

# Universal Differences of Perception and the Legal System\*

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A lawsuit begins with “differences of perception” between plaintiff and defendant. This “differences of perception” would not be dissolved in court. Mutual “differences of perception” would remain or be amplified even at the closing of a case. The “differences of perception” have been studied from the medical viewpoint using mathematically modeled ambiguous figures. It has then been made clear that in lawsuit the subsequent perception is tied to the stereotype that each party holds from the beginning. This is a cerebral physiological event and is essentially what it takes to live a life as a human. For this reason “differences of perception” will not go away, regardless of the lengths to which each party goes in order to clarify his or her own position in the court. Differences of perception”, if left unresolved, can become even greater and lead to a spiral of mistrust. They are the fate of humanity but the consequences can be enormous: they can lead to the collapse of the framework of a healthy society which has been established over many years. Human beings, therefore, are obliged to make efforts to dissolve “differences of perception”.

## INTRODUCTION

The number of civil lawsuits relating to medical incidents is rapidly increasing. Court-ordered independent medical examiners have to face the judicial scene, which works on logic quite different from that of medicine. Truth in medicine is decided relatively and is consequently difficult to explain. In a medical lawsuit both sides make opposing claims as to what happened in the medical field. The accuser and the accused each seek to probe their viewpoint and then start scrambling for the truth. A Law court is a place where they quest for procedural truth (legal truth).

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I am in charge of public examinations of civil medical lawsuits. Medical examiners, being summoned by the justice, are required to see the actual conditions of lawsuits. In the cold win-or-lose world, they choose radical words when attacking and use assertive words to say uncertain things. In civil lawsuits, "facts in dispute shall be acknowledged only by the evidences which the parties exhibit", therefore they make the utmost use of evidences and words that is seemingly available. Since civil lawsuit quest for procedural truth, and as long as competent lawyers make good use of techniques to win, spoken words hurt the opponent more than their true meaning would suggest. The distrust of each party for one another grows through the lawyers' words. This fabric of today can go on tomorrow. In trial, misunderstood facts are corrected but overstated words are not. Uncorrected words, full of harm, leave hateful images with the opponent. Such negative images are shared with other members of society. Patients grow distrustful of medicine through justice, and medicine grows distrustful of patients and of society via the same means.

Getting respected, trusted, and appreciated were once the greatest satisfaction to medical practitioners; however, as a result of increasing lawsuits which seek no more than simple procedural truth, the medical has lost faith in society. The substance of medicine is pure goodwill, not examination, dosage, nor operation; these are only steps. These treatment steps are chosen relatively with treatment progress. What is important is the attitude and will of the medical side in facing disease. Such lofty intention and substance would be considered substantial truth (medical truth) was being sought, however, when it comes into the justice field that value is unnoticed, because this is not where they solve disputes but where they rule on disputes. Thus, the search for procedural proof, the failure to make progress in this search and responsibility for having brought lawsuits are totally exhausting medicine. In this way, the strongest encouragement of medical practitioners, that is, enjoyment of respect, trust and appreciation is disappearing.

Medical procedures are inherently dangerous, carrying with them some percentage of risk. But for the patient who has met with said danger, this occurrence is everything. The spear point of the inflicted damage, of course, is aimed 100% at the medical practitioners' side. Society's awareness of medicine has transformed from an appreciation of medical practices themselves to an appreciation of successful practices only. If an outcome is bad, the blame falls to the side of medicine and it is instantly left to medicine to bear the responsibility. Therefore medicine has stopped running the risk of providing the best medical care. Even if the best care is sought and provided, it is all for nothing if there happens to be a bad outcome; fear of bad results leads to the shuffling of patients from one doctor to another. The relationship between doctor and patient has not

changed. Based on the information that exists between doctors and patients, “perceptual differences” have broadened and both parties have become unable to trust one another.

## UNIVERSAL DIFFERENCES OF PERCEPTION

“Differences of perception” do not exist only between doctors and patients. These differences also occur between the medical and judicial worlds. Once, I acted as a medical judiciary to a local court. After that, the case in question was appealed and the upper court wanted a detailed explanation of my findings. What follows are the particulars of the request for my reply: “In accordance with Civil Code No. 205, in lieu of your appearance for questioning, you may reply with the filing of this form. Please note that failure to remit the reply form or submission of an insufficient reply will result in your being called to reappear before the local court.” The local court is some 200 kilometers away from my residence in Osaka. The officials at the university where I am employed were also shocked at reading this notice. The university aside, as any layperson would think, the contents of this notice were not those of a usual request. As a medical judiciary, had I done something dishonorable, was there some meaning to being labeled rude?

However, I had initially become a medical judiciary out of a feeling of goodwill, in response to a request from the courts in which they stated, “We are currently unable to find a medical judiciary and therefore humbly request that you fill the role.” Why then was the medical judiciary being treated with such (perceived) rudeness? I started to doubt the judiciary notice. With the awkward hands of a novice, I searched through the Compendium of Laws. There I found it written in Civil Code No. 212, “Those with relevant educational experience needed by the court are duty bound to provide judgment.” Once the role of medical judiciary had been taken on (I had the relevant educational experience to answer questions), and a judgment given there was no way out. It was now a matter of “duty.” The absurdity angered me. Were I to defend myself I could say, “This was not explained to me”; “I trusted in the judicial system only to be betrayed by it”; “Had this been explained to me from the outset, I never would have consented.” In the case of a medical trial centered on “Failure of obligation to inform”, these same feelings would surely arise: “Had that been explained to me initially, I would not have assented to the surgery”, “I had faith in the medicine only to be betrayed by it.”

Recently, what words does the judicial system use when requesting a member of the medical profession to act as a medical judiciary? I referenced, “To become a judiciary (Dec. 2003 version)” as produced by the office

of the Supreme Court General and Civil Affairs Division. In contrast to the aforementioned letter, the phrases “questioning” and “...in the event that the reply is insufficient, you will be called to reappear before the local court” were worded with phrases thought of as more polite by the general public. Instead they read, “explanation” and “...may need to give an oral statement”; which is much more common terminology. However, this creates a large language gap from the time before and after becoming a medical judiciary. There is a large disparity between words used in the legal world and those used by the general public. In that respect, a medical expert uses the words of the general public and is unfamiliar with legal terminology. This gives rise to confusion, feelings of being disrespected as well as dissatisfied. Unwittingly, certain words leading to delusion and misinterpretation are mixed in. Believing that a medical expert should be able to understand legal terms is a one-sided belief on the part of the legal world. This chain of events leads to a collision of worlds separated by words and word usage. The judicial system was unaware that even within the legal world itself, “perceptual differences” exist. This fact itself shows the complexity of the problem of “perceptual differences.”

“Perceptual differences” exist between plaintiff and defendant, within the plaintiff and defendant’s respective camps, between judiciaries and medical experts, between law and medicine, and between society, medicine and law. Therefore the words that these groups use will be littered with portions that do not mesh. Thus far law has settled disputes; however, the “perceptual differences” that initially lead to the disputes have not been resolved. The result, “perceptual differences” continue to grow. This is directly related to the continuing erosion of medicine and is a very serious situation, indeed.<sup>1</sup>

## MODELING OF PERCEPTUAL DIFFERENCES

What type of idea is “perceptual differences?” It is a vague, abstract concept and one that is relative. Therefore it is an extremely slippery concept. In order to grasp it, a good deal of sensitivity is necessary. That sensitivity itself varies from person to person and is difficult to manage; we shall go no further into that subject. However, to solve the matter of “perceptual differences”, two conditions must be met. First, “perceptual differences” are held by everyone and we must come to easily be aware of this. Since “perceptual differences” are

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<sup>1</sup> T. Kawasaki, ‘Minji soshou ni okeru kouteki iryou ha nani no tameni okonawareru noka?’ [*Why Do Public Medical Judgements Occur Within Civil Suits?*], 2007 *Jyurisuto* [Jurist] 1327:2-6.

relative, we must all get to the point where we have the same realization of said relativity. The second condition to be met is the awareness, that if left alone, these “perceptual differences” will lead to unwanted consequences. With this understanding we begin to desire the elimination of “perceptual differences” and reflect seriously upon it.

In order that anyone may easily reach mutual awareness, a mathematical model of ambiguous figures has been employed to clearly portray the essence of “perceptual differences.” The intention is to move down a path that will lead to the resolution of “perceptual differences” that cannot be resolved by the legal world. This is linked to restoring the eroding faith in medicine. However, it is not merely towards the restoration of medicine that this path leads. Moving from “perceptual differences” towards “perceptual unity” will change society and the world. Thus, this is the first step down a long road.

Ambiguous figures challenge the awareness of the object within the field of vision. The figure is constructed in such a way as to hold multiple meanings or interpretations based on how it is viewed. For example, let us look at “Rubin’s Vase” (Fig. 1)<sup>2</sup>. It is a white vase (one perception) or it is the silhouettes of two faces (another perception); the two images are in opposition. The focal object and the background shift as both images compete to represent themselves as true. In an uncompromising, all or nothing world, as one image asserts itself, the other image disappears and when this “other” image asserts itself, the initial image vanishes. The images are locked in a tug of war as they cannot simultaneously exist. Next, the image of Jastrow’s “Hare and the Duck” (Fig. 2)<sup>3</sup>. In which direction is the animal’s eye looking? Looking to the left, it becomes a duck; to the right, it becomes a hare; the image changes based on the perceived directionality of the eye. Differing worlds are in competition based on perspective. The meaning of these ambiguous figures runs deep.

Using a mathematical model on these ambiguous figures allows clarification of “perceptual differences.” The mathematical world is able to take phenomena in the natural world that, at first glance, are seemingly irregular and find the fixed order that lies within. Using mathematical terms, this is modeling (mathematical modeling).<sup>4</sup> It is meaningless to simply use mathematical terminology to easily explain the mathematical model. This simplified fixed regularity must be verified as a component of the natural world and from this work, a universal principle established. However, then the model is a single

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<sup>2</sup> Refer Appendix I.

<sup>3</sup> Refer Appendix I.

<sup>4</sup> Niwa, Toshio & R. Nagaoka Jinkou doutai moderu, [*population vital statistics model*] Suuri moderu to kaosu [*Mathematical Models and Chaos*], Hansou University Educational Society, 2005 p 103-112.

image, finding the consistency within the changing of perspective is difficult. Therefore, of the many ambiguous figures there are, one that is a series of images, Fisher's "Man and the Girl" has been chosen.<sup>5</sup> On the left and right ends of the series, there are distinct images, while those in the middle have subtle changes (Fig. 3).<sup>6</sup> One end is a man; the other end is a girl. One end is a face; the other is a full body. One end depicts laughter; the other crying. One side is a squared outline while the other is triangular. In this manner, both ends of the series have distinct features which create obvious "perceptual differences." In other words, "perceptual differences" are modeled so that anyone can come to a mutual awareness. However, this series of images also represents perceptions that are at odds.

### HYSTERESIS AS CAUSED BY AMBIGUOUS FIGURES

Let us look at Fisher's "Man and the Girl" in order starting from the left end. The perception of the image is that of a man's face; however, as we continue from left to right those strong features disappear one after another. Perception starts to fade and blur until suddenly something different emerges, the image of the girl. Conversely, viewing the same series from the right to the left elicits the same effect. The impression of the man on the left and the girl on the right are in the aforementioned tug of war state within the series of images. The object itself is a picture, but what people perceive is the idea within the picture's background. The images on both ends make strong impressions, however they are nothing more than a collection of lines that depict shades of black and white. Perceiving a man's face or the figure of a girl is a function of the viewer's sensitivity. Those viewing the picture add meaning to it based on personal perception. Personal ideas of a man's face or of a girl's figure are called into play. This is similar to conditions in the judicial system. The assertions of the plaintiff and defendant themselves are a conflict of images. What people are aware of is not the wording of the lawsuit. Rather, there are concepts held by the individuals that lie behind and create individual legal claims; it is these concepts that are being fought out. The process of perception is the same for ambiguous figures and legal battles.

Looking at the images from left to right, the man's face suddenly turns into the figure of the girl. The transformation point is at (●2).<sup>7</sup> Looking at the images from right to left, the girl's figure suddenly transforms into the face of

<sup>5</sup> G.H. Fisher, 1967 Preparation of Ambiguous Stimulus Materials, *Perception and psychophysics* 2, 1967, p 421-422. Refer Appendix 1.

<sup>6</sup> Refer Appendix 1.

<sup>7</sup> Refer Appendix 1.

a man at (●1). This means at these two points (●) and the images between are perceived as a man's face going from left to right and a girl's figure going from right to left; even though the images are the same, based on the direction from which they are viewed, the perception of the viewer changes. This is because when viewing from the left, the strong impression of the man's face makes the image transformation point shift to the right. Conversely, viewing from the right, the image of the girl's figure is strong and forces the point of awareness of the man's face to shift to the left. In this manner, the concept of the initial image continues to pull at one's perception. This phenomenon is known as hysteresis. This can often be seen in our daily biases and impressions. For example, a person is arrested for the commission of a crime, even if not indicted many people will continue to look suspiciously at this person from now on. The hysteresis effect allows us to blindly follow the group and be planted in our surroundings. Presumptuous statements by mass media and the controlling effect they have on the general public depict how easily this phenomenon occurs.

### HIGHER CEREBRAL FUNCTIONS

Even though it is not an actual person or a photograph, the expressive power of the picture allows for distinct perception of a man's face or a girl's figure. For pictures that give a particularly strong impression, based on the characteristic, the image is crystal clear. Therefore even if fine points of the picture's composition are changed, the determined image is resistant to this change; it lingers. This is the wonderful innate human ability to grasp an image and is known as the power of impression, a higher function of the cerebrum. With this power of impression, once an idea is grasped, that idea is pulled along from then on. In the case of the picture that is changing before one's eyes, perception itself is not changing in accordance with the picture. The initial image stays forever in the memory as a lingering shadow in the circuitry of the synapses. This is what gives rise to the hysteresis effect.

In a lawsuit presented for judgment, the plaintiff and defendant have extreme perceptual differences. The situation has become confrontational because both sides have a case. The reason why one side cannot understand the other's case is due to hysteresis. The points where perception changes are not the same, when the changes occur, both sides have gotten too deep into the other's position. The more human we are and the more intelligent we become, the stronger hysteresis presents. This is because our fixed ideas are deeply imprinted on us. In the same manner as the direction in which Fisher's series is viewed yields differences in perception, our different situations give rise to

“perceptual differences”. These situational differences lead to remembering phenomena differently, having a different chain of ideas all culminating in the creation of a world view that is unique to every individual. Therefore having perceptual differences is inevitable.

Memory and the closely related hysteresis are natural psychological reactions of the human cerebrum. Along with reasoning occurring in the acknowledged area of the frontal lobe, memories are called forth from the hippocampus. In this process, memories related to hysteresis are referenced first. This method of recall can easily be seen in daily life. Memories with the highest recall rate are of things that just happened and things we are accustomed to. These memories are continually recalled and linked to a conceptual chain. Personal thought patterns and patterns of action are decided leading to the establishment of an individual perspective.

#### ANALYSIS USING HYSTERESIS CURVE

Fisher’s “Man and Girl” figure is mathematically modeled (Fig. 4).<sup>8</sup> The vertical line represents visual movement from man to girl while the horizontal line represents movement from left to right. This is not a linear relationship; the center section shows the locus of instability. This is a mathematical figure known as the hysteresis curve. As the curve moves from left to right the established image of the man’s face persists causing the swelling of the curve to the right. The man’s image continues indefinitely. However, as the downward pointing arrow shows, there is an abrupt fall into a differing perception (catastrophe) and the image suddenly changes into a girl’s figure. On the converse side, starting from the figure of the girl and progressing from right to left, the established concept of the girl’s figure is what persists, bloating the curve to the left. Here, too, there is catastrophe when the figure is suddenly transformed into a man’s face.

Mathematically, this curve represents both stable and unstable loci. An unstable point is one that cannot exist as a point itself and thus quickly leads to the endpoint of the change. Once the catastrophic change has begun there is no stopping mid-way through. There is an abrupt fall into a perceptual gap. Depending on the size and suddenness of the gap, people are astonished and/or stunned. Feelings of things crashing down around one, disquiet and failure arise. In court, people who receive judgment that is contrary to their perceptions have these strong emotions. Both plaintiff and defendant have solidified

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<sup>8</sup> T. Poston, I. Stewart, *Catastrophe Theory and Its Application*, London: Pitman, 1978. p 419-420. Refer Appendix 1.



their positions and assiduously constructed their arguments so that when the catastrophic change occurs they suffer from the size of the perceptual gap. The more strongly a person is rooted in his position and the more arguments have been compiled for support, the larger the perceptual gap becomes. This gap is difficult to accept. There is a large amount of energy that is built up from this sudden correction. This energy needs release and transforms into a large explosion of rage and verbal abuse. Ultimately, mutual understanding (harmony) has not been reached.

### A THIRD JUDGMENT

Let us examine perceptual differences from yet another angle. The portion of Fisher's image wherein viewing from the left is still a man's face yet viewing from the right is still a girl's figure—that is Figure 3<sup>9</sup>, from ●1 to ●2 — are these images those of a man's face or a girl's figure? Which is the actual truth?

Fisher's original "Man and Girl" is more detailed than Figure 3 having a series of 15 pictures.<sup>10</sup> Fisher conducted an experiment in which he showed these 15 pictures in random order to fifty participants. The result, compared to those who had seen the pictures in order either left to right or right to left, those who viewed the pictures non-sequentially were unable to establish and retain a conceptual image. Of the 15 pictures, the initial 5 were recognized as a man and the final 3 were recognized as a girl. However, recognition of the sixth through the twelfth pictures was varied. With no pre-established concept people's perceptions of these pictures were divided; truly separate. Fisher added a condition to the experiment, asking participants, "Is this picture that of a man or of a girl?" This forced the participants to create a pre-established notion. As a result Fisher received a split between man and girl because participants were not given the option, "I cannot say that it is a man nor can I say it is a girl." Surely had the option been given, it is likely that participants would have answered, "I cannot clearly state that the picture is that of a man or a girl."

Returning to the question of legal decisions, if the basic principle was not a choice between A or B, but rather allowed for a third decision - summarily, if, "It cannot be said whether the defendant is guilty or innocent" or "fault or freedom from fault cannot be determined" or "this is something separate (from the choices of guilt or innocence)" where viable opposition would be resolved

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<sup>9</sup> Refer Appendix 1.

<sup>10</sup> G.H. Fisher, *Preparation of Ambiguous Stimulus Materials, Perceptions and Psychophysics*, 1967, p 421-422.

and another step taken towards solving the open problem of “perceptual differences.” However, the halls of justice are for confrontation, where judicial decisions are made determining that one side is correct and the other is at fault. To reserve judgment would be to completely devalue the court’s existence. Even when the gray area of, “neither one can be determined” exists, there is a clear cut decision made. Lawsuits are thus. Only black and white exist, the principle of a third option (for example red or green) is not valid. “Was the law violated or not?” that is the monochromatic resolution. There is slight consideration of the gray zone in the form of mitigating circumstances. There is some consideration given, yet the choice of black has essentially been made. Along this vein, sentences are lightened; probation is given and so on.

### CONFLICT DISPOSAL SYSTEM

Next let us examine if “perceptual differences” can be resolved in the future. In Figure 5, detailed pictures on top are simplified to the shapes shown at the bottom. The dotted lines begin at the transformation points denoted in Figure 3. The bottom simplified pictures are not affected by hysteresis. Moving higher up the rows of pictures, there is more detail and awareness of a clearer meaning is created. Accordingly, hysteresis becomes stronger and the scope of the dotted line becomes broader. Were the pictures to become more detailed and precise, the breadth of the dotted lines would increase even further. As the dashed line continued to expand and hysteresis become stronger, the weight of the catastrophic change would also increase.<sup>11</sup>

Returning to the court of law, the more one gathers and presents a great body of evidence, makes sound arguments and tells his side in a detailed yet stubborn manner to prove his claim is just, the deeper “perceptual differences” become. The cause of this perpetuation of “perceptual differences” does not lie with the plaintiff and defendant themselves. Rather, the basic cause can be found within the judicial system itself and the dispute settling system. That is, the judiciary system is designed only to make decisions, not to move towards the elimination of the dispute (resolution and harmony). As society progresses and as long as medical disputes continue to be handled in the current manner of lawsuits, these “perceptual differences” will only continue to broaden. Accordingly, mutual understanding between society and medicine will only grow further apart. People’s faith in medicine will continue to decline while the number of lawsuits will continue to increase. We are unable to break this atrocious cycle.

<sup>11</sup> T. Poston, I. Stewart. *Catastrophe Theory and Its Application*, p 419-420.

## PURSUIT OF SUBSTANTIAL TRUTH

“Perceptual differences” here is not used to denote the objective reality of two people having differing opinions. Rather, it is used to reflect the will to criticize one who does not understand my position. The person using the term “perceptual difference” is, himself, not in a position to understand the other person’s situation. “I don’t understand him”; “He’s hopeless!” or other terms of rebuff are uttered and cessation of thought on the matter ensues; this is the meaning of “perceptual differences”. Therefore, “perceptual differences” becomes “cessation of thought” and the dispute is solidified. It is then left to the courts to make the resolution that is sought. With both parties present, procedural truth is sought along with the restarting of the halted thought processes and the impasse is resolved.

In the case of a medical trial, when it cannot be determined whether it is the plaintiff or the defendant that is right or the degree to which either of them is right, a medical witness is called in to render judgment. The judiciaries and medical witnesses are both third parties to the lawsuit. This puts them in the best position to observe the “perceptual differences” of the plaintiff and defendant. Further, they share the same social obligations and essential goal. However, their methods and correspondence differs. Therefore, with respect to lawsuits, the judiciaries and medical witnesses that have so many common points must resolve their own “perceptual differences” first and foremost. The problem is, while both the legal and medical worlds are observing the same phenomenon, they are pursuing different truths. The justice system seeks a procedural truth while the medical expert seeks a medical (substantial) truth. In a court of law these two bodies are standing in the same position looking in different directions. From the eyes of the medical expert there is a point of divergence from the legal issue wherein medical truth exists. That is, within the procedural truth of the claims of plaintiff and defendant, there are times when no fundamental truth exists. There are times when it must be recognized that neither the plaintiff nor the defendant are at fault. In such cases, considering both parties claims and merely searching for procedural truth is not linked to an actual resolution of perceptual differences.

If substantial truth is not sought, the true essence of a matter cannot be discovered and situations, wherein neither the plaintiff nor the defendant is responsible, go neglected.<sup>12</sup> The pursuit of procedural truth (legal truth) that

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<sup>12</sup> T. Kawasaki, ‘Minji soshou ni okeru koutcki iryou ha nani no tameni okonawarcru noka?’ [*Why Do Public Medical Judgemets Occur Within Civil Suits?*], 2007 Jyurisuto [Jurist] 1327: 2-6. p 2-6.

occurs within the administration of justice is only able to assign black or white, right or wrong to a matter and cannot be separated from the binominal concept of “A” or “not A”. Without moving towards bringing these concepts together (Aufheben), summarily keeping to the medical truth to understand substantial truths, the chains of “perceptual differences” cannot be broken. Currently, however, the decisions of a medical judiciary are under the authority of the judicial system and end merely with the pursuit of procedural truth.

As noted in, “Cooperative Research ‘Thinking to the Limits of Medicine and Law’,” serious arguments are raised regarding the fusion of law and medicine.<sup>13</sup> Yet, as previously stated, law cannot be separated from the binominal pattern. If the legal system would acknowledge the pursuit of substantial truth in judgments and truly value medical intent, the path towards the elimination of “perceptual differences” would be opened for the first time. To begin with, doctors and patients cannot exist without each other. Therefore, at the root of this existence is compatibility and reconciliation. Borrowing legal terminology, it is not an option of “this or that (Entweder-Oder)” but rather “this and that (Sowohl-als auch)” and “neither this nor that (Weder-noch)”. This third evaluation should be within the scope of the law, leading to a change of the dispute settling system. Recently, since the introduction of the jury system, “Transforming Courtroom Terms to Everyday Language - Trial of the Japanese Bar Association”<sup>14</sup> has been presented to help the average person understand courtroom language. The unification of words is an important step towards breaking the bonds of “perceptual differences”. I would very much like everyday language to be used in the courtroom and to expel the perceptual differences between the justice system and society.

## CONCLUSION

The most important point concerning a medical accident is the investigation of the true cause of the accident, which is the role of the legal system. The essence of the true cause of the medical accident is the late realization of a new change in the situation. The result, the slowness of response, is typically linked to the accident. In other words, it can be said, “Any and everybody commits

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<sup>13</sup> Hayashi, Mihibaru, et al. ‘Kyoudou kenkyu “Iryou to hou no saisentan wo kangaeru”’ [*Cooperative Studies: ‘Thinking to the Limits of Medicine and Law’*] 2006 *Jyurisuto* [Jurist] 1315: 135-169.

<sup>14</sup> Sakai, Miyuki, ‘Houtei yougo no nichijyougoka ni mukete [*Transforming Courtroom Terms to Everyday Language*] – Nichibenren no kokoromi’ [*Trial of the Japanese Bar Association*] 2006 *Jyurisuto* [Jurist] 1306: 2-6.

this error." The judicial system, being separated from the premise, "Any and everyone commits this error," is not equipped with the means to investigate the true cause of a medical accident.

When pre-established concepts arrest the mind, recognition of change comes slowly. This is a natural occurrence of cerebral functioning. As previously stated, due to the late recognition of a change in the situation, a "catastrophe" ensues. Therefore it is necessary for the judicial system to thoroughly examine why the human error occurred and whether steps were taken beforehand to avoid such errors. Further, the courts should hand down rulings that specifically outline what should be done to prevent such error. For example, if there was an issue concerning informed consent, there needs to be a concrete consent form constructed which satisfies both the plaintiff and defendant. From this compilation, it becomes clear as to what a model of informed consent would be, as well as, how it could be written such that anyone could understand all of the contents of this consent form. Further, into the construction process, both parties would be working towards the same goal and therefore the end product would be one of cooperative effort. This cooperative effort is itself an important step towards the elimination of both parties' "perceptual differences". Were law to take on such a role, it would be of great benefit to people and the world at large. However, the current way of raising an issue in a court of law does not exceed ascertaining as to whether the plaintiff or the defendant has the better argument.

Basically, when a dispute is large enough to warrant a legal judgment, some of the leading causes are the environment and education surrounding the medical treatment and in some cases, the system itself. Yet these points are rarely questioned. A search for the substantial truth would inevitably lead to this point. However, the judicial system does not proceed towards this end. In the end, human negligence or fault is returned to and the balance is restored with the calculation and awarding of monetary compensation. In the medical field there are many cases that end with bad results. This is the basis of medicine in that from these cases medical advancements are made possible. If responsibility for every result is sought, and patients with unfortunate results compensated, the amount of medical claims will steadily increase from now on and fruitless medical suits will ensue. Outside of this, the legal system offers alternative dispute resolution (ADR) through the promotion of peaceful reconciliation or out of court settlements. These are merely ways of disposing of disputes and do not lead to the advancement of medicine. Ultimately, procedural techniques with the aim of dispute disposal, including the search for procedural truth, alone are unconnected to the improvement of medicine. This only moves further away from resolution of the essential question.

If substantial truth is not pursued, true resolution cannot be obtained. "Perceptual differences" of the plaintiff and defendant will not be eliminated. Without this elimination, the respect, faith and appreciation that had been enjoyed will disappear not only from the medical field but also from the legal world and all society.

## APPENDIX 1

Figure 1  
Rubin's Vase

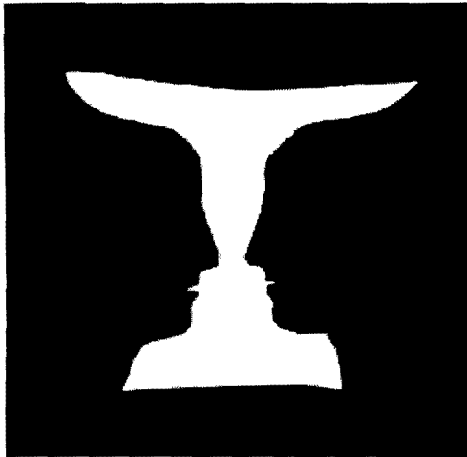


Figure 2  
Jastrow's "Hare and Duck"

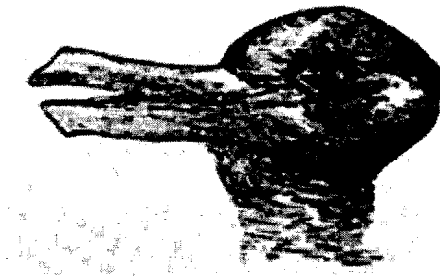


Figure 3  
Fisher's "Man and Girl"



Figure 4  
Fisher's "Man and Girl" exhibiting hysteresis curve

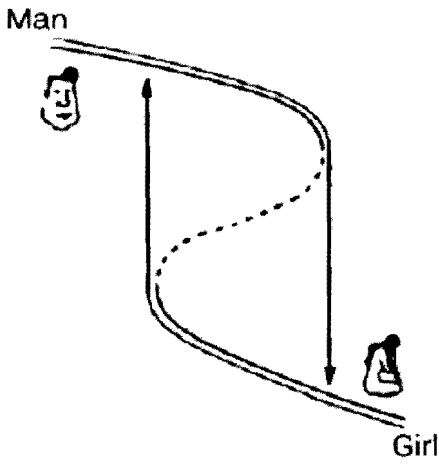


Figure 5  
Fisher's "Man and Girl" hysteresis point of change

