

Conduits, communication facilitators, and referees: Revisiting the role of the court interpreter in the Japanese context

Jakub E. Marszalenko

The role of the court interpreter is probably one of the most controversial topics in the discourse pertaining to legal interpreting and translation. The need for accuracy in conveying the utterances of the participants in criminal proceedings leads some to argue for 'literal' interpreting, turning court interpreters into 'translating machines.' Others, on the other hand, advocate redefining the interpreters' role as 'communication facilitators.' This paper revisits the issue of the role of the court interpreter drawing on interviews with ten court interpreters working with Japanese and English in criminal court proceedings in Japan.

Keywords: interpreter's role, court interpreting, conduit notion, literal translation, Japan, Japanese-English interpreting

1. Introduction

In much academic research, interpreting carried out in the realm of criminal law proceedings is viewed as of a different nature and governed by different rules than that undertaken in other settings. Such differences are usually attributed to the high degree of accuracy required in the interpreter's rendition into the target language. In other words, it is often assumed that the closer the interpretation¹ is to the original utterance or text, the better. This often results in arguments for 'literal translation.'

Discussing the issue in the Australian context, Hale (2015: 165) argues that "[t]he misconceptions that interpreters 'just translate' from one language to another by swapping individual words from language A to language B in a mechanical, uncomplicated way, is still prevalent among some legal practitioners." This view, however, is at odds with the actual practice of court interpreting. One of the reasons for this is that, as Nida argues in the broader context of translation theory, "[s]ince no two languages are identical ... it stands to reason that there can be no absolute correspondence between languages" (1964/2000: 156). Taking such a stance would naturally result in claims that 'literal' or 'verbatim'² translation is difficult, or indeed, impossible to attain.

Some of the most important questions to ask here, then, are: what does a literal interpretation actually mean? When is interpretation an accurate one? How 'free' are interpreters in producing their rendition? How much can the interpreter alter the utterance in the source language to either be better suited for the target language, or be more comprehensible to the recipient? Is 'verbatim' interpretation really the desired form and is it even attainable? Answers to these questions have a significant impact on how one views the court interpreter's role and lead to more issues that need to be addressed.

The difficulty in answering these questions, however, lies in the fact that it is hard to say what different actors involved in the criminal process actually mean, when they argue for 'literal translation.' If it were to be understood as Hale (2007: 7) defines it, namely, as "a target text that is equivalent [to the source text] at all levels of the language hierarchy (lexical, syntactic, semantic and pragmatic)," then it would indeed be hard to imagine any fruitful discussion on the matter.

The same ambiguity can be found in other terms often used to describe the desired form of rendition – "faithful," "accurate," or "equivalent" (Hale 2007: 7). Since equivalence

can be found on different levels in a translated text – equivalence at or above word level, grammatical equivalence, or textual equivalence (Baker 1992/2011) – one must consider the matter from a broader perspective, without clinging on to the notion of literal translation.

Despite the significant effort put into research on courtroom interpreting in the past decades (see section 3 below), this issue is yet to be settled among the academic community, legal practitioners, and interpreters. It is worth readdressing, however, as it has serious implications for the discussion of the court interpreter's role.

Although various scholars (e.g. Hale 2015, Laster and Taylor 1994) report that it is usually legal professionals who often demonstrate an insufficient understanding of legal interpreters' work demanding more 'literal' or 'verbatim' production, Hale found that, in some cases, interpreters, too, believe that their role is to be a 'conduit' (2007: 128) between the source language and the target language. Other interpreters in the same study by Hale, however, argue that their role is to serve as "facilitators of communication" or "agents in delivery of social justice" (ibid.), which would give them significantly more freedom in the rendition than the conduit notion.

Given the above conflicting views on the court interpreter's role, in this paper I revisit the matter focusing on the context of court interpreting in criminal proceedings in Japan. First, I will demonstrate that different interpreters see their role in different ways. Subsequently, I will show that terms often used to define it such as 'conduit,' as well as those used to describe the 'ideal' interpretation, such as 'literal' or 'verbatim,' can be rather vague and not necessarily helpful in addressing the matter. In the final section, I will turn to the interpreters I interviewed to hear what they have to say about their role in criminal proceedings.

2. Research Outline

As I argue elsewhere (Marszalenko 2014), conducting research into legal interpreting and translation in Japan is no easy task. This is because there is little data available to the public or researchers. Audio- or video-recording during police interrogations is not a common practice in Japan (it is carried out only in certain cases). Further, even when such recording is done, legal institutions are reluctant to disclose it or any other records made during the investigative process or court proceedings (to my knowledge, the exception to this are judgment texts published after the case has been concluded). This makes research based on actual courtroom discourse, such as for example that carried out by Berk-Seligson (1990/2002) in the United States, impossible in Japan. Further, since there is no accreditation system for court interpreters in Japan, information on those performing the job is also rather inaccessible, as there is no list of interpreters working in courts available to the public (such lists are often available in the U.S.A. or the European Union (Suzuki 2016)).

Given the above, in order to interview court interpreters I had to rely on those interpreters that I already was acquainted with, or those introduced to me by others. I chose to interview interpreters working between Japanese and English, due to the fact that these are my working languages as well, and because the interviews were part of a broader research project focusing on issues and problems pertaining to the use of English as the language of interpreting in criminal proceedings in Japan. Further, as I discuss elsewhere (Marszalenko 2015) English plays the role of a 'lingua franca' in interpreter-mediated criminal proceedings in Japan, and can thus be considered somewhat different from other languages of interpreting

in that it is frequently used in cases of defendants, for whom it is not their first language. Some details on the interviews and interpreters interviewed are presented in Table 1.

Table 1: Details on the interviews and interviewees

	Month of the interview	Place of the interview (prefecture)	Language used in the interview	Interview length (hh:mm:ss)	Interpreter's Gender	Interpreter's jurisdiction (high court)
Interpreter I	January 2016	Aichi	Japanese	47:40	M	Osaka
Interpreter II	January 2016	Aichi	Japanese	36:41	M	Fukuoka
Interpreter III	January 2016	Aichi	English	58:24	F	Nagoya
Interpreter IV	February 2016	Tokyo	Japanese	45:53	F	Hiroshima
Interpreter V	February 2016	Tokyo	Japanese	45:54	M	Tokyo
Interpreter VI	March 2016	Osaka	Japanese	01:05:34	F	Osaka
Interpreter VII	March 2016	Osaka	Japanese	01:07:40	F	Osaka
Interpreter VIII	March 2016	(Skype)	Japanese	57:02	F	Osaka
Interpreter IX	March 2016	Kyoto	Japanese	02:00:04	F	Osaka
Interpreter X	March 2016	Kyoto	English	01:36:00	F	Osaka

The interviews took place between January and March 2016, and were carried out in various parts of Japan including Tokyo, Nagoya, Osaka, Kyoto, or through Skype, depending on the interviewee's place of residence and their preference. Ten court interpreters were interviewed. The shortest interview took 36 minutes and 41 seconds, while the longest took a little over two hours. The total time of recording reached 10 hours and 40 minutes, thus giving the average of approximately 1 hour and 4 minutes. Most interviews were conducted in Japanese³, however two were in English due to the interviewee's and my own preference.

Of the ten interpreters the majority – seven – were female, and three were male. They perform their duties in different jurisdictions⁴ (number of interpreters in each jurisdiction): Tokyo (1), Nagoya (1), Osaka (6), Hiroshima (1), and Fukuoka (1).

As mentioned above, the interviews were conducted as a part of a broader research project. The role of the court interpreter was not the main focus of the broader study, but surfaced as an important element in the discussion of issues pertaining to the use of English in interpreter-mediated court proceedings in Japan. This is because one of the issues addressed in the interviews was the insufficient English proficiency of some defendants (who, in many cases, do not use English as their first language), which led to discussion of what interpreters can do to mitigate the situation. This, in turn, raised the issues of the degree of 'freedom' in the interpreter's rendition, and the limits and restrictions surrounding their work.

As will be demonstrated in the subsequent parts of this paper, different interpreters have different attitudes and define their role differently. Before discussing the results of the interviews, however, in the next section I will present previous studies addressing the issue of the court interpreter's role. This will show how difficult to define, and at times controversial, the role of the court interpreter can be.

3. The Court Interpreter's Role in Established Literature

3.1 Discussion of the court interpreter's role in academic literature: the fallacy of the conduit notion

Depending on what stance one takes toward the court interpreter's role, different metaphors are used to describe it. Those advocating for 'literal' or 'verbatim' interpretation can be found referring to interpreters as 'conduits' or 'translating machines.' It is usually legal practitioners working with interpreters who use such metaphors (Hale 2015, Laster and Taylor 1994, Wadensjö 1998), but as mentioned above, some interpreters, too, have been found to define their roles in similar terms (Hale 2007). Naturally, the issue is far more complex and there are other, and as can be argued, more accurate, ways to describe the interpreter's role.

In this section I focus on the argument that the court interpreter should always strive to produce interpretation as close to the original utterance on all its levels as possible, which gives the interpreter very little – if any – flexibility in rendition into the target language. I will refer to this attitude to the interpreter's role as 'the conduit notion.'

Before moving on to looking closely into this notion, however, let us first examine the expectations of the court interpreter. Discussing the matter in the American context, Mikkelsen (1998: 21) states that

[i]nterpreters are expected to convey every element of the meaning of the source-language message, without adding, omitting, simplifying, or embellishing. In other words, they must maintain the tone and register of the original message, even if it is inappropriate, offensive, or unintelligible.

The expectations mentioned in the quotation above seem valid. Most would agree that it is not the interpreter's job to make things easier for the defendant – their job is to convey the original message with all its implications. The issue becomes less straightforward, though, when one considers that in many cases, there is no single way to convey an utterance or a text from the source language into the target language. This means that the interpreter will have to choose one of the available options. In Laster and Taylor's (1994: 183) words:

Interpreters are required to make instantaneous and irrevocable decisions about how to interpret from the source language. Inevitably, the interpreter will sometimes choose an inappropriate equivalent term, or there will be ambiguities in the source language which allow more than one valid interpretation.

It seems, however, that this complexity of the interpreter's work is not always recognized by legal professionals, some of whom expect the interpreter to act as a perfectly accurate translating device. This way of perceiving the court interpreter by legal professionals seems to derive directly from the way the law itself is administered. As Laster and Taylor (1994: 112) argue, the law is considered "rational and relatively straightforward." As a result, being unable to communicate in the language of the court is merely "a technical problem," to which appointing interpreters is "a simple solution" (ibid.). This leads some legal professionals to believe that interpreters are "mere cyphers," "conduits," or "translating machines," who are "not expected to take an intelligent interest in the proceedings" (ibid.).

The need for interpreters to be such a technical solution derives from the problem of hearsay evidence (ibid.). In other words, if the original utterance by the defendant or the

witness is not presented to the court ‘verbatim,’ exactly as it was said word by word, the testimony runs the risk of becoming hearsay evidence – not something that the defendant or the witness *actually said*, but something that *the interpreter heard them say*. This, in turn, makes it necessary to maintain the idea of the interpreter as conduit: “[t]he legal fiction that the interpreter was “a mere machine” overcame this problem [of hearsay evidence]. If the interpreter was a “machine” the parties could be deemed to have communicated directly with each other; there was no other person present” (Laster and Taylor 1994: 113; emphasis added).

But what makes the conduit notion a legal fiction? Why should this idea be considered not only inaccurate but also unhelpful? Wadensjö (1995: 114) argues that

[i]t [the conduit notion] implies conceptualizing interpreting as a unidirectional process of transfer, from one language to another, or one text to another. The conduit model is monological. Language use is regarded from the perspective of the speaker. The meaning of specific words and utterances are seen as resulting from the speakers [sic] intentions or strategies, while co-present people are seen as recipients of the units of information prepared by the speaker. It is as if while creating meaning, the individual speaker is thought away from her interactional context and thought into a social vacuum.

Placing the speaker of the original message in the center ignores the crucial process of analyzing its meaning by the recipients (including the interpreter). However, multiple studies have demonstrated that this is rarely the case in interpreter-mediated communication settings. Research carried out in various jurisdictions such as the U.S.A. (Berk-Seligson 1990/2002), Australia (Hale 1997, Hale and Gibbons 1999), or Japan (Yoshida 2008) show that interpreters do indeed make alterations to the original utterance. Such alterations are referred to as ‘discretionary choices’ (Laster and Taylor 1994) and are, to some extent, inevitable as discussed below.

3.2 *The interpreter’s role from the perspective of Goffman’s ‘participation framework’*

Having examined the conduit notion and found it wanting, let us now turn to alternative concepts of the court interpreter’s role. In the Japanese context, one of the theoretical bases frequently applied to this issue is Goffman’s (1981) ‘participation framework.’ Although it was developed for analyzing communication from the sociological standpoint, some scholars (Yoshida 2008, Mouri 2013) find it useful for the discussion on legal interpreting as well, as it explains interactions taking place between participants in communication acts.

Goffman divides hearers in a communication situation into ‘ratified’ (those, for whom the utterance is meant) and ‘unratified’ (those who happen to hear it). The latter category can be further divided into ‘eavesdroppers,’ ‘overhearers,’ and ‘bystanders.’ On the other hand, those who take the role of the speaker can be categorized into ‘authors,’ who “take the responsibility for deciding on the linguistic form” (Yoshida 2008: 117), ‘animators’ (relaying others’ message as it is) and ‘principals’ (assuming the responsibility for the communication act). A participant’s role in a communication situation is referred to as ‘footing,’ and there may be shifts in it as the interaction between the participants progresses.

If the interpreter’s role were to be considered from the perspective of the conduit notion, it would be natural to assume that the interpreter acts as an animator. However, in her analysis of an interpreter-mediated mock trial (whereby Japanese and English were used),

Yoshida found that the two interpreters in the trial were authors, rather than mere animators who relay the original speaker's message without any alterations. Yoshida (2008: 113) discovered this to be particularly true for utterances by the defendant that were in a low register, when slang or vulgar expressions were used:

[I]nterpreters are not mere “animator” or “conduit”, but are “author” responsible for selecting and deciding the words and expressions used in the rendition, which constitute one of the main factors of the difficulty to render registers such as slang expressions.

This phenomenon is particularly overt in interpretation between languages as distinct as English and Japanese. The following examples come from a criminal trial I observed in July 2013 at Osaka District Court⁵. The case involved smuggling of illicit drugs (referred to as ‘stimulants’ or ‘stimulant drugs,’ which include mainly amphetamines and methamphetamines). Examples (1) and (2) demonstrate a shift in the register in the interpretation from the original utterance by the defendant, whereas (3) and (4) are examples of hyperprecision. All of the examples can be considered discretionary choices by the interpreter (underlined portions represent alterations or specific register choices by the interpreter; parts in square parentheses are my back-translations into English):

- (1) Defendant: I applied for GED
Interpreter: *GED ni shinsei itashimasita.*
[I applied for GED]
- (2) Defendant: Anna⁶, 18.
Interpreter: *Anna, 18-sai desu.*
[Anna, [she is] 18 years old]
- (3) Defendant: I answered the questions as I did in the declaration form.
Interpreter: *Zeikan no shinkoku to onaji yōni kotaemashita.*
[I answered as I did in the customs declaration form.]
- (4) Defendant: No, I did not.
Interpreter: *Iie, gutaiteki na kingaku wa kiite imasendeshita.*
[No, I did not hear about the concrete amount of money.]

These short examples suggest that interpreters indeed make certain choices in the vocabulary, register, or grammatical forms, when conveying the utterance from the source into the target language. Examples (1) and (2) require some explanation of the Japanese language and its complex honorific system. In example (1) the interpreter chose to use the verb *shinsei suru* (to apply) in the honorific form of the past tense – *shinsei itashimashita*, which is considered more polite than the regular form *shinsei shimasita* (which, too, would have been an appropriate form for the courtroom setting but more neutral in its politeness level. On the other hand, the neutral past tense form – *shinsei shita* – would not be considered appropriate for the courtroom setting, as it is not usually used in formal situations). In this case, no matter which form of the verb the interpreter had decided to choose, there would have been certain implications on the honorific level in Japanese.

In example (2) the defendant was asked about the name and the age of her daughter. Here, too, the interpreter could have chosen to say *Anna, 18-sai* [Anna, 18 years old] but instead she interpreted the defendant's answer into Japanese with a more polite and complete sentence: *Anna, 18-sai desu* [Anna, [she is] 18 years old], probably because she decided that this form would be more appropriate given the formality of the situation.

Examples (3) and (4), on the other hand, clearly show minor additions by the interpreter. Even though there were no expressions such as 'customs' (Example (3)) or 'concrete amount of money' (Example (4)) used in the defendant's utterances, the interpreter decided to add them, presumably to make the utterance in Japanese less ambiguous and more comprehensible to the parties involved in the trial.

These examples clearly show that interpreters make, and indeed sometimes *must inevitably make*, discretionary choices in producing the message in the target language. Further, it would be hard to argue that such a rendition is not accurate or that it misrepresents what the defendant said. Whether or not the degree of these alterations is acceptable depends on one's stance toward the court interpreter's role and what court interpreting should be like. Either way, these examples as well as the studies mentioned above, clearly demonstrate that court interpreters are not 'mere cyphers' and that the conduit notion is a non-starter in the discussion on the court interpreter's role: "... evaluation of interpreters should shift from an assessment of their performance as a "conduit", to a more realistic appraisal of the complexities of their work" (Laster and Taylor 1994: 187).

3.3 *The other extreme: interpreters as the defendant's advocates and cultural brokers*

Although such argument can rarely be found in the literature on legal interpreting and translation, for the sake of discussion, let us turn to the idea on the other extreme of the spectrum contrasting the conduit notion, that interpreters have, or should have, unlimited freedom in production of the interpreted message if it helps the subject of the legal process (who, by default, is at a disadvantage due to lack of proficiency in the language used in the process). One of the rare examples of a scholar presenting such a view in the broad context of legal interpreting is that of Barsky (2000), who argues for the need of interpreter's advocacy for subjects of the legal process. However, the legal process he deals with, are refugee recognition hearings, which largely differ from criminal proceedings discussed here. To my knowledge, no similar points are raised pertaining to interpreter-mediated criminal trials, but this argument poses some interesting questions with regard to the limit of the interpreter's poetic license, so I will briefly introduce it, if only to demonstrate that it can be as harmful as its opposite – the conduit notion.

This idea turns interpreters into 'advocates' of the defendant and thus detaches them from the job with which they were entrusted. In other words, interpreters would stop *interpreting* what the participants in court proceedings say, but rather *create* their own, at times embellished, version of the courtroom discourse. This would lead to loss of trust in the interpreter on the part of legal professionals. It does pose important questions, though: what is the limit of the interpreter's accountability? What, beside their linguistic skills, should the interpreter provide to the courtroom discourse?

In an interpreter-mediated court hearing with perfectly monolingual participants, the interpreter is the only one that understands both the legal professionals and the defendant. This could easily change the interpreter into the defendant's 'ally' in their eyes, or in the eyes

of the parties. This, obviously, is an undesirable state of affairs in a criminal trial, where interpreters are expected to maintain neutrality.

On the other hand, the interpreter may be expected by some legal professionals to provide cultural expertise pertaining to the defendant's place of origin (Laster and Taylor 1994: 121). This would be just as hazardous, especially in the case of languages such as English in the Japanese context. As mentioned above, English is used as the language of interpreting for defendants with a variety of cultural and linguistic backgrounds. I myself have interpreted in criminal trials for defendants from places such as Nigeria, Palau, Romania, South Africa, the United States, or Uganda. Not having lived in or conducted in-depth research into any of those countries, I could obviously not claim to be an expert in their cultural, political, linguistic or social circumstances that influence the defendant's conduct, linguistic or otherwise. Such a claim would not only be unfounded, it would also be irresponsible for interpreters to claim expertise in a number of cultures that the defendants come from.

On the other hand, there might be situations in which the interpreter's intervention could solve issues deriving from cross-cultural differences. In a police interview I was interpreting in, the interrogating officer asked the suspect: "How many milliliters [of alcohol] were there in the plastic bottle you had with you?" As simple as this question sounds, the suspect was unable to provide an answer, which frustrated the officer. Since the suspect grew up in the U.S.A., the metric system was alien to him and he could not answer the question in the form it was presented. I pointed out the difference in units between Japan and the United States, which led the officer to rephrase the question so that the suspect was able to answer, which solved the miscommunication.

As Hale (2007) points out, such interventions by the interpreter are desirable or even possible only in a very limited number of situations. The miscommunication occurred in a setting far less formal than the courtroom (police interview) where it was possible for the interpreter to communicate directly with the interrogating officer. Further, it was limited to an objective observation – the difference in units of measure used in the two countries.

3.4 Interpreters as communication facilitators

After dismissing the two extremes as inadequate, we must consider another way of defining the court interpreter's role. Laster and Taylor (1994: 126-7) argue that describing interpreters as 'communication facilitators' is a viable stance:

Defining an interpreter as a "communication facilitator" probably comes closer to reflecting the real work they perform ... "Facilitator", rather than "conduit" acknowledges the active and discretionary role performed by interpreters ... Describing the interpreters as "communication facilitators", however, recognises that there are significant limits to the role of legal interpreters. Interpreters are not "advocates", because, unlike lawyers, they have no capacity or power to generate or implement legal ideas and strategies. Nor are they "cultural experts", beyond what is minimally required for the efficient carriage of legal proceedings to effect communication between the parties.

Redefining the role of court interpreters in that way, the authors further argue, would not only lead to recognition of their active part, or to use Goffmans' terms 'authorship,' in the process of producing the target language message. It would also make them more accountable

for the discretionary choices they make. Moreover, it would lead to court interpreters being considered more as professionals, but human nonetheless – humans who can and sometimes do make mistakes or wrong choices in the course of performing their work just like the legal professionals they work with.

Having considered from different angles how interpreters are perceived by legal professionals and researchers, mainly from the perspective of available academic literature, in the next section I will turn to discussing how interpreters themselves see their role in the courtroom, drawing on the interviews introduced in Section 2.

4. The Voice(s) of Interpreters

4.1 Interpreting ‘literally’

Before taking a closer look into how court interpreters in Japan define their role, I first introduce some of their opinions pertaining to the demands for literal translation. As seen in the preceding sections, such demands contribute little to the discussion on legal interpreting, but are often raised, and therefore worth readdressing from the interpreters’ perspective.

Being mindful of the ambiguity of the term, it could be reasonable to expect *accurate* interpretation as presented in the quote from Mikkelson (1998: 21) above. In this sense, interpreters should not add anything that has not been said to the utterance in the source language, or remove anything that has been said from it. This, however, does not mean that such an interpretation would be verbatim. It does not mean that the total number of words or phrases in the source and the target languages must match, or that the same grammatical forms must necessarily be used. As Hale points out, a target text equivalent to the source text at all levels – lexical, syntactic, semantic, and pragmatic – is “largely unachievable” (2007: 7).

It must be acknowledged that there is no one correct answer in interpreting, and that, as Laster and Taylor (1994: 183) argue, there may be more than one available option for the interpreter to choose from. This, it seems, is still not understood by some legal practitioners even after over twenty years since the abovementioned publication. One of my interviewees describes it in the following terms:

It seems to me that when legal practitioners talk of ‘faithful interpretation’ they take this mathematical standpoint that there is only ‘one correct translation.’ From a practicing interpreter’s perspective, though, it seems that there is a certain range for ‘correct translation.’ and as long as one’s rendition is within that range, it’s fine. Some will find it [a particular interpretation] good, while others won’t, that’s where people’s opinions will differ.

(Interpreter II, emphasis added)

The same interpreter also discusses how vague the phrase ‘faithful interpretation’ is and that there is a gap between what is expected of interpreters and what interpreting really looks like in the criminal justice setting. He also states: “since only the defendant himself knows what he means to say, I don’t think I interpret ‘faithfully,’ even though some may find it inappropriate.”

A different interpreter points out that there are cases when literal interpretation is possible, but not necessarily desirable:

I think they [legal practitioners working with interpreters] should understand the situation, how possible direct translation is. First, they should be aware that this direct translation is very difficult and sometimes becomes funny when you translate directly ... There is a little misunderstanding in the legal system about how difficult this translation is, including [issues such as] direct translation ...

(Interpreter III)

Interpreter V seems to be of a similar opinion. He points out that there are cases where literal rendition is possible, but not always. He argues that interpreting literally in some situations is undesirable as it may lead to chaotic communication, particularly due to various cross-cultural differences. The interpreter, therefore, must be fluent not only in the language but also in the culture manifested through it (it must be noted, though, that such cultural expertise on the part of the interpreter has its limits, as discussed in section 3.3 above).

Interpreter IV, on the other hand, argues that literal interpretation is unattainable from the perspective of the sheer nature of the act of interpreting. Not only is perfectly verbatim interpretation rarely possible, she argues, but there are also some cultural factors that may be unfit for literal rendition from the perspective of the Japanese language and culture. In other words, even if the interpretation is very close to the source text in English on the linguistic level, it might have a different impact on the recipients in Japanese. She also points to the burden that the court interpreter bears in terms of addressing the dilemma arising due to the need for accuracy and the desire to be understood by the recipients. Interpreter IX also acknowledges this dilemma and is even more adamant:

This applies to the interpreting practice in general, not only to the legal setting. Naturally, interpretation is pointless if its hearer cannot understand it ... On the other hand there is the pressure to interpret literally, "as it is." I really don't like to interpret "as it is" if I know that the defendant won't understand it, so I believe the interpreter should render in such a way that the recipients can understand it, that's the essence of the interpreter's role.

(Interpreter IX)

She further points out that legal practitioners talk of 'literal interpretation,' when in fact demanding an accurate one would be a more valid expectation. This view is shared by most of the interpreters interviewed – they understand how important accuracy in interpreting is in the criminal justice setting, but argue against expectations of verbatim rendition. Some do seem to agree that interpreters should interpret "as it is" but when they give examples, it is clear that they, too, acknowledge that they do indeed make discretionary choices and that there is a certain degree of freedom in producing their rendition. This would mean that none of the interpreters argue for literal translation as understood in Hale's terms introduced in the preceding sections (2007: 7).

Moreover, in some cases interpreting "as it is" may not be a preferred strategy due to the differences between the source and the target language. Interpreter VI talks of structural differences between texts in English and Japanese:

In a Japanese text, explanations come first. Let's take this kind of a text for example: "The defendant has children, he has never committed a crime before, he is deeply remorseful. These are some facts that should be considered favorable to the defendant." On the other hand, it seems to me that in English the conclusion usually comes first, so

I would often translate it like this: “There are some facts to be considered favorable to the defendant. For example: he has children, he has never committed a crime before, and he is deeply remorseful.” I think such a text is easier to understand this way, so I usually bring the conclusion forward and then give the examples. I think interpreters do have this much of freedom.

(Interpreter VI)

As the above quotations from the interviews show, court interpreters in Japan are of various opinions, which is to be expected given the complexity of court interpreting and different experiences. It can be concluded that they take different viewpoints in terms of the issue of ‘literal interpretation’, but at the same time, it is also clear that they allow themselves a certain degree of freedom in the rendition. This suggests that even those interpreters who argue for interpreting “as it is,” understand it somewhat differently from those legal practitioners who call for verbatim translation.

Given the above, it would seem more appropriate to expect interpreters to render the utterance from the source to the target language *accurately*, but only under the condition that it is recognized that there is a certain range of accurate interpretation, as Interpreter II points out. Since interpreting is not a mathematical process, but rather “a combination of science and art” (Laster and Taylor 1994: 183) the same utterance in the source language will naturally be rendered into the target language differently by different interpreters, or even by the same interpreter on different occasions.

This leads to the natural conclusion that ‘literal’ or ‘verbatim’ translation understood as translation that is faithful to the source utterance or text in all its aspects, is not merely not actually practiced but also simply unattainable. If different interpreters produce different renditions of the same source text, there are only two possible explanations. Either there is more than one accurate rendition possible, or there is only one, and all other renditions are incorrect. After examining the literature on this matter in the preceding sections and considering the quotations from the interviews presented above, it seems reasonable to argue that the former is the case.

4.2 Referees, brain magnets, and invisible men: court interpreters on their role in criminal court proceedings

In the final section of this paper, I present how the interviewed interpreters see themselves, how they define their role in the context of court interpreting. As was the case with the views on ‘verbatim’ interpretation, the interviewees’ opinions on the interpreter’s role, too, vary.

The metaphors the interviewees use to describe their role can be summarized as follows: 1) the interpreter should strive to be “the invisible person;” 2) the interpreter ensures that the communication between the legal practitioners and the defendant (or witnesses) goes smoothly; and 3) the interpreter controls and manages the communicative aspect of court proceedings. It needs to be noted, however, that all of the interviewees point to the importance of accuracy in their line of work as well as to its limitations.

The ‘invisibility’ of the interpreter is a frequently raised claim in the Japanese context. A metaphor used frequently is that of a *kuroko* – a stagehand in kabuki or assistant-puppeteer in *bunraku* theatres dressed in black assisting either the *kabuki* actors in various ways or the *bunraku* puppets’ movements. Even though the *kuroko* in *bunraku* are visible to the spectators, the audience is expected to pretend not to see them. Even though some

interpreters are of the view that ‘invisibility’ is the ideal, they believe it is not absolute or attainable at all times:

The interpreter’s role is to be the invisible person. A greatly successful court hearing is one where communication is carried out as if the interpreter wasn’t there at all. [However,] even with effort, a 100%-invisibility is unachievable. But I think it’s important for interpreters to aim for it.

(Interpreter VII)

Limitations to the interpreter’s invisibility arise due to the fact that there are occasions whereby the interpreter needs to ask for clarification. However, this interviewee points out that the interpreter should gain the judge’s consent before doing so. In other words the interpreter should not rely on their arbitrary interpretation of the meaning of the source text or try to smoothen the discourse (and thus, possibly lose or misrepresent some of the source message in the process) if a misunderstanding has occurred, but rather gain the judge’s consent to clarify what was meant before proceeding.

Interpreter IV raises similar points with respect to the limitations of the interpreter’s invisibility. She says that as soon as the interpreter needs to ask for clarification, they can no longer be considered a *kuroko*, they are no longer invisible. She therefore argues for redefining the court interpreter’s role in such a way that recognizes the interpreter’s visibility.

The second category can be considered close to Laster and Taylor’s (1994) “communication facilitator” notion discussed in section 3.4. For example, Interpreter VI argues that the court interpreter should strive to make the communication smooth between the parties who otherwise would not be able to communicate. ‘Smooth’ does not mean without conflict, as conflict can be an essential part of an adversarial criminal trial. It implies that communication is carried out without major impediments. Interpreter VI does acknowledge, however, that there are certain limitations to what the interpreter can do: “we might miss a word, misunderstand something. Interpreters are not machines. We make our best effort, but we’re not perfect, and [legal professionals] need to understand that.”

Interviewees in the third category seem to give far more authority to the interpreter in the court setting. The metaphors some of them use are ‘referee,’ ‘gatekeeper,’ or ‘goalkeeper.’ Interpreter V argues that since the court interpreter mediates between the parties, they need to assume some control in the criminal process. He argues that unless the court interpreter does so, they run the risk of being overpowered by either the defense counsel or the judge, which, in turn, will lead to disruptions in the interpreting process. Interpreter II similarly comments on the court interpreter’s role in the following terms:

I think interpreters are more like referees in a soccer game rather than *kuroko*. If the game is going well, the referee doesn’t stand out. But in critical situations they have to raise fouls, they make certain decisions, which makes them more visible. So they have to somehow ‘manage the traffic’ on the field. That’s why I think interpreters are more like referees – they have to manage the traffic, which is something the *kuroko* wouldn’t do. The interpreter is obviously visible [in court proceedings].

(Interpreter II)

Interpreter X raises similar points and compares the court interpreter to a magnet joining nerves in the brain that try to communicate: “if the magnet is slightly dislocated on the defendant’s side or the interpreter’s side, nothing will go smoothly.” Therefore, she

argues, the court interpreter needs to manage the proceedings to some extent to ensure that the communication is carried out without major issues.

The ten interpreters interviewed vary in how they describe the role they play in court proceedings. This should come as no surprise, given that they go through different experiences in the course of their careers and encounter different legal professionals, defendants, and situations along the way. All of them, however, seem to acknowledge the limitations and challenges in trying to meet the demands placed on them. They also often point to the insufficient understanding of the interpreter's work or even lack thereof on the part of legal professionals they work with.

Even those interpreters who argue for the need for literal translation recognize that it is not always possible or desirable. This suggests that interpreters acknowledge that discretionary choices are an integral part of court interpreting, and the interpreting practice at large. It could be argued that some interpreters argue for "as it is" rendition but they understand it differently than legal professionals.

The metaphors used by the interviewees to describe their role in the criminal justice setting demonstrate that they are more than 'mere conduits' or 'translating machines.' Not only due to the sometimes inevitable human error in the rendition, but also because interpreting itself is not a mathematical process with only one correct answer.

Of course, this does not mean that any interpretation is accurate – interpreters do make mistakes. The argument here, though, is that on many occasions, there can be more than one accurate rendition for the same source text, which makes the notions of verbatim interpretation and interpreters as conduits "legal fictions".

Notes:

- 1 Since the act of interpreting is generally treated as a form of translation (Pöchhacker 2004) the terms 'interpretation' and 'translation' used throughout this paper are to be understood as referring to the same phenomenon – oral renditions by the interpreter.
- 2 For the purpose of simplifying the discussion, the terms 'literal translation' or 'verbatim translation' will be used interchangeably throughout this paper. Further, in section 4.1 one of the interviewed interpreters uses the term 'direct translation,' which should be understood as a synonym for the other two terms.
- 3 English translations of excerpts from interviews conducted in Japanese are my own.
- 4 There are eight jurisdictions of High Courts registering interpreters in Japan: Sapporo, Sendai, Tokyo, Nagoya, Osaka, Takamatsu, Hiroshima, and Fukuoka. For details on appointing and registering court interpreters in Japan refer to Marszalenko 2014.
- 5 Case number: Heisei (wa) 58, observed on July 16th through 18th.
- 6 Name changed.

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Jakub E. Marszalenko
Nagoya University of Foreign Studies, Japan
marszalenko@gmail.com

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