A discoursal and pragmatic study of information control in criminal trials in China:

A case study of fund-raising fraud trials

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Submitted in fulfilment of the requirements of the degree of Master of Philosophy in Linguistics
Acknowledgement

I would like to express my sincere gratitude to my two principal supervisors, Prof Deborah Cao and Dr Susan Lovell, without whom I would have been unable to undertake and complete my thesis.

Deborah inspired my interest in the current research topic as well as providing me with good insights after I changed my topic from court interpreting to the current one. I appreciate her help and guidance and the useful books to read to improve my ability in methodology and research.

When I was about to drop this project, Susan supported me with her patience and inspired me with exciting, new ideas. Our exchange of ideas always made me want to dig deeper into the topic. More than that, she cared about my life and study as a close friend, giving me positive energy and encouragement to see this through to the end.

My thanks also go to my colleagues in the office and to my parents and friends for their sincere support and help.

Also, I would like to thank the Chinese Scholarship Council for supporting me in my research. Without valuable government support, I would have been unable to complete this meaningful research.

Lastly, I would like to thank Griffith University for all the help, guidance and wonderful workshops that helped me to develop my research skills.
Originality Statement

I hereby declare that this submission is my own work and to the best of my knowledge it contains no materials previously published or written by another person, or substantial proportions of material which have been accepted for the award of any other degree or diploma at Griffith University or any other educational institution, except where due acknowledgement is made in the thesis. Any contribution made to the research by others, with whom I have worked at Griffith University or elsewhere, is explicitly acknowledged in the thesis. I also declare that the intellectual content of this thesis is the product of my own work, except to the extent that assistance from others in the project's design and conception or in style, presentation and linguistic expression is acknowledged.

Signed ………………………………………………………………..

Date ………………………………………………………………..
Abstract

Fund-raising fraud, as an emerging type of financial crime in China, had always been debated over its conviction and sentencing, due to the intricacy of its circumstances and elements of crime. After two amendments to China’s long criticised Criminal Procedure Law in 1996 and 2012, adversarial concepts and practices were introduced, giving greater attention to procedural justice, human rights protection, presumption of innocence, direct speech principle in order to achieve a more even balance in power status and right of speech between prosecution and defence. The presentation and interpretation of legal facts, which are critical to the adjudication of fund-raising frauds, are predominantly presented through discoursal interactions via manipulation of information by different litigants who become increasingly more competitive and conflictive with each other. The conflictive courtroom discourse is profoundly embedded in the asymmetrical power web interwoven between the litigants in court. The self-identities of each litigant and the impact of discoursal interactions on their member resources and institutional ideology can be reflected through analysis of their interactions.

It is, therefore, of great interest and significance for the researcher to examine the information control and power status in the newly reformed criminal trial system of China from a pragmatic and discoursal perspective, through an analysis of real life fund-raising trial video recordings that have been opened to the public in the past three years.

This research aims mainly to identify, describe and interpret the linguistic and pragmatic features registering information control and power relations between different litigants in courtroom discourse so as to interpret and reflect on the proceedings, procedural justice and power relations during the interactive adjudication process. The member resources (MR) of
different litigants play a pivotal role in the use of discoursal strategies and conflictive interpretations of legal facts. Ideological coercions and social power asymmetry are also looked at as secondary issues which impact on the reform of criminal judicial trials, especially the adjudication of fund-raising fraud in China. Ideological reproduction or reformation process will also be touched upon based on the change of MR during conflictive interactions.
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Chapter 1 Introduction

1.1 Background of research

For approximately twenty years, one of the key national policies of the government of the People’s Republic of China (PRC) has been “governing the country in accordance with law” through the establishment of the “rule of law” (fazhi). This involves the building and improvement of a socialist legal system with Chinese characteristics, and there have been consistent efforts by the Chinese government to this end. One notable and noticeable manifestation of this is the conduct of court trials so that most of them (apart from the politically sensitive cases) are open to the public; indeed, some courts in China live broadcast trial proceedings. These offer us an interesting and important window on how trials are conducted in China and what transpired in the process, at least within those parts that are able to be seen.

By the time I wrote this thesis, 416706 trials in total have been broadcast on line, and the total number of cases tried by the Supreme Court of China has reached 919. These trials include all the questioning and evident presentation processes; however, the verdict and sentence are not given during the trial, but separately in a different court session.

Such effort towards the “transparency of justice” is a result of the promotion of the Supreme People’s Court of China ever since 2013. The president of the supreme people’s court stressed the transparency of court trials in a 2013 seminar with presidents of higher people’s courts, saying that “We would like to stress that transparency is the guiding principle while non-open

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1. According to information on the website of Live Broadcast of China’s Court Trials, thirty-two provinces and municipalities in China have provided live and archived video recordings of certain open court trials. Retrieved at http://ts.chinacourt.org/index.html
trials are only exceptions” Yang, 2016). In May 2016, the newly amended Court Rules of People's Courts of the People's Republic of China further promoted the practice of transparent courtroom. It is stipulated in the courtroom rules that citizens may sit in at their will any open courtroom hearings. Besides, the people's courts may broadcast live or by recorded video the pictures, audios or videos through TV, Internet or other public media channels. Since 1st, July, 2016, the Supreme People’s Court of the P.R.C. realized overall live broadcast of case trials over 32 provinces in China, which signifies a significant step towards the goal of “transparency of court”.

As is often said in Western jurisprudence, justice must be done and it must be seen to be done. Seeing, and for our purpose, hearing, what is being said in court gives us opportunities to study how language is used by litigants in the attempt to deliver justice in China. This transparency is in an emergent state of play within the current Chinese legal system, and this study provides insight into a complex process of language usage and its interpretation in a real-life situation. These complexities include a legal system that is relatively inexperienced in transparency working against an historical backdrop often characterised by an opaque legal process. The transition is occurring within a Chinese society that has multi-layered social and political structures, and a myriad of additional variables and factors, both linguistic and extralinguistic, in court proceedings.

Given such circumstances, it is unsurprising that China's justice system has been the subject of a great deal of critical scrutiny by many Western scholars. The reforms to China's Criminal Procedure Law (CPL) in March, 2012 represent the culmination of years of efforts to address the major defects in China's criminal justice system. These defects led to serious abuse of human rights through coercive police powers, lack of principle in procedural fairness, coerced self-incrimination of defendants and evidence obtained by torture or under duress (McConville & McConville, 2012).
In an effort to improve the criminal justice system through the 2012 amendment to CPL, the Chinese government and legislators advocated the following principles: paying more attention to human rights protection; paying equal attention to substantive and procedural justice; prioritising justice and constantly improving the efficiency of criminal procedures; respecting litigation law, and improving operability of CPL (Long, 2013; Wang, 2015).

At this transitional stage, the criminal justice system in China clearly benefits from in-depth studies of its power structure and procedural fairness. With the development of China’s economy, the number of fund-raising fraud cases increased by 75% in Shanghai in 2014 (Hong, 2015) and the total amount involved in fund-raising cases has reached the level of billions (Guangzhou Daily, 16 June, 2016). The increasing number of fund-raising fraud cases are due to the increased income of Chinese people and the deliberate fraudulent means designed by the criminals. Senior Chinese people usually would have accumulated a fair amount of capital and have the desire to make investment and gain profit. They can barely withstand the temptation of “free gifts” or “high rewards” promised by the fund-raisers. Many disguised investment companies hire unemployed graduates with few qualifications and provide them with good benefits and those innocent graduates will be lured by the advertised “high-end” positions in such companies. Fraud accounts for 14.6 percent of all criminal cases in 2015 according to National Bureau of Statistics of China. People’s courts received 1018 trials in 2015 for fund-raising fraud, an increase of 48.83% against the number of last year. Fund-raising fraud cases, as an emerging genre of financial crime, have recently become a particular focus of legal scholars interested in convictions and the way in which penalties are determined and applied (Chen & Wang, 2012; Liang, 2013; Zhou & Dong, 2010). Of special interest is the intrinsic distinction between illegal fund-raising and the normal bankruptcy of companies (which usually

2 Refer to http://www.court.gov.cn/fabu-xiangqing-18362.html
belongs to civil cases). The controversy and complexity of fund-raising frauds provide scholars many opportunities and contexts in which to analyse pragmatic skills, institutional identities, and the ideological nuances of courtroom discourse.

1.2 Research aims and key questions

Through a linguistic analysis of fund-raising fraud trials as a case study, this project aims to provide a description and analysis of power and control structures in criminal fraud cases in China since the 2012 reforms to the CPL. Two foci of this study are the process of information control during the construction of legal narratives and conviction, and the reproduction or transformation of ideology in power-asymmetrical discourse interactions. Using Fairclough’s CDA approach, adapted for China’s courtroom discourse analysis, video recordings of court trials post 2012 are sampled in order to detect possible ideological changes of court litigants or, alternatively, mere “symbolic victory” after the reforms. This facilitates the further aim of finding an effective method that may benchmark future studies. The research therefore first conducts an in-depth review and evaluation of existing discourse analysis methods in order to find or develop a method particularly suited to the situational context of a Chinese courtroom in transition towards a stronger focus on human rights. It focuses on documenting how language is used during the flow and control of information via verbal interactions between various parties in fraud case trials in China. It does this through a systematic and comprehensive analysis of trial transcripts of two case studies. From a sociolinguistic and constructive perspective, it seeks to explain and interpret the process of legal facts ascertainment as an ontologically valid social reality through micro and macro analyses of utterances.

To meet these aims, the project addresses a set of logically progressive key questions and, under each, several subsidiary questions:
First, how is information control practised by different litigants with their respective power, member resources (henceforth MR) and purpose in hand?

a. What linguistic skills are most frequently used to exert control upon information, credibility and power?

b. How can information control influence the adjudication and conviction of a case?

c. How does MR and power status influence the use of information control in court?

Second, do the practices of information control by different litigants reflect any apparent shifts in their power relations that conform to the requirements of the reforms of CPL?

d. What normative and creative relations to MR can be identified/found during the use of information control by different litigants?

e. How are procedural justice and speech right of each party promoted or hindered by different controls exerted by litigants?

Third, how do the ideologies (as far as they can be understood) of litigants shape the power interactions in discourse and how are their ideologies reproduced or transformed during discourse interactions?

f. How do different inferential frameworks and purposes (part of MR) influence the interpretation of legal facts?

g. How do the assumptions of litigants (also part of MR) change during the interactions?

h. How successfully are the less powerful able to creatively use their own MR to confront the institutional, or more powerful, schemata/s, frame/s and script/s?
To meet these broad aims and address both the key questions and the subsidiary questions, it is necessary to formulate and apply a form of critical discourse analysis based on the literature review, particularly Fairclough’s (2001) work. I will address this in the methodology and methods section.

1.3 Rationale

There are a number of reasons for the proposed project. First, China's legal system, and in particular its criminal justice system, has unique characteristics that are very different from western legal systems, either the common law or the European continental system. The current Chinese legal system is a socialist legal system with Chinese characteristics, but it is based, to some extent at least, on the continental system with a strong influence from French and German legal laws. However, it is also unique in many ways given the authoritarian rule of governance in China’s political system. Constitutionally the court system is intended to exercise judicial power independently and free of interference from administrative organs, public organisations, and individuals. However, "the power of the courts to adjudicate independently does not mean total independence from the Party" (Xiao, 2007; Li, 2003) because the Constitution also emphasises the principle of "the leadership of the Communist Party". The leadership of CCP in the judicial system in Chinese courtrooms would hinder the procedural justice from being fully implemented.

In the criminal justice system, this fact manifests itself in the existence of party committees of political and legal affairs at all levels of government (Belkin, 2000). Traditionally, the head of the committee has been the head of public security for the area, with the chief procurator and the chief judge beneath him. Most criminal offenses in China are investigated by the Public

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3 See the preface of the Constitution of P.R.C (2004).
Security Bureau, which is part of the executive branch of government. Criminal offenses committed by government officials, employees, and agencies, however, are investigated directly by the Procuratorate (Barden & Murphy, 2011, p. 17). The Procuratorate is China’s highest national agency for both prosecution and investigation. Thus, the Chinese Communist party unquestionably still exercises institutional influence over the operation of the legal system in general and the criminal justice system in particular.

Second, criminal law and trials regulate the most comprehensive social relationship imaginable, reaching into far wider areas than do other laws wherever crimes are committed. Due to its compulsion, criminal law also serves to ensure the enforcement of other laws. Therefore, criminal justice is of great significance for the preservation of national and social security, stability and development, as well as for the protection of the political, physical and property rights of citizens (Qiao, 2013).

China's criminal justice system is undergoing a transitional period. In terms of China's criminal procedures, the policy shift from "leniency for confession and hardball for resistance (tanbai congkuan, kangju congyan)" to "presumption of innocence" had been advocated for decades through two amendments to the Criminal Procedure Law in 1996 and 2012. Adversarial components were introduced to the former inquisitorial trial system, imposing more restrictions on the prosecution and giving more rights and power to the defence counsel. This was to gradually balance the power status and speech rights between the prosecution and the defence (Mu, 2012; Lu, 2011), as well as for the purposes of crime control and protection of human rights, especially of the defendants and witnesses (Chen, 2012; Wang, 2015).

The 1996 amendment introduced cross-examination (courtroom debate) into China’s inquisitorial trial system, transferring from the judges to the prosecution, plaintiffs, defendants and litigant representatives the right to investigate the evidence, question the accused, witnesses
and expert witnesses, exhibit material evidence and present views. Moreover, this amendment dissolved the clear borderline between courtroom investigation and courtroom debate, allowing discussion of evidence at the courtroom investigation stage, which was beneficial to more accurate and in-depth evaluation of the validity of evidences (Fan and Wu, 1999).

However, although some adversarial features were observed in China’s court after this amendment, the cross examination in China’s court trials, due to a lack of necessary corresponding set of rules and mechanisms, was not completely functional compared to adversarial court trials (Fan and Wu, 1999). For instance, the presence of witnesses and expert witnesses in court had not been guaranteed because, in accordance with Article 157 of the Criminal Procedure Law (1996), the court was even permitted to "read out the testimony of the witnesses or the evaluation conclusion of expert witnesses who are not present in court". With no court appearance of the witnesses, the cross-examination cannot be fully realised through verbal questions and answers. Apart from that, defendants in China’s court trials, different from witnesses with an independent trial status, were required to answer the inquiries and interrogation of court with no right to remain silent (Criminal Procedure Law, 1996). This forced them to face the predicament of self-incrimination, and served as a main source of evidence for the prosecution (Mu, 2012)

Sixteen years after the first amendment in 1996, the second belated major amendment to the Criminal Procedure Law of P.R.C. was approved by the 5th Plenary Session of the 11th NPC on 14 March, 2012, which further improved the protection of human rights through procedure reforms. With respect for and protection of human rights added to the general principles, this new amendment signifies major progress, not only in judiciary concepts, but also in defence rules, evidence rules and trial procedures. The General principles of the Criminal Procedure Law of P.R.C. 2012 are as follows:
The goal of this amendment is to further ensure the protection of human rights and dignity of the prosecuted by giving power to the defence while regulating the investigators’ acts, and thereby avoid miscarriages of justice or infringement on human rights due to procedure injustice.

The amended Criminal Procedure Law 2012 provided a rule against self-incrimination in Article 50: "Nobody shall be forced to attest his own guilt". Although the right for defendant to remain silent is protected by the new CPL, there are coercions and directions from the judiciary or the prosecutors to urge the defendant to make a confession. The defendants would also believe that if he/she remained silent to a question, that would make him/her look guilty. On the other hand, it also provided for lawyers extended right to investigation and the exclusionary rule of illegally obtained evidence in Article 36 and Articles 54, 56, 57 respectively. Articles 187 and 188 also provided the conditions for witnesses, evaluators and expert witnesses to appear in court to give testimony:

Article 187. Where a written testimony by a witness has material influence on the determination of conviction or a sentence and where the public prosecutor, the party or the defender, or the agent ad litem objects to such testimony, and the people’s court believes it to be necessary for a witness to appear before court to testify, the witness should do so.

Article 188. Where a people’s court notifies a witness to appear before court for testimony, and the witness has not appeared before court for no good reason, the people’s court may compel the witness to appear, unless the witness is a spouse, parent or child of the defendant.

The above provisions signified further implementation of a “direct-speech principle” in China’s trial system, shifting the focus of court trials to courtroom questioning and giving more play to in court cross-examination by prosecutors and defence counsels (Chen, 2012).

We can infer but not necessarily measure from these relevant provisions, that the power relations between the defence and prosecution has gradually become more balanced through the expansion of lawyers’ rights (Mu, 2012). This includes the prior intervention by lawyers at
the investigation stage, lawyers’ access to the prosecution documents, and the strengthening of lawyers’ right to visit with the accused. Since the 2012 amendment has added an evident adversarial component in China’s court trials, to a large extent it serves to intensify the conflictive debates between the prosecution and the defence, and amplify the significance of courtroom debate and the role of lawyers as a result (Chen, 2012). Therefore, more interactions between litigants with conflictive purposes would exert impact on the result of the trials, and determining of the sentence for defendants. Those amendments presumably increased the demand for linguistic skills, especially debate and control skills of prosecutors and lawyers in court. They should, therefore, be available for observation and evaluation.

However, some scholars regard these revisions to be a "symbolic victory" (Andreasen and Dalton, 2013) because legal institutions and actors are accustomed to a set, historical way of handling defence attorneys. The interplay between the written law and its enforcement remains an issue, in terms of "whether the police and prosecutors will abide by the new structure is another question entirely"(La Franiere, 2012). When confronted with ‘uncooperative’ or ‘resistant’ defendants, prosecutors allegedly resort to linguistic tools such as threatening, coercive or power-demonstrating discourse to manipulate defendants’ attitude and limit their answers (Liao, 2003; Lv, 2011; Cotterill, 2003; Silvia Cavalieri, 2011)

Through a linguistic analysis of the discoursal interactions in criminal court, the different power status, control skills and rights to speak between different litigants in actual trial practice can be described. They can then be evaluated through comparison, first, with their legally designated rights and power status, so that the effectiveness of these amendments can be assessed accordingly, and; second, against future studies where their progress can be benchmarked by studies such as this one.

Additionally, in terms of the choice of study of courtroom discourse, most studies so far
(Harris, 1984; Walker, 1987; Conley & O’Barr, 1990; 1998; Mumby & Clair, 1997; Cotterill, 2003; Wagner & Le Cheng, 2011) are based on western legal proceedings, in terms of theory and practice. In recent years, more studies have been produced in China on Chinese law and legal proceedings, but only a small number of researchers (Liao, 2003; Du, 2005, 2011; Ge, 2005, 2011; Zhang, 2006; Liu, 2006; Lv, 2008, 2011) have investigated the power and control in courtroom discourse from different aspects including interactional skills, information flow, topic control, interruption, and answer correction. Among these scholars, Lv (2008) did empirical research on power and control between different litigants in courtroom discourse, and analysed the different language skills and devices the dominants use against the subordinates. Although she also included information control in her study as one aspect of power and control, she did not explicate the in-depth structures and procedures of information control realised in discourse through various linguistic means.

Information control, however, constitutes a significant part of the legal process, because in the courtroom linguistic power is displayed by various actors performing largely linguistic acts in their discursive choices. These choices (re) present and (re) construct stories or events in real life (Cao, 2011) and the manipulation and reproduction of information about or as facts determine the credibility of the story.

In criminal cases, conviction and measurement of penalty are normally based on the nature, the physical act (actus reus) and the mental intent of the crime. In fraud trials, for instance, the subjective intent of a defendant to illegally obtain another person’s possessions and property, as well as the fabrication and concealment of facts, needs to be thoroughly discussed and clearly confirmed during courtroom investigation and debate stages for a just conviction and penalty in the sentence. The negotiation for power and control during the obtainment of desired information involves conflictive discoursal interactions between different litigants with their respective purposes in mind. To understand and explain the structures and mechanism of such
linguistic interactions enables researchers and legal participants to better cope with all kinds of counteractions from opposite parties and more efficiently acquire necessary information.

In light of the above, it is necessary and timely to conduct systematic research into the control of information in criminal trials in China to fill a gap in research. This research can discursively illustrate the web of power relations between litigants, understand the self-awareness concerning power relations in court; and provide a conceptualisation of language interactions in fraud case trials in China with a focus on the process of information control and information flow due to their importance to conviction and sentencing. In so doing, the possibility of more objectively measuring whether or not there is progress towards a greater degree of human rights may be determined.

1.4 Significance of the study

This project and its findings will make both conceptual and practical contributions to the study of Chinese court discourse and to the understanding of court proceedings and judicial determinations of fund-raising fraud trials in particular. The implications from the findings of this research can serve as a general reference, and in terms of method, potentially a specific method for measuring the degree of the reform of China’s criminal procedures via the linguistic performances of different litigants.

First, the analysis of the information control process of fraud cases will generate an overall procedural flow chart of the trial and conviction process, measurement of penalty, and sentencing discretion in fund-raising fraud trials in China. Such a detailed analysis of up-to-date cases can generate a descriptive summary of the process of legal facts ascertainment and provide insight into the realisation of procedural justice required in the conviction and
sentencing discretion of such cases under the newly reformed CPL system. Although the pre-
trial practice of China’s judicial system has been criticized for forming presuppositions in
judges’ minds before the trial is carried out, the promulgation of Decision of the CPC Central
Committee on Major Issues Pertaining to Comprehensively Promoting the Rule of Law (2014)
stressed that China must:

Promote structural reform in litigation with trials at the centre, and ensure the
facts and evidence of cases under investigation, examination and prosecution can
stand the test of law;

Fully implement evidentiary judgment rules; collect, fix, preserve, investigate,
and use evidence strictly according to the law; perfect systems for witnesses and
experts appearing in court, ensure that courtroom hearings play a decisive role in
ascertaining the facts, identifying the evidence, protecting the right of action, and
adjudicating impartially.

These provisions have clearly confined the discretion of judges, in particular their assessment
of the case by reading pre-trial or post-trial documents or written evidence only. This ensures
the discretion of judges will not go too far as to beyond logical analysis. Therefore, such
linguistic analysis can demonstrate the process of ascertaining facts and identifying evidence
and therefore evaluate the adjudication of judges.

Moreover, A detailed pragmatic analysis of the verbal interactions of conflictive parties in
criminal courts can reveal some general patterns of the debate strategies and linguistic skills
used professionally or unprofessionally by legal experts and laymen litigants. This will be
useful to the various parties for improving their linguistic performance and persuasiveness in
court.
Second, through the interpretive explanatory stages of a modified form of Critical Discourse Analysis (CDA), the social and institutional power structures in criminal courts behind the discourse may be demonstrated. By comparing power relations between litigants in court based on CDA analysis of court trials in practice, with the ideal power relations advocated by the newly reformed CPL, this research can potentially reveal the disparity between an idealistic principle and the actual practice of such a principle. Therefore, this study can make recommendations on the reform of the criminal justice system in one particular aspect. The assessment of the influence of political governance in China's criminal justice system will provide an in-depth and practical understanding of the mechanism, organisation and the Chinese characteristics of the socialist legal system of China.

Third, since there are not many empirical studies about information control in courtroom discourse, especially in China, this study will make original contributions to the study of information control in criminal trials in general and China’s criminal trials in particular. The mechanism and relationship between information control and power structure in discourse can be clearly demonstrated through corpus-assisted discourse analysis, which may inspire new methods for the analysis of power in discourse. This study therefore tests some useful analytical tools applicable to English language in the discursal context of Chinese institutional language and social context of Chinese criminal court to see if those tools are equally useful.

1.5 Thesis structure

This Chapter is the introduction. It briefly summarises the background of the current research topic, providing a basic rationale for focusing on the research aims listed at the end of the introduction.
Relevant literature will be reviewed in Chapter Two to locate the research gaps on the current topic, thus contextualising the detailed research questions, to draw inspirations from past literature for the construction of a theoretical framework applicable to the research questions, and to decide on a proper approach to the analysis of power and control.

Chapter Three is a detailed description of the theoretical framework for the research, including an explanation of Fairclough’s three-dimensional approach to discourse and power, and three analytical frameworks that respectively deal with relations between member resources and discourse interactions in court, discourse interactions and controls, as well as interpretation of legal fact construction. Also, an integrated framework of courtroom discourse with MR as pivot would help us with the interpretation of ideological changes.

Chapter Four is a detailed description of methodology, including research paradigm, the data description and collection and the methods that are adopted for the analysis and interpretation of the data obtained.

Chapter Five is the case study chapter. It consists of a background introduction of the two cases, a quantitative analysis of the interactional sections in the cases, a quantitative analysis of the statements by litigants and qualitative analysis based on situational context and topics.

Chapter Six will synthesise the results of different stages of analysis and compare the features of different stages of the court trial discourse and different strategies of the litigants. It summarises the power status of litigants as reflected in discourse analysis and therefore provide the possibility to evaluate the influential factors on power relations in criminal court in China after the 1996 and 2012 reform. A comparison of the actual discoursal interactions with the legally prescribed roles of participants will allow us to examine whether the new CPL were just a “symbolic victory” as predicted by scholars. Chapter six will include the analyst’s reflections on application of the framework and methods to the actual case studies and evaluation of the
interpretations for certain textual features, situational contexts and ideological status. Also, the inadequacy of the research will be pointed out and suggestions for future studies will be made.
Chapter 2. Literature Review

Many scholars have investigated the relationship between discourse and power in courtrooms. In courtroom discourse the issue of power is more apparent because “there is little doubt that the most powerful institution in any society which adheres to a ‘rule of law’ is its justice system” (Simpson & Mayr, 2013, p 30). The power of the legal system approximates very closely to our first sense of the concept of power, namely, domination, coercion and social control. Courtroom discourse studies generally analyse language as a tool to preserve or resist institutional power, including how judges and lawyers utilise their power through language and how defendants resist such power and control. Scholars such as Foucault (1971) Fairclough, (1989) and Van Dijk (2002) approached relations between power and discourse in two dimensions: power behind discourse (how orders of discourse are shaped and constituted socially and institutionally as hidden effects of power) and power in discourse (how relations of power are actually exercised and enacted).

This literature review clarifies and summarises the different factors, contexts and linguistic aspects underpinning power and control in court discourse that need to be analysed. In view of the research questions listed in the last section, we need to review research previously undertaken in three areas: 1. Features relevant to power structures and control of information in court discourse, including relevant research on the features of fund-raising fraud trials during legal fact ascertainment because such can provide the institutional, situational and social contexts for the discourse analysis; 2. Linguistic and pragmatic devices and strategies used by different litigants to exert power and control in court discourse because they serve as references for the discourse analyst to take into consideration during the description of the data; and 3. Different approaches to, and perspectives on, the relationship between power and control so
that the researcher can have a comprehensive understanding of the theoretical methods and analytical tools available for the investigation of power relations and information control in China’s courtroom discourse. The third part also includes relations between power, member resources, and ideology. By reviewing literature in these areas, a research methodology based on discourse analytical framework, and taking a comprehensive account of the contexts of courtroom discourse, can be constructed to guide the analysis of discoursal interactions and linguistic performances of fund-raising fraud trials in China.

2.1 Features of courtroom discourse relevant to power and control

As the major body in judicial adjudication, the court generally has three functions in a modern law-governing society: The direct function is to settle disputes and uphold social fairness and justice by means of public resources. Secondly, courts exert control (to maintain social order and safeguard the dignity of the law) and thirdly, they restrict the power of different parties (Zuo, Zhou, 1999: pp. 87-105). These three functions determine how the discourse in court works between different parties. Courtroom discourse is produced in a highly role- and rule-governed environment (Cotterill, 2003), and therefore the most distinct feature of it is recognised by many scholars as being its institutional nature (Harris, 1984; Walker, 1987; Conley & O’Barr, 1990, 1998; Mumby & Clair, 1997; Cotterill, 2003; Wagner & Le Cheng, 2011). The term "institutional talk" was coined by Drew and Heritage, who defined talk in institutional settings as involving (1992: 48):

Role-structured, institutionalised and omni-relevant asymmetries between participants in terms of such matters as differential distribution of knowledge, rights to knowledge, access to conversational resources, and to participation in the interaction.

Levinson (1986) concluded that institutionalised discourse differs from common discourse in three aspects: goal orientation, control and schematisation, which are quite similar to Dew and Heritage’s (1992: 78) summarisation of the features of institutional talk as follows:
1. Institutional interaction involves an orientation by at least one of the participants to some core goal, task or activity (or set of them) conventionally associated with the institution in question. (Goal Orientation)

2. Institutional interactions may often involve special and particular constraints on what one or both of the participants will treat as allowable contributions to the business at hand. (Control)

3. Institutional talk may be associated with inferential frameworks and procedures that are particular to specific institutional contexts. (Schematisation)

Dew and Heritage discussed in detail how interactions work in institutional discourse, while Levinson pointed out the main characters simply but comprehensively. Levinson’s summary provides concepts for a later analytical framework, while the process details studied by Dew and Heritage help guide the analysis process. Here, I would especially mention the concept of schematisation as we will come back to a similar concept, schemata, in MR in later sections because it is critical for the interpretation of legal facts.

The institutional features of court trial embody the legal norms as well as other social elements such as institutional rights, rights to speech, role actions, social relations, social distance, personal rights and responsibilities. Courtroom interaction is a particularly marked form of institutional discourse according to the above three criteria. As discussed in later sections, these three main institutional features shape the framework for courtroom discourse analysis. In the next section, therefore, the study summarises research on the institutional features of courtroom discourse, and introduces the conditions and circumstances for the conviction of fund-raising frauds to provide a basic situational context for the analysis.

### 2.1.1 Goal orientation of courtroom discourse

As mentioned above, the court has mainly three functions. The first function of dispute settlement means that court participants have conflictive purposes and intentions. The presentation of court discourse is not random, but related directly or indirectly to the litigants'
intentions. This conflictive character of courtroom discourse ensures that the controls and restrictions are exerted based on participants’ purposes and institutional power status.

As the referee and supervisor of court trials, the judges’ purposes are quite complicated in order to achieve the institutional functions of court trials (Du, 2004, 2009). Beside the main goal of determining legal facts, judges need to consider institutional functions such as justice and equity. It is generally believed that most judges’ intentions are neutral and procedural (He, 2008; Zhang, 2009; Cotterill, 2011) with no bias against other litigants in court. Their actual purpose and the guidelines they consider, both of which influence their behaviour in court, have not been understood clearly, and their persistence in pursuing justice still remains untested, especially when their purposes also includes achieving efficiency, saving legal resources and protecting the dignity of law. The requirement for trial efficiency and their self-identity as representatives and arbiters of national power and justice would also influence the way they control and restrict other participants in court trials. Moreover, through establishing legal facts and making judgements, judges sometimes manipulate the flow of information in order to facilitate the steady, orderly progress of trials (Du, 2008).

The purpose of prosecutors is to convict defendants by reconstruction of the crime (Cotterill, 2011). The primary goal of prosecutors, therefore, is to obtain the necessary information for the reconstruction of their version of the story (Lv, 2011). In the counteractive competition between prosecutors and defendants, conflictive purposes are accomplished through presenting evidence and information to make judges and juries believe their particular versions of the story and suspect rather than those of the opponent. In other words, prosecutors need to prove that the objective facts, based on the testimony and evidence obtained, have the same features as the claimed charges of crime. In this way, they discredit the defence narrative.
The aim of the defence lawyers is to discredit the adverse witnesses and evidence and to deconstruct their narratives and discredit them to the jury and judges (Gibbons, 2003; Zhang, 2010; Cotterill, 2003). In addition, defence lawyers also need to construct their own version of narrative for the defendant, usually by manipulating certain concepts as well as the evaluation and interpretation of objective facts (Toolan, 2001; Lv, 2011). It is very clear that information control and credibility manipulation are two major goals during the interaction.

With the help of their representatives, defendants aim to co-construct the legal facts against the prosecutor’s accusation to protect their own interests and reduce any losses (Du, 2009, 2010). However, the information introduced and legal facts constructed by defendants are under strict control of the prosecutors so that they can get the desired and relevant information to support their accusation.

In China’s judicial system where the principle, “taking facts as basis, and law as criteria”, exerts great influence on judicial practice, truth-finding is the main goal of court trials and this is achieved during the construction/determination of the ‘legal facts’ (Du, 2010). A combined analysis of the three modes of legal fact construction, namely presentation of facts, co-construction of facts and ascertainment of facts, can facilitate the perception of the main communication intentions and goals of different participants (Du, 2010). Du believes a linguistic analysis helps to explain the goals and intentions of litigants at a contextual level. However, it is important to remember that the general goals of different litigants are predetermined by the circumstances and adjudicative conditions of the crime and court procedures. A knowledge of litigants’ general goals and the adjudicative conditions can also facilitate the understanding of the process of legal fact ascertainment. In fund-raising fraud trials, the ascertainment of legal facts can be controversial due to the complexity of the cases and different interpretations of the legal criteria for conviction and measurement of penalty for
this crime (Zhou, Dong, 2010). Different participants would present and construct the legal facts to their own purposes and advocate their own interpretations of the facts (Du, 2010; Heffer, 2010). Their conflictive interpretations are mainly about the conditions and circumstances for the ascertainment of elements of fund-raising fraud. The construction of legal facts is accomplished during the court trials in which participants exchange information through verbal interactions. Their verbal interactions usually serve for either realising their final goal one step at a time, or defeating the purposes of the contrary party. The next section addresses why interpreting different circumstances of the crime constitutes the main purposes of litigants.

2.1.2 Goals of trial and circumstances of crime for fund-raising fraud

Fund-raising fraud was first listed as a crime in 1995 in the Decision of the Standing Committee of the National People's Congress on Punishment of Crimes of Disrupting Financial Order. The definition and description of the crime were first provided in article 192 of the Criminal Law of People’s Republic of China (1997) and the name of the crime was determined later in a separate legal document⁴. The conviction of fund-raising fraud is based on its definition and other judicial interpretations.

Article 192 Whoever, for the purpose of illegal possession, unlawfully raises funds by means of fraud shall, if the amount involved is relatively large, be sentenced to fixed term imprisonment of… (Criminal Law)

As an emergent type of criminal case after the market economy transformation of China, fund-raising fraud cases have been easily confused with informal financing, illegal fund-raising, or

other fraud cases (Ye, 2012; Gao, 2012). For fund-raising fraud, there are mainly four aspects to consider for the conviction of a defendant (Chen and Wang, 2012; Liang, 2013):

1. Whether the accused had the intention to illegally take possession of the raised funds rather than using them for production and business.
2. Whether the only or main means for fund-raising is fraudulent.
3. Whether the targets of fraud are “the general public”.
4. Whether the sum of the funds reaches a certain level.

During the adjudication of a fund-raising fraud case, these four aspects are carefully investigated and heatedly debated between different parties. As a consequential offense, the main punishable circumstances of fund-raising fraud consist in the “inability to repay” or “refusal to repay”. The test of guilt of a crime requires the “mens rea” and the “actus reus” to be both verified, which means “an act does not make a person guilty unless mind is also guilty”. Since “inability to repay” can be an objective outcome for either fund-raising fraud or illegal fund-raising, it is necessary to investigate the reason behind so as to distinguish one crime from the other. Judges can apparently infer the intention of illegal possession from the act of “refusal to repay”, however, judges can not infer the intention from defendant’s “inability to repay”. Inferences or presumptions of judges have to be made based on either facts or law.

Presumption of facts and presumption of law are two ways for judges to infer and deem the existence of facts based on established facts. A presumption of law has been defined as a deduction which the law expressly directs to be made from particular facts (Kaiser, 1955: P253). In actuality, it is a rule of law which declares that one fact is presumed to exist if another fact or set of facts is proved. There is often no logical connection between the presumed fact and the proven fact. A presumption of fact has been described as the process of ascertaining one fact.

5 There are controversies about the scope of the term “general public”, with some scholars defining it as “non-specific majority” while others prefer to broaden the scope to “non-specific persons or majority” (Chen, 2008; Zhang & Yu, 2011)
from the existence of another without the aid of any rule of law (Kaiser, 1955: P254). The term is used to denote the reasoning or fact-finding process of the triers of the facts and as such it is a logical and not a legal deduction of one fact from another (Long, 2008). Since presumption of fact is highly dependent upon the discretion and experiences of the judges, many scholars (More, 1981; Morman, 1982; Li, 1992; Prutting, 2000) argued that presumption of fact shall be considered as more of an inference, and even proposed that presumption of fact is redundant as a judicial phenomenon, and shall be avoided in judicial practice (Prutting, 2000). Therefore, in order to keep the judges’ discretion in proper extent, presumptions of law are more used than presumptions of fact by judges in continental law systems. Presumptions of law can eliminate judges’ discretion. Presumptions of law are usually made in accordance with legal provisions and interpretations.

The “intention of illegal possession” of the actor, according to judicial interpretation⁶, can be deemed when the following conditions apply:

1. Failing to use the raised funds for production or business operations or the proportion of funds used for production or business operations are obviously out of proportion with the amount of funds raised, and failing to repay the funds raised;
2. Running away with the funds raised;
3. Recklessly squandering the funds raised and failing to repay them;
4. Using the funds raised to conduct illegal or criminal activities;
5. Illegally withdrawing or transferring funds, or concealing property to evade repayment;
6. Concealing or destroying accounts, or conducting fake bankruptcy to evade repayment;
7. Refusing to confess to spending the funds to evade repayment; or
8. Any other circumstance that may be deemed as “for the purpose of illegal possession”.

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⁶ Interpretation of the Supreme People's Court of Several Issues on the Specific Application of Law in the Handling of Criminal Cases about Illegal Fund-raising (13, Dec, 2010)
Presumptions of law based on the above provisions belong to “rebuttable presumptions”. The litigant can be deemed as having the intention of illegal possession if any above conditions apply. In this situation, the defendant bears the responsibility to disprove his intention of illegal possession. If the defendant cannot disprove it, the judges can confirm the defendant’s intention of illegal possession. If the fund-raising has been proven to be illegally conducted with fraudulent means, the prosecutors only have to prove one of the above-mentioned conditions in order to complete the evidence presentation.

In the 1996 version of judicial interpretation and the 2001 Minutes⁷, the first condition on the list used to be “to defraud large amount of funds despite full awareness of inability to repay”. Such a condition has been removed from the list and replaced due to the difficulties in determining the awareness of the defendant in court trials (Zhou & Dong, 2010; Liu, 2012) and disputes over the distinction between subjective intention to fraud and failure of business due to normal risk (Liang, 2013). However, legal professionals, even some judges, are still acutely aware of this rule for the conviction of fund-raising fraud, and apply it in practical court trials as an underlying criterion. This usually causes an intense debate over the awareness of the defendant between the two parties. The defence, bearing this point in mind, would usually take advantage of presumptions of fact and create their own inferential framework to fight against the inferential framework constructed via presumptions of law. We would be able to see examples of this in Chapter 5.

As for the verification of the fraudulent means in fund-raising, in judicial practice, if the fundraiser promises a high rate of return to the creditors, up to 50% over the highest contemporary bank rate, the fundraiser would be deemed to have committed illegal fund-raising

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⁷ Minutes of Meeting on How to Deal with the Financial Crime Cases by PRC Courts issued by the Supreme Court on 21 January 2001
using fraudulent means, although there are disputes over this, too (He, 2010; Zhang & Yu, 2011; Liu, 2012). It is argued that if the fund-raiser misled the creditors to believe that they are investing for “returns” by providing false documents, fabricating projects of the company or making up false purpose for fund-raising, they should be deemed as “using fraudulent means”.

The connotation of the term “general public” in fund-raising cases consists the following three aspects: (1) the scope of the fund-raising targets shall be multi-dimensional, not being confined to relatives and friends, but rather including people unknown to the fund-raisers; (2) the scope of the fund-raising targets shall be developing rather than stable, changing with the socializing community, the credibility of fund-raiser and the promised interest rates; (3) the investors are lured by the high return promised, rather than bonded by kinship or friendship. (He, 2010: p124)

The measurement of penalty for fund-raising fraud depends largely on the sum fraudulently obtained and the social harm done by the crime.\(^8\)

Article 192 also provided about the penalty for fund-raising fraud:

If the amount involved is relatively large, be sentenced to fixed-term imprisonment of not more than five years or criminal detention and shall also be fined not less than 20,000 yuan but not more than 200,000 yuan;

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\(^8\) Article 5 states that where an individual raises funds by fraudulent means amounting to 100,000 yuan or more, it shall be deemed as a “relatively large amount”; if the amount exceeds 300,000 yuan, it shall be deemed as a “huge amount”; if the amount exceeds 1 million yuan, it shall be deemed as “an extremely huge amount”. Where an entity raises funds by fraudulent means amounting to 500,000 yuan or more, it shall be deemed as a “relatively large amount”; if the amount exceeds 1.5 million yuan, it shall be deemed as a “huge amount”; and if the amount exceeds 5 million yuan it shall be deemed as “an extremely huge amount”.

The amount of funds raised by fraudulent means shall be calculated on the basis of the actual amount of funds fraudulently obtained by the offender, deducted by the amount refunded prior to the occurrence of a case. The advertising costs, agency fees, handling charges or kickback paid or the expenses used for bribing or granting gifts, etc. by the offender for raising funds by fraudulent means shall not be deducted. The interest paid by the offender for raising funds by fraudulent means shall be included in the amount of funds raised by fraudulent means, except that the unpaid principal may be used to offset the principal.
if the amount involved is huge, or if there are other serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years and shall also be fined not less than 50,000 yuan but not more than 500,000 yuan;

if the amount involved is especially huge, or if there are other especially serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment and shall also be fined not less than 50,000 yuan but not more than 500,000 yuan or be sentenced to confiscation of property.

Article 199 of *Criminal Law* also pointed out:

Whoever commits the crime mentioned in Article 192, 194 or 195 of this Section shall, if the amount involved is especially huge, and especially heavy losses are caused to the interests of the State and the people, be sentenced to life imprisonment or death and also to confiscation of property.

However, the amount of fund involved is not the only criterion whereby penalty is measured. The circumstances of the crime shall be taken into consideration, such as whether a particular crime-doer is a recidivist or the principal culprit of the fund-raising fraud group (He, 2010; Chen & Wang, 2012). The economic loss to the investors and society, the past conduct, attitude of the criminals as well as the amount of fund repaid are all taken into comprehensive consideration for the measurement of penalty (He, 2010; Chen & Wang, 2012).

The court will discuss all the above elements and circumstances of a crime before adjudicating the case, while also considering the facts presented and constructed during the courtroom investigation and debate stages in trials. The following is a list of these elements and circumstances of crime that have to be ascertained during court trials before adjudication and conviction:
<table>
<thead>
<tr>
<th>General aspects of elements and circumstances of crime to be ascertained</th>
<th>Number</th>
<th>Detailed elements and circumstances of crime to be ascertained</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ascertain the element of “the purpose of illegal possession”</td>
<td>1</td>
<td>Are the raised funds used for production and business or for illegal personal possession?</td>
</tr>
<tr>
<td></td>
<td>2</td>
<td>Are the raised funds recklessly squandered or used for the strategic development of the company?</td>
</tr>
<tr>
<td></td>
<td>3</td>
<td>Are the auditing evidences of bankruptcy authentic and trustworthy, or forgery?</td>
</tr>
<tr>
<td></td>
<td>4</td>
<td>Did the defendant actively try to pay back the funds lost?</td>
</tr>
<tr>
<td>Ascertain the element of “using fraudulent means”</td>
<td>5</td>
<td>Did the defendant actually promise a return rate 50% over the highest contemporary bank rate?</td>
</tr>
<tr>
<td></td>
<td>6</td>
<td>Did the creditors know of the high risk of the business already before the loan?</td>
</tr>
</tbody>
</table>
The debate between litigants over the establishment of legal facts would usually revolve around the ascertainment of the above circumstances and questions. Each party will present and interpret evidence to construct their narratives and interpretations of legal facts. These questions need to be clearly understood by the judges for their judgement and penalty measurement based on the facts presented by different parties. The 12 questions above would usually constitute most of the topics at different stages of the trials. In our discourse analysis, the situational context and the schemata and frame of litigants are usually related to, and partly determined by, these 12 topics. I will elaborate on this point in the framework when a model for situational context interpretation is constructed. The ascertainment and interpretation of these elements
and circumstances of crime is significantly influenced by the courtroom interactions of both parties via information control and power control.

The different goals and communication objectives of litigants are realised through questions and answers, information organisation in court where the power statuses of different litigants vary according to their roles (Du, 2009; Cotterill, 2003). The institutional features of courtroom discourse ensure that the power relations are both socially and institutionally predetermined and discursively negotiated through interactions, and language is the principal means by which institutions create and reproduce their own social reality (Simpson & Mayr, 2013; Mumby & Claire, 1997). It is therefore necessary to have a clear understanding of the feature of power-asymmetry and participants’ roles in court discourse which constitute the power behind discourse.

2.1.3 Asymmetrical power, status and roles of different participants in court: power behind discourse

All litigants, as well as the procedures of court trials, are strictly controlled by judicial regulations. Various participants in court are bound by laws and protocols to conform to clearly defined controls of their language. These linguistic constraints include factors such as the quantity of talk allocated to each participant as well as the nature of the talk, including interaction, turn initiation and differential use of declaratives, interrogatives and imperative forms (Cotterill, 2003).

The expression of institutional hierarchies through control over interaction is embodied in the roles and participant configurations to be found at various stages in the criminal trial (Cotterill, 2003). Therefore, this section investigates the relative power status and relations between different participants with their different roles and rights in court in order to provide the social
and institutional background for developing a model of power interactions and ideological coercions in court.

Cotterill divided the participants in courtrooms into two significantly different categories in terms of “legal training and power to engage verbally during the trials” (Flowerdew, 2014: p. 75). Flowerdew summarised the two hierarchies as follows:

<table>
<thead>
<tr>
<th>Level of legal training/seniority</th>
<th>Level of interactional rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>Judge</td>
<td>Judge</td>
</tr>
<tr>
<td>Barristers</td>
<td>Barristers</td>
</tr>
<tr>
<td>Solicitors</td>
<td>Solicitors</td>
</tr>
<tr>
<td>Interpreters</td>
<td>Expert witnesses</td>
</tr>
<tr>
<td>Witnesses/defendants</td>
<td>Witnesses/defendants examination-in-chief during</td>
</tr>
<tr>
<td>Jurors</td>
<td>Witnesses/defendants examination during cross-</td>
</tr>
<tr>
<td></td>
<td>Interpreters</td>
</tr>
<tr>
<td></td>
<td>Jurors</td>
</tr>
</tbody>
</table>

**Table 2. Hierarchy of litigants in court**

Being included in the same order in both categories, the judge, barristers and solicitors all have the most interactional potential, one which is “broadly commensurate with their legal training and seniority” (2014: p. 76). The lay people, on the contrary, have “both the least amount of legal training and the fewest interactional opportunities” (2014: p. 76). The following summarises the hierarchy of participants and their roles and rights in court.

The judge, who is at the top of this hierarchy, supervises the mechanism of turn-taking, the content of the debate and solves complicated communication problems (Conley & O'Barr 1998). Lawyers follow the supervision of judges and are interrupted if they ask inappropriate questions (such as leading questions during examination-in-chief). Defendants ask for permission from judges to ask questions because they know it violates the common discourse rules in court.
(Harris, 1984). Harris (1984) found that the asymmetric power status would not only influence defendants’ right to ask questions and their responsibility to answer questions, but also influence the content of answers given by the lower power status group. His observations showed that the goals of court were achieved by eliciting answers from defendants while not allowing them to ask certain questions that are deemed unhelpful for adjudication.

In dialogical lawyer-witness question and answer (Q&A) interaction, there is also a high degree of power asymmetry. Lawyers take on a questioner role in the power-asymmetric dyads, and function predominantly as the “initiator of inquiry” and “evaluator of witness response” (Cotterill, 2003:103), whereas the principle role of the witness is to provide appropriate responses to lawyers’ questions. As lawyers already had thorough knowledge of the alleged criminal facts of the defendants before the trial, they interrogate the witnesses and defendants only to re-construct the process of the crime (Cotterill, 2003; Yu, 2006), rather than to seek new information. Witnesses and defendants are required to provide “preferred second-part responses” - answers to the lawyers- which adequately satisfy all four of the Gricean maxims: maxim of quantity, quality, relation, and manner (Cotterill, 2003:104). For example, they might be asked to give “the truth, the whole truth and nothing but the truth” during their testimony. We can thus see clearly, the Q&A session of the trial is actually a deliberately designed "display discourse" to prove the prosecution to the judge (Cotterill, 2003).

This power asymmetry can be reflected through many aspects of language interactions. Considerations of politeness, face and cooperation in court trials are usually less than that in casual conversations (Mason & Stewart 2001; Cotterill, 2003; Jacobsen, 2008). The use of institutional vocatives, address and referring terms in court (Gibbons, 2003; Dettenwanger, 2011), unequal speech rights (Harris, 1984; Conley & O'Barr 1998; Cotterill, 2003; Liao, 2007).
and directive speech acts (Hale, 2004) are all representations of this asymmetry.

This power asymmetry is particularly so in China’s criminal courts where the judges represent the superior power and authority and hold the most absolute, comprehensive power of discourse, such as the ability to interrupt any other litigant for the purpose of inquiry or to give speech right to any litigant as s/he sees proper. (Wang, 2004). Public prosecutors in China enjoy both the right to prosecution and to supervision of other trial participants, including the judges (Ye and Wang, 2010). Due to the social harm done to society in criminal trials, the standing to sue (which belongs to the plaintiff) is upgraded to a national right of public prosecution (Wang, 1999). Public prosecutors have a considerable degree of control over both their own speech and the contributions of the lay participants, especially the defendants (Lv, 2011). Judges and prosecutors can interrupt the defendants to control the information presentation as they desire, due to the institutional role and the power they hold. (Du, 2008; Hu, 2007).

Even though the amended Criminal Procedure Law in 1996 made changes and limitations to their supervision, prosecutors still appear in court with a superior and authoritative mind set through which to advocate for justice (Chen, 2000). As a result, such superior status and mentality can cause prosecutors to sometimes resort to “coercive interrogation” and use “manipulative questions” to witnesses (Chen, 2012) during court trials which clearly has the potential to obstruct the defendant’s human rights. Yet even though positions of authority provide the prosecutors with a legitimate right to power, they do not guarantee the complete and uninterrupted exercise of it. This is because the self-identified position of defendants in fund-raising frauds are different from those in other crimes. They would usually not perceive their actions as wrong-doings even after the charges because of their high social status prior to prosecution, most having held important positions in big companies. They tend to argue that it is because of the recklessness of themselves in their business that the loans cannot be paid back and do not plead guilty or beg for lenient punishment like defendants in other court trials. The
education they received and the wealth they accumulated can be understood as social capital that to some extent counteracts or resists the lower institutional power they are assigned in court. The MR of defendants, shaped by their ideology, determines their attitudes and strategies in court. It is usual for defence lawyers of fund-raising fraud defendants to plead not guilty rather than plead guilty in exchange for a reduced sentence because although confessions may be considered a mitigating effect for penalty, fund-raising nowadays usually involve extremely huge amounts of money which would incur severe penalties that are unacceptable results for the offenders, especially those masterminds in the crime. On the other hand, fund-raising fraud, in itself, is a complex and controversial type of crime in that the conviction of it requires solid test of guilt, on which point many defence lawyers would attack by undermining the credibility of the evidence and manipulating the interpretation of evidence, even arguing for a different kind of crime, such as illegal fund-raising, because this crime receives much less penalty than fund-raising fraud.

A famous case is the trial of Wuying for fund-raising fraud in 2012. She was sentenced to death penalty in the second trial of her case, and her defense lawyer argued that as she only raised funds from 11 people who are mostly her relatives, friends and business partners, she was not raising funds from the “general public”. It is also argued that the defendant did not have the intention for illegal possession of the creditor’s money when she first started the fund-raising.

Kress and Fowler argue that, “though communication between participants is generally asymmetrical, the relationship comprises a competition or a negotiation for power (1979: p 63)”. During the counteractive interaction, lawyers are aware that not all respondents will be compliant to their control, hence they often employ strategies of power to keep the witnesses “linguistically obedient” (Moeketsi, 1999: 23). We will now discuss these strategies.
2.2 Negotiation for power between parties with conflictive purposes

During the negotiation for power in discourse, various linguistic patterns and strategies used by participants have been identified and analysed by different scholars. We are going to categorise those patterns and strategies found in Western and Chinese (2.2.1 and 2.2.2) court discourse according to the functions and purposes they serve. This will help to demonstrate some of the differences between the systems introducing the patterns and strategies that become more central in the analysis stage and, perhaps more importantly, establish the boundaries within which the analysis will occur.

In terms of the differences between Western trials and Chinese trials, it is important, firstly, to recognise that in China trials are inquisitorial. This means that there is no jury. As a representative of the people, and of justice on behalf of the nation, the judge takes the place of the jury. S/he is a symbol of national power. The Western system has described the elements of court as: “the procedural, the adversarial and the adjudicative, which co-exist as three different perspectives, from a discoursal point of view” (Heffer, 2005, p. 66). Whilst not called by these terms in China, the same functions are served in similar (sometimes overlapping) phases in court. The procedural phase is controlled, in both the West and in China, through the judge’s supervision in accordance with the law. In both systems, this phase consists of the ritualistic formalities such as swearing in, checking basic information of both parties, and reading the indictment.

The Western adversarial phase includes the opening speech, witness examinations and closing argument. This is equivalent mainly to the courtroom investigation and debate stages in China. In China’s inquisitorial system, the courtroom debate stage and some conflictive parts of courtroom investigation are part of the adversarial phase. It focuses on evidence presentation
through which counsels of each party strive to influence the outcome of the trial by strategic manoeuvre and linguistic choices that construct their own narratives as powerful.

The Western adjudicative phase is concerned with decision-making, such as summing up, deliberation and interpretation of facts by the jury and the judge, resulting in a verdict as well as determining a sentence. In China the adjudicative phase is based solely on the adjudication of the collegial panel (usually one presiding judge and two other judges) who will produce a verdict to announce in the next court trial. Here I would like to briefly introduce the collegial panel in criminal trials in China so as to clarify how judges produce a verdict. The Criminal Procedure Law (2012) has provided on the structure and the decision-making procedures of the collegial panel as follows:

**Article 178**

Trials of cases of first instance in the Primary and Intermediate People's Courts shall be conducted by a collegial panel composed of three judges or of judges and people's assessors totalling three. When performing their functions in the People's Courts, the people's assessors shall enjoy equal rights with the judges.

Trials of appealed and protested cases in the People's Courts shall be conducted by a collegial panel composed of three to five judges. The members of a collegial panel shall be odd in number.

**Article 179**

If opinions differ when a collegial panel conducts its deliberations, a decision shall be made in accordance with the opinions of the majority, but the opinions of the minority shall be entered in the records. The records of the deliberations shall be signed by the members of the collegial panel.

Although these legal provisions have generally prescribed the structure and procedures of the collegial panel, there are no further provisions regarding the duty distribution among the judges.
In trial practices, the presiding judge would usually be in charge of all procedures including reading the case dossiers, conducting the trials, deliberations and producing the verdict.

The deliberation procedures, including the objectives, the sequence of each member to state opinion, and the number of deliberations to be organized, have not been prescribed in any relevant legal provisions. No accurate legislation has been provided as to whether members of the panel shall demonstrate the verification of the evidence, and the formation and verification of their opinions towards legal facts. Due to such lack of legislation, the presiding judges are usually playing the leading role, while other judges or people’s assessors would not have a substantive engagement or express any substantive opinions. This “collective decision-making system” can become practically an excuse for exercising dictatorship or shirking responsibility (Ye, 2010).

The deliberation and discretion of judges are influenced by the interpretations of legal facts by both parties during the adversarial phase. The most interactive phase of court trials, in both systems, is the adversarial phase. In terms of establishing the boundaries within which the analysis will occur, it is possible to say it will focus on linguistic features and patterns identified in the adversarial and adjudicative rather than the procedural phases.

### 2.2.1 Studies on power and control in court outside China

Many researchers (Atkinson 7 Drew, 1979; Danet & Kermish, 1987; Walker, 1987; Stygall, 1994; Maley & Fahey, 1991; Conley & O’Barr, 1998; Cotterill, 2003; Gibbons, 2002, 2008, 2014; Dettenwanger, 2011; Cavalieri, 2011) have investigated the means by which lawyers use their discursive power to exert control over witnesses in order to co-construct narrative in direct examination and deconstruct narrative in cross-examination. Scholars have different categorisations of those means on varied criteria. However, because courtroom discourse is goal oriented, it is sensible to categorise those means into three categories according to the purposes they serve: a) Devices to control information, including the content and form of
answers as well as the interpretation of information; b) Devices to discredit witnesses and their testimonies, and c) Devices to psychologically coerce the witnesses and assert institutional power status. Under each category, there are varied means serving the same purpose, but many of those linguistic means can also serve more than one purpose.

Conley and O'Barr (1998) did ground breaking research into this complexity. They proposed, for example, five main ways in which lawyers exert control over witnesses: silence, topic management, question forms, evaluative commentary and challenges to the witnesses’ capacity for knowledge. These five control devices are closely analysed by many different scholars although the devices do not cover all linguistic possibilities. They are, nevertheless, now widely recognised as the primary linguistic skills that lawyers draw upon and will form an instrumental element of my analysis later. In mapping these five linguistic witness control mechanisms into three functional categories, we can clearly recognise the intrinsic complexity of the courtroom context. Silence fits predominantly into a) above but is also found in b) and c); the question form is found in all three and is usually approached from the perspective of control of information; topic management is predominantly a) again evaluative commentary is more about a) and b) and less about c); and challenges to the witness's capacity for knowledge is predominantly b). Strategic linguistic devices are not limited to these five, however, the main functions they serve are predominantly these three. A visual mapping is as follows:

<table>
<thead>
<tr>
<th>Function and Devices</th>
<th>Silence</th>
<th>Topic control</th>
<th>Question forms</th>
<th>Commentary</th>
<th>Challenge</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Information</td>
<td>*****</td>
<td>*****</td>
<td>****</td>
<td>****</td>
<td>**</td>
</tr>
<tr>
<td>B. Credibility</td>
<td>***</td>
<td>****</td>
<td>***</td>
<td>****</td>
<td>*****</td>
</tr>
<tr>
<td>C. Power</td>
<td>**</td>
<td>*</td>
<td>***</td>
<td>**</td>
<td>**</td>
</tr>
</tbody>
</table>
Table 3. Main functions of different linguistic devices

Now that the literature has taken us this far, it is important to summarise the linguistic or pragmatic skills deployed to realise the above three purposes so that in later analysis we know where to seek insight. Additionally, we need to point out those features of discourse that affect power and ideological status in the process of legal fact ascertainment/construction.

As the literature reveals, the most frequently used and closely studied strategic linguistic devices are the different forms of questions in different sections of the court trials. They have been considered by scholars as a major means to narrow witnesses’ choice and length of answers and control the speed of the testimony (Loftus, 1979; Walker, 1987; Woodbury, 1984; Maley & Fahey, 1991; Stygall, 1994; Conley & O’Barr, 1998; Gibbons, 2003; Hale, 2004, Heffer, 2005). As Stygall (1994: p. 146) expresses it: “For lawyers, the focus of attention to question forms is on how to control witnesses. Their assumption is that by controlling what the witnesses say, they will also control what the jurors think”. Some earlier scholars tended to assume a direct relation between question form and degree of control over the answers given (Danet & Kermish, 1978; Danet et al., 1980b, Woodbury, 1984). However, later scholars argued that the question form in itself is not particularly indicative of function because the context and the different stages of the court trial all need to be taken into consideration (Maley & Fahey, 1991; Heffer, 2005).

Maley and Fahey (1991) therefore distinguished between information-seeking questions (ISQs) and confirmation-seeking questions (CSQs) based on the different functions. ISQs require the respondents to provide some information and are characteristically identified by Wh-forms (Maley & Fahey, 1991) or some polar questions with the verbs like “do” and “say”\(^9\) (Heffer, 2005).

\(^9\) Generally directive speech acts in question forms, also referred to as “requestion” or “interrogative request” (Danet & Kermish, 1978) \(^9\) Non-directive speech acts.
CSQs are usually initiated by polar interrogatives\(^9\), Yes/No questions, a checking declarative, or a declarative with a tag\(^10\). ISQs are predominant in direct examination, but are rarely used in cross examination, while CSQs are used by lawyers to take on the role of a storyteller in the trial process, especially during cross examination. According to Heffer (2005), for example, 44% of 24,000 questions from 126 cross examinations were confirmation-seeking, compared with 12% in direct examination. By examining the number of ISQs and CSQs in a court discourse by a litigant we can evaluate the intensity of information control they use and investigate their purposes. This dyadic separation of question types provides us with a basic method for analysis, yet it is not enough for more exact analysis because the functions of questions vary from situation to situation.

Gibbons (2003, p. 2008) further categorised courtroom questions into different levels according to the degree to which they include and allow information\(^11\). He argues that the more information included in the question, the less the witness is able to communicate a version of events that differs from that of the questioner (Gibbons, 2008). The following are six question types he categorised according to their control over information:

1. **Polar Yes/No questions** allow all information and impose no pressure on the witness to agree.
2. **Choice questions** posing two alternatives.
3. **Who, where and when questions** elicit the contribution of only a person, place or time, and do not allow the witness to challenge other information embedded in the question.
4. **How and Why questions** enable a witness to supply more information about circumstances and motives.
5. **Projection questions**, such as “you told us” or “do you remember”, include a large volume of information from the lawyer’s version of events and depending on their structure, may place high levels of pressure for agreement on the witness.\(^11\)

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\(^9\) Coerciveness varies with different tags, such as “did you”, “didn’t you” and “is that correct”, etc. Measurement of the “coerciveness” of questions.

\(^10\) The difficulty in denying information can be even more pronounced when the verb is a mental process like ‘remember’, ‘know’, or ‘beware’.
6. **Special formulas:** “I put to you that”, or “is it not the case that”, include the most information from the lawyer’s version of events and place a high level of pressure for agreement on the witness.

Gibbons also analysed other aspects of courtroom questioning, such as the narrative construction, and the coerciveness of tag questions and declaratives. He argued that the objective of much legal questioning is to enable the lawyer, rather than the witness, to express their “position, stand and belief”; this leaves the witness in the role of author and sometimes even animator only (2008: p. 121). Goffman distinguished the discourse interlocutors by their participant roles. A principal is “someone whose position is established by the words that are spoken, someone whose beliefs have been told, someone who is committed to what the words say”. An author is “someone who has selected the sentiments that are expressed and the words in which they are encoded”. An animator refers to an “individual active in the role of utterance production” (Goffman, 1981: pp. 143-145). Apparently, the participation of an animator is less than that of an author, whereas a principal is the most significant participant in a discourse. If lawyers became the principals, and perhaps sometimes even the authors, while witnesses are forced only to be the animators, it means the real power of speech is in the hands of the lawyers.

The second most studied linguistic aspect is topic management. Topic management is a collective term for all the skills and devices used for the purpose of controlling and confining the topics to an intended direction or scope. By assigning fixed questioner/answerer roles, the Q/A format of the court hierarchy constructs “a turn-taking organisation that gives control of topical organisation entirely to the questioner” (Levinson, 1992: p. 86). However, despite the right, and ensured ability, to control topics, lawyers cannot always get their preferred answers from witnesses. Topic management strategies are usually employed by lawyers when witnesses evade the lawyers’ preferred answers (Conley & O'Barr, 1998). The main strategies for topic management include silence, interruption, repetition, reformulating and elaborating on
questions, as well as some part of textual meta-discourse (Conley & O'Barr, 1998; Heffer, 2005; Gibbons, 2008; Cavalieri, 2011). Each of these strategies serves to maintain or diverge the topics in different fashions.

The role of silences in topic management is particularly interesting and does not meet an assumption that silences mean nothing, or are simply an empty space in a transcript. Lawyer’s control over silence allows them to accomplish two strategic objectives: they can manipulate the law’s Q/A format in ways not usually permitted by turn-taking rules, for instance lawyers can declare particular silence appropriate or inappropriate, while not allowing the defendant to remain silent. They can also comment critically on a witness’s credibility, such as allowing silence of the witness for a short time and then follow with a repetition of the question (Conley & O’Barr, 1998). The control of silence, and the act of silencing through interruptions, are certainly skills that can be categorised under the category of discursively structured, context specific topic management, rather than simply as an individual skill.

However, silence seems to have more functions than to manage a topic. A longer silent pause after someone has spoken may give an impression of greater respect for the speaker, and allow the weight of the speaker’s responses to “sink in” with the audience (Mendoza-Denton 1995: p. 55). Lawyers will sometimes loudly repeat a response from a witness which they believe to be particularly significant, then leave a period of silence in which the response reverberates in the courtroom. Witnesses can also use silence as a strategy to avoid answering questions, although this can be taken as contempt of court (Gibbons, 2002). By examining the frequency of the use of silence by different litigants, we can examine how much power in turn-taking each of them has. There is an openness to possibilities in this area for any analysis.

As another most important controlling device in court, interruption allows the powerful litigant in court, usually the judges, prosecutors or lawyers, to take the turn from powerless or less
powerful litigants, such as the witnesses and defendants (Conley & O'Barr, 1998; Gibbons, 2002). There may be occasions when the powerless interrupt the powerful to struggle for their speech right, however, they would seem intrusive to the court norms and be deemed less credible in the sense of lacking manners (Gibbons, 2003). Other functions of interruption will be discussed in future sections.

Repetitions and reformulations are similar and usually used together to hold the topic or draw the witnesses back to the topic lawyers need. Reformulation means the lawyers and prosecutors summarise the testimony of witnesses and defendants in their own words, with the aim of holding topic, adding information and legalising unprofessional language. This function will be discussed more in later sections.

Cavalieri (2011: pp. 77-109) discussed the functions of both textual and interpersonal meta-discourse in realisation of lawyers’ argumentative strategies, to control both the form and the ideational content of the exchange. Textual meta-discourse, such as logic connectors and cohesive devices, on the one hand, allows the legal professionals to build the structure of their interrogatives and on the other hand, controls the development of the testimony leading the trajectory of the interaction. Sometimes this is achieved through inference. This is because besides controlling information through question forms, lawyers can also shape interpretation and inferential work through the wording of their questions, using linguistic manipulations such as presupposition and conceptual frames to “smuggle information” into “loaded questions”. In this way, a lawyer’s question inserts negative or incriminating information into a witness’s testimony through suggestion (Loftus, 1979, 1992; Walton, 1989; Cotterill, 2003; Aldridge & Luchjenbroers, 2007).

Questions may contain presuppositions in a form that makes them difficult for the answerer to disagree with or challenge (Loftus, 1979; Gibbons, 2003). Presupposition has the potential to
confuse witnesses and mislead hearers by inserting as given content something that is new or disputed (Gibbons, 2003). Loftus (1979) found that questions presupposing the presence of items or events, despite their only being a subtle choice of determiner, can elicit different responses from answerers. For instance, “Did you see the broken glass?” and “Did you see any broken glass?” The first question presupposes the existence of broken glass and can elicit more positive answers than the second question which does not presuppose anything.

Evaluative commentary embedded in questions allows the lawyer to “stay within the bounds of the courtroom’s prescribed question-and-answer format and also to cast doubt on the credibility of testimony or the witness” (Conley & O’Barr, 1998, p. 27). These commentaries are usually used by the powerful to either guide or correct the powerless. The behaviour of powerless litigants, such as defendants and witnesses, is influenced or even controlled by these evaluative commentaries because they believe these commentaries from the powerful, especially the representative party of national power, means forcible orders that must be right.

All the above skills are related to control of information presented in court. In the next section we examine how the information presented will be perceived and interpreted and how credibility can be manipulated through power in discourse.

A common strategy of cross-examiners against witnesses perceived hostile is to “upset, unsettle, confuse, confound or otherwise intimidate such witnesses through an aggressive barrage of questions, in order to negate or discredit their testimony or to bring into question their personal credibility” (Cooke, 1995a: p. 73). The first of the two categories is idea targeted, aiming at shaping perception (Gibbons, 2002), the latter is person targeted, and therefore face-threatening and power asserting (Gibbons, 2002; Cotterill, 2003). The strategies and linguistic devices used to achieve these two goals in court will be summarized in the following sections.
Idea targeted tactics, as summarised by Gibbons (2002) include: vocabulary choice, hedging, repetition, reformulation, presupposition, natural narrative structure/unnatural narrative orders, negative suggestions, evaluative third parts (evaluative commentary), rhythm and pace, interruption, and silence. Among those strategies, vocabulary choice, reformulation, presupposition, evaluative third parts, interruption and silence are most frequently used in discourse and analysed by scholars (Loftus, 1979, 1992; Walton, 1989; Conley & O'Barr, 1998; Cotterill, 2003; Heffer, 2005; Gibbons, 2008; Aldridge & Luchjenbroers, 2007).

Danet (1980) argues that the construction of alternative versions of the same reality would vary with different use of vocabulary, (such as referring to an unborn child as “fetus” by the defence or as “baby boy” by the prosecution). Different patterns of vocabulary choice, also referred to as lexical choice, have connotations that can be positive, neutral or negative. There are also sets of vocabulary with similar conceptual content, but different ideological loading (Gibbons, 2002). As soon as we hear a word, a number of associations will be triggered dependent on our life experiences. Frames, the conceptual representations of experience that define a situation and provide an event structure, therefore also capture the body of social expectations associated with each lexical choice (Ribeiro & Hoyle, 1996; Aldridge & Luchjenbroers, 2007).

Aldridge and Luchjenbroers (2007) studied the lexical choice in court and analysed how these can influence the portrayal and perception of witnesses. They found that associations drawn upon with each lexical choice regarding persons, actions and events will influence (and sometimes manipulate) how listeners will evaluate the information presented to them (2007: p. 93). A speaker’s lexical choices involve not only expected event sequences, but also expected characteristics of the players involved in those events (2007: p. 92).

Reformulation, as mentioned above, refers to the practice of lawyers summing up, giving a “gist” or “upshot” of what was said. Sometimes this is flagged by the use of linguistic signals such as:
‘in other words’; ‘so it is true to say that’; ‘so you are saying that’; or ‘when you say’. “[W]hen you say” questions allow the lawyer to suspend the progression of testimony and return to an aspect perceived to be unclear, ambiguous or potentially confusing for the jury (Cheng & Wagner, 2013; Conley & O'Barr, 1998; Cotterill, 2003), then the lawyers can ask the witness either to reformulate or expand on the original response for the purpose of clarification or specification, or lawyers themselves can reformulate the question and add a further segment to it in his/her own favour or to answer his/her own query more effectively than the witness (Gibbons, 2003). Therefore, during the query of a display question, to which the “correct” answer is already known to the lawyer, witnesses are not the “primary knower[s]” but the joint knowers of the information (Berry, 1981; Gibbons, 2003).

However, the witness may resist the different version which the lawyer’s wording attempts to construct. Moreover, reformulations involving a shift to standard language or higher register can help the witness to better fit into a legal framework (Gibbons, 2003), while reformulations by means of a speech act label can impart a particular “spin” in the reformulation. This puts the witness in a difficult situation and also casts doubt on the credibility of the witness’s testimony (Bulow-Moller, 1991; Gibbons, 2003).

Evaluative commentaries can be speaker targeted or idea targeted in situations of unequal power in legal settings. Idea targeted evaluations usually aim to support or challenge answers to questions (Gibbons, 2003), usually given by the questioner to the questioned. Mendoza Denton (1995, pp. 59-60) argued that unequal distribution of supportive evaluative third parts (acknowledgements) can influence the impression given by evidence. Speaker targeted evaluations usually aim at assessing the character or credibility of a witness. These evaluations are usually used by the more powerful lawyers and prosecutors against defendants. Despite the power of lawyers over the witnesses in court, witnesses sometimes offer resistance to a lawyer’s assessment of his/her conduct by downgrading or mediating it (Conley & O'Barr, 1998).
However, the structure of courtroom interaction gives the lawyer an almost insurmountable advantage, meaning that they can interrupt the witnesses anytime they want, thereby stopping any negative evaluation. According to the experimental study of O’Barr (1982), the use of interruption as a strategy is likely to backfire on the lawyer, and the lawyer is rated as less fair, less intelligent and not giving the witness the opportunity to present his/her evidence.

Person-targeted tactics include status manipulation, address forms, personal pronouns, contrast, distorting modality and the infallibility trap, accommodation and turn taking strategy (Gibbons, 2002). Among these strategies, status manipulation, contrast, distorting modality and the infallibility trap all contribute to the degradation of witnesses’ credibility through face threatening acts. Address forms, personal pronouns, accommodation and a turn-taking strategy are more often used to identify and control interpersonal and social relations and to exert power and coercion over witnesses (O’Barr, 1982; Maley & Fahey, 1991; Bülow-Møller, 1991; Jacquenmet, 1996; Hutchby & Wooffitt, 1998).

Lawyers often use what Garfinkel (1967) defined as “social degradation ceremony” to attack the witness’s character rather than the content of testimony. This degradation is usually linked with face-threatening speech acts (FTA), and it is entirely possible that the use of face threatening acts (FTA) can be used as a parameter to measure the attack towards credibility of litigants. A friendly counsel, however, would attempt to reverse status reduction with status support. Lawyers would also attempt to establish contrast between statements by the witness that seem to make them contradictory and undermine their credibility. Moreover, a hostile lawyer or police officer may attempt to force a witness to express certainty about something that is best left modalised, or else the witness’s modalisation may be distorted as vagueness or full uncertainty. The witness can be made to appear evasive, unsure or ludicrously over-confident so as to fall in the “infallibility trap” (Bülow-Møller, 1991; Maley & Fahey, 1991, Gibbons, 2002). As mentioned, credibility is closely related to positive and negative face, as
well as to power status. Face interactions and power interactions are usually not overtly expressed, but rather implied in coercions. Skills that manipulate face and power relations, address terms, interpersonal meta-discourse, personal pronouns, as well as powerful and powerless language styles will be analysed in the next part.

Gibbons (2003) pointed out the impersonal character of (western) courtroom discourse, namely, that in principle legal judgments do not allow any personal influence of the participants. People would always compare the law to a machine or intangible mechanism which means participants in court trials are usually addressed via their roles in court. Address terms are used by lawyers to personalise friendly witnesses, and to depersonalise opposition witnesses, as well as to highlight litigants’ superior status in social power or as a part of the “system” (Bülows-Møller, 1991; Cotterill, 2003; Dettenwanger, 2011). Terms of address are not only a tool to represent power behind discourse, but also a tool to exert power in discourse. Dettenwanger (2011), for example, has argued that the accumulation of the performances and effects of address terms and referrals can be very compelling for jury members; a lawyer could alter a witness’s identity with the varied, available means of creating negative opinions (2011: p. 44). This includes negatively impacting the credibility of a witness (2011: p. 40), showing authoritativeness and focusing the witness on the question (2011: p. 41) and (perhaps subconsciously) differentiating the credibility and respect afforded to different individuals in the trial (2011: p. 42). Interpersonal meta-discourse enables counsels to have power over the relationship with the witness and to decide to whom to attribute the responsibility for their reformulations (Cavalieri, 2011).

Personal pronouns and accommodations have similar interpersonal functions as address terms, mostly to close or increase social distance and to negotiate interpersonal power (Brown and Gilman, 1960; O’Barr, 1982; Jacquemet, 1996). Accommodation involves a change of language
registers, such as switching to street language or dialects to claim association with either party, or mixing standard speech with dialect to show neutrality, usually by the judges (Giles and Powesland 1975; Scotton, 1976; Jacquemet, 1996).

Besides the above mentioned linguistic strategies to exert power, the perception of any litigants’ power status by jury and the judges is also influenced by certain speech attributes that distinguish powerful speakers from powerless speakers (Lakoff, 1975; Scherer, 1979).

Powerful attributes include:

- Loudness and variation in loudness
- A larger pitch range
- Repetition
- Silent pauses rather than filled pauses (um, er)
- Interrupting
- Not using expressions of agreement
- Fluency
- Coherence

Powerless attributes include:

- Hedges: sort of, kind of, you know
- Hesitation
- Uncertainty
- Use of “sir/ma’am”
- Intensifiers
- Time taken
- Mitigation

Many researchers from Duke University (Lind & O’Barr, 1979; O’Barr, 1982; Conley & O’Barr, 1998) investigated the effects of powerless and powerful attributes in legal contexts from a social psychological perspective. They played tapes to university students and asked them to rate the voices according to different scales, including competence, social attractiveness, trustworthiness, social dynamism/power, convincingness, intelligence, coherence and cohesion, and formal and hypercorrect styles. The difference in ratings between the “powerful testimony”
and “powerless testimony” is significant (P<0.5) for both sexes on all evaluation dimensions, with the strongest implications being “trustworthiness” and “convincingness”. O’Barr noted that, “the style in which testimony is delivered strongly affects how favourably the witness is perceived” and suggested that, “these sorts of differences may play a consequential role in legal process itself” (1982: p. 75).

The results of those experiments also indicated that a lower rating was given by respondents and a lower impression perceived by lawyers to the witness’s competence and social dynamism in “fragmented” testimony with poor coherence and cohesion. An over-elaborate speaker is judged more negatively on all rating scales and, worryingly, is much less likely to receive compensation for injuries. These experiments revealed some intrinsic relations between the self-identity, ideological status and the use of language. This is an aspect that is worth looking at with a critical perspective in relation to genuine changes in the Chinese court system.

In general, this set of studies shows how behaviour in the primary reality can affect the portrayal of the secondary reality, and how communication of the speaker’s social identity can affect the communication of the propositional content or ideas. Those linguistic attributes can shed light on our analysis of the potentially changing power status of litigants in court.

Similar to the western courts, there is also power asymmetry that is discursively practised by judges and prosecutors to the defendants in China’s court trials. When the defendants do not show a cooperative attitude towards the interrogation, certain linguistic methods are used to exert power and control over the defendants. Due to the difference between China’s inquisitorial system and the western adversarial system, the power relations and controlling linguistic devices can be different in some respects. Next, we are going to summarise studies on power and control of China’s courtroom discourse.
2.2.2 Studies on power and control in court in China

Empirical studies upon power and control in China’s courtrooms are rare, registering a total number of 12 papers and 8 PhD thesis according to a search result using “courtroom”, “discourse” and “control” as keywords in CNKI database, the biggest available research hub. Relevant linguists in China (Liao, 2003, 2006; Du, 2005, 2008, 2010, 2011; Ge, 2005, 2011; Yu, 2006; Li, 2007; Lv, 2008, 2011; Shi, 2008; Ge & Wang 2009; Zhang, 2009; Zhao 2009) investigated the power and control in China’s court trials from similar perspectives to those abroad: narrative construction/destruction, question forms and topic/information control, as well as power/coercion. Most of the studies have taken the unique features of China’s court trial system into consideration for the analysis. Liao (2003) pioneered the study of courtroom discourse analysis, and set up the approaches and framework for discourse analysis in China. Du’s (2007) tree information structure theory has provided us with a useful and systematic tool for the analysis of information flow and information structure in court. However, his theory focuses more on the overall structure and the progression of discourse rather than any particular speech acts or interactions that revolve around power and control. Lv (2008) and Shi (2008) are other two important monographs on courtroom discourse and power relations. We will discuss their main arguments and possible gaps in later section of literature review.

Due to the inquisitorial legal system principles in China, truth-finding is the essential goal in China’s criminal court trials. However, the process of truth-finding is different from the narrative construction in an adversarial legal system due to the unique features of China’s inquisitorial legal system. The following are some typical features of the inquisitorial justice system as compared to the adversarial system (Komter & Malsch, 2012; He, 2014):

1. The focus is on gathering and presenting evidence (adversarial focus on oral presentation of evidence).
2. Judges are not passive, they collect and review evidence during trial for finding "the truth". (Adversarial legal proceedings are essentially contests between equivalent parties.)

3. Most cases are tried by professional decision makers/judges (adversarial lay participants play a substantial role).

4. There is a preference for a documentary evidence-case dossier system in China (while adversarial systems adhere to principles of immediacy and orality, presenting evidence in its original form).

5. The inquisitorial system prefers "free proof: the judge is trusted to give any weight considered appropriate to this evidence.

6. The inquisitorial system emphasises "pre-trial" stages, while in the adversarial system, trial in open court plays far more dominant roles.

7. Chinese courtrooms are situated inside an intricate and interactive network of power systems, under direct government influence.

All those features influence the truth-finding process as well as the measurement of penalty for criminal trials in China. In particular, points three and four most significantly determine the differences between the two systems. In the west, a jury of ‘one’s peers’ is effectively an ideological symbol of democracy. The ordinary person in court is judged by other ordinary people in the jury whose inferential framework is commonsensical and inexperienced in legal issues. This is a democratic principle of admitting into the court context non-professional players who will understand the defendant. In China, however, point three demonstrates that the authority of the judge, and his or her executive judges, as professional decision-makers with an inferential framework that is rich in legal experience, is valued above the participation of ordinary people without legal insight. This means these differentiated inferential frameworks and the MRs of decision makers in each system carry an ideological load in terms of values.

Put bluntly, the west values individuality and China places authority in government representatives of the people. Ideological power relations are demonstrated through language utterances and contexts. Language utterances with legal and professional features are prone to be perceived as of more value or influence than those with casual styles. Therefore, legal language users would be more powerful in the sense that their utterances and arguments are more valued than those of laymen litigants. Since the decision makers in China prefer

documentary evidence (point four above) rather than immediate narratives constructed through “direct speech”, and they might form opinions for the case due to the pre-trial section, it is possible that their presuppositions affect the impartial judgement that is supposed to happen in court.

Truth can be constituted through power and ideology. Since truth-finding is the main task in China’s court trials, legal fact construction is a critical process. As defined by Du (2010: pp. 83, 86), legal facts are co-constructed by all parties in court based on objective facts within the confinement of trial conditions, and therefore are both objective and subjective to some extent. Legal facts are gradually confirmed by both judicial parties presenting facts selectively to court based on their knowledge and perception, and being commented on by the other parties, including agreeing, suspecting, denying, hedging or ignoring (Du, 2010). Therefore, the whole process of legal fact construction is interpretative and negotiated rather than fixed or stable. The analysis of this process is also discursively interpretative. Legal facts are constructed through the courtroom context, the roles of the litigants and their verbal communication. This courtroom discourse can be categorised into monologue, dialogue and Q&A according to the different types of communication.

Different discourse types determine different schemata, frames and subjective positions. Discourse types can be determined by courtroom stages and the topic itself. The content of dialogue can be further divided into self-expressive speech, interaction, and third person reference according to the roles involved (Du, 2010: p. 85). There are three modes for legal fact construction: presentation, co-construction and ascertainment of facts (Du, 2010).

1. The presentation of facts mainly refers to the selective descriptions of facts from different participants in the trials, which belongs to the initial stage of legal fact construction.
2. The co-construction of facts refers to the stage where different “versions” of the presentation of facts are reinforced, suspected, or denied, during which the powerful descriptions are more salient than those powerless ones. Legal facts are gradually
completed in this stage, and sufficient conditions are provided for the selection, discarding, inferences, and integration of facts.

3. Ascertainment of facts is the critical stage of legal fact construction, in which the former presentations of facts will be evaluated, verified and selected in accordance with legal criteria, such as regulations and rules.

These three modes are interrelated and progressive (sequential). A combined analysis of these three modes of legal fact construction can facilitate the understanding of critical points in different legal situations as well as the perception of main communication intentions and goals of different participants (Du, 2010:86). The first two modes are mainly concerned with narrative construction and deconstruction, and the analysis of these is generally pragmatic. The third mode, which is related to evaluation, engages with the interpretative processes of decision makers because adjudication and interpretation are closely related (Bardon & Murphy, 2010).

The construction of legal facts is a narrative accomplished during the court trials in which participants exchange information through verbal interactions (Xia & Shi, 2006). The core of discoursal interaction is information processing (Du, 2009a). The main focus of courtroom discourse is the exchange of information whereby information flows between different participants and creates communicative significance, with persuasion being the primary purpose (Du, 2010). Consequently, participants’ central concern is to select questions and answers and organise information in order to achieve their specific communicative objectives (Du, 2009). During verbal interactions, each party would present and interpret facts in such a way to influence the information recipient (the judge) to form a favourable adjudication for them based on the legal facts they choose to present. Studying the linguistic patterns and process of information flow is a common approach to analysis of legal fact construction and deconstruction (Du, 2009, 2010; Ge & Wang, 2009).
The Prague School views information as consisting of two categories: new information, which the addressee believes unknown to the addressee, and given information which the addressee believes known to the addressee (Gibbons, 2002). During communications, an information gap forms between the given and new information, providing communicative dynamism to the exchanges of discoursal information through information potential energy (IPE) thus enabling the flow of information (Ge & Wang, 2009). Information flows from higher IPE to lower IPE when there is no external interference from communicators (Jing, 2007: p.55). The higher the IPE, the more persuasive the information. However, information flows can be susceptible to influences from the different communicative intentions and social roles of different parties, and can be manipulated or controlled by the participants, especially by the judges during court trials (Du, 2008). The different ways to manipulate information flow, to some extent, are all related to symbolic, ideologically constructed social power and capital.

According to Hyland (1953), persuasiveness of information increases with the credibility of the source of information and is also closely related to the motivation of the information distributor. The credibility of the source relies on the authority of the institution, entity or individual that releases this information, and their relationship to this information. The persuasiveness of the information is the greatest when the spreading of the information goes against the interest of the information distributor. According to Ge and Wang’s analysis (2009), during the information flow process, the distributor of information would increase the potential energy factors (PEF) by elevating the reputation, increasing credibility and explicating the motivation. Elevating the reputation and increasing credibility both rely on explicating or implicating the authority and status of the information sources. The potential energy can also be reduced and the persuasiveness weakened by impacts of various factors defined as potential energy barrier (PEB). This can be exercised by the recipient through ignoring, refusing and doubting the information from the distributor (Ge & Wang, 2009).
The flow of information is also subject to topic control skills during the process of the trial, simply termed as “process control”. Du and Ge (2005) and Pan and Du (2011) both analysed the skills of information obtainment and control in the courtroom. Du and Ge (2005) focused more on topic control and information solicitation in courtroom questioning. They investigated the starting, holding, transferring and ending of topics in courtroom and suggested that inquirers such as judges, lawyers and prosecutors use their legally granted right and power to start a topic or bring up new topics based on the answers of the inquired. The inquirers usually use repetition, follow-up questions, or implications (implicated coercion) to hold the topic or change the topic, and when they get their desired information, they would choose to end the topic by stopping questioning or forcibly terminating the topic by interrupting.

Besides studying the patterns of information control during discourse process, Pan and Du (2011) also undertook a more in-depth investigation on the details of how prosecutors and lawyers manipulate different legal information elements at inter-sentence development level. They divided topic controls into two categories: primary control, which is the native control power of questions upon answers according to their different types; then there is process control which refers to the interactive process during which the topic controller chooses different questions for answerers (Nie, 2007).

Initial control and follow-up control are two modes of process control. Initial control refers to questions that are skillfully prearranged before the trial according to elements of the crime to lead the answerers to realise the communication intentions of the questioners (Nie, 2007; Pan & Du, 2011). Prosecutors would ask about the time, location, relevant persons, motivation, means, process, result, evidence; while defence counsel would design a question sequence to help the defendant to construct his narrative. Follow-up control aims to intervene in the answers which depart from the topic. Questioners use positive control to lead the answers back to topic and use negative control to encourage the answers to move onto new information to enrich a
topic during follow-up control. Judges and prosecutors usually use positive control by reformulating the questions when the defendants are resisting the question intended in initial control. However, questioners would drop the intention of initial control when they use negative control during follow-up because the defendants’ answers, though diverging from the expectations of questioner, would bring about new information that is valuable and conducive to the construction of legal facts (Pan & Du, 2011).

At inter-sentence level, Pan and Du (2011) looked at the progression of information elements during the “process”. They pointed out that information elements accumulated during the “process” can be used as presupposition for later questioning. By adopting the “information element analysis model of text” developed by Du, they analysed the transcripts in terms of three information elements (aspects): process, entity and conditions. Process information describes the state, quality, appearance, relation, behaviour, cause, turn and negation of things. The term ‘entity’ includes agent, dative, patient, factitive and attributes of an individual, which are used to describe the different roles of an individual. Pan and Du also described how prosecutors control the flow of information by summarising “individual” information elements into a unified “concept” or “entity”, so that the audience and defendants more easily accept the presupposition in the question. They also found that both parties would change the information element of a “concept” or “entity” so that the role of the defendant would change from passive to active or vice versa. To add information elements to the questions would enable prosecutors to linguistically coerce defendants to admit to a certain presupposition.

Scholars (Liao, 2002, 2003, 2006; Du and Ge, 2005; Lv, 2008, 2011; Ge, 2011) also summarised the linguistic devices to exert both initial and follow-up controls, especially with focus on the different forms of questions. In Language Skills in the Courtroom (2003) Liao demonstrated that the power and control of questions varies with different types of questions, according to the open and/or closed nature of the questions. He ranked different types of
questions from more to less, according to the information they seek: 1. Broad open questions, 2. Narrow open questions, 3. Multiple choice questions, 4. Yes or No questions, 5. Positive narrative with a positive rhetoric question, 6. Negative narrative with a negative rhetoric question. 7. Narrative question. 8. Tag questions. He argued that the more information the questions seek from the questioned, the less control they exert on the questioned, and vice versa.

Liao (2002) also described the interactive patterns between litigants in court in China by counting and comparing the different question types and adjacent pairs in different court stages. The following two patterns characterise Chinese criminal courtroom discourse:

1. Q (question)-R (response)-F1 (feedback1)-F2 (feedback2)  
2. Q (question)-R (response)-Qr (question repeated)-Rr (response repeated)

A simple Q-A pattern is often used between judges and other participants. Q-A-F prevails in the interaction between defending counsel and the defendant. The third part, F, serves as a solidarity marker. Q-R-Qr-Rr pattern prevails in the interaction between the prosecutor and the defendant as the relationship between them is adversarial and non-cooperation is the rule. The use of this repetitive interactive pattern signifies the conflicts between litigants and control by the powerful. Interruption and overlapping are also observed as the two main linguistic devices to exert control over the powerless, mostly used by the judges to control the quantity and relevance of the information in an answer.

Liao also summarised the structure of questions and answers by dividing them into three parts according to the different functions they serve: elicitation, core and follow-up. Different elicitations in questions such as directives, addressing terms, and meta-questions can exert power and coercion to the answerer in the cross-examination, and therefore are often used by judges and especially lawyers to complicate the questions. There is usually only one core in
one turn of questioning. Using multiple core questions can be a strategy of lawyers to add presupposition. Follow-ups in questions are used to end a turn or to narrow down the question, so as to control the flow of information and to exert power and challenge. Elicitations in answers can increase the modality of answers, thus modifying answers to be “softer” and “indirect” (Liao, 2002) so that the answerer can escape from the control of the questioner and avoid negative information to be given against him/herself. These elicitations include mostly mitigation devices such as hedge, bush, shield, approximator, passive voice, reported speech (Liao, 2002, 2003; Huang and Chen, 2010), with the intention of avoiding giving direct answers to the core questions. Follow-ups to the answers would usually serve to strengthen, explain or add to the core answers to add information that demonstrates the positivity of the answerer and gains the positive attitude of judges (Liao, 2002: 207).

Power hierarchy is a distinct institutional feature of courtroom discourse because court trials represent national will and are carried out by national force (Ge, 2011). Such hierarchy is embodied and maintained both in the rules of court trial procedures and in the power to have speech and discourse control over the powerless. Lv (2008, 2011) and Ge (2011) analysed the institutional features of courtroom discourse in China through pragmatics, registers, professional, institutional and social dimensions and summarised the power relations and the tools used in maintaining them during direct examination and cross examination. Ge (2011) believed that the expertise of judicial process, the exactness of deduction and inference and goal orientation are the professional features of courtroom discourse due to the different identities of participants. Lv (2008, 2011) illustrated the participant relations and asymmetrical power status they have with case studies and the quantitative measurement of certain linguistic devices registering power and dominance.

According to this research by Lv (2008, 2011) and Ge (2011), the proactive role of China’s judges resulted in a very different discoursal structure in China’s court trials from that of
adversarial court trials where only the judges control the proceedings. Judges in China also need to actively seek information from the testimony of defendants because their judgements are based on “truth-finding”. During this active inquiry process, judges might encounter uncooperative and/or confused defendants. Judges in China usually employ “context control, naked power discourse control, closed questions, interruption, and metacommentary” (Lv, 2011, p. 153) to control the discourse right of other participants. Prosecutors, also referred to as “national lawyers”, are believed to be in the second place of power, using methods such as “information guidance”, “presupposition”, and “directive speech acts” to execute their prosecution against the defendants (Lv, 2008, 2011).

As participants with power in the middle range, lawyers take advantage of their institutional power and knowledge power to influence the defendants’ and witnesses’ minds through manipulating concepts, reformulation of defendants’ answers, and guiding the questioned by leading questions (Lv, 2011, pp. 242-253). Lv and Chen (2012) also observed that lawyers use more open questions for defence witnesses, but more closed questions to restrict the power to speech of the adverse party. Meanwhile, lawyers sometimes also use open questions to adverse witnesses to detect the “weak point” in the testimony.

Lv’s (2008, 2011) research mostly focused on the discoursal interactions between litigants, such as turn-taking and topic control, which is covered by the relational value of text in Fairclough’s framework. The experiential and expressive value of text are not fully investigated in her research.

Shi (2008) analysed Chinese courtroom discourse from textual, discoursal and social dimensions of Fairclough’s CDA framework. He analysed classification, transitivity, modality and interactional control features at textual level, speech act, politeness and coherence and intertextuality at discoursal level, and ideology and power at social level. He included the script
of court trials in the analytical framework, which spells out clearly the institutional context of court discourse, providing interpretive procedures for the CDA interpretations and explanations. The cases used in his analysis contain civil, criminal and administrative types: his conclusions on the power and control of courtroom discourse in China are therefore general to some extent. His critical analysis revealed the institutional and social power asymmetry in China’s court trials as well as the ideological status quo of litigants in the judicial system. However, his research did not talk much about the process of information flow and information control. Although he concluded there are two kinds of tendencies for the ideologies of subjects: convergence and conflict, he mainly concluded that such tendencies are determined by the purposes of the litigants, rather than being influenced by the MR of litigants. I believe such a conclusion is reached without thorough analysis of all the related factors.

Due to lack of accumulation, relevant literature in China is not systematic enough when compared to literature abroad. Past literature on power and control in court mostly focused on the functions of linguistic devices in exerting power and control and the process of information flow, but did not provide in-depth analysis of how the power relations of different litigants interact and influence the way they employ linguistic devices to achieve control of information. Such a gap can be mended by relating the power behind discourse with power and control in discourse, via a CDA framework.

Meanwhile, Chinese researchers on courtroom discourse have tended to analyse only the dimension of discourse practice in court. There is a distinct lack of a systematic account for the social practice dimension of court trials from an explanatory or interpretive linguistic point of view. Few studies, for example, have linked the control and flow of information in discourse with the actual conviction, measurement of penalty, and the interpretation of legal facts by the judges in accordance with law. Nor have ideological features of China’s hierarchical courtroom context and their influence on the conviction and adjudication been clearly explained.
Moreover, the case studies in China usually include a combination of civil, criminal and administrative trials. This might cause variant or disagreeing analysis results and therefore be misleading for the summarisation of the relations between discourse strategies and goals in court. My research chooses a single kind of case trial for the case studies so that the results of the analysis of relations between strategy and goals, as well as between information controlling devices and power status, can be more coherent and reliable.

The next section reviews the studies on the relationship between power and discourse with the aim of finding theoretical basis and analytical tool for this research.

2.3 Studies on power and discourse

In this section, we outline the history of discourse investigations into power from various perspectives, and try to identify some of the main developments and pinpoint some of the key factors/players in power discourse. In so doing, this review provides applicable tools for text analysis and establishes the most suitable approach for courtroom discourse analysis in terms of power and control. The literature review also reveals the less travelled pathway: the analysis of the relations between ideology, power and discourse, and reveals the significance of probing a new approach that places MR as the pivotal point.

Before and after Foucault’s (1970) introduction of power into discourse studies, various scholars have investigated power interactions in discourse from different approaches, mainly the pragmatic, sociological and sociolinguistic, in addition to comprehensive and inclusive approaches such as DA and CDA. The focus of this review is on the approaches of DA, CDA and pragmatics, considering the nature of the research questions are primarily descriptive and explanatory and the focus of research is upon the process rather than the product.
2.3.1 Pragmatic perspectives

Pragmatic approaches towards power in discourse can be summarised into three perspectives based on different theories: the Speech Act theoretical approach of Austin (1962) and Searle (1969, 2001), the Politeness Strategy approach of Brown and Levinson (1978) and Goffman’s Face Theory (1967), and the institutional approach by Thomas (1985) and Harris (2003).

Austin (1962) distinguished performatives from constatives arguing that a speaker might be performing an action (a performative) instead of stating something (a constative). According to Austin (1961), meaning, can be evaluated in terms of three felicity conditions: conventionality, actuality and intentionality. These refer respectively to linguistic conventions correlated with words/sentences, the situation where the speaker actually says something to the hearer, and associated intentions of the speaker. A speech act is only successful when these three conditions are met. The concept of conventionality is related to the procedures for a purported speech act. These conventional procedures are closely related to social norms and social power status. For instance, verbs are categorised into five kinds according to their semantic meaning: verdicatives, exercitives, commissives, behabitives and expositives. Exercitives are directly related to power relations, and based on the felicity conditions of the speaker such as his/her social status, role, and proper procedures. Verbs, such as “appoint, dismiss, name” are of this kind. Although Austin’s theory mentioned the power of the interlocutor in the felicity conditions, he did not elaborate on it, neither did he expand this felicity condition to the ideological level. Social relations and institutional authorities were not talked thorough in Austin’s theory because the realisation of speech acts is believed to be mostly based on the illocutionary forces of the verbs (Tian & Zhang, 2006).

As another representative of speech act theory, Searle believes that the completion of a speech act must involve social factors, rather than just rely on the illocutionary forces of verbs. He
proposed the concept of institutional facts based on three fundamental conceptual tools: the notions of assignment function, collective intentionality, and constitutive rules (Searle, 2001). Searle stressed that power comes from social recognition, and institutional facts are enacted on the power endowed by collective intentionality. The concept of collective intentionality borders on social ideology, yet mainly focuses on social institutions, rather than expanding to the ideological dimension.

Politeness theory (Brown and Levinson, 1978) and Face Theory (Goffman, 1967) both discursively approached power relations between social participants from the norms of social interactions and preservation of social positions and self-identity. Politeness theoretic research probes the relations between power and discourse strategy of speakers. Power, in Brown and Levinson’s (1978) theoretical framework, is considered one of the three fundamental social factors (power, social distance and the rank of imposition). They believe that power can be measured by the rank of imposition of the speaker on the other interlocutor to achieve their own plan and face at the sacrifice of others’. Rank of imposition is culturally determined by particular norms and the sensitivities of a culture. Social distance is a measurement of social similarity and familiarity between participants. Relative power is socially determined by the ability of the one participant to impose their will over the other. Factors contributing to power can be institutional or larger social traditions (Brown and Levinson, 1978). By analysing how politeness or impoliteness strategies are used, we can understand the relative power between litigants and the whole institutional structure.

For instance, in her 2003 paper “Politeness and power: making and responding to requests in institutional settings”, Harris explained power in institutional discourse through politeness theories. She concluded that institutional participants with greater power would employ politeness strategies comprehensively, while institutional participants with less power would use more coercive impoliteness strategies. Though this sounds counter-intuitive, even in
circumstances with greater power hierarchy distance, such as magistrate courts or police bureaux, institutional members would allow the less powerful clients some methods of coercive impoliteness to mitigate face threatening acts, even to the extent where the communication is cut off by rejection of the requirement.

Coercive impoliteness strategies are usually used when a Speaker attempts to increase his or her power over a Hearer by means of socially unacceptable speech patterns. Coercive impoliteness seeks a realignment of values between the producer and the targets so that the producer of the impoliteness benefits or has their current benefits reinforced or protected. Politeness strategies can also reflect the self-identify, or even the ideology of institutional litigants.

There are three types of ideology that are related to politeness: common-sense ideology, scientific ideology and social ideology. Scientific ideologies have mostly employed conceptualisation and terminologies that differ vastly from those common-sense ideologies (Eelen, 1999: 164). They therefore tend to be more professional and seem to be more reliable, thus more powerful, than common-sense ideologies. As elements of social ideologies, social worldviews are often used as explanatory factors in scientific accounts of politeness. As we know, social ideology is related to social organisation and social structure, such as power relations. It is reasonable to deduce that professional ideology also gains its justification from social power and it reinforces the social ideologies holding power. For example, “individualistic” Western social ideologies are often contrasted to Eastern “collectivistic” ideologies in terms of differences in politeness concepts and practices between the two cultures (Eelen, 1999: p. 164). These two very different ideologies are believed to be closely related to notions like “democracy” or “social equity”. Gudrun Held and Klotz both illustrated how these notions influenced the meaning and use of politeness formulae that where directly, historically related to the power-structure of society. Klotz pointed out that, “current politeness theories mostly favour
explanations and models based on ‘democratic’ principles—or at least principles ideologically connected with the concept of democracy.” Comparatively, in very vertically structured societies, social ideologies would emphasise distinction rather than equality. For example, by analysing the use of address terms, a typical feature to signify institutional and social politeness ideology, the value of certain notions such as “democracy” or “individuality” can be reflected. Similar features include: vocatives, pronouns, and politeness markers which can be included in our analysis.

Having regard for another person’s “face” or image is an important aspect of politeness. Face is one’s public self-image and is mutually constructed and maintained by the Speaker (S) and Hearer (H) (Verschueren, 1999). Goffman (1967: 5) described it as, “the positive social value a person effectively claims for himself by the line others assume he has taken during a particular contact.” Face is constantly negotiated between S and H; it is not static but “located in the events in the encounter” (Goffman, 1967:7). Face is understood as a universal desire and, according to Goffman, participants in a conversation work to preserve each other’s “face”. Based on Goffman’s definition, Brown and Levinson argue that every individual has positive and negative “face”. They define positive face as the individual’s desire to be appreciated in social interaction, and negative face as the desire for freedom of action and freedom from imposition; positive face is therefore related to the credibility of litigants in court, while negative face is related to coercion, power asymmetry and controls. Brown and Levinson also believe most speech acts inherently threaten either the hearer’s or speaker’s face-wants, and politeness is involved in redressing those face threatening acts (FTA). Positive politeness aims at supporting or enhancing the addressee’s positive face, whereas negative politeness aims at softening the encroachment on the addressee’s freedom of action or freedom from imposition. Since politeness is related to ideology, facework can be extended to an institutional level and the notion of face is extended from individual face to the image of an institution. By analysing
how facework is negotiated during courtroom discoursal interactions, credibility of litigants or institution and the usage of coercion and controls can be reflected. Although politeness and FTA are two important aspects of inspecting power relations in discourse, there are other aspects to grappling with power interactions that have been studied more comprehensively by other scholars.

Jenny Thomas (1985, 1995) also investigated power in discourse from a dynamic pragmatic perspective. She analyses the power distribution in asymmetrical discourse communications (supervisors and students, sergeant and the accused, judges and defendants) and believes that the power relations between participants and the institutional rules of the communication are the keys to discourse understanding and its dynamic development. She described the systematic way in which a range of pragmatic features were employed by the dominant participants in a series of “unequal encounters” in order to severely restrict the discoursal options of the subordinate participants. Those features include: 1. Illocutionary force indicating devices (IFIDs), 2. metapragmatic comments (MPC), ‘upshots’ and ‘reformulations’, and 3, appeal to felicity conditions (Thomas, 1985).

IFIDs are elements or aspects of linguistic devices that would either indicate the utterance is made with a certain illocutionary force or that it constitutes the performance of a certain illocutionary act. Performative verbs, mood, word order, intonation, stress are examples of IFIDs. Opposite to the situations of “equal” discourse, IFIDs in “unequal encounters”, such as ordering or warning, are often found to be “costly to Hearer’s situations”. An IFID removes any polite ambivalence and gives the utterance a “sledge-hammer” effect.

In “unequal encounters”, the dominant speaker wishes to assert authority by using a metapragmatic comment to remove any possibility of “negotiating communicative intent”. S/he does this either by going on record with the intended pragmatic force of his/her own utterance
(an S-MPC), or by forcing the addressee to do so (A-MPC). Restricted by the pre-emptive moves employed by a dominant speaker through prospective and retrospective comments, the subordinate interlocutor is obliged to produce only a relevant and polite response. Therefore, during the encounters the subordinate must either directly contradict his/her superior or back down and lose the argument (Thomas, 1985).

“Upshot” is a brief summary by the dominant speaker of a long contribution by the subordinate to clarify communicative intent by pragmatic disambiguation (Thomas, 1985). A reformulation is a presentation of H’s utterance in un-ambiguous terms, in response to which H is required to make clear, or simply to confirm, the intended pragmatic force of his/her utterance. “Aggravated” upshots or reformulations are particularly difficult to counter because in such cases the subordinate participant is obliged, not only to make overt a discourteous or challenging implicature intended indirectly, but also the dominant speaker puts into the subordinate’s mouth “snarl” or obscene words.

Interactions within institutions are premised upon a high degree of shared knowledge and beliefs. Among these are beliefs about what are and are not allowable contributions, and the rights and duties associated with particular institutional roles. When a subordinate participant challenges a superior, the more powerful speaker will refer to his official position and implicitly or explicitly invoke the rights and power attached to that position (Thomas, 1985), although stating one’s superior rank violates the “modesty maxim” and the Politeness Principle (Leech 1983). In other words, the dominant speaker counters the challenge by demonstrating that the necessary felicity conditions to be obtained for the issuing of a metacommentary. Naked discourse of power is often used in asymmetrical communication by the powerful to suppress the powerless and control the discourse direction through direct or indirect indication of their superior status and power (Thomas, 1985).
Some advantages and disadvantages of the pragmatic approaches to power and control can be summarised as follows. Speech act theory draws attention to the functions of utterances and therefore may help clarify the implicated intentions of litigants and illustrate the theme of a transcript clip. Although Austin and Searle came up with concepts such as “felicity conditions” and “social recognition” to explain the structure of power in discourse, they did not account for the interactive patterns in an asymmetrical power discourse, and they also ignored the ideological conflicts and different MR of speakers.

The politeness and face work approach towards power _does_ provide a good pathway for analysing the interactional patterns of power in discourse, but using only two basic concepts (“politeness” and “face”) can hardly support all the complex analyses of power interactions. Ranks of imposition, social distance and relative power are three main factors determining politeness/impoliteness strategies. They can, indeed, be adopted as three aspects to investigate power and control in court. However, since these three factors are so closely interrelated, and sometimes even overlapping, it is not reliable to depend only upon politeness strategies for the difficult task of justifying inferences about complexities during the interactions. The distinct character of each speaker needs to be taken into consideration for specific situational context analyses. Specific linguistic features registering power relations might also be more useful to the actual analysis procedures.

Thomas’ dynamic pragmatic approach towards power, based on empirical case studies, produces pragmatic devices and skills for power negotiation in discourse therefore providing more tangible and reliable measurements which can be used as clues for the CDA of power interactions in court discourse. However, the scope of her approach is confined within pragmatics, lacking social context analysis, let alone ideological dimensions. These social and ideological aspects are the foci of sociological and sociolinguistic scholars.
2.3.2 Sociological and sociolinguistic perspectives

In terms of the relationship between society and discourse, sociolinguistic and sociological approaches have more in-depth and detailed research from social interaction perspectives, and therefore can complement the analytical framework for the assessment of power and control in court.

Foucault and Bourdieu are representative scholars who inspect power and discourse from a sociological point of view. They developed systematic theory and clear concepts explaining power in discourse. By reviewing relevant debates, we can have a clear idea of the logic that a sociological approach pursues towards power in discourse.

Michel Foucault developed systematic power and discourse studies in his inaugural lecture ‘The Orders of Discourse’ in 1970, for the first time comparing the concepts of discourse and power. He viewed discourse as linked to power relations and the exercise of power. Foucault argued that the production of discourse is at once, “controlled, selected, organised and redistributed…” to “avert its power and dangers…” (1971: p. 9). Systems for the control and delimitation of discourse were isolated as two groups: external and internal rules. Foucault linked exclusion with prohibition and described the discursive rules of social exclusion as following on the use of “prohibited words, division of madness and rejection of folly-the will to truth”. He further categorised prohibition into three types, with each interrelating, reinforcing, and complementing one another. These were: “objects, ritual with its surrounding circumstances and the privileged or exclusive right to speak of a particular subject”. He believed that this will to truth relies on institutional support and distribution and is reinforced and accompanied by “whole strata of practices”, and more profoundly by the “manner in which knowledge is employed, exploited, divided and attributed in society (1971: p. 24).” Foucault even claimed
the importance of so-called true discourse to law: “It is as though the very words of law had no authority in our society, except insofar as they are derived from true discourse (1971: p. 11).”

The group of internal rules isolated by Foucault is concerned with discourse exercising its own control, rules with the principles of classification, ordering and distribution. Commentary, author and discipline were the three principles of rarefaction. Commentary gives us the opportunity to say something other than the text itself, but on condition that it is the text itself which is uttered and, in some ways, finalised (Foucault, 1971: p. 13). The author implants into the troublesome language of fiction, its unities, its coherence and its links with reality. We ask authors to answer for the unity of work, to reveal or display the hidden sense pervading their work, to reveal and account for their personal lives and experiences. A proposition must fulfill some onerous and complex conditions before it can be admitted within a discipline; before it can be pronounced true or false it must be, as Monsieur Canguilhem might say, “within the true”. A third group of rules, summarised as rules for subjection of discourse, not only determines the conditions for discourse employment, but also imposes a certain number of rules upon those individuals who employ it, thus denying access to everyone. None may enter into discourse on a specific subject unless s/he has satisfied certain conditions. Not all areas of discourse are equally open and penetrable. In sum, the exterior rules of Foucault are equivalent to social rules, the internal rules equivalent to discoursal rules, while the subjection of discourse is equivalent to speakers’ right to discourse.

Another representative scholar viewing power from a sociological perspective is Bourdieu, who, in *Language and Symbolic Power* (1991), brought up the concepts of “symbolic capital” and “symbolic power”. Bourdieu argued that language expresses *and* reproduced the social structure so we cannot separate the linguistic instrument from its “social conditions of production and utilisation”: he proposed “situating language in its sociological context and
perspective”. He described power according to three forms of capital people possess, use and produce in different social cultures: economic capital, social capital and cultural capital, then discussed the role of language in forming authority, power and 'capital' in a linguistic economy.

Bourdieu criticised Austin for looking within words for the power of words, that is, looking for it where it is not to be found (1991: p. 107), and claimed that legitimate language has its basis in power in the sense that one necessary condition for speech is an authorised or legitimate speaker, who derives his or her authority from an underlying institution taken in a broader sense than the English term may suggest (1991: pp. 8, 9). He further affirms that, "the power of words is nothing other than the delegated power of the spokesperson, and his speech" and the stylistic features of speaker, “all stem from the position occupied in a competitive field by those persons entrusted with delegated authority” (1991: pp.107,109).

The illocutionary force of expressions, as he argued, cannot be completely found in the very words. Nevertheless, his restatement of Austin’s theory was not exact. Austin did analyse formal, routinised speech acts, but he never argued, or presupposed, that the illocutionary force of expressions was only to be found, 'in the very words.' Rather, he emphasised the speech setting in painstaking detail: acknowledgments of authority, appropriateness of the characters and conformity to timeliness and other 'felicity conditions'.

Sociolinguists approached discourse power by probing into the relations between language variants and social identity, sex, age and economic status. They believe people do not use language only to get across their meanings and feelings, but also to establish interrelationships and self-identity within a certain social group, as well as perform speech acts through discourse in a subtle manner. Lakoff, Brown and Gilman, from their respective angles, are representative scholars who focused on the power phenomenon in language.
The study by Brown and Gilman (1960) on the vocative forms in French, German, Italian and Spanish was a most influential set of analyses of power from within a sociolinguistic perspective. They believed the use of vocatives is influenced by the power relations between the interlocutors. They found two kinds of vocative pronouns for second person addressing in those languages. “tu/vous” (T/V) forms represent a disparity between interlocutors’ power status, for example children and parents, students and teachers, employees and bosses. The inferior in power would address the superior with V pronouns, and would often be addressed with T pronouns, V pronouns are used in a unidirectional manner both to reflect social status and the formality of certain occasions; T pronouns often show the solidarity, friendship of interlocutors and informality of occasions. Between people with a differential power status, the one who uses T pronouns first would be considered superior in power, obligating the other to reply with V pronouns. Mutual V-pronoun addressing signifies respect and social distance while any unidirectional use of V pronouns indicates unequal power relations. Lakoff (1990) pointed out female speakers usually use emphasis, evasive words and tag questions and sometimes tend to be hyper polite in conversation. All those features indicate the powerless status of female speakers.

The merits of a sociolinguistic approach to power studies lies in its introduction of, and focus on, social factors in language and power analysis; its deficiencies lie in the lack of account for the dynamic nature of interaction and intentions of interlocutors, especially the institutional identity of participants in its analytical framework. Despite the reliable descriptions of linguistic realities (such as language variations and social dialects) in power discourse, sociolinguists seldom inspect the reasons, causes and mechanisms for the occurrence of such linguistic phenomena. A sociolinguistic approach treats social positions and linguistic patterns as direct or linear causal relations rather than correlational relations. A sociological approach, although treating social rules, power, control and ideology as a web, still lacks technical linkage between
the micro-dimension (language) and macro-dimension (society and ideology). Scholars using a critical discourse analysis approach to analyse power have made an investigative and more in-depth analysis of the social contexts and mechanisms underlying discourse power interactions.

2.3.3 CDA/CLA perspectives

Discourse is defined as an interrelated set of texts, and the practices of their production, dissemination and reception, that brings an object into being (Parker, 1992). Since social reality is produced and made real through discourses (Foucault, 1971), discourse analysis aims to understand social interactions and explore the relationship between discourse and reality. Discourse analysis explores how texts are made meaningful through interconnection with other texts, and also how they contribute to the constitution of social reality by making meaning (Phillip & Hardy, 2002). This approach links the microscopic perspective with the macroscopic framework, bridging social and discoursal realities.

More than just a method, DA also represents a methodology that embodies a “strong” social constructivist view of the world (Gergen, 1999), with the focus on the way social reality is produced. According to Phillips and Ravasi (Phillips and Hardy, 2002), empirical studies of discourse analysis can be categorised along two key theoretical dimensions: the degree to which the emphasis is on individual texts or on the surrounding context and the degree to which the research focuses on power dynamics and ideology (as opposed to the process of social construction). As shown in the following figure (Phillips & Hardy, 2002, p. 20), the different approaches to discourse analysis can be divided into four categories according to the variation of the above two dimensions:
Social linguistic analysis is constructivist and text-based. Researchers focus on microanalysis of individual texts to organise and construct other phenomena, relating texts only marginally to distal context with little direct concern for power dynamics. This analytical approach helps us understand both the discursive micro-dynamics of individual strategies and the discursive foundations of the social reality in which decisions are located (Mauws, 2000). Literary analysis, rhetorical analysis and micro discourse analysis, commonly carried out in social psychology, are often used in this approach (Potter and Wetherell, 1987; Mauws, 2000). Although our analysis will be text-based, it also has critical components concerning ideology. This approach, therefore, is not the most suitable to our analysis.

Interpretive structuralism places more emphasis on the analysis of social context and the discourse that supports it. Description of the context often relies on interviews or archival materials, while tests collected are more important as background material for understanding context and providing insight into the “bigger picture”. Through reconstruction of historical events by investigating the linguistic framing of activities, interpretive structuralist approaches can be helpful to the understanding of macro-changes in broad discourse over periods of time. Wodak (1997) follows such an approach. This approach can be really useful in explicating the ideological structures of institutional litigants. However, due to limited accessibility to legal
participants for interviews, especially judges and defendants, the current study takes only text as analytical material. It is hoped future studies may explore this approach.

Critical approaches to discourse typically analyse “unequal encounters” such as political interviews, doctor-patient interactions and court trial discourse, which often employ “linguistic strategies that appear normal or neutral on the surface; strategies which are naturalised but which may in fact be ideologically invested” (Simpson & Myre, 2009: 51). The term “critical” signals a departure from the more descriptive goals of discourse analysis and a focus on why and how power structures are formed through discourse. Critical discourse analysis (CDA) and critical linguistic analysis (CLA) both deal with unequal power relations in terms of their enactment, reproduction and legitimisation (Fairclough & Wodak, 1997). CDA/CLA integrate a set of different methods, such as grammatical analysis, pragmatic analysis of speech acts and communicative acts, rhetorical analysis, stylistics, conversational analysis, analysis of specific structures, and even semiotic analysis. Most of the time such analyses will be qualitative descriptions of the details of discourse structure; but, depending on the data, such descriptions may be quantified. This is increasingly the case in corpus linguistics which provides new methods for CDA research (Simpson & Mayr, 2009). In view of its critical nature and its interest in ideology, the CDA/CLA approach seems to suit the purpose of this current research quite well. We will continue to find out its merits and deficiencies in later sections.

CLA focuses on the micro-dynamics of individual texts, examining the narratives and rhetorical strategies to exert control and justify inequalities in social reality. CLA is therefore helpful in examining how specific discursive activities and texts help to produce power relations at the local level (Grey & Robson, 2000; Jackson, 2000). CDA focuses on the distal context - how broad changes in the discourse result in different constellations of advantage and disadvantage, for example. CDA scholars criticise mainstream linguistic approaches "for taking conventions and practices at face value, as objects to be described in a way which obscures their political
and ideological investment (Fairclough 1992:7”). Fairclough also claimed that one possible limitation of critical linguistics is that “the interconnectedness of language, power and ideology has been too narrowly conceived”. The early critical linguists have also been criticised for their tendency to see texts as products and for giving only scant attention to the processes of producing and interpreting texts, or the possibility that texts can have different meanings to different groups of readers (Simpson & Myre, 2009). A CDA approach interprets text meaning/s in accordance with context and the different member resources (MR) of participants. In our current topic, the legal significance of discoursal interaction is interpreted differently by different litigants, and therefore, the CDA approach can be of great guidance to our analysis.

The three main authors of CDA, Teun van Dijk, Ruth Wodak, and Norman Fairclough, have each adopted different analytical frameworks and focused on analysis of discourse in slightly different domains. Van Dijk (2009) integrates cognitive theory with linguistic and social theories in an attempt to explain how larger societal structures come to be enacted and reproduced by social actors in everyday language and discourse practice. Wodok’s discourse-historical approach (DHA) focuses on critiquing the naturalisation and masking of ideologies in everyday language and discourse. Her analyses focus on intertextuality and interdiscursivity to explain why macrostructures of inequality persist and get reinforced and perpetuated via discourse processes. Her methodology is concrete and operationalisable, but it does not provide any social theoretical framework to connect the linguistic analysis to the analysis of social practice. Fairclough’s (1995, 1992) dialectical-relational approach (DRA) draws on both systemic functional linguistics (SFL) theories of semiotics, conversation analysis and other pragmatic theories in developing text analysis methods. As for the social reality, he developed a three-layer model that includes social structures, practices and events.
Fairclough developed a framework that theoretically connected micro-linguistic analysis to the analysis of social practice and social structure. Such a framework allows better provision for the theorising of how the reproduction or transformation of social power status can take place.

Although all three key CDA scholars have developed diversified approaches and frameworks, they all theorised the relationship between micro-structure of language/discourse/events and macro-structure of society, with a mediating layer. CDA scholars furthered a sociological and sociolinguistic approach by integrating the theoretical and analytic resources from linguistics, semiosis, and rhetorical theories as well as cognitive theories and social theories. Therefore, CDA becomes interdisciplinary and calls for flexibility and diversity in its approaches and methods to tackle complex issues and problems (Reisigl & Wodak, 2009).

Although the approaches and methods of CDA can be really complicated, there are several key principles for analysts to follow. Fairclough and Wodak (1997) outlined eight key theoretical and methodological principles of CDA:

1. CDA addresses social problems and intervenes in social practice and relationship against the dominating groups.
2. Power relations are negotiated in discourse.
3. Every instance of language use makes its own contribution to reproducing and/or transforming society and culture, including power relations.
4. Ideologies are particular ways of representing and constructing society which reproduce “unequal relations of power relations of domination and exploitation”. 5. Discourse is intertextual/historical: intertextuality
5. The link between text and society is indirect or mediated through orders of discourse.
6. Discourse analysis is interpretative and explanatory.
7. Discourse is a form of social action or social practice.

These key principles position the CDA analysts in line with the powerless, summarise the intricate relations between language, power, society and ideology, and indicate the main approach towards CDA. The different authors of CDA constructed different frameworks for
their analyses, so we are going to focus on Fairclough’s framework, as it suits the goal of our analysis best in terms of explaining the social factors influencing discourse interactions.

Fairclough’s three-dimensional framework consists of three interrelated processes of analysis which are respectively related to three interrelated dimensions of discourse. These three dimensions include the object of analysis (verbal/visual texts), the production and interpretation process of text by human subjects (discourse practice), and the socio-historical conditions that govern these processes (social practice). These three dimensions can be analysed by three kinds of analysis: text analysis (description), discourse interpretation and social explanation. The detailed steps and procedures for these analyses will be elaborated upon in the framework chapter to serve as guidelines for our courtroom discourse analysis.

Fairclough distinguished between power "in" and "behind" discourse, and identified the former as implementation and realisation of power through discourse: "power in discourse is to do with powerful participants controlling and constraining the contributions of nonpowerful participants" (1989: 46), and the latter as the way that, “the whole social order of discourse is put together and held together as a hidden effect of power”. Power in discourse is realised through linguistic interactions. My first research question looks at courtroom discourse with a focus on the power in discourse, also referred to as linguistic control. Legal influences of power behind discourse, and the ideology underlying power and control, are the focus of the second and third research questions.

Linguistic control has been said to be one important aspect of exercising power over others (Morris, 1949, Foucault, 1977, Bourdieu, 1991). Those with the widest discourse choices are assumed to be the most powerful and it is safe to say that the more restricted the possibilities of expression, the less powerful the person. Loftus (1979) pointed out the high status groups
(including lawyers and policemen), "are able to manipulate others more easily. They have access to a variety of means to persuade others, change their attitude and influence their behaviour" (Loftus, 1979). Fairclough (1989: 135-7) listed four devices of linguistic control used by powerful persons in an institutional setting and constraining contributions of the less powerful participants: Interruption, enforcing explicitness, controlling topic and formulation.

These devices have often been mentioned in similar power research using other approaches. Interruption, as mentioned before, is one common device through which dominant speakers can dismiss or ignore contributions which they consider irrelevant. Interruptions can have positive functions and be conceived as “a restoration of order (turn-taking)” rather than “conversational deviance” (Murray 1987:104). Wodak states that, "[P]ersons with power determine the course of the interaction or the issues discussed. They can “determine the length of the verbal contributions by allowing, continuing, or interrupting these contributions” (Wodak, 1995: p. 34, cited in Hale, 2004).

In institutional interactions, a less powerful speaker may use ambiguous or vague utterances to deal with the more powerful person, but the latter may demand “discoursal disambiguation” (Thomas 1988: 2) by asking the speaker to make their statements less ambivalent. The purpose of enforced explicitness is to narrow the modality of the answers, which can cast doubt on the credibility of the witness, as discussed in section 2.2 above. Re-questioning and follow-up questions are usually used to achieve discoursal disambiguation.

In many forms of institutional interactions, topics are introduced and changed mainly by the dominant person according to a pre-set agenda. Often, the subordinate speaker is asked to show co-operation with the dominant speaker’s discoursal and social goals. Very often questions are used as a means of controlling the topic and designed to steer the participants in a certain
direction, or incorporating what has been said, and indicating by further questions that more information is wanted.

The concept of formulation defined by Fairclough is similar to the concept of “reformulation” by Gibbons (2002) and Thomas (1985). They are the conversational privilege of people with institutional power, a control device to make participants accept another’s version, thereby constraining participant options for further contribution. Formulations are addressed not only to the interlocutor, but to the overhearing audience.

A basic understanding of those linguistic controlling devices can help us to locate power-related linguistic devices and ideologically invested linguistic features.

Fairclough approached power behind discourse and ideology with member resources (MR) of participants as interpretative procedures during the interpretation stage and an intermediate between discourse and ideology during the explanation stage. Therefore, this becomes significant to this project as MR may be used as a pivotal point that connects all the analysis procedures. We will test this idea in the framework construction chapter.

Van Dijk’s approach will also be useful for our analysis because he pointed out that the exercise and maintenance of social power presupposes an ideological framework which consists of socially shared, interest-related fundamental cognitions of a social group and its members and are mainly acquired, confirmed, or changed through communication and discourse (Van Dijk, 1989, 1995). He proposed a distinction between two ‘levels’ of CDS: ‘micro’ (i.e. language use, discourse, verbal interaction and communication); and ‘macro’ (i.e. power, dominance and inequality between social groups). His conception of ideology also allows us to establish the crucial link between macro-level analyses of groups, social formations and social structure, and micro-level studies of situated, individual interaction and discourse. His clear definition that ideological frameworks are interest-related, which allows us to critically analyse the discoursal
interactions of litigants in court with their purposes (institutional and inferred) in mind. Van Dijk believes that members of more powerful groups control, or have access to an increasingly wide and varied range of, discourse roles, genres, occasions and styles. The production mode of articulation is controlled by “symbolic elites” that exercise power on the basis of “symbolic capital”. They are the manufacturers of public knowledge, beliefs, attitudes, norms, values, morals, and ideologies. In a courtroom, legal professionals are those “elites” and their knowledge, beliefs, attitudes and ideologies are adopted by the whole institution, and forced upon the laymen. Van Dijk inspects the structures of power from several dimensions: 1. Institutional power, 2. Hierarchical power, 3. Dominant group power, 4. Domain of action or scope and type of influence, 5. Gradual differences between various kinds of legitimacy for social control. He chose the analysis of discursive (sub)genres and communicative events in social situations (Brown, 1979).

Such a “situation analysis” requires an integration of both discourse analysis and social analysis. This means analyses of participant representation, interactional strategies, turn allocation, topic and code selection, stylistic registers and rhetorical operations as well as analysis of the roles, relations, rules, norms, or other social constraints that govern the interaction of participants as social group members (Van Dijk, 1989). All those aspects might be considered in our analysis, and this highlights the value of Fairclough’s approach: it is easier to follow because he specifically separates the values of different features of the text into three categories: experiential, relational and expressive. Such categorisation enables clearer guidance when we start to analyse the complexity of our own case studies. We will talk about this in detail at the framework chapter.

According to Van Dijk power abuse, or domination, is realised discursively as polarised structures of positive self-presentation and negative other-presentation expressing ideological conflict (Van Dijk, 1995). Therefore, investigating how these ideological conflicts are
negotiated via manipulations of power relations through linguistic strategies can help understand why power is ideologically shaped and reproduced. Manipulation aims at enhancing the power, moral superiority and credibility of the speaker and discrediting that of others.

2.4 Summary of literature

Following upon literature reviewed in 2.2, we can summarise the controls exerted during discoursal practice in court via the following three aspects: 1. Control of information, including the content and the interpretation of information about the case; 2. Control of credibility, including credibility related to facts and credibility related to persons; 3. Control of power status of relatively powerless litigants, which can be realised by declaration of power and implicated coercion.

We now recognise that due to the different goals in the adversarial and inquisitorial trial systems, the focus of controls can vary between systems: credibility control and narrative construction are paid more attention in the studies of adversarial trial discourse, whereas legal facts construction (especially the interpretation of legal facts) and control of power hierarchy are given greater weight in the studies of legal discourse in China’s inquisitorial trial system through the overarching power and supervising role of judges and prosecutors in court. This also leads us to the ultimate question of whether the ideological structure of the institution will finally influence the outcomes in terms of greater justice for the powerless as evident in the conduct and results of the trial.

As mentioned in 2.2.2, relevant studies in China are not as comprehensive and systematic as those in the west, although they generally follow similar research paradigms. It is clear that the relevance of the relationship between linguistic control and litigants’ goals and power status in
trial under the institutional power hierarchy has not been sufficiently investigated. The legal meaning of discoursal interactions has been either too narrowly conceived to generate substantive implications on procedural justice in court or adjudicative interpretations of judges, or too generally defined to formulate reliable and repeatable illustrations of the relations between language pattern and legal significance. Additionally, the influence of ideology on litigant identity as it relates to procedures and justice outcomes has never been touched upon from a linguistic point of view. The relations between ideology and power interactions in court remain unknown. Therefore, my research seeks a way to link the process of linguistic control (mainly information control) with the process of legal fact construction and adjudication formation from a discourse analytical perspective, and also create a framework to explain in detail how ideology shapes discoursal power and control thus influencing adjudicative justice. Moreover, we can now acknowledge that most systematic research done on power and control in court was about the features in the adversarial legal systems. In such a system the power-negotiation in discourse can be fiercer than in China because in an adversarial criminal court, the defence counsel has equal status and right of speech with the prosecutor (also referred to as counsel). In an inquisitorial trial system, on the other hand, especially that of China, as a representative of government supervision public prosecutors hold a higher position than defence lawyers (Liao 2003, Lv, 2011, Du, 2009). This already causes an asymmetrical power status before any conflictive discoursal interactions are even conducted. Therefore, the social and institutional power asymmetry in China plays a more apparent role in the production and reproduction of court discourse. The 1996 and 2012 reforms on Criminal Procedure Law in China were also aimed at solving this long-term issue. This is why our analytical framework will take the analysis of litigant power and member resources (MR) as its focus and try to verify whether such reforms had any positive influences on those aspects or not.
The sessions, guiding principles, and institutional mechanisms of China’s courts are systematically different from those of other adversarial judicial systems. Chinese prosecutors have their unique strategies and devices to exert power and control over witnesses and defendants due to the special characteristic of China’s trial system. This is why wholesale adoption of an existing framework from the literature would not be suitable for the actualities in China’s court. An analysis of real life cases can overcome this gap to some extent.

As summarised in literature 2.3, the pragmatic approach to power and control provides us with detailed measurement and standards against which power relations in discourse can be evaluated and control identified. However, a pragmatic approach only covers what Fairclough defined as “power in discourse”, not “power behind discourse”. Sociological and sociolinguistic approaches filled this gap, pointing out tangible aspects for the analysis of power behind discourse. They failed, however, to link power in discourse with the power behind discourse via the technical aspects, losing explanatory power when it comes to interpretation of actual, situational contexts.

Language use, discourse, verbal interaction and communication belong to the micro level of the social order; power, dominance and inequality between social groups are typical terms that belong to a macro level of analysis (Van Djik, 1995). CDA has theoretically bridged the well-known gap between micro and macro approaches, which is of course a distinction that is a sociological construct in its own right. (Alexander et al., 1987; Knorr-Cetina & Cicourel, 1981). Fairclough’s three-dimension framework provides a clear and practical model that links the micro level (discourse practice) to the macro level (power and social practice). This three-dimensional framework also provides us with progressive, interpretative procedures to follow. Therefore, we are adopting CDA as the basis for the theoretical framework that shapes the analytical tool of this study.
Now we can summarise all the factors relating to power and control in court in past literature into two categories: power behind discourse and power in discourse, with the former providing social and institutional conditions for the latter.

<table>
<thead>
<tr>
<th>Conditions</th>
<th>Impact on discourse</th>
</tr>
</thead>
<tbody>
<tr>
<td>Goal orientation</td>
<td>interpret discourse differently (intentionally)</td>
</tr>
<tr>
<td>Power asymmetry</td>
<td>cause different mentalities in Court</td>
</tr>
<tr>
<td>Institutional roles</td>
<td>unequal rights to speech communication Rules</td>
</tr>
<tr>
<td>Professional expertise</td>
<td>interpret discourse differently due to different member resource (MR)</td>
</tr>
</tbody>
</table>

Table 4. Conditions determining power behind discourse

The social and institutional features of a court trial can be summarised as: goal orientation, power asymmetry, different institutional roles and different professional expertise. All those features of court trials shape the power behind discourse in courtroom. The power behind discourse impacts on the interpretations of discourse (either intentionally or due to different MR) as well as the ideologies and mentalities of participants in court as well as their respective rights to speech (Atkinson and Drew, 1979; Danet & Kermish, 1987; Walker, 1987; Stygall, 1994; Maley & Fahey, 1991; Conley & O’Barr, 1998; Cotterill, 2003; Gibbons, 2002, 2008; Aldridge & Luchjenbroers, 2007; Dettenwanger, 2011; Cavalieri, 2011).

Means of power exertion in court discourse are complicated and varied in terms of actual manifestation, but we can categorise them according to their functions in terms of controls they exert: to control power status, to control information and to control credibility (see following Table).

<table>
<thead>
<tr>
<th>Information control</th>
<th>Control content of information</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Control interpretation of information</td>
</tr>
</tbody>
</table>

<p>| Credibility control | Fact-related credibility |</p>
<table>
<thead>
<tr>
<th>Power status control</th>
<th>Person-related credibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>Declaration of power</td>
<td>Declaration of power (naked power control)</td>
</tr>
<tr>
<td>Implicated coercion</td>
<td>Implicated coercion</td>
</tr>
</tbody>
</table>

Table 5. Different kinds of control in the discourse interactions in court

These functions of control are actually related to the goals to be realised in courtroom interactions. Legal fact construction, narrative construction, adjudicative interpretation, and attitude formation (Heffer, 2005, 2013; Gibbons, 2003; Du, 2009, 2011) all influence the conviction of the crime and the measurement of penalty, the two main goals of court. On the other hand, the procedural justice of the legal trials and the authority of powerful litigants such as the judges and prosecutors are manifested in the control of speech right and ideological coercion over the powerless, which in turn affects the control of information. The relations between control and the goals and procedures of court trials are intricate in that social reality and discourse practice are mutually and reciprocally supportive to each other. The causality between discourse and society is a multi-dimensional process rather than a linear one. Relations between discourse control, legal significance and ideology can be investigated only by doing detailed and systematic analysis of both the construction of discourse, the progression of legal opinion formation and adjudication, as well as the production of institutional (legal) ideology.

Most of the studies on power and control in courtroom discourse, either in China or abroad, do not follow any particular theoretical framework, but are based on empirical analysis. While this is a very reliable and valid description of the reality, the studies are not systematic enough; therefore, this research chooses to follow the CDA framework which bridges the micro-level analysis with the macro-level analysis. Fairclough’s framework also follows an interpretative approach to meaning and context and provides explanatory methods to reflect on ideology. It can therefore serve as a framework upon which we can build another analytical framework for courtroom discourse analysis. However, although Fairclough used MR as the main interpretative procedures in combination with text as resources for analysis,
his definition of MR is too general and comprehensive. With such a broad definition, it is hard to determine which factors belong to the MR of litigants in our analysis. We need to specify the components of MR of litigants in the framework with the circumstances of fund-raising frauds in mind.
Chapter 3 Framework

In view of the problems identified and the approaches summarised in literature, this chapter continues to develop, on the basis of Fairclough’s CDA approach, an analytical framework that is competent enough for discerning ideological nuances and information controls within discourse interactions during fund-raising fraud trials. Such a framework shall be able to link the concepts of ideology, power, discourse, control, legal fact ascertainment and adjudication.

On the microscopic level, this framework shall be able to explain how linguistic strategies and features exert controls of information and narrative construction; on the macroscopic level, it shall be able to demonstrate the relations between power and control, power struggle and any ideological changes that may follow from the 1995 and 2012 reforms, as well as between the control of information and legal adjudication.

3.1 Philosophical positions

All research is conducted under the guidance of “a basic set of beliefs” (Guba, 1990, p. 17) held by researchers. Each methodology has a philosophical stance as the groundwork for its logic and criteria (Crotty, 1998, p. 66). For any researcher engaged in an inquiry, it is important to consider in advance which approach to take and why. Positivistic and phenomenological approaches to research are two large categories of research methodologies commonly used (Hale & Napier, 2013).

Positivistic approaches seek to identify, measure, and evaluate any phenomenon and to provide a rational explanation for it. This explanation will “attempt to establish causal links and relationships between different elements (or variables) of the subject and relate them to a particular theory or practice” (Hale & Napier, 2013, p. 14). It is believed by positivists that
“people respond to stimulus or forces, rules (norms) external to themselves and these can be discovered, identified and described using rational, systematic and deductive processes” (Hale & Napier, 2013, p. 14). Phenomenological approaches assume that people will often influence events and act in unpredictable ways that upset any constructed rules or identifiable norms. Such research methods are chosen to “try and describe, interpret and explain events from the perspectives of the people who are the subject of the research” (Hale & Napier, 2013, p. 14).

Since the aim of this research is to identify, measure, evaluate and interpret the language use in terms of power and control in court, and to explain the social and institutional structure behind language uses and power relations, it is therefore inevitable that both approaches are useful in developing a systematic view on this topic. A positivist approach shall be adopted in the primary stage of text description to identify all the relevant parameters in text and context that influence the power and control in court discourse and to attempt to ascertain their relations using a CDA framework. Quantitative methods are used at this stage. A phenomenological approach serves better for the interpretive stage and explanation stage of CDA. This allows the social and institutional context to be interpreted and explained with full consideration of the MR of court participants, especially the social orders that are ideologically lodged in their minds. Qualitative analyses are adopted in these stages.

3.2 Fairclough’s framework for CDA

Fairclough glossed over the discourse view of language as “language as a form of social practice” (2001: p. 18) and therefore proposed not to just analyse texts, but to analyse the relationship between text, process and their social conditions, both the immediate conditions of the situational context and the more remote conditions of institutional and social structures (2001: p. 21). Fairclough (2001) used discourse to refer to the whole process of social
interaction, which includes the processes of production and interpretation, with the text as a resource for the discourse analysis of these two processes. He divided the practice of CDA into three stages: description of text (deals with formal properties of the text), interpretation of the relationship between text and interaction, and explanation of the relationship between interaction and social context. For each stage, there is a set of procedures for CDA. We are going to introduce these procedures into our discourse analysis of fund-raising fraud case trials and formulate a detailed analytical framework to guide case studies afterwards.

### 3.2.1 Description of text

Fairclough described properties of the text according to three types of value that characterise the formal features: vocabulary, grammar and textual structures. Any given formal feature may simultaneously have two or three of the values. A formal feature may also have connective value, in connecting together parts of a text. The three types of value are: experiential value, which is related to contents and knowledge and beliefs; relational value, which is to do with relations and social relationships; and expressive value, which is to do with subjects and social identities (Fairclough, 2001, p. 93). These are connected with the three aspects of social practice (contents, relations, and subjects) constrained by power and with their associated structural effects on knowledge and belief, social relationships, and social identities. The following diagram is a clearer demonstration of the complexity Fairclough's division of values in relation to formal features.

<table>
<thead>
<tr>
<th>Dimensions of Meaning</th>
<th>Values of Features</th>
<th>Structural Effects</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contents</td>
<td>Experiential</td>
<td>Knowledge/belief</td>
</tr>
<tr>
<td>Relations</td>
<td>Relational</td>
<td>Social relations</td>
</tr>
<tr>
<td>Subjects</td>
<td>Expressive</td>
<td>Social identities</td>
</tr>
</tbody>
</table>

*Table 6. Formal features: experiential, relational and expressive values (Fairclough, 2001, p. 94)*
Analysis in the description stage is often thought of as identifying and “labelling” formal features. However, CDA also analyses the different values of words, grammatical features as well as the interactional conventions and large-scale structures at the text structural level. For these three features, Fairclough (2001, pp. 94-116) proposed ten questions to ask during text description, which can be adapted for the textual analysis of fund-raising frauds:

Question 1: What experiential values do words have?

Question 2: What relational values do words have?

Question 3: What expressive values do words have?

Question 4: What metaphors are used?

Question 5: What experiential value do grammatical features have?

Question 6: What relational values do grammatical features have?

Question 7: What expressive values do grammatical features have?

Question 8: How are simple sentences linked together?

Question 9: What interactional conventions are used?

Question 10: What large-scale structures does text have?

Under each question, there are even more detailed categories of linguistic features to examine as suggested by Fairclough. We will demonstrate via a table that his categories for linguistic features available for analysis can include most of the linguistic features that register power and control coercion, and ideological asymmetry. We can also summarise the functions or the purposes these features (most of which are covered in literature) may have or serve based on literature review. Although these features cannot be adopted directly for our research, such a
summary has a value of reference for our analysis. In the above literature, we have already summarised the functions of control devices into three categories. However, in fund-raising fraud, the ultimate purposes of litigants for using these devices are closely related to the mechanism of legal adjudication. In later sections, we will demonstrate how these ten questions can be reformulated in the context of fund-raising fraud trials to facilitate the interpretation of formal features in fund-raising trial discourse.

3.2.2 Stage of interpretation

The task in the interpretation stage is to analyse the relationship between text and social structure by examining the participants’ processes of text production and interpretation. The values of textual features only become real and socially operative when they are embedded in social interaction where texts are produced and interpreted against a background of common sense assumptions (part of MR) that incorporate ideologies (Fairclough, 2001, p. 117). Interpretations are generated through the dialectical interplay of formal features of text such as cues and MR as interpretive procedures (Fairclough, 2001). Fairclough suggested that social conditions (including social situation, social institution and society as a whole) shape the member resource (MR) which people internalise and draw upon when they produce and interpret texts, consequently, it is rational to suggest that MR shapes discourse. MR is defined by Fairclough (2001, p. 9) as representations in long-term memory, prototypes for a diverse collection of things, shapes of words, grammatical forms of sentence, typical structures of narrative, properties of types of object and person, and expected sequences of events in a particular situation type. Based on Fairclough’s definition, MR can be regarded as a frame of interpretation. MR are cognitive and ideological as they are shaped in people’s heads, and are also social because they are socially generated, transmitted and unequally distributed, depending on social relations and struggles (Fairclough, 2001a, p. 20).
According to his definition, we can say the power behind discourse belongs to the social conditions that shape MR for production of power in courtroom discourse, and the ideological power asymmetry belongs to MR for both the production and interpretation of power in courtroom discourse. In the construction of an analytical framework, the concept of MR will, therefore, be integrated into different stages of interpretation of the legal procedures so we may show how it influences and connects different stages.

Fairclough listed six major domains of interpretation that cover both the cognitive process of participants and the production/interpretation of context:

1. Surface of utterance: Interpreters converting sounds and marks into recognisable words, phrases and sentences drawing upon their MR-knowledge in phonology, grammar and vocabulary.
2. Meaning of utterance: Interpreters assigning meaning to the constituents of utterances and determine the Speech Act performed by drawing upon the semantic and pragmatic aspects of MR.
3. Local coherence: Interpreters establishing meaning connections between utterances, producing coherent interpretations of pairs and sequences of them, by drawing upon formal cohesion cues and implicit assumptions.
4. Text structure and "point": Interpreters working out the "global coherence" of the utterances-the text structure, matching the text with a schemata, or representation of characteristic patterns of organisation associated with different types of discourse. The "point" of a text is a summary interpretation that interpreters tend to store in the long-term memory, including experiential aspects and expressive aspects. (2001, pp. 119-121) Interpretations of text shall not be limited to vocabulary and grammar, but shall be viewed as speech acts. Therefore, the value of speech acts shall not be assigned simply on the basis of formal features, but also by taking into consideration the textual, situational and intertextual context and elements of MR (Fairclough, 2001). The above four domains deal with the interpretation of the four levels of text, and there are two domains related to the interpretation of context.
5. Situational Context: interpretation of situation context is based partly on external cues-features of the physical situation, properties of participant, what has previously been said, and partly on the basis of the representations of their MR that are related to societal and institutional social orders.
6. Intertextual Context: the basis for participants to have the assumption of how different discourses are connected in sequence.

Each domain of interpretation draws upon interpretations in the other domains as part of its "resource". The relationship between interpretations of context and interpretation of the
text is that interpreters quickly decide the nature of the context, and this decision can affect
the interpretation of text; but the interpretation of context is partly based upon and can
change in the course of the interpretation of text (Fairclough, 2001). Such quick decisions
about contexts are made instantly in social situations; but when we analyse it, multiple
cognitive steps emerge. The interpretation of the context can also rely on multiple
perspectives. Fairclough explored the stage of interpretation from the following
perspectives: situational context and discourse type; intertextual context and
presupposition; speech acts; frames, scripts and schemata; topic and point. Among those
aspects, the interpretation of situational context will be our primary analysis, because it
directly relates to the topics of court trials. Other perspectives will also be analysed during
the process.

Fairclough has described the processes of situational context interpretation and its relationship
with discourse types with the following figure:
He argued that physical situation and text do not themselves determine the situational context but serve as cues which are interpreted in conjunction and in light of social orders in the MR of the interpreters. He also pointed out the elements of MR of the interpreters, i.e. the social order in her mind that divides social space into institutional spaces, are particular to the discourse type, and are realised by “vocabulary, semantic relations, pragmatic conventions, as well as schemata, frames and scripts” (Fairclough, 2001, p. 125). A social order is a sort of typology of social situation types, and interpreting is a matter of assigning an actual situation to a particular type. The interpreter (participant or analyst) first determines the institutional setting on the basis of societal social order in her MR, which divides total social space into many institutional spaces. Then, the interpreter determines the situational setting on the basis of institutional social order chosen in the last stage.

There are four questions to ask in order to understand the situational context: 1. What is going on? 2. Who is involved? 3. What relationships are at issue? and 4. What is the role of language in what’s going on? These four dimensions of situation context determine the four dimensions of a discourse type: contents are determined by what is going on, subjects by who is involved, and relations by the relationships between subjects, and connections by the role of language in what is going on.

“What is going on” can be subdivided into “activity, topic and purpose”. Activity allows us to identify a situation in terms of one of a set of activity types, which have larger-scale textual structures and a particular social order in a particular institution. Activity type constrains the possible set of topics and is also associated with institutionally recognised purposes. For this project, the activity type of fund-raising fraud trials is an institutional discoursal interaction for the goal of judgement. The set of topics mainly include 12 questions to ascertain during
the adjudication of fund-raising frauds (refer to Figure 6 in 2.1.2). The purposes need to be analysed considering both the specific topic involved, the actual “point” of verbal interactions and the litigants’ goals.

“Who’s involved?” and “in what relations?” aim to specify the subject positions of participants in a certain situation. Activity type, institution and different situations are all determinants to the subject positions of litigants in court trials. The power relations and participant roles can both be analysed linguistically and through an institutional and social identity analysis. In fund-raising fraud trials, defendants and their representatives, the prosecutors, and the judges are all participants with complicated relations with each other that are determined by their own purposes and institutional identities. Their relations can be: collaboration, counteraction, and mediation as we have summarised in 2.1.1.

As discussed in 2.1, the institutional social orders of court discourse consist of its features including goal orientation, schematisation and asymmetrical power status. These features can be analysed by looking at the schemata, frames and scripts of courtroom discourse.

Schemata, frames, and scripts represent different types of mental representations of different aspects of the world, they can be differentiated and fitted with the contents-relation-subjects distinction (Fairclough, 2001). A schema is a representation of a particular type of activity, an equivalent to the “large scale textual structures” in the stage of text description. In court trials, these activities include presentation of legal facts, interpretation of legal facts, and discretion over measurement of penalty. Frame is a representation of whatever is used as a topic or “subject matter”. Frames can represent types of person or other animate beings, or processes, or abstract concepts, complex processes or series of events involving combinations of such entities (Fairclough, 2001). In fund-raising fraud cases, these subject matters usually include the 12 topics we summarised in 2.1.2. Scripts represent the subjects who are involved in these
activities and their relationships, and how a specific class of subjects behaves towards each other (Fairclough, 2001). In courtroom discourse, scripts represent the institutional roles of litigants, their participant roles, their respective power status and their discursive interactions with each other.

The following figure tries to specify the elements constituting schemata, frames, and scripts in fund-raising fraud trials. Purposes, which are included in schemata are not included in this figure because they must be analysed in detail with case studies.
Table 7. Schemata, frames and scripts in discourse of fund-raising frauds, adapted and expanded from Fairclough (2001, p. 132)

<table>
<thead>
<tr>
<th>Schemata</th>
<th>Contents: activity</th>
<th>Legal facts presentation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Legal facts interpretation</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Discretion over penalty</td>
</tr>
<tr>
<td>Frame</td>
<td>Contents: topic</td>
<td>12 topics for adjudication</td>
</tr>
<tr>
<td>Script</td>
<td>Subjects/relations</td>
<td>subject positions (participant roles) and power status</td>
</tr>
</tbody>
</table>

In the actual analysis, we would focus on the meaning of utterance the speech acts, the "point", and situational context - because all of those are closely related to the generation and development of information and the understanding of purposes of litigants. A general reading of the text and a basic understanding of case trial procedures would enable us to arrive at a “mental typification” (Fairclough, 2001) of the structure of the discourse. The analysis of the situational context would provide an understanding of the significance of the information control in the conviction process.

3.2.3 Stage of explanation

The objective of the stage of explanation is to portray a discourse as part of a social process, or as a social practice, showing how it is determined by social structure and what reproductive effects discourses can cumulatively have on those structures (Fairclough, 2001, p. 135). Those social determinations and effects are "mediated" by MR: that is, social structures shape MR, which in turn shapes discourses; and discourses sustain or change MR, which in turn sustain or change structures (Fairclough, 2001).
The above figure demonstrates the mechanism of explanation. Fairclough argued that any discourse will have determinants and effects at all three levels: societal, institutional and situational levels. In terms of effects, a discourse may reproduce its own social determinants and the MR which it draws upon with virtually no change, or it may to a greater or lesser degree contribute to their transformation. The producer and the interpreter can be in a normative or a creative relation to his/her MR. Broadly speaking, the choice between these contrasting participant relations to MR depends on the situation. Normative relations to MR are associated with situations which are unproblematic for participants, whereas creative relations to MR are characteristic of situations which are problematic (Fairclough, 2001, p. 137). By analysing whether the litigants are in normative or creative relation to MR in our research, we can better understand if s/he is losing information control or obtaining information control. Creative situations constitute moments of crisis for participants and they typically arise when social struggle becomes overt (Fairclough, 2001, p. 137).

MR in the stage of explanation is seen specifically as ideological. Ideology is defined as “common-sense” assumptions which are implicit in the conventions according to which people interact linguistically, and of which people are generally not consciously aware. These
include assumptions about culture, social relationships and social identities which are incorporated in MR. They are seen as determined by particular power relations in the society or institution. During discoursal interactions, these assumptions will sustain or change the social power relations; they are therefore regarded as ideologically meaningful (Fairclough, 2001). We can say that ideologies are closely linked to power, and the nature of ideological assumptions embedded in particular conventions actually depends on the power relations which underlie the conventions.

In a courtroom discourse, as we have summarised in the last section, the difference between MRs of different litigants is embodied in three aspects of the litigants’ power:

1. Right to speech (role and rule governed-relational-relations)

2. Professional expertise (legal knowledge-experiential-content)

3. Ideological asymmetry (different participant role-self-positioning)

The asymmetrical MR of litigants shape their ideologies and determine how they behave in the discoursal interactions. As a main part of MR, the institutional power status and legal backgrounds of litigants will be included as a very important part during the explanation and interpretation stages.

### 3.3 Construction of analytical framework

This brief introduction of Fairclough’s Framework demonstrates how useful it is in terms of interpreting and explaining the relations between power and control, power and discourse interactions, as well as discourse and ideology. It still has to be integrated with courtroom discourse, however, especially with discourse in fund-raising fraud trials. This integration has to be done by further analysis of the critical circumstances in the adjudication of fund-raising
frauds (summarised in chapter one). We have briefly introduced the feature of power and control in court, and the purposes of the court and litigants so that we understood why it is appropriate to use CDA. Now we are going to dig a bit deeper and talk about exactly how legal fact construction, adjudication and procedural justice are constructed and can be analysed through discoursal interactions.

3.3.1 Legal fact construction and adjudication via discoursal interactions

In order to relate Fairclough’s framework to the actual procedures and goals in court trials, we hereby explain the steps leading to the accomplishment of the main goal in court: to make judgement and adjudication. The main goal of adjudication is to legally interpret objective facts based on evidence (Li & Han, 2002) and determine, amid the “clamour of rival claims” (Barden & Murphy, 2011), what is just. The decision-making process is carried out within three consecutive steps: hearing of the evidence; reflection on and interpretation of the evidence in the light of legislation, conventions, common sense as well as nature of the cases; and, finally, coming to a verdict within the limits of human fallibility (Barden & Murphy, 2011). Objective facts are constructed naturally in the evidences during the hearing, whereas legal facts are constructed via the interpretation of the evidence by judges. During the trial process, aside from the interpretation of objective facts by the judges, each litigant expresses perceptions and opinions of the facts and seeks to reach inter-subjective, mutual understanding and interpretations in order to co-construct the legal facts (Du, 2010; Li & Han, 2002). Institutional context and rules are the basis for such inter-subjective dialogue and commentary. The consensus established is the source for the reasonability of legal facts (Li & Han, 2002).

As we discussed in 2.1.1, truth finding, the main goal of court trials in China, is achieved during the construction of legal facts. In fund-raising fraud trials, the ascertainment of legal
facts can be controversial due to case-complexity and different interpretations of the legal criteria for conviction and measurement of penalty for this crime (Zhou, Dong, 2010). Different participants present and construct the legal facts relative to their own purposes and advocate their own interpretations (Du, 2010; Heffer, 2010).

As a particular kind of institutional facts, legal facts are constructed by directive speech acts via language whose symbolic nature is fundamental in their construction (Searle, 1999). The symbolic power in courtroom discourse is derived from the goal orientations of litigants towards objective facts (Li & Han, 2002). Those goals are predominantly understood and conveyed through linguistic expressions. In each stage of the trial proceedings, the subjects and contents of facts perceived are transformed into linguistic forms in accordance with legal procedures. The source of knowledge is transferred from the experience and perception of objective facts to the understanding and interpretation of the discourse that describes and represents the content and meaning of them (Barden & Murphy, 2011; Li & Han, 2002).

Similarly, in the text description stage of CDA, the experiential values of vocabulary, grammar and structure all represent and provide interpretive resources for us in the interpretation stage to understand the situational and intertextual contexts. Therefore, the adjudicators’ evaluation of legal facts is based on the presentation and interpretation of objective facts, as presented and constructed by different litigants via discoursal interactions.

Member resources (MR) interact with what is in the text to generate interpretation. The MR of judges can be ideological due to their power status and social identity. As Fairclough rightly pointed out, interpreters of discourse usually, “start with assumptions about the context which influence the way in which linguistic features of a text are themselves processed”, so that the values which particular features of a text have, “depend on the interpreter’s typification of the situational context” (Fairclough, 2001, p. 126). The process of
adjudication is also interpretative because laws have to be engaged based on the MR of judges and other legal professionals. The background or context of adjudication is concerned with the particular society and situations, as well as the nature and circumstances of the cases (Barden & Murphy, 2011; Chang, 2013; Du, 2010). Due to the divergence between particular situations and the general cases anticipated and envisaged in the rules, the court has to provide an independent and justified interpretation of the applicability of certain rules to the particular situations during the adjudication. ‘What is just, natural, universal and intrinsic is not discovered and brought about simply by the application of a formulated rule, but must be discovered by scrutinising the applicability of a rule to a certain situation’ (Barden & Murphy, 2011). The discovery of what is just in a particular situation requires an understanding of that situation and the effects of it, which in court trials are realised via the interpretation and explanation of situational and institutional contexts based on text as resource and MR as interpretive procedures. The interpretation of particular situations in fund-raising fraud cases will be included in section 3.3.2, guided by the interpretive process proposed by Fairclough.

When the legal facts are settled, the court asks what the relevant facts are and what is due to each litigant (Barden & Murphy, 2011), namely the relationship between litigants and the liabilities of each party. This process of adjudicative deliberation is also closely related to court procedures. The term “procedural justice” is used to describe the justice inherent in a court’s procedures, which include adequate evidence and impartiality (Barden & Murphy, 2011). Procedural justice in China has not been of major importance due to the court’s focus on substantive justice, the free evaluation principle of judges, and the influence of state policy in terms of the limited recognition of individual rights (Capowski, 2012). The implementation of adequate evidence and impartiality for procedural justice in China’s court trials can be examined through an analysis of discourse rhetoric and turn-takings. Since a direct-speech
principle has been advocated for through the reform of CPL in China (as discussed in the rationale) the evidentiality of courtroom discourse, which influences the credibility of speech evidence, can be a parameter to gauge the sufficiency of evidence in certain aspects (J. Wang, 2015). Evidentiality can indicate the nature of evidence for a given statement; that is, whether evidence exists for the statement and, if so, what kind. An evidential (also verificational or validational) element is the particular grammatical element (affix, clitic or particle) that indicates evidentiality. Examining the turn-takings of prosecution and defence can help reflect the impartiality of judges towards both parties. This is because, in an impartial court judges usually give equal engagement to both parties, despite their asymmetrical power status. If this equal engagement is not given to both parties, or the turn-takings of the powerless are interrupted, there might be side-takings by the judge during trials.

3.3.2 Analytical frameworks

Now that we understand how a CDA framework operates for an analysis of power and ideology, and how discourse interactions shape and influence the process of legal fact construction and adjudication, we can move on. We need to integrate the CDA framework with courtroom discourse analysis and to develop analytical frameworks for fund-raising frauds. There are three individual frameworks, with each explaining a certain perspective of the discourse, and one integrated framework, which tries to put MR in a pivotal position. The three individual frameworks analyse the relations between MR and discourse interactions, the relations between MR and controls in court, and the relations between MR and adjudication. The final integrated framework aims to analyse the whole process of ideological transformation and reproduction via MR in court. In all these four analytical frameworks, textual features works as fundamental resources for the interpretation to help the analysis of contexts with MR as another kind of interpretative procedures.
This figure depicts the reciprocal relationship between member resources (MR) and discourse interactions (DI) in court. This analytical framework can guide understanding about how the MR of different litigants in court play a central role in the interpretative procedures during courtroom interactions.

The diagram shows that MR is shaped by three subcategories, namely: “social situation or immediate social environment”, “social institution”, and “the society” (Box A and solid arrow). This shaping mechanism impacts on power relations that are potentially masked by discourse (Box B, above MR). It also impacts on schemata (which will be engaged shortly).

In court, power behind discourse is partially determined by right to speech, legal expertise and ideological asymmetry. These all provide or restrict the felicity conditions for different litigants during the discoursal interactions used for the realisation of their respective purposes.
in court trials. All these different MR also influence the interpretative procedures carried out by different litigants.

These interpretative procedures have two stages of interpretation: the interpretation of the utterances in terms of meaning and information and the interpretation of legal facts in terms of their adjudicative significance. The first interpretative stage is participated in by all litigants in court, including the laymen in court: defendants and witnesses. In the first interpretation stage, MR of litigants would serve as interpretative resources and cues for interpretation. The text, with their special features would also be used as resources for interpretation. Six levels of interpretation process were listed by Fairclough (2001a, p.119): surface of utterance, meaning of utterance, local coherence, text structure and “point”, intertextual context, and situational context. In courtroom discourse, text means the utterances made in sequence by each litigant in their interactions. Intertextual context in court refers to the all the discoursal interactions that happened before the immediate utterance was made. For instance, the intertextual context of a defendant’s utterance in the debate stage may include the testimonies of other witnesses and the accusations by the prosecution. The historical series can be taken as a common ground or presuppositions for participants. However, the more powerful participants may impose their presuppositions upon others. Situational context is related to activity, topic, participants, and their subject positions. The connective function of language can also be analysed in accordance with the situation context. The interactions between the levels of text and context and the steps for interpretation of situational contexts have been discussed in the last section as part of Fairclough’s framework. However, a detailed summary of the characters of courtroom discourse and fund-raising frauds in particular, has to be integrated into this part of the framework to provide us with concrete methods and guidelines for the case analyses. We will introduce the specific steps in the methodology part.
The second stage of interpretative interactions, with professional demands for the MR of participants, mainly unfolds between professionals who have equally prescribed institutional rights to interpret law. However, in reality, with the judges being the ultimate decision makers, the discretion of the law is based on their MR. In fund-raising fraud, there are usually twelve circumstances of crime to be ascertained in order to convict or acquit. Those circumstances of crime constitute the main topics of discourse sections in different situations, and they have to be made clear during courtroom investigation and debate stages via discourse interactions.

Discoursal interactions require both the producers and interpreters of the discourse to be equipped with what Fairclough calls, “reciprocal assumptions” (2001, P. 8) for everyone to arrive at similar interpretations of the context. However, different litigants may “arrive at different interpretations of situational context” when they have (as they do) different MR (Fairclough, 2001a, p.134). It is widely believed (Janet, 2011; Berk-Seligson, 2001) that the powerful litigants in court tend to maintain control and power status in court as institutionally and situationally prescribed. A participant with power (Box E sequence) may attempt to impose her own interpretation of context and interpretative procedure upon less powerful participants (Fairclough, 2001a, p.134). In the courtrooms in China, some judges and public prosecutors would impose upon defendants their interpretations of the context and the adjudicative significance of legal facts (Liao,2003; Lv, 2011), by means of strategic discoursal interactions (Box SDI), such as reformulation, presupposition. Different litigants in court would presumably interact with each other in an attempt to exert or counteract controls in order to realise their respective goals during trials through their interpretive power. The degree to which this can be achieved in line with their objectives is symptomatic of movement or shift in the power relations. Therefore, the change of power relations can be measured through how successfully each litigant realises their purposes using information controls. Those controls
can be categorised according to their functions, and the relationship between discoursal interactions and the controls they perform analysed in accordance with the framework (Figure 6). The strategic use of discoursal skills and creative use of their MR can be critical to their success.

MR includes language and non-language components, such as phonology, grammar, vocabulary, semantics, pragmatics, schemata, frame and script. Linguistic components will not be elaborated upon in this section. The social and ideological components mainly include schemata, frame and script. They are three significant aspects of MR defined by Fairclough and they all influence the interpretation of utterances. They represent different types of mental representations of different aspects of the world and can be differentiated and fitted with the contents-relation-subjects distinction (Fairclough, 2001, p. 139).

A schema is a representation of a particular type of activity in terms of predictable elements in a predictable sequence, an equivalent to the “large scale textual structures” in the stage of text description (Fairclough, 2001, p. 139). Based on their individual schemata, the discourse participants form their assumptions about the discourse type and the rules. In court trials, the schemata refer to the common-sensical representations by all litigants of the purposes of court trial as a whole. The main activities involved in a court trial discourse include presentation of legal facts, interpretation of legal facts, and discretion over measurement of penalty. Although different litigants may have varied purposes in court and struggle for them, the court expects that all litigants cooperate to serve the primary goals of court: to make proper judgement (adjudication) and to give proper penalty (sentencing).

Frame is a representation of whatever can figure as a topic or “subject matter”. Frames can represent types of person or other animate beings, or processes, or abstract concepts, complex processes or series of events involving combinations of such entities (Fairclough, 2001).
fund-raising fraud cases, these subject matters mainly include the 12 topics we summarised at the end of 2.1.2. In our case studies, each clip of the video recordings covers around 2-3 topics concerned with the adjudication of the case. These topics are mainly to confirm the circumstances and nature of the crime. A careful reading of the topic would help understand the scripts and purposes of litigants. Sometimes, the “subject matter” of the clip is not evident only by analysing the content of discourse, but rather has to be analysed in view of the relations between defendants, and their respective responsibility in the crime.

Scripts represent the subjects who are involved in these activities and their relationships, how specific classes of subjects behave towards each other (Fairclough, 2001). In courtroom discourse, scripts represent the institutional roles of litigants, their participant roles, their respective power status and their interactive strategy with each other. In fund-raising fraud cases, scripts usually have something to do with each defendant’s position and responsibility in the accused company. Schemata of litigants, frames and scripts in court can all be specified as: goals of court, topics concerned in each stage of trials, and litigant relations in terms of power and agendas. These components of MR can be analysed by a background check and summary of the case before the analysis of the text.

The discoursal interactions, in turn, sustain or transform the MR of litigants, thereby generating effects on the social and institutional structures (dotted arrows) that recursively shape MR. The sustainment or transformation of the MR of defendants depends on whether the producer is in a normative or creative relation to the MR of litigants (Fairclough, 2001, p.137). The powerful (Box E) would usually maintain a normative relation to their MR, while the powerless (Box F) attempt to change or transform the power status by counteracting the controls exerted by the powerful. The discoursal interactions of the less powerful would
usually be creative to their MR (Fairclough 2001, p.137). *This is precisely the belief that this project wishes to investigate and test with the case study of court room discourse.*

In the next section, we are going to look at what role MR plays for different litigants during their exertion of controls during the conflictive interactions.

![Figure 5. Discourse interactions and control in discourse](image)

This figure demonstrates how, based on their MR, different litigants use discoursal interactions to exert controls over other litigants. It also shows how the MR of litigants affects the interpretation of discourse so that their controls can be perceived as they intended and be realised for their respective goals in court.
In this analytical framework, the different features and strategies identified with different litigants’ language uses in discoursal interactions (consciously or subconsciously) are influenced and confined by their MR. In court trials, such MR are mainly manifested through power behind discourse, which includes right to speech in accordance with trial procedures, relevant legal expertise of professional and lay litigants, and the self-awareness of one’s identity, power status and institutional role in court.

Line 1 represents the production stage of discourse interactions in court via the influence of MR: this has been discussed broadly in Figure 5. Because the MR of litigants determines the language styles/register they use, as well as influences interactive strategies, the specific aspects of MR of litigants can be analysed through their language usage as well as the more practical background check represented in Figure 5 through the schemata and subject position. During the case study, a preliminary evaluation of the litigants’ MR can provide a basis for the prediction of assumptions they hold during the interpretation stage of discourse. In fundraising fraud, the MR of defendants can be related to their education, their position in the company and their responsibility for the crime as either the mastermind or accomplice.

Line 2 and its extension represents the discourse interactions during which different kinds of controls are exerted, perceived and interpreted by courtroom litigants. As summarised in section 2.1, the institutional features of courtroom discourse are mainly goal-orientation and negotiation for power despite the asymmetrical power status. The goals of litigants in court trials are primarily realised by exerting three kinds of controls: control of information, including the content and interpretation of information; control of credibility, including fact-related and person-related credibility; and control of the power status of litigants, through either naked power or implied coercion.
The connotation of control of information here embodies the process of creating legal facts from objective facts or events. As argued by Du (2010, p. 6), legal facts are constructed by allowing objective facts into legal evidence. Objective facts, i.e. the components that constitute the narratives of the case, are linguistically presented by different litigants and then abstracted by the judges to create legal facts via discussion and interpretation of the objective facts with other professional or laymen participants. Control can also be reflected through the attempt of the powerful to limit the contributions and interpretations of the powerless to this process of legal fact construction. The judges and legal professionals are the main participants to control this legal fact construction process, although the less powerful litigants can also influence the process via narrative construction and deconstruction or arguments made based upon their common sense as laymen. Each litigant tries to manipulate the development and interpretation of a narrative based on their MR and the mutually presented information of the case. The control of credibility is usually used to influence the attitude of judges and juries (in adversarial courts) towards the narratives created by both parties. Linguistic tactics are used either to attack the credibility of the narratives and evidence or the credibility of the litigants (usually defendants and witnesses). Such attacks upon the credibility of narratives and litigants are mostly realised through face-threatening speech acts.

Line 3 represents the process during which the controls in discourse can exert effects upon the MR of litigants, and thereby influence their self-identity in court, potentially shifting positions of litigants, usually conforming the powerless to the powerful. Such ideological influences are mostly generated via controls in discourse, which defeat the litigants’ creative use of their MR.

Lines 4, 5 and 6 represent the effects that controls in discourse have on different aspects of litigants’ MR. Control of information, in terms of both content and interpretation, for instance,
would influence the topics covered during the construction of legal facts. Control of credibility might realise the goals of strengthening or weakening the narrative by different parties. On the other hand, the controls exerted upon power status would alter the litigants’ relations and regulate the speech rights of each litigant. The self-identity and ideological assumptions about power status of the institution will also be influenced implicitly through those controls. The details of such (ideological) influences can be analysed with examples from case studies with the guidance of framework Figures 6 and 7.
This figure depicts the second interpretation stage of discoursal controls during which legal facts and attitudes towards defendants are formed. *Interpretation, stage 2 is different from the interpretation of text by discourse participants defined by Fairclough.* It is the stage after the interpretation of text within context, a stage during which participants agree and disagree upon the legal significance of an utterance based upon their respective MR and purposes.

Interpretation Stage 2 in our research refers to the significance of the information allowed into and forbidden from a discourse to the conviction and measurement of penalty as perceived and argued by different litigants. During this process, the different perspectives of litigants integrate with the opinion of the judge to formulate the final interpretation of the legal facts (Du, 2010; Kong, 2002). Such interpretation is neither an independent judgement of the adjudicator nor an exact reconstruction of the objective facts, because the “preconception” of the interpreter (the judge/s him/herself) has been allowed into the interpretation process (Li & Han, 2002). According to the literature review, we know generally that the control of the content and interpretation of information can directly impact the legal fact construction, the narrative construction and destruction, as well as the adjudicative interpretation of legal facts. Legal fact construction is more concerned with the establishment of facts as legally meaningful (Du, 2010; Li & Han, 2002), while narrative construction/destruction is more concerned with the coherence and the credibility of the narration (Gibbons, 2003, 2014; Heffer, 2010).

The manipulation of fact-related and person-related credibility respectively influences legal fact construction, narrative construction and destruction, and the judge’s attitude (Gibbons, 2003; Heffer, 2005, 2010). The credibility of the narration and the witness influence the
formation of judges’ attitudes towards the measurement of penalty and determination of the subjective intention of the defendants. The attitude of the judge/s is based both on his/her inspection of the coherence of the narration and of the manner of the speaker as powerful or powerless speech styles. The speakers with powerful style are usually more trusted than those with powerless styles. The style of utterances can be registered through an inspection of discourse markers.

The control of power status directly impacts the speech right of litigants and exerts ideological coercion, and indirectly impacts the narrative construction and attitude formation (Cotterill, 2011; Gibbons, 2002; Heffer, 2005). As a conflictive discourse type, courtroom discoursal interactions involve different interpretations of such influences. The inferential frameworks of different litigants are varied, despite the fixed institutional framework for legal fact ascertainment and conviction. The mechanism of the exertion of the legal impacts through discoursal controls is barely understood. This is especially so in fund-raising fraud cases. Legal fact construction and interpretation can be very complicated due to an intrinsic complexity and the sensitive political authoritarian influence on the legal system (Will, 2013).

The intrinsic complexity of the crime rests in the necessity for distinguishing fund-raising fraud from illegal fund-raising or simple mismanagement of business. Circumstances of the crime as well as the liability and intent of defendants all need to be adjudicated via a clear interpretation of the legal facts. This is done by examining the behaviours and utterances of the defendants through detailed discourse interactions and by evaluating the different narratives constructed by the prosecution and the defence.

This enables better recognition that, although the power for interpretation of laws and provisions lies mostly in the hands of judges, the prosecution and defendants also struggle to
uphold their opinions and rights through their interpretations of the laws and formal establishment of the facts. Therefore, when creative situations occur for the powerless participants in court, their interpretations differ from the normative, institutional interpretations espoused by the powerful parties. The details of these creative moments have to be analysed within actual situations in real cases of alleged criminality. Hence, for instance, the analysis of values of utterances/texts and interpretation of them within situational contexts will be elaborated on for fund-raising frauds to be listed in section 3.3. Meanwhile, the MR of litigants in court are summarised in the following table prior to discussion of their influences on the interpretation of legal facts and laws in the next section.

<table>
<thead>
<tr>
<th>MR of litigants</th>
<th>Judges</th>
<th>Public Prosecutors</th>
<th>Defence Counsels</th>
<th>Defendants</th>
</tr>
</thead>
<tbody>
<tr>
<td>Goals</td>
<td>To adjudicate the case</td>
<td>To convict the accused</td>
<td>To acquit or plea for the accused</td>
<td>To acquit or plea for him/herself</td>
</tr>
<tr>
<td>Legal Expertise</td>
<td>Professional</td>
<td>Professional</td>
<td>Professional</td>
<td>Laymen</td>
</tr>
<tr>
<td>Self- Identity</td>
<td>Moderator, Justice</td>
<td>National right representative</td>
<td>Legal worker, human-right representative</td>
<td>Guilty, to be tried, inferior</td>
</tr>
<tr>
<td>Schemata Activity type</td>
<td>Interpret narrative</td>
<td>De/construct supervisor and interpret narrative</td>
<td>De/construct and interpret narrative</td>
<td>Testify to de/construct narrative</td>
</tr>
<tr>
<td>Topics concerned</td>
<td>12 main topics pertinent to 4 aspects of elements and circumstances of crime (to be listed in a separate table)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Litigant relations</td>
<td>Interactive rules for judges, prosecutors, defence counsels, and defendants in court in accordance with criminal procedural law- related with procedural justice</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table 8. Aspects of MR of litigants in fund-raising frauds

This table summarises the most important factors influencing the discoursal interactions between litigants in court and their power status, goals, schemata, frame and subject positions/litigant relations. All these features are manifested in their varied MR during
discoursal interactions via utterances/text. The prediction of the MR of litigants by an analyst can be achieved by investigating these different aspects of the litigants via the indictment and a brief viewing of the recording. In this way, it becomes more probable that shifts in courtroom power relations, contingent on ideological shifts through policies relating to right of speech, for example, can become benchmarked and useful in future studies. This is the purpose of the analysis section of this project. Before proceeding, however, it is now possible to diagrammatically represent an integrated framework of courtroom discoursal interactions that positions MR as pivotal to the process of better understanding, or at least more clearly measuring, shifts in court room power relations.

Figure 7. Integrated framework of courtroom discoursal interactions with MR as
Figure 7 represents an attempt to integrate the complexities of the Chinese court system as they relate to the capacity of a system to sustain or transform itself when ideological implications need to be considered.

This figure contains three kinds of boxes: green stand for the interpretation processes, with the frame of interpretation shaded in dots to represent the impliedness. Blue boxes represent major components and factors influencing these interpretation processes. The red boxes represent how the different factors and components interact with each other. Double arrows mean the two factors interact with each other while single arrows represent a one-directional effect from one factor to the other. The boxes shaded in green have already been discussed and those in red remain to be explained and understood in terms of providing an analytical framework for engaging with alterations in, or the reproduction of, power and ideology in courtroom discourse.

This figure illustrates that ideology not only shapes the MR of litigants, but also gets reproduced or transformed via the evolution (or mutation) of MR through time with the frame of interpretation as an intermediary. The relationship between multiple social formations of MR and ideology are not as overt as the link between ideology and power. The ideology and power status of litigants are mutually interactive because both of them are socially constructed and they both tend to serve for the reproduction of each other. MR and ideology, however, have a more complicated relation.

Verschueren (2012, p.7) argued that, compared to “contents of thinking”, such as ideas, beliefs and opinions, ideology is more stable and underlying and less prone to experience and observation. This is what makes it covert rather than overt. He also argued that normative or
commonsensical frames of interpretation bear on aspects of social reality (2012, p.10) which is characterised by social relations. Social relations in the public sphere usually involve relations of power and dominance. Therefore, Thompson’s definition of ideology as “meaning in the service of power” (Thompson, 1990, p.23) and “the way in which meaning serves to establish and sustain relations of dominance” (Thompson, 1990, p.43) can be used as a very good interpretation of the relations between ideology and power. Therefore, MR and ideology are also linked through the struggle for power status as well as the change of frames of interpretation. Such struggles and changes of frames of interpretation happen during discoursal interactions.

Verschueren (2012, pp. 15-19) described ideology as commonsensical and functioning in such a normative way that its frame of interpretation is rarely questioned. This normativity is reinforced by the institutional goals, which are valued more than individual goals. Meaning of utterances, therefore, is often carried along implicitly rather than being formulated explicitly, so that implied coercion from the powerful institutional party is hard to detect. In other words, the frame of interpretation is implied and hard to be aware of because the powerless are not in a good position to question the presumed implications. Most manifestations of ideology are through language use and discourse, which may reflect, construct and/or maintain ideological patterns. Discursively reflected, constructed, and/or supported ideological meanings may serve the purposes of framing, validating, explaining or legitimating attitudes, states of affairs and actions in applicable domains (Verschueren, 2012, p. 19). These are the exact reasons why an in-depth case study of such power and control mechanism are necessary for critiquing institutional inequity.

In inquisitorial courts such as those in our study, the ideology of the court serves the purposes of legitimating the prosecution, and validating the sentencing. The main frames of
interpretation are constructed in accordance with laws to which judges, prosecutors and lawyers, as legal professionals, all have interpretation rights. In an institutional context such as the fund-raising fraud court trials, the frame of interpretation can be argued by different litigants for their respective purposes. For example, a certain act of using the funds raised to buy luxury cars may be considered squandering by the prosecutors, but viewed as normal expenditure for company image building by the fund-raisers. Despite this possibility of varied interpretations, defendants and witnesses, as laymen, do not have an equal right, or power, to advocate their own interpretations in court; they have to conform to that constructed by professionals or seek help from them. We will see in our analysis that the laymen will be refuted, criticised, educated or simply interrupted if they try to advocate their own opinions.

Van Dijk (1993) argued that the justification of inequality involves two complementary strategies: positive representation of the own group and the negative representation of the other’s group. Models of emphasising ‘our’ tolerance, help or sympathy, and others’ negative social or cultural differences, deviance or threats may be used to sustain existing attitudes or form new negative attitudes. Van Dijk (1993) also summarised the ways to make credible and persuasive linguistic moves that form attitude:

1. Argumentation: the negative evaluation follows from the ‘facts’.
2. Rhetorical figures: hyperbolic enhancement of ‘their’ negative actions and ‘our’ positive actions; euphemisms, denials, understatements of ‘our’ negative actions.
3. Lexical style: choice of words that imply negative (or positive) evaluations.
4. Story telling: telling above negative events as personally experienced; giving plausible details above negative features of the events.
5. Structural emphasis of ‘their’ negative actions, e.g. in headlines, leads, summaries, or other properties of text schemata, trans-activity structures of sentence syntax.
6. Quoting credible witnesses, sources or experts, e.g. in news reports.
These aspects of discourse that determine the attitude formation have been mostly covered in the literature review by categories such as meta-commentary, word choices, register and style, narrative construction, intertextuality and evidentiality.

The goals of court and purposes of litigants also shape the MR of different litigants. We have to distinguish purposes of the court from purposes of different litigants because such differences would force litigants to be in a creative relationship to their MR. Litigants cooperate in court to fulfil the main purposes of the court, while at the same time they struggle discursively to realise their own different agendas through information control. The general purposes of the court in each stage are a common-sensical part of the schemata of litigants in court. This means each litigant has the knowledge of the main task in court.

However, different litigants, despite their common-sensical assumption of the general task, have different understandings of the detailed purposes of each procedure. These different understandings are due to their different MR, especially their legal knowledge.

The interpretation process refers to the stage when the litigants, especially the judges in court, come to recognise the general goals of court and the goals of themselves based on the information about legal facts constructed during discoursal interactions. This process is argued as interpretative because, in the first place, laws are interpretative when they are applied to actual cases; and secondly, because the interpretation of facts and information can be different when viewed from different perspectives and with different MR and ideologies. Many social scientists who study juries have concluded that they interpret information not by considering and weighing each relevant piece of evidence in turn, but by constructing competing narratives and then deciding which story is more persuasive (Griffin, 2013, p.285). This interpretative process is when the credibility of the litigants and narratives by them are
evaluated in relation to their coherence, consistency, intertextuality, and powerful and powerless styles.
Chapter 4: Methodology

This section explains the methodology undertaken in the current research, including the research paradigm based on the theoretical framework, data collection and data analysis methods in order to find answers to the research questions of the study.

4.1 Research paradigm

Discourse is both shaped by, and helps to, shape the world as humans experience it. The analysis of discourse depends on our knowledge of “the cultures, the languages, the settings, the context and the participants and our theoretical stance” (Hale & Napier, 2013, p. 119).

Discourse analysis (DA) is the systematic analysis of language in use through the application of various methods, theories and approaches, including grammar analysis, theme and image analysis, description and explanation, tying language to politically, socially or culturally contentious issues (Gee & Handford, 2012, p. 5). CDA can be conducted either from a deductive top-down or an inductive bottom-up approach or a combined approach. The top-down approach needs the researcher to determine the structure or characteristics of the discourse before analysis; the bottom-up approach allows the data to tell the researcher what to analyse, without any preconceived ideas. The combined approach means the researcher can start with an inductive approach to identify patterns, particular tendencies and special features of a text first, using a single case study or using a corpus-based approach (Gee & Handford, 2012, p. 5).

The researcher used a combined approach to analyse the video collections and the corpus of transcripts because despite former research on the power structure and information control devices in court, the linguistic features and devices listed in such research can only provide
general categories that have been observed in other cases. Fund-raising fraud cases, as a special kind of criminal case, may involve the use of other linguistic devices to maintain a power structure and information control that is different from other cases due to its’ special circumstances and contexts of crime. Therefore, based on the summary of power and control devices from former research, we will try to link those features to the purposes in fundraising frauds so that it can guide our analysis in the case study. Admittedly, certain linguistic features and devices will be added to the list or removed from it depending on the frequency of their appearances.

4.3 Data description and data collection

The main source of data are two transcribed video recordings. These transcripts are made from published video recordings of two fund-raising fraud cases tried in courts of different levels in Guangzhou, Guangdong, China. The Intermediate People's Court of Guangzhou, being one of the first of several courts engaging in the national judicial transparency project in China, uploads daily selected open court trials onto its affiliated video live-broadcast website.12 These videos contain a combination of four camera visuals and soundtracks from four microphones recording respectively the judging panel, the prosecution, the defence counsels and the witnesses' stand. The videos are taken by hi-fi video recorders to provide clear recordings simultaneously of different litigants, with their gestures and some other paralingual features visible. Although body language is available in the recordings, it is hard to see clearly their countenance. The soundtracks are also good enough for transcribing, except when some witnesses speak in a low voice. All those video recordings give us

12 Website: http://gz.sifayun.com/?courtId=14/
"unadulterated" data of naturally happening discourse. Therefore, the quality of those videos and audios are good enough for the purpose of critical discourse analysis and observation.

Fund-raising fraud cases belong to financial fraud, which is characterised by the purpose of illegal possession, means of fraud used and relatively large amounts involved. During the courtroom debate session, both defence and prosecution lawyers would need information to construct their versions of the story, which are important to the conviction and measurement of penalty. Since fund-raising fraud cases usually involve multiple members of a fraud group, complicated structures of false companies, and facts about financial deception and false economic contracts, different litigants usually have to distinguish responsibility and argue for their own interest. Moreover, defendants who are charged with fund-raising frauds usually have a lot of justifications for their actions, and they usually have high social status due to their high positions in the company. Therefore, there are usually more confrontations between the defendants and the prosecutors and the struggles for power status are usually fiercer. As a result, the courtroom investigation and debate of fund-raising fraud cases usually provide ample examples of conflictive discoursal interactions and power and control manipulations for analysis.

There are altogether 23 pieces of videos recordings of 15 fund-raising cases. The two cases I chose for analysis consist most defendants, so that the relations between those defendants and their respective responsibility requires much discussion in court. The two fund-raising fraud cases are recorded in 200 video clips varying in length from two minutes up to ten minutes. Transcripts will only be made of the courtroom investigation and courtroom debate stages, with special focus on the latter where discoursal interactions and conflictive narratives of legal facts are more frequent. The beginning of the court trials, which comprise mostly procedural instructions, are omitted. Presumably, the average length of each case to be
transcribed would be two hours. For each minute of video recording, the transcription takes around ten minutes, and the analysis would take around an hour or even more. Therefore, transcribing four hours of video would take 40 hours of work, ten days of work for four hours per day, and the total analysis of the transcription would presumably take sixty days of work at four hours per day.

Among all the video transcripts, I will only do detailed analyses with the segments in which the litigants either had substantive discoursal interactions or made substantive statements that contains meaningful topics. All of these segments are over 2 minutes in length. Due to the different features of interactive and statement discourses, interactions and statements are two separated categories in my analyses. The different defendants speak for different lengths in court, and the first criterium for the choice of segment is that litigants in that segment have concrete and substantive interactions and the topics in this segment are clear. For an interactive segment, there has to be over four turn-takings. For a statement, there has to be at least two topics or opinions presented.

4.4 Data analysis

The transcripts will be analysed to illustrate the process of information flow and control among different participants in terms of information presentation and interpretation using critical discourse analysis (CDA) framework, which includes textual, discoursal and social aspects. The analysis begins with a general reading of the whole transcript and watching of the whole video of one case to form a basic understanding of the institutional context, the discourse type, the main topics as well as the possible MR of different litigants. An overall schema, frame and script can be described to serve as interpretive procedures for textual description, interpretation and explanation. Textual feature analysis is a basis for discoursal
analysis and further sociological analysis of the institutional structure and power relations. Social structure, judicial reforms and ideological changes and their influence upon the behaviour and MR of litigants in court will be analysed on the basis of textual analysis with further interpretation of the institutional, situational and social contexts. Therefore, textual feature analysis would happen in all three stages of the discoursal analysis, but the focus would not be on the features themselves, but on the context, discourse and ideology.

4.4.1 Description of textual features

The text description stage requires a detailed scan of the transcript for all the linguistic means and features that serve the purposes of power and control. This scan is not random or based on intuition. Rather we have a list of possible linguistic means and features to serve as guidance during our scan. This scanning process includes guided analysis and function-based analysis. Once the relevant features are found, we have to distinguish the experiential, expressive, relational and connective values of the formal features of the transcripts. Text description cannot be thoroughly carried out without the interpretation stage, especially interpretation of situational context, speech acts and topic and point.

We have mentioned that Fairclough (2001, pp. 94-116) proposed ten questions to ask for text description. We hereby adopt those analytical procedures for courtroom discourse and relate them to the linguistic means and features summarised from the literature, with the aim to construct a systematic guide for the textual analysis of fund-raising frauds. Table 9 is a guiding list that summarizes functions of specific text features in court in accordance with their values. It is a categorisation of the linguistic means and features for courtroom discourse analysis in literature in accordance with the values they have and the purposes they serve following Fairclough’s text description steps. Those means and features in italic characters are directly adopted from Fairclough’s analysis and not included in literature review for
courtroom discourse analysis. Other means and features written in normal characters are adopted from literature, and they are categorised according to the experiential, relational, expressive, or connective values they have, and therefore can be integrated into the text description framework of CDA.
<table>
<thead>
<tr>
<th>Aspects of formal features</th>
<th>Values</th>
<th>Specific features to analyse</th>
<th>Functions of these features</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vocabulary</td>
<td>Experiential</td>
<td>collocation</td>
<td>Construct/deconstruct the presentation and interpretation of facts</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(ideological) word choice</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>over-wording (synonyms)</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>rewording (antonyms)</td>
<td></td>
</tr>
<tr>
<td>Relational</td>
<td>address terms</td>
<td></td>
<td>Exert institutional power</td>
</tr>
<tr>
<td></td>
<td>euphemism</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>formal and informal words</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Expressive</td>
<td>commentary, appraisal words</td>
<td></td>
<td>Increase/decrease credibility or influence interpretation of information</td>
</tr>
<tr>
<td>Metaphors</td>
<td>presupposition</td>
<td></td>
<td>Argue about interpretation of information (nature of crime)</td>
</tr>
<tr>
<td></td>
<td>manipulating concepts</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Grammar</td>
<td>Experiential</td>
<td>agency (active, passive)</td>
<td>Argue about liability</td>
</tr>
<tr>
<td></td>
<td></td>
<td>nominalisation</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>question types</td>
<td>Control content of information</td>
</tr>
<tr>
<td></td>
<td>Relational</td>
<td>modes (directives,</td>
<td>Exert institutional power</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Aspects of formal features</td>
<td>Values</td>
<td>Specific features to analyse</td>
<td>Purposes of litigants in trials</td>
</tr>
<tr>
<td>----------------------------</td>
<td>--------</td>
<td>-----------------------------</td>
<td>-------------------------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td>declaratives, grammatical questions)</td>
<td>Power</td>
</tr>
<tr>
<td></td>
<td></td>
<td>relational modality</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td><em>pronouns</em></td>
<td>Distinguish liability and interest</td>
</tr>
<tr>
<td>Expressive</td>
<td></td>
<td>expressive modality</td>
<td>Increase/decrease credibility</td>
</tr>
<tr>
<td></td>
<td></td>
<td>powerful/less style</td>
<td>Increase/decrease credibility</td>
</tr>
<tr>
<td></td>
<td></td>
<td>interpersonal meta-discourse</td>
<td>Person related credibility or exert power</td>
</tr>
<tr>
<td>Connective</td>
<td></td>
<td>cohesion</td>
<td>Powerful/powerless style: credibility</td>
</tr>
<tr>
<td></td>
<td></td>
<td><em>information weight</em></td>
<td>Interpretation of information</td>
</tr>
<tr>
<td></td>
<td></td>
<td>intertextual meta-discourse</td>
<td>Credibility of information source</td>
</tr>
<tr>
<td>Textual Structure</td>
<td>Interaction</td>
<td>turn-taking</td>
<td>Control speech right and thereby control content of information and pinpoint responsibility</td>
</tr>
<tr>
<td></td>
<td></td>
<td>interruption</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>enforcing explicitness</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>reformulation</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>controlling topic</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>silence</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>coherence</td>
<td>Increase or decrease credibility</td>
</tr>
<tr>
<td>Large structure</td>
<td></td>
<td>intertextual context</td>
<td>Powerful/less style</td>
</tr>
</tbody>
</table>

Table 9. Guiding list of features to analyse and their predicted functions in courtroom (Prediction)

The categorisation of these means and features are mostly self-explanatory based on the definitions and explanations given by Fairclough (2001, pp. 94-115) about different aspects of analysis. However, there are several specific points to be explained in order to provide a
basis for our further analysis, including experiential value of vocabulary, metaphors, experiential value of grammar, and relational value of grammar. Additionally, in the actual case study analysis, those means and features might be revealed to bear different functions than those summarised in this table.

The analysis of the experiential value of vocabulary has to draw upon classification schemes which “constitutes a particular way of dividing up some aspect of reality which is built upon a particular ideological representation of that reality” (Fairclough, 2001, p. 96). Collocation gives an “ideologically specific and dominant scheme for classifying behaviour” (Fairclough, 2001, p. 95) and can therefore be used to reveal ideological biases. Ideologically contested words not only have experiential values, but also have expressive values that have effects on social identities.

Over-wording (the use of synonyms) shows preoccupation with some aspects of reality, and rewording (use of antonyms) means incompatibility, usually used to distinguish opinions and concepts in court discourse (Fairclough, 2001). Presumably, quantitative analyses of over-wording and rewording can help reveal the different attitudes of different litigants towards facts and how they present and construct the narrative. The frequency of over-wording mainly reflects a reiteration on a certain concept or point, while frequency of rewording registers the conflicts between litigants.

Formal features of the text can be analysed both quantitatively and qualitatively. Certain features, such as interruptions used by different litigants, turn-takings, discourse markers, question types used by different litigants, commentaries, directives, declaratives, formal/informal languages, collocations, time span to speech, reformulations and hedges shall be counted. Those features have to be interpreted and analysed qualitatively with the trial purposes, topic of the section, and the MR of litigants in mind, so that each speech act can be
analysed with consideration of the situational context. Features requiring qualitative analysis generally include: word choices, over-wording, rewording, speech acts, presuppositions, metaphors and similes, modality words, commentaries, interpersonal and textual meta-discourse, cohesive devices, coherence, use of pronouns, intertextuality, connectives, etc.

Therefore, the frequency of different features can be counted to demonstrate the characteristics of different stages of the court trials as well as to show the characteristics of different participants in court. For example, interruptions by the judges, the prosecution, the defence lawyers and the defendants and witnesses can be counted to demonstrate their different subjective positions and right to speech, and thereby reflect their power status. Information seeking questions and information checking questions can be counted to characterise the frame and the main purposes of courtroom investigation and courtroom debate stages.

### 4.4.2 Interpretation of the legal significance of textual features and discoursal strategies

Based on the result of the primary linguistic feature analysis, this research also tries to explain, from a discoursal level, the institutional and social functions of those information control devices in terms of their impact on the procedural justice, the adjudication of the cases as well as the power status and self-identity of participants. These analyses are done within the interpretation and explanation stages of the CDA framework. Since the values of different aspects of the textual features were analysed in situational contexts in the text description stage, the purposes and functions of them can be interpreted based on their values. Application of adjudicative rules will be an extra resource in the MR of the analyst to help interpret the legal significance of those features and strategies. In this stage, the topic of a section of video clip and the agendas of conflictive litigants is summarised, and the subject
positions of participants is analysed based on general understanding of the case trial and their identity and responsibility in the crime, which can be known from courtroom investigation sections. Also, the flow and control of information, especially those meaningful to the conviction or acquittal of the accused is also analysed linguistically, with the main focus on how topics are manipulated by the powerful and forced upon the powerless. Interruptions, turn-takings and evaluative comments are the main aspects for this analysis.

In the explanation stage, we mainly focus on the ideological status of different litigants as reflected in their discoursal interactions. Ideologically invested words, face threatening acts, address terms, as well as pronouns usage will all be analysed in the institutional context. MR will play an important role as a new resource for interpretation other than the textual features themselves. The schemata, frame and script of litigants observed from the recording and gathered from related documents will provide the context for interpretation stage. By so doing, the self-identity of litigants in court can be analysed and such self-identity understood to reflect their ideological status towards their rights and positions in court.

4.4.3 Features to be analysed

Fairclough argued that description is ultimately just as dependent on the analyst’s “interpretation” as the transcription of speech (2001, p. 28). What we regard as worth transcribing, and what we choose to emphasise in a description, are dependent on how we interpret a text. The interpretation of a text or discourse is primarily based on the institutional context and situational context; therefore, the analysis chooses specific features according to the genre of the discourse in different stages in the court. In the above section, we have listed a guiding prediction of the textual features and their probable functions in courtroom discourse, based on a combination of Fairclough’s CDA approach and courtroom discourse structure. In the actual analysis, the textual features that might be observed would vary in accordance with
the discourse types, because different functions of discourse would need different textual features to realize. Therefore, it is important to firstly explain the different genres of discourse in courtroom. After that, new sets of textual features separated from the above list will be proposed for each type of discourse so that the analysis would be more targeted and less redundant.

Discourse in these court trials can be categorised into two kinds according to the intensity of interaction between litigants: interactive discourse and statements. During the courtroom investigation stage, there are more discoursal interactions between different litigants; during the courtroom debate stage, different litigants state their own opinions respectively in sequence, although they are actually addressing each other. Therefore, the case study is of one representative segment from each stage of each trial to illustrate the linguistic features and their functions characterising different litigants in different stages. Those segments include the following:

<table>
<thead>
<tr>
<th>Interactive discourse (mostly in courtroom investigation stage)</th>
<th>Judges and Defendants</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Prosecutors and Defendants</td>
</tr>
<tr>
<td></td>
<td>Defence Counsels and Defendants</td>
</tr>
<tr>
<td>Narratives (statements of opinion) (mostly in courtroom debate stage)</td>
<td>Statement of the Prosecutors</td>
</tr>
<tr>
<td></td>
<td>Statement of the Defence Counsels</td>
</tr>
<tr>
<td></td>
<td>Statement of the Defendants</td>
</tr>
</tbody>
</table>

Table 10. Types of discourse analysed in different sessions of court proceedings

The two videos we use are not complete recordings of the two fund-raising fraud trials under study. For the first case, the Baojie Company fraud, it was the second hearing, consisting mainly of courtroom debates. For the second case, the Menghuan Company fraud trial, it was a complete recording of the trial. With each case, the analysis begins with a background
introduction, information about the different litigants and explanations of the different circumstances involved in each video segment.

For the more interactive discourse segments, the focus is mainly on analysing features that have interactional, relational and expressive values because according to Fairclough (2001, pp. 97-116), the relational values of words can be reflected in: the choice of address terms, the use of formal or informal words and pronouns; the expressive value of words reflected in the use of commentary and ideologically invested words. The relational values of grammatical features are reflected in the use of different modes (declaratives, imperatives, grammatical questions), relational modality and interpersonal meta-discourse. The interactional value of discourse is reflected in the turn-taking and control of topics. The following table is a summary of these different features to be included in the analysis of interactional segments.

<table>
<thead>
<tr>
<th>Vocabulary</th>
<th>Grammar</th>
<th>Interaction in Textual Structure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address terms</td>
<td>Modes</td>
<td>Turn-taking</td>
</tr>
<tr>
<td>In/formal words</td>
<td>Imperatives (directives)</td>
<td></td>
</tr>
<tr>
<td>Pronouns</td>
<td>Declaratives</td>
<td>Interruption</td>
</tr>
<tr>
<td>Commentary</td>
<td>Graphmatical questions</td>
<td></td>
</tr>
<tr>
<td>Words</td>
<td>Relational modality</td>
<td>Topic control</td>
</tr>
<tr>
<td>Ideologically invested words</td>
<td>Interpersonal meta-discourse</td>
<td>Reformulation</td>
</tr>
</tbody>
</table>

Table 11. Features to be analysed for interactional segments

Among the features listed in the above table, declaratives will not be analysed quantitatively because they only indicate the giver and receiver of the information, but do not ensure participant subject positions.
Interpersonal meta-discourse is a comprehensive term that includes many different features, such as hedges, boosters, self-mention and engagement markers which in interactional discourse build relationships between participants. Hedges and boosters are used to analyse the narrative features of litigants in court, so they would not be included in this analysis, whereas self-mention and engagement markers in this analysis can be replaced by the analysis of pronouns, which also reflect the relationships, especially the power status of participants.

For narratives that involve less interaction but more information and language styles, we focus on analysing the linguistic features that have experiential values, expressive values and connective values that reflect language styles. Those features to be analysed are summarised in the following table.

<table>
<thead>
<tr>
<th>Vocabulary</th>
<th>Grammar</th>
<th>Textual Structure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ideological words</td>
<td>Nominalisation</td>
<td>Coherence</td>
</tr>
<tr>
<td>Over-wording</td>
<td>Question types</td>
<td>Intertextual context</td>
</tr>
<tr>
<td>Rewording</td>
<td>Expressive modality</td>
<td></td>
</tr>
<tr>
<td>address terms</td>
<td></td>
<td></td>
</tr>
<tr>
<td>in/formal words</td>
<td>Connective</td>
<td>Cohesion (logic connector)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Intertextual meta-discourse</td>
</tr>
</tbody>
</table>

**Table 12. Features to be analysed for statement segments**

Now that we are clear about the methods for the case study, we can carry out our case analysis step by step.
Chapter 5 Comparative analysis of information control and power status between litigants by case studies

Following the analytical frameworks proposed in Chapter 3 and the methods explained in Chapter 4, I will illustrate with examples from two court trials as recorded in videos to show how different types of textual features listed in Table 9 of Chapter 4 serve to achieve the purposes of different participants: to maintain or fight against institutional power status and to manipulate the flow and interpretation of information in court proceedings. The case study also aims to test whether the ideological status of different litigants actually changed after the 1996 and 2012 reforms to CPL. The case study falls into four steps: briefing the case background, analysing the interactional discourse, analysing statements and qualitatively analysing the process of ideological transformation and reproduction. Before the actual analysis, I would have to explain some possible inconsistent terms used in the analysis than the sets of textual features proposed in Chapter 4. The features that have been analysed would mostly match the features listed in the table, they just have different terms for reference. For instance, "imperatives" are referred as "directives" in the actual analysis. Pronouns are analysed under the category of address terms. (that is why pronoun is listed under the category of “vocabulary” rather than “grammar”). Grammatical questions are actually equal to "question types" in the analysis. These inconsistencies are because Fairclough referred to these linguistic features by one set of terms and other scholars of courtroom discourse usually refer such features by a different set of terms. Therefore, i adopted the terms used by scholars of courtroom discourse for the following analysis.
5.1 The background of the two cases

5.1.1 Background of the first case

The basic facts of the first case are as follows: Guangdong Baojie Investment Management Company, Ltd. was founded in 1993 by the main stakeholders, Wu Peng and Ren Yongqiang. It is located in the CITIC Building in Tianhe District in the city of Guangzhou, with its main business activities in investment trades of precious metals. Mr Li Jiejun was hired as the deputy president of the company in June, 2010, and he became the president and legal officer of the company around March, 2011. Previously, the company had been led by Li, and two other office holders, Mr Wu and Mr Ren, the main stakeholders.

From the beginning of 2011, Li Jiejun started, with the approval of Wu and Ren, to ask the company’s sales representatives to solicit up to 188 clients to make an investment totalling 72 million yuan under an “entrusted investment agreement”. This was done in the name of investing in gold trade without any approval from the financial administrative department or the gold trade administration of China.

In March 2014, the company was closed down and investigated by the Tianhe Public Security Bureau and charged by the Guangzhou public prosecution office with fund-raising fraud committed for the company to illegally possess a large amount of funds using fraudulent means and fabricated facts. Ren was also charged with forgery of Chinese citizen ID cards, as well as other official documents and certificates.

There are all together eight defendants in this case: Li Jiejun, Wupeng, Ren Yongqiang, Zhu Dezhi, Zhang Lingwei, Zhou Jianfei, Lao Jiantao, Chenxiaofan. Their roles in the company are shown below so that we can understand the relationship between different participants and their responsibility in the company. Since the trials aim at identifying the responsibility of the
participants in the crime, it is necessary to understand their background for a detailed discourse analysis.

<table>
<thead>
<tr>
<th>Li Jiejun</th>
<th>Deputy president and legal representative of Baojie Company, directly in charge of the general business and the investment from clients from beginning of 2011. Lijiejun talks to Ren and Wu to make major decisions of Baojie Company.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wupeng</td>
<td>The founder and main stakeholder of Baojie Company.</td>
</tr>
<tr>
<td>Ren Yongqiang</td>
<td>The main stakeholder of Baojie Company</td>
</tr>
<tr>
<td>Zhu Dezhi</td>
<td>The client investment advisor, training clients about gold transactions</td>
</tr>
<tr>
<td>Zhang Lingwei</td>
<td>The deputy president of Baojie Company, in charge of signing contracts of investment with clients</td>
</tr>
<tr>
<td>Zhou Jianfei</td>
<td>Employee of Baojie Company, in charge of driving and paper work</td>
</tr>
<tr>
<td>Lao Jiantao</td>
<td>Employee of Baojie Company, in charge of soliciting clients</td>
</tr>
<tr>
<td>Chen xiaofan</td>
<td>Employee of Baojie Company, in charge of logistics</td>
</tr>
</tbody>
</table>

**Table 13. Background and positions of defendants**

In this case study, there are four main defendants: “Zhu”, “Zhou”, “Li” and “Ren” involved in these ten segments, and most topics revolve predominantly around the conviction and liability of different defendants. Only these four defendants and their lawyers had substantive discoursal interactions with judges or prosecutors or made statements with substantive content. I have selected ten segments from videos of these four defendants and their defence counsels for analysis, of which four are interactive and six are narrative/statement. The following analyses will also be divided into interactional and narrative.

<table>
<thead>
<tr>
<th>Segment</th>
<th>Type</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Segment 1</td>
<td>Interactional</td>
<td>Zhu vs. Judge (18-55)</td>
</tr>
<tr>
<td>Segment 2</td>
<td>Narrative</td>
<td>Zhu’s defence counsel (56-71)</td>
</tr>
<tr>
<td>Segment 3</td>
<td>Narrative</td>
<td>Zhou’s statement (72-80)</td>
</tr>
<tr>
<td>Segment 4</td>
<td>Narrative</td>
<td>Zhou’s defence counsel (80-133)</td>
</tr>
<tr>
<td>Segment 5</td>
<td>Narrative</td>
<td>Li’s defence counsel (417-459)</td>
</tr>
</tbody>
</table>
Table 14. Main segments and participants involved in Case One

<table>
<thead>
<tr>
<th>Segment 6</th>
<th>Narrative</th>
<th>Li (460-465)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Segment 7</td>
<td>Interactional</td>
<td>Ren vs. Judge (468-493)</td>
</tr>
<tr>
<td>Segment 8</td>
<td>Narrative</td>
<td>Ren’s defence counsel (494-553)</td>
</tr>
<tr>
<td>Segment 9</td>
<td>Interactional</td>
<td>Zhu vs. Judge (554-562)</td>
</tr>
<tr>
<td>Segment 10</td>
<td>Interactional</td>
<td>Ren vs. Judge (669-679)</td>
</tr>
</tbody>
</table>

Situation One: segment 1, 2 and 10 are related to situation one. Comments by defendant Zhu Dezhi and his defence counsel on the accusation of fund-raising fraud by the prosecution. In segments 1 and 2 (clips 018-055 and clips 056-071), Zhu had an interactive debate with the judge, while his defence counsel stated his defence opinions. First video segment is interactional, the second is narrative. In segment 3, Zhu was trying to state some opinions towards his charge, but was interrupted by the judge many times, so this segment is also an interactive section.

MR of Zhu: As client investment advisor, he believes he is not directly involved in fund-raising, his has a good understanding of his responsibility in the company, he also has some basic legal knowledge about the conviction of fund-raising fraud. He understands that he has the right to speech in court and also realises he must follow the instructions of the judges. He is an active participant in the company and holds a high position in the company, and therefore might have a superior mentality.

Purpose: To determine the liability of Zhu Dezhi in the fraud.

The main topics and facts to ascertain and main linguistic properties to interpret include: Zhu’s right to ask questions during the trial, the role of Zhu in Baojie Company, his knowledge about the fraud, his intention of illegal possession of others’ property, whether he took any
commission for soliciting clients, and evidence of investment by Baojie company to Hong Kong. The most evident linguistic traits in this segment are conflictive discoursal interactions, mainly achieved through the use of interruptions, directive speech acts (DSA) and direct imposition of power status.

Situation Two: Zhou Jianfei and his defence counsel state their opinion to defend him against the accusation of fraud. They both replied to the charge against Zhou with their argument on the nature of Zhou’s crime, and the responsibility of Zhou in the company.

MR of Zhou: Since Zhou is just an employee of Baojie Company in charge of driving and paper work, he would consider himself not much involved in the criminal facts. He might know the nature of the company, but believed he was not the main stakeholder of the project. With such an innocent self-identity, he considered himself an accessory, or even a victim. Since he does not have a high status in the company, his social status is not as high as that of Zhu or Ren.

Purpose: Zhou tries to reduce his liability and sentence.

Main topics contained in these two segments include: the main responsibility of Zhou in the fraud company, fraudulent means used by Zhou, illegal intention of Zhou, the nature of the crime, the liability of Zhou as well as his attitude for confession.

Situation three: Li Jiejun and his defence counsel state their defence against the accusation for Li Jiejun.

MR of Li : As one of the main managers of the company, Li is highly involved in the criminal facts, thus being responsible for the crime, and can hardly justify his innocence. As the central figure of the company, he is in cooperation with many defendants, such as Ren and Zhu. His intention to negotiate his responsibility for fraud will affect his discoursal strategy.
Purpose: To introduce a new adjudicative perspective in order to reduce the sentence or alleviate the punishment.

Topics involved: The whereabouts of the funds raised, the liability of the company as a whole, Li’s intent for illegal possession of funds.

Situation four: Ren defends for himself and Li Jiejun.

MR of Ren: As a main creditor to Baojie Company, Ren is also frequently involved in the business of the company. He seems well-educated in the video, and has many pieces of justification for his relations with the company. Due to his high position in the company, he holds a superior mentality.

Purpose: To justify Ren’s behaviour and reduce his liability, and also to reduce the liability and increase the credibility of Li Jiejun.

Topics involved: The nature of Ren’s investment, responsibility of Ren in the company, and the intention of illegal possession by Li.

5.1.2 Background of Case Two

The second case is a complementary trial for Menghuan Xincheng Investment Company that had been tried and convicted of fund-raising fraud in an earlier trial. This complementary trial is because there were new victims claiming for their losses. Li Xiaochun, a national of Malaysia, is the founder and main stakeholder of Menghuan Xincheng Investment Company. Tang Jianhui is a down-line of Li and the upper-line of Xie Minzhen. Xie also developed several down-lines including Jian Huanjiao, and Xu Shuiyue. This trial mainly aims to verify the responsibility of Li, Tang, and Xie for their solicitation of clients for investment with the purpose of illegal possession in the pyramid scheme. The following are the seven segments to be used in case study two. I have described the main nature and content of each segment as follows.
All these seven segments revolve around four topics: segment 1 and segment 2 are about whether Li Xiaochun has the intent of illegal possession of other’s property; segment 3 and segment 5 are about the responsibility of Li for the fund-raising fraud; segment 4 is about all the downlines of Li and the whereabouts of their investments; segment 6 is about Xie’s involvement and responsibility in the development of the fraudulent company; segment 7 is about the downlines of Xie. Li’s purpose, of course, is to escape from the accusation and justify his behaviour, or at least reduce the severity of his behaviour. The prosecutor’s purposes are to invalidate Li’s self-defence and convict him. The judges’ purpose shall be to preside over the court trial, but we will find in segment 5 that their purposes are more than this, as they try to persuade the defendant to admit his own liability in the crime. Xie’s purpose is to justify her behaviour and evade her responsibility for the crime. With the purposes of litigants and topics of different situations in mind, the discourse analysis process can be carried out with more attention to the ideological asymmetries and the construction of the narrative.

### 5.2 Analysis of interactional section of the discourse

This part includes two kinds of analysis: quantitative analysis to reveal language use patterns and qualitative analysis to reveal the strategies for information control. First, we are going to
analyse the quantifiable linguistic features in the interactional sections of discourse between the judge and defendants. The main textual features present during interactional discourse have been summarised in Table 11 in Chapter Four. Table 11 can be used as a guideline for our analysis. During our analysis, the following features are most frequently noticed: interruptions, directive speech acts, conflictive interactions, address terms, question types, reformulation and turn-taking. Sometimes one linguistic means might fall into two different categories of features for the multiple-functions/speech acts they serve and perform, such as interruptions and directive speech acts. Interruptions sometimes can perform directive speech acts.

5.2.1 Interruptions

Interruptions between the judge, the prosecution and the defendant are used as a main tool to control the topic and exert power. In our analysis, we use (INTR+number) to signify interruption by the powerful against the powerless, and (intr+number) to signify interruption by the powerless against the powerful. (DIR+number) is used to stand for directive speech acts performed by the powerful (the judge and the prosecution), and (dir+number) to stand for directives by the powerless-the defendant. (CONF+number) is used to stand for conflictive interactions by the powerful, whereas (conf+number) to stand for conflictive interactions by the powerless.

There are four interactional segments in our first case analysis, two of them are between defendant Zhu and the judge. The other two are between Ren and the judge. Due to the differences between these two defendants, their rights to speech in court and the attitude of judge towards them, both vary a lot during the interactions.

<table>
<thead>
<tr>
<th>Judge to defendant</th>
<th>Prosecutor to defendant</th>
<th>Defendant to judge</th>
<th>Defendant to prosecutor</th>
</tr>
</thead>
<tbody>
<tr>
<td>11 out of 11 times</td>
<td>1 time</td>
<td>2 out of 7 times</td>
<td>0 time</td>
</tr>
</tbody>
</table>
In the two segments of around 7 minutes when the defendant was supposed to state his opinions on the case, he was interrupted 12 times in total, with 11 times by the judge who ordered him not to ask questions or to repeat himself. The defendant tried to interrupt the judge 7 times to get his right to speech, but only succeeded twice. The prosecutor interrupted the defendant once because he was accused of failing to provide evidence by the defendant. These interruptions (12 in total) mostly consist of or are followed by directive speech acts (9/12), most of which are given by the judge.

This contrast of the use of interruptions indicates the power asymmetry in court, with the judge holding a presiding status and the defendant a submissive one. It is based on their respective roles with the judge being the regulator in court and the defendant a source of information for the judge. Additionally, the eagerness and insistence of the defendant’s attempts to access speech also revealed his self-identity as a party not totally submissive to the institution or the institutionally powerful participants. The success rate of interruptions also appears to reflect the superiority of institutional power. We can notice that the judge used interruptions successfully every time, however, the defendant only succeeded 2 times out of 7.

When we examine the situations where interruptions are used, we can observe that the reason for interruptions to the defendants by the judge is to regulate the defendant’s manner of speaking and limit his speech by pointing out his lack of institutional felicity conditions (not talking according to expected manner). After most interruptions, the judge used a question “qingchu le meiyou? (Are you clear or not?) / ting qingchu meiyou? (Do you hear me clearly or not?)” or a directive: “niyao gao qingchu (You need to be clear)” to indicate to the defendant that he misunderstood or did not know the rule in courtroom debate stage, due to a lack of
knowledge or an unwillingness to comply with the rule. Impatience was implied within the frustrated and anxious tone of the judge as she determined the defendant as uncooperative and non-submissive. Such a question is a threat to the negative face of the defendant because it indicates the defendant’s an inferior position due to his lack of knowledge and limited speech right. Despite his inferior position, the defendant broke the usual rule of cooperative communication, especially the rule not to argue with the judge in court and answered this question “qingchu le meiyou? (Are you clear or not?)” with an answer not favourable to the judge: “bushi hen qingchu, (No, I am not quite clear)” so as to strive for his right to speech. Such a non-normative reply was apparently unexpected by the judge. Interestingly, instead of clarifying to the defendant again what she meant, the judge replied with “OK, not quite clear. Then have you finished your statement?” This reply, despite being in the form of a Yes/No question, indicates implicated coercion towards the defendant to urge him finish his statement and “behave” himself. However, such a coercive and indirect imperative was refused by the defendant only by two words “Not yet”. The judge finally gave the defendant the turn to speak, because the judge cannot force the defendant to give up his turn as long as he conforms to the institutional procedural rules.

The expression “qingchu” which means “clear” was used 10 times by the judge in slightly different questions. The gradual changes of the context, however, gave this expression different meanings. In the beginning, “ting qingchu fating de zhiyin (Listen clearly to the guidance of the court)” was merely an imperative/directive without much reproach. However, when the defendant kept disobeying the guidance of the judge, questions like “qingchu le meiyou? (Are you clear or not?)”, and the later: “ting qingchu meiyou? (Do you hear me clearly or not?)” used by the judge started to exert some implicated coercion due to the use of a rhetorical question, which apparently does not require any answer other than “yes”.

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5.2.2 Directives

Other than for the purpose of interrupting, directives are also used to control/change the topic and speaking manner of the other interlocutor. The following is a table indicating all the directives used in these two video clips.

<table>
<thead>
<tr>
<th>Judge directs the defendant</th>
<th>Prosecutor directs the defendant</th>
<th>Defendant directs the judge</th>
<th>Defendant directs the prosecutor</th>
</tr>
</thead>
<tbody>
<tr>
<td>20 times</td>
<td>1 times</td>
<td>3 times</td>
<td>6 times</td>
</tr>
<tr>
<td>21 times by the powerful</td>
<td>9 times by the powerless</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table 17. Directives used by the judge, the defendant and the prosecution

Directives used by the judge are of two kinds: direct directive speech act by giving an order such as “ni zhijie fabiao nide yijian (You shall give your opinions directly)” (8 times) or indirect directive speech acts by stating the right or identity of the defendant or the proper thing to do in court procedures, such as: “ni meiyou quanli fawen (You do not have the right to ask questions)” (5 times) or: “nishi beigaoren (You are the defendant)” (4 times). In the direct directive speech acts, the judge later used the directive “ni zhijie fabiao wan nide yijian (You shall directly complete/finish giving your opinions)” twice to the defendant when he kept on asking questions not meant for that section. “Wan” in Chinese means to complete or to finish. Two such direct directives by the most powerful figure in court would exert hefty psychological pressure on the defendant, for he was supposed to follow the instruction of the presiding judge according to institutional rules, even though it was his right to state his opinions on the case. Although the judge did not tell the defendant to stop giving opinions, a subtle change of wording indicated that during the production process of the discourse, the intention of the judge was, at least partly, to stop the defendant from talking. It is reasonable to infer that she regarded his manner as inappropriate in the sense that it was not directly helpful to adjudication. Such linguistic behaviour by the judge can be regarded as a direct imposition of power. This is also
referred to as a naked discourse of power (Thomas, 1985) and is often used in asymmetrical communications by the powerful to suppress the powerless and control the discourse direction through direct or indirect indication of their superiority. Although the defendant tried to use directives 9 times to judges and prosecutors, he only succeeded once when he actually pleaded to the judge to let him finish what he wanted to say.

5.2.3 Confictive interactions

As we mentioned in the beginning, these two segments of discourse are characterised by their conflictive interactions. Therefore, these conflictive interactions can reveal the power relations between litigants, too. We hereby define directly conflictive interactions as the speech acts performed by the interlocutors which are in direct contradiction with the intention of speech acts by the other interlocutor of the last turn. An example is: when the judge told the defendant that he was the defendant and should not ask questions; she was refuted by another question of the defendant: “I didn’t commit a crime, why would I become a defendant?”

Conflictive speech acts initiated by one against another participant signify not only the different interests they hold, but also indicate the power status between two interlocutors. The more one participant initiates conflictive interactions, the more powerful or psychologically superior he/she is or is attempting to be. The following is a table of the conflictive interactions initiated by different litigants in court in these two segments.

<table>
<thead>
<tr>
<th>Judge to defendant</th>
<th>Prosecution to defendant</th>
<th>Defendant to judge</th>
<th>Defendant to prosecutor</th>
</tr>
</thead>
<tbody>
<tr>
<td>14 times</td>
<td>1 time</td>
<td>11 times</td>
<td>0 times</td>
</tr>
<tr>
<td>15 times by the powerful</td>
<td>11 times by the powerless</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Table 18. Directly conflictive interactions between litigants

It is apparent that the conflictive interactions between the judge and the defendant are generally balanced, with the judge engaging in conflictive interactions 14 times to the defendant’s 11 times. For most interruptions and directives that limit the speech right of the defendant, the defendant counteracted by either repeating, reformulating his request or refuting the directives of the judge by raising other questions, some of which even challenged the judge’s authority.

We can use an example to illustrate this point:

Example
Chinese:
法官：现在，是对案件的定罪，构成什么罪，罪轻罪重，你直接发表你的意见(DIR9)，你没有权利发问(DIR 10)。清楚了没有？
被告人：(conf 4)我怎么没有权力发问呢？法官：你是被告人。清楚了没有！?
被告人：为什么要成为被告？我没有犯罪，你告我什么啊？法官：现在你是以被告人的身份，以被告人的身份接受法庭的审判！清楚了没有？
被告人：不是很清楚！法官：嗯，不是很清楚，那你
你的意见说完了没有？被告人：没有！

Translation:
Judge: Now it is the conviction of the crime, the nature and the severity of the crime, you shall directly give your opinions, you do not have the right to ask questions, are you clear or not?
Defendant: Why do I not have the right to ask questions? Judge: You are the defendant. Are you CLEAR or NOT?
Defendant: Why do I have to be the defendant? I did not commit any crime, with what are you charging me?
Judge: Now you, as the defendant, are receiving the judgement from court as the accused. Are you CLEAR or NOT?
Defendant: NOT very clear.
Judge: Okay, not very clear. Then have you finished your opinions yet?
Defendant: No! I haven’t.

We can see in this example that instead of following the judge’s instruction not to ask questions, the defendant asked two questions in order to challenge the judge so and thus defend his right to ask questions and to raise an issue concerning his identity as the defendant. The defendant,
with almost a year of detention before the trial, must have known that he was the defendant for a reason. The question: “Why do I have to be the defendant?” was therefore a challenge to the authority of the judge for limiting his speech right. The judge, failing to explain to the defendant his identity, repeated the defendant’s role and status with a declarative, exerting a naked power imposition upon the defendant. The judge even used another question to confirm that the defendant would obey her instruction, but got a negative answer. Here we noticed the judge repeated the defendant’s response and changed the topic from whether the defendant understood to whether he finished talking. Such an indirect directive speech act reflected the coerciveness of the judge in an attempt to control the contribution of the defendant to court, either because she assumed the irrelevance of his testimony to the current topic or because ideologically she already defined a defendant as someone who had been convicted or was in a lower institutional position and therefore must be obedient to her instructions. The surprisingly “brave” response: “No” by the defendant signifies his willingness to struggle for his own right to speech, reflecting his eagerness for defence and confidence in his own innocence.

Another example is when the judge started to threaten defendant Zhu to control his right to speech:

Judge: If you think there is anything missing, you can add it onto the records. There is no need to repeat it. Well, during the courtroom investigation when you were asked of your identity and position, you have clearly told us about the things you did at Baojie Company. Zhu: I did not tell you what I did in Baojie Company! (conf)
Judge: (INTR) Same content, not necessarily in the same words. About the nature of your work in Baojie Company, you have already talked about it. (Zhu replied “not yef”) There is no need to repeat yourself! (impatiently)
Zhu: Report to the presiding judge, I did not talk about it. Now I am going to say something I have never said.
Judge: Ok, you may say it now. Let me check which part you did not talk about. If the court find out that you have talked about it already, you would have to be responsible for your behaviour (CONF) (DIR), do you understand? (stressing loudly)
Zhu: Ok, then please let me continue(dir), please let me tell it shortly(conf).

The underlined sentence is actually a very evident threat to the defendant to stop him from saying more about his role in Baojie company, which the judge believed had been talked about
enough for the purpose of trial. The different MR of Zhu prompted him to fight for his right to speech, even though he might be shouldering a heavy psychological burden from the institutionally more powerful judge.

5.2.4 Address terms

As we have discussed in former chapters, the use of address terms can reflect respect, social distance and solidarity. The following table registers the use of address terms by the four main participants.

<table>
<thead>
<tr>
<th>Use of address terms</th>
<th>Judge</th>
<th>Defendant</th>
<th>Prosecution</th>
<th>Defence Counsel</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Formal</td>
<td>Pronoun</td>
<td>Formal</td>
<td>Pronoun</td>
</tr>
<tr>
<td>Self-mention</td>
<td>6</td>
<td>0</td>
<td>3</td>
<td>61</td>
</tr>
<tr>
<td>Addressing 2nd party</td>
<td>9</td>
<td>21</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Address 3rd party</td>
<td>2</td>
<td>0</td>
<td>7</td>
<td>4</td>
</tr>
<tr>
<td>Total</td>
<td>17</td>
<td>21</td>
<td>14</td>
<td>70</td>
</tr>
<tr>
<td>Rate of Formality</td>
<td>44.7%</td>
<td>16.7%</td>
<td>20%</td>
<td>100%</td>
</tr>
</tbody>
</table>

Table 19. Use of address terms

We can observe from the above table that the defence counsel most frequently uses formal address terms. The judges rank second in their use. The prosecution and the defendant use relatively fewer formal address terms, but more pronouns. Most of the formal words are used by judges and defence counsels to address the defendant, usually in the form of “defendant + full name”. We can notice that, when mentioning himself/herself, the judge tends to use formal address terms, usually in the form of “the Court” in order to point out his/her authority as an
impersonal regulator of the court. We can also notice that when the defendants refer to the judges, they usually use formal addressing terms; but they use informal pronouns such as “you” or “they” more often when they refer to the prosecution. This is probably because they view the prosecution as the opposite party. Another interesting behaviour of the defendants is that, when referring to the judges and the prosecution, they would usually modify the address term with “respectable” or “respected”. This indicates a psychological imbalance due to different power status. The prosecutors are respected by the defendants the same as the judges, indicating their status to be superior one. We can say the attitude of the defendants is mostly submissive to the prosecution despite occasional conflict.

5.2.5 Question types and reformulations

Now that we have analysed the lexical features of the interactional discourse in court, let us look at grammatical features and strategies in other interactional discourse segments between the judge, the prosecutor, the defendant and the defence counsels. Question types and reformulation would be the most important features to analyse.

As summarised in Chapter Two, questions in courtroom can be divided into confirmation seeking questions (CSQ) and information seeking questions (ISQ) according to the degree to control information (Danet & Kernish, 1978; Danet et al., 1980b, Heffer, 2005). Grammatical questioning (using different question types) is one important aspect of the mode of speech to investigate (Fairclough, 1991). We hereby choose three video segments from the trial two case and analyse how different legal professionals (judges, defence counsel A for Defendant One, Li Xiaojun, and defence counsel B for defendant Two, Tang Jianhui) use CSQs and ISQs to control the defendant and the information. Also, we would examine the frequency of their use of reformulations and the number of information points so that by examining the ration of CSQs
and ISQs and the number of information points, we can understand how information is controlled by litigants.

<table>
<thead>
<tr>
<th>Participants</th>
<th>CSQ</th>
<th>ISQ</th>
<th>Reformulation</th>
<th>Points of Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Judges</td>
<td>7</td>
<td>7</td>
<td>13</td>
<td>8</td>
</tr>
<tr>
<td>Defence Counsel 1</td>
<td>9</td>
<td>6</td>
<td>6</td>
<td>5</td>
</tr>
<tr>
<td>Defence Counsel 2</td>
<td>18</td>
<td>18</td>
<td>12</td>
<td>10</td>
</tr>
<tr>
<td>Total</td>
<td>34</td>
<td>31</td>
<td>31</td>
<td>23</td>
</tr>
</tbody>
</table>

Table 20. The use of CSQ, ISQ and reformulations by different participants and the information points discussed in each segment

As shown in Table 20, CSQs used by all professional participants in these segments account for a total percentage of 52.3%, or over half of all questions. As Heffer (2005) argued, CSQs allow the lawyers to take on a role of story teller. According to our data, most reformulations (80.6%) were in the form of confirmation seeking questions which are mostly used to reconstruct the process of the crime (Cotterill, 2003; Yu, 2006). ISQs account only for 47.7% of all questions, giving a much more limited chance for a defendant to give new information. CSQs used by different participants actually serve different purposes, summarised as: to confirm the testimony of defendant in order to use it as known information; to abstract the defendant’s answers to help construct meaningful legal facts in court; to facilitate the defendant’s articulation of the critical point that acquits or incriminates him/her. We can take the following several examples for illustration:

Example 7 (To confirm the testimony)

CN:

审判员：你就是说你的行为是传销是吧？被告人：对。
审判员：然后传销在你们那个国家是合法的对吧？被告人：对。
Judge: You said that your behaviour is pyramid selling, didn’t you?
Defendant: Yes.
Judge: And pyramid selling is legal in your country, right?
Defendant: Right.
Judge: How to deal with it if all the money were gone during this pyramid selling in your country?
Defendant: Indeed, there will be legal consequences.

We can see in the above example that the judge used two CSQs to confirm and reformulate the testimonies of the defendant in order to use them as the foundation for a following question, which leads to a logical fallacy or apparent contradiction. Example 8 (Abstract testimony to construct meaningful legal facts)
TR:

Judge: Then where did the money of the victims go?

Defendant: The money of the victims, from the very beginning, had been clearly explained. When we received the money, we are just a representative, responsible for the business in China. Tang Jianhui is a business representative in Guangzhou, so we have different levels…

Judge: **Answer directly**, where did the money go?

Defendant: They went to the bank account of the company.

Judge: **That means, you do not know about it, do you?**

Defendant: Right.

In this example, we can see that the judge interrupted the defendant when he was explaining in detail where the money went. The judge reformulated the defendant’s answer (to the bank account of the company) to a totally different propositional content (defendant does not know about it). Such a reformulation is different from what the defendant said, but it is intentionally reformulated like this so that the judge can identify useful and clear information for the adjudication of the case. In this situation, the judge was trying to determine the final whereabouts of the lost money and thereby the responsibility of the defendant for such placement of the funds. The long explanation given by the defendant aimed to minimise his own responsibility, but did not provide any clear answer to help determine the final receiver of the money. Therefore, the judge inferred from the defendant’s testimony and reformulated the answer to a clearer statement so that this testimony is legally meaningful in the courtroom context.

Example 9 (To avoid bringing up new questions by reformulation)

CH: 公诉人：对于，这个起诉书上面的，所涉及的 12 名受害人，以及这个数额你有没有什么意见？

被告人：有。因为。。。公诉人：什么意见？
被告人： 对，因为数额我确实不知道多少，所以我不知道，根据哪一个方面定罪？

公诉人： 就是说，这个数额呢，我可以告诉你，是根据受害人他们提供，然后经过审定，所得出来的。你有没有意见？就说，你。。。你就说你有意见就是，你的意见就在于你不知道它是通过什么方式统计出来的是吧？被告人： 对，包括它的法律。公诉人： 好了，行了，没有问的了。

TR:

Prosecutor: As claimed in the indictment, there are another 12 victims involved. Do you have any opinion towards this claim and the total amount of lost money?

Defendant: Yes, because…

Prosecutor: What is your opinion?

Defendant: Right, because I did not know how much is the total amount, so I do not understand with what reason am I charged?

Prosecutor: Well, this total amount, I can tell you, is based on the information provided by the victims and has been inspected and confirmed. Do you have any opinions? So, you, you just mean that your opinion is that you do not understand the method to calculate the total amount of money, isn’t it?

Defendant: Yes, including the relevant laws

Prosecutor: Ok, that is all, no further questions.

In this example, the reformulation used by the prosecutor is used to specify the focus of the discussion and sidestep certain questions raised by the defendant. Instead of explaining to the defendant the reason why he was charged, a complex question that might lead to other discussions, the prosecutor narrowed the doubt of the defendant to a specific technical problem directly due to the defendant’s lack of knowledge. Such a reformulation prevents the defendant expressing doubt, and on the other hand converts the argument about a technical detail that might affect conviction to a lack of knowledge on the defendant’s part.

Example 10 (To facilitate the defendant’s acquittal)
辩护人：南美洲？你有没有，以前向那个公安或者向法庭说过，它不是在，或者是在澳门或者广州这边注册过？

被告人：啊，我确实没说过是在澳门或是在广州有注册过，但是据我所知，在我们开庭的时候，其中这边的一个代表律师，曾经有，把那个证件提交给应该是检察院吧？提供给检察院吧，应该是有这件事，但是我不知道，为什么他们没有去往那方面继续。

辩护人：你的意思是说，这个澳门梦幻公司，它是个正规的公司？被告人：据我所知，应该是正规的公司。

TR:
Defence counsel: South America? Have you ever told the police or the court that the company is or is not registered in Macau or Guangzhou?

Defendant: Well, I actually did not say it was registered in Macau or Guangzhou. However, as far as I know, one of our representative defence counsel had handed in the certificate to the Procuratorate when we started the hearing. Or provided to the Procuratorate, they probably have done that, but I do not know why the prosecutors did not continue investigating that aspect.

Defence counsel: You mean that this Macau Menghuan Company, it is a legal company?

Defendant: As far as I know, it is a legal company.

The defence counsel in this example is a representative of the defendant Li XiaoChun. In this segment, the defence counsel was trying to prove the legality of the Macau Menghuan Company. The defendant, following his lead, told the court that they “handed in the certificate to the Procuratorate”. By inferring from the defendant’s testimony, the defence counsel reformulated the testimony in a more direct and clearer fashion, giving the critical information for the trial: “It is a legal company.” Such reformulations are frequently used by defence counsels or the prosecutors to take advantage of the testimony in their own favour.
5.2.6 Turn-taking and information control

Now we are looking at how turn-taking in court can help the powerful to realise information control over the powerless, making sure most of the new information are brought about by the powerful, and therefore construct a narrative in conformity with their story and purposes.

In the segment of interaction between the judges and the defendant Li Xiaochun, the defendant had 27 turns to speak while the judges had 32 turns. Such turn-takings between the two parties are generally balanced. However, out of the 27 turns of the defendant, only 15 turns contain information about legal facts, and only 13 turns are active construction of legal facts. We can note that 10 turns are simply passive answers such as “yes” or “ok” to the judge’s questions. In contrast, during the 32 turns, the judges used 13 turns to sum up or reformulate the defendant’s answers, even putting words into the defendant’s mouth through a few reformulations. The reformulations are usually signalled by the use of “ni jiushi shuo (You mean…)?”, “nide yisi shishuo (What you mean is…)?” or “jiushi shuo (That means…)?” and are usually in the form of a rhetorical question, ended by a tag such as “shiba? (isn’t it)?” or “duiba? (Is that right)?”.

This frequent use of reformulation by the judges is similar to the linguistic behaviour of the lawyers when interrogating the witnesses and defendants only to re-construct the process of the crime (Cotterill, 2003; Yu, 2006) rather than to seek new information. By using reformulations in a subtle way, the judges manage to “smuggle in” or slightly alter some information in the defendant’s answers. The following is an example:

Example 11 (Smuggled information)

CH:

被告人：梦幻新城。因为我看了这个起诉书，我才知道之前他们这些起诉人起诉我们的，起诉的唐建辉前四家公司么，包括我现在面对的这家公司，是第五家的公司。所以我想问法官大人，他同第一…法官：（打断）你直接发表你的意见。
Defendant: Menghuan Xincheng. Since I have read the indictment, I got to know that before these clients charged us with fraud, they also charged four other companies introduced by Tang Jianhui. Our company was the fifth company, so I want to ask Your Honor, when he charged the first…

Judge: You shall state your opinion directly.

Defendant: I mean he himself doesn’t have to be responsible? That is, as an investor, he shall take time to know these pyramid selling companies. Now that accidents happened, these five companies.

Judge: You mean that the victims, other than Menghuan Company, also invested in other companies, didn’t you?

Defendant: Yes, that is what I read in the indictment.

We can summarise that the defendant in this video segment wanted to stress the responsibility of the victims to understand a company before investing as he mentioned the former bad investments they made to four other companies. The judge, however, reformulated his opinion only as “Victims also invested in other companies”. This omits the number of companies they invested in, thus causing the loss of the implication that the investors should be aware of the qualifications of companies and should, to some extent at least, take responsibility for their own investment.

5.2.7 Question and answer patterns for narrative construction in interactive discourses

Now that we have analysed the question types and topic control, we can further summarise the question and answer patterns between prosecutors and defendants. We can see from Table 20
that the total points of information are only 35% of the total number of questions, indicating it
takes on average three questions to confirm a piece of information. Further analysis reveals that
all these questioning processes follow a certain pattern, namely:

ISQ – Answer (descriptive)-Reformulation (CSQ – declarative + tag) Confirm (Yes/No)

Usually, the questioner starts with an information seeking question to the defendant, and the
defendant answers the question in a descriptive way, usually with extra information to explain
the situation. If the answer given by the defendant is too long or with excessive information,
the questioner usually reformulates the answer with a CSQ question to summarise the testimony
or alter it slightly to serve for the purpose of the questioner. Usually, such reformulations are
ended with a tag, seeking confirmation from the defendants who, in most cases, would agree
and add some further information to defend him/herself. The following are two examples:

Example 12

CH:
辩护人：那个，李晓春，我是唐建辉的那个，辩护人。那么，有几个问题想跟你核实一下。那个，唐建辉你是怎么认识的？

被告人：唐建辉，我跟他是没有直接认识的，我是经过一个叫，杨芳，之前我在口供里面有说起过，杨芳的过后她再介绍一个叫于军，于君过后来介绍唐建辉，所以我们是，就是从这个过程认识的。

辩护人：额，那能不能说（RF），你的下线本来就是杨芳跟于君？被告人：对。

辩护人：然后是由杨芳和于君发展了唐建辉（RF）。

被告人：唐建辉。辩护人：是吧？被告人：嗯。

（点头）

TR:
Defence counsel: Well, Li Xiaochun, I am the defence counsel for Tang Jianhui. I have a few questions to check with you. Well, how did you get to know Tang Jianhui?

Defendant: Tang Jianhui, I did not acquaint him by myself. I was introduced by Yangfang, as I mentioned in the testimony, to someone called Yujun, and Yu later introduced me to Tang, so we are acquainted like this.

Defence counsel: Well, can we say, that your “downlines” are actually Yangfang and Yujun?

Defendant: Yes

Defence counsel: And then Yangfang and Yujun recruited Tang Jianhui?

Defendant: Tang Jianhui

Defence counsel: Is that right?

Defendant: Yes (nodding)

In this example, the defence counsel of Tang Jianhui pointed out clearly, that the relations between Li Xiaochun and Tang Jianhui are not merely acquaintances as Li described, but actually Tang was one of Li’s “downlines” in the pyramid selling scheme. Therefore, the intention of Li Xiaochun to deny financial relations with Tang Jianhui was defeated by a reformulation. This will lead to a different evaluation of the responsibility of the two defendants. Such Q&A patterns are very commonly seen in our data. We have other examples in later sections when we start the in-depth analysis of the discoursal interactions concerning a single litigant.

Both the quantitative data, the textual features and detailed analysis of situations in court of these interactional segments in the two cases revealed an asymmetrical power relationship in fund-raising fraud trials in China, not only in speech right and mental positioning, but also in their language skills employed in court. Such asymmetry is deeply rooted in their social role, institutional role and their member resources including professional and legal knowledge, as well as their self-role positioning. The quantitative frequency counts can be unreliable to some
extent, considering the small sampling of the corpus. However, such quantitative analyses, complemented by concrete examples analysed with situational and institutional context, can generate certain arguments that can guide our qualitative analysis. Also, these arguments will be further proven and strengthened in 5.3 where long sections of discoursal interactions concerning a particular defendant are analysed in-depth with clear knowledge of situational context and litigants’ MR.

5.3 Analysis of statements by different participants

Next, we are going to analyse some more narrative sections of the courtroom discourse. As proposed, we would quantitatively analyse features such as logic connectors and expressive modality of the narrative to reflect the language style of the speakers and do a qualitative analysis on the word choice, especially those that may be ideologically invested ones to see how they influence the construction of information, power status and identity. Six video clips of three different kinds of litigants were used for this analysis. Comparative analyses will be made across different roles and within the same litigant role. For example, linguistic features of both the defendant and the defence counsel will be analysed in contrast with each other. We also analyse the discourse of two members for each kind of litigant in court, so that we can compare how individual litigants with the same role differ in aspects of attaining power and manipulating information in discourse due to their personal differences in language strategy. In video clips of defendants, one short clip of around 65 seconds shows Defendant Zhou stating his opinion on the case, and another clip of around 125 seconds shows Defendant Zhu stating his opinion on the case. For defence counsels, we chose two video clips of the defence counsels of both Zhou and Zhu defending for them. For prosecution, we chose two clips of opinion statement by the prosecution. We are going to compare how they differ in the language styles and the manipulation of information.
<table>
<thead>
<tr>
<th>Features</th>
<th>Logic connectors (in bold)</th>
<th>Expressive modality (underlined)</th>
<th>Ideologically invested words (inclined)</th>
<th>Professional/formal Words (in brackets)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>4 times (8 characters)</td>
<td>9 times (26 characters)</td>
<td>3 times (8 characters)</td>
<td>2 times (4 characters)</td>
</tr>
<tr>
<td>frequency</td>
<td>4/263=3.02%</td>
<td>26/263=9.88%</td>
<td>4/263=3.02%</td>
<td>4/263=3.04%</td>
</tr>
</tbody>
</table>

Table 21. Quantitative linguistic analysis of Zhou’s statement

<table>
<thead>
<tr>
<th>Features</th>
<th>Logic connectors (in bold)</th>
<th>Expressive modality (underlined)</th>
<th>Ideologically invested words (inclined)</th>
<th>Professional/formal Words (in brackets)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>9 times (21 characters)</td>
<td>8 times (15 characters)</td>
<td>3 times (10 characters)</td>
<td>8 times (35 characters)</td>
</tr>
<tr>
<td>frequency</td>
<td>21/585=3.59%</td>
<td>15/585=2.56%</td>
<td>10/585=1.71%</td>
<td>35/585=5.98%</td>
</tr>
</tbody>
</table>

Table 22. Quantitative linguistic analysis of Zhu’s statement

<table>
<thead>
<tr>
<th>Features</th>
<th>Logic connectors (in bold)</th>
<th>Expressive modality (underlined)</th>
<th>Ideologically invested words (inclined)</th>
<th>Professional/formal Words (in brackets)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appearance</td>
<td>12 times (28 characters)</td>
<td>3 times (5 characters)</td>
<td>0 times (0 characters)</td>
<td>33 times (136 characters)</td>
</tr>
<tr>
<td>Frequency</td>
<td>28/570=4.91%</td>
<td>5/570=0.87%</td>
<td>0/570=0%</td>
<td>136/570=23.86%</td>
</tr>
</tbody>
</table>

Table 23. Quantitative linguistic analysis of the statement of defence counsel for Zhou

<table>
<thead>
<tr>
<th>Features</th>
<th>Logic connectors (in bold)</th>
<th>Expressive modality (underlined)</th>
<th>Ideologically invested words (inclined)</th>
<th>Professional/formal words (in brackets)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appearance</td>
<td>19 times (47 characters)</td>
<td>5 times (10 characters)</td>
<td>0 times (0 characters)</td>
<td>29 times (103 characters)</td>
</tr>
<tr>
<td>Frequency</td>
<td>28/570=8.45 %</td>
<td>10/556=1.80%</td>
<td>0/570=0%</td>
<td>103/556=18.53%</td>
</tr>
</tbody>
</table>

Table 24. Quantitative linguistic analysis of the statement of defence counsel for Zhu
The use of logic connectors reflects the cohesion of the discourses which, to some extent, represents the credibility of the speaker. On a general level, the more logic connectors used in a discourse, the more cohesive and coherent the narrative, and cohesion and coherence are two features of powerful testimony which would be more credible to the participants (Lakoff, 1975; Scherer, 1979, Conley & O’Barr, 1998). Similarly, in an institutional context such as the court, the more professional/formal words used by the litigant, the more powerful and credible the speaker is and therefore, the more influential s/he is over the flow of information. Therefore, logic connectors and professional/formal words are two positive indicators of powerful speech style. As shown in the table above, we can tell the defendants both used logic connectors less frequently than their defence counsels. The defendants also usually use simpler logic connectors such as “because”, “and”, “first”, “second” or “third”, whereas the defence counsels used more varied logic connectors, including “in accordance with” and “that is to say”. The distance between defendants and defence counsels in terms of usage of professional and formal words are farther than that of logic connectors. Defence counsels use up to almost five times as many professional and formal words as the non-professionals, the defendants in the defence statement. During the interpretation of the defence statements made by different litigants, the judge has similar member resources to the defence counsel, as they are both legal professionals. Therefore, the use of professional and formal words not only increases the power of the discourse, but also gives more validity impact to the judges’ interpretation of information constructed in the statements.

On the other hand, the use of expressive modality and ideologically invested words can reflect the objectivity of the speaker. Although under the category of expressive modality, hedges (such as “perhaps”, “possible”) make the speaker sound less assured, and boosters (such as “definitely”, “clearly”, “always”, “never”) increase the confidence of the speaker: the use of both would reveal the attitude of the speaker towards his/her statement, be it resolution or
moderation. Ideologically invested words also reveal the ideological status of the speaker in the institution, making him/her sound less objective. The following are some examples to demonstrate the functions of expressive modalities and ideologically invested words, each is analysed with the speaker’s purposes as the situational context.

As we have analysed earlier in Chapter 3, to identify the liability of a defendant requires a clear understanding of his/her involvement in certain criminal acts. During the narration of the defendants and defence counsel, boosters such as “never”, “any” and “always” are often used to express assertion of their statements.

Example 1:

CH: 从始至终，我都没有去骗过或者拉过任何一个客户到公司。而且我也没有去占有过任何一个人的这个~财物。

TR : From beginning to the end, I never lied to or lured any client to join the company, and I did not take possession of anyone’s properties.

Although these boosters enhance the assertion of statements, they also leave a loophole for the prosecutions to attack. The more assertive a claim, the more possible that the prosecutor can find some evidence that may go against the claims and impair the credibility of the defendant.

Meanwhile, hedges such as “mainly”, “a little” are often used to describe the responsibility of the defendant in the fraud company because their liability for the crime depends on their responsibility in the fraud, and usually the accused takes upon multiple roles in a company. The expression, “we can say that” is often used to state an opinion on the nature of the crime or the nature of the accused. Such an expression indicates a combination of affirmation and powerless status for lack of the right to making any judgement. For example:
Example 2:

CH：我只是保洁公司的挂名的股东，因为从来不参加他们的经营和管理，所以我并不知道保洁公司的经营状况，以及他们的管理体制和管理模式。

TR：I am only a nominal stakeholder of Baojie Company. Since I never participate in their operation or management, I have no knowledge of the business conditions of Baojie Company, or of their administrative system and mode.

Example 3:

CH: 可以说我也是一个受害者吧！

TR: I could say I am also a victim.

In the following part, we analyse and explain the ideologically invested words found in these discourses.

Example 4:

CH: 我是一个打工者 的角色! 可以说我也是一个受害者吧!

TR: I was playing the role of an employed worker. It can be said/ we can say that I am also a victim.

In China, the role of an employed worker (dagongzhe) is always associated with the poorly paid, lower class. By using the word “worker”, the defendant was trying to portray his role as a powerless member of the working class exploited by a fraud company. Ideologically, people in China generally have a soft heart towards the “worker” class, partly due to the political nature of the country and partly due to the poor conditions they suffer. A further self-identity as a “victim” (shouhairen) aims to appeal to the judge by highlighting that he does not occupy a major role in the company.
Besides intentionally using ideologically invested words to portray self-image, the litigants also use ideologically invested expressions without self-awareness. This unawareness may indicate the deep-rooted mentality of the asymmetrical power status in institutions. Let us look at the following example:

Example 5:

CH: 尊敬的这个，法院，啊，法院院长，审判长，法官。尊敬的检察院，检察长，公诉人。在辩论期间呢，可能语言有所不敬，啊，有所不妥，请多多包，原谅。

TR: Respected, em, Court, president of the Court, presiding judge, judges, and respected Procuratorate, the Attorney General, the prosecutors. During the courtroom debate, I might have said something disrespectful, ah, or inappropriate, I beg your pardon, please forgive me.

These sentences were said by Zhu after he argued with the judge and prosecution about his right to speak and his identity as the defendant. He described himself as saying something “disrespectful” and “inappropriate”, although all he did was argue for his legislated right to speech. Finally, he used “I beg your pardon” or “Please forgive me” (qing duoduo yuanliang) apparently to show regret for his former discoursal interactions and behaviour. The word “disrespectful” indicates that what he did earlier, the act of arguing with the judges and prosecutors for his speech right, violated the old court norms which has to be “forgiven” or “pardoned” by the powerful litigants. Such a mentality can be regarded as formed due to the defendant’s resignation to the tradition of asymmetrical power relations in court. This change of attitude towards the judges and prosecution might also indicate that the defendant Zhu finally realised his inferior position as a defendant after being coerced by the judge’s direct imposition of power.
On the other hand, the defence counsel for Zhu never used such ideologically invested words to show regret for his client, but rather defended him with confidence and a firm statement. Both defence counsels avoided ideologically invested words in these two video clips. This potentially indicates that defence counsels identify themselves as having equal institutional status or equal speech right to the judge and the prosecution.

Our quantitative analyses on the interactional and narrative sections of courtroom discourse have corresponded with the prediction list of the framework. However, there are also new discoveries about the relations between textual features and their functions and ideological influences in courtroom discourse, such as the relations between reformulation and information control, between the use of ISQs and CSQs and the narrative construction, or between conflictive interactions and ideological status and struggle for power. Qualitative studies of the functions of such features within a complete topical and situational context would allow the analyst to further explore the explanatory power of the framework.

5.4 Situational context and topic based qualitative analyses

The previous section focused mainly on quantitative analyses of linguistic features that register the power and information control of litigants in discourse interactions. As discussed in Chapter 3, the purpose of discourse interaction cannot be determined without specific situational context. As we summarised in literature, during the presentation, co-construction and ascertainment of legal facts, the prosecution and the defence would respectively increase the potential energy factors (PEF) of their information and create potential energy barriers (PEB) for the counter party. During such verbal interactions, each party would present and interpret the legal facts in such a way that there is a prompt to the information recipient - the judge - to form adjudicative facts favourable to them based on the legal facts they choose to present. The following analyses
of several video clips of fund-raising frauds in Guangzhou can help illustrate how information flow and legal fact interpretation works.

5.4.1 Analyses of information flow and legal fact interpretation reflected in the case of defendant Li Jiejun

Video Clip for Li Jiejun (Video No. 460-465)

Dialogue 1

法官：李杰军是否同意？

李杰军：我同意我律师的意见，并且的话呢，我补充下面一点发言。

法官：你还有什么补充？

李杰军：刚才前面的话呢，我的律师就已经讲到了，协议里面的话呢被检查方指控的话呢，我们以的话呢，高额的回报的话呢，来诈骗客户。在这里面的话，我强调一点，在四十一册的案卷册子里面，绝大多数的这个协议里面写道的高额的回报，是指一个预期的一个回报。在程宋英的几十万的投資协议里，清清楚楚的话呢，是书面的话呢，打印到，这是个预期的一个回报。所以说，你把一个预期的回报当成一个，高额的，一个的话呢，回报的话呢，来的话呢，判断的话呢，保洁公司犯有这个集资诈骗罪，这点的话呢，我要向向合议庭的话呢，就是说提出强调。其他没有了。

Dialogue 1 (Translation)

Judge: Li Jiejun, Do you agree?

Li Jiejun: I agree with my lawyer’s defence, and also I want to add another point.

Judge: What else do you have to add?
Li Jiejun: just now, em..., my lawyer has mentioned, that em... in the agreement, as been em... accused by the prosecutor, we committed fraud to deceive the clients with em... a promise of high return. Hereby, em..., I would like to stress that according to the 41st section of the case files, the high return written in most agreements refers only to an expected return. In the investment agreement with Cheng Songying of hundred thousand Yuan, it is em... clearly printed em... on paper that, em... this is an expected return. Therefore, you (the prosecutor) have taken an expected return for a high return promise, and judged em... on this basis, that Baojie Company committed fund-raising fraud, this is what I would like to just point out to the collegial panel. That’s all.

Background for analysis and interpretation

This video clip is taken from a fund-raising fraud case, in which the defendant held the office as the general manager of the company accused of fraud. Li Jiejun was in charge of soliciting funds from clients. As discussed before, in judicial practice, if the defendant promises to the clients of a high return rate up to 50% over the highest contemporary bank interest rate, the defendant would be deemed as having committed illegal fund-raising using fraudulent means. The frame covers two topics: 1. Is the high return only an expectation or a promise? 2. Are there any fraudulent means used? Script of this clip involves four subjects: the defendant, his lawyer, the prosecution, the clients, and the judge.

MR of Defendant Li Jiejun: basic understanding of the conviction of fund-raising frauds and clear understanding of company operation and contracts signed, aim to justify himself and escape liability.

MR of the judge: clear understanding of conviction of fund-raising frauds, aim to identify the circumstances of crime: fraudulent means.

MR of the prosecution: clear understanding of conviction of fund-raising frauds, aim to prove use of fraudulent means.

13 Disputes over such a criterion for conviction of fund-raising frauds mainly focus on the determination of fraudulent means. For more discussion please refer to 叶良芳. (2012). 从吴英案看集资诈骗罪的司法认定. 法学, (3), 16-22.
MR of defence counsel: clear understanding of conviction of fund-raising frauds, aim to acquit the defendant (not a participant in this piece of discourse).

Text description for video clip of Li Jiejun:

<table>
<thead>
<tr>
<th>Aspects of formal features</th>
<th>Values</th>
<th>Specific features to analyse</th>
<th>Examples in this clip (Chinese-English)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vocabulary</td>
<td>Experiential</td>
<td>collocation</td>
<td>无</td>
</tr>
<tr>
<td></td>
<td></td>
<td>word choice</td>
<td>当成</td>
</tr>
<tr>
<td></td>
<td></td>
<td>over-wording (synonyms)</td>
<td>清清楚楚/书面/打印到</td>
</tr>
<tr>
<td></td>
<td></td>
<td>rewording (antonyms)</td>
<td>预期的回报/高额的回报</td>
</tr>
<tr>
<td>Relational</td>
<td>address terms</td>
<td></td>
<td>李杰军检查方合议庭</td>
</tr>
<tr>
<td></td>
<td></td>
<td>euphemism</td>
<td>强调</td>
</tr>
<tr>
<td></td>
<td></td>
<td>formal and informal words</td>
<td>投资协议</td>
</tr>
<tr>
<td>Expressive</td>
<td>commentary, appraisal words</td>
<td></td>
<td>清清楚楚</td>
</tr>
<tr>
<td>Metaphors and Simile</td>
<td>presupposition</td>
<td></td>
<td>无</td>
</tr>
<tr>
<td></td>
<td>manipulating concepts</td>
<td></td>
<td>无</td>
</tr>
<tr>
<td>Aspects of formal features</td>
<td>Values</td>
<td>Specific features to analyse</td>
<td>Examples in this clip (Chinese-English)</td>
</tr>
<tr>
<td>----------------------------</td>
<td>--------</td>
<td>-----------------------------</td>
<td>---------------------------------------</td>
</tr>
<tr>
<td><strong>Grammar</strong></td>
<td>Experiential</td>
<td><em>agency</em> (active, passive, nominalisation)</td>
<td>写到/打印到</td>
</tr>
<tr>
<td><strong>Relational</strong></td>
<td>directives</td>
<td>无</td>
<td>none</td>
</tr>
<tr>
<td></td>
<td>declaratives</td>
<td>无</td>
<td>none</td>
</tr>
<tr>
<td></td>
<td>question types</td>
<td>同意吗?</td>
<td>Do you agree?</td>
</tr>
<tr>
<td></td>
<td>relational modality</td>
<td>无</td>
<td>none</td>
</tr>
<tr>
<td></td>
<td><em>pronouns</em></td>
<td>我/我们/你（公诉人）</td>
<td>I/we/you (prosecution)</td>
</tr>
<tr>
<td><strong>Expressive</strong></td>
<td>expressive modality</td>
<td>绝大多数</td>
<td>most</td>
</tr>
<tr>
<td></td>
<td>discourse markers (language styles)</td>
<td>14个“的话呢”</td>
<td>14 &quot;em…”</td>
</tr>
<tr>
<td></td>
<td>interpersonal meta-discourse</td>
<td>被…指控</td>
<td>were accused</td>
</tr>
<tr>
<td><strong>Connective</strong></td>
<td>cohesive features (logical connectors and reference, etc)</td>
<td>所以说这里面，这是，这个，这点</td>
<td>therefore hereby, this is, this, this point</td>
</tr>
<tr>
<td></td>
<td><em>information weight</em> (coordination or subordination)</td>
<td>无</td>
<td>none</td>
</tr>
<tr>
<td><strong>Textual Structure</strong></td>
<td>Interactional conventions</td>
<td>turn-taking</td>
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</tr>
<tr>
<td></td>
<td>interruption</td>
<td>法官1次</td>
<td>Judge 1 time</td>
</tr>
<tr>
<td></td>
<td>enforcing explicitness</td>
<td>无</td>
<td>none</td>
</tr>
<tr>
<td></td>
<td>reformulation</td>
<td>无</td>
<td>none</td>
</tr>
<tr>
<td></td>
<td>controlling topic</td>
<td>无</td>
<td>none</td>
</tr>
<tr>
<td></td>
<td>silence</td>
<td>无</td>
<td>none</td>
</tr>
<tr>
<td></td>
<td><em>coherence</em></td>
<td>无</td>
<td>none</td>
</tr>
<tr>
<td><strong>Large structure</strong></td>
<td>intertextuality</td>
<td>第四十一册案卷我律师的话</td>
<td>41st case files My lawyer’s defence</td>
</tr>
</tbody>
</table>

Table 25. Text description of Dialogue 1 between Li Jiejun and the Judge
Analysis and Interpretation 1

As discussed in 3.3, legal fact construction not only involves legal fact presentation, but also involves interpretation of it. The different interpretations of a fact may influence the legal fact construction in a different aspect. Li Jiejun employed many skills in his statement to manipulate the flow of information and the interpretation of legal facts.

Point 1.1 The use of “当成” (take… for) is specially chosen to intend the meaning of “making a mistake”. The use of this word by the defendant is an implication that the prosecution was wrong in defining the return in the agreement as “promised high return”.

Defendant Li Jiejun pointed out in his argument the distinctions between the “promised” and the “expected” high returns in hope of redefining the intention of his behaviour in relation to fund-raising. By using a rewording, he rebuked the accusation by the prosecutors of him using temptation of “high returns” as fraudulent means, by indicating a mix-up of concepts by the prosecutors. This is a re-interpretation of a detailed fact`; however, this concept is critical for adjudication because “high returns” is considered a condition for conviction.

Point 1.2 The uses of “清清楚楚 (clearly)”, “书面 (in written)”, and “打印到 (printed)” are near synonyms which can be seen as over-wording. Over-wording indicates a focus of ideological struggle (Fairclough, 2001, P.96), here referring to the defendants’ belief/argument that the contract was mutually understood and there was no fraudulent means used to the clients. Moreover, the expression of “书面 (in written)”, and “打印到(printed)” made the agent in that sentence unclear. Therefore, as the defendant is not an active initiator, the liability for the making of this contract shall not be totally on the defendant.

Again, this use of over-wording allowed him to draw attention to the “mutual understanding” between him and the clients, thus reducing his responsibility for the fraud.
Point 1.3 In order to increase the credibility of the information source, Li pointed out the source of this new piece of information is from “第四十一册案卷 (41st case files)” and the “投资合同 (investment agreement)” which were all authoritative and legally binding documents. This therefore increased the potential energy factor (PEF) of the information and thus prompted the flow of information to the judges and audience. At the same time, the doubt cast on the prosecutor’s accusation decreased his credibility and functioned as potential energy barrier (PEB) towards the information flow of the accusation.

Point 1.4 The different use of address terms indicates the power relations in an institution. We noticed the judge addressed the defendant by his full name, “Li Jiejun”, instead of using his institutional title “defendant”. This usage made the discourse less institutional and more conversationalised. Such an address term might indicate a nice gesture to make defendants feel less pressurised in such a power-asymmetrical institution. This use of address term does not conform to our quantitative analysis results in 5.2, which means courtrooms still remain an institution with strict power positions. Meanwhile, the defendant addressed the judge and prosecution as “合议庭 (collegial panel)” and “检查方 (the prosecution)” rather than “you” or “they”, which indicates that he still ideologically identifies himself according to his institutional role.

Point 1.5 The use of pronouns “我(I)”, “我们(we)”, “你 (You-here refer to the prosecution)” indicates the opposite position of the defendant against the prosecution when he accused the prosecution of wrongly defining “expected high return” as “promised high return”. In this way, the defendant was discrediting the prosecution and also ideologically establishing his equal status to the prosecution through his superior understanding of finance.

Point 1.6 However, it is apparent that one discourse marker “的话呢 (de hua ne)” (translated as “em...”) was frequently used (14 times) in his short piece of argument (40 seconds). Frequent
use of filled pauses in discourse indicated that his discourse style belongs to that of the powerless considered as less trustworthy according to Conley and O’Barr (1998). Compared with the discourse style of another defendant, Ren Yongqiang, in video clip two below, we are able to identify differences in the credibility and persuasiveness of the discourses.

5.4.2 Defendant Ren Yongqiang and strategic self-defence

Video Clip of Ren Yongqiang (Video No. 468-493)

Determination of penalty for fund-raising fraud relies on the circumstances of the crime, such as whether a particular crime-doer is a recidivist or the principal culprit of the fundraising fraud group. Meanwhile, the awareness of the doer is still of considerable importance as one of the conditions, although this condition has been removed in the amended judicial interpretation in 2010. In this video clip, the main situation is the self-defence of an accessory crime-doer Ren Yongqiang. We can see that he was trying to give a clear definition to his role in the company and thereby claim his unawareness of the company’s fraudulent nature. The two main topics are: 1. Why should he not be considered a crime-doer? 2. What was the subjective intent of Li Jiejun? The script of this transcript includes the judge, defendant Ren, defendant Li, and the prosecution. Some overall purposes of the defendant Ren were to define the relationship between defendant Ren and defendant Li and the company, to define the behaviour of defendant Ren, and to present legal facts that justify/decriminalise defendant Li’s behaviour. The purpose of the judge was to identify via discourse interaction the nature of defendant Ren’s behaviour.

MR of Ren Yongqiang: basic understanding of conviction requirements relating to fund-raising fraud and basic knowledge of loan and investment.

MR of judge: detailed understanding of conviction requirements for fund-raising fraud.

We can see that there is a major difference between the MR or Ren and the MR of the judge in terms of their inferential framework. Ren’s inferential framework is based on his laymen
common sense and basic knowledge of loaning and investment relationship, while the judge has a legal inferential framework based on professional understanding of the relevant legal provisions and the circumstances of fund-raising fraud. Such differences would allow us to see clearer how Ren manipulated the interpretation of legal facts found and information presented.

For convenience of analysis, due to its length this clip has been divided into two dialogues.

Dialogue 2.1

法官：任永强有什么补充意见？

任永强：有。法官：嗯，说吧！

任永强：从前两次的开庭中我已经明确的跟大家介绍过，我只是保洁公司的挂名的股东，因为从来不参加他们的经营和管理，所以我并不知道保洁公司的经营状况，以及他们的管理体制和管理模式。我只知道他们是在和广东省黄金公司合作黄金生意。至于他们是从什么时候开始合作又是从什么时间终结了他们之间的合作，这些情况我就一概不清楚。第二，我跟保洁公司李杰军他呢也只是一种借贷关系，出于关心，对他们的帮助和支持。当初我借钱给他们周转，然后叫他们还我的本金，我不知道我触犯国家刑法的哪一条？

法官：（打断）这条说过啦，你有没有新的意见？

任永强：（打断法官）没有说过！上次没说过，我只是说没参与，不知道。

法官：嗯。

Dialogue 2.1 (Translation)
Judge: Ren Yongqiang, do you have anything to add?

Ren Yongqiang: Yes, please.

Judge: Okay, go ahead.

Ren Yongqiang: I have clearly explained to everyone in the last two trials, that I am only a nominal stakeholder of Baojie Company. As I never took part in their business or administration, I do not know the business conditions of the company or their administrative mechanism or management mode. I only knew they were doing gold business with a Guangdong gold company. As for when they started or ended their cooperation, I have no idea whatsoever. Secondly, my relation with Baojie Company and Li Jiejun is only a loan relationship. I was helping and supporting them out of my kindness. I loaned them money for them to finance, and then asked them to pay back my principal. I do not see which article of the Criminal Law I violated?

Judge: (interrupting) You mentioned this point before, do you have any new opinions?

Ren Yongqiang: (overlapping with the judge) No, I didn’t. I didn’t mention this last time, but only said I wasn’t part of the crime, and knew nothing about it.

Judge: Okay.

Dialogue 2.2

任永强：我不知道我触犯了国家刑法的哪条哪款？借钱还钱，天经地义，这是我们中华民族几千年文化传统的美德。

法官：这在法庭调查的时候（尝试打断不成功）

任永强：（继续）如果说借钱也犯法，借钱也属于犯罪，那我们这个社会将变得十分可怕。以后再也没有人敢借钱，再没有人敢去做好事。换句话说，如果李杰军这次借的几百万不是我私人的钱，而是借国家银行的钱，并且他们还了一点在银行里，我想请问各位法官和公诉人员，你们会不会把银行的行长也抓到法庭上来让他来接受审判？我想这样的事情是绝对不会发生的。我才是真正的受害人，我也应当得到社会的关心和帮助。我更加需要得到法律的保护和支持。你们现在把人抓了，把公司查封了，那李杰军他们
欠我的钱，我不知道该找谁来还给我。我的损失应该有谁来承担？我请求各位法官，你们今天一定要帮我做主，一定要帮我撑腰，一定要把我的损失也追回来，还给我。第三，我虽然恨李杰军，但是今天，当着大家的面在法庭上我要讲几句公道话：前两次公诉机关在公诉中特别强调，说李杰军带领保洁公司总共集资额六七千万。当我听到这个数字，我感到非常的震惊，也非常意外。因为凭我对李杰军的了解，他根本就不像一个拥有六七千万身价的老板。如果他有那么多的钱，他为什么不还我的钱？如果他有六七千万，他干嘛还要三番五次来跟我借钱？作为一个大男人，在向我借钱的时候一点尊严都没有，低三下四。我问他借那么多钱去干什么，他说公司做黄金生意做亏本了，让我借钱给他还给客户，去赔偿给客户。由此可见，李杰军的本意，他并没有刻意想侵吞客户的投资款，而是在千方百计，想法设法，四处去筹集资金，到处借钱去解决公司的困难，去解决他们跟客户之间的矛盾，去还给客户的投资以及他们的亏损。

Dialogue 2.2 (Translation)

Ren Yongqiang: I do not know which article or which item of the national Criminal Law I have violated? It is very much right and proper for someone to lend money and get it paid back. This has been a good traditional virtue of our Chinese nation for thousands of years…

Judge: This was in the courtroom investigation… (tried to interrupt, but failed)

Ren Yongqiang: (continues) …if lending someone money were illegal and a crime too, our society would be an awful one. No one would ever dare to lend others money, nor do they dare to do good things. Put it this way, if the several million Yuan loaned to Li Jiejun were not from me, but from a national bank, and they paid back some of it to the bank, I would like to ask all the judges and prosecutors, would you arrest the President of the bank for a trial in court? I think such thing would never happen. I am actually a victim, and shall be supported and cared for by the society. I need legal protection and support even more. Now that you have arrested the company staff, and sealed up the company, I do not know who to ask for the money Li Jiejun owes to me. Who shall be responsible for my loss? I therefore appeal to all judges here to please stand up for (represent) my interest and back me up and please help me to get back my loss. Thirdly, although I hate Li Jiejun, I would like to say some just words in face of everyone in court: The prosecution stressed in the last two trials that the sum of funding raised by Baojie Company lead by Li Jiejun were around 60 -70 million Yuan. I was shocked and surprised to hear this sum, because Li Jiejun, in my opinion, is far from a businessman owning a fortune of 60 -70 million Yuan. If he had that much money, why did he not pay me back the loan? If he had 60 -70 million, why did he keep borrowing money from me? He lost
his own self-esteem as a man when he kept asking me for money. I asked him why he had to loan so much money, and he told me he suffered from a loss in the gold business and needed my money to pay back to his clients and compensate their loss. Judging from the above, Li Jiejun did not intent to embezzle the funds from clients, but rather tried every means to gather finance and loan money to solve the problems of the company and the issues with clients, to payback the clients’ investment and compensate their loss.
<table>
<thead>
<tr>
<th>Aspects of formal features</th>
<th>Values</th>
<th>Specific features to analyse</th>
<th>Examples in this clip (Chinese-English)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vocabulary</td>
<td>Experiential</td>
<td>collocation</td>
<td>only… not…</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(ideological) word choice</td>
<td>nominal stakeholder stand up for me, back me up</td>
</tr>
<tr>
<td></td>
<td></td>
<td>over-wording (synonyms)</td>
<td>did not participate, did not know, have no idea.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>rewording (antonyms)</td>
<td>nominal stakeholder, loan relationship; crime, victim.</td>
</tr>
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<td>Relational</td>
<td>address terms</td>
<td>任永强法官</td>
<td>Ren Yongqiang Judge Prosecutors</td>
</tr>
<tr>
<td></td>
<td></td>
<td>公诉人员</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>euphemism</td>
<td>无</td>
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<td></td>
<td></td>
<td>formal and informal words</td>
<td>national criminal law stand up for me, back me up</td>
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<td>commentary, appraisal words</td>
<td>传统美德，十分可怕，震惊，意外公道话，低三下四</td>
<td>traditional virtue awful, shocked, surprised, just words lose self-esteem</td>
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<td>Metaphors and Similes</td>
<td>presupposition</td>
<td>借钱，银行行长</td>
<td>lend money, President of bank</td>
</tr>
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<td></td>
<td>manipulating concepts</td>
<td>国家的钱，私人的钱；银行行长</td>
<td>national bank loans, personal loans, President of bank</td>
</tr>
<tr>
<td>Aspects of formal features</td>
<td>Values</td>
<td>Specific features to analyse</td>
<td>Examples in this clip (Chinese-English)</td>
</tr>
<tr>
<td>---------------------------</td>
<td>--------</td>
<td>------------------------------</td>
<td>----------------------------------------</td>
</tr>
<tr>
<td>Grammar</td>
<td>Experiential</td>
<td><em>agency</em> (<em>active, passive, nominalisation</em>)</td>
<td>把人抓了，把公司查封</td>
</tr>
<tr>
<td></td>
<td>Relational</td>
<td>directives</td>
<td>说吧</td>
</tr>
<tr>
<td></td>
<td></td>
<td>declaratives</td>
<td>这条说过了。没有说过！</td>
</tr>
<tr>
<td></td>
<td></td>
<td>question types</td>
<td>设问句</td>
</tr>
<tr>
<td></td>
<td></td>
<td>relational modality</td>
<td>一定要</td>
</tr>
<tr>
<td></td>
<td></td>
<td>pronouns</td>
<td>我/我们/你</td>
</tr>
<tr>
<td></td>
<td>Expressive</td>
<td>expressive modality</td>
<td>绝对不会</td>
</tr>
<tr>
<td></td>
<td></td>
<td>discourse markers (language styles)</td>
<td>极少</td>
</tr>
<tr>
<td></td>
<td></td>
<td>interpersonal meta-discourse</td>
<td>我不知道我想</td>
</tr>
<tr>
<td></td>
<td>Connective</td>
<td>cohesive features (logical connectors and reference, etc)</td>
<td>所以说由此可见这里面，这是，这个，这点</td>
</tr>
<tr>
<td></td>
<td></td>
<td><em>information weight (coordination or subordination)</em></td>
<td>无</td>
</tr>
<tr>
<td></td>
<td></td>
<td>intertextuality (reference)</td>
<td></td>
</tr>
</tbody>
</table>
### Table 26. Textual description of Ren’s statement

**Analysis and Interpretation 2.**

**Point 2.1**

From the transcript, the collocation of “只是 (only)” and “不 (no/not)” occurred three times in the early part of Dialogue 2.1. This indicates that defendant Ren was attributing to himself a definite and limited role in the company. By claiming himself as only a “挂名的股东” (nominal stakeholder) and repetitively acknowledging (over-wording) ignorance of the business conditions or administration of the company, the defendant successfully introduced the information that he should not be considered as involved in, or liable for, the crime via manipulation of the concept of his role in the company. By denying knowledge or participation in the company business, he proposed a new identity between himself and Bao Jie Company—“借贷关系 (loan relationship)”. *This is important* because in the judgment of joint crime, the ascertainment of “awareness” is the key determination of “indirect intention”. Therefore, the
defendant claimed his intention was to help and support Li as a friend, rather than “illegal possession of the funds”: this insists that there was no direct or indirect intention to commit fraud.

Point 2.2

After defining his role as a nominal stakeholder and a lender, defendant Ren continues to portray himself as a “受害人 (victim)” and his behaviour “传统美德 (traditional virtue)” rather than a “罪犯 (criminal)” or “犯罪 (crime)”. He used “传统美德 (traditional virtue)” to comment on his behaviour of “lending” and used “太可怕 (awful)” for treating “lending” as a crime. By defining his investment to Baojie company as a loan out of kindness and support, Ren claimed that he was just following "a traditional virtue of the Chinese nation for thousands of years" to lend money to Li Jiejun. This is used to elevate his own reputation through a manipulation of the concepts between "lending" and "making an investment". Such a change of concept not only indicated his opposition to the prosecution, but also influences the interpretation of his behaviour as an objective fact. However, with a different member resource in terms of legal knowledge and professional knowledge, the judge may choose to interpret such an argument according to her own discretion.

Point 2.3

Ren’s question “Which article of the criminal law have I violated?” is a challenge to the authority of the court, and especially to that of the prosecutors. Since as legal professionals, the prosecutors and judges have higher status and more legal knowledge than the defendants, such a challenge to their authority is a negative face threat. Right at that point, the judge interrupted defendant Ren, saying that he “mentioned this point before”, in an effort, through her judicial right to oversee the procedures of court trials, to take the turn back and change the topic. However, this interruption was immediately counteracted by the defendant through his own
interruption effectively taking back the turn from the judge. This is unusual behaviour for defendants in criminal trials, considering the lower power status and inferior speech right of defendants in court.

Point 2.4

Following a similar logic of concept manipulation, the defendant made an analogy/simile between himself as a lender and the “国有银行行长 (President of a national bank)”, who has a high social power status and a legitimate social and legal identity. With the presupposition of him being as legitimate as the President of a bank, the defendant even used a rhetorical question to confront the judges and the prosecutors, drawing a firm conclusion that he, too, is actually a victim who needs help. It is skilful of the defendant to use such an analogy to elevate his own social status and justify his behaviour because, we suggest, he intuitively understands that for which he has no language: namely, that the power behind discourse provides conditions for the attainment of power in discourse.

Point 2.5 In the position as a “victim”, Ren used “做主” (stand up for me) and “撑腰” (back me up) to ask for the support of the judge to help him with his loss. “做主” literally means “be my master” and “撑腰 ” means “lumbar support”. These terms were used in ancient mandarin by lower class people to appeal to the county magistrate so they are two informal and ideologically invested words being used here to narrow the institutional distance between the defendant Ren and the judges. These expressions are also ideologically associated with “冤案” (wronged cases) and therefore give the impression he was wronged by the prosecution. Defendant Ren intentionally lowered his status to seek sympathy from judges.
Point 2.6 According to the theory of information flow, the persuasiveness of information is the greatest when the spread of the information goes against the interest of the information spreader. The defendant confessed that, “I hate Li Jiejun”, who was supposed to be his friend. The implication of such information is that the defendant does not want Li to escape punishment from law. On one hand, his confession of hating Li showed his disinterest with the principal accused. On the other hand, when he said he “would like to say some just words in face of everyone in court”, he sounds more persuasive and credible to other participants because of such a confession. Moreover, he described Li as someone who has, “lost his own self-esteem as a man”, a piece of information that harms the image of Li, but at the same time made his presentation of that loss believable to others. Through such self-representations and linguistic techniques, Ren manages, therefore, to simultaneously appear angry towards Li whilst still feeling pity for his loss of manhood.

Finally, Ren summarised the situation based on his own perception that Li did not intend to embezzle the funds from clients. Without the confirmation of intent of illegal possession of funds, it is less likely for the judge to convict Li for fund-raising frauds.

5.4.3 The case of defendant Xie Minzhen and topic control

Next, we are going to do an analysis of a more complete session of one defendant being interrogated in court, focusing on how topics in trials are negotiated and debated. This clip of a video gives a whole picture of one part of the criminal case and is suitable for a qualitative and inter-textual analysis. The defendant Xie Minzhen is both an upper-line of several investors and a down-line of Tang Jianhui. Let us look at her strategy of defence and the ideological nuances of different participants as reflected in their interactions.

Judge-J, Defendant-D
Translation of Conversation:

J: Defendant Xie Minzhen, do you have any opinion on the criminal facts and accusation in the indictment?

D: I believe that, em… Are you asking about my opinion on the current indictment?

J: Yes, this indictment, the current trial is for this indictment.

As we know from background research, this trial was an additional session for new victim claims in a former case that had been adjudicated. According to Criminal Procedure Law, before and at the beginning of a trial, the indictment would be provided to all participants and read to the whole court so that litigants can get prepared for the trial. However, in this case, we can see that the defendant was trying to confirm with the judge which indictment she was asked her opinion on. The cause or reason for such a response shall be analysed based on our prediction of the MR of the defendant. Since we know that the defendant must know that the judge was asking about the current indictment, then the reason for such a question as a response would most probably be purpose-driven, which means this response serves for her benefit in court. If we understand that her goal in court was to gain an impression of credibility from the judges and defend herself against any charges, we can interpret her response as a strategy to gain more time for her to organise her answer, and also, perhaps, as a struggle to argue about her former conviction.

We can notice here the judge said, “the current trial is for this indictment” which seems to indicate that trials are aimed at either proving or disapproving the indictment filed by the prosecution. Pre-trial procedure in criminal investigations is carried out by the public security bureau as a verification of the criminal evidence (CPL, Article 114). Documents generated from this pre-trial are then used in the indictment filed by the Procuratorate against defendants. The court would also first read the indictment to all litigants, partly as a basis for
debates and discussion. As a response to the defendant’s question, it was reasonable for the judge to give a simple answer. However, viewed ideologically, this seemingly neutral sentence embodies a pre-concept of the fundamental rule of legal fact construction in criminal trials in China: namely, that the narrative construction of legal facts is partly reliant on or influenced by the investigation of PBS and Procuratorate who are institutionally neutral but functionally opposing the defendants. If we analyse intertextually, we can notice more such ideological partiality built into the procedures or structure of the institution. Let us examine the following part:

D: Well, I am also an investor, but more of a victim. In the beginning, I got to acquaint a manager of a hotel who recommended me this (program). At that time, I was not keen on this program. Then I got to know Tang Jianhui three years ago, and later some customers to this hotel. Like that, and then, they just told me that some investing programs are quite profitable, and since I have never had any knowledge of stocks before, the first investment I made was quite a lot. I mean, I did so because I can see he was quite successful with his family life and all different aspects. His father was also an administrator of business. He himself was also quite capable in financing.

J: Simpler please. Simpler please.

D: Okay

J: You have talked about these in the first court trial, now you may only make clear your point and argument.

D: I see, okay. And then, I made my first investment of 10 grand for the first time, also as a gesture to strengthen our friendship. Now the indictment mentioned many other programs, which were also introduced to us in that hotel. They came over to
the hotel, and since we saw each other before, we passed some business cards to each other, and such. Then, at that time, everyone was making money, back then. He asked me if I made any investments before, and how I felt about those programs. I told him it seemed not bad. It was even better than bank interest rate, but I also told him there was risk and he must think it over and make the decision himself, whether to invest or not. That was like that. Later after I invested, we became friends, and I introduced to them those programs, in which they invested 10 grand or so. Later, they were just casually investing in their programs. I also later invested in the MC. Now that I was sued for fraud, I made my appeal to the Supreme Court and I am surprised to have received such a sentence. During all this time, I had always been an investor, a victim. All I did was to help others make money. What was wrong with that? I do not understand.

We can see here that the judge told the defendant to be “simpler” and later told her to “only make clear your point and argument”, when the defendant started to explain the influence of the introducers’ family on her first investment decision. Such commentaries, as we discussed in literature review, belong to information control devices. However, if we inspect the probable reason for such commentaries, we would realise the ultimate purposes of them were not merely to control information within a relevant scope, but also to ensure that the mode of the defendant’s narrative construction serves the unspoken purpose of China’s court: the display of “known information”. This type of pre-trial procedure once caused the phenomenon, “first decide [the case], then have a trial”. Although the 1996 and 2012 CPL reforms all aimed to accomplish an elimination of such a phenomenon by not requiring the prosecutors to file evidence with the court before trial, the descriptions of the case in the indictment are still read by the judges beforehand. The prosecutors provide “major evidence” that they get from the PSB investigation. However, whether such evidence is obtained legally
is not the concern of prosecutors. In this section, the judge’s requirement to keep it simple and make the point can be interpreted as an underlying lack of interest in the defendant’s extended explanations. This is because the judge had already decided that such extended explanations were neither relevant nor new information that could contribute to the main structure of a narrative that had been basically constructed before the trial.

The defendant, on the other hand, tried her best to disprove that she was an active member of the group or had any intention of fraud. She used many ideologically invested words and expressions that portrayed herself as innocent and misled, or to avoid her responsibility by indicating she warned them or the investors about the risk. The following is a list of her strategies:

<table>
<thead>
<tr>
<th>Identify herself as innocent and misled</th>
<th>I am also a victim. (2 times)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Never had any knowledge</td>
</tr>
<tr>
<td></td>
<td>Not keen on this program</td>
</tr>
<tr>
<td></td>
<td>They just told me that…</td>
</tr>
<tr>
<td></td>
<td>He was quite successful… his father…</td>
</tr>
<tr>
<td>Point out her good will</td>
<td>As a gesture to strengthen our friendship.</td>
</tr>
<tr>
<td></td>
<td>All I did was to help others make money.</td>
</tr>
<tr>
<td></td>
<td>We became friends.</td>
</tr>
<tr>
<td>Point out her warning</td>
<td>I also told him there was risk…</td>
</tr>
<tr>
<td></td>
<td>Make the decision himself.</td>
</tr>
<tr>
<td>Point out investors’ responsibility</td>
<td>Just casually investing in their programs</td>
</tr>
<tr>
<td></td>
<td>Everyone was making money back then.</td>
</tr>
</tbody>
</table>

Table 27. Xie’s utterances and relevant purposes

Analysis and interpretation 3

When we start to interpret the defendants’ use of words, such as “victim”, “no knowledge”, “not keen” or “they just told me”, we can tell she was portraying herself as powerless, innocent and manipulated by others. Ideologically, such an image of the powerless would
incur other people’s pity. As we mentioned in Chapter 2, the convictions handed down by judges are not only based on legal fact construction, but also on their impression of the credibility and subjective intent of the defendant, as well as on their own interpretation of the situational context reconstructed through discourse. Playing the powerless, as can be observed in our database, is a frequently used strategy for defendants who cannot argue about the facts verified. Such a strategy, however, may not definitely leave a good impression upon the judges, because these self-defences may sound like excuses to the judges, especially when they already had in mind a pre-concept of the guilt of the defendant. The defendant also claimed that she made her investment because the success and financial capability of her upper-line influenced her decision and lured her to make her first investment. As we can understand, in any society, wealth and success symbolise power and influence, particularly so in the ideology of the less powerful. The defendant brought up such a reason as an excuse for her misjudgement of the program, justifying her mistakes with a commonsensical and well accepted value of respect for elders. It is hard for the court to invalidate her justification because laws are primarily derived from common sense and an institutional ideology. Commonsensical ideology, does not ensure an overwhelming superiority. This is especially so in a society that values success, perhaps even more highly than regulations.

Pointing out good will usually transforms the business relationship between upper-lines and down-lines in a pyramid selling system into a friend relationship. Chinese society is a nepotism society in which kinship, friendship, and relationships are greatly valued. To “give face” to friends and family is critical to maintaining good relationships. Chinese culture is unique because business partners usually refer to each other as “friends” and many businesses are decided in a banquet or a friendly gathering. In view of such culture, ideologically, if the relationship of the two business partners is described as friendship, there seems to be less focus on one party taking advantage of another party and more focus on cooperation and
good will for mutual benefit. The defendant referred to her investment as, “A gesture to strengthen our friendship” because ideologically, such an “excuse” conforms to the Chinese culture and sounds more credible. Especially, such a “friendship” would automatically create “good will” in all her contacts with her down-lines or clients, thus eliminating her “intent of illegal possession”. The claim of one’s good will, no matter whether it is real or not, will make a defendant sound more credible and confident in court, and thereby increase the positive face of the litigant.

Conviction and sentencing of defendants depends on verification of their responsibility in the crime. The defendant here pointed out that she was just giving suggestions to friends and also warned them about the potential risks of these programs. This strategy can help her to transfer her responsibility to her clients, indicating their careless investments. She also used the word “casually” to indicate the lack of sufficient responsibility by her clients. She mentioned that, “Everyone was making money back then” most probably for the reason that she wanted to point out it was unfair to accuse her of irresponsible introduction of the program, just because the program was not making money right now. From our point of view as an analyst, we can now get a general idea of the defendant’s MR. She invested and made money in that program, ignoring the nature of the pyramid scheme. She introduced those programs to her “friends” who also made money. Therefore, she might believe it was wrong of them to accuse her of misleading them to such a fraud. Such a belief is very likely due to her MR, especially her understanding of the pyramid scheme as an illegal behaviour since pyramid scheme programs disguised as normal investments would usually escape the observation of investors. In China, such investments, with their structural focus on selling to or doing business with friends, would still lure some investors even if they had a slight doubt in mind about the nature of the investment. Such a unique feature of fund-raising fraud causes the hardship of conviction and provides many uncertainties about the nature of such activity, and defendants, both the
genuinely unwary and the deliberate fraudster, can use such uncertainties to argue against accusations. In such a situation, the MR of the defendant is clearly pivotal.

The next long section consists of a conversation between the prosecutor and the defendant, concerning seven topics relevant to conviction and sentencing. In the following part, we are going to analyse the turn-takings during the conversation about each topic. We will analyse some interactive strategies to see how the two parties negotiate and navigate in discourse to achieve their respective goals, and how speech right can influence the flow of information. Under each topic, we examine the turn-takings of litigants and focus on how the prosecutor keeps the defendant on topic and under control, and how the defendant uses her own strategies.

Prosecutor: P Defendant: D

Topic 1

P: Well, Xie Minzhen, the prosecution has a few simple questions for you. First, the verdict of Menghuan Loans in Macau has come into effect. 52 new victims showed themselves now to claim for their loss. So what opinions do you have for these new victims?

D: As for the new victims, to be honest, I did not see their names. Since we are all investors, some of them also invested in several different programs, then...

P: We are now talking only about Menghuan Loans Company.

D: Okay, about Menghuan Loans Company

P: Do you have any opinions on the charges and requirements raised by the new victims?
D: **I have no idea. I am only a shareholder** of Menghuan Loans Company, a mere investor. As for the amount of the investment, we need to **hold accountable**…

Topic one is about the defendant’s opinions about the charges and requirements by the new victims. It took six turns of both parties to finally get an equivocal and evasive answer to this question. The following are the turns taken by two litigants towards a final answer which was still evasive:

P raised broad question--->D gave equivocal and evasive answer---> P refocused on the main topic---> P continued to specify the content of the question---> D avoided responsibility and used evasive answers.

We can tell that the prosecutor adjusted his way of asking the question three times, just to pin down a finite answer about the defendant’s opinion (probably expecting more of a confession). However, the defendant either declined to answer (no idea, did not see their names), or declared her identity as an equal investor who did not play a part in that matter, or indicted that the responsibility should not be only on her, but on the investors themselves and other departments in the company. Knowing that the defendant Xie Minzhen actually introduced several down-lines to this program, which was later determined as a pyramid scheme, we can understand that her equivocal answers were aimed at evading her responsibility.

**Topic 2**

P: Well, this indictment also further accused the leaders of Morgan Stanley, MC Angel investment, and Associated Elite International of organising financing. How did **these programs** come into being?
D: It was like this. Because when all funds were being organised, the organisers, they said that this program was also pretty good, and was suitable for investment, just like other stocks, no need to worry or... anyway...

Topic 2 aims to find out who organised these programs relevant to these financial organisations. However, the defendant only gave very ambivalent answers by using pronouns such as “they”, and general terms such as “the organisers”. She seemed to be hiding some information for a reason. Also, she used understatement, saying that these programs were “just like other stocks”. In this way, she avoided answering the question clearly with a finite answer, but evaded the crucial point whilst dwelling on the trivial and equivocal. She did this, probably in the hope of protecting some other accomplice. We can tell more clearly about her motivation in later sections.

Topic 3

P: From where did you know of this program? I mean this investment program.

D: That one was also when we first got to know each other, I heard of the program from them, so I thought it was a good one.

P: Who told you about the program?

D: Well, at that time, also, because my upper-line is Tang Jianhui, so, yes, and then

P: It was also Tang Jianhui who introduced you to this program?

D: Yes, and then, em, and the MC investment, I also invested in that MC program to Liu Min.

Topic 3 is actually a further question following up on topic 2, when the prosecutor did not get the clear answer he wanted. In order to identify responsibility for the crime, the prosecutor had
to find out who the direct upper-line was for her and who was responsible for the investment program. However, a clear question did not get a clear and simple answer. The use of the pronouns “we” and “them” once again successfully defeated the prosecutor’s purpose. The prosecutor immediately reformulated the question, and specifically asked about the individual responsible for introduction of the program. Even after the defendant admitted that Tang was her upper-line, the prosecutor has to repeat it in a clearer and unequivocal form, as he knows that the clerk would take down their conversation, and a clear answer saves a lot of debate and trouble.

Topic 4

P: Then, was Tang Jianhui in charge of soliciting investors for all such programs?
D: I am **not sure** about this, because we were just shareholders, and usually we do **not interact**...

P: I am asking you from whom did you hear of **this MC program**?

D: That was when he had meals in our hotel, and then he mentioned it to me, so I just invested, just like that.

P: Who do you mean by “He”? Please clarify it to the court. There’s nothing to hide in court.

D: I told you just now, Liu Min

P: Okay, Liu Min D:

Yes.

P: So **what program did Tang Jianhui introduce to you**?

D: Oh, it was the original program that I have confirmed.
Following the new information obtained from Topic 3, Topic 4 continues to establish how many programs Tang Jianhui introduced to the defendant and how many were his administrative responsibility. The defendant was equivocal, as usual. However, here we have an example of how the MR of litigants, or their pre-conceptions, can influence their judgement. The prosecutor here first infers that Tang might be in charge of soliciting investors for all the programs, but such inference was not confirmed by the defendant’s answer. Therefore, the prosecutor continues to narrow down the question to establish if Tang also introduced the MC program to the defendant. Although the prosecutor did not mention Tang specifically, we can infer from later questions about Tang Jianhui that the prosecutor was suspecting that Tang was the introducer. The defendant only used the pronoun “he” in her explanation of the story.

Such equivocal use of the pronoun compelled the prosecutor to ask for clarification of “he”. The MR of the prosecutor, specifically his inference, guided her to miss a piece of information that had been mentioned before by the defendant. Liu Min was the one who introduced the defendant to the MC program, which had been mentioned earlier. The prosecutor believed that the defendant only used “he” to be evasive and equivocal, and therefore, he requested a clarification and even commented, “There’s nothing to hide in court”. Such a comment is a face-threat to the defendant, as it implies that she might be “hiding” some information from the court. This FTA not only propelled her to clarify things, but also exerts an impact on the credibility of the defendant’s testimony. As a matter of fact, the pronoun “he” used by the defendant was quite clearly referring to Liu Min, which was obvious to the defendant herself.

Topic 5
P: How much did you invest in this program? You just said you also invested in this program.

D: Yes, I did.

P: How much did you invest in this program, then?

D: Em… for this one, I invested over 200 grand in this program initially.

P: Just in this MC program?

D: Yes, I did not invest that much in the beginning, but I invested more later, when I found it profitable.

Topic 5 is to determine the amount of the investment made in the MC program by the defendant. In this section, this one simple question took the prosecutor three times altogether to finally confirm. The reason for this is partly because the defendant only chose to answer the immediately adjacent question and partly because the prosecutor must get a clear answer for each question.

Topic 6

P: Then how many people did you solicit to invest in MC Capital?

D: For MC, I, I, just, just, back then I got acquainted with Xu Shuiyue, and I contacted her more often.

P: You mean you have told Xu shuiyue about this.

D: Yes

P: Did you sign a contract with others?
D: No, I didn’t

P: **Why then did** someone named Huanjiao tell us that you introduced her to the business?

D: Which one?

P: Someone with the family name of Jian, Jian Huanjiao, is she one of your client? *Answer simply.*

D: Jian Huanjiao, **Why don’t I remember**… I didn’t introduce her.

P: She has got this, em, investment certificate issued by Tang Jianhui and Xie minzhen to prove her payment. Jian Huanjiao.

D: I didn’t, no, I cannot remember.

Question 6 is to determine how many clients the defendant introduced to such programs. One interesting point is that, when asked this question, the defendant intentionally tried to avoid using the term “solicit investment”, but instead used “got acquainted with” and “contacted her more often”. This is an ideological choice of wording. The defendant’s description would cause the hearer to believe that she and Xu were just friends who were taking care of each other. This equivocality was defied by a reformulation that verified one legal fact: soliciting investment activity by the defendant. Then the prosecutor came up with a question asking for accountability for a victim’s loss (Jian). This time, the prosecutor asked a very clear question and for the defendant to answer simply. The prosecutor, well prepared about the case based on the indictment and documents from PSB, has obtained certain evidence before asking the defendant about it. Even when the defendant first answered that she does not remember her and claimed that she didn’t introduce the program to Jian, the prosecutor still showed the
defendant evidence provided by the victim. Strategically, first giving freedom to the
defendant to deny certain accusations and then providing hard evidence to disprove the
defendant’s testimony, would cause severe damage to the defendant’s credibility.

Topic 7

P: Then how was the money **dealt with** after it **had been received**?

D: The money is their investments and they are deposited into their own accounts,
not through my account.

P: Not through your account?

D: No, no, no. I did not even know whether they invested or not. I had no idea when
they contacted me or not.

P: Fine, ok. No more questions, Your Honour.

Topic 7 is to determine whether the defendant handled the investments of her down-lines in
order to ascertain her responsibility in the pyramid scheme. The prosecutor used passive
voice to indicate he was being objective and not suggesting any possible wrong-doing of the
defendant. It is a professional habit as a legal person not to presuppose before acquiring
enough evidence. The defendant also firmly denied any handling of the investment, and she
further clarified she knew little about their investment or activities.

In this long and interactional session where Xie answered Prosecutors’ questions, we can
summarise by highlighting Xie’s tendency to use equivocal, ambivalent and general words to
avoid confirmation of her responsibility. Meanwhile, once the defendants have the
opportunity, they portrayed themselves as friendly, or as a victim, as doing business as a form
of helping others and being a beneficiary. Both parties are influenced by their own
ideological background knowledge, a significant part of MR. We can also tell through their interactions, that each party was trying to reinforce their own belief and point of view for the purpose of lenient punishment. Ideologically invested words and expressions not only reflect the purpose of the litigant, but also indicate that the flow of information cannot escape the influence of ideology at large.
Chapter 6. Conclusion

This chapter will present the findings of the research and summarise the implications as well as limitations of the research.

6.1 Summary

At the beginning of the thesis, three research questions were identified. We answered the first research question firstly with a description of the text and analysis of the functions of the textual features. However, it is not a question that can be answered purely by description, this research question, especially the sub-question B, requires an analysis of the adjudication procedures and a clear understanding of the interactions of the different inferential frameworks of different litigants to examine the influence of information control upon conviction. Such analysis was conducted within section 5.4.2 with Ren’s self-defence. The different inferential framework of Ren from that of the judge determines his way of interpreting the legal facts and manipulating information presented, the second question is answered through a detailed observation of the relations between the skills of information control and the procedural justice and legal fact construction, especially by analysing the conflictive interactions initiated or reacted by the defendants to the legal professionals. The third research question requires an interpretive study of the relations between power interactions, ideological changes and discourse interactions.

Chapters Two to Five gradually provided a step by step approach to solve all three research questions. Chapter two provided a review of relevant literature, laying the foundation for the theoretical approach this research was going to adopt and placing our research at the crossroad of CDA, legal adjudication and ideological struggle. Chapter three constructed an explanatory
framework based on CDA and legal fact construction, linking legal fact ascertainment with
discourse interaction and power status, which used to be three divided aspects. Most
importantly, member resources (MR) were elevated to the pivotal point that connects power,
discourse and ideology. Such a framework with MR as the pivot can provide methods and
approaches that allow the analyst to examine and explain language patterns for information
control and legal fact construction, to interpret the relations between power status, ideology and
discourse interactions. The construction of a CDA analytical framework for control of
information in courtroom discourse in Chapter 3 registers a step forward towards the systematic
analysis of ideology and language use in courtroom discourse. By setting member resources as
the pivotal point of CDA analysis, this framework linked three CDA levels together: textual
level, discoursal level and social level. Chapter 4 designed a methodology which categorises
discourse types and selects certain textual features for certain discourse types. Such a
methodology allows the framework designed in Chapter 3 to be fully utilised, through two case
studies in Chapter 5. The three sections of Chapter 5 combined can provide an answer to the
research questions raised. The quantitative analysis of the interactional and statement discourse
sections in 5.2 and 5.3 can answer first part of the first research question about language patterns
used for information control, while the qualitative analyses can answer the latter two parts of
the first research question by demonstrating the possible influences of information control on
procedural justice and legal fact construction and interpreting the influence of MR to the use of
information control. As for the second research question, the first part on normative and creative
use of MR provides answers in 5.2.5, 5.2.6, 5.2.7 and some part of 5.3. The creative use of MR
not only depends on the unique mentality of the defendant, but also depends on the stage in
which the defendant was questioned. Another observation is, that no matter how creative the
defendants may use their MR, the adjudicative results may not be influenced at all. For the
second part of research question two, we found plenty of supporting evidence to prove the
influences of information control on procedural justice; but no reliable inference can be made for the influence to substantive justice. Three parts of research question three have been widely discussed in 5.4, the situation based case studies. Discussions about the influence of inferential framework differences and different purposes of litigants can be found in the analysis of judges vs defendants and prosecutors vs defendants. However, although we can see in our analysis that the powerful usually would win an upper hand at the conflictive interactions, we can not confirm that it was the ideology that perpetuated the powerless in their lower status. There are many examples of ideological struggle and discoursal struggle for the right to speech found in defendants’ speech; however, the defence counsels would usually conform to the institutional ideology and were seldom creatively using their MR.

6.2 Findings

The findings based on the case studies lie in several aspects: the power relations between the litigants; interactive skills between litigants; and ideological contrasts between litigants. Some of those findings coincide with past findings, whereas some are contradictory. Next part will briefly summarize those findings. In the fund-raising fraud case studies, it is found that, in terms of language right, the judges are usually in the most powerful position, regulating the turn-taking and the manner of the defendant, the defence counsels and the prosecutors. This finding is similar to the findings in literature. However, in terms of psychological status, the self-supposed inferiority in power mainly exists in defendants towards judges or towards some of the prosecutors. The defendant does not hold an inferior mentality towards their defense counsel or less controlling judges and prosecutors as we can see they sometimes confront them with different opinions or even interruptions. This means if the judges choose not to use their superior power status, their advantage over the control of information would be lost to a large extent. This finding seems to be different from that of past research in literature, and therefore
indicates that there might be a change of self-identity and awareness of one’s right to speech from the defendants’ part. The conflictive interactions between Zhu and the judge over the right to speech can clearly demonstrate a more balanced power relationship between the judges and the defendant. It is rarely reported in past research that an argument between the least powerful and the most powerful would actually occur. Other participants, including the prosecutors or defence counsels, hold similar power status and self-identity when they face each other or the judges. However, their attitudes towards the powerless participants, as well as towards the construction and interpretation of narratives are different. The defence lawyer would encourage the defendant to use their MR creatively while prosecutors would threaten or discourage the defendant so that he/she would stick to the normative use of MR.

At different stages in the court trials, mainly the investigation and debate stages, the rate of turn-taking exchange varies. The turn-takings are more frequent in the investigation stage, usually switching between the questioners and the questioned. The questioners use ISQ and CSQ alternately to confirm the answer and change topic, and they use reformulation to alter the implied meaning and connotations in the testimony of the answerers, smuggling in or covering up certain information of the original testimony. In the Q&A session, the judges would usually have requirements and comments on the answers of the defendants and the questions by the defence counsels, such as to answer directly and simply, not to repeat, and not to use leading-questions.

Although prosecutors do not give direct directives like the judges, they often use critical comments on the defendant’s answers to regulate the manners of the defendants’ answers and, in this way, control the presentation of information. Compared with judges and prosecutors, defence counsels have less interference to the manner of answers by defendants, they seldom comment on their answers, but would usually use reformulation and CSQ to control the information in the direction that favours his/her version of the story. Such difference between
the defense counsel and the prosecutors and judges might be due to their self-identities in courtroom. Since less interferences and commentaries mean exerting less power upon the other interlocutor, we can infer that the defence counsels view themselves not as holding a superior institutional role over the defendants as the judges and prosecutors do. Judges and prosecutors who use interruptions and commentaries the most, can reproduce their superior mentality through their coercions towards the defendants, and their MR is also strengthened in this process.

The defence counsels for different defendants have different interactive strategies with the defendant in terms of information and turn-taking control. Defence counsels for a particular defendant would usually use open questions (mostly ISQs) to allow enough information to be presented by his/her defendant. When their defendants answer in a less logically coherent way, the defence counsels would reformulate their answers to conform to a more legally acceptable manner, which is clearer and more positive to the defendant. The opposite defence counsel, however, would usually use closed questions (mostly CSQs) to limit new information brought into conversation by the defendant. They also use many reformulations to lead the defendants to acknowledge information that is more favourable to the opposite defendant who usually need to share the responsibility with the defendant.

At the stage of courtroom debate, especially the opinion statement section, the defendants are often interrupted by the judges, and sometimes by the prosecutors, even though they are given the right to speak. The reason for interruptions is that defendants sometimes ask questions during the statement or repeat their story which was already told during the investigation stage. Another reason for interruptions is that defendants sometimes tell their story or opinion in an incoherent or redundant way, usually in an everyday language rather than a legally professional language.
In contrast, the opinion statement by the prosecutors and defence counsels are seldom interrupted by the judges as they know the court trial procedures and are legally and linguistically more competent. The defendant’s language rights are restricted to some extent because of their lack of knowledge of trial procedures and their inferior institutional power status and their lack of legal knowledge. Such restrictions on the defendants are mainly due to their less professional MR. The lack of trial procedures and legal knowledge has, to some extent, thrown the defendants into a vicious circle: The urge to defend themselves in their own inferential framework is defeated because of their “lower” MR, and the eagerness of them to use impolite FTAs grows, and the more restrictions to their right to speech will be exerted upon them.

The use of ideological words in the debate can usually reflect the disputes between the opposite parties in terms of legal fact ascertainment and their interpretations of legal facts. The opposite party sometimes choose to use a different word than the other party, so that the concept of that particular word is extended or confined to a more specific one. By so doing, they can either verify the information for legal fact construction in a clearer fashion, or blur and confuse the verification of the legal facts, because words matter in the interpretation of a certain crime and the responsibility of a defendant. Other than that, those ideological words can reflect their creative or normative uses of MR. For judges and prosecutors, they would usually choose words that are ideologically normal rather than creative, while defendants would have to choose words that are creative, especially compared to the norms in court.

The turn-taking patterns in the investigation stage and the debate stage are different in that they serve different purposes and are manipulated by different participants:

Common turn-taking pattern in the investigation stage:
ISQ - Answer-Reformulation (CSQ) - Yes/No + Explanation - End

Common turn-taking pattern in the debate stage:

**Statement – Interruption + ISQ - Restricted Answer – Reformulation (CSQ) - Yes/NO + Explanation**

In the investigation stage, the questioner starts with an information seeking question and the answerer gives a response. The questioner then reformulates the answer with a confirmation seeking question, which the answerer would either agree to or disagree and explain further.

In the debate stage, the opinion statements sometimes are interrupted with a comment, and the questioner would use an ISQ to change the topic or question a particular fact in the opinion statement. The answerer then usually follows the change of the topic and gives a limited answer according to the comments from the questioner. Then, this limited answer would be reformulated in the form of a CSQ by the questioner so that it favours the questioner better. The answerer then would either agree or disagree and explain further.

Although the 1996 and 2012 reforms tried to give right to the powerless defendants and protect their right to speech, the analysis indicates that most of the time, the prosecutors and judges still have a superior mentality and such a mentality would reduce their respect for the opinion of the defendants, as they might have presumed the “guilt” of the defendant based on investigations done before trial. Meanwhile the defendants, with an inferior and intimidated mentality would usually allow the judges and prosecutors to lead them in terms of narrative construction and conform to the intentions (sometimes latent) expressed by the judges and prosecutors. Institutional reforms usually take a long time, especially in those with the powerful in full control of the system.
6.3 Reflections on the study

The previous analysis has demonstrated that the proposed framework is successful in explaining the relations between power, textual features and information control, as well as the relations between information control and legal fact construction. During the analyses of the two cases in accordance with the methods and procedures proposed in the framework, it is clear that textual features listed in the framework, such as interruptions, directives, address terms, commentaries, and the use of different question types, can all be found in both cases. However, some of the features listed in the framework did not appear in our cases. This is perhaps because of the limited types of our discourse sections, such as there is seldom any conversation between the defence lawyers and the prosecutors, as they usually have their designated time for a whole statement of their opinions. We have also observed in the analysis that the frequent uses of interruption and directives by the judges were aimed at keeping the topic and contribution of the defendants under control, while the choice of words, topic controls and reformulations employed by prosecutors and defence counsels are all useful strategies to manipulate the narrative construction.

Many examples of textual analyses, such as Zhu vs the Judge, and Ren vs the Judge can demonstrate that some defendants in these two case trials actually struggled for their right to speech and defence in spite of the institutional power asymmetry. There are also examples where the prosecutors or even judges coerced or controlled the defendants and even defence counsels with their directives, commentaries and interruptions. These examples can indicate possible hindrances to the procedural justice of court and speech rights of the powerless, especially when they go against the principles of the two reforms. However, these coercive or power-asymmetrical language uses cannot, in a study this size, or a study with a single temporal instantiation, be easily proved or disapproved in terms of exerting negative effects.
upon the realisation of substantive justice in a particular court trial. The reason for such a limitation is due to the complexity of adjudicative procedures and principles which relate to interpretation of law far more than to discursive interactions.

Meanwhile, the MR of the analyst also influences interpretations of the legal significance of textual features. The limited knowledge of the analyst about adjudicative procedures and principles confines the applicability of the analyses. In an effort to overcome this issue, the added analysis of the situational context was helpful in reducing this limitation, enabling the researcher/analyst to interpret the relations between textual features and the manipulation of topics and information. Despite this, the interpretation of the relations between the textual features of litigants’ utterances and their ideological status can be a bit subjective and potentially unreliable, considering the small quantity of the samples collected. This study therefore indicates the strong desirability of larger databases in future studies to strengthen the correlation between utterances and ideological status. A team of researchers, rather than a single analyst would also be beneficial for the correcting of subjectivity as well as to manage the increased workload.

Although the interpretation of the ideological status, self-identity and intentions of all litigants are based on pragmatic inferences and evaluation of their social and legal background, it is still a challenge to verify the reliance of such interpretations. Any inaccuracy or subjectivity on the part of the researcher/analyst is compounded, partly because legal facts constructed in court are usually very different from the facts that actually happened.

Future studies, interviews with, or questionnaires to, the litigants can provide useful and more certain information about their MR and background. Data about litigants’ MR may include their educational level, their legal knowledge, their self-identities in court, as well as their
reflection on their own language interactions in court and their view of the liberalisation of a defendant’s right to speech.

Moreover, the analyses for the interactional discourse sections include power relations, information control and the influence of ideological status on information control. However, the analysis for the ideological influence was not fully carried out as expected in the framework again due to a lack of knowledge of the litigant’s social background for MR prediction. The judges and prosecutors might have some superior mentality over the defendants and witnesses, such an ideological superiority does not directly cause any adjudicative injustice, because even with such superior self-identity of judiciary, the procedures of court will not be hindered due to such superiority. Also, adjudicative justice in China is achieved, not only via “direct speech”, but on reviewing the documents and evidences. It seems it is one thing to make MR pivotal in a theoretical framework and as a methodology, but another to actually develop a full grasp of the various MR of all litigants in order to better evaluate its impact.

The changes or reproduction of ideology of litigants through time, which had been illustrated in figure 7 of the framework, cannot be fully exemplified via one or two case studies right away, but rather would have to be further proved or disproved via a diachronic comparison between the ideology status of litigants before 2012 and after 2012. In our analysis, however, we were able to point out that the creative or normative use of MR by litigants, usually the defendants, can indicate the alteration or reproduction of their frame of interpretation. Such a creative or normative use of MR also reflects their self-identities in the institution against, or in conformity to, the designated role.

In view of all the above merits and shortcomings of this research, there are some suggestions I want to make for future studies on similar topics.
6.4 Suggestions for future study

Due to limited time and resources, there are a number of limitations in this study. The most obvious one is the quantity of the data collected. As a case study, this study only includes two trials of fund-raising fraud cases, which, although typical, are not comprehensive samplings that can represent all the features of court trials of fund-raising fraud cases. This being said, the two case studies can provide a reasonable description of the power and control interactions in court discourse, as well as the main structure of information flow/control.

Another limitation lies in the limited features in the case study that were chosen for analysis. Despite the representativeness of these features, other linguistic features that have been summarised in the literature usually work together to realise a certain function in court trial. Therefore, the analysis of only the chosen features would incur a lack of overall and holistic perspective on the progression of the discourse as a whole.

Also, considering the disputable features of fund-raising fraud case, this research was not able to probe further into the political influence and the fundamental social and institutional causes of the ideological mentality of different participants that forge their role and identity in court.

It is hoped that in future work, these limitations can be addressed in the following aspects: getting access to and transcribing more case trials, analysing other features summarised in the framework and integrating the findings to generate a more holistic and systemic picture of the court discourse interactions of fund-raising fraud cases.

Also, in future studies, materials about the MR of litigants obtained from interviews or questionnaires can be obtained to complement the current research in terms of the relations between ideology status and information control as well as the relations between ideological changes and judicial system reforms. The interpretation of the reform effects of the criminal
trial mechanism also needs diachronic data to create a more holistic and comprehensive image of the systemic progress. Whilst these issues were not able to be addressed in this project, they do not necessarily present insurmountable problems in relation to the research design of future studies. The pivotal role of MR remains an exciting and valid contribution to understanding how discourse and ideology engage one another within institutions such as the court. Indeed, it is possible that such an approach would be valid in relation to other institutions, education, for example, or medicine, in an effort to understand how change comes about and how it may be measured in action.
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### Appendices

**Transcripts for First Case Trial**

Video clips 018-055 (38 clips, around 5min 45s in length)

法官：朱德智，你的意见是你先说还是辩护人先说？啊，你的意见？啊？？你先说是吧？行。嗯，说吧! (DIR1)

Judge: Zhu Dezhi, do you want to state your defence first or let your representative to state it for you ? huh? Your opinion? Huh? You want to state first, right ? Ok, go ahead, you can speak.

被告人：就是，请求公诉人出具我的证据(dir 1)。

Defendant: just want the prosecutor to present my evidence.

法官：(INTR1) (CONF1)朱～～德智!要听清楚法庭的指引(DIR2)! 现在是进行法庭辩论。

法官，(INTR1) (CONF1)朱～～德智!要听清楚法庭的指引(DIR2)! 现在是进行法庭辩论。

上一次，法庭已经明确告知了，法庭辩论，是，就是，要根据，这个，围绕这
个，呃，起诉，那个，争议的焦点也就是围绕围绕你有罪无罪，罪轻罪重等案件的事件、证据、适用法律等实质性的问题，你直接发表你的意见(DIR3)！清楚了没有？

Judge: Zhu~~Dezhi! You need to hear clearly the instruction of the court. It is now the courtroom debate. The court has informed you clearly last time, that courtroom debate, is, is just, based on, about this accusation. Um, the focus of the argument is whether you are guilty or not, heavy or light punishment. About the substantive disputes about the facts, evidence and applicable laws on your accusation. You shall give your opinions directly. Are you clear or not?

被告人：我清楚啊。

法官： (INTR2)有什么意见？！对这个案件！

被告人：对这个案件，首先我要他出取，出具我的证据，我叫公诉人(dir2)～

法官： (INTR3)(CONF 2)法庭已经告～知～你了，证据已经出～示～完毕。现在是围绕这个指控，还有公诉人还有各方出具的证据，发表你的意见(DIR4)！你要遵守法庭的指引(DIR 5)！

被告人:(intr1) (conf1)我知道，遵守法庭的指引。因为，针对我的证据我没看到(conf2)。

法官： 嗯。

被告人：我本人的证据，他出示的是公司的证据，我本人的证据，我没看到什么证据。

法官： (INTR4) 嗯，行。(CONF 3)说完了没有！？
被告人：(intr 2) (conf3)我本人，你证明我有罪，你肯定要出示我的证据，对于我的证据嘛！有证人呐，证言呐，还是有什么物证啊？因为，非法集资，阿不，非法集资诈骗，首先我想让他证明，我拿了什么钱，拿了多少钱，我骗了谁？我想让他出示这个证据，请问公诉人有没有这个证据？（dir3）（我拿了多少…）

法官：（INTR5）（CONF4）你没有权力发问！（DIR6）听清楚没有！朱德智！在法庭辩论，你没有权利发问(DIR7)，你要搞清楚(DIR8)，你是被告人！

被告人：被告！

法官：现在，是对案件的定罪，构不构成犯罪，构成什么罪，罪轻罪重，你直接发表你的意见(DIR9)，你没有权利发问(DIR 10)。清楚了没有？

被告人：(conf 4)我怎么没有权力发问呢？

法官：你是被告人。清楚了没有！？

被告人：(intr 3) (conf 5)为什么要成为被告？我没有犯罪，你告我什么啊？

法官：（INTR6）（CONF 5）现在你是以被告人的身份，以被告人的身份接受法庭的审判！（DIR11）清楚了没有？

被告人：（conf 6）不是很清楚！
法官：嗯，不是很清楚，(CONF 6)那你意见说完了没有？

被告人：(CONF 7)没有！

法官：嗯。

被告人：请问，我们出示的这个证据，这些~啊~合同，这些证据，经过了这个司法鉴定没有？请问公诉人？

公诉人：(INTR7)这个，被告人啊，一直处于这个，梦游状态啊(CONF 7)！那个，经过上一次的这个，开庭，这个法庭调查，也发表了这个~公诉意见，已经进入了这个辩论阶段！下面就是你对你，我们指控你的这个证据，以及这个犯罪事实，还有这个罪名啊，你发表你的这个辩护意见(DIR12)。知不知道？

被告人：那我~，说一下哈。尊敬的这个，法院，啊，法院院长，审判长，法官。尊敬的检察院，检察长，公诉人。在辩论期间呢，可能语言有所不敬，啊，有所不妥，请多多包，原谅。在我这个案件里头呢，在审问我的期间呢，我说：我没有犯罪。说呢，我没有介入这个方面，我们公司呢，被定义为集资诈骗。那首先，集资诈骗，必须要有证据，那通过了这段时间的学习嘞，啊，法律学习，我了解，集资诈骗呢，以[非法占有]，以[欺骗的手段]，[非法占有为目的]的。所以嘞，我认为，我没有[非法占有]，也没有欺骗谁。那你定我集资诈骗呢，我首先就想问，我骗了谁多少钱？我，[非法占有]了谁，我骗了谁，有没有
这方面的证据？对于我来说。**第一个**我的疑问。**第二个**疑问呢，在我们公司啊，我上次啊，看了一下这个，很多这个～，我们公司的这个合同。以前我是没有看过，不知道，这次拿了这个案件出来以后呢，对这些合同，这些证据啊，稍微看了一下。我觉得很多合同呢，都不受法律的保护，啊，我希望，对这个合同呢，这些证据呢，进行司法鉴定和司法公正。它能不能成为证据，或者说，它是不受法律保护的，就不能成为证据。不是合法证据。这是第二个。**第三个**，就是说～我们，听说我们公司呢，我们很多客户的钱呢，都投资到了大中华，投资到了香港的各个平台。请问公诉人，我们投资，我们投资的这个平台有没有这个数据？我没看到这个数据，上次。我们的投资款，有没有数据，请问公诉人？（585 words in this paragraph）

法官：（INTR8）（CONF8）你没有权力发问（DIR13），好吧？辩护人？那个，被告人朱德智！

被告人：昂～

法官：（CONF9）你直接发表完你的意见（DIR14），听清楚没有？！

被告人：啊，

法官：（CONF 10）如果你再继续这样子，法庭已经告知，明确告知你，你没有权力发问（DIR15）！

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被告人：好好好…

法官：听清楚没有？

被告人：哦，没有权力发问。（conf8）那我就说有没有这个数据？

法官：（INTR9）（DIR16）（CONF11）你直接发表完你的意见！被告人：这些数据嘞，如果你们有这些个投资的数据，那我们就想得到这些数据，因

为到现在我们没有听到这些数据。有这些数据，有投资，就不属于集资诈骗。

那我想说的就这么多。

法官：嗯，行。请辩护人发表辩护意见（DIR17）。

周建飞：额我先说吧！

法官：嗯，行。说吧。

周建飞：额，额，在这个案件当中，我本人是没有那个犯罪的[动机]跟[事实]的。因为在一个公司当中，我是一个打工者的角色。额，从始至终，我都没有去骗过或者拉过任何一个客户到公司。而且我也没有去占有过任何一个人的这个～财务。我在公司这么
（久）这段时间，我反正，也一直都是，额，做一点行政工作。其他的主要是开车之类的，我没有去骗过任何一个客户，或者跟客户承诺过，任何的东西。而且回，在公司当中，我自己的资金也被拉到公司里面去了，资金也没有还。可以说我也是一个受害者吧！额，至于我在这个案子当中到底是有罪无罪，或者是罪轻罪重，额，请审判长定夺，我接受。谢谢。(65 seconds, 263 characters in total)

法官：嗯，行。额，周建飞，周建飞的辩护人。呃，请发表辩护意见。

Video clip：Statement of Zhu 那我，说一下哈。尊敬的这个，法院，啊，法院院长，审判长，法官。尊敬的检察院，检察长，公诉人。在辩论期间呢，可能语言有所不敬，啊，有所不妥，请多多包，原谅。在我这个案件里头呢，在审问我的期间呢，我一直说：我没有犯罪。一直说呢，我没有介入这个方面，我们公司呢，被定义为集资诈骗。那首先，集资诈骗，必须要有证据，那通过了这段时间的学习嘞，啊，法律学习，我了解，集资诈骗呢，以[非法占有]，以[欺骗的手段]，[非法占有为目]的。所以嘞，我认为，我没有[非法占有]，也没有欺骗谁。那你定我集资诈骗呢，我首先就想问，我骗了谁多少钱？我，[非法占有]了谁，我骗了谁，有没有这方面的证据？对于我来说。这是第一个我的疑问。第二个疑问呢，在我们公司嘞，我上次嘞，看了一下这个，很多这个~，我们公司的这个合同。以前我是没有看过，不知道，这次拿了这个案件出来以后呢，对这些合同，这些证据嘞，
啊，我们稍微看了一下。我觉得很多合同呢，都不受法律的保护，啊，我希望呢，对这个合同呢，这些证据呢，进行司法鉴定和司法公正。它能不能成为证据，或者说，它是不受法律保护的，就不能成为证据。不是合法证据。这是第二个。第三个，就是说～

我们，听说我们公司呢，我们很多客户的钱呢，都投资到了大中华，投资到了香港的各个平台。请问公诉人，我们投资，我们投资的这个平台有没有这个数据？我没看到这个数据，上次。我们的投资款，有没有数据，请问公诉人？

Defense Counsel of Zhou

Video clips：80-133 （53clips * 9s/clip=477sec）

尊敬地审判长，审判员，本律师接受被告人周建飞及其家属的委托，担任其辩护人。

下面（CN1）就周建飞的是否构成集资诈骗罪的有关事实和法律适用问题发表如下（CN2）辩护意见。第一（CN3），被告人周建飞不构成集资诈骗罪。周建飞不构成集资诈骗罪。根据（CN4）被告人在建设公司任总经理助理，主要职责是，为李杰军开车和处理公司的一些文书工作，自己呢只领取固定的工资。从来没有吸纳任何客户，额，向保洁公司，呃，投资，也没有（CN5）领取过客户向保洁公司投资的[提成款]。其主观上并没有，主，[非法占有他人财产]的目的和动机，也没有
办案笔录中，的[口供]我们看到，从来没有提及朱德智在与客户接触的过程里面，编造这个谎言，[捏造或者隐瞒事实的真相]。那么朱德智在公司里面负责的这个培训的这个内容，主要是负责黄金基本面及技术的分析。并非去培训，员工如何去，欺诈客户。


Transcript for Second Case Trial

94-106

被告人李晓春，对起诉书指控的犯罪事实和罪名有什么意见么？

有。

先简单的说。就是，额。。。就是根据检察院所说的非法。。占有，从一开始包括我口供里面我承认，这间公司是，走传销的模式，然后，还有就是根据，啊。。。如果是，
That is, em… according to the Procuratorate, the illegal possession, and the confession I made about the pyramid selling scheme of this company, and also according to … well, if illegal, if my intention were for illegal possession of company properties, why would my, bank account be a personal account that were taking the money of those so-called victims?

In the beginning, we regard this as pyramid selling scheme, which is legal in Malaysia. After we came to China, we start to know that it is illegal. Now that such a thing happened. Also, the accusers that charged us with fund-raising fraud are also investors in this program, we are members under the same brand name. I just can not understand why we are now charged by our so-called second and third generation of members. Also, about the amounts you just talked about, we are not clear how did you calculate those, including these 2 million Yuan benefits you talked about, if the weekly return were 5%, then the amount of return would be much higher than 2 million. That’s my opinions.

106-113
法官：下面由公诉人讯问被告人。

公诉人：这样啊，李晓春啊，今天开庭呢是追加起诉，是涉及到澳门梦幻这个，又有关害人的举报。现在呢，等于说你刚才提出了，一系列的认为没有非法占有故意啊，等等这些情况，前期的一审判决已经生效。它是具有法律效力的，其他的呢，可以说，我也不想多问。我现在只想问你一个问题。对于，这个起诉书上面的，所涉及的12名受害人，以及这个数额你有没有什么意见？

被告人：有。因为。。。

公诉人：（INTR）什么意见？

被告人：对，因为数额我确实不知道多少，所以我不知道，根据哪一个方面定罪？

公诉人：就是说，这个数额呢，我可以告诉你，是根据受害人他们提供，然后经过审定，所得出来的。你有没有意见？就说，你。。。你就说你有意见就是，你的意见就在于你不知道它是通过什么方式统计出来的是吧？

被告人：对，包括它的法律。

公诉人：好了，行了，没有问的了。

法官：那辩护人这边有没有需要发问的？

辩护人：李晓春辩护人在法庭调查阶段。Fact construction

辩护人：李晓春，我问你几个问题哈。现在就是说，你是澳门梦幻公司，澳门梦幻国际公司的法人或者负责人么？

被告人：也不是。
辩护人：你明确向法庭说（RF），不是，是吧（确认问句）？第二个问题就是说，澳门梦幻公司它是不是个正规合法注册的一个公司？它在哪里注册登记的？你有没有什么印象？

被告人：它，公司确实给我们看过，是在英属群岛，维京英属群岛，包括注册那个，证明。

辩护人：维京英属群岛是在？是在哪个地方啊？

被告人：应该是在，南美，南美洲还是哪里。

辩护人：南美洲？你有没有，以前向那个公安或者向法庭说过，它不是在，或者是在澳门或者广州这边注册过？

被告人：啊，我确实没说过是在澳门或是在广州有注册过，但是据我所知，在我们开庭的时候，其中这边的一个代表律师，曾经有，把那个证件提交给应该是检察院吧？提供给检察院吧，应该是有这件事，但是我不知道，为什么他们没有去往那方面继续。

辩护人：你的意思是说，这个澳门梦幻公司，它是个正规的公司？

被告人：据我所知，应该是正规的公司。辩护人：第三个问题就是，你私人账户，收到这些唐建辉等人的这些转入投资款后，你是怎么转给其他梦幻公司的？你是怎么转的？

被告人：我们，我在公司的身份，其实就是帮公司开拓它的业务。然后，我们的团队里面，就其中一个，就会负责去搞财政。所以财政这部分呢，确实我不是很明确的知道，这个，整个过程是怎么样来的，但是据我所知呢，这个唐建辉会把钱打入我们的户口，就是我提供给他的，这是我们私人的户口，然后我们再把这笔钱呢，转给公司所提供的那些户口，就是这个过程。
辩护人：你这个公司的户口是在国内的还是在国外？

被告人：国内。

辩护人：在国内？是不是说唐建辉等人把这些款转到你的，你是在中国，广州或者珠海，开的工商银行，农业银行，建设银行的账号，收到钱以后，就不是自己经手的，你们的意思是说，是吧？

被告人：是，不是自己做的。但是，唐建辉也曾经有直接把钱打给公司的，并没经过我们。他也是直接打给公司，所以，公司的户口那边，收款人确实是存在这些，确实是有存在，但是我不知道为什么检察院没有对那些，收取那些款项的人去追查那一部分的行为，我也不知道，是谁提走那些钱，为什么他也没有跟我们在一起呢？所以到现在，我也搞不清楚。

辩护人：你向法庭说明白，那你自己有没有这边直接提取什么现金，转移走？被告人：就是说我们提取现金，也是公司会有负责人，把，来跟我们拿走这笔，这笔现金。跟据我们这些走传销公司的程序，你没有钱到公司的户口，公司是不会给开一个账号，就是所谓的那个，在网络那边开一个账号。

辩护人：你没有账号，你怎么知道这笔钱，公司收到了呢，就是这么简单的理由。那说明一个问题，就是说：你收到了这个钱，这个，所有的这个，是在倒汇银行这边又出去了，是吧？

被告人：应该是的。

辩护人：然后至于给谁提走，你就不清楚了。

被告人：我就不清楚。
辩护人：还有一个问题，刚才公诉人问道。这个补充起诉，这东西，就是说你这个非法集资十二个人，十二个人次，这里面有没有跟你，已经生效判决的，那个，有些人是不是重复的？

被告人：因为，我跟他们是没有直接关系的，他们如果跟着传销的模式来走的话，就不知道是我的第几代，我自己都不知道。所以我现在变成，变成所谓的被告人，如果我是曾，我曾经是会员的话，那所谓的会员，为什么不跟我们在一起？

辩护人：坐在这个被告席上是吧？

被告人：对。

Reformulation: 6 个，13 turns
144-175

唐建辉辩护人

辩护人：那个，李晓春，我是唐建辉的那个，辩护人。那么，有几个问题想跟你核实一下。那个，唐建辉你是怎么认识（Presupposition）的？

被告人：唐建辉，我跟他是没有直接认识的，我是经过一个叫，杨芳，之前我在口供里面有说起过，杨芳的过后她再介绍一个叫于军，于君过后再来介绍唐建辉，所以我们是，就是从这个过程认识的。

辩护人：额，那能不能说（RF），你的下线本来就是杨芳跟于君？

被告人：对。

辩护人：然后是由杨芳和于君发展了唐建辉（RF）。
被告人: 唐建辉。辩护人: 是吧？

被告人: 嗯。（点头）

辩护人: 我在那个。。。一审，看你一，原来一审的笔录里面，你也提到，你一开始接触
唐建辉的时候同时接触了另外两个被告人，是不是，徐水月跟那个谢敏贞是不是
(RF)?

被告人: 当时应该是跟他们一起，辩护人: （INTR）一起接触(RF)?就是同时一起接
触？那么在在广州，你就说(DIR)接
触比较多的是不是他们那几个？

被告人: 他们那几个，是的。

辩护人: 除了他们几个，你刚才也说到，你们是一种会员制也分级的(RF)。那么在他们
下面，你认为比较重要的，还有几个，你认识的？比如说，有去过几次澳门的？你来
广州也跟你在一起的？有哪些人认识的？

被告人: 包括事件所谓的起诉人么？

辩护人: 起诉人，你认为有几个人？你认识的？

被告人: 认识的，就是那个，什么田。。。 

辩护人: 成信田？

被告人: 应该是。

辩护人: 嗯，还有呢？

被告人: 还有，什么，我见到了才会记得，我记不起名字
辩护人：就是说，也有这一部分人的存在（RF）？

被告人：有。

辩护人：啊，你认为他也是其中起到重要作用的会员？对吧（RF）？

被告人：对。

辩护人：因为他，是不是他们下面还有分级的会员？被告人：因为我们这种传销模式，
就是所谓，中国所谓的拉人头吧。就是一个介绍一个，一个介绍一个，就是，我们这个
模式。

辩护人：嗯。另外一个问题我想问一下，唐建辉等人，包括徐水月，他们那个，所吸收
到的那个，存款的投资款，是不是通过他们账户打到你账户或是你指定公司的账户里面
去？

被告人：应该是这个流程。

辩护人：嗯，打完以后，你们是怎么样给这些所谓的投资者一个，确认？比如说是，给
予会员身份确认，还是给予什么确认？

被告人：就是会给他们一个，注册码。

辩护人：注册码？

被告人：对，我们公司的注册码。只要把这个注册码拿到网站，然后登陆，就把你的户
口，启动。

辩护人：就是说（RF），每个人，都有，注册码？
被告人：对。

辩护人：那么给注册码之前是不是一定要把钱，打到公司里面去？

被告人：对。

辩护人：打到那边去了之后才给注册码。

被告人：对，对。辩护人：就是，每个受害者，涉及到本案的，都有注册码（RF）？

被告人：对。

辩护人：是吧？

被告人：嗯。

辩护人：还有个问题，你在广州这里是不是有指定某个人的账户，是作为，你接收，这些投资者的账户？有没有指定？

被告人：公司确实，不是我指定的，是公司安排的。之前是唐建辉跟他们这一帮人。

辩护人：有没有指定哪一个人的账户，当时？

被告人：我记得好像是，是。。。有一个叫，但是我不知道，但是我应该是，广州这个代表啦

辩护人：有没有指定谁为广州代表？

被告人：一开始是唐建辉，跟这帮人搞得。

辩护人：这帮人里面指定哪一些人？
被告人：包括，那个徐水月包括谢敏贞。

辩护人：是他们三个？

被告人：嗯。包括那个何艺韵，最后才发展成。

辩护人：嗯。被告人：嗯，每个人都有自己的下线，每个人都有自己的，每个人都有自己的业务去找。就这样。

辩护人：那么你，根据你所了解的，就是广州这边的客户。就是涉及到本案的投资者或者说受害者吧。一共有多少钱？到你们公司里面去？

被告人：这个我确实不知道。

辩护人：大概有没有算过？

被告人：多少？

辩护人：有没有算过？估计过？

被告人：我估计应该不会超过，一千万，应该差不多，这个是我们。

法官：额，请辩护人的发问围绕指控的犯罪事实。

辩护人：额，还有一个问题。就是呢，你们返还的利润，返利，大概有多少？

被告人：如果根据检察院所说的，每周 5%的话，肯定超过这些数额了。

辩护人：超过这些数额了。那么，是不是每个人都有返利？

被告人：对啊。
辩护人：啊，什么时候才没有返利？

被告人：应该是到七月份吧？

辩护人：2012年7月份（RF）？

被告人：是。

辩护人：也就是说，2012年7月份之前的所有人都有返利（RF）。

被告人：是这个意思。

辩护人：没错吧？

被告人：是的。

辩护人：嗯，没了。

175-202两位法官询问被告人李晓春。

法官：今天啊，这个案子审理呢，主要有5个被告，因为这5个被告之前因为相同的事实已经被本院判过刑，也都经过二审审理的了。那么今天呢，主要审理的追加起诉的12名被害人，这个，涉及到这个款项的一些相关事宜。请各辩护人，以及就是说大家审理的时候主要围绕着今天审理的起诉书的范围。好吧？其他辩护人有没有需要发问的？

被告人：额，我。（举手示意）
法官: [INTR]等一下。现在是辩护人发问的阶段。其他辩护人有没有需要的？都没有？

（对被告人）[DIR]你有什么要说的？

被告人: 就是，额，我看到这个起诉书，最近起诉书我才知道，现在起诉我们的那个起诉人，他这边有参加那个，所谓唐建辉介绍的那几个项目。所以，现在我看到，他们，加上我们这一家，梦幻星城的话，这是第五家。所以我在想，如果一个人可以从第一家，第二家，到第五家，他本身不需要负一点责任么？就是他不要付责任？

法官: 你说的第五家，是什么意思？

被告人: 就是，我们这边，

辩护人: （INTR）这五个项目。

被告人: 梦幻新城。因为我看了这个起诉书，我才知道之前他们这些起诉人起诉我们的，起诉的唐建辉前四家公司么，包括我现在面对的这家公司，是第五家的公司。所以我想问法官大人，他同第一，

法官: （打断）你直接发表你的意见。

被告人: 我是说他本人不用付一点责任，就是说，他是投资者，他就要去了解所谓的这些传销公司。现在出事了，这五个。

法官: （打断）你的意思是说，被害人除了在梦幻投资之前，还有在其他的公司，额，都投过资是吧？

被告人: 对啊，我看起诉书是这么写的。

法官: 你发表完可以了。还有什么需要说的？
被告人：啊（6s）还有就是关于，最重要就是讨论下我们这边证，虽然是我们第一次庭审，就是关于公司的注册，就是从第一审的，就是说，澳门没有，办事公司，但是，从这些起诉让里面，他们确实有去过，澳门的办事公司。所以包括，

法官：（打断）这些在你第一次的庭审上已经说过了。被告人：所以说，我到现在还是不明白，包括有照片有录影。

法官：你没必要再说。（对审判员）晓刚你来问一下。

审判员：李晓春，法庭要问你一个问题。

被告人：好

审判员：你就是说你的行为是传销是吧？

被告人：对。

审判员：然后传销在你们那个国家是合法的对吧？

被告人：对。

审判员：那你们那个国家的传销，传着传着这些钱都没见了怎么办呢？

被告人：啊？

审判员：这些投资人的钱没有了怎么办呢？

被告人：确实也有法律追究的。

审判员：啊？

被告人：根据，
法官：也要有法律追究。

审判员：也要有法律追究？

被告人：对。

审判员：那在中国也是有法律追究的啊。

被告人：对。

审判员：那你有什么意见呢？

被告人：不是，一开始我确实，我当这个行业是传销的行业。所以我从来没有说要诈骗
说是，怀有诈骗的目的，占有的目的来搞这个行业。

审判员：那么这些被害人的钱去了哪里呢？

被告人：而这些被害人的钱，从一开始我已经，很解释清楚。钱收到我们的手，我们只
是一个代表，中国的一个业务代表。唐建辉就是一个我们广州的业务代表。所以我们是
分层次。

法官：直接回答，就是钱去了哪里？

被告人：这些钱是去了公司的户口。

审判员：就是说，你不知道是吧？

被告人：对。

审判员：就是说，这么多被害人的钱，这么多老人的钱，也是他们的这个这个。

被告人：（打断）但是为什么不去，所谓提款人的户口查那个人呢？
审判员：如果要是查得到，你说我们会不查么？

被告人：那查不到就变成我收了他们的钱？

审判员：那难道你不需要承担责任么？被告人：责任我这个，我这个我承认，我做了传销这一行。

审判员：就是咯。

被告人：但现在这是集资诈骗啊？

审判员：集资诈骗，是我们根据本案的事实，根据本案的证据来认定的。

被告人：有什么证据？

审判员：我，你现在不用问我。我现在是问你。好不好？

被告人：好。

审判员：你回答我？要不要承担责任？

被告人：要。

审判员：OK。行，下一个被告。

法官：被告人谢敏真，对起诉书指控的犯罪事实和罪名有什么意见吗？

被告人：这个我觉得是，你问的是现在的这个起诉书意见吗？

法官：这个起诉书，现在审理的是这个起诉书。
J: Defendant Xie Minzhen, do you have any opinion on the criminal facts and accusation in the indictment?

D: I believe that, em are you asking about my opinion on the current indictment?

J: Yes, this indictment, the current trial is for this indictment.

Defendant: Well, I am also an investor, but more of a victim. In the beginning, I got to acquaint a manager of a hotel who recommended me this (program). At that time, I was not keen on this program. Then I got to know Tang Jianhui three years ago, and later some customers to this hotel. Like that, and then, they just told me that some investing programs are quite profitable, and since I have never had any knowledge of stocks before, the first investment I made was quite a lot. I mean, I did so because I can see he was quite successful with his family life and all different aspects. His father was also an administrator of business.
He himself was also quite capable in financing.

J: simpler please. Simper please.

D: OK

J: you have talked about these in the first court trial, now you may only make clear your point and argument.

1.

法官：简单点。简单一点哦。

被告人：好的。

法官：在第一次的庭审这些应该都是已经讲过了的，现在把观点讲出来就可以了。

被告人：哦，好的。那么然后，那个时候就投了啊，投了一开始是 1 万块啊，也是当是一个人情做的哦。那然后现在，起诉书说我们那个其他的那些项目哦，那当时的也是是在酒家，他们过来，但是只是想说因为我们认识嘛，那然后很多时候就派卡片啊，这些。那然后，那个时候也是，大家也是赚钱啊，那时候。他问我有没有投资，他问我觉得怎么样，我说我觉得还可以啊。比银行的储蓄都好一点，我说。挺不错的，不过我说投资有风险的，一定要考虑清楚，要不要投，是你做最后决定。是这样子说。

后来我就投了以后，也是朋友了，后来他们过来玩，我就介绍他们也是投了一万一万这样子的。后来呢，他们的项目呢，准备随便怎样搞怎样搞。是这样子。像什么 MC 啊那些我也弄过，我也投资过。现在的时候我觉我现在被起诉了，我最高院也上诉了，拿了结果以后，我觉得我懵了，那么多事情，我一直都是一个投资者，受害者身份出现的。我是帮人挣钱，这哪里又错了？我是不明白。

D: I see, ok. And then, i made my first investment 10 grands for the first time, also as a
gesture to strengthen our friendship. Now the indictment mentioned many other programs, which were also introduced to us in that hotel. They came over to the hotel, and since we saw each other before, we passed some business cards to each other, and such. Then, at that time, everyone was making money, back then. He asked me if I made any investments before, and how I felt about those programs. I told him it seemed not bad. It was even better than bank interest rate, but I also told him there was risk and he must think it over and make the decision himself, whether to invest or not. That was like that. Later after I invested, we became friends, and I introduced to them those programs, in which they invested 10 grands or so. Later, they were just casually investing in their programs. I also later invested in MC. Now that I was sued for fraud, I made my appeal to the supreme court and I am stunned to have received such a sentence. During all this time, I had always been an investor, a victim. All I did was to help others make money. What was wrong with that? I do not understand.

417-442

下面由公诉人讯问被告人。

公诉人：这个，谢敏贞啊，公诉人就简单的问你几个问题。一个呢，梦幻借记这个澳门这个判决已经生效了，现在呢，又有新的受害者出现。一共52名，那你对于现在，你对于新出来的这一些诉讼者，你有什么意见呢？
被告人: 新的受害者，老实说，我也没有看到他们的名字哦，因为呢我们都是投资的，有些人呢一下子呢也投了几个项目的。那...

公诉人: 现在说的是梦幻借记这一块儿。被告人: 哦，梦幻借记这一块。

P: well, Xie Minzhen, the prosecution has a few simple questions for you. First, the sentence of Menghuan Loans in Macau has come into effect. 52 new victims showed themselves now to claim for their loss. So what opinions do you have for these new victims?

D: As for the new victims, to be honest, i did not see their names. Since we are all investors, some of them also invested in several different programs( with what intention?), then...

P: we are now talking only about Menghuan Loans Company. D:

Ok, about Menghuan Loans Company

公诉人: 你呢，对这个现在新出来的这一些诉讼请求，有什么意见吗？

被告人: 我也不懂哦。梦幻借记我是股制，我是投资。至于它的数字啊，也要靠...

公诉人: 额，那么起诉书还追加指控了，这个摩根士丹利的这个高层，MC 天使基金，联合精英国际，还都组织了融资，这些项目是怎么来的啊？

被告人: 它是这样子的。因为，这个时候组织完以后呢，人家其他的组织者呢，他们说，哎这个也蛮好的。是合适的一些投资，像股票一样的这样的，不用什么，反正是...

P: Do you have any opinions on the charges and requirements of the new victims?

D: I have no idea. I am only a shareholder of Menghuan Loans Company, a mere investor. As for the amount of the investment, we need to hold...(responsible)
P: well, the indictment also further accused the leaders of Morgan Stanley, MC Angel investment, and associated elite international of organizing financing. How did these programs come into being?

D: It was like this. Because when all funds were being organized, the organizers, they said that this program was also pretty good, and was suitable for investment, just like other stocks, no need to worry or... anyway...(avoid topic/transfer responsibility to others)

公诉人：你是从哪里知道这个项目的？就是这个投资项目的。

被告人：那个也是，当时也是大家认识了以后他们说的，所以我觉得挺好的一个..

公诉人：是哪个说的？

被告人：嗯，那个时候也是，因为我的上司是唐建辉咯。所以，对。那然后... 公诉人：

也是唐建辉介绍的？

被告人：对，那然后还有，额，还有就是 MC 的那个就是... 当时也投了那个***

（inaudible）的那个刘敏。

P: where did you know of this program? I mean this investment program.

D: That one was also when we got to know each other, I heard of the program from them, so i thought it was a good one.

P: who told you about the program?

D: well, at that time, also, because my upline is Tang Jianhui, so, yes, and then

P: It was also Tang Jianhui who introduced you to this program?
D: yes, and then, em, and the MC investment, I also invested in that *** program to Liu Min.

公诉人：那这些，这些项目都是唐建辉招人的吗？

被告人：那我就不清楚，因为大家都是股权分吗，平时的时候就不相互... 公诉人：我现在问你你是从哪里听到的？

被告人：他当时来我们酒家吃饭呢，那然后说起来，哦，那我就投了，就这样子。

公诉人：那你所谓的他是指谁啊？向法庭说清楚。在法庭上没有什么不能说的。被告人：就刚才说了的，刘敏嘛。公诉人：哦，刘敏。被告人：对。

P: Then, was Tang Jianhui in charge of soliciting investors for all those programs?

D: I am not sure about this, because we were just shareholders, and usually we do not interact...

P: I am asking you from whom did you hear of this program?

D: That was when he had meals in our hotel, and then he mentioned it to me, so I just invested, just like that.

P: who do you mean by “He”? please clarify it to the court, there’s nothing to hide in court.

D: I told you just now, Liu Min

P: Ok, Liu Min

D: Yes.

公诉人：那唐建辉介绍的什么项目过来呢？

被告人：当时就是我最初确认的工程咯。
P: so what program did Tang Jianhui introduce to you?

D: Oh, it was the original project that I have confirmed.

公诉人：你在这个项目里面投了多少钱？你刚才说，你自己也在项目里投钱了。被告人：对，对啊。

公诉人：你在这个项目里面投了多少钱呢？

被告人：额，对这个，一开始是投了20多万吧。

公诉人：就投了这个，MC？

被告人：对，一开始的时候没有投那么多，后来觉得它蛮好的，又追加上一部分。

P: how much did you invest in this program? You just said you also invested in this program.

D: yes, I did.

P: how much did you invest in this program then?

D: em… for this one, I invested over 200 grand in this program initially.

P: just in this MC program?

D: yes, I did not invest that much in the beginning, but I invested more later when I found it profitable.

公诉人：那你发展了几个人投资 MC 资产呢？
被告人：我，MC 就是，就是，当时我就是跟那个认识徐水月之后，跟她就是多联系下。公诉人：也就是你跟徐水月说了。被告人：对。

公诉人：有没有跟其他人签过？

被告人：没有。

P: how many people did you solicit to invest in MC Capital?

D: I, for MC, just, just, back then I got acquainted with Xu Shuiyue, and I contacted her more often.

P: You mean you have told Xu shuiyue about this?

D: yes

P: did you sign a contract with others? D:

no, I didn’t

公诉人：那么为什么有一个叫焕娇的说是你发展的她。

被告人：哪个？

公诉人：一个姓简的，简焕娇的，有没有这么一个人呢？简单的讲。被告人：简焕娇啊，我怎么不，我没有介绍她。公诉人：她在这里有个啊，唐建辉，谢敏贞收钱发给我的认购证书。简焕娇。被告人：我没有，我没，不记得。
P: why then did someone named Huanjiao tell us that you introduced her to the business? D:

Which one?

P: someone with the family name of Jian, Jian Huanjiao, is she one of your client, answer simply?

D: Jian Huanjiao, Why don’t I… I didn’t introduce her.

P: she has got this, em, investment certificate issued by Tang Jianhui and Xie minzhen to prove payment. Jian Huanjiao.

D: I didn’t , no, I can not remember.

公诉人：那么收到这些钱之后，最后是怎么处理的？

被告人：这些是他们投资的，这些钱是直接打进他们的账户，我没，没有通过我的账户。

公诉人：没有通过你的账户？

被告人：对对对。我都不知道他们到底有没有投哦，只是说了，他们有没有投啊，什么时候找我了，根本就不知道。公诉人：好，行。审判长，没有问题了。

P: Then how are the money dealt with after they were received?

D: These money are their investment and they are deposited into their own account, not through my account.

P: not through your account?

D: no, no, no. I did not even know whether they invested or not. I had no idea when they contacted me or not.
P: fine, ok. No more questions, your honor.