

# Analysis of Witness Protection System in Criminal Procedure

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**Abstract:** The low rate of witness appearance in court is a major issue in China's criminal proceedings. The absence of witnesses in court not only affects the fairness of the trial, but is not conducive to ascertaining the truth. By comparing and analyzing the problems existing in the witness appearing in court system in criminal proceedings between China and the United States, as well as in the Chinese witness appearing in court system, this article discusses how to improve the protection system of Chinese witnesses appearing in court.

**Keywords:** Witness; System of appearing in court; Protection system

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From the perspective of judicial practice after the revision of the Criminal Procedure Law, the most prominent and difficult issue in the implementation of the new court trial system is the issue of witnesses appearing in court to testify. Only when the witness testifies in court can the parties realize their right of inquiry and counter inquiry. Moreover, the witness states the facts of the case he personally perceives in front of the judge, which is beneficial for the judge to discover the truth of the case and for the defendant to voluntarily plead guilty and plead guilty to the law. In criminal cases in China, the witness attendance rate is generally less than 10%. This article attempts to explore how to further improve China's witness appearance by comparing the witness appearance<sup>[1]</sup>.

## 1. The Connotation of the System of Witness Appearing in Court to Testify

Witness appearing in court to testify refers to the litigation activity in which a witness who knows the situation of a case attends the court during the trial of a case, truthfully states the facts of the case to the court in the form of empty words, and accepts cross-examination by all parties, or the judge conducts examination by way of inquiry. In the United States, it is a matter of course that witnesses are required to testify in court. The State has the right to obtain evidence from anyone. Due to the continued use of the jury trial method, the litigation process is centered on the testimony of witnesses, and the evidence is almost always oral testimony of witnesses who appear in court to testify. The nature of witness testimony in China is also very clear in legislation. China's Criminal Procedure Law has established the obligation of witnesses to testify in court, but it lacks strict restrictive measures.

## 2. Comparison of Witness Protection Measures Between China and the United States

Witnesses' appearing in court to testify is an obligation that witnesses should fulfill. Only by stipulating the consequences of violating mandatory norms can the law encourage witnesses to actively fulfill their obligations. At the same time, the law should also give witnesses corresponding rights to ensure that witnesses can testify in court. In this way, rights and obligations correspond to each other.

### 2.1 Measures to Compel Witnesses to Appear in Court

In the Anglo-American legal system, the presence of witnesses in court is highly valued, and everyone with witness qualifications has the obligation to testify in court. If a witness refuses to testify in court, he will be charged with contempt of court, and the judge has the power to impose a fine or imprisonment on him. That is, it is considered a criminal act for a witness to refuse to testify in court without justified reasons. This is the inherent requirement of the hearsay exclusion rule followed by the common law system. Written testimony submitted by a witness without appearing in court is hearsay evidence. If such hearsay material is not sworn by a witness. There is a possibility of falsehood and forgery in court confirmation and cross examination. Therefore, according to the hearsay evidence exclusion rule, witnesses must appear in court to testify. The Federal Important Witness Act

stipulates that if a witness's testimony is important to criminal proceedings and the witness is likely to escape. The prosecutor may apply for an arrest warrant. Judges must approve arrest warrants, and witnesses have the right to a bail hearing and assistance from government appointed lawyers. However, China lacks measures to compel witnesses to appear in court. Although China's Criminal Procedure Law stipulates the obligation of witnesses to testify, it does not provide for the legal consequences of witnesses refusing to appear in court<sup>[2]</sup>.

## **2.2 Witness Compensation System**

The right to compensation for expenses is an important right of witnesses. Witnesses who appear in court to testify inevitably consume energy, financial resources, and time, affecting normal work and life, and inevitably suffering certain economic losses. Therefore, it is necessary to provide reasonable compensation for the costs of witnesses' testimony. In the United States, whether a witness is called in the name of the government or based on the application of an incompetent defendant, a fee paid by the government can be obtained, that is, financial compensation. Witness fees are prescribed by statute. For example, the state of Illinois provides that a witness is entitled to a fee of \$20 per day for appearing in court or taking written testimony, in addition to a fee of \$0.2 per mile for necessary travel. Expert witnesses also have the right to receive fees, and Chinese law does not provide for the right of witnesses to claim compensation for losses incurred in court.

## **2.3 Witness Protection System**

In criminal proceedings, the testimony of witnesses to the criminal facts committed by the defendant may put their own or relatives' lives, bodies, and property at risk. Therefore, the civilian family should have the responsibility to protect witnesses. In the United States, protecting the safety of witnesses is the responsibility of the Federal Attorney General. According to United States law, the Federal Attorney General should provide protection for witnesses or potential witnesses in judicial proceedings involving organized crime or other violent crimes in the state and federal governments. At the same time, the Attorney General should also provide security for the safety of close relatives of witnesses who are threatened in judicial proceedings or persons closely associated with witnesses. In China, however, there is a lack of specific and standardized protective measures for witnesses<sup>[3]</sup>.

# **3. Comparative Study on the Exceptions of Witnesses Appearing in Court between China and the United States**

In order to avoid the arbitrariness of a witness not appearing in court, it is necessary for the law to clearly define the scope of a witness not appearing in court. According to Rule 804 (a) of the Federal Rules of Evidence, the statement "cannot appear as a witness" includes the following situations: (1) The declarant was ruled by the court to be excused from testifying on the grounds of the existence of a privilege to prove the content of the statement made by the declarant. (2) The declarant refuses to testify as to the content of his statement, despite a court order to do so; (3) The declarer claimed that he could not remember clearly the content of his Chen test; (4) The declarant cannot testify if he/she is unable to appear in court due to death, or is suffering from physical or mental illness, or physical weakness; (5) "If the presenter fails to appear at the hearing, the person providing the relevant statement cannot appear in court through subpoenas or other reasonable means." "If the presenter is excused from testifying, refuses to testify, claims to have lost memory, is incompetent, or is absent because the person providing the relevant statement made a mistake or violated the law in order to prevent the witness from making a decision, the presenter is not considered unable to testify in court." In contrast, Article 141 of China's "Interpretation of the Supreme People's Court on Several Issues Concerning the Implementation of the Criminal Procedure Law of the People's Republic of China" stipulates: "A witness shall testify in court, and may not testify in court if the following circumstances are met, and with the permission of the people's court; (1) a minor; (2) a person suffering from serious illness or extremely inconvenient actions during the court trial; (3) There are other reasons. The fourth point is "other reasons", which has a vague meaning, allowing witnesses to classify all reasons for not appearing in court as "other reasons", thereby providing a legal basis for not appearing in court<sup>[4]</sup>.

The United States also has a wide range of privileged rules for witnesses not to appear in court, which are conducive to maintaining the trust relationship between specific social groups and maintaining the stability and healthy development of social relations. The scope of the privilege includes the privilege of lawyers clients, psychotherapists patients, husbands wives, conversations with clergy, political elections, trade secrets, state secrets, and other official information. The client may enjoy the privilege. These have been widely recognized by society. Among them, the professional privilege and public interest privilege are not available in China's missionary legal system. Americans also have the right to refuse to answer questions about official secrets.

## 4. Perfection of China's Witness System

Firstly, provide sanctions for witnesses refusing to testify in court, and enforce the state to ensure the presence of border witnesses in court. For witnesses who refuse to appear in court, they can be required to explain the reasons for not appearing in court. If they cannot provide legitimate reasons, the court can apply measures such as summoning or summoning them to testify in court, forcing them to do so. Sanctions against those who refuse to testify in court without justified reasons can only have a deterrent effect on witnesses and can promote them to fulfill their obligation to testify in court.

Secondly, establish a witness economic compensation system. Witnesses appear in court to testify in order to assist the country in combating crime, and it is necessary to compensate for their losses. The scope of compensation for court appearance expenses should at least include the costs of work delay, transportation costs, accommodation costs, and living allowances for witnesses when appearing in court to testify. The law should provide for the costs and standards of these compensations, and stipulate that the various expenses incurred by witnesses in criminal proceedings should be borne by the government at all levels of finance, that is, the financial plan should specifically disburse them from the court's operational funds. The court should uniformly pay for witnesses.

Thirdly, establish a witness protection system. Witnesses' unwillingness to testify in court is often subject to intimidation or future retaliation by certain individuals. The establishment of a witness protection system is a safeguard of civil rights. According to the provisions of China's Criminal Procedure Law, the witness protection organs are the three organs of public security, procuratorate, and law. However, the responsibilities of multiple organs for protection are easily unclear, and each other prevaricates.

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