Analysis of Witness's Remote Testimony in the Digital Age

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Abstract. in the digital age, the witness's remote testimony system has made great changes in the traditional way of giving evidence. It breaks through the limitations of the region, can better meet the needs of people in the new era to obtain judicial relief conveniently and quickly, and more comprehensively meet the requirements of the judiciary for the people.

Summary of Witness's Remote Testimony

The Concept and Significance of Remote Testimony by Witnesses

A witness refers to a person who knows the case outside the party and accepts the court's notice to testify in court. Testimony of witnesses is of great significance for judicial personnel to restore the facts of the case, discover the truth and correctly adjudication. Therefore, the three major procedural laws in China stipulate the obligation of witnesses to testify in court. It is the basic litigation obligation of witnesses to appear in court, to receive inquiries from judicial personnel and parties in person, and to participate in court investigation and cross-examination. It also meets the requirements of the principle of direct speech. According to the procedural law and relevant judicial interpretations, unless special circumstances arise, the law allows witnesses to testify by flexible means, such as the production of written testimony, testimony through two-way video transmission system, and so on.

With the development of society, in judicial practice, more and more litigation activities are connected with electronic technology, and the prospect of electronic litigation is constructed. Among them, the use of electronic technology to provide a remote testimony platform for witnesses, breaking through the difficulties of witness testimony, has become a new topic that many courts continue to explore. Tele-testimony refers to the use of Internet video technology, the court organizes witnesses who are not at the scene of the court to participate in litigation to testify on their own understanding of the case. It is of great significance for the development of judicial practice to witness a lot of testimony. First of all, it is good for witnesses to testify, which is a convenient measure for witnesses to testify. Especially for the difficulty of appearing in court due to long distance, special work, physical or other objective reasons, it provides a solution, and can protect the safety of witnesses to a certain extent, and avoid being disturbed by dissatisfied parties or outsiders. Secondly, it improves the efficiency of litigation, reduces the cost of litigation, and saves the time, money, manpower and material investment caused by guaranteeing witnesses to testify in court. Third, increase the transparency of the judiciary and ensure the fairness of the litigation process, except for a few cases which are not heard publicly as stipulated by law, the whole trial process, including remote testimony of witnesses, can be better supervised by the public, increase judicial transparency, ensure the fairness of the litigation process and the predictability of the results through digital video transmission system and the popularization and convenience of the network.

The Status Quo of the Legislation of Witnesses' Remote Testimony

Witness testifying in court and participating in court trial is the concrete embodiment of the principle of direct speech in lawsuit and the internal requirement of modern judicature and civilized trial. According to the provisions of the three procedural laws and relevant judicial interpretations in China, those who know the facts of the case should testify in court, and the testimony of witnesses must be questioned, cross-examined, listened to the opinions of all parties in the court, and after
verification, the case can be taken as the basis for the conclusion of the case. Witnesses may submit written testimony, video testimony, or a two-way video transmission system, except for special circumstances specified by law, such as old age, poor health, long journey, special nature of work, force majeure, etc.

As for witness testimony, there are basic provisions in the three major procedural laws, but for remote testimony of witnesses, different procedural laws have different provisions based on the different nature and tasks of different litigation.

The Provisions on the Witness's Remote Testimony in the Civil Procedure Law

According to the seventy-third provision of the civil procedure law, the people's court shall notify the witness to testify in court. If a person is unable to appear in court for health reasons, long distances, inconvenient traffic, force majeure or other justifiable reasons, he may testify by means of written testimony, audio-visual transmission technology or audio-visual materials with the permission of the people's court.

The Provisions on the Witness's Remote Testimony in the Criminal Procedure law

Article 59 of the Criminal Procedure Law stipulates that the testimony of a witness must be cross-examined and verified by the public prosecutor, the victim and the defendant and the defender before it can be used as the basis for a final case. When a court finds that a witness intentionally intends to perjure or conceals a crime, he shall deal with it according to law. Article 62 stipulates that in cases of crimes against national security, terrorist activities, organized crime of underworld nature, drug-related crime, etc., witnesses, expert witnesses and victims are at risk for their personal safety or the personal safety of their close relatives because they testify in litigation, the people's court, the people's procuratorate and the public security organ shall Measures should be taken to testify in court, such as not revealing personal information such as real name, address and work unit, and not revealing appearance and real voice. Among them, taking measures such as not revealing appearance and real voice to testify in court can be regarded as providing legal basis for witnesses to testify remotely.

The Stipulation of Remote Witness in Administrative Procedure Law

Article 43 of the Administrative Procedure Law stipulates that evidence shall be presented in court and cross-examined by the parties concerned. Evidence concerning state secrets, business secrets and personal privacy shall not be presented at public hearing. Article 41 of the Provisions of the Supreme People's Court on Certain Questions of Evidence in Administrative Litigation obliges everyone who knows the facts of a case to testify in court. Yes

If it is really impossible to appear in court for special reasons such as old age, infirmity, inconvenience in movement, long distance, inconvenience in transportation, force majeure and so on, the parties concerned may submit written testimony with the permission of the people's court.

It can be seen that in the current legislation, remote testimony of witnesses in civil litigation is an exception and supplement to testimony in court, while the attitude of remote testimony of witnesses in criminal and administrative litigation is more cautious, mainly based on the difference between the nature of these two kinds of litigation and civil litigation. However, in judicial practice, the three major lawsuits have different degrees and ways of using remote testimony of witnesses.

Practice Status Quo

In recent years, many areas in China have gradually carried out the exploration and practice of witness remote testimony. For example, as early as 2006, the Nanchang Intermediate People's Court tried to arrange a witness in Shenzhen to testify a civil case through video transmission system, and achieved good results. In the following years, courts all over the country followed suit. By 2017, Yuexiu District Court in Guangzhou boldly tried to organize a police officer who could not appear in court for official business to testify in a theft case. Judicial practice shows that the use of Internet technology to organize witnesses to testify in court is a development direction of judicial practice in
the future. As long as the design is reasonable, the three major litigation can make such institutional arrangements to meet the practical needs of society for judicial efficiency.

**Inadequate Legislation**

At the present stage, judicial procedures should be formulated to guide judicial practice. Article 56 of the Provisions of the Supreme People's Court on Evidence in Civil Procedure stipulates that “witnesses can testify by means of two-way audio-visual transmission”. This provision provides a legal basis for remote testimony. But in addition, there are no laws or interpretations on the specific procedures of remote testimony, so in practice, there is no uniform standard to refer to.

**Technical Defects**

Tele-testimony is transmitted by means of network, so it needs professional workers who are proficient in network technology. In addition, due to the lack of professional network for remote testimony, the current remote litigation relies more on the ordinary network, and its security cannot be guaranteed. And the whole operation process is not reliable.

**The Authority of Remote Testimony Must Be Improved**

In remote testimony, witnesses can choose a more casual environment to testify, and lose the solemn atmosphere created in the court. Judges also lose the opportunity to observe and observe at close range. This is an impact on the principle of direct speech. It is not only difficult to identify the true identity of witnesses, but also difficult to ask them to sign after witnesses testify. Related court hearing transcripts. Therefore, if the remote testimony is not properly mastered, it will impair the authority of the trial and increase the possibility of providing false testimony.

**Solutions**

**Strengthening Relevant Legislation**

In order to avoid the fact that there is no unified reference standard for remote testimony in practice. The specific procedure of remote testimony should be stipulated by law or interpretation, so as to provide legal basis for remote testimony.

**Improve the Technical Level of Remote Testimony**

For example, the court system content upgrade video and audio hardware and software, high-quality, standardized digital records also need to be improved, to ensure the security and unimpeded data transmission in the process of testimony, to avoid malicious attacks. Improve the level of information technology and network technology of staff, set up a special person to be responsible for the technical support of remote testimony, in order to improve the quality and efficiency of the trial.

**To Strengthen the Identity Verification of the Witnesses Who Give Long-Distance Testimony**

For example, before the court hears, through the establishment of face recognition system, docking with the public security system and other ways to verify the identity of witnesses. At the same time, the court where the witness is located is requested to assist in the identification of the witness or to set up a special testimony room directly by the court where the witness is located. When the witness testifies, the courts of the two places are interconnected and interoperable to realize real-time transmission of video and audio signals, so as to overcome the drawbacks of the remote testimony of the witness. Mutual judicial assistance between the courts of the two places should be raised from the individual occurrence to the legislative level, and the specific content of assistance should be clearly defined.

In addition, after a witness testifies remotely, the court of a trial case may fax the transcript of the trial to the witness. After reading, signing and printing by the witness, the court of the witness's place faxes the transcript to the court, and the principle of signature is sent back to the court by mail.
Conclusion
The development of Internet has accelerated the modernization and intellectualization of litigation. While facilitating the testimony of witnesses, remote testimony can improve the efficiency of trial, reduce the pressure of witnesses appearing in court, reduce unnecessary expenditure for the parties, save litigation costs, and relieve the worries of witnesses. It is indeed a worthwhile way of testimony.

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