



START OF TRANSCRIPT

IKUKO NAKANE

Sen Lam

Hello there, I'm Sen Lam and welcome to *Ear to Asia* where we talk with researchers who focus on the region with its diverse peoples and societies. *Ear to Asia* is a podcast from Asia Institute, the Asian research specialists at the University of Melbourne. Imagine yourself for a moment on trial on criminal charges in a country where you don't speak the language, or at least not at the level of a native speaker.

The prosecutors, the judge, even your own defence lawyer are speaking quickly and probably using a lot of the specialist language found in criminal courts that are challenging enough in one's own mother tongue. In the interests of fairness and seeing justice done you will likely be given a court-appointed interpreter to help steer you through the legal proceedings. That's the case in Japan, which had seen an increasing number of non-Japanese finding themselves facing criminal charges. But how do defendants in such

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circumstances know that they're hearing the questions and being understood in their testimony when they're doing it through the filter of an interpreter? If they speak some Japanese, should they take the chance and use it in the formal setting of court where the stakes are so high? And what of all the non-verbal communications that interpretation cannot entirely convey?

Our guest today in *Ear to Asia* is Asia Institute's Dr Ikuko Nakane who specialises in the use of language and interpretation in criminal cases in Japan and what it means for foreign defendants whose fates are on the line. Dr Nakane has been looking into language in criminal courts for six years and has written numerous articles and recently edited a book on the topic. The book, *Languages and Identities in a Transitional Japan*, is published by Routledge, 2015. Ikuko, thank you for joining us.

Ikuko Nakane

My pleasure.

Sen Lam

Ikuko Nakane, you've written that there has been a rising awareness of the challenges faced by foreigners, or people who are not native speakers of Japanese, being taken to court on criminal charges, and these non-native speakers of Japanese, for the purpose of your study, are called NJSB. Now, before we enter this discussion, give us an idea of where these people of non-Japanese speaking background, NJSB, where are they from, which countries?

Ikuko Nakane

The latest statistics from the court actually shows that Chinese language speakers take up about 35 per cent of the population, followed by Vietnamese speakers and then Portuguese speakers. This group is mainly from Brazil because of the migration history involving the Japanese people. And that is followed by Tagalog speakers from the Philippines and then English. Now, in the case of English there are lots of people who actually have to be given interpretation into English but their first language may not be English and that could be sometimes a little bit problematic.

Sen Lam

So in the age of globalisation are we seeing more and more non-native speakers of Japanese being brought to the courts?

Ikuko Nakane

There was a big increase up to around 2003/2004. But crimes like visa overstaying that used to be dealt with in courts, at the moment they're dealt with outside courts mostly and so that relates to the drop in numbers of so-called interpreter-mediated criminal court cases. On the other hand, the Japanese government introduced what we call a lay judge system, or in Japanese *saiban-in* system, where some serious criminal cases such as assault, burglary and drug cases are brought to court where we have citizen judges participating in the legal procedures alongside professional judges. In those cases, there is a higher proportion of people requiring language assistance in court.

Sen Lam

So when you say citizen judges you mean a jury of some sort?

Ikuko Nakane

It is similar to the jury system in Australia, but they are judges and they work alongside professional judges and they also participate in deliberation. So not only do they decide guilty or not guilty but also they get involved in determining the penalty.

Sen Lam

Are defendants allowed to choose their own interpreters or are interpreters just appointed to them?

Ikuko Nakane

They can't choose their own interpreters. The courts decide or appoint interpreters for each case.

Sen Lam

And I understand that some non-native speakers of Japanese actually request that they do not need an interpreter, that they want to do it themselves?

Ikuko Nakane

Yes, in some cases the defendants themselves say that they would like to speak in Japanese. There's also been some cases where an interpreter may have been provided but the defendant actually decided that it would be better to speak in Japanese without assistance from the interpreter.

Sen Lam

So what about these so-called language ideologies that you wrote about; what are they, what are these language ideologies and why are they important in Japanese court cases?

Ikuko Nakane

Yes, one thing that I notice in media reports and official reports there seems to be an assumption that language assistance or interpreter assistance is required for foreigners and there's no need for language assistance for Japanese citizens. But with the globalisation we have more and more people moving in and out of the country where Japanese citizens might not have a high level of literacy and language competency, that they might actually need language assistance in places like court and hospitals, et cetera, et cetera.

On the other hand, we have had large increase of migrants into Japan and there are more and more long-term residents in Japan, and as these people increase and their number of years in Japan increases, their competence in Japanese is probably high enough sometimes to cope with certain aspects of court proceedings.

Sen Lam

So there are various shades of proficiency, language proficiency?

Ikuko Nakane

Yes, and this includes, of course, so-called native speakers of Japanese.

Sen Lam

That's right. As you pointed out in your study, the languages are far and varied because of more foreigners coming into Japan, and we're looking at the primary languages I suppose of Mandarin, Cantonese, as you said, Tagalog from the Philippines, Portuguese. But even languages like Swahili. So how realistic is it to expect competent and effective interpretation to be provided by the courts?

Ikuko Nakane

Yes, as the current system stands there are lots of issues to do with interpreter quality. The courts actually provide brush-up courses and workshops for course interpreters. I think those initiatives have been quite helpful, but media reports also have shown that, for example, lay judges who participated in lay trials expressed concerns about the difficulty

and challenges that they experienced in forming impressions and understanding the intentions of witnesses or defendants from non-Japanese speaking backgrounds of their testimonies.

Sen Lam

So even members of the *saiban-in* that you were talking about, the lay judges, the citizen judges, that they themselves have voice misgivings about the fairness being meted out to these foreign defendants?

Ikuko Nakane

Yes, but then there is a limit to what you can do in terms of communication. Interpreters do their best to communicate accurately and effectively, but the reality of court interpreting is that it's such a challenging task.

Sen Lam

You're listening to *Ear to Asia* brought to you by Asia Institute of the University of Melbourne. Our guest today is Dr Ikuko Nakane, a linguistics researcher from Asia Institute specialising in the language and discourse of criminal trials.

Ikuko Nakane, the linguistic notion of ellipsis comes up in your work on criminal cases, and for our listeners unfamiliar with the term, ellipsis is when we omit words or leave words out from our speech that are superfluous or that can be understood from the context of the conversation.

This is, of course, extremely common and native speakers and listeners of any language hardly even notice it. But Ikuko, tell us about ellipsis in the Japanese language; what it means for criminal defendants answering questions in a Japanese courtroom and in a language not their own?

Ikuko Nakane

Yes. So ellipsis is used in Japanese a lot more frequently than in many others languages. Certainly far more frequently than in English where you're actually usually required to mark your subject, your object of a sentence, et cetera, et cetera. In Japanese once the context allows you to work out what it is that you're talking about, who's the actor, even sometimes the verb of a sentence might be omitted if the interactants can work out what it is that you're talking about, what action you're talking about, and when that happens in court in

questioning, especially in a context such as cross-examination where the questioner might like to trick the addressee into giving inconsistent answers...

Sen Lam

So the prosecutors actually use linguistic tricks to try and strengthen their case against the defendants?

Ikuko Nakane

Yeah, in the field of language and law there's been a lot of work on questioning strategies in court. And in adversarial situations where two sides actually battle using questioning, there are lots of strategies used by lawyers so that they can project an image that witnesses and defendants are unreliable. In those situations, it is quite important that the defendant understands what it is that the question is about, and if there is a misunderstanding as to what it is that the questioner is referring to in their questions, there could be a possibility that the defendant might project an image that he is she is an unreliable witness giving inconsistent answers.

Sen Lam

So some proceedings, such as lengthy exchanges between lawyers and judges are, in the interests of saving time, I understand that they're only summarised for defendants. Is that problematical in itself?

Ikuko Nakane

It is a very common practice. When lawyers talk amongst themselves in court, there tends to be a lot of technical terms and it could be a lengthy discussion. And what happens usually is that when an interpreter is involved the judge says, okay, interpreter, please wait until we actually finish our discussion, and then when the discussion is finished the judge would summarise the contents of the discussion and the interpreter would interpret the contents for the defendant. I found that when I actually heard these examples, some parts of the discussion that could be relevant to the defendant's case that the defendant may like to know could be missing from the summarised version.

Sen Lam

So you think that sometimes the question of legal precision, that that suffers in the process?

Ikuko Nakane

Yes, Japan is a signatory to the International Covenant on Human Rights. That includes the right to be informed in detail of the charges laid against you and what goes on in court. So it relates to the language rights of the defendant.

Sen Lam

Ikuko, as part of your research you sat in to observe a number of criminal trials, as you alluded to earlier, of defendants who are not native speakers of Japanese and you found a variety of ways or scenarios in which interpretation was used, or not used, in criminal courts. Tell us a bit more about that.

Ikuko Nakane

In Japan most cases are open to public and you can just walk into the courtroom and sit in the gallery and take notes, and that's what I do. But what I found was that there are different genres or types of discourse used in court. For example, in some cases lawyers read out from a written document. In those cases, often the court deems that the language is too technical and too difficult to process in Japanese for second-language speakers of Japanese in court. Therefore, they might choose to make sure that interpretation is provided.

Often interpreters are given the original written documents and they can prepare for their interpretation in court. But, on the other hand, they might decide that for courtroom questioning, such as cross-examination, they might just say, okay, we know that you speak Japanese so we will try and do this procedure in Japanese. If you have difficulties in communicating or understanding, please let us know so that we can ask the interpreter to come in and help you.

Sen Lam

From your observation how sensitive are Japanese judges to the special needs of defendants from a non-Japanese speaking background?

Ikuko Nakane

I think it depends on the experience of the judges and their language ideologies, I suppose. So sometimes they might say, okay, well, there might be some issues and they might stop questioning and intervene and say, is the interpreting going okay? In other

cases, the prosecutor might just keep going with all these tricky questions and misunderstanding might actually be observed, which is a little bit disturbing. But, as I said, in some cases the defendant themselves might want to speak in Japanese to appeal to lay judges or the judges and so on and so forth. So yeah, it depends.

But I have also seen a case where the judge was being very sensitive to the needs and the importance of language access. And I think in one case, at the end of the trial the defendant was asked to say whatever he wanted to say at the end of the trial, and he actually spoke in Japanese expressing his regrets and how he repented and so on and so forth, and the judge actually later on – after the Japanese testimony – the judge said, look, would you like to also do this in Chinese?

I think in the gallery they had a family member, and I think that was actually a good example of what we call restorative justice where the family member, possibly a Chinese speaker, was able to hear what the defendant had to say in the mother tongue. That was a very impressive language sensitivity that I observed in court.

Sen Lam

So overall how effective is the Japanese judicial system in its understanding and approach to multilingualism?

Ikuko Nakane

Yes, I think that, unlike Australia where there's a lot of people using English as their primary medium of communication, regardless of English being their first language or second language or even third language, in Japan there is this ideology that, okay, foreigners don't speak Japanese well and therefore they need interpreters. It does help ensure that language assistance is provided. So that ideology actually helps in ensuring language rights.

On the other hand, the reality is that with the globalisation there's a more complex picture of language competence and your citizenship or ethnic backgrounds. So therefore there might need to be more global understanding of Japanese language proficiency in various social contexts, such as the courtroom. So there was a Japanese citizen being called but this person lived overseas for a long time. So an interpreter was provided, but in either of these two languages, Japanese and the other language, it was difficult for the defendant to understand some of the concepts.

There are also Japanese citizens whose literacy level is not quite high and their language proficiency, even though they are native speakers, may not be high enough to understand what goes on in court. So, for example, there was a case where this person who was wrongly convicted after he was acquitted he actually said in his book that he only understood about 10 per cent of what went on in court, and this is a native speaker of Japanese. That means that there might need to be an approach where you look at language proficiency in court in terms of beyond the binary ideology of native and non-native speakers.

Sen Lam

Ikuko, you've done a lot of work in this field. How did you get interested in researching this area of the linguistic impact on criminal cases in Japan?

Ikuko Nakane

Basically I was trained as a linguist and in particular in the area that's called discourse analysis. My PhD was on discourse in the classroom but then I got to know about colleagues who were working on language and discourse in legal contexts. So basically I just wondered if I could apply my skills as a discourse analyst to a legal context, and I knew that there weren't that much studies on legal discourse in Japan and that's where I got interested.

Sen Lam

Finally, what implications do you think this kind of research might have for the wider world?

Ikuko Nakane

So internationally and also in Japan, linguists have been working with lawyers and advocated for ensuring language rights and better communication in legal contexts. In the case of Japan, we have an association called Japan Association for Language and Law. I'm one of the founding members of the association. We work with the Bar Association. We invite lawyers and sometimes judges. It is not always easy, and this is a universal problem, to communicate how important language is in the legal context; that is quite hard to communicate to legal practitioners sometimes. But we keep working on that and hopefully there will be further collaboration between legal professionals, legal study scholars and linguists.

Sen Lam

Ikuko Nakane, thank you very much for speaking with *Ear to Asia*.

Ikuko Nakane

My pleasure. Thank you very much.

Sen Lam

That was Dr Ikuko Nakane, a linguistics researcher from Asia Institute specialising in the language and discourse of criminal trials. Dr Nakane is also first editor of the book *Languages and Identities in a Transitional Japan*, a collection of essays published by Routledge, 2015.

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