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Table of Contents

Preface **5**

ARTICLES

1. Legal Language and Terminology

Michal KUBÁNEK, Ondřej KLABAL (Czech Republic) Plain or Archaic: The New Czech Civil Code Going against the Flow **9**

Mami Hiraike OKAWARA (Japan) Lay Understanding of Legal Terminology in the Era of the Japanese Lay Judge System **19**

2. Legal Translation

Hanna JUSZKIEWICZ (Poland) Dissolution of Marriage: Functional Approach to Polish-English Translation of Selected Court Documents **49**

Łukasz ZYGMUNT (Poland) Lexical Pitfalls in Polish-English Legal Translation: a Case Study Involving Students of English Philology in Poland **67**

3. Corpora

Juliette SCOTT (UK) Can Genre-Specific DIY Corpora, Compiled by Legal Translators Themselves, Assist Them in 'Learning the Lingo' of Legal Subgenres? **87**

4. Reviews

Marcus GALDIA *An Appraisal of Language and Law in Times of Expanding Legal Linguistics*. A review of *The Oxford Handbook of Language and Law* edited by Peter M. TIERSMA, Lawrence M. SOLAN, 2012. Oxford University Press. **101**

Karolina KACZMAREK *Precision and Vagueness in Legal Linguistics.* A review of *Vagueness in Normative Texts. Linguistic Insights 23.* Studies in Language and Communication. edited by Vijay K. BHATIA, Jan ENGBERG, Maurizio GOTTI, Dorothee HELLER, 2005. Peter Lang. **113**

Aleksandra MATULEWSKA. *New Developments in Legal Linguistics.* A review of *Legal Discourse Across Languages and Cultures*. *Linguistic Insights 117.* Studies in Language and Communication. edited by Maurizio GOTTI, Christopher WILLIAMS, 2010. Peter Lang. **115**

Permanent Advisory Board and Reviewers 2012 **117**

Spis treści

Wprowadzenie **5**

ARTYKUŁY

1. Język prawa i terminologia prawnicza

Michal KUBÁNEK, Ondřej KLABAL (Czechy) Prosty czy archaiczny: nowy czeski kodeks cywilny idzie pod prąd **9**

Mami Hiraike OKAWARA (Japonia) Rozumienie terminów prawnych przez niespecjalistów w dobie systemu opartego na sędziach niezawodowych w Japonii **19**

2. Tłumaczenie prawnicze

Hanna JUSZKIEWICZ (Polska) Funkcjonalne podejście do polsko-angielskiego przekładu wybranych pism procesowych i orzeczeń sądowych w sprawach rozwodowych oraz w sprawach o orzeczenie separacji **49**

Łukasz ZYGMUNT (Polska) Leksykalne pułapki w polsko-angielskim przekładzie prawniczym: studium przypadku obejmujące studentów filologii angielskiej **67**

3. Korpusy

Juliette SCOTT (Wielka Brytania) Czy korpusy poszczególych gatunków tekstów zebrane samodzielnie przez tłumaczy prawniczych pomagają im „uczyć się języka" podgatunków tekstów prawnych? **87**

4. Recenzje

Marcus GALDIA *Pochwała języka i rawa w czasach rozwoju legilingwistyki.* Recenzja monografii pod redakcją Petera M. TIERSMY, Lawrence'a M. SOLANA, *The Oxford Handbook of Language and Law*. 2012. Oxford University Press. **101**

Karolina KACZMAREK *Precyzja i niedookreśloność w legilingwistyce*. Recenzja monografii pod redakcją Vijay K. BHATII, Jana ENGBERGA, Maurizio GOTTIEGO, Dorothee HELLER, *Vagueness in Normative Texts. Linguistic Insights*. Studies in Language and Communication. 2005. Peter Lang. **111**

Aleksandra MATULEWSKA *Nowe trendy w legilingwistyce.* Recenzja monografii pod redakcją Maurizio GOTTIEGO, Christophera WILLIAMSA, *Legal Discourse Across Languages and Cultures*. *Linguistic Insights 117*. Studies in Language and Communication. 2010. Peter Lang. **113**

Komitet redakcyjny, doradczy i recenzenci 2012 **117**

LAY UNDERSTANDING OF LEGAL TERMINOLOGY IN THE ERA OF THE JAPANESE LAY JUDGE SYSTEM

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Abstract: This paper discusses the unintelligible nature of legal terminology from lay perspectives in the era of the lay judge system. First, I will introduce Japan's first plain language project which was set up by the lay-judge preparatory headquarters of Japan Federation of Bar Associations in preparation in 2005 for the lay judge system introduced in 2009. The project paraphrased sixty-one legal terms, which were important for lay judges but not known to lay people. I will show some rewording work, which was conducted by joint effort between legal and non-legal experts of the project. After the discussion of the rewording work I will move to a mock lay judge trial which was held by Maebashi District Courts, together with Maebashi District Public Prosecutors' Offices and Gunma Bar Association in 2006 to prepare for the lay judge system. I will focus on one unintelligible legal terminology, 'murder through willful negligence' (*mihitus no koi*) and discuss how the intent to murder was determined in a deliberation of a mock trial, using a discourse connective, 'the only thing is that…' (*tada*). The introduction of the lay judge system has therefore given a prodigious opportunity to work on plain legal language in Japan.

裁判員時代における市民の法律用語の理解についての考察

本論文は、法律専門用語のわかりにくさについて市民の観点から論じたものである。まず、2009年の裁判員制度導入にあたり日本弁護士連合会の裁判制度実施本部に2005年に設置された法廷用語日常語化プロジェクトについて紹介する。本プロジェクトでは、裁判で重要であるが市民が知らない法律用語61語の言換えを行った。本論の前半では、プロジェクトの法律家と非法律家の委員の協働の言換え作業について解説する。
次に、同じく裁判員制度導入にあたり行われた法曹三者合同模擬裁判の内で2006年の前橋地方裁判所と前橋検察庁と群馬弁護士会模擬裁判（山本純子事件）を取上げる。「未必の故意」という市民にとって理解困難な法律専門用語がどのようにして理解されていくかについて、接続詞「ただ」の使用に着目して論じる。裁判員制度の導入は、法律用語のわかりやすさ研究に大きな契機となった。

ROZUMIENIE TERMINÓW PRAWNYCH PRZEZ NIESPECJALISTÓW W DOBIE SYSTEMU OPARTEGO NA SĘDZIACH NIEZAWODOWYCH W JAPONII

Artykuł dotyczy problemu niezrozumiałości terminologii prawnej przez niespecjalistów w dobie systemu opartego na sędziach niezawodowych (ławnikach). Na wstępie autorka omawia pierwszy projekt uproszczenia japońskiego języka prawa stworzony w 2005 roku przez jednostki Japońskiej Federacji Izb Adwokackich w ramach przygotowywania systemu sądownictwa opartego na sędziach niezawodowych wprowadzonego w życie w 2009 roku. W projekcie sparafrazowano sześćdziesiąt jeden terminów prawnych, które są ważne dla sędziów niezawodowych, ale nie są zrozumiałe dla niespecjalistów. Następnie został omówiony próbny proces sądowy przeprowadzony w 2006 roku przed wprowadzeniem systemu opartego na sędziach niezawodowych w życie. Autorka koncentruje się na niezrozumiałym terminie "zabójstwo przez umyślne zaniedbanie" (*mihitus no koi*) oraz konektorze dyskursu *tada*.

Introduction

The implementation of the lay judge (*saiban-in*) system in 2009 has opened the way to plain legal language in Japanese courts. In this paper I briefly introduce Japan's first plain language project of which I served as an academic member. I then discuss how the intent to murder is determined in a deliberation of a mock trial. Lay persons seem to find it difficult to make the distinction between 'murder through willful negligence' and 'recklessness', though this distinction is the boundary between 'murder' and 'manslaughter'. This is because lay persons may lack the notion of 'murder through willful negligence'. I will show how 'murder through willful negligence' is understood through the discussion between professional judges and lay judges. I would like to emphasize that legal expert's time-consuming efforts as well as cooperative work between legal and language experts are effective for lay understanding of legal terminology.

The Lay Judge System

The Japanese lay judge system is a hybrid of the common law jury and Roman law lay judge systems. Like the Common law jury system, Japanese lay judges decide only a single case. However, unlike the jury system of common law countries, Japanese lay judges deliberate and decide the case together with professional judges. The deliberation body is composed of three professional and six lay judges. Not all cases are tried under this hybrid system. Only criminal cases of serious offences are subjected to this new system. Defendants indicted on serious offences have no option of being tried by the traditional bench trial system.

Lay judges not only render a verdict after having engaged in deliberative discussions with professional judges; they also work together to sentence a guilty defendant. It is neither prohibited nor uncommon for lay judges to discuss the case with professional judges prior to the conclusion of trial. Furthermore, the presiding judge frequently declares fifteen-minute adjournments to facilitate and ensure that lay judges have an adequate understanding of what is being presented in the trial.

Lay judges serve in trials in the first level district courts. Not only defendants but also prosecutors can appeal the decisions of lay judge trials to higher courts. Lay judges are chosen randomly by computer from the electoral roll. However, not all voters are qualified to serve as lay judges; those who have not finished compulsory education

and those who have been imprisoned are disqualified from serving, along with various people employed in the legal system or in government. Finally, people over 70 years old or students have the right to be excused from the duty. Trials are open to the public, but deliberations are held behind closed doors. Lay and court judges are not allowed to discuss their deliberations in public.

The 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. The current lay judge system was proposed as a pillar of judicial system reform in 2001. The lay judge system is expected to make court procedures more efficient and comprehensible through public participation.

Preparation for the Lay Judge System

Legal Professions took several measures for the new lay judge system. I would like to discuss two major measures: mock lay judge trials and plain courtroom language projects.

1 Mock Lay Judge Trial

To prepare for the new lay judge system, district courts, together with district public prosecutors' offices and local bar associations, held about ten mock trials in each prefecture throughout Japan using the same mock case scenarios between 2006 and 2009. The total number of mock trials held nationwide has surpassed 500.

In each of these mock trials three court judges in their own district court played the role of professional judges. Attorneys of the district public prosecutors' office took on the role of prosecutors. Lawyers of the prefectural bar association performed the role of defense attorneys. Court staff members acted as defendants and witnesses. The lay judges were recruited from ordinary citizens through connections within the legal profession in the area. In these mock trials the argumentation was very heated. Although real trials are open to the public, the mock trials are held *in camera* to avoid criticism about poor performance from those strongly opposed to the implementation of the lay judge system. Academic access to the courtroom discourse of mock trials is limited to a few researchers.

2 Plain Courtroom Language

There have been several efforts to promote the use of plain courtroom language. Public prosecutors published a guidebook (Maeda 2006). A project on Plain Courtroom Language in the Preparation for the Lay Judge system, on which I will introduce in this paper, was launched in the Japan Federation of Bar Associations (Nihon Bengoshi Rengoukai) resulting in the publication of two guidebooks (Nihon Bengoshi Rengoukai 2008a, b). An introductory book on legal language from the perspective of lay persons has also been published (Okawara 2009b). In addition, some work has been done on persuasive language in the courtroom (Okawara 2008a, b, 2009a).

The Project to Simplify Courtroom Language

In August of 2005 the Japan Federation of Bar Associations set up the lay-judge preparatory headquarters in preparation for the lay judge system. The project was characterized by collaboration between legal and non-legal experts. To reflect daily Japanese usage, the project team included language-related experts such as linguists (Seiju Sugito, Makio Tanaka and Mami Okawara), a social-psychologist (Masahiro Fujita), and broadcasters (NHK announcer Tomoo Koda and Fuji TV analyst Yukito Minowa), together with lawyers and criminologist. As legal experts regard themselves as language experts, the incorporation of non-legal experts in a Japan Federation of Bar Association project was a highly unconventional method for Japan.

1 Survey[7]

The plain language project needed to gain a clearer perception how lay people feel about legalese. 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. 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.

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.

[7] Fujita played a pivotal role in conducting the survey. See Fujita (2005).

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.

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

'Suppression of rebellion', however, is an incomprehensible phrase to Japanese lay people. In Japanese, 'suppression' indicates that someone in authority puts 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'. Therefore, Japanese lay people would conjecture that a policeman 'suppressed' the defendant's 'rebellious' conduct.

At a project meeting, non-legal experts were 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: the use of 'resistance' (*teikou*) instead of 'rebellion' (*hankou*). As 'resistance' (*teikou*) indicates 'an

attack consists of fighting back against the person who has 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' (*teikou*) 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 Result

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 indict 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 by a well-known publisher named Sanseido: one book (Nihon Bengoshi Rengokai 2008a) for lay people, *Handbook of Courtroom Language for Lay People* (*Saiban-in no tame no Houtei Yougo Handbook*), and the other (Nihon Bengoshi Rengokai 2008b) 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 made by Casio.

Murder through willful negligence (*mihitsu no koi*)

In Japan the categories of types of murder are not specified using (1st degree, 2nd degree, etc.). To clarify the several types of homicide, 'intent', 'murder and manslaughter by negligence' are stipulated in The Penal Code of Japan of 2008 (EHS Law Bulletin Series) as follows[8]:

Intent

Article 38. An act without intention of committing a crime shall not be punished. Provided that, this shall not apply when otherwise specified by law.

[8]'Death or bodily injury, etc. caused by negligence in conduct of business' is also stipulated in the Article 211 in the Penal Code. As the Article 211 is not relevant to the discussion of this paper, the Article 211 is not included in this section.

Homicide
Article 199. A person who kills another shall be punished with death or penal servitude for life or not less than five years.
Manslaughter caused by negligence
Article 210. A person who causes the death of another by negligence shall be punished with a fine of not more than five hundred thousand yen.

'Homicide' is thus differentiated from 'manslaughter by negligence' with the existence or nonexistence of 'intent'.

A difficulty in the Japanese Criminal Code is that penalty is broadly stated, and determination is left to interpretation by legal experts. When a defendant is found guilty of 'intent to kill', his or her possible penalty starts from a five-year jail sentence term to death penalty. When a defendant is found guilty of 'negligence', the penalty carries a maximum fine of 500,000 yen. For a defendant the final judgment regarding the nature of his criminal act is literally a matter of life and death.

Homicide is classified into two main categories: 'intent' (*koi*) and 'negligence' (*kashitsu*). 'Intent' (*koi*)[9] is furthermore divided into two types: 'definite intent to murder' (*kakutei-teki koi*) and 'murder through willful negligence' (*mihitsu no koi*). 'Negligence' (*kashitsu*) is then subdivided into two types: 'recklessness' (*ninshiki aru kashitu*) and 'inadvertent negligence' (*ninshiki naki kashitsu*). Legal experts use these four notions when they judge a homicide case.

The notion of 'definite intent to murder' and 'inadvertent negligence' is easily recognized. However, lay persons seem to find it difficult to make the distinction between 'murder through willful negligence' and 'recklessness', though this distinction is the boundary between 'murder' and 'manslaughter'. The distinction between 'definite intent to murder' and 'murder through willful negligence' is also difficult to determine. This is because lay persons may lack the notion of 'murder through willful negligence', which questions whether a defendant knew the results that would probably result from his actions or not. Ramseyer and Nakazato (1998, 153) succinctly explains that to be liable for murder, one need not even know about the person who dies; instead, one need only intend to kill *some*one and take actions that do kill someone, whether the person intended or someone else. If prosecutors can prove that a defendant knew 'the results' that would probably result from the actions he took and took them anyway, he is convicted of murder.

It is not sufficient to rely on accessing a defendant's mind through his confession or statement in court when determining 'intent to murder' (Kobayashi 1992, 1). Legal experts thus have worked out a conventional way of judging 'intent to murder' from the externals of a homicide rather than the internal feelings of a defendant. More concretely, they use circumstantial evidence: the region of an injury, the degree of an injury, types of a weapon, how a weapon was used (e.g. randomly stabbing or making a lunge), an action after a criminal act, and motive. The first four types of evidence

[9] 'Intent' *(koi)* does not indicate 'intent to murder'(*satsu*i). More precisely, 'intent' (*koi*) includes 'intent to injure' as well as 'intent to kill'. However, in the issue of the acknowledgment of homicide, 'intent' is conventionally used as 'intent to murder'.

relating injury or weapon are considered to be the most important in the acknowledgment of the intent to murder; the other two are used more as supplementary evidence. Kobayashi (1992, 2) emphasized the importance of the use of circumstantial evidence, in particular when acknowledging 'murder through willful negligence' (*mihitsu no koi*).

1 'Murder through Willful Negligence' (mihitsu no koi)

The term *mihitsu no koi* is a legal word coined in the Meiji era (1862–1912) when a new western legal concept was introduced. *Mihitsu* means 'not necessarily', but used in Japan except for this legal usage. However, the term is still used as an ordinary word in China (Okawara 2009a, 28). '*Koi*' (intent), however, is used in ordinary Japanese, though the legal usage of '*koi*' includes a more precise definition. Attaching an unknown term '*mihitsu*' to '*koi*' has made the new term, '*mihitsu no koi*', totally unintelligible to ordinary citizens.

At a lecture on the lay judge system offered at Masoho Culture College for citizens on 27th February 2005, I asked thirty participants to write down legal terms which I dictated (2008a, 27–30). '*Mihitsu no koi*' is one of the legal transcription test words. None of them gave a correct transcription; rather, there were several curious answers such as '*misshitsu no ko*i' (romance at a locked room) or '*misshitsu no kooi*' (a conduct at a locked room). As the participants had never heard the term '*mihitsu*', they thought my pronunciation was wrong and wrote down a different word with a similar sound '*misshitsu*' (locked room). It is needless to say that the legal concept of '*mihitsu no koi*', on its own, is quite difficult, but the term itself makes the word even more alien to lay persons.

2 Mock Lay Judge Trial

As mentioned earlier mock trials were held around the country in order for those in the legal system and the general public to understand and refine the new lay judge system. This section consists of 1) a summary one of the mock cases: 2) observations made by the investigator while observing the mock trial; 3) an introduction to the discourse particle '*tada*'; and 4) the text and comments from one of the deliberations by the professional and lay judges.

2.1 The Mistress Case

The Mistress Case is one of the mock trial cases held in all district courts in Japan. The defendant (Junko Yamamoto) met the victim (Goro Ikeda) at a bar where she was working as a barmaid. Later, she became his lover and was financially supported by Goro. Goro was a violent man with a criminal record. On the day of the crime, the two had a quarrel over their relationship. Goro was beating her violently. Junko then stabbed him in the right side of his back with a kitchen knife (the 1st stab), upon which he pulled the knife out of his back and continued to beat her. Junko grabbed the knife from Goro and in the same motion she stabbed Goro in the abdomen (the 2nd stab). Goro died.

2.2 Mock Trial

I observed a Mistress case held at a district court for three consecutive days late October of 2007. The point of the case is to highlight two issues: the intent to murder and self-defense.

The prosecution demanded 16 years' imprisonment for the accused. The court passed a six-year sentence. The court acknowledged excessive self-defense, 'murder through willful negligence' for the 1st stab, and 'definite intent to murder' for the 2nd stab.
In the trial, the prosecution used the term '*mihitsu no koi*' with restraint. Instead, they replaced a paraphrased explanation for '*mihitsu no koi*'. For example, in the opening statement, the prosecutor said, 'the defense lawyer claims that when the defendant was stabbing the victim with a kitchen knife, the defendant did not have the intention to kill the victim, to say nothing of the feeling that it is all right the victim might be dead …'.

2.3 Deliberations

In this analysis I discuss two questions involving a discourse connective *tada* ('except that…', 'the only thing is that…').

1. What kind of 'words' did professional judges try to draw out of lay judges?
2. How did lay judges try to respond to professional judges?

2.3.1 Discourse Connective

Japanese *tada* ただ('except that…', 'the only thing is that…') is a discourse connective which adds an exceptional or supplementary clause to the previous clause (Morita 1980, 265), as shown in the following:

(1) (a) Aji wa ii ga,
taste topic marker good but
味 は いい が

(b) tada shoushou ne ga haru.
the only thing a bit price subject marker cost
ただ 少々 値 が はる。

'The taste is good. The only thing is, it's a bit expensive.'

The use of *tada* marks a Proposition in which the speaker assumes that what the hearer believes is not sufficient. The speaker believes that the Proposition (a) requires a supplementary explanation or an explanatory note. After *tada*, the speaker gives a Proposition (b) as a form of supplementary comment.

Kawagoe (2003) notes that *tada* is used as a communicative strategy to be considerate of the hearer, referring to Brown & Levinson's negative politeness. Brown & Levinson (1978) developed politeness strategies to save the hearer's 'face'. 'Face' consists of two separate kinds of desires: positive face and negative face. 'Positive face' indicates the desire to be approved of by others, while 'negative face' means the desire not to be impeded by others. People usually do not want to make others uncomfortable. If one asks someone a favor, that person is put in a threatened situation because people usually do not want to reject the other's request for a favor. Brown & Levinson then proposed 'face-threatening acts' (FTA) which make the other uncomfortable by threatening the other's desires. Before one performs an FTA, he considers the best strategy possible. Thus, five strategies are proposed. The politest strategy is not to perform a FTA, which means you do not ask any favors. The second politest strategy is

'off record', which is not making an explicit request. The third one is 'negative politeness with redressive action', which expresses one's respect to the other and one's recognition of imposing on the other, using an expression like 'I do not want to bother you, …'. The fourth one is 'positive politeness with redressive action', which shows respect to the other, using 'is it all right if I do …?'. The least polite strategy is 'without redressive action, baldly', which is a very direct request. In the case of Japanese language, negative positiveness indicates one shows respect to the other, using honorifics. Thus, the use of *tada* indicates the speaker is not imposing on the hearer.

Kawagoe suggests that *tada* is used when the hearer partially opposes the speaker's statement in a polite and mitigated way, as in the following:

(2) (a) Nagao: (te ni totte mite) Shinseihin desu ka?
(picking it up and looking at it) new product copula final particle
長尾：（手にとってみて） 新製品 です
か。
Ii desu ne.
good copula final particle
'Is this a new product? It's good, isn't it?'
いい です ね。
(b) Waga: Tada, kono bunya ni kanshite,
The only thing this field about
和賀： ただ、 この 分野 に関して、
uchi wa tano kaisha ni kurabete
our company topic marker other company compare
うち は 他の 会社 に比べて
okureteru kara na,
behind because final particle
遅れてる から な、
urikomi wa kanari kitsui darou.
hard selling topic marker quite difficult copula
'The only thing is, we are behind other companies in this field.'
売り込み は かなり きつい だろう。

Kawagoe (2003:86) states that while '*tada*' agrees the other's utterance partially, it also points out a problem or a difference in the utterance given by the other. This means that a problem or a difference in Proposition (a) is noticed and Proposition (a) is revised with the notion of Proposition (b) by the use of *tada*.

In the deliberations in the mock trials professional judges frequently used *tada* when they were trying to convince lay judges of *mihitsu no koi*. As mentioned before, the notion of 'murder through willful negligence' is barely comprehensible to the mind of ordinary people because lay persons lack the concept of 'knowing the results that would probably result from the actions one took'. Therefore, lay judges did not mention the notion of 'murder through willful negligence' when professional judges expected to

hear it. In such a case, a judge would first paraphrase a lay judge's opinion ('no intent to murder') as a Proposition (a), then the judge's opinion ('murder through willful negligence'), Proposition (b) would be expressed after *tada*.

The important point is that the lay judge's Proposition (a) ('no intent to murder') is contrary to the trial judge's Proposition (b) ('murder through willful negligence'). Unlike Kawagoe's business example (2) above, trial judges are not opposing Proposition (a) partially; they are presenting a completely different Proposition (b). If the defendant's act is understood using Proposition (a), he is found guilty under Article 210 (manslaughter caused by negligence), and the penalty is 'a fine of not more than 500,000 yen'. If the defendant is found guilty with Proposition (b), he is subject to Article 199 (homicide), and the penalty is between death and a five-year jail sentence. Proposition (b) is neither a partial denial of Proposition (a) nor a supplementary comment to Proposition (a). It implies that professional judges use *tada* as a supplementary or a partial denial when they are actually opposing to an opinion of lay judges.

2.3.2 Deliberations on the 1st Stab

The following discourse is a 30 minutes discussion of the deliberation in the morning of the third day. The issue is to acknowledge *mihitus no koi* ('murder through willful negligence') on the act of the first stab. The six lay judges are Mrs. A (60s housewife), Mr. B (50s professor), Mr. C (40s government employee), Mrs. D (50s housewife), Mr. E (60s administrative scrivener) and Mr. F (20s college student). Trial judges consist of a Chief Judge (50s male), a senior associate judge (40s male) and a junior associate judge (30s male).

> **(3) Chief Judge: …When the defendant made the first stab, as I explained many times, can you say that she was aware of that because of her action the victim would die or might die? I would like to focus on the defendant's mind. What about this, Mrs. A?**
>
> その時、突き刺し行為をした時、何度か説明しているように、自分の行為で相手が、池田さんが死ぬと、あるいは死ぬかもしれないと、いうことがわかっていた、と言えるのかですね、被告人の心の中で。ここをまぁ、メインに見ていきたいんですね。ここのところはどうですかね、Ａさんどうですか。
>
> Sono toki, tsukisashita koui wo shita toki, nandoka setsumei shiteiru youni, jibu no
> its time pierced action obj-marker did time many times explain was doing as oneself of
>
> koui de aite ga, Ikeda-san ga shinuto, aruiwa shinu kamoshirenaito,
> action by the other party sub-marker Mr. Ikeda sub-marker die or die may
>
> iukoto ga wakatteita, to ieru no ka desu ne, hikokunin no kokoro no naka de. Koko
> say sub-marker understand that say of is defendant of feeling of inside here
>
> wo maa, main ni mite ikitain desu ne. Koko no tokoro wa dou desu kane, A-san dou desu ka?
> obj-marker look want is see here of topic how is it Mr. A how is it

(4) Mrs. A: I don't know what to say.
ちょっとわかんないです。
Chotto wakannain desu.
A little don't understand

(5) Chief Judge: As I mentioned a little while ago, we cannot read people's hearts. It is impossible to grasp correctly what the other person is thinking. So, as I said a little while ago, we infer from the external circumstances.
さっき言いましたように、人の心の中はわかんないってのは、本当に何考えてたのかズバリ当てましょうっていったら、無理な話なんですよね。だからさっき言ったように、外の事情から、推測していくしかないんですよね。
Sakki iimashita youni, hito no kokoro no naka wa wakannaitte no wa, hontouni
before said as person of heart of inside topic- marker don't understand of topic really

nani kangaeteta noka zubari atemashoutte ittara,murina hanashi nann desu yone. Dakara sakki
what thinking right guess say difficult story what is isn't it so before

itta youni, soto no jijou kara, suisokushite iku shika nainn desu yone.
said as outside no situation from guess only isn't it

(6) Mrs. A: The external circumstances mean the violence the defendant received or the injury she got?
そうしましたら、暴力をふるわれてましたか、どんなダメージが？
Sou shimashita ra, bouryoku wo furuwaretemashita ka, donna damage ga?
so did if violence obj-marker received what kind of sub-marker

(7) Chief Judge: In other words, it is something like this, the defendant is aware that the victim would be killed or might be killed by her stab, something like that.
つまり自分が突き刺すという行為で、相手が死ぬことがわかっている、あるいは、死ぬかもしれない事がわかっている、そういう風な
Tsumari jibun ga tsukisasu toiu koui de, aite ga shinu koto ga
after all oneself sub-marker pierce that action by the other party sub-marker die that submarker

wakatteiru, arui wa, shinu kamoshirenai koto ga wakatteiru, souiu fuuna
understand, or die may that sub-marker understand such a way

(8) Mrs. A: I don't think she was thinking at that level, 'will die' or 'may die'.
その辺までは考えてなかったと、私は思います。死ぬとかそこまでは。
Sono hen made kangaete nakatta to, watashi wa omoimasu. Shinu toka soko made wa
there about thinking not that I sub-marker think die or to that level

(9) Chief Judge: You are thinking she did not recognize 'will die' or 'may die', aren't you?
死ぬとか考えてないという感じですかね。
Shinu toka kangaete nai toiu kanji desu kane.
die or thinking not that feeling is isn't it?

(10) Mrs. A: yes.
ええ。
Ee
Yes

The Chief Judge tried to form his opinion on the definite intent or willful negligence based on circumstantial evidence in (3). Mrs. A could not answer because she was still unfamiliar with the distinction of the intent in (4). Then, the Chief Judge suggested external evidence would give some clues in (5). In (6), Mrs. A was confused about the external evidence and mistook the injury of the victim for that of the defendant. The Chief Judge returned her to the issue of the intent in (7), but Mrs. A flatly rejected the notion of intent to murder in (8). In (9) the Chief Judge repeated Mrs. A's response, the use of tag question implies his doubt about her response, but she did not change her answer in (10). The Chief Judge gave up, and then moved to another lay judge, Mr. B.

(11) Chief Judge: Mr. B, what do you think of this?
Ｂさんいかがですかね。
B-san ikaga desu kane.
Mr. B how is it see

(12) Mr. B: The defendant has been beaten for a while. So, there must be some kind of lesson or punishment, in addition to counterattack. I'm thinking she wanted to show she was taking some revenge on him.
私は前から言ってる事の繰り返しになって、真実ではないから、議論は？？とこなんですけど、色々あれしてきてこう、やられっぱなしで、反撃と合わせて何か、こういう事もやってやるんだよっていう、見せしめみたいな部分があったんじゃないかなという感じがするんですけど。
Watashi wa mae kara itteru koto no kurikaeshi ni nattte, shinjitu dewa nai kara,
I topic-marker before saying that of repeat truth is not because

giron wa … toko nan desu kedo, iroiro are shitekite kou, yarareppanashi de,
argument is but various that doing such a way kept being hit

hangeki to awasete nanika, kouiu koto mo yatteyarunda yotte iru, miseshime
counterattack put together such thing that also actively doing lesson

mitaina bubun ga attan janai kana toiu kanji ga surunndesukedo.
like part sub-marker was wasn't it that feeling sub-marker having

(13) Chief Judge: Well, you are thinking she had the will to protect herself, and moreover she had the intent to counterattack. The only thing is that (*tada*) the content of her intent to counterattack. Had she gone as far as thinking of murdering him?
まあ、身を守ろうという意志だけではなくて、攻撃の意志はあったろうと、ただその中身ですよね。殺してやるっとまで思っていたのか、、、

Maa, mi wo marou toiu ishi dake dewanakute, kougeki no ishi wa attarou to,
well self obj-marker protect intention only not attack of intention sub-marker was that

tada sono nakami desu yone. Koroshite yarutte tomade omotteita noka
the only thing its content is see kill for to the degree was thinking or

(14) Mr. B: I don't think she was thinking to that extent.
そこまではいってないと
Soko madewa itte inaito
to that extent thinking not

(15) Chief Judge: The only thing is that (*tada*), otherwise, how do you answer if you were asked whether she must have recognized he would die or might die?
ただ、そうじゃなくても、死ぬなとか、あるいは、死ぬかもしんないな、そこら辺はわかってたんじゃないかと、言われたらどうですかね。
Tada, sou janakutemo, shinu natoka, aruiwa, shinu kamoshinnnaina, sokora henwa
the only thing otherwise die must or die may there about

wakattenn janai kato, iwaretara dou desukane.
recognize isn't whether were asked how is it see

(16) Mr. B: Well, I also might do, just threatening someone, just showing a knife, that's all. I don' have any intention to kill …
ちょっとまぁ、あれなんですよね。私もなんかこう、相手に脅威をみせるっていうか、そういう意味で、ナイフを。だから、殺すっていう気は全然ないし、それから、
Chotto maa, are nan desu yone. Watashi mo nannka kou, aite ni kyoui wo miserutteiuka,
well that is it see I also well the other party threat obj-marker show

souiu imide, knife wo. Dakara, korosutte iu ki wa zenzen naishi, sorekara,
in that meaning obj-marker therefore kill feeling topic-marker not at all then

(17) Chief Justice: No intention to kill means the strong intent to kill?
殺す気がないってのは、殺してやるーっみたいのは
Korosu ki ga naitte noha, koroshite yartte mitai noha
kill intention sub-marker isn't that kill strong intent that

(18) Mr. B: Not at all.
全然ない。
Zenzen nai
not at all

(19) Chief Justice: Well, not that level. Well, how about her recognition of 'will die' or 'might die'?
じゃあ、そこまでいかないにしても、じゃあ、死ぬかなぁ、死ぬな、死んじゃうかな、それくらいはわかってたんじゃないかっていうのは、どうですか。

Jaa, soko made ikanai ni shitemo, jaa, shinu kanaa, shinu na, shinn jaukana,
well, not that level not go well die may die die will

Sorekurai wa wakattetan ja nai kattiu nowa dou desu ka
that level topic-marker recognize isn't that how is it

(20) Mr. B: I don't think she had that sort of recognition. That must be a lesson, pressing down the other party's violence. The term 'pressing down' might not be the right word, but counterattacking and teaching a lesson, something like that.
そういう意識はなかったんじゃないかと。見せしめのようなんですよね、私もなんかこうあれして、見せしめのような感じで、相手の暴力をある程度封じ込めるような、封じ込めようというのはちょっと言葉が、とにかく、私も反撃して、見せしめてってそういう部分があったのかなぁって。
Souiu ishiki wa nakattan janai ka to. Miseshime no you nann desu yone.
sort of recognition topic-marker wasn't isn't it that lesson like is it see

Watashi mo nannka kou are shite miseshime no youna kanji de, aite
I too something like this that did lesson like something the other party

no bouryoku wo aru teido fuujikomeru youna, fuujikomeyou toiunowa
of violence obj-marker some degree contain like contain like

chotto kotoba ga, tonikaku, watashi mo hangekishite, miseshimetette
a little words sub-marker anyway I too defend lesson

souiu bubun ga attano kanaatte
such parts sub-marker was wonder

Mr. B repeated his opinion that the defendant was teaching a lesson in (12), (16), and (20); on the other hand, the Chief Judge also repeated two types of intent to murder. Both were talking along parallel lines. The Chief Judge then asked a senior associate judge for help.

(21) Chief Judge: It may a bit early to ask you, but Senior Judge, what do you think of this?
ちょっと早いけど、三上さんいかがですか。
Chotto hayai kedo, Senior Judge san ikaga desu ka.
a little early but how is it

(22) Senior Judge: Well, I'm not talking about this ('the intent to murder') with confidence. I also think that was an impromptu act, it was an immediate act.
そうですね、これもあんまり自信持って、こっちだと言いきる感じでもないんですけど。咄嗟にやったことと、咄嗟という点では、そうだと思うんですけれど。
Sou desu ne, kore mo anmari jishin motte, kocchi dato iikiru kanji demo nainn desu kedo.
well this too very confidence with this is declare feeling but isn't but

Tossani yatta koto to, tossa toiu ten dewa, sou dato omounn desu keredo
immediately what did and immediate point is so is think but

(23) (Senior Judge) The only thing is that (*tada*) she stabbed him in the back, this time (1st stab). It is true that she did not stab him in the very important internal organs, but that part, that part perhaps includes kidneys or liver …I don't know, but I don't think she stabbed him, trying to avoid stabbing his internal organs. So, if she had missed it a bit, she might have thrust the knife home into the most important organ from the side of the backbone in the middle of the back.

ただ、背中、今回は特に重要な臓器まで行ってませんけど、あんな所を刺して、腎臓やらあそこだと肝臓もあるのかな、ちょっとわかりませんが、しかし、臓器にあたらないようにしようと思って刺したわけでもないから。ちょっと手元が狂えば、ほんとに背中の真ん中の背骨の脇あたりから、重要な臓器を、突き刺してしまったかもしれない位置ですよね。

Tada, senaka, konkai wa tokuni juuyou na zouki made ittemasen
the only thing back this time topic-marker not particular important internal organs up to didn't go

anna tokoro wo sashite, jinnzou yara asoko dato kanzou mo aru no kana,
such place obj-marker stub kidney or there liver too is wonder

chotto wakarimasen ga, shikashi, zouki ni ataranai youni shiyo to omotte
a little don't understand but but internal organs to not touch like try that think

sashita wake demo naikara. chotto temoto ga kurueba hontoni senaka no
stubbed not the way a little at hand sub-marker clumsy really back of

mannaka no sebone no waki kara, juuyouna zouki wo tsukisashite shimatta
middle of backbone of side from important internal organs obj-marker pierced

kamoshirenai ichi desu yone.
may position is isn't it

(24) (Senior Judge) Furthermore, if she had stabbed just like touching the back from upper part, that might have been a different story. But, I think her way of stabbing would have ended up plunging the knife into his chest … or he could have been deeply stabbed.

しかも、それを上からこうなぞるようなやり方とかそういうのであれば、また別ですけど、あのやり方だと、ブスっと刺さってしまってもしょうがない。もっと刺さる事があったかもしれない刺し方のように思うんですよ。

Shikamo, sore wo ue kara kou nazoru youna yarikata toka souiu node areba,
but, it obj-marker from this touch like way or that

mata betsu desu kedo, ano yarikata dato busutto sasatte shimattemo shouganai.
again different is but that way is zunk stubbed can't be helped

Motto sasaru koto ga atta kamoshirenai sashikata no youni omoun desu yo.
more lug that sub-marker was may how to pierce of like think is it

(25) (Senior Judge) While I've been thinking over those things, I don't think she had the intent to kill, at that point.
そういう事を考えると、殺しやろうとか、私もそこまで、思ってなかったんじゃないかと思うんですよ、この時点では。
Souiu koto wo kangaeru to, koroshite yarou toka, watashi mo sokomade, omotte nakatta
those things obj-marker thinking kill intend or I too to that extent, thinking was

njanai kato omou ndesuyo, kono jiten dewa.
isn't think this point

(26) (Senior Judge) The only thing is that (*tada*), I'm feeling 'might die', so it is 'all right to kill him in order to protect herself'.
ただ、死んじゃうかもしれないなというのは、身を守るためには構わないくらいの感じがするんですよね。
Tada, shinjau kamoshirenaina toiu noha, mi wo mamoru tame niha kamawanai
the only thing might die that oneself obj-marker protect in order to don't mind

kurai no kanji ga surunn desu yone
extent of impression sub-marker feel

Senior Associate Judge gave a long explanation. In (22) he used 'impromptu act' or 'immediate act' which lay judges used during some earlier deliberations. In other words, he started the explanation, placing himself in the lay person's shoes. However, in (23) the use of *tada* introduced the notion of willful negligence with emphasis on the region of the injury. In (24) Senior Judge reinforced his argument with his emphasis of 'death'. However, in (25) the judge expressed denial of definite intent, which is contradictory to (24). But, in (26) the judges started with the use of *tada* and indicated 'willful negligence'. The Chief Judge seemed to be satisfied with the explanation of Senior Judge. Then, he asked another lay judge the same question in confirmation.

(27) Chief Judge: Mr. C, what do you think of this?
Ｃさんいかがですか。
C-san ikaga desu ka
Mr. C how is it

(28) Mr. C: I think at her first stab she (the defendant) had not realized anything about the possibility that he (the victim) might die. Rather, her feelings were mostly occupied with her desire to stop the violence from the victim, I think.
一回目のときには、死ぬだろうなとかそういう考えが一切なかったんじゃないかなと思います。それよりも暴力をやめさせたいというのが、ほとんど支配してたんじゃないかなと。

Ikkaime no toki niha, shinu darou natoka souiu kangae ga issai
first of time die might something thinking sub-marker not at all

nakattan ja nai kana to omoimasu. Sore yori mo bouryoku wo yamesaseta
wasn't was it that think that than violence obj-marker stopped

toiunoga, hotondo shihaishiteta njanai kana to.
that almost control wasn't might

(29) Chief Judge: Well, that was an immediate attack. So, you are thinking that was a counterattack. As I said just a little, for example, about a situation of stabbing someone in a frenzy of the moment, it is true that in such a moment one cannot grasp what he is thinking.
まあ、咄嗟のことだったし。反撃という感じですかね。前にもちょろっと言いましたけど、例えば、逆上して刺しちゃう場合とかってのがあるんですよね、そういう時ってあまり詳しい事考えてないってこともありますよね。
Maa, tossa no koto data shi. Hangeki toiu kanji desu kane. Maenimo chortto
well immideate of thing was counterattack feeling is before a little

iimashita kedo tatoeba gyakujoushite sashichau baai tokatte no ga arunn desu yone,
was saying but for example frenzy stab case thst of sub-marker is isn't it

souiu tokitte amari kuwashii koto kanngaete naitte koto mo arimasu yone.
such moment much detail that thinking not that also is it

(30) (Chief Judge) The only thing is that (*tada*), even in such a case, if we follow the way courts think, from the act which appeared outside, for example, random stabbing.
ただ、その場合でも、今までの裁判所の考え方だと、外に出た行為から、例えば、メッタ刺しにしてるとかですね。
Tada, sono baai demo, imamadeno saibansho no kangaekata dato, soto ni deta,
the only thing such case even before court of way of thinking outside appeared

koui kara tatoeba, mettazashi ni shiteru toka desune.
conduct from for example jab or is it

(31) (Chief Judge) Yeah, in a frenzy of the moment, feeling a rush of blood to the head, yelling noisily, in such a case the feelings such as 'will kill' or 'may die' would disappear somewhere in the midst of a frenzy
ほんとにめちゃくちゃ血が上っちゃって、うわーとか言ってやっちゃう場合もあるわけですよね。そういう時ってのは、殺すとか、死ぬかもしれないとか、そういう気持ちってのは、どっか全部逆上の中に、消えちゃってるわけですよね。
Hontoni mechakucha chi ga agacchatte, uwattoka itte yacchau baai mo
really absolutely blood sub-marker raise oh said did case

aru wake desu yone. Souiu tokitte noha, korosu toka, shinu kamoshirenai toka,

is reason is is it such moment kill or die might or
souiu kimochitte noha, dokka zenbu gyakujou no naka ni, kiechatteru wake desu yone.
such feeling where entirely frenzy of inside disappear is it

(32) (Chief Judge) The only thing is that (*tada*), even in such a case, in a case of random stabbing, when we try to view the inside of the heart of the accused, we have so far conjectured 'may die' from external evidence.
ただ、そういう場合でも、メッタ刺しにしているとかの場合だと、そういう場合だと、心の中を考えるときには、死ぬことがわかっていたろうとか、そういう形で、外部の事情から、推定していくってことは、やってるわけですね。
Tada, souiu baai demo, mettazashi ni shite iru toka no baai dato, souiu baai dato
the only thing such case but random stabbing of case such case

kokoro no naka wo kangaeru toki niha, shinu koto ga wakatte itarou toka, souiu katachi de,
heart of inside obj-marker think when die that understood or such form

gaibu no jijou kara, suitei shite ikutte koto wa, yatteru wake desune.
outside of circumstances from g uess that topic-marker did didn't it

(33) (Chief Judge) So, I personally don't think an immediate act does not include 'may die'.
だから、単純に咄嗟の事だから、ないという事にはならないかなぁとは個人的には思うんですけど。
Dakara, tanjun ni tossa no koto dakara, nai toiu koto niwa naranai kanaa to wa
so simply immediate act because not that is it

kojinteki niha omounndesu kedo
personally think but

(34) (Chief Judge) The only thing is that (*tada*), in a chain of events, because of the immediate act the defendant was simply thinking of an immediate counteract, or, as Mr. B mentioned, she might be thinking of threatening him. I don't think it isn't impossible to think that way, though.
ただ、まさにこの一連の流れの中で、咄嗟の反撃行為だから、頭の中はとにかく反撃と。あるいはせいぜい、Ｂさんの指摘があったように、ちょっとなめんなよみたいな、気持ちぐらいまではあったかもしれないけど。死ぬなとか、そういう風なことはなかったんじゃないかという見方も、それはできない事はないと思うんですけど。
Tada, masani kono ichiren no nagare no nakade, tossano hangeki koui dakara,
the only thing really this chain of events immediate counteract because

Atama no naka wa tonikaku hangeki to. Aruiwa seizei, B-san no shiteki ga atta youni,
head of inside topic-marker simply counteract or at best Mr. B of pointed out as
Chotto namen nayo mitaina, kimochi gurai madewa atta kamoshirenai kedo.
a little not monkey like feeling about to that level was might but

Shinuna toka, souiu fuuna koto wa nakatta njanaika toiu mikata mo,
might die or like way that topic-marker wasn't that and so perspective also

Sorewa dekinai kotowa nai to omounn desu kedo.
that cannot do that not that think isn't it but

(35) (Chief Judge) The only thing is that (*tada*), as Senior Judge mentioned, the position of the stab, how she stabbed him, that was not a straight way, she did this, she did that, those kinds of things …
ただ、そこら辺はさっき、ちょっと右陪席裁判官も言ってましたけど、刺した位置とか、対応ですよね、ぱっと取って、くっとやったとかじゃなくて、こうやって、こうやってるところとか、そういったところですね。
Tada, sokora hen wa sakki, chotto migi baiseki saibankan mo itte mashita kedo,
the only thing all over topic-marker before a little right associate judge also saying was but

sashita ichi toka, taiou desu yone, patto totte, kutto yatta toka janakute,
stubbed position or, handling is isn't it immediately took this way did or isn't

kouyatte, kou yatteru tokoro toka, sou itta tokoro desu ne
this way this was doing while or things like that isn't it

Mr. C could not recognize any specific kinds of 'intent' in (28) in spite of repeated explanations from the judges. In (29) the Chief Judge repeated and paraphrased the lay person's views of 'no intent'. However, in (30) the Chief Judge started to talk about the court's conventional way of recognizing 'intent' by the use of *tada*. But, he changed his approach in (31) probably because he was trying to be careful not to persuade lay judges to his way of thinking. In (32) by the use of *tada* he returned and reiterated the court's way, using 'we', which does not include lay persons. In (33) he mentioned his personal view in line with the court view, in a mitigated way by using double negatives. In (34) by the use of *tada* he repeated the lay view citing a previous comment of Mr. B, again using double negatives. But, in (35), he again started with *tada*, and he presented the traditional court view, citing the comment of the Senior Judge. The Chief Judge was careful about not giving plain and straightforward persuasion, but with repetition he was hoping that the lay judge would understand the court's way of judging. As he realized that was not an easy task, he changed his approach and started with a less controversial question.

(36) Chief Judge: Let me see, the defendant said she had not recognized where she was stabbing … that it was his back. What do you think of her utterance?
あと、背中である事がわからなかったと、被告人が言ってるんですけど、ここら辺はどうですか、認識として
Ato, senaka dearu koto ga wakaranakatta to hikokunin ga itterunn desu kedo,
maybe back is fact sub-marker didn't understand that defendant sub-marker was saying but
kokora hen wa dou desuka, ninshiki toshite
here about topic-marker how is it recognition as

(37) Mrs. A: I cannot believe her.
それはないんじゃないですか。
Sore wa nain janai desuka
that topic-marker isn't is it?

(38) Chief Judge: It is only natural that you cannot believe her.
流石にそれはないんですかね。
Sasugani sore wa nain desu kane
as it to be expected that topic-marker isn't is it?

(39) Mrs. D: Since part of his shirt was ripped in the back, she probably thought that was a good timing.
シャツが捲れて背中が目に入ったから、ちょうどいいなと思ったんじゃないですか、きっと。。
Shirt ga makurete senaka ga me ni haitta kara, choudo ii na to omottan
shirt sub-marker ride up back sub-marker eyes to enter because just good that thought

ja nai desuka, kitto
isn't is it? certainly

(40) Senior Judge: I remember her saying that.
被告人はそんな風なことを言ってましたよね。
Hikokunin wa sonnna fuuna koto wo itte mashita yone.
defendant topic-marker as much things obj-marker was saying wasn't it?

(41) Chief Judge: Whether she really thought that or not is disputable, though. It is only natural you don't believe her utterance. We would like to see her heart to determine the credibility of her utterance. What do you think of this, Mr. E?
ちょうどいいなと思うかどうかってのは、議論の余地があるかと思うんですが。わからなかったっていうのは、流石にこれはないんですかね。という事も踏まえて考えるということになると思うんですが。Eさんいかがですか。
Choudo iina to omou ka doukatte nowa, giron no yochi ga aru ka to omou n desu ga.
good time that think or whether dispute of open sub-marker or that think but

Wakaranakatta tte iu nowa, sasugani kore wa nain desu kane.
didn't understand by this as might be expected this topic-marker isn't is it?

Toiu koto mo fumaete kangaeru toiu koto ni naru to omou n dusu ga.
that also take think that have become that think but
E-san ikaga desu ka.
Mr. E how is it?

The Chief Judge was successful in starting with an undisputable question and has confirmed a common ground with one lay judge. He then returned to the intent issue, calling on another judge, Mr. E.

(42) **Mr. E: Well, she perceived neither 'will kill' nor 'may die' at this point.**
そうですね、殺す気はなくて、死んじゃうかなってのも、この段階ではなかったんじゃないかと。そこまで考えてなかった。
Sou desu ne, korosu ki wa nakute, shinjau kanatte nomo, kono dankai dewa
I see kill intention topic-marker isn't there die may either this stage at

nakattan janai ka to. Soko made kangaete nakatta.
wasn't or that that extent to thinking wasn't ?

(43) **Chief Judge: You are saying she did not have that kind of perception. How about Mrs. D?**
そういう認識はなかったということですか。Ｄさんはどうですか。
Souiu ninshiki wa nakatta toiu koto desuka.
that kind of perception topic-marker wasn't there that is it

D-san wa dou desuka?
Mrs. D topic-marker how is it?

Contrary to the expectation of the Chief Judge, Mr. E did not recognize any 'intent', either. He called back again Mrs. D, hoping to extract 'intent' from her answer.

(44) Mrs. D: I don't think she had the intent to kill. She was just in despair. Both were quarreling over a divorce. She was almost in despair. She might not be thinking that he would die. She might be thinking that if his violence would continue, she would end up the relationship. If you take up a kitchen knife in the quarrel, you won't get away with it. So, as the defendant said, she just wanted to finish his violence. So, her intent is to stop the violence.
殺す気はないでしょうと、かなり自棄になってたと思うんですね、別れる気で二人は？？？わけですから、半分自棄になってて、かなり、死ぬまでは思わないかもしれませんが、暴力が続くならば、これで終わりにしようという気持ちがあったんではないか、包丁で突き立てたら、何かその後は、ただでは済みませんよね。ですから、被告も言ってますが、これ以上殴る蹴るをやめてほしかった。だからそういう意志を持って、？？？？
Korosu ki wa nai deshou to, kanari jiki ni natteta to omoundesu ne.
kill intent topic-marker not that, just despair become that think see

wakareru ki de futari wa, hanbun jiki ni natete, kanari
end up intent two people topic-marker half despair become, rather

shinu madewa omowanai kamoshiremasen ga, bouryoku ga tsuzuku naraba,
die till not think may but violence sub-marker continue if
korede owarini shiyou toiu kimochi ga attan dewa naika, houchou de
this end will that feeling sub-marker wasn't knife by

tsukitatetara, nanika sonogo wa, tadadewa sumimasen yone. Desukara, hikoku mo
stick if some after that topic-marker not get away with isn't it? so, defendant also

ittemasu ga, kore ijou naguru keru wo yamete hoshikatta. Dakara, souiu ishi wo motte,
said but this above beat kick obj-marker stop wanted so such intent with

(45) Chief Judge: Mr. B said she had the intent of a counterattack and the intent to threaten him. And Mrs. D said she had the intent to end the relationship because by taking up a knife, they cannot continue the relationship any more.
Ｂさんはさっき、反撃ったのもあったけど、畜生なめんなよと言って、攻撃を加えるぞみたいな意志もあったと。今のＤさんのご意見だと、終わりにするっていうような意志もあったから、包丁で刺せば、関係が今後も続くとは考えにくいわけで。
B-san wa sakki, hangekitta nomo atta kedo, chikushou namen nayo to itte,
Mr. B topic-marker just now, counterattack but, damn it don't monkey that saying

kougeki wo kuwaeru zo mitaina ishi mo atta to. Imano D-san no goiken dato,
attack obj-marker give like intent also was that earlier Mr. D of opinion

owari ni surutte iu youna ishi mo attakara, houchou wo saseba,
end that like intent also was knife obj-marker stub

kankei ga kongo mo tuzuku towa kangae nikui wake de.
relations sub-marker from now on also continue that think difficult reason

(46) (Chief Judge) This means, it may be too harsh, but she had <u>the intent of that kind</u>.
そういった意志で、攻撃っていうと、ちょっとどぎついかもしれませんけど、そういう意志もあったんだろうと。
Souiu ishi de, kougeki tteiuto, chotto dogitui kamoshiremasen kedo,
such intent by attack that, a little hard may but

souiu ishi mo attan darou to.
Such intent also was likely that

(47) (Chief Judge) The only thing is that (*tada*), it does not mean the intent of death, that's how you are thinking.
ただ、それは死というところまでいってないんじゃないだろうかと、死という認識まではいってないんじゃないだろうかと。
Tada, sore wa shi toiu tokoro made itte nain janai darouka to, shi toiu
the only thing it topic-marker death that till saying not wasn't that death that

ninshiki made wa itte nain janai darou ka to.
recognition until topic-marker saying not wasn't probably that
(48) Mrs. D: The only thing is that (*tada*), <u>she was aware that he would be badly wounded</u>.
ただ、相当な怪我をすることは、わかってたと思うんですね。
Tada, soutouna kega wo suru koto wa, wakatteta to omoun desune.
the only thing badly injury obj-marker that topic-marker, understood that think see

(49) Chief Judge: She had the intent of that level, all right. Mr. F, what do you think of this?
そこまではいってたろうと、いう感じですね。Ｆさん、いかがですか。
Soko made wa ittetarou toiu kanji desune. F-san, ikaga desu ka.
that level topic-market intent that feel all right Mr. F, how is it?

In (45) the Chief Judge repeated the opinions of Mr. B and Mr. D. After that, the judge introduced the intent of 'injury', not the intent of 'death'. As Mrs. D thought the intent of 'injury' was related to the defendant's feeling to stop the violence of to end the relationship, she recognized the defendant's intent to injure. Mrs. D's comment (48) is certainly a turning point on the intent issue in the deliberations. It is interesting to note that Mrs. D also used *tada* when she met the Chief Judge halfway. The Chief Judge tried to obtain 'the intent' from another lay judge.

(50) Mr. F: Regarding the opinion on the intent to end the relationship, I don't agree with it. That was a simple, as Mr. B mentioned, an immediate action. But it is something caused by a reflex action.
その関係を終わらせようとした、そういう意志があったんじゃないかという意見があったんですけど、僕はそれはないと思います。それは単純に、Ｂさんと同じような、咄嗟と言いきれないですけど、反射的な、防衛の意志から出るという。
Sono kankei wo owaraseyou toshita, souiu ishi ga attan janaika toiu iken
that relationship obj-marker end that such intent sub-marker were not that opinion

ga attann desu kedo, boku wa sore wa nai to omoimasu. Sore wa tanjunni,
sub-marker were but I topic-marker that topic-marker not that think it is simply

B-san to onaji youna, tossa to iikirenai desu kedo, hanshatekina, bouei no ishi kara deru toiu
Mr. B same as like immediately difficult to say but reflex defense intent from that

(51) Chief Judge: A reflex action means a counterattack?
反射的に、反撃みたいな感じで。
Hanshatekini, hangeki mitaina kanji de.
reflex counterattack like isn't it?

(52) Mr. F: That's right. Something caused by a reflex action, counterattack, self-defense. But, by looking at her action of stabbing him with a kitchen knife, I have a feeling that she must have some kind of 'intent'.
そうですね、反射的な、防衛の意志から出るという。でも、ただし、包丁で刺すという行為をみると、それには何らかの意図があったんじゃないかなという風には思いますね。
Sou desu ne, hanshatekina, bouei no ishi kara deru toiu. Demo, tadashi,
that's right, reflex action defense of intent from caused that but in this regard

houchou de sasu toiu koui wo miruto, sore niwa nanrakano ito ga attan
knife by stub that action obj-marker look that something intent sub-marker was

janai kana toiu fuu niwa omoimasu ne.
isn't that way think see

The intent to cause injury was again confirmed in (52). After a few exchanges between Mr. F and the Chief Judge, which were deleted in this paper due to space, the Chief Judge talked about 'intent' again in (53).

(53) Chief Judge: The only thing is that (*tada*), I asked Mrs. D's opinion about this, but you are thinking she did not have the intent of death, are you? … not the level of his death?
ただ、さっき私、Ｄさんにも確認しましたけど、死というところまでは言ってないという感じですかね。相手の死というところまで
Tada, sakki watashi, D-san nimo kakunin shimashita kedo, shi toiu tokoro made wa
the only thing just before I Mrs. D to confirmed but death that until topic-marker

ittenai toiu kanji desu kane. Aite no shi toiu tokoro made.
not saying that feel isn't it? the other party of death that until

(54) Mr. F: If she had had that intent, she would have stabbed him in a different place. It was just like random stabbing.
殺すつもりだったら、もっと違う所を刺したんじゃないかな、それこそ、メッタ刺しとか。
Korosu tsumori dattara, motto chigau tokoro wo sashita njanai kana,
kill intent was more different obj-marker stubbed isn't it?

Sorekoso, metta zashi toka.
exactly stub mercilessly or

(55) Chief Judge: The only thing is that (*tada*), you are talking about a more definite intent to kill. Not that level of the intent, something like a feeling that he may die if she does such … how about this intent?
ただ、それは、まさに積極的にぶち殺してやろうと思っている場合ですよね。そこまで行かなくても、これじゃ死んじゃうかもみたいな感じぐらいの所ってのはどうですかね。
Tada, sore wa, masani sekkyokutekini buchikoroshite yarou to omotteiru baai
the only thing it topic-marker exactly positively definite intent to kill that thinking case

desu yone. Sokomade ikanakutemo, koreja shinjau kamo mitaina kanji gurai
isn't it? until that level this die may like feeling somehow
no tokorotte nowa dou desu kane.
of some how is it

(56) Mr. F: Well, I do not think she had the presence of mind, after all.
いや、そういう風に考える余裕がなかったんじゃないかなと思います、やっぱ。
Iya, souiu fuuni kangaeru yoyuu ga nakatta njanai kana to omoimasu. Yappa.
No, like that way think latitude sub-marker wasn't there that think all in all

(57) Chief Judge: From the circumstance, you think that way?
その状況からして
Sono joukyou kara shite
the circumstance from

(58) Mr. F: Yes.
はい。
Hai.
Yes.

(59) Chief Judge: Junior Judge, Junior Judge …
左陪席さん、左陪席裁判官。
Junior Judge-san, Junior Judge-san.
Mr. Junior Judge, Mr. Junior Judge.

The Chief Judge tried to extract the perception of the intent to murder based on the issue of the intent to injury, but it ended unsuccessfully. None of the lay judges recognized 'willful negligence'. He asked the Junior Judge for help. After a seven minutes' long explanation by trial judges, lay judges began to understand the notion of 'willful negligence'.

(60) Mr. B: Well, that's a gap between professional judges and ordinary citizens. Your way of asking is whether the defendant had a will to kill or not
その辺がやっぱり、裁判官の先生方と、私たち法律の素人とのギャップだと思うんです。裁判長が、聞いていらっしゃる事っていうのは、被告人に殺す気があったかどうかっていう訊き方だと思うんですね。
Sono hen ga yappari, saibankan no senseigata to, watashitachi houritsu no shirouto tono
that around sub-marker surely judges and we legal of amateurs of

gyappu da to omoun desu. Saibanchou ga kiite irassharu koto tteiunoha hikokunin ni
gap that think chief judge sub-marker ask that defendant to

korosu ki ga attaka douka tteiu kikikata da to omoun desu ne.
kill intent sub-marker was whether that how to ask that think see

(61) Chief Judge: Not a will to kill, but the intent to kill. Because I feel that a will to kill means a definite intent to kill, it is the intent to kill.
殺す気っていうか、殺意ですね。殺す気っていうと、殺す気満々ぶち殺す、みたいな感じで、
Korosuki tteiuka satsui desu ne. Korosuki tteiuto korosuki manman buchikorosu mitaina kanji
will to kill that intent to kill see will to kill that intent to kill full of definite intent to kill like feeling
(62) Mr. B: Well, you are asking whether she had the intent to kill, but the intent to

kill includes what Senior Judge stated, but we are simply looking at only how she was feeling.

殺意があったかどうかってのを聞いてると思うんですけれども。それの、殺意があったかどうかの中に、右陪席裁判官が仰られたような事が入ってると思うんですよね。ところが、私たちの方は、単純に気持ちだけをみている。

Satui ga attaka doukatte nowo kiiteru to omoun desu keredomo. Soreno satsui
intent to kill sub-marker was whether asking that think but that intent to kill

ga attaka douka no nakani migibaisekisaibankan ga osshararreta youna koto
sub-marker was whether of inside junior judge sub-marker said like things

ga haitteru to omoun desu yone. Tokoroga, watashitachi no hou wa, tanjunni ni
sub-marker mean that think don't I however our side topic-marker simply

kimochi dake wo miteiru.
feeling only obj-marker looking

Mr. B is getting the point of 'willful negligence' in (60). The Chief Judge gave a more precise definition of the intent. In (62) Mr. B clarified the different approaches between lay and professionals. After some supplementary explanation from the Chief Judge, Mrs. D also recognized the defendant's intent to kill. Her reasoning was that a gambler-mistress of an ex-convict is so different from herself that Mrs. D could assume that that kind of woman could have had an intent which ordinary people would not have. After that, Mr. B expressed his opinion as in (63).

(63) Mr. B: If I can round off the discussion, my personal view is my perception of her heart and in such a narrow sense she did not have the intent to murder. But in a more broad sense including legal interpretation, I think I can perceive the intent to murder.

今の話をまとめると、私個人的な考えとして、心の中の認識として、被告人が持っている、認識という、狭い意味での殺意がなかったけれども、法律上の解釈を含めた、広い意味での殺意ってのは出てる、あったんじゃないかなぁと。

Ima no hanashi wo matomeruto watashi kojintekina kangae toshite kokoro no naka no
last remark obj-marker sum up I personal opinion as heart inside of

ninshiki toshite hikokunin ga motteiru ninshiki toiu semai imi deno satsui
perception as defendant sub-marker have perception that narrow meaning intent to kill

ga nakatta keredomo houritsujou no kaishaku wo fukumeta hiroi imi deno
sub-marker wasn't but legal interpretation obj-marker include broad meaning

satsui tte no wa deteru attan janai kanaa to.
intent to kill that appear wasn't was it?

This is how 'willful negligence' regarding the first stab finally came to be shared with professional and lay judges.

Now let me return to the two questions posed in the beginning of this section. The answer for the first question is that professional judges wanted to extract the word, 'the intent that the victim might die' form lay judges. As lay judges lacked the notion of 'willful negligence', they could not differentiate between 'definite intent' and 'willful negligence'. As they could not perceive the definite intent in the first stab, they could not see any other kinds of 'intent'. Therefore, they replied 'no intent'. The Chief Judge reiterated lay response of 'no intent' and then carefully provided the conventional notion of 'intent that he might die', using *tada*. As mentioned before, *tada* is used when one adds supplementary information or partially opposes to what the other said. Although the Chief Judge was completely opposing to what lay judges said, he presented his opinion as if he were only partially opposing to the lays' perception. His use of the communicative strategy was so successful that lay people were not hesitant to express their different opinions continuously. Lay judges did not understand 'willful negligence' in their own sense, but to respond to professional judges, lay judges differentiated between their notion of 'intent' and the legal notion of 'intent'. They agreed to use the legal notion in the deliberations.

Because heinous criminal cases are deliberated under the lay judge system, lay judges are often involved in hearing murder cases. When a defendant admits to "intent to murder" (definite intent), the deliberation is on the assessment of culpability. However, when the defendant claims "no intent" (negligence) to a murder charge, lay and professional judges need to decide whether the defendant had the required intent at the time of enacting the crime or not. The courts' conventional way of judging intent is based on external circumstances; in contrast, it appears that lay persons may focus more on the defendant's motives to understand the story of the crime. Thus, as lay persons lack the notion of "willful negligence," opinions of the panel of judges very well might be divided.

Conclusion

Legal terminology is unintelligible to lay people though people's life is prescribed by laws. The introduction of the lay judge system therefore has given a prodigious opportunity to work on plain legal language in Japan. The diversity of the Japan Federation of Bar Associations' project was effective in reflecting lay understanding legal terminology.

To have a fruitful deliberation in a lay judge trial, professional judges have to learn how to explain to lay judges important legal distinctions, without placing too much pressure on them to simply agree with the professionals. Lay judges also have to learn how to express their opinions and participate in a meaningful way.

Three years have passed since the lay judge system was implemented. As the new system has not caused any major problems up until now, the feeling of tension in lay understanding has been decreasing among legal experts. On the other hand, more and more lay people with the experience of serving as a lay judge have expressed the feeling that trials are difficult to follow, according to a survey conducted by the Japanese Supreme Court. Legal experts need to go back to the principle of the lay judge system and work with language experts.

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