

# Politeness in the courtroom discourse

## Abstract

Whether in China or in any other parts of the world, and whether in ancient times or in today's society, politeness was and still is a very important social or interpersonal phenomenon, which helps to maintain social equilibrium and friendly relations which enables us to assume that our interlocutors are being cooperative in the first place. Literature on politeness study is legion,<sup>1-3</sup> but the focus is predominantly on politeness in everyday conversation or non-institutional settings, in spite of the fact that sporadic mention of politeness features in courtroom discourse can be found as forensic linguistics is developing fast and attracting more and more attention. Important theories of politeness such as Leech's Politeness Principle,<sup>4</sup> Brown et al.,<sup>5</sup> Politeness Theory in terms of face-wants, Gu Yueguo's Politeness Principle for modern Chinese and more recently, Jonathan Culpeper's impoliteness model,<sup>6-8</sup> are nearly all of them based on ordinary or everyday conversation. Lack of adequate research on politeness in institutional discourses or settings on the one hand and curiosity as to the nature of politeness in Chinese courtroom discourse as an example of institutional discourse on the other motivate the present chapter. We are going to examine politeness phenomenon in Chinese courtroom discourse and try to address the following four questions. Firstly, how is politeness in courtroom discourse representative of institutional discourse? In other words, how is politeness in what is often claimed to be a "war-like" discourse? Secondly, what politeness strategies, if there is any, are used in courtroom discourse in different interactional relationships? The third question is: how do we explain the peculiarities of the politeness phenomenon in courtroom discourse if there is any at all. And finally, what implications might the conclusions of this study have for legal practice in China and for politeness study in general? Does politeness have anything to do with law or practice of law?

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## Introduction

Before we commence our discussion of the topic, we deem it necessary to introduce some of the most important theoretical frameworks devoted to politeness as a background and what is more important is that we hope our model for analysis in this chapter will be one which draws insights and strengths from these previous models.

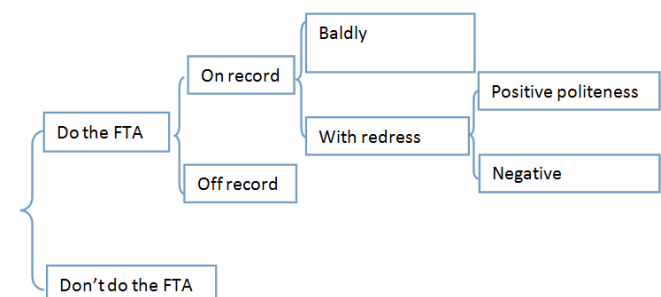
## A brief review of most influential theories or models

When talking about politeness in terms of models or theories, the Politeness Principle, a systematic effort made by Geoffrey Leech (1983), out of his desire to rescue the Cooperative Principle,<sup>9</sup> from serious trouble, will naturally come to our mind first. The Principle is expressed in two forms, with its negative form being 'Minimize (other things being equal) the expression of impolite beliefs' and the positive form 'Maximize (other things being equal) the expression of polite beliefs', which are substantiated by the following six maxims:

- i. The tact maxim: Minimize the expression of beliefs which imply cost to other; maximize the expression of beliefs which imply benefit to other.
- ii. The generosity maxim: Minimize the expression of beliefs that express or imply benefit to self; maximize the expression of beliefs that express or imply cost to self.
- iii. The approbation maxim: Minimize the expression of beliefs which express dispraise of other; maximize the expression of beliefs which express approval of other.
- iv. The modesty maxim: Minimize the expression of praise of self; maximize the expression of dispraise of self.
- v. The agreement maxim: Minimize the expression of disagreement between self and other; maximize the expression of agreement between self and other.

- vi. The sympathy maxim: Minimize antipathy between self and other; maximize sympathy between the self and other.

While Leech's model is based essentially on benefit and cost to each other, as indicated by his tact and generosity maxims, the two most important as well the most substantial of the six, Levinson et al.,<sup>5</sup> developed a framework to address politeness in terms of face, or more exactly, face wants. According to them, face refers to our public self-image and there are two aspects to this self image: *positive face* and *negative face*. The former refers to our need to be accepted and liked by others and our need to feel that our social group shares common goals whereas the latter orients to preserving the positive face of other people. Therefore, the most important thing has to do with redressing of affronts to a person's 'face' by face-threatening acts as depicted in the following model, which includes four types of politeness strategies: bald on-record, positive politeness, negative politeness and off-record (indirect).



GU Yueguo's Politeness Principle for modern Chinese (1998), modeled upon Leech's work and based upon the Chinese culture, was meant to address politeness phenomena in the unique context of China. It consists of the following five maxims, which are different from Leech's model in many ways:

- i. Self-denigration maxims: (a) denigrate self and (b) elevate other.

- ii. Address term maxim: address your interlocutor with an appropriate address term.
- iii. Refinement maxim: use refined language, including the use of euphemisms and indirectness, and avoid foul language.
- iv. Agreement maxim: maximize agreement and harmony between interlocutors, and minimize disagreement between them.
- v. Virtues-words-deeds maxim: minimize cost and maximize benefit to other at the motivational level, and maximize benefit received and minimize cost to self at the conversational level (1990: 92:11-14).

And more recently, Jonathan Culpeper's impoliteness model,<sup>6-8</sup> which for the first time draws our attention to impoliteness phenomena much neglected in the previous models, consists of five super strategies as follows:

- I. Bald on record impoliteness: utterances that are typically used when there is much face at stake, and when the speaker has an intention to attack the face of the hearer.
- II. Positive impoliteness: the use of strategies that are designed to damage the positive face wants of the hearers.
- III. Negative impoliteness: the use of strategies that are designed to damage the negative face wants of the hearers.
- IV. Sarcasm or mock politeness: the face-threatening acts that are performed by employing politeness strategies which, however, are obviously insincere and thereby remain surface realizations.
- V. Withhold politeness: keeping silent when politeness work is needed or expected so that the face of the hearer is damaged.

Among the five super strategies, positive impoliteness and negative impoliteness are the most note-worthy for they are listed into several output strategies as follows:

(a) Positive impoliteness output strategies:

- i. Ignore, snub, fail to attend the other's interests, wants, needs, etc.
- ii. Exclude the other from an activity;
- iii. Disassociate from the other-for instance, deny common association or ground or avoid sitting together;
- iv. Be disinterested, unconcerned, and unsympathetic;
- v. Use inappropriate identity markers;
- vi. Use obscure or secretive language;
- vii. Seek disagreement;
- viii. Avoid agreement;
- ix. Make the other feel uncomfortable;
- x. Use taboo language;
- xi. Call the other names;
- xii. Etc.

(b) Negative impoliteness output strategies:

- i. Frighten;
- ii. Condescend, scorn or ridicule;
- iii. Invade the other's space;

- iv. Explicitly associate the other with negative aspect;
- v. Put the other's indebtedness on record;
- vi. Hinder;
- vii. Etc.

On the basis of the previous studies on politeness and impoliteness, especially Culpeper's<sup>10</sup> impoliteness model, Bousfield,<sup>11</sup> established his own framework. Before producing a framework which accounts for impoliteness, Bousfield,<sup>11</sup> discusses the definition of impoliteness. He takes impoliteness to be the broad opposite of politeness, that is, impoliteness is considered as verbal face-threatening acts in communication, which are performed on purpose and with deliberate aggression. Since positive and negative impoliteness strategies are difficult to distinguish and are often combined together, Bousfield,<sup>11</sup> revised the impoliteness model into a very simplified one with only two "tactics" as follows:

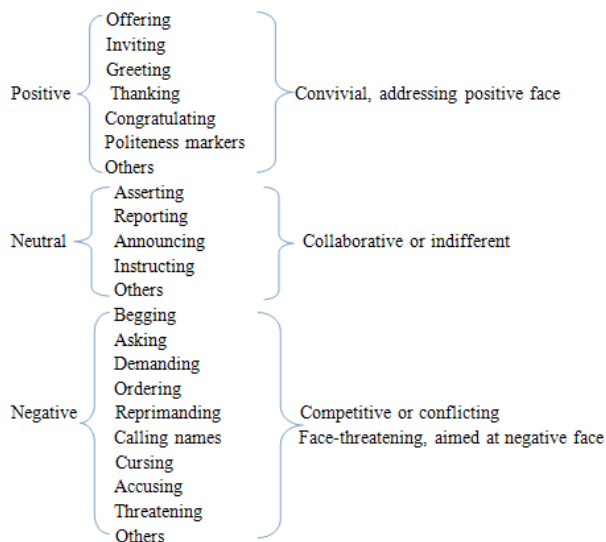
- I. On-record impoliteness-a direct, explicit or unambiguous way to attack the other's face or deny the expected face wants and demands of the other. Culpeper's bald on-record impoliteness, positive impoliteness and negative impoliteness are all included in this category.
- II. Off-record impoliteness-an indirect way to threat or damage the other's face. Culpeper's<sup>6</sup> sarcasm and withholding politeness are under this category.

As can be seen from the brief summary above, earlier efforts in the field were characterized by a focus on politeness more oriented towards the positive end of the phenomenon while the later ones feature a growing awareness of impoliteness more oriented towards the negative end of the phenomenon. But can we have something which will be able to take care of both of the two ends or dimensions?

### Politeness model for this book

In the same way as we approached cooperation above, politeness in this paper is treated as a continuum roughly in terms of positive, neutral and negative politeness. By positive politeness, we mean those acts which please the addressee or hearer in the way of courtesy, respect, face wants or benefit. By negative politeness, we mean those acts which may offend the addressee or hearer by showing lack of courtesy, respect, face wants or benefit. And consequently, neutral politeness means those acts which neither please nor offend the addressee or hearer in the way of courtesy, respect, face wants or benefit. Accordingly our use of the term "politeness" is much broader than the word as ordinarily understood and used and the purpose of so doing is for our model to cover the entire spectrum of the phenomenon under discussion, which includes both of the two ends or dimensions as mentioned a little earlier so as to incorporate previous politeness models. In order to make our ideas here clearer or make our model more workable, we briefly introduce Leech's classification of illocutionary functions into "*competitive, convivial, collaborative and conflicting*" (Leech 1983) and relate them to our tri-partition model of politeness in our continuum. *Convivial* acts like offering, inviting, greeting, thanking or congratulating, etc., plus other politeness markers without any substantial content, are examples of positive politeness. Those acts which realize *competitive or conflicting* functions like threatening, accusing, cursing, reprimanding, ordering, demanding, asking or begging embody negative politeness. Neutral politeness is exemplified by such acts as asserting, reporting, announcing or

instructing, which are *indifferent or collaborative* in nature. On the basis of this classification, and also drawing on the merits of the previous models introduced above, we have the following model for politeness analysis.



It is to be noted that in the model we combined Leech's competitive and conflicting functions into one category because both are characteristically negative in politeness, for according to Leech (1983:105), where the illocutionary function is competitive, politeness is of a negative character, and its purpose is to reduce the discord implicit in the competition between what speaker wants to achieve, and what is "good manners". Competitive goals are those which are essentially discourteous, such as getting someone to lend you money while in the category of conflictive functions, politeness is out of the question, because conflictive illocutions are, by their very nature, designed to cause offense. To threaten or curse someone in a positive manner is virtually a contradiction in terms: the only way to make sense of the idea is to suppose that the speaker does so ironically. Because politeness can be best seen in interpersonal relations or interaction we are going to examine politeness in terms of the most important interpersonal interactional relations in the courtroom as outlined in Chapter One, but we are not going to deal with every aspect of politeness in every way in which it manifests itself in the courtroom discourse, and choose to focus on two important media through which facets of politeness can be best expressed: illocutionary acts (and specifically, face-threatening acts) and interpersonal addresses, with the former concerning the content or substance of politeness and the latter the form. Accordingly and also finally, we will refer to Brown and Levinson's politeness theory in terms of face and face wants because it is based on speech act theory and face is important not only in the Western culture but also in the Chinese culture, and also to Gu Yueguo's politeness model as it is specifically designed for modern Chinese. However, we are not going to borrow everything from Gu's model, but just "the address maxim" of the 6 maxims.

### Data for analysis

Transcripts of six criminal and three civil courtroom trials were used as data for analysis for this chapter. Here is a brief summary of the cases involved:

- A. The first trial involved a charge of fraud. Five defendants were charged with defrauding some senior citizens of their money or jewelry by purporting to predict their future. Four of the defendants were farmers and one was an unemployed woman. Three of the defendants had received some primary-school education, one had received middle-school education, and one was illiterate. All the defendants pleaded guilty. The trial took place in 2000 in a lower court in Beijing, where the crime allegedly had occurred.
- B. The second trial involved a charge of destruction of private property. The defendant, a farmer of Fangshan District of Beijing, ran a coal mine originally independently with his elder brother, but was later made to run it jointly with the victim in the case with the defendant as the legal representative of the mine. The defendant and the victim signed a new contract with the production team according to which they should share their fees due to the production team. It turned out that the defendant was made to pay everything while the victim did not pay his share at all. The defendant complained to the leaders of the production team and also talked directly to the victim about the problem but failed in his efforts to correct the situation. The defendant's brother was so enraged when he saw the victim brought a new fancy car that he, out of revenge, committed the act of blowing up the victim's car after considerable preparation in the vein of a dark night, in which he himself was killed. The defendant was accused of being involved in the conspiracy. The trial took place in 2001 in a lower court of Fangshan District, Beijing.
- C. The third trial involved a charge of bigamy. A farmer in a Beijing suburban area was accused of maltreating his mentally sick wife and living with a divorced woman unlawfully. This is a private prosecution case, in which the victim, the defendant's wife, lodged a complaint to the court with the help of a law firm. The trial took place in 2001 in a lower court in Pinggu, a suburban county, Beijing.
- D. The fourth trial involves a charge of dereliction of duty. The defendant, the high-ranking deputy manager of a large Beijing-based corporation, was accused of dereliction of his duty, which led to great losses of money of the corporation. The defendant did not plead guilty and the trial took place in a lower court in Beijing in 2000.
- E. The fifth trial involved also a charge of fraud. The defendant, the general manager and also the chairman of the board of directors of a Wuhan-based corporation, was accused of obtaining from three Chinese banks 4 documentary irrevocable letters of credit at 160 to 180 days after sight, amounting to 8,503,042 US dollars, with forged import documents. The trial took place in the criminal tribunal of Wuhan Intermediate Court in 2002.
- F. The sixth trial involved again a charge of fraud, in which the defendant, who was the head of a property management center, was accused of defrauding 30 times the owners of apartments in a newly completed residential quarter of more than 3,400,000 yuan by renting the apartments to people without the owners' knowledge. The trial took place in a lower court of Fengtai, Beijing in 2001.
- G. The seventh trial is also of a civil case involving a dispute over the quality of the software for a sophisticated manufacturing process. The trial took place in 2002 in a suburban court of Wuxi, Jiangsu Province.

H. The eighth trial is of a civil case involving a charge of environmental pollution, in which a wine brewery was charged for polluting the. The trial took place in 2001 in a lower court of Fangshan District, Beijing.

I. The ninth trial is also of a civil case, in which the plaintiff, a Shenzhen-based company named Qidefeng, lodged a complaint to the lower people's court of Haidian District of Beijing, against the defendant, a Beijing-based communication technology company limited, for failure to honor their contract, according to which the defendant should transfer 5% of their company's stock to the plaintiff when the defendant received a payment by the plaintiff in Renminbi of 2 million. The case was heard in 2000. The data were chosen simply because of their being relatively more representative in terms of the nature, the type or complexity of cases, the number, education and gender of the participants in spite of the fact that they are more characteristic of our earlier work in the corpus construction.

Finally, before we come to the topic proper, we need to point out that the word "politeness" or "impoliteness" are treated as technical or academic concepts without any attitudinal bias involved unless otherwise indicated in specific sections or contexts.

### Politeness in the courtroom: a descriptive analysis

Henceforward we will try and present a descriptive analysis of the politeness phenomena in the data, as detailed as possible, in terms of illocutionary acts and interpersonal addresses so as to prepare for the explanatory efforts that follow.

#### Politeness in terms of illocutionary acts

As was mentioned above, politeness can be better examined in illocution of speech acts because it has to do with the intention or the goal or more exactly the content of the speech acts, we will first concentrate on discussion of politeness in terms of illocutionary acts or more exactly, face-threatening acts.

#### Politeness between the two opposing parties in civil and criminal trials

As conflict or confrontation is the theme of a courtroom trial, we will naturally deal with politeness in the interaction or in the "war" between the opposing parties, which are represented respectively by the prosecuting party and the defending party or defendant in a criminal trial and the plaintiff (or plaintiff lawyer) and the defendant (or defense lawyer) in civil (administrative as well) trials. It is understandable that the speech acts by the prosecutor in a criminal trial or the plaintiff (lawyer) in a civil trial are necessarily inherently impolite to the defendant either in criminal or in civil cases because these acts are accusatory in nature and therefore inherently impolite, even though the facts or the story of the case are presented or narrated by both sides in a so-called matter-of-fact way most of the time. As will be shown in the following, face-threatening acts characterizing negative politeness, especially those bald on-record ones, are the rule, permeating the interaction between the two parties with face-saving acts or positive politeness strategies the exception. Both sides try by every means or avail themselves of every chance to make the other side lose his or her face in court. Thus negative politeness or impoliteness stands out or dominates. Here are some of the most prominent strategies adopted.

#### Exposing face-losing acts or faults

One of the most popular strategies employed in court, especially in civil trials, is to have one's public image damaged by exposing one's face-losing faults or acts before the court. In the following cross examination of a witness for the plaintiff, Shen XX, a former high-ranking administrator of the company concerned, the defense lawyer asked a few questions which pointed to some ignoble acts by the witness.

J: Please remain silent. Does the defendant have anything to say?

DL: Yes.

J: Report your questions to the court.

DL: The first question is: When did SHEN XX work in the company? I mean when did he start to work there and when did he leave? --- The second question is: was SHEN XX in charge of the financial affairs from the very beginning to the end, that is, when he left? The third question is: Were Yi, Li, Liu and Wang employed by SHEN XX when he was the administrator of the company? Were they his former classmates? --- One more question: Is it true that when you (SHEN XX) left the company, you never paid back the 2000 yuan you borrowed from the company? What is more, is it true you never returned the computer you borrowed from the company? In order to weaken the force of the testimony by the witness for the plaintiff, the defense lawyer, in asking his questions, tried and made known to the court some face-losing acts that the witness committed (that is, borrowing some money and a computer from the company without returning them) which help to show that the witness was ignoble and therefore incredible.

#### Driving one into the tight corner

Here "driving one into the corner" means making the opponent dumb or tongue-tied through powerful and well-woven questions such as the plaintiff lawyer did in the following, in which the defendant was accused of selling to the plaintiff an instrument which did not meet the national standards.

PL: May I ask how many higher-ranking or senior engineers you have in your factory?

D: None.

PL: Then how many ordinary engineers do you have?

D: None.

PL: What about technicians?

D: We've got two.

PL: By what institution were their qualifications recognized?

D: By the factory managing committee and the workers' congress.

PL: Do they have any official qualification certificates by the state?

D: Not for the moment.

PL: Do you employ any engineers from the outside?

D: No.

PL: Then, I was wondering how you could make the instrument which requires highly sophisticated processing techniques qualified or up to the state-defined standards?



D: (Dumb)

Here is a different situation where it is not that the defendant personally did something wrong or culpable which was exposed resulting in his losing his personal face in court but that his factory's impotence or incompetence for production of the instrument was made so cruelly and embarrassingly naked before the court by the plaintiff lawyer's strategic face-threatening questions which constituted disastrous damage to his factory's public image and at the same time his losing face (for his factory). What is more, the plaintiff did not use any overtly or bald on-record impolite language but simply asked those cruelly embarrassing but factual questions in which the power of logic was in such an incremental way that it culminated in making the defendant tongue-tied. The above two negative politeness strategies are more characteristic of civil trials while in a criminal trial, where power imbalance is more serious, quite often face-threatening acts by the prosecutor or the judge in a criminal trial in court are bald on-record and there is no any redress work as depicted in the following typical strategies.

### Requesting or demanding

This is often a strategy employed by the prosecutor in interaction or examination of the defendant in criminal trials and its face threatening force or effect is often multiplied when the requesting or demanding act was itself an incriminating one as in the following:

PP: Did you use the same method in your swindling?

D: Yes.

PP: The same? Then you make a clean breast of the methods used in your swindling acts to the court.

D: I cannot.

The requesting or demanding, the form itself already overpowering, becomes overwhelming when used to express the propositional act that the defendant make a clean breast to the court of the methods her she used in her swindling acts.

### Criticizing

In criminal trial, when the defendant does not behave as well as expected, the prosecutor would criticize him or her as in the following where the defendant was criticized for assuming a poor attitude.

D: I cannot remember other things.

PP: You can't? In your presentation in court today, it seems you don't remember any crimes you committed. But when we examined you in our office, you remembered most of your crimes. What is your attitude in court today?

When the defendant said that he could not remember the things asked about, either intentionally or unintentionally, the prosecutor criticized her because the defendant was behaving quite differently than when she was previously examined in the prosecutor's office.

### Hoping

Hoping, like requesting or demanding, is also face-threatening in that it is condescending. It is a very much resorted-to strategy by the prosecutor (or the judge) in a criminal trial. Usually the prosecutor started his or her examination of the defendant by raising his or her hopes to the defendant by way of an opening remark, with the

practical consequence of assuming condescension and establishing a power imbalance right at the beginning of the interaction, in spite of the fact that sometimes the prosecutor might do so simply to facilitate the cooperation and communication with the defendant.

PP: Defendant LI Guimei, you are standing on trial today for swindling. It is hoped that you have a correct attitude in court and answer the prosecutor's questions truthfully and represent the case truthfully. Is that clear to you?

D: Yes, it is. I will be positive in cooperating with the court.

As can be seen, the prosecutor's expression of his hope was preceded by pointing out that the defendant was standing on trial for swindling, which reinforced the act of hoping as a face-threatening one. More often than not, hoping is also requesting in a different form.

### Interrupting

Whenever the defendant is being reluctant, irrelevant, hesitating or more informative than required, he or she will be interrupted.

D: Because my child was poorly off at the time (started sobbing), because my child is disabled

PP: You just answer the question truthfully. Do not talk so much about things unrelated to the case. Just tell the court things related to the case, OK? Then how many times were you involved in the swindling?

What the prosecutor cared was how the defendant committed the criminal deeds and the miserable situation of the defendant's family which the defendant tried to explain as a background or even the cause of her criminal deeds is none of the prosecutor's business. Interrupting is a very much resorted-to strategy by the prosecutor and it will be exclusively dealt with in a special chapter on it.

### Performing guilt-assuming or incriminating acts

The most extreme case of this situation is one where the prosecutor or the judge in a criminal trial simply or directly asked the defendant to confess or use other directly or explicitly incriminating words or expressions.

(a) Simply asking the defendant to confess

D: When I was present or on the spot, I saw them divide the spoils, but sometimes I was absent and did not know how they shared the booty, because I never took any money from them || I never

PP: Well, now, now you confess the crimes you were accused of in the indictment. Tell them one by one.

First, talk about your first crime. When and where did you commit it?

(b) Using baldly incriminating words or expressions

In court, prosecutors tend to use words or expressions which presuppose that the defendant is guilty.

PP: Go on. Do you still remember the swindling act in which you got the most spoils?

D: Well, sometimes I vaguely remember there was such a

PP: The one which involved a sum of 62,000 yuan, I mean.

"Swindling" is a criminal deed while "spoils" are ramifications

or results of criminal deeds, both of which presuppose that what the defendant had done was criminal or illegal.

### Politeness between the defense lawyer and the defendant in civil trials and the defense lawyer and the defendant in criminal trials

Contrarily, positive politeness strategies were employed by the defense lawyer in addressing his client(s) and none of the strategies resorted to by the prosecutor in the above was found here except the act of hoping, which was occasionally employed by some defense lawyers when starting to examine their clients. Very interestingly and also importantly, the prosecutor and the defense lawyer used very different and often mutually contradicting words or expressions or strategies when examining the same defendant. In the following case, the defendant, the head of a property management center, was accused of defrauding 30 times the owners of apartments in a newly completed residential quarter of more than 3,400,000 yuan by renting some of apartments to other people without their owners' knowledge. Let us first see how the prosecutor examined the defendant about it.

PP: Is the presentation of your criminal facts in the indictment true?

D: Well, the defrauding, or what you call the illegal renting of the three flats, is not consistent with what I said, and there are some differences.

PP: How much money did you defraud the contracted renters of in your contract swindling?

As can be seen, the key words the prosecutor used were all of them incriminating: "criminal", "defraud", and "contract swindling". But when it was the defense lawyer's turn, he tried and framed his questions in a completely different or opposite way.

DL: ZHANG XX, just wait a moment. I want to ask you a question.

D: Yes, please.

DL: About your renting of the first flat, was it the owner of the flat that entrusted you with it?

D: Yes, exactly.

DL: Well, you got 6,000 yuan.

D: Yes.

Rather than "defraud" or "swindle", here the defendant simply "got" the money from the renting of the flats because the owners had "entrusted" him to do that. Neutral, positive or exonerating expressions in favor of the defendant were used in counterbalance to the prosecutor's accusation. Again, as the seemingly neutral words or expressions ("got" or "entrusted") were used against those incriminating ones by the prosecutor, they turned out to be essentially positive politeness strategies for the defendant. A remarkable way or strategy of taking care of the defendant's positive face in court by the defense lawyer was trying to draw the court's attention to the positive side of the defendant or positive things he/she had done in relation with the case by asking such questions and also asking them in such a way which would give the defendant chances to show those positive things or aspects of the things she/he had done so as to exonerate the defendant or make him or her less culpable. Let us take the examination of the defendant by the defense lawyer in the

arson case in which the defendant was accused of being involved in the conspiracy of setting fire to the victim's fancy new-bought car together with his brother in revenge for the victim's not sharing their contracted dues to the production brigade in jointly running the same coal mine. Let us just represent the defense lawyers' questions and the defendant's answers:

(Q1) DL: Well, ZHANG XX, what did the village authorities originally say to you concerning the fees due the production brigade?

D: They said that I would be the legal representative of the joint-run coal mine, and share the fees due the production brigade with the victim. That is, each of us should pay half of our profits.

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(Q2) DL: Is it true that the village authority ruled it that you two families provide 300 tons of coal to the villagers free of charge?

D: Yes, it's true.

(Q3) DL: Did you provide the coal?

D: Yes, I did.

(Q4) DL: What about the victim?

D: It seems he did not.

DL: He did not.

D: Yes, we provided all of it.

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(Q5) DL: When you found that the victim continued running the coal mine without paying any fees due the production brigade, did you talk to him?

D: Yes, I said to him, "Let's go and pay our dues together". But he said that he was going to drop out.

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(Q6) DL: Did you make any complaint to the village authorities over his running the coal mine without paying any fees at all?

D: Yes. I went to the party secretary about it.

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(Q7) DL: Did you ever discuss the plan for setting fire to the victim's car with your brother?

D: No, I didn't

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(Q8) DL: When did you get to know that you were going to set fire on the car?

D: Right on the same day when we set out to burn the car.

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(Q9) DL: What did you specifically do when you arrived on the crime spot?

D: I did nothing but watch for my brother.

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(Q10) DL: When you were caught and the case was investigated, did your family managed to pay for the victim?

D: Yes. I went to my instructor in the detention house many times asking him to call you and talk with my family about compensation for the victim's loss as soon as possible.

(Q11) DL: How do you look at what you did in this case?

D: For my part and the role in the crime, I will just listen to the court. What they say goes.

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The 11 questions by the defense lawyer, well organized in chronological order, elicit a complete story or narrative totally different from that as told in the accusation by the prosecutor and favorable in every way to the defendant. According to this story, before the criminal deed, the defendant was a very well-behaved citizen, law and rule abiding. The victim was culpable because he continued running the joint coal mine and making profits without paying any due fees to the production brigade at all. The village authorities were also culpable because it seemed they did not do anything even after the defendant complained to them about the victim's non-observance of the contract. Most importantly, the defendant was totally ignorant of the criminal plan until the day when he and his brother set out to burn the victim's car and he did nothing substantial on the crime spot besides playing a role of watcher or watch-dog. After the criminal deed was committed and he was caught, his attitude towards his compensation for the victim's loss as well as to the court was very positive and admirable. The defense lawyer used every positive politeness strategy by asking the questions in such a way so as to try and have the defendant's damaged public image or lost face repaired or re-established. In this sense, we say that when the defense lawyer tried and exonerate the defendant he was being impolite to the prosecutor in an indirect way because what he did was to try and seek disagreement rather than agreement with the prosecutor in every possible way.

### Politeness in the interaction between the judge and others

The situation involving the judge in terms of politeness is little bit more complicated because of judge's dual duty both as a pure and simple procedural judge and as a substantial investigator of facts. When the judge performs his or her procedural duty, his or her speech acts tend to be neutral in politeness as in the following.

J: Now let us check the information of the defendants. Defendant LIU Han?

D: Yes.

J: Have you got any other names?

D: No.

J: Speak closer to the microphone. (The defendant did as he was told.)

J: Your birthday?

D: I've got no other names. Thank your presiding judge.

J: Your birthday?

D: October 25, 1965.

J: Your nationality?

D: Han.

J: Your education?

D: College education.

J: Your occupation?

D: Chairman of the Board of Directors of Sichuan Hanlong (Group) Company Limited.

J: Your address?

D: (Clearing his throat) Flat 2, Floor 2, Unit 3, Number 6 Zongnanzheng Road, Wuhou District, Chengdu, Sichuan.

J: Did you ever have any legal punishments?

D: No.

J: Because of being involved in this case, when did you get any compulsory measures on you and what kind of measures?

D: (A pause of 6 seconds) March 12, 2012.

J: What coercive measures?

D: (Clearing his throat) Surveillance of residence.

J: Do you remember your date of detention?

D: No, I can't, your presiding judge.

J: Is the date of your detention as indicated in the indictment true?

D: It should be.

J: Have you got any copy of the indictment?

D: Yes.

J: When did you get it?

D: I can't remember.

J: According to the record and the receipt which carries your signature, it is February 21, 2014. Is it true?

D: Yes. It is true.

But when he or she switches to his or her role as a substantial investigator of facts, his or her speech acts were inclined to negative politeness and those face-threatening acts or negative politeness strategies so popular with the prosecutor were also resorted to, some of which include the following.

### Deriding or mocking

These are not infrequent when the defendant(s) are vainly trying to find excuses for what they have done or to dodge the question.

J: Who of you located the victim of your fraud?

D: Most of the time, it was SHI who located the victim for me. It was Shi who decided the victim for me.

J: || SHI decided the victim for you, didn't she?

D: Yes. On the one hand, I was very timid at first and on the other hand

J: You timid? You did it more than || 30 times.

D: Sometimes I could not see the victim clearly.

J: None of that. Just tell how you managed to get your victims.

The defendant was exculpating herself by saying that she was timid and the prosecutor interrupted her and responded by mocking at her describing herself as “timid” because, according to the prosecutor, someone who has committed fraud for more than 30 times can never possibly be said to be “timid”.

### Scolding

The presiding judge in the following, irritated by the defendant’s persistence in telling the story in his own way despite the judge’s repeated interruptions, flew into a rage and began scolding the defendant.

PP: Now you talk, talk about the process of committing those criminal acts the related people, how you managed to get the business, how you talked about it. (---)

D: You want me talking about the facts in the indictment?

PP: That’s right.

D: About this---this business, as for the content of the indictment may I first point out some points in it, which I think are not true before I tell you the process?

PP: Yes, you may, but I wanted you to tell the court how the business started. Tell us just how it started. Talk about the process.

D: The whole thing started back in 1995, when I, through a friend of mine, got to know LI Yuecheng, the General Manager of Xinhuarong Computer Center affiliated with Xinhua News Agency. I learned from him that the People’s Bank of China was planning to have a pictorial book published, aimed to launch a promotion for the Law of the People’s Republic of China on Negotiable Instruments to be passed at the People’s Congress but they did not have the enough fund for it. LI said that they could win the project and asked if we could provide them with the money or get a bank loan and promised that we would cooperate once we got the project. Having formed an intentional cooperative proposal, I went to report it to our general manager and also the legal representative ZHANG Ruwen, who, thinking the idea was excellent because of a very profitable return, an annual interest rate of 30 percent, unprecedented at that time, approved our proposal, and entrusted it with me and Ren Yanfang, the financial manager of our department of finance. We two, Ren Yanfang and me, together,

contacted LI Yuecheng, negotiated with him and finally reached an agreement. Before the contract was signed, I went to report it to ZHANG Ruwen, who let me sign the agreement on behalf of him and REN Yanfang was put in charge of raising and allocation of the funds because I was not in charge of financial affairs. That was the case in the beginning and it was in early 1995. We began with an investment of 2 millions, and we provided this amount because (---), that was for 3 months and the immediate return was, at the rate of 30%, 150,000 yuan. Later, in view of the fact that the project was promising, and our 36 partner fulfilled the contract, we continued our cooperation. Of course, I had made a very careful examination of LI Yuecheng’s information concerning his business license, his identity as the legal representative, his certificate as a reporter for Xinhua News Agency, his I. D. card, his office affiliated with Xinhua News Agency, and I went so far as to try calling the telephone number on his business card, because it said he was the associate director of China Periodical Pictorial Publisher and I had made and kept a copy of his business license and his business card. I tried and called his number and someone answered and confirmed that he was an employee of

this work unit. I had been to the place, but I didn’t go up the stairs. I used the telephone downstairs. The office, I mean, China Periodical Pictorial Publisher, was inside an office building in the southern part of the third ring road. So, we began to talk about our second project, that is, our cooperation on the pictorial book about the Law on Negotiable Instruments. That was after the 2 million project. Again I went there together with REN Yanfang because we were required to hold our talk together. I remember we talked for several rounds and after we finished our talks, we went to report it to ZHANG Ruwen again and only then did we sign the contract and start the allocation of the fund of 8 millions. But this was just the starting (initiating) fund and far from enough. We needed loans from a bank as mentioned in our initial proposal but our own company could not do this as we had once managed to get a loan from Industrial & Commercial Bank of China and had no more such relationship with any other bank. We asked our partner to do this for us and he introduced us to Beijing City Cooperative Bank, which had been called otherwise (---). Our partner arranged everything, driving our financial personnel there, helping them through various formalities, and etc. I don’t know where the bank was situated and I have never been there. REN Yanfang was in charge of all this after our talk with Li Yuecheng, but I do know that quite a few of our financial personnel were involved. When they came 67 back from the bank with some form, they asked me sign it. But I asked for instructions first, and I asked for the instructions from ZHANG Ruwen before I signed the form. The first loan agreement was signed by me. That was in 1995, most probably in July or August. This was the first year of our cooperation, and it was from June of 1995 to 1996. Later we talked about cooperation on some other business, the production of bankbooks. That was our second business project and we got another loan of 20 million from the bank and Xinhuarong Computer Center was to pay the principal and its interest. All this was

accomplished by our financial personnel through our account there. By the way, there is a very important story here. It was later that I got to know it. At first, it was our partner who was responsible for getting the loan and we were guarantors. Later we were made responsible for getting the loan and also the guarantor for the loan. The change was caused by the bank. The story is like this. At first, the bank had us fill in the forms with our partner as the loanee and us as guarantor and sign the contract accordingly. But when the contract was signed and submitted to the higher ranking officials for approval, who negated it and proposed the change. Ren Yanfang came to me with the new contract and we discussed it, concluding that whichever way we signed the contract, we would be responsible for any loss resulting from any problem arising from this venture. The only difference would be that earnings on our side would be reduced, but the amount was not substantial. Having weighed these factors to the exclusion of other things, we decided to sign the new contract. As for the second loan contract I should say I am not clear about it at all. But later, I mean after I resigned from my position in 1997, one of the new leaders of the company told me that the second loan contract.

J: May I request the defendant to stick to the facts of the case, OK? The prosecutor just now asked you to tell the facts of the case.

D: I just finished the story about the first loan contract, and now let me tell you the second loan contract

J: You are to stick to the facts of the case.

D: I am talking about the second loan contract

J: (Suddenly and also very loudly) did you hear me, defendant?



D: Yes, I did.

This episode is multiply illustrative. In the last chapter, it was used to illustrate how the dominating party, that is, the questioners, should try and ask their questions in a cooperative way but here we will just focus on one of its face-threatening acts, “Did you hear me?” towards the end of the episode. Obviously annoyed at the defendant’s ignoring at her twice warning by interrupting, the judge tried interrupting the defendant the third time and scolding him with “Did you hear me?”, which is a very popular and also traditional way or strategy of scolding resorted to by Chinese parents or teachers or military commanders in giving a lesson to their disobedient children, pupils or soldiers. The force of face-threatening was multiplied when the harsh scolding was simultaneous with the abrupt interrupting, as was evinced by the fact that the defendant was immediately awed into obedience. Seemingly, the judge was performing her procedural duty when she tried and interrupted the defendant, but as her act of interrupting and scolding was based on her judgment and evaluation of what the defendant was saying in relation to the facts of the case, we say that that act of hers was substantial in nature. However, generally, even when the judge switches to his/her role as a substantial investigator his/her face-threatening acts were less frequent and the bald on-record ones were still less.

### Politeness in forms of addresses

In traditional Chinese culture, address is one of the most important cultural or linguistic devices which can best reflect degrees of politeness as naming or rectification of names was traditionally regarded as essential in running the country or government according to Confucianism and address has much to do with naming.<sup>1</sup> Generally speaking, as there are specific legal terms for referring to different participants in courtroom trial prescribed in the criminal or civil procedure laws, which are supposed to be neutral or objective or impersonal, it should be expected that legal addresses will be used, and that neutral politeness strategies will be employed in court in terms of address as the law, theoretically at least, should respect everyone in court in the same way. Now let us examine how in reality participants in their different relationships in court address each other.

### Forms of addresses used by the judge to others

As mentioned in the beginning of the book, traditionally, the inquisitorial system was practiced in Chinese courtroom trials, where the judge took almost everything in hand, performing both procedural and substantial duties. And as the principle of presumption of innocence was not adopted and practiced, the defendant could not enjoy the same rights and status as other litigants or participants. In a criminal case for example, once a person was arrested, sued and took the defendant stand in court, he or she would be regarded and treated as a criminal with no due respect shown to him or her as a defendant. However, since the revised criminal procedure law came into force, which reflects the spirit of the principle of presumption of innocence, the judge has been more oriented to the role of a neutral procedural judge. So the judge normally uses legal forms of addresses in court, which are neutral in politeness- Judge’s address to the defendant; Legal forms of address. The so-called legal forms of address are those which are used in or prescribed by the related laws. Once the suspect is brought to court, he or she will be referred to as “defendant” according to the Criminal Procedure Law of the People’s Republic of

<sup>1</sup>According to *Confucian Analects*, if the name is not correct then speech is not in order and if speech is not in order then nothing will be accomplished.

China.

J: The second tribunal of the criminal court of Xicheng People’s Court of Beijing is now in session.

(A) The defendant’s name?

D: HAN Wei.

Legal forms of address plus the full personal name, As a rule, as soon as the defendant’s name is identified.

(B) The judge will use his or her name together with the legal address as in the following:

J: Defendant LI Guimei.

D: Here I am.

So legal address + full personal name is the standard form of address used by the judge in referring to the defendant.

(C) Just the full personal name

The principle of economy or least effort also applies in use of language in court. Once the defendant’s name is associated with his or her role and status as the defendant, the judge will sometimes simply use his or her personal name as trial moves along in referring to the defendant as a third party as in

J: Does the defense lawyer have any questions to ask LI Guimei?

DL: Yes, I do.

Or (rarely) in directly addressing the defendant especially when there are more than one defendants involved as in

J: Do you have any objections to the victim’s testimony? Well, LI Guimei and DU Xiuying? Li & Du: No.

J: LI Jinhua and SHI Zhenru? LI & SHI: No.

J: No? What about you, ZHANG Yuling?

ZHANG: I didn’t have any idea of it at all.

J: You’ve got no idea?

ZHANG: Yeah.

It is significant that the judge (and the prosecutor) will never use personal names to refer to the defendant right at the very beginning.

### Judge’s address to the defense lawyer

In addressing to the defense lawyer, the judge employs neutral politeness strategies by using only legal addresses. Very, very rarely, or never, does the judge address the defense lawyer in his or her personal name, nor does she or he use a legal address plus the full personal name, even though the defense lawyers’ name(s), together with the prosecutors’ names, were introduced in the beginning by the presiding judge before the courtroom investigation process commences.

J: Does the defense lawyer have any questions to ask LI Guimei?

DL: Yes, I do.

It seems that as personal names suggest familiarity judges are always being very careful in maintaining a distance between him/her self and the defense lawyers by using legal address only in referring to the defense lawyer.

### Judge's self-address

Although we said earlier that we are to deal with politeness in interpersonal interaction here we also include in our discussion the judge's self address as it is used in addressing the whole court. When the judge refers to him or herself in court, he or she does not use the term "judge", nor does she or he use her or his personal name because a collegiate panel system is adopted in Chinese courtroom trial, the judge represents the court, not himself or herself. So normally the term "the court" is used, which is neutral, objective and impersonalized.

J: Well, this piece of evidence is recognized and confirmed by the court.

### Forms of address used by the defendant to others

The defendant tends to use positive polite addresses to other participants in court. As we treat politeness as a continuum of three degrees: negative, neutral and positive, we find that the defendant normally employs positive politeness strategies.

#### (1) Defendant's address to the judge

The defendant is most respectful in addressing the judge and most of the time the word "respectable" is used before the legal address "judge". This is understandable as in the Chinese courtroom the judge was and still is considered the most powerful person.

##### (a) Respectable + legal form of address

D: Respectable judge, how are you! I am now very regretful. Because I did not take the consequences of my acts seriously and did not learn the laws, I will repent my crimes and turn over a new leaf. Thanks! Please, I plead that the court should give me a chance. I thank the judge.

J: The court is now adjourned and will resume in five minutes. Take the defendant into the custody.

##### (b) Respectable + judge + Your Excellency (□□□)

Quite often, the defendant will follow that address of "Respectable Judge" with "Your Excellency" to emphasize his or her respect to the judge.

J: Now the defendant LI Jinhua may defend herself.

D: Well, Respectable judge, Your Excellency, although I had a junior middle school training, those were the days in the Cultural Revolution. I did not have a good education and my family was very poor then. I did not learn any law, nor did I understand any law. That is why I went astray and committed the crimes. It was indeed Shi Zhengru who first got me involved in this business, and it was not me who decided the venue or the victim. May I rebut their lawyer's arguments, Judge, Your Excellency?

#### (2) Defendant's address to the prosecutor or the defense lawyer

The defendant normally used legal forms of address to refer to the prosecutor or his or her defense lawyer.

J: Now the prosecutor may examine the defendant.

PP: Defendant Chen Ling, did you hear the indictment clearly?

D: Yes, I did.

PP: You did, didn't you? In the indictment your Tiancheng Company and the China Huarun Company were accused of opening

8 credit letters without actually importing any goods from abroad. Is it true?

D: I am sorry, but I would like to ask the prosecutor first

PP: You answer my questions first. Chen Ling, I remind you that it is me who is now questioning you. Did you open the 8 letters of credit? Did you do it? You will have your chance to speak.

### Forms of address used by the prosecutor or legal representative to others

#### (1) Prosecutor's address to the defendant

##### (A) Legal form of address + full name

The prosecutor usually addresses the defendant in legal terms together with the defendant's full names rather than mere legal addresses most probably because the defendant had been identified before the prosecutor started his or her interaction with the defendant.

PP: Defendant LI Guimei, today you stand on trial for your defrauding crimes. It is hoped that you have a correct attitude, answer the prosecutor's questions truthfully and present your case truthfully. Is that clear to you?

D: Yes, it is. I will cooperate with you.

##### (B) The full name only

The prosecutor very rarely addresses the defendant directly in his or her personal name. If the prosecutor does so, he or she normally uses the legal address first.

J: Now the prosecutor may examine the defendant.

PP: Defendant CHEN Ling, did you hear the indictment clearly?

D: Yes, I did.

PP: You did, didn't you? In the indictment your Tiancheng Company and the China Huarun Company were accused of opening 8 credit letters without actually importing any goods from abroad. Was it true?

D: I am sorry, but I would like to ask *the prosecutor* first

PP: You answer my questions first. **CHEN Ling**, I'd like to remind you that it is me who is questioning you now. Did you open the 8 letters of credit? Did you do it? You will have your chance to speak.

#### (2) Prosecutor's address to the judge

The prosecutor tends to use legal addresses in referring to the judge.

##### (A) Legal forms of address

PP: Judge, the prosecutor has finished his examination of the defendant.

##### (B) *Respectable* + judge

Occasionally, in order to show his or her respect for the judge, a prosecutor may also use "respectable" before the legal address "judge" as in the following:

1 J: Well, the legal representative (agent ad litem) is GUO Xiuwen. Do you have any other opinions?

The agent: Respectable presiding judge and other judges, in accordance with the law, entrusted by WANG Shuying, the private

party who initiated the prosecution, and appointed by Shiyu Law Firm of Beijing, I will provide legal aid for WANG Shuying as her agent ad litem. --I think the defendant WANG Guibao and Luo Cuixia committed the crime of bigamy by violating the 258th article of the Criminal Law of the People's Republic of China. I request that the People's court investigate the crime and inflict due punishment on the defendants according to the criminal law of China.

### Forms of address used by the defense lawyer to others

(1) To his or her client

(A) The full name only

Generally speaking, the defense lawyer does not use legal addresses to refer to his or her client in direct interaction, nor does he or she use any legal address plus the personal name but simply the personal names.

DL: Well, ZHANG Wenqiang, I would like to ask you a few questions. When you and Zhang Lihua jointly ran this mine, what did the village leader say about paying the fees to the production brigade?

D: The secretary of the production brigade said that I would be the legal person and each of us should hand in half of our earnings.

(B) Legal forms of address

We said above that the defense lawyer seldom addresses his client in legal terms in direct interaction with the client, but when he or she has to refer to his or her client as a third party in other statements, narration or presentation, he or she will use legal addresses such as "my client" or (less often) "the defendant".

J: I understand your opinion. Defense lawyer for DU Xiuying, do you want to say anything?

DL: Well, I would like to say two things. The first is I was wondering if my client should be responsible for all the seven crimes the prosecutor listed in his indictment. Actually, my client confessed all the seven crimes, but the other defendants did not. They just said that if the others confessed the crimes, they would also do so. My client cannot very well remember each and every of the crimes she was accused of. The Criminal Procedure Law says clearly that no conviction is made simply on the defendant's confession.

(2) To the judge

Generally, the defense lawyer uses legal terms to address the judge either as "Presiding Judge" as in

DL: Presiding Judge, I have finished my questions. Or simply "Judge" as in the following

J: Does prosecutor have any comments on this piece of evidence?

PP: We prosecutors did not see this payment receipt in court so we do not accept it as evidence as the defense lawyer presented

DL: Judge, because the original receipt is in her family's possession we cannot, we have no right to take her original one. But if you need the original form, we can ask her family to bring it here and show it to you in court.

J: Why couldn't you present it to the court? We || had to check it in court

DL: || No, the original can't be given to you.

J: Then do you have any copy of it?

However, in making their concluding or closing remarks towards the end of the courtroom trial process, the defense lawyers will normally add "respectable" before "judge" or "presiding judge" to show greater respect for the judge as in the following:

J: Now the defense lawyer for DU Xiuying may make his closing remarks.

DL: Well, You Respectable Presiding Judge and other judges, I am a lawyer from Hualian Law Firm entrusted and invited by DU Xiuying. I am now making the following five points in her defense.

### Politeness and court roles and status of participants

Although neutral politeness should be expected in court, actually politeness varies with the participants' courtroom roles and status. Normally, the judge enjoys greater respect and the defendant the least. When the defendant addresses the judge, he or she will more often than not use "respectable" before "judge" as depicted above.

J: You demonstrated a good attitude towards your crimes. You've got no more opinion? Well, court is now adjourned. Now in accordance with the Criminal Procedure Law, the defendant has the right to make a final statement. Now you may present your opinions and ideas. Do you understand?

D: Yes.

J: Good.

D: Respectable Presiding Judge and other judges, I, I did violate the law. After I committed the crime, I thought, ---

Sometimes the defendant went so far in showing his or her respect for the judge that he or she would report to the judge before he or she started to speak just as a soldier in the army does to his/her military commander.

J: Now the defendant Zhang Wenqiang may make a defense speech for himself.

D: (Sighing deeply) Report to you Presiding Judge, the crime was caused by four factors. The first was our dispute over the contracted fees. I paid my share of the fees to the production brigade but he did not. The second is---

Not infrequently, the defendant repeatedly expressed his or her thanks to the judge or the court in spite of being interrupted by the judge.

J: Now the court is adjourned. The defendant Chen Ling may make her final statement. You just state your opinions and say none of the things unrelated with the case in hand. Is that clear? Keep to your case and things about yourself.

D: Respectable Presiding Judge, respectable court attendants, I sincerely thank the court for giving me the invaluable chance to make my final statement. I have got some ideas that I would like to report to Your Excellency. Firstly, at the Sixteenth National Congress of the Communist Party of China, the Communist Party made its commitment to rule of law as the fundamental policy in running the country || and this makes me confident in today's trial

J: || CHEN Ling || Do not talk about this, will you? Keep to your case proper, that is, the treatment of you and your case, OK? You

sum it up. I had a look at your written defense just now. Your talk about rule of law at the sixteenth national party congress and your understanding of your case according to Marxist dialectical point of view has nothing to do with the practical operation in this case. Just express your ideas about how your case should be handled, OK?

D: Well, thanks. I remember the English Philosopher Francis Bacon once remarked, "An unjust trial is worse than ten crimes". A crime is a contempt or violation of the law just as water is polluted, but an unjust trial damages the law as it polluted (---). The country has established three fundamental principles in law enforcement, which shows that a defendant is to be treated as innocent before he or she is convicted. But in reality, this principle hardly applies and my own experience has proved this. For many times and on different occasions I heard the prosecutors say that if it were not that you were declared innocent in the first hearing, we would not have sued you for the second time. We have never wrongly sued anybody (---). If you are innocent,

then we are wrong (---). The words themselves may not be wrong, but the conceptions behind the words are. Human rights are not duly respected here. We should not just pay lip's service to our legal reform. When I stood here in 1999, 2000, I did not see judges wear robes nor use any hammer. What I want to see is substantial progress in legal thinking. The road to justice is long and uneven. I and my family could only wish justice done to us with tears in our eyes. For more than four years, I have been confined to a room of about 20 square meters.

Every night the strong light of an electrical bulb of more than one hundred watts was directed at me, which makes me sleepless, not to mention other sufferings I have had. I am driven to the verge of collapse. What I am longing for right now is not freedom, but a good sleep in a dark still night. All this reminds of a famous case in the Qing Dynasty, which involved the two defendants YANG Naiwu and Xiao Baicai, who were wrongly convicted. But even in those times there was an official who ventured to report the case to the Emperor;

J: None of this, none of this, we have no time for this stuff. At this court;

D: Why did the official want to report the case to the Emperor? Because the officials in charge of the case would like to stall until one of the defendants died in 52 prisons so that they could end the case in haste. That was in the Qing Dynasty and the case lasted no more than three years. But I don't see the end of my case. Maybe it will last as long as I can endure it. So this is a trial of my physical strength. Anyway, I do hope that the court will be liberated from those outdated conceptions and keep abreast with the society. Looking at my experiences, I grew up with the guidance of the Communist Party. I was always trying to do something for the country. I never intended nor attempted to ignore the law. All the evidence of this case pointed to the fact that we had been trying to bring together funds from Hong Kong and Beijing to make our contribution to the development of Wuhan. Without any law forbidding it, why couldn't we do it? I have no any demand for the court. I just want to thank the presiding judge for your instruction. What I can do is only to expect justice, hoping that all those prosecutors and judges who wear national emblems in their hats and hold the power in their hands will enforce the law fairly and squarely Thanks for the court.

However, judges or prosecutors will never return their politeness and respect. What is more, the judge tends to discriminate between

prosecutors and defense lawyers as well as defendants. The judge enjoys the highest respect, next comes the prosecutor, still next is the defense lawyer, and the defendant is the last. Let us take a look at the judge's way of treatment of interruption for example.<sup>2</sup> When the judge has to interrupt the prosecutor, he or she will use the politest way of interrupting.<sup>3</sup> But when the judge interrupts the defense lawyer or the defendant, he or she will be less scrupulous or considerate. Let us look at the following example.

J: Prosecutor, please continue to present the relevant pieces of evidence.

PP: Now we will present the fourth item in the table of contents of evidence, that is, the auditor's report which shows the uses and the flow of the funds collected through the 8 letters of credit without any actual import of goods. And then we will show the related documentary evidence. Here is Wuhan Changcheng Accounting Company Ltd, the 156th

J: I'd like to interrupt you. I'd like to interrupt you. Could you just read the conclusions?

PP: All right. Here the judge uses the most polite way of interrupting the prosecutor. But when he happened to interrupt the defense lawyer, he turned to a less polite way of interrupting.<sup>4</sup>

DL: --- I think the people who should take the defendant stand are Hanpeng Company, who not only tampered with the commercial ethics, broke the law, but also violated the Company Law and its rules of the game. What's worse, they cheated some leaders of the Wuhan Municipal Government, and caused serious damage to the reputation of the Wuhan Municipal Government, as well as to the soft environment for the development of Wuhan both at home and abroad. Here I sincerely call upon the court to make a thorough investigation of this matter. And I would also like to call the attention of the comrades in the gallery, especially those from the disciplinary committee of the Provincial Party Committee as I myself also worked in this committee. I would like to call your attention to this problem

J: Defense lawyer, do not talk about nonsense not related to this case. Moreover, when the judge interrupted the defendant, he would use the least polite way of interrupting.

D: The road to justice is long and uneven. I and my family could only wish justice done to us with tears in our eyes. For more than four years, I have been confined to a room of about 20 square meters. Every night the strong light of an electrical bulb of more than one hundred was directed at me, which makes me sleepless, not to mention other sufferings. I have been driven to the verge of collapse. What I am longing for right now is not freedom, but a good sleep in a dark still night. All this reminds me of a famous case in the Qing Dynasty, which involved the two defendants YANG Naiwu and Xiao Baicai. But even in those times there was an official who ventured to report the case to the Emperor

J: None of this nonsense, none of this nonsense, we have no time for this stuff. At this court

D: Why did the official want to report the case to the Emperor? Because the officials in charge of the case would like to stall until

<sup>2</sup>This example will be further discussed and analyzed in the chapter on interruption.

<sup>3</sup>Refer to Chapter 8.

<sup>4</sup>Most probably because the judge thought what the lawyer (or defendant) was saying was irrelevant or offensive.



one of the defendants died in prison so that they could end the case in haste. That was in the Qing Dynasty and the case lasted no more than three years. But I don't see the end of my case. Maybe it 19 will last as long as I can endure it. So this is a trial of my physical strength. Anyway I do hope that the court will be liberated from those outdated conceptions and keep pace with the development of our society. Looking at my own experiences, I grew up under the guidance of the Party. I was always trying to do something for the country. I never intended nor attempted to ignore the law. All the evidence of this case pointed to the and Beijing to make our contribution to the development of Wuhan. Without any law forbidding it, why couldn't we do it? I have no any demand for the court. I just want to thank the presiding judge for your instruction. What I can do is only expecting justice, expecting that all those prosecutors and judges who wear national emblems in their hats and hold the power in their hands will enforce the law fairly and squarely. Thanks for the court.

Traditionally, in a courtroom trial, the prosecutors have, among others, the right of supervising the process of the trial. This might help to explain why the court seems to show greater respect for the prosecutors.

## Politeness in courtroom: an explanatory analysis

### Discussion in terms of GP

Earlier in the beginning of the chapter, we mentioned that it seems very hard for classic models of politeness such as Leech's to apply in the courtroom discourse where politeness is so much different from that in everyday conversation in that negative politeness or negative politeness strategies loom largest while the positive politeness smallest as revealed by our descriptive analysis above. The most important reason is that, unlike in ordinary conversation, conflict or confrontation, or what Leech called competitive or conflicting speech acts, characterizes interaction in the courtroom. The conflicts are caused by disputes over participants' interests. To put it more directly, the conflicts are actually those out of different or conflicting interests, which are embodied or substantiated in goals of speech acts. Trying to be polite or maintain a friendly relationship is not the main business or concern of a courtroom trial. Henceforth, in courtroom discourse, the principle of interest, or rather GP, weighs more significantly than politeness principles in their various versions. That is, politeness can be, or rather, has to be, sacrificed or simply ignored for greater interest (and greater efficiency as well) here in court. When in court, it is the prosecutor's fundamental duty, aim or goal to accuse the defendant(s) of the crimes committed, have the defendant punished and win the case and it is the defense lawyer's essential or professional duty, aim or goal to defend the accused, or exculpate the accused, and win (to various extents or degrees, of course) the case too. Similarly, in a civil case, it is the plaintiff or the plaintiff lawyer's ultimate duty, aim or goal to prove that the plaintiff's rights had been violated or impinged upon and should be compensated for while it is the defendant or the defense lawyer's duty, aim or goal to do and achieve just the opposite. Both of the opposing sides are always seeking their disagreement rather than their agreement. This "tug of war", directed by the two detrimentally opposing goals, constitutes the everlasting theme of the courtroom discourse or trial discourse, which in turn shape the politeness behavior of the participants toward each other. Even though the speech acts performed by the prosecutor were not each of them overtly or flagrantly impolite in the locution, they were necessarily

inherently impolite in force to the defendant as a whole because of the accusatory nature of the acts, whereas the defending acts by the defense were necessarily inherently positively polite to the defendant in spite of the fact that overt positive politeness markers may have not been always employed. This may explain why Leech's politeness model does not apply here because the most important factor in his model is less cost and more benefit to others and more cost and less benefit to self as being polite, while in courtroom trial benefit or cost is the bone of contention. For example, in the following examination episode, the prosecutor, instead of showing any sympathy for the defendant's miserable family situation, interrupted abruptly the defendant for talking things irrelevant.

D: They told me over the phone that we would go fortune telling.

P: They told you to go fortune telling?

D: Yes, yes. At that time, I didn't know it would be a crime. I thought we would be simply wandering about, like itinerant entertainers or craftsmen, telling fortunes for people.

P: Yeah

D: Because my family was badly off (sobbing), || because my child was disabled.

P: || You just answer my questions honestly. Do not talk that much about things irrelevant with this case. Tell honestly those facts related to this case, will you? How many times did you get involved in the swindling?

What Prosecutors cared was where, when and how the defendant committed the crimes and how often, evidence or confession which proved their accusation. Neither does Brown & Levinson's politeness theory apply most of the time as face-threatening acts permeate courtroom discourse, especially the interaction between the opposing parties. There are, as a rule, no softening or mitigating devices used before the production of these acts, nor are there any redressing strategies or measures after the production of these acts, as is the case with everyday conversation, because these devices will hinder, rather help, the realization of their goals. It is obvious from the above examples that politeness varies quite a lot with interactional relations in that prosecutors in their interaction with the defendants or the defense lawyers in criminal trials and in cross examination show much more negative politeness than in direct examination or in interaction with other court participants simply because the prosecutor's accusing speech acts are necessarily inherently discourteous to the accused. It goes without saying defense lawyers will employ positive politeness strategies in their interaction with the accused simply because their defending speech acts are necessarily inherently courteous to the accused. In civil trials, lawyers also employ more negative politeness strategies in cross examination than in direction examination as well as in their interaction as opposing parties. In other words, in goal-sharing or adopting interaction, positive politeness dominated while in goal-conflicting or resisting interaction, negative politeness stood out. Neutral politeness prevailed where goals were neutral to each other, as was shown in judge's interaction with others when the judge assumed his/her role a pure procedural judge in which the speech acts he or she performed could hardly be described either as polite or impolite in nature as they were performed simply in accordance with the procedure law. The fact that judges tended to show, consciously or unconsciously, more positive politeness to prosecutors than to prosecutors' court correspondents, the defense lawyers, as well as

other courtroom participants, can also be explained in terms of judges' and prosecutors' implicit or tacit traditional alliance in court as well as the prosecutor's traditional privilege of supervising the trial process. Although negative politeness (strategies) loomed large, neutral politeness (strategies) was also impressive in courtroom discourse as a whole because courtroom interaction is governed by rules of the procedure law, which are neutral in the sense that they have to apply to everyone theoretically equally in court. And the rules are expressed in neutral terms in diction and style, and most of the participants, that is, judges, prosecutors and lawyers, are well aware of them. Neutral politeness strategies were employed in order to realize the goal of procedural justice in legal proceedings and law in general.

## Conclusions and implications

As most of the conclusions were actually arrived at and also obvious in our descriptive as well as analysis explanatory made above, we are now presenting a succinct summary and reserve most of the time for treatment of the implications of the present study for legal practice in China.

## Discussion

Of our continuum of politeness, we see that in terms of speech acts negative politeness stood out while positive politeness seemed negligible but in terms of address neutral politeness was the most prominent and permeating with negative politeness a rare phenomenon or marginal. But politeness varies conspicuously with different interactional relations in terms of the alignment of the interpersonal goals of the interactants. In interaction characterizing goal-resistance or conflicting as between the two opposing parties represented by the prosecutors and the defense lawyers in criminal trial or by the plaintiff and the defendant in civil cases, negative politeness stood out while in interaction featuring goal-adoption or sharing as between the defense lawyer and the defendant positive politeness was prominent. In goal-neutral interaction as between the judge in his or her procedural role or a pure procedural judge and others neutral politeness were a marked phenomenon. Politeness and use of politeness strategies varies significantly with courtroom roles and status of the participants. The judge employed neutral politeness strategies most often, the prosecutor tended to use negative politeness strategies in interaction with the defendant and the defense lawyer normally appealed to positive or neutral politeness strategies in interaction with his client in criminal trial. As an addressee, the judge enjoys the highest degree of positive politeness and the defendant the least. Hence, in general, politeness in courtroom discourse as a typical example of institutional discourse is fundamentally different from that in everyday conversation, a fact that will be better borne out if examined or looked at against the classic politeness models, which were based essentially on everyday conversation as presented in the beginning. And this ontological or factual conclusion pertaining to courtroom politeness phenomena proper, in turn, leads us to a methodological conclusion, that is, classic politeness models can hardly apply to courtroom discourse as a whole because those models by Leech, Levinson or GU are all of them oriented to the positive end of the politeness phenomena while the later two, Culpeper's<sup>10</sup> and Bousfield's<sup>12-17</sup> impoliteness models are exclusively negative end oriented. In a word, neither of these two types of theories can capture politeness of Chinese courtroom discourse as a whole. Metaphorically speaking, if we apply the first type of the models, courtroom would look like a dark room; if we apply the second type of the models, we

would totally ignore the shining or rays of light. However this does not mean that these models are out-dated and worthless and we will discuss this issue in our forthcoming implications section.<sup>18</sup>

## Implications

Just as courtroom discourse is a war-like one with conflict and confrontation dominating the trial process, it is all the more important for us to study the politeness phenomena in the courtroom because politeness here has so much to do with social justice. Put in a different way,<sup>19</sup> politeness in court is not a purely linguistic phenomenon, nor is it solely for the sake of politeness, but has much to do with important judicial or jurisprudential issues. This is especially true in a criminal trial.<sup>20-28</sup> Our descriptive analysis lends strong support to the view that the focus of study of courtroom politeness phenomena should be on negative politeness in the same way in which study of the courtroom cooperative phenomena should be centered on non-cooperation because more often than not some serious legal problems find their expression in or substantiated in negative impoliteness. Henceforth, this approach will contribute to the solution of legal problems.

## Politeness, practice of presumption of innocence and protection of human rights

In China, a courtroom trial used to be regarded as a punishment for the defendant because the principle of presumption of innocence was not practiced and the defendant was treated as a convicted criminal. Even though the principle of presumption of innocence was adopted in the 1996 revised criminal procedure law,<sup>29-30</sup> malpractices resulting from the deep-rooted presumption of guilt in minds of legal professionals were or are still not infrequent. Politeness or politeness behaviors in court, especially those of the dominating party represented by the judge or the prosecutor towards the dominated party represented by the defendant in a criminal trial is a true and reliable indicator of the real situation or practice of the principle of presumption of innocence and protection of human rights. Focus of politeness study on the negative end will undoubtedly help to promote and improve practice of presumption of innocence as well protection of human rights. For example, one of the traditional criminal courtroom trial practices was to have the defendant wear a yellow vest, a stigma usually attached to a convicted criminal or a prisoner<sup>5</sup> and another such practice was to have the defendant remain standing throughout the trial process unless the defendant explicitly indicated that he or she could not keep on standing any more as in the following:

D: Report to You Presiding Judge.

J: Go ahead.

D: Could I sit down? I cannot stand any longer.

J: Court police, will you bring a stool for the defendant.

D: Much obliged.

J: Well, please proceed with the presentation and reading of relevant documentary evidence.

Such implicit negative politeness or absence or neglect of due positive politeness, or those stigmatizing practices, strongly suggest presumption of guilt and neglect of due respect for the human rights of the defendant as a defendant in due judicial proceedings. In the spirit of the principle of presumption of innocence, the judge should

<sup>5</sup>The practice was abolished in 2015.

treat both the opposing parties as judicially equal litigants and thus abstain from discriminating between them, behaving politely towards one side while less so towards the other as was discussed in the above analysis of interrupting in the case involving charge of malfeasance in Beijing. In spite of the fact that a Chinese judge in a criminal court may perform both his or her substantial duty as an investigator of facts and his or her procedural duty as a pure judge, his or her acts in his or her capacity as an investigator of facts should be also as neutral as possible so as to be distinguished from those performed by the prosecutor. Thus, those acts which presuppose that the defendant is guilty are to be carefully avoided, and acts which realize negative politeness such as scolding or interrupting should be kept to a minimum unless in cases of contempt of court or other highly judicially relevant situations.

### Politeness, trial communication and trial outcome

As was discussed earlier in our descriptive analysis, impoliteness or negative politeness, more often than not, hinders rather than facilitates communication or cooperation by intensifying conflict or confrontation, attracting the court's attention to those minor or less important aspects of the case and reducing the efficiency of the trial. The ultimate goal of emphasis of more attention to negative politeness as we discussed above is also aimed at improving courtroom trial communication by promoting positive politeness in spite of fierce confrontation or conflict. Even though our conclusions point to the negative end of the continuum, positive politeness is to be encouraged and promoted. It seems what matters most in a case in terms of litigation is win or loss, but what actually matters more socially and professionally is to win or lose a case gracefully. Additionally, win or lose is a matter of degrees, always a continuum and there may be wins in a loss and losses in a win. Here we would like to illustrate this with two examples to totally different effects. Both are civil cases because so far most of the time we have been dealing with criminal ones. The first example involves a dispute over compensation for the damage of the plaintiff's deceased father's cinerary casket. The story is as follows. The plaintiff buried his deceased father's ashes in a cinerary casket in a communal cemetery at an expense of 320 yuan in 1999. But the next year when the plaintiff went to the cemetery to express their anniversary mourning for the deceased, they found to their great horror that the grave had been damaged and the casket gone. Having eventually managed to locate the casket near some other graves, they went to complain to the defendant, the township authorities in charge of the cemetery. It was later discovered that a mental patient had somehow strolled into the cemetery and destroyed the grave of the plaintiff's deceased father. The plaintiff henceforth sued the defendant for malpractice which led to the destruction and at the same time caused inconsolable and inarticulate spiritual pains for the defendant as well as indelible damage to the reputation and dignity of the deceased and therefore demanded compensation for the damage. In the process the defense did not try and expressed any slightest apology for what had unfortunately happened to the plaintiff and finally the plaintiff's lawyer had to say in his closing remarks the following:

Before I conclude, I have to point it out that it is to be regretted that throughout the litigation process the defense lawyer, acknowledging that the facts and the pieces of evidence for the facts of the case were basically true, did not try and make any slightest apology to the plaintiff for what had happened to the plaintiff as a result of their malpractice and its consequences. It goes without saying that the

defendant lost the case and they lost it gracelessly at that. A small step on the defense side in terms of a sincere apologizing act would have made the plaintiff feel a little better, which would turn out to be some important gain from the loss or a kind of win in a different form for the defendant. It is also to be noted that the few concluding remarks by the plaintiff, face-threatening as they were, were made politely. Following is another scenario in a courtroom trial: in front of the court was a clothe stained with blood and also a glass with a stub of a finger immersed in medicinal liquid. Not far away stood the victim with a gauze bandage, crying and cursing furiously. Sympathizing immensely with the victim, the crowd of court observers were all of them staring at the defendant angrily. When it was the defense lawyer's turn to speak, he started his opening remarks by saying: On behalf of the defendant, I am now defending for her. First of all I feel greatly regretted for what has happened to the victim and hereby please allow me, on behalf of the defendant and her family, to express our sincere and profound apology and condolences to the victim. Miraculously these few words immediately soothed the whole court and even the victim was calmed down. However, having made these polite remarks, the lawyer moved on. Unfortunately the victim was regrettably very much culpable in the case because, as a matter of fact, the defendant, as a result of her involuntary response, bit off one of the fingers of the victim while the victim was poking, scrabbling and scratching the defendant's mouth with her hand trying to open it. In other words, the victim herself was responsible to a great extent for the unfortunate injury. Being positively polite does not mean that you have to make any concessions or compromise in the way of truth or fact. Positive politeness and war does not inherently or necessarily exclude each other. Being positively polite in this case on the side of the defense was beneficial to the defense in at least a triple way. Put in another way, the case was concluded in a triple win situation in favor of the defense in our view of winning despite the fact that the defendant was eventually punished for that part of the injury which she was truly culpable for. Firstly, he won in the sense that communication or cooperation with the court and the victim together with her defense was made obviously easier henceforth as a result of his positively polite behavior. Secondly, he won in the sense that he tried and exculpated his client to the extent that the fact that the victim was also culpable for the injury was made known and accepted by the court. Finally, the defense won because he had his true respect for him as a highly professional legal practitioner from both the court including the opposite party and the observers and his own client. Before we conclude this chapter, in order to further clarify our point, let us refer to the following lengthy excerpt of court sentencing from a criminal trial which took place in a US court. As we saw in our above descriptive analysis, although neutral legal addresses may contribute to realization of procedure justice in court use of positively politeness strategies seem to be very helpful in facilitating courtroom communication.

The court: Mr. Franklin, you stand convicted of serious crimes, that is, conspiracy to communicate national defense information to persons not authorized, conspiracy to communicate classified information to a foreign government agent, and unlawful retention of that security information. These are serious offenses, and Congress has appropriately prescribed severe penalties. And in setting an appropriate sentence, the Court has considered your history and characteristics, the nature and seriousness of the offense, the need to avoid unwarranted disparity in terms of people being sentenced for similar offenses, and the need for personal deterrence, directed at you,



and general deterrence. Now, with respect to your personal history and characteristics, the Court is fully familiar with your background of service as Mr. Cacheris has aptly described it. You have served in the military and you have served in government, and you have a long period of national service. And I have taken that into account. I have also taken into account that you have no criminal history. I have also taken into account the seriousness of these offenses, which Mr. DiGregori just described very briefly. It should be clear that—what the significance – this is a very significant matter, a very significant case. This is not significant solely or chiefly because of the nature of the statutes that you have violated. This case isn't about the merits or demerits of this particular statute. But what this case reflects—because people will argue lots of things about this statute, about the nature of the information, who it was disclosed to, all sorts of things. It doesn't matter. What this case is truly significant for is the rule of law. The law says what it says. The merits of the law really are committed to Congress. If it's not sensible, it ought to be changed. But they're—that's the body that changes it, not the judiciary. The judiciary simply interprets and applies the law. So, the real significance of this case is that we have a rule of law. There is a law that says that if you have authorized possession of national defense information, you can't disclose it to unauthorized people, if you have a reason to believe that it would hurt the U. S. or help a foreign country. It doesn't matter that you think that you were really helping. That's arrogating to yourself the decision of whether to adhere to a statute passed by Congress or not. And we can't do that in this country. You may disagree with the application of the statute to you, but you can't use that disagreement to violate the law with impunity. Lots of people think that they are doing more good than harm if they disclose classified information to academia, to professors, to journalists, to other countries, to whoever—or to whomever. They can't make that calculation. It's not up to them to make. Congress has decided how this classified information should be treated. They have passed a law.

The rule of law applies, and we are all subject to it, and we must also obey it. So that's the real significance, is that we are a country committed to the rule of law. So, any discussion about whether it makes sense to apply the law in this case, or whether it's a sensible law, is irrelevant to you, because you chose to violate the law. That doesn't mean we shouldn't debate whether the law is a good law or not, as a people. It doesn't mean that Congress shouldn't consider it. It's not for the Court to say. It's none of the Court's business. The Court's business is to interpret and apply the law, and we are a country under which everyone is subject to the rule of law. So, there is no excuse for you thinking that you could get to the NSC circuitously by disclosing national defense information to unauthorized persons. And it doesn't matter who you disclosed it to. It doesn't matter whether you disclose it to a newspaper. It doesn't matter whether you disclose it to people who are fierce American patriots, or anything else. It doesn't matter. It can't be disclosed. That's the rule of law. That doesn't mean that I view this case the same way as I would view this case back when I first went on the bench, in the 'Eighties, seeing people disclose things, national defense information, to the Soviet Union as it then existed, because, of course, the circumstances would be different. But not different in-to the extent of excuse, not at all. But I have considered the nature and seriousness of the defense. And it is a serious offense. As Mr. DiGregori pointed out, once the information gets into unauthorized hands, who knows where it goes? Who knows where it travels? That's why it is classified, to insure that only the people with the need to know, with that classification, receive it. I have also considered the need to avoid unwarranted disparities.

And in that regard, the Guidelines are an important benchmark. And I typically use the Guidelines in order to avoid unwarranted disparities. In this case I see no substantial reason—and I don't need to find something in the Guidelines to depart, that is, a Guideline departure before I would before I would depart. I sometimes depart without any Guideline departure, if the circumstances warrant, because the command to the Court is not to impose a sentence that is more severe than necessary to meet these in the statute; that is, the deterrence, respect for the law, and the like. Given all of that, it is the judgment of this Court that you be sentenced and committed to the custody of the Bureau of Prisons to serve a term of 120 months on Count 1 and Count 5 of the Case 05-225; that is, 120 months on the conspiracy to communicate national defense information to unauthorized persons, and Count 5, conspiracy to communicate classified information to an agent of a foreign government. As to those counts, it's 120 months on each, but the sentences are to run concurrently. With respect to Count 5—I'm sorry, I misspoke there. On Count 1, which is the conspiracy to-the conspiracy to communicate national defense information to unauthorized personnel is in Count 1 of the indictment, superseding or the indictment in this case, is 120 months; Count 1 of the West Virginia matter is also 120 months, those sentences to run concurrently. With respect to Count 5 of the indictment from this district, which is the conspiracy to communicate classified information to an agent of a foreign government, you are to serve a period of 31 months imprisonment. And that sentence is to run consecutive to the other two sentences, for a total sentence of 151 months. The Court concludes that that sentence adequately accommodates the goals of the Federal Criminal Justice System, in that it provides adequate deterrence, both general and specific, and because it promotes respect for the law. That's why I emphasized the rule of law. I will also impose a \$100 special assessment for each count, for a total of \$300. And I am going to order that you serve a period of supervised release of three years on each of these counts, and that term is to run concurrently. That is, all three three-year counts are to run concurrently. The Court does not impose any special drug testing, because the record does not reflect the need for that. The Court does not impose a financial or a punitive fine, in view of the forfeiture. What is the extent of the forfeiture, Mr. DiGregori, Mr. Cacheris?

The Court: All right. The Court will order the payment of a \$10,000 fine, due and payable immediately. If not paid immediately—that's the figure I originally had noted—then you are to pay it at the rate of \$250 a month within 60 days of your release from confinement. Now the Court will allow you to surrender voluntarily and the Court will also stay the service of your sentence pending the completion of your cooperation, which extends beyond the matter that is the subject of the indictment in this district. I also want to mention that I took account, Mr. Franklin, of the fact that I believe—I accept your explanation that you didn't want to hurt the United States, that you are a loyal American and a patriot, and you thought—that you perceived this problem, and you thought the only way to get this problem to the attention of the NSC was in this odd, circuitous method that you chose. I have told you that is, of course, a violation of the law, no matter what your motive may have been. And Mr. DiGregori has properly pointed out that one of the problems with that is that once classified information escapes, its or destinations can't be predicted. Now, what I didn't mention is that, as I also read this record, I see some element of personal ambition, namely, you wanted to be on the NSC. And you had hoped some of these people might help you. That's not as laudable a motive. But I think what really drove you is what you stated in your statement. I accept that. Now, have I omitted any aspect of the



sentence? As can be seen, the judge, in delivering his court sentencing to the defendant, used very positive polite addresses right at the very beginning and throughout<sup>31–33</sup> when speaking to the defendant as well as the opposing lawyers, rather than those impersonal and neutral legal addresses<sup>34–37</sup> even though the defendant was already convicted. These positive polite strategies, together with the informal or conversational style involving the use of personal pronouns “you” (33 times), “your” (9 times), “I” in referring to himself rather than “the court” (29 times), generic “we” and “they” (5 times), and the use of short sentences, colloquial expressions “doesn’t”, “that’s”, “can’t”, “shouldn’t”. etc. (29 times), facilitates greatly the communication and cooperation between the court and the defendant as well as the lawyers with the distance and detachment lessened.

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## Conflicts of interest

The author declares that there are no conflicts of interest.

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