Exploring the possibility of using Plain English in interpreter-mediated criminal trials in Japan: Focus on non-native speakers of English

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English is one of the most important languages in interpreter-mediated criminal trials in Japan involving defendants, victims or witnesses not sufficiently fluent in Japanese. However, a significant number of subjects requiring Japanese-English interpreting and translation services, come from a variety of cultural, linguistic, or educational backgrounds and do not use English as their first language, and potentially, may not be sufficiently fluent in this language.

Despite the fact that this issue can have serious implications for the due process and the subjects' rights, it has been given little attention to date. Therefore, in this paper I will explore whether using Plain English could be helpful in addressing the issue of insufficient communication between actors in the interpreter-mediated criminal process, in order to consider whether: 1) Plain English can elevate the defendant's understanding, and 2) if and how the use of Plain English may impact on the accuracy of the legal message of the source text in Japanese.

Keywords: court interpreting, Japan, Plain English, non-native speakers, readability

1. Introduction

As in most democratic societies, in Japan too, suspects and defendants not sufficiently proficient in the language of legal proceedings (i.e. Japanese) have the

right to interpreting and translation services. This right is fully respected and it would be a virtually impossible task to find a case of a non-Japanese speaker processed without the mediation of an interpreter (however, as reported by Tsuda (2002), this has not always been so). In fact, even those who are (somewhat or even highly) proficient in Japanese and have a long history of residency in the country, are usually provided with interpreting and translation services, if they are not Japanese citizens or if Japan is not their country of origin or upbringing.

The right to interpreting and translation services is also guaranteed by the United Nations' *International Covenant on Civil and Political Rights* (ICCPR), to which Japan is a signatory. It specifies that those who do not speak the language of the host country should be "informed promptly and in detail *in a language which he understands* of the nature and cause of the charge against him" (Article 14, section 3 (a); emphasis added) and "have the free assistance of an interpreter if he cannot understand or speak the language used in court" (Article 14, section 3 (f)). The key issue with legal interpreting and translation in Japan, therefore, lies not with whether or not interpreting and translation services are provided, but rather *in which language* they are, and should be, provided.

The emphasized wording of ICCPR section 3 (a) quoted above reflects the main question addressed in this paper. The document does not specify or even recommend that the language of interpreting should be the suspect's or the defendant's first (native) language (defining which, in itself, can prove a problematic task). Therefore, it is not clear what constitutes "understanding" of a language and to what extent subjects of criminal proceedings need to be proficient in the language of interpreting. This raises the following questions: What determines if one "understands" the language of interpreting sufficiently to undergo criminal proceedings mediated through this language? How should cases, in which qualified interpreters in the suspect's or the defendant's native language are not available, be dealt with? Are there any measures that can or should be undertaken to ensure the subject's comprehension of the process?

This paper focuses on the issue of defendants in criminal trials in Japan who suffer from what can be referred to as a "double handicap," by which I mean that 1) they do not possess a sufficient command of the language of the court

proceedings (i.e. Japanese), which in itself puts them at a disadvantage (Gibbons, 2003); and 2) that the language of interpreting (in the case of this paper - English) is not their native tongue and not necessarily their strongest suit.

Anecdotal evidence demonstrates that interpreters often work with defendants of various linguistic backgrounds. This is corroborated by interviews with interpreters I conducted between February and July 2016. According to the data gathered, the total number of nationalities of the defendants the interviewees worked with reached thirty-five (including those of countries where English is the main language as well as those where it is not), including many defendants from African countries (e.g. Uganda, Nigeria, Kenya, Ghana) but also Europeans (e.g. Estonia, the Netherlands) and Asians (e.g. India, Pakistan, Singapore, Nepal) (Marszalenko, 2017: 162-164).

I will argue that, at least in some cases whereby defendants do not have a (sufficiently) high command of English, certain measures must be taken to ensure due process and that provision of interpreting services ought not merely be a formality implemented to satisfy legal requirements and international commitments. I will focus on one of such measures, the use of Plain English, and its potential in making the English-mediated courtroom discourse more accessible to defendants. Although such an approach is not widely accepted in Japan, where interpreters are still usually expected by legal practitioners to perform "literal translation," I will argue that, even though not the perfect solution, it can be the first step in the right direction in addressing the issue of insufficient English proficiency in interpreter-mediated criminal court proceedings in Japan. The argument will be put forward based on the (scarce) available data and my research conducted with the participation of registered[1] court interpreters in Japan working with English.

2. English in interpreter-mediated criminal process in Japan

1) There is no accreditation or certification system for legal interpreters and translators in Japan, but those who serve in the profession are registered directly by courts (i.e. without involvement of intermediary agencies) after a test and/or an interview followed by training sessions.

One of the largest impediments to conducting research into legal interpreting in Japan is that little data is available to scholars. Video- or audio-recording of court proceedings by the general public (which includes researchers) is not permitted, and obtaining court records for research purposes is very difficult. Furthermore, as Japan lacks an accreditation or certification system for legal interpreters, lists of those serving as interpreters are not publicly available and if one wishes to interview interpreters, they need to know someone in the profession to gain access to their insights and experiences.

Moreover, similar limitations in data availability can be seen in information on the subjects of interpreter-mediated legal proceedings. Various legal institutions collect their own statistics but not all of them are available to the general public and those that are available are often difficult to compare as they focus on different aspects of the penal process. As noticeable exceptions to this data scarcity, one should mention the information on the languages used in interpreter-mediated criminal trials published by various agencies operating under auspices of the Supreme Court of Japan.

One such publication is *Gozonji desuka. Hōtei tsūyaku. (Do you know about court interpreting?)*, a brochure published by the Supreme Court. According to the latest edition of this publication, in 2018 there were 3,757 defendants in first instance criminal trials who required an interpreter's assistance (Supreme Court of Japan, 2020: 4). In almost one third of these cases (32.0%), the language used was "Chinese" (the brochure does not specify whether this was Mandarin Chinese, but it is probably safe to assume that the majority of these cases were indeed mediated by Mandarin-speaking interpreters. On the other hand, some cases of Cantonese or other languages/dialects of China are likely to have been included in this number as well). This is followed by Vietnamese (26.7%), Tagalog (6.8%), Portuguese (5.7%), English (5.6%), and more than twenty other languages. Although there are some fluctuations in the usage ratio of each language, usually interpreting services in the same languages are provided every year. English is one of these languages and even though its usage ratio is far lower than that of Chinese, it is consistently included in the top ten languages used in interpreter-mediated criminal court

proceedings.

The role of English is even more prominent in the *saiban'in* (or *lay judge*) trials, wherein adult Japanese citizens participate in criminal proceedings alongside professional judges[2]. This type of trials deals with crimes of graver nature, such as homicide, rape, assaults leading to bodily injuries, or illicit drug trafficking. The *Saiban'in* System was implemented in May 2009, and in early 2020 data on languages used in these proceedings are available for the May 2009-December 2018 period. The total number of interpreter-mediated *saiban'in* trials amounted to 1,136 (Supreme Court of Japan, 2010-2019). Chinese was used in 259, whereas English in 237 cases. However, data in this publication specify what languages/dialects constitute the "Chinese" category – Mandarin: 206, Cantonese: 42, Taiwanese: 8, Shanghaiese: 2, and Southern Min: 1 (ibid.). This means that the Chinese languages/dialects considered collectively were used in c. 22.8% (259 out of 1,136), and English in c. 20.8% (237 out of 1,136) of all interpreter-mediated *saiban'in* trials in the said time frame. However, if we consider the languages/dialects under the "Chinese" umbrella separately, the most commonly used of them – Mandarin – accounts for c. 18.1% (206 out of 1,136), which makes English the most frequently used language of interpreting in *saiban'in* trials (c.20.8%).

It is difficult to explain the high usage ratio of English in the *saiban'in* trials compared to its general usage. However, as I argue elsewhere (Marszalenko, 2017), we can at least surmise about some factors contributing to this state of affairs. As mentioned above, one of the crimes tried in *saiban'in* cases is drug smuggling, especially of illicit substances referred to as *kakuseizai* in Japanese (I will discuss this term in detail in Section 6). This crime accounts for a vast majority (e.g., 82 out of 135 cases in 2018) of *saiban'in* trials against non-Japanese speaking defendants (Supreme Court of Japan, 2019: 88). Indeed, interpreters working in English-mediated *saiban'in* trials report that most of these cases involve illicit drug trafficking.

Finding qualified court interpreters who could work between Japanese and

2) The Saiban'in (Lay Judge) System can be compared to jury systems in other countries (such as the USA or various European jurisdictions). However, there are certain aspects (pertaining to the composition of the judicial panel or the decision-making process, among others) to it that make it significantly distinct from its overseas counterparts.

languages such as, for example, Hausa, Yoruba or Luganda, would be virtually impossible and so, English is used as the next best solution. This, consequently, leads to a situation, whereby some defendants (e.g. those from China, Vietnam or the Philippines) usually have interpreting services in their first language (as interpreters in languages spoken in these countries are usually more easily available in Japan perhaps thanks to large populations of citizens coming to Japan from these countries), whereas others, for example those coming from Nigeria or Uganda, need to rely on their proficiency in their second (or perhaps third) language, English.

Needless to say, nationality is not the only or, in some cases, even the most significant factor determining one's linguistic proficiency. One must bear in mind, too, that not speaking English as one's first language does not equal being insufficiently proficient in it. One can imagine that in some cases non-native speakers are more proficient in English than some of their native-speaking counterparts, due to a plethora of idiosyncratic circumstances such as the environment of one's upbringing, or their educational or professional background. Having said that, it must be acknowledged that at least some defendants with English interpreting services provided to them, do indeed struggle with comprehension and command of this language. This category of defendants is whom I will focus on in the following sections of this paper.

3. Prominent role of documents in court proceedings in Japan

Before we go into specifics of this study, some commentary on criminal court proceedings in Japan is in order. Even though with the implementation of the *Saiban'in* System and, as a consequence, participation of the lay public in some criminal trials, the courtroom discourse is generally believed to have become more accessible to the general public not versed in the legal system, court proceedings still rely heavily on presentation of various legal documents during the trial. Such documents are used in all (not only *saiban'in*) criminal trials and they include: the indictment act, opening statements by the public prosecutor and the defense counsel

(the latter being usually presented only in case of lay judge trials), summary of evidence exhibits, closing arguments (by both the prosecutor and the defense counsel), and the judgment text discussing the court's ruling and its justification.

With the exception of the indictment act and the judgment text, documents in interpreter-mediated criminal trials are usually presented through the wireless system, whereby the defendant listens to the translated version of the document while a lawyer (the public prosecutor or the defense counsel) reads out the Japanese original. This is referred to as "simultaneously progressing interpreting" (*dōji shinkō tsūyaku* in Japanese), even though interpreting is actually rarely performed – the translation has usually been produced in advance (before the hearing) and the target text is simply *read out* during the trial *simultaneously* to the source text.

This method has numerous advantages over actual simultaneous interpretation or sight translation, some of which include saving time and the fact that interpreters (usually) receive the Japanese originals in advance, giving them time to familiarize themselves with the contents, and to produce a coherent and accurate target text of high quality.

However, the same method can put the defendant at a disadvantage. Firstly, one should notice that the documents, after the party in question has read them out, are presented in paper to the court as well as the other party. This means that after the hearing or during recess or deliberations, judges (professional and lay) and opposing attorneys have the time to go through them in their native tongue, Japanese. This is not the case for the defendant. The English translation is not presented to them in print. It is only read out once during the hearing and even if shown the Japanese original, they would have little use for it unless they are fluent in written Japanese.

This is crucial because these texts can be highly technical and written in the legal style and register, which makes them structurally meant for "readers," when in fact the person who has a significant interest in fully understanding their contents – the defendant – is a "hearer." In his seminal work on the way we communicate through language, Goffman points out that "readers can reread a passage whereas hearers can't rehear an utterance …" (1981: 189). He also notes that "spelling helps disambiguate what in speech would be homonymous" (ibid.). Such strategies are unavailable to the

defendant and so they have no other choice but to rely on the interpreter and their ability to present the text in a clear and comprehensible manner.

Further, due to differences between the two languages, English translations of Japanese texts tend to be longer than the source text and interpreters may (consciously or not) wish to finish reading the target text at the same time as the lawyer reading out the Japanese original. There is no formal requirement to do so, but some interpreters may feel pressure even if such an expectation has not been explicitly (or even implicitly) stated. This means that *certain* interpreters may read out *certain* translations in a manner too fast for the defendant to fully, or even sufficiently, understand them. Moreover, interpreters, just like professionals in any other occupational group, can and do make mistakes or errors, and these can impact the defendant's understanding as well.

To illustrate this point let us turn one more time to Goffman, who divides modes of spoken words into three categories: 'memorization,' 'aloud reading' and 'fresh talk' (op. cit., 171). He further points out that "speaking inevitably contains what can be linguistically defined as faults: pauses (filled and otherwise), restarts, redirections, mispronunciations, unintended meanings, word searches, lost lines, and so forth" (ibid., 184). It can be assumed that the type of faults committed will differ depending on the mode, so in case of translations discussed here ('aloud reading'), such faults would most likely include mispronunciation, restarts, pauses or lost lines.

All the factors mentioned above can have a (significant) impact on the defendant's comprehension of the courtroom discourse. In this paper, attention is given mainly to written documents presented during criminal trials, due to the limitations in obtaining video- or audio-recording, or even transcripts, of actual courtroom oral communication as discussed in Section 2. In the subsequent part of this paper, therefore, I will discuss a study conducted based on cooperation of twelve court interpreters working with English, with the use of a sample judgment text.

4. Data collection and research outline

Judgment texts are an exception in court records in Japan in that they are made publicly available sometime after the trial has been concluded. The judgment text used in this study was rendered in 2010 by Fukuoka District Court in a lay judge trial in which the defendant was accused of drug trafficking.[3] The defendant was found guilty.

With the judgment text as an example, the study aimed at analyzing how easy or difficult translated legal texts can be for the defendant, especially if they are not a native speaker of English (the methodology will be discussed below). The entire judgment text was relatively long and consisted of multiple pages but only two comparably short excerpts were selected for the study. This is because the study participants agreed to produce a translation of the selected portions of the judgment text free of charge, and so, these excerpts could not be too long. Further, the portions selected for translation were distinct in form: the first portion titled "Facts Constituting the Crime" (Japanese: *Tsumi to narubeki jijitsu*; "Crime Facts" henceforth) resembles in its structure that of the indictment act – it is composed of one lengthy sentence starting with "The defendant" and ending with the defendant's failed attempt to smuggle illicit drugs into Japan (for detailed discussion on challenges associated with translating indictment acts see Mouri, 2006). The second excerpt came from the part of the text entitled "The defendant's conduct at the customs" (Japanese: *Hikokunin no zeikan de no gendō ni tsuite*, "Conduct" henceforth), which discussed what the defendant said and did while being interrogated by the customs authorities upon their arrival in Japan.

Fifteen registered court interpreters working with English were asked to produce a translation of the aforementioned excerpts and twelve[4] of them submitted their translation. Participants of the study were given numbers 1 through 12 and are referred to henceforth as "Interpreter 1," Interpreter 2," etc. It is important to note that the interpreters were *not* asked to produce an easy-to-understand translation or a translation for a non-native speaker of English. They were requested to translate the

3) Case number: Heisei 21 (Wa) No. 1122

4) The number of participants was relatively small due to the fact that lists of court interpreters are not made public and one needs to rely on interpreters they already know or ask other interpreters and researchers to introduce potential study participants.

judgment text as they usually would, without any particular defendant in mind.

The translations were then analyzed using the notion of readability by implementing the Flesch Reading Ease (the Flesch Test), one of many existing readability formulas, used not only in analyses of text difficulty but also in research on interpreting and translation (Liu and Chiu, 2011; Oakland and Lane, 2004). The Flesch Test takes two factors into consideration: average sentence length (ASL) and average words per syllable (ASW), and the readability score is calculated based on the following formula: Reading Ease = 206.835 – (1.015 x ASL) – (84.6 x ASW). A text can score anywhere between 0 and 100 points, and the higher the score, the easier the text is considered to read. It is believed that a text should score above 60 points to be easily comprehensible (for details see DuBay, 2007).

Translated texts produced in this study averaged the score of 34.7 for both excerpts considered together, 14.1 for "Crime Facts" and 48.4 for "Conduct." The highest scoring piece was "Conduct" by Interpreter 5 (58.5), while the lowest score was that of "Crime Facts" by Interpreter 1 (7.7), and this piece is the basis for the study. Detailed analysis and discussion of the findings of the study has been already presented elsewhere (Marszalenko, 2015), therefore I will only briefly discuss why this particular excerpt was chosen (the excerpt and my revised translation will be presented in Section 6).

This translation is of interest not only because it scored lowest on the readability scale, but also because it is the only excerpt produced by the study's participants, whose composition resembles that of the source text in that it is also composed of only one long sentence beginning with the subject "Defendant" and ending with the clause "was unable to accomplish his objective."

5. Plain English and its usefulness in the legal discourse

Plain English is not a new phenomenon, but it gained traction with Chrissie Maher and the Plain English Campaign, who stated that

> *[s]ince 1979, we have been campaigning against gobbledygook, jargon and misleading public information. We have helped many government departments and other official organisations with their documents, reports and publications. We believe that everyone should have access to clear and concise information.*
> (Plain English Campaign, 2015)

In other words, what Plain English and the Plain English Campaign aim at is making public information – including the legal discourse encountered in everyday life – more comprehensible and accessible to the general public, for whom legal language is rarely easily accessible.

In his *Oxford Guide to Plain English*, Cutts (2009) discusses how Plain English can transform a highly complex text structure using jargon and terminology rarely found in daily life and, thus, potentially confusing or hard to understand, into one that would be much easier to understand, without changing or reducing the information. One such example is the following.

> Original Text:
> *In the event of an emergency evacuation of these premises should you require assistance to facilitate your evacuation would you please advise your host or reception on arrival.*
> (Cutts, 2009: vii, emphasis added)
>
> Text revised with Plain English:
> *Visitors: if there's an emergency, will you need help to leave the building? If so, please tell reception or your host now.*
> (ibid., emphasis added)

As is apparent from the texts presented above, two strategies have been applied. First, the original text was divided into two sentences in the revised version. Even with samples as short as these, the impact of dividing a text into multiple sentences on readability is evident: the original text scores at 24.3, whereas the revised version at 76.4 on the Flesch Test. The number of words was also slightly reduced from 28 in the original to 22 in the revised version.

The second strategy applied was to replace the words and phrases potentially difficult to understand with those more likely to be encountered in daily life and, thus, more comprehensible. Examples of this include replacing "premises" with "building," and "advise" with "tell."

Oxford Guide to Plain English discusses the effectiveness and benefits of using Plain English and gives guidelines on how to achieve the goal of clear and comprehensible texts written in English. There is a total of twenty-five such tips categorized into the following domains of writing: 1. style and grammar, 2. preparing and planning, 3. organizing the information, 4. management of writing, 5. Plain English for specific purposes: emails, instructions, the Web, legal documents, and low-literacy readers, 6. layout, and 7. proofreading (Cutts, 2009: xxvi-xxvii). Although all twenty-five guidelines are useful when aiming at producing easily accessible texts, for the purpose of exploring whether or not Plain English could and should be applied to Japanese judgment texts translated into English, in the subsequent section I will mainly discuss the guidelines in the "style and grammar" and "Plain English for specific purposes" categories.

Guidelines in the "style and grammar" category on which I will focus include: "[o]ver the whole document, make the average sentence length 15-20 words;" "[u]se words your readers are likely to understand;" "[u]se only as many words as you really need" and "[p]refer the active voice unless there's a good reason for using the passive" (ibid.: xxvi). As for the "Plain English for specific purposes" category, the guideline that would be most useful in production of the judgment text translation is "[f]or people with low literacy, cut out the fine detail, be brief, and test your documents with the real experts-the readers" (ibid., xxvii; emphasis added). This is because, as mentioned in previous sections, a considerable number of defendants in English-mediated criminal trials in Japan does not speak the language of interpreting as their first, and at least some of them do not demonstrate a high proficiency in English. Needless to say, even though they may be perfectly capable of following the legal discourse in their native tongue, lower English proficiency would be a significant impediment in the cases discussed here and, thus, those defendants would likely be considered of "lower literacy," at least as far as the

legal discourse translated from Japanese into English is concerned.

As useful as Plain English seems for our purposes, we must bear in mind that it is not without limitations. Davies (2004) analyzed what impact Plain English may have on legal documents. As an example of this, the original contract by the British Association of Removers and a version of it revised in the Plain English style produced by the Plain English Campaign were compared. In this analysis, Davies found that indeed some significant changes were implemented in the revised text and that they may have an impact on the interpretation of the contents of the contract. This means, that even if application of Plain English in translated court texts is accepted, just how much (if any) of "cutting out the fine detail" (Cutts, 2009: xxvii) would be permitted, should be a matter of debate treated with much caution.

That being said, the term "legal documents" is very broad and includes a wide variety of texts produced for different purposes and with different legal implications. I argue that a legally binding contract (whose multiple interpretations could lead to more legal action) is not the same as a judgement text, whose main purpose is to inform the defendant and other participants of the trial of the court's decision. Moreover, considering that the focus of this study is a defendant with no (or almost no) proficiency in Japanese and a lower English proficiency, who has no other option but to rely on the interpreting services, it would indeed be hard to argue that the English translation of the judgment text (and this can be said about other documents presented during the trial as well) in its present form (i.e., the form retaining the complexity of the source text in Japanese with regard to the style, register and terminology) sufficiently satisfies the need for the defendant to fully understand what is being conveyed to them.

Conversely, one could also argue that provision of interpreting and translation services should not put a non-Japanese-speaking defendant at an unfair advantage in comparison to their Japanese-speaking counterparts. After all, Japanese legal discourse can be as challenging to a native Japanese speaker as its English-mediated rendition to an English speaker. However, my focus is not an average *native* speaker of English, so applying the Plain English strategy aims at remedying the "double handicap" discussed previously that some defendants, who are not English native speakers, may shoulder. In other

words, certain measures, of which Plain English is just one example, are not a means to give such defendants an unfair advantage. On the contrary, they bring them closer to a similar level of comprehension one would expect a Japanese speaker (in a trial conducted without an interpreter's mediation) or a native English speaker (in interpreter-mediated trials) to demonstrate.

In the following section, I will present the translation of "Crime facts" by Interpreter 1 and my Plain English-revised version, and discuss its potential in mitigating the difficulty in comprehension by a non-English-native defendant.

6. Application of Plain English to the translated judgment text: Findings

In this section I will first present the translation by Interpreter 1 and the revised text to which Plain English strategies were applied, in order to compare the readability of the two texts. Further, I will discuss what steps were taken to increase the readability of the excerpt, following guidelines set forth by Cutts (2009) discussed in the previous section.

Table 1. Excerpt translated by Interpreter 1 and its revised version using Plain English objective.

Original Translation (by Interpreter 1)	Revised Translation (by J.E. Marszalenko)
Defendant, for the purpose to profit, disregarded order, and planned to import illegal drugs into our country, by colluding with others whose names are not known; and when boarding Singapore Airlines Flight 119 on 17 August 2009 (local time) at Kuala Lumpur International Airport in Malaysia, Defendant commissioned the transport of a soft-shelled suits case [sic] (Item Label 9 of Exhibit 25) that hid approximately 1188.47 grams of crystals of phenyl-methyl-amino-propane hydrochloride, which is an illegal drug (2010	The defendant planned to import methamphetamine for profit into Japan without permission. He did this through collaboration with unknown persons. He boarded Singapore Airlines Flight 119 on 17 August 2009 (local time) at Kuala Lumpur International Airport in Malaysia. At that time, he entrusted the transport of a suitcase (Item Label 9 of Exhibit 25) to an employee of this airline. The suitcase hid about 1188.47 grams of crystals of phenyl-methyl-amino-propane hydrochloride, which is methamphetamine (2010 Confiscated Item No 25 Labels 1 through 8

Original Translation (by Interpreter 1)	Revised Translation (by J.E. Marszalenko)
Confiscated Item No 25 Labels 1 through 8 are what remained when appraised), to an employee of this airline company for it to be transported as flight check-in baggage to Fukuoka Airport in Hakata, Fukuoka City; and Defendant had said soft-shelled suits case [sic] be placed on said aircraft by manipulating concerned staffs at said Kuala Lumpur International Airport, who were unable to tell whether Defendant is a sincere individual, and depart said airport, and this was made to arrive on the same day (local time) at Singapore's Changi international airport of the Republic of Singapore; Defendant had this be re-loaded from this aircraft onto Singapore Airlines Flight 656 by manipulating concerned staffs at said airport who were unable to tell whether Defendant is a sincere individual, and had this arrive at above-mentioned Fukuoka Airport at or around 7:55 am on 18 August by the same aircraft; and Defendant had this transported off this aircraft and brought said illegal drugs into our country, thereby importing illegal drugs into our country; and when receiving inspection of personal items on the same day at travel items import inspections gate of Fukuoka Airport Customs Section on the premises of said airport, Defendant, who, as mentioned, was hiding illegal drugs, hid, and did not declare, this fact to officers of this Customs Section, and attempted to pass through said inspections gate and import illegal drugs in Defendant's cargo, which are not allowed into the country; however, because they were discovered by officers of said Customs Section, Defendant was unable to accomplish his[5]	are what remained when appraised). The airline transported the suitcase as flight check-in luggage to Fukuoka Airport in Hakata, Fukuoka City. The defendant had concerned employees at Kuala Lumpur International Airport place the suitcase on the airplane. The employees were unaware of this situation. Then the suitcase departed the airport. It arrived on the same day (local time) at Singapore's Changi international Airport in the Republic of Singapore. The defendant had concerned employees at this airport re-load the suitcase from the aircraft onto Singapore Airlines Flight 656. The employees were unaware of this situation. The suitcase arrived at Fukuoka Airport around 7:55 am on 18 August on this airplane. The employees transported the suitcase off the airplane, and so the defendant brought and smuggled methamphetamine into Japan. The defendant received inspection of personal items on the same day at travel items import inspections gate of Fukuoka Airport Customs Section at this airport. As mentioned above, he was hiding illegal drugs. However, he hid and did not declare this fact to officers of this Customs Section. Further, he attempted to pass through the inspection gate and smuggled the drugs in his luggage. Importing such drugs into Japan is not allowed. However, officers of the Customs Section discovered the drugs. Thus, the defendant was unable to accomplish his objective.

One of the starkest differences between the two texts is the significantly

5) Since the Japanese language usually does not distinguish between genders, it is not certain whether the defendant in this case was indeed male nor was the defendant's gender made clear in other parts of the text. The choice of the masculine form by Interpreter 1 may be explained by either the large number of male defendants in criminal cases in general, or by the desire to avoid the neutral forms such as "they" or "he/she," which can sometimes be clumsy.

increased number of sentences in the revised version. The text produced by Interpreter 1 was composed of just one long sentence, whereas the revised version has 21 sentences ('sentence' is understood here in simple terms as a clause with a subject separated from other clauses by periods. It could be argued that, although indeed only one period can be found in the translation by Interpreter 1, it is in fact a text composed of multiple sentences separated by commas instead of periods and thus, this text would score higher if these commas were replaced with periods. This is one of the limitations of using readability formulas, to which point I will return later). This change has the greatest impact on the readability due to the fact that the Flesch Test is a relatively simple formula, which takes only ASL and ASW into consideration. Changes discussed below, on the other hand, are likely to have little impact on readability as understood in the Flesch Test terms, but can arguably increase the defendant's comprehension of the text, which, due to its subjective nature, is harder to demonstrate in numerical terms unless they have an impact on ASL and ASW, but whether shorter phrases are always "easier to understand" than longer ones can be a matter of debate beyond the scope of this paper.

As mentioned previously, the text by Interpreter 1 scored at 7.7. On the other hand, the score of the revised version presented above reached 37.9, which is an almost five-fold increase. This score is still far beyond the recommended 60 but is undeniably an important first step in addressing the issue of legal text translations presented to the defendant, which can be difficult for them to understand.

Next, I replaced passive voice with active forms. As observed in the original translation (by Interpreter 1), the passive voice was used quite frequently, so there were many portions to revise. Some examples of this process are presented in Table 2 below.

Table 2.Examples of replacing passive voice with active forms

	Original Translation (by Interpreter 1)	**Revised Translation (by J.E. Marszalenko)**
1)	(the suitcase) was to be transported as flight check-in baggage to Fukuoka Airport in Hakata, Fukuoka City… (17 words)	The airline transported the suitcase as flight check-in baggage to Fukuoka Airport in Hakata, Fukuoka City. (16 words)
2)	Defendant had said soft-shelled suits case [sic] be placed on said aircraft by manipulating concerned staffs at said Kuala Lumpur International Airport (21 words)	The defendant had concerned employees at Kuala Lumpur International Airport place the suitcase on the airplane. (16 words)
3)	… this was made to arrive on the same day (local time) at Singapore's Changi international airport of the Republic of Singapore (21 words)	… the suitcase … arrived on the same day (local time) at Singapore's Changi international airport of the Republic of Singapore. (21 words)
4)	Defendant had this be re-loaded from this aircraft onto Singapore Airlines Flight 656 by manipulating concerned staffs at said airport who were unable to tell whether Defendant is a sincere individual … (31 words)	The defendant had concerned employees at this airport re-load the suitcase from the aircraft onto Singapore Airlines Flight 656. The employees were unaware of this situation. (26 words)

It is worth noting that replacing the passive voice with active has one more potentially positive side-effect. With the exception of Example 3, the number of words decreased slightly (in the last example it increased by five words), which has at least some impact on the readability score.

Further strategies involved using only the necessary words and phrases, and replacing the legal jargon or other potentially difficult-to-understand words and phrases by those considered more common in the everyday language use. There are many ways of implementing these strategies, most of which are unavoidably subjective, and the result of the experiment discussed here is by no means the final or the only possible revision. Some examples of changes implemented can be seen in Table 3 below.

Table 3.Examples of using only the necessary words and those easier to understand

	Original Translation (by Interpreter 1)	Revised Translation (by J.E. Marszalenko)
5)	our country	Japan
6)	others whose names are not known	unknown persons
7)	… import illegal drugs	… import the drugs
8)	Defendant's cargo	his cargo

The examples presented above are not the only possible changes that could be applied to the text. For example, the verb "to commission" in "Defendant commissioned the transport of a suitcase" in the eight line of the original translation (see Table 1), was replaced with "he entrusted the transport of a suitcase …," which was just one of multiple possibilities. Even though these expressions are not the perfect synonyms, they could arguably be used in the given context without a significant impact on the intended meaning.

The term describing the object smuggled by the defendant, and which was the basis for the indictment, can also be problematic. Interpreter 1 in their translation uses the generic term "illegal drugs," whereas the Japanese original discusses smuggling of *kakuseizai.* This term is characteristic to the Japanese legal system and its comprehension cannot be taken for granted. Interpreter 1 is an outlier in using *illegal drugs* as translation for *kakuseizai*, as the terms *stimulant(s)* or *stimulant drug(s)* seem to be used more frequently by other interpreters. These terms are not without their flaws. I address this issue in detail elsewhere (Marszalenko, 2017: 147), but suffice it to say that the Japanese legal term *kakuseizai* refers to a variety of substances such as amphetamines, methamphetamines or their derivatives. On the other hand, the English term *stimulant* has a much broader meaning range and can even include such (legal) substances as tobacco or coffee, which, in Japanese, do not fall under the umbrella of *kakuseizai*. With no perfect equivalent to the Japanese *kakuseizai*, I have decided to follow Interpreter 5 and used the specific term *methamphetamine*, which is what *kakuseizai* in this case (*phenyl-methyl-amino-propane hydrochloride*) refers to. Given the variety of *kakuseizai* types, however, this term cannot be used as the safe translation in all *kakuseizai* cases and needs to

be treated with caution.

We must also note that the effects of strategies others than shortening sentences (and, as a consequence, increasing their number) and words on the comprehension of the defendant cannot be measured directly through the Flesch Test. Naturally, the measures taken must have some impact on the readability score as some words have more syllables than others and some clauses have more words than others (all examples in the right-hand column of Table 3 use fewer words than the left-hand column clauses, but the difference is rather small, perhaps with the exception of example 6)). However, this impact is already reflected in the general score of the entire text and it would be difficult to provide any conclusive arguments as to which word or phrase is easier to understand, because, as discussed previously, it differs largely due to a particular defendant's English proficiency. For some defendants taking such measures may be unnecessary or even counterproductive.

In the aforementioned interviews with interpreters, the participants discussed the difficulties associated with communicating in English with some defendants and expressed the concern that these difficulties are rarely sufficiently addressed. The potential of using Plain English was also discussed. Some interviewees stated that they lacked the necessary experience in using this style, while others mentioned that the use of Plain English would only be attainable if they had more time to prepare the translations. Nevertheless, many participants agreed that it could be a viable solution and expressed the wish to pursue it if the circumstances allowed.

Even after taking into consideration all the issues surrounding the use of Plain English and its implications, discussed previously, it is evident that implementing some of the strategies put forward by Cutts (2009) can have a positive impact on the defendant's understanding of the text in question. However, readability or comprehensibility of a text is very subjective and depends largely on various idiosyncratic characteristics of the recipient of the text. Finding the ultimate numerical and objective method of measurement would be an impossible task. That being said, Plain English does provide at least some first-response solutions which can, if nothing else, start a discussion on how cases of defendants with lower proficiency in the language of interpreting could be handled in order to secure a

better understanding of the legal language heard at the trials.

7. Concluding remarks

There are some limitations to this study that ought to be addressed. First of all, there is only one sample provided of the revised text and, even more importantly, it was produced by the author of the study, which naturally leads to the undisputable subjectivity of the results. Moreover, my purpose of revising the text was not to investigate whether or not Plain English can increase the readability score but rather, how to use Plain English to increase it. Given the above, it is necessary to conduct a follow-up experimental study on a far larger scale with neutral participants such as translators, or possibly even non-native recipients of the translated text. Moreover, I have focused here on the defendant as the recipient, when, naturally, defendants are also authors of utterances, most visibly when examined directly in court. Potential issues associated with defendants not being able to express themselves sufficiently in the language of interpreting also warrant a separate and in-depth investigation.

Furthermore, the methodology used has limitations of its own. As mentioned in preceding sections, readability formulas only take certain aspects of a text into consideration. In the case of the Flesch Test, the number of words per sentence (ASL – average sentence length) and the number of syllables per word (ASW – average syllables per word) are the only measures of readability. This is unavoidable to some extent, as these formulas attempt at demonstrating a text's reading ease in objective numerical terms. This means that it is impossible to measure the impact of, for example, replacing "approximately" with "about" (whose effect on comprehension is rather intuitive) other than the difference in the number of syllables.

Another problem is the issue raised by Davies (2004) discussed in Section 5, namely, the potential impact of Plain English on the interpretation (understood as comprehension and legal implications of the text, not in translation terms) of the

legal document undergoing the revision process. Implementing Plain English-informed alterations to any translation of a legal document would naturally need to ensure that the text is understood and interpreted as the author – in the case of the judgment text, the court – intended, or at least as the recipient of the source text with a similar linguistic proficiency would. In other words, such revisions would not be acceptable if they had too excessive an impact on the equivalence between the source and the target texts.

It would therefore be necessary to work not only with interpreters and linguists but also legal practitioners involved in interpreter-mediated criminal court proceedings. The benefit of such cooperation would be two-fold. First, the interpreter would get a better understanding of how much flexibility they can enjoy in the process of producing a Plain English-informed translation. Second, legal practitioners, too, would gain insights into how interpreting and translation are performed, what degree of equivalence is achievable, and how the way they use language can impact the defendant's understanding of the legal process of which they are the subject. Needless to say, these recommendations would only work under the assumption that all participants of interpreter-mediated criminal trials with defendants demonstrating lower English proficiency, understand and agree that the ultimate goal of providing interpreting and translation services in the first place is to ensure a sufficient, if not complete, comprehension by the defendant.

To conclude, Plain English is not the silver bullet that will solve the problem at hand, which is the difficulty some defendants with lower English proficiency face in interpreter-mediated criminal trials in Japan. It is, however, the first step in the discussion. Without such a discussion, there is no other choice but to accept the status quo, which, in this case, means that at least some non-Japanese-speaking defendants to whose cases English-speaking interpreters are appointed, do not fully understand what the judges, prosecutors and defense counsels are communicating to them through the interpreter. Accepting this would have serious implications on the defendant's linguistic and in more extreme cases even human rights.

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This paper was received on 28 February 2020; revised on 15 May 2020; and accepted on 30 May 2020.

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