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ARTICLE

LOCALIZATION PATH OF THE RESEARCH PARADIGMS OF LEGAL COMMENTARY IN CHINA — FOCUSING ON THE PUBLIC LEGAL SERVICE FUNCTION OF THE CASE-COMMENTARY RESEARCH ON THE STYLE OF CIVIL LITIGATION DOCUMENTS

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Abstract Conducting case-commentary research on the style of civil litigation documents is a key method for judges to produce legal documents, develop professional writing and creative skills, and enhance legal thinking. Such a study is an important way to deepen the reform of the judicial power operation mechanism and to improve the trial management mode. Considering the background of the judicial responsibility system reform, the localization of the research paradigms and case-commentary methods of the style of litigation documents can help reach the consensus of the legal professional community. It also helps promote judgment rules and the spirit of the law. Legal commentaries convey the important functions of public legal services to the public. It is necessary to integrate the Style of Civil Litigation Documents, the "one-stop" litigation service with the reform practice of judicial committees in China, and conduct detailed research on the procedural ruling function and guiding function of the style of civil litigation documents. By studying the guiding function of civil litigation document style for judicial behavior, litigation procedure, and entity processing, it is good for judges to broaden their ideas and methods to write civil litigation documents, enabling an examination of the localization path and method of the legal commentary research paradigm and demonstrating how to continue using the paradigm within the context of the comprehensive reform of the judicial system. Moreover, the study emphasizes how to exert the function of public legal services integrated with the style of civil litigation documents.

Keywords style of civil litigation documents, legal commentary, research paradigm, public legal service

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INTRODUCTION

The Supreme People's Court (SPC) of the People's Republic of China has always encouraged the research and promotion of standardized civil litigation documents. The traditional trial management mode is mainly realized through the participation of the president of the court in the collegial panel and review of legal documents on a level-by-level basis. Earlier, in the trial management mode, the style of civil litigation documents played a significant role in the regulation of the procedure. In the operation mechanism of the judicial power of modern Chinese courts, the panel discussion and approval of legal documents by the president of the court has long been a trial supervision and management method, which indicates that the textual carriers of the legal documents contain the function of civil procedure regulation. The most commonly used legal writing

skills of civil trial judges are to write judgments under the form of guidance on the style of civil litigation documents. Furthermore, the style of the documents is not only an indispensable tool for the judge to manage the case but also a rule and a guiding method for the civil procedure. The judicial system reform that is currently being implemented in China has integrated the judge quota system, judicial accountability system, and judicial power operation mechanism into a flat management model. Among these systems, a key reform project is to revise the traditional position of the court president to the new position of the presiding judge in a trial team. Furthermore, the right to examine the legal documents of different cases is replaced by the direct issuance of legal documents by the judges presiding over the case. Certainly, the direction and objective of this reform are correct.

However, while radically altering a traditional trial management model, we should consider its core functions. What type of trial management model should replace the traditional one with a more powerful core function? Some scholars have questioned the style of civil litigation documents and believe that the formatted document style promoted by the SPC restricts the individuality of a judge's professional group, and the related academic debate on the style of civil litigation documents continues. However, the judicial tradition of the SPC, whereby it emphasizes standardized research on and promotion of the legal document style, has not changed. The important objectives of the judicial responsibility system that is actively promoted by the new round of judicial reform are to promote further standardization of the legality of civil trial execution procedures by specifying the style of civil litigation documents and promoting and strengthening the standardized management of such documents. The style of civil litigation documents remains a general guide for the regulation of civil trial management procedures and rules. This aspect aroused my research interest, and I conducted continuous observations and research on the topic from diverse perspectives, such as legal paperwork, legal commentary, and civil procedure law.

I. PROPOSAL ON THE PUBLIC LEGAL SERVICE FUNCTION OF RESEARCH ON THE COMMENTARY OF LITIGATION DOCUMENT STYLE

Political and legal organs perform numerous public legal service functions.[1] The Opinions of the SPC on Building One-Stop Diversified Dispute Resolution mechanisms and One-Stop Litigation Service Centers were promulgated on July 31, 2019. It proposed that "Establishments for publicity and education intended to disseminate the law oriented to the community shall be built, and cultural and litigation service centers shall be

[1] 习近平出席中央政法工作会议并发表重要讲话 (*XI Jinping Attended the Political and Legal Work Conference of the CPC and Delivered an Important Speech*), (2019), available at http://www.xinhuanet.com//politics/2019-01/16/c_1123999899.htm (last visited Sep. 11, 2019).

constructed."[2] Furthermore, these measures were to conduct the spirits of the Opinions on Accelerating the Construction of Public Legal Service System issued by the General Office of the Central Committee of the Communist Party of China (CPC) and the General Office of the State Council. Such judicial policies and several judicial reform measures proposed higher requirements for the quality of judgment documents and promotion of the rule of law. The judgment documents, which "enriched the legal system, the judicial system, and various economic, political, and cultural factors that constitute the operating environment of the judicial system,"[3] are important carriers promoting judicial justice, promoting the rule of law, and maintaining social fairness and justice.[4] The judgment documents perform an important legal service function by popularizing legal knowledge and disseminating the concept of the rule of law. Accordingly, the style of civil litigation documents is an important public legal service compliance norm that must be adhered to by judges who create civil litigation documents.

To further optimize the function of analysis and reasoning of judgment documents, the SPC promulgated the Guiding Opinions on Strengthening and Standardizing the Analysis and Reasoning in Judgment Documents in June 2018, which proposed a functional orientation and realization path of reform on analysis and reasoning of judgment documents. Then the SPC issued Opinions on Improving and Perfecting the Working Mechanism for the Judicial Committees of the People's Court on August 2, 2019, providing "the decision of a judicial committee in the deliberation of a case and the reasons therefor shall be disclosed in the written judgment, except as otherwise prescribed by law." Therefore, the aforementioned documents are essential in strengthening the reform of the analysis and reasoning of judgment documents. Furthermore, strengthening the analysis and reasoning of judgment documents by providing a case commentary of the style of the litigation documents is an important method of implementing the aforementioned provisions. Following the introduction of the new Civil Procedure Law and its judicial interpretation, the SPC enacted a new Style of Civil Litigation Documents, which was implemented on August 1, 2016.

Although academia and practitioners have mixed reactions to the Style of Civil Litigation Documents, we can examine the functions and roles of the Style of Civil

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[2] 最高人民法院关于建设一站式多元解纷机制 一站式诉讼服务中心的意见 (*Opinions of the Supreme People's Court on Building One-Stop Diversified Dispute Resolution Mechanisms and One-Stop Litigant Service Centers*), issued by the SPC on Jul. 31, 2019.

[3] FU Yulin, 民事裁判文书的功能与风格 (*The Functions and Style of Civil Judicial Decisions*), 4 中国社会科学 (Social Sciences in China), 123 (2004).

[4] HU Shihao & LIU Shude, 新时代裁判文书释法说理的制度构建与规范诠释(上)——《关于加强和规范裁判文书释法说理的指导意见》的理解和适用 (*System Construction and Regulation Interpretation of Analysis and Reasoning in Adjudicative Instruments in the New Era — Understanding and Application of the Guiding Opinions on Strengthening and Standardizing the Analysis and Reasoning in Adjudicative Instruments*), 16 法律适用(司法案例) (Journal of Law Application (Judicial Case)), 3 (2018).

Litigation Documents issued by the SPC using the research paradigm of a legal commentary. Furthermore, this method provides the best research perspective on the localization path and research paradigm method.

In addition to studying legal provisions and typical cases, an important research objective is the public legal service function of the instrument style to guide and regulate procedures. Moreover, considering jurisprudence, it is more important for the research method of legal commentary to examine how to combine civil procedure law and substantive civil law better, and how to better perform the public service function of the style of the instrument. In a civil case, the litigation document and the opinion of the judgment have a wider impact on the law's effect and the judiciary's authority than the civil law provisions cited in the litigation document. Hence, a book on the style of litigation documents is an important tool used by legal professionals in the judicial practice community. Furthermore, an exemplary legal commentary work, rather than the object of this commentary, may more profoundly impact the development of legal thinking. Although there are many reference books regarding the style of judgments and collections of laws on the desks of judges and assistant judges, doubts will remain when legal documents are written in specific styles. Earlier, the judges could rely on the president's appraisal "check" on the judgments. However, after the reform of the judge quota and judicial accountability systems, the presiding judge can now judge and check the case themselves. Hence, it is necessary to merge the style of civil litigation documents, documents of typical cases, and legal commentaries according to the model of inspirational thinking. However, this raises the following questions: How can the styles, examples, and commentaries be combined effectively? How can one comprehensively improve the professional skills of judges in the production, writing, and creation of legal documents? How can the long-standing gap between judicial practice, legal research, and legal education be addressed? Finally, to appropriately play the public legal service function of the style of civil litigation documents should be considered while implementing comprehensive reform of the judicial system.

In the contemporary era, it is better to draw on experience in research paradigms and methods of legal commentary in other countries. Accordingly, more studies should examine the research paradigms of legal commentaries. The localization of the research paradigms and methods is an important manifestation of the practical methodology of "drawing from past and foreign achievements." The systematic and traditional style of civil litigation documents formed in China's court system can be combined with legal commentary research paradigms and methods, by introducing research methods of legal commentaries into the original value function of the civil litigation document styles, to create localized research paradigms of the legal commentary in China's judicial system. In addition to a few unfavorable factors of administrative management, the traditional judgment approval management model "checks and guards." More importantly, the style

of litigation documents highlights a procedural regulation function and judgment rule guidance role. This is a core function of trial management, although it is generally ignored. How can we continue to play the procedural regulation function and judgment rule guidance role of the litigation document style in the process of furthering the reform of the judicial system? This paper clarifies how to continue demonstrating, extending, and exerting the role of the public legal services of the style of civil litigation documents in the context of the reform of the judicial system.

Based on the overall plan of furthering the reform of the judicial system proposed in the Fourth Plenary Session of the 18th Central Committee of the CPC and XI Jinping's report at the 19th National Congress of the CPC and the reform objectives and measures proposed in the Fifth Five-Year Reform Outline for the People's Court issued by the SPC, I try to find the path of promoting the deep integration of legal document research and civil procedural jurisprudence through research methods of commentary jurisprudence, through localization research of the case-commentary research paradigm of the style of civil litigation documents. This is to explore the normative guidance function of the style of civil litigation documents to judicial acts, litigation procedure, and substantive treatment, broaden judges' thoughts and methods of writing civil litigation documents, explore the localization path and research paradigm methods of legal commentaries, seek the best means for enhancing the judges' ability of producing, writing, and creating legal documents, and to seek a localized development path that combines the reform of the judicial system, reform of the judicial responsibility system, and reform of the operational mechanism of judicial power.

II. FOREIGN SOURCES AND THOUGHTS ON THE RESEARCH PARADIGMS AND METHODS OF LEGAL COMMENTARY

In court trials, a judge uses neutral language to guide the plaintiff and defendant in expressing their respective perspectives; however, outside the courtroom, the judge expresses the legal connotation, true meaning, and his or her understanding of the legal provisions in the judgment document. The judicial practice involves the exchange activities based on litigation documents. As implied by the legal proverb "beyond his/her judgment, a judge is speechless," a judge conveys his or her thoughts on the rule of law and the idea of the rule of law reflected in the judgment documents. Subsequently, legal texts transform law on paper into law in practice. Commentary research is a modern method by which the law can be activated.

During the twelfth century, since the annotations of the original commentators could no longer satisfy the social and application needs of the time, law application necessitated a new method of research "that is both faithful to Roman law but not confined to it; it should no longer solely be based on legal texts a thousand years ago, but should be elaborated as a living legal system," that is, a new research method that strongly

interpreted and revealed the spirit and essence of legal texts. Therefore, the emergence of the Commentators satisfied a contemporary need as follows: "after the middle of the thirteenth century the Commentators became the main stream of the Glossators.[5] The Commentators contributed much to modern legal science, including the definition, discovery, and creation of many concepts, principles, and rules. In other words, "without the Commentators, there would not be modern legal science."[6]

Currently, in German legal practice, legal commentary has a lasting impact and strong vitality, that is, "especially in the field of civil law, without commentary, it is unable for us to study and apply the civil code."[7] This commentary research originated as a type of writing and research method in the Athens School in the fifth century BC. Later, the Romans introduced it to Western Europe. Since the middle of the thirteenth century, Glossators became Commentators, and two French scholars named Jacob and Pierre realized the independence of the Commentators from the previous Glossators, who were mainly engaged in the annotation of Roman law.[8] Using the basic tenets of the Glossator's work, the Commentators are devoted to solving the dilemma between the "real" law in practice and scholars' "academic" law. This differentiates the Commentators from their predecessors, the Glossators, and is the reason for commentary's prosperity in the future.

In the fourteenth century, in Italy, Lombardy law and Roman law coexisted; however, in the court, the northern city-states of Italy only recognized the Lombardy law. Meanwhile, since temple law was recognized in the church court, both the Lombardy and temple law were applied in practice. However, in legal monographs, Roman law assumed mainstream status, although it could not be practiced in lawsuits. The work by the Glossators reveals that Roman law and the law of effectiveness in the litigation had the same identity based on jurisprudence. It is through the commentaries that Roman law is combined with substantive law and exercises its legal effects in litigation. The Italian scholar Cynus de Pistoia (or Cino da Pistoia) introduced the research method used by French scholars in Italy and classified the research method into various categories. Subsequently, the Commentators prospered during the fourteenth and fifteenth centuries. The popularity of the commentary is attributed to its ability to satisfy the historical call of the scientific nature of jurisprudence and appropriately respond to the unity of European

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[5] QI Zhusheng & WANG Weichen, 评注学派——后注释学派 (*The Commentators: The Post-Glossators*), 外国法制史研究 (Study on the History of Foreign Legal System), 17 (2014).

[6] SHU Guoying, 评注法学派的兴盛与危机: 一种基于知识论和方法论的考察 (*The Prosperity and Crisis of the Commentators' School: An Investigation Based on the Theory of Knowledge and Methodology*), 25(5) 中外法学 (Peking University Law Journal), 1006 (2013).

[7] WANG Jianyi, 德国法律评注的历史演变与现实功能 (*The Historical Evolution and Realistic Functions of German Legal Commentary*), 1 中国应用法学 (China Review of Administration of Justice), 181 (2017).

[8] See QI & WANG, fn. 5.

common law and the pluralism of special law at the practical level.[9] From the end of the fifteenth to the beginning of the sixteenth centuries, doubts were raised on the scientific nature and integrity of the Commentators' theoretical source titled *Corpus Juris Civilis*, due to which the Commentators faced challenges.[10]

Today, the legal commentary is popularly applied in civil law countries, and it interprets legal norms for judicial practitioners and legal theorists and is an interpretation of laws within the legal framework. Following its founding in the nineteenth century, numerous commentaries existed in Germany. At the time, although legal education was based on the common law of Germany, the German parliament also promulgated a large number of laws with political essence, which enabled the revival of the Commentators' School and "Commentary (*Kommentar*)" became a fixed term. Since then, to facilitate judges and law students to check, the German commentary became more straightforward and clearer. Since judges participated in writing commentary, many reasons for judgments were adopted into the commentary.

The *Brief Civil Code Commentary*, which was compiled in 1921 and was lauded for its simplicity and convenience, aimed "to pay comprehensive attention to the practice of courts and consensus view." It is noted that the legal commentary has a special audience, which highlights its importance in practical research. In addition to university professors, legal practitioners such as legislative officers, judges, lawyers, and notaries also participated as legal commentary writers. The *Munich Commentary on the German Civil Code*, which was compiled in 1978, is a masterpiece among modern commentaries. It established the complete style of the legal commentary by including the following: normative purpose, the scope of application, constitutive prerequisite, legal consequence, the burden of proof, and procedural matters. The German legal commentaries have high practical value; moreover, since they conveniently and concisely express views on judicial practice, the legal commentaries have a deeper impact on the judicial procedure than the content of the legal provisions themselves. In countries of the rule of law, the formation of the rule of law system and recognition of judicial authority has been facilitated by the use of the legal commentary method, which enables the concept of the rule of law to become deeply embedded in the hearts of citizens. The legal commentary acts as a carrier in achieving the practical application of the legal method and legal thinking.

The enforcement of the civil code of Germany enabled widespread recognition of the value of the legal commentary. The difference between a legal commentary and legal interpretation is that works on interpretation are often written or published by the legislature immediately after a legislation, whereas the legal commentary places

[9] See SHU, fn. 6.

[10] Id.

"emphasis on academic research, legislation, and the function of the existing judicial decision on legal practice," due to which the commentary reflects "the accumulation of experience and achievements" and "is a kind of legal tool of legal application oriented, but with academic recognition."[11] In a dialogue among several scholars, Professor ZHANG Shuanggen opined that, for a legal commentary to have a positive effect, several conditions must be met, including the "accessibility of legal texts," "relevant training taken by commentators," "considerable organizations," and "sufficiency and utilization of commentary material and methods." Furthermore, he expressed concerns about the immaturity of currently introducing commentaries in China.[12]

Glossators (*Rechtsdogmatik*) are not often considered a discipline, or a school, but "a research standpoint, which embodies a kind of research method."[13] After decades of the development of Glossators, particularly during the last ten years, the legal community has increased attention to Glossators. Practitioners also attach considerable importance to the Glossators. Following the promulgation of many basic laws, regulations, and implementation rules, several books interpreting Glossators were published almost simultaneously. Regarding the activities of the Commentators' School, Professor Norbert Horn identified three aspects of the activities of the Commentators' School. One considers legal matters. Compared with the jurists of the Glossators, Commentators are more committed to the legal practice and consider complicated and local special law issues. The second aspect is the continuous development of methods. Based on the Glossators' annotation, the Commentators attempted to apply new legal methods to solve concrete problems or discuss practical issues in legal practice and thereby provide more detailed commentaries, which enabled the advancement of Legal Dogmatics and facilitated the proposal of numerous practical solutions. The third aspect is the promotion of scholars' law, which constitutes the material (resources), concepts, and method foundation of legal science.[14] Therefore, compared with the Glossators, the Commentators more strongly emphasized the effects of existing judicial decisions on legal practice.

Commentators studied the influence of legal texts on judicial decisions and clarified the effectiveness, problems, shortcomings, and solutions of legal texts concerning judicial practice. This examination of judicial decisions will, in turn, make us consider the established/agreed/pending legal text paradigms, including thoughts on the formal justice

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[11] ZHANG Shuanggen, ZHU Mang & ZHU Qingyu et al., 对话: 中国法律评注的现状与未来 (*Dialogue: The Status Quo and Future of Chinese Legal Commentary*), 2 中国应用法学 (China Review of Administration of Justice), 161 (2017).

[12] Id. at 165.

[13] JIAO Baoqian, 法教义学在中国: 一个学术史的概览 (*Legal Dogmatic in China: An Overview of Academic History*), 3 法治研究 (Research on Rule of Law), 48 (2016).

[14] See SHU, fn. 6 at 1026, 1027.

of legal texts and the perspectives of legal texts on the procedural and substantive rights of relevant parties.

Earlier, the legal circles in China were unfamiliar with the study of commentary law. Today, the formation and development of the Commentators' School in China under the country's unified judiciary are inevitable. The formal specification and unification of standardized texts "is of great practical significance to strictly enforce the civil procedure law, to unify the law application, to standardize the litigation activities, to safeguard the rights and interests of the parties, and to display the judicial justice, enhance the judicial credibility, promote the spirit of the rule of law, and publicize the core socialist values."[15] Many publishing houses for legal works have interpretation categories, such as 中华人民共和国法律释义丛书 (*Book Series on Legal Interpretation of the People's Republic of China*) published by Law Press China, 法律法规释义解释系列 (*Book Series on Interpretation of Laws and Regulations*) published by China Legal Publishing House, and 司法解释理解与适用丛书 (*Book Series on the Understanding and Application of Judicial Interpretations*) published by People's Court Press, and so on. One of the major features of these works is that "most of the writers have participated in the legislative process and grasped considerable data and information,"[16] and the writers began writing these books during the process of legislation. Consequently, apart from their connotations on normative content, these commentators often used many papers to present legislative information, including the background for the creation or modification of laws, controversies in amendments, and legislative intent or normative purpose. Hence, the writers of such traditional interpretation books have some advantages of writing that cannot be afforded by other writers. Furthermore, "when making interpretation of a legal provision, the author only refers to some other ones related to the interpreted one. As long as the legal provision is relatively new, the author would usually quote material in the legislative process to record the will of legislators."[17] In China, this method of historical interpretation of the law is comprehensively used in interpretation books. By enhancing the commentary of legal texts, deconstructing and constructing the standard paradigm of such texts, and adopting a new relevant method of studying legal texts, we should expand the normative effect and scope of application of the law to make the legal texts better adapt to "the social needs of times."[18] While looking forward to a new era of commentary jurisprudence in China, we should realize that the crisis encountered by the German commentary jurisprudence in the past will occur in China's commentary

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[15] SHEN Deyong, 民事诉讼文书样式 (*The Style of Civil Litigation Documents*), People's Court Press (Beijing), at 1 (2016).

[16] See ZHANG, ZHU & ZHU et al., fn. 11 at 164, 165.

[17] WANG Jianyi, 德国法律评注的历史演变与现实功能 (*The Historical Evolution and Realistic Functions of German Legal Commentary*), 1 中国应用法学 (China Review of Administration of Justice), 181 (2017).

[18] See SHU, fn. 6 at 1015.

jurisprudence in the future.

The methods and theories of the commentary jurisprudence will inevitably create crises: First, the contradiction of epistemology between the Commentators seeking the self-evident truth in legal science and returning to the propositional tools and techniques of "probabilistic certainty" to realize the legal argumentation of specific issues.[19] The second crisis is attributed to methodological limitations. Legal commentaries are based on, summarize, and develop norms, and thereby "commentary becomes the norm itself." François Hortman, a famous sixteenth-century French jurist, once criticized the *Corpus Juris Civilis* that it "was written by a group of people who did not understand the spirit of Rome after the collapse of the Roman Empire, and these writers changed a lot of the law."[20] Do the ideas, opinions, and suggestions proposed by professional judges, as observers and practitioners of law on a legal text, reveal the meaning of the legal text itself, reflect the true requirement of judicial practice, represent the Chinese legal customs and judicial culture, and reveal the direction of development of the Chinese judiciary? It is difficult to answer these questions using the methods and theories of the Commentators' School.

Today, the introduction of the study of commentary jurisprudence to Chinese judicial practice and legal education based on the lessons learned from recently developed research paradigms and methods on commentary jurisprudence in Germany, the development of new connotations to commentary jurisprudence study (according to the rule of law development conditions, judicial resources, and legal qualities in China), and the enrichment of the theory, methods, and culture of Chinese commentary jurisprudence have formed a new path and method for of learning Chinese legal texts and representing a new thought and direction in Chinese law research. This is a modernized model that also forms "China's legal ambition prospect" with the direction followed by judicial practice and the development of the rule of law in China. It provides some ideas for the "jurisprudence of China: where to go." This raises some questions, for example, "what is the basis of imagining the "law" or the "legal order" of China in this era?"[21] The law/legal texts enacted by the legislature form the theoretical aspect of the law, whereas the judicial decisions made by the judicial organs and the enforcement of these decisions form the practical aspect of law in practice. Furthermore, these aspects co-construct the "law" or "legal order" today. Hence, making case-commentaries on the Style of Civil Litigation Documents is the best starting point for introducing research paradigms and

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[19] Id. at 1036.

[20] Id. at 1038.

[21] DENG Zhenglai, 中国法学向何处去(上)——建构 "中国法律理想图景" 时代的论纲 (*Jurisprudence of China: Where to Go — Research Sketch of Building an Era of China's Legal Ambition Prospect*), 1 政法论坛 (中国政法大学学报) (Tribune of Political Science and Law (Journal of China University of Political Science and Law)), 5 (2005).

methods of commentary jurisprudence in Chinese legal research.

The Decision on Amending the Civil Procedure Law of the People's Republic of China was adopted at the 28th Session of the Standing Committee of the Eleventh National People's Congress of the People's Republic of China on August 31, 2012, following which the new Civil Procedure Law came into force. To date, the Court's Litigation Document Style (for Trial Implementation) issued by the General Office of the SPC in 1992 (hereinafter referred to as the 1992's Document Style), and other styles of civil litigation documents, have not satisfied the requirements of judicial practice in civil litigation. The SPC established a leading group to implement the revised civil procedure law and considered amending the style of civil litigation documents as one of the two most important tasks. The civil litigation documents are a kind of judicial document, containing some specific technical problems, which leaves the premise of the legal text's accessibility for commentary and proposes realistic needs.

We live in the era of big data, and the construction of a judicial openness platform with Chinese characteristics has enabled our country to advance to the forefront of judicial openness efforts worldwide in a relatively short period. On July 1, 2013, China Judgments Online was launched. By the end of September 2019, the judgments issued on China Judgments Online exceeded 76,264,353, and the number of visits exceeded 33,097,506,834. In only six years, the China Judgments Online website became the world's largest site of its kind, and the vast amount of judicial document resources available on this site forms extensive material for the study of legal documents.

On June 6, 2014, the Framework Opinions on Several Issues Concerning the Pilot Program of Judicial System Reform was adopted by the CPC Central Leading Group for Deepening Overall Reform, that is, China's judicial system reform was officially launched then. The prerequisite, basic, and auxiliary systems of the judicial responsibility system, which formed the core content of the judicial system reform, is the judge quota system. Reportedly, in June 2017, after selecting and appointing the first batch of 367 judges of the SPC, more than 120,000 judges of courts across the country were selected and appointed. That demonstrates that the reform of the judge quota system was comprehensively promoted and wholly implemented in the national court system.[22]

Performing a case-commentary study on the style of civil litigation documents by combining actual cases and judgments in judicial practice is important for clarifying the function and role of the style of such documents in the judicial reform context; furthermore, such a study examines the introduction of commentary jurisprudence research in the field of civil litigation document writing as an entirely new, creative, and beneficial attempt. Performing a systemic case-commentary study on the style of civil

[22] JIN Hao & LI Jing, 我国法官员额制改革全面完成 (*The Reform of Judge Quota System Was Completed in All Respects*), 光明日报 (Guangming Daily), (Jul. 4, 2017).

litigation documents will continuously solve the problems in civil adjudication administration and continuously enrich the types of legal research work while enabling new developments in and applications of the Glossator's jurisprudence and heralding the new era of judges' commentary research.

Earlier, legal commentaries were completed by legislators/legislative participants. They were more concerned about the law's history and present status, the process of formation of the law and associated controversies, and the normative purpose of the law. In other words, they focused on the intent and purpose of the legislation and paid scant attention to the effect of the implementation of the law. On the contrary, when judge teams systematically conduct case-commentary research on the style of civil litigation documents, based on the in-depth analysis of legal texts, they focus on the actual effect of these legal texts. They examine the regulation and application of the style of civil litigation documents in specific cases, which can reflect the influence of legal texts on judicial decisions and activities, to provide helpful and effective legal advice. Therefore, Chinese legal science and the Chinese judiciary can usher in a new era of legal research from the legal commentaries made by groups of professional judges. Furthermore, this indicates that the commentary-based legal study of professional judges will gradually form a localized Commentators' School in China. What type of public legal services will the groups of professional judges conducting commentary jurisprudence research provide? What research paradigms and research methods will be used for commentary studies? We must consider these questions and examine the legal practice jointly.

III. THE GROWTH AND DEVELOPMENT OF THE RESEARCH PARADIGMS AND METHODS OF LEGAL COMMENTARY IN CHINA

To study the development of the Commentators' research paradigms and methods in the local judicial process in China, we should analyze how Chinese legal practitioners understand the practical meaning of a legal commentary to clarify its acceptability under the country's local cultural psychology. The Chinese meaning of the word "commentary" is interpreted as comment and annotation. In the crises and challenges encountered by the commentary jurisprudence mentioned, will they be encountered when we transplant commentary jurisprudence to China? One thousand years ago, *Tang Lü Shu Yi* (*The Tang Code*), the greatest work on the Chinese legal system, was enacted. *Shu Yi* contains analyses and interpretations of the *Tang Lü*. Additionally, *in Da Qing Lü Li* (*The Great Qing Legal Code*), *Lü* (law) is interpreted through *Li* (cases). All such works can be considered a prototype of the ancient legal commentary research paradigm in the Chinese legal system; however, it did not have the systematic style followed by the fixed-style research paradigm and content system of German legal commentary.

Additionally, under the unification mode of judicature and administration in ancient China, the magistrate was the local chief executive. Although the books described the

judges' strategy of making judgments as "citing from the classics, convicting based on reasons," the decisions made by local magistrates in real life often had more practical significance. In particular, in the field of civil litigation, there were historical, ideological roots of present-day judicial policy, such as settling disputes and making the concerned parties accept the judgment and abandon continuing appeals; furthermore, the quotation of classics in the decisions was highly random. In other words, there are no uniform principles or standards of decisions. During their evolution from ancient to modern times, the Chinese judicial system and litigation mode experienced significant and continuous changes alongside social developments. In particular, after the founding of the People's Republic of China, judicial activities paid more attention to policy goals and responded to social contradictions rather than the establishing of judgment rules.

Currently, with the improvement and development of the legal system to promote the establishment of the rule of law, research on the department law of China has shifted its legal research focus from legislative to explanation theory, which requires numerous legal commentaries to fill in the loopholes between the special law and common law by responding to the society's needs and refining judging rules. Therefore, research methods of legal commentary that originated in Europe are symbiotic with the Chinese traditional legal environment. Currently, more consideration is required to apply the legal commentary to examine serious problems, such as the arbitrariness of judicial governance and disorder of legal thinking caused by the frequent reforms of social and economic and judicial systems, study the application of law in Chinese society with the research paradigms and methods of legal commentaries that can be accepted by the legal community of modern Chinese society, and reach agreement among the legal community of China by clarifying the localization path and method of the research paradigms of legal commentaries.

Whether a professional group is affected by the development of science and technology depends on the core elements that make it an independent professional group. In this era of rapid development in the field of artificial intelligence (AI), it is often argued that, with the development of online legal consultation and internet courts, that AI will replace judges and lawyers in the future. In Europe, scientists have already developed an AI "judge" that can accurately predict the majority of the decisions of the European Court of Human Rights. Similarly, in the future, an AI "lawyer" could complete the task of legal inquiry and investigation with ease.[23] Often, the ideological and religious structural changes of professional groups affect a region's social civilization, rather than its material and living environment. Similarly, Since 1978, China's judicial system and litigation modes have undergone several reforms and, accordingly, the old system and

[23] ZHANG Xinbao, 把握法律人工智能的机遇, 迎接法律人工智能的挑战——致 2017 年从法学院毕业的同学们 (*Seize the Opportunity and Face the Challenges of Legal Artificial Intelligence: To the Students Graduated from Law School in 2017*), 法制日报 (Legal Daily), (Jun. 28, 2017).

thinking modes have been replaced; however, to date, the new mode of legal thinking and evaluation criteria with Chinese characteristics has not been formed or established. Hence, it is particularly important that we comprehensively use research paradigms and methods of legal commentaries to help the legal professional community and the public to reach a consensus.

In recent years, Chinese scholars realized that it is necessary to take into account the balance and unity of the stability of the legal system and its conjunction with judicial practice. Accordingly, Chinese scholars have begun to study legal commentaries, including monographs, cases, and papers. Some important monographs in China are as follows: (1) 民法总则评注 (*Commentary on General Principles of the Civil Code*) — by interpreting and making commentaries on the clauses in the General Provisions of the Civil Law, 206 clauses are sequentially interpreted in this book. Its contents include historical origins, normative purposes, normative connotations, distributions of the burden of proof, and other issues. (2) 家事法评注丛书 (*Book Series on Commentaries on Family Laws*) — 11 volumes are contained in the *Book Series*, and according to the construction of the laws, such as Marriage Law of the People's Republic of China, Adoption Law of the People's Republic of China, and the Law of Succession of the People's Republic of China, commentaries are made on every article and chapter of the above laws. The contents of the commentaries include the article and its origins, interpretation of the article, its relationship with other articles, and the relationship between the article and relevant judicial interpretations. Cases judged by important courts and academic viewpoints are also included. (3) 税法解释与判例评注 (*Tax Law and Case Review*) — is published once or twice in a year and is a kind of serial publication. The commentary objectives of this book include judgments of tax cases of courts in China's mainland, administrative decisions made by financial and tax organs, tax law cases in other regions and countries, and the explanation of the tax law's application by finance and tax organs. The commentaries in this book are freestyle, rather than unified.

The representative papers on the topic of commentary in China are: (1) 《物权法》第245条评注 ("Commentary on Article 245 of the Property Law of the People's Republic of China") written by WU Xiangxiang; (2) 《合同法》第52条第5项评注 ("Commentary on Article 52(5) of the Contract Law of the People's Republic of China") written by ZHU Qingyu; and (3) 论合同解除、债权抵销之异议——《合同法解释(二)》第24条评注 ("On the Objection of Rescission of a Contract and Debt Offset — Commentary on Article 24 of the Interpretation II on Several Issues concerning the Application of the Contract Law of the People's Republic of China") written by TANG Wenping.

Scholars from law schools wrote most of the aforementioned monographs and papers on legal commentaries, and few judges and lawyers have participated in preparation of these monographs or papers. Furthermore, most of the literatures consider substantive civil law as the objective of commentary. Scant literature focuses on procedural law as its

commentary objective. Moreover, regarding the scope of the commentary, some literatures mainly consider one article or legal department, whereas others comment on legal systems. The objects, forms, basic material, and formatting of the commentaries differ. Currently, legal commentary research in China is in the exploration stage. The research paradigm has not yet been formed, and the research method requires further improvement. Therefore, before attempting to apply new research paradigms, methods, and innovative models, we should learn from mature research paradigms and methods applied by other developed countries. We also require more time and practice to understand the type of research paradigms and methods that best suit China's legal and social environments.

Practice is the sole criterion for testing truth. Accordingly, this paper proposes a localization research method that conforms to the judicial tradition of civil adjudication, focusing on the guiding function of document styles in China's judicial system. This localization method combines the style of civil litigation documents and real judgments to conduct case-commentary. This is a localized and creative research method that combines current civil judicial traditions and customs in China and the research paradigms of commentary jurisprudence. Furthermore, this localization research method introduces the procedural rules of civil procedure law into commentary research paradigms and combines the litigation document styles and legal commentary methods. I believe that this cross-disciplinary thinking and exploration research can be tested by truth and method in judicial practice.

In the new round of China's judicial system reform, we highlight the need to strengthen the specialization, standardization, and professionalization of the team of judges, which indicates that the professional level of judges is being questioned and challenged in the context of the construction of the rule of law. The legal occupation, particularly judges' occupation, has suffered from the impacts of various aspects; the "broken chain" phenomenon of judicial techniques and legal thinking occurs among the judges of courts at all levels nationally. It is certainly related to the judge quota system reform; however, it is also a result of the fact that the law students who are educated under the legal theory-oriented training mode in law schools cannot fulfill requirements in practice when they work in courts and other judicial fields.

The judges' team experienced an event related to the movement of "better troops and simpler administration" from 1998 to 2002. It is noted that all party and government organizations at all levels in China simplified a total of 1.15 million administrative staff. In these four years, the recruitment of court personnel to various positions nearly ceased. Subsequently, the recruited judicial personnel in courts should fulfill the requirements of admission as civil servants. Therefore, the knowledge structure of the newly recruited judicial personnel differed from that of the previously appointed judges. However, at the time, for the three-level transition mode of clerk–assistant judge–judge and the cultivation

mode of the judge's professional thinking and professional technique by teaching the "broken chain" phenomenon hand in hand was relieved.

On completion of the new round of the judge quota system reform and before the second round of judge selection, since the previously traditional mode was completely broken, people are concerned about the "broken chain" phenomenon of the professional team of judges. The current round of the judge quota system reform in the judicial system reform process is equivalent to a large-scale movement of "better troops and simpler administration" in professional judges. Due to the gradual division of workload among judges and their assistants, there is no guarantee that even those assistant judges with excellent abilities have a systematic and professional legal thought and professional judicial skills at the time of their appointments. Therefore, some support the idea of implementing the sectional cultivation of judges in the next round of reform, and the substance of this mode is similar to setting a role between the judges' assistants and judges.[24]

In his book, Professor Posner mentions that the American judicial system has some structural and managerial problems that are difficult to solve, and the law schools' academic accomplishments are becoming increasingly incapable of meeting the needs of judicial practice since the emphasis is increasingly being placed on professionalism, theorization, and multidisciplinary aspects. Professor Posner has devoted himself to social science knowledge in solving the legal issues.[25] Furthermore, research paradigms and teaching methods in commentary jurisprudence that is currently under discussion is actually a branch of applied law jurisprudence. In other words, various kinds of legal commentaries retranslate the positive law to ensure that positive law and jurisprudence are integrated, and law students can fulfill requirements in practice when they work in courts and other judicial fields.

It is popularly acknowledged that "law is like the language of the country." Accordingly, in countries following the continental law system, literatures on legal commentary are often listed in reference books of legal education; hence, commentary jurisprudence is the reinterpretation of the synthetic translation of jurisprudence, legal provisions, and judicial opinions in cases to determine the role of the law itself in real life under the combined effects of the above three aspects. Simultaneously, commentary

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[24] LIN Na & ZHONG Bei, 为了持续的高质量正义: 论法官员额背景下法官养成机制的"分段式"改革 (*For Continuous Justice of High Quality: On the Sectional Reform of Judge's Cultivation Mechanism under the Background of Judge Quota stystem*), cited from HE Rong ed. 深化司法改革与行政审判实践研究: 全国法院第28 届学术讨论会获奖论文集 (*Research on Deepening Judicial Reform and Administrative Trial Practice: Collections of Award-Winning Papers of the 28th Academic Symposium of China's Courts*), People's Court Press (Beijing), at 294 (2017).

[25] Richard A. Posner, *Divergent Paths: The Academy and the Judiciary*, Harvard University Press (Cambridge), (2016).

jurisprudence is a kind of teaching and exercising thinking method. One such translation teaching method is commentary translation or annotation translation. It refers to how a translator simultaneously interprets the etymological background of the basis of translation during the translation process; it clarifies the method and process of solving the important problems in translation while analyzing and transmitting original text information. Furthermore, it examines translation techniques, processes, related theories, and practical problems and ensures the basic root of the translation.[26] The difference between this translation method and the traditional method is that the latter focuses on whether the results of translation conforms to the model essay, that is, a result-oriented method. However, commentary-oriented translators consider the behavior as the orientation and focus on the translators' thinking on how to deal with issues during the translation process and path exploration of achieving content assurance. This translation style is gradually becoming popular as a type of guided pedagogy in foreign language teaching.

As part of current judicial reform in China, theoretical research on the effect of law in practice has shifted its focus from judicial results to judicial acts. Considering the study of the judicial responsibility system, we clarify that the judicial responsibility principle in the early stage of China was the result-based responsibility model, which evaluates responsibility according to whether the case is remanded for retrial or amended for retrial but does not comply with the practical rationality of judicial rules. Contrarily, today, many scholars propose the concept of judicial act responsibility, which is "mainly based on whether the judge has illegal behaviors in the process of conducting judicial acts, if there is an illegal act, the judge should be accountable for the act even if the judgment result is correct."[27] The only aspect that the judge, who is the judicial subject, can control is the acts in the judicial process, rather than the case result. Whether the case will be remanded for retrial or amended for retrial remains unpredictable and uncontrollable in the first instance. Judge Posner proposes "a realistic theory of judicial behavior"[28] based on his observation of recent judicial activities. Through analyzing judge's acts in the judicial process, such as the voting behavior in the case deliberation and its related background factors, the researchers examine what kind of factors impact the judge's opinions in the deliberation of the case, and how to predict the judge's acts.

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[26] LI Xiaosa & KE Ping, 过程教学法在翻译教学中的应用——以同伴互译和评注式翻译为例 (*Process-Oriented Pedagogy Application in Translation Teaching — Taking Peer Review and Translation with Commentary for Example*), 34(5) 外语教学 (Foreign Language Education), 109 (2013).

[27] LI Hao ed. 员额制司法责任改革与司法现代化 (*Judicial Modernization: The Reform of Judge Quota System and Judicial Responsibility System*), Law Press China (Beijing), at 109 (2017).

[28] Lee Epstein, William M. Landes & Richard A. Posner, *The Behavior of Federal Judges: A Theoretical and Empirical Study of Rational Choice*, Harvard University Press (Cambridge), at 25 (2013).

IV. VALUE ANALYSIS AND CONCEPT GUIDANCE OF CASE-COMMENTARY STUDIES ON LITIGATION DOCUMENT STYLE

Unlike interpretation of the law, case analysis, and opinion of judgment, legal commentary is a subject of the legal literature and a method of legal research, and it has legal dogmatic significance with self-checking, heuristic, and systematic features. A series of decisions made in the judicial process implies "an accidental application of law. How do we make decisions that have a self-consistent internal logic and external argumentation rationality and maintain the certainty of law and the correctness of law? There are three possible solutions to this core problem of and legal theory: legal hermeneutics, legal realism, and legal positivism."[29] The value of legal hermeneutics lies in the fact that the specific meaning of a rule would reveal its specific appearance when it is applied to a specific case.

A. Value and Function of Case-Commentary Studies on Style of Civil Litigation Documents

The prime function of the style of litigation documents is to let litigation procedures and judgment rules interweave to reflect the process and result of the case in a peaceful and orderly manner. "People are the foundation of the country, law is the public instrument."[30] Civil and commercial cases occupying the main parts of various types of cases form one of the measures implying that the country and its society have moved from mainly cracking down on crimes toward efforts to achieve economic prosperity and stability. In 2016, people's courts at all levels across China concluded 10,764,000 first-instance civil and commercial cases, which ranked first in various litigation cases.[31] As on July 1, 2017, the total number of judgments on China Judgments Online was 30,728,800, among which 18,991,407 were civil judgments.[32] Among the legal commentaries that have emerged in China, there are more commentaries on the content of substantive civil law and few commentaries on the content of civil procedure law.

It is difficult to classify the Style of Civil Litigation Documents as a sort of procedure law; it cannot also be attributed to substantive law, and the Specifications for Preparing Civil Judgments by the People's Courts has the effect of judicial interpretation alone.

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[29] Jürgen Habermas, TONG Shijun tr. 在事实与规范之间：关于法律和民主法治国的商谈理论 (*Between Facts and Norms: The Negotiation Theory of Law and Democratic Country under the Rule of Law*), SDX Joint Publishing Company (Shanghai), at 246 (2014).

[30] It is an important aspect of the Confucian political thought. The words are from 尚书·五子之歌 (*The Book of History · The Song of the Five Brothers*).

[31] ZHOU Qiang, 最高人民法院工作报告——2017 年 3 月 12 日在第十二届全国人民代表大会第五次会议上 (*Work Report of the SPC at the Fifth Session of the Twelfth National People's Congress on March 12, 2019*), available at http://www.npc.gov.cn/npc/xinwen/2017-03/15/content_2018938.htm (last visited Jun. 30, 2017).

[32] Real-time data from China Judgments Online, available at http://wenshu.court.gov.cn/ (last visited Jul. 1, 2017).

Hence, considering the key function of case-commentary on the Style of Civil Litigation Documents in judicial practice, the object of the research method of the legal commentary should be advocated.

The legal system of Germany strongly influences the substantive civil law and procedural law in China; however, China's scholars have only recently become interested in the field of legal commentary. Presently, some scholars of Chinese substantive law have conducted commentary research and tried to focus on the legislative background, system principles, application issues, and so on. However, few similar attempts have been made in the field of procedural law and judicial documents. In particular, there is no record of any achievements in commentary works based on judgment documents. However, some documents that examine litigation document writing in both judicial practice and legal education are available. Furthermore, previous works focus on the evaluation of cases and are less interested in the complete and systematic writing paradigms of litigation documents. Recently, the works on litigation documents have started considering research paradigms and methods. Although the documents' writing style is a tool used by judges to write judgments, the content structure of the documents involves the combined use of substantive civil law and civil procedure law, which is of great significance in demonstrating the judicial achievements of the application of law and regulating the judges' rights to interpret and apply the law. Moreover, it plays a significant role in regulating the judges' activities and formulating adjudication rules and judgment gist in the process of the judicial act.

B. Foundation of the Judicial System on the Style of Civil Litigation Documents

To guide the making of civil judgments in people's courts at various levels, the SPC issued the Specifications for Preparing Civil Judgments by the People's Courts and the Style of Civil Litigation Documents on July 5, 2016. This denoted a major adjustment to the style of civil litigation after nearly a quarter of a century following the SPC's issuance of the 1992's Document Style, which laid the foundation of document style reform and commentary research, and the Style of Civil Litigation Documents adopted in 2016 is more complete than the 1992's Document Style structurally. It considers improving the quality of documents as its core goal and proposes that the writing style of judgments should satisfy the external requirements of a unified format, have a complete structure and appropriate elements, and satisfy the inherent requirements of strict logic, and proper words in judgment reasoning.

Earlier, the courts applied the 1992's Document Style issued by the SPC in civil cases at all levels. After 24 years, due to the change in the application of substantive law on civil matters, the civil procedure law was amended twice. Accordingly, the 1992's Document Style can no longer meet the requirements of civil litigation. The new document style was enforced and issued along with the Interpretation of the SPC on the

Application of the Civil Procedure Law in 2015, and the Specifications for Preparing Civil Judgments by the People's Courts was promulgated at the same time to unify different writing standards. Despite the comprehensiveness of the Style of Civil Litigation Documents, not all styles of civil litigation documents are covered. Furthermore, with the deepening of the judicial reform and development of the judicial civil law system, the change in the relative litigation system will inevitably result in conflicts between certain parts of the Style of Civil Litigation Documents and the new litigation system. In addition to complicated litigation forms of civil cases and the moderate openness of the accepted scope of civil cases, we should annotate the new litigation document style by combining it with specific cases and systematic characteristics prevalent in judicial practice.

C. Litigation Philosophy of Interactive Guidance of Dynamic Trial Elements and Elements of Litigation Documents

Against the background of judicial reform, combining the elements of dynamic trials with litigation documents and synchronously using them enables the efficiency of judicial professional skill training and legal thinking cultivation and subtly influences the de-administration effect of adjudicative thinking on judgments. In his work on judges' behavior, Professor Posner describes the common problems faced by the American judiciary, which we may have to face while writing judgment documents after the reform of the judge quota system.[33] Subsequently, the reform of the judge quota system generates an underlying apprehension: Since the judges often hand down the task of writing parts of the content and analyses of judgments to their assistants, who have probably only recently graduated from law schools, the judge's legal thinking will be passivated. Or, since the assistants do not have enough judicial experience, will it be difficult for them to develop into a qualified judge without completing the "circulation circuit" of judicial practice and adjudication opinion?

Regarding judicial procedural function, the making, writing, and creation of judgments is a process of the dynamic adjudication procedure dominated by adjudication elements, since much of the work done by judges, assistant judges, and clerks in facilitating adjudication is related to the judgments' contents. Many of the words used in the judgments are derived from the works of judges, assistant judges, and clerks in the judicial process. The tasks performed by these individuals, such as the service of legal documents, investigation, and summarizing argumentation of disputes, fixing of evidence, and holding court sessions are dynamic procedures of making, writing, and creating judgments. However, we did not realize or deepen the cultivation of the working method and the professional skill involved in the dynamic writing of judgments.

Making and writing judgments should be performed throughout the judicial process

[33] See Epstein, Landes & Posner, fn. 28.

than only be conducted after the conclusion of the court's session or deliberation by the collegial panel. Once a litigation procedure is completed, the relative part of the judgment should also be made or written. For example, in civil litigation, after the completion of registration and pretrial service work, we can write "the basic situation of the parties and other participants" in the adjudication report. Following the conclusion of the focus of controversy and the procedure of exchanging evidence, we can write "the parties' claims, the controversial facts, and their reasons" in the adjudication report.

My findings on judicial practice indicate that nearly all experienced judges, assistant judges, and clerks wrote and finished the adjudication reports and judgments during the dynamic process of adjudication itself. In general, once the court trial or the collegial panel's deliberation is finished, the judgment is soon made. Furthermore, the adjudication reports and judgments of some simple cases can even be completed in court. By combining the judicial practice experience of using the element-adjudication mode, as summarized earlier, and the dynamic-stage judgment writing method, we can summarize the different litigation stages of making, writing, and creation of judgments by judges, assistant judges, and clerks.[34]

The adjudication report is the judgment in its early form and is the basis for writing judgment. In judicial practice, two misunderstandings are prevalent regarding people's ideas and concepts in some aspects: One is the segment-processing mode, that is, only after the court trial and the deliberation of the collegial panel, the adjudication report can be written. When the collegial panel cannot form a majority opinion, after submitting the adjudication report to the judicial committee for deliberation and decision, the judgment (or verdict) is written. The second aspect is that the complete task of writing the judgment is the duty of judges. The adjudication report can be written in stages according to the process of judicial activities, and the first draft of parts of the judgment can also be prepared in different stages.

In addition to pretrial preparation, assistant judges and clerks are assigned another important task of assisting the judges in making judgments, and these judgments should be made with the cooperation of judges and their assistants. Two extreme cases are possible in practice: First, there is a complete reliance on the assistant judges or clerks to write the documents. Some courts even specifically divide assistant judges into procedural assistants and clerical assistants, and assistant judges assist in writing judicial documents. Second, the assistant judges or clerks do not help in making the documents, and the judges write the judicial documents alone. Although it is certainly wrong to rely solely on clerks and assistant judges to make judicial documents, a complete lack of assistance from assistant judges and clerks is a mechanically dogmatic and impractical

[34] YANG Kai, 法官助理和书记员职业技能教育培训指南 (*The Guide for Judge Assistants and Clerks Professional Skills Education and Training*), Peking University Press (Beijing), at 311 (2016).

way of thinking. Assistant judges and clerks can periodically and dynamically help judges in making adjudication reports and judgments during the adjudication process, and judges can dynamically write adjudication reports and judgments while handling cases.

Improving the skills of assistant judges who assist the judges in writing judgments can help the judges improve the quality and efficiency of their judgments to a certain level. Since two heads are better than one, the joint efforts of the judge and his or her assistant on the adjudication work certainly provide better results than the effort made by the judge based on his or her strength and wisdom alone. Based on the first draft written by the assistant judge, the judge revises and writes the judgment according to the situation of the hearing and deliberation of the collegial panel, which is conducive to improving the level and efficiency of the written judgment.

An element is a basic unit that constitutes the essential factors of things or components of a system. Generally, the adjudication object is the case itself. However, specifically, elements, including the factual elements of the case, evidence, legal, and procedural elements, constitute the case. Among these, the factual elements of the case are the basic elements, and other elements are generated according to the factual elements. Therefore, element adjudication focuses first on the factual elements of the case. Furthermore, element judgment is suitable for a summary procedure case. However, the Style of Civil Litigation Documents does not provide a complete list of document elements for all types of cases that pertain to the application of element judgments; therefore, the elements of the civil judgments of various types of cases should be summarized in judicial practice.

The judicial basis of an element judgment, which refers to the citation of legal provisions, should strictly conform to the requirements of Provisions of the SPC on Citation of Such Normative Legal Documents as Laws and Regulations in the Judgments: first substantive norms then procedural norms, first special law then ordinary law. The scope of the legal norms quoted in judgments is limited to the laws, administrative regulations, and judicial interpretations enacted by the state, and other governmental regulations. Furthermore, the judgments should not reflect on or quote the local regulations aimed at protecting the region's economic development. Similar to ordinary judgments, the main body of an element judgment must have a complete structure, the subjects of rights and obligations, the subjects of execution and contents, methods, and the time limit of enforcement; these details should be clear, definite, specific, and enforceable. In the enforcement procedure of the judgment, making a judgment on the disputes arising from the substantive legal relationship of the case is not allowed, and a judgment can only be executed per the clear scope of the main body of the judgment. Hence, it should not leave room for controversy over the substantive issues in the main body of the judgment.

The reform of the Chinese civil litigation procedure system is a continuous process;

hence, parts of the civil litigation procedure system often undergo adjustments and renewals per various changes. However, a large number of styles of civil litigation documents should maintain their inherent stability so that the subject matter of judgments can become deeply rooted in the judicial habits of adjudicators, enabling the creation of a writing habit and style. Although civil litigation undergoes frequent revisions, the style of civil litigation documents cannot frequently change, and any confusion caused by this conflict should be clarified by the commentary work of the style of litigation documents. Furthermore, the method of handling new issues that are not included in the original specifications should be demonstrated and guided by subsequent commentary efforts. Although the Style of Civil Litigation documents was compiled according to the new civil procedure law and its interpretations, some contents continue to conflict with the practical problems associated with the existing civil procedure law and its judicial application.

In practice, there have been some nonstandard causes of action that do not comply with the Causes of Action of Civil Cases in judgment writing, that is, in such cases, the habitual cause of action in judicial practice did not have a corresponding one in the Causes of Action of Civil Cases. Such causes of action do not conform with the Causes of Action of Civil Cases since they cannot accurately reflect the legal relationship of the case disputes.

The most obvious example is as follows: If we search civil cases in China Judgments Online, the total number of civil cases should theoretically be the same irrespective of whether the cases are classified according to the level of adjudication or according to the causes of action. However, if we search cases according to the cause of action, the total number of cases is usually less than the total number of all the civil cases. This is because, in some cases, the cause of action is not written in a standardized manner, which results in an inability to retrieve the case by searching the cause of action automatically. Hence, the standardized manner of filling judgments directly influences the effective performance of the intelligent automatic generation system for judgments. Therefore, it is necessary to apply the research paradigms and methods of legal commentary to bridge the gap between the system of civil litigation documents and the system of civil procedure law.

V. LOCALIZATION PATH OF THE COMMENTARY RESEARCH PARADIGMS ON DOCUMENT STYLE FROM THE PERSPECTIVE OF THE PUBLIC LEGAL SERVICE FUNCTION

Legal commentary research can be used as an independent research paradigm and writing style because it has a specific function realization mechanism that is different from the papers on theoretical analysis, interpretation of legal articles, and case analyses. To revolutionize, standardize, and specialize a team of professional judges in China, it is necessary to have in place a high-level revolutionized, standardized, specialized, and

professional skills training and education system for judges.[35] "In order to realize the social function of the legal order and at the same time satisfy the legal claim of the law, the judgment must satisfy both its logical self-consistency and its social acceptability. Because these two are often in conflict with each other, these two sets of evaluation standards must compromise with each other in judicial practice."[36]

We advocate the application of the case-commentary research paradigm of the new style of civil litigation since it complies with the authenticity of the original forms of cases and judgments and follows the epochal character of judicial system reform. Furthermore, it makes up the details in the new style of civil litigation documents and the specifications for preparing civil judgments and helps bridge the gap between the new style of such documents and the development of the civil litigation procedure system to demonstrate the connotation and extension of the separation of simple civil litigation documents from complicated ones. Moreover, this paradigm has theoretical and practical value since it tightly combines dynamic adjudication elements and the judgment element writing style to summarize the associated practical experience and guide judgment writing in judicial practice and helps construct a new model to cultivate professional judicial skills among judges by combining the dynamic adjudication elements and judgment elements.

A. Improvement and Supplementation of the Elements That Are Not Specified in the Style of Civil Litigation Documents

The new style of civil litigation documents contains 568 styles (196 in the 1992's Document Style), of which 463 are used by people's courts at all levels (180 in 1992's Document Style), and 105 are styles of party documents (16 in the 1992's Document Style). At the time of the establishment of the new style, the Code for the Making of Civil Judicial Documents of the People's Courts was promulgated. However, some elements of the trial procedure and the writing elements of judgment documents in the commentary requires further clarification. In other words, the judgment document should include both formal and substantive elements. The formal elements of the judgment document refer to the normative requirements of the instrument form and can be understood as the document's structural elements. The formal elements mainly reflect the procedure type and specific procedural requirements of the case. The basic elements of the document specified in Article 1 of the Code for the Making of Civil Judicial Documents of the People's Courts for formal elements include the following: the instrument comprises three parts, the title (including the name of the court, name of the instrument, and case

[35] ZHANG Xinbao, 探寻司法职业技能培训与法学教育融合共进的创新路径 (*Exploring the Innovative Path of the Inclusion of Judicial Professional Skills Training and Legal Education*), cited from YANG, Id. at 3.

[36] See Habermas, fn. 29.

number), body (the first part, facts and reasons, the basis of the judgment, the main body of the judgment, and the tail), and inscription (including the signature and date). Among these, the payment part does not state the position of the assistant judges in the instrument because, in the new round of the judicial system reform process, the duties and legal status of the assistant judge are not clarified by the legislation. Accordingly, the commentary in this discussion reveals several examples of judgment documents that indicate how the assistant judges in the appropriation section analyze how assistant judges manage documents in practice. Furthermore, the document production specification stipulates detailed requirements for the production of first-instance judgment documents, particularly judgments. However, the Code does not mention any provisions or explanations for the detailed requirements of other procedures. Therefore, we should use the case commentary to differentiate between and explain the general elements and specific requirements of document writing that are not specified in the document-making norms.

B. Essential Aspects of Dynamically Extracting Elementary Judgment Documents in Conjunction with Elemental Law

In addition to formal elements, judgment documents have essential elements. Substantive elements refer to the elements that are necessary to make judgments after a trial, and they are necessary elements of the judgment document. Regardless of the case type, the 1992's Documents Style is not complicated. Furthermore, summary procedure cases contain some content that does not influence the judgment. However, no specific requirements are stipulated for the substantive elements of the judgment, that is, the elements of the judgment. Consequently, although some cases are simple, the paper is not sufficiently long to explain the reasons for the judgment. To solve this issue, the new instrument style includes a table format, and a warrant-like factor-based instrument format. The aforementioned types of documents mainly detail summary and expedited procedures to improve the trial quality of the case. The implementation of tabular, writ, and elementary judgment documents have the following intentions: first, to improve the need for trial efficiency. Currently, the number of litigation cases in China is rapidly increasing, and contradictions among the number of court cases are increasingly becoming acute. Meanwhile, the quota system reform has streamlined the number of judges. Hence, it is necessary to solve this problem through the optimization of the litigation system and trial mechanism. The litigation case is complicated and simplified, and the general or straightforward civil case is easily handled using elementary trial law. Hence, the court concentrates its judicial resources and trial energy on complicated and influential cases. The second intention is to satisfy the requirements of the diversified development of procedures and adapt to the value demands of the development of the modern civil procedure. The third is to promote the enhancement of the judicial level of

the court and improvement of judicial credibility. Compared with the long-standing and inseparable 1992's Documents Style, the new style of civil litigation documents can effectively promote civil proceedings in a targeted and efficient manner. This makes the new style highly suitable for trial-centered judicial reform. On the other hand, it requires the judicial personnel to do their homework, completely refine the trial and judgment elements of civil cases, and accurately control the controversial foci of the trials.

C. Bridging the Gap between the Document Style and Litigation Procedure Law Systems

Currently, civil litigation procedure system reform is being implemented in China. Whereas some civil litigation procedure systems often require adjustments and updates, a large civil litigation style norm must maintain its inherent stability to make the subject matter of the judgment in the jurisdiction of the judiciary. Judicial habits are deeply rooted and affect judges' writing habits and styles. Although the civil litigation procedure system undergoes frequent repairs, it is not possible to frequently change the style of civil litigation documents. This conflict between the system and document style causes confusion, which must be resolved by the commentary work of the style of the judgment. Moreover, no method to overcome new problems is mentioned in the original style specification, and efforts to solve such problems must be demonstrated and guided by subsequent commentary work. Although the new style of civil litigation documents is based on the new civil procedure law and its interpretation, there remain some contents in practice that conflicts with the existing civil procedure law and its practical judicial application. Furthermore, the aforementioned conflicts can be divided into two parts, the original conflict and consequent conflicts.

The first conflict is the original conflict in style, which refers to how some problems in style formulation are incompatible with practical operations. It is necessary to clarify how practical needs should be combined without violating civil substantive law and procedure law and without derogating from the litigant rights of concerned parties. Some partial details of the style are modified. For example, the format of the announcement of various types of cases requires the period of the announcement to be "from the period of the announcement to xxxx year xx month xx day to xxxx year xx month xx day." However, as per the current judicial practice in China, most of the court's announcements were made in the *People's Court Daily*. While writing the announcement's content, it is impossible to confirm the date on which the newspaper arranged the publication. Therefore, in practice, according to the actual situation, some judgment documents are stated in the following form: "Within xx days from the date of publication of this announcement."

The second conflict type is the consequent conflict in style. The new civil litigation

documents do not conform to the practice. Additionally, due to the development of China's civil litigation procedure system, some content inevitably does not match the new civil litigation procedure system and should be issued after the promulgation of the Style of Civil Litigation Documents. Per Article 27 of the Provisions of the SPC on Several Issues Concerning the Modification and Addition of Parties in Civil Enforcement, which was implemented on December 1, 2016, where the name or designation of a party subject to enforcement is changed, the people's court may directly regard the entity after the change in the name or designation as the party subject to enforcement, and indicate the name or designation before change in the legal instrument. In other words, it is not necessary to make a separate decision just because the name change caused a change. This provision directly pertains to the style 81 in Chapter 21 (Execution) of the Style of Civil Litigation Documents (the legal person or organization being executed whose name is changed), which is not applicable in future practice. These new litigation procedure changes are all unforeseeable when the new civil litigation documents are formulated. Therefore, we should combine the examples in the subsequent commentary to illustrate the relevant treatment methods used in the practice development style to compensate for the shortcomings of the new civil litigation documents.

Furthermore, Article 32 of the aforementioned Provisions adds, "A respondent or an applicant that refuses to accept a ruling of modification and addition or a ruling of dismissing an application rendered by an enforcement court under the provisions of Paragraph 2, Article 14, and the provisions of Articles 17 to 21 of these Provisions may, within 15 days of the date when a written ruling is served, file a lawsuit of opposition to execution with the enforcement court."[37] The styles 73, 78, 81 of the instruments in Chapter 21 (Execution) are reconsidered per the aforementioned judicial interpretation, and style 79 may be reconsidered or prosecuted. This is attributed to the promulgation of the Style of Civil Litigation Documents and the new judicial interpretation of the original proceedings and the rights and obligations of the concerned parties. The adjustment directly led to a change in the application scope of the original style, the title of the subject in the first part of the instrument and remedy methods and notice of the deadline in the last part of the instrument. Furthermore, some of the instruments became inapplicable due to changes in the system. These issues should be solved using commentary research paradigms and methods.

[37] Para 2 of the Art. 14 of the Provisions of the SPC on Several Issues Concerning the Modification and Addition of Parties in Civil Enforcement provides: "Where a limited partnership as a person subject to enforcement is unable to pay off the debts as determined in a valid legal instrument with its own property, and an enforcement applicant applies for modifying and adding a limited partner failing to make contribution in full as scheduled as a person subject to enforcement and assumes responsibilities within the scope of the contribution not paid in full, the people's court shall support such a claim."

D. Developing an Accurate Understanding of the Limits and Tensions of the Reasoning in Judgment Documents in the Reform of the Separation of Complex and Simple Cases

On September 12, 2016, the SPC formally published Several Opinions on Further Promoting the Efficient Distribution of Complex and Simple Cases and Optimizing the Judicial Resources, which proposed the application of appropriate procedures according to the facts of a case, the application of law, social influence, and other factors, to standardize the transition between different procedures, enabling the selection of the appropriate case-handling procedure, irrespective of whether it is complex or simple, to achieve good legal effects with less judicial costs. According to Article 157 of the Civil Procedure Law, the scope of application of the summary procedure encompasses "simple civil cases with clear facts, unambiguous rights and obligations and minor disputes." However, the practical applicability of these provisions is not clarified in standard cases and in some other cases, which depict the characteristics of simple cases at the case-filing stage and can be transformed into complicated cases in the litigation process. Therefore, the separation of simple from complicated cases cannot be handled by the legal provisions, which requires us to reproduce the separation of simple and complicated cases in the judgment of a specific case.

E. Intelligent Document Module Generation and Trial Rules That Refine Interaction Guidelines

Due to the development and application of software to develop the assistant production module of intelligent judgments, we must comprehend and master the essentials of an element judgment. The combination of the adjudication element and element-judgment style can be considered the premise and basis of the intelligent judgment auxiliary production module software. Furthermore, it is guaranteed that the intelligent judgment auxiliary production module software can be updated and developed promptly by combining the adjudication element and element judgment style, and the software can generate judgments that are intelligently combined with the trial record in the court trial process.

With the development and operation of the intelligent auxiliary judgment document production module software, it is more important to understand the mastering of the elementary judgment documents. The combination of judgment elements and the element-judgment style forms the premise and basis for generating software. Furthermore, it is guaranteed that the software can be updated and developed promptly, and it comprises only trial elements and other elements. The high degree of the style used in judgment documents can help synthesize judgment documents in the trial process. The phenomenon of "many cases but few judges" has been one of the most significant challenges encountered by people's courts in civil litigation. To solve this problem, courts

in China are examining the possibility of reforming the element adjudication mode and the mechanism of separating complicated and straightforward cases and, simultaneously, attempting to develop a document automatic generation software system of intelligent assistant writing for judgments. This judicial reform is based on information technology advancements. It plans to use information to increase the efficiency of the judicial process and hasten the reform of the element-adjudication mode and the mechanism of separating simple cases from complicated cases. The intelligent automatic generation system for judgments is based on the semantic analysis, after the intelligent judgment and analysis of the complaint, the plaintiff, evidence, other pre-data, and the content of the court record. According to the format requirements of the style of civil litigation documents published by the SPC, all kinds of litigation documents, such as judgments, verdicts and so on, are automatically generated by one touch. The general search and classification paths and principles of various types of judgment documents that assist the generation software are similar and work along the following path:

> 1. Log in to the trial management system. ⇨ 2. Select the case. ⇨ 3. View the electronic volume. 4. Click judgment document production. ⇨ 5. Enter the case analysis page. ⇨ 6. Select the generation template. ⇨ 7. View the judgment documents.

The accuracy of this intelligent auxiliary judgment document production software system depends on the normalization, accuracy, and clarification of recent judgment documents and case trials. Since the computer records the judgment documents and other documents pertaining to the case, it requires one to search for the case. After the case is classified according to the case type, the next item can be selected according to the corresponding procedure. In practice, past or present, there are some cases in many written court judgments that do not conform to the cause of action; that is, the customary case is formed in judicial practice but cannot be written as per Causes of Action of Civil Cases. Finding the corresponding specific case, such as "debt dispute" and "house disputes," is inconsistent with the Causes of Action of Civil Cases, which cannot correctly reflect the legal relationship among case disputes and even fail to pass the basic relationship among claims. One should attempt to search for a case and subsequently generate corresponding trial records and judgment documents. The most obvious case is as follows: If a civil case is retrieved in Chinese courts, the number of civil cases filed during the same period, whether classified by the level of trial or by case and the total number of cases for each item, are calculated using two classification methods. The values should be consistent; however, if the total number of cases retrieved after classification according to the case is often less than the total number of civil cases, it is because some cases of judgment documents are not written appropriately and, hence, cannot be automatically retrieved according to the case. The formality of the case and form of the judgment document directly affects the effectiveness of the intelligent

auxiliary judgment document production software system. Therefore, we should apply the research paradigm and research method of legal commentary to bridge the gap between the style of civil litigation document system and the civil litigation procedure system.

CONCLUSIONS

The civil litigation judgment of the people's court of China is not only the judicial carrier of the judgment result and adjudication rules of a civil case but also the carrier of the entire court and the national judicial organ that records and regulates judicial behavior. Judicial documents should reflect the fairness of individual cases by combining the reasoning of adjudication elements to perform the education, evaluation, guidance, and demonstration functions of adjudication. Moreover, these documents should conform to judicial practice and include the formal elements of the style of litigation documents to guarantee that the civil litigation procedure is open and to prevent the abuse of discretion in judicial procedure. Conducting a case-commentary study on the style of civil litigation documents is the main method of training judges to develop professional skills in the making, writing, and creation of legal documents and legal thinking. Furthermore, such a study is an important strategy to deepen the reform of the functional mechanism of adjudicative powers and improve the level of adjudication administration of the flat management structure of the adjudication team. Against the background of judicial accountability system reform, it can forge the practical reason of legal thinking and form a consensus for the legal professional community through the localization of research paradigms and methods of case-commentary study on the style of litigation documents. The case-commentary study on litigation documents helps construct a revolutionized, standardized, specialized, and professionalized operation system within the legal professional community so that the core socialist values that embody the spirit and principles of the rule of law can be applied in judicial practice. Additionally, the style of civil litigation documents is a visible carrier and platform. This will help realize the spirit of the rule of law and values such as fairness and justice during the transitional period of China's judicial practice. Finally, by applying the localization path and method of the research paradigms of legal commentaries, the Chinese legal community should strive to establish a socialist trial-based public legal service system with Chinese characteristics as part of the comprehensive reform of China's judicial system and judicial trial practice.