

2005年7月1日至4日, 第七届法律语言学双年会(7th Biennial Conference on Forensic Linguistics/Language and Law)由国际法律语言学家协会(IAFL)主办, 于英国威尔士卡迪夫大学(Cardiff University)举行。本次会议期间, 有幸偶遇广外杜金榜教授、台湾学者胡碧婵博士及Amy Wang博士, 这是我们首次谋面。7月2日(星期六)17:00-17:30, 本文于203会议室宣读, 主持人系美国执业律师Richard Creech先生。该论文经修订后, 于2007年发表于学术期刊《罗兹语用学论丛》(Lodz Papers in Pragmatics)。需特别说明, 本文原始文本为英文撰写, 中文译本仅供参考。

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## 英文原文

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# ILLOCUTIONARY AND PERLOCUTIONARY ACTS IN CHINESE JUDGE'S ATTACHED DISCOURSE

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**Abstract:** After 2002, courts in China have increasingly been introducing certain judicial reforms, one of them being the improvement of trial language. In these courts, the judges append their comments to the case at the end of their verdicts in writing. The Chinese judge's attached discourses resemble the *obiter dicta* of judges in Western courts, but there are differences. Since the new element was introduced in some courts in 1998, some doubts have been voiced in strong opposition to the new practice, giving rise to a heated academic debate on the issue. This paper investigates and analyses Chinese judge's attached discourse in terms of discourse analysis categories, such as their usage of illocutionary and perlocutionary acts.

**Keywords:** illocutionary act, perlocutionary act, judge, discourse, litigant

## 1. Introduction

One of the significant judicial reforms implemented in China during the past few years is a language reform that becomes manifest through an improvement in the diction of judicial documents. Many courts now avoid previously common derogatory terms such as *frenzied*, *unscrupulous*, *severe penalty*, *crack down on*, etc., or traditional pejorative phrases like *despair gives courage to a coward*. Instead, they uphold the litigants' rights and interests by restricting themselves to a matter-of-fact legal language with neutral terms, which embodies both justice and civility. At the core of this reform of judicial documents is the court verdict, which includes the judge's attached discourse.

This discourse is a written comment of the judge appended to the end of a court verdict. It is not a judicial document in the strict sense, but rather a supplemental commentary without binding power, and often contains moral and ethical exhortations. It serves to mitigate the solemn nature of the verdict by relating to the underlying social value system, and further adds some warmth and compassion to the bleakness of a legal decision. For example, according to the Chinese view only as a last resort should opponents in civil cases involving family values and responsibilities, such as support of parents and grandparents or spouse and child support in divorce situations, enter into litigation. If they still do, this means they fail to voluntarily fulfill their moral responsibilities and obligations, ignore the ethical framework and over-emphasize their own interests. In such cases, the judge's attached discourse is to

make the litigants aware of those case-relevant ethical and moral values that lie beyond the mere legal reasoning. It is to add the human touch to a legal decision, stress the interdependence of law and morality in society, and inspire the litigants to understand the human concerns underlying the verdict.

From what has been mentioned above, we can see that this kind of discourse emphasizes the human touch, reason and morals, so it can play an active role in condemning and admonishing immorality and promoting excellent social morals in such cases, especially in those concerning the party who win a case in the legal sense, but lose an action in the moral sense. Some legal experts even think that the judge's attached discourse is a "declaration of morals" to a certain extent.<sup>1</sup>

The judge's attached discourse is quite similar to obiter dictum, which is widely used in the Anglo-American law system. Firstly, both of them are attached to the end of court verdicts to express the judge's opinions or comments *ex parte*. Secondly, both have no binding force and effect on the final decision. However, the judge's attached discourse and obiter dictum are not exactly the same. There exist some differences between the two. On the one hand, obiter dictum expresses more of the judge's social and economic values, even love and hatred. On the other hand, although obiter dictum has no binding force, it is more like a final decision than the judge's attached discourse. Besides, it merges into an organic whole with *ratio decidendi*. On the contrary, the judge's attached discourse emphasizes more reason or sense, human concern and human touch than obiter dictum. As a result, its content is full of instructive and inspirational significance, conviction, affinity and public trust. From these differences, we can see that obiter dictum embodies more of the judge's wisdom and character while the attached discourse shows more of the judge's welling emotions.<sup>2</sup> Here, the judge's attached discourse uses the form of obiter dictum as a reference, but as far as the content is concerned, the two are different from each other.

Since the judge's attached discourse was first used in a civil case in Shanghai No.2 Intermediate People's Court in 1998, more and more courts in China have taken this measure. From 2002 to 2003, more and more courts in many places, such as Nanjing, Kunming, Changsha, Luoyang, Yancheng, Qinghai, Shanxi and Zhouning County, were employing this method. All these courts have achieved good results and social effects. However, though it has received high praise, the attached discourse is faced with some doubts and strong oppositions and has thus aroused a heated academic debate. Summing up these ideas, the doubts or oppositions mainly include the following points: 1. Court verdicts, in fact, contain morals. Judges should be sure of this, but the attached discourse neglects this point. 2. The attached discourse should not go beyond law. 3. Judges should merge reason or sense into court verdicts, so as to blend the human touch with law (Zhang 2002). 4. The attached discourse blurs the difference between law and morals and causes the disruption of judge's role and the procedure (Mi 2003; Wu 2003). 5. The attached discourse is out of harmony with the form and content of court verdicts.<sup>3</sup> Here, the debate is going on all from the legal point of view. However, the present paper will deal with this problem linguistically, which means an attempt to investigate and analyse such a discourse according to the theory of illocutionary and perlocutionary acts, to prove its feasibility as well as its limitations.

## 2. Illocutionary acts in Chinese judge's attached discourse

Shuy (2001:444) says, "One of the defining characteristics of discourse analysis is that it is capable of application in a wide variety of settings and contexts. Wherever there is a continuous text, written or spoken, there is a potential analysis of such a text". According to Shuy, although the attached discourse is the unilateral and written form or monologue by the judge, it looks forward to the litigants' positive responses most eagerly. Besides, it can be analysed in the context of a court trial. In this kind of context, the speech acts of the judge and litigants are not genuine face-to-face interactions, unlike ordinary conversations, but the judge and litigants play different roles. They can interact with each other easily, thus bringing about consequential effects on the litigants. From this point of view, the judge's attached discourse has more interactions than ordinary written discourses. It can be said that this kind of discourse is a kind of a special conversation. Therefore, it is necessary to analyse the illocutionary and perlocutionary acts in this discourse in order to find in the context of a court trial

how the intention of the discourse is produced by the judge, and how the consequences are brought on the litigants.

According to Austin (1962:103), the application of any discourse can perform three kinds of act—the locutionary, the illocutionary, and the perlocutionary. A locutionary act is just to utter a certain sentence with the meaning in the traditional sense. It is the act performed in saying something and does not show any design, intention, or purpose, but its force is identical with the speaker's intention. An illocutionary act, however, is a conventional act, which is done with design, intention, or purpose. It is performed by or resulting from saying something, so it is the consequence of the discourse. Therefore, an illocutionary act gives a discourse illocutionary force which then has an effect on others, accomplishing the intention. The attached discourse is the words “from the bottom of the judge's heart,” based on the details of a case at the end of a court trial. It has clear design or intention, strong influence and illocutionary force. Besides, a court trial is a kind of a highly stylized context where there is a set of conventional rules to follow. These rules restrict the content and expressions of the attached discourse. There is no choice in this matter for the judge and just for this reason, the judge's attached discourse is feasible in a court trial. For example:

#### *Case 1*

This was a civil case of dispute over money obligation. Zhou (wife) received compensation in the amount of 8,100 Yuan (RMB) from her husband's unit after his death in a traffic accident. However, her mother-in-law claimed some of the payment from her. As a result, they came into conflict with each other and engaged in a lawsuit. In accordance with specific conditions, the judge decided Zhou should give 1,000 Yuan (RMB) to her mother-in-law. Though it was a fair result, their emotional attachment had been damaged. With a view to repairing it, the judge attached the following discourse to the case at the end of the court verdict:

Money cannot substitute for emotional attachment. Get rid of old grievances to renew past cordial family relations. This is not only a question for the litigants and other sons and daughters to ponder deeply over, but also a mutual goal for you to achieve.

#### *Case 2*

This was a civil case of divorce. Since they began to do some self-supported business, Peng (husband) has been dissatisfied with Liu (wife) arrogating all family economic powers to herself. Consequently, they often quarrelled with each other and then decided to live apart. Afterwards, Liu resorted to proceedings to claim a divorce from Peng. The judge did not grant the divorce, and then wrote down what he would like to say at the end of the court verdict.

Any happy family will have conflicts between husband and wife. Now that the conflict has arisen, the two parties should keep a clear head with a view to solving the existing problem through active communication. Congenial love between husband and wife should rely on complete confidence in each other.

#### *Case 3*

This was a civil case of a succession dispute. Mu (plaintiff) and Dong (defendant) had had many complaints against each other before they engaged in this lawsuit. However, they have got rid of old grievances and become reconciled with each other again just after the lawsuit. The reason for this was that they were deeply moved by the following attached discourse:

His father died when the plaintiff was very young and the defendant's spouse died when she was middle aged. Such things are really tragedies in the world. The two parties of the case

ought to sympathize with one another because of their misfortunes, but it is a great pity that they had instead a dispute for the heritage of the dead and caused a more serious damage to their own hearts. The law can handle this succession dispute between the two parties fairly, but money cannot substitute for emotional attachment at all. The departed is gone; his kinsfolk are still alive. How can the departed close his eyes in his grave when his kinsfolk are disputing about his heritage? I wish the two parties to get rid of old grievances, to respect and love each other, and to renew their emotional attachment. It will really be a great joy to see everything happy and prosperous in your family!

According to John R. Searle (1969:48), the sentence provides a conventional means of achieving the intention to produce a certain illocutionary effect in the hearer. If the hearer understands the sentence, the intention will be achieved. In the cases mentioned above, the sentences in the attached discourse stress “affection,” “morals” and “human touch” and reveal judge’s intention explicitly. Besides, in Cases 1 and 3, the sentences like “*Get rid of old grievances to renew past cordial family relations,*” and “*I wish the two parties to get rid of old grievances, to respect and love each other, and to renew their emotional attachment,*” in fact, produce a moral call to the litigants and request them to respond to the attached discourse in a positive way, to perform certain conventional acts and to carry out their obligations. Although there are no such sentences in Case 2 and there are only two sentences like this in Cases 1 and 3, the entire attached discourse expresses the identical meaning and produces the identical illocutionary acts. These acts have strong illocutionary forces.

The context can be divided into “linguistic context” and “nonlinguistic context” (Huang 1988: 44; He 1989). The linguistic context depends on cohesion and coherence while the nonlinguistic context goes beyond sentence meaning. Nonlinguistic context can tell us how illocutionary force expresses the discourse. In a court trial, the hearers are in fact the litigants of the case. They show a great deal of concern for the case and are most eager to know the judge’s decision and opinion. In this sense, they have strong motivations. Therefore, in these two contexts, they can understand the meaning and intention of the judge’s attached discourse completely. In this way, the discourse takes its expected effect.

### 3. Perlocutionary acts in Chinese judge’s attached discourse

A successful performance of an illocutionary act in interactions can bring about the expected consequences and produce the act that tallies with the speaker’s intention, a perlocutionary act. From the examples in the previous section, we may have felt the effects brought about by the judge’s attached discourse. Normally, the litigants will produce certain actions in the context or will be much moved by what the judge says. However, saying something will also produce certain consequential effects upon the feelings, thoughts or actions of the audience and the speaker (Austin 1962: 101; Searle 1969: 25). Based on this, the discourses with the same meaning may produce different consequential effects while the same consequential effects may be achieved by different discourses with different meanings because different hearers may have different knowledge, ideology and character which will produce different feelings, thoughts or actions. Therefore, it seems true that a perlocutionary act does not necessarily have any connection with an illocutionary act.

From this point of view, the litigants of a case may respond to the judge’s attached discourse positively or negatively. If the litigants respond positively, the attached discourse will achieve its intention. If they respond negatively, such a discourse will not be “reasonable.” This is the most important point—we should notice that the context of the attached discourse is a highly stylized court trial where what the judge says and the expressions he uses is carefully devised. Since most of the cases involve an emotional attachment, the judge’s attached discourse will produce consequential effects on the feelings, thoughts and actions of the litigants. A lot of examples can show that the litigants responded to the attached discourse in a very positive way. In Case 1, the daughter-in-law and mother-in-law were deeply moved by the discourse and soon afterwards they became reconciled; in

Case 2, the husband was inspired greatly by the attached discourse and said that he would not seek divorce any longer; in Case 3, the two parties said that they would submit themselves to the fair court decision, and that it was the attached discourse that put them right on how to understand the rule of law and morality. There are of course still more examples in which positive consequential effects are achieved. All these cases show that the judge's attached discourse really works. It is really convincing. Just because of this, it can be called a "tender court decision" (Mi 2003).

#### 4. Conclusion

Although the Chinese judge's attached discourse conforms to the conditions of illocutionary and perlocutionary acts and achieves excellent effects, it is not omnipotent. Of course, it has its own limitations and some of its problems should be discussed.

Firstly, as has been discussed in the previous section, a perlocutionary act does not necessarily have any connection with an illocutionary act because many factors have an effect on the consequences. Based on this point, the speaker and listener's interaction determines the effects. The effects are determined by the listener's responses or acts. In judicial practice, the litigants' feelings, thoughts and actions are not at all stable. Though the judge's attached discourse has a highly stylized context, explicit convention and strong illocutionary force, it can only be used in civil cases which involve "emotional touch." This means that it cannot be widely used in other cases, especially criminal cases because the complexity of these cases determines the complexity of the litigants' feelings, thoughts and actions and we are not sure whether they would respond positively or negatively. Secondly, this problem triggers a second one—the expressions in the attached discourse. The expressions should be deeply devised, based on the details of the cases. Proper expressions can bring in strong illocutionary force, so as to affect the litigants. Without proper expressions or an appropriate choice of words, the judge's attached discourse will not achieve the expected perlocutionary act. Thirdly, the judge's attached discourse is mainly applicable to such cases as support for parents and grandparents, bringing up children, succession disputes, divorce and the like. These cases often involve emotional attachment, and so the litigants tend to respond positively. However, in other cases, especially in criminal cases, the litigants are usually more emotionally unstable. Thus, the illocutionary and perlocutionary acts of the attached discourse are most likely to be limited. This is the reason why such a discourse is not widely used in other cases.

At present, some courts are trying to apply this kind of discourse to criminal cases concerning minors as well as civil cases concerning the disputes of damage compensation and reputation. The effects are encouraging, and show that the judge's attached discourse still has room for further development. Provided that its expressions are well-designed according to the nature of different cases, it will certainly produce strong impact and achieve excellent long-lasting effects.

#### Notes

<sup>1</sup> See "The judge's attached discourse: declaration of morals."

[http://www.szrbs.net/news\\_content.asp?ns\\_id=234&nc\\_id=184430&newstype=1](http://www.szrbs.net/news_content.asp?ns_id=234&nc_id=184430&newstype=1).

<sup>2</sup> See Li Jiangping, "Discrimination and analysis of attached opinions."

<http://www.dffy.com/faxuejieti/ss/200311/20031118153825.htm>.

<sup>3</sup> See Zhang Peng, "Should court verdicts have human touch—debate aroused by the judge's attached?" *Beijing Evening*, June 27, 2001.

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## 中文参照

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# 中国法官后语的言外与言后行为

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**摘要：**自 2002 年以来，中国法院持续推行了一系列司法改革，其中一项就是改进庭审语言。在这些法院中，部分法官会在判决书末尾以书面形式对案件附加评述。中国法官后语这一形式，虽在功能上类似于西方法院法官的附带意见 ( obiter dicta )，但在诸多方面亦存在显著差异。自 1998 年部分法院率先引入这一革新元素后，该做法便引发了广泛关注与讨论。部分反对者对此新举措提出了强烈质疑，进而在学界引发了关于中国法官后语这一议题的激烈学术争鸣。本文运用话语分析领域的关键理论范畴，如言外行为 ( illocutionary act ) 和言后行为 ( perlocutionary act )，对中国法官后语进行研究与分析。

**关键词：**言外行为；言后行为；法官；话语；诉讼当事人

## 1. 引言

近年来，中国司法领域推行了一项意义重大的改革举措，其核心体现于司法文书措辞的改进上。在这一改革背景下，许多法院转变了文书表达习惯，摒弃了以往频繁使用的贬义词，诸如“疯狂的”“肆无忌惮的”，以及“严厉惩处”“严厉打击”这类带有强烈主观色彩和情绪倾向的表述。同时，一些诸如“狗急跳墙”这类源自传统俗语的贬义表达，也逐渐被排除在司法文书之外。取而代之的是，法院在司法文书中通过使用客观中立的法律术语，秉持克制，以此维护当事人的

合法权益,彰显司法的公正与文明。司法文书改革的核心在于法院判决书,其中包含法官后语。

这段话是法官附加在法庭判决书末尾的书面评语。严格来讲,它并非正式的司法文书,而是一种不具有法律约束力的补充性评注,其中常常包含道德与伦理方面的劝诫内容。其作用在于借助关联的社会价值体系,缓和判决本身的严肃性,为法律裁决的冷峻增添一抹温暖与人文关怀。例如,在中国传统观念中,涉及家庭价值观与责任的民事案件——如赡养父母或祖父母,或在离婚案件中处理配偶及子女抚养费问题时——对立双方应尽量避免诉讼,将其作为最后的解决手段。若当事人最终仍选择诉讼途径,这意味着其未能自觉践行道德责任与义务,漠视道德准则,且过度强调自身利益。在此类案件中,法官后语旨在让诉讼当事人知晓那些超越单纯法律推理以及与案件相关的伦理道德价值观。这不仅为法律裁决注入人文关怀,更揭示出法律与社会道德之间的共生关系,引导双方当事人体悟裁判结果中蕴含的人文精神与价值导向。

综合上述分析可见,这类话语充分彰显了人文关怀、理性精神和道德导向,在批判不当行为、匡正失德现象、弘扬社会公德方面具有独特价值。特别是在当事人虽胜诉却背离道德准则的案件中,其教化功能尤为显著。对此,一些法律学者甚至指出,法官后语某种程度上可视为一种“道德宣言”。<sup>1</sup>

法官后语与英美法系广泛运用的附带意见 (*obiter dictum*) 存在诸多相似之处。首先,两者均附于判决书末尾,用以表达法官个人的观点或评论。其次,两者对案件的最终裁决均无法律约束力。然而,两者并非完全等同,而是在性质和功能上存在一定差异。从内容上看,附带意见 (*obiter dictum*) 更多地反映了法官的社会和经济价值观,甚至带有爱与恨色彩;从法律效力上看,尽管附带意见不具有约束力,但与法官后语相比,更接近于最终判决。此外,它与判决依据 (*ratio decidendi*) 融为一体。相较而言,法官后语更强调理性思辨与法律常理,突出人文关怀和人性化表达方式,因而充满了教育意义与启迪价值,兼具说服力、亲和力以及公众认同感。从这些差异可以看出,附带意见 (*obiter dictum*) 更多体现了法官的智慧与品格,而法官后语则更凸显了法官的真挚情感。<sup>2</sup>可以说,法官后语借鉴了附带意见的形式,但就内容而言,两者存在差异。

自 1998 年上海第二中级人民法院首次在民事案件中引入法官后语以来,中国越来越多的法院均采取了这一举措。2002 至 2003 年间,南京、昆明、长沙、洛阳、盐城、青海省及山西省等多地法院,以及福建省宁德市周宁县人民法院,纷纷开始采用这一方法。这些法院的实践均取得了良好的法律效果和社会反响。然而,尽管法官后语广受赞誉,但也面临一些质疑和强烈反对,由此引发了激烈的学术争论。总结这些观点,相关质疑或反对意见主要集中于以下几点: 1. 法院判决书本质上已蕴含道德内涵。法官对此应有明确认知,但其后语却忽视了这一关键点; 2. 法官后语不应逾越法律范畴; 3. 法官应将理性或情理融入判决之中,使法律蕴含人文关怀 (张志铭, 2002); 4. 法官后语模糊了法律与道德的界限,导致法官角色定位和司法程序混乱 (米健, 2003; 吴学安, 2005); 5. 法官后语与判决书的形式和内容存在冲突。<sup>3</sup>目前,这场争论主要局限于法律视角。本文则尝试从语言学角度切入,运用言语行为理论中的

言外行为和言后行为理论,对法官后语展开分析,以探讨其可行性及局限性。

## 2. 中国法官后语中的言外行为

Shuy (2001:444) 指出:“话语分析的一个显著特征在于,它能够广泛应用于各种场景和语境之中。具有连续性的文本,无论是书面的还是口头的,就都存在对其进行话语分析的可能性。”根据 Shuy 的观点,尽管法官后语以书面形式单方面呈现为独白,却殷切期待诉讼当事人的积极回应。法官与诉讼参与人的言语行为并非像普通对话那样是真正意义上的面对面互动,而是法官与诉讼参与人各自扮演着不同的角色。他们能够顺畅互动,并对诉讼参与人产生实质性影响。从这个角度看,法官后语比普通书面话语更具互动性,可视作一种特殊的对话形式。因此,有必要对该话语中的言外行为 ( illocutionary acts ) 和言后行为 ( perlocutionary acts ) 展开分析,以探究法官在法庭审判语境中如何通过话语传达意图,以及这些话语对诉讼当事人产生的影响。

根据 Austin (1962:103) 的观点,任何话语行为都包含三种言语行为——言内行为 ( locutionary act )、言外行为 ( illocutionary act ) 和言后行为 ( perlocutionary act )。言内行为仅指按字面意义说出特定句子的行为,其实施仅依赖语言本身,不涉及说话者的意图或目的,但其有效性仍与说话者的意图保持一致。而言外行为是一种约定性行为,实施时必然包含谋划、意图或目的。这种行为通过言语得以实施,或是因言语而引发,因此本质上是话语所产生的结果。因此,言外行为赋予话语以言外之力,这种力量能够影响他人并实现说话者的意图。法官后语作为庭审结束时针对案件细节的专门表述,是'发自法官内心深处'的话语,具有明确的意图与谋划,并展现出强大的言外影响力和说服力。此外,法庭审判作为高度程式化的情境,须严格遵循既定规则。这些规则对法官后语的内容与表达方式形成约束,使得法官在此框架内缺乏自由选择的空间。正是这种规范性,保障了法官后语在法庭审判中的可行性。例如:

### 案例 1

这是一起关于金钱债务纠纷的民事案件。妻子周某在丈夫因交通事故去世后,从其丈夫所在单位领取了 8100 元人民币的补偿金。然而,周某的婆婆要求分得部分款项,双方因此产生纠纷并诉至法院。经审理,法官认定周某应向其婆婆支付 1000 元人民币。虽然该判决结果公平合理,但母女关系已产生裂痕。为修复亲情,法官在判决书末尾附加了如下寄语:

金钱难抵血脉亲情。望双方放下往日积怨,重拾昔日和睦。这既是当事人及子女应当深思的问题,更是需要共同努力达成的目标。

### 案例 2

这是一起离婚民事诉讼案件。自夫妻二人共同经营个体生意以来,丈夫彭某长期不满妻子刘某独自掌控家庭经济大权,双方为此频繁争吵,最终导致分居。随后,刘某向法院提起离婚诉讼,请求解除婚姻关系。法官认为夫妻感情尚未完全破裂,遂判决不准予离婚,并在判决书末尾附上如下意见:

任何美满的婚姻都难免存在夫妻矛盾。既然矛盾已经产生,双方更应保持清醒头脑,力求通过积极沟通化解现存问题。夫妻恩爱应建立在彼此充分信任的基础之上。

### 案例 3

这是一起继承纠纷民事诉讼案件。原告穆某与被告董某在诉讼前长期相互指责,矛盾激烈。然而案件审结后,双方不仅冰释前嫌,更重归于好。这一转变源于他们被以下法官后语深深触动:

原告幼年丧父,被告中年丧偶。这些无疑都是世间真正的悲剧。本案双方彼此都遭遇了不幸,本应相互同情、彼此理解,但遗憾的是,他们却为死者的遗产起了争执,给自己的内心造成了更严重的伤害。法律虽可公正裁决双方之间的继承纠纷,但金钱终究无法替代血脉亲情。逝者已矣,生者犹在。若其亲属仍在为遗产争执不下,逝者又岂能在九泉之下安然瞑目?希望双方摒弃旧怨,互相尊重、彼此关爱,重新培养感情。若看到你们全家幸福美满、诸事顺遂,那可真是一件无比快乐的事!

根据 John R. Searle (1969:48) 的论述,此类语句通过约定俗成的方式实现特定言外行为效果,即当听者理解语句时,说话者的意图即告实现。上述判例中,法官后语通过着重强调“情感”、“道德”与“人文关怀”,清晰传递了法官的裁判意图。此外,案例 1 中‘望能放下往日积怨,重拾昔日和睦’与案例 3 中‘希望双方摒弃旧怨,互相尊重、彼此关爱,重新培养感情’等表述,本质上构成对诉讼当事人的道德感召,要求其以积极态度回应法官后语,履行约定俗成的行为义务。尽管案例 2 中未出现此类表述,而案例 1 和案例 3 中也仅包含两处相似话语,但整个法官后语所传达的核心意涵一致,并产生了同等的言外行为效果。这些话语具有显著的言外之力。

语境可分为‘语言语境’和‘非语言语境’两类(黄国文,1988:44;何自然,1989)。语言语境依托于衔接与连贯机制,而非语言语境则超越了句子本身的意义范畴。后者能够揭示言外之力如何赋予话语深层含义。在法庭审判中,听者即为案件的诉讼当事人。他们高度关注案件进展,并迫切希望理解法官的判决理由与意见。从这个意义上讲,他们具有强烈的行为动机。因此,在这两种语境下,诉讼当事人能够充分理解法官后语的内涵与意图,从而实现预期的沟通效果。

### 3. 中国法官后语中的言后行为

在交际过程中,成功实施言外行为能够达成预期效果,并引发与说话者意图一致的行为反应,即言后行为。从上述案例可见,法官后语的影响力已有所显现。通常,诉讼当事人在法庭语境中会采取相应行动,或深受法官话语触动。然而,话语本身也会对听者和说者的情感、思想及行为产生连锁性影响(Austin 1962:101; Searle 1969:25)。由此可知,表意相同的话语可能产生不同的结果效应,而相同的结果效应也可能通过不同表意的话语实现。这是由于听者知识储备、意识形态及个人性格的差异,会导致其产生不同的感受、认知和行为反应。因此可以确认:言后行为与言外行为之间未必存在必然关联。

据此观点,案件当事人可能会对法官后语作出积极或消极回应。若当事人积极回应,法官后语即可实现其预期目的;反之,若遭否定回应,则此类后语难以称之为'合理'。需要特别指出的是,法官后语的语境是高度程式化的法庭审判环境。在此类审判中,法官的言辞表达均经过严谨设计。鉴于多数案件涉及情感因素,法官后语会对当事人的情感、认知及行为产生显著影响。大量案例显示,当事人对法官后语普遍持积极反馈。在案例1中,法官后语深深触动了婆媳双方,促使二人重归于好;案例2中,法官后语打动了丈夫,使其主动放弃离婚诉求;案例3中,双方当事人均表示愿意服从法庭的公正判决,并坦言正是法官后语帮助他们正确认识了法治与道德的关系。事实上,在更多案例中,法官后语均取得了积极成效。这些实践充分证明,法官后语确实发挥了重要作用,具有显著的说服力。正因如此,将其称为“温情的法院判决”是恰如其分的(米健,2003)。

### 4. 结论

尽管中国法官后语符合言外行为与言后行为的条件,并取得了良好成效,但其自身仍存在一定局限性,并非完美解决方案。其中部分问题值得探讨。

首先,正如前文所述,由于多种因素可能影响最终效果,言后行为与言外行为之间并不必然存在直接关联。基于此,言后行为的效果取决于说者与听者的互动,最终由听者的反应和行为所决定。司法实践中,诉讼当事人的情感、认知和行为往往具有不稳定性。尽管法官后语具有高度程式化的语境、明确的惯例及显著的言外之力,但其适用范围主要限于涉及情感因素的民事案件。这表明言后行为难以在刑事案件等其他类型案件中广泛运用——此类案件的复杂性导致诉讼参与者的认知、情感和行为具有高度不确定性,因而难以预测其反应的性质(积极或消极)。其次,法官后语的表达方式问题值得深入探讨。其设计应当基于案件具体情况精心推敲,确保能够有效传递强有力的言外之力,从而对诉讼当事人产生积极影响。若表达方式欠佳或措辞不当,将难以实现预期的言后行为效果。第三,法官后语主要适用于赡养父母与祖父母、抚养子女、继承纠纷、离婚等家事案件类型。此类案件通常涉及情感依附关系,因此诉讼当事人更易产生积极回应。然而,在刑事案件等其他类型案件中,诉讼当事人往往情绪波动较大,

心理状态更不稳定。因此,法官后语的言外行为和言后行为效果可能受到较大限制,这也是其在非家事案件中应用范围有限的主要原因。

目前,部分法院正尝试将法官后语应用于涉及未成年人的刑事案件以及损害赔偿、名誉权纠纷等民事案件领域。初步实践成效显著,表明法官后语仍有进一步发展的空间。若能结合具体案件特点精心设计表达方式,法官后语必将发挥更大效能,并产生持久深远的影响。

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