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日弁連の法廷用語日常語化の取組み

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A Project to Simplify Japanese Courtroom Language

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1．Introduction

The implementation of the lay judge (*saiban-in*) system in 2009 has opened the way to substantial lay participation in Japanese courts. In this presentation I will introduce Japan's first plain language project carried out by legal experts in collaboration with non-legal experts. I will first explain the lay judge (*saiban-in*) system. Next, I will show the brief outline of the plain language project. Then, I will discuss the details of the surveys and some of the results from the project. Finally, I will conclude this presentation by adding how plain-language approach is now being perceived in the era of lay participation.

2．The Lay Judge (*saiban-in*) System

Japanese lay judge system is not the first lay judge system in Japan. Japan previously had a jury system, which was introduced in 1928 and suspended in 1943 due to a limited number of cases. The current lay judge system was proposed as a pillar of the judicial system reform in 2001. The lay judge system is expected to make court procedures more efficient and more comprehensible through public participation.

Japanese lay judge system is a middle-of-the-road system between the Common law jury system and the Roman law lay judge system. Like the Common law juries, Japanese lay judges serve a term of only one case. However, unlike the jury system of Common law countries, Japanese lay judges deliberated on cases together with professional judges. This means that court trial judges as well as lay judges participate in the decision-making process. If they reach a guilty verdict, they then decide on what kind of penalties, fines, prison terms they need to

impose. Not all cases are heard using the lay judge system. Only criminal cases with serious offences are subject to the new system, and the defendants in such cases cannot choose the traditional court-judge system. Lay judges serve in trials in the first level district courts. Not only defendants but also prosecutors can appeal decisions of lay judge trials to higher courts.

The deliberation body consists of three professional judges and six lay judges. Trials are open to the public, but deliberations are held behind closed doors. Lay and court judges are not allowed to discuss its deliberations in public.

3. The Plain Language Project

A new law concerning criminal trials with lay judges was promulgated on 28 May 2004. In response to this new law, the Japan Federation of Bar Associations (JFBA) set up the lay-judge preparatory headquarters in August of the same year. Progressive lawyers have harbored great expectations in the lay judge system because the criminal court would be drastically changed from the monopoly of court by legal experts to the shared court between legal experts and lay people. Lay participation was also expected to prompt trials from dependent on written professional documents to using oral plain language. To meet the expectations, the project to simplify courtroom language was launched by the lay-judge preparatory headquarters.

The project is characterized by collaboration between legal and non-legal experts. To reflect daily Japanese usage, the project included language-related experts such as one social-psychologist, two linguists, one television caster, one television announcer, together with seven lawyers and one criminologist. As legal experts regard themselves as language experts, the incorporation of non-legal experts into a project of JFBA was a highly unconventional method used in Japan.

4. Survey Results[1]

1) Survey

The project needed to gain a clearer perception how lay people feel about legalese (a form of languages used within the communities of legal professionals). Therefore, the project team decided to identify three features: (1) the type of legal terms which lay people felt they knew; (2) how lay people actually understood the terms they had indicated they knew; (3) the type of vocabulary lay people used when they were explaining those 'known' terms.

The project first selected fifty legal terms from among legalese commonly used in the

courtroom, using legal textbooks which include verbal exchanges in criminal trials. Needless to say, their own criminal court experience of attorneys was reflected in the process of selecting fifty words.

The survey was to be conducted to obtain lay people's thoughts about the fifty legal terms, using a field research method called cognitive interview (Aldbridge & Wood (1998), Naka (2001a), Naka (2001b)). The respondents of the surveys were 46 lay people consisting of university students and office staffs. The respondents were first asked Question (1) to each fifty word. If a respondent answered 'yes' to Question (1), then Question (2) was given to the word to which the respondent gave the 'yes' answer. Those who answered 'no', that was the end of the survey on the word with 'no' answer. In Question (2) there are five answers to choose. The responded answers were converted into a five-point rating scale, where 1 is 'not at all' and 5 is 'very well'. After obtaining answers to Question (2), the experimenter encouraged respondents to talk about fifteen or twenty selected legal terms freely. By doing so, the experimenter collected verbal information on legalese. The survey thus identified types of vocabulary lay people used when they were explaining those 'known' terms.

Question (1) Have you heard this word ( )?
Yes → Question (2)
No → End of survey
Question (2) How well do you know this word ( )?
Very Well
Well
Neither well nor no
Not well
Not at all

The fifty words were first arranged in order of the number of 'yes' answers to Question (1). Then, the average score of each legal term answered in Question (2) was listed in descending order by score. We have found a correlation between Question (1), the category of 'heard-of-feeling' and Question (2), the category of 'already-known feeling'.

The degree of importance of the fifty words was measured by a survey for attorneys, using a five-point scale. Although there was a definite correlation between lawyers' 'important-word' feeling and lay peoples' 'heard-of-feeling', the correlation between lawyers' 'important-word' feeling and lays' 'already-known' feeling was distantly held. This means that lay people have

heard of 'important legal terms' but it does not necessarily mean that lay people feel that they know the meaning of these important legal terms.

With these findings, the fifty words were then classified into four groups: a) important but not known; b) important and well-known; c) not important but well-known; d) neither important nor known. From the classification based on the survey, the project concluded that Group a) requires explanation and rewording; Group b) was considered to take fewer measures; Group c) demands caution for lay understanding; Group d) should be given less priority. The project team commenced paraphrasing legal terms in the order of a), b), c), and d). In the process of paraphrasing, the project team checked the type of vocabulary used when explaining their 'known-words' so that we could judge how correctly they knew legal terms.

2）Rewording Work

Most of the time spent on the project was rewording work. Rewording work was conducted by joint effort between legal and non-legal experts. Legal experts offered legally adequate but rather lengthy explanations for legal terms under examination. Language experts then provided understandable but brief paraphrases to these words. After a long discussion about each legal term, the gap of understanding between legal and lay cultures was narrowed; comprehensible and sufficient rewordings were thus produced.

The writer illustrates this paraphrasing process of legalese with an example of 'suppression of rebellion' (*hankou no yokuatsu*). 'Suppression of rebellion' (*hankou no yokuatu*) is not a legal technical word, but it is a mandatory phrase written in charging facts in a case of robbery, for the purpose of distinguishing 'robbery' from 'theft'. 'Theft' indicates taking someone's property with the intent to permanently deprive them of it while 'robbery' requires a form of violence or threat of violence used to deprive someone of their property, in addition to the definition of 'theft'. Article 235 (2) of the Japanese Penal Code stipulates that a person who robs another of property through assault or intimidation shall be punished by imprisonment with work for a definite term of not less than 5 years. On the other hand, Article 236 of the code states that a person who steals the property of another shall be punished by imprisonment with work for not more than 10 years or a fine of not more than 500,000 yen. 'Theft' and 'robbery' are therefore different crimes with different punishments.

'Suppression of rebellion' (*hankou no yokuatu*) is used to clarify that the defendant used force or imposed fear on the victim in order to prevent resistance. Japanese public prosecutors thus use 'suppression of rebellion' (*hankou no yokuatu*) in charging facts as follows: the defendant suppressed the victim's rebellion and stole 32,000yen from the victim's bag ….

'Suppression of rebellion' is, however, an incomprehensible phrase to Japanese lay people. In English 'suppression of rebellion' means that someone in authority stops a violent organized action by a large group of people who are trying to change their country's political system, just like British's suppression of colonies in America. From the point of British people in those days, they had the justifiable grounds to suppress rebellious colonists. In Japanese, 'suppression of rebellion' is an incompatible combination of two words. 'Suppression' indicates that someone in authority put down either anti-social or anti-Establishment movement by using force or making it illegal. On the contrary, 'rebellion' means a more personal violent action by someone who is trying to change his or her current status, to give one example, 'a rebellious child'. While 'suppression' involves a more justifiable notion, 'rebellion' has an anti-authority type of action. Therefore, Japanese lay people would be confused and would conjecture that a policeman 'suppressed' the defendant's 'rebellious' conduct.

At a project meeting, non-legal experts were also confused with 'suppression of rebellion' and could not understand 'who' did 'what' in the charging facts. Therefore, language experts offered a clearer rewording from their linguistic sense. They proposed the use of 'resistance' (*teikou*) instead of 'rebellion' (*hankou*). As 'resistance' (*teikou*) indicates 'an attack consists of fighting back against the people who have attacked you', language experts said that lay people could imagine that the defendant put down the victim's resistance, using 'suppression of resistance'. However, attorneys and criminologist disagreed with the use of 'resistance' (*teikou*) instead of 'rebellion' (*hankou*). It is because 'rebellion' (*hankou*) includes the notion that the defendant's threat is strong enough that a victim cannot fight it back. Therefore, the use of 'resistance' limits the interpretation of the defendant's robbery conduct. After a long discussion, the project team concluded that 'suppression of rebellion' (*hankou no yokuatsu*) means that the defendant put the victim into fear physically as well as mentally, and that it includes the victim's submission despite his or her failed resistance.

3）Results

On November of 2005 the project team presented an interim report on sixteen legal terms, which was widely covered in the media. The public prosecutors office was mildly critical of the paraphrase of 'opening statement' (*boutou chinjutu*). In our paraphrase 'opening statement' is 'a story read by a public prosecutor or a defense counsel at the beginning of the examination of evidence'. As public prosecutors have indicted a defendant for a certain crime with absolute confidence in Japan, they thought the usage of 'a story' makes their opening statement a mere conjecture of a criminal act. As Article 296 of the Code of Criminal Procedure puts 'at the outset

of the examination of evidence, a public prosecutor shall make clear the facts to be proved by evidence', public prosecutors have used the term 'fact', not 'story'. However, in daily Japanese the term 'fact' is 'a piece of information that is known to be true'. If the word 'fact' is used in the paraphrase of 'opening statement', lay people would find it difficult to understand that the burden of proof is placed on the prosecution. 'The term 'story', which was originally considered a misuse, has become an acceptable word in the era of lay justice system.

On April of 2008 the paraphrase work on the sixty one legal terms was completed and published in two books: one book for lay people, *Handbook of Courtroom Language for Lay People* (*Saiban-in no tame no Houtei Yougo Handbook*), and the other for legal experts with the highlights of the discussion between lay and legal experts, *Courtroom Language in the Era of Lay Judges* (*Saiban-in Jidai no Houtei Yougo*). It is also included in an electric dictionary published by Sanseido.

5. Effects on Legal and Lay Worlds

1) Legal World

To prepare for the new lay judge system, district courts, together with public prosecutors office and local bar associations, held 500 mock trials throughout Japan between 2006 and 2009. There are about 300 cases tried under the lay judge system since its introduction of 2009. I have observed some of mock and real trials and found that some public prosecutors used 'story' instead of 'fact' in the opening statements. Other legal terms discussed in the project are also carefully treated in trials. Legal experts have gradually realized that they are expected to use plain legal language in the era of lay judge system.

2) Lay World

On February of 2009 the writer published one book named, 'Trial Language Funny Studies' (*Saiban Omoshiro Kotoba-gaku*) on legal language from the perspective of lay people. I selected peculiar legal terms and expression from lay perspective and discussed what they actually mean and why they are different from our daily language. As this book is the first book on legal language written by non-legal experts and published by non-legal publishers, it was widely covered on television, radio, newspapers, and a weekly magazine. On July of 2010 the writer published another book, 'The Inside Story of Legal Profession' (*Minnaga Shiranai Saiban Gyokai Urabanashi*). This book includes some background of the legal profession as well as legal langnage.

Although legal system concerns daily people's lives, legal language has been used by legal experts, to legal experts, and for legal experts. Lay judge system has opened a Pandora's box of peculiar legal language. It is certainly a favorable chance for language experts to deal with plain language issues in legal circles.

Note：This paper is a revised version of the paper read at a plenary session of the Clarity 2010 conference held in Lisbon, Portugal, from 12 to 14 October 2010.

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1　Fujita played a pivotal role in conducting the survey. See Fujita (2005) for details.

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