

The Construction of
Prosecution-Defense-Judge Relationship:
A Frame Analysis of Judges' Courtroom
Discourse Processing

控辩审关系的建构 ——法官庭审语篇处理的框架分析

陈金诗 著



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序

运用语言学理论和方法分析、解决法律问题是法律语言学的宗旨所在，陈金诗博士的著作《控辩审关系的建构——法官庭审语篇处理的框架分析》充分体现了这一宗旨。该著作即将出版，受其委托代为写序。作为导师，我对作者在写作过程中付出的种种艰辛非常了解，对其孜孜以求、勇于探索的开拓精神印象深刻。

法官的庭审语篇是法律语言学研究的重要课题，并受到越来越多国内外法律语言研究者的关注。刑事庭审中的控辩审关系是法学界研究的热点，从法官的语篇分析切入进行探讨，具有鲜明的现实意义。作者选择此课题体现了法律语言学为我国法治建设服务的研究指向。作者基于结构性语篇的框架分析理论，运用语篇树状信息结构的分析手段，构建了“控辩审关系建构的多维度框架分析模型”，并对法官庭审语篇建构控辩审关系的表现、原因和语篇处理策略进行了深入细致的分析和研究。语言的使用必须植根于一定的社会环境，受到社会因素的影响，尽管我国法治化进程不断推进，法官的庭审语篇仍存在建构倒三角控辩审关系的现象，作者因此提出在中国法制背景下法官如何通过语篇处理策略构建合理的控辩审关系。如通过信息层次降级、信息层级移位或共享分类修改等手段改变法官角色，通过信息单位增补、信息单位合并、冗余信息删除、信息单位融合、信息点更换、信息单位重复或信息单位共享等手段进行再框定等。这些基于语料分析和验证而提出的语篇处理手段试图从语言学角度解决控辩审关系建构这一法律问题，具有较强的理论意义和实践价值。

作者在本书中构建的分析模型基于框架理论，但是为了避免框架分析的抽象性，作者经常与我讨论、与学界同行切磋，最终形成了此分析模型——把互动性框架、框定和语篇立足点迁移融为一体，并采用了语



篇信息分析的手段，解决了框架认定难题，形成了一套微观、中观和宏观兼具的多维分析框架。该模型的构建，是法律语言学理论建设中的一种成功尝试。作者严肃认真的态度贯穿整个写作过程，作为导师我深感欣慰。此书的出版，是他本人的收获，也是法律语言学界的幸事，值得祝贺。相信陈金诗博士在今后的学术研究中能持之以恒，多出成果，出好成果，为中国法律语言学的发展做出更大的贡献。

是为序。

杜金榜

2011年1月于广州白云山下

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内 容 简 介

控辩审关系是司法实践的重要内容之一，也是刑事诉讼研究的一个重要课题。此前，从法官的庭审语篇操控入手研究控辩审关系的建构尚属空白。而法官的裁判权通过庭审互动来实现，法官的语篇处理会影响到庭审中各方关系的建构，因此法官如何通过语篇处理建构合理的控辩审关系成为本研究的关注焦点。

本研究构建了一个描写、分析和解释法官庭审语篇的分析框架。该分析框架基于框架理论，并结合相关分析工具，从微观、中观和宏观三个维度进行分析，涉及框架分析的三个核心内容：互动性框架、框定和语篇立足点迁移。整个研究主要是对从法律语料库中抽取的语料进行语篇信息的定性分析。

语料分析表明，法官有时在庭审互动过程中建构出控辩审间的倒三角关系。在操控庭审的过程中，法官的独白偶尔会具有“控审合作”倾向，违背庭审程序。法庭对话中，法官也会使用有违庭审程序的“有罪推定”语篇信息。而法庭问答内容最为丰富，法官的语篇信息处理不当可能也会导致“有罪推定”、“控审合作”或“控辩不平等对抗”等违背司法公正的后果。这些都不利于维护被告人的诉讼权利。

分析还揭示了在法官的语篇信息处理中影响控辩审关系建构的各种因素，详述了法官庭审语篇如何遵循或违背了司法公正。分析发现，法官的定位、中立性和对当事人的信任性与程序公正密切相关。法官的目的和动机、个人因素或非个人因素影响着庭审中的分配公正；而惩罚公正的违背主要源于应得惩处、惩处对象、惩处手段以及惩处力度。根据司法公正原则可知，分配公正和惩罚公正的违背最终导致程序公正的破坏。

同时通过比较研究，归纳出法官通过语篇手段重构控辩审关系的框定策略。在语篇立足点迁移的策略分析中，归纳了法官的三种语篇立足点，即“语篇实践者”、“语篇实践者+语篇作者”、“语篇实践者+语篇作者+语篇委托者”。在互动中，信息层次降级、信息层级移位或共享分

类修改等语篇手段会引起语篇立足点迁移。在分析再框定的策略时,归纳出了框架紧缩、框架延展和框架合意三种次级策略。框架紧缩主要通过信息单位增补或信息单位合并等手段以实现框架的具体化;框架延展是通过冗余信息删除或信息单位融合等手段来完成;框架合意则通过信息点更换、信息单位重复或信息单位共享等手段来实现。在中国法制背景下,这些策略和具体的语篇手段有助于避免控辩审正三角关系重构中的司法不公。

本研究的主要创新点在于基于语篇信息的框架分析解决了控辩审关系的建构问题。语料分析证实了该分析框架的适用性和有效性。本研究提出系统的语篇处理策略和具体的语言实现手段,为司法公正相关课题提供了语言研究视角和研究方法。另外,本研究的分析框架具有综合性和多维性特征。它把互动性框架、框定和语篇立足点迁移融为一体,构成了框架分析的三个核心成分。并应用了“法律语篇树状信息结构”这一操作性强的分析工具,有效地支持了框架的认定和定性、语篇立足点的分类和迁移、框定过程和策略分析。此外,本研究为与刑事诉讼相关的教学提供了更为丰富的内容,对有志于从事司法工作尤其是从事法官工作的学习者也具有启发意义。该研究强调保障被告人合法权益、维护程序公正、分配公正和惩罚公正,因此对中国司法改革具有参照作用。

本书用英文出版,便于向国外推广,加深国外法律语言学界对中国法律语言的认识。本著作可能尚存不当之处,敬请读者批评指正。

Abstract

Prosecution-Defense-Judge (PDJ) relationship is a major concern both in judicial practice and in the study of criminal litigation. Up to now, the research on this topic from judges' discursive perspective in particular remains fairly insufficient at home and abroad. However, now that judges' jurisdiction is exercised in the courtroom interaction, judges' discourse processing will influence the construction of the relations among all the parties in trials. Thus, how judges construct rational PDJ relationship via discourse processing becomes the focus of the present research.

To accomplish the research objective in the present study, an analytical framework is constructed for the description, analysis and interpretation of the language used by judges in court. On the basis of frame theory integrated with some other tools, the analytical framework is concerned with judges' discourse processing at the micro-level, meso-level and macro-level, which involves such constituents of frame analysis as interactive frames, framing and footing shifts. All these constituents are mainly investigated through the qualitative analysis of discourse information from a legal corpus.

Data analysis shows that judges may sometimes construct PDJ relationship as an inverted triangle in the courtroom interactive process. In the manipulation of trials, judges' monologue occasionally violates trial procedures, inclining to "Prosecution-Judge (PJ) cooperation". In courtroom dialogue, judges may use the discourse information with guilt presumption, which always violates trial procedures. As for courtroom questioning, judges' discourse information processing may result in "presumption of guilt", "PJ

cooperation" or "Prosecution-Defense (PD) adversarial inequality". All these phenomena are detrimental to the maintenance of defendants' litigant rights.

Data analysis also reveals that various variables affecting judges' discourse information processing lead to the observation or the violation of judicial justice on the three dimensions relevant to the PDJ relationship. Judges' standing, neutrality and trust are closely related to procedural justice; judges' goal and motivation, individual or non-individual factors influence distributive justice; and deserving punishment, criminal punished, punishment means or punishment severity are pertinent to retributive justice. Based on the principles of judicial justice, the violation of distributive justice or retributive justice eventually leads to the destruction of procedural justice.

Through comparative analysis, judges' framing strategies are generalized for the reconstruction of PDJ relationship, which have been realized in the discursive way. In the courtroom interaction, judges' footing is categorized as "animator", "animator + author" or "animator + author + principal". Judges' footing shifts, as a strategy in reconstructing PDJ relationship, can be utilized by means of such discursive devices as degradation of information levels, displacement of information levels or modification of knowledge categories. As another strategy, reframing involves frame contraction, frame expansion and frame negotiation. Frame contraction can be employed to specify frames via addition of information units or combination of information units. Frame can be expanded by deletion of redundant information or assimilation of information units. Frame negotiation can be achieved by alteration of knowledge categories, repetition of information units or sharing of information units. These findings bring the research to the conclusion that judges' appropriate footing shifts or reframing in an appropriate way constitutes effective means to avoid the violation of judicial justice in the reconstruction of a

“regular-triangled” PDJ relationship in China’s legal context.

The major contribution of the present research lies in addressing judges’ construction of PDJ relationship via the information-based frame analysis. Data analysis has proven the applicability and validity of the analytical framework used in attaining the research objective of this study. Our discursive approach focuses on the authentic data of courtroom discourse, brings forth some relevant discursive strategies and specific devices of discourse processing and provides a linguistic perspective for relevant legal issues to judicial justice.

Moreover, the analytical framework is characterized by the comprehensive and tridimensional interactive frame analysis. Interactive frames, framing and footing shifts have been integrated, which form the three constituents of frame analysis. The framework has employed “Tree Information Structure of Legal Discourse (TISLD)” as an operable and feasible tool. The identification and characterization of frames, the categorization and shifts of footings, and the process and strategies of framing are all mainly attributed to the analysis of discourse information processing.

In addition, the present research has provided the new content for the teaching of criminal litigation and offered some implications to the future legal workers, especially the learners who are determined to be judges.

It is also hoped that the research can be of value to China’s judicial reform, as it lays much emphasis on protecting and safeguarding the defendants’ legitimate rights and interests, upholding and maintaining procedural justice, distributive justice and retributive justice.

Key words: PDJ relationship; construction; courtroom discourse; discourse processing; frame analysis

Transcription Conventions

?	Inquiring intonation
,	Continuation
.	Falling, stopping intonation
.....	Omission
=	Contiguous utterances
::	Prolonged syllable; the more colons, the more elongation
↑	Raising intonation
↓	Falling intonation
(0.5)(2.6)	Examples of timed pause
(.)	Micro pause (shorter than 0.5 seconds)
<u>word</u>	Stressed word
^o word ^o	Quieter and softer speech
><	Speeding up utterance
<>	Slowing down utterance
(word)	Comments made by the researcher
[]	The start and end of overlapping speech
Bold	Speech that is obviously louder than surrounding speech
—	Cut-off of the preceding sound
--	A short, untimed interval without talk
⊥	repair

Abbreviations

PDJ	Prosecution-Defense-Judge
PD	Prosecution-Defense
PJ	Prosecution-Judge
JD	Judge -Defense
FA	frame analysis
TISLD	Tree Information Structure of Legal Discourse
CA	conversation analysis
IS	interactional sociolinguistics
CLIPS	the Corpus for the Legal Information Processing System
CPL	The Criminal Procedure Law of the People's Republic of China (1996)
KN	Kernel Proposition
WT	What Thing
WB	What Basis
WF	What Fact
WI	What Inference
WP	What Disposal
WO	Who
WN	When
WR	Where
HW	How
WY	Why
WE	What Effect
WC	What Condition
WA	What Attitude
WG	What Change
WJ	What Judgment

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