Literature Review on Courtroom Discourse Analysis

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Focusing on research perspectives and methods, this paper reviews the main research on discourse analysis about how society affect courtroom discourse in nearly recent 30 years. The research shows that courtroom discourse analysis has a trend of diversified research perspectives and research methods which formerly aimed at the static, single and conventional social factors, now it comes to concern about the dynamic, interactive, and occasional ones. Social behavior theory is an emerging and unique member of it.

Keywords: courtroom discourse analysis, social behavior theory, society

This paper summarizes the research on how social facts affect courtroom discourse at home and abroad in the past 30 years from 3 diversed research methods and perspective: discourse analysis research, sociolinguistic research and social behavior perspective. There are well-known research methods in the field of discourse analysis including conversational meaning analysis, conversational politeness analysis, and conversational structure analysis and I will not repeat them. Below, this paper will focus on the literature in sociolinguistic research and social behavior perspective.

Sociolinguistic Research on Courtroom Discourse

Research on the Power Factor in Courtroom Discourse

Matoesian (1993), Conley & O'Barr (1998) et al.'s analysis of a large number of rape trials, especially the audio-transcriptional corpus of the sensational "Will Jam Kennedy Smith" trial in the United States, suggested that the answer to the problem of re-victimization of the victim woman in the trial should not be found in the structure of the courtroom trial, but in the micro-details of the interactive language of the use of power.

In the 70s of the 20th century, the Language and Law Project undertaken by Duke University extensively studied the language of witnesses, and found that many witnesses spoke in a "powerless" style, which was manifested in the heavy use of words and uncertain language (e.g., I think; sort of, etc.), hesitant words (e.g., uh, well), interrogative tone (answering questions in an ascending tone, indicating uncertainty), and using reinforcement (very, surely, etc.). Studies have shown that people who use this style are mostly women and people of low socioeconomic status, while well-educated people speak in a "powerful" way. Their research also found that, relatively speaking, the more powerful a witness's words are, the more credible, convincing and more acceptable to the jury will be. If the defendant speaks in a standard and courtroomeous manner, it is easier to be acquitted. In short, in the courtroomroom, the power of witnesses is closely related to language.

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Research on the Cultural Factor in Courtroom Discourse

Wu (1998) argued that cases involving non-native cultures were more likely to lead to unfair trials. This is because judicial professionals often judge on the basis of values that are closely linked to their own culture, without taking into account the cultural differences that may exist in such cases, which undermines the fairness of the law.

Eades (2000) made analysis on landright and other courtroom discourse involving Aboriginal crimes, which showed that Aboriginal people are often at a disadvantage in litigation due to their deficiencies in English proficiency and the significant differences between their English usage and mainstream English, coupled with cultural differences.

Philips (1998), Ehrlich (1999) also made analysis on how the defendant's society like their background, education, and gender made impact on judges and lawyers when they asked.

The use of courtroom discourse is a dynamic conversational process involving many complex factors, so the consideration on those static and conventional social factors research from a social perspective is far from fully revealing the complexity and subtlety of courtroom discourse.

Research on Courtroom Discourse in Social Behavior Perspective

Drew et al. (2011a) argue that "language transmits not meaning, but behavior". The choice of language form made by a speaker to carry out a certain act is not completely affected by social individual identity factors such as age, gender, education level, and absolute power (such as static social relationships between bosses and employees, doctors and patients, etc.), but is restricted by social factors such as the right to perform a certain act (entitlement), the likelihood of a certain event occurring, or contingency. It can be seen from this that the research of Paul Drew et al., emphasizing the social nature of conversational behavior, treats conversational behavior as a social behavior, and not exactly a personal act (Zhang Falian, 2023).

Chen Xinren (2013) explained, in doctor-patient communication, absolute power relations cannot fully explain the distribution of different language forms in the patient's request behavior, but if dynamic factors such as relative power that are closely related to the communicative context are introduced, the patient's request can be made.

Zhang Falian (2017) selected two homicide cases to demonstrate the judicial discourse analysis from the perspective of social behavior theory.

Conclusions and Expectations

The current literature show that the study of the efffcts of society on courtroom discourse has yielded fruitful results, but there are also some shortcomings: (1). Compared with the abroad research, there is a lack of convergence of research perspectives and methods in domestic research; (2). The corpus used in domestic research is basically written language or transcripts transcribed by clerks, not natural courtroom discourse. Therefore, we need to use different methods and more perspectives to deepen our understanding of the relationship between courtroom discourse and its social motivation.

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