

事实重构的法律语言学研究

孙 利 著



*Forensic Linguistic Study on Criminal Event Reconstruction
in Witness Statements*

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河南大学出版社
· 郑州 ·

图书在版编目(CIP)数据

事实重构的法律语言学研究/孙利著. - 郑州:河南大学出版社,
2013.3

ISBN 978-7-5649-1154-6

I . ①事… II . ①孙… III . ①法律语言学 - 研究
IV . ①D90-055

中国版本图书馆 CIP 数据核字(2013)第 046577 号

责任编辑 卢志宇

责任校对 宋达华

封面设计 马 龙

出 版 河南大学出版社

地址:郑州市郑东新区商务外环中华大厦 2401 号

邮编:450046

电话:0371-86059701(营销部)

网址:www.hupress.com

排 版 郑州市今日文教印制有限公司

印 刷 开封智圣印务有限公司

版 次 2013 年 6 月第 1 版 印 次 2013 年 6 月第 1 次印刷

开 本 650mm×960mm 1/16 印 张 17.75

字 数 247 千字 定 价 36.00 元

(本书如有印装质量问题,请与河南大学出版社营销部联系调换)

序 言

法律语言学是语言学、法学等学科共同孕育的新兴交叉学科，于 20 世纪 80 年代开始得到蓬勃发展。其主要研究目标是使用语言学等学科的理论和方法解决法律中与语言相关的问题，在帮助解决法律问题的同时，也揭示法律语言的本质语言特点。

语言证据一直是法律语言学家关注的焦点，也是法律语言学的主要研究对象之一。法律语言学家对语言证据的研究从录音材料和文本鉴定开始，发展到现在对这两类材料的分析方法已日趋成熟。而在语言学分析领域，对证人证言的研究到目前为止基本都是从法律的角度出发，来探讨警察询问证人的策略、方法或技巧。此类研究一般都止于法律法规适用的层面或证言的修辞层面。

然而在实际使用时，准确性和可靠性一直都是语言证据的重要评判标准。截至目前，从语言学角度出发评价语言证据的准确性和可靠性的研究主要集中于个案分析，常使用模拟证人的方式进行实证研究。在评价证人证言的准确性和可靠性方面，语言学家提出的若干标准或其干扰因素基本停留在实证研究得出的结论中，很少结合到实际案例的分析中去。

孙利博士的著作《事实重构的法律语言学研究》以国内案件的证人证言为研究对象，提出了系统的分析框架，并筛选出证人在证言中对案件事实重构的一系列影响因素，在此分析框架指导下探讨了这些因素对证人的事实重构所产生的重要的影响作用。

本书具有一系列特点。第一，它是首次对多个真实案件涉及的全部证人证言的综合分析，整个研究收集了 9 个案件共 91 份证

言,是大样本量的法律语言分析。

第二,本书引入证人涉案关系这一主要因素对证人证言研究提供了多元化视角,解决了实证研究中无法处理的不同证人作证情况。这也是将叙事学中的重要理论引入法律语言分析的首次尝试。

第三,本书的主要内容为分析各主要因素对语言证据的影响,包括证人的涉案关系、年龄,以及警察的问话类型、案件的暴力程度、事后信息和见证时间等。这些因素的作用在法律心理学实证研究中都分别得到证实,但它们在语言层面上的影响效果还没有得到分析,这意味着实证研究的结果和真实法律语言环境之间缺少衔接。因为在语言证据的使用中,只有反映到语言层面上的分析结果才是真正有效的。因此,使用法律语言学的分析框架和方法对这一系列因素的分析将这些因素和真实的法律语言证据连接起来,能为语言证据的使用和采信提供非常重要的帮助。

总之,本书为证人证言的研究提供了新的思路和整体的分析框架,并得出了行之有效的分析结果,也为中国刑事案件证人证言研究提供了一个新的理论视角。它是在前人研究基础之上,对语言证据的新的探索性研究。作者辛勤的耕作为法律语言学的进一步研究铺垫了道路,相信有了学者们的不懈努力,中国的法律语言证据研究定将结出更为丰硕的成果。

是为序。

广东外语外贸大学

杜金榜

2012年10月

前　　言

法律语言一直是法学和语言学两个领域都关注的研究对象。法律无论是其表现形式(立法语言)还是执法过程(司法语言),都和语言交织在一起,无法分割。较早的法律语言研究主要是针对立法语言的语言修辞特点进行的,随着现代科技的进步,司法过程中的语言证据成了法律语言学家们关注的热点。在电脑科技的帮助下,语言学家们在语音识别和文本鉴定领域作出了杰出的贡献,研究理论和方法也趋于成熟。

上世纪末,司法过程中警察、证人、法官及律师等的语言成为语言学家研究的热点,其中证人证言是司法过程中举足轻重的语言证据。证人证言是刑事案件中司法机关对涉案证人的询问或讯问笔录。在中国目前的庭审制度下,证人证言在刑事案件的审理中起着举足轻重的作用。由于证人出庭作证率极低,在庭审前阶段获得的证人证言成了公诉人起诉和案件判决的主要依据。本书首先分析了中国刑事案件中证人证言的结构和性质,在此基础上重点分析证人证言的准确性和可靠性的影响因素。

本书的分析框架建立在法律心理实证研究、Jef Verschueren 的语用顺应理论、Labov 的叙事理论和 Gibbons 的警察询问/讯问的形式结构理论之上。证人证言的法律心理实证研究为本研究提供了可供选择的一系列影响证言精确性的因素, Verschueren 的顺应论为主要因素的分类提供了重要的理论依据。Labov 和 Gibbons 的研究对分析中国刑事案件中证人证言的性质和结构提供了参照。在上述工作基础上构建的理论框架为本研究提供了一整套有力的分析工具。

利用所构建的分析框架,本书首先分析中国刑事案件中证人证言的形式结构和性质。证人证言的结构主要是由“第一现实构建”、“第二现实核心”以及“第三现实构建”组成。其中,“第二现实核心”是证言的主要组成部分,是对刑事案件过程的叙事性重现,而两个“第一现实构建”所承载的法律程序内容赋予“第二现实核心”以合法性。从本质上讲,证人证言可被认为是对犯罪事实的合法性叙事重现。故此,本书还对叙事重现的不同叙事种类进行了研究。

准确性和可靠性是衡量证人证言可采性的主要标准。在证言形式结构和性质分析的基础上,本书集中分析各主要因素对证人证言的影响,包括证人的涉案关系、年龄,以及警察的问话类型、案件的暴力程度、事后信息和见证时间等。每一个因素都被进一步划分为若干子类,本书也分析了这些子类对证人证言所产生的影响及其表现形式。一系列分析表明,本研究所筛选的主要因素都对证言产生了不同的影响,而且相当明显。

在研究了单独因素的作用后,本书还研究了每两个不同因素之间的交互作用及其与证人证言的关系,包括年龄和问话类型、涉案关系和暴力程度、暴力程度和见证时间、涉案关系和事后信息,以及事后信息和问话类型。研究发现,每对因素之间存在明显交互作用,并能同时对证言产生显著影响。

本书为中国刑事案件证人证言研究提供了一个比较全面和多元化的分析框架,筛选出了一系列影响证人证言精确性和可靠性的主要因素,并对各个主要因素的子类进行了分析。本书的研究过程证明了所采用分析框架对刑事案件证人证言分析的有效性。本书的研究结果可用于分析证人证言对案件事实的重现情况,用以分析证人证言的精确性和可靠性。这不仅打破了以往证人证言实证研究无法与真实案件环境联系的局限性,也为我国刑事案件证人证言研究提供了一个新的视角。

孙利

2012年10月

Abbreviations Used in the Book

Types of Cases, Their Abbreviations, and the Specific Criminal Cases

NO.	Types of cases	Abbreviation	Cases
1	Larceny case	Larceny	窦 * * 盗窃案
2	Crime of unlawful detention	U Detention	牛 * * 非法拘禁案
3	Crime of causing traffic casualties	Traffic Case	赵 * * 交通肇事案
4	Negligent injury case	Neg Injury	王 * 过失伤人案
5	Unarmed robbery crime	Unarm Rob	李 * 抢夺案
6	Malicious injury cases	Mali Injury	刘 * * 故意伤害案 (L Mali Injury)、 夏 * * 故意伤害案 (X Mali Injury)
7	Robbery-rape case	Rob Rape	秦 * * 抢劫强奸案
8	Intentional homicide case	Inten-cide	张 * * 故意杀人案

(When there are two or more than two criminal cases in the same category, the last name of the suspect is put at the beginning of the abbreviation in order to distinguish one case from another.)

The Categories of Witnesses and Their Abbreviations

Categories of witnesses	Abbreviations	Witnesses in the cases
Suspect witnesses	Sw	夏 * * (X Mali Injury); 赵 * * (Z Traffic Case); 李 * (Unarm Rob); 窦 * * (Larceny); 秦 * * , 王 * * (Rob Rape); 牛 * * , 张敬 * , 张明 * (U Detention); 刘 * * (L Mali Injury); 王 * (Neg Injury); 张 * * (Inten-cide)
Victim witnesses	Vw	杨 * * (X Mali Injury); 肖 * * (Unarm Rob); 王 * * , 程 * * , 蒋 * * , 窦 * * (Larceny); 关 * * , 马 * * (Rob Rape); 王 * * (U Detention); 王 * * , 李 * * (L Mali Injury); 赵 * * (Neg Injury)

By-stander witnesses	By-stander W	李保 *、李文 *、邢 * * (X Mali Injury); 岳 * *、程 * *、陈 * *、王 * *、崔 * * (Unarm Rob); 孙 * *、关 * 彬、关 * 全 (Rob Rape); 王 * 军、王 * 国、王长 *、杨 * *、崔 * * (U Detention); 邵 * *、刘克 *、王 * *、刘斌 * (L Mali Injury); 赵 * * (Neg Injury); 朱金 *、朱文 *、王 * *、李 * *、孙 * *、贺 * *、刘 * * (Inten-cide)
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(All the given names of the witnesses that appear in the study are replaced by asterisks; most of the names of the witnesses consist of three Chinese characters, with the second and third representing the given name, and the first representing the family name. If the family names of two or more witnesses are the same, then the second characters are kept for clear recognition, and asterisks only replace the third ones. If the same circumstance occurs with the second characters of the witness names, then asterisks only replace the second characters, and the family names and the third characters are kept for clear recognition. The names of places and information concerning personal privacy are also replaced by asterisks or omitted on conditions where ambiguity does not appear.)

Age Categories of Witnesses and Their Abbreviations

Age categories of witnesses	Abbreviations	Witnesses in the cases
Young person witness (<18)	Yw	王 * * (U Detention)、崔 * * (U Detention)、朱 * * (Inten-cide)
Adult witness (≥ 18)	Aw	Other witnesses (except the three) listed in the above table

Case Names of the Trial Reports and Their Abbreviations

No.	Case Names of the Trial Reports	Abbreviations
1	郭 * * 故意伤害(致死)案	G Mali Injury
2	琚 * * 故意伤害(致死)案	J Mali Injury
3	赵 * * 故意伤害(致死)案	Z Mali Injury
4	罗 * * 交通肇事案	L Traffic Case

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language and the law have been inseparable ever since the emergence of the law. The exterior form of the law and its use in practical procedures are represented in language. With the development of linguistics and further research into the law, more and more studies have been carried out across the two fields. By and by these studies are included generally in the term "forensic linguistics". Forensic linguistics is a newly-born interdisciplinary field that links linguistics and the law (Du, 2004: 19). It can be used "narrowly to refer only to the issue of language evidence; however it is becoming accepted as a cover term for language and the law issues" (Gibbons, 2003: 12).

Chapter One Introduction

1.1 Introduction

Language and the law have been inseparable ever since the emergence of the law. The exterior form of the law and its use in practical procedures are represented in language. With the development of linguistics and further research into the law, more and more studies have been carried out across the two fields. By and by these studies are included generally in the term "forensic linguistics". Forensic linguistics is a newly-born interdisciplinary field that links linguistics and the law (Du, 2004: 19). It can be used "narrowly to refer only to the issue of language evidence; however it is becoming accepted as a cover term for language and the law issues" (Gibbons, 2003: 12). This interdisciplinary field "mostly adopts theories and research methods of linguistics, and focuses on language as its research focus. Therefore, it still belongs to the field of linguistics" (Du, 2004: 19).

The research object of forensic linguistics is legal language covering language used in the whole process from legislation, justice to execution of the law. For a long time language of legislation has been the research object; the focus has gradually shifted to that of justice and execution of the law with language evidence as its essential part. Language evidence has been one of the main research objects in forensic linguistics. This is closely related to the fact that early forensic linguistic studies started with the courtrooms' needs of linguists' expert examination of language evidence. Thus studies on authorship determination and speaker identification, such as comparisons of samples of handwriting and of tape-recorded voices, are the branches of forensic linguistics "where the methodology is already well developed" (Coulthard, 1992: 242).

With language evidence as the predominant research object, some forensic linguists have placed increasing attention on the dynamic language interaction in judicial process both in spoken and written form (Atkinson & Drew, 1979; Bennett & Feldman, 1981; Coulthard, 1992). In China, experts of linguistics and the law have also done researches on issues concerning legal language (Jiang, 1995; Pan, 1997; Sun, 1997; Wang, 1997; Peng, 2001; Du, 2001, 2002, 2004; Wu, 2002; Zhang, 2000, 2001; Zou and Li, 1988; Wang, 2002). Evidence is the foundation of judicial process and the study of it has always been one of the common issues both in law and in forensic linguistics: the former studies mostly the prescription of legal rules concerning how every kind of evidence should be gathered, treated, and judged to be true or false; while the latter pays more attention to the power relationship between the two sides in the police interview, the language strategies