

The defendant's dilemma: Being cooperative without compromising their defence

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Abstract

In Chinese criminal trials, defendants face the dual tasks of providing information as “an object of interrogation” and defending themselves as a defendant. Against such a backdrop, they face the dilemma of being cooperative and defensive at the same time. This research investigates the practices they use to navigate this dilemma. A corpus linguistic analysis identifies two key features in defendants’ language: negation, and words associated with narration. These point to three main practices: defending with a (partial) denial, accounting for an “unexpected” lack of knowledge, and persuading through an uninvited narrative, practices which are explored through a fine-grained conversation analysis. Linguistic devices such as indirect responses, double verb constructions, extreme case formulations, and the mood adverb “也, (ye)” contribute to the negotiation of the dilemma. It is found that a balance of defence and cooperation is key to a defensive response in the Chinese courtroom.

Keywords

defendants’ responses, courtroom talk, interactional dilemma, Chinese criminal trials, conversation analysis, corpus linguistics

Introduction

Defendants in criminal trials are interactionally compromised in many ways. They are lay speakers in a professional arena, whilst being the focus of everyone’s attention. They are negatively positioned by the fact that they are indicted with a criminal offence,

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whilst attempting to protest their innocence or mitigate the seriousness of the crime. And they are required to answer questions designed to construct a legal argument for the trier of fact: the judges. At the same time, in legal studies, much of the research has focused on legal professionals' language (e.g. Eades, 2000; Harris, 1984; Heritage, 2002; Heritage and Sorjonen, 1994; Johnson, 2018; Woodbury, 1984), obscuring our view of the defendant's dilemma: how to be cooperative without compromising their defence. Because defendants' responses are "interpreted as the effect of an external cause, shaped by constraints of prior questions and turn-allocation systems" (Carter, 2019: 225), and "witnesses are poorly placed in the interactional hierarchy of courtroom talk" (Cotterill, 2010: 357), we need to ask: is it still possible for them to resist the power and control of questioning? Harris (1989: 131) suggests it is, because "the very notion of interaction presupposes some sort of linguistic reciprocation." This paper explores the ways defendants negotiate their reciprocal role in Chinese criminal trials.

Since a trial can be understood as an event where one party blames the other, who in turn faces the task of blame management, blame management strategies are considered important kinds of reciprocation in lawyer and witness interaction (Malle et al., 2014: 175), including denial, excuses, and justifications. A small number of studies have investigated these kinds of strategies, giving us knowledge about a variety of defendants' defensive strategies. Harris (1989) examines counter-questions and interruptions. Drew (1990, 1992) identifies avoiding self-correction and providing alternative descriptions to the version provided by the legal professionals as important self-defence strategies. Cotterill (2004, 2010) identifies four types of "rebellious" behaviours by defendants and witnesses from the perspective of Gricean maxims: questioning relevance, diverting discourse sequencing, challenging the authority of the law and/or the lawyers, and challenging lexical formulations proposed by lawyers.

These studies are mainly based on Anglo-American trial data in the Common Law adversarial tradition, rather than the Chinese criminal trial system, which combines features of the inquisitorial and adversarial systems (Xiong Qihong, 2016). Adversarial systems are often described as "a kind of contest between two equally-situated contestants, each of which is striving to prevail" (Ainsworth, 2017: 80). Inquisitorial systems are "imagined as a neutral inquiry conducted and controlled by a state official aimed at investigating and establishing the facts of a contested occurrence" (Ainsworth, 2017: 81). While the adversarial systems highlight competition, the inquisitorial systems emphasise finding the truth. In Chinese criminal trials, while defendants are, naturally, a defending party (as in the adversarial tradition), they are also an "object of interrogation" (Xiong Qihong, 2016: 34), subject to examination by judges, prosecutors, victims, and their own lawyers (following the inquisitorial tradition). Being cooperative in providing information is seen as a sign of good conduct, of cooperating with the court, which can support their request for sentence mitigation. According to the provisions of the third paragraph of Article 67 of the Criminal Law of the People's Republic of China, those who truthfully confess their crimes can be given a lighter punishment. "Truthfully confess (如实供述)" refers to their honesty and cooperation in giving testimonies before and during trials. In such circumstances, they face the dilemma of being "cooperative without compromising their defence" (Drew and de Almeida, 2020: 186). Komter (1994), in examining interaction in the Dutch courtroom, brought our attention to this dilemma and identified three cooperatively defensive strategies: selective admissions or

selective memory, alternative descriptions, and the removal of agency. Very few studies (Liao Meizhen, 2004; Carter, 2019) have addressed the dual tasks faced by Chinese defendants.

This research highlights the influence of the institutional context on defendants' language and focuses on their linguistic practices as they negotiate the dilemma of balancing cooperation and defence.

The data and methodology

The data include the transcripts of 49 Chinese criminal trial videos from the website of "China Court Trial Online" (<http://tingshen.court.gov.cn/>), the official Chinese website which livestreams trials and displays recorded trials uploaded by courts from across China. The data consist of 26 murder trials and 23 assault trials. In Chinese criminal trials, most defendants plead guilty, and both prosecution and defence agree on what happened (in 47 out of the 49 trials collected); however, they argue about *how* an event or occurrence (crime) happened in order to assess whether there are factors that aggravate or mitigate the sentence. The corpus built with the defendant examination transcripts in these 49 trials amounts to 284,404 Chinese characters. Unlike English, Chinese characters are written in a string with no space between characters to indicate words. So that the Chinese transcripts could be analysed via corpus software, they were processed with *ROST Content Mining System 6.0* (Shen, 2018), which is able to put a space after one meaning unit (i.e. segmentation or tokenisation). The minimum meaning unit in Chinese usually contains two or more Chinese characters. Though *ROST Content Mining System* cannot guarantee 100% accuracy in segmentation, close examination of the segmented txt files finds very few errors. When errors are spotted, they are manually corrected. After tokenisation, the corpus amounts to 169,556 tokens.

Though the data are publicly accessible, they contain personal information and, therefore, they have been anonymised to prevent participants from being identified. Ethical approval was granted by the University of Leeds (reference no: LTENG-036). The data were transcribed from the audio-visual record in two ways: first a word-for-word light transcription for corpus linguistic analysis, and second a richer conversation analysis transcription of specific extracts for close interactional analysis, which will be evident in the presentation of examples below. The meanings of the transcription symbols used in these examples can be found in the Appendix. To save words and for simplicity, instead of providing three-line glosses for every excerpt, we used literal translations to keep them as close to the original as possible. Idiomatic translations are provided where relevant.

Two key features of defendants' responses

A corpus-driven approach (McEnery and Hardie, 2012: 6) that takes a bottom-up view of data was used to identify salient features of the defendants' responses. Defendants' turns were extracted from the dataset with Python code, amounting to 83,061 tokens. After searching the ngrams ($n=2, 3, 4$), which are a contiguous sequence of n items (typically words or characters), we find that bigrams ($n=2$) are the most useful in identifying key lexical patterns in the dataset. We identified the top 100 bigrams with the corpus software

AntConc 3.5.9 (Anthony, 2020) and found that 28 of them occur frequently due to the inclusion of common turn-initial or turn-final words, such as “被：我 (Defendant: I)” and “被：是 (Defendant: Yes).” Since these bigrams only provide a single word from the defendant’s response, offering limited insight into the defendant’s language characteristics, we excluded them from further analysis. Next, we focused on bigrams with raw frequencies exceeding 100 occurrences, totalling 33 (Table 1).

On close examination, these bigrams in Table 1 can be divided into two sets, shown in Table 2. Set one is a narration set; set two is a negation set, in which a prominent category is the “not know” response. These two sets of bigrams point to important defendant strategies in the data, which motivate the close interactional analysis in section “Interactional practices of the defendant’s dilemma” below. The bigrams in set one show the defendants’ orientation to narration, with bigrams related to time, such as “然后 我 (then I),” “当时 我 (at the time I),” “时候 我 (when . . . I),” speech reporting such as “我 说 (I say),” “说 我 (say I),” and behaviour description such as “打 我 (beat me),” “打 了 (beat *le*).” The particle “了 (*le*)” is usually used to mark an action as complete, and is commonly found in narration. In addition, there are three bigrams containing “就 (*jiu*)” including “我 就 (I *jiu*),” “他 就 (he *jiu*),” and “她 就 (she *jiu*).” “就 (*jiu*)” has many meanings (Liu Lin, 2013: 164–167), and its core meaning is to indicate temporal relations. It can be used to describe things happening quickly, early, or immediately after another thing, making it also important in narration. Being aware of the “anti-narrative” (Heffer, 2012: 270) design of courtroom interaction as “[I]n modern judicial procedure, stories rarely are told directly, uninterruptedly” (Brooks, 2005: 417), this research looks at how defendants include narrative in their responses, in particular when a narrative is not invited (Section “Persuading through an uninvited narrative”).

Set two shows the defendants’ orientation to “countering”. “不 (not)” and “没 (neg-have)” are negation markers in Chinese. A negation may risk showing an uncooperative attitude. This research explores how a typical type of negation response—denial—is navigated in balancing cooperation and defence (Section “Defending with a (partial) denial”). One device can be seen in the two bigrams containing “也 (*ye*),” which literally means “also” and serves as a conjunction adverb or a mood adverb. In the defendants’ turns, it is predominantly used as a mood adverb. The structure “*ye* + negative form” can be used to indicate a speaker’s intention to counter the recipient’s expectation in a friendly tone (Chen Hongyao, 2010: 51). As a mood adverb, its deletion would not make the sentence grammatically incorrect, but it would make the defendant sound uncooperative and unfriendly. A “not know” response is also a kind of denial, as it denies the implicit expectation of the questioner: that the defendant knows the answer to the question. Nevertheless, due to its prominence in the corpus as the second most frequent bigram (Table 1), it is discussed in a separate section (Section “Accounting for an ‘unexpected,’ lack of knowledge”).

The next section examines three common practices related to negation and narration used by defendants to navigate their interactional dilemmas: defending with a (partial) denial, accounting for an “unexpected” lack of knowledge, and persuading through an uninvited narrative. To maintain coherence and clarity in the corpus linguistic analysis and conversation analysis, we do not delve into further details of each bigram. However, the most frequent bigrams, such as “I *jiu*,” “not know,” and “I *ye*,” are discussed. Nevertheless, the focus remains on negation and narration.

Table 1. The top 33 bigrams used by the defendants.

Rank	Frequency	Bigram	Translation
1	777	我 就	I <i>jiu</i>
2	380	不 知道	not know
3	323	我 也	I ye
4	318	了 我	le I
5	299	的 时候	when
6	274	我 说	I say
7	257	不 是	not be
8	218	我 的	my
9	205	说 我	say I
10	179	是 我	be I
11	172	因 为 我	because I
12	163	当 时 我	at the time I
13	151	也 不	ye not
14	149	然 后 我	then I
15	147	他 就	he <i>jiu</i>
16	143	我 不	I not
17	143	我 是	I be
18	141	我 我	I I
19	136	他 说	he say
20	129	跟 我	with me
21	128	给 我	give me
22	124	打 我	beat me
23	116	时 候 我	when . . . I
24	116	说 你	say you
25	114	打 了	beat <i>le</i>
26	112	在 我	at I
27	110	她 就	she <i>jiu</i>
28	109	我 当 时	I at the time
29	108	我 跟	I with
30	106	应 该 是	should be
31	105	着 我	<i>zhe</i> me
32	101	去 了	go <i>le</i>
33	101	就 说	<i>jiu</i> say

Chinese bigrams might not correspond precisely to English bigrams. For example, the bigram “当时 我” has two Chinese words, but it means “at the time I,” more than two words in English. Chinese verbs do not change their form based on tense or the singular/plural form of the subject. Therefore, all verbs are translated into their infinitive forms such as “说 (say),” “打 (beat),” and “去 (go).” And sometimes there may be different translations for the same Chinese word in different contexts. For example, the Chinese word “我” is used for “I,” “me” and sometimes “my” in English. “我说” is translated as “I say” while “打 我” is translated as “beat me.” Sometimes, it is hard to decide the translation of a word in a bigram. For example, “在 我” can be translated in different ways depending on the context. “在我怀孕的时候” means “When I was pregnant.” “在” means “at” as in “at the time” or “when” while “我” means “I.” “在我手中” means “in my hand,” where “在” means “in” and “我” means “my.” Therefore, these translations are for reference, and a more accurate translation can only be made when the context is known. Transliteration is used for Chinese function words that do not have English counterparts such as “了 (*le*)” and “着 (*zhe*),” and words that have multiple meanings depending on the context such as “也 (*ye*)” and “就 (*jiu*).” For these words, English translations and explanations are provided when relevant.

Table 2. Categorisation of the bigrams into two sets.

Set	Bigram
Set One (narration)	然后 我 (then I), 的 时候 (when), 当时 我 (at the time I), 时候 我 (when. . .I), 我 当 时(I at the time) 我 说 (I say), 说 我 (say I), 说 你 (say you), 他 说 (he say), 就 说 (jiu say) 打 我 (beat me), 打 了 (beat le), 了 我 (le I), 去 了 (go le) 我 就 (I jiu), 他 就 (he jiu), 她 就 (she jiu)
Set Two (negation)	不 知道 (not know), 不 是 (not be), 也 没 (ye neg-have), 我 不 (I not), 也 不 (ye not)

Interactional practices of the defendant’s dilemma

Drawing on the corpus linguistic findings, we now explore the interactional practices that defendants use to negotiate their defence, balanced by cooperating with the questioner. We begin with negation-based responses.

Defending with a (partial) denial

Perhaps the most common negation-based defensive response is denial or partial denial. In a criminal trial, defence is usually grounded in denying that the event occurred, denying having caused the event and/or denying the intention to cause harm (Malle et al., 2014; Moore, 2010). Such a response in Chinese usually contains “不 是 (not be).” As most Chinese defendants plead guilty, but their defence aims to get the judge to lighten the sentence, defendants usually focus on the denial of intentionality. Corpus linguistic analysis finds that “故意(intention/intentional/intentionally)” is the second most frequent collocate to the right (1R) of “不 是 (not be)” after “我 (I/me).” Excerpt 1 shows a typical plea made by defendants.

Excerpt 1:

1. 审:公诉人 现在 起诉 你,认为 是 你 这个 行为 构成 故意杀人罪,对 这个 罪名 有 意见 吗?
J: The prosecutor is now indicting you, holding that your conduct constitutes murder. Do you have any objections to this charge?
2. 被: 我 不 是 故 意 的 , 这 个 我 绝 对 认 , 事 实 我 绝 对 认 。
D: I didn't do it intentionally; this I absolutely admit; the facts I absolutely admit.

The admission of what happened but denial of intention is a pattern found even in response to questions that are not about plea making, as shown in Excerpt 2 in response to a prosecutor in a murder trial.

Excerpt 2:

1. 公:行, 龙某某, 你 是 男 的, 你 在 上 面, 她 是 女 的 她 在 下 边, 谁 的 力 气 大?
你 回 答 我, 谁 的 力 气 大 ?
P: Ok, Long, you are a man, you were above, she was a woman, she was under you, who was stronger? You answer me, who was stronger?

2. 被:这我当时我不是故意扎的,[是我造成,肯定是我造成的
D: *This, at the time I didn't intentionally stab, [it was caused by me, definitely by me.*
3. 公:[行,先别说了。
P: *[Ok, no more talking for now.*

Since the question in turn 1 is a *who*-question, a type-conforming answer (Raymond, 2003) should identify the person who was stronger. However, the defendant appears to substantially change the topic to deal with his lack of intention. This is indicated by the turn-initial word “这 (zhe),” which literally means “this” and is an important discourse marker in Mandarin Chinese. It can serve to indicate a change of topic or misalignment of stance with the interlocuter (Zheng Youjie and Luo Yaohua, 2013: 100), which is closely related to its function of delay (Zheng Youjie and Luo Yaohua, 2013: 101). The closest English translation for this word might be “well” given the similarity of their functions of marking a departure from the expectation of the questioner (Heritage, 2013: 3) and as an alert for an indirect answer to the question (Heritage, 2015: 91). This indirect answer (turn 2) orients to the prior turn’s agenda (Walker et al., 2011: 2344) of blame attribution. The defendant, cooperatively, responds by admitting the act of stabbing, and therefore responsibility for his role in causing the death of the victim. However, he departs from the questioner’s expectation by his partial denial of the intention to cause harm; the defendant thereby cooperates and defends himself at the same time. And blame attribution is indeed the hidden agenda of the question, as evidenced by the prosecutor closing down that line of questioning.

The next excerpt also shows how “intent” is foregrounded in a defendant’s denial. The defendant was charged with murder. (Note: An “invoice” refers to a receipt provided as proof of payment. Some people purchase fake invoices for fraudulent activities, such as making false expense claims.)

Excerpt 3:

1. 审:被告人我问你一下啊,你当天为什么跟被害人一方就会发生争议?是
(9.0s looking at the screen in front of her) 是你在向(.)被害人一方
在(.)推销你的发票°是吗?
J: *Defendant, let me ask you, why did you have a dispute with the victim on that day? It's (9.0s looking at the screen in front of her) It's you were(.) trying to sell your invoices to(.) the victim, °right°?*
2. 被:不是<我是(.)没(.)>特意地推销给他<,我是在马路边喊的,
他下车(.)直接骂的。
D: *No, <I was(.) not(.) >deliberately trying to sell them to him<, I was by the roadside shouting, and he got off the motorcycle(.) and cursed (me) directly.*

In turn 1, the judge asks about the cause of the dispute between the defendant and the victim. After a 9-second pause during which the defendant does not answer, the judge provides a candidate answer to her own question (“It’s you were trying to sell your invoices to the victim, right?”), as earlier claimed by the prosecutor but denied by the defendant. (During the 9-second silence in turn 1 when the judge looks at the screen in front of her, it is possible that she is looking for the response given by the defendant to

the same question earlier in the trial; see Excerpt 5). The design of the tag question implies that the judge is blaming the defendant, whose denial “no” is followed by correcting the judge’s explanation and implicit accusation for the dispute between the defendant and the victim (turn 2), in a denial-correction structure (Winter, 1994; I was not . . . , I was). The repetition and juxtaposition structure is highlighted with the unusual use of “我是没 (I was not),” which is more often expressed as “我没 (I not)” in Chinese and thus has minor pauses after “是 (was)” and “没 (not),” and it matches with “我是 (I was).” In the denial, the word “特意地 (deliberately)” is placed right after “没 (not)” and, therefore, is foregrounded. Though “特意地 (deliberately)” is not seen in the prior question turn, its meaning contained in “意 (intentional)” is implied in the word “推销 (trying to sell).” The meaning contained in “特 (special)” emphasises the particular target of an action. By denying “特意地 (deliberately),” the defendant denies individualisation of the victim as the specific target for his selling. As acting “特意地 (deliberately)” implies taking extra care or thought (Austin, 1966: 439), its denial points to the random manner of his selling, and dispels the implicature of the question in the preceding turn, that he provoked the dispute with the victim. The correction also highlights the non-deliberate nature of the defendant’s action “by the roadside shouting” without targeting the victim. The last part of the response shifts the blame to the victim with a double verb construction “下车 直接 骂,” which literally means “disembark directly curse” and is translated as “(he) got off the motorcycle and cursed (me) directly.” A cross-linguistic study by Drew et al. (2021: 24) shows that double verb constructions “generally concern a complainable matter and are used in environments characterised by a conflict, dissonance, or friction that is ongoing in the interaction or that is being reported by one participant to another.” In this case, the disaffiliation is between the defendant and the victim, a non-present third party. According to Drew et al. (2021: 24), in double verb constructions “it is the first verb that stands out to fulfil the interactional function of the construction, by conveying imposition or deliberateness in a course of action or event that is, in one way or another, discordant.” In this case, “下车 (disembark),” or “got off the motorcycle,” shows the inexplicable and aggravated nature of the victim’s behaviour from the point of view of the defendant, since he was just “by the roadside shouting.” When the disembarking is coupled with the cursing, the effect is of “increasing the bulk” (Drew et al., 2021: 9) of the verb phrase and, thus, the actions of the victim. To emphasise the double action implemented through these two verbs, the defendant adds “直接 (directly)” between the two verbs to show the unreasonableness of the behaviour. Such a response shows alignment (Stivers, 2008; Stivers et al., 2011) or structural cooperation, as it is a type-conforming response (Stivers and Hayashi, 2010) to the yes/no question in the preceding turn, but it also displays defensiveness through a range of linguistic devices: denial plus correction, the highlighted “deliberately,” and a double verb construction. Moreover, the denial of deliberateness and the admission to the conduct of selling further balances defence with cooperation.

Partial denial is also common, as illustrated in the following example; the defendant describes the incident of fighting with the victim, leading to the victim’s death, as being an exception to the norm, through an “extreme case formulation” (Pomerantz, 1986; turn 2) in her response to the prosecutor.

Excerpt 4:

1. 公:你 在(.)跟 何某某 打架 的 过程 中-你 平时 打架 也 都是 从来 不 让 的 吗? 就是 说/
P: When you were (.) fighting with He- in normal times did you never back down from your fights? That's to say/
2. 被:(听不清)以前 从来 打 打架 都是 我 让 着 他, 那么 多 年 我 都 是 一 直 让 着 他, 就 那 天 我/
D: (inaudible)Before, in our fi, fights, I always let him win. For so many years, I all the time, always let him win, only that day I/
3. 公:那 你 干 嘛 这 么 忍 气 吞 声? 你 们 俩 之 间 又 没 有 婚 姻 关 系, 你 走 人 算 了 呗
P:In that case, why did you suffer in silence? You two didn't have any marital relationship. You can just leave.
4. 被:他 老 威 胁 我, 我 不 敢 走 .
D: He always threatened me. I dare not leave.

The defendant's response to the prosecutor's question about the history of her fights with the victim, her partner for many years, begins before the prosecutor's explanation of the question, prefaced by "就是说 (that's to say)." The defendant's turn design shows her attempt to duplicate the structure of the prior question with the repetition of "都是 (all the time)" "从来 (always)" from the prosecutor's turn. Interestingly, both are "extreme case formulations" (Pomerantz, 1986), boosting the prosecutor's accusation and enhancing the defendant's defence. The resonance (Du Bois, 2007) shown through the repetition of these words highlights the contrast between the two turns and the substitution of "不让 (not back down)" with "让他 (let him win)" displays her explicit denial. The replacement of "平时 (in normal times)" with "以前 (before)" counters the assumption that her behaviour on the day of the incident is her usual behaviour. And "以前 (before)" is contrasted with "就 那天 (only that day)" in the last part of the turn. In between, she uses "那么多年 (for so many years)" to highlight her forbearance and to portray the incident as an aberration, which resists the presupposition embodied in the question. This explains the omission of "no" at the beginning and the failure to produce a type-conforming response. The direct answer to the question shows structural alignment but omitting "no" avoids absolute denial of the prosecutor's proposition, as a way of negotiating defensiveness. As argued by Komter (1994: 173), "partial admissions show defendants to be cooperative, [while] their partial denials allow them to defend themselves against the more damaging and blame-worthy elements of the charges."

Defending by acknowledging facts while denying intent, as shown in this section, is a typical pattern. Whilst admitting their actions (Excerpt 4), the consequences of those actions (Excerpt 2), or the entire event (Excerpt 1), defendants nevertheless simultaneously defend (mitigate, excuse, or justify) their conduct. This results in only a partial denial of the accusation and displays cooperating with the court. In contrast, another type of negation structure—the "not know" response—seems explicitly to convey an uncooperative attitude. This type of response thus requires different linguistic strategies to demonstrate cooperation, which are explored in the next section.

Accounting for an "unexpected" lack of knowledge

A "not know" response challenges one of the elementary claims invoked in questioning (Heritage and Raymond, 2012: 180), that is that the "questioner believes the respondent is

willing/obligated to answer.” Whether it is due to unwillingness or inability, providing a “not know” response is a misaligning action, because it fails to promote the action sequence initiated by the questioner (Keevallik, 2011: 185). A “not know” response is a kind of non-answer, which displays a “dispreferred structure and rank lower on the preference scale than informative answers” (Keevallik, 2011: 185). “Not know” responses carry a strong risk of presenting an uncooperative attitude. Yet it is one to which defendants frequently resort. Table 1 shows that “不 知道 (not know)” is the second most frequent bigram after “我就 (I *jiu*).” We know that it occurs frequently in the courtroom context because “not knowing/remembering” can be “an object conveniently used to avoid confirming potentially damaging or discrediting information” (Drew, 1992: 481).

To avoid presenting an uncooperative attitude, defendants try to limit or mitigate the damage by providing an account. The corpus linguistic analysis shows that among all “not know” responses ($N=380$), only 11.58% ($N=44$) are stand-alone “not know” responses with no additional information. Further examination reveals that the additional information in a “not know” response usually takes the form of a narrative-based account first, while a reason-based explanation is expected as the line of questioning is pursued further. This can be seen in Excerpt 5 in response to a prosecutor.

Excerpt 5:

1. 公: 那你再给我讲一下这个案发时间 94 年 x 月 x 号 你是因为 什么 和 这个被害人方面发生冲突的
P: *In that case, tell me again, on the day of the incident, X (date), X (month), 1994, you and the victim had a conflict because of what?*
2. 被: 因为我在(.)马路边(.)卖发票, 他也是属于过路的, 过路呢他们三个人骑(.)一个车子, 后面两个人, 下车. 我也不知道, 反正我就叫卖发票, 他下车就(.)骂 (1.0 s) [就这样引起了.
D: *Because I was (.) on the roadside (.) selling invoices, he was passing by, passing by, they three were riding (.) a motorcycle, two people on the back, got off the motorcycle. I ye don't know (why), anyway, I was peddling invoices, he got off and just (.) cursed (1.0 s), [just like this (it) caused (the dispute)*
3. 公: [叫卖 发票
P: *[(You were) peddling invoices*
4. 被: 嗯
D: *Mm*
5. 公: 下车就骂
P: *(They) got off (the motorcycle) and just cursed.*
6. 被: 嗯=
D: *Mm=*
7. 公: 为什么要骂你=
P: *=Why did (they) curse you?=-*
8. 被: 我也不知道, 因为这么长时间<再说吧(.)当时我也没得罪他, 因为我卖东西, 我不可能找人麻烦, 他们是(.)自己找茬的.
D: *I ye don't know, because this was long time (ago) < in addition(.) at the time I did not offend him, because I was selling things, it's impossible for me to seek trouble with others, they themselves were (.) making trouble.*

In Excerpt 5, the prosecutor asks about the reason for the conflict, which leads to a subsequent killing. The defendant starts the response with “because,” a seemingly type-conforming answer to the question in the prior turn (“you and the victim had a conflict

because of what”), which demonstrates the defendant’s orientation to structural cooperation, and it is followed by a narrative-based account, but the defendant does not provide a reason for the conflict with “I ye don’t know (why)” in the middle of the account. The prosecutor repeats the gist of his story in turns 3 and 5 (“(You were) peddling invoices, (they) got off (the motorcycle) and just cursed.”) and highlights the incongruence in the story: “why did (they) curse you?” The defendant again gives a “not know” response “I ye don’t know” and provides a reason-based account this time (“because this was long time (ago)”), which implies he does not remember now. In addition, instead of explaining why the victim cursed him, he argues that he had no reason to start the fight (“because I was selling things, it’s impossible for me to seek trouble with others”), which aims to blame the victims for provoking the conflict. Though it is not a direct answer to the question, the account shows his orientation to cooperation by supporting the questioning activity and shows his compliance with his role as answerer in the interaction. Meanwhile, it provides a defence by blaming the victim for starting the conflict.

Both “not know” responses in turns 2 and 8 include the mood adverb “ye,” which indicates the speaker’s willingness to provide information and his inability to do so, thereby displaying the defendant’s cooperative attitude. Interestingly, among the 380 “not know” responses, there are 117 “ye not know” responses (31%), out of which only 9 (around 7.6%) are stand-alone responses. This illustrates the necessity of the mood adverb for a non-answer response to boost its epistemic stance.

A similar pattern of shifting from a narrative-based account to a reason-based account is also seen in Excerpt 6 in response to a prosecutor.

Excerpt 6

1. 公：那你目标直奔冰箱，然后抓起来就抡人，你向法庭解释解释你的动作为什么这么准确啊？拿的东西为什么这么精准啊？
P: So you went straight to the fridge, grabbed (the knife), and then swung it at someone. Can you explain to the court why your actions were so precise? Why did you pick up that particular item so accurately?
2. 被：这个当初我也不知道是怎么回事，反正就是那么，我就往屋爬，就那小门我就挣扎着要起来，手里就抓了个东西要抡了，我真不知道，我真不知道当初是怎么回事。
D: This, back then, I ye didn’t know what was going on. Anyway, it was (like) that, I just crawled towards the room, and just at the small door, I just struggled to get up, and just grabbed a thing to swing with, I really don’t know, really don’t know what happened at that time.
3. 公：那你本能反应就奔屋里的冰箱上去抓东西，你怎么不知道怎么回事？=
P: So your instinctive reaction was to head to the fridge and grab something, how come you didn’t know what happened? =
4. 被：=这不是去冰箱上抓东西，是我挣扎着要起来扶着冰箱，冰箱上有东西，我就顺手抓了，也没有说，因为当初距离很短，那地方也很小。一拳-只要是正常的人，应该是一拳打到眼眶上，那么倒在地上后脑勺着地，肯定也不会清醒。
D: = It wasn’t going to the fridge to grab things, it was that I was struggling to get up and held onto the fridge. There was something on the fridge, so I grabbed it. It wasn’t like, because the distance was short, and the space was small. One punch-for any normal person, if he were punched in the eye socket, and fell to the ground, hitting the back of his head, he definitely wouldn’t stay conscious.

In turn 2, the defendant says “I *ye* didn’t know” and then uses “就 (just)” four times to normalise his behaviour. At the end of turn 2, he uses “真 (really)” twice to emphasise his helplessness and honesty. But this account is rejected by the prosecutor in turn 3 (“how come you didn’t know what happened?”). In reply, the defendant provides a reason for his confused state of mind (and thus not knowing) based on a “normal person” argument (turn 4).

An equivocal narrative-based account for not knowing may be insufficient, as illustrated in the following deviant case in which a reason-based response is not provided and the prosecutor explicitly criticises it as nonsense (turn 5).

Excerpt 7:

1. 公:你的 棍子 哪 来 的 呀? (.)木棍
P: *Where did you get your stick? (.)The wooden stick.*
2. 被:木棍 是 哪 来 的, 说真的 我 真的 不 知道=
D: *Where I got the wooden stick, honestly, I really don’t know.=*
3. 公:=也 不 知道 =
P: *=(You) also don’t know =*
4. 被:=就是 当时 混乱中 我 就 不 知道 怎么 就 拿 了 一个
D: *=That is, at the time, in chaos, I just didn’t know how I just got one.*
5. 公:不 符合 常理 啊, 解释 不通 啊
P: *It goes against common sense. That doesn’t make sense.*
6. 被:但是 事实 就 是 这 样 的 就 是 说
D: *But that is the fact.*
7. 公: 就 拿 一个 木棍, 其 他 人 都 拿 什 么 了 ?
P: *(You) just took a stick, what did everyone else take?*

In turn 2, the defendant attempts to emphasise his honesty with “说真的 (honestly)” and the stressed “真的 (really)” in his “not know” response. The “honestly + don’t know” “attend[s] to the question asker’s assumptions or presuppositions about what the answerer should know” (Edwards and Fasulo, 2006: 369). However, the prosecutor repeats his response with an added “也 (also)” in the turn-initial position to imply the unacceptability of the defendant’s claim of not knowing and to reject it, as he is the person using the stick. Discussing police interview data, Edwards and Fasulo (2006: 370) argue that the “honesty” phrase usually works “to make it difficult or awkward (although not impossible) for the questioner to pursue the point”; nevertheless, the fact that the lawyer pursues it shows how much work the defendant must do to construct his defence. The defendant immediately gives a narrative-based account of his not knowing (“in chaos”). In turn 4, the defendant uses “就 (just)” twice to highlight his confusion caused by the chaos, but the account is rejected again by the prosecutor with “It goes against common sense. That doesn’t make sense,” which shows the prosecutor’s expectation of a reason-based explanation. The defendant fails to provide one and then the line of questioning is dropped, the prosecutor having made his point.

A “not know” response is a prominent defensive response, explicitly displaying uncooperativeness. To mitigate the appearance of being uncooperative, defendants provide accounts for their lack of knowledge. The analysis shows that defendants tend to provide a narrative-based account first, but questioners further pursue until a reason-based explanation is provided. This points to “the tension between two cultural-cognitive modes:

narrative mode and paradigmatic mode” (Heffer, 2005: 22), which are preferred by defendants and legal professionals respectively. By providing the volunteered and/or required account, the defendant manages to display a cooperative attitude while avoiding sharing information that could be detrimental to his defence such as who started the dispute (Excerpt 5), and how the defendant obtained the weapon (Excerpts 6 and 7).

Persuading through an uninvited narrative

Though a narrative-based account may not be considered sufficient, as shown in the last section, narrative devices are important resources for defence, according to our corpus linguistic analysis. On the other hand, institutional participants prioritise the questioning process, limiting the narrative mode through controlling questions (Harris, 1984, 2001; Heffer, 2005). This section illustrates how defendants manage the constraint frame imposed by the question in their accounts by first providing a seemingly cooperative answer; this further demonstrates the importance to the defendant of balancing defence and cooperation, as happens in Excerpt 8.

Excerpt 8:

1. 公: 你 跟 被害人 发生 推打 的 时候, 另外 两 个 人 有 没有 围 过 来 一 起 打 ?
P: *When you and the victim were pushing and fighting with each other, did the other two people come over and join the fight?*
2. 被: 他 们 他 们 三 个 人 追 我 嘛, 那 三 个 人 /
D: *They, they three people chased after me, those three people/*
3. 公: 公 诉 人 问 的 问 题 是, 你 跟 被 害 人 发 生 推 打 的 时 候, 另 外 两 个 人 有 没 有 过 来 一 起 打 ?
P: *The prosecutor's question is, when you and the victim were pushing and fighting with each other, did the other two people come over to join the fight?*
4. 被: 没 有, [听 不 清
D: *No, [inaudible*
5. 公: [没 有 是 吧? 你 们 当 时 是 在 哪 一 间 房 ? 你 跟 被 害 人 是 在 哪 一 间 房 ?
P: *No, right? Which room were you (plural) in at the time? Which room were you (singular) and the victim in?*
6. 被: 被 害 人 ?
D: *The victim?*
7. 公: 你 跟 被 害 人 [是 在 哪 一 间 房 ?
P: *You and the victim [were in which room?*
8. 被: [你 听 我 讲, 我 是 住 306 房 间, 他 去 我 的 306 房 间, 我 就 退 两 步, 因 为 他 三 个 人 我 肯 定 怕 啊 是 不? 我 就 退 两 步, 刚 好 307(.) 一 个 人 在 那 里 吃 西 瓜, 西 瓜 上 有 把 刀, 我 就 把 它 拿 起 来 了, 牛 某 就(.) 不 知 道 用 什 么 东 西 把 我 打 在- 刚 好 打 去 了 那 个 308, 308 那 个 地 下, 他 就 睡 在 我 身 上, 那 时 候 肯 定 就 伤 害 到 他 了. 我 也 不 想 发 生 这 种 事 情, 因 为(.) 我 也 是 出 于 一 种 本- [出 于 一 种 本 能
D: *[You listen to me, I was living in Room 306, he went to my room, I jiu stepped backwards for two steps, because he (had) three people, I surely was scared, right? I jiu stepped backwards for two steps, coincidentally in Room 307(.) one person was eating watermelon, there was a knife on the watermelon, I jiu picked it up, Niu then (.) beat me with something that I didn't know, coincidentally beat me to 308, on the ground of 308, he fell on me, that moment surely (I) jiu harmed him. I didn't want this thing to happen, because(.) I was also out of instinct-[out of instinct*
9. 公: [你 离 开 的 时 候 被 害 人 是 什 么 状 况 ?
P: *[When you left, what was the situation of the victim?*

The prosecutor asks a yes-no question in turn 1, but the defendant begins to provide an account regardless of the question. The prosecutor intervenes by repeating his question, prefacing his question with marked self-reference in “the prosecutor’s question is,” highlighting the non-responsiveness of the defendant’s reply. In turn 4, the defendant gives a type-conforming negative answer to the question (“did the other two people come over to join the fight”) to further explain, but the floor is taken back by the prosecutor, through strong institutional control. The prosecutor asks another question, and the defendant initiates a repair. However, before the prosecutor finishes repeating his question in turn 7, the defendant starts to reply, which shows that the repair does not necessarily indicate failure in retrieving the information. His response starts with a powerful preface (“You listen to me,” turn 8), which functions similarly to a *listen*-prefaced turn in English as an indicator of directly addressing the question (Sidnell, 2007: 404) and clearly marks and prepares for an upcoming account. The defendant appears to reply to the question about where he and the victim were (“I was living in Room 306, he went to my room”). However, this is not the answer to the question asking where he and the victim were at the time (turn 5) when they were pushing and fighting with each other (turn 3). The subsequent account shows that the fight occurred in Room 308 rather than Room 306. More importantly, this elaboration is not required by the question in the prior turn and is later terminated by the prosecutor before he finishes the whole account. The purpose of the narrative seems to be related to his use of “*I jiu*” three times between his mention of Room 306 and Room 308, allowing him to provide contextual information about:

1. being a threatened passive party (“I was living in Room 306, he went to my room, I *jiu* stepped backwards for two steps, because he (had) three people, I surely was scared, right?”),
2. happening to come across a knife (“coincidentally in 307(.) one person was eating watermelon, there was a knife on the watermelon, I *jiu* picked it up”), with which he defensively armed himself, and
3. the victim accidentally falling on it (“Niu then (.) beat me with something that I didn’t know, coincidentally beat me to 308, on the ground of 308, he fell on me, that moment surely (I) *jiu* harmed him”).

Jiu here indicates natural logical relations similar to “so.” In the first case, he uses a tag question to indicate that it should be easy for the prosecutor to understand and the word “肯定 (surely)” adds to the effect. *Jiu* is also used to legitimise his behaviour, supported by qualifying his conduct with “coincidentally,” twice. Finally, in the third case, he describes the victim falling on him and, thus, *harming* him, indicating accidental killing rather than premeditated murder.

Mazzocco and Green (2011: 27) distinguish between argument-based persuasive communication and narrative-based persuasive communication and maintain that “[I]acking straightforward arguments, narrative persuasion tends to be driven by the actions and portrayal of antagonists and protagonists”. In this case, the defendant is portraying his actions as those of a protagonist and the victim as an antagonist. In his narrative, the victim came to his room with two other accomplices, and he “stepped backwards” out of

fear and picked up a knife for self-defence. The victim “fell on” him and he harmed the victim accidentally. With this uninvited narrative, he attempts to persuade the court of his innocence and the victim’s hostility.

The defence implied in the defendant’s account is not triggered by the preceding question (“which room”), but can be interpreted in terms of the “agenda,” “goal,” “game,” or “activity” (Robinson, 2013: 260) of a trial, where prosecutors aim to convict defendants while defendants try to defend themselves. Atkinson and Drew (1979: 182) explain that “as the pre-allocation of turns in examination ensures that only counsel have rights to ask questions, witnesses cannot guarantee that questions will be asked which allow them the opportunity to explain their actions, or otherwise defend themselves.” Here the defendant creates an opportunity to defend himself by providing a seemingly aligning answer (room number) in the beginning. Meanwhile, starting the story with what happened in Room 306 rather than Room 308 allows him to present himself as a passive party who harmed the victim only out of self-defence. The response manages to strike a balance between cooperation and defence through some powerful manoeuvres by the defendant.

Discussion and conclusions

Defence in a criminal trial carries high stakes. Moreover, as an “object of interrogation” (Xiong Qihong, 2016: 34), defendants are expected to provide information and thus they are obliged to be cooperative while defending themselves. This research identifies lexical patterns that point to three practices used by the defendants to balance cooperation and defence: defending with a (partial) denial, accounting for an “unexpected” lack of knowledge, and persuading through an uninvited narrative. The fine-grained analysis also reveals various linguistic devices in the three practices such as double verb constructions, the mood adverb “也 (ye),” extreme case formulations, and indirect responses.

These three practices represent different levels of cooperation and different dimensions of defence. Defending with a partial denial represents a high level of cooperation, as it not only provides a structurally aligning response, but also contributes to the construction of the “preferred version” (Auburn et al., 1995: 357) of the criminal event, as the defendant admits to the *actus reus* (i.e. a certain criminal act occurred). Even when the admission is not elicited by the prior question, the defendant provides such an admission to show his cooperative attitude while providing his defence. The defence embodied in a partial denial response is usually the denial of intent, which aims at challenging the *mens rea* (guilty knowledge) of the murder/assault charge.

A “not know” response displays explicit uncooperativeness. It is even regarded as “declaring non-cooperation” (Liao Meizhen and Sun Yadi, 2017: 61). Questioners usually have an idea about whether the defendant knows the answer to the question or not. When the defendant unexpectedly shows a lack of knowledge, an account is required for damage control. The defendant usually volunteers an account immediately after stating not knowing and softens his tone with the mood adverb “也 (ye)” to display his cooperative attitude, but the questioner pursues until a reasonable account is provided, which shows that “not know” responses are not well received. Nevertheless, “not know” responses are still frequently resorted to, as they can serve defensive purposes by avoiding providing information detrimental to the defence.

A response with an uninvited narrative seems to show “excessive cooperation” (Liao Meizhen and Sun Yadi, 2017: 61) as it provides more than is necessary. The analysis shows that the uninvited narrative serves important defensive purposes, as the narrative-based account is designed to persuade the court that the defendant is either innocent or that their behaviour is justified by portraying a positive image for themselves. However, defendants face the challenge of creating an opportunity to present their defensive accounts; otherwise, an uninvited narrative may be dismissed as irrelevant. Defendants navigate this difficult situation by adroitly maintaining the relevance of their response on a surface level. Thus, they not only have linguistic resources at their disposal but also the pragmatic ability to create opportunities to utilise these resources effectively.

It should be pointed out that carefully navigating the interactional dilemma does not necessarily result in a successful defence. The subsequent trial stages (evidence presentation, closing arguments) show that prosecutors present physical evidence and other witness testimonies to imply or prove the defendant’s intent, knowledge, and the incident itself, while dismissing the defendant’s testimony as lies or excuses. In such cases, the defence embedded in the cooperatively provided responses can be used to undermine the defendant’s credibility. The defendant’s navigation of the dilemma can be linguistically successful, but not necessarily in a legal sense. Nevertheless, dealing with the dilemma is strategically important for defendants who employ powerful linguistic strategies to boost their position, which helps us to better understand this otherwise compromised courtroom participant role.

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Appendix

Symbols in transcription

Symbols	Meaning
J	Judge
P	Prosecutor
D	Defendant
=	Latched speech
[	Overlapping
-	Cut off of prior word or sound
/	Interruption
(.)	Micropause
(2s)	Lapsed time in second
<u>Underlined</u>	Stressed part
(inaudible)	Inaudible information
<word	A hurried start of a word
◦ word◦	Words quieter than surrounding speech by the same speaker
.	Falling tone
?	Rising tone
,	Slightly rising intonation
>word<	Increased speaking rate