

Title of thesis

Legal professionals' aspirations for and magistrates' practices of legal
Cantonese in Hong Kong and implications for legal Cantonese education:
a CDA approach

by

Lee Kim Hung

for the degree of Doctor of Philosophy

University of East Anglia

School of Education and Lifelong Learning

December 2009

© This copy of the thesis has been supplied on condition that anyone who consults it is understood to recognise that its copyright rests with the author and that no quotation from the thesis, nor any information derived therefrom, may be published without the author's prior, written consent.

Abstract

The court of Hong Kong enjoys a prestigious status encompassing some of the core values indispensable to the stability and development of the city. If judges are in need of projecting their identity as representatives of the court, their language serves as an indicator of such intention. Theoretically speaking, maintaining a certain standard for magistrates' speech style is vital not only to magistrates and the court but also to the sustainability of the current social formation. From time to time, however, there are criticisms on the Cantonese speech style of magistrates by their senior colleagues. The aim of the study, therefore, is to answer the following research questions: (1) What do legal professionals believe are the importance and the key features of legal Cantonese in Hong Kong courtrooms? (2) What are the features of Cantonese used by magistrates and how do they differ from the legal professionals' aspirations? (3) What education do legal professionals receive in legal Cantonese? (4) How might the legal Cantonese education be improved?

To explore the above issues, Fairclough's critical discourse analysis (2001) and Bell's theories of speech style shift (2001) were adopted as the former theory serves to provide a social dimension to institutional discourse and thus reveals the relations between magistrates' speech style and social identity and power, and the latter theory contributes to an explanation of judges' speech style shifts within a trial setting. In this light, a basic interpretative qualitative study (Merriam and Associates 2002) was carried out. With theoretical sampling after courtroom observation spanning 32 months, three trial transcripts, field notes of 11 trial observations, four judgments and online data featuring the speech style of 10 magistrates were analyzed. Data from expert interviews and judgments involving 18 legal

professionals (i.e. a magistrate, seven high court judges, a university teacher of legal language, a barrister, a former court interpreter, and seven university law students) on the importance and features of legal Cantonese and information on legal language educations from the judiciary and universities were gathered. Data triangulation was conducted to support the research findings.

The research reveals that the majority of legal professionals favour the use of “common and generally understood Cantonese without resorting to slang and usage that may compromise the dignity and solemnity of the judicial process” in the courtroom and that magistrates tend to mix different speech styles which are mutually incompatible by social definition in their speech and hence compromise their social identity and power. As agreed by the majority of legal professionals, magistrates’ speech performance needs to be improved, and it is suggested that a dual-component approach which is both knowledge based and skill based should be adopted for legal Cantonese learning for judges and law students. The course design will highlight the social meaning of speech style and raise the learners’ awareness of the relations between speech style and social identity and power.

The significance of the research lies in the application of Fairclough’s critical discourse analysis and Bell’s theories of speech style shift on legal Cantonese in the context of Hong Kong, which has been left unexplored, and, as a result, its contribution to the generalizability of the theories. Pragmatically speaking, the research provides sociolinguistically-based explanations for the criticisms over magistrates’ speech style in Hong Kong as well as implications for a possible approach for legal Cantonese education for judges and law students. The research, therefore, serves theoretical and practical purposes.

Table of contents

	Page
Title of thesis	1
Abstract	2
Table of contents	4
List of figures	7
Chapter 1 Introduction	8
1.1 Aim of the research	8
1.2 Language diversity in Hong Kong	10
1.3 English as the high language	13
1.4 Emergence of Cantonese as the high spoken language	16
1.4.1 Cantonese as Hong Kong identity	20
1.4.2 Cantonese or Putonghua: a political choice	23
1.5 Reallocation of linguistic resources	27
1.6 Cantonese as a trial language	29
1.7 Overview of the thesis	40
Chapter 2 A survey of sociolinguistic theories on language, identity and social power relations adopted for this research	42
2.1 Interaction between discursive practices and social power relations	46
2.2 Speech style shifts and institutional identity	58
2.2.1 Audience design	58
2.2.2 Referee design	60
2.3 Institutional discursive practices and power struggle	64
2.4 Speakers' awareness of the significance of speech performance	68
2.5 Conclusion	69
Chapter 3 Methodology	71
3.1 Personal interest and belief in the research	71
3.2 The research perspective, approach and rationale	72
3.3 The research significance to sociolinguistic theories	75
3.4 Data gathering and analysis	77
3.4.1 The research context and participants	77
3.4.2 Data gathering	78
3.4.3 Direct courtroom observation	82
3.4.3.1 Site selection	83
3.4.3.2 Data capturing method	84

3.4.3.3 From pilot to data sampling	87
3.4.3.4 Data analysis	94
3.4.4 Expert interviews	99
3.4.5 Documentary analysis	108
3.5 Ethical considerations	112
3.6 Translation of data	115
3.7 Limitations of the research	116
3.8 Validity and reliability	118
3.9 Conclusion	119
 Chapter 4 Aspirations for legal Cantonese in the courtroom	 120
4.1 Issues with Cantonese as a trial language	166
4.2 Social identity and power of the court	176
4.3 Linguistic realization of the court's identity and power	179
4.4 Features of standardized legal Cantonese	183
4.5 Conclusion	187
 Chapter 5 Legal Cantonese in Practice	 189
5.1 Features of legal Cantonese in practice	199
5.1.1 Colloquial Cantonese expressions	199
5.1.2 Flowery or hyperbolic expressions	202
5.1.3 Formal Cantonese expressions	202
5.1.4 Written Chinese	204
5.1.5 English expressions	204
5.1.6 Questions instead of commands	205
5.1.7 Verbal particles	206
5.1.8 Self references	207
5.2 Summary of features and examples of magistrates' speech style	208
5.3 Conclusion	218
 Chapter 6 Theoretical explanations for the conflict between the aspirations for and the practices of legal Cantonese in court	 219
6.1 How judges manifest the identity and power of the court through discursive practices	220
6.2 Theoretical explanations for magistrates' use of colloquial Cantonese	233
6.2.1 Audience design	234
6.2.2 Referee design	237
6.2.3 Code-mixing and its socio-ideological significance	244

6.2.4 Revised model for the interactional relationship in courtroom	252
6.2.5 Democratization and instrumentalization of discursive practices	255
6.3 Conclusion	263
 Chapter 7 Review and recommendations regarding legal Cantonese education for judges and law students in Hong Kong	 265
7.1 Education for judges	268
7.2 Education for law students	277
7.3 Approach for legal Cantonese education	336
7.3.1 Theoretical framework	337
7.3.2 Methodology	341
7.4 Conclusion	358
 Chapter 8 Conclusion	 360
8.1 Guiding theories	360
8.2 Findings and implications	362
8.3 Possibility for further research	367
 Appendix 1	 369
Appendix 2	370
Appendix 3	371
Appendix 4	372
Appendix 5	374
Documentation conventions	542
Abbreviations	543
Bibliography	544

List of figures

	Page
Figure 1.1 Language spoken by Hong Kong people (1993)	10
Figure 1.2 The linguistic repertoire of Hong Kong people (1983 v 1993)	11
Figure 1.3 The court system of Hong Kong	30
Figure 1.4 Number of cases heard in Cantonese at the higher courts (1997)	39
Figure 2.1 Fairclough's model of interactional relationship between social formation, institution and action (1995: 37)	50
Figure 3.1 Data triangulation in the research	80
Figure 3.2 Format of field notes	86
Figure 3.3 Questions for expert interviews	104
Figure 4.1 How genre is created in a social context	169
Figure 4.2 Interactional relationship between court participants based on Fairclough's model of a conversational context (1995: 38 – 39)	178
Figure 4.3 Legal professionals' stance towards the standardization of legal Cantonese	185
Figure 5.1 Coded data of transcripts, field notes and judgments	209
Figure 6.1 The complementary relationship between English and low Cantonese expressions	252
Figure 6.2 Revised interactional relationship between court participants based on Fairclough's model of a conversational context (1995: 38 – 39)	253
Figure 7.1 Linguistic repertoire of a typical Hong Kong English and Chinese bilingual	265
Figure 7.2 Courses related to the use of Chinese listed in <i>Annual Report 2007</i> of the judiciary	269
Figure 7.3 Courses on English oral skills listed in <i>Annual Report 2007</i> of the judiciary	274
Figure 7.4 Course outline for the workshop "Negotiation – Achieving Practical Skills as a Negotiator"	275
Figure 7.5 Content analysis of the four assignments for "CLAW1009 Practical Chinese language course for law students"	332
Figure 7.6 Bachman and Palmer's (1996) model of language ability	342
Figure 7.7 Sample task for legal Cantonese education based on Feez's (1998) model	357

1.1 Aim of the research

This research aims at exploring the legal professionals' aspirations for and magistrates' practices of legal Cantonese in Hong Kong courtrooms based on the criticisms on the speech style of magistrates. It looks into the standard of legal Cantonese aspired by the legal professionals and whether in actual practice the Cantonese used by magistrates in courts complies with it. Apart from providing theoretical explanations for the findings, the research traces and explores the development of Cantonese as a medium of trial, the legal Cantonese education provided for judges and law students, and how the use of legal Cantonese in court could be promoted. The following theories will be adopted to support the arguments:

- (1) Fairclough's (2001) critical discourse analysis (CDA)
- (2) Bell's (2001) audience and referee designs

These theories will guide the research in an attempt to answer the following research questions:

- (1) What do legal professionals believe are the importance and the key features of legal Cantonese in Hong Kong courtrooms?
- (2) What are the features of Cantonese used by magistrates and how do they differ from the legal professionals' aspirations?
- (3) What education do legal professionals receive in legal Cantonese?
- (4) How might the legal Cantonese education be improved?

This is a pioneering work on legal Cantonese and its use in the local context, though the use of Cantonese as a medium of trial has a history of more than 30 years in Hong Kong since its inception in 1974 (Leung 1997). Previous works on legal Chinese are restricted to judges' written judgments instead of actual speech acts, and have overlooked that it is the judges' actual words in courts that create the court realities, not their written form for record purposes. Given Hong Kong is an international city where the rule of law is one of its cornerstones and the court system held in high regard by its citizens, the trial language issue in courtrooms is a concern not only to judges but to the general public, and I would argue that one of the judges' responsibilities is to ensure that their language used in courtrooms meet a *certain standard* so as to fulfill its institutional and social function. The following observations by Fairclough (2001: 55) support the assertion:

There is likely to be a general requirement for consistency of language forms, which will mean for instance that the vocabulary must be selected from a restricted set throughout. There is also a heightened self-consciousness which results in care about using "correct" grammar and vocabulary, including a whole set of vocabulary which is reserved for more formal occasions, and is often itself referred to as "Formal".

As now more than 80% of the trials at the magistrates' courts are conducted in Cantonese, it is timely to investigate whether the Cantonese currently used by the magistrates meet such a standard. The research findings will

also shed light on the further development of Cantonese as a courtroom language.

Before the legal professionals' beliefs regarding legal Cantonese are explored, it is essential that the linguistic situation of Hong Kong and the development of Cantonese as a high language, including its use as a trial language, are contextualised as background knowledge for the research.

1.2 Language diversity in Hong Kong

Hong Kong is a multilingual society with Cantonese, English and Putonghua as the most common spoken languages. The 1993 sociolinguistic survey conducted by the University of Hong Kong yielded the following result (Bacon-Shone and Bolton 1998: 75):

Question: What language can you speak now?	
Cantonese	91.9%
English	65.8%
Putonghua	55.6%
Chiu Chau	5.2%
Hakka	6.0%
Sze Yap	3.3%
Fukien	4.1%
Shanghainese	2.7%
Cantonese dialects	2.5%
Others	3.6%

Figure 1.1 Language spoken by Hong Kong people (1993)

As Bacon-Shone and Bolton have observed, speakers of Cantonese, the majority language, and speakers of minority “dialects” of Chinese also tend to report increasing degrees of proficiency in both English and Putonghua (1998: 85). They give further analysis by grouping individuals into a number of mutually-exclusive categories:

	Cantonese- English- Putonghua trilinguals	English- Cantonese bilinguals	Cantonese monolinguals	Home dialect- Cantonese bilinguals	Cantonese- Putonghua bilinguals
1983	16.9%	25.2%	30.4%	18.4%	7.7%
1993	38.3%	21.4%	16.2%	8.3%	7.1%

(Data are from the 1983 survey by Bolton and Luke and the 1993 sociolinguistic survey by the University of Hong Kong. See Bacon-Shone and Bolton, 1998)

Figure 1.2 The linguistic repertoire of Hong Kong people (1983 v 1993)

The surge in the percentage of people in the trilingual group suggests the increasing complexity of the linguistic repertoire of individuals. The 1993 survey has also found that 56.2% of the respondents have an English name and 53.4 % write personal cheques in English. One apparent reason for this phenomenon is the adoption of the mass education system by the government from the 1980s onwards to replace the old elitist system which allows only a tiny portion of the population to receive formal education. As more and more people have received senior secondary and tertiary education, multilingualism flourishes.

The mass media also reflects the multilingual reality of Hong Kong and contributes to its development. The city now has 10 free television channels, five of Television Broadcast Limited (TVB) and five of Asia Television (ATV). Six of them are Cantonese speaking, two are in English and two in Putonghua. Putonghua drama and news both of China Central Television (CCTV) and Taiwan television stations are also broadcast on some of the Cantonese and English channels. The Cable TV and Paid TVB, the two largest paid television stations in Hong Kong, also provide a large number of channels. While, like the two free stations, the majority of these channels are in Cantonese, English and Putonghua channels are on the increase in spite of their relatively small audience size. Moreover, many private estates

are installed with satellites and residents have access to a vast number of regional television channels of PRC and even of South Korea and Japan.

There are 12 major radio channels in Hong Kong. Among them, six are operated by Radio Television Hong Kong (RTHK) which is publicly-funded, three by Commercial Radio of Hong Kong (CRHK), and three by Metro Broadcast (Metro). In terms of broadcasting language, seven are basically in Cantonese, four in English, and one in Putonghua. Nevertheless, a number of Putonghua radio channels of the southern regions of PRC can also be received in Hong Kong. There is also a programme tailored for the Filipino community in Hong Kong called “Good Evening Kabayan” on the English channel of CRHK. To promote multiculturalism, the English channel of Metro, Metro Plus, also offers a vast array of international programmes for the ethnic minorities such as “The Indonesian Hour”, “Filipino Hour” and “Desi Dhamaka”.

Regarding the printed press, as Pierson (1998) has recorded, Hong Kong publishes more than 60 newspapers, 41 Chinese dailies and 7 English dailies, and nearly ten times that many periodicals, some of which are popular regional magazines and have their bases in the city such as *Asiaweek*, the *Far Eastern Economic Review*, the *Asian Wall Street Journal* and the *International Herald Tribune*. *Newsweek* and *Time* also have local editions printed in Hong Kong. Recent years saw the emergence of free daily newspapers, three in Chinese (*AM730*, the *Headlines*, and the *Metro*) and one in English (*The Standard*), all distributed at railway stations and housing estates. With websites like the RTHK and other powerful search engines, English and Chinese information on a wide variety of subjects is always at hand for Hong Kong people.

Local language use is as diversified as the above communication channels. As Scollon says, there is a continuum of languages and linguistic varieties in Hong Kong, from very standard British English to very colloquial Cantonese (1998: 279). The following presents and explains the changes in the use of the major languages amid the social transformation of Hong Kong from a British colony to a special administrative region of PRC, and provides theoretical arguments on how Cantonese becomes a high language and the language of the court.

1.3 English as the high language

The importance of English in Hong Kong was affirmed in 1878 when the Conference on the Teaching of English at Government Schools, called by the Governor Sir John Pope-Hennessy, arrived at the following conclusion: the primary objective to be borne in mind by the government should be the teaching of English (Yu 1987: 220). In political terms, English is the language of the ruling class and Chinese the language of the ruled. As illustrated by Pennington and Balla (1998: 243):

often as a result of the political domination of one people by another, one language is used in the formal, or “high”, domains of government, education, law, and business, while the other is generally used in the informal, or “low”, domains of home, family, and friendship. The former can be seen as domains where status and hierarchy are reinforced, while the latter are domains where solidarity and equality are established.

Hence Chinese is regarded as secondary in social status. At the same time, there is a strong pragmatic motivation for Hong Kong people to acquire English as a working language as it is generally believed that English skills and/or qualifications are vital to future employment prospects (Richards 1998; Patri 1998; Tsou and You 2003). Richards (1988: 310) attributes this belief to the following reasons:

- (1) Hong Kong's colonial heritage
- (2) The shift in the local economy towards international finance and trade
- (3) The growing importance of English as an international language
- (4) The desire to do well in the two public examinations in the face of fierce competition for places in certain courses in certain tertiary institutes

Lin and Detaramani have also found that the rising status of Hong Kong as an international financial centre in the 1990s continued to exert a pressing demand for university graduates highly competent in English (1998: 299). In university, English is the teaching and working language. Professional training in medicine, accountancy and law, for example, is conducted in English. In the labour market, English standard is invariably at the top of the requirement lists of professional positions. Hong Kong is at the same time an exhibition centre and a regional headquarters for many multinational companies the day to day operation of which is conducted in English. As So maintains, the high percentage of Hong Kong students in Anglo-Chinese schools is the result of the societal reward system (1984). Schools using English as the medium of instruction, including international schools, are most popular among parents who have considerable influence on the choice of schools for their children. In tracing the development of

English and Chinese education in Hong Kong, Yu concludes that Chinese education after the Second World War became a minority activity because of its non-alignment with the dominant socio-technocratic structure, which was the mainstay of economic development (1987: 229). Since western countries are still leaders of internationalization and technological advancement, English is vital and remains appealing in Hong Kong even though Putonghua is becoming a popular language along with the rise of PRC as a world power and a huge market for all kinds of commercial activities, not to mention that Putonghua speakers themselves are in the frenetic wave of learning English. With this understanding, English still maintains a firm psychological grip over Hong Kong people. Richards' study has found that Chinese people who are fluent in English are highly regarded. Without exception all of the informants of the study comment the bilinguals favourably in terms of status ("they have high status", "they are successful", "they are highly educated") and competence ("they are clever", "I am able to learn from them") (1998: 317). This further helps promote the use of English as individuals tend to create for themselves patterns of linguistic behaviour so as to resemble those of the group or groups with which they wish to be identified (McEntegart and Le Page 1982: 105). Some also argue that the continuing status and function of English in the community is a partial guarantee that Hong Kong will remain free and autonomous because it will operate as PRC's eyes on the outside world (Pierson 1992: 190). Firmly attached to social power and the identity of success, English is and will continue to be a high language of Hong Kong.

1.4 Emergence of Cantonese as the high spoken language

As shown by the above mentioned surveys, Cantonese is the mother-tongue of the overwhelming majority of Hong Kong people and is spoken by about 66 million people mainly in the south east of China including Macau, Guangdong, Guangxi and Hainan. Nowadays, it remains the medium of instruction in kindergartens as well as primary schools in Hong Kong. As for secondary schools, only 114 out of about 500 schools are English schools, also known as EMI (English as the Medium of Instruction) schools, where the classroom language is English except for Chinese subjects and subjects like music and physical education.

Cantonese has appeared in writing since the 19th century and is used mainly in personal correspondence, diaries, comics, poetry, advertising, popular newspapers, magazines and to some extent in literature. There are two standard forms of written Cantonese: a formal version and a colloquial version. The formal version is quite different from spoken Cantonese but very similar to Modern Standard Chinese and can be understood by Putonghua speakers. The colloquial version is much closer to spoken Cantonese and largely unintelligible to Putonghua speakers (<http://www.omniglot.com/writing/cantonese.htm> on 3 October 2009). Diglossia exists not only in written Cantonese but also in spoken Cantonese. Diglossia is a language situation in which two markedly divergent varieties, each with its own set of social functions, coexist as standards throughout a community. One of these varieties is used (in many localized variant forms) in ordinary conversation; the other variety is used for special purposes, primarily in formal speech and writing. It has become conventional in linguistics to refer to the former variety as “low”, and the latter as “high”. The functional distinction between high and low Cantonese is generally

clear-cut. High Cantonese is used in contexts such as sermons, lectures, speeches, news broadcast, proverbs, newspaper editorials, and traditional poetry. It is a language that has to be learned in school. Low Cantonese is used in everyday conversation and discussion, radio “soap operas”, cartoon captions, folk literature, and other informal contexts (Crystal 2003: 43). This echoes Joseph’s observation that Cantonese is complex in terms of linguistic hierarchy as there is formal spoken Cantonese which is in a diglossic relationship with colloquial Cantonese (2004: 150). Lord (1987: 10) captures the essence of their differences:

The “high” Cantonese varieties approximate more closely to the norms of Modern Standard Chinese [i.e. Putonghua]. Only the actual pronunciation of some commonly used vocabulary, and a few grammatical as well as stylistic features differ from the Northern Chinese norm. The “low” varieties on the other hand differ markedly from Modern Standard Chinese, not only in vocabulary and grammar, but especially in the whole style of speaking. “Low” varieties are colloquial, “street” varieties, seldom geared to clarity of exposition or subtlety of expression; and Cantonese is no exception. The failure to meet the level of “educated” speech is of course compensated by a wealth of expressive and communicative devices in which Cantonese is uncommonly rich.

Such communicative devices include code-mixing and verbal particles which will be discussed further in later chapters. Lord (1987: 10) also points out the undesirable local situation in the use of Cantonese:

The trouble is that only a very small proportion of Cantonese speakers in Hong Kong are actually properly familiar with, or actually use, “high” varieties, even in situations when these are definitely called for.

He attributes the decline in the use of “educated” Cantonese to both the neglect of Chinese language education in schools and the dominance of English in Hong Kong (1987: 10). Fu has also noted that there is so far no full linguistic analysis of Cantonese written in Chinese and Hong Kong students do not study their own spoken language either as a logical or grammatical system of communication or as a vehicle for written expression (1987: 28). The stylistic significance of low Cantonese is spelt out by the following description:

With the advent of the computer and standardization of character sets specifically for [spoken] Cantonese, many printed materials in predominantly Cantonese spoken areas of the world are written to cater to their population with these written Cantonese characters. As a result, mainstream media such as newspapers and magazines have become progressively less conservative and more colloquial in their dissemination of ideas. Generally speaking, some of the older generation of Cantonese

speakers regard this trend as a step backwards and away from tradition. This tension between the old and new is a reflection of a transition that is taking place in the Cantonese-speaking population.

(http://en.wikipedia.org/wiki/Written_Cantonese on 27 June 2009).

The proposition that low Cantonese contributes to informality in the mass media nowadays is also supported by other descriptions like “Cantonese is lively, colorful, and fun to speak. The abundance of slang, unique culture, and distinctive sense of humor make it a highly enjoyable language to learn” (<http://how-to-learn-any-language.com/e/languages/cantonese-chinese/index.html> on 3 June 2009). The features of low Cantonese manifested in magistrates’ speech, reasons for their formation, and their social implications will be further investigated in Chapters 5 and 6.

Just a year after PRC’s resumption of Hong Kong’s sovereignty, Evans and others conducted a research and found that teachers believed that Cantonese would be the most important language after 1997 and interviewees generally noted that Putonghua was already becoming increasingly important in business because of Hong Kong’s economic links with PRC (1998). As Kwo says, China’s open-door policy has boosted trade with Hong Kong and speakers of Putonghua have strong advantages in business (1992: 204 -205). The arrangements under the Closer Economic Partnership Arrangement (CEPA) starting from 2004 have further tightened the economic ties between Hong Kong and PRC. As Hong Kong depends more and more on PRC for economic growth, it is natural that Putonghua is becoming essential in school and at work, and Hong Kong people are

pressurized in learning Putonghua as a working language. Pierson also predicted that with the handover of Hong Kong to PRC, Putonghua would emerge as a potentially strong rival to both Cantonese and English (1992: 183). Others such as Johnson (1994) argue that language use is an indicator by which the implementation of the principle of “one country, two systems” may be judged, and that an emphasis on Putonghua in Hong Kong might be seen as a move towards integration with PRC, while the maintenance of Cantonese instead of Putonghua as the high spoken variety of Chinese will imply a greater degree of autonomy and a separate identity within PRC. As Bacon-Shone and Bolton say, it may well be the power of ideology through government intervention of one kind or another that decides the linguistic future of the Hong Kong community (1988: 87). With this understanding, one may find it intriguing that the term “Chinese” in the Official Languages Act 1974 is ambiguous and therefore subject to manipulation. No explanation is given as to what the official spoken form of Chinese is. In practice it is Cantonese. The Chief Secretary for Administration said on 23 May 2009 that with the continuous economic boom in the Pearl River Delta region, the youths of Hong Kong should learn more about the region and Putonghua so as to take part in its development (RTHK news), striking the same cord that it is out of economic, not political, considerations that Putonghua proves useful. I would argue that this ideology goes to the very root of Putonghua learning in the city: Putonghua is, like English, basically a language to meet pragmatic needs rather than for national identity.

1.4.1 Cantonese as Hong Kong identity

As Tsou & You point out, unlike other Chinese dialects used in different regions, Cantonese has traditionally enjoyed a very high status in Hong

Kong and is increasingly well-established (2003: 89 – 90). According to the 1966 census, Cantonese account for only 55% of the population but their language is spoken at home by 81.43% of Hong Kong people, rising to 98% in 1998 (2003: 201). Cantonese has also spread to other overseas Chinese communities through Hong Kong. Nowadays, Cantonese is the common language in Ho Chi Minh City of Vietnam, Kuala Lumpur and Ipoh of Malaysia, numerous China Towns in North America including the largest ones in New York, Vancouver and Los Angeles as well as the only language spoken by the Cantonese there (2003: 68). The success of the media industry of Hong Kong also helps reaffirm the status of Cantonese locally and overseas as Cantonese movies, television programmes and Canto-pop songs are well-received by Chinese all over the world (2003: 68).

For the people of Hong Kong, Cantonese represents an identity they are proud of. As suggested by Eastman (1985), language plays a major role in the development of social identity. Bell says that speech style derives its meaning from the association of linguistic features with particular social groups (2001: 142). According to Tajfel (1978), self-awareness of social identity is based on the following factors:

- (1) The knowledge of belonging to a particular social group or groups
- (2) The values attached to that membership
- (3) The strength of emotional attachment to the group

It may be due to the prolonged separation from their motherland that local ethnic Chinese who enjoy a higher standard of living display a sense of pride of being Hongkongers, and their language, Cantonese, provides a strong sense of identity for them. Hence one would not be surprised to find

that the term Chinese means in its spoken form Cantonese rather than Putonghua to Hong Kong people, as the overwhelming majority of them are immigrants or their descendents from the Guangdong province where Cantonese is the mother tongue. Johnson has also acknowledged the strong sense of Hong Kong identity based on Cantonese, with Hong Kong unique in the use of a “dialect” as the high spoken form of Chinese (1998: 275).

Richards finds that previous local studies on the relationship between ethnic identity and English (Pierson, Fu, and Lee (1980); Bond (1985); Pennington and Yue (1994)) suggest some discomfort on the part of Chinese students when hearing other Chinese using English (1998: 318). He interviewed 27 local senior secondary school students and found that the majority of them felt that Chinese people should not use English with other Chinese partly because the use of Cantonese is an important marker of Chinese identity – “speaking Chinese is a part of being Chinese”. The findings echo those of the research carried out by Fu (cited in Pierson 1987: 55) 23 years ago that while 83 percent of 561 secondary school students agreed that English was necessary to secure a good job as well as being important for the future, 66 percent reported that they felt uneasy when a Chinese person used English with them outside the classroom.

Although there are Hong Kong people, arguably increasing in number, feeling the pride in PRC’s progress symbolized by its financial bloom and, not the least, the hosting of the 2008 Olympic Games, Cantonese still occupies the central position in the spoken resources of Hong Kong people. As Joseph says, since Cantonese is the first language to more than 90 per cent of the population, it may seem unthinkable that the language could ever be weakened (2004: 159). To the majority of Hong Kong bilinguals, English is a language for only specialized academic or professional occasions and

most students will “search for the earliest opportunity to remove themselves from an English-speaking situation if they are unable to avoid it altogether in the first place” (Fu 1987: 35).

1.4.2 Cantonese or Putonghua: a political choice

At the end, I would argue that the reason for Cantonese instead of Putonghua being selected as the high spoken variety in Hong Kong is political. As Tsou and You suggest, the choice of the high language in a society has to do with economic factors, but political consideration ranks even higher (2003: 89). An example is Shanghai in the 1930’s when it was a semi-colony of foreign powers and English became the high language. Likewise, Malay is the national language of Singapore though 77.5% of the population are Chinese and only 14.2% are Malaysians (2003: 222). I contend that the political event that has decided the linguistic future of Hong Kong is the June 4th Incident in 1989 in which a student movement pressing for anti-corruption and democracy in Beijing was finally cracked down by the PRC’s People’s Liberation Army. It adds to the fear of Hong Kong people towards integration with PRC and strengthens Hong Kong’s unique position of an autonomous city, a situation contrary to the 1911 Revolution in PRC which made Hong Kong people more patriotic and, as Yu sees it (1987: 223), was an opportunity to promote Chinese education against the backdrop of English school domination. The HKSAR government might be well aware of the high tensions the June 4th Incident caused in the city and therefore dare not push through any plans for the wider use of Putonghua, which could be interpreted as a political act. Another political incident that has made Hong Kong people more detached from their motherland is the proposed legislation of the Public Security Ordinance in 2003. Fearing that

the passing of the bill might mean stricter control of civil liberties like what is reportedly the case on the mainland, half a million Hong Kong people took to the street in defiance of the proposed legislation which is considered to be a central government's high-handed move aided by the Hong Kong government. To ease the tensions, the Hong Kong government at the end withdrew the bill. The incident is a heavy blow to the credibility of both the Hong Kong government and the central government. As Joseph says, it also provides ample evidence that the Hong Kong culture is distinctive from mainland Chinese culture in more than superficial ways (2004: 134). If anything, the incident further separates the people of Hong Kong from their motherland. It also provides another evidence for the remark by Le Page and Tabouret-Keller that members of a group who feel their cultural and political identity is threatened are likely to make particular assertive claims about the social importance of maintaining or resurrecting "their language" (1985: 236).

The language loyalty displayed by the Hong Kong population and reinforced by political factors has another dimension. In studying how attitudinal factors affect the choice of medium of instruction in the schools in Guangzhou, Iu has found that there is a "power" relationship between people in the south and people from the north, which could be explained by the fact that the overwhelming majority of government officials in Guangzhou come from the north who have a low proficiency in Cantonese but possess the necessary connections to better social resources. He discovered that in Guangzhou, only key-point schools actually use Putonghua as the medium of instruction; others are Cantonese schools (cited in Fu 1987: 45). Hence a psychological revolt against power might be at play. Likewise, in a conversation between Chinese bilinguals in Hong Kong,

the use of only English maintains an official distance between a person in a superior position and one in a subordinate position because English is “a symbol of power more than a means of communication” (Cheung 1984: 9) and “not a neutral code of communication, but...carries the connotation of superiority” (Wong 1984:13). The use of Cantonese, on the contrary, is a symbol of solidarity, local values and a Hong Kong identity (Fu 1987: 43). This means that the more proficient in English a Cantonese speaker is, the more pressures he or she may have to bear regarding self-awareness and sense of belonging. In this regard, what is true for English is also true for Putonghua which succeeds English as the language of the ruling class.

It is against this background that Cantonese stands out in the linguistic struggle for power and is given a new mission in the legal field. As recorded on the government website, the number of Cantonese speeches made by senior government officials on formal occasions far exceeds that in English. If education is the most effective channel for linguistic goals, Pierson says that “one possible way to promote interest in Putonghua in the schools might be to make it the medium of instruction for some of the core Chinese subjects in the syllabus” (1992: 197). Yet the government is again hesitant to take this step. The Language Commission, while having set the goal of teaching Chinese in Putonghua for Hong Kong schools, has no definite plan of implementation, probably having foreseen the political overtone of such a move and possible opposition from the general public who are still emotionally not as close to their motherland as they physically are. Similarly, the Education Commission’s Report on the medium of instruction for secondary school released in December 2005 only focuses on the use of English and Cantonese and recommends that “母語教學，學好英語 (Use Cantonese as the medium of instruction and learn better English)” be the

priority for secondary schools. A year later, the Fourth Progress Report on the Education Reform was published. Though it states that “the language policy of the Government is to enable students and the working population to be biliterate (in written Chinese and English) and trilingual (in Cantonese, Putonghua and English)”, there is no schedule for compulsory Putonghua learning. As Kwo observed in 1992, the role of policymakers on promoting Putonghua in the territory as a whole is restricted to facilitation and encouragement rather than compulsion (1992: 209). Putonghua, therefore, lacks government support to become the daily means or formal language of communication in Hong Kong.

The intention of the government is more apparent if one looks at the pragmatic side of the issue. In the 2009 Language Proficiency Assessment for Teachers conducted by the Hong Kong Examinations and Assessment Authority, the percentages of the 2,785 candidates meeting the language proficiency requirement in Putonghua are 58% in listening and recognition, 56.5% in Pinyin, 37.9% in speaking and 77.2% in classroom language assessment. This compares unfavourably with the figures of English which show that the percentages of the 2,071 candidates meeting the language proficiency requirement are 80.3% in reading, 46.2% in writing, 69.5% in listening, 50.6% in speaking and 97.2% in classroom language assessment (<http://www.news.gov.hk/en/category/atschool/090526/html/090526en02002.htm> on 3 October 2009). If the government wants to provide sufficient Putonghua teachers to raise the local standard of the language, it may be a good idea to borrow the experience from English education: to employ NETs (Native English Teachers) to help teach the language. The Education Bureau, however, has not implemented any similar plan, not even put it up for discussion in the education sector. After all, it may be too risky to take

such a step when the sentiments of Hong Kong people towards PRC do not favour it. In fact, PRC's reiteration of its commitment to the "one country, two systems" policy towards Hong Kong as exemplified by its leaders' famous quote of "the water of river (which symbolizes PRC) will not intrude into that of the well (which represents Hong Kong)" suggests that the central government will not interfere with the language policy of Hong Kong, with the intention, I would argue, to alleviate Hong Kong's resentment towards the central government. As Fairclough says, social formation determines the power relations between various social institutions which in turn determine how social action such as discursive practices is carried out. Hence there is a connection between properties of discursive practices and the social power structure in which texts (in spoken and written forms) are produced (1988: 112). In this light, the current power relations between PRC and Hong Kong do not facilitate the promotion of Putonghua.

1.5 Reallocation of linguistic resources

In the past two decades, the simple description of a home-work switch, Cantonese for home and English for work, is no longer if ever adequate for Hong Kong people as more and more public issues are dealt with in Cantonese. Pierson (1998: 92) has predicted that:

for the foreseeable future, Putonghua and the notably different sociopolitical culture of the PRC will impact forcefully on the unique Chinese culture of Hong Kong, presenting new challenges to "Cantonese vitality" by attempting to alter the present sociolinguistic alignment

of languages in Hong Kong in some hitherto unknown way. It is not unreasonable to suppose that Putonghua might eventually emerge as the language of public administration, although there is little evidence for this status at present. English will continue to serve as the language of technology and international commerce, and of relations with the West and foreigners; Cantonese will most probably persist as the language of family and personal intimacy.

Yet up to this moment, the situation has proved to be somewhat different. Political factors and the identity awareness of Hong Kong people are mediating against the use of the national language, though Putonghua has become more popular, not out of government motivation but the awareness of its importance as a language for commerce. Putonghua has not displaced English as the language of power and prestige, and Cantonese has become a high language. As Johnson says, the increasing use of Cantonese in government, in the Legislative Council and other public forums, and in the education system has "assisted in the legitimization of Cantonese as the 'high' spoken language of Hong Kong" (1998: 270). Pennington and Balla (1988: 244) have also found that Cantonese is becoming the language of regional business and popular culture while English is no longer the only high language of the society. The trend is apparent. Johnson (1991) and Pennington et al (1992) have noticed a slide in the position of English and the corresponding rise in the position of Cantonese, synchronizing a declining use of English by students and teachers. Pennington and Yue

(1994: 18) have provided the dynamic perspective for understanding the linguistic changes in Hong Kong:

Attitudes to language cannot be viewed as stable characteristics of populations but are rather strongly responsive to contextual conditions. In particular, they indicate how much community attitudes might change in a comparatively short time during a period of societal upheaval and a major political transition.

The above analysis of the linguistic situation of Hong Kong throws light on how the power relations between languages interact with social changes.

1.6 Cantonese as a trial language

The year 1842 is a watershed in Hong Kong legal history. The Treaty of Nanking signed by China and Britain in that year following the Opium War made Hong Kong Island a colony of Britain. The Treaty of Tientsin of 1856 and the Second Convention of Peking of 1898 further extended the British rule to the Kowloon Peninsular and the New Territories of Hong Kong. As a result, the common law system, with English as its working language, was applied in Hong Kong. British parliamentary acts applicable to Hong Kong and local legislations are all in English, and legal professionals need to learn and exercise the law through English. Likewise, the Hong Kong court system is modelled on the British with three levels of courts as shown below dealing with different categories of cases:

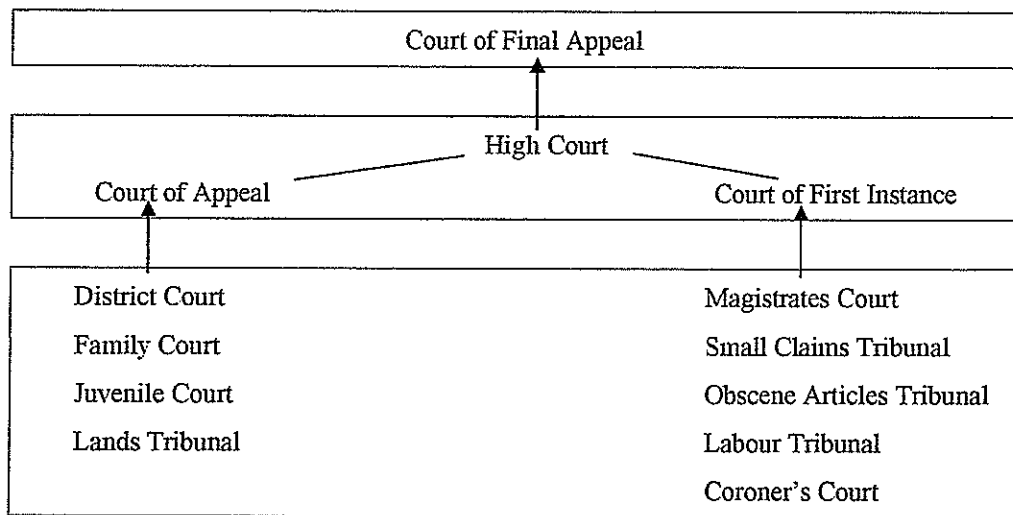


Figure 1.3 The court system of Hong Kong

With the change of sovereignty in 1997, the power of the courts of Hong Kong was further enhanced. Before 1 July of the year, the Judicial Committee of the Privy Council in London was the ultimate court of appeal for the people of Hong Kong. From 1 July 1997 onwards, , the Court of Final Appeal in Hong Kong is the highest judicial authority in the HKSAR in which independent judicial power is guaranteed as stipulated in Article 85 of the Basic Law:

The courts of the Hong Kong Special Administrative Region shall exercise judicial power independently, free from any interference. Members of the judiciary shall be immune from legal action in the performance of their judicial functions.

Article 81 of the Basic Law also states that The Court of Final Appeal, the High Court, district courts, magistrates' courts and other special courts shall be established in the HKSAR (see Figure 1.3) and Article 92 provides that judges and other members of the judiciary of the Hong Kong Special

Administrative Region shall be chosen on the basis of their judicial and professional qualities and may be recruited from other common law jurisdictions. (http://www.basiclaw.gov.hk/en/basiclawtext/chapter_4.html#section_4 on 15 May 2010) Hence magistrates in Hong Kong must have been practicing lawyers before being appointed as magistrates.

As explained later in this chapter, the magistrates' courts in Hong Kong are the lowest court and the starting point for all criminal offences and hence deal with the overwhelming majority of cases. As Wesley-Smith points out, magistrates' courts in Hong Kong dispose of a vast number of petty offences and are thus the judicial institutions a citizen is most likely to have dealings with (1993: 58). This is true in England as well. All prosecutions start in the magistrates' courts and as Partington (2006: 114) says:

The vast bulk of criminal trials are disposed of in the magistrates' court, and the vast bulk of them – both in the Crown Court and in the magistrates' court – are determined on the basis of a plea of guilty. The trial is a statistical rarity.

In both England and Hong Kong, whether the trials finish in magistrates' courts depend on the categories of the cases:

- (1) Summary offences: these are offences tried in magistrates' courts with the issue of a summons.
- (2) Indictable offences: these are offences of a more serious nature, such as murder and rape, tried on indictment in the Crown Court in England and,

in Hong Kong, in the District court or the High Court, depending on the seriousness of the crime.

- (3) Either-way offences: these are offences triable in either the magistrates' courts or the higher court which means the Crown Court in England or, in Hong Kong, the District Court or High Court. The defendant has the right to choose whether the case should be heard by magistrates or by a judge with a jury in the higher court. As Partington points out, opting for trial in the higher court exposes the accused to the risk of a more serious sentence since the Crown Court in England or the District Court/ High Court in Hong Kong has wider powers of sentence than the magistrates' courts, though the latter may also commit a case to the higher court if they believe their powers of sentence are inadequate (2006: 115).

Appeals from magistrates' courts will be dealt with by the Crown Court in England and the Court of First Instance of the High Court in Hong Kong.

While the magistrates' courts in England and Hong Kong serve basically the same function in their legal systems, there is a huge difference between the magistrates in the two jurisdictions. As Partington (2006: 120) explains:

There are two distinct types of magistrates' courts which operate in England and Wales: the *lay justices'* courts, and the *district judge* (formerly *stipendiary*) *magistrates'* courts. Lay justices' courts are made up of (usually) three lay persons (i.e. persons with no specific legal qualifications), known as Justices of the Peace (JPs), who sit and determine criminal cases, with legal advice

on their powers given to them by the *Justices' Clerk*, a specially appointed official who is legally qualified...

District judge magistrates' courts are run by district judges, who are qualified lawyers and sit on their own, rather than in panels of three. (emphasis in original)

Since the lay justices' courts account for the majority of courts in England, the administration of justice at the lowest level relies heavily on lay persons of diverse occupations and background, who serve voluntarily as judges (Harrison 1994: 7). The magistrates in Hong Kong, however, are lawyers. They sit alone on all trials. Moreover, magistrates in England has the maximum sentencing power of six months' imprisonment or a fine of £5,000 for a single offence only (Harrison 1994: 42), while their counterparts in Hong Kong may sentence a defendant to a maximum of two years' imprisonment and a fine of HK\$100,000 (Judiciary 2006). The attire of magistrates, as a symbol of social identity and professionalism, also varies between English and Hong Kong courts. English magistrates could "dress up" or "dress down" as long as they dress appropriately (Greenhill 2002: 22). In Hong Kong, magistrates all wear judges' gowns in courts. These differences not only highlight the features of the two legal systems but also provide an explanation for the shaping of the expectations of the general public towards magistrates in the two places. It could be argued that the general public of England and that of Hong Kong view magistrates differently, and Hong Kong magistrates arguably give a more professional legal image. This understanding contextualizes the research and its implications on research methodology will be discussed in Chapter 3.

With the common law system came the etiquettes associated with it. Legal English used by the legal profession was viewed with respect. Jargon like “your worship” for addressing the judge and “my learned friend” used among counsels exemplifies the dignity of the court and the social identity of the legal professionals. As Smircich (1992) and Norlyk (2000) point out, specialized vocabulary constitutes an important part of the identity of a language community. The translation of English legal jargon into Chinese has helped preserve the tradition. As shown in Chapter 5, some of the formal Cantonese expressions used by magistrates are direct translations from English legal jargon, and they help maintain the social identity and power of the court.

Before 1974, English was the medium of trial at all levels of court and it was only after riots broke out in the 1960’s, among them “The Chinese Movement” in which people led by university students and Chinese teachers took to the street to fight for equal status of Chinese and English, that the government became aware of the need to change its policy. In 1974, with the implementation of the Official Languages Ordinance which states that Chinese and English are both official languages in Hong Kong, the government and the legal profession recognized the need for a wider use of Chinese in the legal field. Article 9 of the Basic Law of Hong Kong promulgated in 1990 provides that “In addition to the Chinese language, English may also be used as an official language by the executive authorities, legislature and judiciary of the Hong Kong Special Administrative Region” and thus reconfirms the status of Chinese. Hence the need to speed up the use of Chinese, and Cantonese as its spoken form, in the legal profession became even greater. The government started translating local laws which were hitherto all in English into Chinese. New

laws were to be drafted and passed in bilingual versions. An English-Chinese glossary of legal terms was compiled. The use of Chinese emerged in the legal profession.

In a place where the overwhelming majority of people are Cantonese-speaking, the advantage of using Cantonese in courtroom is beyond question, as the former Secretary for Justice, Miss Leung Oi-see, (1997) points out:

The increasing use of Chinese in the courts is of immeasurable value to the community, since it removes a language barrier, helps to de-mystify the law and promotes the ideal that the law belongs to the people. For the first time, the vast majority of Hong Kong's population now has access to the law in their own language. And if they are ever involved in a court case, it will be possible for the proceedings to be heard in their own language.

Miss Leung's view is echoed by that of Mr. Yen Yuen Ho, the Government Law Draftsman (2001: 249 – 250):

Supposing we were involved in litigation or had some legal problems concerning our rights that had to be resolved in a court of law, but the judge on the bench presiding over the court would only use a language that we do not understand, or are not too familiar with...then would you say that your rights have been guaranteed, or

that the law has helped you? In our society, the importance of democracy and governance by the rule of law are often emphasized, but if the law is not expressed in a language that people do understand, how can you expect the public to understand the law, know their rights and obligations, and be law-abiding citizens? This language barrier was an impediment to the popularization of the rule of law and good civic education. It only helped to create an unfair situation.

Sin and Chu also point out that the predominance use of English as the language of the law inevitably causes injustice to most Hong Kong people who do not speak English (1998: 151). However, as English has been the working language for professionals of various sectors including the legal profession as mentioned above, it was not until the Official Languages Ordinance came into effect that the first Cantonese trial took place at a magistrates' court in 1974. The last thirty years saw the wider use of Cantonese by judges at the lower courts. For higher courts, the pace is much slower. It was only in February 1995 that the government announced the timetable for bilingual proceedings in courts above the magistracy level. It called for the phasing in of the use of Chinese in the District Court within a year, the High Court in two years, and the Court of Appeal in June of 1997 (The Law Society of Hong Kong 1995: 25). The result is that the first Cantonese trial took place in the High Court in 1995 and in the District Court in 1996. However, as Mr. Justice Findlay (1999: 69 – 70) says, there has been resistance to the shift in the medium of trial from English to Chinese:

The aspirations of the local community to have cases in which they are involved conducted in Cantonese is [sic] perfectly natural. There is nothing extraordinary about them wanting to understand what is going on directly. The judiciary may be more conscious of this than the rest of the profession as you tend to get more initiative from the judiciary to have more cases conducted in Cantonese than would be merited from outside pressure. The Bar tends to be very lukewarm about it, and I understand this because those who have been practising for a long time have been practising entirely in English and might find it strange to suddenly have to switch and argue cases in Cantonese. And of course the international community will still want to see their cases conducted in English, as it is the lingua franca of the business world. So I see it as being a gradual development but I also see English as being very prominent for a long time to come.

The above quoted Mr. Yen explains the situation from another perspective (2001: 253):

In the majority of cases in magistrate's courts Chinese is now used as the medium of communication, and most of the magistrates are bilingual. But when you get to the High Court the situation may be different. There are many judges and lawyers in the Hong Kong legal circle who do not understand Chinese, so that the case is better

conducted in English if the judge hearing that case and the lawyers representing the parties can't speak Chinese. Hong Kong is an international city in which many foreign companies will run into legal problems from time to time, and big cases, especially commercial ones, that are before the High Court, are generally reported in English, so lawyers and judges tend to use English. This is appropriate and causes no injustice. On the other hand, many criminal cases like traffic offences, regulatory breaches of the Public Health and Municipal Services Ordinance and cases of small claims are heard at a lower level of the courts. Most legal proceedings involving local people are conducted in these lower courts, and since the main issue is usually on the finding of facts only, it will be easier to get to the truth if Chinese is used. Everybody is able to understand the proceedings clearly, so peoples' rights and justice are better preserved. In the High Court, however, English is usually the more convenient medium since most documents are in English, and parties do not generally feel that this creates any major problem.

In fact, as Sin and Chu point out, senior lawyers do not possess a working knowledge of the Chinese language (1998: 151). In the research interviews, Student Man's view that "using Cantonese means blocking the participation of foreign counsels in trials" (I. 2: 4 – 6) and Student Lee's view that "most senior counsels, over 50 years old, are English speaking and you cannot

expect them to start picking up Chinese at their age” (I. 2: 8 – 10) also support this argument. It is, therefore, only natural that the majority of Cantonese trials have been conducted in magistrates’ courts. By 2004, while Cantonese was used in about 76% of the 59,111 charge cases heard in magistrates’ courts as reported in the Hong Kong Judiciary’s *Annual Report 2005*, and in about 90% of the cases in the Labour Tribunal and Small Claims Tribunal, Cantonese trials accounted for only about 16% of cases in the District Court and High Court (Judiciary Administrator 1997) as shown below:

	Number of cases heard since Cantonese was allowed to use	Number of cases heard in Cantonese	Percentage of Cantonese trial
District Court	1,597	265	16.6%
Court of First Instance (High Court) (appeals from lower courts)	903	147	16.3%
Court of First Instance (High Court)(Trials of first instance)	96	15	15.6%
Court of Appeal (High Court)	136	6	4.4%

Figure 1.4 Number of cases heard in Cantonese at the higher courts (1997)

By 2006, the percentage of trials conducted in Cantonese in the High Court reached 30%, that of the District Court reached 40% (Judiciary Administrator 2007), while for magistrates’ courts it was about 78%. The figures show that magistrates’ courts are the major setting for Cantonese trials to take place from the beginning of the introduction of Cantonese trials to the present. Taking the number of cases heard in magistrates’ courts into

account (50,536 charge cases in 2005; 46,639 charge cases in 2006; 33,698 charge cases in the first three quarters of 2007 as reported in the Hong Kong Judiciary's *Annual Report 2007*) and the scale of Cantonese trials in these courts is even more obvious. Moreover, magistrates' courts hear a wide range of offences, both summary and indictable, and all matters appear initially in magistrates' courts with most of them disposed of there (Judiciary 2006). As Jones and Vagg point out, the Magistrates' Courts were those that dealt most directly with the Chinese population and it was on the basis of their experience here that many formed their views about the criminal justice system as a whole (2007: 575). Hence magistrates, who have the longest tradition of and probably the most knowledgeable in using Cantonese in trials, are chosen for this research.

1.7 Overview of the thesis

The above outlines the socio-political and linguistic context for the research. Hong Kong as a multilingual community witnesses the reallocation of linguistic resources in response to unprecedented social changes over the past few decades. The use of Cantonese as the high language leads to pragmatic socio-linguistic issues one of which is judges' speech performance as a unique genre of communication in society. Such changes and outcomes could be interpreted using critical discourse analysis which links the use of language to social power structure. On this basis, the guiding theories and methodology for the research will be elaborated in the next two chapters to provide the sociolinguistic perspective for data analysis and a detailed account of the research process. The legal professionals' aspirations for and magistrates' practices of legal Cantonese will then be explored in Chapter 4 and 5 respectively. A comparison of the findings will

be made in Chapter 6 and recommendations for bridging the gap between aspirations and practices in terms of legal Cantonese education for judges and law students will be presented in Chapter 7. As a summary of the preceding chapters, Chapter 8 highlights the theoretical framework and the findings and implications of the research, and discusses about the possibility for further research.

Chapter 2 A survey of sociolinguistic theories on language, identity and social power relations adopted for this research

With the research questions set out in the last chapter alongside the theoretical explanation for the emergence of Cantonese as a medium of trial and its development as the background, this chapter explores the sociolinguistic theories guiding the research. As mentioned in the first chapter, these theories are Fairclough's critical discourse analysis (CDA) and Bell's audience and referee designs. How these theories relate to the research questions will be discussed first, followed by a discussion on their major propositions.

On the definition of CDA, Fairclough (1993: 135) says:

By "critical" discourse analysis I mean analysis which aims to systemically explore often opaque relationships of causality and determination between (a) discursive practices, events and texts, and (b) wider social and cultural structures, relations and processes; to investigate how such practices, events and texts arise out of and are ideologically shaped by relations of power and struggles over power; and to explore how the opacity of these relationships between discourse and society is itself a factor securing power and hegemony.

Hence CDA strives to unveil the interaction between discursive practices and social power relations. The theory applies to this research because it links up discursive event at the micro-level with social formation at the macro-level, serving to explain the relations between the speech

performance of judges, the institutional identity and power of the court, and the ideology of the legal professionals in the context of social power relations, a perspective so far neglected in the discussion on the appropriateness of magistrates' speech style in Hong Kong.

According to Fairclough, power relations exist in every class society, resulting in a particular model of hegemony. He calls this model a social formation which is defined as a particular society at a particular time and stage of development (1982: 125). The choice of Cantonese rather than Putonghua as the high Chinese form, hence hegemonic, in the legal and other official domains as explained in the last chapter demonstrates how linguistic resources come under the control of the socio-political circumstances. Other CDA theorists such as Wodak (1997) and Jenkins (2004) agree with Fairclough in arguing that social power relations configure the formation and operation of society and are displayed through social institutions which share their identity and power with their members, and one way of realizing such identity and power is the use of institutionalized discursive practices. Norlyk also points out that the socialization process surrounding individual professional cultures subtly establishes a framework for professional and linguistic identity (2000: 168), and it is in this sense that the linguistic identity of an institution tends to be treated as an expression of an ideological position (Benwell and Stokoe 2006: 45), reflecting the social power structure. The study of the aspirations and practices of the use of legal Cantonese by the legal professionals, therefore, will reveal the power structure of Hong Kong. Since CDA theorists hold a constructionist rather than a determinist premise, they also suggest that the flow of action can be in the opposite direction, namely individual acts such as speech performance could construct institutional

identity and change the power relations of society. Coupland also points out that speech form is “partly pre-figured in the social environment (culturally recognized and endorsed) and partly constructed by speakers themselves” (2007: 16). The discursive event and the social context, therefore, work in a dialectical relationship. Such a model, particularly with its emphasis on the role of institutions, provides possible explanations for the interactional tensions in terms of discursive practices between the Hong Kong society and its court system, and between the speech performance of judges as members of the court and the aspirations for the language of judges as an index of institutional identity. Since speech performance has its social dimension, it could be examined not merely linguistically. On the development of discourse analysis, Fairclough (2001: 9) criticizes the traditional method of studies:

Conversation analysis has been resistant to making connections between such ‘micro’ structures of conversation and the ‘macro’ structures of social institutions and societies. As a result, it gives a rather implausible image of conversation as a skilled social practice existing in a social vacuum, as if talks were generally engaged in just for its own sake.

In this light, judges’ speech performance in court should be interpreted on a social basis, a new perspective for understanding the language of judges in Hong Kong.

CDA, however, does not provide a detailed description and explanation for the changes that take place during the process of conversational

interaction between members of the same or different social institutions, such as in what manner such changes occur and what are the causes for the changes, thus failing to give a thick description of the “identity crisis” which emerges when shifts in speech style during conversation alters the speakers’ identity representations. As Fairclough points out, speakers are constrained by their identities and at the same time creative, being able to move out of the institutional speech style during conversation. How “creativity” comes to emerge in conversation within the framework of CDA is an area for exploration, and this is where the sociolinguistic theory developed by Bell, comprising audience and referee designs, which focus on the causes of speech style shifts, has its role to play and contribute to CDA. Combining the two theories in the analysis of empirical speech data will provide multiple perspectives for the discursive practices of magistrates in the courtroom, informing the debate on the topic with a theoretical framework under which it could be argued that the speech style of a speaker in a conversation setting is not stable, but is subject to the influence of other possible speech styles of both the speaker and the interlocutors and even those of people outside the setting. In this light, CDA and audience and referee designs complement each other in bringing about a theoretical explanation for the formation and significance of magistrates’ speech style in the context of Hong Kong. The following sections represent an attempt to illustrate the following propositions supported by the two theories:

- (1) Individual and institutional discursive practices reflect and produce the power relations of society.
- (2) Discursive changes of institutional members such as speech style shifts during conversation imply changes in institutional identity.

- (3) Institutional discursive practices are the result of the continuous power struggle between different ideologies in the institution.
- (4) Institutional members may not be aware of the formation and significance of institutional discursive practices.

2.1 Interaction between discursive practices and social power relations

Language is a social construct and the complexity of society has given rise to different speech styles. Bakhtin (1981: 293) supports this view:

All words have the “taste” of a profession, a genre, a tendency, a party, a particular work, a particular person, a generation, an age group, the day and hour. Each word tastes of the context and contexts in which it has lived its socially charged life.

For example, a coach might address the football team as “you guys”, while a speaker in a formal situation would begin with “distinguished guests” (Lucas 2007: 288). A speech of a government official can be differentiated stylistically from that of a friend, and the speech style used at home differs from that in the working place. Speech style is influenced by the conversational settings whose boundaries are defined by society and that speakers in a particular setting are supposed to know what should be the conventional speech style to use. In other words, society defines the nature of different contexts which in turn restricts the choice of speech styles. Labov draws the same conclusion from his New York City study which focuses on the varieties of English spoken in New York City, underpinning individual stylistic variation as a key nexus between the individual and the

community. It calls forth a socio-economic hierarchy with the two poles of “prestigious” communication style, marked by formal and careful speech, and “stigmatized” style, marked by more casual and unmonitored speech, and that a speaker’s style can always find, or be identified, a place in the hierarchy (Rickford and Eckert 2001: 2). Bernstein says that social power relations translate into principles of strong and weak classifications and these principles in turn establish social divisions of labour, identities and voices (1996: 26). As quoted in the last chapter, Fairclough (2001: 55) points out that in every formal setting:

There is likely to be a general requirement for consistency of language forms, which will mean for instance that the vocabulary must be selected from a restricted set throughout. There is also a heightened self-consciousness which results in care about using ‘correct’ grammar and vocabulary, including a whole set of vocabulary which is reserved for more formal occasions, and is often itself referred to as ‘Formal’.

Using the notion of politeness as an example, Fairclough says that a strong tendency towards politeness is a marker of a formal situation, for such manner is based on the recognition of differences of power, degrees of social distance, and the like (2001: 55). Speech form, therefore, reflects the social power structure.

How does the social power structure decide which is the standard language variety for a particular social context? Edwards says that “there is nothing of a linguistic or aesthetic nature which confers special status

upon the standard. It is solely because of its widespread social acceptance that it had become *primus inter pares*" (1985: 21). That means standard language is nothing more than a creation of society, echoing the pre-dominance of society over language form. Bell also notices the social power over language. He says that variation on the speech style dimension within the speech of a single speaker derives from and echoes the variation which exists between speakers on the "social" dimension (2001: 145). This is another way of saying every variation of style of a speaker is modelled on what is available in the speaker's society. Intra-speaker style shift will, therefore, always be within the range of inter-speaker style shift. Everybody learns different speech styles from society. Everybody "imitates". Hence speech style variation is working in a social parameter. Coupland also points out that to speak "in" a dialect is very much to speak "through" a dialect, and so to endorse (perhaps fleetingly and inconsistently) a perspective that is inevitably heard to represent a "mind-style", a particular social formation (2001: 204), and that to speak through a particular dialect is to offer the interpretation of speaking from a particular cultural and social position, and against the background of a more or less predictable set of understandings and presuppositions (2001: 204). The Sapir-Whorf Hypothesis also throws light on this understanding of speech style. Whorf says, "Every language and every well-knit technical sublanguage incorporates certain points of view and certain patterned resistances to widely divergent points of view" (1998: 247), and he argues against the view that a particular way of speaking is socio-culturally insignificant:

He supposes that talking is an activity in which he is free
and untrammelled. He finds it a simple, transparent

activity, for which he has the necessary explanations. But these explanations turn out to be nothing but statements of the NEEDS THAT IMPEL HIM TO COMMUNICATE. They are not germane to the process by which he communicates. Thus he will say that he thinks something, and supplies words for the thoughts “as they come.” But his explanation of why he should have such and such thoughts before he came to utter them again turns out to be merely the story of his social needs at that moment. It is a dusty answer that throws no light. But then he supposes that there need be no light thrown on this talking process, since he can manipulate it anyhow quite well for his social needs. Thus he implies, wrongly, that thinking is an OBVIOUS, straightforward activity, the same for all rational beings, of which language is the straightforward expression (emphasis in original) (1998: 251 – 252).

Whorf, therefore, concludes that:

His thinking itself is in a language — in English, in Sanskrit, in Chinese. And every language is a vast pattern-system, different from others, in which are culturally ordained the forms and categories by which the personality not only communicates, but also analyzes nature, notices or neglects types of relationship and

phenomena, channels his reasoning, and builds the house
of his consciousness (1998: 252).

In the light of the above, speech style is also an indicator of institutional identity. In explaining institutional identity, Jenkins says that “Institutions are established patterns of practice, recognized as such by actors, which have force as ‘the way things are done’” (2004: 23 – 23) and language is at the heart of this process (2004: 136). Bourdieu also states that when members of a group are very little differentiated, the dispositions which each of them exercises in his or her practice are confirmed and hence reinforced both by the practice of the other members of the group and by institutions which constitute collective thought as much as they express it, such as language (1997: 167). Fairclough also sees the implications of institutional identity in relations to speech style and hence stresses the role of social institutions in the analysis of speech-society relationship, saying that social institution is a “hinge” between the social formation and the particular situation in which texts (in spoken and written forms) are produced (1988: 112). The following model illustrates this relationship:

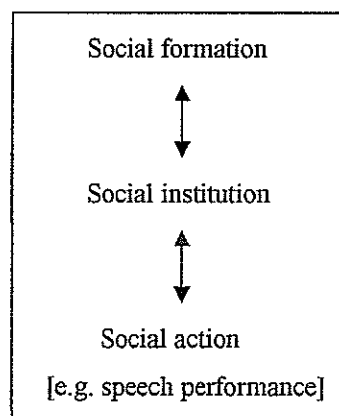


Figure 2.1 Fairclough’s model of interactional relationship between social formation, institution and action (1995: 37)

The model suggests that institutional speech performance is determined by sets of conventions associated with social institutions as well as by other, non-linguistic, parts of society. Institutional speech performance, therefore, is embedded in a network of power relations which, Fairclough argues, are a complex of diverse institutions whose dominating forces are not in any straightforward sense agents of the ruling class, but acknowledge the “hegemony” of the “intellectual and moral leadership” of the ruling class (1988: 115). White also says that speech form cannot help advertising themselves and people recognize them as pertaining to certain institutions and certain social activities, hence as the registration of historical and social distinctions – not least power relations and hierarchies (1984: 124).

The categorization of speech styles according to different levels of formality may also be attributed to the speaker’s role in an institution. Eckert also says that the nature of standard language is best described in terms of social institutions and their hierarchies (2000: 25). For example, one speaks in the high variety in ceremonial events and the low variety in casual gatherings. As Crystal has observed, a Berlin businessman may use standard German at his office and lapse into local dialect at home, a conference lecturer in Paris may present in formal French and then discuss the same points with colleagues in an informal variety, and a London priest may give a sermon in an archaic, poetic style and talk colloquially to the parishioners as they leave (2003: 42). Bell also says that speech style derives its meaning from the association of linguistic features with particular social institutions (2001: 142). In media language, there are “news reader speak” which is supposed to be formal, and “sport announcer talk” which takes up a more causal tone. Coupland quotes the example of “news reader speak” and claims that there certainly are stylistic tendencies in how

news is spoken by presenters on television and news audience can always tell from, other than the substance, the tone and lexis that news is on going (2007: 14). In an institution, people have a particular speech style, sometimes unique to their profession. For example, Deborah Cameron finds that call centre workers are subject to being scripted. They have preferred ways of speaking imposed on them (2000, 2005). In this regard, Lukes says that institutions constitute structures for their members (1977: 10). Hence Fairclough says that it is “necessary to see the institution as simultaneously facilitating and constraining the social action (here, specifically, verbal interaction) of its members: it provides them with a frame for action, without which they could not act, but it thereby constrains them to act within that frame” (1995: 38).

If institutional identity is the determinant of speech form, the notion of genre will help capture this relationship. According to Bhatia (1993: 13), genre is:

a recognizable communicative event characterized by a set of communicative purpose(s) identified and mutually understood by the members of the professional or academic community in which it regularly occurs. Most often it is highly structured and conventionalized with constraints on allowable contributions in terms of their intent, positioning, form and functional value (emphasis in original).

The features of “a recognisable communicative event”, “a set of communicative purpose(s)”, “understood by the members of the

professional or academic community”, and “conventionalized” etc. are prominent in institutional discursive practices. Studies associated with conversation analysis initiated by Sacks (1992) also reveal how speakers’ orientation to their institutional identities underpins their verbal interaction through which they accomplish their institutional tasks. In a similar vein, Bakhtin says that each sphere in which language is used develops its own relatively stable types of utterances and that speakers presuppose not only the existence of the language system they are using, but also the existence of preceding utterances, that of their own and of others (1986: 69), emphasizing the conventionalization of institutional discursive practices. Fairclough hence uses the technical term “configurations of genres” to describe how speech forms develop and become conventionalized for particular categories of activity in particular social institutions (1995: 14), echoing Bhatia’s view that genres are socially authorized through conventions which are embedded in the discursive practices of members of specific institutions (1997: 360). The development of interactional sociolinguistics provides an enormous amount of evidence for this claim by explaining language variations in terms of institutional identity, saying that institutional identity is part of the conversational context which governs discourse strategies (Gumperz 1982). Crystal (2003: 41) says that people hold different positions in the social structuring of a community and that:

Each position will carry with it certain linguistic conventions, such as a distinctive mode of address, an ‘official’ manner of speech, or a specialized vocabulary... More usually, a person learns a new variety of language when taking up a social role – for example,

performing an activity of special significance in a culture (such as at a marriage ceremony or council meeting), or presenting a professional image (as in the case of barristers, the police, and drill sergeants).

Goodrich (1987: 145) also says:

From the perspective of discursive processes, it can thus be argued, with some subtlety, that a material and immediate feature of the subdivision of discourse into discursive formations is to be located in the affinity which particular discourses bear to particular institutions. Those institutions, in turn, can then be analysed in the multiple terms of their roles within the hierarchy of the social organization of communication, and their ability to appropriate specific unities or regularities of ideological meaning for the purposes of particular socio-political and ideological interactions, functions and effects.

Hence there exists the social authorship of specific linguistic practices (Goodrich 1987: 145) and discursive practices are considered a reliable marker of institutional identity.

This speech-institution relationship contributes to the understanding of the connection between an appropriate magistrates' speech style and the notions of dignity and solemnity so often associated with the court. As Sprague and Stuart suggest, institutional identity is one of the factors that determine what language is appropriate to use and listeners have different

expectations about the stylistic level suitable for different institutional identities (2000: 215). Eckert further points out that the standard language market is located in upper middle class institutions, while the colloquial market is in vital and residence-based working class communities (2000: 25). Kroch (1978) who has studied standard and non-standard variations in terms of conflicting forces of innovation and resistance further suggests that the socioeconomic continuum is also a continuum of linguistic practice, in which “greater socioeconomic status brings greater resistance to change.” Goodrich (1987: 171) says:

The sociological point is that legal discourse is embedded, in a highly specialized and self-conscious way, in institutions of a high social status and prominence, to which excess or professional entry is severely restricted. The most immediate phenomenon of “recognition” of legality is in no sense intrinsic to the legal order – a matter of the “internal attitude” of officials of the legal system – but straightforwardly extrinsic. Legal discourse is socially and institutionally authorized – affirmed, legitimated and sanctioned – by a wide variety of highly visible organizational and socio-linguistic insignia of hierarchy, status, power and wealth.

Hence in Hong Kong, one may find that government officials who are regarded as members of an upper class institution have a strong tradition of discursive practice and deviation may be seen as a blunder. For example, the Chief Secretary for Administration, Mr. Tang Ying-yen, used the colloquial

expression of “班友吊吊 [*fing*] 街度 (those guys hanged around in the street)” last year in the Legislative Council to describe a group of mainland tourists being barred from entering a liquidated hotel, and was widely criticized for being uneducated (Cha 2008). In the same light, the court in Hong Kong is an institution at the upper level of the social formation and magistrates are the subject of the court who is expected to observe the rules, be they explicit and implicit, regarding speech style. However, as mentioned before, magistrates sometimes do break those rules. Such violation is socially significant because discursive practices and the social formation are interactional, as explained by the following remark by Fairclough (1995: 19):

CDA ought in contemporary circumstances to focus its attention upon discourse within the history of the present – changing discursive practices as part of wider processes of social and cultural change – because constant and often dramatic change affecting many domains of social life is a fundamental characteristic of contemporary social experience, because these changes are often constituted to a significant degree by and through changes in discursive practices, and because no proper understanding of contemporary discursive practices is possible that does not attend to that matrix of change.

Speech style, therefore, not only reflects but induces social changes. This is to say that in reality, discourse implies more than its communicative meaning. It either legitimizes the social hierarchy by keeping people in

check in their preconditioned roles in an institution or invalidates the current social formation by breaking away from the conventional discursive practices associated with the institution. Holtgraves says that “it is because language use is contextually determined (e.g., one speaks formally in formal situations) that stylistic variation can help to define (rather than just reflect) the context” (2002: 87). Coupland and others also say that language defines – as well as is responsive to – situations (2001: 212). Similarly, Lukes says that although human agents in institutions operate within structurally determined limits, they none the less have a certain relative autonomy and could have acted differently (1977: 6 – 7). This concept is shared by Fairclough who says that any text is part repetition, part creation, and texts are sites of tension between centripetal and centrifugal pressures, and that texts vary in the relative weight of these pressures depending upon their social conditions, so that some texts will be relatively normative whereas others are relatively creative (1995: 7). He further explains that “centripetal pressures follow from the need in producing a text to draw upon given conventions” and “centrifugal pressures come from the specificity of particular situations of text-production, the fact that situations do not endlessly repeat one another, but are, on the contrary, endlessly novel and problematic in new ways (1995: 7). Hence the term “subject of institution” captures, as Fairclough says, the dual roles of agent and the affected, for an institutional subject is able to create while being constrained discursively. The result is that the situation informs the language to use and the use of language informs the situation, and speakers do not react passively to the context but may actively reshape it. As Mertz contends, both presupposed backdrops and ongoing creativity in language use would need to be considered in order to achieve an adequate model of linguistic meaning and

a thorough understanding of how we forge, rupture, and maintain social relationships in and through language (2007: 20). With this understanding, it follows that if magistrates use the low variety, hence unconventional, of Cantonese in court, it may at least be theoretically construed as an endeavour to change the current identity and power of the court and consequently the social formation.

2.2 Speech style shifts and institutional identity

2.2.1 Audience design

The last section explains how institutional speech performance may reinforce or subdue the social power structure on the basis that, as Hymes says, a social institution has its own features of speech describable in terms of settings, participants, topics and goals (1972). Since speech style refers to linguistic features which determine how a message is said rather than what is said in terms of verbal content (Giles and St Clair 1979), to speak in a certain social setting must involve the choice of speech style. In actual conversation, Bell observes that speakers very often shift their speech style towards their interlocutors. Bell names this tendency “audience design”. He attributes the design to the premise that speech style is oriented to people rather than to mechanisms or functions: speech style focuses on the person (2001: 141) and speakers design their style primarily for and in response to their audience (2001: 143). During conversation, therefore, speakers invariably experience the audience’s influence on them and shift their speech style towards that of the audience.

In the same vein, Giles highlights the concept of the audience’s influence on a speaker by developing his communication accommodation theory which proposes that speakers accommodate the speech style of their

interlocutors in order to win approval (Giles and Powesland 1975) and this accounts for the popularity of some low dialects. Edwards says that “it is quite clear that some dialects attract negative evaluations, and can be seen as socially deficient; even so, they are maintained, and speakers can have pride in them...dialects lacking in social status often evoke high ratings on dimensions relating to interpersonal warmth and integrity” (1985: 22). Giles and St Clair say that the theory has incorporated ideas from socio-psychological theories such as similarity-attraction and social exchange (1979: 47). The similarity-attraction theory suggests that the more one acts like other people, the more one will be attracted to them. Hence it could be assumed that one will speak like one’s interlocutor in order to be liked. Holtgraves quotes an example to support this view: “When visiting a foreign country, we often may want our interlocutors to recognize (and appreciate) our intention to use their native language” (2002: 87). Byrne also says that personal similarity increases the likelihood of attraction and liking (1971). In communication accommodation theory, Giles dwells on the notion of “convergence” which means a reduction of the linguistic dissimilarities between the speaker and the audience and is “a strategy of identification with the speech patterns of an individual internal to the social interaction” (Giles and Powesland 1975: 156). Using convergence strategy, a speaker makes a speech style shift to promote harmony and thus effectiveness in communication.

Social exchange theory stresses the costs and rewards in social interaction. It suggests that a speaker has to consider the purpose of conversation so as to decide what to give and take in terms of speech form. To illustrate how the theory works, Giles and St Clair say that prospective employees would shift their accent more in the direction of the interviewer

than vice-versa, because of their relative needs for each other's approval (1979: 48 – 49). The example highlights power asymmetry and provides the pragmatic reason for speech style shift. Holtgraves also recognises that accommodation can be upward (toward a more-prestigious variety) or downward (toward a less-prestigious variety) (2002: 80) in order to achieve the communication purpose.

2.2.2 Referee design

Bell develops referee design together with audience design in an attempt to explain speech style shifts which could not be explained by audience design. He defines referees as third persons not usually present at a conversation but possessing such salience for a speaker that they influence the speaker's speech style even in their absence (2001: 147). It refers to occasions where speakers shift their speech style away from their interlocutors' and closer to that of someone else having an influence on them. For example, students may speak like their parents when talking to their teachers at school to highlight their agreement with the views of their parents, and people may talk like some celebrities in front of their friends to show support to their idols. Bell initially sees referee design as secondary and audience design primary in conversation, which means audience design has priority over referee design in people's choice of discourse strategy, but opts for an integrated audience and referee design on revision, supporting the proposition that audience and referees are in dynamic, constant wrestling for the attention of the speaker during speech performance. He says that the two designs may be concurrent, pervasive processes, rather than necessarily treating referee design as occasional or exceptional (2001: 165).

As in the case of audience design, Giles develops a theory parallel to referee design called “divergence” which is a strategy of identification with the linguistic norms of a reference group external to the immediate situation of conversation, with the effect of widening the social distance between the speaker and the audience (Giles and Powesland 1975: 156). He (Giles and St Clair 1979) says:

Given that speech style is, for many people, an important subjective and objective clue to social group membership, it can be argued that in situations when group membership is a salient issue, speech divergence may be an important strategy for making oneself psychologically and favourably distinct from outgroup members.

Hence when talking to an outgroup member, one can mark or emphasise one’s own institutional identity by deviating from the interlocutor’s speech style and converging to the conventional style of one’s own institution. Conversely, if one chooses to style shift towards an outgroup member, “there is a loss of perceived integrity and personal (and sometimes group) identity” (1979: 48). Holtgraves (2002: 80) provides further support on this point:

Speech divergence, on the other hand, is viewed as a desire to emphasize one’s identity with a reference group that is external to the current situation. Such a motive is most likely to be salient when communicating with

out-group members and especially when one's social identity has been threatened.

It complements the theory of convergence because sometimes the strategy of convergence fails to achieve the speaker's purpose, for "an increase in convergence may not be attributed to a positive intent on behalf of the speaker, but seen instead as patronizing, condescending, threatening, or ingratiating" (Giles and Smith 1979: 54). On the contrary, "one can imagine situations in which the 'right' amount of divergence might elicit co-operation where convergence would not" (Giles and St Clair 1979: 63). Giles quotes an example of a stranger entering a foreign city to illustrate the advantage of opting for the strategy of divergence: if the stranger retains his distinct speech, he may be better taken care of among local inhabitants (Giles and St Clair 1979: 63). Kress's example of "Standard English" also supports this view. He argues that the standard language has, among different regional dialects of English, a high status since it symbolizes a high level of education, wealth, economic and political power, and its speakers live within the geographical (and social and cultural) ambit of London. He says that "anyone wishing to be identified with that group, or aspects of it, orients their linguistic habits on those of that group" (1979: 47).

Both audience and referee designs are based on the interaction between identity and speech performance and so people can manipulate speech form to manage their identities. In this regard, Rockford and McNair-Knox raise the issue of performativity in speech style, suggesting that variability can play a role in the performance of the speaker's institutional identity (2001:

5). Holtgraves (2002: 87) also recognises the significance of what he calls “impression management”:

If language is potentially informative for others in forming impressions, then language is a resource that can be used for managing our impressions. And so it is. Stylistic (or within-speaker) variation makes most sense as an attempt at impression management, an attempt to place oneself in the most-positive light. Or as an attempt to create more specific impressions (e.g. power and status), or to (re)negotiate the closeness of one’s relationship with another.

Coupland (2001: 200) contributes to the studies on such “creativity” of the speaker with the notion of “identity management” which he says is the result of the speaker’s self-evaluation:

It is equally likely that the designing of acts of linguistic display would be geared to the speaker’s self-perceptions, projecting various versions of his or her social and personal identity, with different degrees of confidence and plausibility. Since we are continual, if often rather unsuccessful, reflexive monitors of our own self-projections, it is also necessary to theorize display as potentially a self-directed sociolinguistic activity. In just the way that we might admit to designing our dress and appearance for own benefit (albeit monitored through the

perceptions of others), so we can think of our speech-style choices as being oriented to our own self-evaluations.

This illustrates the significance of identity management: to project the desired images informed by self-evaluations. In his 1985 study, for example, Coupland finds that one subset of phonological variables in a Cardiff DJ's broadcast talk projects an image of personal competence/incompetence for humorous effect, while another set projects degrees of community affiliation. La Page takes the same stance and suggests that a speaker's choice of expressions is "an act of identity towards an audience" (1980: 13) and that "each individual creates for himself patterns of linguistic behaviour so as to resemble those of the group or groups with which from time to time he wishes to be identified" (McEntegart and Le Page 1982: 105).

In reality, speech convergence and divergence may take turns during conversation for identity management purposes. In his research on law-enforcement – community relations, Giles says that in the profession of police officers, great value is placed on sociolinguistic flexibility and accommodative practices to the extent that police officers should show caring, empathy, and respect (convergence), but also induce compliance and express their authority (divergence) (2001: 217). This sheds light on magistrates' discursive strategies in court to be discussed in later chapters.

2.3 Institutional discursive practices and power struggle

Van Dijk says that "ideologies are the cognitive counterpart of power" and "discourse is needed in the reproduction of the ideologies of a group" (1997b: 7). Discursive practices are not only identity-specific but also

ideologically encoded, and the dominant ideology and the dominant discursive practice maintain each other. Fairclough says that “in the process of acquiring the ways of talking which are normatively associated with a subject position, one necessarily acquires also its ways of seeing, or ideological norms” (1995: 39). Hence “ideology” refers not simply to the beliefs of individuals, but rather to the process by which all social actors develop particular identities and hold a particular world view (Mumby and Clair 1997: 183). The social power structure relies on its dominant ideology for maintenance, for every structure has its supportive ideology which occupies the dominant position among conflicting ideologies co-existing in it. As “ideologies arise in class societies characterized by relations of dominance” (Fairclough 1995: 82), ideological hegemony is also present in every social institution with members of different classes. The dominant ideology is the belief which forms the basis of cognition of members of different classes in an institution. It serves to coordinate social practices of them so as to perpetuate their dominant position as an institution (Van Dijk 1997b: 26). In the context of the court system, the dominant ideology of the legal professionals coordinates, or controls, the discursive practices of judges in order to maintain its dominance within the system. This process of reinforcement keeps repeating and naturalizing itself since “every established order tends to produce (to very different degrees and with very different means) the naturalization of its own arbitrariness” (Bourdieu 1997: 164). Once the dominant ideology of an institution “naturalizes” itself, its related discursive practices will be, as Fairclough says, accepted as non-ideological “common sense” or “a neutral code” (1995: 27 & 34), rather than in the interest of any class of membership (1995: 35). However, ideologies of an institution are pluralistic and the extent of plurality depends

on factors like the balance of power between members of different classes in the institution. Fairclough explains that if there is a balance of power, namely non-dominant classes are relatively powerful, pluralism is likely to flourish. The same is true if the institution is less integrated, or more autonomous, even though non-dominant classes are relatively powerless (1995: 40). An institution, therefore, may have a number of ideological formations with different degrees of power, manifested in the same number of corresponding discursive practices, struggling for control of the institution. As Mumby and Clair say, an institution's politics are often exercised through the discourse of its members (1997: 183). Since the dominant ideology and discursive practices are the result of continuous negotiations between different ideologies and discursive practices in the institution, hegemony is unstable and dominance always challenged. Changes in institutional speech style will follow once new power relations are in place. On this basis, Fairclough (1992b: 48) comments:

Appropriateness models in sociolinguistics or in educational policy documents should therefore be seen as ideologies, by which I mean that they are projecting imaginary representations of sociolinguistic reality which correspond to the perspective and partisan interests of one section of society – its dominant section.

Conceptually, an institutional structure symbolised by a standard practice of discourse can be established or displaced by means of “technologization of discourse” which Fairclough (1995: 102) explains as follows:

Technologization of discourse is a process of intervention in the sphere of discursive practices with the objective of constructing a new hegemony in the order of discourse of the institution or organization concerned, as part of a more general struggle to impose restructured hegemonies in institutional practices and culture.

The concept of power struggle underlies the proposition that power structures may be created, maintained and destroyed by acts of power (Lukes 1977: 9). The process could be initiated by the subjects of the institution for enhancing the effectiveness of interaction with clients and/or public or for projecting the desired image of the institution through redesigning the discursive practices. It is in this light that Fairclough says that discursive practice is a facet of struggle which contributes in varying degrees to the reproduction or transformation of the existing order of discourse, and through that of existing social and power relations. He quotes the political discourse of Thatcherism as an example, showing how traditional conservative, neo-liberal and populist discourse elements were brought into a new mix, materializing the ideological project of restructuring the hegemony of the bourgeoisie in new economic and political conditions (1995: 77), and hence discursive practices are ideologically invested to different degrees in so far as they contribute to sustaining or undermining power relations (1995: 82). The tendency for apparent power symmetry, symbolized partly in the conversationalization of public speeches, is a feature of technologization of discourse today and with impact on social power relations. As will be elaborated in later chapters, it is the difference in ideology that underlies the disparity between the

aspirations for and practices of the use of Cantonese in court and the debate on magistrates' speech style reflects this struggle for ideological hegemony.

2.4 Speakers' awareness of the significance of speech performance

Not only magistrates who use colloquial Cantonese in court are criticized. Eckert (2000: 13) observes that the use of adult colloquial expressions like "dude" by children attracts adult sanction, and associated with it is the issue of control, an issue of social power relations. Hegemony dictates that certain words are allocated for use by a certain class and violation of the rule induces penalty. Eckert (2000: 13) also finds that standard and non-standard can be foregrounded quite early on among children in elementary schools, and standard-speaking kids who thus linguistically resemble teachers are viewed as having certain alliance with adults. This proves that speech style is identity sensitive and affiliation with groups or institutions can be perceived through speech style, even without the knowledge of the speakers concerned. Fairclough and Wodak have also observed that documentaries on the "Third World" consistently position the poor in developing countries as objects of transitive verbs and never as subjects of such verbs, and this may contribute to the construction of the poor in the text as passive victims, rather than a struggling mass (1997: 263). Hence the choice of a grammatical form is socially meaningful and it illuminates how ideology is reflected or manipulated through linguistic means. However, one typically is not aware of such a process, for norms are just taken as norms or necessary skills required for achieving a certain status in the institution, naturalizing the process and making its ideological implications opaque for institutional subjects. As Mertz (2007: 19) says:

Here, then, is a meeting place for individual creative language usage and socially shared structuring of language, at a level that is deeply cultural and only partially available to conscious awareness. How intriguing it is that so many of the key political and ritual discourse forms in other cultures can structurally mirror, in very subtle and complex ways, the very model of society or language that they attempt to reinforce.

Fairclough also says, “Metaphorically speaking, ideology endeavours to cover its own traces” (1995: 44), and identity bearers may not be able to see how their speech performance impacts them. The opinion of an interviewee in the research, Professor Sin, represents such an instance. The problem is, as this research shows, whether magistrates are aware of the implications of their speech performance or not, they have to deal with them. Judges should, therefore, be trained on identity management in terms of speech knowledge and performance, which will be the topic of Chapter 7. The bottom line is, as Fairclough says, hegemonic struggle in discourse affects not only the ideology of the institution where it takes place but that of the social formation (1995: 94).

2.5 Conclusion

Social contexts govern individual as well as institutional identities and their corresponding speech style variations. Conversely, the manipulation of power and identity through speech style shapes the social contexts. The ongoing interaction between different linguistic forces generates a complex and dynamic framework which will guide the analysis of the aspirations for

and practices of legal speech style. First of all, the methodology for the study will be discussed in the next chapter.

Chapter 3 Methodology

This chapter explains the research design, including research methods and data gathering and analysis strategy, and how it relates to the research questions (see page 7 in Chapter 1) and guiding theories. The researcher's interest and belief in the study is also included so as to shed light on the significance of the research.

3.1 Personal interest and belief in the research

Researchers need to reveal how they manage the subjectivity inherent with the research paradigm (Holliday 2002: 47). Any personal belief underpinning the research will be the starting point of the research design. As mentioned in Chapter 1, the success of Hong Kong relies on the common law system. The courts of Hong Kong are of high repute; judges are highly respected. If the status quo needs to be retained, the local courts and judges need to continue enjoying their respectable social status. As language is one important carrier of social identity, the debate over the Cantonese speech style of judges is certainly an issue not only for legal professionals but for all Hong Kong people. From time to time, magistrates are criticized by their senior colleagues for using a speech style detrimental to the image of the court as shown by the research judgments. As a teacher of legal language, I am aware of the significance of the speech style of judges in courtroom and am interested in discovering how the appropriateness of legal language is defined. As Mertz says, recent research has shown that legal language plays a crucial, nontransparent role in mediating social conflict, social change, and the distribution of power in societies (2007: 29). Hence questions like how social structure affects language use and vice-versa will lead to reflection on

the arguments for and against the standardization of legal Cantonese, a standard speech style appropriate to the identity of judges and the court. My belief is that such a standard will help maintain the social identity and power of judges and the court system. The image of judges and the court, after all, will impact how people see them as an authority of justice. I hope, through this revelatory research, legal professionals will be more aware of the significance of legal Cantonese and there will be policy actions: the judiciary and universities will implement necessary measures in promoting the use of legal Cantonese by judges and law students.

3.2 The research perspective, approach and rationale

Since the research focus on the relations between the speech style and the social identity and power of magistrates, it takes a qualitative perspective which, according to Merriam and Associates (2002: 3 – 4), underlies the idea that meaning is socially constructed by individuals in interaction with their world:

The world, or reality, is not the fixed, single, agreed upon, or measurable phenomenon that is assumed to be in positivist, quantitative research. Instead, there are multiple constructions and interpretations of reality that are in flux and that change over time. Qualitative researchers are interested in understanding what those interpretations are at a particular point in time and in a particular context.

As Flick says, qualitative research is of specific relevance to the study of social relations (2009: 12) and is “oriented towards analyzing concrete cases in their temporal and local particularity and starting from people’s expressions and activities in their local contexts” (2009: 21). It can be used to research about persons’ behaviours, organizational functioning and cultural phenomena (Strauss and Corbin 1998: 11) and represents an effort to understand situations in their uniqueness as part of a particular context and the interactions there (Patton 1985:1). In this research, the qualitative method serves to discover the social meaning of magistrate’s speech style within the theoretical framework of the research in the context of Hong Kong, arriving at both the description of and the explanations for the issue.

A basic interpretative qualitative research was then conducted. As Merriam and Associates point out, in a basic interpretative qualitative research, concepts or theories are drawn upon to frame the study, and data are collected through observations, interviews or document analysis. The analysis of data involves identifying recurring patterns (presented as categories, factors etc.) and the interpretation of the findings will be the researcher’s understanding of the phenomenon of interest under the guidance of the research theory (2002: 38 – 39):

In summary, all qualitative research is interested in how meaning is constructed, how people make sense of their lives and their worlds. The *primary* goal of a basic qualitative study is to uncover and interpret these meanings. The inquiry is always framed by some disciplinary-based concepts, model, or theory...

On the basis of the personal belief and methodology outlined above and the relevant literature in sociolinguistics, a linear model of the qualitative research process (Flick 2006: 98) was elaborated. The theory of social power relations (Fairclough 2001), complemented by the theories of speech style shift (Bell 1984 & 2001), forms the theoretical framework guiding the research design. The theories serve to explain the discrepancy between the legal professionals' aspirations for and the magistrates' practices of Cantonese in the courtrooms in terms of speech style, revealing the arguments for and against the standardization of legal Cantonese. For sampling purpose, three trial cases were selected as samples and their transcripts sought for analysis, along with the field notes of 11 trials and four judgments. In general, the use of samples is the preferred strategy when "how" or "why" questions are being posed, when the investigator has little control over events, and when the focus is on a contemporary phenomenon with some real-life context (Yin 1989: 1). This research describes the judges' speech style (the "how" question) and explains the rationale for the arguments for and against such a speech style (the "why" question). The research, therefore, falls within the ambit of both "descriptive" and "explanatory" qualitative studies. Literal replication is arrived at through the use of multiple samples as justified by Yin (1989: 51):

Any use of multiple-case designs should follow a replication, not a sampling logic... The cases should serve in a manner similar to multiple experiments, with similar results (a literal replication) ... predicted explicitly at the outset of the investigation.

3.3 The research significance to sociolinguistic theories

As suggested by Marshall and Rossman (2006: 43), a researcher should identify some gaps in previous research. This study will fill such a gap between the current argument over judges' speech style and the theories of sociolinguistics concerning language, identity and social power relations. Previous studies on legal language have centred on technical details like the use of and-prefaced questions by counsels in proving that the technique serves to disguise inconsistency between questions to construct speech trap for the defendant (Heritage and Sorjonen 1994: 3 – 4) or turn-taking in the form of question-answer sequences in trials in showing the local management of interaction by participants (Atkinson and Drew 1979; Philips 1984). The scope of these studies is confined within the courtroom, between the subjects (judges) and the clients (defendants) or among the clients (counsels/defendants), with the relationship between the “micro” domain of legal discourse and the “macro” domain of society left unexplored. It is therefore the aim of this research to investigate how social power relations bear their significance on judges' speech style and vice-versa. The Hon. Griffin B. Bell, U.S. Court of Appeals for the Fifth Circuit says that style must be regarded as one of the principal tools of the judiciary and thus deserves detailed attention and repeated emphasis (1996). I would argue the speech style of judges in the courtroom is more important a tool to the court than the writing style of, for example, judgments because it is the judges' actual words in courts that create the court realities. By revealing the significance of the judges' speech style in relation to social formation, more attention will be brought to the development of legal Cantonese in the local context because, as Fairclough and Wodak say, both the ideological loading of a particular way of language usage and the power

relations which underline them are often unclear to people until they are made visible through critical analysis (1997: 258). This research will give judges' speech style a social meaning in Hong Kong hitherto neglected and put the debate over legal language on a new theoretical basis.

From a wider perspective, this study enhances the generalizability of the research theories to issues on language, identity and social power relations, providing insights into the nature and use of language in relation to society, echoing the view that the goal of a qualitative study is to do a "generalizing" analysis (Lipset, Trow and Coleman 1956: 419 – 420). As mentioned in Chapter 1, the prosperous mass media also contributes to multilingualism in Hong Kong and helps promote a rich mixture of all languages and their varieties including code-mixing which becomes nowadays the repertoire of the average Hong Kong bilinguals (Li 1996: 153). Hence Luke observes that there is a group of bilinguals in Hong Kong who can be called "linguistic middlemen" and who can use Cantonese, both its high and low varieties, and English with ease, and their language competence enables them "to utilize more fully the social meanings that are associated with code choices in the community" (1998: 150). Legal professionals are arguably members of this group. As Pennington (1998: 30) says:

bilingualism acquires a new meaning over time. It starts from necessity to become more of a symbolic act, as the two languages are increasingly juxtaposed, no longer in different speakers and contexts, but within the same speakers and contexts. This transition suggests that the direction of development in language use in Hong Kong is from more of an expedient type of motive for use of

English to more of an orientational one, from more of a linguistic one to more of a social one, from more of a requirement to more of a choice, from an imposition or a superposed variety to an “act of identity”.

On this basis, how Cantonese replaces the traditional legal language of English in Hong Kong and becomes a high language used by legal professionals also underlines the relationship between language, identity and social changes. The research, therefore, aims to generalize the theoretical proposition that social power relations play a dominant role in the identity management and in turn the speech style of institutional members. Flick says that “to increase the theoretical generalization, the use of different methods (triangulation) for the investigation of a small number of cases is often more informative than the use of one method for the largest possible number of cases” (2006: 138). Through data triangulation and literal replication for this study, the research theories will be expanded by their application to a new situation, namely the Hong Kong courtrooms, providing another aspect of meaning for them.

3.4 Data gathering and analysis

3.4.1 The research context and participants

As mentioned above, there are news reports covering criticisms on magistrates’ speech style in recent years and they seem to be carrying a message: some magistrates’ speech style is problematic and hence there is a need for the standardization of legal Cantonese. Since the research focus is to describe and account for magistrates’ speech style and to discover the arguments of legal professionals on legal Cantonese, legal professionals

including magistrates as listed out in the following sections will be the participants of the research. They will offer their opinion on the aspirations towards magistrates' speech style and show the magistrates' practices of spoken legal Cantonese in the courtrooms.

3.4.2 Data gathering

Some techniques like gathering data by means of interviews and observations are normally associated with qualitative methods (Strauss and Corbin 1998: 11; Merriam and Associate 2002: 6). Taking into account the necessity of scrutinizing the course materials on Cantonese skills for magistrates and law students and other documentary evidence, the research utilises the following multiple sources of data:

(1) Direct courtroom observation

The speech styles of six local magistrates whose trial language is Cantonese at the Tsuen Wan Magistracy (four magistrates) and the Shatin Magistracy (two magistrates) were observed in this research for a total of 110 hours covering the period from 29 Jan 2004 to 29 September 2006. At the end of the observation, empirical data from 14 trials involving these six judges were selected for a qualitative study.

Direct courtroom observation was felt to be the most appropriate method to gather data about the features of Cantonese used by magistrates and how they differ from the legal professionals' aspirations.

(2) Expert interviews

One magistrate, one high court judge, one retired court interpreter, one university teacher, one barrister and seven university law students were interviewed. These interviews aim to explore:

- the beliefs of legal professionals about the importance and the key features of legal Cantonese in the courtrooms
- the education legal professionals receive in legal Cantonese
- how might the legal Cantonese education be improved

To protect them from any possible risks, the names of the interviewees are fictitious and certain information like their working experience was not included in the dissertation. Confidentiality is particularly important for the two judges who may have to face possible pressure from the judiciary if their names are disclosed. Ethical considerations for the research were explained in Section 3.5 below.

(3) Documentary analysis

This data gathering exercise aims to provide a triangulated approach to other data concerning the research questions.

(a) Judgments

Four judgments involving three magistrates showing high court judges' criticisms on magistrates' speech style during the period of 2001 – 2007 were used to provide additional data and support to the findings of courtroom observation and expert interviews.

(b) Website data

One website on the speech style of one magistrate was used to provide additional data to the findings of courtroom observation.

(c) Course materials on Chinese skills for judges and law students from the judiciary and two lawyer training universities

The data triangulation approach using these sources of data is adopted to provide multiple measures of the same phenomenon. It improves the quality of qualitative research by extending the approach to the issue under study (Flick 2009: 405). In Yin's words, it develops "converging lines of inquiry" which lead to more convincing and accurate conclusions (1989: 92). As the diagram below shows, the triangulation develops connecting lines of inquiry and produces a better informed analysis of the phenomenon (Geertz 1993: 6):

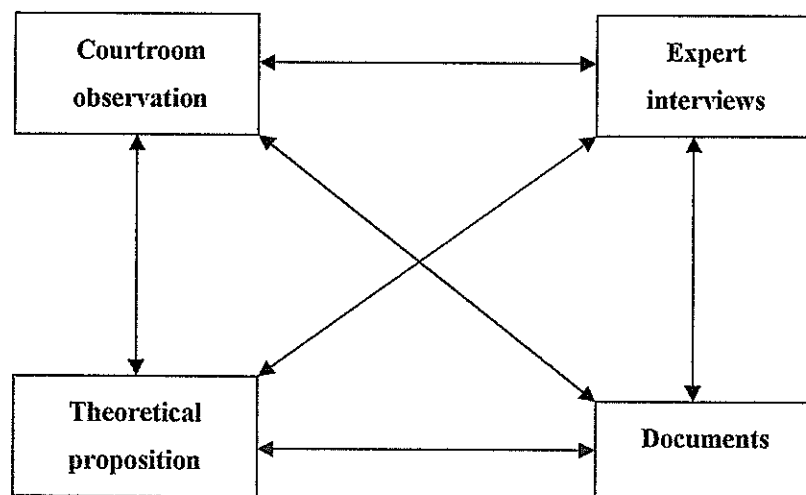


Figure 3.1 Data triangulation in the research

The method of triangulation adopted in this research is referred to by Denzin (1989: 237) as “data triangulation”. It is the use of different data sources to verify a certain proposition. Furthermore, triangulation of different methods or data sorts allows a principal surplus of knowledge. It produces knowledge on different levels, which means they go beyond the knowledge made possible by one approach and thus contribute to promoting quality in research (Flick 2009: 445). For example, features of magistrates’ speech style were identified in courtroom observation, but it is with the data from other sources such as expert interviews and documents that an explanation for their formation could be developed. Likewise, the theoretical proposition that language of the mass media play a part in the speech performance of magistrates will be no more than a reasonable guess if not substantiated by expert interviews and courtroom observation. The interpretative enrichment is made possible as different data sources address different levels of the problem: courtroom observation for practice/interaction, expert interviews for professional expert knowledge (in which the interview with magistrate also carries subjective knowledge), course materials for documentary evidence etc. and contribute to a better informed analysis. As Kalof, Dan and Dietz (2008: 136 – 137) point out:

Each additional method that is used to address a particular research question provides another way of looking at a problem and can help offset the limitations of any one approach. A multi-faceted perspective contributes to a richer, more complete understanding of the social world...Mixed methods can also give us greater confidence in our findings...If we use multiple

methods and they reveal similar information, we can be more confident in our conclusions.

The following gives the details of how data from different sources were gathered and analyzed:

3.4.3 Direct courtroom observation

Observation here may also be referred to as “field study” as it is used as a data gathering tool in conjunction with interviews (Merriam and Associates 2002: 13). It represents a firsthand encounter with the phenomenon under study rather than, for example, a secondhand account obtained through interview. It enables the researcher to find out how something factually works or occurs (Flick 2009: 222). As Merriam and Associates point out, it is the best technique when an activity or event can be observed directly or when participants are not able or willing to discuss the phenomenon under study (2002: 13). In the research, courtroom observation is essential since it is the magistrates’ speech style in a courtroom setting, as opposed to magistrates’ speech style outside courtroom, which is the phenomenon under study. Hence courtroom observation is the only opportunity for the collection of relevant data (unless the researcher is one of the participants in the trial concerned). In this regard, non-participation observation was conducted so that data could be collected from a natural situation where behaviours and interaction continue as they would without the presence of a researcher, uninterrupted by intrusion (Adler and Adler 1998: 81). This kind of observation is also known as naturalistic and direct observation (Kalof, Dan and Dietz 2008: 114 – 115). Although in the courtroom setting the researcher as a sit-in could be noticed by the presiding judge of the trial, the

presence of audience in the courtroom is a natural occurrence for judges and hence does not cause additional disturbance to them, hence unobtrusive. For the practice of observation, the following items suggested by Spradley (1980), Denzin (1989) and Adler and Adler (1998) had been taken into consideration:

- (1) The selection of the setting most relevant to the phenomenon under study.
- (2) The selection of the information to be recorded and the recoding protocol in the observation.
- (3) The selection of the end date of the observation process.

The following sections illustrate how these items were taken into account in the research.

3.4.3.1 Site selection

As mentioned in Chapter 1, a few reasons account for the decision in choosing magistrates among judges of different levels for the study. The first reason is that all criticisms regarding speech style are on magistrates. Hence the research should start from this reality. The second reason, closely related to the first one, is about the chances of discovery. Nowadays, Cantonese as a trial language is mainly used in magistrates' courts as illustrated in Chapter 1. Hence, for example, in the Court of Final Appeal, as Chief Justice Mr. Andrew Li says, "the opportunity for using Chinese... is likely to be limited, since cases which reach the final court usually involve complex questions of law which require substantial reference to precedents from other common law jurisdictions which are in English" (1997). In fact,

Magistrates are the forerunners in using Cantonese as the trial language. The judiciary started to implement the policy of using Cantonese at magistracies in 1974. It follows that magistrates generally have accumulated more years of practical experience in using Cantonese than judges of other courts, and it is believed that the problems they present will be more deep-rooted and revealing. This view is also supported by Jenkins who observes that non-conforming behaviour, or deviance, may come most easily to those whose group membership is secure in the mainstream (2004: 125). The third reason is that magistrates' courts handle the majority of cases in Hong Kong and any problems with their speech style are of more immediate relevance to the general public compared with judges at other levels.

3.4.3.2 Data capturing method

The production of reality in texts starts with the taking of field notes (Flick 2009: 297). Since it is not permitted to tape record or video the court process, notes were taken to record the speeches of magistrates. While it is a general rule that field notes should be made as immediately as possible, it is not the case in this research, though this could possibly be done with prior application for approval from the judges. Instead, all field notes were jotted down after each session of observation which lasted from half an hour to around two hours, in line with Lofland and Lofland's recommendation that notes should be made right after field contact (1984: 64). This is to avoid possible interference to magistrates if they know their performance is under surveillance. The worst case could be that magistrates may change their usual speech style which is the research focus, thus violating the fundamental principle that "qualitative researchers are concerned with how

people think and act in their everyday lives” (Taylor and Bogdan 1998: 8).

Lofland and Lofland (1995: 90) also point out:

If you are a known observer, the observed are already well aware of being observed. You need not increase any existing anxieties by continuously and openly writing down what you see and hear. Rather, jot notes at moments of withdrawal and when shielded.

Kalof, Dan and Dietz (2008: 118) echo this principle:

In a natural setting, we must take notes in an unobtrusive manner to disturb the setting as little as possible. It would be distracting to group members if we were constantly frantically writing notes on paper; we would also miss things when doing so.

The last remark spells out another reason for not taking notes on the spot: writing cannot be as fast as speaking and the subsequent utterance of a magistrate will be lost if the current one is to be written down at once. The result is that mental notes were relied on during observation and written down immediately after observation. To maintain order in the field notes so that they could be used any time with comprehensive information, background information of the trials observed needs to be included in the field notes, and Rasmussen, Østergaard, and Beckmann further claim that on all field notes there must also be a note of where, when and by whom they have been written (2006: 99). These requirements were met through the use

of a note sheet derived from the daily cause list on the website of the judiciary, so that the particulars of the observed trials could be found on the same page of the field notes:

Tsuen Wan Magistracy	Date: 8 September 2004
Offence: Theft	
Magistrate: Mr. LEE Ka-chai	
Field notes:	

Figure 3.2 Format of field notes

Strauss and his colleagues point out that note taking presents a number of problems involving discrimination as well as the researcher's interpretation (1964: 28 – 29). Data collection in observation, therefore, needs to be guided by the research theory so that the researcher's interpretation of the data is framed. During the observation period, relevant words or utterances meaningful to the research were jotted down on the note sheets. As Spradley points out, a condensed account in single words or sentences taken from the field could be a form of field notes for documentation (1980: 69) and Flick also says that researchers should be led in their decisions by the rule of economy: record only as much as is definitely necessary for answering the research question (2009: 298). While field notes were jotted down throughout the observation period, both of the pilot and of the focused observation, the functions of field notes developed as the observation progressed. Such a process, which leads to better informed observation, is described by Marshall and Rossman (1999: 107):

The value here [in the early stage of observation] is that the researcher is able to discover the recurring patterns of behaviour and relationships. After such patterns are identified and described through early analysis of field notes, checklists become more appropriate and context sensitive. Focused observation then is used at later stages of the study...

Field notes, in this way, contributed to the formation of themes to be used as a checklist to inform ensuing observation, sampling for applying for trial transcripts and data coding. The following section gives an account of how observation was carried out in the data collection process.

3.4.3.3 From pilot to data sampling

The observation process covered the period from 29 January 2004 to 29 September 2006. It started with a pilot aiming at progressive focusing. Owing to time constraints as I was working full time at the Chinese University of Hong Kong in Shatin and living in Tsuen Wan during the pilot, I went to the two magistrates' courts there, the Tsuen Wan Magistracy and the Shatin Magistracy, for observation, a realization of the tactic of convenience suggested by Patton (2002). The number of judges observed was, however, larger than the number of magistracies because there were eight courts in each magistracy and more than ten magistrates sit on these courts, among whom six specializing in Cantonese trials were the targets for observation. These magistrates are:

- (1) Mr. Justice Lee Wai-chi
- (2) Ms. Justice Chu Yin-fong
- (3) Mr. Justice Lee Ka-chai
- (4) Mr. Justice So Man-lung
- (5) Mr. Justice Douglas Kwok
- (6) Mr. Justice Chan Kam-cheung

I went to the two magistrates whenever I did not have office commitments during weekdays, for courts were closed in weekend. Usually I went to a courtroom for a morning or afternoon, each time for about 2 hours. If the trial being observed ended early, I would enter another courtroom to observe another trial. Besides observing the speech style of magistrates, I also focused on the courtroom environment like the seating arrangement and courtroom procedures. For three months during the period of January – March 2004, a total of about 30 hours was spent on observing 20 sessions of trial covering an array of crimes including theft, littering, fighting, careless driving, burglary and indecent assault. Among them, 12 sessions involving Mr. Justice Lee Wai-chi and Ms Justice Chu Yin-fong were observed at the Shatin Magistracy and eight sessions involving the other four judges observed at the Tsuen Wan Magistracy. These 20 sessions excluded partly observed ones which I gave up observing once I found that they could not possibly give any new data. Such cases are those with a guilty plea where the standard procedures were quickly rushed through and the defendants convicted, and, compared with other trials, the magistrates seldom spoke. From the analysis of these 20 sessions of trial, several features of magistrates' speeches pertinent to the current debate on legal Cantonese were discovered and they became the coded themes to guide further data

collection and for categorization of data presented in Chapter 5. The coding process is further explained in the next section.

April 2004 – September 2006 was a period of focused observation guided by the themes developed in the above pilot. Since I left the Chinese University of Hong Kong in August 2004 and took up a full time appointment at the Hong Kong Examinations and Assessment Authority where I stayed until August 2006, it followed that I no longer enjoyed the convenience of traveling to the Shatin Magistracy, and I had to apply for leave in weekdays to attend trials at the Tsuen Wan Magistracy. The observation process was adversely affected. During the period, approximately 80 hours were spent in courtroom observation. Time was more effectively utilized. I was, thanks to the pilot, more sensitive to judges' speech performance and would leave the courtroom as soon as I foresaw the magistrate would give little new data. 40 sessions of trial at the Tsuen Wan Magistracy involving the above four judges were observed as at 29 September 2006 when the observation process reached an end because representativeness and exhaustiveness of the features of magistrates' speech style were confirmed. According to Glaser and Strauss (1967), this is the point of theoretical saturation where the data become repetitive without giving further knowledge. The field notes, like in the pilot, were then analyzed and categorized under the developed themes and became the database for the whole research. The following field notes from the pilot and the focused observation, provided in full in Chapter 5, were used for the research:

Field notes 1:

Date: 29 January 2004

Offence: Theft

Judge: Mr. Justice Lee Wai-chi

Court: Shatin Magistracy

In this trial, the magistrate spoke in a casual style with mixed-code.

Field notes 2:

Date: 5 February 2004

Offence: Theft

Judge: Mr. Justice Lee Wai-chi

Court: Shatin Magistracy

In this trial, the magistrate spoke in a casual style with mixed-code and colloquial expressions.

Field notes 3:

Date: 12 February 2004

Offence: Careless driving

Judge: Ms. Justice Chu Yin-fong

Court: Shatin Magistracy

In this trial, the magistrate spoke with mixed-code.

Field notes 4:

Date: 20 July 2005

Offence: Theft

Judge: Mr. Justice Lee Ka-chai

Court: Tsuen Wan Magistracy

In this trial, the magistrate used formal speech style.

Field notes 5:

Date: 1 September 2006

Offence: (A) Infringing copyright and (B) Breach of condition of stay

Judge: Mr. Justice Lee Ka-chai

Court: Tsuen Wan Magistracy

In this trial, the magistrate used formal speech style.

Field notes 6:

Date: 1 September 2006

Offence: Theft

Judge: Mr. Justice Lee Ka-chai

Court: Tsuen Wan Magistracy

In this trial, the magistrate used formal speech style.

Field notes 7:

Date: 8 September 2006

Offence: Careless driving

Judge: Mr. Justice So Man-lung

Court: Tsuen Wan Magistracy

In this trial, the magistrate spoke in a casual style with mixed-code and colloquial expressions.

Field notes 8:

Date: 8 September 2006

Offence: Careless driving

Judge: Mr. Justice Douglas Kwok

Court: Tsuen Wan Magistracy

In this trial, the magistrate spoke with mixed-code.

Field notes 9:

Date: 15 September 2006

Offence: Careless driving

Judge: Mr. Justice So Man-lung

Court: Tsuen Wan Magistracy

In this trial, the magistrate spoke in both formal and informal styles.

Field notes 10:

Date: 18 September 2006

Offence: Possession of poison

Judge: Mr. Justice Douglas Kwok

Court: Tsuen Wan Magistracy

In this trial, the magistrate spoke in both formal and informal styles.

Field notes 11:

Date: 29 September 2006

Offence: Indecency in public

Judge: Mr. Justice So Man-lung

Court: Tsuen Wan Magistracy

In this trial, the magistrate spoke in both formal and informal styles.

From all the field notes, sampling was needed so that a few cases could be singled out for a detailed investigation. As Patton says, the sampling

strategy begins as a search for information-rich cases to study individuals who manifest the phenomenon intensely (1990). Hence, theoretical sampling was used to select cases according to their potential of expanding the guiding theories, and three cases which matched with the developed themes most, which means they are the most information-rich cases, were selected.

The next step was to apply for the transcripts of the selected three cases from the courts. Among these three cases, two were heard by the same judge, Mr. Chan Kam-cheung, and one by another judge, Mr. So Man-lung. These transcripts are verbatim accounts of the actual words spoken at the trials, hence free of the researcher's interference.

Transcript 1:

Date: 12 September 2005
Offence: Littering in a public place
Judge: Mr. Justice Chan Kam-cheung
Court: Tsuen Wan Magistracy

Transcript 2:

Date: 4 August 2006
Offence: Fighting in a public place
Judge: Mr. Justice Chan Kam-cheung
Court: Tsuen Wan Magistracy

Transcript 3:

Date: 15 September 2006
Offence: Indecent assault

Judge: Mr. Justice So Man-lung

Court: Tsuen Wan Magistracy

3.4.3.4 Data analysis

Since the research focuses on judges' speech style and not on the formal procedures like turn-taking and closing patterns of speech normally associated with conversation analysis (CA) (Marvasti 2004: 102 – 107), it is necessary to identify another presentation framework suitable for style analysis. As Yin says, data analysis is the most difficult stage of doing qualitative research (1989: 125). Field notes from observation and the contents of trial transcripts need to be analyzed and reconstructed into texts before they give meaning to the research. It is at this stage that another reality is created. Flick (2009: 303) says:

This substantiation of reality in the forms of texts is valid in two aspects: as a process that opens access to a field and, as a result of this process, as a reconstruction of the reality, which has been transformed into texts.

He also points out that the construction at the stage of data analysis should be, as mentioned above, guided by the research theory and involve analyzing and breaking down the data into a structure – the rules according to which it functions, the meaning underlying it, the parts that characterize it. Texts produced in this way construct the studied reality in a theory-backed and structured way as empirical materials for interpretative procedures (2009: 303). To achieve this construction, the following approach for data analysis based on Yin (1989) was adopted:

- (1) Employing the general analytic strategy of relying on the theoretical propositions of the research.
- (2) Using the specific analytic technique of pattern matching.
- (3) Coding data of different patterns into different categories
- (4) Provide theoretical explanations for coded data

Data analysis should start with a general analytic strategy, for it yields priorities for what to analyze and why (Yin 1989: 102). For the research, the first step was to adopt a general strategy which was informed by the theoretical propositions of the research because the research questions and design, including the data collection methods, were based on these propositions. The theoretical orientation should, therefore, guide the data analysis. This is in fact a continuation of the theory-driven process which governs the entire research, through data collection to the stage of data analysis and interpretation. For studies based on qualitative methods, data analysis often begins during the data collection stage (Rasmussen, Østergaard, and Beckmann 2006: 109; Grbich 2007: 30). Schatzman and Strauss (1973: 109 – 110) describe the process thus:

Our model researcher starts analyzing very early in the research process. For him, the option presents an analytic strategy: he needs to analyze as he goes along both to adjust his observation strategies, shifting some emphasis towards those experiences which bear upon the development of his understanding, and generally, to exercise control over his emerging ideas by virtually simultaneous “checking” or “testing” of these

ideas...Probably the most fundamental operation in the analysis of qualitative data is that of discovering significant classes of things, persons and events and the properties which characterize them. In this process, which continues throughout the research, the analyst gradually comes to reveal his own “it’s” and “because’s”: he names classes and links one with another, at first with “simple” statements (propositions) that express the linkages, and continues this process until his propositions fall into sets...

The analytic strategy has a filtering effect because the theoretical propositions “helps to focus attention on certain data and to ignore other data” (Yin 1989: 104). This is particularly conducive for the research as theoretical propositions about causal relations – answers to “how” and “why” questions – can be very useful in guiding qualitative analysis in this manner (Yin 1989: 104), and both CDA and audience and referee designs, as explained in Chapter 2, belong to theoretical propositions about causal relations, namely the relations between speech style, people present and absent in the conversation setting, and social power structure.

With the application of this general analytic strategy, only certain episodes of the text relevant to the above research theories were singled out for input into the second stage. The process falls in line with the steps for conversation analysis suggested by Ten Have (1999: 48). This means only the conversations between the magistrates and other trial participants were selected. The specific analytic technique of pattern matching was then applied to the data. As Yin says, one of the most desirable strategies for

qualitative analysis is to use a pattern-matching logic which compares an empirical based pattern with a predicted one (1989: 106). Since the hypothesis of the research is that magistrates sometimes use inappropriate speech style and CDA and audience and referee designs serve to explain the phenomenon, the following speech patterns could be specified based on the theoretical propositions:

- (1) Magistrates will use the formal speech style in their speech;
- (2) Magistrates will also use the informal speech style in their speech.

To reveal these two patterns, the data derived from the first stage were further categorized so that the features of different speech styles were identified. Coding of data, the process by which data extracts are labeled as indicators of a concepts (Green and Browne 2005: 75), then followed. As Green and Browne (2005: 80) further explain:

Each of these codes should be named and perhaps a brief description added to define it... New data are then coded as they are added to the data set. New cases will challenge emerging coding schemes, which need to be flexible enough to be adapted as you rethink categories and subcategories.

Through the process of coding and continuous revision of the coding schemes to accommodate data from all cases, the following codes were arrived at:

- (1) Colloquial Cantonese expressions
- (2) Flowery or hyperbolic expressions
- (3) Formal Cantonese expressions
- (4) Written Chinese
- (5) English expressions
- (6) Questions instead of commands
- (7) Verbal particles
- (8) Self-references

Moreover, the process serves to reduce the material – to select the representative parts for answering the research questions, so that it could be consolidated into a manageable form. Through reduction, the source text that overlapped at the level of generalization could be skipped (Flick 2006: 313). The coded texts were then given descriptions. As Strauss and Corbin point out, description is the basis for more abstract interpretations of data and theory development (1998: 18). Hence a brief description for each code with representative examples is given in Chapter 5. In addition to coding, charting by which data across cases could be put together was also used. The outcome is Table 5.1 which includes data from the three trial transcripts, extracts from judgments and field notes. It provides a comprehensive data source for different aspects of theoretical explanations. This last process of data analysis, referred to as “mapping and interpretation” by Green and Browne (2005: 83), focuses on the following tasks:

The charts [of data]...are then reviewed to look at patterns across the data and associations within it. This process involves defining concepts, mapping the range

and nature of phenomena, creating typologies and making provisional explanations of associations within the data.

To define the codes so that they relate to the theoretical explanations of CDA, the following coding paradigms invented by Strauss (1987: 27 – 28) which could provide theoretical explanations and implications for speech performance are incorporated in Table 5.1:

- (1) Strategies and tactics: Theoretical explanations for magistrates' choice of a particular speech style to achieve the trial goal
- (2) Consequences: The social identity and power implicated by the chosen speech style

This conceptual mapping process captures and presents a neat and simple explanation for the data, but brief words and phrases tend to oversimplify and decontextualize issues and access to the database is needed to get the full story (Grbich 2007: 32). In this light, complete theoretical explanations for the findings from data analysis are given in Chapter 6.

3.4.4 Expert interviews

Interviews have particular strengths as they get large amounts of data quickly and, combined with observation, contribute to the understanding of the meaning people hold for their everyday activities (Marshall and Rossman 1995: 80 – 81).

Expert interview is used in the research because the interviewees are experts in the field as representing a group of specific experts. As Flick points out, they are of less interest as a whole person than their capacities as experts for a certain field of activity, and they are integrated into the study not as a single case but as representing a group (2009: 165). Bogner and Menz (2002: 46, quoted in Flick 2009: 166) give a definition for experts:

Experts have technical process oriented and interpretive knowledge referring to their specific professional sphere of activity. Thus, expert knowledge does not only consist of systematized and reflexively accessible specialist knowledge, but it has the character of practical knowledge in big parts...The experts' knowledge and orientations for practices, relevancies etc. have also – and this is decisive – a chance to become hegemonic in a specific organizational or functional context. This means, experts have the opportunity to assert their orientations at least partly. By becoming practically relevant, the experts' knowledge structures the practical conditions of other actors in their professional field in a substantial way.

Since the focus of the research is on legal professionals' aspirations for the use of legal Cantonese and how in practice legal Cantonese is used by magistrates, a pragmatic issue in which the orientation of legal professionals themselves play a decisive role, the use of expert interviews to gauge relevant data compares favourably with other forms of interviews. As

mentioned above, six categories of interviewees were included in this research. The selection of interviewees was again theory driven. While judges are the central stakeholder in the research, hence referred to as primary professionals, other informants, the other professionals, provide multiple perspectives for triangulation, in line with Wengraf's suggestion that there should be representative and contrasting informants in interview for achieving triangulation (2001: 105).

Magistrates who are at the centre of the debate on legal Cantonese are able to provide an insider's perspective to the research and fall within "primary selection", namely people who have immediate relevancy to the research focus (Morse 1998: 73). In this light, a letter was sent to the Chief Justice for interviewing magistrates and court interpreters (Appendix 1) but the request was turned down (Appendix 2). A follow-up request on gathering information from judges using questionnaire through the Judicial Administrator for transmission to judges was also not acceded to (Appendix 3). At this time, one of my colleagues at the Hong Kong Examinations and Assessment Authority offered her timely help. She introduced to me a senior counsel who brought me further to his friend, Mr. Justice Norman Cheng, a magistrate. Not only was I able to interview Magistrate Cheng, but through him I made my way to a High Court judge, Mr. Justice Gordon Hui, with whom an interview was also conducted. Mr. Lau Kwok-chuen, a retired court interpreter, also became my acquaintance when I met him in one of my work places. The other interviewees except five law students are people I have known for years in different capacities. The following gives information on the eleven interviewees:

(1) Mr. Justice Norman Cheng – Magistrate

I had no personal contact with any judge before I met Justice Cheng. It was a nice surprise to find him very frank on what he knew about my research topic. He has been using Cantonese in, as he said, 90% of trials.

(2) Mr. Justice Gordon Hui – High Court judge

Justice Hui impressed me as a very learned judge, eloquent and meticulous in words. He is a local Chinese and has worked in different courts. Being experienced in using Cantonese, he argues for the standardization of legal Cantonese.

(3) Mr. Lau Kwok-chuen – Retired court interpreter

Mr. Lau worked as a court interpreter for many years before retirement. He was the court interpreter for some of the biggest commercial fraud cases in Hong Kong.

(4) Mr. Cheung Fu-wing – Barrister

Mr. Cheung is a local Chinese. After working as a legal executive for some years, he moved to Australia to pursue a new career in law. He returned to Hong Kong almost two decades ago and started practicing as a barrister. During the interview, he impressed me as a legal professional who had given much thought to language use in his work.

(5) Professor Wong Tin-wai – University teacher of linguistics

Before I knew Prof. Wong personally, I had known that he was highly esteemed in the field of linguistics. His knowledge in linguistics

impressed me when I knew him a decade ago. He is very active in research and writing.

(6) Miss Kesman Ho - Law student at the City University of Hong Kong

Ms Ho was among the top achievers in the Hong Kong Advanced Level Examination with outstanding result in English and Chinese languages. After graduation from the school of linguistics at another university, she chose to study for a law degree at the City University of Hong Kong.

The other six student interviewees were strangers to me before the interview. They were studying alone in the study room of the School of Law in the City University of Hong Kong when I knocked on the door and asked for their favour of an interview on Tuesday afternoons when I was free from lesson. They were all helpful and the interview started immediately after I introduced myself and outlined my research objective.

(7) Mr. Nelson Kwan - PCLL student

(8) Miss Jessica Liu - PCLL student

(9) Mr. George Man - JD student in his second year of studies

(10) Mr. Jeffrey Lee - JD student in his second year of studies

(11) Mr. Richard Ho – PCLL student

(12) Miss Linda Ng – PCLL student

The interviews were all conducted in a quiet place without interference. They were active interviews, semi-structured. In practice, the design meets

the criteria for interview questions laid down by Green and Browne (2005: 56):

- (1) Start with general questions to orientate your interviews to the topic, and to elicit the kind of language they prefer to use.
- (2) Ask open questions to generate more than a “yes” or “no” answer.
- (3) Ask neutral questions to avoid imposing bias.
- (4) Use appropriate everyday vocabulary.
- (5) Use concrete rather than abstract questions to solicit informative answer.

These criteria were realized through the following questions raised in the interviews:

Questions for a semi-structured expert interview:

1. Could you tell me something about your experience in the legal field?
2. How often you come across trials in Cantonese?
3. There are criticisms on magistrates’ speech style, what do you think?
4. What do you think are the courses for these criticisms?
5. If there is a standard for legal Cantonese used by judges, do you think this example meets the standard? Why?
6. There are some legal professionals who do not think this way. What will be your response to them?
7. If the question of speech style exists, what can be done to improve the standard of legal Cantonese used by judges?

Figure 3.3 Questions for expert interviews

These areas of questions were loose parameters but were preferred over rigidly worded questions which might frame the interviewee’s response. Furthermore, care had been taken so that these questions sound neutral and non-judgmental. Question 7, for example, would not be asked if the interviewee revealed disagreement to its hypothesis (that some magistrates’ speech style is inappropriate) during the interview, as in the case of

interviewing the university teacher. This was a protocol to avoid presumption which might lead to distorted answer. The interviewer took up less the role of a traditional question producer and the interviewee less a passive respondent, and more a collaborative participant. As Rasmussen, Østergaard, and Beckmann say, a good interview is not a question and answer session, but a *dialogue* between two people that leads to the establishment of a common understanding of an area (2006: 101). Since active interview takes the interviewees as a productive source of knowledge (Holstein and Gubrium 2003: 74), other questions were allowed to develop during the interviews. The objective is to provide an environment conducive to the production of the range and complexity of meanings that address relevant issues, and not be confined by predetermined agendas, and activate possible answers that respondents can reveal, as diverse and contradictory as they might be (Holstein and Gubrium 1995: 17 and 37). For example, during the interview with Justice Hui, he mentioned about his children's inappropriate language which could be interpreted as an evidence for the mass media's influence on the public of which judges are a part. Moreover, opposite views were put to the interviewers for comment in the hope of generating interviewees' retrospective inspection and multi-perspective answers. For example, the arguments for and against the standardization of legal Cantonese were mentioned to the judges and the university teacher to provide opposite perspectives and to stimulate feedback. Examples of judges' speech were also cited to indicate possible orientations and findings from field data for the interviewees' comment to facilitate triangulation. In this light, the interview resembles what Flick regards as typical procedures for a semi-standardized interview which serves to reconstruct interviewees' subjective theory (2009: 156). Hence an open question of "There are

criticisms on magistrates' speech style, what do you think?" and the confrontational question of "There are some legal professionals who do not think this way. What will be your response to them?" are put to the interviewees to trigger in-depth thinking. It is also an in-depth interview as described by Kalof, Dan and Dietz (2008: 120):

An in-depth interview is a series of mostly open-ended questions that is used to obtain detailed or descriptive information from individuals about a research topic...the goal is to learn about a research topic from an individual's own perspective, in her own words, and in detail.

Although the interviews may develop in breadth, the questions for the interviewees outlined above contain the central themes that help answer the research questions. For example, answers to the initial questions of "Could you tell me something about your experience in the legal field?" and "How often you come across trials in Cantonese?" shed light on the context in which the experts interpret meaning, the three questions of "There are criticisms on magistrates' speech style, what do you think?", "What do you think are the causes for these criticisms?" and "There are some legal professionals who do not think this way. What will be your response to them?" help clarify the aspirations for the use of legal Cantonese which are the focus of research question 1, *What do legal professionals believe are the importance and the key features of legal Cantonese in Hong Kong courtrooms?* The same interview questions with an additional one of "If there is a standard for legal Cantonese used by judges, do you think this

example meets the standard? Why?” provide understanding to the actual practice of legal Cantonese for answering research question 2, *What are the features of Cantonese used by magistrates and how do they differ from the legal professionals’ aspirations?* and 3, *What education do legal professionals receive in legal Cantonese?* The last interview question “If the question of speech style exists, what can be done to improve the standard of legal Cantonese used by judges?” contributes to the answer to research question 4, *How might the legal Cantonese education be improved?*

As suggested by Flick, the range of information provided by experts is much more restricted, in other words more focused, than by other informants (2006: 165). It ensures that relevant data can be gathered from different interviewees, and the simplicity is desirable as it facilitates comparison of experts’ knowledge for highlighting the different viewpoints on legal Cantonese through content analysis (Marshall and Rossman 2006: 108) in which a set of categories is formulated and the number of instances that fall into each category is counted. Views of different categories are explained by the guiding theories and related to data from other sources in Chapters 4 – 7.

Coding procedures including direct presentation, condensation and interpretation (Rasmussen, Østergaard, and Beckmann 2006: 113 – 114) were applied to the interview data:

- (1) Direct presentation means capturing the statements which express explicitly meanings that match a coding theme. For example, Magistrate Cheng’s remark that “some Cantonese expressions may be too colloquial and should be avoided” (I. 3: 11 – 12) means the necessity of setting a standard for Legal Cantonese.

- (2) Condensation means the reduction of meanings across a number of utterances into a condensed conclusion, because sometimes meanings are not explicitly expressed in a single utterance and direct presentation is not possible. For example, Barrister Cheung's comment that "there is a particular type of language for court and he rejects the saying that as long as the expressions are in Cantonese, people can use them in court. He says that the image of the court has to be protected." (I. 5: 1 – 4) could be condensed as "Image of the court is damaged by inappropriate style of language."
- (3) Interpretation means placing meanings in relations to the research theory so that interviewees' statements are contextualized theoretically. For example, Justice Hui's condensed view that "There are standards for judges' language in all common law jurisdictions" and Professor Wong's view that "People are over reacting on the standard of courtroom Cantonese" were used as contrasting evidence in the theoretical analysis.

All interviews were not tape-recorded in accordance with the interviewees' request but notes were taken immediately, and all interview reports were written the same day the interviews were conducted to ensure accuracy, and oral permission was sought at the beginning of each interview for quoting its content.

3.4.5 Documentary analysis

Documents can be a very instructive addition to interviews or observations, providing a new and unfiltered perspective in the field under study (Flick

2009: 261). In the collection of documents for the research, the following criteria suggested by Scott (1990: 6) were met:

- (1) Authenticity – the evidence is genuine and of unquestionable origin.
- (2) Credibility – the evidence is free from error and distortion.
- (3) Representativeness – the evidence is typical of its kind.
- (4) Meaning – the evidence is clear and comprehensible.

Hence the documents are primary documents, not rewritten in any way, collected directly either from the institutions through official channels, including downloading from official websites, or from current students, and are available in complete sets and could be verified with the sources. At the end the following documents were collected:

- (1) The most recent four judgments showing high court judges' criticisms on the speech performance of magistrates:

Judgment 1:

Date: 5 February 2001

Offence: Violation of Employment Ordinance

Judge: Ms Justice To Lai-bing

Court: High Court

Judgment 2:

Date: 17 March 2005

Offence: Littering in a public place

Judge: Ms Justice Cheung Wai-ling

Court: High Court

Judgment 3:

Date: 12 September 2007

Offence: Indecent assault

Judge: Mr. Justice Tong

Court: High Court

Judgment 4:

Date: 4 October 2007

Offence: Robbery and other crimes

Judges: Mr. Justice Tang, Mr. Justice Cheung, Ms. Justice Yuen

Court: High Court

(2) Data from a personal website (<http://kingsland03.mysinablog.com/index.php?op=ViewArticle&articleId=105601> on 10th Feb 2006) which records the speech of a magistrate and the author's comment on it.

(3) Course materials on legal Cantonese for judges and law students:

- (a) A list of training courses offered by the judiciary to serving judges, recorded in *Annual Report 2007* of the judiciary and the letter from the Judiciary Administrator (Appendix 4).
- (b) The outline of the workshop entitled "Negotiation: Achieving Practical Skills as a Negotiator" conducted by the Faculty of Law, the University of Hong Kong for serving legal professionals.

- (c) A list of legal courses with outlines of contents offered by the School of Law, the City University of Hong Kong and the Faculty of Law, the University of Hong Kong in the academic year of 2006-2007.
- (d) Introductions on legal courses offered by the above universities from their homepages.
- (e) Student's handouts for the course "CLAW1009 Practical Chinese language course for law students" offered by the Faculty of Law, the University of Hong Kong for the first semester of the academic year 2005 – 2006.
- (f) Assessment scheme and examination scripts of the above course.

These documents construct a corpus serving the following purposes:

- (1) To provide explanations for findings from observation.
- (2) To provide evidence for interviewees' knowledge on legal Cantonese and the education on the topic.
- (3) To reveal the content of legal Cantonese education received by legal professionals.
- (4) To provide the basis on which further recommendation on legal Cantonese education could be made.

Nevertheless, documents are the means to construct a specific version of an event or process and often, in a broader perspective, for making a specific case out of a process (Flick 2009: 261). Knowing for what purposes are the documents produced will contextualized the documents for their better interpretation. Contextual information of the documents, therefore, will be

further given in Chapter 4 for the research judgments and in Chapter 7 for the course materials where content analysis (Marshall and Rossman 1995: 85) will be carried out on the documents. As Kalof, Dan and Dietz point out, the main goal of content analysis is to systematically classify units of text into meaningful categories (2008: 105). Since the research focused on the legal professionals' views on legal Cantonese, a simple coding strategy was adopted for the analysis.

3.5 Ethical considerations

Ethical integrity is essential for research. Section 2.3.2 of the *Code of Ethics* of the International Sociological Association stipulates that "The security, anonymity and privacy of research subjects and informants should be respected rigorously, in both quantitative and qualitative research" (2010). As Marshall and Rossman say, the researcher must demonstrate awareness of the complex ethical issues in research and show that the research is both feasible and ethical (1995: 73). They also point out that ethical considerations are generic – such as informed consent and protecting participants' anonymity – as well as situation-specific (1995: 71). In the research, the generic considerations for protecting the privacy and well-being of the research participants were taken into account. The research hence tried to ensure the following:

- (1) The informants gave informed consent to participate in the research
- (2) The identities of the informants were covered up

Regarding informed consent, researchers must tell participants what they are being asked to do so that they can make an informed decision about whether

or not to participate and, in this regard, the researchers should clearly convey the goals of the research, as well as any risks and benefits of participation, to the participants (Kalof, Dan and Dietz 2008: 47 – 48). The *Code of Ethics* issued by the American Sociological Association also states that “informed consent must be obtained when the risks of research are greater than the risks of everyday life” (1989: 3). Hence the interviewees were told the goal of the research and how their input would contribute to the research before the interviews and their consent sought.

The protection of the identity of the participants warrants careful consideration in the research because it involves the personal comment of the insiders, namely the legal professionals and particularly the judges, on the legal system and hence there were potential risks to certain informants. Confidentiality needs to be guaranteed. According to Kalof, Dan and Dietz, confidentiality means removing all identifying information about individuals from research records and reports (2008: 49). Flick also stresses the importance of the dignity and rights of research participants and says that researchers need to guarantee participants’ confidentiality by ensuring that the information about the participants is only used in a way which makes it impossible for other people to identify them or for any institution to use it against their interest (2009: 40). Barbour (2008: 81) explains:

It can be difficult to anticipate which aspects of descriptions might give rise to an individual or setting being recognized in subsequent reports or papers, and the researcher has to be constantly vigilant. For example, when providing quotes in written work, I have on occasion changed details, such as someone’s gender or

age (where this information is not relevant to the issue being discussed).

Flick (2009: 42) also recognizes the need to cover up more information of the participants in a particular context:

The issue of confidentiality or anonymity may become problematic when you do research with several members of a specific setting. When you interview several people in the same company, or several members of a family, the need for confidentiality is not just in relation to a public outside this setting. Readers of your report should not be able to identify which company or which persons took part in your research. For this purpose, encrypt the specific details (names, addresses, company names, etc.), to protect identities. Try to guarantee that colleagues cannot identify participants from information about the study.

Likewise, Lofland and Lofland say that in studies of stable communities or ongoing groups, pseudonyms are unlikely to prevent any of the participants from recognizing, or at least making pretty accurate guesses about, “who’s who” (1995: 43). In the research, interviewees were told that anonymity would be observed and in practice, the identity of the participants was modified with some details of the participants omitted so that their identity would not be traceable. Hence all the names of the interviewees were fictitious.

Lofland and Lofland (1995: 44) also argue for confidentiality from another perspective:

At their best, social researchers are neither muckrakers nor investigative reporters...Their goals as *researchers* should, in our view, be neither moral judgment nor immediate reform, but *understanding*. The absence of names or the use of pseudonyms (if names, per se, are necessary for clarity) helps both the analyst and the reader to focus on the generalizable patterns emerging from the data and to avoid getting deflected into telling or hearing a “juicy” human-interest story (emphasis in original).

In the same vein, the research is an attempt to enhance the understanding of the social nature of judges’ speech style and its impact on the social formation and the omission of certain information of the participants will not disrupt the research aim.

3.6 Translation of data

The issue of translation of data from observations, transcripts and judgments, which are in Cantonese, needs a brief explanation at this point. As suggested by Strauss and Corbin, while translation enables readers to get at least some degree of feeling about, or insight into, what the data means, minimal translating is desired, for often there is no equivalent English word capable of capturing the subtle nuances in meaning of the original language (1998: 285 – 286). Only utterances coded for theoretical explanations, therefore,

were translated in the thesis, and the originals were given alongside so that readers who know Cantonese could have access to them.

3.7 Limitations of the research

Three limitations of the research were identified. The first limitation lies in the scope of this study. This research was conducted on trial cases drawn from the Hong Kong courts. It is thus bounded and situated in the local context. Its focus on the spoken style of Cantonese means that its findings may not be fully transferable to other settings where other languages with very different linguistic properties are used. As such, the research is defined as a local study through its identification of data sources at the planning stage. With the documentation of the process of data collection and analysis of the research, readers are provided with a clearer picture of the research process and can decide on the extent the knowledge gained from the research is transferable for another setting.

Another limitation in the research process is that since, according to the judiciary, judges are not to be interviewed, only one magistrate and one high court judge were interviewed on a personal basis for the study. If there were more judges available to offer their views on the topic, there may be more data to support arguments on legal Cantonese. Another similar restriction is that no defendant had agreed to be interviewed. If defendants could be interviewed, they might provide another perspective for data triangulation. To minimize the limitation on participants, the research included interviews with, other than the two judges, different categories of legal professionals such as a barrister, a former court interpreter, a university teacher of legal language, and seven law students, as well as the opinions of six high court

judges as shown in the four research judgments, so that the research focus on legal professionals' aspirations for legal Cantonese could be enhanced.

The last limitation concerns the identification of speech styles which depends on the sensitivity and the interpretation strategies of the researcher and the interviewed experts. Given the fluidity of language and the obscurity of boundaries between formal and colloquial languages, there are bound to be conceptual issues open for reanalysis, and the analysis provided in this research could be viewed as tentative. As Mumby and Clair say, discourse analysts are working in a "creative construction of meaning, attempting to construct a sensible, insightful reading out of data that are frequently incomplete and obscure" (1997: 202). Fairclough and Wodak also say that "interpretations and explanations are never finished and authoritative, they are dynamic and open, open to new contexts and new information" (1997: 279). For the limitation, three strategies were employed to minimize misinterpretation. Firstly, expert interviews and judgments were used to provide multiple perspectives on the issue of speech style. Secondly, representative utterances from trial observations were used as examples for interviewees' comment, through which whether there is a common understanding of the example could be tested. Thirdly, in addition to their coded versions given in the thesis, complete trial transcripts, full interview reports and course documents were provided in the research so that interpretation of data could be checked and verified.

Like all areas of knowledge, a research should be properly framed for interpretation. As spelt out above, the research theories were used to guide data collection through data analysis so that the research was theoretically framed, and data triangulation was adopted to provide multiple perspectives

to the research questions. Through these procedures, the research was theoretically informed and its findings were more trust-worthy.

3.8 Validity and reliability

To address the issue of validity of this research, data triangulation mentioned above was adopted. Triangulation is normally thought of as increasing the validity of qualitative research by getting and comparing “multiple perceptions” of the same phenomenon (Stake 1994: 41). The process of data collection and case selection was also built in with purposive and theoretical sampling guided by theories. Data collection and theoretical analysis thus went hand in hand to build a coherent interpretation of the data. Moreover, the sampling process demonstrates a triangulation of quantitative and qualitative methods (Flick 2006: 37), with 11 observed trial sessions as the database and three representative cases and four judgments for study, which enhances the validity of the research. Introducing the subtypes of data triangulation, Denzin suggests drawing data at different dates and places and from different persons (1989: 237 – 241). This was also realized in trial observation which covered different courtrooms with different judges within a timeframe of more than two years. The database therefore contributes to the stability of the observational findings through time, enhancing diachronic reliability.

As for the experts’ evidence, all interviewees were enthusiastic and helpful, showing no hesitation in answering questions, and there was no cause for casting any doubt on their credibility as truthful informants. The presence of the trial transcripts, judgments and course materials also guarantees validity as they are authentic documents and are given in the thesis. As Wolcott says, by providing accurate data for readers to make their

own inference and follow that of the researcher, readers will be able to make their own judgment on the research findings (1990: 127 – 128).

3.9 Conclusion

Mumby and Clair say that critical discourse studies of institutions should not be taken as a traditional language analysis exercise, but should be valued on the wider basis of interaction between language practices and their sociocultural contexts (1997: 202). The methodology outlined above was devised with this understanding. In the next chapter, the findings of expert interviews will be triangulated with theoretical propositions and data from the research judgments to explore the beliefs of the legal professionals regarding the importance and the key features of legal Cantonese in Hong Kong courtrooms (research question 1). In Chapter 5, the arguments that emerged are then contrasted with magistrates' practices of Cantonese in court. A critical analysis is offered in Chapter 6.

Chapter 4 Aspirations for legal Cantonese in the courtroom

Following the elucidation of the research methodology in chapter 3, this chapter will focus on how the primary professionals, defined as the subjects of the court, namely a magistrate and a high court judge, think about the importance and the features of legal Cantonese, aided by the findings of interviews with other professionals including a barrister, a university legal language teacher, a former court interpreter and seven university law students as well as data from the research judgments involving six high court judges, so that the aspirations for legal Cantonese will be analyzed from multiple perspectives (research question 1). Where relevant theories are employed to support the professionals' views, they are necessarily simplified for immediate purposes, and a detailed theoretical analysis will be provided in Chapter 6.

The interview reports and the research judgments are given below:

(1) An interview with Mr. Justice Norman Cheng, magistrate

Date: 24 January 2007

Time: 5:30 – 6:00 p.m.

Venue: Mr. Norman Cheng's office

Paragraph	Line	Interview notes
1	1	Mr. Justice Cheng says he is a local born Chinese.
2	1	He has been using Cantonese in, as he said, 90% of the trials, though he has received no training on using Cantonese as a trial language. It is simply on-the-job training, and without a mentor whatsoever. Asked what his opinion on the use of Cantonese in court is, he says
	2	
	3	
	4	
	5	

	6 7 8 9 10	that, with the government English-Chinese legal glossary at hand, he does not find it very difficult. His concern is mainly the strenuous task of putting Cantonese, an oral language, into its written form for the archive.
3	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	When shown some examples of colloquial Cantonese used by some magistrates in court on the question of whether such will lower the dignity of the judicial process, Mr. Cheng says that a magistrate should first consider the effectiveness of the language used, that is whether the Cantonese can make understanding easier for the trial parties so as to avoid wasting time. He says that if the witnesses, some of them not very well educated, use colloquial expressions in giving evidence, it is all right for the judge to repeat those expressions when necessary because it helps communication and will not distort what the witnesses actually means. He says, however, he is aware that some Cantonese expressions may be too colloquial and should be avoided on the part of advocates and judges to retain the dignity of the court.
4	1 2 3 4 5 6	Asked, then, is there any guideline from the authority for magistrates to follow, Mr. Cheng's answer is in the negative. Regarding how the standard of Cantonese of judges can be monitored, he says that it is a matter of trust. When the authority appoints someone to be a magistrate, a trust on the ability of the incumbent,

	7	including his language ability, is given. As long as the
	8	basic principles to be observed by judges like to be
	9	respectable and upright is followed, the incumbent
	10	should be able to do a good job on language issue as
	11	well.

(2) An interview with Mr. Justice Gordon Hui, high court judge

Date: 5 March 2007

Time: 3:10 – 4:20 p.m.

Venue: High Court Building

Paragraph	Line	Interview notes
1	1	Mr. Justice Hui says he has worked in different courts.
2	1 2 3 4	He admits that there is so far no training on Cantonese skills for newly-appointed and serving judges. Only training on judgment writing skills have been offered by the judiciary starting from roughly 1993 or 1994.
3	1 2 3 4 5 6 7 8 9	For new entrants, there is also no examination to test their Cantonese competency. Only written examination is in place. But he says judges responsible for recruitment will have known something about the standard of Cantonese of new appointees since they have come across them who are counsels in court prior to appointment. Hence, new appointees must have met a certain standard or they would not have been offered the job.
4	1 2	Although there have been no formal training for judges, he says that the standard of Cantonese in court is on the

	3 4 5 6	rise as young lawyers have undergone some Chinese training during their studies at university and the old judges are getting more and more used to Cantonese trials.
5	1 2 3 4 5 6 7 8 9 10 11 12	<p>But he also says that there are still unsatisfactory cases of Cantonese usage in various courts, some of which have been brought before the High Court for appeal. He has heard of an example: a counsel said the following to the witness during cross-examination:</p> <p>“你咁樣講真係臭屎密𩶛 (What you said is really smelly faeces tightly covered up)” which means “from what you said you have done something wicked but have tried to conceal it completely”</p> <p>He says that such a remark is too vulgar and is unsuitable on the occasion.</p>
6	1 2 3 4 5 6 7 8 9 10 11	<p>He says there are two extremes of inappropriate use of Cantonese: one of too colloquial and one of too flowery or playful like the abuse of idioms and four-character stock phrases. He also gives an example on the second type: a judge used a lot of four-character expressions (the underlined part) like “你講嘅有如<u>大海倒流</u> (What you said is like <u>the big sea turning upside down</u>)” which means “What you said is <u>obviously impossible</u>” to imply that the evidence of the defendant was unfounded. He says that the expression is inappropriate in court. It exaggerates and therefore only serves to excite the</p>

	12 13 14 15 16	defendant, increasing the chance of entering into irrational arguments and the final judgment being seen as out of emotion rather than reasons. This, he added, could be catastrophic: the convicted may appeal on the ground of being unfairly treated by the judge.
7	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15	On the question of whether there exists inappropriate Cantonese as far as communication between all parties in court is effectively conducted, Mr. Hui says that the question does exist, though he admits some of his colleagues do hold the opposite view. He says that if a certain standard of Cantonese cannot be maintained, the dignity of the court cannot be safeguarded. He asserts that dignity is important for courts if the public do not want to see a judgment composed of words like what one will hear at a construction site, between metal workers. If it happens, it will dampen the authority of the judgment and lead to unnecessary appeal cases. He has, as mentioned above, come across appeal cases which originate not from the legal basis but from the incitement of language.
8	1 2 3 4 5 6 7	While some people, for instance Professor Wong who has been commissioned to train legal officers including judges on writing skills in the local context and has been teaching linguistics for over ten years, may claim judges in the west do use colloquial expressions in court and there should not be a higher standard set for Cantonese courts, Mr. Hui says that there are standards set for

	8 9 10 11 12 13 14 15	judges' language in all common law jurisdictions, with higher standards in the UK, Canada and Australia, etc, and laxer for the US. Therefore, he says, the demand for a good Cantonese standard in court should be upheld. He adds that it is not true that any native Cantonese judges can use Cantonese well in court, and the importance of using appropriate Cantonese cannot be over-emphasized.
9	1 2 3 4	Mr. Hui adds that judges should find a balance between "for the ease of communication" and dignity of the court manifested through the judge's language, and the balance does exist.
10	1 2 3 4 5 6 7 8 9	He says that the use of Cantonese in court is not merely for transparency of the trials and for easier access to the general public, it has a political dimension, that is the handover of Hong Kong to PRC in 1997. As such, to foster effective communication between all parties involved in a trial is only one of the purposes of the implementation of Cantonese trials and therefore should not be taken as the sole criterion for assessing what should be the standard set for Cantonese in court.
11	1 2 3 4 5 6	Regarding what is appropriate and inappropriate Cantonese expressions, he gives an example: Appropriate: "你點可以咁樣講？(How can you say this?)" Inappropriate: "你傻㗎咁樣講。(You are crazy saying this.)"

	7 8 9	He says that while both remarks show's the judge's disapproval, the second quote carries unnecessary comment and sounds insulting.
12	1 2 3 4 5 6 7 8	Asked to comment on two remarks by the judge from Transcript 1 (Appendix 5), he says that “你一輪嘴咁，佢唔知答得你邊一槓 (You spoke without a stop. He didn't know which part of it to answer)” is acceptable while “唔通我叫你去搶咩？ (Will I ask you to rob [meei]?)” as a judge's remark to persuade the defendant that the fine of a certain sum is not beyond his means is inappropriate in court for being too colloquial.
13	1 2 3 4 5 6 7 8 9 10 11	He reiterates that any verdict arrived at amid inappropriate expressions only gives the losing party the impression that the judge is prejudiced and emotional, which may be the basis for appeal, and so this is no longer a language issue, but reflects how the judge handles the case and the judge's learnedness. He also says that the news report on Mr. Justice Wong (Judgment 1) is such an instance. He says the judge is in fact a translation scholar who is good at English and Chinese. It is his altitude that causes his misconduct, not his Cantonese competency.
14	1 2 3 4 5	He says that if the standard of the Cantonese in court is to be raised, a higher standard of Cantonese used by the general public must come before it, since judges are also ordinary citizens and have learned their language from the society. He says even his own children cannot speak

	6 7 8 9	appropriately, and today's language learning environment goes against the demand for better Cantonese in court, as the language of the people on the street and the media is often too crude.
15	1 2 3 4 5 6 7 8 9 10 11	He says that while in the old days using English in trials was the norm, the problem of dignity was not as serious as when Cantonese is used because Chinese judges' English standard is somehow limited and so they usually just say directly what they want to say in the style they have learnt from their professional training. Yet in Cantonese trials, since the language is the judges' mother tongue, there is a lot of room for judges to manipulate the trial language, sometimes to the extremes, and hence many different kinds of language styles emerge.
16	1 2 3 4	He says that there is a remedy: judges of the lower courts will read and learn from the judgments of the higher courts and in this way will help improve and unify the judges' expressions.
17	1 2 3 4 5 6 7	On code-mixing, he says it is not appropriate for judges to use some English and some Cantonese in court. It should be either all in English or all in Chinese. The only acceptable mix is that the judge gives the Chinese translation followed by its English original for the sake of clarity when the judge is not sure if the Chinese translation is authentic.

(3) An interview with Mr. Cheung Fu-wing, barrister

Date: 5 December 2004

Time: 6 – 7 p.m.

Venue: Mr. Cheung's chamber

Paragraph	Line	Interview notes
1	1 2 3 4 5 6	Mr. Cheung was born in Hong Kong. After graduation from a local university, he worked as a legal executive for some years. He then went to Australia and entered the profession of barrister after completing his legal studies there. He later returned to Hong Kong to continue with his career as a barrister.
2	1 2 3 4 5 6 7 8	When asked about his feeling towards Cantonese trials, he starts by saying that the use of Cantonese facilitates the clarification of facts at a trial, hence enhances effectiveness of the trial and helps save time. All parties in court can express in their mother tongue and this no doubt greatly reduces errors in expressions and misunderstanding compared to using a foreign language like English in the old days.
3	1 2 3 4 5 6 7	However, he says that using Cantonese is still at a premature stage in Hong Kong as he have seen a lot of judges using English expressions in Cantonese courts. This shows that judges may not know very well how to express in Cantonese, and what is more important is that defendants' interest is compromised since some of them may not understand English.
4	1	He agrees that judges are not well trained in Cantonese

	2	usage and some of their expressions may hurt their
	3	identity as a judge. For example, he recalls, a judge said
	4	“哩啲係廢話 (This is worthless words [This is
	5	bullshit])” in court and this gives the impression of
	6	being too colloquial and seems to be expressing strong
	7	personal comment rather than an objective judgment.
5	1	He says that like on other occasions, there is a particular
	2	type of language for court and he rejects the saying that
	3	as long as the expressions are in Cantonese, people can
	4	use them in court. He says that the image of the court
	5	has to be protected.
6	1	Regarding whether training on oral Cantonese for judges
	2	is needed, he says that the judiciary should give more
	3	exemplars for judges to learn from, and seminars and
	4	talks by successful Cantonese users also help.

(4) An interview with Mr. Lau Kwok-chuen, retired court interpreter

Date: 18 December 2007

Time: 10:00 – 11:00 a.m.

Venue: Café de Coral, Tuen Mun Town Plaza

Paragraph	Line	Interview notes
1	1	Mr. Lau says he started his career in the government as a
	2	junior clerk. Out of passion for language, he later
	3	applied to become a court interpreter, forfeiting all his
	4	previous seniority to start afresh in the civil service. He
	5	says he was the court interpreter for some biggest
	6	commercial fraud cases in Hong Kong.

2	1 2 3 4 5 6 7 8	Lau says that using Cantonese in court after the handover of Hong Kong to China is inevitable for two reasons: first, using English as the medium of trial is merely a governing tool in the former colony, and this political ground is no longer valid after 1997; second, using a language alien to the defendant is gross injustice, and hence must be changed with the rise of human rights in Hong Kong.
3	1 2 3 4 5 6 7 8 9 10	While Lau strongly agrees that Cantonese should be the language for trials, he sees the shortcomings of it: the dignity of the judge, and in turn of the court, is undermined, since the defendants feel more comfortable to argue with the judge with their mother tongue. He quotes Mr. Justice Chim To, high court judge, as saying, "When I gave the sentence in English, the defendant lowered his head. When I give the sentence in Cantonese now, the defendant holds up his head, looks at me and even smiles."
4	1 2 3 4 5 6 7 8 9	When asked whether he knows of any training on Cantonese for judges, he says that judges are given a guide book and there is a rule saying judges must speak appropriately. As to what is "appropriately", he says that it is up to individual judges to exercise their judgment. Asked to comment on the remark "唔通我叫你去搶咩? (Will I ask you to rob [meei]?)" (Transcript 1) he, like Mr. Justice Hui, also says that it is inappropriate and it reflects badly on the attitude of the judge. It may lead

	10	to complaints from the defendant or the defence counsel
	11	and even an appeal.

(5) An interview with Professor Wong Tin-wai, university teacher of linguistics

Date: 10 May 2007

Time: 3:00 – 3:20 p.m.

Venue: Prof. Wong's office

Paragraph	Line	Interview notes
1	1	Upon my introduction on my research topic, Professor
	2	Wong says he disapproves it. He says that the topic is
	3	not worth studying because it is meaningless to look into
	4	the speech style of judges, for it could not lead to
	5	anything, hence no return in scholarship. Speaking in
	6	Cantonese, he says, is like speaking in English as far as
	7	the intended meaning can be successfully conveyed. He
	8	further suggests that I might instead do a research on the
	9	history of legal bilingualism in Hong Kong.
2	1	When given counter arguments on the value of
	2	researching on the speech style of judges in Cantonese
	3	trials with the support of a newspaper report on the issue
	4	(Judgment 1), Professor Wong says that people are over
	5	reacting on the standard of Cantonese used in court. He
	6	says that judges using very colloquial expressions or
	7	even swear words in court is commonplace in the US
	8	and so Hong Kong people should not find the same in
	9	the local court unusual.

3	1	Asked the content of the training course for judges he
	2	has been commissioned to teach, he says it is on
	3	teaching syntactical rules and lexis in Chinese writing
	4	such as the conversion of Cantonese expressions into
	5	written Chinese.

(6) An interview with Miss Kesman Ho, LLB student at the City University of Hong Kong

Date: 19 July 2008

Time: 3:40 – 4:30 p.m.

Venue: Mos Burger, Hung Hom

Paragraph	Line	Interview notes
1	1	Miss Ho says that she earned her undergraduate degree
	2	in language at another local university and immediately
	3	started studying for a law degree.
2	1	When shown the example of the magistrate's speech
	2	style which Mr. Justice Hui says is inappropriate
	3	(Transcript 1), she says she does not think that the
	4	colloquial speech style is detrimental to the dignity of
	5	the judge since it is the norm in magistrates' courts that
	6	judges' speech style is less formal, symbolized by the
	7	older environment, with worn-out furniture, and less
	8	disciplined audience who always talk during trial,
	9	compared with that of higher courts. She says the speech
	10	style in the example matches the setting. She recalls
	11	once a magistrate, when conducting trial in English,
	12	suddenly shifted to Cantonese to ask the audience to

	13 14 15 16 17 18 19 20 21 22 23 24 25 26 27	switch off their mobile phones after they rang off twice, proving the inferior quality of the audience at magistrates' courts, and such disturbances, she says, will not be found in higher courts. Likewise, the colloquial speech style of the magistrates will not be found in higher courts where the speech style of judges is more decent. She says, for example, that there are lift attendants for the High Court, which gives the formal overtone. Since judges of those higher courts are promoted from the magistrates' courts, hence the same group of people, the factor of quality of judges is insignificant, and that the difference in speech style among different levels of courts should be accounted for by the above factors, namely the physical setting of courts and the quality of the audience.
3	1 2 3	She says that using such a style will also enhance trial efficiency as the defendants will find the language easier to understand.
4	1 2 3 4 5 6 7 8 9	On the questions of training on oral Cantonese skills for law students, she says no formal courses are being offered by the City University of Hong Kong on the topic. There is only one course which is Legal Chinese which requires students to write Chinese and do individual and group oral presentations. The focus of the course is on written Chinese such as syntax, the conversion between traditional and simplified Chinese characters, and writing different kinds of documents,

	10 11 12 13 14 15 16 17 18 19	and the individual and group oral presentations last for only three minutes and ten minutes or so respectively and the focus is not on oral skills either, but on the subject matter of the topics chosen by the students. She regards this course as rather useless since it is like a revision of what she has learned in Form Six in secondary school. Apart from this course, all courses are delivered and students respond in English. Even the only course of training oral skills, mootings, is in English only.
5	1 2 3 4 5 6 7 8 9 10 11 12	She says that on the whole her class of students of about 50 are not good at oral English and Cantonese skills and they do not show enthusiasm in speaking up in class, and that the common thinking that law students are good speakers is a misunderstanding, and that only 20 to 30 percent of the students can said to be capable of using the two languages competently, and a lot of her classmates stammer in oral presentation. She says that classmates always ask for her help in Chinese as she is better in this language, having undergone more training in language when she was studying at another local university.
6	1 2 3 4 5	She finds her Chinese and Cantonese is deteriorating as well since she does not have a lot of practice in them and that when she has time she will read English rather than Chinese books as the emphasis of the course is in English. She says that one needs to be good in English

	6 7 8 9 10 11	to get a good grade which means better job opportunity, mostly as a solicitor, after graduation. She says she wants to be a solicitor too as it involves and invest a lot more if a law graduate wants to be a barrister, like finding a chamber and building up networks with law firms for business.
7	1 2 3	She agrees that more training, at least one specialized course, should be offered to students on oral Cantonese skills.

(7) An interview with Mr. Nelson Kwan, PCLL student at the City University of Hong Kong

Date: 8 Sept 2009

Time: 10:50 – 11:15 a.m.

Venue: PCLL students' study room, School of Law, City University of Hong Kong

Paragraph	Line	Interview notes
1	1	He wants to be a solicitor after graduation next year.
2	1 2 3 4 5 6 7 8 9	Mr. Kwan says there is no specific course on legal Cantonese in the university. There is only one course on Chinese but it does not cover the use of Cantonese in a courtroom setting. The oral component of the course is the teacher giving a topic unrelated to law to students and they have to speak on the topic for three minutes. The teacher then gives comment. There is mooting as an elective but it is in English only. There is no Chinese mooting.

3	<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p>	<p>When asked whether he feels confident to use Cantonese in court after graduation, he says he sees no problem as he has observed a lot of conversation in courts of all levels and trusts that he can express as good as the counsels do. He says that what matters in using Cantonese in court is whether one is smart enough. When I quote the example of “唔通我叫你去搶咩？ (Will I ask you to rob [meei]?)” for his comment, he says that it does not sound too colloquial to him. He says that high court judges are of far better quality than judges of the district and magistrates’ courts and hence the kind of problematic speech style I mentioned only happens to the lower court judges, and he says he have come across even more colloquial style in lower courts, though he could not quote an example at the moment.</p>
4	<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p>	<p>He says that the use of colloquial style is particular common while the judge is facing a defendant whom he refers to as “lay client” or one who “acts in person” and so the judge has to spend a lot of time explaining the court procedures to the defendant. He says it is easier to communicate with these defendants, particularly those who are lowly educated, in colloquial style, or judges are only creating problems for themselves.</p>
5	<p>1</p> <p>2</p> <p>3</p> <p>4</p>	<p>When asked what will be his response to Mr. Justice Hui’s criticisms on Mr. Justice Wong’s language (Transcript I), he says that the high court judge is bound to say he or she concurs with the criticisms because of</p>

	5	his or her role in the legal profession.
--	---	--

(8) An interview with Miss Jessica Liu, PCLL student at the City University of Hong Kong

Date: 8 Sept 2009

Time: 11:15 – 11:25 a.m.

Venue: PCLL students' study room, School of Law, City University of Hong Kong

Paragraph	Line	Interview notes
1	1	Miss Liu says that she was a sit-in in my course on legal
	2	translation, but only for the first lesson as she was too
	3	busy afterwards.
2	1	Regarding legal Cantonese education, she says there is
	2	no course on it in the university. The training of oral
	3	Chinese is “come out to speak for 3 minutes” only and
	4	the topic is not related to anything about trial but she
	5	cannot recall the topic.
3	1	As regards the example of “唔通我叫你去搶咩？ (Will
	2	I ask you to rob [<i>meei</i>]?)” quoted for her comment, she
	3	says it is hard to say whether it is inappropriate or not
	4	because there is no standard. She says she has done little
	5	court observation and does not have a clear idea of what
	6	is the appropriate speech style in court.

(9) An interview with Mr. George Man, JD student at the City University of Hong Kong

Date: 22 Sept 2009

Time: 10:45 – 11:00 a.m.

Venue: PCLL students' study room, School of Law, City University of Hong Kong

Paragraph	Line	Interview notes
1	1 2 3	Mr. Man was born in PRC. He earned his undergraduate degree in Canada and is now in Hong Kong studying for a Juris Doctor.
2	1 2 3 4 5 6 7 8 9 10 11	He says there is no course on Cantonese in the university but does not think such a course is necessary. After all, he says, there is no need to use Cantonese in court. Firstly, even judges do not know how to express some legal terms in Cantonese. Secondly, using Cantonese means blocking the participation of foreign counsels in trials. Some of these counsels are from the House of Lords and very experienced and may contribute a lot to the trials. Furthermore, interpretation service is provided in court and there is no need to use Cantonese as the trial language at all.
3	1 2 3 4	He says he has observed trials in Hong Kong conducted in Cantonese a few times and found that judges code-mix and cannot use purely Cantonese because they do not know how to express in the language.
4	1 2 3 4	He says that the example of “唔通我叫你去搶咩？ (Will I ask you to rob [meei]?)” is a natural outcome of using Cantonese. It is a bit colloquial but hard to control as long as Cantonese is used.

(10) An interview with Mr. Jeffrey Lee, JD student at the City University of Hong Kong

Date: 22 Sept 2009

Time: 11:05 – 11:20 a.m.

Venue: PCLL students' study room, School of Law, City University of Hong Kong

Paragraph	Line	Interview notes
1	1	Mr. Lee was born in PRC. He completed his
	2	undergraduate degree in law in Canada and is now
	3	studying for a Juris Doctor in Hong Kong.
2	1	He says that the university has offered no Cantonese
	2	speaking course but only a Chinese writing course.
	3	However, he says that even if there is a course on legal
	4	Cantonese, few students will take it because English is
	5	still the language for studying law as all the legal
	6	materials are basically in English and you cannot
	7	translate everything into Chinese. For example, even the
	8	name of a trial case is in English and it is hard to say it
	9	in Chinese. It is a waste of time to change the current
	10	practice as most senior counsels, over 50 years old, are
	11	English speaking and you cannot expect them to start
	12	picking up Chinese at their age. Furthermore, there are
	13	different Chinese versions for a certain English term and
	14	there is no way to unify them. Hence there are a lot of
	15	technical problems in using Cantonese in court. He does
	16	not see the need for himself to be proficient in
	17	Cantonese as long as English is still the medium of law

	18	in practice.
3	1 2 3 4 5	He says that he has been to different courts in Hong Kong for many times and noticed that sometimes judges did deliver the judgment in Cantonese so that the defendant can understand it, but the problems like code-mixing are still there.
4	1 2 3 4 5	He says that the example of “唔通我叫你去搶咩？ (Will I ask you to rob [<i>meei</i>]?)” is the result of using everyday Cantonese and is inevitable or Cantonese should not be used at all. Training can help but few students will join it for the above reasons.

(11) An interview with Mr. Richard Kam, PCLL student at the City University of Hong Kong

Date: 24 Sept 2009

Time: 4:45 – 5:05 p.m.

Venue: PCLL students’ study room, School of Law, City University of Hong Kong

Paragraph	Line	Interview notes
1	1 2	Mr. Kam completed LLB in Australia and is now a PCLL student.
2	1 2 3 4 5 6	He says that all the courses in the school of law, including those of advocacy and mooting, are in English. There is only one Chinese teacher on these courses and the rest are English-speaking. Nevertheless, they all use English in these courses and there is no course on the use of Cantonese.

3	1	Commenting on the criticisms on the magistrates’
	2	speech style, he says that the use of colloquial speech
	3	style is to cater for the needs of the audience but perhaps
	4	may not sound appropriate to some people including
	5	himself.
4	1	He says that he knows he will need to use Cantonese at
	2	work and foresee difficulties as he does not know how
	3	to express certain legal concepts in Cantonese. He says
	4	that a course on legal Cantonese is welcome as he is
	5	aware that nowadays 90% of trials in magistracies are
	6	conducted in Cantonese.

(12) An interview with Miss Linda Ng, PCLL student at the City University of Hong Kong

Date: 6 October 2009

Time: 10:45 – 11:05 a.m.

Venue: PCLL students’ study room, School of Law, City University of Hong Kong

Paragraph	Line	Interview notes
1	1	Linda Ng is a local. She earned her law degree in
	2	England.
2	1	She says that all courses are conducted in English in her
	2	studies.
3	1	She says that the magistrate’s speech style as shown in
	2	the example of “唔通我叫你去搶咩？ (Will I ask you
	3	to rob [meei]?)” is not appropriate. She has also
	4	observed that many magistrates speak in such

	5	inappropriate style and she gives another example:
	6	during a trial, two audiences sitting at the front talked.
	7	The magistrate scolded them, saying “你當呢度係乜嘢
	8	呀？街市呀？要講嘢就出去 (What do you think this
	9	place is ? A market? Go out if you want to talk.” She
	10	opines that the style of the magistrate’s utterance is not
	11	appropriate though the interruption is very reasonable.
	12	Such inappropriateness, she says, makes the courtroom a
	13	less solemn venue than people may think.
4	1	Asked about the necessity of a course on legal
	2	Cantonese, she says she is aware that Cantonese is the
	3	major medium of trial in magistracies and would like to
	4	see such a course offered by the university for three
	5	reasons. Firstly, she does not know how to express in
	6	Cantonese in the legal field. For example, she does not
	7	know how to express some English legal terms in
	8	Cantonese. Secondly, after a few years of speaking and
	9	writing mainly English, she says that her Cantonese for
	10	use in everyday life is getting worse, “not so fluent”.
	11	Thirdly, 80% of her classmates are from overseas and
	12	their Cantonese ability is not good.

(13) Judgment 1

Date: 5 February 2001

Offence: Violation of Employment Ordinance

Judge: Ms Justice To Lai-bing

Court: High Court

In this trial, Ms Justice To criticized the magistrate of the first instance, Mr. Justice Wong Suen-kin, for using inappropriate language which “might lead to misunderstanding by the general public that the judge was threatening the defendant and hence hurt the dignity of the court” (J1,1,27 – 28). Paragraphs 1 to 3 showing the inappropriate language of the judge are given below with translation, followed by the complete original judgment:

Original (line 10 – 13 of paragraph 1):

錄音帶的謄寫本清楚顯示，上訴公司的代表林先生一開始已表示其公司願意認罪。但是由於欠缺經驗，他在嘗試解釋上訴公司的立場時，無意間令法庭誤會以為他擬對傳票提出抗辯。因此，裁判官押後案件，安排由特委裁判官黃孫建先生聆訊。上訴人向他重覆其所謂的解釋。黃特委裁判官同樣認為上訴人事實上是在對傳票提出抗辯，此點並無不妥，接着排期聆訊，此舉亦無不當。不過，有一點欠明智的，就是他曾說「冇放到，咁你就死啦」及「你因住」。(見上訴綜卷第 33 頁 D 及 K) 這番說話可能會令公眾人士誤解，以為語帶恫嚇，有損法庭體面。

Translation:

The audio transcript clearly shows that Mr. Lam, the representative of the appellant company, indicated that his company was willing to plea guilty. But due to the lack of experience, he, in explaining the stance of the appellant company, unintentionally misled the court into believing that he was going to contest the writ. Therefore, the magistrate postponed the case and arranged for Deputy Magistrate Mr. Wong Suen-kin to hear it. The appellant repeated his so-called explanation. Deputy Magistrate Wong again believed that the appellant was in fact contesting the writ. There is nothing wrong about this point. Then came the arrangement for the trial dates. There is nothing wrong about this act either. However, he was not being sensible

when he said “you haven’t given them holiday. Then you are dead [la])”and “you be careful”. (See D and K on page 33 of the appeal document) This utterance might lead to misunderstanding by the general public that the judge was threatening the defendant and hence hurt the dignity of the court.

Original (Paragraph 2):

在審訊當天，上訴人再次表示認罪，並在求情時似乎對法庭處理無法律代表的被告的態度有所批評。此時，黃特委裁判官開始長篇大論，言語間選詞用字方面失當，令上訴人心感不平，並以此為理由，指特委裁判官對他存有偏見，以致判罰過重。

Translation:

On the day of the trial, the appellant indicated again his guilty plead, and during mitigation seemed to be critical of the way the court had handled the defendant. At this moment, Deputy Magistrate Wong started to become long-winded and during his speech had made mistakes in the choice of words, which made the appellant feel aggrieved and, based on this ground, accused the Deputy Magistrate of being partial against him and thus sentencing too heavily.

Original (Paragraph 3):

誠然，裁判官面對很大的工作壓力，但仍須時刻緊記維持法庭的體面。司法人員發言時不應如本案特委裁判官般如此失當。

Translation:

Indeed, magistrates are facing huge working pressure. But they still need to remember every moment to safeguard the dignity of the court. Legal officers should not speak inappropriately like what the Deputy Magistrate did in this case.

Complete judgment:

HCMA 907/2000

香港特別行政區高等法院原訟法庭

裁判法院上訴案件 2000 年第 907 號

(原荃灣裁判法院案件 2000 年第 4023-7 號)

答辯人 香港特別行政區

及

上訴人 錦緯食品有限公司

主審法官：高等法院原訟法庭杜麗冰暫委法官

聆訊日期：2001 年 1 月 16 日

宣判日期：2001 年 1 月 16 日

判案書日期：2001 年 2 月 5 日

判 案 書

1. 上訴人被票控五項罪名，違反《僱傭條例》第 39、63 (4) (a) 及 63 (7) 條，無合理辯解而沒有給予僱員根據香港法例第 57 章《僱傭條例》第 39 條須給予僱員假日，即在 1999 年 9 月 25 日及 10 月 17 日給予僱員假日。特委裁判官黃孫建先生判上訴人每票 2,000 元罰款，全數共罰款 10,000 元。上訴人不服判罰，提出上訴。錄音帶的謄寫本清楚顯示，上訴公司的代表林先生一開始已表示其公司願意認罪。但是由於欠缺經驗，他在嘗試解釋上訴公司的立場時，無意間令法庭誤會以為他擬對傳票提出抗辯。因此，裁判官押後案件，安排由特委裁判官黃孫建先生聆訊。上訴人向他重覆其所謂的解釋。黃特委裁判官同樣認為上訴人事實上是在對傳票提出抗辯，此點並無不妥，接着排期聆訊，此舉亦無不當。不過，有一點欠明智的，就是他曾說「冇放到，咁你就死啦」及「你因住」。(見上訴綜卷第 33 頁 D 及 K) 這番說話可能會令公眾人士誤解，以為語帶恫嚇，有損法庭體面。

2. 在審訊當天，上訴人再次表示認罪，並在求情時似乎對法庭處理無

法律代表的被告的態度有所批評。此時，黃特委裁判官開始長篇大論，言語間選詞用字方面失當，令上訴人心感不平，並以此為理由，指特委裁判官對他存有偏見，以致判罰過重。

3. 誠然，裁判官面對很大的工作壓力，但仍須時刻緊記維持法庭的體面。司法人員發言時不應如本案特委裁判官般如此失當。

4. 有鑑於此，而且上訴人屬初犯，最重要的是特委裁判官在判罰時忽略考慮總體刑期的原則。本席決定判上訴得直，推翻原有判罰，現每票判罰款 1,000 元，因此上訴人須共付 5,000 元罰款。

杜麗冰

暫委法官高等法院原訟法庭

上訴人：錦緯食品有限公司，由林熾錦代表自辯

答辯人：由律政司伍淑娟政府律師代表香港特別行政區政府

(http://legalref.judiciary.gov.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=42848&QS=%2B&TP=JU on 10 October 2009)

(14) Judgment 2

Date: 17 March 2005

Offence: Littering in a public place

Judge: Ms Justice Cheung Wai-ling

Court: High Court

In this trial, Ms Justice Cheung criticized the magistrate of the first instance for “using extremely inappropriate speech style aiming at mocking the defendant and thus detrimental to the dignity of a magistrate” (J2,12). As can be seen from the judgment, the magistrate’s speech is rich in verbal particles which make it very colloquial. Paragraph 9 and 11 showing the inappropriate speech style of the judge are given below with translation, followed by the complete original judgment:

Original (line 5 – 13 of paragraph 9):

「咁曾經有人爭拗過嘅就話『我攞嚟金三兩重，跌落地，咚一聲，我行咗去，唔知自己跌咗嚟金，算唔算攞垃圾咁？金喎，法官，幾錢你知唔知呀，如果三兩金幾錢呀』咁；或者有人就將一百鈞紙摔埋佢，攞埋一嚟攞落地。如果法庭認為攞垃圾或者遺棄垃圾個樣物品嘅人有個意向係唔再要個樣嘢，咁法官可以作出一個決定，睇吓個個人，推斷佢當日係唔係根據證供顯示會放棄個樣嘢嘅擁有權，咁呢個係我嘅責任同埋我嘅困難，呢啲我會稍後做喇，咁我哋先聽吓證供，所以如果你個責任——你嘅講法話『我冇心個嚟』，或者『我其實唔想個喎』，咁你自己諗清楚嘞。」

Translation:

“Someone has argued that ‘I bring a solid gold of three taels, drop it on the ground and “dung” it sounds. I leave without knowing I have dropped the gold. Is it littering [*ah-gaam*]? Gold [*wo*]. Judge, how much a tael do you know [*ah*]. How much if it is three taels [*ah*’ ; or someone crushes a one hundred dollar note, presses it together and throws it onto the ground. If the court finds that the person who has littered or left behind that thing which is the rubbish has intended not to possess that thing any more, then the judge can make a decision, look at the person, deduce whether according to the evidence it has been shown that the person would give up the right of possession of the thing. This is my responsibility and my difficulty. I will handle it later [*ga-la*]. Why not we listen to the evidence first [*ah*]. So about your responsibility – you say ‘I don’t mean to [*gor-bor*’ or ‘I don’t want it to be [*gor-wo*],’ then you have to think about that [*la*].”

Original (line 4 – 29 of paragraph 11):

「問：哦，即係你 1 米之內我都係你視線範圍之內掉煙頭，即係我擺錢嚟攞，你又當時有着制服，係咪咁嘅意思呀？」

答：唔清楚你嘅…

問：你係咪矛——有啲矛盾呀，呢啲呀？吓？

官：有啲人光天化日打劫上海銀行都係咁㗎喇。

被告人：哦，咁又係。

官：係咪咩？

被告人：我都有諗咁多嘢。

官：即係咁人心隔肚皮。

被告人：即係佢…

官：你咁樣問呢，即係問佢『我似唔似賊呢』咁，咁你畀個機會人㗎話你『喂，你係真係，你個樣就真係咁衰㗎』咁。

被告人：咁佢話我樣衰，咁咪死火？

官：咁我建議你就唔好畀機會人㗎劃花你塊面。

被告人：哦，係。

官：係咪咩？

被告人：多謝，多謝，多謝，我諗到，不過我唔識問啫，未啲啲啫。

官：不如咁㗎，喺，我押後件案三年，等你入香港大學讀法律。咁武俠小說都有喇，今日打贏你，唔算你，畀你上山學藝，你學完返嚟，然後等你吓，咁…

被告人：係呀，唔好笑人喇，法官，我哋係粗人一個，乜都唔識，…

官：唔係，我唔知你有幾粗。

被告人：…係咪先？

官：粗唔粗呢，先天嘅事㗎啫，後天可以改㗎嘛，係咪？頑石都會點頭。咁香港政府而家畀好多錢讀書，咁你咪去讀書囉。喺，我等你三年㗎喺，駛唔駛咩？如果唔駛就繼續。」

Translation:

Ask: Oh, that means within one metre of you I still threw the cigarette butt within your vision, and that means I threw away my money intentionally, and you are wearing uniform at that time. Do you mean that?

Answer: Don't understand your...

Ask: Are you having con – contradiction, kind of? Ha?

Judge: Some people even robbed the Bank of Shanghai in broad daylight
[gɑ-lɑ])

Defendant: Oh, that is true.

Judge: Isn't it [ah]?

Defendant: I haven't thought that much.

Judge: That means the hearts of people are separated by their bellies.

Defendant: That means he...

Judge: If you ask him like that, it means you are asking him 'Do I look like a thief'. Then you are giving others the chance of telling you 'Hei, you really are. Your face really looks that awful [wɔ].'

Defendant: Won't it be a problem if he says my face looks awful?

Judge: Then I would advise you not to give others the chance of scarring your face.

Defendant: Oh, yes.

Judge: Isn't it [ah]?

Defendant: Thank you. Thank you. Thank you. I have thought of that. But I did not know how to put in into words. Did not that.

Judge: How about that [ah]. [La], I postpone this trial for 3 years so that you can go to the University of Hong Kong to study law. Like in a martial arts novel [la], I beat you today but it doesn't count. I let you go up to the hill to

learn from the master. You come back after studying. I will wait for you
[ha]. Then...

Defendant: Yes, don't laugh at me [la]. Judge, I am a coarse man. I don't
know anything,...

Judge: No. I don't know how coarse you are.

Defendant: Isn't it?

Judge: Coarse or not, it is by birth [lai-je]. It can be changed later [ga-ma],
isn't it? Even a hard rock can nod. Now the Hong Kong government gives
out a lot of money for study. You go to study [law]. [La], I wait for you for
three years [ah-la]. Do you need it [ah]. If not then go on.

Complete judgment:

HCMA1245/2004

香港特別行政區

高等法院原訟法庭

刑事上訴司法管轄權

判罪上訴

案件編號：裁判法院上訴案件 2004 年第 1245 號

(原荃灣裁判法院案件 2004 年第 15 號)

香港特別行政區

訴

被告人 叶云強

主審法官：高等法院原訟法庭暫委法官張慧玲

聆訊日期：2005 年 1 月 11 日及 3 月 17 日

裁判日期：2005 年 3 月 17 日

判 案 書

1. 上訴人經審訊後被特委裁判官裁定一項在公眾地方棄置廢物罪罪名成立，違反香港法例第 132 章《公眾衛生及市政條例》制訂的《公眾潔淨及防止妨擾規例》第 4(1)(a)及 23(1A)條，被判罰款 600 元及堂費 200 元。上訴人就罪名不服上訴，要求推翻定罪。

控方案情

2. 控方案情很簡單。控方第一證人是食環署助理管理小販主任，在案發當日他目睹上訴人將手持的煙蒂拋到行人路上。

上訴理據

3. 上訴人提出的上訴理由有三項：

- (一) 裁判官審理案件時有欠公平公允；
- (二) 裁判官作出錯誤分析；及
- (三) 裁判官繼而作出錯誤假想。

有關謄本

4. 由於裁判官在裁斷陳述書指上訴人就案件發生的準確地點（即位於荃灣楊屋道街市出入口處的行人路）從未提出爭議，而上訴人指他當時曾經提出爭議，在本上訴首次聆訊時，本席將案件押後，以便本席索取有關謄本參閱。

裁定

5. 本席參閱有關謄本後，認為上訴人確曾就案件發生的正確地點提出爭議。他在盤問控方第一證人時向證人說（見上訴綜卷第 26 頁 P 行）：「你講大話，啱啱出口個度，紅色地嘅磚個度，我就企喺出面，你就企喺門口個度…」

明顯地上訴人有對正確地點提出爭議。

6. 其實除了上訴人當時的位置外，究竟附近是否有其他人？上訴人是否與其妻子一起？是否將買了的餸菜放在地上這幾點，上訴人均曾向控方第一證人作出盤問，及提出爭議。換句話說，上訴人對控方第一證人

的證供指他在哪種情況及在哪個地方看見上訴人拋棄煙蒂等等，都提出爭議。

7. 裁判官在裁斷陳述書指上訴人沒有提出爭議是明顯錯誤。

8. 本席在參閱謄本後，亦察覺有多處令本席甚為關注的地方。

9. 首先，在案件正式審訊前，裁判官以相當時間將審訊程序告知上訴人。當一名被告人沒有律師代表時，裁判官向他作出解釋是恰當的。但本席實看不出在本案中，當上訴人被控拋棄煙蒂，裁判官為何會向上訴人作出以下解釋（上訴綜卷第 23 頁 E 行）：

「咁曾經有人爭拗過嘅就話『我攞嚟金三兩重，跌落地，咚一聲，我行咗去，唔知自己跌咗嚟金，算唔算攞垃圾 o 丫 咁？金喎，法官，幾錢兩你知唔知呀，如果三兩金幾錢呀』咁；或者有人就將張一百鈞紙粹埋佢，攞埋一嚟攞落地。如果法庭認為攞垃圾或者遺棄垃圾嗰樣物品嘅人有個意向係唔再要嗰樣嘢，咁法官可以作出一個決定，睇吓嗰個人，推斷佢當日係唔係根據證供顯示會放棄嗰樣嘢嘅擁有權，咁呢個係我嘅責任同埋我嘅困難，呢啲我會稍後做㗎嘞，咁我哋先聽吓證供 o 丫，所以如果你個責任——你嘅講法話『我冇心個嚟』，或者『我其實唔想個喎』，咁你自己諗清楚嘞。」

10. 本席認為裁判官在本案向上訴人作出如此講解，不獨不會令上訴人對他面對的控罪及審訊程序更清晰，反而更加混淆。

11. 其次，當上訴人向證人盤問證人是否指上訴人在證人視線範圍內（即他面前一米之內）拋棄煙蒂時，謄本顯示當時的對話如下（上訴綜卷第 30 頁 C 行）：

「問：哦，即係你 1 米之內我都係你視線範圍之內掉煙頭，即係我攞錢嚟攞，你又當時有着制服，係咪咁嘅意思呀？

答：唔清楚你嘅…

問：你係咪矛——有啲矛盾呀，呢啲呀？吓？

官：有啲人光天化日打劫上海銀行都係咁㗎喇。

被告人：哦，咁又係。

官：係咪咁？

被告人：我都有諗咁多嘢。

官：即係咁人心隔肚皮。

被告人：即係佢…

官：你咁樣問呢，即係問佢『我似唔似賊呢』咁，咁你畀個機會人哋話你『喂，你係真係，你個樣就真係咁衰㗎』咁。

被告人：咁佢話我樣衰，咁咪死火？

官：咁我建議你就唔好畀機會人哋劃花你塊面。

被告人：哦，係。

官：係咪咁？

被告人：多謝，多謝，多謝，我諗到，不過我唔識問啫，未啲啲啫。

官：不如咁咁，喺，我押後件案三年，等你入香港大學讀法律。咁武俠小說都有喇，今日打贏你，唔算你，畀你上山學藝，你學完返嚟，然後等你吓，咁…

被告人：係呀，唔好笑人喇，法官，我哋係粗人一個，乜都唔識㗎，…

官：唔係，我唔知你有幾粗。

被告人：…係咪先？

官：粗唔粗呢，先天嘅事㗎啫，後天可以改㗎嘛，係咪？頑石都會點頭。咁香港政府而家畀好多錢讀書，咁你咪去讀書囉。喺，我等你三年咁喺，駛唔駛咁？如果唔駛就繼續。」

12. 本席認為裁判官當時的言行極不恰當，他出言嘲弄上訴人，實在有失身為裁判官應有的尊嚴。

13. 最後，在控方證人作供完畢後，裁判官對上訴人說（上訴綜卷第32頁B行）：

「開審之前呢，叶先生，我已經話過畀你聽，證明你有罪係控方嘅責任，你作為被告人基本上係唔需要反證明自己有罪嘅，咁所以究竟係選擇畀

唔畀口供嘅時候，你可以考慮吓我講嘅嘢。叶生，除非你好希望畀口供，咁你可以，除非你話好希望想講，如果唔係嘅話，咁你可以唔畀口供都得。法官已經講過畀你聽，控方有責任證明你有罪，你作為被告人，基本上唔需要反證明自己有罪嘅，咁所以你有權唔畀口供，呢個係你法律上嘅權利，法官唔會因為你選擇唔畀口供呢，就作出一啲對你不利的揣測，法官知道叶生有權唔畀口供嘅咁。」(本席加以強調)

14. 誠然，上訴人確有權選擇作供與否，但當考慮到上訴人對控方第一證的證供曾作極大爭議，他多次直指控方第一證人說謊，裁判官理應向上訴人解釋他在向控方第一證人盤問時所作的指控不是證供，好讓上訴人考慮他是否想作證，將他的版本在法庭向裁判官道出。裁判官向上訴人指「除非你好希望畀口供，咁你可以 …」不是一個正當的做法。他的用詞應該中立，讓上訴人自己決定是否想作證。

15. 基於上述種種理由，本席裁定定罪不安穩，上訴得直。定罪撤銷，刑罰擱置。

(張慧玲)

高等法院原訟法庭暫委法官

控方：由律政司梁卓然高級政府律師代表香港特別行政區。

辯方：無律師代表。

(http://legalref.judiciary.gov.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=44995&QS=%28%7Bhcma1245%2F2004%7D%7C%7BHCM A001245%2F2004%7D+%25caseno%29&TP=JU on 10 October 2009)

(15) Judgment 3

Date: 12 September 2007

Offence: Indecent assault

Judge: Mr. Justice Tong

Court: High Court

In this trial, Mr. Justice Tong criticized the magistrate Mr. Justice Wong Yu-wing for using expressions detrimental to the dignity of the court (J3,22). As can be seen from the judgment, the magistrate's speech is rich in idioms and flowery language which amount to hyperbole. Paragraph 22 showing such a speech style is given below with translation, followed by the complete judgment:

Original:

有關本案定罪理由書之內容，本席希望提出一些意見。「定罪理由」或「裁斷陳述書」是具有法律效力的文章，內容重理性分析而不重花巧。裁判官當然有權不相信被告人的供詞，但是否有必要說成甚麼：「被告敲鑼擊鼓，高調地反覆強調……」，或是「被告被盤問至此階段，整條狐狸尾巴，已展露無遺，……」。這種誇張的形容，在一份嚴肅的法律文章裡出現，難免會令人覺得有欠莊重。

Translation:

Regarding the content of the reasons for conviction of this case, This bench wants to make some comment. "Reasons for conviction" or "statements for findings" are writings with legal effect. The focus of their contents is on rational analysis and not on floweriness. Magistrates of course have the right not to believe the evidence of the defendant but is there the need to phrase it as "the defendant hit the gong and beat the drum, repeatedly emphasizing in high profile" or "at this stage of cross examination, the defendant's fox tail was completely revealed..." To have this kind of hyperbolic description in a solum legal writing inevitably make one feel that there is a lack of dignity.

Complete judgment:

HCMA1047/2006

香港特別行政區

高等法院原訟法庭

刑事上訴司法管轄權

判罪上訴

案件編號：裁判法院上訴案件 2006 年第 1047 號

(原粉嶺裁判法院案件 2006 年第 617 號)

香港特別行政區

訴

被告人葉奇君

主審法官：高等法院原訟法庭法官湯寶臣

聆訊日期：2007 年 7 月 26 日

裁決日期：2007 年 9 月 12 日

判案書

背景

1. 上訴人被控在 2005 年 11 月及 2006 年 1 月期間，在元朗洪水橋丹桂村 251 號上訴人的寓所內，兩度猥褻侵犯一名 11 歲的女童。
2. 上訴人否認控罪，在審訊後，黃汝榮裁判官裁定上訴人罪名成立，入獄 18 個月。上訴人不服定罪及判刑之裁決，向原訟庭提出上訴，後來上訴人決定放棄判刑方面的上訴。

控方案情

3. 裁判官在其「定罪理由」已交代了控辯雙方的證供。本席不準備覆述所有內容。控方的主要證人為涉案的女童及一名社工周小姐。上訴人也選擇了上證人台作供。
4. 證供顯示，女童與上訴人是鄰居，他們相識於 2004 年 9 月，初時上訴人邀請女童去他的居所操玩電腦，上訴人也有替女童補習家課。

5. 在 2005 年約 10 月某個晚上，女童到上訴人家中看電視，後來上訴人在床上擁抱著女童睡了一會。但控方就此行為並沒有提出起訴。

6. 約一個月後，即同年的 11 月某日，上訴人在房間內脫去女童所有衣服，並吻其胸部，過程長達十多分鐘。到了 2006 年 1 月中，女童再次在上訴人居所玩電腦時，被上訴人帶入房間。上訴人脫去自己及女童衣服後，吻了女童胸部，又用手指插入女童陰部達分餘鐘。這兩次事件是為第一、二項控罪之基礎。

7. 到了 2006 年 1 月 16 日，女童向社工周小姐(即控方第二證人)傾訴，事情因此而曝光。其實周小姐事前已知道有一名比她年長的男士義務替女童補課及讓她玩電腦遊戲，因此對她的情況特別留意，最終女童在 2006 年 1 月 16 日向她說出被侵犯之經過。周小姐報告了上司，後來警方介入調查。

辯方案情

8. 上訴人作供說是女童主動要求到他家裡玩電腦，他答應後，女童就常常到訪。他知道女童與家人關係惡劣，乏人照料，連吃飯也有問題，他是出於好心而讓女童到他家裡玩電腦，更替她補習功課、安排膳食。上訴人說他當女童是女兒般照顧。上訴人否認對女童有作出過擁抱、吻胸及指插下體的不當行為。他不明白女童為何會作出如此嚴重的指控。但他提到，女童喜歡上網與網友吹擂。

裁決

9. 上訴人沒有刑事紀錄，就這方面，裁判官已提醒了自己要從對上訴人有利的角度考慮其證供的可信性及犯罪傾向性。

10. 裁判官在分析證據後，最後採納女童的證供而否決了上訴人的說法。裁判官指上訴人對女童的作為已構成猥褻侵犯，因此而裁定兩項罪名均成立。

上訴理據

11. 上訴人的代表凌耀中大律師提出了以下幾點作為上訴理據：

(a) 裁判官對女童的評估不當。裁判官認為女童年輕，心智尚未成熟，她不可能作出如此天衣無縫之版本。裁判官說從女童作供時的感情反應，有關的供詞內容不會是憑空想像或是胡扯之言。但裁判官忽略了女童其實在認識上訴人之前，已有男朋友，還與他發生過關係。女童在男女關係方面有過經驗，她所提到的細節，並非是「憑空想像」。裁判官不應以女童不能「憑空想像」而相信她。

(b) 裁判官指女童對上訴人並沒有仇恨之意，因此不會誣害上訴人。但裁判官忽略了女童在是否「自願」的問題上有矛盾。在盤問期間，女童說兩次事件中她都有說「唔好」；但在主問時，她的證供不同，這顯示她會誇大證供。

(c) 裁判官忽略了女童描述的情節有其「不可能性」，例如是：

(i) 上訴人不可能把女童連人帶椅推入睡房，因房間門有門檻；

(ii) 當時是冬天，女童不可能脫光衣服被上訴人吻胸達十餘分鐘。

(d) 裁判官沒有充分考慮本案的疑點，例如是：

(i) 女童為何在被侵犯後不立刻回家，又繼續去上訴人家裡玩電腦？

(ii) 上訴人為何不依女童提示說謊否認女童有到過他家裡？

(iii) 如果女童所講的屬實，事發時上訴人的睡房及大門都是打開的。

(iv) 女童在盤問時蓄意避談其男友，但卻指證上訴人。

代表大律師指出，情況應該是女童在社工追問下，爲了包庇男友而胡亂說侵犯她的人是上訴人，因此，定罪之裁決並不穩妥。

12. 代表大律師在他的書面陳詞中詳述了以上各點，並在庭上作了補充發言。

答辯人之陳詞

13. 答辯人也提交了書面陳詞逐點反駁了上訴人的論點。

14. 答辯人指出，裁判官已小心、詳盡及全面地考慮過女童之證供與案情。女童在事前有兩性經驗這方面，裁判官是注意到的；至於女童有沒有在被非禮時說「唔好」，女童在作供時的表達並不清楚，但在盤問時

她就肯定地作了回覆；裁判官又從女童在被侵犯後的反應來評估過她有否誣害上訴人之意圖；再者，裁判官也沒有在上訴人如何認識女童一事上存有偏見。

15. 就上訴人提到某些案情的「固有的不可能性」，答辯人不認同事情有何不可能之處：門檻高低的少許差別，不應會防礙到上訴人把女童連人帶椅推入房間；又以香港的天氣而言，在事發期間也不會冷到令人不能在室內光身十多分鐘。

16. 答辯人亦逐點反駁了上訴人所提出的 6 個疑點。特別在女童是在「包庇」男友及她在第二次案發日期有所更改方面，答辯人有以下的回應：

「……女童與前度男友的關係是屬於另一宗事件，嚴格來說，與本案無直接關係。至於上訴人大律師提出‘包庇’這說法，一來這是沒有任何證據支持他的說法，二來如果辯方是有懷疑的話，應當在審訊時向受害女童提出質問，但辯方並沒有這樣做。故此經審訊定罪後，上訴人現今提出這個說法是沒有根據，不足以此構成本案定罪不穩妥理由。

……以女童的年齡，她在日期上有些少混亂是可以理解的，重要的是她能否清楚講述發生事情經過，更何況女童已清楚交待並解釋她為甚麼弄錯日子(上訴宗卷 267 頁 E 行)。這些少瑕疵，並不影響女童證據的整體可信性，原審法官顯然接受她的解釋，並指出女童被質問半天，版本毫無破綻之餘，字字仍一針見血，她如非親歷其境，根本無從單賴刻意舖排，或從幻想可加以塑造出來(上訴宗卷 25 頁 23 段)。」

上訴理據之評估

17. 本案的最主要點是在於女童的證供是否可信。裁判官也特別指明，他雖拒納辯方證供，惟上訴人無舉證之責任。就女童之證供，裁判官作了分析及評估。他說女童的證供在整體內容上，「主題鮮明，細節互相吻合，有稽可尋，自然流暢」，(見定罪理由第 20 段)，而在具體情況

上，也講得清清楚楚，例如是怎樣被上訴人脫去衣服、指插、擁抱吻胸與她當時的感受等。裁判官認為這些都不能是謊話。(見第 21 段)

18. 裁判官總結說：

「女童的證供，縱有仙人點路，指點迷津，還得配合自然演繹，及經得起盤問，才可瞞天過海。她被質問了半天，版本毫無破綻之餘，字字仍一針見血，她如非親歷其境，根本無從單賴刻意鋪排，或從幻想可加以塑造出來。」

19. 裁判官在觀察過雙方證人及考慮了證供內容後，就案情事實方面作出了裁斷。雖然，本席對裁判官所採用的某些形容描述有所保留，但最終他也是行使了陪審員的職責而作了決定。

20. 本席同意答辯人的陳詞，本席不認為上訴人所提出的各項理據足以構成案中疑點。本席也不認為裁判官在法律原則或證據評估方面有出錯之處。

21. 基於上述原因，本席會駁回上訴，維持原判。

22. 有關本案定罪理由書之內容，本席希望提出一些意見。「定罪理由」或「裁斷陳述書」是具有法律效力的文章，內容重理性分析而不重花巧。裁判官當然有權不相信被告人的供詞，但是否有必要說成甚麼：「被告敲鑼擊鼓，高調地反覆強調……」，或是「被告被盤問至此階段，整條狐狸尾巴，已展露無遺，……」。這種誇張的形容，在一份嚴肅的法律文章裡出現，難免會令人覺得有欠莊重。

23. 但正如本席指出，裁判官最終是作了一個事實方面的裁決，本席看不到有推翻其裁決的理由。

(湯寶臣)

高等法院原訟法庭法官

控方：由律政司高級政府律師侯偉泉代表香港特別行政區。

辯方：由勞潔儀律師行轉聘凌耀中大律師代表上訴人。

(http://legalref.judiciary.gov.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=58541&QS=%2B&TP=JU on 10 October 2009)

(16) Judgment 4

Date: 4 October 2007

Offence: Robbery and other crimes

Judges: Mr. Justice Tang, Mr. Justice Cheung, Ms. Justice Yuen

Court: High Court

In this trial, the three high court judges criticized the magistrate Mr. Justice Wong Yu-wing for using emotional and insulting expressions which are extremely inappropriate and detrimental to the professional ethics of judges (J4,19). Paragraph 19 showing such a speech style is given below with translation, followed by the complete judgment:

Original:

法官審案時是應該採取持平鎮靜的態度主持審訊，憑著法律原則及理性的分析作出裁決。這是明顯不過的。若法官在裁決理由書中採用感性化的措詞，如以“非人非鬼”來描述被告人，則難免會令被告人（或其他讀者）得到一個印象，是法官已失去了他應持有的專業態度。本庭認為該類帶有侮辱性的措詞極之不合適，本庭盼望不會再重現於裁決理由書中。

Translation:

Judges should be fair and calm in presiding over a trial, and give the verdict according to legal principles and rational analysis. This cannot be more obvious. If judges use emotional words in the judgment, such as using “neither human nor ghost” to describe the defendant, the defendant (or other readers) will inevitably get an impression, that is the judge has lost his

professional ethics. This court is of the opinion that this kind of insulting expressions is extremely inappropriate. This court hopes that they will never appear in judgments again.

Complete judgment:

CACC 467/2006

香港特別行政區

高等法院上訴法庭

刑事司法管轄權

定罪及刑罰上訴許可申請

案件編號：刑事上訴案件 2006 年第 467 號

(原本案件編號：區域法院刑事案件 2006 年第 374 號)

答辯人 香港特別行政區

訴

申請人 龐太宗(PONG TAI CHUNG)

主審法官： 高等法院上訴法庭副庭長鄧國楨

高等法院上訴法庭法官張澤祐

高等法院上訴法庭法官袁家寧

聆訊日期： 2007 年 9 月 21 日

宣判日期： 2007 年 9 月 21 日

判案理由書日期： 2007 年 10 月 4 日

判案理由書

由上訴法庭法官袁家寧頒發上訴法庭判案理由書：

1. 2007 年 9 月 21 日，申請人龐太宗就一項搶劫罪向本庭申請許可就定罪提出上訴，本庭經考慮了他的代表大律師陸偉雄的陳詞後拒絕給予許可，詳細理由如下。

2. 2006 年 10 月 16 日，申請人在區域法院暫委法官黃汝榮席前被裁定了三項控罪罪名成立。第 1 項控罪為“搶劫”，詳情指申請人於 2006 年 1 月 24 日在新界將軍澳寶林邨一樓宇外搶劫一對鄭姓夫婦\$10,000。其實該夫婦是申請人的前外父外母，案情指當晚申請人約他們到鄭氏夫婦住所樓下的小公園，向他們索錢。鄭氏夫婦說他們沒有錢，申請人則說他們走不得，他已早有準備，而展示了部份藏在他的褲腳下夾在襪頭的一塊反光似是金屬的物體，並向鄭先生說若當天拿不到錢，他們就“一鑊熟”，鄭氏夫婦受驚，其後鄭先生去拿銀行提款卡，以透支形式獲取現金\$10,000 給予申請人，當時鄭太則應申請人吩咐與申請人留在公園內。這就是第一項罪名“搶劫”的詳情。
3. 第 2 項控罪為“勒索”，詳情指申請人於第 1 項控罪事發後兩天，在電話威脅前妻鄭女士以索取\$6,000。第 3 項控罪是第 2 項控罪的交替控罪。
4. 第 4 項控罪為“刑事恐嚇”，詳情指第 2 項控罪發生後幾天，則 2006 年 1 月 31 日，申請人恐嚇前妻鄭女士。
5. 經審訊後，原審法官裁定了申請人三項控罪（即第 1 項、第 2 項及第 4 項）罪名成立，並其後就第 1 項控罪“搶劫”，判申請人入獄 4 年 9 個月，就第 2 項控罪“勒索”，則判申請人入獄 1 年 3 個月，其中 6 個月與第 1 項控罪的監禁分期執行。就第 4 項控罪“刑事恐嚇”，則判申請人入獄 9 個月，其中 3 個月與第 1 項控罪的監禁分期執行，即總刑期為 5 年 6 個月。
6. 原本申請人就每一項控罪的定罪及判刑都提出了上訴許可申請，但在本申請聆訊開始時，他表示除了有代表律師的就第 1 項定罪的許可申請外，他放棄其他的申請。
7. 代表申請人的陸大律師陳詞說，原審法官漠視了鄭先生和鄭太證言中的分歧，即是說：申請人當時是站立的還是坐著的、申請人當時的衣

著、申請人初時要求的數目、申請人是否要求鄭太留低等待鄭先生去拿錢、與及申請人是否有說過如果拿不到錢就“攞住一齊死囉”。

8. 其實陸大律師在原審時，亦曾提出鄭先生及鄭太的證言有出入這一點，而就這一點原審法官已在裁決理由書的第 20 段有以下的裁定：

“鄭父、鄭母就這方面的證供，略有出入，實正常不過，兩人證供存異之處，只是瑣碎無聊之事項，反顯他們作供前沒有討供論證，圖蒙騙法庭。”

9. 在本庭前，陸大律師指其實那些分歧並非瑣碎無聊，他提出的例子是申請人展示反光物體時是坐著或是站著。陸大律師說鄭先生及鄭太就這一點的證言有分歧，但其實翻看謄本，鄭先生與鄭太就這一點的證言並非互相矛盾的。當鄭先生被問到申請人抽起褲腳期間，他藏有好似刀片那隻腳是怎樣的時，他的答案是“戙起，戙係 seat 位度” (p.53S)。他在被盤問時亦是這樣說 (p.59K)。陸大律師從該證言就推斷這顯示鄭先生是說申請人當時是站著的，但其實任何人坐下時亦可以把腳戙起，所以鄭先生的證言並非與鄭太的證言有分歧，因為鄭太是說當時申請人正在坐著，而有意地摸他的褲腳以好讓他們看見那塊反光的金屬物體 (p.87J - M)。

10. 經考慮以上事宜，本庭看不到鄭先生與鄭太就這一點的證言有甚麼互相矛盾之處。

11. 陸大律師的列表也提及其他的所謂分歧，如申請人當時穿著什麼類型的褲及鞋，但事發時已是晚上 10 時許，而雙方交談的地點是在公園，光線不足，審訊時亦已離案發有 9 個月之多，所以鄭先生及鄭太就申請人的衣著的回憶雖然有出入，但並非重要。

12. 至於鄭先生說申請人初時要求 7 至 8 萬元，而鄭太說申請人初時要求“幾萬元”，這並非矛盾，因為鄭太作證時已說她沒有刻意地留意聽申請人所提及的數目 (p.99P)。這亦不足為奇，因為這只是申請人單方面顯示他所需要的款額，鄭氏夫婦在無意亦無經濟能力給予他任何

款項的情況下，鄭太不留意申請人說他究竟須用幾多錢來過年，並無不合理之處。

13. 至於陸大律師聲稱鄭先生說申請人“願意接受”\$10,000 及鄭太說申請人“要求最少要”\$10,000，這是沒有甚麼實際的分別，本庭看不到有任何分歧，遑說嚴重的分歧。

14. 至於另外一點，即鄭先生說他去提款時，申請人是需要他的太太留下的，陸大律師聲稱鄭太卻說她是自願留在現場，但其實鄭太的證言是當時申請人是叫她留下來的(p.85J)，因為申請人向她說“妳叫肥佬[即鄭先生]自己去攞錢喇”，“妳喺度…”(p.86B)。這令鄭太得到的訊息是她並不可以不留在現場(p.86I-J)。明顯地申請人是著她留下，陸大律師聲稱鄭太是自己選擇留下是不對的。

15. 另外，鄭先生說當晚申請人提及如果拿不到7、8萬元或1萬元，會“攞住一齊死”(p.54N)，而鄭太說申請人只說“冇得走”，“你要畀咗錢我先走得”(p.88S - 89F)。其實鄭先生亦有在證言提出鄭太說申請人所說的一番說話(p.520)，而“一鑊熟”(p.53K)的說話正是申請人展示金屬物體時說的。這正是鄭太說她受驚的時刻(p.85E-G, 87S - 88G)，因申請人知道他們的住所與及家庭成員的狀況，她恐怕申請人會對他們不利(p.88E-F)或會使用暴力(p.88G)。在那些情況下，鄭太聽不到一兩句說話或事後忘記了亦不足為奇。重要的是，陸大律師接納當時鄭先生及鄭太確實是受驚的。

16. 總括來說，不管陸大律師所提出的出入是否真正的分歧，在分析鄭氏夫婦兩人的證言後，本庭並不認為入罪的裁決是有任何不穩妥之處。

17. 基於申請人在庭上已放棄第2項及第4項控罪定罪的上訴許可申請及所有控罪判刑的上訴許可申請，故此本庭撤銷了該些申請。本庭亦駁回了申請人就第1項控罪定罪的上訴許可申請。

18. 最後，本庭須提到一點。申請人原本申請上訴許可的理由之一，是原審法官裁決偏袒一方。最後申請人放棄了這上訴許可申請理由，而本庭經閱讀謄本及考慮到其他證據後，認為申請人放棄這上訴許可申請理由是正確的。然而本庭認為必須提出以下一點。

19. 法官審案時是應該採取持平鎮靜的態度主持審訊，憑著法律原則及理性的分析作出裁決。這是明顯不過的。若法官在裁決理由書中採用感性化的措詞，如以“非人非鬼”來描述被告人，則難免會令被告人（或其他讀者）得到一個印象，是法官已失去了他應持有的專業態度。本庭認為該類帶有侮辱性的措詞極之不合適，本庭盼望不會再重現於裁決理由書中。

（鄧國楨）

（張澤祐）

（袁家寧）

高等法院上訴法庭副庭長 高等法院上訴法庭法官 高等法院上訴
法庭法官

申請人：由法律援助署委派張恩純，葉健民律師行轉聘大律師陸偉雄代表（第1項控罪的定罪上訴許可）。無律師代表（第2及第4項控罪的定罪上訴許可及所有控罪的刑罰上訴許可）。

答辯人：由律政司高級政府律師黎婉姬代表。

(http://legalref.judiciary.gov.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=58703&QS=%2B&TP=JU on 10 October 2009)

4.1 Issues with Cantonese as a trial language

As mentioned in Chapter 3, there has been a debate on the Cantonese used by magistrates, exemplified by Justice Hui's and Prof. Sin's arguments given in this chapter. The crucial issue related to the debate is the appropriateness of magistrates' speech style. Since the social setting is procedurally relevant to the production of speech style as explained in Chapter 2, the court as the context of conversation affects how participants

speak. Moreover, it is argued that since the situational features of a courtroom are so unique, all trial participants ought to be able to predict what is typical to take place, including the appropriate language to use. Hence magistrates are able to use high Cantonese is taken for granted. However, the reality presents a different picture, for time and again magistrates are criticized for their colloquial Cantonese speech style. It means that the issue of legal Cantonese needs to be looked into, and the concern of legal professionals is unfolded in the following article written by Ms. Justice Carlye Chu (1994: 40):

One may think that as long as all the people in court speak and understand Cantonese, it is a simple matter for the bench, the advocates and the parties to communicate in Cantonese. That is not quite true. The Chinese and, in particular, the Cantonese which the local community uses has, over the years, been modified, shaped and developed by the changes and trends in society and culture. Different social sectors will have usages peculiar to themselves... At the same time, some of the usages adopted by the local community, especially those coined and promoted by pop stars and the mass media, are rather crude and vulgar, to say the least.

It is therefore an art to speak and use common and generally understood Cantonese and Chinese, without at the same time resorting to slang and usage that may compromise the dignity and solemnity of the

judicial process. It is also a matter which judicial officers and advocates alike will have to give serious thoughts to, if Chinese is to be used at more or at all levels of the court system.

Two arguments could be concluded from Justice Chu's statement. The first argument is that there is a difference between legal Cantonese and Cantonese used for conversation in other social sectors and hence even native Cantonese speakers may not be competent users of the mother tongue in the context of the court. Justice Hui echoed this view when he said at interview that "it is not true that any native Cantonese judges can use Cantonese well in court" (I. 8: 12 – 14). Barrister Cheung also gave a similar response at interview, saying that "there is a particular type of language for court" (I. 5: 1 – 2). In this connection, the concept of genre which refers to the use of language associated with a particular social activity has its role to play. As Coupland (2007: 15) says:

Common definitions of genre tell us that genres are culturally recognized, patterned ways of speaking, or structured cognitive frameworks for engaging in discourse. So the most clear-cut instances are institutionalized communicative genres, such as political speeches, lectures, post-match sports interviews or stand-up comedy routines. In these cases quite specific frameworks exist, and indeed there are often partial scripts, for how to fill out the discourse of a genre. People recognize these genres when they come

across them, and they can refer to them through fairly simple labels; they appreciate their norms and their discursive demands on people taking part...and coming to appreciate their social resonances and values.

By this definition, judges' language is an institutionalized communicative genre. It is framed by its very specific context and there are discursive demands on it. Erving Goffman (1974) also says that particular social identities will be shown in particular communicative genres, and participant roles in a specific genre will foretell language-identity information and expectation. In short, a particular social context dictates the linguistic requirements as a specific genre for an identity, represented as follows:

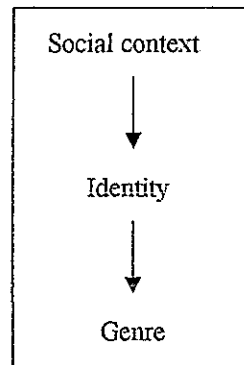


Figure 4.1 How genre is created in a social context

Hence aspirations for a genre are always identity-related and socially-bounded. It is on this sociolinguistic basis that Barrister Cheung has observed that judges sometimes use over-colloquial expressions like “哩啲係廢話 (This is bullshit)” (I. 4: 4 – 5), and Justice Hui noticed the linguistic blunders of legal professionals, quoting at interview the example of “你咁樣講真係臭屎密𩶛 (What you said is really smelly faeces tightly covered

up)” which means “from what you said you have done something wicked but have tried to conceal it completely” (I. 5: 6 – 10) which he says is too vulgar, not of the expected “social resonances and values”, to be acceptable as part of the specific genre of courtroom speech. Another high court judge, Mr. Justice Tong, also stressed the importance of solemnity of legal expressions (J3,22), a proposition supported explicitly by two law students. Student Ng comments that the magistrate’s utterance of “你當呢度係乜嘢呀？街市呀？要講嘢就出去 (What do you think this place is? A market? Go out if you want to talk) makes the courtroom a less solemn venue than people may think (I. 3: 6 – 13) and Student Kam says that magistrates’ colloquial speech style “may not sound appropriate to some people including himself” (I. 3). Further support could also be found in the course material of the Law Faculty, the University of Hong Kong, to be discussed in Chapter 7, in which it is stated that “使用中文審訊時，說話要淺白，但不能過份粗俗，用語市井，有損法庭的莊重 (When the trial is conducted in Chinese, expressions used have to be easily understood without being too colloquial. Using slangy expressions will be detrimental to the solemnity of the court)” (see page 321).

The second argument of Justice Hui is that the mass media has an adverse influence on the development of legal Cantonese, an argument again echoed by Justice Hui who said at interview that “today’s language learning environment goes against the demand for better Cantonese in court, as the language of the people on the street and the media is often too crude” (I. 14: 6 – 9). Coupland (2007: 171) also says that the influence of the media language, which lowers the speech style of high performance speech such as a public political speech in favour of the colloquial style for other low performance like small talk, is palpable:

I am thinking of stylistic practices around accent/dialect which are most distinctive for how they do not respect boundaries between social groups. Many of them originate in the mass media, particularly television, in situation comedies, soap operas and product advertisements. They can rapidly reach awareness and some level of usage at a national level, and sometimes they can be close to global.

Fairclough and Wodak also assert that “key areas of social life are becoming increasingly centred on the media, especially television” (1997: 259). This echoes Justice Chu’s claim that the intrusion of mass media’s language which is “rather crude and vulgar” is undermining legal discourse and it is not welcome in the courtroom (and in Justice Hui’s family as well (I. 14: 4 – 5)) but is nevertheless, as Justice Hui says, apparently having an effect on judges (I.14). Coupland says that “the theoretical importance of media-influenced styling is... that mass media are increasingly active and important in delivering our accent/dialect/variation experience” (2007: 184). He quotes the global hit television sitcom *Friends* as example, noting that the use of the “so” expression as an intensifier by the character Rachel as in “I am so:: going to marry that guy” has been rapidly absorbed into youth speak in the UK (2007: 185). The problem of code-mixing identified by Barrister Cheung may also be ascribed partly to the mass media through which a lot of code-mixed materials like advertisements and popular magazines reach the public. He says that he has seen “a lot of judges using English expressions in Cantonese courts” (I. 3: 2 – 3), an observation also shared by Student Man (I. 3) and Student Lee (I. 3), and Justice Hui

comments that “it is not appropriate for judges to use some English and some Cantonese in court” (I. 17: 1 – 2). Hence legal Cantonese needs to be learned to master if its purity, its identity implications for judges, is to be preserved. How code-mixing renders Cantonese informal will be further explored in Chapter 6.

The two arguments of Justice Chu and Justice Hui go hand in hand: genre-mixing in some cases may not be socially welcome, particularly if the features of the genres in question, like colloquial and formal speech styles, are “incompatible” by social definition. Weight has been added to this proposition by Justice Hui at the start of the interview in which he recalled his experience as a user and observer of courtroom Cantonese. He mentioned in detail different Cantonese courts he has worked in (I. 1), demonstrating his experience in using Cantonese in trials and implicitly claiming representativeness on the topic. He is not alone in criticizing the current courtroom Cantonese. Other legal professionals have voiced similar concerns on the development of legal Cantonese. Tommy Cho, member of the Working Party on Bilingualism of the Law Society of Hong Kong, has commented that “most Chinese practitioners are conversant in the vernacular use of the Chinese language only, and are hence hesitant in its formal use. Legal Chinese, as such, does not exist yet” (1997: 18). He (1998: 30) says on another occasion that:

There has been an increase in the number of cases tried in Chinese in the District Court and below...But these trials are more often than not actually tried in the Punti, a Cantonese dialect...adding a vernacular face to the supposedly solemn context of trials.

This lends further support to the view of Justice Chu and Justice Hui that colloquial Cantonese is not a suitable language for use in the court, and it suggests that legal Cantonese has to be promoted, and that the protection of the dignity and solemnity of the judicial process is the key criterion for the choice. The problem is not limited to the local courtroom. In PRC where another form of Chinese, Putonghua, is used in trials, an appropriate courtroom language for judges is also in need, and a quick survey of it will help enhance our understanding of the local situation and the nature of the problem, since Cantonese and Putonghua both have their formal and colloquial speech styles. The following extract from *The Legal Daily* of 24 February 2002 is revealing:

目前，我国法官尚未形成富有个性的法官话语体系，大多数法官的话语存在粗鄙化……因法官说话不当而引起当事人的不满意，导致上诉、上访增多，不但增加了当事人的诉讼成本，而且也降低了法院的社会公信力。可见，强化法官的语言规范、提升法官话语的文化品位已成为法官素质建设的一个重要课题。(In our country, a unique language system for judges has yet to develop, and the language of the majority of judges is vulgar...The inappropriate language of the judge has caused dissatisfaction among clients, with the result that the number of appeals has increased. This not only means a higher litigation costs for clients but has also discredited the court. Hence to better regulate and improve the civility of the language of the judge has become an important issue in

improving the quality of judges.) (丁国强 “法官话语
与法律精神” Ding Kwok-keung’s “Judges’ language
and the Spirit of Law”)
(http://legaldaily.com.cn/gb/content/2002-02/24/content_32453.htm)

The official stance represented by the following article published on 28 December 2006 on the website of the court further strengthens the call for an appropriate speech style for judges in court:

长期以来，我国庭审用语缺乏规范化、缺乏研究，以致于一些法官在庭审中各行其是，影响了庭审的效果……个别法官，为了让当事人听懂，使用的语言过于口语化，生活化，把一些社会上的流行语用到法庭上，对审判工作的严肃性造成影响，有损法官形象。(For a long time, there has been no regulation and studies on the language of the judge in our country, and hence some judges speak in whatever way they like in the courtroom, causing adverse effects to the outcomes of trials. Individual judges, for ease of understanding by the clients, use a language which is too colloquial and conversational and bring into the courtroom trendy expressions of the society, causing adverse effect to the solemnity of trials and damaging the image of judges.) (张灵敏、钟巍、金艺：法官言辞艺术 庭审规范基石——对庭审语言规范化的一般性解读) (Cheung Ling-man, Chung Ngai, and Kam

Ngai's "The Art of Speaking of Judges as the Basis for
Regulating Trials – General Interpretation on
Regulating Trial Language")
(<http://lqfy.chinacourt.org/public/detail.php?id=3491>)

The problem that "judges speak in whatever way they like" also exists in Hong Kong and could be caused by one's familiarity with one's mother tongue, as Justice Hui says that "in Cantonese trials, since the language is the judges' mother tongue, there is a lot of room for judges to manipulate the trial language, sometimes to the extremes, and hence many different kinds of language styles emerge" (I. 15: 6 – 11), examples of which are "被告敲鑼擊鼓，高調地反覆強調 (the defendant hit the gong and beat the drum, repeatedly emphasizing in high profile) and "被告被盤問至此階段，整條狐狸尾巴，已展露無遺 (At this stage of cross examination, the defendant's fox tail was completely revealed) and are criticized by Mr. Justice Tong as "難免會令人覺得有欠莊重 (unavoidably being felt as lacking solemnity)" (J3,22). Both Student Ho and Student Ng also support the proposition that native Cantonese speakers may not be competent users of the language. Student Ho says at interview that "on the whole her class of students of about 50 are not good at oral English and Cantonese skills" (I. 5: 1 – 2) and "law students are good speakers is a misunderstanding" (I. 5: 4 – 5), and Student Ng says that after a few years of speaking and writing mainly English, her Cantonese for use in everyday life is getting worse and that 80% of her classmates are from overseas and their Cantonese ability is not good. (I. 4: 8 – 12). I would argue that even Student Liu has implicitly admitted that she is not good at using Cantonese or she would not have attended the course on legal translation (I. 1). These prove that the problem

with judges' speech style has been well identified, and there are voices calling for the promotion of standardization of legal Cantonese as a remedy. In this light, Justice Hui has also noticed that the judiciary has certain requirements on oral Cantonese when he says that "new appointees must have met a certain standard or they would not have been offered the job" (I. 3: 6 – 7), echoing the Chief Justice's remark that "The use of the Chinese language in the courts is an area in which we have made considerable efforts" (Appendix 1). The importance of legal Cantonese is also recognized in law. In July 1995, the Official Languages Ordinance was amended to the effect that the Chief Justice may make rules and issue practice directions to regulate the use of Chinese language in the courts, admitting that judges may be facing problems of language. The above data and measures all point to the requirement of a certain standard of Cantonese used by judges.

4.2 Social identity and power of the court

Meanings must be interpreted in their contexts and any analysis of courtroom Cantonese should likewise be contextualized, for every word bears its cultural and historical heritage and inherits its meaning from it. In other words, as Gumperz and Cook-Gumperz put it, it is because of the historical character of the process through which groups are formed and the symbols of identity created that there are particular characteristics of the ways of speaking in question (1982: 7). To understand the process of formation and the social significance of courtroom language in Hong Kong, one has to know the social position of its legal system where concepts like dignity and solemnity of the court originate. The *Hong Kong 2006* published by the Information Services Department provides the information for such understanding:

“The core values on which the governance of Hong Kong is based include the rule of law... Hong Kong is fortunate also to possess a tried and tested legal system, which has its roots in the English common law, as this is crucial to the preservation of confidence in the way in which we conduct our affairs,” said the Secretary for Justice, Mr. Wong Yan Lung, at the Third ICAC Symposium.

(http://www.yearbook.gov.hk/2006/en/01_01.htm)

Another section in the same chapter gives a more detailed account of the legal system of Hong Kong:

A key element in the success and continuing attraction of the HKSAR is that its judicial system operates on the principle, fundamental to the common law system, of the independence of the judiciary from the executive and legislative branches of government. The courts make their own judgments, whether disputes before them involve private citizens, corporate bodies or the Government itself.

(http://www.yearbook.gov.hk/2006/en/02_10.htm)

I would argue that the court is a strongly framed institution, both in terms of its unique identity in the society and its very limited accessibility to only the elites as its members, making it a powerful and highly organized institution. Many language analysts contribute to the definition of an institution. Some

say institutions are intrinsically bound up with power, and are often seen to serve the interests of powerful groups such as the government and the media (Benwell and Stokoe 2006: 88), and some define an institution as “a socially legitimated expertise together with those persons authorized to implement it” (Agar 1985: 164). The court appears to fit well with these definitions since it is a socially empowered organization with its experts (judges) responsible for exercising the social power towards non-experts (the defendants). Fairclough uses the special terms of “subjects”, “clients” and “public” to denote different participants and their relationship in such a conversational context (1995: 38 – 39) represented in Figure 4.2 below:

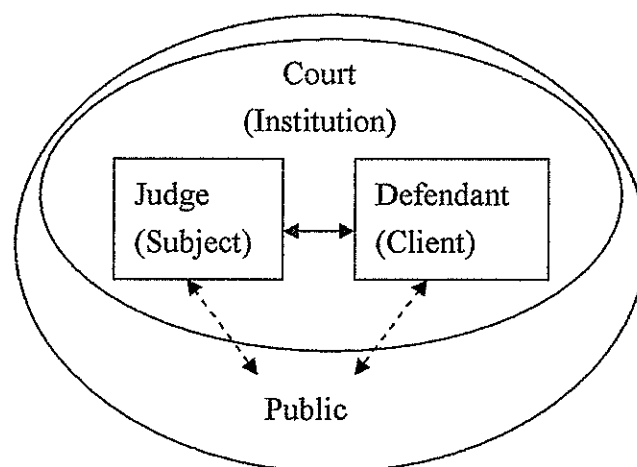


Figure 4.2 Interactional relationship between court participants based on Fairclough’s model of a conversational context (1995: 38 – 39)

In this framework, subjects are members of an institution who have institutional roles and identities acquired in a defined acquisition period and maintained as long-term attributes. Clients are outsiders who take part in certain institutional interactions in accordance with norms laid down by the institution, but without a defined acquisition period or long-term maintenance of attributes. The public are people to whom the messages of

certain institutions are addressed and who interpret these messages according to the norms laid down by the institution, but who do not interact with institutional subjects directly. In the context of this research, the public are ordinary citizens, and subjects and clients stand for judges and defendants respectively. In the courtroom, the judge occupies the subject position and becomes the representative of the court in exercising its authority over its client, the defendant.

4.3 Linguistic realization of the court's identity and power

While institutional dignity originates from its social identity, it is realized linguistically through features of vocabulary, politeness conventions, speech turn-taking system, etc. Formal speech style helps demarcate the court as at the top tier of the social order, as social convention dictates that on any ritual or serious occasions, only formal speech style is allowed, and at the same time, internalizes the social identity of the court as a collective truth. This explains the relationship between, and the stability of both, the identity of the court and the speech style of judges. In practice, the dignity of the court is manifested in the judge's language through the following devices suggested by Fairclough (2001: 113):

(1) Interruption

Judges may stop the defendants or anyone at any point when they are giving evidence or interrogating to control the use of time.

(2) Enforcing explicitness

Judges may ask the defendants or anyone to repeat or clarify their evidence to make implicit meaning explicit.

(3) Controlling topic

Judges may order the defendants or anyone to start or change a topic to direct the course of the trial.

(4) Formulation

Judges may reword the evidence of defendants or anyone to facilitate interpretation of its meaning.

Examples of the operation of these devices could be found in the field notes and trial transcripts for this research, some of which quoted in the next chapter. Only one point that goes beyond these data from observation needs to be made here: the prosecutor and the defendant are asked to appear in person to argue for their case before the judge is to ensure that the judge has the opportunity of verifying and clarifying any evidence, a clear sign of the judge's dominating role as the subject in a trial.

Some theoretical analysis of a trial process will throw light on the relationship between the social identity of the court and judges' speech style. In Figure 4.2, the broken arrows linking the public with the judge and the public with the client symbolize the proposition that they are mutually influenced, as judges and defendants are in real life part of the society (public). Justice Hui says, "Judges are also ordinary citizens and have learned their language from the society" (I. 14: 3 – 5). It could be further argued that a trial is a public performance, not only because any member of the public can enter the court and sit in on any trial with minimum restriction, but because the media can cover any trial. Moreover, both what and how judges speak has social effects. One may have heard judges, in delivering their judgments, appealing to the public for looking out for certain crimes or advising the government on the amendment of certain laws.

On this basis, judges are not only speaking to the defendant but a large audience, the public including the media which keeps a close eye on judges' performance and is always ready to bring their "misconduct" into the limelight. Judges are in this sense similar to high-ranking government officials who are under public scrutiny and are supposed to talk in the way they ought to and with due care. This identity-language pairing is not a new invention. Benwell and Stokoe say that it is a truism that identities are performed or constructed in discourse across the social sciences (2006: 85). Hence language is performative: how one speaks will construct one's identity and as a result tell who one is. If a performative approach is adopted on a social basis, judges not only are giving public speech in trials, but are staging a public display of their institutional identity. This proposition is also supported by Van Dijk who says that speakers assume the dual role of speaker and member of a social institution, and by accomplishing discourse in social situations, they at the same time actively construct and display such identity (1997b: 3). On this basis, judges' speech style is one of the communication channels through which the legal system exercises its influence on society, and because of its institutionalization, the court in Hong Kong, as in elsewhere, has traditionally produced a fixed English speech style which becomes habituated for its members who keep reproducing, and reinforcing, it. The following case from the website of the judiciary serves as an example of such an established speech style:

Hon Stock JA:

I agree with my Lord the Vice President that this application should be dismissed for the reasons he gave. I would add only this: that this is an application,

as he has intimated, to vary an order of this court. This is not an action that we are hearing to rescind a judgment on the ground of discovery of new evidence which will have had a material effect upon the decision of the court. In saying that, I do not for a moment do so in order to encourage this applicant to take that route, not least because one of the matters that would have to be shown in such an action is that the further evidence was such as to have an important influence on the result of the issue. I say it merely to illustrate that on the application now made, this court has no jurisdiction. (<http://legalref.judiciary.gov.hk/lrs/common/ju/judgment.jsp> on 3 October 2009)

The choice of vocabulary and the use of long sentences and nominalization all point to a formal style which becomes the standard for judges' speech. For people who are conscious of this speech style formation process, such as Justice Chu and Justice Hui, telling the standard speech style from the non-standard one does not appear to be a problem. In fact, though from time to time magistrates' language is criticized, it seems there is not the slightest argument within the legal profession on each of these incidents, suggesting that professionals have to a certain extent agreed to the standard against which the criticized speech style is measured. Hence the criticisms on magistrates' speech style by high court judges found in the research judgments have not been opposed in the legal profession. This gives the impression that there is a consensus on the necessity of standardized legal Cantonese among legal practitioners, in line with the interview findings of

this research. What the features of standardized legal Cantonese are will be discussed below.

4.4 Features of standardized legal Cantonese

According to Van Dijk, talk and text are indexical, formal address indexing the formality of the event and vice-versa (1997b: 3). Judges use formal Cantonese to “protect” their dignity which is tied to their identity, and the use of colloquial Cantonese “should be avoided on the part of advocates and judges to retain the dignity of the court,” said Magistrate Cheng at interview (I. 3: 12 – 16). To relate the data from the interview with Justice Hui to Justice Chu’s above quoted critique on legal Cantonese will contribute to a better understanding of the features of standardized legal Cantonese. Justice Hui observes that there are two types of inappropriate speech style in court, namely too colloquial and too flowery or playful like the abuse of idioms and four-character stock phrases (I. 6: 2 – 4). The latter style is usually preserved for the literary genre and may sound pedantic to the public, though not necessarily detrimental to the image of judges, since the genre is traditionally esteemed as a marker of the learned. An exception is perhaps the use of hyperbole such as the case of Judgment 3 (J3,22) quoted on page 101 and the case of Judgment 1 in which Justice To criticized Magistrate Wong Suen-kin’s expressions of “冇放到，咁你就死啦 (you haven’t given them holiday. Then you are dead [*la*])” (J1,1) and “你因住 (You be careful)” (J1,1) as threatening because, I would argue, they are exaggerating. Similarly, Magistrate Wong Yu-wing’s use of “非人非鬼 (neither human nor ghost)” to describe the defendant also leads to criticism by the panel of three high court judges as the expression shows the magistrate has lost the attitude of “持平鎮靜 (being fair and calm)” and expressions of this kind,

the panel say, are extremely inappropriate and “本庭盼望不會再重現於裁決理由書中 (this court hopes will not appear in a judgment again)” (J4,19). What Justice Hui refers to as inappropriate, judging from the example he offers, “你講既有如大海倒流 (What you said is like the big sea turning upside down)” which means “what you said is obviously impossible” (I. 6: 6 – 8), is another instance of hyperbole which, like another example he gives, “你傻架咁樣講 (You are crazy saying this)” (I. 11: 4 – 6), carries, he says, “unnecessary comment” since the rhetorical device serves to exaggerate. Hence Justice Hui is not looking for an academic style remote from public usage, as he approves using “common and generally understood Cantonese” suggested by Justice Chu quoted at the beginning of this chapter, but a style capable of expressing meanings accurately and without connotations of the subculture of the society such as the crude and vulgar language of the mass media. Magistrate Cheng agrees with his view, saying that the appropriate Cantonese should “make understanding easier for the trial parties to avoid wasting time” (I. 3: 6 – 7). Student Lee is also aware of the necessity of using Cantonese “so that the defendant can understand it [the judgment]” (I. 3: 3 – 4), echoing Student Kam’s opinion that “to cater for the needs of the audience” (I. 3: 3) is the reason for using colloquial speech style. Justice Hui also goes beyond the context of the courtroom and looks at the problem from a socio-political perspective (I. 10) which will be elaborated in Chapter 6. Besides, Magistrate Cheng (I. 3: 13 – 16) and Barrister Cheung (I. 5) both agree with Justice Hui on the appropriateness of judges’ speech style, that there is a certain standard below which the dignity of the court will be jeopardized, and Justice Hui (I. 7: 5 – 12 and 13: 1 – 4) and Interpreter Lau (I. 4: 6 – 11) both say that judges’ colloquial speech style may create ill-feeling on the part of the defendants and lead to

unnecessary appeals. Professor Wong, the university teacher of linguistics, is the only interviewee who says that “people are over reacting on the standard of Cantonese used in court” (I. 2: 4 – 5). Figure 4.3 illustrates the stance of the interviewees on this issue.

	Primary professionals	Other professionals
For standardization of legal Cantonese	Magistrate Cheng Justice Hui	Barrister Cheung Interpreter Lau Student Ho Student Kwan Student Kam Student Ng
Against standardization of legal Cantonese		Professor Wong

Figure 4.3 Legal professionals’ stance towards the standardization of legal Cantonese

While the interview with Professor Wong is brief and seems non-informative, more could be learned from what meets the eye. First of all, Professor Wong’s outright ban on the research topic once it was introduced, saying that “it is meaningless to look at the speech style of judges” (I. 1: 3 – 4), indicates a strong dismissal of the significance of speech style in the courtrooms. This immediate dismissal of the research value reinforces his perception of the futility of looking into the speech style of judges. With the rest of the data he provides (I. 2), it could be inferred that Professor Wong does not think the speech style of judges plays any role in the identity making of judges and courts. Neither does he think language is an issue in court as he says judges in the United States use very colloquial expressions or even swear words (I. 2: 6 – 7), and Cantonese is just like English (I. 1: 5 – 6) as a medium of communication, further implying that speech style does not affect the identity of judges and the image of the court. This

argument contrasts with the view of Justice Hui and others and will be revisited critically in Chapter 6.

The opinion of Student Ho also deserves elaboration. Although she commends the effectiveness of using colloquial Cantonese in magistrates' courts, she does not approve such a speech style as she explicitly expresses her praise for higher courts where formal Cantonese is used, using the value-loaded word "decent" (I. 2: 13 – 15). Her support for colloquialism, as she says, is accounted for by the environment of the magistrates' courts where the physical setting and the audience are comparatively "inferior" compared with those of higher courts (I. 2). The deterministic view, namely a better furnished and managed court promotes the use of the formal language style, implies that what should be done is to renovate the magistrates' courts and tighten courtroom discipline to help promote a formal language style instead of tolerating the use of colloquial Cantonese. This view also serves to explain the notion that a particular speech style is demanded by a particular social setting, and is not short of examples. Benwell and Stokoe (2006: 119), commenting on a text taken from the homepage of a UK university, arrive at the following conclusion:

There is little evidence of a conversational register (with the exception of "a real competitive edge" which is slightly colloquial), and in this sense, the material is an example of the way in which universities construct themselves as serious, corporate bodies, whose language reflects their professional status.

Likewise, the speech style for judges should reflect the social status of the court. As most of the interviewees take ease of understanding by defendants as an important criteria for using Cantonese in court (Justice Hui I. 9: 2, Cheng I. 3: 4 – 7, Cheung I. 2, Lau I. 2: 6, Ho I. 3, Lee I. 3: 3 – 4, and Kam I. 3: 2 – 3), what remains to be discussed is how to find the balance between communicative convenience and the preservation of dignity of the court linguistically expressed, and as Justice Hui says, “The balance does exist” (I. 9: 3 – 4).

4.5 Conclusion

This chapter has presented data in relation to the beliefs of legal professionals regarding the importance and the key features of legal Cantonese in Hong Kong courtrooms (research question 1). Under the research theory of CDA, the situation-type of the court is that of an authoritor (subject) demanding information from and communicating commands to the authoritee (client). Such an authoritor-authoritee relationship is conventionalized as one of the same instances in the past, achieved through the simple reproduction of the rigid structure-discourse relationship, namely participants assuming a fixed set of roles using a fixed set of speech styles. This situation, as Fairclough says, is possible only under conditions of stable power, where institutions, situation-types and their boundaries, speech styles and their relationships of dominance, are sufficiently constant (1988: 119). Conversely, to protect the established structure-speech style from being undermined one needs to suppress any attempt to style shift in discourse. In this light, judges’ speech style is one of the tools to express the judge-defendant and judge-public relational goals

and the identity goals of judges, manifesting the social power of the court with judges as its representatives.

It is found that the features of standardized legal Cantonese are “common and generally understood Cantonese” and “without resorting to slang and usage that may compromise the dignity and solemnity of the judicial process” as summed up by Justice Chu in her article. How in practice magistrates use legal Cantonese (research question 2) will be explored in the next chapter.

Chapter 4 discusses the legal professionals' aspirations for the use of legal Cantonese. To compare them with magistrates' actual practices of using Cantonese in court in the light of the research theories, this chapter gives a descriptive and partly explanatory analysis of trial transcripts, field notes and judgments aiming at highlighting the features of current Cantonese used by magistrates in the courtroom (research question 2). Further explanatory analysis of these features and how they differ from the legal professionals' aspirations using triangulation of multiple sources of data will then be conducted in the next chapter.

As outlined in Chapter 1, though scholars recognize there are high and low Cantonese (Joseph 2004; Lord 1987), so far no research has been carried out on stylistic implications of Cantonese expressions. There are only brief propositions on the topic suggested by Luke (1998: 148):

“High” Cantonese is more formal, is associated with more education, and is used typically for such functions as public announcements, news broadcast, formal speeches, lectures etc. “Low” Cantonese is used in informal domains as home, friendship, and neighbourhood. In terms of lexis, “high” Cantonese is characterized by a much higher concentration of set phrases and idioms while “low” Cantonese use them infrequently.

As Goodrich (1987: 177) says:

The authority of legal language is its predominant formal characteristic, and the initial question to be posed is that of the lexical and syntactic forms which, viewed as vehicles of expression or of meaning, combine to construct a socio-linguistic belief system of extreme social significance.

Hence certain lexical items like idioms and their frequency of use could be taken as the markers of high or low Cantonese, which is also the approach adopted by this research. However, the question of whether any other types of lexical items are style-loaded is still unanswered. Philips also observes that apart from the idea that discourse is expressive or constitutive of social relations, there is little in the theory which looks at the discursive characteristics of the particular discourses (2003: 27). With no relevant literature on Cantonese available, this chapter is an attempt for a breakthrough in the field of legal discourse. The transcripts for analysis were selected through theoretical sampling and are, together with field notes, representative of the findings covering the entire observation period. Coupled with documents such as the judgments used in the preceding chapter, they feature the speech style of 10 magistrates. A brief description of each of the transcript and the field notes are provided below. Full versions of the transcripts, too lengthy to be included here, are in Appendix 5.

Transcript 1:

Date: 12 September 2005

Offence: Littering in a public place

Judge: Mr. Justice Chan Kam-cheung

Court: Tsuen Wan Magistracy

In this trial, there was a lot of conversation between the magistrate and the defendant who was a lorry driver, because the defendant appeared in person but did not know much about the technicalities of cross-examination, thus creating disorderly dialogue where the magistrate had to interrupt and explain to him the proper procedures. Since the defendant was unwilling to accept the conviction and sentence, the magistrate, at the end of the trial, spent quite some time to persuade him into acceptance. The trial provides a rich site for investigating the speech style of the magistrate.

Transcript 2:

Date: 4 August 2006

Offence: Fighting in a public place

Judge: Mr. Justice Chan Kam-cheung

Court: Tsuen Wan Magistracy

In this trial, how the magistrate talked to, and sometimes argued with, the counsel for the defence was the focus of observation as it unraveled some features of the magistrate's speech style during interaction with the counsel. It serves to support the proposition that magistrates' speech style is under the influence of their immediate interlocutors.

Transcript 3:

Date: 15 September 2006

Offence: Indecent assault

Judge: Mr. Justice So Man-lung

Court: Tsuen Wan Magistracy

In this trial, the magistrate's speech style is particularly revealing in two ways: the use of colloquialisms and that of formal, nearly written, expressions, which are supposed to be incompatible in the same setting. This hybridization provides evidence for the research theories.

Field notes 1:

In this trial, the magistrate spoke in a casual style with mixed-code.

5 th Court, Shatin Magistracy	Date: 29 January 2004
Offence: Theft	
Magistrate : Mr. LEE Wai-chi	
Field notes:	
Sorry , 無係乜嘢意思 ? (Sorry, what do you mean by no?)	

Field notes 2:

In this trial, the magistrate spoke in a casual style with mixed-code and colloquial expressions.

6 th Court, Shatin Magistracy	Date: 5 February 2004
Offence: Theft	
Magistrate : Mr. LEE Wai-chi	
Field notes:	
1. 佢[被告]有個，點講呀，legitimate expectation。 (He [the defendant] has the, how to put it, legitimate expectation.)	
2. 我記得好似係哩個 charge。 (I remember it seems to be this charge.)	
3. 好似係呢單嘢。 (Seems to be this stuff.)	

Field notes 3:

In this trial, the magistrate spoke with mixed-code.

8th Court, Shatin Magistracy

Date: 12 February 2004

Offence: Careless driving

Magistrate : Ms Chu Yin-fong

Field notes:

我每次聽完證人口供都再睇供詞，make sure 我清楚了解。(After I listen to the witness's evidence, I will read the written evidence again to make sure I understand clearly.)

Field notes 4:

Throughout the trial, the magistrate used formal speech style.

5th Court, Tsuen Wan Magistracy

Date: 20 July 2005

Offence: Theft

Magistrate : Mr. Lee Ka-chai

Field notes:

本席感到不安，因為證供與所講嘅唔同，令人懷疑作出證供嘅自願性。
(This bench feels uncomfortable because the written evidence is different from what has been said and this makes one suspicious of the willingness in writing the evidence.)

Field notes 5:

Throughout the trial, the magistrate used formal speech style.

2 nd Court, Tsuen Wan Magistracy	Date : 1 September 2006
Offence: (A) Infringing copyright and (B) Breach of condition of stay	
Magistrate: Mr. LEE Ka-chai	
Field notes:	
Judge: 乃念你係初犯，本席判你監禁五個月。(Taking into consideration that this is the first time you commit an offence, this bench sentences you to imprisonment for five months.)	

Field notes 6:

In this trial, the magistrate used formal speech style.

2 nd Court, Tsuen Wan Magistracy	Date : 1 September 2006
Offence: (A) Possession of a dangerous drug and (B) Possession of apparatus fit and intended for the inhalation of a dangerous drug	
Magistrate: Mr. LEE Ka-chai	
Field notes:	
Judge: 憑各種證據，可見你係一名隱君子。(According to various pieces of evidence, it can be ascertained that you are a drug addict.)	

Field notes 7:

In this trial, the magistrate spoke in a casual style with mixed-code and colloquial expressions.

6th Court, Tsuen Wan Magistracy

Date: 8 September 2006

Offence: Careless driving

Magistrate : Mr. So Man-lung

Field notes:

Judge: 由你發覺煞掣失靈到撞到水馬，中間有幾長時間？(How long did it last from the moment you discovered the brake failure to clashing into the road block?)

Defendant: 大概 20 秒。(About 20 seconds.)

Judge: 即係話架車 [sir] 咗 20 秒。(That means the car slipped for twenty seconds.)

Judge: 過程中你有冇拖到最低波？(Did you pull to the lowest gear during the process?)

Defendant: 我已經用咗廢氣煞。(I have used the exhaust brake.)

Judge: 知唔知有冇原因架車冇咗 brake? (Do you know if there is a reason why the car has no brake?)

Defendant: 唔知。(Don't know.)

Judge: 架車有冇做定期檢查？(Was the car regularly checked?)

Field notes 8:

In this trial, the magistrate spoke with mixed-code.

5th Court, Tsuen Wan Magistracy

Date: 8 September 2006

Offence: Careless driving

Magistrate : Mr. Douglas Kwok

Field notes:

Defendant: 我 cut 線嘅時候唔覺得對第三線嚟緊嘅車造成不便。(When I cut across the lane, I did not feel that there is any inconvenience caused to the cars coming up in the third lane.)

Judge: 你 cut 線是否有造成不便並非係主觀嘅想法，而係以合理謹慎者嘅客觀標準嚟決定。(Whether you have caused inconvenience when you cut across the lane is not a subjective judgment but has to be assessed using the objective standard of a reasonable and cautious person.)

Field notes 9:

In this trial, the magistrate spoke in both formal and informal styles.

6th Court, Tsuen Wan Magistracy

Date: 15 September 2006

Offence: Careless driving

Magistrate : Mr. So Man-lung

Field notes:

1. Judge: 對證供嘅自願性同準確性有爭議? (No disagreement on willingness and accuracy?)

Defence counsel: 冇爭議。(No disagreement.)

2. Defence counsel: 你同唔同意你根本唔熟路? (Do you agree that you in fact do not know the route well?)

Witness: 你咁樣問有乜嘢作用? (What is the function of your question?)

Judge: 你唔洗理作唔作用, 只需要回答同唔同意。(You don't need to care about whether there is a function or not, [you] only need to answer agree or not.)

Field notes 10:

In this trial, the magistrate spoke in both formal and informal styles.

5th Court, Tsuen Wan Magistracy

Date: 18 September 2006

Offence: Possession of poison

Magistrate : Mr. Douglas Kwok

Field notes:

Judge: 有乜嘢求情說話想講? (What stuff do you want to say for mitigation?)

Defendant: 希望法官大人判我坐監, 同埋充公我嘅補釋金。 (I hope my honour will put me behind bars and confiscate my bail money.)

Judge: 何出此言? (Why you said this?)

Defendant: 我希望快啲出嚟供養我媽媽。 (I hope I can come out earlier to support my mother's living.)

Field notes 11:

In this trial, the magistrate spoke in both formal and informal styles.

6th Court, Tsuen Wan Magistracy

Date: 29 September 2006

Offence: Indecency in public

Magistrate : Mr. SO Man-lung

Field notes:

1. Judge: 呢單嘢係咪維持原判? (Is the original sentence upheld in this stuff?)

Prosecutor: 如果法官睇落去, 最後佢話 appeal is dismissed。 (If my honour read till the end, it says appeal is dismissed.)

2. Judge: 有律師會更貼身眷顧你嘅利益。 (There will be counsels who will look after your interest more closely.)

The features of legal Cantonese as shown in the above data are described below. The source of data is documented in the format of (T1,27,I) for part I of page 27 of Transcript 1, (F1) for Field notes 1, and (J1,2) for paragraph 2 of Judgment 1.

5.1 Features of legal Cantonese in practice

5.1.1 Colloquial Cantonese expressions

The magistrates sometimes used colloquial Cantonese expressions instead of their formal equivalents like “我唔係嚇你 (I don’t mean to scare you)” (T1,37,U) which is a highly colloquial expression against a formal setting where an alternative like “我要向你指出 (I have to point it out to you)” sounds formal. Another prominent example is “唔通我叫你去搶咩? (Will I ask you to rob [meei]?)” (T1,40,E), regarded by both Judge Hui, Interpreter Lau and others as inappropriate for courtroom use, instead of which “本庭已經考慮到你嘅負擔能力 (This court has already considered whether you can afford to pay)” would be a far less colloquial remark. Similarly, “你唔洗理作唔作用 (You don’t need to care about whether there is a function or not)” (F9) is a colloquial remark and could be omitted or replaced by a formal expression. Other examples such as “得意 (funny)” as in “好得意嘅……(What is very funny is...)” (T2,86,C), “呢頭……個頭 (on the one hand...on the other hand)” as in “唔係法庭係呢頭判左佢冇罪 個頭又判佢有罪…… (It is not that the court on the one hand found him not guilty and on the other hand found him guilty...)” (T2,87,H), “橫掂 (anyway)” as in “橫掂我都係早上會休息架㗎㗎 (anyway I will take a break in the morning [ga-la])” (T2,87,M) and “[sir]” as in “架車 [sir] 咗 20 秒 (the car slipped for twenty seconds)” (F7). These expressions sound colloquial in formal situations.

Of all the colloquial expressions, a particularly eye-catching one is the frequently used word “嘢 (stuff)” as in “冇其他嘢補充? (No stuff to add?)” (T1,27,I) which sounds far more colloquial than its equivalent like “冇其他說話／資料補充? (No words / information to add?)” or “係咪冇補充? (Is there nothing to add?)”. Similarly, “冇冇嘢覆問? (Any stuff to ask again?)” (T3,14,L) is colloquial while “冇冇覆問? (Any follow-up question?)” or “冇冇問題覆問? (Any more question to ask?)” is formal. Other examples include “冇乜嘢求情說話想講? (What stuff do you want to say for mitigation?)” (F10) and “呢單嘢 (this stuff)” (F2 and F11) which could be rephrased as “冇冇求情說話想講? (Any mitigating words to say?)” and “呢宗案件 (this case)” or “呢次審訊 (this trial)” respectively. “嘢 (stuff)” is a slangy word which can mean, as shown in the above examples, an object, a piece of information, a conversation, etc. for different contexts and is not supposed to be used in any official situation where a more specific reference should be adopted. Its frequent appearance renders the magistrate’s speech very causal.

The next example is more indicative when it comes to how colloquial expressions emerge during conversational interaction between the judge, the counsel, and the defendant. In Cantonese conversation, there are five expressions for “buttock”. They are “屎忽 [*see-fat*]” (extremely colloquial hence taboo), “籬柚 [*law-yau*]” (very colloquial), “屁股 [*pei-goo*]” (colloquial), “[*pat pat*]” (colloquial but euphemistic) and “臀部 [*tuen-bo*]” (formal). In the trial, when the first witness described how she was sexually assaulted by the defendant, she said:

“我發覺我右邊個 [*pat pat*] 突然之間俾硬嘢撞倒一下 (I discovered that my right [*pat pat*] was suddenly hit by something hard once)” (T3,4,C)

The prosecutor immediately interrupted:

“等等下。你話你個右邊，你頭先用就係話講 [pat pat]，你意思係臀部，係咪呀？ (Wait. You said your right what in your words is [pat pat]. You mean [tuen-bo], don't you?)” (T3,4,D)

And the witness also echoed the correction:

“唔，臀部，係 (yes, [tuen-bo], correct)” (T3,4,E)

Hence the prosecutor had shown to be very conscious of the speech style of the witness, and had tried to lead the witness to use the formal speech style. In fact, throughout the trial, the prosecutor stuck to using the formal style, though the witness did not follow very closely somehow and used not only “[pat pat]” (T3,6,D) again but the very colloquial expression of “籬柚 [law-yau]” (T3,6,C) later in the trial. As for the judge, he used the colloquial expression of “屁股 [pei-goo]” twice during cross-examination, namely, “唔係掂住你屁股既嗰陣 (Not the moment touching your [pei-goo])” (T3,13,D) and “唔係掂住你屁股嘅？ (Not touching your [pei-goo]?)” (T3,13,G), the only occasions he made the reference during the trial process. It was only during the delivery of the judgment that he used the formal expression of “臀部 [tuen-bo]” (T3,31,I and T3,31,O).

All the above colloquial expressions are “involvement” which Thornbury and Slade say is part of the language resources used for indexing group membership, and is likely to be recognized as ingroup language by the other members of the group (2006: 67). They convey a sense of intimacy between acquaintances and resemble the tone found in the trendy talk such as that

between radio hosts and audience and are, I would argue, not appropriate for use by magistrates in the courtroom.

5.1.2 Flowery or hyperbolic expressions

Flowery descriptions used by the magistrates give the impression of being not true and fair and sometimes amount to hyperbole. For example, to say that the defendant has “敲鑼擊鼓 (hit the gong and beat the drum [to repeatedly emphasise])” (J3,22) and at the end his “整條狐狸尾巴，已展露無遺 (fox tail was completely revealed)” (J3,22) are adding rhetorical effects to judgment which should be impartial. Similarly, using “非人非鬼 (Neither human nor ghost)” (J4,19) to describe the defendant will easily makes one feel that the judge is adding personal comment on top of a judgment based on facts only. Perhaps the general conception is, if facts speak louder than words, the more flowery the language, the less convincing its content.

5.1.3 Formal Cantonese expressions

There were times when the magistrates used formal expressions including idioms in their conversation. For example, “干犯本案 (commit this crime)” (T1,37,N), “拘捕歸案 (caught by the police)” (T1,39,T), and “再作定奪 (give sentence at a later date)” (T1,40,E) are formal expressions preserved for legal setting, and “捉襟見肘 (inadequate resources to meet the ends)” (T1,35,M), “討價還價 (bargaining)” (T1,38,N), “大相逕庭 (in stark contrast)” (T2,85,P) and “支吾以對 (stammer, fail to give direct and clear answer)” (T3,30,U) are Chinese idioms. All of them are of the typical form of four characters and give an air of learnedness and formality, and are mostly found in literary writing and formal correspondence. This creates the

formal speech style and is capitalized in expressions like “必然合理，無可抗拒 (can only be reasonable and cannot be defied)” (T3,31,N), “神情閃縮，迴避問題 (with a suspicious look and try to avoid questions)” (T3,31,B), “感到不安 (feels uncomfortable)” (F4) and “何出此言？(Why you said this?)” (F10) which, though not idioms, are made up of four characters and hence convey the formal tone. Other expressions not in such a format like “乃念 (Taking into consideration that)” (F5), “隱君子 (a drug addict)” (F6) and “眷顧 (look after)” (F11) are also typical examples of formal Cantonese as they are typically used in formal writing.

Another formal style marker is the use of nominalized expressions like “假設性 (hypothetical one)” as in “其實呢條問體係一個假設性 (in fact this question is a hypothetical one)” (T2,66,H), “攻擊性 (aggressiveness)” as in “感覺到攻擊性 (felt [his] aggressiveness)” (T2,66,K), “可信性 (credibility)” and “可靠性 (reliability)” as in “佢嘅證供可信性同埋可靠性係非常之關鍵 (the credibility and reliability of his evidence is vital)” (T1,32,N) and “自願性 (willingness)” as in “令人懷疑作出證供嘅自願性 (this makes one suspicious of the willingness in writing the evidence) (F4) and “對證供嘅自願性同準確性冇爭議 (No disagreement on willingness and accuracy ?” (F9). These expressions display traces of literal translation like using the character “性” to translate English morphemes such as “-ability” or “-ness” and is regarded by some people, notably academics, as translationese, an artificial form of the receptor language resulted from literal translation, and are commonly found in formal writing like government documents.

Formality is further enhanced by the use of legal jargon such as “賦予 (conferred on)” in “根據 109I 所賦予本席嘅權力..... (In accordance with the authority conferred on this bench by 109I...)” (T2,86,Q), “裁定

(found)” and “表面證據 (prima facie evidence)” in “本席認為裁定表面證據成立 (I found that prima facie evidence stands)” (T3,22,D), and “合理疑點 (reasonable doubt)” (T1,32,G).

5.1.4 Written Chinese

While some formal written Chinese expressions such as those quoted above could be used in speech, some could only be used in writing, hence it is unnatural that there are written expressions in the magistrate’s speech in Transcript 3. For example, “本乃本席就本案的判決，但撮要來的 (This is this bench’s sentence on this case, but is only a summary)” (T3,30,R) is a written expression which is in sharp contrast with the rest of the speech, and “為何他仲會…… (Why he still…)” (T3,30,U) is a blend of written style, underlined above, and spoken style within one sentence, very unnatural to the native Cantonese speakers. Further explanations on the causes and implications on language training for such a mix will be given in the next two chapters.

5.1.5 English expressions

Some magistrates did not use Cantonese only as they were supposed to. Very often they resorted to a mixed code. An obvious example is the English abbreviation “PW 1” for “The first witness for prosecution” as in “首先他稱他怕碰到 PW1 (At the beginning he said that he was afraid of touching PW1)” (T3,30,U). The English expression the two magistrates shown in the transcripts use most often is “okay” as in “Okay, 等等先下 (Okay, wait a second)” (T1,3,S). A total of 38 counts of the word are found in Transcript 1, 18 counts in Transcript 2, and 2 counts in Transcript 3.

The use of the “title and last name” address in English is the norm for Magistrate Chan who, for example, addressed the prosecutor as “Mr. Lai” and the defence counsel as “Mr. Chan” throughout the trial of Transcript 1, a contrast with Magistrate So who always adopted the identity address mode, calling the conflicting parties “控方 (prosecution)” and “辯方 (defence)” in Cantonese in Transcript 2. The use of English title and last name, while formal in English speech, gives a colloquial tone in a Cantonese context.

Other examples of code-mixing include “咩野 possibility?” (What possibility?)” (T2,18,R), “Aggressiveness。唔係..... (Aggressiveness. It’s not that...)” (T2,29,R), “我一定要知道你條問題係有關連先，有 relevant 先..... (I must first of all make sure that your question is relevant, has relevant [sic] first...)” (T2,61,F), “裏面嗰啲咁嘅 annotation 同唔同意㗎，辯方？ (Do you agree to the annotation inside, defence?)” (T3,2,F), “我記得好似係哩個 charge (I remember it seems to be this charge)” (F2), “佢 [被告] 有個，點講呀，legitimate expectation (He [the defendant] has the, how to put it, legitimate expectation)” (F2) and “我每次聽完證人口供都再睇供詞，make sure 我清楚了解 (after I listen to the witness’s evidence, I will read the written evidence again to make sure I understand clearly)” (F3).

Code-mixing is a sociolinguistically rich phenomenon. How it renders judges’ speech style informal will be discussed at length in the next chapter.

5.1.6 Questions instead of commands

The magistrates sometimes used questions instead of orders. For example, “逐樣逐樣㗎，好唔好？ (Please say it one by one, yes or no?)” (T1,13,N) contrasts with “你用隻耳仔聽住，記住..... (You use your ears to listen, to remember...)” (T1,16,S) and “俾完口供，你落番去 ([You have] finished

giving evidence, you go down” (T3,30,D) which are commanding. Another example is “2,000 蚊，我已經俾到最輕你，明唔明白？” (2,000 dollars is the minimum [sentence] I can give, can you see?)” (T1,37,P) which could be replaced by a more simple choice of “2,000 蚊，我已經俾到最輕你。(2,000 dollars is the minimum [sentence] I can give)” which is more rigid in style. These questions are used to elicit agreement (about something that the speaker believes is self-evidently true) rather than to elicit information or confirmation (of the speaker’s assumption) (Tsui 1992). The use of questions instead of commanding expressions may, therefore, seem appeasing, for they engender intimacy and reduce the relational distance between the magistrate and the defendant, undermining the effect which legal Cantonese serves to achieve, and, as I would argue in the next chapter, superfluous in the first place.

5.1.7 Verbal particles

Verbal particles were extensively used by Magistrate Chan in the trial of Transcript 1 and made what were supposed to be orders or stern remarks sound more intimate and colloquial, since verbal particles add personal emotion to the utterances and are commonly found in conversation in the private domain rather than in formal situations. For instance, “先下 [*sin-ha*]” as in “等等先下 (Wait for a moment [*sin-ha*])” (T2,8,B) carries a sense of intimacy between friends, contributing to a colloquial style. Other verbal particles such as “㗎嘛 [*ga-ma*]” as in “係一個可以決定去唔食既習慣㗎嘛 (This [smoking] is a habit you can choose not to take up [*ga-ma*])” (T1,36,R), “先得㗎 [*sin-dak-gaat*]” as in “咁你同佢有幾遠先得㗎？ (Then how far were you away from him [*sin-dak-gaat*]?)” (T2,60,S), and “啫 [*je*]” as in “能唔能夠啫？ (Can you [*je*]?)” (T2,80,S) emphasise

impatience and disagreement, are even more emotion-loaded, and are often used in private conversation.

Another verbal particle “𠵿 [ah]” as in “講真𠵿 (To be honest [ah])” (T1,37,E) and “你冇望佢𠵿，抑或你……見到佢冇望住你𠵿？ (You didn’t look at him [ah] or you ...saw him didn’t look at you [ah])?” (T2,61,R) is again a marker of private conversation which denotes a sarcastic emphasis. Similarly, the verbal particle “咩 [meei]” as in the previously quoted “唔通我叫你去搶咩？ (Will I ask you to rob [meei])?” (T1,40,E) conveys a rhetorical question and is a sarcastic remark aiming at mocking the addressee, and hence not expected to be found in court.

Judgment 2 also features the extreme use of verbal particles. “𠵿 [ah]”, “咁 [gam]”, “㗎嘞 [ga-la]”, “個㗎 [gor-wo]”, “嚟㗎 [lai-je]”, “噃 [la]”, “吓 [ha]”, “㗎嘛 [ga-ma]” all contribute to an explicit colloquial style and reinforce the tone of sarcasm, hence criticized by Justice Cheung as inappropriate.

Verbal particles are a rich language resource for indexing ingroup membership. They are particularly handy for establishing interpersonal relations in various subtle ways and, as explained above and in the next chapter, not expected to be part of the repertoire of a judge.

5.1.8 Self references

Different types of self references detailed as follows are adopted by the magistrates:

- (1) “我 (I)” as in “我直接的問喇 (I will ask directly)” (T3,14,O), “我每次聽完證人口供 (after I listen to the witness’s evidence)” (F3) and “我已經話過俾你聽 (I have told you before)” (J3,13);

- (2) “我哋 (We)” as in “我哋喺法庭審案…… (We, in conducting trial in court...)” (T1,22,Q);
- (3) “本席 (This bench)” as in “本席裁定控方已毫無合理疑點的基準底下舉證成功控罪裏的每一元素 (This bench has found that the prosecution has successfully proved every element of the charge beyond reasonable doubt)” (T3,31,P) and “本席感到不安 (This bench feels uncomfortable)” (F4); and
- (4) “法庭 (The court)” as in “法庭係裁定咗你係故意犯非禮嘅 (The court has found that you have intentionally committed the crime of indecent assault)” (T3,34,G).

The first two choices of self reference implicate a personal rather than an institutional identity which the last two choices highlight. Hence the former is less formal and less conducive to the standardization of legal Cantonese.

5.2 Summary of features and examples of magistrates' speech style

Table 5.1 below presents the coded data of transcripts, field notes and judgments as described in Chapter 3. The thematic headings of “Strategies and tactics” and “Consequences” provide brief theoretical explanations for the data. English translations are bracketed after the original Cantonese expressions and, where necessary for ease of reference, the expressions in question are underlined. Cantonese verbal particles, for which there are no exact English translations, are transliterated and italicized and put in square brackets. Likewise, where there are implied content and transliterated expressions, [] will be inserted for indication.

Strategies and tactics	Data	Consequences
Colloquial Cantonese is used to converge to the conversational style of the counsels or the defendant and / or the public	哋好多紙 (<u>wasted</u> a lot of paper)(T1,7,N)	An equal of the counsels or the defendant / a member of the public
	你一輪嘴咁，佢唔知答得你邊一樞 (you spoke <u>without a stop</u> . He didn't know which <u>part</u> of it to answer.)(T1,12,R)	
	隨得你 (<u>Up</u> to you) (T1,14,V)	
	仲有冇嘢問佢？ (Any <u>stuff</u> to ask him?)(T1,17,L)	
	問啲啲嘢，有冇嘢跟進呀？ ([Regarding] asking stuff, any stuff to follow up?) (T3,21,J)	
	我唔係嚇你 (<u>I don't mean to scare you</u>) (T1,37,U)	
	判你坐監 (put you <u>behind bars</u>)(T1,39,U)	
	唔通我叫你去搶咩？ (<u>Will I ask you to rob [meei]?</u>) (T1,40,E)	
	我唔係完全封晒你後路㗎 (I am not completely <u>blocking the way out behind you</u>) (T1,40,I)	
	好得意嘅.....(What is very <u>funny</u> is...) (T2,86,C)	
	唔係法庭係呢頭判左佢有罪，嗰頭又判佢有罪..... (It is not that the court <u>on the one hand</u> found him not guilty and <u>on the other hand</u> found him guilty...) (T2,87,H)	
	橫掂我都係早上會休息㗎㗎 (<u>anyway</u> I will take a break in the morning [<i>ga-la</i>]) (T2,87,M)	
	唔係掂住你屁股嘅個陣 (Not the moment touching your [<i>pei-goo</i>] (buttock)) (T3,13,D)	
	唔係掂住你屁股嘅？ (Not touching your [<i>pei-goo</i>] (buttock)?) (T3,13,G)	
	有冇嘢覆問？ (Any <u>stuff</u> to ask again?) (T3,14,L)	
	俾完口供走得 ([You have] finished giving evidence and [you] may <u>quit</u>) (T3,15,L)	
	好似係呢單嘢 (Seems to be this <u>stuff</u>) (F2)	
	即係話架車 [<i>sir</i>] 咗 20 秒 (That means the car <u>slipped</u> for twenty seconds) (F7)	
	過程中你有冇拖到最低波？ (Did you <u>pull to the lowest gear</u> during the process?) (F7)	
	你唔洗理作唔作用，只需要回答同唔同意 (You don't need to care about <u>whether there is a function or not</u> , [you] only need to answer agree or not) (F9)	

Strategies and tactics	Data	Consequences
Colloquial Cantonese is used to converge to the conversational style of the counsels or the defendant and / or the public	有乜嘢求情說話想講? (What <u>stuff</u> do you want to say for mitigation?) (F10)	An equal of the counsels or the defendant / a member of the public
	呢單嘢係咪維持原判? (Is the original sentence upheld in <u>this stuff</u> ?) (F11)	
	你咁樣問呢，即係問佢『我似唔似賊呢』咁，咁你畀個機會人哋話你『喂，你係真係，你個樣就真係咁衰㗎』咁 (If you ask him like that, it means you are asking him ‘Do I look like a thief’. Then you are giving others the chance of telling you ‘Hei, you really are. <u>Your face really looks that awful [wo].</u> ’) (J2,11)	
	咁我建議你就唔好畀機會人哋割花你塊面 (Then I would advise you not to give others the chance of <u>scarring your face</u>) (J2,11)	
	不如咁吓，喺，我押後件案三年，等你入香港大學讀法律。咁武俠小說都有喇，今日打贏你，唔算你，畀你上山學藝，你學完返嚟，然後等你吓，咁…… (How about that [ah]. [La], I postpone this trial for 3 years so that you can go to the University of Hong Kong to study law. Like in a martial arts novel [la], I beat you today but it doesn’t count. I let you go up to the hill to learn from the master. You come back after studying. I will wait for you [ha]. Then...) (J2,11)	
	唔係，我唔知你有幾粗 (No. I don’t know how <u>coarse</u> you are) (J2,11)	
Flowery or hyperbolic expressions to emphasize judgment	你可以考慮吓我講嘅嘢 (You can considered the <u>stuff</u> I have told you) (J2,13)	An equal of a member of the public
	冇放到，咁你就死啦 (you haven’t given them holiday. Then you are <u>dead [la]</u>) (J1,1)	
	你因住 (You <u>be careful</u>) (J1,1)	
	被告敲鑼擊鼓，高調地反覆強調 (the defendant <u>hit the gong and beat the drum</u> , repeatedly emphasizing in high profile) (J3,22)	
	被告被盤問至此階段， <u>整條狐狸尾巴，已展露無遺</u> (At this stage of cross examination, the defendant’s <u>fox tail was completely revealed</u>) (J3,22)	
	非人非鬼 (Neither human nor ghost) (J4,19)	

Strategies and tactics	Data	Consequences
Formal Cantonese is used to highlight the formal setting	有條不紊 (well-structured) (T1,32,V)	A judge / the court
	捉襟見肘 (inadequate resources to meet the ends) (T1,35,M)	
	恣意犯法 (commit crimes ruthlessly) (T1,37,G)	
	干犯本案 (commit this crime) (T1,37,N)	
	討價還價 (bargaining) (T1,38,N)	
	拘捕歸案 (caught to be responsible for the case) (T1,39,T)	
	再作定奪 (give sentence at a later date) (T1,40,E)	
	大相逕庭 (in stark contrast) (T2,85,P)	
	根據 109I 所賦予本席嘅權力..... (In accordance with the authority <u>conferred on</u> this bench by 109I...) (T2,86,Q)	
	支吾以對 (stammering in answering [questions]) (T3,30,U)	
	合情合理 (reasonable) (T3,31,F)	
	貫徹始終 (consistent from beginning to the end) (T3,31,G)	
	誠實可靠 (honest and reliable) (T3,31,G)	
	必然合理，無可抗拒 (can only be reasonable and cannot be defied) (T3,31,N)	
	神情閃縮，迴避問題 (with a suspicious look and try to avoid questions) (T3,31,B)	
	佢嘅證供既可 <u>信性</u> 同埋 <u>可靠性</u> 係非常之關鍵 (The <u>credibility</u> and <u>reliability</u> of his evidence is vital) (T1,32,N)	
	佢個犯案 <u>傾向性</u> 低 (His <u>tendency</u> towards committing the offence is low) (T1,32,S)	
	佢完全冇任何地方令到我對佢嘅證據既可 <u>信性</u> 係產生懷疑 (Nothing is his evidence has caused me to doubt its <u>credibility</u>) (T1,33,C)	
	對.....其他嘅車輛作出觀察 (Conduct observation on other vehicles) (T1,33,E)	
	佢有.....足夠嘅 <u>清晰</u> 度去記低呢啲詳情 (He has adequate <u>clear-mindedness</u> to record the details) (T1,33,H)	
	不為本席所接納 ([This] is not accepted by this bench) (T1,33,M)	

Strategies and tactics	Data	Consequences
Formal Cantonese is used to highlight the formal setting	你係有權可以向法庭係作出求情嘅說話 (You have the right to <u>give a mitigating speech</u> to the court) (T1,33,T)	A judge / the court
	我要採取呢一個諗法 (I have to <u>adopt this thinking</u>) (T1,38,Q)	
	判監就係可能出現 (A sentence of imprisonment may then <u>appear</u>) (T1,40,H)	
	個人 個積極性係會有影響嘅 (Personal <u>motivation</u> will be affected) (T1,40,K)	
	其實呢條問體係一個假設性 (In fact this question is a <u>hypothetical one</u> .) (T2,66,H)	
	感覺到攻擊性 (felt [his] <u>aggressiveness</u>) (T2,66,K)	
	本席認為裁定表面證據成立 (I found that <u>prima facie evidence stands</u>) (T3,22,D)	
	合理疑點 (reasonable doubt) (T1,32,G)	
	本席感到不安，因為證供與所講嘅唔同，令人懷疑作出證供嘅自願性 (This bench <u>feels uncomfortable</u> because the written evidence is different from what has been said and this makes one suspicious of the <u>willingness in writing the evidence</u>) (F4)	
	乃念你係初犯，本席判你監禁五個月 (<u>Taking into consideration that</u> this is the first time you commit an offence, this bench sentences you to imprisonment for five months) (F5)	
	憑各種證據，可見你係一名隱君子 (According to various pieces of evidence, it can be ascertained that you are <u>a drug addict</u>) (F6)	
	對證供嘅自願性同準確性有爭議 (No disagreement on <u>willingness and accuracy</u> ? (F9)	
	有律師會更貼身眷顧你嘅利益 (There will be counsels who will <u>look after</u> your interest with greater concern) (F11)	

Strategies and tactics	Data	Consequences
Written Chinese within Cantonese speech is used to meet the need for formal writing for archive purposes	本乃本席就本案的判決，但撮要來的 (This is this bench's sentence on this case, but is only a summary) (T3,30,R)	A judge / the court
	為何他仲會…… (Why he still...) (T3,30,U)	
	何出此言？ (Why you said this?) (F10)	
English expressions are used to adhere to the norm of the public / guarantee accuracy	首先他稱他怕碰到 PW1 (At the beginning he said that he was afraid of touching PW1) (T3,30,U)	An equal of the counsels / a member of the public / a judge
	Okay，等等先吓 (Okay, wait a second) (T1,3,S)	
	Okay，咁係啲警方寫嘅啫 (Okay, it's just written by the police) (T3,2,H)	
	唔該你，Mr. Cheung (Thank you, Mr. Cheung) (T1,14,R)	
	就證物 P2 (This is evidence P2) (T1,11,F)	
	Sorry，我早上開一個短會先。(Sorry, I will attend a short meeting in the morning first) (T2,14,B)	
	咩嘢 possibility? (What possibility?) (T2,18,R)	
	我睇唔到嗰個 relevance，個相關性，Mr. Chan。(I don't see the relevance, the relevance, Mr. Chan) (T2,18,T)	
	Aggressiveness。唔係……(Aggressiveness. No...) (T2,29,R)	
	我一定要知道你條問題係有關連先，有 relevant 先…… (I must first of all make sure that your question is relevant, has relevant [sic] first...) (T2,61,F)	
	就係如果佢既行為係可能會破壞度到安寧，所謂嘅 breach of the peace，又或者佢個行為係可能令人係擔心佢唔能夠遵守法紀，就係 of good behaviour (that is if his behaviour may disrupt the peace, so-called breach of the peace, or his behaviour may cause other people worry that he is not able to abide by the law, that is of good behaviour) (T2,87,E)	
	裏面個的咁嘅 annotation 同唔同意㗎，辯方？ (do you agree to the annotation inside, defence?) (T3,2,F)	

Strategies and tactics	Data	Consequences
English expressions are used to adhere to the norm of the public / guarantee accuracy	Sorry, 無係乜嘢意思? (Sorry, what do you mean by no?) (F1)	An equal of the counsels / a member of the public / a judge
	佢[被告]有個, 點講呀, legitimate expectation (He [the defendant] has the, how to put it, legitimate expectation) (F2)	
	我記得好似係哩個 charge (I remember it seems to be this charge) (F2)	
	我每次聽完證人口供都再睇供詞, make sure 我清楚了解 (After I listen to the witness's evidence, I will read the written evidence again to make sure I understand clearly) (F3)	
	知唔知有冇原因架車冇咗 brake? (Do you know if there is a reason why the car has no brake?) (F7)	
	你 cut 線是否有造成不便並非係主觀嘅想法而係以合理謹慎者嘅客觀標準嚟決定 (Whether you have caused inconvenience when you cut across the lane is not a subjective judgment but has to be assessed using the objective standard of a reasonable and cautious person) (F8)	
Orders are given to manifest the authority of the judge	你用隻耳仔聽住, 記住..... (You use your ears to listen, to remember...) (T1,16,S)	A judge / the court
	好, 寫 —— 改翻「事發地點」 (Good. Write – Correct it as “Crime scene”) (T3,2,M)	
	好, 叫證人 (Good. Call upon the witness) (T3,2,T)	
	俾啲相我睇吓 (Give me the photos to have a look) (T3,10,J)	
	你講 (You say) (T3,21,O)	
	俾完口供, 你落番去 ([You have] finished giving evidence, you go down) (T3,30,D)	
	四個星期監 (Four weeks' imprisonment) (T3,35,K)	
	退庭 (Adjourn) (T3,35,L)	
Question tags are used to reduce the relational distance with the counsels or the defendant	逐樣逐樣嚟, 好唔好? (Say it one by one, yes or no?) (T1,13,N)	An equal of the counsels or the defendant
	2,000 蚊, 我已經俾到最輕你, 明唔明白? (2,000 dollars is the minimum [sentence] I can give, do you understand?) (T1,37,P)	
	可以嘅話, 不如寫一寫低, 好唔好呀? (If possible, let's write it down, yes or no?) (T3,21,S)	

Strategies and tactics	Data	Consequences
Verbal particles are used to enhance the conversational style	所以我咪話俾你聽囉 (That's why I told you [law]) (T1,35,U)	An equal of the counsels or the defendant / a member of the public
	係一個可以決定去唔食既習慣嚟㗎囉 (This [smoking] is a habit you can choose not to take up [ga-ma]) (T1,36,R)	
	講真㗎 (To be honest [ah]) (T1,37,E)	
	你冇望佢㗎，抑或你……見到佢冇望住你㗎？ (You didn't look at him [ah] or you ...saw him didn't look at you [ah]?) (T2,61,R)	
	唔通我叫你去搶咩？ (Will I ask you to rob [meei]?) (T1,40,E)	
	等等先吓 (Wait for a moment [sin-ha]) (T2,8,B)	
	抑或你純粹出去睇吓㗎咋？ (or did you merely go out to take a look [ga-tsa]?) (T2,57,M)	
	咁你同佢有幾遠先得㗎？ (Then how far were you away from him [sin-dak-gaat]?) (T2,60,S)	
	更何況我唔係專家㗎囉…… (Moreover, I am not an expert [ga-ma]) (T2,80,I)	
	能唔能夠㗎？ (Can you [je]?) (T2,80,S)	
	橫掂我都係早上會休息架㗎喇 (anyway I will take a break in the morning [ga-la]) (T2,87,M)	
	有啲人光天化日打劫上海銀行都係咁㗎喇 (Some people even robbed the Bank of Shanghai in broad daylight [ga-la]) (J2,11)	
	我擺嚟金三兩重，跌落地，咚一聲，我行咗去，唔知自己跌咗嚟金，算唔算攞垃圾㗎咁？金㗎，法官，幾錢兩你知唔知呀，如果三兩金幾錢呀 (I bring a solid gold of three taels, drop it on the ground and “dung” it sounds. I leave without knowing I have dropped the gold. Is it littering [ah-gaam]? Gold [wo]. Judge, how much a tael do you know [ah]. How much if it is three taels [ah]) (J2,9)	
	呢啲我會稍後做㗎喇，咁我哋先聽吓證供㗎，所以如果你個責任——你嘅講法話『我冇心個噃』，或者『我其實唔想個噃』，咁你自己諗清楚㗎 (I will handle it later [ga-la]. Why not we listen to the evidence first [ah]. So about your responsibility – you say “I don't mean to [gor-bor]”	

Strategies and tactics	Data	Consequences
Verbal particles are used to enhance the conversational style	or “I don’t want it to be [gor-wo], then you have to think about that [la] (J2,9)	An equal of the counsels or the defendant / a member of the public
	係咪咁? (Isn’t it [ah]?) (J2,11)	
	粗唔粗呢，先天嘅事嚟㗎，後天可以改㗎㗎，係咪？頑石都會點頭。咁香港政府而家畀好多錢讀書，咁你咪去讀書囉。噏，我等你三年咁噏，駛唔駛咁？如果唔駛就繼續 (Coarse or not, it is by birth [lai-je]. It can be changed later [ga-ma], isn’t it? Even a hard rock can nod. Now the Hong Kong government gives out a lot of money for study. You go to study [law]. [La], I wait for you for three years [ah-la]. Do you need it [ah]. If not then go on) (J2,11)	
“I” and “We” are used to denote casual conversation	特別係個事主嗰個證供係令我冇啲憂慮 (Particularly the client’s evidence has made me feel some worry) (T2,86,K)	An equal of the counsels or the defendant / a member of the public
	我直接的問喇 (I will ask directly) (T3,14,O)	
	我唔講離開你視線嘅情況底下 (I am not talking about the situation away from your view) (T3,15,G)	
	我想知道 (I want to know) (T3,21,M)	
	我哋喺法庭審案…… (We, in conducting trial in court…) (T1,22,Q)	
Institutional identities are used to indicate the identify of the court	就算係被告人嘅證供不為本席所接納 (Even if the defendant’s evidence is not accepted by <u>this bench</u>) (T2,85,F)	Member of the court
	其實係冇太大嘅令到法庭憂慮嘅地方 (In fact has nothing that makes <u>the court</u> too worry) (T2,85,G)	
	如果譬如好似主控咁問你 (If like what <u>the prosecutor</u> has asked you) (T2,57,P)	
	(2)就係被告逃跑方向，係咪呀，辯方？((2) is the direction where <u>the defendant</u> ran, isn’t it, defence?) (T3,2,M)	
	辯方有冇中段陳詞？(Any interim speech, <u>defence</u> ?) (T3,22,C)	
	最後陳詞，控方有冇？(Any closing speech, <u>prosecution</u> ?) (T3,30,E)	
	本席裁定控方已毫無合理疑點的基準底下舉證成功控罪裏的每一元素 (<u>This bench</u> has found that	

Strategies and tactics	Data	Consequences
Institutional identities are used to indicate the identify of the court	the prosecution has successfully proved every element of the charge beyond reasonable doubt) (T3,31,P)	Member of the court
	法庭係裁定咗你係故意犯非禮 (<u>The court</u> has found that you have intentionally committed the crime of indecent assault) (T3,34,G)	

Figure 5.1 Coded data of transcripts, field notes and judgments

5.3 Conclusion

This chapter has analysed the features of Cantonese used by magistrates (research question 2) by using data from trial transcripts, field notes, and judgments. As mentioned in the methodology section (Chapter 3), the interpretation of style is a complicated process and might be subject to various limitations such as the lack of research on the lexical differences of Cantonese varieties and their stylistic implications. For the purpose of this research, to avoid arbitrariness, views of the experts are used for verification. It should also be noted that while not every example of every feature of Cantonese used by magistrates is given in the above description, the examples quoted are illustrative of their respective categories and their synchronic operation does nothing less than highlighting the style of magistrates' speech. In the next chapter, these examples will be measured against the legal professionals' aspirations for legal Cantonese in the light of the research theories in order to explore the second half of research question 2 as regards the conflict between legal professionals' aspirations for and magistrates' practices of legal Cantonese.

Chapter 6 Theoretical explanations for the conflict between the aspirations for and practices of legal Cantonese in court

One of the research findings mentioned in Chapter 4 is that the majority of experts see the necessity of standardization of legal Cantonese and that the features of standardized legal Cantonese are “common and generally understood Cantonese” and “without resorting to slang and usage that may compromise the dignity and solemnity of the judicial process”. The validity of such a model of speech style appropriateness is based on the identity and power of the court as part of the social formation under the theoretical framework of CDA. In this chapter, the framework is adopted to provide theoretical explanations for the conflict between the legal professionals’ aspirations for and magistrates’ practices of Cantonese in the courtrooms (research question 2). For interpretation purposes, magistrates’ Cantonese speech style which does not share the above features of legal Cantonese is labeled as colloquial Cantonese in this chapter. Specifically it refers to a speech style encompassing code-mixing, frequent use of colloquialisms and verbal particles, and a personalized tone, reminiscent of casual communication rather than formal speeches. It is argued that the following factors contribute to the magistrates’ deviation from using standardized legal Cantonese:

- (1) Influence of the immediate interlocutors as well as other people relevant to the magistrates including the mass media
- (2) Democratization of discursive practices
- (3) Instrumentalization of discursive practices

In this chapter, therefore, a theoretical analysis of the discoursal formation within the court as a social institution will first be conducted to show how speech style is related to the identity, power and ideology of the court, followed by explanations for the magistrates' conflicting speech styles, the identities these different styles have created and to what extent they are desirable to the legal professionals. In the analysis, data from transcripts, field notes, judgments, expert interviews and other documents will be used to support the research theories in order to provide multiple perspectives for understanding the issues.

6.1 How judges manifest the identity and power of the court through discursive practices

Three salient points integrating CDA with the conceptualization of the court system of Hong Kong will be highlighted first to guide the discussion. Firstly, the court is an ideological-discursive formation (IDF) which is “a sort of ‘speech community’ with its own discursive norms and its own ‘ideological norms’” (Fairclough 1995: 27). Since an institution may have diverse IDFs associated with different subgroups in them, and that there is usually one dominant IDF (Fairclough 1995: 41), the dominant IDF related to the court system, I would argue, is symbolised by standardized legal Cantonese, and that the criticisms against the use of colloquial Cantonese by magistrates in court represent such ideological hegemony. It is under this light that standardized legal Cantonese is regarded as the appropriate speech style by legal professionals. The basic assumption is that the relationship between standardized legal Cantonese and the court resembles that between the dominant discursive practice and its institution.

Secondly, interview findings that standardized legal Cantonese rather than colloquial Cantonese seems to be more favoured by the legal professionals could be explained by the proposition that a dominant ideology, with its discursive practices, is more likely to emerge at the upper level of the social hierarchy (Eckert 2000: 25) as described in Chapter 2. As long as discursive practices indicate identity, it means that institutions at the higher social level are keener on maintaining a stable and standard speech style. Since the court is accepted as one of the most prestigious institutions of the Hong Kong society, to which high social status and great social power are attached, its dominant ideology symbolised by standardized legal Cantonese is expected to be strongly fortified against subversive power linguistically represented by colloquial speech style.

Thirdly, as power is conceptualized both in terms of asymmetries between participants in discourse events, and in terms of unequal capacity to control how texts are produced, distributed and consumed (and hence the shapes of texts) in particular sociocultural contexts (Fairclough 1995: 1), the power asymmetries in the courtroom, likewise, are manifested by the difference in the discursive rights of the judge and other parties. Furthermore, normalization of these rights symbolized by the naturalization of the discursive practices in the courtroom serves to stabilize and reinforce the power asymmetries.

Drawing from various sources of data to argue for the above propositions, the following is an explanatory analysis of the magistrates' practices of legal Cantonese. The discussion will start by focusing on the most obvious before moving on to abstraction, and hence the first theme to look at is power asymmetries in the courtrooms.

The court, according to the definitions of Benwell and Stokoe (2006: 88) and Agar (1985: 164), is a socially empowered organization with its experts (judges) responsible for exercising the social power towards non-experts (the defendants), and the social power of the court is manifested partly in the judge's language through the several devices suggested by Fairclough (2001, 113). During a trial, the identity and power display of the judge includes the control of topic, the right to question and to demand clarification any time he or she likes, as opposed to other parties who can only do so at the judge's discretion, and they serve to fulfill the requirements for maintaining the dignity and solemnity of the judicial process. Supportive evidence for this proposition includes “等等先吓。你同意係有時間咁做，不過你有諗住走，係咪？(Wait for a moment [*sin-ha*]. You agree that [you] had the time to do so, but you had not thought of leaving, don't you?)” (T2,65,G), and “你唔洗理作唔作用 (You don't need to care about whether there is a function or not)” (F7) which are used by the magistrates to interrupt the defendant's speech or to enforce explicitness from him and are hence utterances vested with social power. Other examples include magistrates' seeking agreement to enhance the tempo of the trial and criticizing the performance of the counsel such as “係咪呀，辯方？(Is it true, defence?)” (T3,2,B), “同意呵，辯方？(Agree, right, defence?)” (T3,21,R), and “係咪呀？你問精準啲咩嘛，係咪呀？(Isn't it? You should ask more precisely, isn't it?)” (T3,13,H) which imply the authority of the magistrate. There are also “conversational triple” in which the magistrate's second utterance (line 3 and 7 below) confers approval on the witness's answer (T1,4,O):

Line

- 1 官：Okay，係右邊，即係你嘅意思係個窗門嗰度拋左出去？
(Judge: Okay, to the right, that is you mean [the defendant] threw [the cigarette butt] through the window?)
- 2 答：係喇，向右邊拋左出去。
([Witness's] answer: Yes. Threw [the cigarette butt] to the right.)
- 3 官：係，請繼續。
(Judge: Yes. Please go on.)
- 4 答：咁然後就開車向前行。
([Witness's] answer: Then [I] started the car and headed forward.)
- 5 官：嗰陣時你未開車嘅？
(Judge: At that moment you haven't started the car?)
- 6 答：未嘅，拋左先至開。
([Witness's] answer: Not yet. [I] started [the car] after [the defendant] threw [the cigarette butt].)
- 7 官：係，請繼續。
(Judge: Yes. Please go on.)

The positive response of the magistrate carries an evaluative function and is a sign of his authoritative identity in an institutionalized setting, alerting the audience, including the interlocutor and all other people in the courtroom, that the speaker is playing a role in a high performance. Above the sentence level, Magistrate Chan in Transcript 1 gave the defendant a lengthy lecture on how to be a good father and spend less on tobacco (from T1,88,P to T1,89,E). Whether it is necessary to give such a long speech on something unrelated to the subject matter of the trial is subject to argument, what warrants attention is that the lecture could be interpreted as a display of the

identity and power of the magistrate in the sense that he has complete control of the theme and time allocation of the trial proceeding. These examples prove that to maintain the hegemony of the dominant ideology in an institution, language is an effective tool and the discursive practices within the institution, therefore, have to be put under the control of the subjects of the institution, namely judges in the courtrooms.

The controlling role of judges in the courtroom could also be seen from the interview data. Justice Hui says that “any verdict arrived at amid inappropriate expressions only gives the losing party the impression that the judge is prejudiced and emotional, which may be the basis for appeal, and so this is no longer a language issue, but reflects how the judge handles the case and the judge’s learnedness”, and that the case of Mr. Justice Wong as shown in Judgment 1 is such an instance, for the judge is in fact a translation scholar who is good at English and Chinese and it is his altitude that causes his misconduct, not his Cantonese competency (Hui I. 13). Likewise, the use of the insulting expression of “非人非鬼 (Neither human nor ghost)” (J4,19) by the magistrate is criticized by the panel of three high court judges as too emotional. This suggests that inappropriate speech style originates from an inappropriate attitude of the judge and in this case it has to do with, I would argue, arrogance which originates from the power supremacy of the court in the social formation. The other example quoted by Justice Hui, namely “你傻㗎咁樣講 (You are crazy saying this)” (I. 11: 4 – 7), which he says “carries unnecessary comment and sounds insulting”, may be construed in the same light, and hence the problematic attitude could be ascribed to the overwhelming social power of the court. This proposition adds weight to the Gramscian theory of power which says that the modern capitalist society is “hegemony”, and that hegemony and hegemonic

struggle are reflected in discursive practices of institutions, suggesting that the control of discursive practices of institutions is one facet of social hegemony. As Fairclough (1995: 219) points out:

It is an age in which the production and reproduction of the social order depend increasingly upon practices and processes of a broadly cultural nature. Part of this development is an enhanced role for language in the exercise of power: it is mainly in discourse that consent is achieved, ideologies are transmitted, and practices, meanings, values and identities are taught and learnt.

In the courtrooms, through the control of discursive practices, institutional professionals establish standard patterns of operation in the trial process which is largely accomplished linguistically. The primary legal professionals interviewed in the research and their fellow colleagues are the designers of these standard patterns. As Drew and Sorjonen (1997: 110) assert:

the existence of standard patterns in institutional encounters, and their emergent overall organizations, owe much to the direction and initiative of the institutional professionals who participate in many such interactions every day, and therefore tend to develop standard practices for managing the tasks of their routine encounters.

If the proposition that discursive practices express ideology and power relations is a valid one and a particular discourse convention means repeated reinforcement and naturalization of an ideology embedded in the convention, it is reasonable that the majority of legal professionals favour standardized legal Cantonese which is held as the standard variety in the courtroom, as against other non-dominant Cantonese varieties, because, as proven below, it helps sustain the desired ideology for judges and the court. In this regard, Fairclough devises the appropriateness theory of language variability – a theory that assumes a rather straightforward matching between types of social situation and language varieties, so that each social situation is associated with a single, unitary variety. He says that “there may be a dominant (‘normal’, naturalized) practice and dominated (marginalized, ‘alternative’) practices” and that “the category of power in a structural sense (and perhaps the category of social class) is needed to make sense of the ordering and dominance relations between practices and how people select from amongst available practices on specific occasions” (1995: 12). Linguistic control symbolizes power control, so judges lowering their speech style means upsetting the established power relations, an act to their disadvantage. I would argue that in a courtroom where there is direct interaction between the judge and other parties, there is always a linguistic tug-of-war going on between them. Edwards notes that “It is simply the case that matters of language and identity become most visible when social obstacles appear. Consequently, it is with group contact that linguistic identity issues become most pressing” (1985: 47). Judges and defendants represent two different social groups – the elites (as the term “the learned judge” imparts) and the commoners. Judges’ use of formal speech style, as a symbol of power, will mean further consolidation of the established social

hierarchy while their use of colloquial speech style represents concession and put the current social structure at risk. An enlightening analogy is that if a judge tolerates the defendant to answer the judge's question sitting, it could be interpreted as a concession made to the defendant. Language in courtroom has the same symbolic function. The awareness or attitude of the judge towards the notion of identity and power has a crucial role to play in this linguistic battle. This could be explained by Bakhtin's (1986) theory of genre which says that there are different socially available repertoires of genres such as the genre of advertisement and genre of political speeches and that people may choose to mix genres. Since genres are contextually specific and therefore go with particular contextually-bounded participants and hence identity revealing, the blending of genres may upset the identity stability of people and induces instances of identity shifts.

While the prevailing institutional ideology supports its discursive practices, the latter projects the identity of the institution. Different modes of discursive practices of an institution, therefore, signify different shares of power of institutional members and create identities that make up the institutional structure. Richards means the same when he says that "Identity, whether group or individual, is never merely a matter of assuming or assigning a label; it is something that is formed and shaped through action" (2006: 3). Bourdieu (1997: 25) quotes Bally:

the very content of communication, the nature of the language and all the forms of expression used (posture, gesture, mimicky, etc.) and above all, perhaps, their style, are affected by the structure of the social relation between the agents involved and, more precisely, by

the structure of their relative positions in the hierarchies of age, power, prestige, and culture...

A conclusion on the importance of speech style is its contribution to and representation of social identity and social power relations. As Fairclough and Wodak argue, to see how a discursive event does ideological work, it is not enough to analyse texts; how texts are interpreted and what social effects they have need to be considered (1997: 275). In this light, an institution, in order to maintain its dominant ideology, expects all its members who share the same expertise to act jointly in terms of speech style to symbolize their collective identity. The more they have in common in terms of speech style, the more united and strong they will be seen by outgroup members, thereby retaining their social identity and power. Standardized legal Cantonese, therefore, is bound to be in conflict with colloquial Cantonese as the former is more specifically found in and hence symbolizes a formal setting while the latter represents an informal setting. A case in point is the choice of language code. As Holtgraves says, code switching does not simply reflect the setting, it also adds to and hence helps create the setting. For example, to switch from a standard variety (or they-code) to a local dialect (or we-code) implicates solidarity with one's interlocutor and it is a means of defining a situation as informal rather than formal (2002: 75). An example of this we-code from the transcripts is the choice of the address mode which signifies the difference in identity management between judges. Calling the prosecutor "Mr. Lai" instead of by his institutional identity "控方 (Prosecution)" in a Cantonese context, hence a case of code-mixing, implies intimacy, narrowing the distance between the speaker and the interlocutor and symbolizes an informal communication. In

contrast, the use of the institutional identity reveals the awareness of the relational distance on the part of the magistrate.

Van Dijk also finds that the use of the formal speech style such as the formal address and the self references of “this court” and “this bench” displays contextual presupposition that the speaker is speaking in a formal setting where a formal speech style is obligatory. In elaborating the notion of contextual presupposition, he cites fragments of the parliamentary debate at the British House of Commons on 4 February 2004. One fragment shows a member of parliament questioning the Prime Minister Tony Blair who is present to take questions:

Mr. Crispin Blunt (Reigate)(Con): The Prime Minister has had some notice of this question, because I asked it two minutes before Lord Hutton began the presentation of his report a week ago. The evidence before Lord Hutton includes a copy of an e-mail about the dossier from the Prime Minister’s chief of staff, which asks: “What will be the headline in the *Standard* on day of publication? What do we want it to be?”

Van Dijk points out that the formal style adopted by the speaker, such as the use of the much more formal function-address of “the Prime Minister” instead of the deictic pronoun “you”, should be seen as his awareness of his speaking in a formal institution in which a formal style is mandatory (2007: 305 – 306). Hence a possible explanation for the use of “主控 (prosecutor)” instead of “佢 (she)” in “如果譬如好似主控咁問你 (If like what the prosecutor has asked you)” (T2,57,P) is to highlight the formal setting and

enforce the distance in power relations between the prosecutor and the defendant to press for the latter's compliance in answering the former's question. It is mentioned in last chapter that the verbal particle “咩 [meei]” in “唔通我叫你去搶咩？ (Will I ask you to rob [meei]?)” (T1,40,E) gives sarcastic emphasis. This marks the question as between friends rather than strangers, implicating a personal relationship, and reduces the distance between the speakers with the magistrate's authority mitigated. In the same vein, the prolonged lecture by Magistrate Chan in Transcript 1 persuading the defendant to stop smoking and how he should take care of his son mentioned above only enhances the personal colour of a public trial.

The habitual use of other verbal particles such as “先得㗎 [sin-dak-gaat]” as in “咁你同佢有幾遠先得㗎？ (Then how far were you away from him [sin-dak-gaat]?)” (2,60,S), “㗎 [ah]” as in “講真㗎 (To be honest [ah])” (1,37,E) and “㗎喇 [ga-la]” as in “有啲人光天化日打劫上海銀行都係咁㗎喇 (Some people even robbed the Bank of Shanghai in broad daylight [ga-la])” (J2,11) is another marker of conversation in the private domain rather than in formal situations. The requirement of “避免使用大量的助語詞（咁、呢、唔） (avoid using a lot of verbal particles ([gam],[ne],[ng]))” stated in the course material to be discussed in the next chapter supports this proposition.

The concept of standardized legal Cantonese as the appropriate speech style for judges' use in court is established taking into account what Coupland (2007: 15) lays down as the criteria for a genre:

This is the criteria that participants have some significant awareness, as part of their cultural and communicative competence, of how the

event-types they are engaging with are
socially constituted as ways of speaking.

The social expectation for a context-specific language choice cannot be ignored without consequence larger than merely linguistic. As Benwell and Stokoe (2006: 108) say, speaking is not a purely automatic act working at the subconscious level, but is a conscious, goal-driven act with a decision-making component. For example, Rosina Lippi-Green has observed that “in Disney animations, characters with strongly positive actions and motivations are overwhelmingly speakers of socially mainstream varieties of English. On the contrary, characters with strongly negative actions and motivations often speak varieties of English linked to specific geographical regions and marginalized social groups” (1977: 101). The difference between standardized legal Cantonese and colloquial Cantonese could be interpreted in the same light: they represent different identities, one inside and the other outside the courtroom. Coupland (2007: 87) also notices that:

this is certainly how some British government education reports have picked up on the study of language variation. For example, the Cox Report of 1989 set out that children should be able to use “standard” varieties of English when this is “appropriate”... The modality of the word “should” in the previous sentence already hints at an appeal to social norms and prescriptions, and therefore undermines the apparent neutrality of the concept of

appropriateness.

Coupland (2007: 150) gives a further example from high performance events which he defines as events often staged institutionally:

Radio presenters, for example, may be expected to project preferred and designed personas rather than in any simple sense their real selves. Many dimensions of authenticity relating to personhood and talk itself – for example the factual accuracy of what is said, consistency of self-representation or cultural coherence – are subordinated to the priority to entertain or just to fill out the performance role. The demand of projecting identities consistent with particular media genres or media institutions might also be an important consideration.

This observation supports the proposition that speech style is linked to its institutional identity. In another case, Fairclough and Wodak study the use of pronoun in speeches of former British Prime Minister, Margaret Thatcher, and find that the word “we” is sometimes used inclusively to express solidarity with the public (1997) and implicates, I would argue, the identity of a country leader. Hence, a particular style, under the concept of appropriateness, is identity-loaded, and must be construed and designed as such. Another analysis referred to as acts of identity by Le Page and Tabouret-Keller (1985: 181) echoes this concept:

the individual creates for himself the patterns of his linguistic behaviour so as to resemble those of the group or groups with which from time to time he wishes to be identified, or so as to be unlike those from whom he wishes to be distinguished.

Eckert also says that the adoption of a way of speaking, like a way of dressing, requires both access and a sense of entitlement to adopt the style of a particular group (2000: 211). Under this paradigm, judges are constrained to speak, or framed, to use the term of Erving Goffman (1974), by the genre unless they want to edit away the identificational value of their speeches. If judges are presumably in need of projecting their identity as the authority in the courtrooms, their language serves as an indicator of such intention. Though there may be times they want to move closer to the colloquial speech style for ease of understanding by the defendant, and hence they “cross” into the non-legal genre, they should be aware this is the exception, like for the sake of accuracy as explained below, rather than the norm. Hence it could be suggested that while legal Cantonese helps manifest the institutional identity of judges, colloquial Cantonese tends to erase it.

6.2 Theoretical explanations for magistrates’ use of colloquial Cantonese

Based on the above analysis, I would contend that, similar to the judge’s attire and their raised seat in the courtroom, the speech style of the judges has dual roles to play: to achieve the trial goal and to sustain the social identity of the court. Regarding this proposition, magistrates’ expressions

recorded in the research transcripts and field notes are illustrative. For example, the formal vocabulary, specifically the archaic four-character phrases such as “捉襟見肘 (inadequate resources to meet the ends)” (T1,35,M), “大相逕庭 (in stark contrast)” (T2,85,P), “支吾以對 (stammering in answering [questions])” (T3,30,U), literal translations of English expressions like “傾向性 (tendency)” (T1,32,S) and formal Cantonese terms like “隱君子 (a drug addict)” (F6) which are most often found in formal settings and seldom used in everyday conversation, accords with the impersonalization required in courtroom and the relational distance between speakers. This linguistic alienation symbolizes the intent of widening the distance in identity and power between the magistrate and other parties, hence preserving and enforcing the identity of the court subjects. Given that the trial processes are relatively fixed with standard procedures, there is little novelty that warrants changes in speech style on the part of magistrates and hence the speech style of judges is relatively normative, and such changes have to be accounted for by reasons other than procedural considerations and this is where the sociolinguistic theory developed by Bell, which focuses on the causes of speech style shifts, contributes. The following is a theoretical analysis of the colloquial Cantonese used by magistrates in the light of Bell’s model of speech style shift and its implicated conflict with legal professionals’ aspirations for legal Cantonese.

6.2.1 Audience design

Halliday says that “a shift in the fashion of speaking will be better understood by reference to changing patterns of social interaction and social relationships than by the search for a direct link between the language and

the material culture” (1978: 77). It highlights the mutual influence of the interlocutors on speech style and how such influence overshadow social convention of conversation, and hence could account for the change in magistrates’ speech style in court, for a judge is expected to take heed of the speech of the counsels or defendants and respond in a way that seems “pro-communicative” to promote effectiveness in exchange of ideas. This corresponds to Bell’s audience design in style variation. Bell claims that speakers design their speech style according to the needs of the audience, in that style shift “occurs primarily in response to a change in the speaker’s audience...is generally manifested in a speaker shifting her style to be more like that of the person she is speaking to” (Bell 2001). Howard Giles builds on Bell’s theory using a social psychology approach and arrives at the “accommodation theory” which says that if speakers are able to recognize the “accommodated style” and choose to be “accommodative”, it is speech style convergence. For this theory, Coupland has carried out a survey with a travel agency worker, Sue, who has to talk to clients from different walks of life and concluded that “variation in Sue’s speech does to a large extent match the variation in her clients’ speech, particularly the ‘lower’ socio-economic classes...Sue’s speech to clients is almost as reliable a marker of their social class as their own speech is” (Coupland 2007: 73). Speech style convergence serves to explain why magistrates speak in a colloquial style. Findings from the transcripts provide evidence. The use of the question tag by Magistrate Chan in Transcript 1, for example, could be conceived as an intended reduction of social power, narrowing the relational distance between himself and the defendant. The choice of using “逐樣逐樣黎，好唔好？(Say it one by one, yes or no?)” (T1,13,N) rather than an imperative of “逐樣逐樣嚟 (Say it one by one)” is less commanding.

Another example is “2,000 蚊，我已經俾到最輕你，明唔明白？ (2,000 dollars is the minimum [sentence] I can give, do you understand?)” (T1,37,P) which is in contrast with an alternative such as “2,000 蚊，我已經俾到最輕你 (2,000 dollars is the minimum [sentence] I can give)”, revealing the original being unnecessarily appeasing. One possible explanation for the judge’s choice to insert a question tag time and again is that, in the trial, the defendant portrays himself as a deplorable low-achiever and that the judge wants to take care of his feelings and hence less rigorous in tone. The speech style representing this interlocutor-oriented approach compromises the judge’s identity and social power of the court and is at odd with standardized legal Cantonese.

Code-mixing also renders magistrates’ speech style more informal and hence incompatible with legal Cantonese and it could be explained by audience design. For example, Magistrate Chan presided over both trials recorded by Transcript 1 and 2 but he did not show any code-mixing in Transcript 1, save for the verbalism of “okay”, the term “mike” (T1,1,Q) of which there is no Chinese translation, and “Isuzu” which is the brand name of a vehicle and has to be spelled out in English during cross-examination (T1,8,R), and this could be explained by the adherence to the exclusive use of Cantonese by the counsels. In Transcript 2, on the contrary, Magistrate Chan spoke in mixed-code many times, arguably because the defence counsel used many English expressions starting from “唔係自願性，係 incompleteness (Not voluntariness, but incompleteness)” (T2,3,S) at the very beginning of the trial, followed by “咁但係呢一點似乎仍然係一個 life issue (but this seems to be still a life issue)” (T2,4,E) and other instances during his argument with the magistrate during cross-examination such as “係個 possibility 係 ([It] is the possibility [it] is)” (T2,18,R), “我俾佢再

reconsider 過啫 (I let him reconsider [je])” (T2,28,I), “佢嗰個 aggressiveness , 應該點講 ? (His aggressiveness, how to put it [in Chinese]?)” (T2,29,R) and “我個 case 嚟嘅..... (It is my case)” (T2,32,E), just to name a few. The adoption of mixed-code by the magistrate, therefore, is induced by the counsel, the interlocutor. The counsel, therefore, has to be held responsible for the magistrate’s using English with the result that the magistrate’s speech style deviated from standardized legal Cantonese which tolerates only specific use of English expressions as explained by Justice Hui (I. 17):

it is not appropriate for judges to use some English and some Cantonese in court. It should be either all in English or all in Chinese. The only acceptable mix is that the judge gives the Chinese translation followed by its English original for the sake of clarity when the judge is not sure if the Chinese translation is authentic.

6.2.2 Referee design

There are instances, however, that the causes of magistrates’ speech style shift, such as the use of non-interlocutor induced mixed-code and verbal particles, have to be found outside the courtroom, and Bell’s referee design provides the explanation.

As explained in Chapter 2, referees are people who are third persons not usually present at an interaction but who are salient for the speakers and able to influence their style of speaking even in their absence. Bell uses this concept to explain why people shift their speech style away from that of their interlocutors towards that of other people, the referees, who are

members of the speaker's institution not present in the situation. The following elucidation by Bell (1984: 187) on ingroup referee design which he defines as "a speaker talking to a member of an outgroup, and reacting with a shift towards the style of the speaker's own (absent) ingroup," therefore, could also be taken to mean the reining-in effect of referees on other members of their institution:

Such a speaker takes the initiative to deliberately reject identification with the immediate addressee, and identifies instead with an external referee. Ingroup referee design seems to require a general sociopolitical situation in which in- and outgroups and their linguistic codes are in conflict, and a set of social psychological circumstances which bring that conflict to the surface in a specific situation.

In the context of a courtroom, the referees for judges are fellow judges representing the court. Since, as argued above, the legal profession occupies a unique and distinctively high position in society, it possesses overwhelming influence on its members in terms of social action including speech style. Moreover, it is argued in Chapter 4 that a trial is a public performance, and that since "justice must not only be exercised, but must be seen to be exercised", the speech style of the judge must show disengagement rather than personal attachment in a conflicting judge-versus-defendant situation where a certain distance between the judge and the defendant or other parties like counsels must be kept. Personal remarks or in fact any intimate implication should be avoided. All these

conditions help contribute to the dignity and solemnity of the court. A particular revealing evidence is the Magistrate So's use of institutional identities for addressing the defendant as well as all other parties in the concluding judgment of Transcript 3. For example, "被告人 (defendant)" (T3,30,R) instead of "你 (You)" (T3,13,C) was used, though the magistrate was speaking to the defendant standing before him. This shows that the magistrate was giving a public speech, the audience being the public and not merely the parties present in the courtroom, and the result was that the speech style is formal. Transcript 1 and 2 suggest the same proposition. Although Magistrate Chan in these trials did not stick as closely as Magistrate So to the use of institutional identities in the concluding judgments as could be seen from the use of "我 (I)" (T2,86,K) along with "本席 (this bench)" (T2,85,F), the use of institutional identities for all parties such as "被告人 (the defendant)" (T2,86,D) and the absence of code-mixing show that the speech style of the concluding judgments is less colloquial than the rest of the transcripts and the magistrate was making a public speech at that moment. This understanding explains why there are aspirations for a certain fixed scheme of work like standardized legal Cantonese to emerge in a courtroom. Examples from the transcripts such as the use of formal legal expressions of "干犯本案 (commit this crime)" (T1,37,N), "拘捕歸案 (caught to be responsible for the case)" (T1,39,T), and "不為本席所接納 ([This] is not accepted by this bench)" (T1,33,M) are proofs for the validity of this proposition. Through the use of legal jargon, magistrates as subjects of the court redefine their own identity in relation to institutional clients. The use of "法庭 (the court)" as in "法庭係裁定咗你係故意犯非禮嘅 (The court has found that you have intentionally committed the crime of indecent assault)" (T3,34,G) instead of

“我 (I)” provides further support to the argument that ingroup referees, namely fellow judges, have certain influence on the magistrate who speaks with an institutional identity.

Referee design also accounts for Magistrate Lee’s use of “乃念 (Taking into consideration that)” in “乃念你係初犯 (Taking into consideration that this is the first time you commit an offence)” (F5) and “隱君子 (a drug addict)” in “憑各種證據，可見你係一名隱君子 (According to various pieces of evidence, it can be ascertained that you are a drug addict)” (F6) in handing down judgment and Magistrate So’s shifting to a formal speech style in using “臀部 [*tuen-bo*] (buttock)” throughout the delivery of judgment (T3,31,I and T3,31,O), contrary to his use of the colloquialism of “屁股 [*pei-goo*] (buttock)” (T3,13,D) during the trial. The reason for using formal speech style in judgments is that judgments are to be recorded in writing for the court archive for future reference of those interested who are very often fellow judges. As Magistrate Cheng says on the use of Chinese in court, his concern is mainly “the strenuous task of putting Cantonese, an oral language, into its written form for the archive” (I. 2: 7 – 9). The presence of written Chinese expressions in the spoken context such as “本乃本席就本案的判決，但撮要來的 (This is this bench’s sentence on this case, but is only a summary)” (T3,30,R) and “爲何他…… (Why he...)” (T3,30,U) adds weight to the proposition that magistrates are subject to the requirements of ingroup referees. Furthermore, the binding effect of ingroup members on magistrates is enhanced by the notion of judicial independence which is cherished as one of Hong Kong’s core values, and hence criticisms from the public and the mass media is somewhat remote to judges, and that it is peers’ observation that means more immediate to them. This proposition is supported by the fact that

every reported criticism on magistrates' speech style was first made by high court judges and reported later by the media, demonstrating the obvious role of fellow judges as referees outside the courtrooms.

Referees, however, are not necessarily ingroup members. They might be subjects of other institutions. Sometimes judges are distracted away from the setting and resort to a speech style not typically used by judges in the courtrooms and therefore attract criticisms from fellow judges. This may be accounted for by the proposition that lexical items of a speech community sometimes creep into different speech communities, and courtroom language is a genre that sometimes succumb to such intrusion. For example, the magistrate in Transcript 3 did converge towards the colloquial speech style of the public. A case in point is the use of the colloquial expression of “屁股 [pei-goo] (buttock)” twice even though its formal equivalent of “臀部 [tuen-bo]” had been suggested by the prosecutor as described in the previous chapter (see page 117 – 118). This could be accounted for by referee design in which the conversational style in the private domain dominates the style selection of a speaker in a public setting.

The view that outgroup referees have an effect on magistrates' choice of speech style is further supported by judge-initiated code-mixing. There were times when neither the counsels nor the defendant had used any English but the magistrate diverged to adopt it, a phenomenon which can only be accounted for by his seeking resources outside the courtroom situation. Examples are “okay” (T1), “sorry” (T2), “title and last name” address (T3), “make sure” (F3) and “annotation” (T3). They are different in nature from English abbreviations like “PW 1” for “The first witness for prosecution” which is used for simplicity as their Cantonese counterparts are yet to be established. Likewise, the colloquial expression of “俾完口供

走得 ([You have] finished giving evidence and [you] may quit)” (T3,15,L) used by Magistrate So is a self-initiated remark, carrying a frivolous overtone brought by the expression “走得 (may quit)” and are commonly found in friendly conversation. Transcript 3, therefore, finds its place in this research because it shows that the speech style of magistrates could be non-interlocutor-induced and has to be explained by theories such as referee design. As Bell explains, “Initiative style-shifts are in essence ‘referee design’, by which the linguistic features associated with a reference group can be used to express identification with that group” (2001: 147). The use of a colloquial speech style brings the identity of a magistrate closer to that of the public or the institutional clients, detrimental, as the majority of interviewees say, to the solemnity of the court.

A relevant concept on referee is Rampton’s (1995) “crossing” which offers the interface for understanding how legal Cantonese and colloquial Cantonese come into conflict in court. The concept refers to the use of a style associated with a speech community the speaker is not supposed or naturally belongs to, hence rather odd to the audience. It is expected that people do “cross” among communities in their daily business. This constructionist approach challenges the idea of a uniform and close-ended speech community in reality. In Chapter 4, it is mentioned that institutional subjects do not interact with the public directly (Figure 4.2), implying that there is indirect contact between them. Judges’ decisions on the choice of words are not only informed by their education, but also by other factors. Judges are, like everyone, exposed to all sorts of linguistic performances in the society and are constantly under the influence of the mass media. One cannot imagine judges sealing themselves off from the rest of the society while still be able to perform the role of a judge. In this regard, Fairclough

observes that hegemony of the mass media is pressuring the legal identity into giving way to the identity of “real self”, blurring the institutional identity represented by speech style. The magistrate’s use of “我 (I)” as opposed to “本席 (This bench)” (T2,86,K and F4) supports this view. “我 (I)” bears a personal instead of an institutional quality, contributing to informality of the trial. Edwards also says that “Language in its communicative sense is, then, an element of identity very susceptible to change” (1985: 97), and he notices that the media has played a significant role in such a change (1985: 92):

The media are two-edged swords for declining languages. On the one hand, it is clearly important that such languages are represented in them; on the other hand, the seemingly inevitable importation of foreign-language elements, coupled with the increasing, global levelling of culture which the media (particularly television) present, can obviously contribute to the decline.

A comment on a website also serves as evidence for the above proposition. 小彭 (Junior Pang) has recorded a dialogue in a trial observation as follows:

紹：被告有乜野求情說話？

([Magistrate] Siu: Any mitigating words to say, defendant?)

XXX：希望法官比次機會，我會好好做人……

([Defendant] XXX: I hope your worship will give me a chance. I will be a good man...)

紹：(諗三秒) 三個月監禁，唔該晒，請便！！

([Magistrate] Siu: (After thinking for 3 seconds) Three months' imprisonment. Thank you very much. Please feel free to leave!!)

(<http://kingsland03.mysinablog.com/index.php?op=ViewArticle&articleId=105601> on 10th Feb 2006)

The author concluded the above record with the remark of “平時好驚聽法庭，因為用英文唔識聽，好鬼悶。但今次用廣東話審案，又聽得幾過癮、幾有娛樂性！ (I used to be afraid of observing a trial because I do not understand English and hence it was very boring. But this time Cantonese was the medium of trial and it was quite fun, quite entertaining!)” It is, I would argue, the “entertaining effect” which is so often associated with the mass media that is detrimental to the dignity and solemnity of the court since expressions like “唔該晒，請便 (Thank you very much. Please feel free to leave)” are playful and sarcastic remarks and are an extreme example of inappropriate use of Cantonese in court.

6.2.3 Code-mixing and its socio-ideological significance

The above traces the causes of magistrates' use of some Cantonese expressions including mixed-code and their stylistic implications. How mixed-code comes to be part of the repertoire of magistrates and contributes to a colloquial speech style needs further explanation.

Li says that code-mixing as one of the manifestations of bilingualism is simply unstoppable in Hong Kong as the two languages, namely English and Cantonese, have entered into contact over a considerable period of time and “the longer the contact, the more profound the influence of one language by another” (1996: 165). Joseph (1992), Luke (1992) and Li (1996)

all agree that language mixture is so widely attested in ostensibly Cantonese discourse in Hong Kong that the borders between English and Cantonese are becoming ever more nebulous and the notion of a pure language is illusive. Moreover, as mentioned in Chapter 1, the prosperous mass media, while contributing to multilingualism in Hong Kong, also helps promote a rich mixture of all languages and their varieties. For example, in Chinese newspapers, there are as many as four linguistic varieties within a single headline – Standard Written Chinese, Cantonese, Classical Chinese and English (Li 1994) so that code-mixing becomes nowadays the repertoire of the average Hong Kong bilingual (Li 1996: 153) and, as outlined above, an outgroup referee for members of other institutions. Bacon-Shone and Bolton have noticed that English brand-names and slogans appear frequently in Chinese television advertisements; English lyrics in many Canto-pop songs; and English expressions and idioms in Chinese comic books and teenage slang (1998: 85). Fu (1987: 37) says that:

Particularly among students and educated adults, Cantonese conversation is frequently sprinkled with English lexical items – often subject terminology which is cumbersome or difficult to translate. Sometimes English lexical items are fractured to fit into Cantonese syntactical structure. For example, the first syllable of the English word *support* will be forced into a Cantonese choice-type question pattern: *Sup-m-suppport...* (where *m* represents the Cantonese negative particle).

Legal jargon like “breach of the peace” (T2,87,E) and “legitimate expectation” (F2) are among the English expressions found in magistrates’ speech. Luke has also observed that there is a group of bilinguals in Hong Kong who can be called “linguistic middlemen” and who can use Cantonese, both high and low, and English with ease. Their language competence enables them “to utilize more fully the social meanings that are associated with code choices in the community”, and they are found to be having the following characteristics (1998: 150):

They are typically young, and have been educated through a mixed medium of Chinese and English; they are either college or university graduates, or executives and senior white-collar workers whose jobs involve frequent use of English.

The magistrates and counsels in the research may in different degrees regarded as possessing these characteristics and hence sometimes code-mix quite considerably. Research by Bacon-Shone and Bolton have found that English and Cantonese have an increasingly complex coexistence in the government, law, education, and business. They noted that in the 1993 sociolinguistic survey conducted by the University of Hong Kong, respondents reported observing high levels of Chinese-English code-mixing in the following societal domains: home (45.5%), friends (75.5%), work (79.3%), in public (83.1%), and school (90.0%). Pennington suggests that such society-wide code-mixing is reinforced by both the “Top-Down” Force and the “Bottom-Up” Force (1998: 32 – 33). The former is the pressure from the government to maintain English as the high language and hence

forcing secondary school students to use English as far as they can. The result is an unsatisfactory blend of English and Chinese. The latter is the students' and teachers' self-initiated mixing using existing linguistic resources.

As Chan says, code-mixing can be a spontaneous behaviour of bilinguals and that it is doubtful whether these people make a choice before they code-mix (1998: 212). This view is supported by Li who says that, against the background of linguistic fusion in Hong Kong, "as most concepts in the Hong Kong classroom are learnt using English technical vocabulary, the English terms naturally come to mind more quickly than the Chinese counterparts" (1998: 180). He found that many secondary school teachers in the 1990s were educated in English and were more familiar with English terminology and hence anticipated difficulties when asked to teach entirely in Chinese (Cantonese), such as locating Chinese references and understanding (equivalent) Chinese technical terms (1996: 156). I would argue that Li's view is particularly true in the discipline of law which is deeply rooted in English. Anyone studying law in Hong Kong must start learning the subject in English. The following examples taken from the trial transcripts and field notes indicate this trace:

- (1) 我 put 埋呢個 case 就得㗎喇 (It will be done [*ga-la*] after I put this case)
(T2,35,K)
- (2) 裏面嗰啲咁嘅 annotation 同唔同意㗎, 辯方? (do you agree to the annotation inside, defence?) (T3,2,F)
- (3) 我記得好似係哩個 charge (I remember it seems to be this charge) (F2)

The legal terms are reproduced in its original English form in the matrix language. Li sees these instances of code-mixing behaviour as the inability or reluctance to translate (1998: 184). Indeed, he asks, what better means is there than code-mixing to ensure that the original meaning housed in the English word or expression is preserved intact? Hence he recognizes the negative and positive reasons for code-mixing in Hong Kong: when Hong Kong bilinguals are reluctant to translate the intended English term into their Chinese variety (even if such a translation is listed as a dictionary equivalent), it is negatively chosen; if the English expression is preferred (consciously or otherwise) for its relative formal simplicity, it is a positive choice (1996: 164 – 165). Luke develops a similar theoretical framework for understanding speech data of code-mixing but with deeper analysis. He agrees that there are instances of code-mixing which are “gap-filling” in nature, but suggests that there are those which occur in spite of the existence of native equivalents, and so “the key to an understanding of this aspect of the linguistic behaviour of people in Hong Kong is to recognize two different kinds of language mixing,” namely expedient mixing which is pragmatically motivated and orientational mixing which is socially motivated (1998: 156). He gave the example of “contact lens” which bilinguals often refer to in English within a Chinese utterance while “glasses” are not referred to in English but in its Chinese equivalent in the same social context. He (1988: 156) attributes the former choice to orientational mixing and explains thus:

The factor which seems to be at work...may be called
“Westernism”, which we can understand as a function of
the individual’s reaction, by virtue of social group

membership, to the forces of Westernization in Hong Kong.

Since “contact lens” are perceived as more western, the synonym for “advanced and better educated”, than ordinary glasses, speakers are able to expose their social institutional membership which links to their social status through the orientation of language. As explained in Chapter 1, English has always been regarded as the “language of success” in Hong Kong. Good English skills, written and spoken, are essential for career development. Pennington also says that the use of English terms in a Cantonese utterance is a way of aligning oneself with English-based social or cultural values (1998: 13). She (1998: 28 – 29) elaborates thus:

Dual language use can express many other kinds of meaning which might broadly come under the heading of *representative* (or “symbolic”). For example, use of English in... code-mixed discourse may be symbolic of wealth, power, social position, and education. It is symbolic of such values as fashion, modernity, and consumerism. Use of English is thus metaphorical for the speaker’s relationship to all these values, i.e. for claiming membership in groups which espouse these values.

It is in this light that Luke says that “tennis”, “Walkman”, and “U (university)” are widely used while soccer, the radio and restaurants (including those selling Western food) are almost always referred to by their

Cantonese names. In all these cases, the dominant social ideology and its linguistic form are apparent.

However, as elaborated in chapter 1, Hong Kong people are torn between “westernized” and “localized” and this is arguably affecting the language choice of the population. Li recognises that language purity and language loyalty tends to be twins born of the same parent – nationalistic sentiments (1996: 159) and this has contributed to the resistance to mixed code. He says that “Research on language attitudes has confirmed that Hongkongers tend to judge code-mixing behaviour rather negatively” (1998: 184). Richards has also found that local senior secondary school students have some discomfort upon hearing other Chinese using English (1998: 318), for which the following remark by Weinreich (1953: 101) on the relationship between nationalism and language choice provides an explanation:

If a group considers itself superior but has to yield to the other group in some of the functions of its language, or has to fill vocabulary gaps by borrowing from the other language, a resentful feeling of loyalty may be fostered.

Cheung offers an enlightening view and sees code-mixing as marking role relationships particularly when ingroup solidarity is called for. He says that the language form is a proclamation of “the social role that the speaker wants to acclaim and consequently the attitudes of the listeners towards him” (1984: 12). Hence he concludes that while English in Hong Kong divides people into those who know the language (the middle class) and those who do not (the working class), Cantonese unites the general public

and mixed-code the middle class (1984: 15). This also echoes Gibbons's findings that code-mixing plays a role in defining social identity and maintaining in-group solidarity (1987). As Pennington points out, a semantic explanation for bilingual behaviour must be complemented by additional explanatory factors such as the symbolic associations and social value of using a second language (1998: 13). Hence Code-mixing is not value-free. It is a performance and produces certain effects not only on the immediate audience but also on society. It carries socio-ideological meaning.

Li, in studying the Hong Kong Chinese press, said that "In general, the more informal the style of writing, the more likely it is for English to be code-mixed" (1998: 168). I would argue that the same is true for the spoken code and that the use of English lexis in magistrates' Cantonese speech marks the discourse as less formal. Luke's (1998: 155) explanation for the difference between expedient mixing and orientational mixing provides support to this argument. He says that "the difference between the two kinds of mixing is that while in expedient mixing a term in the mixing category is "chosen" because it happens to be the only informal term in the formal-informal contrast, in orientational mixing, a term in the mixing category is chosen out of a two-term contrast between the "mixing term" and its corresponding "low" Cantonese term" (1998: 155). According to Luke's research findings, English constituents in a Cantonese utterance are always in complementary relationship with their low Cantonese equivalents as the following examples show:

	Item	High Cantonese	Low Cantonese	Mixing
No low Cantonese equivalent	Application form	Biu-gaak	-	Form
With low Cantonese equivalent	Billiard	Coek-kau	Toi-bo	Billiard

Figure 6.1 The complementary relationship between English and low Cantonese expressions

Hence in practice, “Form” is used to fill the empty low Cantonese position, and “Billard” to replace its low Cantonese term. To sum up the above analysis, I would argue that mixed code could be defined as a feature of low Cantonese used by the Hong Kong middle class.

6.2.4 Revised model for the interactional relationship in courtroom

As Fairclough and Wodak say, “Discourses are always connected to other discourses which were produced earlier, as well as those which are produced synchronically and subsequently” (1997: 276). Incorporating Bell’s theories and seeing a speaker’s speech as a continuum rather than a broken piece of utterance free of the influence of his or her past communicative experience, I would contend that Figure 4.2 could be revised to illustrate the magistrate’s communicative position as follows:

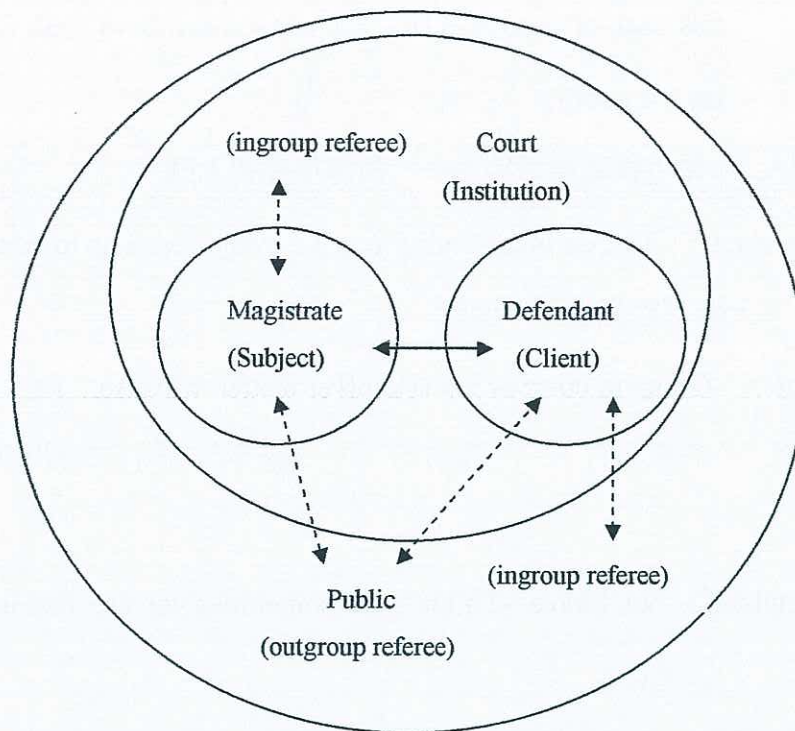


Figure 6.2 Revised interactional relationship between court participants based on Fairclough's model of a conversational context (1995: 38 – 39)

The broken arrows indicate that both the subject and the client of an institution are under the influence of not only their immediate audience but also their own ingroup and outgroup referees, and the outgroup referee is the public which includes the mass media. This model of relationship illustrates how Bell's theories operate and hence could provide explanations for the disorderliness displayed in the trial of Transcript 1 below (T1,36,I), namely the defendant interrupted the magistrate's speech and challenged the magistrate's decision rather than complying with it:

官： 我唔係話你自私，不過你個重心擺左錯咁嘛……你只要的起心肝，我唔食呢包煙，咁我個仔就可以有新鮮送食，幾好？

(Judge: I don't mean to say you are selfish, but your focus is wrongly placed... You only need to make up your mind that I won't smoke

this pack of cigarettes and then my son can have fresh food to eat.

Isn't it good?)

被告人：係，我直情每年 —— 我每年都要上庭。

(Defendant: Yes, definitely every year I – every year I go to court.)

官：上唔上庭係後話，因為.....

(Judge: Going to court or not is another matter, because...)

被告人：唔係，有 —— 我有的 —— 覺得你有時有啲即係唔係好公平。

(Defendant: No. I have – I a bit – feel sometimes you are, that is, not very fair.)

官：馬生，公唔公平自有定論，香港係有一個.....

(Judge: Mr. Ma, whether [I am] fair or not is open for discussion. Hong Kong has a...)

被告人：唔係，我地平 —— 即係市民講，我有乜可能撞架車撞警車，上 —— 前年，咁又要我認罪。

(Defendant: No. As an ordinary – that is a citizen, how is it possible that I ran my car into a police car. Last – the year before the last, [the judge] asked me to plead guilty without grounds.)

官：馬生，我唔想同你.....

(Judge: Mr. Ma, I don't want to...)

被告人：即係我年年都惹官非，即係我覺得我好坎坷，有時啲嘢。

(Defendant: That means I get involved in offence every year. That means I feel I am very humble, somehow.)

Hence the defendant being the client did not adapt to the norms of the court because of, as Fairclough says, the particular configuration of processes of subjection in other institutions which have contributed to the social

formation of that client. In other words, the defendant who was in this setting the client occupied the subject position in another institution such as his peer group or work place. Hence he was under the control of the dominant discursive practice of another institution and spoke accordingly even when the setting was replaced. This explanation echoes the referee design of Bell and explains why magistrates use a divergent speech style when a convergent one is expected, and in the research context why magistrates use colloquial Cantonese when fellow judges and other interviewees prefer standardized legal Cantonese. Furthermore, the revised model helps explain why magistrates are articulating two different discourse configurations, namely standardized legal Cantonese and colloquial Cantonese. Since a discourse including more than one genre will cause difficulties in interpretation, like how the genres are hierarchized, which will determine the basic nature of the discourse, the use of colloquialism could undermine the formal tone of the whole trial and renders it into a friendly chat. As Van Dijk points out, “discourse may be constituted by a complex hierarchy of different acts at different levels of abstractness and generality” (1997b: 5). Hence a magistrate may be exercising his public authority as a social agent and at the same time providing counseling to the defendant out of sympathy as a friend and lecturing the defendant on proper caring of his son as a father. The problem engendered is on the prioritization of these identities in the setting, which leads to the reassessment of the trial goal and its prerequisites to be dealt with below.

6.2.5 Democratization and instrumentalization of discursive practices

Another explanation for the use of colloquial Cantonese by magistrates is the concept of social democratization in which the traditional formal style is

problematized along with the rise in individual autonomy, leading to more equality between the subject and the client in a professional field. Fairclough suggests that this originates from a general rejection in contemporary societies of elite, professional, bureaucratic practices etc., and a valorization of ordinariness, naturalness, “being oneself” and so forth, in discourse and more generally (1995: 230), though he says that the democratization of discourse which reduces overt markers of power asymmetry between speakers of unequal institutional power is generally interpreted as a transformation of unequal power relations into covert forms rather than an elimination of the power asymmetry (1995: 79). Hence the power relations between the interlocutors still persist but are covered. The speech style then is less an indicator of relational distance. Professor Wong’s view on judges’ use of Cantonese, namely speaking in Cantonese is “like speaking in English as far as the intended meaning can be successfully conveyed” (I. 1: 5 - 6), and that judges’ use of colloquial Cantonese has no substantive effect on their identity and power can be interpreted in this light. Though judges are using low Cantonese, they are not making concession in power and status. Lofland and Lofland’s suggestion that social life and people are highly fluid and ambiguous objects of perception, and formal and informal organizational and occupational roles, therefore, are often insufficient guides to action (1995: 106) also serves to explain how democratization blurs the notion of genre.

Another possible cause for magistrates’ colloquial speech style is that magistrates are speaking in such a manner that they think are most readily comprehensible to their interlocutors. As Drew and Sorjonen say, analysing institutional dialogue involves investigating the speakers’ use of language to pursue institutional goals (1997: 94), and I would argue that magistrates

choose a particular speech style in order to achieve the trial goal. In other words, magistrates' speech performance may also be interpreted as an instance of instrumentalization of discursive practices and conversationalization is, therefore, adopted for strategic, instrumental effect. The institutional goal for which magistrates make such a decision is primarily trial efficiency as stated in the principles for the selection of trial language by the judge published by Judiciary Administrator (1997):

法官.....決定選擇採用那種語文，則會以案件能獲得公正快捷的處理作為準則。(Judges...will choose the trial language which helps speed up the trial process while ensuring a fair trial.)

Magistrate Cheng's view that "a magistrate should first consider the effectiveness of the language used, that is whether the Cantonese can make understanding easier for the trial parties so as to avoid wasting time" (I. 3: 3 – 6) also supports this proposition and is in line with Justice Chu's appeal for using "common and generally understood Cantonese". Student Ho's view that the colloquial speech style "will also enhance trial efficiency as the defendants will find the language easier to understand" (I. 3) and Student Kwan's observation that magistrates are more prone to using colloquial Cantonese because it makes communication with lowly educated defendants easier (I. 4: 4 – 6), along with Student Lee's remark that "judges did deliver the judgment in Cantonese so that the defendant can understand it" (I. 3: 2 – 3), add further weight to this stance. This could be the reason for Magistrate Chan's calling the defendant in the conversational style of "馬生 (Mr. Ma)" (T1,10,J) instead of his formal institutional identity of "被

告人 (defendant)", for the chosen mode of address suggests personalization and politeness, resulting in a pleasanter feeling for the defendant in a supposedly cold court setting and is, therefore, conducive to the accomplishment of the trial goal. Similarly, the assumption that less formal language will solicit evidence from ordinary people more effectively is taken to be true by some judges in the research findings of Philips (1998: 110):

This stance links courtroom control to degree of formality, which in turn is manifest in particular ways of using language. The judges present themselves as manipulating degree of formality to achieve both control of the courtroom and the level of involvement, particularly from non-lawyer participants in courtroom interaction, that they feel is desirable to meet their idea of what a legal system is supposed to be doing.

An informal speech style, compared with a formal style, could be considered an effective means of enhancing the involvement of the defendants and thus helps win the approval and cooperation of them. It could result in a favourable appraisal of the judge since the defendants find the judge accommodating and the trial process is taken as an exchange of information between equals.

However, the arguments for democratization and instrumentalization of discursive practices, hence the use of colloquial Cantonese, are problematic. Democratization of discursive practices is not free of implications at the

“macro” (ideological and social) level since a change in discursive practices embodies representations which enforce or undermine institutional identity and its power position, and the effect of such a change towards the dominant ideology of the social formation could not be underestimated. In this regard, Justice Hui, in contrast to Professor Wong, takes a broader social perspective to argue for the necessity of using standardized legal Cantonese in trials. He says at interview that the use of Cantonese in court is not merely for transparency of the trials and for easier access to the general public. It has a political dimension, namely the handover of Hong Kong to PRC in 1997, a perspective ignored by Student Man and Student Lee as both of them prefer using English as the medium of trial (Man I. 2 and Lee I. 2). As such, to foster effective communication between all parties involved in a trial is only one of the purposes of the implementation of Cantonese trials and therefore should not be taken as the sole criterion for assessing what should be the standard set for Cantonese in court (Hui I. 10). Justice Hui says that the use of Cantonese has made the identity of the judge more vulnerable and therefore should be handled with care (I. 15):

while in the old days using English in trials was the norm, the problem of “dignity” was not as serious as when Cantonese is used because Chinese judges’ English standard is somehow limited and so they usually just say directly what they want to say in the style they have learnt from their professional training. Yet in Cantonese trials, since the language is the judges’ mother tongue, there is a lot of room for judges to manipulate the trial language, sometimes to the

extremes, and hence many different kinds of language styles.

Interpreter Lau also agrees that while Cantonese should be the language for trials, the dignity of the judge and the court could easily be undermined, since the defendant finds it more comfortable to argue with the judge using the mother tongue. He quotes Mr. Justice Chim To, a high court judge, as saying, "When I gave the sentence in English, the defendant lowered his head. When I give the sentence in Cantonese now, the defendant holds up his head, looks at me and even smiles" (I. 3), demonstrating how language could help maintain the social relations or break it. As Hammersley and Atkinson point out, settings are not naturally occurring phenomena, they are constituted and maintained through cultural definition and social strategies (1995: 41), and discursive practices should be considered part of social strategies to maintain the court setting.

Fairclough (1995: 94) has noticed that in his days, there was a dominant traditional mode of conducting doctor-patient consultations and an emergent alternative mode (which adopts the counselling approach) in Britain. The former is a rigid question-and-answer process based on asymmetrical power relations between two identities while the latter is more like an open conversation between friends as individuals, and "the open conversation mode entails greater informality and more democratic interaction, with a greater sharing of control and a reduction of the asymmetries" (1995: 101). He also gives the example of university academics who, in order to attract students to apply for admission into their universities, are torn between being looked like an up-scale academic authority and a down-scale salesperson, with the university prospectuses written in a mixed style to

reflect this identity inconsistency. On these observations, Fairclough concludes that “A professional such as a doctor or lawyer cannot shift to a conversation mode of interaction with patients or clients without taking on in some degree a new social identity, and projecting a new social identity for the patient or client” (1995: 106). In the same vein, the power position of the court could no longer be maintained if the standardized speech style of its members, magistrates, is compromised. As Fairclough says, texts constitute a form in which social struggles are acted out (1995: 7).

Democratization and instrumentalization of discursive practices are operating in the Hong Kong courtrooms. The use of colloquialisms such as the word “嘢 (stuff)” in “問個啲嘢，有冇嘢跟進呀？([Regarding] asking stuff, any stuff to follow up?)” (T3,21,J) and verbal particles like “囉 [law]” in “所以我咪話俾你聽囉 (That’s why I told you [law])” (T1,35,U) symbolises an informal style and setting, and the ingroup referee’s influence on the speech style of magistrates is undermined in favour of a friendly chat in the struggle for dominance, leading to the invalidation of the identity of magistrates and in turn the authoritor-authoritee relations between the subject and the client of the court. As Verderber et al (2008: 200) point out:

Some people mistakenly believe that it is appropriate to use language in a way the speaker believes the members of the audience speak. Rather than being appropriate, however, this is likely to be counterproductive. For instance, when a middle-class adult gives a speech to young teenagers and tries to use teen slang or street talk, he or she may come off as a patronizing phony.

The same allegation applies to magistrates who use colloquial Cantonese in court.

Furthermore, it is arguable in the first place whether magistrates need to adopt a colloquial speech style in order to achieve the institutional goals. The magistrate's practices of using colloquialisms such as “我唔係完全封晒你後路㗎 (I am not completely blocking the way out behind you)” (1,40,I) and “你個樣就真係咁衰㗎 (Your face really look that awful [wo])” (J2,11) do more harm than good to the identity of themselves and the court. Given the power asymmetry between the magistrates and other parties in court, magistrates need not resort to an appeasing strategy to give the defendant an apparent equal footing by lowering his own speech style and thus dwarfing themselves, for it is obligatory for defendants to tell the whole truth or there will be statutory punishment due to contempt of the court, an offence underlining clearly the social supremacy of the judicial system.

One may argue from another perspective that instrumentalization of discursive practices could be construed as the result of an ideological struggle over hegemony of conflicting discursive practices and its discursive solution: magistrates want to retain their authority while knowing the need to give up part of it and the solution is to express their authority implicitly, seemingly in a less formal and more colloquial speech style, thus turning the overt into the covert. This compromise of power at the discursive level has, as proven, attracted criticisms from senior judges including the majority of the research interviewees. As Jenkins says, institutions are not only sources and sites of identification for individuals (2004: 140) but are also always networks of reciprocal identification: self-definition as a member depends upon recognition by other members (2004: 160). High court judges' criticisms on magistrates represent a challenge to the identity of the latter.

The “speaker-goal” model, therefore, focuses on only the local situation and ignores the subconscious part of discourse, namely its implication for the issue of identity and social power structure. In this light, magistrates using colloquial expressions may be labeled as compromising the identity and power of their profession and adversely affects the dignity of the court (Hui I. 7: 5 – 6) and “makes the courtroom a less solemn venue than people may think” (Ng I. 3: 10 – 11). This explains why while Edwards says that “although we can say that language can be an extremely important feature of identity, we cannot endorse the view that a given language is essential for identity maintenance”, he has to admit that “many have considered language an essential pillar” (1985: 22).

6.3 Conclusion

In this chapter, the conflict between standardized legal Cantonese and colloquial Cantonese has been analysed at the socio-ideological level in the light of the research theories (research question 2). The outcome is the proposition that a bigger social ideology exists in what otherwise is only a tiny normal utterance, through which the ideology is reproduced and reinforced again and again. Legal Cantonese, in this light, has its role to play in the current social formation, and data are taken from the trial transcripts, field notes, judgments, expert interviews and other documents for illustrating the ideological challenges to the standardization of legal Cantonese. Magistrates, therefore, are expected to be aware of the relations between language and institutional identity, and the individual benefit and risk of adherence to and creativity in discursive practices should be considered together with the effect on the social formation. To quote Pierre Bourdieu, subjects do not, strictly speaking, know what they are doing that

what they do has more meaning than they know (1977). The next chapter will look at the education on legal Cantonese currently provided to magistrates and law students to explore how standardized legal Cantonese is being promoted and what needs to be done to help promote it (research question 3 and 4).

Chapter 7 Review and recommendations regarding legal Cantonese education for judges and law students in Hong Kong

This chapter follows up the result of the comparison between the legal professionals' aspirations for and magistrates' practices of legal Cantonese in the courtrooms by reviewing the legal Cantonese education provided for judges and law students, teasing out the relationship between the education that legal professionals receive in legal Cantonese and how this might be improved (research question 3 and 4). This chapter also presents an attempt to suggest an approach for legal Cantonese education with theoretical support, highlighting the relationship between courtroom discourse and society. It is also a functional approach as the learning process is framed in the courtroom setting where a particular communication purpose is realized. Learners are, therefore, functionally trained as judges in context.

Before the analysis of the legal Cantonese education provided by the judiciary and the universities is conducted, the theoretical proposition about the learning of oral skills needs to be presented. In Hong Kong, the linguistic repertoire of a typical English and Chinese bilingual could be illustrated as follows:

	Written	Spoken
English	English	English
Chinese	Putonghua	Cantonese

Figure 7.1 Linguistic repertoire of a typical Hong Kong
English and Chinese bilingual

English and Chinese are two different signal systems, so that English competency has hardly any implication on Chinese competency and

vice-versa. This is supported by the findings by Thornbury and Slade that problems will arise when a bilingual speaker chooses a degree of formality or informality which, while appropriate in their L1, would be inappropriate in their L2 (2006: 228). For example, as long as speech style is concerned, “嘢 (stuff)” and “橫掂 (anyway)” sound more colloquial in Chinese than “stuff” and “anyway” in English, and hence their social implications differ. Odlin also identifies “formality” (such as when and with whom a formal speech style, rather than an informal one, is appropriate) as an area of cultural mismatch (1989). Hence the transfer of language skills between English and Chinese could be negative. The disparity between Putonghua and Cantonese is equally obvious. Competence in Putonghua suggests little, if any, proficiency in Cantonese in social dimension. As Cohen points out, sounding appropriate in a language is more than simply learning its vocabulary (1990: 71), and this echoes Thornbury and Slade’s view that “grammatical competence does not predict conversational ability” (2006: 214). Hence grammar knowledge of written Chinese has little to do with oral skills. As Thornbury and Slade say, the nature of spoken language itself was barely understood and for a long time spoken language was taught as if it were simply a less formal version of written language (2006: 2). Sometimes written Chinese may even have a negative impact on Cantonese. As Koch says, beginning speakers often phrase main ideas and subpoints in a stilted, unnatural way, usually because they have composed their ideas in a written rather than an oral style (2010: 109), and Magistrate So did erroneously use the written style in a spoken context in Transcript 3 (Figure 5.1). The proposition that for Hong Kong people, writing skills and oral skills draw on different linguistic resources means that oral skills need to be taught as an independent discipline is particularly plausible. As Cummins

points out, proficiency in one modality does not imply proficiency in other modalities (1981), and textbooks on speaking skills mostly acknowledge the many differences between writing and speaking like dynamic versus static, immediate versus distant, etc. (see Coopman and Lull 2009). Lord attributes the decline in the use of “educated” (high) Cantonese to the dominance of the English in Hong Kong (1987: 10) and to the fact that Hong Kong students do not study their own spoken language either as a logical or grammatical system of communication (1987: 28). For example, the subtle problems associated with speech style such as the social meaning of Cantonese verbal particles are largely unexplored. It is on this basis that an investigation into the legal Cantonese education currently offered is carried out and a new education approach recommended. The investigation will be aided by the triangulation of data from expert interviews and the content analysis of the following documents:

- (1) A list of training courses offered by the judiciary to serving judges, recorded in *Annual Report 2007* of the judiciary and the letter from the Judiciary Administrator (Appendix 4).
- (2) The outline of the workshop entitled “Negotiation: Achieving Practical Skills as a Negotiator” conducted by the Faculty of Law, the University of Hong Kong for serving legal professionals.
- (3) A list of legal courses with outlines of contents offered by the School of Law, the City University of Hong Kong and the Faculty of Law, the University of Hong Kong in the academic year of 2006-2007.
- (4) Introductions on legal courses offered by the above universities from their homepages.

(5) Student's handouts for the course "CLAW1009 Practical Chinese language course for law students" offered by the Faculty of Law, the University of Hong Kong for the first semester of the academic year 2005 – 2006.

(6) Assessment scheme and examination scripts of the above course.

Content analysis of the documents aims at unfolding the greatest emphasis of the data and the advantage of the method is that the procedure is explicit to the reader (Marshall and Rossman 1995: 86).

7.1 Education for judges

The above documents reveals that the judiciary has conducted courses for two types of judges: non-Chinese speaking judges and Chinese speaking judges. For the former category, Cantonese courses at elementary, intermediate and advanced levels were organised in the period between 1995 to 2004 and the courses covered Cantonese sounds and tones, words and expressions, sentence pattern, listening comprehension, conversation practices, pair and group work etc. For the Chinese speaking judges, the judiciary says that:

a sum of about \$1,100,000 was provided in 2007-08 for training programmes to enhance the bilingual skills of the JJOs (judges and judicial officers). The programmes included Chinese judgment writing courses and language training course. *Training on oral Cantonese skills was not covered* (emphasis added).

What deserves immediate attention is that the judiciary has admitted that it has offered no training on Cantonese skills to judges. This vacuum is also suggested by interview findings. Barrister Cheung says that a lot of judges do not know very well how to speak in Cantonese in court and have to resort to English (I. 3: 2 – 4). Student Man (I. 3) and Student Lee (I. 3) have also noticed the same problem with magistrates during trial observation. Their view is further supported by the findings from the *Annual Report 2007* of the judiciary. All the courses related to the use of Chinese listed in the report are on written Chinese aiming at enhancing judgment writing skills only:

Date	Activity
30.7 - 24.8.2007	清華大學中文判決書撰寫課程 (Tsinghua University Chinese Judgment Writing Course)
7.9 - 16.11.2007	中文判決書撰寫課程 (由香港大學主辦) Chinese Judgment Writing (run by the University of Hong Kong)
24.10.2007	判決書撰寫課程講座 — 「判詞寫作：文以載道」 Judgment Writing Course Lecture on “Judgment Writing: The View from Outside”
24 - 27.10.2007	判決書撰寫課程 Judgment Writing Course
25.10.2007	判決書撰寫課程講座 — 「令人信服的判決：理論與實踐」 Judgment Writing Course Lecture on “Decisions That Convince: Principles and Practice”
26.10.2007	判決書撰寫課程講座 — 「關於判詞寫作的個人反思」 Judgment Writing Course Lecture on “Some Personal Reflections on Judgment Writing”

Figure 7.2 Courses related to the use of Chinese listed in *Annual Report 2007* of the judiciary

Professor Wong, university teacher of linguistics commissioned by the judiciary to conduct “判決書撰寫課程 Judgment Writing Course”, also says that the focus of these courses is on teaching syntactical rules and lexis in

Chinese writing like the conversion of Cantonese expressions into their written forms (I. 3), and not on the social meaning of Cantonese expressions. With the majority of cases in the magistrates' courts being conducted in Cantonese, the judiciary should have provided relevant education to judges if it wants to promote the use of legal Cantonese in court. However, the task has been left undone, and the findings would be the same if a research had been conducted 10 years ago when the judiciary focused on writing skills rather than oral skills of judges as evidenced by the Judiciary Administrator's statement (1997):

司法人員培訓委員會在來年將進一步加強法官及司法人員的語文培訓，尤其著重中文寫作的培訓，並會舉辦課程，以幫助他們更有效地以中文進行審訊和撰寫判詞。現正考慮將中文寫作研習班作為新入職人員的就職培訓項目之一。(The Judicial Studies Board will further promote language training for judges and judicial officers, particularly on Chinese writing skills, and will run courses to help them conduct trials and write judgments in Chinese. It is now considering the inclusion of the Chinese writing course as part of the induction training for new appointees.)

我們已在 1997/98 及 1998/99 年度預留了 170 萬元編纂法庭常用的英漢法律詞彙。這套詞彙將為法官及司法人員進行中文審訊提供有用的工具，並確保用詞一致。(We have earmarked a sum of \$1,700,000 in 1997/98 and 1998/99 for the compilation of the

English-Chinese glossary of legal terms. The glossary will be a useful tool for judges and judicial officers in conducting trials in Chinese and ensures uniformity in the use of legal terms.)

Today, though the English-Chinese glossary of legal terms was completed, its content is, as its name suggests, limited to providing legal jargon in written Chinese only. No practice direction has been produced by the judiciary to guide judges on how to conduct trials in Cantonese, as can be seen from the complete list of practice directions below:

- PD1.1 Admiralty Actions
- PD2.1 Civil Appeals to the Court of Final Appeal
- PD2.2 Criminal Appeals to the Court of Final Appeal
- PD2.3 Leave to appeal granted by the Court of Final Appeal in civil cases
- PD3.1 Bankruptcy and Winding-up Proceedings
- PD3.2 Procedure for filing and hearing bankruptcy petitions by debtors who are legally represented
- PD3.3 Pilot Scheme for voluntary mediation in petitions presented under Sections 168A and 177(1)(f) of the Companies Ordinance, Cap.32
- PD4.1 Civil Appeals to the Court of Appeal
- PD4.2 Criminal Appeals to the Court of Appeal
- PD4.3 Criminal Appeals in the Court of Appeal - Handing down judgments
- PD5.1 Listing and refixing of dates
- PD5.2 Setting Down for Trial in the Court of First Instance
- PD5.3 Listing and Hearing of Summonses for Interlocutory Orders and Injunctions
- PD5.4 Preparation of Interlocutory Summonses and Appeals to Judge in chambers for hearing
- PD5.5 Submission of Authorities
- PD5.6 Documents for use at trial
- PD5.7 Long Cases

PD5.8	Originating Summonses set down for hearing by Judges
PD6.1	Construction and Arbitration List
PD6.2	Application for leave to appeal against arbitration awards
PD6.3	Construction and Arbitration List Pilot Scheme for Voluntary Mediation
PD7.1	Actions by Writ - Running and Fixture Lists
PD7.2	Court of First Instance - Criminal Running List
PD7.3	Urgent Applications in Commercial List
PD8.1	Hours of sittings - High Court and District Court
PD8.2	Vacation Business in the High Court
PD9.1	Conspiracy
PD9.2	Voluntary Bills of Indictment
PD9.3	Criminal Proceedings in the Court of First Instance
PD9.4	Criminal Proceedings in the District Court
PD9.5	Evidence by way of Live Television Link or Video Recorded Testimony
PD9.6	Magistracy Appeals in the Court of First Instance
PD10.1	Affidavit Evidence
PD10.2	Chinese Translations
PD10.3	Citation of judgments written in Chinese at hearings conducted in English
PD11.1	ExParte, Interim and Interlocutory Applications for Injunctions
PD11.2	Mareva Injunctions and Anton Piller Orders
PD11.3	High Court and District Court Restricted Application and Restricted Proceedings Orders
PD12.1	Warrants of Arrests of Judgment Debtors
PD13.1	Certificate for Solicitor and Counsel in Legal Aid Cases
PD14.1	Rights of Audience before a Master
PD14.2	Proceedings before Masters
PD14.3	Taxation of costs in civil proceedings in High Court and District Court
PD14.4	Taxation of costs in criminal cases
PD14.5	Application for wasted costs order under order 62 rule 8
PD15.1	Divorce
PD15.2	Petition - Personal Service
PD15.3	Reconciliation
PD15.4	Special Procedure
PD15.5	Affidavit of Means
PD15.6	Appointment of Medical Inspectors
PD15.7	Decree Absolute
PD15.8	Decrees and Orders: Agreed Terms

- PD15.9 Ancillary Relief in Matrimonial Causes - Estimate of Costs
- PD15.10 Family Mediation
- PD15.11 Financial Dispute Resolution Pilot Scheme
- PD15.11A Application of Financial Dispute Resolution Pilot Scheme
- PD16.1 Settling Draft Orders and Judgments
- PD16.2 Judgment: Foreign Currency
- PD16.3 Interest on Judgment
- PD16.4 Execution to enforce Judgment for Possession of Immovable Property
- PD16.5 Peremptory Orders
- PD17.1 Parties in Particular Proceedings
- PD18.1 The Personal Injuries List
- PD18.1A Effective Date of Practice Direction 18.1
- PD19.1 Pleadings
- PD19.2 Service of Documents By Post : Ordinary Course of Post
- PD20.1 Non-Contentious Probate Practice
- PD20.2 Leave to issue Writ in Probate Actions
- PD21.1 Solicitors - Appearance in Open Court
- PD22.1 Trade Marks Ordinance (Cap. 43)
- PD23.1 Wards of Court
- PD24.1 Sealing of Writ of Summons, Newspaper Advertisement, Filing of Documents
- PD24.2 Endorsements in the Chinese Language to be made on Court Documents
- PD25.1 Chambers Hearings in Civil Proceedings in the High Court, the District Court, the Family Court and the Lands Tribunal
- PD25.2 Reports on Hearings held in Chambers not open to the public
- PD26.1 The Constitutional and Administrative Law List
- PD27 Civil Proceedings in the District Court
- PD29 Use of The Technology Court
- PD29.1 Cost of using the technology court
- PD30.1 Applications under Part II of the Mental Health Ordinance (Cap. 136)
- PDSL1 Directions made by the Judge of the Commercial List pursuant to O.72 r.2(3) of the Rules of the Supreme Court
- PDSL2 Directions made by the Judge of the Construction and Arbitration List under O.72 r.2(3) of the Rules of the Supreme Court
- PDSL3 Directions made by the Judge in charge of the Constitutional and Administrative Law List pursuant to O.72 r.2(3) of the Rules of the High court

There are courses with an oral component organized by the judiciary listed in its *Annual Report 2007*, but telephone replies from the Bar Association of Hong Kong (officer-in-charge: Ms Cheung on (852) 2869 0210 on 27 August 2008) and the University of Hong Kong (officer-in-charge: Ms Tsang on (852) 2241 5939 on 29 August 2008) which ran the courses have confirmed that they are all conducted in English hence aiming at enhancing English oral skills only. These courses are listed below:

Date	Activity
23.1.2007	講座 — 「盤問心得」 Talk on “Thoughts on Cross-Examination”
7 & 9.2.2007	工作坊 — 「談判 — 學習談判專家的實用技巧」 Workshop on “Negotiation - Achieving Practical Skills as a Negotiator”
3 - 5.5.2007	導師培訓及實習生訟辯課程 Teacher Training & Pupils Advocacy Programme

Figure 7.3 Courses on English oral skills listed in *Annual Report 2007* of the judiciary

The following is the course outline for the workshop on “Negotiation – Achieving Practical Skills as a Negotiator” which shows that English oral skills, and not specific to trial hearing, is the focus of these courses:

7 February and 9 February 2007, 9:00 am – 5:00 pm
 Pacific Place Conference Centre, Level 5, One Pacific Place, 88 Queensway, Hong Kong

Negotiation Skills Training

A newly developed state-of-the-art 2 day programme which teaches practical skills on how to negotiate in a variety of contexts.

The course is designed to enable students to:

- Gain a deeper understanding of the basic principles behind negotiation
- Achieve satisfaction in negotiation
- Develop thorough preparation and strategy techniques
- Enhance their “toolbox” of negotiation skills for use in a range of contexts
- Identify dirty tricks and threats and explore how to deal with such tactics
- Practice and develop their negotiation skills through discussion and practical exercises

Topic includes:

The 6 negotiation contexts, achieving satisfaction, negotiation principles, preparation, breaking impasses, identifying needs, testing solutions, communication skills, handling dirty tricks and tactics, assisted negotiation.

Figure 7.4 Course outline for the workshop “Negotiation – Achieving Practical Skills as a Negotiator”

Furthermore, these courses are not compulsory for judges and hence the above course registered only 22 participants and none was a judge. The other two courses are for members of the Bar Association and there were no records kept for the participants’ identities. The findings support Justice Hui’s opinion that there is no formal education on Cantonese for serving judges and that only courses on judgment writing skills have been offered by the judiciary starting from roughly 1993 or 1994 (I. 2). Like Justice Hui, Magistrate Cheng is experienced in using Cantonese in court, as he says that since he became a magistrate in 1988 he has been using Cantonese in 90% of the trials, and yet he has not received any training on legal Cantonese (I. 2: 1 – 3). He also admits that the judiciary has provided no guidelines for judges regarding the use of courtroom Cantonese and that the situation comes down to a matter of trust (I. 4: 1 – 4). Though he adds that “When the authority appoints someone to be a magistrate, a trust on the ability of the

incumbent, including his language ability, is given” (4: 4 – 6), it would be difficult to guarantee magistrates’ speech performance is up to a certain standard if no mechanism specifically designed for the task is in place, and the lack of continuous education only makes the prospects for improving judges’ Cantonese skills dimmer. In this regard, Magistrate Cheng also admits that he is aware of the problems of using some Cantonese expressions which “may be too colloquial and should be avoided on the part of advocates and judges to retain the dignity of the court” (3: 12 – 13). Relevant education, therefore, is needed.

Although Justice Hui says that “the standard of Cantonese in court is on the rise as young lawyers have undergone some Chinese training during their studies at university and the old judges are getting more and more used to Cantonese trials” (I. 4), there are cases presented in Chapter 4 and 5 in which veteran magistrates are unaware of the importance of speech style in court. Magistrate Chan, an experienced magistrate, for example, has shown in Transcript 1 and 2 how a magistrate might use mixed-code and colloquial expressions considered to be not appropriate in court by Justice Hui. Magistrate Wong was criticized twice in two months by high court judges for using inappropriate Cantonese expressions as shown in Judgment 3 and 4. Even young magistrates such as Justice Chu (Field notes 3) and Justice Kwok (Field notes 8) did code-mix in trials.

While Interpreter Lau says that judges are given a guide book in which there is a rule saying that judges must speak appropriately (4: 2 – 3), yet this is the only information he could offer regarding Cantonese education for judges. In fact, as mentioned above, the Chief Justice has so far issued no directions on the use of Cantonese. Furthermore, one needs to be reminded that until the 1990’s, Cantonese as a spoken language has not been taught in

school as part of the formal curriculum. Oral examination on Cantonese was introduced in the Hong Kong Advanced Level Examinations only in 1994 and in the Hong Kong Certificate of Education Examination in 2007. Hence, judges over 40 years old have hardly received any formal education on Cantonese skills in their primary and secondary school studies, let alone in university where English is the medium of instruction. Magistrates like Magistrate Cheng who studied law in English-speaking countries are further disadvantaged on Cantonese skill. If these judges do not have adequate sociolinguistic resources on their own to solve their language problems, they could only rely on their intuition when working with Cantonese, and intuition could be misguided. Student Kwan's remark that "what matters in using Cantonese in court is whether one is smart enough" (I. 3: 4 – 5) reflects such a pitfall, and Student Liu's difficulty in differentiating appropriate and inappropriate Cantonese speech styles (I. 3: 1 – 3) only highlights the risk. Consciousness-raising is, therefore, needed.

7.2 Education for law students

As will be shown below, the legal Cantonese education law students receive in their universities is not in line with Justice Hui's expectation either, and Student Ho's (I. 4) view reveals this inadequacy:

On the questions of training on oral Cantonese skills for law students, she (Student Ho) says no formal courses are being offered by the City University of Hong Kong on the topic. There is only one course which is Legal Chinese which requires students to write Chinese and do individual and group oral

presentation. The focus of the course is on written Chinese such as syntax, the conversion between traditional and simplified Chinese characters, and writing different kinds of documents, and the individual and group oral presentation last for only three minutes and ten minutes or so respectively and the focus is not on oral skills either, but on the subject matter of the topics chosen by the students. She regards this course as rather useless since it is like a revision of what she has learned in Form Six in secondary school. Apart from this course, all courses are delivered and students respond in English. Even the only course of training oral skills, mootings, is in English only (I. 4).

In fact, all other student interviewees say that there is no legal Cantonese course in the law programmes. In 1998, Walters and Balla surveyed seven departments of the City University of Hong Kong, then Polytechnic, on the use of language during lectures and tutorials and found that the law department was clearly different from the other departments in that all lessons, including student discussion sessions, were conducted almost entirely in English. They noted that “the most obvious result worthy of comment in this area, and perhaps the most straightforward to deal with, is the almost total absence of Chinese in the Law courses. This is unsurprising, as Hong Kong law is drafted in English and the staff of the Law department is about 90% expatriate (that is, non-Cantonese speaking)” (1988: 378) and “Law students feel more comfortable with English than their contemporaries in other courses” (1988: 384). This explains at least partly why, as pointed

out in the last chapter, Student Man and Student Lee go so far as to reject the use of Cantonese as a trial language.

The lack of emphasis on Cantonese may also be due to the mistaken presumption that native speakers of Cantonese are competent users of the language in the courtrooms. Justice Chu does not agree with this presumption when she says that “One may think that as long as all the people in court speak and understand Cantonese, it is a simple matter for the bench, the advocates and the parties to communicate in Cantonese. That is not quite true” (1994: 40), and Student Ho also disproves the presumption with her experience when she says that on the whole her class of students of about 50 are not good at English and Cantonese oral skills and they do not show enthusiasm in speaking up in class, and that the common thinking that law students are good speakers is a misunderstanding since only 20 to 30 percent of the students can said to be capable of using the two languages competently, and a lot of her classmates stammer in oral presentation (I. 5: 1 – 7). She is also facing problems with Cantonese herself as she says that “her Chinese and Cantonese is deteriorating” (I. 6: 1) and the cause is that “she does not have a lot of practice in them and that when she has time she will read English rather than Chinese books as the emphasis of the course is in English” (I. 6: 2 – 4). Student Ng (I. 4: 4 – 10) also says that she and her classmates need more education on Cantonese due to the following reasons:

Firstly, she does not know how to express in Cantonese in the legal field. For example, she does not know how to express some English legal terms in Cantonese. Secondly, after a few years of speaking and writing mainly English, she says that her Cantonese for use in everyday life is

getting worse, “not so fluent”. Thirdly, 80% of her classmates are from overseas and their Cantonese ability is not good.

Student Kam also foresees difficulties in using Cantonese as a trial language for himself as “he does not know how to express certain legal concepts in Cantonese” (I. 4: 2 – 3).

As the balance of the entire training at university tilts towards English, it is only natural that, in support of Student Man, Student Lee and Student Ho’s observation, a lot of English expressions could be found in the trial transcripts and field notes. Take the speech of the defence counsel in Transcript 2 as an example:

- (1) 係個 possibility 係 ([It] is the possibility [it] is) (T2,18,R)
- (2) 大家企係個 platform 同一個高度嘅時候 (When both of them were standing on the platform at the same height) (T2,18,R)
- (3) Depends , 有勞 (Depends, thank you) (T2,18,S)
- (4) 我俾佢再 reconsider 過者 (I let him reconsider [je]) (T2,28,I)
- (5) 佢嗰個 aggressiveness , 應該點講? (His aggressiveness, how to put it [in Chinese]?) (T2,29,R)
- (6) 我 put 埋呢個 case 就得㗎喇 (It will be done [ga-la] after I put this case) (T2,35,K)

Item 5 is particularly revealing for two reasons. Firstly, the question “應該點講? (How to put it [in Chinese]?)” suggests that the counsel did not know how to express the original English concept (“aggressiveness”) in Cantonese, a barrier which might have been cleared if sufficient education

on Cantonese has been provided to him during his legal studies. Secondly, the question was asked with the hope, indicated by the counsel's turning to the prosecutor, that the prosecutor might be able to offer the Cantonese expression. There was, however, no response, perhaps because the prosecutor did not know the answer either. Inadequate education on Cantonese skills, therefore, explains why the problem of code-mixing is common among counsels and magistrates.

Below is a complete list of courses offered by the School of Law at the City University of Hong Kong for 2006 – 2007:

GE1103 Citizens and Justice
LW1200 Introduction to Law
LW1201 Introduction to the Law of the PRC
LW1202 Introduction to Public Law
LW1203 Torts Law
LW1948 Business Law
LW1949 Law for Construction, Engineering & Management Students I
LW2204 Contract Law
LW2205 Principles of Criminal Law
LW2206 Law of Property
LW2207 Legal Characteristics of Organisations
LW2600 Legal Method
LW2601 Hong Kong Legal System
LW2602A Law of Contract I
LW2602B Law of Contract II
LW2603A Law of Tort I
LW2603B Law of Tort II
LW2903 Business and Law
LW2925 Law for Social Workers
LW2938 Legal Studies for Housing Management I
LW2940 Law and Hong Kong Society
LW2945 The Law of Business Transactions

LW2950 Law for Construction Engineering & Management Students II
 LW2953 Law for Facilities Management 1
 LW2954 Law for Facilities Management 2
 LW3208 Criminal Procedure
 LW3209 Principles of the Law of Evidence
 LW3210 Civil Litigation
 LW3211 Commercial Law
 LW3212 Company Law
 LW3213 Company Practice
 LW3214 Matrimonial Law and Litigation
 LW3215 Probate Law and Practice
 LW3216 Conveyancing Practice
 LW3217 Administrative Law and Practice
 LW3218 Commercial Transactions and Finance
 LW3604 Legal System of People's Republic of China
 LW3605A Constitutional and Administrative Law I
 LW3605B Constitutional and Administrative Law II
 LW3606A Criminal Law I
 LW3606B Criminal Law II
 LW3607 Land Law
 LW3608 Applied Legal Theory
 LW3902 The Law Relating to Companies
 LW3932 Environmental Law
 LW3933 Chinese Legal System
 LW3935 Basic Legal Systems of Hong Kong and the People's Republic of China
 LW3939 Legal Studies for Housing Management II
 LW3955 Law for Electronic Commerce
 LW3956 Environment and Law
 LW4612 Legal Placement
 LW4613 Private International Law
 LW4614 Dispute Resolution
 LW4615 Insurance Law
 LW4616 Law of Evidence
 LW4617 Family Law in Hong Kong
 LW4618 Law and Gender

LW4620 International Trade Regulation

LW4621 Law of International Sales and Finance

LW4622 Law of Human Rights and Civil Liberties

LW4623 Administrative Law

LW4624 Planning Law

LW4625 Environmental Law

LW4626 Comparative Law

LW4627 Economic Law of China

LW4628 Foreign Investment and Trade Law of China

LW4630 Equity and Trusts

LW4631 Banking Law

LW4632 International Financial Law

LW4633 Law and Business in the European Union

LW4634 Public International Law

LW4635 Project/Research Paper

LW4636 Shipping Law

LW4637 Criminology

LW4638 Criminal Justice

LW4639 Securities Regulation

LW4640 Advanced Legal Theory

LW4641 Intellectual Property: Theory, Copyright and Design

LW4642 Intellectual Property: Theory, Patents and Trademarks

LW4643 Cyber Law

LW4645 Revenue Law

LW4646 Telecommunications & Space Law

LW4647 Law of Succession

LW4649 International Mooting & Advocacy

LW4649B International Mooting & Advocacy

LW4650 Issues in Equity

LW4656 Company Law I

LW4657 Company Law II

LW4658 Commercial Law

LW4659 Civil Procedure

LW4660 Criminal Procedure

LW4661 Corporate Social Responsibility

LW4662 Intensive Seminar
 LW4936 Introduction to Constitutional and Administrative Law
 LW4940 Legal Studies for Housing Management III
 LW5303 Commercial Contracts
 LW5400 Legal Concepts
 LW5403 Recent Developments in Law
 LW5616 Law of Evidence
 LW5630 Equity and Trusts
 LW5653 Common Law Legal Method
 LW5655 Jurisprudence
 LW5656 Company Law I
 LW5657 Company Law II
 LW5659 Civil Procedure
 LW5660 Criminal Procedure
 LW5910 Introduction to the Legal System of the PRC
 LW5911 Civil Law Concepts in Hong Kong and the PRC
 LW5923 Law for Managers
 LW5924 Law Relating to Business Environment
 LW5942 Law of Business and Organisation
 LW5946 E-Commerce Law
 LW5957 Legal Studies for the Built Environment
 LW5958 Law for Social Workers
 LW6401 Dispute Resolution in Theory and Practice
 LW6402 Procedure and Proof
 LW6404 Research Project
 LW6405 Arbitration Law
 LW6406 Advanced Alternative Dispute Resolution
 LW6407 Arbitration Practice
 LW6408 International Arbitration
 LW6409 Dissertation
 LW6409A Dissertation
 LW6520C Basic Law of Hong Kong
 LW6520E Basic Law of Hong Kong
 LW6521C Constitutional and Administrative Law of China
 LW6521E Constitutional and Administrative Law of China

LW6522C Chinese and Comparative Financial Law
 LW6522E Chinese and Comparative Financial Law
 LW6523C Chinese Criminal Law & Procedure
 LW6523E Chinese Criminal Law and Procedure
 LW6524C Chinese Legal History and Legal Thought
 LW6524E Chinese Legal History and Legal Thought
 LW6526C Dispute Resolution in Theory and Practice
 LW6526E Dispute Resolution in Theory and Practice
 LW6527C Chinese and Comparative Intellectual Property Law
 LW6527E International and Comparative Intellectual Property Law
 LW6529C Chinese and Comparative Environmental Law
 LW6529E Chinese and Comparative Environmental Law
 LW6530C Seminar on Advanced Issues in International Law
 LW6530E Seminar on Advanced Issues in International Law
 LW6531C Legal Systems in South East Asia
 LW6532C Theory and Practice of Comparative Law
 LW6532E Theory and Practice of Comparative Law
 LW6533E International and Comparative Copyright Law
 LW6534E Chinese and Comparative Company Law
 LW6536C Chinese and Comparative Real Property Law
 LW6536E Chinese and Comparative Real Property Law
 LW6537C Dissertation
 LW6537E Dissertation
 LW6538C Chinese Civil Law and Procedure
 LW6538E Chinese Civil Law and Procedure
 LW6539C Advanced Issues on Chinese Civil Law
 LW6539E Advanced Issues on Chinese Civil Law
 LW6540E Chinese Commercial Law
 LW6541E Chinese Foreign Trade and Investment Law
 LW6542C Foundation of International Economic Law
 LW6542E International Investment Law
 LW6543C International Investment Law
 LW6543E Law and Business in Asia
 LW6544C International Trade Law
 LW6544E International Trade Law

LW6545C International Cyber Law
 LW6545E Transnational Legal Problems
 LW6546C Transnational Corporate Law
 LW6546E Applied Legal Skills
 LW6547C Advanced Business Law of China
 LW6547E WTO Law
 LW6548C Independent Research
 LW6548E Advanced Issues in WTO Law
 LW6549E Common Law I
 LW6550E Common Law II
 LW6551E Independent Research
 LW6552E Independent Research (Common Law Stream)
 LW6553E Independent Research (Common Law Stream)
 LW6555E International Intellectual Property Law and Regional Integration
 LW6556C Advanced Tort Law
 LW6556E Advanced Tort Law
 LW6557C Human Rights, Development and Governance
 LW6557E Human Rights, Development and Governance
 LW6558C Law and Development
 LW6558E Law and Development
 LW6559C Advanced Issues in Public Law
 LW6559E Advanced Issues in Public Law
 LW6560C Advanced Study of Antidumping and Countervailing Measures
 LW6560E Advanced Study of Antidumping and Countervailing Measures
 LW6561C Competition Law
 LW6561E Competition Law
 LW6654 Special Research Elective
 LW6700 Advanced Legal Research Methodology
 LW6701 Jurisprudence and Political Theories
 LW6702 Globalization and Law
 LW6703 Globalization and Legal Research Methodology
 LW6913 Corporate, Insolvency & Employment Law
 LW8001 Doctoral Thesis
 PLE5001 Conveyancing & Probate Practice
 PLE5002 Commercial Law and Practice

PLE5004 Civil and Criminal Practice and Procedure

PLE5005 Professional Conduct

PLE5006 Accounts

PLE5007 Advocacy Interviewing & Negotiation

PLE5008 Legal Writing and Drafting

PLE5010 Advocacy, Interviewing & Negotiation

PLE5011 Legal Writing & Drafting

PLE5012 Conveyancing Practice

PLE5013 Corporate & Commercial Practice

PLE5014 Civil & Criminal Litigation Practice

PLE5015 Professional Conduct & Practice

The list shows that there are specialized courses such as “PLE5008 Legal Writing and Drafting” to train students’ English writing skills, and courses which seem to have but actually do not cover Cantonese skills like “LW6546E Applied Legal Skills”, “LW6401 Dispute Resolution in Theory and Practice”, “LW6526E Dispute Resolution in Theory and Practice”, “LW6406 Advanced Alternative Dispute Resolution” and “PLE5007 Advocacy Interviewing & Negotiation”, the first one having no oral component and the latter three courses having only an oral component in English. “LW6526C Dispute Resolution in Theory and Practice” has an oral component as well but it is entirely in Putonghua. Two points need to be highlighted for understanding the curriculum. Firstly, the emphasis is in English and Chinese is given a much lighter weight. While courses like Dispute Resolution in Theory and Practice are taught in two streams (LW6526E in English; LW6526C in Putonghua), only the English stream was actually offered in the academic year 2006 – 2007. Secondly, oral Cantonese components are completely excluded in course design. As Student Ho, Student Kwan and Student Liu say, apart from the course “CTL3161 Legal Chinese” which places little attention to nurturing

students' Cantonese skills, "all courses are delivered and students respond in English" (Ho I. 4: 13 - 14). Findings from the course list of the Law Faculty of the University of Hong Kong below reveal similar situations:

LLAWI001	Law of Contract I
LLAWI002	Law of Contract II
LLAWI005	Law of Tort I
LLAWI006	Law of Tort II
LLAWI008	Legal System
LLAWI009	Law & Society
LLAWI 01 0	Legal Research & Writing I
LLAW 10 11	Legal Research & Writing II
LLAW1012	Legal Research & Writing III
LLAW2001	Constitutional Law
LLAW2003	Criminal Law I
LLAW2004	Criminal Law II
LLAW2005/2013	Property Law I/Land Law I
LLAW2006/2014	Property Law II/Land Law II
LLAW2009	Introduction to Chinese Law
LLAW2012	Commercial Law
LLAW2015	Legal Research & Writing IV
LLAW2016	Legal Research & Writing V
LLAW3001	Introduction to Legal Theory
LLAW3093/2002	Administrative Law
LLAW3094/2007	Equity & Trusts I
LLAW3095/2008	Equity & Trusts II
LLAW3096	Mooting
LLAW2010	Social Justice Summer Internship
LLAW2011	Social Justice Summer Internship
LLAW3002	Guided Research
LLAW3010	Business Associations
LLAW3015	Company Law
LLAW3021/3102	Fundamentals of Evidence and Trial Procedure/Evidence I
LLAW3030	Introduction to Private International Law
LLAW3033	Issues in Intellectual Property Law
LLAW3034	Labour Law
LLAW3040	Medico-Legal Issues

LLAW3041	PRC Civil and Commercial Law
LLAW3043	Principles of Family Law
LLAW3055	Use of Chinese in Law
LLAW3058	International Mooting Competition
LLAW3059	Jessup International Law Moot Court Competition
LLAW3071	Equality and Non-discrimination
LLAW3072	Principles of Hong Kong Taxation on Income
LLAW3073	Media Law
LLAW3074	Research Project (Oral Presentation)
LLAW3080j	Governance and Law
LLAW3081	PRC Commercial Law
LLAW3099	Criminal Procedure
LLAW3105	Land Law III (Conveyancing)
LLAW3007	Alternative Dispute Resolution
LLAW3016	Comparative Law
LLAW3022	Human Rights in HK
LLAW3028	International Trade Law I
LLAW3029	International Trade Law II
LLAW3044	Public International Law
LLAW3050	Securities Regulation
LLAW3057	International Criminal Law
LLAW3062	Human Rights in China
LLAW3066	Cross-border Legal Relations
LLAW6114	between the PRC and HK
LLAW3068	Rights of the Child in
LLAW6077	International and Domestic Law
LLAW3069	Regulation of Financial Markets
LLAW3070	WTO : Law and Policy
LLAW3085	International & Comparative
LLAW6132	Intellectual Property Law
LLAW3088	Dispute Resolution in the PRC
LLAW3106	Legal System of the PRC
LLAW3110	Human Rights and Cyberspace
LLAW6119	[yet to be confirmed]
LLAW3111	International Commercial
LLAW6099	Arbitration
LLAW3112	Hong Kong Arbitration Law
LLAW3113	Issues in IT Law - Legal and
LLAW6106	Policy Challenges of P2P Networks

LLAW3117	Economic, Social and Cultural
LLAW6062	Rights
LLAW3118	Law and Religion
LLAW3119	Dispute Settlement in the WTO
LLAW3123	Competition Law
LLAW3124	European Business Regulation
LLAW3125	Comparative Constitutional Law
LLAW3127	Dealing with Legacies of Human
LLAW6152	Rights Violations

In fact, the information provided on the homepage of the Law Faculty highlights the priority of English in its course design:

English proficiency is built into the new curriculum in preparing our students for the highly demanding language requirements of the legal profession. The proficiency in English in the study and practice of law should best be learnt through the teaching and learning of the substantive law subjects, rather than doing quarantine language courses which may bear little relevance to the use of English as an analytical tool for the study and practice of law. Under the curriculum, the learning and drilling of legal skills, including English language skills, is done through the small-group teaching and learning sessions for the basic core subjects. It is coupled with a systematic and structured programme of Legal Research and Writing courses that are staggered through the first two years of the curriculum.

Not only the importance of English in the course design is spelled out, the absence of a similar introduction on training students' Cantonese skills also implicates the marginalization of Chinese in the curriculum. The question and answer section of the homepage also reiterates the focus of the course which is "to enable students to learn key legal concepts, analysis, thinking and writing skills..." and oral skill is not mentioned. The two Chinese-related courses, namely "LLAW3055 Use of Chinese in law I" and "LLAW3004 Use of Chinese in Law II", cover topics on written Chinese only. "CLAW1009 Practical Chinese language course for law students" is the only course which covers the topic of Chinese oral communication. It lasts for one semester and there are altogether twelve 50-minute lessons for the five topics as shown in the student's handout:

1 實用中文（4大課，2導修）

a. 漢語特性和語文運用

b. 掌握基礎語文能力:

分析基本句型、句子成份、病句

詞語運用、成語

2 文字（3大課，2導修）

a. 簡化字、異體字、標準字形

b. 簡化字、異體字、標準字形

c. 簡化字、異體字、標準字形

3 常用文書簡介 (3 大課, 1 導修)

- a. 書信
- b. 啓事
- c. 通告

4 表達與溝通 (2 大課, 3 導修)

掌握中文溝通表達能力, 以應用於業務演示

5 專業中文 (6 大課, 1 導修)

以〈基本法〉為例, 說明中文法律的語言特點

The five topics are:

1. Basic features of Chinese (4 lectures, 2 tutorials)
2. Conversion between traditional and simplified Chinese characters
(3 lectures, 2 tutorials)
3. Practical writing (3 lectures, 1 tutorial)
4. Communication (2 lectures, 3 tutorials)
5. Professional Chinese (6 lectures, 1 tutorial)

It is in the last two topics that Cantonese skills are touched upon and the handouts for them are appended below:

PRACTICAL CHINESE LANGUAGE COURSE

實用中文課程
表達與溝通

內容

溝通的定義

溝通流程圖

傳意方式

應用於口語溝通的技巧

影響訊息傳遞的因素

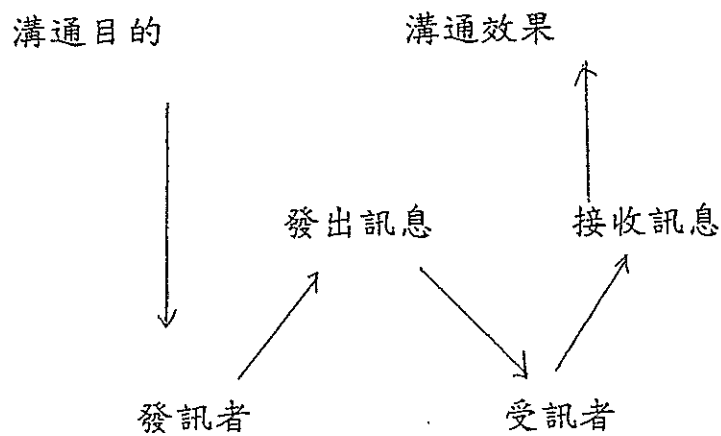
應用於業務演示的技巧

應用於會議文書的技巧

(一) 溝通的定義

人與人之間訊息、理念或意見相互傳達與了解，文字或訊息之交流思想或意見之交換。

(二) 溝通流程圖



- a. 傳遞訊息
- b. 接收訊息
- c. 理解訊息
- d. 作出回應

不論是文字或語音，訊息都必須通過溝通渠道來傳遞。

書信、便箋、公函、啟事等都是文字的溝通渠道，

演講、會議發言等是語言的溝通渠道，當受訊者接收訊息後，了解訊息後，溝通才算完成。

回饋：收訊者把自己的意見，利用原有的或其他的渠道回饋給發訊者。

(三)傳意方式

書面語：著重系統化的表達、語意和修辭 經過深思熟慮、精密的修飾後，較口語來得完整。

形態傳意和體態語：是一種無聲語言，包括表象、標誌、符號

人的體態行為：面部表情、眼神、手勢、坐立姿勢都是傳遞著訊息。

體態語能有效的表達你的意向或意思，令對方感受你的態度，而對方的反應亦往往取決於你的態度。

口語：口頭傳意，句子結構較鬆散，句子長度較短，以不同的聲調、說話速度來表達不同的意思。在傳意的過程中，透過說話中的聲音提示、身體語言、服飾以輔助傳遞訊息。

(四) 掌握溝通流程應用於口語溝通的技巧

確立溝通目的：

界定誰為受訊者，並以他們為中心，鼓勵他們接收發訊者所發出的訊息，是成功溝通的關鍵

- a. 傳遞訊息：針對時、地、人、訊息內容，使用合適的語言策略和技巧、語調、眼神、身體語言、態度、文字或其他材料來使表達訊息。
- b. 接收訊息：細心分析對方的用語和措辭、語調、眼神、身體語言、態度、文字或其他材料，以確實瞭解訊息的表面和深層涵義。
- c. 理解訊息：利用提問、覆述訊息、眼神、身體語言和各種材料，讓雙方知道各自對訊息涵義的理解程度是否一致。
- d. 作出回應：利用提問、覆述訊息、眼神、身體語言和各種材料，讓雙方清楚明白你對訊息涵義的立場、意見或態度。

(五) 影響訊息傳遞的因素

社會背景：階級、教育程度、貧富

信念：宗教信仰

價值觀：積極樂觀、消極悲觀

(六) 掌握溝通流程應用於業務演示的技巧：

a.傳遞訊息：針對時、地、人、訊息內容，使用合適的語言策略和技巧、語調、眼神、身體語言、態度、文字或其他材料來使表達訊息。

(i) 使用三段式演示方法突出訊息涵義

- 概括式導出要傳遞的各個訊
- 具體仔細解釋各個訊息
- 扼要歸納訊息以加強聆聽者的記憶

(ii) 使用關鍵詞語以強調關鍵概念

人聽話的耐心是有限的，注意力集中最多持續二十分鐘左右 在溝通的過程中，先將重點或關鍵詞語說出來，使聽者留下深刻印象

(iii) 使視聽器材、電腦演示軟件突出訊息涵義

- 選取合適的站立位置：講者在使用視聽器材的時候 應面向聽者
- 配合適當的身體語言：一個人的姿勢明顯的表現他的情緒 和想法，如把與聆聽者的距離拉近，效果更佳

自然、適當的身體語言，能與聆聽者建立溝通。

講者的注意力不應集中在投映的銀幕或筆記，而是聆聽者，講者面對大批的聽者，應選擇前排的聽眾為注意力的集中點，但亦不應忽略兩旁的觀眾。

- 聲線控制：善用自己聲線，改善發音不正確的毛病。平板、單調的聲音為演說的大忌，留意音調的高低(抑揚頓挫)。

- 音量：聲音太強，會造成對聽者的負擔，給人爭議的感覺，聲音太弱，則會讓對方聽起來非常吃力或有竊竊私語之嫌，說話的音量要強弱適中，讓人聽得清楚為原則。避免使用大量的助語詞（咁、呢、唔）

- ⌘ 發言速度：由於講者緊張，以致發言過急。說話速度應不徐不疾，讓聽者可完全掌握內容

- ⌘ 適當的停頓：說話經驗不足的人不懂運用停頓的力量。講者不要擔心出現“冷場”，這段時間正好令聽者思考及消化，停頓亦可幫助說話者吸引聽眾的注意。在段落間或句意完結時，稍微停留三至五秒，是有效加強效果的一種說話技巧。

配合適當的衣服、化妝：服飾：考慮報告的對象、場合和所營造的氣氛來決定服飾、形象。

假設是向公司高層匯報計劃，衣著要莊重一點，

避免君臨天下、高不可攀的形象。

• 化妝：面部焦點的重整，給人一種整潔、禮貌

的表現。

b. 接收訊息：細心分析對方的用語和措辭、語調、眼神、身體語言、態度、文字和其他材料，確實瞭解訊息的表面和深層涵義：

1. 清楚瞭解訊息的關鍵概念

2. 明白圖表、數字的涵義

使用簡單的文字、圖表

c. 理解訊息、作出回應：利用提問，覆述訊息、眼神、身體語言和各種材料，提高溝通的成效。

1. 問題模式覆述訊息，以確定雙方的感受及對訊息的理解是否一致

2. 善於聆聽：使我們得到比較準確的資料，感受對方的感情可在談話的內容和態度中，洞悉對方是否誠懇和可靠耐心的聆聽，可以減少自我防衛的

意識，促進彼此的溝通和了解。適當的點頭和微笑，會起著鼓勵對方的作用

(七) 掌握溝通流程應用於會議文書的技巧

- a. 接收訊息、理解訊息：針對時、地、人、訊息內容，細心分析發言者的用語和措辭、語調、眼神、身體語言、態度、文字和其他材料，以確實瞭解訊息的表面和深層涵義，並利用提問、覆述訊息以證明對訊息理解正確無誤
- b. 記錄訊息：將口語轉化成文字時要：
 - 用複述模式記錄訊息
 - 決定是否必須同時表述出訊息的表面和深層涵義

實用中文課程

中文法律的語言特點

內容

準確

1. 確切詞語
2. 模糊詞語
3. 近義詞的細微差異
4. 避免歧義
5. 正確使用標點符號

精煉

1. 精煉句子
2. 注意詞序的合理安排

樸實

嚴謹周密

莊重

參考資料：

1. 中華人民共和國香港特別行政區基本法(草案) 徵求意見稿
2. 中華人民共和國香港特別行政區基本法(草案)
3. 中華人民共和國香港特別行政區基本法
4. 潘慶雲：跨世紀的中國法律語言（北京：華東理工大學出版社，1997年）。
5. 姜劍雲：法律語言與言語研究（北京：群眾出版社，1995年）。
6. 寧致遠、顧克慶、辛蘊鋌：司法文書寫作基本知識（北京：光明日報出版社，1985年）。
7. 寧致遠、劉永章：法律文書的語言運用（安徽教育出版社，1988年）。

語言必須有效地表達信息和概念。法律語言大致可分為兩大部分：立法語言、司法語言。立法語言是指制訂法律的過程中，所使用的文字，主要表現為法律文件中所使用的語言。而司法語言是指有關的司法機關在執法過程中所使用的法律文書。

（一）準確

準確是首要的要求，無論是對案情事實的敘述，或對問題性質的認定，也必須是絕對準確的。因此，任何模稜兩可、語義兩歧的語言表達都是不容出現的。為了達到語言準確的要求，既要注意準確地選用詞語，又要注意句式的恰當運用和文意正確表達。此外，還要從漢語言文字、中國文化特點出發，注意詞語、短句的排列次序和標點符號的正確使用。

1. 確切詞語

精確的詞語表達明晰的概念，故要求正確運用法律術語和普通詞語。

(a) 凡屬特定法律概念必須使用確切法律詞語

例如：確定罪名、說明罪行性質、罪行表現等。這些極為確切的詞語，必須嚴格加以區分。

(b) 凡屬涉及的財物必須使用確切的詞語加以說明。

例如：偷竊的財物，應以確切詞語記錄，物品名稱、牌號、數量必須具體說明。

(c) 凡屬涉及的有法律意義的時間、地點、人物等必須使用確切的詞語。

一、

第五十三條香港特別行政區行政長官短期不能履行職務時，依次由政務司長、財政司長、律政司長臨時代理其職務。(《徵》)

第五十三條香港特別行政區行政長官短期不能履行職務時，由政務司長、財政司長、律政司長依上述順序臨時代理其職務。(《草》)

第五十三條 香港特別行政區行政長官短期不能履行職務時，由政務司長、財政司長、律政司長依次臨時代理其職務。(《基》)

二

第五十五條 香港特別行政區行政會議的成員由行政長官從行政機關的主要官員、立法會議成員和社會人士中委任，其【任期或任期未滿時終止委任，】由行政長官決定。行政會議成員的任期應不超過委任他的行政長官的任期。(《徵》)

第五十五條 香港特別行政區行政會議的成員由行政長官從行政機關的主要官員、立法會議員和社會人士中委任，其【任免】由行政長官決定。行政會議成員的任期應不超過委任他的行政長官的任期。
(《草》)

第五十五條 香港特別行政區行政會議的成員由行政長官從行政機關的主要官員、立法會議員和社會人士中委任，其任免由行政長官決定。行政會議成員的任期應不超過委任他的行政長官的任期。(《基》)

三

第七十八條(五)在香港特別行政區內或區外被判犯有刑事罪行，判處【入獄】一個月以上，並經立法會議出席會議的【成】員三分之二通過解除其職務；(《徵》)

第七十八條(五)在香港特別行政區內或區外被判犯有刑事罪行，判處【監禁】一個月以上，並經立法會出席會議的【議】員三分之二通過解除其職務；(《草》)

第七十九條(六)在香港特別行政區內或區外被判犯有刑事罪行，判處監禁一個月以上，並經立法會出席會議的議員三分之二通過解除其職務；(《基》)

四

第一百一十條 香港特別行政區繼續實行自由開放的貨幣金融政策。
貨幣金融制度由法律規定。(《徵》)

第一百一十條 香港特別行政區貨幣金融制度由法律規定。(《草》)

第一百一十條 香港特別行政區貨幣金融制度由法律規定。(《基》)

2. 模糊詞語

模糊詞語：在法律、法規中，模糊詞語比較多用於列舉事物，當客觀事物無法舉出時，往往用模糊詞語來概括。

(a) 不影響基本的法律事實和法律行為的時間、地點、財物數量。

必要時可以使用模糊詞語。

(b) 不便於或不需確切說明的事實、原因等。

例：

一、

第四十二條 香港居民和在香港的其他人有遵守香港特別行政區的
義務。((《徵》))

第四十二條 香港居民和在香港的其他人有遵守香港特別行政區實
行的法律的義務。((《草》))

第四十二條 香港居民和在香港的其他人有遵守香港特別行政區實
行的法律的義務。((《基》))

二、

第一百零九條 香港特別行政區政府提供【條件，並採取措施】，以
保持香港特別行政區的國際金融中心地位。((《徵》))

第一百零八條 香港特別行政區政府提供【適當的經濟和法律環境】，以保持香港的國際金融中心地位。((《草》))

第一百零九條 香港特別行政區政府提供適當的經濟和法律環境，以保持香港的國際金融中心地位。((《基》))

三、

第二十八條 香港居民住宅和其他房屋不受侵犯。禁止非法搜查或非法侵入居民的住宅和其他房屋。((《徵》))

第二十九條 香港居民的住宅和其他房屋不受侵犯。禁止任意或非法搜查、侵入居民的住宅和其他房屋。((《草》))

第二十九條 香港居民的住宅和其他房屋不受侵犯。禁止任意或非法搜查、侵入居民住宅和其他房屋。((《基》))

四、

第三十四條 香港居民有進行學術研究、文學藝術創作和其他文化活動的自由。

五、

第四十八條（九） 代表香港特別行政區政府處理中央授權的對外事務和其他事務；

六、

第五十二條 香港特別行政區行政長官如有下列情況之一者必須辭職：

（一） 因嚴重疾病或其他原因無力履行職務；

3. 近義詞的細微差別

例：保衛、保護、維護、保障

《中華人民共和國刑法》第二條：

中華人民共和國刑法的任務，是用刑罰同一切犯罪行為作鬥爭，以保衛國家安全，保衛人民民主專政的政權和社會主義制度，保護國有財產和勞動群眾集體所有的財產，保護公民私人所有的財產，保護公民的人身權利、民主權利和其他權利，維護社會秩序、經濟秩序，保障社會主義建設事業的順利進行。

權力、權利、權益

《中華人民共和國憲法》第二條：

中華人民共和國的一切權力屬於人民。

《中華人民共和國婚姻法》第十五條：

非婚生子女享受與婚生子女同等的權利。

《中華人民共和國婚姻法》第二條：

保護婦女、兒童和老人的合法權益。

分辨詞義的輕重：

分裂—破裂 批評—批判

失望—絕望 事故—事變

違背—背叛 思考—研究

周到—嚴密 檢查—考核

正視—重視 發覺—發現

浪費—奢侈 缺點—錯誤

柔弱—懦弱 苦難—災難

認真分辨詞與詞的搭配關係

執行：執行命令，執行任務

履行：履行義務，履行職責

含糊：含糊其辭，含糊不清

含蓄：語言含蓄

4. 避免歧義

立法語言因為普遍使用並列結構，形成複雜的主語、謂語、賓語和複雜的附加及修飾成份，句子一般比較長。詞語在句中，在結構上來說，是按一定語法規律組織起來的多層次系統，詞語愈多，句子愈長，結構層次愈複雜。所以成文後，要對各層次進行切分，檢查是否有歧義。

例：

損壞國家重點保護的文物、古建築、古墓葬、古遺址和風景游覽區以及烈士陵園等的公共設施的，應當負責修復或者折價賠償，還可以對致害人追究其他民事責任。

5. 正確使用標點符號

漢語言文字原本大沒有系統完整的標點符號，在書面語中依靠句讀表示停頓，同一段文字，若句讀不同，會使語意大不相同，在契約、遺囑等書面法律文件中，因句讀關係引起爭訟或其他糾紛的事例也頗多。

- 1.句號 表示陳述句後面停頓和陳述、判斷的語氣。
- 2.問號 表示疑問句後面的停頓和疑問語氣。
- 3.感歎號 表示感歎句和部分祈使句後面的停頓，有強烈的語氣。
- 4.逗號 表示句子中間的停頓和語意未完的語氣。
- 5.分號 表示並列複句分句間比句號小、比逗號大的停頓。
- 6.冒號 表示引起下文或總結上文的句中較大的停頓。
- 7.頓號 表示句中並列詞語間小於逗號的停頓。主要用法是
 - (1) 表示句子中並列的詞與詞之間的較小的停頓。
 - (2) 表示句子中並列的詞與語組或詞組與詞組之間的停頓。
- 8.引號 表示文中的引用部分。用法如下：
 - (1) 標明文中的引用部分，這是引號的基本用法。
 - (2) 標明需要特別注意的詞語。
- 9.括號 表示文中注釋、補充說明或插入部分。
- 10.省略號 表示文中的省略部分，主要用法如下：
 - (1) 表示引文中的省略。
 - (2) 表示列舉的省略。
 - (3) 表示重複詞語省略。
- 11.破折號 表示語句的中斷、轉折或附加的注釋。

(二) 精鍊

語言必須精鍊簡明。要達到凝鍊的要求，必須有以簡馭繁的語言運用能力。而且敘事簡明完備，約而不失一辭，說理精辟，簡而不缺。

1. 精鍊句子：煉句是語言運用中很重要的一個環節。

一、

第十五條 香港特別行政區享有行政管理權，依照本法的有關規定自行處理【財政、金融、經濟、工商業、貿易、稅務、郵政、民航、海事、交通、運輸、漁業、農業、人事、民政、勞工、教育、醫療衛生、社會福利、文化康樂、市政建設、城市規劃、房屋、房地產、治安、出入境、天文氣象、通訊、科技、體育和其他方面】的行政事務。
(《徵》)

第十六條 香港特別行政區享有行政管理權，依照本法的有關規定自行處理【香港特別行政區】的行政事務。(《草》)

第十六條 香港特別行政區享有行政管理權，依照本法的有關規定自行處理香港特別行政區的行政事務。(《基》)

二、

第六條 【財產所有權，包括財產的取得、使用、處置和繼承的權利和依法徵用財產得到補償的權利，均受法律保護。徵用財產的補償應相當於該財產的實際價值，可自由兌換，不得無故遲延支付。】（《徵》）

第六條 【香港特別行政區依法保護私有財產權。】（《草》）

第六條 香港特別行政區依法保護私有財產權。（《基》）

三、

第二十四條 香港居民，不分國籍、種族、民族、語言、性別、職業、宗教信仰、政見、教育程度、財產狀況，在法律面前一律平等。（《徵》）

第二十五條 香港居民在法律面前一律平等。（《草》）

第二十五條 香港居民在法律面前一律平等。（《基》）

四、

第五十五條 香港特別行政區行政會議的成員由行政長官從行政機關的主要官員、立法會議成員和社會人士中委任，其【任期或任期未滿時終止委任，】由行政長官決定。行政會議成員的任期應不超過委任他的行政長官的任期。

(《徵》)

第五十五條 香港特別行政區行政會議的成員由行政長官從行政機關的主要官員、立法會議員和社會人士中委任，其【任免】由行政長官決定。行政會議成員的任期應不超過委任他的行政長官的任期。(《草》)

第五十五條 香港特別行政區行政會議的成員由行政長官從行政機關的主要官員、立法會議員和社會人士中委任，其任免由行政長官決定。行政會議成員的任期應不超過委任他的行政長官的任期。(《基》)

五、

第一百一十條 香港特別行政區繼續實行自由開放的貨幣金融政策。

貨幣金融制度由法律規定。(《徵》)

第一百一十條 香港特別行政區貨幣金融制度由法律規定。(《草》)

第一百一十條 香港特別行政區貨幣金融制度由法律規定。(《基》)

2. 注意詞序的合理安排

漢語是一種缺乏形態的語言(語言學上稱為“孤立語”或“分析語”),不用詞的內部形態變化而用詞序、虛詞來表達詞與詞之間的關係。因此語序在漢語構詞和句法中具有舉足輕重的作用。它不僅決定語意,也直接關係到表達效果。

一、

第三十一條 香港居民有宗教信仰的自由,有傳教和〔公開〕舉行、參加宗教活動的自由。(《徵》)

第三十二條 香港居民有宗教信仰的自由,有〔公開〕傳教和舉行、參加宗教活動的自由。(《草》)

第三十二條 香港居民有宗教信仰的自由,有公開傳教和舉行、參加宗教活動的自由。(《基》)

二、

第七十二條 香港特別行政區立法會議行使下列職權：

(一) 根據基本法規定並依照法定程序制定、(廢除和修改) 法律。(《徵》)

第七十二條 香港特別行政區立法會議行使下列職權：

(一) 根據基本法規定並依照法定程序制定、(修改和廢除) 法律。(《草》)

第七十三條 香港特別行政區立法會議行使下列職權：

(一) 根據基本法規定並依照法定程序制定、修改和廢除法律。(《基》)

(三) 樸實

語言用以闡明事實，論說事理，具有很強的務實性，以平實為貴。必須如實地反映事實、精當地闡述理由。

(四) 嚴謹周密

周密是講求邏輯，認定事實才作出決定。所謂嚴謹，包括詞語選用、文意闡述和表述方式。

一、

第九條 香港特別行政區的行政機關、立法機關和司法機關，除使用中文外，還可使用英文【。】(《徵》)

第九條 香港特別行政區的行政機關、立法機關和司法機關，除使用中文外，還可使用英文【，】英文也是正式語文。(《草》)

第九條 香港特別行政區的行政機關、立法機關和司法機關，除使用中文外，還可使用英文，英文也是正式語文。(《基》)

二、

第一百六十六條 香港特別行政區除懸掛國旗和國徽外，可使用區旗和區徽。(待擬)(《徵》)

第十條 香港特別行政區除懸掛國旗和國徽外，還可使用香港特別行政區區旗和區徽。(《草》)

第十條 香港特別行政區除懸掛國旗和國徽外，還可使用香港特別行政區區旗和區徽。(《基》)

三、

第十三條 中央人民政府負責管理香港特別行政區的防務。

(《徵》)

第十四條 中央人民政府負責管理香港特別行政區的防務。香港特別行政區政府負責維持香港特別行政區的社會治安。(《草》)

第十四條 中央人民政府負責管理香港特別行政區的防務。香港特別行政區政府負責維持香港特別行政區的社會治安。(《基》)

四、

第一百零五條 香港特別行政區政府財政預算，以量入為出為原則【。】

【香港特別行政區政府財政總收入和財政總支出，在若干財政年度內，保持基本平衡。香港特別行政區財政預算收支的增長率，在若干財政年度，以不超過本地生產總值的增長率為原則。】 (《徵》)

第一百零六條 香港特別行政區的財政預算以量入為出為原則【，】

【力求收支平衡，避免赤字，並與本地生產總值的增長率相適應。】（《草》）

第一百零七條 香港特別行政區的財政預算以量入為出為原則，力求

收支平衡，避免赤字，並與本地生產總值的增長率相適應。（《基》）

五、

第十八條香港特別行政區法院除繼續保持香港特原有法律原則對法院審判權所作的限制外，對所有的案件均有審判權。（《徵》）

第十九條香港特別行政區法院除繼續保持香港特原有法律制度 and 原則對法院審判權所作的限制外，對香港特別行政區所有的案件均有審判權。（《草》）

第十九條香港特別行政區法院除繼續保持香港原有法律制度和原則對法院審判所作的限制外，對香港特別行政區所有的案件均有審判權。（《基》）

六、

第四十二條 香港居民和在香港的其他人有遵守香港特別行政區法律的義務。(《徵》)

第四十二條 香港居民和在香港的其他人有遵守香港特別行政區實行的法律的義務。(《草》)

第四十二條 香港居民和在香港的其他人有遵守香港特別行政區實行的法律的義務。(《基》)

七、

第四十八條根據安全和公共利益的考慮，決定政府官員或其他負責政府公務的人員是否向立法會議作證和提供證據；
(《徵》)

第四十八條根據安全和重大公共利益的考慮，決定政府官員或其他負責政府公務的人員是否向立法會或其屬下的委員會作證和提供證據；(《草》)

第四十八條根據安全和重大公共利益的考慮，決定政府官員或其他負責政府公務的人員是否向立法會或其屬下的委員會作證和提供證據；(《基》)

(五) 莊重

法律語言要經過斟酌、權衡，也應莊重嚴肅。以書面語為主，避免口語、俗語、俚語。

使用中文審訊時，說話要淺白，但不能過份粗俗，用語市井，有損法庭的莊重。

- 裁判官在庭上說：「衰都行遠D衰」

The focus of the module “Communication” is on the four fundamental principles of communication, namely the transfer of message, the receipt of message, the interpretation of message and the response to message. How the use of syllogism, key words, audio-visual equipment, manipulation of voice, tempo and clothing aid communication is briefly elaborated. There is, however, only one remark on the importance of speech style, namely “避免使用大量的助語詞（咁、呢、唔）(avoid using a lot of verbal particles ([gam],[ne],[ng]))” (underlined on page 298). What is worth mentioning is that such a remark is placed, quite strangely, under the sub-topic of “音量 (volume of voice)”, hence its focus is not on speech style-identity relations, and no relevant examples are given. In other words, how the use of verbal particles in courtroom affects the social identity and power of judges and the court has barely been touched upon.

The module of “Professional Chinese” focuses on the requirement of precision of expressions in written Chinese law. Only one remark on the importance of Cantonese speech style in court is given under the sub-topic of “莊重 (solemnity)” at the end of the handout, namely “使用中文審訊時，說話要淺白，但不能過份粗俗，用語市井，有損法庭的莊重 (When the trial is conducted in Chinese, expressions used have to be easily understood without being too colloquial. Using slangy expressions will be detrimental to the solemnity of the court)” (underlined on page 321). Moreover, only one example is provided. The way this theme is handled is in sharp contrast with that of the rest of the module which focuses on writing skills with more than 9 pages of statutes taken from the Basic Law of Hong Kong as examples.

While it could be argued that the training on written Chinese skills such as the correct usage of idioms may encourage students to use them in court

for manifestation of judges' learnedness and thus contributes to a formal speech style, the little emphasis placed on speech style in its own right could hardly foster adequate awareness of the importance of such on the part of students. The design of the four assignments for "CLAW1009 Practical Chinese language course for law students" also reflects this inadequacy. The assignments are attached followed by an analysis of their contents:

繳交日期：2005 年 10 月 7 日前

香港大學中文系中文增補課程

實用中文課程（法律學院）

練習一

一、改正下列句子：

1. 凡報讀電腦初級課程，可以優惠價格選購電腦。
2. 昨天是遞交認購新股申請表截止日期的最後一天，地鐵公司已收到數萬份申請表。
3. 切忌不要吃未經煮熟的海產，以免引起腸胃病。
4. 在敦煌國際研討會上，饒教授第一個首先發表意見。
5. 在胡裕樹主編的現代漢語中，對漢語語法作了詳盡的解說。
6. 在《歌聲魅影》尚未正式公演之前，演藝學院的教授已向學生推薦這齣大型歌劇。
7. 白鱔豚與拉河豚、亞河豚、恒河豚是現存的淡水豚類，又是數量最少的一種。
8. 凡大學本科畢業並具有同等學歷，年齡在三十五歲以下者，均可報名。
9. 從十月一日起，各式家具、沙發、紅木家具、藤製家具等，均以九折優惠價格發售。
10. 大榮乳品公司推出的新產品，具有速溶、潔淨衛生，營養豐富、老幼皆宜，實為價廉物美的營養補助品。
11. 巴筏洛提的精采表演，博得了觀眾的熱烈掌聲，對這次演出給予很高評價。
12. 據教育署的統計，去年參與小一自行分配學位的學生，是歷年來最多的一年。
13. 昨天，我們三個科研小組的成員，參加了國際學術交流研討會的開幕典禮。
14. 根據四位英國有關人員，他們認為牛頓是死於慢性鉛、汞、銻中毒，推翻了人們一直認為他是死於內臟結石症。
15. 目前最大的世界上的一台光學望遠鏡放置在巴斯特底卡夫山上。

二、改正下列句子的錯別字：

1. 這場美國職業籃球賽決賽，芝加哥公牛的表現比紐約湖人尤勝一籌。
2. 經過李校長語重深長的訓侮，我終於痛定思痛，改過自新。
3. 爲他人切想，請讓坐與傷殘人仕。
4. 這篇文章的論點，以偏蓋全，引來學術界的不少爭議。
5. 台灣民眾深信鬼神之說，漠拜神祇，亦成民間風俗之一。
6. 相聲這種民間藝術，以針貶時弊爲主，所論之事，往往令人發啄。
7. 這件事情比較複雜，還是從詳計議，不宜愴悴行事。
8. 這個老翁衣衫襤褸，面容枯槁，身體非常羸弱。
9. 問責官員面對議員的提問，總是閃礫其遲，真令人費解。
10. 大明爲新作找靈感，手索沽腸，也芒無頭緒。
11. 張教授學富伍車，教學認真，獲頒最佳教學獎，委實無容置疑。
12. 特區首長要改善經濟環境，必須深入探討問題的徵結所在。
13. 這名藝術家雖然放蕩形駭，但卻屢有佳作。
14. 同學爲收看英國足球賽，切夜不眠，精神諛靡。
15. 家庭教育和學校教育兩者相附相乘，缺一不可。
16. 這個忙命之徒，早已置生死於道外。
17. 蒙古雪災，死傷枕籍，救災的工作，實在是克不容緩。

香港大學中文增補課程
實用中文課程(CLAW1009)
練習二

姓名：_____

大學編號：_____

1. 請在2005年11月9日前繳交。
2. 必須手寫。
3. 筆畫必須清楚。

一、試根據《簡化字總表》、《第一批異體字整理表》及《新舊字形對照表》，把編號1-40的漢字轉換成簡化字或國內的規範漢字。

國家主義和哲學的批判

使得(1)盧梭深陷古典自由主(2)義(3)傳統圈圈的正是其理念中的自然主義。盧梭(4)認(5)為，所有個人都具有自我保存的根本慾望。當然，盧梭尖(6)銳地批判了使得富者(7)剝(8)奪(9)窮人成為合法的“欺騙性”社會契約，在盧梭那著名的論(10)斷中，他指出，在真正可信的社會契(11)約(12)裏，每個人的一切都被“剝奪”，並作為一個整(13)體賦予共同體。財(14)產成為一種(15)關係到正義和國家存(16)續的社會制度。但是盧梭仍然認為生命、自由和財產是人之所以成為人的“(17)構成要素”。按照我的(18)觀點，除了其激(19)進的理論立場，仍然保持着這一觀點：自由是沒有甚麼可以改(20)變的對財產的(21)慾望，它是人(22)類本性的組成部分。如果人們要想自由的生活在一個自然(23)狀(24)態中，那(25)麼所有的(26)個人都必須同他人(27)團結在一起。在契約中彰(28)顯的主權本質上是(29)國家主義的，正如盧梭所指出的，個人之間的利益(30)衝突必定要以集體(31)強制力的方式加以(32)解(33)決。如果情況將危及到平等，盧梭用毋庸置疑的口(34)氣指出：合法權力應該保(35)證平等。公意應該通過(36)實施強制力，調整和(37)懲戒那些本(38)質上必然(39)會危及到平等的“不公平”來保(40)護這一平等。

注意：可剔()超過一個格。

整

	例字	簡化字	第一表	第二表	第三表	第一批異體字理表	新字形
	學	學 学			✓		
1	盧	卢		✓			
2	義	义		✓			
3	傳	传			✓		
4	認	认	✓				
5	為	为		✓			
6	銳	锐			✓		
7	剝	剥					✓
8	奪	夺	✓				
9	窮	穷		✓			
10	斷	断		✓			
11	約	约			✓		
12	裏 ¹¹⁸ 裡	里	✓			✓	
13	體	体	✓				
14	產	产		✓			✓
15	關	关	✓				
16	績	绩			✓		
17	構	构	✓				
18	觀	观	✓				
19	進	进		✓			✓
20	變	变			○		
21	慾	欲				✓	
22	類	类	✓				
23	狀	状	✓				
24	態	态	✓				

25	麼	么	✓				
26	個	个	✓			✓	
27	團	团	✓				
28	顯	显	✓				
29	國	国		✓			
30	衝	冲	✓				
31	強強	强				✓	(v)
32	解	解					✓
33	決	决				✓	(v)
34	氣	气		✓			
35	證	证	✓				
36	實	实	✓				
37	懲	惩	✓				
38	質	质		○			
39	會	会		✓			
40	護	护	✓				

二、將以下的簡化字轉為相應的繁體字。如果可以轉換的繁體字超個一個，請全部寫出。

1. 酿 (釀) 2. 库 (庫) 3. 拣 (揀) 4. 压 (壓)
5. 忤 (忤) 6. 递 (遞) 7. 忧 (憂) 8. 惧 (懼)
9. 维 (維) 10. 历 (歷) 11. 围 (圍) 12. 岂 (豈)
13. 犹 (猶) 14. 聂 (聶) 15. 获 (獲) 16. 图 (圖)
17. 郁 (鬱) 18. 书 (書) 19. 迟 (遲) 20. 译 (譯)
21. 颁奖 (頒獎) 22. 凭借 (憑藉) 23. 贵宾 (貴賓) 24. 审议 (審議)
25. 严厉 (嚴厲) 26. 临时 (臨時) 27. 检验 (檢驗) 28. 欢乐 (歡樂)

简化

三、圈出以下文字中可简化的繁体字，并写上对应的繁体字，重复的必须写出。

计算机犯罪具有很强的隐蔽性，大多数犯罪都是在不动声色之中完成的，作案手段复杂多样。十分诡谲、隐秘，尤其是专业人员利用其职业之便在工作时作案更令人难以察觉。大多数犯罪分子都具有年轻化、知识化，有较高学历和娴熟的操作技能、工作条件优越、没有过多债务或认识较难等特点。据统计，在已经发现的计算机犯罪案中，罪犯年龄在18-22岁之间的占80%左右，平均年龄只有23岁。计算机资料档案存放在介质上，由于计算机阅读和处理，却无法直接用人去监视它，不适于计阅读处却无监视。通过计算机及程式，人们就无法从媒体上读到这些文件。所以这些文件过计们无从体读这这很有可能已被截取和修改。

法律學院實用中文課程

功課三及功課四

功課三為「口頭報告」，應在第 6-8 節導修分組完成。

功課四為文字報告，應在功課三完成後一週內繳交。

一、報告形式：

- 每班導修分為三組，每節導修由一組負責報告
- 每小組由 3-4 位同學組成，每位同學輪流發言，其報告表現，佔個人分數 80%
- 全組報告時間以不超過 30 分鐘為限
- 報告完畢，其他同學負責質詢
- 回應同學的質詢，佔個人分數 20%
- 需使用電腦簡報 (Powerpoint Presentation) 為報告輔助工具

二、評分：

功課三 (個別評分)： 報告 (80%) + 回應質詢 (20%)

功課四 (小組評分)： 整理口頭報告後，呈交指定文稿

三、題目：

香港大學學生會法律學會為提高同學對國內司法制度的認識、加強香港和內地的法律制度聯繫、促進兩地的法學交流，準備籌組交流團前往中國政法大學。

第 6 節導修 (11 月 7 - 11 月 10 日)

假設你是籌備小組負責人，在工作會議上提交有關交流團的計劃書，向其他幹事簡報計劃內容和分配工作。

工作要求：

1. 你們正召開是次的籌備會議。
2. 請準備是次會議的電腦簡報檔。
3. 請準備是次會議的計劃書。
4. 假設導修組的同學是法律學會的其他幹事，請向他們交代是次活動的詳情。

第 7 節導修 (11 月 14 -11 月 17 日)

法律學會爲了讓同學認識是次交流團的詳情，將在校園內的梁詠琚樓大堂擺放展板，介紹有關交流團的內容。你們是負責展板內容的小組，並在籌備小組的會議上，提交展板內容的初稿，以便討論在構思和內容上是否需要修改。

工作要求：

1. 請構思是次展覽的展板內容。
2. 請準備有關展板內容的電腦簡報檔。
3. 提交建議的同學，應向其他幹事解釋有關的構思和內容。

第 8 節導修 (11 月 21-24 日)

假設是次交流活動已經結束，你們是有關活動的籌委會成員，請向是次活動的贊助商匯報活動的成果，並提交活動的總結報告。

工作要求：

1. 你們正在召開內部會議，向其他幹事提交總結報告的初稿。
2. 請準備報告的電腦簡報檔。
3. 提交報告的同學，應向其他幹事交代報告的內容。

The following table shows the content analysis of the four assignments:

Assignment	Written	Oral
1	Correction of ungrammatical Chinese sentences and misspelled words	
2	Conversion between traditional Chinese characters into simplified ones	
3		Presentation on an invented visit to a university in PRC
4	Written report of the assignment 3 presentation	

Figure 7.5 Content analysis of the four assignments for “CLAW1009 Practical Chinese language course for law students”

Three out of the four assignments are on written Chinese and the oral presentation is not based on a trial context. It requires three to four students to form a group to present on a topic unrelated to trials but on planning an invented visit to a university in PRC and reporting on its progress and result. Moreover, each group was given only 30 minutes for the representation so that each member takes turn to speak for no more than 10 minutes, and the question and answer session that follows lasts for about 15 minutes. Given this amount of time for training on oral skills for the entire course, it could be concluded that the design of the course is essentially for enhancing writing skills rather than oral skills, let alone oral skills for trial purposes. If any further evidence is needed to support this conclusion, an analysis of the examination paper for the course attached below will be revealing:

THE UNIVERSITY OF HONG KONG
DEPARTMENT OF CHINESE
CHINESE LANGUAGE ENHANCEMENT PROGRAMME

CLAW1009. PRACTICAL CHINESE LANGUAGE COURSE FOR LAW
STUDENTS

Date: December 23, 2005

Time: 9:30 am – 11:30 am

Instructions to candidates:

1. This examination paper comprises FOUR printed pages.
2. Answer ALL questions.

1 請改正下列句子的毛病。(Correct the grammar of the following sentences.) (15%)

- (1) 跳水名將郭晶晶，因受傷患困擾多年，多次失去參加國際比賽。
- (2) “害蟲一掃光”專除螞蟻、蟑螂、虱，以及昆蟲，只須把藥餌放在害蟲出沒之處，便可杜絕蟲患。
- (3) 以科學方法飼養豬隻，飼養的時間可以縮短一半，飼料成本也可減少一倍。
- (4) 經過了幾天的反覆思量，終於使王督察悟出了一點頭緒來。
- (5) 新產品美顏瘦身丸的成份是燕窩、珍珠末、當歸和阿膠配製而成的。

2 請改正下列句子的錯別字。(Correct the misspelt words.) (10%)

- (1) 梁老太違疾忌醫，只是服用止痛藥來減輕痛楚，這種做法，無異飲鳩止渴。
- (2) 對於法院的不公裁決，受害者家屬均感到義訓填膺，誓言抗爭到底。
- (3) 取得十優的會考生，除了天資聰穎外，還有孜孜不倦、焚膏繼晷的好學精神。
- (4) 這間小商店是小李十多年來，拚手抵足，克勤節儉的成果。
- (5) 面對辦公室的人事關係，他只好明節補身，置身事外。

3 請改正下列句子用詞的毛病。(Correct the misused idioms.) (10%)

- (1) 爲了改善兩國的經貿關餘，中國只好忍氣吞聲，在談判桌上作出讓步。
- (2) 老張已經五十多歲，仍然待字閨中，每逢佳節，倍感落寞。

- (3) 陳校長道貌岸然，宅心仁厚，畢生致力於教育事業，實為同學的楷模。
- (4) 著名歌唱家莫華倫的歌聲，如雷貫耳，在場的觀眾也報以熱烈的掌聲。
- (5) 一年一度的家居用品展覽會在會議展覽中心舉行，場內的展品花團錦簇，令人目不暇給。

4 請在答題簿上順序寫出各行中可以簡化的繁體字及其相應的簡化字(如:簡 — 簡),重複的也請照寫。(Convert the traditional Chinese characters into their simplified forms.) (12%)

(1)

第一行 朝鮮時代，賤人階級位處於社會最下層。凡公賤、
 第二行 私賤、廣大、巫者、社黨、白丁等均屬之。奴隸如
 第三行 同財物，可以買賣、贈送、繼承、貢出，且負責布
 第四行 之義務。奴隸身份之子孫，無論母良父賤，或父良
 第五行 母賤，均難獲免，此為一種奴隸增產主義政策之具
 第六行 體表現。故其數目，至李朝中葉，已佔全體人口之
 第七行 相當比率。

(2)

把下列的繁體字改寫成相應的簡化字，如該字屬於可作簡化偏旁用的簡化字，則寫出兩個應用該字類推的簡化字。如：馬：马，類推：骑、驱。
 (5%)

(a) 廬 (b) 樸 (c) 壯 (d) 萬 (e) 賓

(3)

把下列的簡化字改寫成相應的繁體字，如果可以轉換的繁體字超過一個，應全部寫出來。(8%)

(a)迟 (b)帘 (c)忧 (d)冲 (e)护
 (f)难 (g)肮 (h)欢 (i)厂 (j)艺
 (k)沟 (l)风 (m)偿 (n)惧 (o)钟
 (p)松 (q)皱

5

香港 OSIM 國際有限公司最近推出的新產品 iPamper 手提按摩器，能迅速舒緩肌肉痛楚，促進血液循環。近日該公司發現市面上有不少冒認該產品的劣質按摩器，企圖魚目混珠。假設你是香港 OSIM 國際有限公司的法律顧問，請代擬一則聲明，以正視聽。(Write a Chinese legal notice.) (15%)

- 6 (1) 比較下列兩則文字，並評論其表達方法和效果。(Compare and comment on the following two statutes in terms of form and effect.) (13%)

《中華人民共和國香港特別行政區基本法徵求意見稿》	《中華人民共和國香港特別行政區基本法》
第九條 香港特別行政區的行政機關、立法機關和司法機關，除使用中文外，還可使用英文。	第九條 香港特別行政區的行政機關、立法機關和司法機關，除使用中文外，還可使用英文，英文也是正式語文。

- (2) 請從語文角度評論(甲)(乙)兩則文字內容的差異和表達的效果。(Comment on the following two statutes in terms of their differences in content and effect from a linguistic perspective.) (12%)

(甲)《中華人民共和國香港特別行政區基本法徵求意見稿》	(乙)《中華人民共和國香港特別行政區基本法》
第三十一條香港居民有信仰的自由。 香港居民有宗教信仰的自由，有傳教和公開舉行、參加宗教活動的自由。	第三十二條香港居民有信仰的自由。 香港居民有宗教信仰的自由，有公開傳教和舉行、參加宗教活動的自由。

END OF PAPER

The examination questions are all on written skills, namely correcting ungrammatical sentences (question 1), misspelt words (question 2) and misused idioms (question 3), converting traditional Chinese characters into their simplified forms (question 4), and writing a legal notice (question 5) and a commentary on the language of given statutes (question 6). There is no oral component, in line with the course introduction provided on the university's homepage which states that "The course, which lasts for one semester, will include teaching in a variety of basic practical Chinese writing skills, with an emphasis on the writing of Chinese legal language" ([http://www.hku.hk/law/programmes/0809/LLB200809%20Course%20descriptions_Compulsorylawcourses\(1\).pdf](http://www.hku.hk/law/programmes/0809/LLB200809%20Course%20descriptions_Compulsorylawcourses(1).pdf) on 23 December 2008). The issue of the use of Cantonese as a medium of trial has not been addressed in the course.

7.3 Approach for legal Cantonese education

At the interviews, legal professionals offer different views on how training on legal Cantonese should be implemented. While Magistrate Cheng says that formal training is not necessary as "judges should be able to do a good job" (I. 4: 7 – 9) as long as they adhere to the principles such as being respectable and upright, Justice Hui puts part of the burden on judges of the higher courts who should set good examples for junior judges to learn from (I. 16), a suggestion which seems to have been realized as Student Ho (I. 2: 13 – 15) and Student Kwan (I. 3: 8 – 11) have observed that judges of higher courts are performing much better in terms of speech style compared with magistrates. Justice Hui also stresses the effect of institutional training provided by universities to law students and on-the-job experience (I. 4).

Nevertheless, as shown above, it could be argued that the two universities will help raise the standard of judges' Cantonese skills if more courses on the topic are offered. Reforms on university curricula are needed. For example, the course content and assignments of "CLAW1009 Practical Chinese language course for law students" offered by the University of Hong Kong fail to highlight the importance of legal Cantonese. The only oral assignment is not put in the context of a trial. In this regard, a shift in the assessment strategy is desirable so that the oral presentation is linked to courtroom oral skills in addition to more practicum being introduced to put students' practice in a trial context. Courses like "PLE5007 Advocacy Interviewing & Negotiation" offered by the City University of Hong Kong and "LLaw3096 Mooting" offered by the University of Hong Kong include oral components, but they are in English only. To offer their equivalents in Cantonese could be a useful step towards the goal. Student Ho also agrees that training on Cantonese at university level should be strengthened as she says, "more training, at least one specialized course, should be offered to students on oral Cantonese skills" (I. 7), echoed by Student Kam (I. 4: 3 – 5) and Student Ng (I. 4: 1 – 4).

7.3.1 Theoretical framework

Taking the above issues into consideration, the following is an attempt to come up with an approach for legal Cantonese education for the judiciary and universities. To devise the approach, a theoretical framework for its development needs to be put in place first. It shall reflect the belief in oral communication for the target learners and help identify a suitable methodology encompassing teaching and learning practices leading to the

desirable outcomes. Richards and Rodgers (quoted in Littlewood 1992: 7) point out the three levels of such a framework:

- (1) In the classroom itself the teacher employs *procedures*, which are “the actual moment-to-moment techniques, practices and behaviours that operate in teaching a language”.
- (2) Classroom procedures are selected in the light of decisions that have been made prior to the classroom, at the level of *design*, which decides matters such as objectives, course organization, activity types, materials, and the roles of learners and teachers.
- (3) These matters of design are determined by the teacher’s *approach*, which is “theories about the nature of language and learning that serve as the source of practices and principles in language teaching” (emphasis in original).

In this light, the framework of CDA which informs the research should be adopted for devising the educational approach since it takes into account the research findings regarding characteristics of legal Cantonese as a tool for communication, which could be explained in terms of different levels of meaning of language as described by Littlewood (1992: 21 – 26) below, illustrated by using a typical example of colloquialism discussed in the research:

- (1) Literal meaning – This is the conventional meaning listed in a dictionary, which “makes reference to concepts and ideas shared by all adult speakers of the language” (Littlewood 1992: 22) and hence also known as “referential meaning”. In everyday situations, the literal meaning of

an expression is clear and hardly open to disagreement. For example, the magistrate's utterance of “唔通我叫你去搶咩？ (Will I ask you to rob [meei]?)” (T1,40,E) is a rhetorical question which means “You do not need to rob”, a literal interpretation of the words.

(2) Functional meaning – This refers to the purpose of expression during conversation. For example, “唔通我叫你去搶咩？ (Will I ask you to rob [meei]?)” (T1,40,E) is used by the magistrate to emphasize the reasonableness of his sentence in the trial so as to persuade the defendant into acceptance. The context as shared knowledge between the interlocutors is important for this meaning to be understood by the audience (defendant). Hence functional meaning “can only be determined when we take into account the situation where communication takes place and the relationship between the participants” (Littlewood 1992: 23). It gives what can only be a literal meaning a purpose in a real-life setting.

(3) Social meaning – This is the social information an expression in a particular situation carries. Different utterances may serve to achieve the same function, but they may not give the same social meaning. To achieve the purpose of speaking, one chooses from among a variety of utterances which carry different social information. For example, the functional meaning of “唔通我叫你去搶咩？ (Will I ask you to rob [meei]?)” (T1,40,E) can be expressed in different forms. Below are a few of them:

(a) You do not need to rob to pay the fine.

(b) The fine imposed on you will not put you into financial difficulties.

(c) You can certainly pay the fine.

(d) If the fine was unreasonable, this court would not have asked you to pay it.

The choice of the magistrate, compared with the above alternatives, implies no more than a request of understanding rather than a direct clarification. Coupled with its colloquial style, it gives the social information of informality not expected in a trial setting. Hence social appropriateness is the concern at this level of meaning. As Littlewood says, “we have to relate words to the wider situation in which communication takes place, in order to express and understand the intended functional meanings and (through the choice of alternative forms) the social meanings which the form carry” (1992: 31). In a similar vein, Van Dijk differentiates two types of knowledge in the mental model of a speaker, namely contextual knowledge and semantic knowledge (2007: 310). Contextual knowledge refers to the understanding of the immediate situation and semantic knowledge refers to the remote knowledge of the society in which the conversation takes place (2007: 311).

I would argue that while the research magistrates have few problems with literal meaning and functional meaning, it is at the level of social meaning that they sometimes slip because social meaning dwells on knowledge beyond the immediate conversation. The research findings on magistrates’ speech style performance in Chapter 6 support this proposition. Therefore, in devising the curriculum for enhancing the Cantonese skills of judges and students, the awareness of the speech style and social meaning will be the focus. On this basis, the methodological framework for legal Cantonese education is explained below:

7.3.2 Methodology

(1) Approach

CDA focuses on the relations between the micro level of speech style and the macro level of social structure. It throws light on how judges' speech style reduces or reinforces their social identity and power. Hence for judges to maintain its social status, they should be made aware of the social meaning of their speech: they should not only know what to say, but also how to say it, and why. This theory of communication underlies the overarching framework for the course design, and Chomsky's theory of language use lends support to it. According to Chomsky, there is a distinction between competence and performance (1965). As elaborated by Richards, performance, or proficiency, as he calls it, refers to the degree of skill with which a learner can use a language for particular communicative purposes (1987: 273). It is about observable and measurable behaviour and must be distinguished from competence which refers to what the grammarian for methodological reasons *represents* as language knowledge (Widdowson 1983: 23). Hence, competence refers to what we know about the rules of speaking of a language, and performance refers to how well we can use such rules in communication (Richards 1987: 271). In redefining the meaning of competence, Hymes points out that a speaker needs to know not only the rules of grammar but "when to speak, when not, and ... what to talk about with whom, when, where, in what manner" (1972: 277), hence competence in a language is not merely linguistic, but socio-cultural, in nature. Campbell and Wales also say that the most important skill in language use is "to produce or understand utterances which are not so much grammatical but more important, appropriate to the context in which they are made..." (1970: 247). In a similar vein, Canale points out that

“sociolinguistic competence” is essential for language users. It refers to the knowledge of how contextual and cultural factors are realized through language (1983). Hence different levels of context are important for discourse analysis. As McCarthy, Matthiessen and Slade (2002: 56) say, the following questions are the concerns of a discourse analyst:

Who are the participants in the discourse, i.e. the writer and reader(s), the speaker(s) and listener(s)? What is their relationship? Is it one between equals? Are there differences in power or knowledge between the participants? What are their goals?

These questions are in line with Bachman and Palmer’s emphasis on sociolinguistic knowledge in language learning in a more complex model:

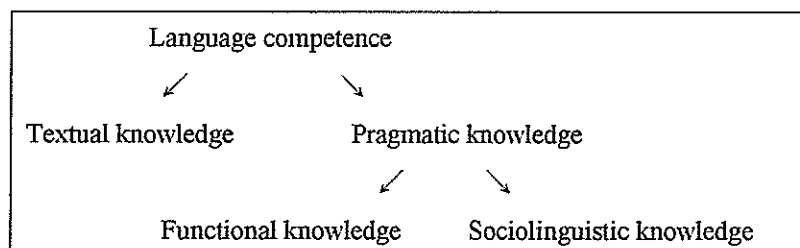


Figure 7.6 Bachman and Palmer’s (1996) model of language ability

Bachman and Palmer (1996: 69 – 70) say that while textual knowledge is required to produce and understand both written texts and conversation, pragmatic knowledge enable people to create or interpret discourse by relating utterances to their meanings, to the intentions of language users, and to relevant characteristics of the language use setting, and that there are two areas of pragmatic knowledge:

- (a) Functional knowledge – it helps interpret relationships between utterances and the intentions of language users.
- (b) Sociolinguistic knowledge – it helps create or interpret language that is appropriate to a particular language use setting. This includes knowledge of the conventions that determine the appropriate use of dialects or varieties, registers, natural or idiomatic expressions, cultural references, and figure of speech.

This understanding has important implication for an effective course design for language learning if judges are to be well trained in both language competence and language performance. As Justice Hui suggests (I. 13: 6 – 9), the case of Justice Wong in Judgment 1 is an instance of lacking pragmatic knowledge rather than textual knowledge. As Cohen says, one may fail to communicate effectively in situations involving complex speech acts such as apologies and complaints even though one's command of grammar and vocabulary is fine, and what is lacking is knowledge of how to execute the speech act appropriately, hence one of the most important tasks in acquiring communicative competence is learning the rules of appropriateness. He says that although the learning of speech acts would appear to be an important priority for the language learner, the set of strategies and the language forms to be used in realizing each strategy are not always 'picked up' easily (1990: 65). Cohen's opinion suggests the dichotomy between knowledge and performance, and they need to be connected to bring about effective communication. A curriculum for legal Cantonese should be, therefore, composed of two parts, one knowledge-based and the other skill-based. The former deals with the

knowledge on the relations between speech style and social formation and the latter deals with the resultant realization in oral Cantonese skills. This approach will meet the requirement suggested in the last chapter, that judges should be trained to become more self-conscious in the use of Cantonese as a social instrument and be equipped with what is actually needed for performance.

(2) Design

(a) Learning goals

Guided by the above theoretical framework, the design of a legal Cantonese course should aim at the following learning goals:

- (i) Learners are able to recognize the relations between speech style and social meaning.
- (ii) Learners can use formulaic expressions as an automatic skill in their daily routines and can produce the appropriate speech forms in other spontaneous situations.

These goals correspond to the concepts of “knowledge” and “performance” of the guiding theory. As Van den Branden says, defining the learning goals is basically a matter of describing the tasks the language learner needs to be able to perform and of describing the language use that the performance of these tasks necessitates (2006: 4). How the learning goals are actualized will be explained in the following course design.

(b) Course organization

The above goals help shape the course organization into two major components: knowledge on legal Cantonese (such as its features and social meaning associated with usage) and speech performance. Thornbury and Slade's (2006: 279) course design for genre learning also features these two components in a certain order:

The starting point of a top-down, genre-driven model of instruction, therefore, is a context of use, and an authentic instance of real communication typical of such a context. This "text" is then subjected to analysis (which may include analysis of its grammatical, lexical and phonological features, as well as of its overall discourse structure) before learners attempt to replicate these features in the production of their own texts.

Cope and Kalantzis also support the approach with explicit modeling of the features of the target text type while highlighting their relations to the socio-cultural context, arriving at a genre-based pedagogy (1993). This conceptualization is important if legal language is to be distinguished from, and not to be undermined by, other language genres such as the discourse of mass media, the influence of which on legal Cantonese has been a concern for Justice Hui (I. 14: 1 – 4). With knowledge on the socio-cultural aspect of discourse linked up with actual discursive practices, the approach is suitable for learning the legal genre in the light of CDA. As shown in the following section, this course organization leads to two levels of learning activities: instruction and practicum.

(c) Learning activities

Burns, Joyce and Gollin also adopt a similar dual-component design and arrive at the following steps for teaching spoken language (1996: 88), which will be elaborated to serve the purpose of legal Cantonese education:

- Step 1 Providing and discussing relevant cultural, social and contextual information associated with the text type
- Step 2 Using typical models of natural spoken discourse related to the text type
- Step 3 Focusing on and guiding learners on various aspects of the discourse such as specific discourse strategies and particular lexical items
- Step 4 Giving explicit explanation and modeling of the tasks to be undertaken
- Step 5 Setting up tasks for guided practice.

These steps echo Thornbury and Slade's (2006: 279) approach for genre learning and realize an important element of professional education recognized by Van de Branden, namely there should be a close link between the tasks performed by learners in the language classroom and in the outside world, that the things learners do with language in the classroom (the classroom tasks) should be related to, or derived from, what the learners are supposed to be able to do with language in the real world (2006: 6), and in this sense the activities invite learners to act primarily as language users, and not as language learners (2006: 8 – 9).

To turn language learners into language users, activities should, therefore, take a situational approach (see Alexander 1967) which capitalizes on the audiovisual method, so that it embraces what Bachman

(1991) requires for achieving a high authenticity of assessment, namely the situational and interactional aspects of authenticity. The former hinges on the explicit reproduction of the features of the contextual learning task and the latter the amount of engagement the learner has in the interaction with the task. As Bhatia (1993: 194) says:

Whether one considers teaching materials or testing procedures, it is by no means a great achievement to use subject-specific authentic texts as input if all it brings is the relevance of the content for the sake of the psychological reality. More important, is what the test designer wants the learner to do with it.

Douglas also points out that the simulation of real-life tasks and the interaction between the characteristics of such tasks and the language ability of the learner are equally important (2000: 88), and task with high authenticity will elicit a rich language performance in terms of specific purpose language ability. This echoes Richards and Rogers' (1986: 72) view inferred from Littlewood (1981) and Johnson (1982) that the following principles are important for communicative language learning:

- (i) Activities that involve real communication promote learning.
- (ii) Activities in which language is used for carrying out meaningful tasks promote learning.
- (iii) Language that is meaningful to the learner supports the learning process.

To engage learners in meaningful and authentic language use, video recordings, film strips, trial transcripts and role plays such as mooting are important tools. For step 1 and 2 of the Burns, Joyce and Gollin's model, learners are, for example, shown video recordings of trials or film strips and/or trial transcripts, to be followed up with an exploration into the text-context relationship and the interactive nature of language and society. In a broad stroke, the differences between formal and informal speech styles have to be highlighted at this stage. Examples to illustrate the differences have to be available for close scrutiny. As Thornbury and Slade (2206: 20 – 21) say:

An informal (or casual) style contrasts with the style of more formal spoken genres...where formal speech is defined as 'a careful, impersonal and often public mode of speaking used in certain situations and which may influence pronunciation, choice of words and sentence structure' (Richards and Schmidt, 2002: 209). Informality in speech is characterized by lexical choices – such as the use of slang, swearing and colloquial language...

The social meaning of the use of colloquialisms and formal Cantonese expressions has to be emphasised. For example, the significance of the use of "I" and "The bench" and the use of verbal particles as a discourse strategy in the courtroom setting has to be pointed out. As Cook-Gumperz, Jupp and Roberts say, that the social and cultural differences affecting the signaling in all the channels which make up the act of speaking are many

and subtle, so that small linguistic differences may have much bigger social-interactional consequences (1982: 239).

For step 2, the provision of a trial context showing conversation in real life for scrutiny by learners is essential, and this explains why Billows says that the material of the language lesson should not be language, but life itself; the language is the instruments we use to deal with the material, slices of experience (1961: 17). Halliday et al also say that the emphasis is on language activity as part of the whole complex of events which, together with the participants and relevant objects (Figure 6.2), make up actual situations (1964: 38). This again captures the essence of the social meaning of legal Cantonese. What follows will be a genre approach and how language use reacts to the situation becomes the theme. Typical models of judges' discourse are shown to justify the theory of genre. These initial activities have the merits pointed out by Thornbury and Slade (2006: 280):

learners are immediately exposed to example of language in use. Moreover, by attempting to relate texts to their contexts and functions, there is a better chance that the linguistic features of such texts will not be seen as arbitrary but socially and contextually determined.

The focus will then move from language knowledge to language skills (step 3). Explicit instruction on formulaic routines, or what Hymes call "the rule of speaking" (1972), will come in. This offers the basic help to learners who do not know very well how to express in Cantonese in court as observed by Barrister Cheung (I. 3. 2 – 4) and the student interviewees like Student Kam (I. 4: 2 – 3). As suggested by Thornbury and Slade, a store of

conversational routines or formulaic expressions is essential for language learners so that they could engage in conversation with lexical phrase knowledge, and hence the acquisition of a bank of memorized, fixed (or semi-fixed) expressions is of enormous utility in the development of conversational fluency (2006: 193). Littlewood also says that “skilled performers possess a large repertoire of plans that are ready-made and, once selected, can unfold without conscious effort or attention” (1992: 41), and that the most obvious failure in speech performance occurs when speakers conceive a communication purpose but their language repertoires do not contain the plans needed for carrying it out efficiently (1992: 45). These plans, or a speech data bank, I would argue, are equally important for the development of the appropriate speech style for the courtroom setting. The learning of legal terms will, for example, contribute to the appropriate style in the courtrooms and inform the choice of expressions for trial purposes. This process may be referred to as a lexical approach commonly included in language learning courses (Willies 1990, Lewis 1993). As Nattinger and DeCarrico (1992: 121) say:

Lexical phrases are integral to conversation, for they provide the patterns and themes that interlace throughout its wandering course. These phrases are essential, even for rudimentary ‘communication competence’, yet texts that present conversational language do not do so in any systemic way that would permit learners to form connected, functional discourse.

At this stage, the focus of learning may move from memorization of simple high-frequency formulaic routines, like readily available translations for frequent terms (examples of which are “okay” (T1,3,S), “relevant” (T2,61,F), “annotation” (T3,2,F) and “charge” (F1)), to more spontaneous control of language (such as replacing “屁股 ([*pei-goo*])” (T3,13,D) and “唔通我叫你去搶咩? (Will I ask you to rob [meei]?)” (T1,40,E) with their formal varieties) in a quasi free-flowing exchanges between the judge and the counsels or defendants in the courtroom. In this light, the total skill learning process has to be divided into sub-components with a gradation of difficulty and finally learners have to integrate all the part-skills so that oral plans could be retrieved at will. These oral plans could also be organized under different learning areas or topics such as “interrogating” (asking the defendant to clarify his or her answer), “persuading” (persuading the counsel on the necessity of being brief), and “explaining” (explaining to the defendant the justifications for a ruling). Through repeated practice and evaluation, automatic processing of language could be achieved as the information-processing theory (Levelt 1978: 57 – 58) suggests:

Initially the execution of such a unit of activity requires the allocation of large amounts of mental effort, since it has to be designed anew...Repeated performance of the activity, however, leads to the availability of ready-made plans in long-term memory for such activities...The result of automation is that less and less effort is spent on lower-level patterns of action, so that more and more capacity is left for the higher level decisions.

Richards also points out that the purpose of language learning is to provide opportunities for learners to develop the use of controlled processes in performing different kinds of tasks, and gradually to acquire automatic control through practice (1987: 278). It is at the stage of automation that oral proficiency is attained. In this sense, Magistrate So's use of the written form in speech (T3, 30, U) as discussed in last chapter reflects a lack of automatic control. Repeated practices will rectify the mistakes in this type of speech production.

For step 4 and 5, Cantonese mooting provides the best situation for practicing legal Cantonese, for it elicits the communicative behaviour that naturally arises from performing real-life language tasks and therefore foster language acquisition (Van de Branden 2006: 9). Ellis also emphasizes the importance of learning oral skills through participation in conversation (1990: 92). As a mode of practice, role plays such as mooting create language situations for learners to act out their speech for evaluation and improvement. They allow learners to "explore the effects of different contextual factors – power relationships, setting, communicative purposes, etc. – on language" (Thornbury and Slade 2006: 265). As Scott says, role plays are important because they provide learners the opportunity to practice speaking under conditions that are as close as possible to those of normal communications (1981: 77). Role play could also be used as the means of assessment for learning. It "stimulate the test-taker to produce spontaneous speech-behaviour within given roles eliciting specific speech functions (Lee and VanPatten 1995: 173 – 174). Hence it is argued that Cantonese mooting should be made a compulsory part of legal education if standardized legal Cantonese is to be promoted among judges and if the

student interviewees' request that a course on Cantonese skills should be offered to students is to be entertained.

(d) Input materials

As Thornbury and Slade (2006: 288) say:

Input materials are designed to model certain features of conversation for the purposes of conscious study and internalization. Typically these take the form of written transcriptions of conversational extracts, either specially written or authentic, with accompanying audio or video recordings.

Since “the value of transcripts cannot be overestimated” (Thornbury and Slade 2006: 297), input materials for textual analysis are preferably transcripts of trials for learners to study the features and the appropriateness of judges' speech style, and for discussion and learning activities. Reading transcripts of the higher courts may well be another way of learning (Hui I. 16: 1 – 3). As Willis and Willis say, “using transcripts allows learners time to notice features that may not be noticed for a long time if only heard in the flow of real time conversation” (1996: 75 – 76). Even during the practice stage, transcripts showing learners' own speech style, whether from records of role-plays or real trials, could be very useful for self and peers' evaluation. They may be used for comparison with, say, reference transcripts to open up discussion. While Koch notes that one way of improving speech delivery is to listen to effective speakers and emulate them (2010: 118) and hence video recordings and transcripts which display

good practices could be used for modeling, which Barrister Cheung also sees essential (L. 6: 2 – 3), negative examples are equally important for consciousness-raising purposes.

(e) Role of teachers and students

As the learning process proceeds, the focus moves from the teacher to the learner. From step 1 to 3 which is the exposure and instruction stage, explanations are important and are largely given by the teacher, sometimes preceded by activities or learners' discussion. There is also evidence that without explicit instruction, learners are unlikely to acquire certain sociocultural rules necessary if conversation is to be sociolinguistically appropriate (Thornbury and Slade 2006: 232). Yet explicit instruction without practicum reduces learning effectiveness. Cohen recalls his own language learning experience and discovers that though teachers had provided him with a lot of language knowledge, he was unable to engage in conversation because he lacked practice opportunities and hence what he had learned had not been automatized, and found himself "not comfortable enough in communicative situations to be motivated to try out language knowledge in such contexts" (1997: 155). The teacher should, therefore, assume a less dominant role towards later activities when learners take on a more active role. Intensive practice by learners in step 5 means that the teacher at this stage acts as a facilitator to promote continuous participation and improvement. Evaluation and assessment could also be in the form of peer review rather than merely comment by the teacher. The gradual shift of gravity from the teacher to the learner in the classroom is essential if the attention of the learner has to be maintained and their actual performance improved through practice.

(f) Assessment

Since goal-specific tasks are set for practicum, it is imperative that assessment needs to tie in with the design. As Long and Crookes say, assessment of student learning in this kind of task-based design should be organized “by way of task-based criterion-referenced tests, whose focus is whether or not students can perform some task to criterion, as established by experts in the field, not their ability to complete discrete-point grammar items” (1992: 45). This highlights certain requirements in assessment:

- (i) There should be criteria.
- (ii) There should be expert participation in setting these criteria.

Legal professionals should be involved in working out the criteria as to what is considered judges’ appropriate speech style in courtroom and what types of performance are considered meeting the criteria. This echoes the modeling function of judges of higher courts (Hui I. 16). Descriptors as well as samples for appropriate performance need to be provided so that learners know the requirements of them, and these assessment materials need to be developed with the teaching and learning materials for the course so that they form an integrated whole.

This assessment framework is in line with Baker’s (1989) performance-referenced tests which aim at assessing learners’ actual performance in a language use situation, instead of paper and pencil examination, and therefore is more authentic.

(3) Procedures

The above course design demonstrates the importance of the three elements for effective language learning suggested by Thornbury and Slade (2006: 237):

(a) Exposure

(b) Instruction

(c) Practice

It also reiterates Judd's model (1999) which serves to illustrate how the knowledge-based and skill-based components work together:

Exposure → Instruction → Practice

Learners are shown video recordings and/or trial transcripts which feature examples of appropriate or inappropriate speech style; they are given explicit instruction; they practice in mooting.

In practice, the three elements can be arranged in multiple ways, as suggested by Thornbury and Slade (2006: 296), such as:

(i) Instruction → Exposure → Practice

Learners are given explicit instruction in a feature of speech; they observe how this feature works in the trial setting through video recordings or transcripts; they practice in mooting.

(ii) Exposure → Practice → Instruction

Learners are shown video recordings and/or trial transcripts which feature examples of appropriate or inappropriate speech style; they practice in mootings; they are given feedback on their performance, highlighting the merits or mistakes they may or may not have observed from the video recordings and/or transcripts.

The first model also echoes Feez's (1998: 33) teaching/learning cycle which is composed of three stages as follows:

- (i) First stage: conduct activities to construct knowledge of language use
- (ii) Second stage: study the language features in context
- (iii) Third stage: practising with the focus on the language features

The following is an example of a task designed for legal Cantonese education with the concept of Feez's cycle:

<p>Task</p> <p>In the following video recording a magistrate is delivering his sentence on a defendant who is not satisfied with the judge's ruling. Watch the video recording and answer the following questions:</p> <ol style="list-style-type: none">1. What are the social identities of the interlocutors?2. To what extent are their social identities displayed through language? Give examples.3. What are the speech goals of the interlocutors?4. To what extent their use of language helps them achieve their speech goals? Find a particular utterance which you think helps them to achieve their speech goals / prevent them from achieving their speech goals.5. What improvement will you suggest on the use of language for the judge?6. What criteria are you using for making the suggested improvement?
--

Figure 7.7 Sample task for legal Cantonese education based on Feez's (1998) model

The task aims at highlighting the relations between speech style and social identity and power in a courtroom setting, the overarching concept of the suggested course design. It could be preceded by a general discussion on the interaction between social identity and language. The question and answer session can also take the form of group discussion so that each group can present its answer to the whole class for further in-depth discussion.

7.4 Conclusion

This chapter has considered the relationship between the education that legal professionals receive in legal Cantonese and how this might be improved (research question 3 and 4). The judiciary and the universities have not been active in providing legal Cantonese education to judges and students. Hence Barrister Cheung has found that “judges may not know very well how to express in Cantonese” (I.3: 3 – 4) and Student Ho and Student Ng also point out that their Chinese is deteriorating because the course they are studying emphasises English rather than Chinese competency. To tackle the problem, this chapter suggests an approach for legal Cantonese education under the theoretical framework of CDA, though it is by no means conclusive as different factors with varying degrees of importance have to be taken into account in actual circumstances for arriving at an optimal course design. Among the factors are the age, the level of language competence, the interest and expectation of the learners, their preferred style of learning, class size, etc. The suggested approach, however, could be a framework for refinement. The principle is that language knowledge and language skills should be considered as interrelated parts of the learning process. As Littlewood says, language learning involves developing a set of habits (i.e. automated skills), but these skills have their basis in the mind

(1992: 39). Sound judgment of social factors is the prerequisite for proper speech performance in the courtrooms, and this is what the research theory of CDA highlights.

Adopting the theoretical framework of Fairclough's critical discourse analysis (2001) supplemented by Bell's theories of speech style shift (2001), this research explores the sociolinguistic nature of the criticisms on magistrates' speech style in Hong Kong. The social causes of the criticisms are revealed through looking into the aspirations for legal Cantonese by legal professionals, and how the practices of legal Cantonese by magistrates deviate from the aspired standard. The findings also shed light on the issue of legal Cantonese education for judges and law students, and hence the research ends with recommendations for devising a practicable approach for legal Cantonese education in the hope of bridging the gap between aspirations and practices regarding legal Cantonese. In this concluding chapter, a summary of the guiding theories, findings and implications of the study will be presented to highlight its significance, and the possibility for further research will also be discussed

8.1 Guiding theories

This research focuses on the social meaning of the magistrates' speech style. It is grounded on the discourse-society relationship suggested by CDA which finds its basis on the conception of power hierarchy in a capitalist society (Fairclough 1988: 115). Such relationship is further enhanced by the proposition that judges' speech style as an institutional discursive practice has a complex distribution. Other than the defendants, there are other receptors like the reporters (and the public via them), the audience (including the acquaintances of the defendants and the victims), and court staff in the courtroom. Different people mean multiple readings of the

judges' expressions. A defendant-oriented approach is therefore of limited value to the study of judges' speech style which should be instead interpreted as a public performance in which the interest of society is involved. It is in this light that this research finds its widest socio-ideological meaning.

This research provides an analysis of the background of the emergence of Cantonese as a medium of trial in Hong Kong and argues that since social institutions are in asymmetrical power relations, the court continuously tries to maintain its social identity and power. As Evan points out, to be successful in influencing the behaviour and social attitudes of the people, a legal system must enjoy a high prestige (1980). The courtroom is one of the legal settings for achieving this goal. This echoes Keith's view that "what is professionally achieved is also linguistically achieved and the identities that emerge from engagements with daily business are as much linguistic as professional" (2006: 219).

Through observation, expert interviews and documentary analysis, this research has found that the majority of legal professionals aspire for an appropriate speech style to be adopted by judges in the courtroom. With the standardization of legal Cantonese, judges can maintain the social identity and power of themselves and the court. Whether magistrates manage to adhere to such a speech style serves to explain their success and failure in maintaining their social identity and power.

Bell's audience and referee designs complement the CDA framework by providing an explanation to the interactional relationship between judges and other people both in and outside the courtroom regarding speech style. It reveals how judges are under both the constraints of the standardization of speech style and the influence of other discursive practices, and therefore

accounts for the formation of magistrates' speech style at the "micro" discourse level (courtroom) and the "macro" discourse level (society), making this explanatory study of magistrates' speech style a complete one.

8.2 Findings and implications

Informed by the above theories, the research findings and implications are significant in terms of the following:

(1) This research is a pioneering study of its kind. Adopting a CDA framework which emphasizes the socio-ideological dimensions of discourse, the research is the first attempt at discovering the social dimensions of the courtroom language issues in Hong Kong. It provides a new perspective to the understanding of the social identity and power of judges through the aspirations for and practices of legal Cantonese. Through a qualitative study, the speech styles used by magistrates in court have been investigated and accounted for. Factors leading to the use of legal Cantonese and colloquial Cantonese have been explored. Judges and other legal professionals were interviewed to unravel their insights into the formation of magistrates' speech style. Data from field notes, trial transcripts, judgments, course materials and other documents were used to triangulate with their opinions. An area hitherto unexplored due to its inaccessibility is at least made more transparent, implying possibilities for further research.

(2) It is also the first research in the legal field that highlights the significance of speech rather than written texts such as judgments as a mode of interaction between judges and other participants in a trial. It

also breaks the limitation of previous descriptive work on speech style which places little attention to its effects outside the immediate situation of the courtroom, and serves to explain in what way magistrates' speech style strengthens or weakens the social identity and power of the court in Hong Kong, and why the speech style of judges is one of the key areas of language studies which deserves more attention.

(3) The use of authentic trial transcripts and interviewing serving judges (a magistrate and a high court judge) in the research set a precedent for the study of judges' speech style. Only with the complete transcripts can one study in details how judges function linguistically as the subject of the court under the influence of the clients and the public, and how magistrates' deviation from social constraints occurs. Likewise, expert interviews with serving judges provide essential information on understanding the primary professionals' views on legal Cantonese. This revelatory study, therefore, opens up a new ground for further exploration in legal language by using new data sources.

(4) From a wider perspective, this study enhances the generalizability of the research theories to issues on language, identity and social power relations, providing insights into the nature and use of language in relation to society, echoing the view that the goal of a qualitative study is to do a "generalizing" analysis (Lipset, Trow and Coleman 1956: 419 – 420). The research is situated in Hong Kong which is a multilingual society and the average population is bilingual and their language competence enables them "to utilize more fully the social meanings that are associated with code choices in the community" (Luke 1998: 150).

As Pennington says, the development in language use in Hong Kong is from more of a linguistic one to more of a social one, from more of a requirement to more of a choice, from an imposition or a superposed variety to an “act of identity” (1998: 30). The research, therefore, aims to generalize the theoretical proposition that social power relations play a dominant role in the identity management and in turn the speech style of institutional members. Through data triangulation and literal replication for this study, the research theories will be expanded by their application to a new situation, namely the Hong Kong courtroom, providing another aspect of meaning for them.

- (5) The research has found that the insurmountable tension between functional meaning and social meaning of language in legal discourse is no more than a myth. As some interviewees mention, the use of colloquialisms might, though at the expense of the identity of magistrates, help the defendant understand the legal professional discourse. Nevertheless, the research argues that a balance for the preservation of the social identity of magistrates and ease of comprehension for defendants does exist in legal Cantonese. Cantonese colloquial expressions could be substituted by their formal equivalents as shown in the discussion in Chapter 6 and 7. Formulation of a set of standardized legal Cantonese is possible without sacrificing the interests of either party.

- (6) The research reveals one significant feature of judges’ speech performance: while magistrates’ choice of speech style is neither rigidly controlled nor arbitrary, the conventional discursive practices of other

ingroup members play the decisive role. As argued, judges participate in defining a trial setting and in turn the appropriate speech style while also being subjected to the speech convention of their ingroup members. Such a dynamic aspect of professional discourse becomes a recurring challenge for magistrates. The research findings further confirm the controlling power of the ingroup members over the discursive practices of magistrates. It discovers that there is a dominant view on the necessity of standardization of judges' speech style, echoing the criticisms by senior judges on the magistrates' speech style in court. It confirms the theoretical proposition suggested by CDA that there exists a dominant discursive practice among members of a social institution. Moreover, the overwhelming view among the interviewees, particularly the two judges, further suggests that if institutional discourse is to be assessed for appropriateness, it should primarily be assessed by senior judges like those of the high court. Hence if the use of the colloquial style might be taken as a reflection of the changes in social attitude towards legal language and hence part of the natural language development, in line with the ongoing democratization process in a global scale, it tends to be a top-down rather than a bottom-up process in the legal profession.

(7) The research contributes to the theory of relevance for legal discourse.

Commenting on the present methodology of conversation analysis, Van Dijk says that a more explicit theory of relevance is needed to account for the countless mental aspects that appear to mediate between social situations and conversation (2007: 312). He points out that both the immediate situation of actual discourse production and understanding in

face to face interaction, which he calls “local context,” and the historical, social and cultural situation in terms of groups or institutions, which he calls “global context,” have to be taken into account in the description and construction of a discourse (2007: 286). Since the research findings reveal that courtroom language of the judge is not just an instance of legal talk but involves the studies of its immediate setting as well as its broader social context for its perception, the contextual properties and their relevance to courtroom conversation with its specific participants are highlighted. The context models of these participants, namely how speakers contextualize their own speeches, contribute not only to the understanding of discursive performance of the participants, but to the development of a theory of relevance for discourse analysis generally. The exploration on the concept of relevance for discourse performance at two levels, namely the immediate context of the setting where interaction takes place and the larger context of the social power relations, offers a fertile ground for further research.

- (8) The research is also a pioneering work on legal Cantonese education. As Lord, in support of the majority of the research interviewees, points out, the undesirable local situation in the use of Cantonese is that only a very small proportion of Cantonese speakers in Hong Kong are actually properly familiar with, or actually use, its high variety, even in situations when this is definitely called for (1987: 10). In this light, the research discovers the inadequacy of the education provided by the judiciary and the universities and highlights the necessity of studying Cantonese as a spoken variety of Chinese for a more systematic understanding of the features of high and low Cantonese, and how the knowledge could be

applied to legal Cantonese education in the legal profession. It is suggested that the relevant course should address the knowledge as well as the skill problems for the practice of legal Cantonese so that learners are made aware of the social meaning of speech style and are able to produce the appropriate speech style in court.

- (9) For legal Cantonese education, an approach with CDA as the guiding framework is devised. The course design underlies the importance of the social context of Hong Kong and the social meaning of legal Cantonese. To put theories into practice, procedures for classroom activities incorporating the three essential elements of exposure, instruction and practice have been suggested. The use of the audio-visual method and role play (mooting) is emphasised so that learners are acting as language users in context. A sample task has also been worked out for reference. The curriculum provides a blueprint for the introduction of legal Cantonese education as the first of its kind in Hong Kong.

8.3 Possibility for further research

The research on legal Cantonese as a spoken genre in Hong Kong also points to the direction of further research at different levels. For example, research could be conducted in the context of other languages. As one of the interviewee points out, very colloquial style of language is adopted by judges in the courts of the US, hence it would be conducive to the development of CDA in the legal context if the issue could be studied and its findings compared with those with other languages to shed more light on the sociolinguistic nature of legal language. In this sense, this research may be taken as the start for a cross-cultural study of spoken legal language.

Furthermore, the research focuses on the magistrates' practices of legal Cantonese and therefore could be limited in scope, and studies could be conducted at other levels of courts such as the High Court or the Court of Final Appeal where, as some interviewees say, judges perform better in terms of speech style. It would therefore be enlightening to look into the differences in speech style between courts of different levels and how such differences could be accounted for and what implications they could bring about on a sociolinguistic basis. Equally promising will be studies on the language used in courts for specific purposes such as the Small Claims Tribunal, the Labour Tribunal or the Family Court. How the style of legal language is possibly affected by the subject matter of the courtroom communication, given their different social concerns, could be investigated and another perspective for the study of spoken legal language could be generated.

Research could also be conducted from the perspective of not legal professionals but other stakeholders such as the public who may see things differently. How the views of members of the public as the majority users of law differ from the legal professionals' contribute to the understanding of legal language on a wider social basis.

As Fairclough and Wodak postulate, both the ideological loading of a particular way of language usage and the power relations which underline them are often unclear to people until they are made visible through critical analysis (1997: 258). The applicability of CDA, therefore, could be further tested through the research suggested above.