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The pragmatic functions of 'respect' in lawyers' courtroom discourse: a case study of Brexit hearings

Abstract

This paper is a corpus-assisted discourse analysis of the use of the word *respect* by the main advocates in the High Court and Supreme Court hearings of R v Secretary of State for Exiting the European Union (the 'Brexit case'). Courtroom discourse has received substantial research attention in pragmatics, and previous work has largely focused on notions of face and im/politeness exhibited in power-asymmetric encounters between lawyers and witnesses in hostile cross-examination. In contrast, this paper focuses on lawyer-judge interaction in appellate hearings and explores the ways in which advocates negotiate the task of making face-threats that are inherent to the discourse situation, while maintaining the levels of professional courtesy demanded by the institution. The word *respect* has a particular role in managing this balance, and has attached to it well-established implicit, indexical and professional meanings within the legal profession. The corpus analysis here shows that, although the advocates in question use *respect* in seemingly formulaic and ritualised ways, it is used to achieve multiple facework and interactional goals. Throughout the analysis we see advocates use *respect* when (dis)agreeing with judges, challenging opposing counsel and making recommendations to the court.

Keywords: forensic linguistics, corpus linguistics, courtroom discourse, face, Brexit, respect.

1 Introduction

Advocacy, when conducted by advocates in legal proceedings, represents a formalised discourse underpinned by rules of conduct and developed through communities of practice. This is particularly so in appeal (or 'appellate') proceedings before the higher courts, wherein the aim of advocates is to present arguments in such a way that persuades the court of the validity or otherwise of decisions made by another court or, in some cases, a public body. In appellate proceedings, advocates are required to produce a skeleton argument in advance which outlines their arguments, and oral advocacy will often focus on specific aspects of that argument. In doing so, advocates are often required to address and invalidate the arguments put forward by their opponents. In addition, appellate advocacy is notable for its frequent robust judicial intervention, the function of which is to test the strength of an argument in the face of alternative paradigms. The nature of this intervention often takes the form of a challenge to the advocate's argument from one or more judges.

The language of advocacy places a heavy emphasis on obvious displays of courtesy which are engrained as both rules and normative principles. For example, the judiciary in the higher courts in England and Wales are addressed as 'My Lord' or 'My Lady' and opponents as 'My Learned Friend'. These practices are informed by obligations of The Code of Conduct for work by barristers and serve to maintain the dignity and gravitas of court proceedings which is seen as being central to upholding the rule of law. As the Court of Appeal noted in R v Farooqi ([2013] EWCA Crim 1649), a case in which an advocate was censured for being rude to a judge in their closing submissions:

> Advocacy of the kind employed by [M] would rapidly destroy a system for the administration of justice which depends on a sensible, as we have emphasised, respectful working relationship between the judge and independent minded advocates responsibly fulfilling their complex professional obligations.

The importance of displaying courtesy at all times is something which is impressed upon advocates throughout their training and career. Failure to observe these rules can result in censure either via complaints to senior members of the profession or professional regulators.

In pragmatic terms, then, the appellate courts provide a unique space in which advocates are required to discursively manage making face-threatening acts that are inherent in challenging and disagreeing with either their opponents or judges (or both) while maintaining the standards of institutional and professional courtesy. The main aim of this paper is to examine the word *respect* (and its related forms) and to identify the ways in which it is used to navigate these complex demands. *Respect* is an institutionally entrenched and conventionalised token that serves a range of pragmatic functions in context; one such counter-intuitive function is the use of *respect* as a marker of disrespect, as it has come to be interpreted by those in the legal profession to show contempt or derision. The analysis adopts a corpus-assisted approach to discourse analysis in investigating the use of *respect** by the main advocates in one of the most significant appellate cases in U.K. history - R v Secretary of State for Exiting the European Union (the 'Brexit case'). This work builds on the array of previous research into the pragmatics of the courtroom, making the case that 'the courtroom' is not a homogenous discourse space, and that insights from appellate courts in particular present new perspectives to this area of institutional and legal pragmatics.

2 Pragmatics of the courtroom

As Harris (2011: 86) notes, the courtroom is "inevitably associated with conflict, disagreement and the often irreconcilable goals of the primary participants", in which such conflict between opposing sides in court is "systematic and legally sanctioned". This institutionally sanctioned conflict has made the court a popular target for pragmatic analysis. This is mainly because the order of business in courtroom discourse, characterised by challenge, disagreement and (legal) argument, is such that behaviours that would ordinarily be considered face-threatening are a central part of the process. In a courtroom context, the

positive face of participants can be threatened by having their rationality, motivation and recall questioned, as well as being forced to concede, admit inappropriateness of their actions and having to give deference to others. At the same time, participants' negative face is threatened as they have to succumb to institutional constraints and obligations as well as accept impositions and direction from others (see Penman 1990 for a description of these facework strategies). Archer (2008; 2011a; 2011b; 2011c; 2017) has made a strong case that theories of im/politeness primarily based on Brown and Levinson (1987) and developed and expanded by Culpeper (1996) and Bousfield (2008) are not fully equipped to deal with the nature of interaction in court. In such interactions "participants are legally licensed to aggravate the face of other participants because of their role" and, therefore, "there is likely to be a high expectation of conflictive talk amongst participants" (Archer 2008: 182). There are two main consequences of this expectation of face-threat with regard to im/politeness. First, insofar as the function of linguistic politeness is to mitigate the effects of potential face-threats on the hearer, if the hearer is *expecting* such face-threats and they are sanctioned in context, then there is no (or at least less) requirement to mitigate them, reducing the need for so-called politeness. This has led the description of the courtroom as being "designed as a place of minimal politeness" in which "disagreements are done straightforwardly with little hedging or the other kinds of conversational work" (Tracy 2011: 124, 129). In this way, courtroom discourse can be considered to involve what Tracy (2008) calls 'reasonable hostility', which reflects the requirement for certain types of institutional discourse to include expected and accepted situationally appropriate face-attack. Second, Archer (2011a: 3219) highlights that in traditional theories of im/politeness, "truly impolite behaviour must transcend the norm for a given community of practice or activity type". Therefore, such models of impoliteness struggle to account for courtroom interaction "because they are designed to capture intentional face attack which is 'maliciously and spitefully' undertaken" (Archer 2011a: 3217). Courtroom protocol, Archer argues, helps to ensure that this sort of *intentionally* malicious and *personally* spiteful face-attack is rare in this context; as Harris (2011: 104) notes, purposefully offensive behaviour is "probably counter-productive as a

strategy in the courtroom to convince anyone of anything". That said, although the incidence of so-called "impoliteness" is relatively low, face-attack *does* occur in court, regardless of intentionality. For example, Archer (2011a) introduces the notion of 'strategic ambivalence' to account for instances when a lawyer knows that an utterance they plan to make in the pursuit of achieving their goals is likely to damage the witness' face, but that is not the primary goal of the utterance. Tracy (2020) extends this further, arguing that face-attack is an inherent part of lawyers enacting their professional identities, and that much of what they do in court "straddles the line between being intentional face attack and attack that is merely incidental to the legitimate doing of their work" (Tracy 2020: 253).

The vast majority of studies in the pragmatics of courtroom interaction are bound by three common and related themes: (i) the focus on legal-lay talk (ii) the focus on witness cross-examination in criminal trials, and (iii) the focus on face-attack, face-aggravation and impoliteness (or absence thereof). The fact that much of the facework undertaken by lawyers is sanctioned in context is underpinned by the power asymmetries between participants, particularly lawyers and witnesses in hostile cross-examination. In a cross-examination context, as the institutionally powerful participant, lawyers are in a position to attack the witnesses' face. Meanwhile, the witness has a much more limited capacity to negotiate their own positive and negative face wants, for example, because they must comply with the direction of the questioner and their accounts are challenged as standard (Penman 1990: 34; Archer 2011a: 3228). As such, it is very difficult for witnesses as the institutionally powerless participant to successfully challenge the strategies of the lawyers, and this is something that has been examined in both historical (Kryk-Kastovsky 2006; Cecconi 2011; Csulich 2016) and modern (Taylor 2009; Archer 2011a; Johnson and Clifford 2011; Grainger 2018) contexts. Relatedly, the mismatch between legal and lay participants' expectations and perceptions of salient or non-salient 'politic' (Watts 2003: 20) behaviours in court, as well as the implications for face and potential problems these can cause for the interaction, are also well-documented (e.g. Taylor 2009; Archer 2011a; Archer 2011b; Grainger 2018). In

addition, most research into facework in court has reported on face-attack, face-threat or face-aggravation. Penman (1990: 29) noted that, in court, participants mitigate the effects of face infringement by using markers of politeness. However, features of politeness, face-protection and face-enhancement enhancement are very rarely examined in a courtroom context (Harris 2011: 88; Archer 2017: 714).

Because this study explores lawyer-to-lawyer (or, more accurately, lawyer-to-judge) talk in the presenting of legal opinion in a case of constitutional law, its findings have implications for some of the main assumptions and areas of consensus developed by this existing research. In the type of lawyer-to-lawyer talk examined here, all parties are privy to (in fact, very well-versed in) the norms of the activity type, and so the talk will not be characterised by any mismatch in expectations and perceptions of politic (or otherwise) behaviour. At the same time, because the advocates are equal to each other in terms of power (or at least in terms of role), the facilitation of the much-researched face-attack via institutional dominance is removed. This paper, therefore, makes a contribution towards redressing the current imbalance in the field by analysing an underexamined type of courtroom discourse. The analysis shows that 'courtroom discourse' is not a homogenous genre, and that the shifting of the parameters of the interaction, including the participants, their expectations and the purpose of the talk, produces many features that run counter to the received wisdom of face and facework in court.

2.1 *Respect* in advocacy

Advocates are often advised to use linguistic devices which allow the conflict inherent in appeal court hearings to be negotiated whilst maintaining the impression of courtesy (e.g. Elkington et al. 2021), and the word *respect* (and its adjective and adverb forms *respectful* and *respectfully,* marked in this paper by an asterisk) is one such device. In fact, as a result of the frequency with which this practice is followed in the judiciary, the use of the word *respect* has developed cultural significance around it within the legal profession. One

interpretation in the profession is that it is in fact a marker of *disrespect*, whose utterance is designed to show contempt. As Lord Neuberger (2016: 12), President of the Supreme Court at the time of the hearings, commented extra-judicially:

> So, when the judge makes what the advocate thinks is a stupid point, the advocate will often begin his answer with the words, "My Lord, with great respect …"; if he thinks the point is particularly stupid, the advocate may begin his answer by saying, "My Lord, with the greatest respect ….". I leave it to your imagination as to what an advocate thought of a point I once made to him in argument when he started his answer with the words, "My Lord, with the very greatest respect possible…"

This idea has also been expressed in commentary in the legal profession. For example, *The Law Society Gazette*, the largest-circulation legal magazine in the UK and Europe, ran a piece which advised junior barristers that the phrases "'With respect', 'with all due respect', 'with great respect', 'with the greatest respect', and 'with the greatest possible respect', are insults of increasing aggression" (*Law Gazette* 2004). Similarly, British legal news website *Legal Cheek* published a "How to speak lawyer" guide for trainee solicitors and pupil barristers, in which readers are told that the phrase 'with the greatest respect' is to be translated as 'you are a total idiot' (Nugent 2013). This in-group phenomenon is also visible in popular culture, often being alluded to by John Mortimer's fictional barrister, Horace Rumpole who described advocacy as:

> Standing up and bowing, saying, "if your Lordship pleases, In my humble submission, With the very greatest of respect my Lord," to some old fool no-one has any respect for at all (Mortimer 1992: 223)

Another informal perception that exists in the profession is that there is a correlation between the number of times an advocate uses the word *respect** and their likelihood of being

ultimately unsuccessful in their argument. This is perhaps best summarised in a tweet from an anonymous twitter profile in the persona of a High Court judge: “Counsel today kept saying ‘with respect my lady.’ Coincidentally I found against him.” (Mrs Justice Prevailed @MsJusticeP, 2017).[1] Therefore, there is an underlying logic that a greater use of *respect** is indicative of a greater number of points of conflict to be negotiated between advocate and judge, which in turn is indicative of there being a greater number of concerns in the mind of the judge. Therefore, the word *respect** has attached to it a well-established and implicit institutional meaning and this makes it an attractive object for pragmatic analysis. Although it is ostensibly a marker of politeness, when used in context it has a number of quite different possible interpretations.

3 R v Secretary of State for Exiting the European Union

On the 23 June 2016 the United Kingdom held a referendum on membership of the European Union (‘the EU’). The result of that referendum was announced on 24 June 2016 and 51.9% of the population voted to ‘leave’ the EU (Electoral Commission 2019). In order to give effect to the result of the referendum and withdraw from the EU, the government were required to notify the European Council in accordance with Article 50 of the Treaty of European Union (‘Article 50’).[2]

Following the announcement of the results of the referendum, some legal commentators indicated that notification was an act that required Parliamentary approval in the form of legislation (e.g. Pannick 2016). On 3 July 2016, the law firm Mishcon de Reya issued a statement indicating that it had sought assurances from the government that notification would not be sent in accordance with Article 50 without first obtaining parliamentary approval, and that in the absence of such assurances being given it was issuing proceedings

[1] There is no evidence that the author of this account is a judge but there is evidence that she or he has a detailed knowledge of the justice system.
[2] Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union 2012/C 326/01

on behalf of a group of clients (Mishcon de Reya 2016). Proceedings by way of an application for Judicial Review were commenced in the High Court, with the matter being heard on 13 October 2016 and continued on the 17 and 18 October 2016. The High Court issued a declaration that the Crown could not use prerogative power to issue notice pursuant to Article 50 but granted permission to appeal to the Supreme Court (R v Secretary of State for Exiting the European Union [2016] EWHC 2768). The government sought leave to appeal this ruling to the Supreme Court and the case was heard between 5 – 8 December 2016 (R v Secretary of State for Exiting the European Union [2017] UKSC 5). The Supreme Court dismissed the government's appeal by a majority of 8:3.

In England and Wales, judicial review proceedings are conducted in the Administrative Court, a specialist court which sits within the Queen's Bench Division of the High Court. Normally a decision in the High Court would be appealed to the Court of Appeal. However, in cases of general public importance (such this case) which turn on the interpretation of a statute or caselaw, the appellant can seek leave of the court to 'leapfrog' the request for permission to appeal directly to the Supreme Court. Both the High Court and Supreme Court house powerful institutional voices. Justices of the High Court are the third highest tier of the judiciary and are appointed on the basis of their ability to deal with cases of the utmost gravity and complexity. Justices of the Supreme Court are the highest tier of the judiciary. Judges in England and Wales have, historically, been drawn from the senior ranks of the Bar and solicitor's profession although in the higher courts the majority are former barristers. The nature of the talk in the High and Supreme Courts is such that all exchanges are made via the judges; the advocates do not speak directly with each other during proceedings.

The bald description of the facts of the Brexit case given here does little justice to the public scrutiny it endured. From a legal perspective it was seen as providing important clarification as to the extent to which the executive can use the Royal prerogative to withdraw from treaty obligations which confer rights on individuals. In the media, a narrative developed that this

was an attempt by the Claimant's lawyers to thwart the referendum result. The unprecedented public interest in this case meant there was a considerable focus on the standards of advocacy displayed. Although eleven advocates addressed the court(s), much of the public commentary was focused on Lord Pannick QC, on behalf of Gina Miller[3], and James Eadie QC, on behalf of the government. A number of sketch writers endeavoured to capture the interplay between Pannick, Eadie and the bench. *The Guardian* (Crace 2016) said of Eadie's performance in the Supreme Court:

> He'd never wanted this appeal and just going through the same points that the divisional court had dismissed last time out was doing nothing for his self-esteem. Trying to make the best of a bad job, wasn't his usual style.

Whilst of Lord Pannick QC he said:

> A Pannick attack is a thing of zen-like beauty. He doesn't need to shuffle his papers because he never forgets a reference. Nor does he ever miss a beat. In his hands, a legal submission is more a cosy bedside story than adversarial confrontation.

To ensure transparency and reflect the exceptional public interest in the hearings, verbatim transcripts of all hearings were released on the day of the hearing in addition to the normal practice of livestreaming cases from the Supreme Court. It is these transcripts that comprise the data for this paper. Combined, the transcripts of these hearings total 286,808 words. Focus here is on the turns of the two primary and opposing advocates—Lord Pannick (Miller) and James Eadie QC (government)—whose turns account for over 55,000 and 71,000 words respectively (Table 1). The differences in the number of words per advocate across the two hearings can be explained by their alternating roles in the High Court and

[3] a business owner and activist who initiated the 2016 R (Miller) v Secretary of State for Exiting the European Union

Supreme Court. In the High Court, Lord Pannick acted on behalf of the appellant and therefore bore the burden of persuading the court to overturn the government's decision. In the Supreme Court, it was the government who bore the burden of persuading the court to overturn the High Court decision. Therefore, Lord Pannick in the High Court and James Eadie in the Supreme Court were responsible for opening the case and setting out their arguments to which the opposing side responded. The turns of Eadie and Pannick were manually extracted from the full transcripts using the speaker names provided in the transcripts.[4] The data were converted from the PDF format in which they were downloaded into plain text (.txt) for use with corpus software AntConc (Anthony 2019).

Table 1

Breakdown of the Brexit Hearings corpus.

	High Court	Supreme Court	Total
Tokens	125,953	160,855	286,808
James Eadie QC	22,496	49,002	71,498
Lord Pannick	37,233	18,261	55,494

4 Methodology

The approach taken in this paper is a corpus-assisted discourse analysis. A decade ago, corpus approaches to the courtroom were rare (Taylor 2009: 233) but recent years have seen them become far more frequently applied in analyses of the historical, modern and

[4] We owe an enormous debt of thanks to Roxanne Ablett and Selina Leung for their work on the collection and preparation of this data.

multilingual courtroom (e.g. Johnson 2014; Liu and Hale 2017; Chaemsaithong 2018). The analysis here focuses on all forms the lemma *respect** in the hearings, including *respect, respectful* and *respectfully*. The decision to focus on *respect* was determined by the institutional and professional meanings it has attached to it, detailed above (section 2.1). Furthermore, all three forms of *respect* are keywords in the corpus, indicating that they appear with an unusually high frequency relative to some comparison point (Hardie 2018). In this case, the data from the hearings was combined and compared against the 11.5-million-word spoken component of the British National Corpus 2014 (Love et al. 2017) and keyness was calculated using the log-likelihood statistic. There was found to be a statistically significant difference in the frequency of all three words between the hearing data and the Spoken BNC2014 ($p<0.0001$), which means that we can be confident to a level of 99.99% that the frequency difference between words in our corpus and the BNC2014 is not due to chance. Furthermore, Hardie's Log Ratio effect size measure (Hardie 2014) was used to determine the *size* of the frequency difference. This measure revealed that *respect, respectful* and *respectfully* occurred 16, 128 and 2,048 times more frequently in our corpus than in the Spoken BNC2014.[5] In focusing on one word or lemma as a means of analysing pragmatic patterns in a large corpus of courtroom discourse, this paper follows an emerging trend in the field, with *well* (Tkacukova 2015), *now* (Claridge 2018), *you see* (Szczyrbak 2019) and *but* (Lutzky 2019) having all recently been used for this purpose.

The methodological approach to analysing *respect** followed in this paper comprised three procedural steps. The first step involved identifying all of the 2 to 5-word clusters in which *respect** appeared in the data. The second involved using concordance analysis to identify recurring patterns in the use of *respect** and its clusters and, following common practice in corpus-assisted discourse analysis, these patterns were manually categorised on the basis of shared meanings, functions or discourses (Baker et al. 2008; Partington et al. 2013). In

[5] The Log Ratio effect size results for these words were 4.6 (*respect*), 7.28 (*respectful*) and 11.58 (*respectfully*), which as per Hardie (2018) correspond to the frequency differences stated here.

this analysis, each instance of *respect** was categorised in terms of its apparent pragmatic function. Given that our data is dialogic, this required expanding the analysis beyond the usually restricted concordance lines to longer stretches of talk (c.f. Rheindorf 2019: 64–9). Over the course of the iterative, bottom-up analysis, three main uses of *respect** were identified. The final methodological step involved the selection and presentation of representative examples of these uses in which to anchor a closer, more detailed analysis and interpretation of the pragmatic strategies being employed by the advocates. Because in this type of corpus-assisted approach the pattern identification and categorisation of usage is "entirely a property of the perspective of the analyst" (Baker and Levon 2015: 233), such interpretations need to be supported by appropriate discourse theory. In this analysis, we follow Tracy's (2020: 267) recommendation of using concepts of politeness and face as "useful sensitizing tools for describing the goals, problems and discourse strategies" of communicative practices in the courtroom. Therefore, in our analysis, we draw on a range of different notions and conceptualisations of face and (im)politeness where appropriate in examining and interpreting the pragmatic strategies employed by Eadie and Pannick.

5 Analysis

Eadie and Pannick use *respect* with different frequencies across the two hearings (Figure 1). First, all *respect** forms are more common in the Supreme Court than the High Court and in terms of normalised frequencies per thousand words, Eadie is a more prolific user than Pannick. Second, while Eadie has a clear preference for *respectfully*, Pannick has a more equal use of *respect* and *respectfully* in both hearings. Third, both advocates use *respectful* the least of the three forms though it appears marginally more frequently in Eadie's turns than Pannick's. A quantitative inspection of the clusters in which these words appear provides an insight into how they are used by the two advocates (Table 2 and 3). The most dominant pattern which emerges is that *respectfully* is used exclusively, by both Eadie and Pannick, to modify verbal processes: *suggest, agree, say, accept, answer, recommend, invite*, with by far the most frequent cluster being *I/we respectfully submit*, for example:

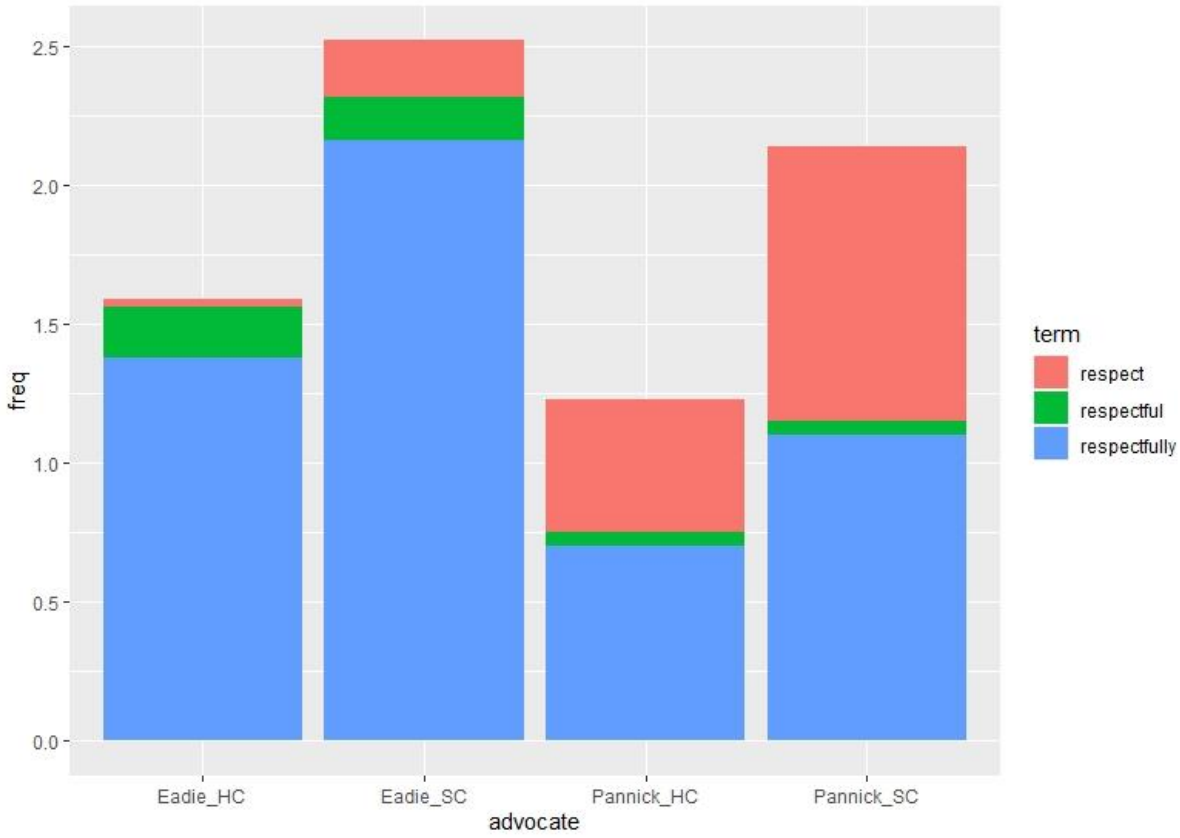

Figure 1

*Respect** frequencies in turns of Eadie and Pannick (per thousand words) in the High Court (HC) and Supreme Court (SC) hearings

> [1]
> The second on core points on the 2015 Act is that it was passed with Parliament acknowledging at the very least the political realities associated with the scale of the decision to stay or leave. **We respectfully submit** that the proper implication from that act is that doing so, Parliament was acknowledging and acknowledging plainly, consistently with the statements that happened to have been made, that the vote should decide that question and that all concerned including Parliament, would respect the outcome.
>
> (James Eadie, Supreme Court, 5 December 2016)

Table 2

James Eadie's uses of *respect** in the corpus (frequency in brackets)

Hearing	Word	Freq.	Cluster
High Court	*respectfully*	32	*we respectfully submit* (27), *we respectfully suggest (2), we do respectfully submit, I may respectfully say so, which respectfully recommend*
	respectful	4	*my respectful submission* (3), *my respectful answer*
	respect	3	*with respect (3)*
Supreme Court	*respectfully*	106	*we respectfully submit* (74), *we do respectfully submit* (9), *I respectfully submit* (7), *we respectfully agree* (5), *we respectfully do not accept* (2), *we do respectfully entirely agree, I nevertheless respectfully submit, we respectfully adopt, we respectfully answer, we respectfully respond, we respectfully suggest, we respectfully would not accept, we will respectfully submit, I would respectfully submit*
	respectful	8	*my respectful submission* (7), *our respectful submission*
	respect	2	*with respect* (2)

In judicial contexts, *submit* refers to the introduction or presentation of an argument or evidence. The alternation between *we* and *I* (the former being preferred by Eadie, the latter by Pannick) reflects the fact that in both hearings there are multiple advocates in each team and therefore when using *we,* Eadie and Pannick as senior advocates are representing the submission on behalf of their respective teams. As the clusters in the table show, *respectfully* only appears modifying verbs, and not in its other possible position modifying a whole sentence, such as would be the case in "respectfully, your Lordships, I…". The use of *respectfully* to modify verbal processes in this way—and similarly when *respectful* is used to modify *submission*, *answer* and *criticism*—demonstrates the metadiscursive function of the terms as a means by which to influence their recipients' reception of the utterance. Metadiscourse conveys a speaker's intended meaning and in doing so takes their audience's "needs, understandings, existing knowledge, intertextual experiences and relative status into account" (Hyland 2007: 284). In simple terms, Eadie and Pannick are explicit that they are making their submissions to the court 'respectfully' and that they

Table 3

Lord Pannick's uses of *respect** in the corpus

Hearing	Word	Freq.	Cluster
High Court	*respectfully*	25	*I respectfully submit* (6), *we respectfully submit* (5), *I respectfully agree* (4), *I do respectfully submit, I respectfully seek, I respectfully [interrupted], I respectfully say, very respectfully say, we respectfully agree, we respectfully dispute, we respectfully invite, we would respectfully agree, we would respectfully submit, I would respectfully submit*
	respectful	2	*my respectful submission* (2)
	respect	13	*with respect* (9), *with great respect* (4)
Supreme Court	*respectfully*	20	*I respectfully submit* (4), *I respectfully agree* (3), *I say respectfully* (2), *we respectfully agree* (2), *I respectfully adopt, I respectfully commend, we for our part respectfully agree, I do submit respectfully, I therefore respectfully submit, I would respectfully accept, we would respectfully agree, I would respectfully submit, I would respectfully take issue*
	respectful	1	*my respectful criticism*
	respect	14	*with respect* (8), *with great respect* (6)

hope that they are received as such. Given that these metadiscursive clusters are frequently repeated (particularly by Eadie), it could be argued that they are "formulaic metadiscursive signalling devices" that may be "almost wholly automised" (Trklja and McAuliffe 2019: 50) in the interaction. This interpretation would mirror both Kurzon's (2001: 64) point that in a legal context, addressees can be deferred to with respect by the use of "formulaic politeness strategies" and O'Driscoll's (2018: 44) notion of "ritual deference" as a perfunctory, unmarked enactment, going mostly unnoticed by those giving and receiving it. However, metadiscursive strategies and their effects "must be analysed as part of a community's practices, values and beliefs" (Hyland 2005: 37) and they are "linked to the norms and expectations of a particular cultural and professional community" (Cavalieri 2011: 83). Therefore, given the established implicit and perceived institutional meanings of *respect* within the legal profession, to conclude that the use of *respect** by Eadie and Pannick in this context is only and always simply a routine or symbolic politeness marker, signalling

deference to addressees in court, would serve to understate the pragmatic versatility of the word and its uses. In the qualitative analysis of instances of *respect** below, we show the ways in which it serves multiple facework goals (Penman 1990), all of which are underpinned by professional norms and shared understanding of the participants.

5.1 *Managing (dis)agreement with the judge(s)*

Appellate court hearings are characterised by frequent interruptions and questions from the bench of judges to the advocates. It follows, therefore, that there are regular disagreements between the judges and advocates, as the former challenges the latter's submissions and arguments, while the latter works to defend them. Thus, exchanges between advocates and judges are fertile spaces for potential face-threats. For example:

> [2]
> My Lord, I think, the Master of the Rolls said: well, does this all depend upon the fundamental distinction being drawn between an amendment and a withdrawal, bearing in mind the wording of that Act. In **my respectful submission** the position is that withdrawal is not touched at all by that legislative scheme, despite Article 50 being brought in by Lisbon, despite the explanatory notes of the 2008 Act and all of that.
> So **we do respectfully submit** that there is a clear indication that the withdrawal was not touched, however much amendment might be. So the answer that is given to that by my learned friend which, I think perhaps underpins my Lord, the Master of the Rolls' question is: well, how does that make sense? You are legislating for the lesser beast and you are legislating for the least dangerous animal in the jungle and you are prepared to let the tiger roam free. That is the point being put against me.

> But **my respectful answer** to that is that that assumes, as it were, that degree of coherence in the way in which Parliament has exercised the choices it has about calling back in.
>
> (James Eadie, High Court, 17 October 2016)

In this extract from the High Court, James Eadie is responding to a question posed by the Master of Rolls and uses *respect** three times in quick succession. Eadie's response is one in which he is rejecting the argument being advanced by the judge and, taken together, these *respect** clusters serve to mitigate the face-threat inherent in such a rejection. At the same time, Eadie de-personalises the face-threat. When using *in my respectful submission,* although he attributes this to himself through *my* (rather than *our*), the use of the nominalised *submission* removes some of the personal nature of the rejection; that is, his submission stands as proxy for himself and his team, and it is this submission which takes issue with the judge's argument, making it a more impersonal face aggravation. Later, when re-iterating the *point being put against* by using the passive voice, Eadie elides and so protects The Master of Rolls from a personal face-threat. Although it may be true that disagreements are expected in this context, they are still conflictive, and their expectedness does not mean that they are devoid of any and all face-threat. It is possible that, despite the context and its parameters, the judges being challenged by Eadie here may still perceive some threat to their face. Indeed, Tracy (2011) describes the ways in which advocates preface disagreement with judges as being 'respectful' to mark their actions as sensitive and as a means by which to make visible "that there are persons involved in the disagreement, and that hurt feelings were a possibility" (Tracy 2011: 135). In fact, we argue it is precisely the parameters of the context that exacerbate the severity of the potential face-threat; in terms of professional hierarchy, status and power, judges hold a superior position over advocates and, in turn, this calls for a high level of mitigation of challenges and disagreements so as to not appear as professionally discourteous.

At the same time, in [3] we see Lord Pannick challenge an argument being advanced by a judge, in this case the President of the Supreme Court. In this exchange, Pannick is responding directly to a question being put to him, as opposed to Eadie above who was conjuring prior discourse in a response temporally detached from the initial point. Here, The President is asking Pannick whether the result of the referendum inherently implies that the notification of Article 50 should be given, an argument which fundamentally runs counter to Pannick (and Miller's) argument:

> [3]
>
> THE PRESIDENT: If one sees it in the sort of sense -- the way Lord Wilson puts it, of some sort of partnership between Parliament and the executive, between Parliament and the Government, then it seems to me there may be some force in the argument that says, when Parliament comes to face up to this issue, they say: well, let the British people vote; it is not decisive, of course, because the Government has to decide; but one could say it is Parliament ceding the ground so far as its role is concerned to the people, to a referendum; it has done that; and then it is over to the Government.
>
> LORD PANNICK: The former is, **with respect**, self-evident, that Parliament is saying that the people are entitled, should be given a voice. Where **I would respectfully take issue** is the second part of your Lordship's question to me. It doesn't follow in my submission that the people having spoken, they are advising the Government as opposed to Parliament.
>
> (Lord Pannick, Supreme Court, 7 December 2016)

In his response, Pannick potentially threatens the face of The President on two counts, both of which are shaped through the use of *respect*.* First, Pannick undermines the judge's point

of Parliament giving the people a voice as being *self-evident*. Second, he explicitly *takes issue* with an aspect of the judge's question. Here, the difference in approaches of Eadie and Pannick is clear. Although both advocates are disagreeing and challenging a judge in these examples, whereas Eadie offers a heavily mitigated challenge, characterised by indirectness and courtesy, Pannick's challenge in less mitigated. As such, it is less likely that the use of *respect** will have the effect of diminishing the face-threat in the case of Pannick.

Something that distinguishes Eadie's discourse in the Supreme Court is the instances in which he challenges not the judges sat before him, but the decision of the High (Divisional) Court that found against him in ruling that there should be a parliamentary vote on giving Article 50 notification:

> [4]
>
> What **we respectfully submit** is that the divisional court did not properly take a long established constitutional principle and apply its inevitable logic; what they did instead was to take a number of different and generally expressed principles, and invented a new principle.
>
> (James Eadie, Supreme Court, 6 December 2016)

In such examples, Eadie is issuing potentially face-threatening criticism to parties who are not present in the current discourse event. Nevertheless, Eadie mitigates any potential face-threat by prefacing the relevant turns with *we respectfully submit*. Because these face-threats are addressed to decisions and judges that are temporally and spatially displaced, the question arises as to who stands to benefit from this mitigation. Given the structured institutional hierarchy, it may be considered professionally discourteous to openly criticise the decisions and reasoning of one court to another. Therefore, this mitigation serves to pre-empt any reprimand and to acknowledge the potentially problematic and marked act of

criticising the High Court to the bench of judges before whom he is sitting, even though the targets of the face-threat are not present.

Advocates do not always disagree with judges, however, and are often forced to concede ground after judicial intervention. *Respect** is used to frame responses to judges' turns in which the advocate agrees with the judge in a way that damages their own face:

> [5]
> LORD WILSON: Are these three cases anything more than interesting examples of the application of the necessary implication test?
> MR EADIE: My Lord, **I respectfully submit** not. I am sorry it has taken a long while to get to that point, but I did want to drive home the idea that it is expressly or by necessary implication as -- the scheme and then everything else flows from that.
>
> (James Eadie, Supreme Court, 5 December 2016)

In such cases, there are two sources of face-threat to the advocate – the judge's question of the relevance of a particular aspect of their argument or submission and then their own concession. Eadie responds to the judge's question negatively and apologetically, prefacing it with a respectful term of address "My Lord" and following it with an explicit apology. In this case, *respect** is used by Eadie to mitigate the threat both to his own face, but also to the judges for wasting their time with a seemingly irrelevant argument. Agreeing with the judge is not in itself a face-threatening act, but agreeing that he himself was wrong does threaten Eadie's own face. Such an example shows how *respect** can be used by speakers to mitigate bidirectional face-threats, both to the judges and to themselves, and further emphasises the extent of the professional courtesy demonstrated in this context.

5.2 *Challenging opposing counsel*

Addressing, invalidating and challenging the arguments of the opponents is the core business of appellate courts. Such challenges are by definition indirect in this context insofar as they are not made directly to the opposing side but via the judges. In fact, in court, lawyers never speak directly to one another, but instead talk to the judge and refer to what one another have said, or might say. Both Eadie and Pannick regularly use *respect** when framing these challenges. This is demonstrated by Eadie in [6] following a stretch of talk in which he addresses the issues he has with an aspect of Lord Pannick's answer to a previous question in the hearing (and his legal case more broadly):

> [6]
> It is not an answer because it bears no relation, the possibility that Parliament might introduce amendments and the Lords want to discuss negotiating strategy, all of that, it has nothing to do with his legal case. His legal case is you need primary legislative authority just to give the notice. It is no good saying you have to go back because they might want to ask other questions, that is the solution, as he accepts, to his legal case and **we respectfully submit** therefore that the answer he gave is no answer at all, and indeed we submit that the 2015 Act speaks volumes about the intention of Parliament.
>
> (James Eadie, Supreme Court, 8 December 2016)

Here, Eadie's challenge is directed at Pannick's answer rather than Pannick himself. Thus, this potentially face-threatening act, given via the judge and towards an answer rather than Pannick, is several steps removed from a 'standard' face-threatening act towards the person. Furthermore, Pannick can expect to have his argument challenged in this way and so it is unlikely that such a challenge will cause an undue threat to his face. Certainly, face-threat is not the *primary* function of Eadie's turn here, but a by-product of him doing his job.

Therefore, Eadie's challenge here arguably does not need to be mitigated in the same way as it would otherwise, yet he still chooses to preface this challenge with *we respectfully submit*. Very similar cases are found in Pannick's turns:

> [7]
> Therefore **<u>we respectfully dispute</u>** my learned friend Mr Eadie's contention that the defendant can lawfully use prerogative powers, even though this will defeat statutory constitutional rights created by Parliament unless, as Mr Eadie puts it, Parliament itself has made clear that there is to be a limit on the use of the prerogative power. That is how my friend Mr Eadie put it. And I do submit, **<u>with great respect</u>**, that that formulation by Mr Eadie reverses the true principle. The true principle is that where, as here, Parliament has created statutory and constitutional rights, the minister has no power to destroy those rights, or any of them, through the use of the prerogative unless Parliament has clearly conferred on him a power to do so. That is the true principle. It is vital in this case which of those approaches one adopts.
>
> (Lord Pannick, High Court, 18 October 2016)

Here, Pannick *respectfully dispute(s)* and disagrees with Eadie *with great respect.* Again, both of these potentially face-threatening challenges are conducted through the judges and towards Eadie's *contention* and *formulation* rather than Eadie himself. Nevertheless, like Eadie, Pannick mitigates the potential effects of these challenges with *respect**. Therefore, both advocates are using *respect** as an explicit politeness marker, despite the fact that it may not be necessary in this context. We argue that there are three possible motivations for this. One is that, although politeness is not necessary in the traditional sense, it *is* necessary in order to maintain the level of professional and institutional courtesy and conduct expected in court. Therefore, the source of the expectation for mitigation and politeness is not the recipient, but the judicial context itself. Related to this is the use of *respect** as a marker of professional identity. That is, *respect** is an important part of 'doing' advocacy and 'being' an

advocate and it is integral to the identity work (Tracy 2020) in which the advocates are engaged. In Garcés-Conejos Blitvich's (2009: 295) terms, *respect** serves "as a linguistic index in the identity construction" of the advocates and, as such, is being used as a routine, perfunctory metadiscursive device with no substantive politeness function. The third possible motivation for the use of *respect** in instances where it is surplus to pragmatic requirements is founded on a slightly different basis. That is, although face-threat is not the primary intention of the advocates, some level of face-threat is inevitable regardless of how indirect or mitigated it is. This is perhaps better demonstrated in other examples from Pannick:

> [8]
> If Parliament meant the 2015 Act to have a legal effect, it could and it would have said so. My friend Mr Eadie nevertheless submits, and I wrote what he said down, he said the 2015 Act "gave the decision on withdrawal to the people". Well, **I respectfully submit** that is impossible to understand as a legal proposition. Indeed, it is particularly difficult to understand when the Government resisted an amendment to give legal force to the referendum and explained why they were doing so.
>
> (Lord Pannick, Supreme Court, 6 December 2016)

> [9]
> That is the point. It is no answer for the Attorney General to say in his submissions, as he did on Monday, and I quote: "Parliament can stand up for itself." **With great respect**, that is a bad legal argument. The same could have been said in Laker, the same could have been said in ex parte Fire Brigades Union. It is the role of the court and my Lord, Lord Reed asks me about the role of the court, it is the role of the court to address whether there is legal power to act in the relevant respect, and the ability of Parliament to control that which the minister is proposing to do is, **with great respect**, nothing to the point.

(Lord Pannick, Supreme Court, 7 December 2016)

These examples demonstrate something beyond the indirect challenge to answers, contentions and formulations that we saw above. Here, Pannick attacks the arguments being presented by the opposing side as being *impossible to understand as a legal proposition*, and as *bad legal argument*. In this way, Pannick is challenging more than simply the arguments themselves, but is questioning their legal foundation and, by extension, undermines the professional competence of the opposing advocates. In doing so, Pannick presents himself a person who is ready to acknowledge and/or accept the argumentation from the opposite party provided this argumentation is sound. That is, he points out that he is reacting here against the what-is-said and not *necessarily* who-said-it. Yet, although this type of face attack is indirect, we argue that its ultimate target is the ability and the proficiency of Eadie and his team, in other words, their 'competence' face (Partington 2006) or their 'professional' face (Archer and Jagodziński 2015), and that Pannick is using *respect** insincerely as what Taylor (2009) describes as 'surface politeness' and Johnson and Clifford (2011) term 'polite incivility', serving impolite goals while remaining polite at the level of locution. As such, it is possible that using *respect** to accompany these face-threats serves to exacerbate or amplify the severity of the face-attack. Such an interpretation relies on the shared knowledge of the legal participants here and takes into account the situated professional and indexical meaning that is attached to *respect*. It requires the recipients to be 'in the know' (not only Eadie but also the court) and therefore be able to infer that *respect** is in fact being used as a marker of disrespect and to show contempt or derision. In other words, Pannick is not simply "adorning" his face-threat "with at least a piece or two of politeness jewellery" (Tracy 2008: 187); he is amplifying it by accompanying the face-threat with an institutionally and contextually loaded term, albeit an ostensible marker of 'politeness'.

5.3 *Making recommendations to the court*

Another pattern in which *respect** is used is in instances where the advocates are making recommendations or suggestions as to what the court and the judges should or should not do. Making such suggestions risks putting an imposition on the judges, which runs counter to the power asymmetry between the court and the advocates. Therefore, it may be that *respect** is used to mitigate the potential face-threat attached to these suggestions; it is a means by which the advocate can acknowledge that they themselves are in no place to tell the court how to do its job, but they nevertheless need to emphasise particular points. For example, in [10] Eadie suggests that the court approach the question at hand in a particular way:

> [10]
>
> If one is using the gun analogy, it is the starting gun. The point to which this is going is that if one approaches the issue, as **we respectfully suggest** you should do, by asking the necessary implication questions, if you get past Rees-Mogg, you are into the territory of De Keyser, it becomes a great deal less likely that the prerogative would be abrogated or excluded if the challenged action, here notification, is in very significant parts remote indeed from the asserted constitutional vice.
>
> (James Eadie, High Court, 17 October 2016)

Similarly, in [11] Eadie recommends that the judges *exercise a little caution* when considering a particular element of Pannick's submission. Here, we argue that *respect** is playing a dual role. One the one hand, it is mitigating the potential face-threat to the court as Eadie advises them what to do. At the same time, in the same was as we saw above, he is indirectly criticising an aspect of Pannick's argument:

> [11]

You need to exercise a little caution, if **I may respectfully say so**, with Lord Pannick's submission that you don't need to bother about this point because Lord Denning disposed of it in Laker in the terms that he did.

(James Eadie, High Court, 17 October 2016)

Lord Pannick also uses *respect** to preface or to mitigate face-threats attached to making recommendations on the action of the court. However, whereas Eadie does so when making suggestions as to how the court *should* act, Pannick does so when making suggestions as how it *should not* act. More specifically still, the recommendations that Pannick makes are in order to emphasise the distinction between the *political* questions surrounding Article 50 and the UK's exit of the European Union and the *legal* ones:

[12]

My Lords, some preliminary points if I may, just to clear away what we say this case is not about. First of all, this claim concerns, and only concerns, whether the law allows the executive to give notification under Article 50. The courts, **we respectfully submit**, I am sure there is no dispute about this, is not concerned with the political wisdom or otherwise of withdrawal by this country from the EU.

(Lord Pannick, High Court, 13 October 2016)

[13]

THE LORD CHIEF JUSTICE: Well, we can't get into the question, it is not for us, as to what the will of the people was. That must be for politicians to decide.

LORD PANNICK: I **respectfully** agree, and that was the substance of the submission that I sought to make this morning about the Referendum Act

> and it is not for your Lordships, in **my respectful submission**, to try to ascertain and act on any such questions.
>
> (Lord Pannick, High Court, 13 October 2016)

In these examples, Pannick makes clear that the court are only concerned with the legal aspects of the notification of Article 50 and not the political wisdom or significance leaving the EU, nor are they concerned with making estimations about the will of the people. In doing so, Pannick is demarcating the role of the court and does so *respectfully*. It is unlikely that the court disagree with Pannick in this regard, indeed, in 11, Pannick states *I am sure there is no dispute about this*. Therefore, the source of the potential face-threat here, which is mitigated by *respect** is not *what* Pannick is saying to the court, but more likely that he is saying it at all. By using *respect** Pannick is acknowledging that it is perhaps above his role as advocate to be speaking on behalf of the court and outlining the limits of its remit. An additional and alternative interpretation here is one which implicates the overhearing audience – members of the public and press watching from home (either live or otherwise). It can be assumed that the court whom Pannick is addressing knows its remit in terms of law *versus* politics. We argue, therefore, that Pannick may be using *respect** here to emphasise the role of the court and its process with regard to the UK's exiting of the European Union to those *outside* of the profession. That is, he is making clear for those who do *not* know that the court's role is to discuss and determine the legality of aspects of the withdrawal, not the withdrawal itself. Unfortunately for Pannick, any attempts in this regard were unsuccessful as, after the High Court ruled in favour of Pannick and Miller, the *Daily Mail* ran the now infamous front page headline: 'Enemies of the People: Fury over 'out of touch' judges who have 'declared war on democracy' by defying 17.4m Brexit voters and who could trigger constitutional crisis' (Slack 2016).

6 Conclusion

This paper adds to the growing literature on the analysis of face and im/politeness in courtroom contexts. Unlike the majority of existing work in this area, which has tended to analyse face-threat in the cross-examination of lay witnesses in criminal cases (either historical or modern), this study focused on lawyer-judge interaction in a case of constitutional law in appellate hearings. The examples drawn on here show that when the institutional power asymmetries that characterise cross-examination of lay witnesses are removed, the face-work and politeness strategies exhibited in the discourse of advocates has a very different flavour to that which we have become accustomed to seeing in the literature. In particular, the analysis has examined the use of *respect*,* given its ubiquity in the data and the frequency with which it was used by the two main advocates in the Brexit hearings – Lord Pannick and James Eadie. It has been argued that *respect** is a professionally salient word in the legal profession, renowned not only for the regularity with which it is used, but the institutional indexicality it holds. Furthermore, the pragmatic uses to which *respect** is put by advocates makes it an important resource as they navigate the inherent face-threating nature of argument, challenge and disagreement, while maintaining the standards of professional courtesy demanded by their role. The status of *respect** is complex in this context. On the one hand, we have argued that it can be used as a marker of professional identity, of 'doing advocacy', in instances where it serves little purpose in terms of politeness. Meanwhile, we have observed instances where it is clearly used to mitigate potential face-threats in cases where advocates disagree with judges. We have also made the case that when it is used to furnish face-threats to opposing counsel, such is the perception of the word's use in the profession, it can have the effect of exacerbating or intensifying face-threats and be used as an implicit marker of disrespect in this community of practice.

From a linguistic point of view, we hope that this paper reinforces the importance of analysing the pragmatics of courtrooms other than criminal ones, or at least elements of

courtroom discourse other than cross-examination. To focus on one part of the justice system is to understate the pragmatic richness and complexity of the interaction(s) that occur in this conventionalised institution. We also hope to have demonstrated the value of corpus linguistic approaches to courtroom discourse as a means by which to identify salient lexico-grammatical patterns which can be subject to close qualitative analysis. From a legal perspective our findings highlight the role that argument construction plays in appellate advocacy – not only in the context of choice of words, but also in terms of understanding the dimensions in which appellate advocacy operates. Notions of courtesy are not solely or simply tradition, they help emphasise the power dynamics within the court system which underpins the rule of law. We also acknowledge the scarcity of courtroom data available for the researcher, which underlines the value of publicly available data such as the transcripts from the Brexit hearings. As for the Brexit case itself, there remains a huge amount of work to be done, both from a linguistic perspective and otherwise. It provides a valuable case study in the practice of advocacy and remains a largely untapped commodity by discourse analysts despite its social, political and historical significance.

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