Law. The defendants' nationalities were Filipino, Taiwanese, Polish, Brazilian, Chinese, Mexican, German, Colombian and Spanish. The languages used were Filipino (Tagalog), Taiwanese, Chinese-Mandarin, Polish, Portuguese, Chinese-Cantonese, Spanish and English. And of these ten trials, two court interpreters were appointed and performed the

duty in four instances, but only one interpreter was appointed and had to perform the duty for six others. I have not yet investigated what were the reasons of the court to do so.

A Participant-Observation

Incidentally for the case of German defendant, who was a South Africa born person, English was used instead of German. I had an opportunity to be a participant observer because I was then one of the team interpreters for this three-day trial. For your information, but based on the reported news, the sentencing for this defendant, who pleaded not-guilty, was 9 years of imprisonment with a forced labor and a fine of the equivalent of 27,000 Euros, to be paid, or if one could not have that money, by working inside the prison. She was found guilty of carrying some 3 kilograms of the stimulant drugs from South Africa via Frankfurt International Airport.

For three consecutive days of this lay judge trial, two interpreters attended all throughout, but the burden on them were quite tough because of the fact that the interpreters had to translate and read many documents before and during the trial, that there was always a tight time pressure in order to proceed as scheduled and on time, that they were expected to be mentally and intellectually concentrating for hours within a day, and that the two interpreters tried to check, support and follow up the other all throughout.

Challenges for the Legal Interpreters and Translators

[PPP Slide No. 9: Challenges for the Legal Interpreters]

To sum up, I would like to point out a few challenges I consider imminent and vital.

In Japan there is no nationwide association of court interpreters-translators. There is no national network of legal interpreters-translators. However, their accumulated experiences and demands should be voiced out. So that their users, such as the court,

Prosecutors' Office, bar associations, police headquarters, Ministry of Justice institutions and so forth will come to fully understand and appreciate the works and professionalism of legal interpreters-translators.

More education and training should be provided to cultivate the future interpreters-translators. More academic research should be encouraged. While the above mentioned users of legal interpreters-translators only occasionally give training seminars that are the most for two days only, and not all interpreters-translators get the opportunity to participate. Actually in Japan, there is just one institution that offers formal and systematic curriculum in legal interpreting-translation. It is Osaka University Graduate School's Legal Interpreting and Translation Studies Program, for which I have been acting as Coordinator. It is unique in the sense that not only the theories and methods of interpreting-translation but also language specific praxis courses, at least in Japanese-Chinese, Japanese-Korean, Japanese-Thai, Japanese-Russian and Japanese-English, for legal and court interpreting and translation, and also courses are taught by the users themselves such as the Public Prosecutor, prison officer, Immigration Bureau officer and other Ministry of Justice officers, criminal defense counselors and other lawyers, as well as police officers. They give lectures and at the same time lead the practical training in the classes.

The improvement of working conditions and environment should be advocated for court and all other types of legal interpreters and translators. Their presence and role are so vital and indispensable, and in order to ensure the quality and credibility the treatment and compensation should be reconsidered. One way of guaranteeing it may be to introduce the official structure of qualifying the interpreters-translators and of recruiting and training them to a higher grade.

The establishment of EULITA is highly appreciated even from a "far eastern country" like Japan. The legal interpreting and translation services are such an essential element speaking of justice and human rights in this globalized community today. I sincerely hope that this will be a firm step for more mutual understanding and closer interactions among the legal interpreters-translators of the world.

Thank you and Arigatoogozaimashita.

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