广东省哲学社会科学“十二五”规划学科共建项目（GD11XWW09）

Realization of Persuasion in Chinese Court Conciliation: The Discourse Information Approach

语篇信息视角下的中国法院调解说服实现研究

徐优平 著

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内 容 简 介

本书选取当前司法实践中备受关注的法院调解为研究课题，基于真实的当庭调解语料，建构了“语篇信息为中心的说服模式”（DICMP）理论框架，研究法官说服活动的话语实践过程。本书紧扣法官如何通过信息传递说服意图、受何语境因素影响、实现何种说服效果三大研究问题，分析了说服过程中语篇信息的分布特点，梳理了影响说服效果的语境因素，总结了实现说服的话语模式。本书主要面向法律语言学研究者与爱好者、法官、调解员及其他对调解、说服感兴趣的相关人员。

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序

法律语言学是一门新兴的交叉学科，旨在运用语言学的理论和方法分析、解决法律实践中的语言问题。徐优平博士的新作《语篇信息视角下的中国法院调解说服实现研究》充分体现了法律语言学研究服务司法实践、服务法治建设的宗旨。徐优平博士对法律语言学研究充满热情，长期关注法院调解中的语言应用问题，前期研究深入、扎实。该著作出版在即，受其委托代为作序。作为导师，我对作者在研究过程中表现出的刻苦勤勉、勇于探索的钻研精神印象深刻，对该书的质量感到欣慰。

法院调解是中国民事诉讼制度的一个伟大创设，在解决民事纠纷、修复人际关系、维护社会稳定方面发挥了积极作用。目前，我国正大力推进大调解工作体系建设，积极探索“诉调对接”工作机制，进一步发挥法院调解的核心作用。然而，现有的法院调解研究多从法学、经济学、心理学角度切入，关注法院调解制度的改革与完善，忽略了调解话语的研究。国际知名法律语言学专家、美国律师 Peter Tiersma 教授早在 1993 年就明确指出，“没有哪一种职业像法律那样离不开语言”。对法律问题的研究离不开对法律语言的探讨。遗憾的是，很少有学者关注法院调解是如何通过语言展开的、法官是如何通过信息交换说服当事人改变态度的。该专著从语篇信息的视角出发，重点分析法院调解中法官说服活动的话语实践过程，具有开拓意义。

作者基于语篇信息理论(DIT)、互动认知说服模式(ICMP)以及语境模式(the context model)，构建了理论框架“语篇信息为中心的说服模式”(DICMP)，用于研究法院调解说服过程中的语篇信息特点、影响语篇信息使用的说服语境构成要素以及说服的实现情况。作者基于“法律语篇信息系统语料库”(CLIPS)的真实语料，从语篇信息视角出发，对法院调解中法官说服的话语实践进行了系统的分析与研究，具有较强的理论意义和实践价值。该书构建的理论框架“语篇信息为中心的说服模式”整合了语篇信息理论的系统研究成果，将语篇信息作为说服活动的主要媒介，细化了说服语境，深化了说服的理论研究，拓展了语篇信息

研究的应用范围。该理论框架的构建，是法律语言学理论建设中的一种成功尝试。

此书的出版，是作者学术道路上的一个重要里程碑，也是法律语言学界的一件喜事，值得祝贺。衷心希望徐优平博士在法律语言学研究道路上不断进步，为中国的法治建设贡献法律语言学研究者应有的力量。

是为序。

杜金榜

2013年5月于广州白云山下

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Preface

Court conciliation (CC) conducted by a single judge or a collegial panel in court is regarded as one of the creative legal systems in China. Recently, its importance has been further emphasized when China endeavors to establish a grand mediation working system in which CC is expected to take a leading role and to "mediate towards a harmonious society" (Woo & Gallagher, 2011, p.8). However, except for studies on CC as a legal system, few efforts have been made to reveal how CC is conducted through language. In particular, little is known about how judges persuade parties to change attitudes through information exchange. Thus, this book aims to elaborate on the discursive practice of judges' persuasion in CC from the perspective of discourse information.

In this book, persuasion is regarded as a reciprocal and interactive communicative activity where beliefs, attitudes or behaviors are intended to be created, reinforced or modified through discourse information within the constraints of the persuasion context. Based on the Discourse Information Theory (DIT), the Interactive Cognitive Model of Persuasion (ICMP) and the context model, a theoretical framework "the Discourse-Information-Centric Model of Persuasion" (DICMP) is constructed to guide the exploration of the features of discourse information in persuasion, the influence of major factors in the persuasion context and the realization of persuasion in CC.

To reveal the uniqueness of CC, i.e., an integration of conciliation into the process of litigation, CC in this book is confined to a particular stage of conciliation in Chinese civil cases: one that is

conducted by judges in the court after court investigation and court debate. The data are extracted from the Corpus for the Legal Information Processing System (CLIPS), out of which 35 cases are taken as the core dataset. All the data have been tagged according to the convention for the Tree Information Structure Model (the Tree Model) of the DIT. During the corpus-based qualitative data analysis, experimental findings of persuasion carried out by psychologists are also integrated into the interpretation of the data.

Data analysis shows that discourse information, the major medium of judges' persuasion in CC, is distributed, combined and developed in different ways in persuasion and realizes different functions: the factual discourse information sets the objective basis for judges' persuasion, the attitudinal discourse information presents the subjective attitudes or settlement schemes directly, and procedural discourse information guarantees a smooth running of CC.

The features and functions of discourse information in CC are subject to the dynamically constructed persuasion context. It includes the objective social situations (settings, social roles, and social relations) which objectively exist but may not influence persuasion unless they are activated and made relevant through discourse information. It also includes subjective communicative situations (communicative roles, intentions and goals and knowledge) that are salient cognitive properties of participants and influence persuasion constantly.

Within the dynamic constructed persuasion context, judges have to rely on parties' cognitive responses to assess the (un)realization of their persuasion and resort to different means of discourse information to persuade them. These strategies include the value-/impression-/outcome-relevant involvement of discourse information, the overt and covert presentation of discourse information and the uni-/multi-directional transmission of discourse

information. The (un)realization of judges' persuasion may yield different effects, including the change of parties' cognition, attitudes and behaviors. If parties' attitudes stay unchanged, more rounds of persuasive efforts may be needed.

Based on data analysis, this book concludes that the process of CC is a process of persuasion, in which judges have to, in light of parties' cognitive responses, activate relevant factors in the persuasion context and rely on an effective presentation of discourse information to convey their persuasion intention, to bridge the information gap between parties and to change parties' cognition, attitudes or behaviors.

The major contribution of this book lies in that, based on authentic data, it reveals how judges' persuasion is conducted discursively through discourse information. Moreover, data analyses have proven the applicability and validity of the theoretical framework DICMP. It can be applied to future researches on persuasion in other forms of mediation. It is hoped that this book can provide useful linguistic references for the ongoing reform of CC in China, and make forensic linguists' due contributions to the construction of the grand mediation system and a harmonious society in China.

Xu Youping

January 2013, Guangzhou

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Besides, I am grateful for help from Dr. Krzysztof Kredens who supervised me when I was in Aston University as a visiting researcher, and Dr. Tim Grant and Dr. Nicci Macleod. They brought me fresh ideas and enlarged my horizon in forensic lingustics research.

I am fully indebted to my teachers from Guangdong University of Foreign Studies, Dr. Zhang Xinhong, Prof. Yang Shaogang, Prof. Mo Aiping, Prof. Yuan Chuanyou, Prof. Zhao Junfeng and Prof. Xu Zhanghong, for their time, patience and concern in the whole process of book writing. Their challenges enabled me to find out the underlying problems immediately, and their suggestions enlightened me to solve the problems from different perspectives.

I also owe my thanks to my colleagues in the School of English for International Business who voluntarily assumed part of my daily teaching work, and to my lovely students who often cheered me up

after class. My sincere thanks also go to the Center for Linguistics and Applied Linguistics, Guangdong University of Foreign Studies, for its abundant resources and meticulous scholarship, to knowledgeable professors for their enlightening lectures, and to helpful and kind staff there, such as Ms. Zhang Xinrong and Ms. Xiao Yuanlin.

In addition, I am grateful for encouragement and support from my friends, Dr. Zhang Liping, Dr. Zhong Caishun, Dr. Huang Yongping, Dr. Chen Jinshi, Dr. Li Yuekai, Dr. Ge Yunfeng and Zhang Luping. I can always gain sparkling ideas from discussions with them and get valuable suggestions concerning the collection of data and searching of reference. I have also benefited a lot from my deer classmates and good friends, Dr. Xu Rui, Dr. Li Yukun and Dr. Cheng Fenxiang. They often provide me with insights from their own research orientations.

Moreover, I want to extend my thanks to Ms. Liu Yanhui and other editors in Science Press, and to the sponsor of this book, Guangdong University of Foreign Studies. Without their help, the publication of this book would not have been possible.

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List of Abbreviations

CC	court conciliation
DIT	Discourse Information Theory
CLIPS	the Corpus for Legal Information Processing System
ICMP	the Interactive Cognitive Model of Persuasion
DICMP	the Discourse-Information-Centric Model of Persuasion

Types of Information Knots

WT	What Thing
WF	What Fact
WY	Why
WA	What Attitude
HW	How
WG	What Change
WB	What Basis
WP	What Disposal
WJ	What Conclusion
WI	What Inference
WO	Who
WN	When
WC	What Condition
WE	What Effect

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