Observations on How the Lexical Choices of Court Interpreters Influence the Impression Formation of Lay Judges

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1. Introduction

In May 2009, the lay judge system was introduced as a part of Japan's judicial reform. According to this system, six randomly chosen citizens join three professional judges in criminal trials, and if the lay and professional judges find the accused guilty, they hand down a sentence as well. Characteristics of lay judge trials include, first, the participation of ordinary citizens. According to Hotta (2008), compared with professional judges, lay judges seem to be more influenced by their impressions of testimonies and to focus their attention on the defendant's character, mentality, and feelings. Second, in lay judge trials, the importance shifts from documents to oral evidence. The only evidence presented is what is spoken in court, which means that not only what is spoken but also how it is spoken is important because both contribute to the lay judges' impression of the speaker.

In September 2009, the first lay judge trial for a non-Japanese defendant with interpreting was held in Saitama Prefecture. By the end of 2010, according to the Ministry of Justice, 142 interpreter-mediated trials had been held. During this period, there were a number of after-trial press conferences for lay judges and a large amount of coverage in newspapers. We collected the comments of 21 lay judges from newspaper articles. The following are their thoughts on the interpreting they witnessed in court.

Five lay judges felt that there seemed to be gaps in nuances between the original speeches and their translations. Three suspected that translations had differed from the original speech in meaning. Two felt that it seemed difficult to convey the feelings and emotions of the defendant through interpretation, and one felt unsure about what the defendant was actually saying based only on the interpretation. Thus, the lay judges' comments revealed that they held some suspicions regarding court interpreting. On the other hand, however, our 2010 questionnaire survey of mock lay judges who participated in our mock trial revealed that they tended to regard what the interpreter said as what the defendant said. It seems that many lay judges are likely to regard the interpreter's speech as the speech of the defendant, although they are not entirely convinced of the accuracy of court interpreting. This shows that how interpreters translate and speak is an important factor in the decision-making of lay judges.

Our research focuses on gaps between the original court speeches and their translations and tries to identify how such gaps influence the impressions and decision making of lay judges.

2. Past studies

As mentioned in Section 1, some lay judges sensed that the gap between the original court speech and its interpretation. There is no perfectly equivalent interpretation of an original statement, as a significant number of studies have shown. For example, Berk-Seligson (2002), Hale (2004), and Nakamura and Mizuno (2010) revealed that interpreters' speech styles or pragmatic alterations change jurors' and lay judges' impressions of the witness or defendant. Then, how do interpreters' lexical choices affect such impressions?

The issue of lexical choices poses a grave problem in interpreter-mediated trials, as the overall legal meaning of a statement can potentially be altered depending on the words chosen by the interpreter. Not only legal terms, but general terms as well, are prone to alterations of nuances of the speaker's intent. Loftus and Palmer's (1974) psycholinguistic court experiment provides a famous example of the influence of intentional word choice. They showed images of a traffic accident to participants and changed the verb **smash** to similar verbs such as **collide**, **bump**, **contact**, and **hit**, in order to determine whether word choice influenced the judges' impression of the defendant. See Nakamura (2006) for details. Stubbs (1996) describes this experiment in his research and warns of the possibility of manipulating meaning through words, saying that "lexical choices can influence [people's] perception and memory" (p. 107). Words such as "beat" and "hit" may seem synonymous, but their nuances and legal meaning may be quite different. Nakamura and Mizuno (2009), having encountered a situation similar to Loftus and Palmer's in their mock trial, use a corpus linguistics methodology to investigate the interchangeability of these seemingly synonymous lexical items. They conclude that collocations of the words contain completely different co-texts and that if the words are misused, there is a risk of altering the nuances of the source language speech. Differences in the lexical choices are so subtle that they may be left uncorrected, resulting in serious legal consequences.

3. Experiment

In 2011, we conducted an experiment to investigate whether court interpreters' lexical choices influence lay judges' impressions of the defendant and their decision making in the trial.

3.1. Method

We prepared a scenario based on a real case of injury resulting in death. The scene depicts the questioning of the foreign language–speaking defendant. We created two versions of a movie, each with different interpreting. In Version A, to describe the acts of the victim, words with more violent connotations are used, and for the acts of the defendant, unmarked and neutral expressions are used. In Version B, the scene is manipulated in the opposite way, with unmarked and neutral expressions for the acts of the victim and more violent expressions for the acts of the defendant. Examples are shown in (1)

to (3) below.

    (1) The original: One of them was <u>beating up</u> the other guy.

        Version A: *boko boko ni shite imashita* [beating up severely]

        Version B: *nagutte imashita* [hitting / beating]

    (2) The original: <u>He was a big guy</u>.

        Version A: *Oo otoko datta*. [He was a huge guy / a giant.]

        Version B: *Otoko ga oogara datta* [The man was big.]

    (3) The original: I <u>turned myself and kicked</u> him.

        Version A: *karada no muki wo kaete keri mashita*. [turned myself and kicked.]

        Version B: *mawashigeri wo shimashita*. [gave a roundhouse-kick.]

Further, we manipulated the scenario so that the defendant's words of remorse are interpreted differently in the two versions. We incorporated this point in our experiment because in Japanese courts, the defendant' remorse is an important factor in determining the sentence. Example 4 shows this part of the scenario.

    (4) The original: <u>I feel very sorry about it</u>.

        Version A: *Hontou ni moushiwake naku omotte imasu*. [I feel very sorry for what I did.]

        Version B: *Totemo zannen desu*. [I regret it very much. / It's really a pity.]

We played Versions A and B to two groups of men and women of varying ages and backgrounds who had been dispatched by a personnel placement agency as mock lay judges (Version A was played for 41 mock lay judges and Version B for 39)[i]. In the questionnaire, the mock lay judges evaluated the defendant from several perspectives, such as whether he was guilty or not guilty, whether his act was justifiable as self-defense or excessive self-defense, whether he was honest or not, and so forth.

Scene

    A big man (the victim) is beating up and kicking another man in a park. The defendant comes around and tries to stop the fight. The big man shows a fighting posture, and the defendant thinks he might be beaten, too. Scared, he kicks the man. The man falls backward, hits his head on a concrete block, and dies.

3.2. Research questions

    Our two research questions and hypotheses are as follows.

Research Question 1: Do court interpreters' choices of words influence lay judges' evaluation of the defendant in terms of his/her degree of guilt?

Hypothesis 1: Mock lay judges for Version A will evaluate the defendant as less guilty because the victim's acts are described with more violent words and the defendant's with less violent words. Therefore, in Version A, lay judges will find the acts of the defendant more justifiable and evaluate the defendant as less guilty.

Research Question 2: Does the way the interpreter interprets the defendant's words of remorse influence the impression of lay judges?

Hypothesis 2: Mock lay judges for Version A will believe the defendant feels more remorse because the translation matches the way Japanese speakers usually express an apology, while the translation in Version B is not a typical Japanese apology.

3.3.　Results

3.3.1　Statistical findings

After viewing the movie, the mock lay judges were asked to reply to seven-point Likert-scale questionnaire items concerning the judgment of guilt, crime severity, justification of the defendant's act, coherence of the defendant's testimony, trustworthiness of the defendant, degree of remorse, influence of the defendant's appearance, etc. Their responses were analyzed with a statistical tool. However, no clear statistically significant differences were found except for the degree of remorse ($X^2 = 14.594$, $df = 6$, $p < .05$) (see Table 1) and influence of the defendant's appearance ($X^2 = 57.522$, $df = 35$, $p < .05$) (see Table 2). These results are discussed in detail in Section 4.

Table 1.　*Degree of remorse as evaluated by the mock lay judges: Results of the Chi-Square Test*

	Value	Degree(s) of Freedom	Exact Sig (2-sided)
Pearson Chi-Square	14.594[a]	6	<u>.024</u>
Likelihood Ratio	16.796	6	.010
Liner-by-Liner Association	3.397	1	.065
No. of Valid Cases	80		

Table 2.　*Influence of the defendant's appearance: Results of the Chi-Square Test*

	Value	Degree of Freedom	Exact Sig (2-sided)
Pearson Chi-Square	57.522[a]	35	<u>.010</u>
Likelihood Ratio	31.920	35	.618
Liner-by-Liner Association	.325	1	.569
No. of Valid Cases	80		

3.3.2　Findings from comments by the mock lay judges

In response to the questionnaire, the mock lay judges wrote down the words or expressions that

had stayed in their memory after they watched the movie. Although there was no statistically significant difference between Versions A and B in terms of the mock lay judges' evaluation of the severity of guilt, a psycho-linguistically interesting tendency was observed in their comments. While marked expressions stayed in the memory of the mock lay judges verbatim, unmarked expressions tended to change form. For example, the expression *keri mashita* 'kicked' in Version A, which is an unmarked expression, was changed to *keri wo ireta* in the reproduction by several mock lay judges.

4. Discussion

In this section, we discuss the experiment findings, focusing on the above mentioned three points: (1) the difference in how the mock lay judges evaluated the defendant's degree of remorse, (2) the statistically significant difference in the evaluation of the defendant's guilt between Versions A and B concerning the influence of the defendant's appearance, and (3) changes in the forms of unmarked expressions as recalled by the mock lay judges.

4.1. Defendant's remorse

As mentioned, there was a statistically significant difference between Versions A and B in terms of the evaluated degree of the defendant's remorse. To support this result, we introduce the results of our pilot study conducted in 2009.

Pilot study

The pilot study was conducted to obtain data on how interpreters' word choice influences the impressions of lay judges in terms of how they perceive the defendant's level of remorse. We prepared a scenario based on a real injury case. The scene depicts the questioning of the foreign language speaking-defendant. We made two versions of a DVD with different interpreting. Different Japanese words and expressions were chosen for the same foreign language expressions. We played the movies to two different groups of mock lay judges (10 and 13 judges for Versions 1 and 2, respectively). In the questionnaire, the mock lay judges evaluated whether the defendant felt remorse for his actions. We chose Spanish as the language of the defendant[ii]. Examples (5) to (7) illustrate the main points of manipulation in translation.

(5) The original expression: *Lo siento mucho*.
    Version 1: *Zannen desu*. [I regret it.]
    Version 2: *Taihen moushiwake arimasen deshita*. [I feel deeply sorry for what I did.]

(6) The original: *Perdí la cabeza.*
    Version 1: *Watashi wa atama wo ushinai mashita*. [I lost my head.] (This is a verbatim translation, and the questioning attorney tries to clarify the meaning. The ensuing conversation is as follows.)
        The attorney: What does it mean?

The interpreter's translation of the defendant's answer: *Watashi wa watashi jishin de wa arimasen deshita*. [I wasn't really myself.]

The attorney: What does it mean?

The interpreter's translation of the defendant's answer: *Handanryoku wo ushinatte imashita*. [I lost my sense of good vs. bad.]

Version 2: *Dou ka shite imashita*. [I was out of my mind.] (This is a free translation reflecting the intended meaning of the original utterance, and there is no ensuing conversation.)

We asked the mock lay judges to score the defendant's degree of remorse on a scale of 1 "not remorse at all" to 7 "very remorseful."

The mock lay judges rated the defendant as more remorseful in Version 2 compared to Version 1. The mean score for the defendant's level of remorse in Versions 1 and 2 was 2.4 and 4.167, respectively. The mock lay judges who watched Version 1 felt that the defendant gave an evasive answer. A t-test showed the difference in their evaluation of the defendant's remorse was significant ($P(T <= t) = 0.0254 < 0.05$).

In the 2011 experiment, we observed a similar phenomenon. The original expression "I feel very sorry about it" was interpreted as *Hontou ni moushiwake naku omotte imasu* in Version A, which is very similar to the translated version *Taihen moushiwake arimasen deshita* in Version 1 of the pilot study. Both are fixed expressions of deep remorse frequently used in Japanese, and the movie versions that used these expressions gave the mock lay judges the impression that the defendant was feeling a greater degree of remorse.

Thus, the lexical choices of interpreters seem to influence lay judges' evaluation of the defendant's remorse. There are various ways to express remorse, depending on one's language. When these expressions are translated verbatim, their impact may be lost because the resulting translation can sound unnatural and awkward. The conventional phrases most commonly used by a certain cultural group are perhaps the most acceptable and effective expressions of remorse for defendants.

4.2 Defendant's appearance

Table 3, a cross-tabulation of the influence of the defendant's appearance on the mock lay judges' judgment of guilt, reveals a difference between those who replied that they had been impacted by the appearance of the defendant and those who replied that they had not. Among those who reported being impacted (scale: 5 to 7), **12** people responded that the defendant was absolutely guilty, guilty, or possibly guilty, whereas **22** people replied that the defendant was absolutely not guilty, not guilty, or possibly not guilty. However, among those who reported that they had not been impacted by the defendant's appearance (scale: 1 to 3), **11** people considered the defendant guilty or possibly guilty, while **19** replied that the defendant was not guilty or possibly not guilty (see Table 3). As mentioned in Section 3.3.1, the appearance of the defendant might have influenced the judgment of guilt, and this tendency has

been statistically endorsed. These findings suggest that the mock lay judges might sway their judgment according to the defendant's appearance.

Table 3. *Cross-tabulation of the influence of appearance on judgment of guilt*

Judgment	Influence of Appearance							
	1	2	3	4	5	6	7	Total
Absolutely not guilty	1	0	0	0	1	1	0	3
Not guilty	0	1	1	1	1	0	1	5
Possibly not guilty	4	8	4	9	8	9	1	43
Possibly guilty	1	5	2	4	7	1	1	21
Guilty	0	1	2	2	1	0	1	7
Absolutely guilty	0	0	0	0	0	0	1	1
Total	6	15	9	16	18	11	5	80

4.3 Reproduced expressions

Regarding the mock lay judges' reproduction of what they heard in the movie, their comments revealed a psycho-linguistically interesting tendency. The judges tended to recall marked translated expressions better than unmarked ones. That is, they were able to reproduce marked expressions verbatim, while unmarked ones showed shifts in wording. Based on this finding, we decided to conduct an additional experiment to explore the influences of lexical choices by interpreters on the impression formation and decision making of lay judges[iii].

In order to explore the tendency further, we created two versions of the same story in Japanese. Both versions take the form of narration and contain approximately 450 characters. In Version A, words with unmarked and neutral expressions are used for both the victim and defendant, while in Version B, words with more violent connotations are used for both. We read the participants one of the stories and had them answer 10 questions about it. Here, the experimental design differed slightly from that of the first experiment. We sought to explore how the participants' mental representations and reproduced expressions were altered after they heard stories of criminal incidents; therefore, instead of setting Version A with the victim sounding more violent and the defendant sounding neutral and Version B as vice versa, we created Version A with both the victim and defendant sounding neutral (i.e., unmarked) and Version B with both sounding more violent (i.e., marked), because we assume that an individual interpreter demonstrates one particular tendency in his/her interpreting performance consistently throughout one trial.

We read Versions A and B to 112 and 106 university students, respectively. Table 4 compares the two stories.

Table 4. *Comparison of Versions A and B (English translation of the Japanese stories)*

Version A	Version B
One night on the way home, Robert heard <u>a loud voice</u> from the park he was walking past.	One night on the way home, Robert heard <u>a voice shouting</u> from the park he was walking past.
There, <u>a tallish</u> man in blue was <u>hitting</u> another man.	There, <u>a huge guy</u> in blue was <u>beating up</u> another man <u>severely</u>.
But, the man kicking the other man turned to Robert and <u>held up his fists in front of his face</u>.	But, the man kicking the other man turned to Robert and <u>held a fighting pose</u>.
Fearing that he also might be in danger, Robert reflexively <u>turned himself and kicked him</u>.	Fearing that he also might be in danger, Robert reflexively <u>gave him a roundhouse-kick</u>.

Example questions

Question 3: What was the man in blue like?

Question 7: What did the man in blue do after he turned around when Robert tried to intervene?

Question 8: What did Robert do when he felt frightened?

We chose three expressions from the stories and analyzed how the participants' answers changed from the original expressions (The remaining question items in this additional experiment are to be analyzed on another occasion).

Table 5. *Focus Expressions in Versions A and B*

	Version A	Version B
Expression 1	a tallish man	a huge guy
Expression 2	held up his fists in front of his face	held a fighting pose
Expression 3	turned himself and kicked him	gave him a roundhouse-kick

The participants' answers are summarized in Tables 6 to 8.

Table 6. *Participants' reproduction of Expression 1*

	(A) a tallish man	(B) a huge guy
verbatim reproduction	73	59
expressions similar in meaning	19	39
expressions with negative connotations	13	6
sheer misunderstanding	1	1
no answer	6	1
(total)	112	106

Table 7. *Participants' reproduction of Expression 2*

	(A) held up his fists in front of his face	(B) held a fighting pose
verbatim reproduction	35	97
expressions similar in meaning	51	0
expressions with negative connotations	21	8
expressions with neutral connotations	4	1
no answer	1	0
(total)	112	106

Table 8. *Participants' reproduction of Expression 3*

	(A) turned himself and kicked him	(B) gave him a roundhouse-kick
verbatim reproduction	26	101
expressions similar in meaning	70	1
expressions with violent connotations	4	0
expressions with neutral connotations	5	1
sheer misunderstanding	4	2
no answer	3	1
(total)	112	106

Given the results shown in Tables 6 to 8, we focus on the fact that although most of the respondents obtained almost the same mental representation on the basis of the story they heard, their way of reproducing the expressions varied. Here, we observe the following tendencies. If the original utterance takes a verb, the respondents cannot make a clear construal of the event in their mind instantaneously, due to the dynamic nature of "verb"; hence, they show variation in the reproduced expressions (as in expressions similar in meaning, such as Expressions 2A and 3A; see Tables 7 and 8). On the other hand, if the original utterance takes a noun, they can make a clear construal of the event instantaneously due to the static nature of "noun"; hence, they show little variation in the reproduced expressions (as in expressions similar in meaning, such as Expressions 2B and 3B; see Tables 7 and 8). It may be concluded that the disambiguation of a verb is subject to the context in which the verb is used, causing fluctuation of hearers' memory and variance from the original wording (e.g., "held up his fists in front of his face" was altered to "thrust forth his fists in front of his face," "turned his fists in front of his face," or "tried to hit with his fists"). In contrast, a noun is unambiguous in meaning per se due to its referential nature; thus, it is easy to memorize, retain, and reproduce verbatim (e.g., "A tallish man" and "a huge guy" in Expressions 1A and 1B—in Japanese, either is considered to take the form of a noun—were altered little).

Another conclusion we can draw from these results is that a verbal expression tends to be reproduced as a nominalized one (e.g., "turned and kicked him" was altered to "gave him a kick"), and an impressive nominal expression has a high rate of reproduction (e.g., "held a fighting pose" and "gave

him a roundhouse-kick"). However, we need to examine those conclusions with further experiments and research in order to understand the cognitive structure and process of mental representations such as memorizing, retaining, recalling, and reproducing what people hear in court.

5. Conclusion

Based on the results of our experiments (pilot study, main experiment, and additional experiment), which were intended to identify the influences of lexical choices made by interpreters on the impression formation and decision making of lay judges, we reach the following conclusions.

Our first hypothesis, that mock lay judges would evaluate the defendant as less guilty and his act as more justifiable if the victim's acts were described with more violent words and the defendant's with less violent words, was not supported. No statistically significant differences were shown in terms of the mock lay judges' judgment of guilt or severity of guilt. However, our statistical analysis is based on the sum of evaluations by individual respondents, and based only on these results, we cannot necessarily conclude that the lexical choices of the interpreter would not influence the judgment by a group of people, either. The dynamics of decision making by plural interlocutors (e.g., three professional judges and six lay judges) should be explored in the next stage of our research.

Our second hypothesis, that mock lay judges would believe the defendant felt more remorse if the translation included a typical Japanese expression of apology, was supported. The expression of remorse is an important factor in Japanese trials, and therefore, how the interpreter renders the defendant's apology might be a critical factor in the impression formation of the lay judges. Additionally, verbatim translations of expressions that are unique to a certain culture may seem artificial or awkward to the audience and adversely affect their evaluation of the speaker. This demonstrates that cultural factors in court speeches are too important to overlook.

Further, our statistical analysis of the data from the main experiment suggested that the defendant's appearance influences the judgment of guilt by the lay judges. This socio-psychological phenomenon presents an interesting research topic, although it is not directly related to the issue of court interpreting.

Our experiments showed, among other findings such as verbs and nouns being reproduced in different ways in the memory of hearers, that unmarked expressions tended to change form in the hearer's process of creating mental representations (e.g., memorizing, retaining, recalling and reproducing of what they heard), while marked expressions did not change form much. This suggests that whether the court interpreter uses a marked or unmarked expression for a certain concept might have a psycho-linguistic impact on lay judges. The issue is worth exploring further through more experiments, observations, and analyses.

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(Endnotes)

[i]   The experiment was conducted on 17 December 2011, inviting 80 Japanese citizens, age ranging from 20s to 70s, each age bracket of which distributed in almost equal number. Most of them have limited command of English and limited exposure to cross-cultural situations.

[ii]   The experiment was conducted on 6 September 2009 at the annual conference of the Japan Association for Interpreting and Translation Studies. Most of the participants who served as mock lay judges had academic backgrounds and knowledge of English. Therefore, Spanish was used as the foreign language in the recordings.

[iii]   The additional experiment was conducted on several days of mid and late September 2012 in Aichi-gakuin University and Kinjo-gakuin University. A total of 218 students from both universities cooperated for this experiment.