



# Japanese/English Deposition Interpreting

William Lise

June 3-6, 2005

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[Presented at IJET-16 in Chicago]

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This presentation is being made by Manako Ihaya, who kindly agreed to take this task on while Bill Lise is busy doing (what else) deposition interpreting in Osaka.

# What is a Deposition?

- Part of the discovery process in US civil procedure.
- Opportunity for the parties to litigation to examine witnesses produced by the opposing party *before* the trial.
- Goal is to discover facts and knowledge by the parties of the case.

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There might be a few participants who don't have a good understanding of just what a deposition is.

Under the Federal rules for civil procedure, discovery is discovery by one party of information and things held by the other party. It can take the form of interrogatories (written questions), witness examination (depositions), and even visits to plants and offices of an adversary.

There is no judge present at a deposition, and depositions are not taken in courts of law, but rather in the offices of law firms or (in Japan) at a US embassy or Consulate.

Both the plaintiff and the defendant make use of this system, in which the other side's witnesses are orally examined. Discovery is done *before the trial*, and sometimes results in the trial being obviated, as the parties learn what the other side has "on it's mind" and in its boxes full of exhibits.

## Who Are the Clients?

- Generally US law firms representing parties to litigation.
- Client law firm could represent the Japanese side or the opposing side.
- The Japanese side is *usually* the defendant.
- When the defendant is non-Japanese, they could take depositions of Japanese witnesses.
- (Very) rarely both parties are Japanese.

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These days, however, it is not at all unusual to see a Japanese firm bring suit against a non-Japanese company.

In May I interpreted for depositions of a Japanese firm which had brought litigation against a German company. The German manufacturer's counsel had come to Japan to examine a Japanese witness produced by the plaintiff. This is a case illustrating two perhaps unexpected exceptions: a Japanese plaintiff and a defendant taking depositions.

*(Comment by Manako Ihaya: Some of my clients are U.S. entities of Japanese corporations. The legal dept. is always handling lawsuits and so if you win the trust of the in-house attorneys, they'll be calling you for many different cases. They actually usually hire outside lawyers for different cases, and the in-house attorneys keep track of them and oversees all the lawsuits. I've also had cases in which U.S.-based Japanese businesses sued another in the United States. Both sides, including some who were Japanese-American attorneys, could communicate among each other in Japanese, but since all records had to be in English, everything needed to be conducted in English.)*

## Who Are the Deposition Interpreters in Japan?

- 95% Japanese; 90% female.
- On any given day most are more likely to be found doing conference interpreting than doing deposition interpreting.
- I know fewer than 5 native English speakers in Japan who do deposition interpreting.

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After about 20 years of deposition interpreting, I feel pretty confident about the percentages you see here for Japan.

I have run into very few non-Japanese interpreters even among the interpreters who come from the US to Japan to do depositions. In fact, I can name all of the ones I have met, and that list is also quite short (3 interpreters, actually).

There appear to be two “groups” of deposition interpreters: those who do depositions occasionally between conference interpreting, assignments and those who specialize in deposition interpreting. The latter group is very small.

Probably because very few individual Japan-based deposition interpreters are known by name to US law firms, I regularly get approached by both sides in a suit; naturally I have to decline the second approach if I am already committed to doing work for the first client. This exact thing happened to me, as a matter of fact, in the litigation that is preventing me from participating directly in the IJET Conference this year.

## Where Are Depositions Held?

- Outside Japan: Offices of participating law firms or hotels.
- In Japan: The US Embassy in Tokyo or US Consulate in Osaka.
- A treaty between the US and Japan prevents depositions anywhere other than in a US Embassy or consulate (i.e., prevents depositions in Japan—those venues are “in the US”).
- This treaty greatly hinders the ability of US parties to take depositions of Japanese witnesses.

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The Osaka US consulate has two deposition rooms; one small and the other smaller. Tokyo, oddly, has only one, and that room is a mere 1/3 of its former size, chopped down to make room for the more complex visa procedures put in place after 9-11.

If the treaty between the US and Japan regarding depositions did not exist, there would likely be dozens of depositions taken in Japan daily. With the treaty in place, there are enough assignments for only 3 lead interpreters in Japan on any given day.

*(Comment by Manako Ihaya: In the U.S., another often-used venue is the court-reporter agency's office, which is provided with rooms for depositions.)*

## Much-Wanted Deposition Room Reservations

- Law firms book the rooms in Japan and tend not to cancel them even when they settle before the depositions.
- Because of the above, the room reservation rate is about 99.9%, whereas the room usage rate is about 40-50%.

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The fact that the deposition rooms are very difficult to reserve means lots of schedule changes for interpreters. This makes cancellation fees essential. Without them, a last-minute cancellation would leave the interpreter with reserved interpreting days but no income.



# Bad Water Flows Downhill

- Law firms often learn of free deposition rooms in Japan just before the rooms become available.
- The result for interpreters: very sudden requests.
- When attorneys fail to obtain a special deposition visa in time or fail to get agreement from the other side, the depositions are usually cancelled.
- The interpreter needs to take cancellation fees in such cases.

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# The Players in the Deposition Room

- Examining attorney
- Defending attorney
- Witness
- Representative from the examined side
- Lead interpreter (for deposing attorney)
- Check interpreter (for the side being deposed)
- Court reporter
- Videographer

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## Pre-Deposition Preparation for the Lead Interpreter

- Obtain a copy of the complaint and the court order allowing the depositions to be taken.
- Obtain copies of any patents in suit.
- Develop a glossary of player names, technical terms, etc.
- Meet with attorneys to discuss what kind of questions are going to be posed to the deponent.

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The complaint gives you the case caption (Who v. Who) and the court order gives the venue of the litigation. I always use this in referring to the case in correspondence with the law firm. The complaint will also provide a look at the names of parties and other related entities. Large suits can involve many parties.

The notice of the deposition sometimes includes a list of topics about which the witness will be examined, in the case in which the witness is a Federal Rule 30(b)6 witness, meaning a witness representing his or her party and assumed to have knowledge that the party as a whole has.

Almost all the litigation interpreting I do is patent-related. Usually US patents are in suit. If a US party has obtained patents in Japan as well, copies of those will usually provide valuable terminology.

Meeting with the attorney is an important part of the preparation. It helps the interpreter get used to the attorney (and vice versa), and gives the interpreter a chance to ask questions. It appears from what I have been told that when US law firms use the household-name interpreting agencies in Japan, the interpreter does not usually meet beforehand with the attorneys and is not really considered a part of the team. Most such interpreters would not be permitted themselves to make on-the-fly decisions about doing anything more than a 9 to 5 interpreting day.

At present, I do not charge for the time spent in preparatory meetings. In a sense,

## Basic Differences Between Depositions and Other Interpreting

- Hostile environment
- High premium on unobtrusive interpreting.
- High stakes

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A deposition, by definition, involves a room full of people having an argument. Some interpreters find this stressful to the point of discomfort.

Additionally, since only one side (the examining attorney) wants to communicate, and the other side (the witness) wants to say as little as possible, interpreting depositions proves more challenging than situations in which both parties want to talk.

Unlike friendly interpreting situations, the interpreter is not there to be a facilitator, but rather to interpret. Asking for clarifications is very difficult or impossible, unless it is limited to simply not being able to hear the witness, because it would disturb the process.

Although some non-deposition interpreting situations (particularly business negotiations) involve large sums of money, almost all depositions involve large sums.

# Sight Translation

- English documents placed before the witness as exhibits often need to be sight translated.
- Sight translation of a sort is also required when an attorney quotes previous testimony from a deposition transcript.
- Written language is much denser and can be much more difficult to render accurately than spoken questions.

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Sight translation includes elements of both translation and interpreting.

The fact that sight translation is often required makes it all the more important to meet with the attorneys the day before the depositions. Sight translation of patent documents should probably not be attempted on-the-fly without a disclaimer that the accuracy is very likely to be lower than the accuracy of a written translation.

# Language-Related Problems

- Plurals
- Personal pronouns
- Gender

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# Plurals

- 複数の is often usable, but frequent usage makes your Japanese sound very strange (sort of like a Japanese-language patent).
- これら、それら also come into use.

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## Personal Pronouns

- Amazingly (to me, anyway) there are some interpreters who commonly refer to the witness as *あなた*. I could not bring myself to do this, any more than a salesperson in a Japanese department store would dare call a customer *あなた*.
- Verb forms obviate the need to make decisions about pronouns. Correct use of 敬語 is very helpful in eliminating the need for (and unnaturalness of) of personal pronouns.

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*(Comment by Manako Ihaya: I actually do use あなた without hesitation. I used to try to address the Witness by the person's last name, but somewhere along the way I started using あなた for simplicity' sake, such as if the question was, "Is this your handwriting?" Sometimes I'd use ご自身. Of course, in Japanese, you could just omit using あなた most of the time, and that is what I do most of the time....)*



## Greetings

- Upon greeting the deponent after lunch, many attorneys will say “Good afternoon, Mr. Haraguro.” Nothing strange in English, but bizarre in Japanese, since the same person has been examining the witness all morning.
- Solution: 引き続き、お願い致します。(I have used this for years with no problems.)

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This is a good example of a case of interpreting something on the record that is not a “literal” translation but nevertheless quite acceptable.

## A Deposition Interpreting Workday

- Unlike depositions in the US, there are time restrictions (9am to 5pm). In Tokyo, a burly marine kicks us out of the depo room at about 4:45pm.
- One hour lunch break.
- Breaks about every 1 hour.

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Because of the need to start vacating the deposition room at around 4:50pm, the deposition interpreter working in Japan has it a bit easier than some in the US. For example, when I acted as a checking interpreter in a case in LA about 5 years ago, the depositions often went until 6 or 7pm, after which (since our side was producing witnesses to be examined) we returned to the hotel, where we prepped witnesses for the remaining depositions (sometimes until 10 or 11pm). Naturally, the client pays for this, but I would rather have been relaxing.

## Interpreting in Pairs



- While most major interpreting agencies force clients to take two interpreters, I (and a small group of other interpreters I know) work alone.
- Working alone makes breaks more important.

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Working in pairs is standard for most people doing depositions in Japan, simply because most people doing deposition interpreting in Japan are conference interpreters, who really are under the gun in a number of ways that differ from the situation in depositions. Thus, the conference interpreting practice is follows. That said, I (and a number of colleagues) work alone, thereby nearly halving the cost for the client.

But working alone means that breaks are essential. Breaks should be taken about every hour.

# Real-time Translation

- All English spoken in the depo room displayed in “real-time” on computer screens for participants.
- Almost completely eliminates the need to take notes in English.

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This refers not to instant machine translation, but to a court reporting technology.

When I started doing deposition interpreting about two decades ago, real-time court reporting had not yet arrived, and the interpreter needed to take notes for the attorney’s English questions as well. It also makes the life of the court reporter easier. In the past, re-reading a previous question or answer from the record involved reeling out the printer paper and reading from the coded printout. Now, anybody at the table can scroll back on their display screen to read it for themselves.

## Real-Time Display: The Down Side

- Concentration on the computer screen can actually prevent you from maintaining a natural feel for what is going on. Some interpreters prefer not to have a screen.
- Zealous check interpreters sometimes over-use the screen, and demand that every word in the English have a corresponding word in the Japanese interpreting.

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## The Check Interpreter

- Official mission: to check that the lead interpreter is interpreting correctly.
- Covert mission (sometimes): to disturb the process and waste time.
- Law firms sometimes instruct the check interpreter to “get in there and check!” in an effort to obstruct the process.

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The other day something happened in the Embassy that deposition interpreters might have just thought to be a joke.

The check interpreter announced herself to the Consul as the check interpreter, so that the Consul could swear her in. He began with *“Do you solemnly swear that you know the English and the Czech languages, and that your will faithfully interpret questions from the English language into the Czech language, and .....*

Seriously folks, the most important advice I can give to the lead interpreter about the check interpreter is avoid wasting time in discussions. If the checking interpreter’s comment is not a substantial change to your interpreting, accept and move on. If it is substantially different, thank the checker and move on. If the check interpreter is clearly incorrect, say so briefly and go on the record as disagreeing. But don’t waste time arguing. Your side’s attorney (the people paying you for all of this) will be grateful.



## Belief Systems

- The presence of a native English speaker deposition interpreter who is not a graduate of Simul or a similar school appears to upset the belief system of a small number of interpreters.
- There are various devices that can be used to prevent problems in such cases.

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There is a distinct value for NES interpreters in chatting up the checking interpreter before things start. If you can do deposition interpreting, it should not take much to convince the other side's interpreter that you are real, but if you hit the ground running, with no pre-deposition greetings or chatting, the preconceptions about interpreters with the "wrong" DNA interpreting between Japanese and English are sometimes difficult to overcome. This is not that often a problem, but it is wise to remember that it could happen.

*(Manako Ihaya comment: I went to Simul to study and even taught there, but the school didn't do me any good for my interpreting career since I only took translation courses, not interpreting. But the name Simul does indeed have a powerful effect on my resume when reviewed by prospective Japanese clients.)*



Questions?

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## Work Environment of the Deposition Interpreter

- Constant changes in schedule.
- Need to be in a particular city (or country) at a particular time.

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The uncertainty of deposition interpreting scheduling creates great problems for some interpreters. It necessitates cancellation fees, for example, and some interpreters find it difficult to ask for or actually collect such fees.

The need to be tied up in a particular city or country different from your normal working environment—not as your choice, but at the behest of the client—is another disadvantage of deposition interpreting. Those who like to travel might actually like it, however.

## Capabilities Required for Deposition Interpreting - 1

- (Obviously) High degree of fluency in both languages.
- Knowledge of the subject matter (greater accuracy is required than in conference interpreting—faking it is not acceptable and will be caught).

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These two points should be obvious. However, there appear to be some interpreters who feel that they can interpret in any field if they study enough. I prefer to interpret in fields I already know; the income-diluting study time is therefore minimized.

(Comment by Manako Ihaya: *I know Bill Lise stresses the strength of being a NES when doing deposition interpreting, and here is an example I can cite.... When the witness was asked if he had ever seen a report regarding the issue at hand, the witness answered, “レポートは見たことはありません” or something to that effect. The lead NJS interpreter interpreted, “I did not see the report,” which in English implied that such a report existed. As a first-time checking interpreter, my hand went up and said what the witness said was “a report, (any reports?)” not “the report.” The lead interpreter objected, saying basically, “the report, a report, same thing.” But the attorney who had hired me (and who was defending the witness) was adamant that my correction be put on the record. This was my first deposition experience, and I thought, if interpreters like her were doing it all the time, I can do better...! So that’s why I decided to accept deposition jobs after avoiding them for many years. Of course, I then went on to work against much better interpreters than me as well!*)

# Native-Level English

- Transcript is in English
- Both the attorneys and the court reporter have trouble with much less than native-English level pronunciation, not to mention the ability to express the responses to questions in natural-sounding, grammatical English.

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Almost all interpreters have an A language (native language) and a B language (non-native, usually acquired later).

In civil litigation in the US, the only thing that goes into the transcript of the deposition is English. Regardless of how uncomfortable an NJS may feel with the Japanese of an NES interpreter, as long as it is being understood and as long as the responses are being interpreted correctly into normal English, there is very little reason for criticism.

I have heard comments from both attorneys and court reporters that working in Japan is often unusually stressful because of the need to “tune into” the non-native English of most of the interpreters.

The other problem, of course, is understanding common modern-day business slang and buzzwords. This is a skill that not all NJS interpreters have.

My experience is that, after learning that interpreters who can speak native-level English are available, many law firms actively seek out such interpreters.

## Capabilities Required for Deposition Interpreting - 2

- Familiarity with “弁護士節”
- Ability to handle corrections and interference from the “opposing” interpreter.
- Willingness to have your life disturbed beyond belief for days on end (never knowing where or whether you will actually be needed).

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Again, don't waste your client's time for the sake of protecting your pride as an interpreter when attacked by the checking interpreter.



## Capabilities Required for Deposition Interpreting - 3

- Ability to strike a balance between natural language and accuracy, while resisting the temptation to read minds.

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As touched upon earlier, personal pronouns appearing the questions of an attorney really don't require corresponding personal pronouns in the Japanese version of the question if they can be avoided while still leaving no doubt about the meaning of the question.

"When did you join Nusutto Industries?" is rendered with no confusion by 盗人工業に入社されたのはいつだったんですか? Note that the unwieldy (and frankly out-of-place) あなた has been avoided. That said, there are some check interpreters who have bought into the story that, unlike their normal conference interpreting, which is very loose and often not nearly as accurate as would be required in depositions, deposition interpreting needs to follow the utterances of the speakers precisely, even to the point of making the interpreted utterances sound ludicrous. This attitude can waste lots of time.

Naturally, even if the witness says something "strange" (for example, illogical or clearly in error or out of step with common sense) the interpreter must avoid the urge to read the mind of the witness.

Several years ago I was interpreting a witness response which to everybody in the room was clearly at odds with what had already established as a fact. The checking interpreter, evidently trying to be "helpful" said "Mr. Lise's interpreting was fine, but what the witness intended to say was ..." Needless to say, the examining attorney went ballistic. Quickly realizing the seriousness of his error, the check interpreter apologized, but that just angered his own side's attorney, who did not want their checking interpreter to lay himself open for impeachment by admitting on the record such ridiculous behavior. In the end, the check interpreter was physically "guided" out of the room (and out of the range of the microphones) by the defending attorney.

## Do You Need Specialized Legal Knowledge?

- Short answer: not really.
- Witness examination hardly ever includes subject matter having to do with the law.
- *Colloquy between the attorneys* is the most difficult from this standpoint.
- Experience and a bit of reading should be enough. If you don't understand something, ask an attorney at a break.

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Almost every Japanese (and non-Japanese, come to think of it) layperson who learns that I interpret depositions makes a comment to the effect that I must know all that “legal stuff.” Nothing could be farther from the truth.

Unless the witness is an attorney (something that does happen) questions posed to a witness are almost always limited to the subject matter of the case, which is mostly technology or business subject matter. If even a question such as “do you think your product infringes our patent” is posed, the defending attorney will object on the grounds that the question calls for a legal conclusion, which the witness is not qualified to give.

Banter between attorneys (colloquy) is another matter. If the interpreter is required to interpret colloquy, things could get sticky. Whether you need to do so should be established at the start of the deposition. The good news is that, if you are going to interpret attorney colloquy, it is all on the real-time display screen for you to see.

## 弁護士節その1

- Is it fair?

*Is it fair to say that you, Mr. Tanaka are an expert in microcomputer chip layout?*

This question has nothing to do with “fairness,” but one day my Japanese checking interpreter, who did not understand the question, thought that 公正 or 公平 needed to be in the interpreting into Japanese.

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Here are just a few locutions heard over and over in depositions from attorneys.

## 弁護士節その2

- It is true...is it not (泣き別れ編)

*It is true, Mr. Tanaka, that you are a shareholder in the company Mizunoawa Rich Man Planning Office, is it not?*

Needless to say, the framing of the question, with the *it is true* separated from *is it not?* is confusing at best, but it is not the job of the interpreter (at least during the questioning) to tell the attorney how to frame questions.

## 弁護士節その3

- It is true/is it not? (上級編)

*It is true that a good attorney can turn any declarative sentence into a question by simply appending to its end is it not, is it not?*

While I have never seen anything this bad, this trivial example illustrates just how frustrating things can get when the attorney becomes enamored of this style of questions.

## 弁護士節その4

- “Reporting”

*Mr. Saito, to whom do you currently report?*

Amazingly, some misguided checking interpreters think that the word 報告 needs to be in the Japanese version. Sorry, it does not. The attorney is just asking who Mr. Saito’s boss is at present.



## Typical Flow of Witness Examination

- Ground rules
- Educational background questions
- Employment background questions
- Organizational questions
- Case-specific questions
- Document authentication

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Ground rules include such common-sense things as telling the witness to ask for clarification if a question is not understood and warning the witness that if a question is answered without such a request, it will be assumed that the question has been understood.

Other housekeeping matters involve asking the witness whether he or she is taking any drugs that would impair complete and truthful testimony, and asking the witness whether he or she can understand and speak English.

Educational and employment background questions should be self-explanatory.

Organizational questions are often asked of a witness in an attempt to discover the organization of the other party, and further to discover the organization in which other potential witnesses might be working.

Having gone through the ground rules and background questions, the examining attorney usually turns to subject matter specific to the case and to document authentication (not necessarily in that order).

## Typical Case-Specific Subject Matter

- The role of the witness in developing, selling, or otherwise dealing with an accused product.
- Whether or not the witness knows whether a patent search was done before beginning production or sales of the accused product, and what the witness might know about the results of such a search

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These two areas are typical of patent infringement cases.

Naturally, if the actual technical nature of the accused product is in question (and it usually is), there could be many questions of a highly technical nature.

*(Comments by Manako Ihaya: There are many other civil litigation cases as well, such as sexual harassment, stealing of a trade secret, etc., etc., in which case case-specific subject matter would greatly vary.)*

# Document Authentication

- Hand the witness a document marked Exhibit N.
- Ask if the witness recognizes the document.
- Ask the witness what the document is.
- Repeat the above many times.

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This process is used to establish on record the opinion and knowledge of the witness with regard to specific documents. This can be repeated 10 or even 50 times. It is tedious, but gives the interpreter a chance to relax, in what is pretty close to autopilot mode. Seldom is there anything difficult about interpreting two hours of document authentication.

When a more significant document is given to the witness, the examining attorney might ask what certain parts mean or, if the witness is the author, what the witness meant by the language in the document. The interpreter should be given a copy of the document to follow along, and might also be asked to sight translate parts of English-language documents for the witness.

## The Attorneys Are Not the Only Problem: Witnesses

- Speech quirks of the witness.
- Witnesses who start every response with 確かに..., when it is clear that the witness is not at all sure.
- Witnesses who literally talk to themselves while thinking of a response to a question.

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Some witnesses just have speech quirks. I have often seen witnesses use the 確かに preface where no reasonable interpreter would feel comfortable about translating this literally. Confronted with this, I translate it literally a few times and insert an interpreter's note on the record that I feel this only a meaningless introductory vocalization without any particular meaning.

Other manifestation of witnesses talking to themselves are things such as いったかな? and どう言えばいいのでしょうか? spoken in a low voice. In these cases I would interpret the utterances. Doing this kind of thing usually alerts the witness to the fact that everything he or she is saying will be interpreted.

Similarly, when a witness goes into serious bafflegab mode, with numerous false starts and parenthetical comments, I try to reconstruct the utterance with the same level of confusion.

## Interrupting the Witness

- Don't do it, if at all possible.
- Interrupting the witness for the sake of interpreting risks losing valuable testimony.

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If a witness is rambling on forever and their utterance has gotten so befuddled in your notes and mind that things are going to become difficult, you should resist the urge to interrupt the witness. The reason is simple; if you interrupt the witness, something that might have followed might be forgotten or be changed in the testimony. Your client will not likely be happy to see this happen.

In short, you should avoid doing anything that disturbs the flow of testimony.

# Deposition Support Interpreting

- Check interpreting
- Witness preparation

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Check interpreting is a valuable function. Often the interpreter who serves as the check interpreter also participates in another important phase of discovery—preparing the witness to give testimony to the other side.

Even for cases in which depositions of Japanese witnesses are taken overseas, the preparation for depositions is most often done in Japan, at either the party location or the Japan office of the defending law firm.

Two phases are usually done: general introduction to depositions (procedural matters, deportment, general issues of handling questions) and case-specific preparation.

The case-specific phase is often useful for the attorneys to discover themselves what their client knows about the subject matter of the litigation. Naturally, witnesses cannot be coached as to what to say, but this preparation allows the defending attorneys to know beforehand what their witness will say, thereby avoiding embarrassing or even damaging surprises in the deposition itself.





Questions?

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# Taking Care of Business

- Fees
- Deposits
- Cancellation fees
- Retention agreements

June 3-6, 2005

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[Presented at IJET-16 in Chicago]

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As is my usual custom in doing these presentations, I am going to give real-life numbers for fees, and will also present my own company's policies with regard to deposits, cancellation fees and retention agreements.

# Deposition Interpreting Rates

- Simul: 120,000 yen/day (class A) or 100,000 yen/day (class B) (but 2 interpreters are usually required for lead interpreting at a deposition)
- My firm: Somewhat more than Simul's Class A fee (and only one interpreter required)

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The Simul figures are straight from their website as of the time of this presentation.

## Deposits/Reservation Fees

- To eliminate window-shoppers, I have recently started taking at least one day's fee *before reserving interpreting days.*
- No client has yet refused.
- The fee is non-refundable, but credited against the final invoice amount.
- It also demonstrates the client's ability to handle electronic transfer of funds.

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Recently I instituted the requirement of a non-refundable deposit. This has succeeded in weeding out people asking me about rates because they just "might" have depositions some day or people wanting to "tentatively" reserve my time but who are not willing to make a commitment.

I will be changing my deposit requirements in the near future to reflect the length of an assignment. I will probably start taking two days deposit for assignments longer than 5 interpreting days.

## Cancellation Fees

- Absolutely required because of the uncertain nature of depositions.
- Collection requires that the interpreter act professionally throughout the process.
- Memorialization is highly recommended in written form *before* the assignment is accepted.
- Cancellation fees accounted for 1/3 of my interpreting income in fiscal 2004.

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Without a written agreement beforehand, the interpreter could find it impossible to collect a cancellation fee for cancelled depositions.

My cancellation fees kick in at 14 calendar days before any given day of interpreting, and run from 50% to 100% depending upon the number of days notice given. Each day is treated separately and cancellation fees for all days cancelled are added.

If a client cancels Tuesday through Friday of deposition interpreting at noon on Monday of the previous week, the charges would be 100% each for Tuesday and Wednesday and 75% each for Thursday and Friday. I will shortly change this schedule so that cancellation fees kick in earlier (perhaps two weeks), but start a bit lower.

My retention agreement has the fees listed explicitly and is signed by the client before I will reserve any interpreting days.

# Retention Agreement

- Don't agree to reserve days without one.
- Have it signed by the client.
- Make it all-inclusive, meaning that it includes explicitly your policy on deposits, cancellation fees, and invoicing of out-of-pocket expenses.

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Clients for deposition interpreting services are almost all attorneys. Signing (and writing) contracts is quite normal for attorneys. In years of deposition interpreting I have never had a law firm refuse to sign a retention agreement, and in my case the retention agreement clearly states that no days will be reserved for interpreting until the agreement is returned signed.

This includes recent cases after I instituted a system of taking a non-refundable (but creditable) deposit.



## Getting Paid in Japan

- I do not accept checks; they take too long to cash in Japan.
- My retention agreement includes the condition that payment be made by electronic transfer.
- If a client stills sends a check, I cut it in half and return it with instructions to pay *by the agreed-to method*.
- A paper agreement is essential.

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I have actually cut a check and returned it in the past (only two times, however). In one case the client was essentially the government of Quebec, which was a party in litigation against a Japanese company. Being the government, they took forever to send the payment, and it ultimately arrived by check, in violation of our written agreement. The solution was to have their counsel, a law firm in Texas, pay the invoice.

## Synergy With Translation Business

- Translators are often forgotten; interpreters are on-stage and in the face of the client at all times.
- When I am on the defending side (usually Japanese firm), depositions afford me the chance to meet intellectual property people from that company. These are prime targets for sales.

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The synergy with translation work comes into play particularly strongly when you do deposition preparation interpreting for the side being deposed.

The room is usually packed with people from the intellectual department of the party. I am also a patent translator, so I need not explain why this is a good sales opportunity. Sometimes I don't even have to ask for work; it is given to me in the course of preparing witnesses.

## One-Stop Shopping?

- Compared to the US, there appear to be fewer people doing both interpreting and translation in Japan.
- This is sometimes attributed to the differences in required abilities and personalities.

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Just as we often see the bizarre sight of *sushi* and *teppanyaki* in the same restaurant in the US, people who interpret often also translate in the US. In Japan there is more specialization, but I think that the reasons are not so much a matter of abilities as they are of networking.

Many interpreters in Japan, having gone through a school such as Simul, tend (if they are good) to have a ready-made market waiting for them. They need not look outside the area of interpreting.

# Which Activity Pays More?

- It “all depends.”

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When I am translating something I know (which, since I select my work, is almost always), and when I have my nose to the grindstone, I can often earn double on a given day of what I would make interpreting in a deposition. Whether this would apply to other translators depends upon more factors than can be discussed here.

Additionally, translation does not require me to be in a given city, at a given time. So why do I both doing deposition interpreting? One reason is, of course, the opportunity to pursue sales activities with embattled Japanese parties. However, another is that, even though I like translation, I also enjoy getting out and meeting people, and deposition interpreting, even if it is restrictive and less profitable, gives ample opportunity to get out and mingle.



Still have questions?

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