The structural format and rhetorical variation of writing Chinese judicial opinions

A genre analytical approach

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As Chinese legal system follows a statutory tradition, the writing of Chinese judicial opinions is normally considered as an invariant sequential process of stating the law, presenting the fact, and finally providing the conclusion. The official ideology is further reinforced by the fact that Chinese judges need to follow various authoritative writing guidelines and templates prescribed by the official bodies of legal profession. This paper examines to what extent this ideology is a trustworthy description, and to what extent it is only an imagined myth related to the rhetorical practices of Chinese legal profession. Theoretical constructs employed in the study are genre, text type, and rhetorical modes, and analytical data include exemplar judicial opinions, intertextual legislative documents, and insiders' accounts. According to the research findings, while the official ideology remains a strong shaping force in the composing of Chinese judicial opinions, Chinese judges do take compelling moves to add dialogic elements to the traditionally monologue-dominated discursive sphere of legal writing.

Keywords: genre analysis, judicial writing, legal ideology, monologue, dialogue

1. The unchangeable deductive format of judicial opinions

Judicial opinions are important legal genres addressed to both legal specialists and the lay public. They play a fundamental role for the operation of the whole legal profession and supply an authoritative point of reference for both specialist and lay readers to understand, explain, and interpret law. The importance of this genre is apparently confirmed by its priority position in various disciplinary initiatives of socializing law students and junior lawyers into the profession (Bhatia 1993; Cheng, Sin, and Zheng 2008; Han 2011; Maley 1985). These researches provide meticulous

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descriptions related to the nature and textual format of judicial opinions for the same purpose of raising students and junior lawyers' textual awareness and at the same time, sensitizing them towards judges' conventional writing practices. Maley (1985) observes the coexistence of legitimizing and declaring acts in the opinions of the Higher Court of Australia and points out that the two acts are textually realized by *facts/issues/reasoning* and *conclusion/order* respectively. Bhatia (1993) considers British judicial opinions as an important source of law and as British judges' binding illustration of legal argumentation related to material issues. By concentrating on judges' textual practice of applying law to facts/issues, he concludes a four-move pattern of judicial opinions: *identifying the case*, *establishing facts of the case*, *arguing the case* and *pronouncing judgment*. Cheng, Sin, and Zheng (2008) and Han (2011) see Chinese judicial opinions as a highly performative genre whose primary function is to negotiate and regulate social relationships. Both two studies arrive at a similar structural description of Chinese judicial opinions: *heading*, *case history*, *establishing facts*, *identifying issues*, *presenting arguments*, and *decision*.

A careful comparison of these studies reveals that judges of different jurisdictions tend to equip the genre of judicial opinions with a common coercive nature and a shared unchangeable deductive format of legal reasoning. The force of coerciveness has long been recognized as an inherent element of judicial opinions which, if issued and executed in due manners, creates new social realities in a forcible manner. As the ending product of judges' adjudicating work, judicial opinions convey judges' authoritative and uni-directional instructions relating to what the law is and how the law should be interpreted in specific circumstances. They are judges' final remarks on the value of parties' opposing viewpoints, judges' mandatory perceptions on how "legally recognized state of affairs" should be, and judges' enforceable orders on the penalty for wrong-doing parities and the remedy for the ignorant (VáZquex-Orta 2013: 97). The characteristic of coercion means that the reception of judicial opinions is largely a mechanical passive process where opinion readers have little opportunity of negotiating the actual meaning of law. The coercion also engenders a higher degree of formality in the composing of judicial opinions, as evidenced by the frequently used ritualistic linguistic expressions and logic-deductive processes of legal argumentation, regardless of the change of authorship and jurisdiction.

Van Den Hoven (2011) observes that judges of different jurisdictions commonly place their arguments/reasoning between "the facts as the opening stage and decision as the final stage" (p. 501), demonstrating their preference of the unquestionable deductive format of *arguments* (facts as minor premise, law as major premise) + *conclusion* (decision as conclusion), instead of the reader-oriented persuasive pattern of *standpoint* + *arguments*. This transcending format of deductive presentation may be seen in the above three groups of judicial opinions clearly:

Table 1. The structure of judicial opinions across jurisdictions

		Maley (1985)	**Bhatia (1993)**	**Han (2011)**
1	Naming	Identifying the case	Identifying the case	Heading
2	Facts/Issues	Facts Issues	Establishing facts	Case history Establishing facts Identifying issues
	Arguments *(Applying* law *to facts/issues)*	Legal reasoning	Arguing the case	Presenting arguments
3	Decisions (Standpoints)	Conclusions Orders	Pronouncing judgment	Decisions

Judges of Australia, U.K., and China, as shown in this table, share the writing practice of introducing disjointedly bulky sections of *case history*, *facts*, *issues*, *legal reasoning*, and *decisions*, making no efforts on the explanation of the immediate relevance and interactions of their specific discussions (Han 2011: 753). Since the postponing of *decisions* towards the end of this genre deprives opinion readers of the opportunity of knowing judges' standpoints in the first place, specific arguments included in the foregoing *legal reasoning* become a group of unconnected statements which are only spatially grouped together. The purposive negligence of author-reader interaction and the apparent absence of coherently organized persuasive texts suggest that the major concern of judicial opinions is not a faithful recounting of judges' actual reasoning process, but a strict adherence to the imagined logic-deductive working mechanism of modernist adjudicating institutions:

> …(s/he) first objectively *ascertains* that facts, is then *confronted* with the forces of the appropriate rule of law and subsequently *has to conclude* on the basis of these facts and rules what the decision must be. In this narrative chain of motivated acts driving force is not the judge (this agent is hidden by means of linguistic devices such as a formal tone, extensive use of passives, nominalizations, avoidances of the first person), but the facts, the rules and logic.
>
> (van den Hoven 2011: 508, *original emphasis*)

2. The ideology and reality of judicial opinions

Although judicial opinions are written by individual judges, they function as an official public document carrying the institutional voice of courts. With concurring/dissenting opinions or not, judicial opinions are regarded as the products of an independent and impartial process of collegial decision-making. Judges, unlike lawyers, are not only educated professionals competing for legal market and

pursuing personal successes, but also trained bureaucrats with "secure prestige and access to special knowledge" (Wells 1994: 129). One of their premier duties is to portray and protect the court's image of reliable adjudicating institutions that are capable of rendering authoritative decrees to settle down social disputes. The universal adoption of the logic-deductive format of argumentation is one of the important techniques of achieving this purpose, as it enables judges to present judicial opinions as objective descriptions of self-evident existential justice, rather than something undetermined one needs to zealously argue for. The implied assertive nature of judicial opinions justifies judges' removal of personal expressions of indignation and sympathy. This, according to (Leflar 1961), conducts a multiplicity of ideological works including, among others, signifying courts as the mechanical consumer of the growing body of codified law, safeguarding the quality of opinion writing ascribable to judges of various levels of experiences and expertise, and maintaining the authority of legal profession.

The ideological dimensions of the logic-deductive arguing format are important for sustaining the integrity and stability of modern legal institutions and naturally find a popular acceptance among the community of judges, lawyers, and other legal specialists. However, owing to the development of a more participatory relationship between citizens and their government, the public has become less interested in the passive knowing of the thoughtfully-crafted structural description of judicial opinions which hardly goes beyond a synoptic description of courts' well-rehearsed *front-stage* performances (Goffman 1959). They become equally, if not more, interested in the *back-stage* work of adjudication where judges interpret the meaning of law and make legal decisions through the employment of personal experiences, professional expertise and subjective judging abilities. A number of researches have been conducted echoing this need of knowledge, for example, Merry (1990), Conley and O'Barr (1990), Leung (2012), Hafner (2013), and Han (2011). Judges' *back-stage* work, according to these researches, is far from being the imagined linear process of applying unambiguous law made by the legislature to some readily accessible facts. On the contrary, the decision-making is a rather complicated compromising procedure, charged with trifles, uncertainties and contradictions. Adjudication is conducted within, through, and with the mediation of various rhetorical activities, in addition to the apparent logic-deductive arguing practices.

Judges' compromising project may leave bountiful linguistic traces in the text of judicial opinions, which can be retrieved only through a careful reconstruction of judges' writing process, but not the above superficial structural depiction of argumentation format. Merry (1990) conducts an extensive ethnographic study of the U.S. lower courts and discovers that American judges may initiate or respond to, interchangeably, the use of legal argumentation, moral narrative and

therapeutic discussion in their handling of court users' disputes. Conley and O'Barr's (1990) intensive field work finds that both rule-oriented legal exposition and relation-concerned narrative are commonly seen in courtroom trials. Leung (2012) examines the impact of the introduction of local Cantonese language into the previously English-only Hong Kong courts. She finds that the emerging bilingualism creates a prominent presence of vernacular cultures in Hong Kong courts and forces a number of new identities on judges. Hong Kong judge, who are used to produce formalist legal discourse only, now need to tell exemplum like a god father, to give specialist reports like a scholar, to issue how-to instructions like an educator, and to utter evaluative comments like a scolding parent. Han (2011) explores how experienced judges construct successful judicial opinions and concludes that the mastery of special legal arguing techniques and accessible plain-language story-telling skills are equally important for the profiling of judges as knowledgeable members of the expert legal profession. The examination of these diversified rhetorical activities portrays judges' writing practices in ways much closer to the actual *back-stage* scenario of adjudicating work. They demonstrate how judges carefully navigate through boundless discursive chaos and conflicts and finally carve out the neatly organized logic-deductive formats as described above. The present study makes further efforts to explore the *back-stage* scenario of Chinese judges' adjudicating work, investigating the specific rhetorical activities they employ and analyzing the concrete lexico-grammatical strategies they mobilize.

3. A genre analytical approach to judicial opinions

3.1 Genre and text type

The study of language and communication in legal settings has drawn much attention from applied linguists and discourse analysts, and both conventional and newly-formed approaches have been employed in order to explore the ideologies and practices of courtroom interaction and police/suspect interviewing, e.g. Grice's Cooperative maxims (Harris 1995), ethnography (Conley and O'barr 1990), corpus (Heffer 2005), evaluation and appraisal (Zhang 2007), and facework (Archer 2011). Against this eclectic backdrop of research methodologies, the present discursive study of Chinese legal language draws on two closely-related analytical notions, i.e. genre and text type. Genre is not only patternized texts of highly visible structural conventions and formats, it is also "situated linguistic behavior in institutionalized academic or professional settings" which gives shape to these surface textual patterns (Bhatia 1997: 629). Judicial opinions as a genre refer both to the

ultimate legal documents which bear the very name of *opinions*, and to judges' actual writing practices of building facts, applying the law, and deciding parties' disputes as reported in the documents. Genres may be conceptualized on different levels of the generalization of communicative context. The traditional view focuses on the general socio-cultural context and treats genre as the basic types of rhetorical modes including, among others, narration, description, argumentation, persuasion, exposition, instruction, and information (Paltridge 2002: 77). While this view enables an easier categorization of texts into larger groups according to general expressive purposes, such as to entertain, to inform, and to persuade, it defines genre so broadly that significant context-sensitive differences among texts and their rhetorical situations could be overlooked. Textbooks and research articles carry the same general purpose of informing, but to inform students and to inform expert colleagues may be two dramatically different communicative processes. Further, the defining of a single text as a member of one such broad category, for example, judicial opinions as texts of deductive argumentation, may be so reductive that the subtle operation of other rhetorical modes is completely neglected. The understanding of such context-sensitive nuances requires a better solution of considering these general types of rhetorical modes (narration, description, persuasion, etc.) as *text types* which could be used in the composing of different genres, and *genre* itself is defined in terms of specific communicative goals of recurrent socio-professional situations, like textbooks, research articles, editorials, advertisements, recipes, grant proposals and news interviews (Bhatia 1993; Blitvich 2010). Observing with this contrastive conceptualization of *genre* and *text type*, the major purpose of this study is to explore Chinese judges' use of various broadly defined *text types* in their actual construction of the *genre* of judicial opinions.

3.2 Data and analysis

Chinese judicial opinions are of an apparent dual function. On the one hand, they are addressed to "the state itself, or more specifically, a set of state actors – courts, agency officials, and enforcement officers" (Stevenson 2003: 108). A large number of case volumes are compiled and published by Chinese higher and supreme courts annually in order to establish legal authority for the future adjudication. Although the legislature does not officially endow Chinese judges with the right of making law, these published case volumes represent one important part of the *front-stage* of Chinese legal system and they function as professional guiding books, the violation of which requires quite elaborate justification. On the other hand, Chinese judicial opinions are important tools of educating the general public about law and there is

an explicit requirement that judicial opinions should be publicly accessible on internet or in print forms (Articles 13 and 38, *The Five-year Reform Outline of People's Courts*, 1999). In order to ensure the coverage and representativeness of data used in this study, the selection of sample opinions is confined to the cases which are officially published on the website of *the Supreme Court of the People's Republic of China* (http://www.court.gov.cn/wenshu.html). Attention is paid to one particular type of legal case only, i.e. civil lawsuits. Civil lawsuits address the economic and tortuous disputes of parties and they constitute the paramount section of Chinese trial judges' daily business.

The authors take length and recentness as another two criteria of selecting data. Care is taken to choose opinions which are of a length of no less than eight thousand Chinese characters and which are written and signed by Chinese judges after the year of 2010. Looking through the civil judicial opinions, from the newest to the oldest, published on the website of *the Supreme Court of The People's Republic of China*, the authors select the first 100 opinions which meet the above criteria and consideration as the primary data for the present study.

The textual analysis starts from a detailed reading and analysis of the first 30 opinions (choose according to the order of the date of publication) of the chosen data. The taxonomy of rhetorical modes identified in the above studies is taken as pre-established categories, including narratives, recounts, anecdotes, arguments, reports, explanations, descriptions, instructions, etc. (Martin and Rose 2008; Duke, Caughlan, Juzwik, and Martin 2012). The authors read carefully through each of these 30 opinions, marking and discovering repeatedly occurring rhetorical modes. Any unclear features and patterns are examined against another 20 opinions. The remaining 50 opinions are used for the verification of findings. In order to further enhance the credibility of such explorative textual analysis, the authors submit results to the examination of specialists – three judges sitting in two different Chinese courts. They have a judicial career of ten (specialist No. 1), fifteen (specialist No. 2), and twenty years (specialist No. 3) respectively. Interviews with the specialists (see the Appendix) are both general and text-based. The general interviews solicit specialists' reflections and thoughts on their lived experiences of opinion-writing. The text-based interviews seek to examine the findings of the above textual reading, and specialists are welcome to add their own perceptions. Twenty formal interviews (45–70 minutes) are conducted. The combination of the top-down textual reading and the open-ended specialist interviews reveals that Chinese judicial opinions are not a monolithic argumentative *text type*, but a complicated legal *genre* invoking a multiplicity of rhetorical modes, including argumentation, narration, exposition, and instruction:

Argumentation
Argumentation is commonly seen in a number of social settings, e.g. advertising, political campaigning, sermonizing, and courtroom debating. It is purposively "designed to influence the judgments and actions of others" (Simons and Jones 2011: 24). It usually takes the communicative form of aligning with audience in different ways (i.e. appealing to logos, pathos, and logos) and, accordingly, warranting the credibility of the argued claims among the audience.

Narration
Narration is not necessarily confined to the experience that the narrator has actually lived through, and the narrator may also compose stories or recounts on others' experiences about which he/she has a sound knowledge basis. The textual structure of narratives reveals a prototypical abstract-orientatio n-complication-resolution-coda pattern that transcends across different cultures and communicative settings (Labov and Waletzky 1967). The purpose of narrative texts varies between sharing, entertaining, educating, evaluating, and judging.

Exposition
Exposition refers to human's semiotic activity of documenting and disseminating knowledge based on the "generalising about things and processes" (Martin and Rose 2008: 141). The communication is normally from someone who knows well the conveyed information to someone who needs to know it, which creates an inborn inequality between the expositor and the audience.

Instruction
Instructional texts enable experts to pass down their crafts and skills to new generations by demonstrating, teaching, and scaffolding. It is one of the important means through which human reproduces customs and practices. Everyday instructions are normally conducted as a company of expert demonstration, but specialist instructions are more likely to be entirely paper-mediated. The context-free of specialist instructions presupposes a higher degree of readability and accessibility of instructional texts.

4. The rhetorical variations beyond the deductive writing format

4.1 Argumentation

Judicial opinions, as described above, are an impersonal logic-deductive argumentative *text type* where judges present facts as the minor premise, quote statutory stipulations or general principles of law as the major premise, and mechanically do the deductive algorithm. This creates the impression that judicial opinions are

unavoidably formed by the detached application of law activated by existing facts and judges' adjudication is solely based on the use of *Logos*, one of the three persuasive modes. In order to fulfill the purpose of effecting attitudinal or behavioral changes in the target audience, argumentative texts, according to Aristotle, may use three different persuasive modes: Logos, Ethos, and Pathos (Kennedy 1991). Generally speaking, Logos relates to reason and logic, concentrates on the propositional message, and highlights the internal consistency of arguments. Ethos stresses the speaker's trustworthiness by evoking his/her expertise, authority, and reputation. This mode of persuasion places the speaker in an advantageous position where they can talk in a superior tone with the audience because of his/her good command of subject-matter knowledge. Pathos appeals to the audience's capacity for empathy and is intended to solicit an emotional response. Pathos normally takes the form of passionate speeches and it can be most effective when the speaker successfully builds connection with the audience' value projects. The analysis discovers that the invoking of Ethos and Pathos is not uncommon in Chinese judicial opinions, showing the judges' significant authorial involvement in the administration of law.

Judges' authorial involvement seems necessary if one notices the impossibility of the ideal complete legislative coverage which is unavoidably caused by the limits of human capacity and the constant fluidity of society. Judges need to handle some controversies which are not or can not be anticipated and fully addressed by the legislature. Parties of the following case have conflicting understandings related to some of the standard terms in their publishing agreement. The judge explains the general principle of law which the interpretation of standard contract terms should follow:

> Example text 1[1]
> In order to solve the ambiguity of standard contract terms, the rights and interests of the party who does not make the contract should be prioritized (**a quick reference to the law**). The standard contract terms should be interpreted in ways that are, as maximally as possible, fair and square to all contractors. Standard terms are made by one not two parties, so some terms are, possibly, written by the contract maker for his/her own benefits; the contract maker, possibly, will use or insert vague expressions in order to take advantage of the other party, and possibly, will impose unfavorable contract interpretations on the other party… (**an elaborate discussion of legislative intent**)

1. Example texts used in this article are translated from Chinese. Findings reported are based on the analysis of original Chinese data and the verbatim English translation is shown for the purpose of illustration.

Here, the judge makes a quick reference to the legislative provision "where there are two or several possibilities of interpreting standard contract terms, the one unfavorable to the party providing the contract shall be preferred" (Article 41, *The Contract Law of PRC*), and then supplies an elaborate discussion of the legislators' intent of making this law. The latter part reads highly argumentative and the judge makes an apparent authorial presence in the text, as evidenced by the intensive use of grammatical hedges (Mao 1993), "as maximally as possible", and three "possibly". The textual visibility of the judge's personal self suggests that he claims a direct responsibility for the interpretation of the codified law. The trial judge, not without pride and esteem, uses his professional knowledge (Ethos) to decide controversies for the disputing parties, to exemplify how to adjudicate similar cases for his fellow judges, and to demonstrate for the community at large the power of his expertise in the development of law.

More dramatic elements of personification are added to judicial opinions when judges employ Pathos to maximize the acceptance of their judgments across non-specialist opinion readers. Instead of seeking guidance for future actions, these non-specialists look for best legal answers for practical questions in judges' writing (Wells 1994: 87). Compared to the analytical weights carried by Logos and Ethos, the strategy of rapport-building inherent in Pathos turns out to be a more effective persuasive mode in judges' efforts of convincing non-specialists of the rightness of their judicial conclusions. The plaintiff of example text 2 loses his personal belongings when he travels on a bus owned by the defendant. The plaintiff claims that the defendant should have guarded the safety of passengers' personal belongings, while the defendant counter argues that passengers themselves should take care of their own belongings. The hearing judge expresses his point of view:

> Example text 2
> The plaintiff did not specifically mention the unique feature of his belongings … passengers (the plaintiff) of course bear more duty in taking care of their personal belongings than the carrier (the defendant) does, … the plaintiff, fully aware of the very fact that he was carrying something special … carelessly handed it to the defendant … After knowing the plaintiff's loss, the defendant, out of kind and sympathy, provided very prompt assistance for his search of the lost belongings …

Far from being a value-free comment on the two parties' actions, the judge performs a rhetorical extravaganza here. Grammatical emphatics (Hyland 2004) are intensively used to show his negative attitude towards the plaintiff: "of course bear more duty", "fully aware of the very fact" and "carelessly handed it". The emphatic "of course" carries the judge's confidence and decisiveness in concluding that the plaintiff should "bear more duty" in this incident. Moreover, "of course" positions

the plaintiff's claims as a self-evidently incorrect argument because he himself fails to "specifically mention" the uniqueness of his belongings. "Fully aware of the very fact" and "carelessly" express the judge's strong negative perception relating to the plaintiff's improper manner of taking care of his own things. Similarly, the comment on the defendant is also highly emotion-charged. "Out of kind and sympathy" and "very prompt" indicate the judge's appreciation of the defendant's good intent in helping the plaintiff. It is implied that the plaintiff should not have started the lawsuit in the first place; instead, he should have expressed gratitude to the defendant's virtuous deed. The judge's candid tone creates an imaginative ethical situation where the opinion readers' understanding, if dissenting from the judge's, may set the innocent wronged and the guilty free. This naturally invites the readers' empathic reading response and requests them to connect affirmatively with the expressed sensational judgments (Pathos).

4.2 Narration

As found in the collected sample opinions, the incorporation of factual narratives is an indispensible move of Chinese judicial writing. The comprehensive report of facts provided by these narratives represents the very troubling point of life world which necessarily triggers and suffices the intervention of law world, considering that the primary function of law is to spot disputes "arising out of social relations of disgruntled people" (Conley and O'Barr 1990: 66) that fall precisely within the realm of law, to maneuver legal apparatuses, to enact realities over disputes and finally to restore balance to the disturbed social lives. Narrative is one of the basic forms of human communication and its major purpose is to organize and transfer personal experiences to others through verbal recounting behaviors (Labov 2011). Narratives are seldom a sheer recapitulation of past experiences and it is neither possible nor desired for narrators to render their recounts completely value-free or purely referential. The forming of narratives is considerably shaped by the narrators' intention of carving out the public face of past experiences in evaluative ways favorable to their personal interests. In case of judicial opinions, narrating interests include the enacting of realities over disputes, the assignment of blame and responsibility, and the reinforcing of the legal ideology of the rule of law (not the rule of judges).

The narrating behaviors, regardless of social and cultural constraints, tend to follow a common six-step structural pattern: *abstract*, *orientation*, *complication*, *resolution*, *evaluation*, *coda* (Labov and Waletzky 1967; Han 2016). Chinese judges' factual narratives are no exception to this general pattern, but with significant variations. A tortuous case is chosen for the purpose of illustration, where a complicated

series of events have caused bodily harms to the plaintiff. The plaintiff and the defendants of the case hold opposing views on which side should be held accountable for the caused injury. The plaintiff argues that his sufferings are undeniably caused by defendant B's incontrollable tricycle and defendant C's misplaced hot oil pot; while the two defendants maintain that the plaintiff's injury is caused by his own imprudence as he recklessly moves B's tricycle and knocks down C's hot oil pot. The two views advocate two uncompromising versions of one same past incident, and it becomes a necessity for the trial judge to distinguish the true from the false and to provide the official version of *fact*:

> Example text 3
> (*Orientation*) At 8 o'clock on the morning of December 5, 2006, defendant B parked his electric tricycle along the road close to the building of X Mall, did not pluck the key, and walked into defendant C's restaurant for breakfast. (*Complication*) Plaintiff A trundled his cart on the same road and was blocked by the parked tricycle. Plaintiff A came to the tricycle and tried to move it in order to clear the road. Because he did not operate properly (*Evaluation*) and accidently started the engine, the moving tricycle run him down and tipped over the hot oil pot defendant C placed in front of his restaurant in order to cook breakfast. (*Resolution*) Plaintiff A was burned badly by the spilled hot oil. (*Orientation*, *Complication*, *Evaluation*, *Resolution* are added by the present authors)

Compared to the structure of conventional narratives, factual narratives of judicial opinions are of a neatly organized Orientation – Complication – Evaluation – Resolution pattern. The absence of Abstract and Coda in this pattern is not without significance. Abstract is a key point where story world and reporting world interact. Narrators employ Abstract to encapsulate the *point* of story (Johnstone 2001: 639) and claim, in a straightforward manner, that it is worthy for the audience to direct their attention from reporting world to the story world. Similarly, Coda, as a section bridging story and reporting world, is temporally separated from the end of the story (Resolution) and what it highlights is the impact of past experiences on the present narrating world, in terms of the narrator or the audience.

Although the missing of the two steps may seemingly jeopardize a successful communication of the judge's telling of legal facts, it is arranged intentionally for the adjudicative purpose of enacting legal realities. An intertextual reading of the whole judicial opinion, for example, reveals that the interacting work between story and reporting world which is meant for Abstract and Coda is actually completed by other parts of the judicial opinion. *Points* of the legal story, i.e. issues of the case (*the plaintiff's injury*), are introduced at the very beginning of the judicial opinion and are further elaborated in the judge's quoting and anti-quoting of both parties'

controversial arguments (Han 2012). They become already known when opinion readers read through the first parts of the judge's writing, and what is kept unknown while opinion readers begin to approach the factual narratives is what concrete activities have actually given shape to the *point* of legal story (i.e. *the plaintiff's injury*), an answer to be found in the judge's narrative. The intertextual arrangement enables the judge to start, in this section, with a much straightforward description of the settings of incident, sealing off the parties' foregoing controversial arguments and then setting about finalizing how the *point* of legal story has been developed. Likewise, in the reporting world of adjudication, the Coda of the example narrative naturally refers to the judge's forthcoming response to the narrated events, i.e. their long-awaited legal reasoning and judicial decision following the story part. In this sense, the judge's analytical writing following Example text 2 within the same opinion can all be taken as the Coda. So, the schematic variation of legal stories suggests no lack of narrating skills, but a higher degree of intertextuality of opinion writing practices.

The second professional job completed by the example narrating text is the assignment of blame and responsibility. Legal discourse is basically evaluative because it is one of the crucial social institutions measuring, comparing, judging, and disciplining people's activities. The evaluative agenda is particularly prioritized and explicitly marked off in judges' writing of adjudicating genres. Judicial evaluation may be based on the criteria of truthfulness or appropriacy, depending on whether parties' verbal arguments or physical behaviors are being examined. As factual narratives address past experiences of parties' conflicts, it becomes necessary that the appropriacy of each side's action is assessed and praise/blame is assigned accordingly. The assignment of praise/blame in everyday narratives is normally realized through strategic linguistic devices in order to conceal the narrator's intention of "transforming the social meaning of events without violating our commitment to a faithful rendering of the part" (Labov 2011: 548). On the contrary, the assignment of blame in Chinese judicial opinions is mostly foregrounded by the highlighted causality markers ("because") and contrastive use of negation ("did not operate properly"). Temporally-ordered clauses of narratives reflect narrators' theory of causality through which narrators hold the former of any two temporally linked clauses accountable for the occurrence of the latter. The manifestation of the usually implied causality has a strong pragmatic force of attributing blame and responsibility, in this case, to the plaintiff ("because he did not operate properly"). For the same reason, negation is one of the important devices creating *irrealis* events which "did not happen or might have happened or had not yet happened" (Labov 2011), in this case, *the plaintiff operate carefully*. The function of *irrealis* is to serve a contrasting point of reference for narrators to unfavorably assess the reported event. The trial judge and opinion readers alike, here, can draw no other

conclusions but that the plaintiff has failed to do something he should have done. The explicit authorial intervention implied in the foregrounding of authoritative evaluation which may undermine narrators' credibility in everyday narratives is a legitimate rhetorical move for legal narratives, since the trial judge is privileged, and also obliged to exercise judicial power, to remove potential ambiguities in his language of delineating responsibilities between disputing parties, and finally to provide concrete legal instructions on how the damaged justice may be renovated. Reflecting on such writing practices, specialist No. 1 says:

> The uptake of law transparency movement does require me to reveal more details of courtroom trials. My colleagues and I start to provide more factual narratives in opinions, and some of the narratives may read much like entertaining stories. However, the major purpose remains the same. We need to see through the fogs created by parties' competing stories, and to corner the legal facts without any suspicious points. Our job is to mark the moral and legal weight of parties' actions, sometimes, even at the expense of the coherence and entertainment of our narratives.

The third and final task fulfilled by this narrating text is the reinforcement of the legal ideology of law as a self-sufficient machine, free of judges' personal influences. As argued at the beginning of the paper, the ideology of autonomy and objectivity is important for the maintaining of integrity and reliability of the legal profession. In order to achieve this, it is natural for trial judges to reduce their personal presence in judicial texts to a minimum level. There are quite a few carefully planned linguistic arrangements in this example text serving this purpose. Firstly, the narrator introduces all characters in third-personal singular forms and portrays himself as some objective observer holding no invested interests in the reported incident. Secondly, there is a dehumanization of the characters as they are universally named with generic labels, i.e. plaintiff A, defendant B, and defendant C. Here, the parties' personhood with full details and subtleties is reduced into impersonal "functionalized" parts (Van Leeuwen 2008: 41) of the adjudication machine. The highlight becomes the operation of law machine, but not the recount of parties' personal experiences. Thirdly, the narrative is characteristic of a plain language style, with an apparent absence of complicated narrative techniques, like detailed descriptions, dialogues, quotes, flashbacks, and elements of surprise. Particularly, the use of assertive clauses throughout the narrative provides nothing but a network of bare propositional meanings. The denial of the interactive and rhetorical dimensions of communication closes the floor for any possible reader responses. To sum up, what the narrative conveys is not an ordinary *negotiable* re-telling of events which may or may not be accepted by opinion readers, but law institution's *unquestionable* finding of what the past events actually *are*.

4.3 Exposition

Exposition is one important mode of discourse in human's enterprise of constructing and communicating knowledge about the natural and social world. As authors of expository writing are usually those who have expert knowledge on a particular topic, they enjoy a privileged position of providing the audience more information and insights on the topic and educating them (Hubbard and Spencer 2012). The basic function of explaining information makes expository writing an indispensible skill for specialists of almost any profession, including law, medicine, and business, to name just a few. In case of judicial opinions, what needs to be explained by trial judges includes not only the usually long-established legal rules and regulations, but also mundane ideas and notions that are newly converted into the legal realm because of law development. For the latter case, in order to catch up with the fluid and quickly evolving social lives, law keeps selecting concepts and notions from everyday life and other social sectors and institutionalizing them into binding legal doctrines.

One legal area where such new doctrines are frequently created and interpreted in China is personal moral rights. The idea of personal honor and integrity has been long acknowledged as a traditional Chinese culture phenomenon, but it remains not codified till quite recently. The increasingly integration of Chinese economy with the global market and also the awakening of individual rights, according to Kalscheur (2012), urge Chinese law to pay equal, if not more, attention to intangible personal rights, for example, rights to dignity, reputation, privacy, name, and mental health, in contrast to the more common tangible property rights and rights of personal freedom/security. The judicial efforts of explaining and sustaining intangible moral rights as newly surfaced legal notions, through the use of ritualistic language, are commonly seen in the collected sample opinions. In example text 4, the judge needs to provide a working definition of *human dignity* in order to decide whether the plaintiff's moral rights have been violated by the defendant:

> Example text 4
> Needless to say, *human dignity* refers to the idea that one needs to be valued and respected by others, and needs to treat him/herself with proper self-respect. The decision of the violation of human dignity is a matter of both subjectivity and objectivity, and it depends internally on how one feels and also externally how one has been actually treated.

As Chinese legal tradition has treated the protection of dignity and other moral rights in rather a cursory manner, it is hard for the trial judge to retrieve any readily available theoretical circumscription from the legislature. So, he needs to conjure

one judicial explanation of *human dignity* for the case at hand, one courageous judicial move of undermining the traditional legal ideology of impersonality and objectivity in a civil law system. However, less ideally, one noticeable feature of this and other similar legal explanations conjured by Chinese trial judges is that the concerned special topics (e.g. human dignity) are discussed with a much higher degree of generality, so that an apparent discontinuity is created between the expository texts and the discussion of concrete matters in other parts of opinions.

Elements of generality may be identified in a number of aspects. For example, the notion dignity is repeatedly categorized into broad connotative notions like "idea", "respect", "self-respect", "subjectivity" and "objectivity". If denotative language is a common strategy of constructing informative texts (Duke, Caughlan, Juzwik, and Martin 2012: 94), the exclusive use of connotative language without the support of denotative examples can only make the explained notion even more elusive. Secondly, there is quite limited connection between the expository writing and the parties' immediate concern with the defining and protection of their personal interests. The judge's explanation is neither temporarily nor conditionally defined because of the timeless verbal ("refers to", "needs to be", "is a matter", "depends") and generic noun constructions ("human dignity", "one", "others"). The lack of the explicit reporting of immediate relevance makes the introduction of this exposition text into the judge's writing quite intrusive. Thirdly, the judge's use of evidential markers ("needless to say") suggests a sneaky intention of objectifying the rhetorical imposing of explanation from the knowledgeable to the ignorant. Evidential markers, according to Aikhenvald (2004), confer credibility on text and discourse by specifying the information source. "Needless to say" demonstrates that the evidential basis for the expository judicial writing is apparently (which is not necessarily true) accessible to the public and the text is only re-stating information already shared across a large number of people. The expository text, being objectified, is turned into an invariant definition of *human dignity* which may be universally applied regardless of the details and nuances of communicative settings.

While these linguistic characteristics of generality cause an apparent discursive discontinuity between the expository text and the case-sensitive discussions in the rest part of the judicial opinion, they create an interesting alignment between the trial judge and his professional colleagues as the text bears a close resemblance with the explanation of *human dignity* in other authoritarian settings, for example, a prestigious law textbook on Chinese civil law:

> *Human dignity* refers to a citizen's right to self-esteem and his/her right of being respected and valued by the society. (Liang 2011: 98)

As can be seen, the textbook definition is of a close kinship with the above trial judge's expository writing and is characteristic of the similar prevalence of connotative vocabulary ("right", "self-esteem", "respected and valued"), the similar use of timeless verbal ("refers to") and generic noun constructions ("human", "a citizen"), and the similar objectification of statement caused by the silencing of authorial voice ("human dignity refers to"). The trial judge's conformity to the 'formalized' (Kadar 2013: 1–22) textbook language, not the other way round, is a communicatively significant writing practice of Chinese legal profession. The education of law in China is a national enterprise and most aspects of teaching follow state standards, including curriculum, syllabus, textbook, examination, and others. Law textbooks are normally written by government-endorsed professors and virtuoso practitioners and are meant to be a canonical pedagogical genre for the nation-wide use, and also to be an official source for the profession to practice law. Through aligning with the authoritarian textbook discourse, the trial judge's expository writing, in general, reinforces the legal ideology that China law is a homogenous institution with a monolithic public voice, and in particular, helps the trial judge to take a not-too-hasty personal move of making law in a civil law system where the judges are not yet officially entitled to do so. Specialist No. 3 expresses his views with the following statement:

> There is always a big gap between the 'should-be' world (the law) and the 'as-it-is' world (social lives). New disputes that are not covered by existing laws never cease appearing. The cases need to be closed on time and I cannot wait for the making of new laws. That will take you a thousand of years! I cannot make law, but I do rely on my own thinking and understanding. Everything should be done strategically. At least, you should disguise your writings as part of the canonical texts.

4.4 Instruction

Instructional discourse is commonly seen in mundane and specialist contexts where readers need to learn "how to perform a specialized sequence of activities in relation to certain objects and locations" (Martin and Rose 2008: 182). Common example texts include cooking recipes, game directions, tourist guides, laboratory protocols, etc. The delivery of instruction, in everyday settings, is normally accompanied by experts' illustrative performance of target activities. But in specialist settings, instruction is more likely to be mediated in written forms in order to permit people who are not together in time or space to direct and follow. The travel of instruction texts from the everyday activity-based pedagogical settings to the entirely verbal-mediated situations free of immediate contexts makes it impossible for instructors and followers to name objects and locations with simple reference

items (e.g. here, there, this, that) or to make on-going adjustment and correction according to on-the-spot conditions. Accordingly, written instructions need to be of a higher degree of readability and accessibility (Bhatia 2008; Han and Li 2011), as they are required to explicitly describe participants, materials, objects, locations, and more importantly, concrete procedures the activity needs to follow.

Chinese trial judges' writing of judicial decisions is a typical example of this kind of interactive instructional discourse:

> Example text 5
> It is, hereby, decided:
> 1. Defendant Y shall compensate plaintiff X for the loss of cargo in amount of […];
> 2. Other litigation requests of plaintiff X shall be dismissed.
>
> Of the court fees […], plaintiff X shall pay […] and the remaining […] shall be borne by defendant Y.
>
> The payment of the above sums shall be completed within ten days of this judgment coming into effect. The failure of effecting the stipulated payment shall lead to the imposing of a fine, which shall account for […].
>
> Should there be any objection to this judgment, a statement of an appeal with copies in the number of the opponent parties may be submitted to this court within 15 days upon the service of this judgment, for appealing before the court of appeal.

Judicial decisions are judge's final enforceable conclusions on the parties' dispute. It is through this discourse that the law exercises power over the disturbance of social lives. As non-specialist readers, parties and the lay public most often pay their sole attention to this section in order to quickly locate legal answers for their social problems. Although normally positioned towards the end of judicial opinions, it can be the section which is read first. The example shows the judge's clear awareness of opinion readers' communication needs and his purposive textual arrangement of making the text a highly readable and accessible piece of writing. For example, the text is organized not in the form of paragraphed passages, but as a check list of main points, i.e. each of the points covered is itemized either explicitly by Arabic numbers or implicitly by separate indented sentences. Moreover, in order to remove potential misunderstandings between the multiple participants involved in court-room trials, the trial judge avoids the usually adopted imperatives in instructional settings, and the whole judicial decision consists of a series of full-sentenced commands directing particular parties ("plaintiff X", "defendant Y") to take concrete actions ("compensate", "pay") in terms of different objects ("litigation requests", "court fees", "objection to this judgment"), with each components of the instruction explicitly marked out.

At the same time, the judicial instruction does reveal features which are significantly different from other types of instructional discourse. As argued, instruction, compulsory or not, is a kind of enabling discourse because its major purpose is to teach someone to fulfill things which are otherwise beyond their expertise (Purchell-Gates, Duke and Martineau 2007). The audience of instructional discourse, in one way or another, benefit from their following of the instructed moves. But, in judicial settings, the instructional purpose is apparently retributive and the adjudicative goal is not to bring something that is not there to happening, but to provide corrections to what has wrongly happened, i.e., to reintroduce balance to the disturbed equilibrium by granting damages to the victim (*compensate plaintiff X*) and imposing penalty on the wrong-doers (*defendant Y compensate*). This connotes a significant evaluative dimension which is rarely seen in other types of instructional discourse. That is to say, what the judicial instruction stipulates are not optional moves which may or may not be followed by the target audience, but compulsory orders which have to be effected with an appropriate manner. The state power behind the court and judge guarantees a reliable deterrence for any possible disobedience ("The failure of effecting the stipulated payment shall lead to the imposing of a fine").

5. Conclusion

Dialogue exists on a number of planes of human activities, including values, meanings, voices, identities, utterances, and others. The language of one's utterance is partially someone else's because it belongs to a semiotic system which has been long shaped by a number of extralinguistic social forces, and at the same time, is "one's own" because it is created from ones' individual intention and thinking processes (Bhahtin 1975/1981: 293). The heterogeneous understanding of utterance implies that the production of any discernible chunks of language-in-use shall be the outcome of the conversational engagement of a number of different words/voices. What is achieved through the engaging process is not the reductive synthesis of the encountering words/voices, but a newly formed meaning space where the encountering words/voices both intersect and confront. The smoothly organized intersection makes the *front-stage* dimension of the identity of the newly formed utterance, and the confrontation, as the residue of the unresolved differences between the encountering word/voices, becomes the *back-stage* ones. Both are indispensible. An ideology-oriented understanding normally tends to wear an oversimplified lens of looking at the dialogically formed utterance, neglecting the confrontation of differences and reducing the heterogeneous utterance into a monolithic construct.

In the present case of legal ideology, law has been traditionally considered as a kind of autonomous discursive sphere of little interpretation and personal judgment, and accordingly, the practice of writing judicial opinions is nothing more than a mechanic logic-deductive process of stating major premise, identifying minor promise, and producing invariant conclusion.

In order to overcome the oversimplifying tendency of reducing judges' writing practices into the assumed singular vision, the present study adopts an explorative method of analyzing judicial writing, focusing not only on the *front-stage* textual conventions of judicial opinions like communicative purposes, move/step structures, and lexico-grammatical features, but also on the less visible *back-stage* writing variations including rhetorical modes, styles, and strategies. The *genre* of judicial opinions, according to the research findings, is much more than a neatly structured logic-deductive *text type*; it is more like a discursive space for judges' *polyphonic* writing performances involving the use of a variety of rhetorical modes and involving the processing of a number of communicative contingencies and uncertainties. To be specific, Chinese judicial opinions are a heterogeneous genre composed of the combination of a number of rhetorical modes, e.g. argumentation, narration, exposition, and instruction. Owing to the paramount need of keeping the sustainability of Chinese legal profession and the need of maintaining its ideologies, identities, and beliefs, Chinese judges devote much rhetorical effort to the reproduction of formalistic writing practices. That is to say, the discursive construction of each of the modes reproduces the ideological assumption of judicial writing as a highly structured impersonal process. For example, the overall argumentative structure of judicial opinions is still a logic-deductive type; factual narratives are told in an objectified tone, free of judges' personal judgment; exposition is provided in highly formulaic textbook language; and most expressions of instruction are coercive, retributive and deterring.

On the other hand, the disagreement of the quickly evolving social lives and the constantly lagging legal regulations requires judges to carve out sufficient space of flexibility where they may practice personal originality and creativity in the processing of new types of legal dispute. So, rhetorical modes may be constructed in alternative ways that incorporate a significant number of examples of authorial presence and, thus, undermine the official legal ideology of autonomy and objectivity. For example, Chinese judges do invoke their professional expertise (Ethos) and sensational judgment (Pathos) to construct legal arguments, do use simple stories to enact realities over disputes and to impose blame and responsibility upon parties, do create law by explicating new concepts and by building situational basis for the adjudication of entirely new disputes, and do provide reader-friendly instructional texts directing the reestablishment of justice. The contestation of the

conventional conformity with the collegial ideology and the motivation of producing innovative case-sensitive texts drives Chinese judges to build their own versions of personal, professional, and institutional identities along the spectrum between the safe practice of behaving like an apathetic member of the profession and the compelling personal move of opening new space of dialogue in the traditionally monologue-driven sphere of legal writing.

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Appendix. Four stages of specialist interviewing

The interviewing questions function as a guidance and may not be literally considered as a script for the authors' communication with the specialists. The authors do not expect accurate Yes or No answers to these questions, but encourage the specialists to share detailed accounts of their work histories and lived experiences.

Stage 1

Questions are asked to acquire the specialists' understanding on the nature of Chinese judicial opinions:

a. Can you name some important features and functions of Chinese judicial opinions?
b. Are Chinese judicial opinions important professional texts, or are they formulaic texts solely meant for lay readers?
c. Why are Chinese judicial opinions published, and for whom?
d. Do you read published opinions? What is the your purpose of reading?
e. Is there any difference between Chinese judicial opinions and the opinions issued in common law systems, for example, British or American opinions? If so, what is the difference?

Interviews conducted:

1. January 9, 2016 (Specialist No. 1, 45 min.)
2. January 10, 2016 (Specialist No. 1, 45 min.)
3. January 11, 2016 (Specialist No. 1, 45 min.)
4. January 19, 2016 (Specialist No. 2, 60 min.)
5. January 21, 2016 (Specialist No. 3, 60 min.)
6. January 22, 2016 (Specialist No. 3, 45 min.)

Stage 2

Questions are asked to acquire the specialists' understanding on the convention and creativity of writing Chinese judicial opinions:

a. How do you understand your work of composing judicial opinions? Do you complete it on your own, or with the help of your assistants?
b. How do your refer to the opinion templates provided by the Supreme Court of the People's Republic of China?
c. People tend to get the impression that the writing of judicial opinions is normally an automatic process of filling objectified information into the logic-deductive template. What is your comment?
d. Is it necessary to reveal judges' personal thoughts and ideas in Chinese judicial opinions? Is it lawful/permitted to do so?
e. What is your strategy of mixing your personal voice with the rest formulaic content of judicial opinions? What are your colleagues' strategies?

Interviews conducted:

7. March 1, 2016 (Specialist No. 1, 70 min.)
8. March 6, 2016 (Specialist No. 2, 45 min.)
9. March 19, 2016 (Specialist No. 3, 45 min.)

Stage 3

Questions are asked to acquire the specialists' comments on the authors' findings of textual analysis:

a. If the written law is not clearly defined, how do you quote the law and interpret it in judicial opinions?
b. How do you claim the authorial responsibility of your professional and personal voices in opinion writing?
c. Some parts of Chinese judicial opinions tell interesting stories and are quite readable. Are these stories similar to the stories of everyday interactions?
d. What is the relationship between these stories and other specialist parts of Chinese judicial opinions?
e. Are the written law and the published opinions the sole sources of law in your adjudication work? Is it possible to refer to other legal authorities for reference?
f. Do you have any scholarly publications? If so, how has your scholarly study of law influenced you adjudication work?
g. Why is there an identifiable tone of threatening in the language of judicial decisions?

Interviews conducted:

10. June 9, 2016 (Specialist No. 1, 45 min.)
11. June 19, 2016 (Specialist No. 1, 45 min.)
12. June 20, 2016 (Specialist No. 2, 60 min.)
13. June 21, 2016 (Specialist No. 2, 45 min.)
14. October 9, 2016 (Specialist No. 2, 45 min.)
15. October 15, 2016 (Specialist No. 3, 60 min.)
16. October 19, 2016 (Specialist No. 3, 45 min.)
17. October 25, 2016 (Specialist No. 3, 70 min.)

Stage 4

Questions are asked to acquire the specialists' views on the authors' final manuscript and their consent on the authors' representation of their professional voices in the manuscript:

a. Are our findings valid?
b. Do you agree with the authors' reporting of your remarks in this paper?
c. Do you have any suggestion on the authors' present and future work?

Interviews conducted:

18. January 16, 2017 (Specialist No. 1, 45 min.)
19. February 19, 2017 (Specialist No. 2, 60 min.)
20. February 21, 2017 (Specialist No. 3, 45 min.)

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