

# Theoretical Basis and Practice of Police Testifying in Court

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Police testimony in our country is becoming increasingly common as criminal procedures change. In criminal proceedings, the police testifying in court provides legitimacy and is a necessity. This study uses the case of the Beijing Municipal Public Security Bureau Police testifying in court to comprehensively analyze the overall operation and results of each stage of such testimony. On this basis, the author considers the problems and obstacles faced by the police when they appear in court to testify. The author also puts forward a proposed system that clarifies the scope of court appearances, refines the court appearance procedure, and guarantees the quality of court appearances and police authority.

*Keywords:* police testifying in court, practical operation, realistic consideration, system construction

## Introduction

Criminal procedure stipulates that anyone who is aware of the circumstances of a case is obliged to provide evidence in court, except for those who are unable to do so. The law reasons that the police will appear in court as witnesses to prove the reasonableness and legitimacy of the circumstances of a case. However, in judicial practice, the witness attendance rate is very low, and the attendance of the police as witnesses is even lower. One of the highlights of the 2012 revision of the Criminal Procedure is the explicit inclusion of police testimony into the law. In October 2014, the fourth plenary session of the 18th CPC Central Committee took a major decision regarding “Promoting the reform of the trial-centered litigation system”. Since then, eliminating illegal evidence has been pursued including the adoption of the legal principle of the presumption of innocence, improving the evidence adjudication system and the legal system of trial procedures, and reforming the mechanism of “Division of labor, responsibility, coordination, and mutual restraint” in public security, procuratorial, and judicial entities. As an important link in the realization of the central position of the trial, the witness system, including police witnesses, has attracted the attention of academic and practical circles. The Beijing Municipal Public Security Bureau has studied and implemented trial-centered reforms of the litigation system, launched a special study on the significant problems related to the police testifying in court, and actively held talks with the legal and procuratorial departments. During its study, the Bureau continued to deepen its understanding of this issue in practice. Through constant exploration and practice, a series of measures have been implemented for police and expert witnesses to testify in court including reasonably determining the scope of police and expert witnesses who testify in court, scientifically implementing procedures for police and expert witnesses to testify in court, and paying attention to improving court protection measures for police and expert witnesses who testify in court.

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This paper, which is based on practice, uses the case of the Beijing Municipal Public Security Bureau as an example to summarize the system's operation and to describe its phased achievements in Beijing. This paper also analyzes the problems identified during the operational process and puts forward feasible suggestions for solving these problems in the context of program starting mode, rule construction, safeguard measures, and others, with a view to the development of a comprehensive foundation for more in-depth research.

### **The Theoretical Basis of the System of Police Appearing in Court as Witnesses**

#### **Legitimacy of the Police System for Testifying in Court**

Through criminal procedure, the country pursues the accused. The public prosecutor, the accused, and the defender are on their respective sides and the judge is in the middle, forming a triangular litigation structure. In addition to the three main actors, in order to clearly identify the facts of the case, the participation of witnesses is necessary. A witness's neutral status often makes their testimony more credible. The only requirement of being a witness is to be present in the case, and being a witness is not limited by personal status. If a police officer observes a case, they can be a witness. However, it has long been the case that the police department submits a large number of arrest certificates and information notes and the trial is a mere formality.

#### **Necessity of Police Testifying in Court**

For an accused, the public desires a fair trial and the protection of human rights. The public has raised its expectations for fair trials and human rights protection, given the advancements in the construction of the rule of law in China and improvements in citizens' awareness of the rule of law. In particular, criminal proceedings address the right to citizens' freedom of life and involve significant wide-ranging concerns. Currently, the public not only needs the results of justice but also justice in the form of visible realization—of which testimony by police witnesses is an aspect. Furthermore, police testimony is an important component of a substantive trial. The most important part of the reform was a trial of textualism. Whether in the pre-court meeting system or the trial itself, witnesses that testify in court are important to holding a substantive trial (Mou, 2012).

### **The Practical Exploration of the System in Which the Police Appear in Court as Witnesses Using Beijing as an Example**

To reflect the situation in which a number of police cases and a number of police officers have appeared in court since the amendment of the criminal procedure laws in 2012, the author searched the entire database on the Chinese judicial documents website by keyword combinations (police, court appearance, witness). The main contents included the annual collection of cases, number of cases completed, and the number of civilian police appearing in court. The statistical results are as follows:

Table 1

*Number of Cases of Police Testifying in Court and the Number of Cases Received and Closed per Year*

	2013	2014	2015	2016	2017	2018	2019
Cases received	420,430	465,106	601,849	651,614	769,817	774,618	973,749
Cases closed	404,022	448,246	542,879	654,666	774,618	893,570	894,984
Number of cases attended by civilian police	625	5,368	5,379	4,796	5,069	4,552	3,418

Overall, the volume of cases received and closed during an entire year grew steadily after 2012. The number of cases where the police appeared in court decreased slightly after an increase in 2014 and 2015, reflecting the positive response and rational return to the judicial practice of police testifying in court. To better understand the practice in Beijing, the author logged onto the Beijing Court Trial Information Network, used a keyword search, and found nine cases in which the police testified in court.<sup>1</sup>

### Overall Operation in the Beijing Area

#### The Number of Cases and Persons Has Been Increasing Yearly; However, the Overall Proportion Is Very Low

During 2014, 2017, 2018, and 2019, the number of cases increased each year; however, the proportion of criminal cases was very low.

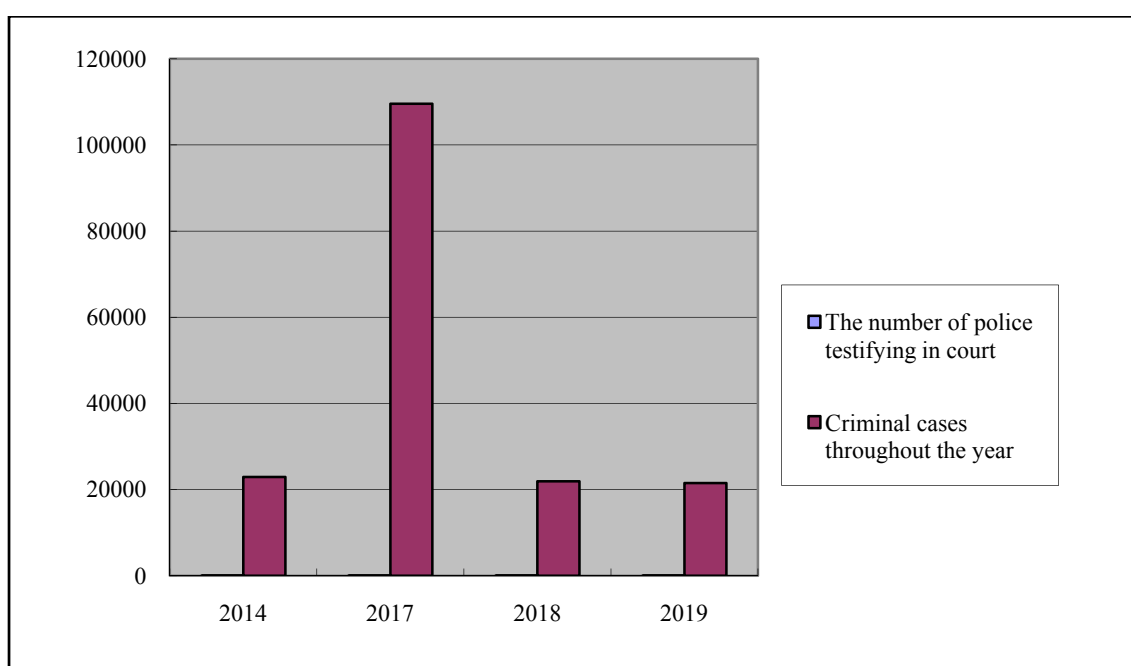


Figure 1. Distribution and proportion of police court cases in Beijing.

#### Variety of Cases and Relative Concentration of Testimony

The comprehensive case situation in Beijing is that area police appear in court to testify in cases involving drug trafficking (three), larceny (two), murder, intentional injury, rape, fraud, cover-ups, and concealment.

<sup>1</sup> If the case involves first instance, second instance, or retrial, it was only regarded as one case and the final judgment was selected.

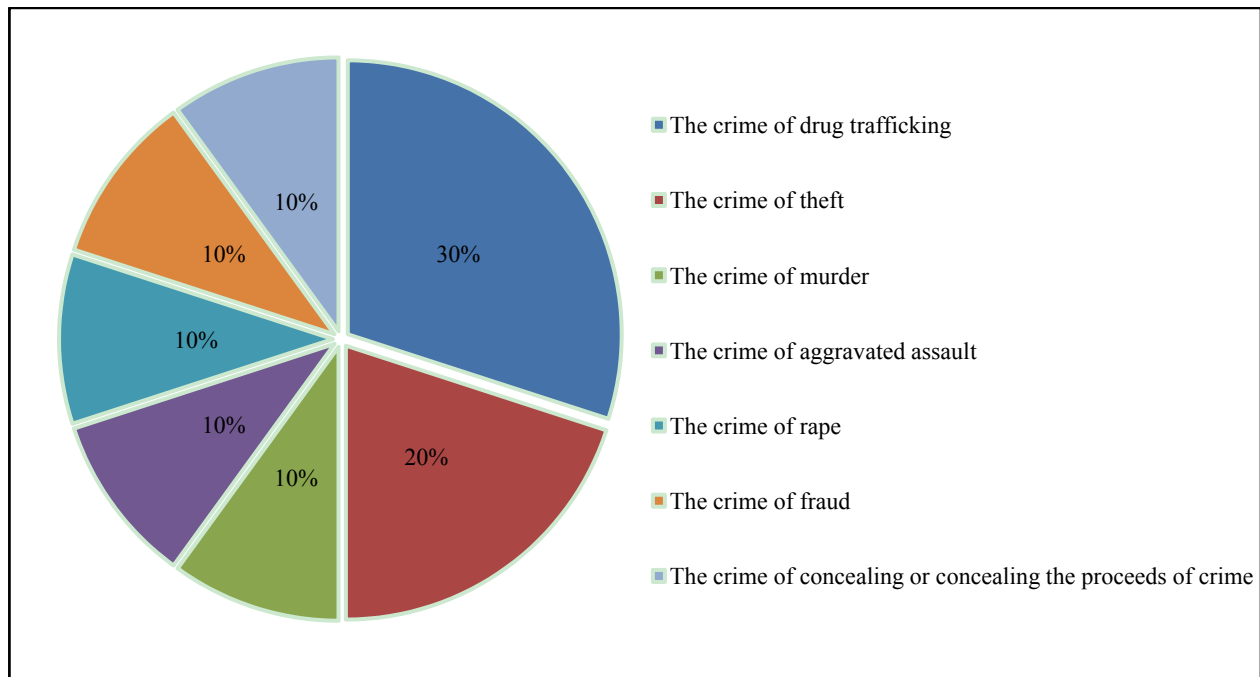


Figure 2. Types of police court cases in Beijing.

### Main Starting Point Is the Court

In the nine investigated cases, the trial court asked the police to testify. The applicable cases involved the exclusion of illegal evidence, use of controlled delivery in drug cases, signature of witnesses, and recognition of meritorious service, among others (Chen, 2012).

### Strengthening the Accusations Made by the Public Prosecution Entity Is Imperative

According to the traditional theory of criminal procedure, the trial is conducted by a judge who is in the middle of an equal confrontation between the accuser and the defender. The public prosecution entity charges the criminal suspect but before evidence is presented in court it must be collected and refined by the investigation entity. Sometimes, disputes occur over the procedure or content related to the collected evidence. Police testimony can describe and explain the evidence and strengthen the public prosecutor's accusations (Zhao & Wang, 2019).

## Analysis of Phased Results Achieved in the Beijing Area

### Effective Cognizance of Disputed Facts

The weight of drugs is an important index in conviction and sentencing for drug-related crimes. The weight of drugs has long been a bone of contention in drug trafficking cases (Li, 2016). In addition, detecting drug trafficking cases depends on the use of the controlled delivery of the drugs procured. Drug trafficking suspects often claim police entrapment, false purchase of drugs, and self-abuse as defenses to deny the illegality of their behavior, which occurred in a drug case investigated by the Dazhongsi police station of the Haidian District Sub-bureau of the Beijing Municipal Public Security Bureau. On October 25, 2018, the Haidian Court tried Wang Haibin and others for selling drugs. Doubts existed over the quantity of drugs sold by the defendants, Wang

Haibin, Chen Huabing, and others. The court summoned police witnesses from the Big Bell Temple police station of the Haidian District Sub-bureau—Sun Mou and Li Mou—to testify about the source of the case and the course of the transaction—especially the quantity of drugs seized at the scene. After cross-examination by the prosecution and the defense regarding the final 50g required for a drug trafficking conviction, the court issued a lenient penalty for the defendants Wang Haibin and Chen Huabing because, although the drugs were traded through a controlled delivery, they did not flow into the community and harm the public. In court, the police provided effective confirmation of the disputed facts (Li, 2010).

### **Effective Correction of Evidence of Defects**

Flawed evidence in a criminal case refers to evidence that was not collected in a way that conforms with the legal procedures and where the collection or documentation procedures were flawed, including flawed witness testimony or interrogation records, verbal evidence, and so on. The principle of “Remedy before exclusion” should be carried out when addressing evidence of defects, and which primarily adopts correction and reasonable interpretation methods to give such evidence formal integrity and legitimacy. Therefore, the effectiveness of this evidence is directly related to the success or failure of the rectification of defective evidence (Chen, 2018). In a homicide investigation in Shijingshan District, the crime scene transcript was found to be flawed because of the lack of witness signatures. Strict standards of proof are required in this case because the defendant, Sun Li, could face the death penalty. The first intermediate people’s court allowed testimony from the then-host police. From the criminal investigation detachment of the Shijingshan District Branch, the deputy captain of the technical team, witness Li Mou; trace engineer of the technical team, witness Bian Gang; and trace assistant engineer of the technical team, witness Liu Mou confirmed that Li Fengyun and Zhang Rongjuan were present as witnesses during the crime scene investigation because, at that time, the investigation work did not have clear clues, many appraisal work results were not produced, and the scene’s investigation records were not perfect; therefore, the witnesses were not asked to sign by hand. Subsequently, to confirm the objectivity of the crime scene investigation records, the investigators contacted Li Fengyun and Zhang Rongjuan several times and asked them to cooperate with the public security entities to carry out the inquiry work. On August 20, 2018, investigators again contacted the two men. Zhang Rongjuan said over the telephone that he could confirm that he and Li Fengyun had witnessed the onsite investigation of the case but could not remember the specific investigation process because of the long period that had passed and refused to be questioned and give his address. Li Fengyun said over the telephone that he had an impression of the scene of the crime but that other information was not clear, and he refused to cooperate with the inquiry. During the trial, three police officers appeared in court, and their testimony confirmed the case site investigation that noted two witnesses throughout the scene. Therefore, the statements made by the three investigators who participated in the onsite investigation in court and the statement of work issued by the public security entity reasonably explained the flaws in the evidence. The Full Court comprehensively examined the authenticity, legitimacy, and relevance of the “Onsite investigation notes” in this case and concluded that they could be identified as evidence.

### **Regulating the Conduct of Investigation and Evidence Collection**

The standardization of public security law enforcement is an important issue for public security law enforcers, given an increasingly strict law enforcement environment and the increasing legal consciousness of

citizens. From arresting people to solving crimes to investigating evidence, extracting evidence has become a new challenge for investigators (Li, 2006). In July 2014, a rape case was tried by the Haidian Court. During the trial, the defendant and his defense team raised the question of the legality of the defendant's interrogation transcripts, and the presiding judge summoned the People's police to testify in court. The Haidian District Dongsheng Police Station said that they did not know the defendants, Sheng and Hu, and were involved in five or six hours of normal questioning. Errors in the interrogation transcript were filled in by others and witness Wang Mou's WeChat screenshots and transfer records were not signed, which was negligent. The investigation detachment of the Haidian District Sub-bureau carried out the duty of informing during the interrogation, the procedure was lawful, no torture occurred to extort a confession, and the confession was induced. The video of the interrogation was played in court, key details in the transcript were verified word for word, and the investigators who interrogated the accused at that time were notified to testify in court. Cross-examination was conducted on the legitimacy of the interrogation process and techniques, and reasonable explanations were given by the investigators. In the end, the judge supported the testimony of the police witness and revealed omissions in the police investigation and evidence collection, which helped to standardize the investigation and evidence collection and made the evidence withstand the challenge of the defense.

### **Practical Considerations Regarding the System of Police Testifying in Court: Problems and Obstacles**

Implementing the system of the police appearing in court as witnesses was a process of constant exploration in practice, from starting with nothing to gradually reaching consensus until today's steady implementation. Certain achievements have been made in Beijing but the process has also exposed certain problems and difficulties, including imperfect legislation, ideological barriers, lack of an effective police force, and others.

#### **Unknown Starting Conditions**

Considering the current judicial environment and conditions, the system of the police appearing in court to testify in all cases will waste judicial resources and is not compatible with reality. Therefore, the scope of police testimony in court can only guarantee the efficiency of the proceedings while seeking to prove the authenticity of the results and the legitimacy of the process of finding the maximum balance (Wang & Yang, 2003). Existing laws vary according to the content of the police testimony and as to when and by whom the procedure for police testimony is to be initiated.

Table 2

#### *Comparison of Starting Methods for Police to Testify in Court*

Type of testimony	Witnesses	Lawfulness of the evidence-gathering procedure in the performance of duties	Unlawful exclusion procedure
Starter Man	The prosecution Court The accused and the defender	Public Security Bureau The prosecution Court	Public Security Bureau The prosecution Court The accused and the defender

As a result, the Public Security Bureau, the Public Prosecutor's office, and the court can initiate the testimony using any procedure, whereas the defendant and the defender have limited options available to them

without the right to initiate the testimony procedure, such as a dispute over the legality of police procedures (Ji, 2015a). The defendant and the defender in the dispute are the interested parties and the parties that bear the burden of an improper result. The defendant's defender has a high degree of concern and a strong motive for seeking proof. The defendant's defense is an important measure to guarantee the equality of litigation and endows the defender with the right to have the police testify in court.

### **Lack of Power**

Under the influence of the principle of "division of labor, mutual coordination and mutual restriction", the criminal procedure in our country has formed a kind of flowing operational mode. The investigation and prosecution procedures are relatively independent. From the perspective of judicial practice, the police and the Public Security Bureau in which they are located only use the outcome of an investigation as the criterion for realizing their functions. The assessment focuses on the number of criminal detentions, number of cases, rates of arrest, and so on. As long as a case can be investigated and concluded during the public prosecution stage, the Public Security Bureau task has basically been completed. There are flaws in the evidence or problems with some facts in the prosecution case, and the defendant's misdemeanor is not closely related to the Public Security Bureau. Therefore, the need for additional evidence can only be regarded as cooperation with the prosecution and trial departments.

### **Lack of Police Presence in Court**

According to Article 188 of the criminal procedure,<sup>2</sup> if a witness fails to appear in court without just cause after receiving a notice from the People's Court, the Court may take measures to compel their presence in court and may, with the approval of the president, admonish them as appropriate and place them in custody. Statistics from the Beijing area show that the number of witnesses actually appearing in court is much lower than the number of witnesses who are notified to appear in court, including police officers. In the final analysis, the reason for this situation appears to be the linear criminal procedure pattern—the police have the duty to arrest and solve a case but that does not include the duty to convict and punish the accused. The latter is a matter for the court and not the police—as long as the case is referred to the public prosecutor for prosecution. A police officer who is required to testify has their workload increased and testifying is not part of their job (Wang & Sha, 2017). Coupled with long-term cooperation, for a court to decide to compel a police officer to appear is difficult, as is admonishing them and asking the president to authorize detention. However, for the police to be notified to testify in court every time it requires time-consuming coordination, communication, and significant pre-trial work for the judge, which discourages them from supporting the police testimony system.

### **Insufficient Ability of Police to Testify in Court**

If the police appearing in court as witnesses do not receive systematic and standardized training, they arrive on the witness stand and may find themselves in an embarrassing situation. However, most members of the police force are graduates of public security schools, have various specializations, and are publicly recruited. They focus on investigations, criminology, and other professional knowledge. Although they may study the law, their

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<sup>2</sup> If a witness fails to appear or refuses to testify after he or she has been notified by the People's Court, the People's Court may take measures to compel the witness to appear before the court, may admonish them as appropriate, and with the approval of the President of the court, he or she shall be detained for a term not exceeding 10 days.

knowledge may be inferior relative to professional judges, prosecutors, and defense lawyers. Before our country had the police appearing in court on a clear legal basis, they did not have the experience needed to testify and had not mastered the skills needed to provide adequate responses. Many police officers with no court experience are nervous when first confronted with the seriousness of a trial. Professional defense lawyers can often find loopholes in police testimony. Some are harmless and may be a slip of the tongue; however, others can have a significant impact on the outcome of a case. At the same time, if the police cannot respond calmly and skillfully in the face of inquiries from the prosecution, the defense, and the court, they will appear to have no confidence in their answers. The judge may have doubts about the situation described by the police, and the original probative evidence may not be accepted by the court at the end of the trial. Moreover, the police's image suffers a certain amount of damage. In contrast, questioning by the prosecution, defense, and trial parties of police witnesses who testify in court is often aimed at the specific details of the case, such as the defendant's surrender after receiving a phone call from the Public Security Bureau, and the police telling them over the phone that they need them to cooperate with an investigation into a case and come to the Public Security Bureau for questioning or other reasons, such as obtaining a residence permit. These questions require police witnesses to carefully recall the details of the case and then provide targeted answers. However, police work is burdensome, and the content of cases is often similar. Moreover, certain legal procedures from arrest to trial must be followed. Without a doubt, for the police to appear in court to accurately explain a situation poses a significant challenge and could even result in them failing to accurately recall the facts.

#### **Insufficient Protection for Police to Testify in Court**

The risk of a police officer appearing in court as a witness is significantly greater than that of a general witness. How to protect the person and property of the police and their family members and to eliminate their concerns is an important aspect in the implementation of this system (Xie, 2014). At present, some measures have been implemented regarding the personal safety of police appearing in court; however, given the lack of court building and awareness of confidentiality, the police who appear in court have not been protected when cases have been tried in grassroots courts. Many of the police officers who appear in court also express concerns about their personal safety during their communications, fearing reprisals from the accused or their families after giving public testimony in court. At present, the witness protection provisions are too principled, and actual operability is not high. At the same time, the emphasis is on punishing the retaliator after the fact. No set of feasible operational procedures exists, and the court encounters problems in practice and then needs to develop a solution. Doing so will have a negative effect on the police testifying in court, affecting the effectiveness of the trial.

### **Construction of a System for Police Appearing in Court as Witnesses**

#### **To Specify the Scope of Cases in Which the Police Appear in Court to Provide Evidence**

Considering the relationship between fairness and efficiency, given existing conditions, in cases in which the accused does not plead guilty or the facts of the case are in dispute between the prosecution and defense, both sides may ask the police to appear as a witness to give an account of the situation, such as in relation to the issues referred to below. The court should allow testimony in these situations. First, the existing evidence on file should

reflect the defendant's surrender, self-surrender, merits, and other circumstances that directly affect their sentencing (Yang, 2015). The court will notify the police to testify before it and accept the cross-examination of the prosecution and defense. Second, if the facts of a case are more controversial, the investigator, in the performance of his duties, needs to provide an explanation of the situation. At present, China's police have gradually strengthened the pre-guard configuration of a large number of police close to the front line, increased the intensity of street patrols, and placed plain-clothes anti-pickpocketing police in public places and traffic police on the streets to ease traffic. Large numbers of police officers are on the streets, increasing the chances that they will spot, track, or witness a crime. In such cases, if the accused pleads not guilty and refuses to admit their crime and the facts of the crime are in dispute between the prosecution and the defense, the police officer performing their duty may give testimony to the court on the facts of the crime that they witnessed. At the same time, given the application of high-tech means, criminal acts are becoming increasingly covert, meaning that secret investigations and technical investigation methods are widely used in cases involving mafia- and drug-related crimes. If a need exists, the police who participate in undercover investigations or investigations in advance of such cases can also testify in court through concealment to strengthen the effect of the public prosecution's accusations. Finally, considering the efficiency of the proceedings and the current serious shortage of police members and to protect the state's interests, the public good, and the police's rights and interests, the scope of the police's testimony in court should be limited and excluded as necessary.<sup>3</sup>

### **Detailed Procedures for Police to Testify in Court**

The criminal procedure has laid down certain procedural rules for witnesses to testify in court but not specific operational procedures. Therefore, given the particularity of police witnesses' duties, differences exist in the notice and pre-trial preparation for the specific police testimony process in court and the specific process of general witnesses (Ji, 2016).

#### **Calling the Police to the Stand**

After a joint meeting of the Public Prosecutor's office, the People's Court decided that it was necessary for the police to testify in court and sent the notice of appearance from the pre-trial Legal Department directly to the pre-trial Legal Department of the Public Security Bureau where the police were located. This approach has the following advantages. First, it makes it easier for the police Public Security Bureau to be aware of the police's presence in court and to ensure that they would not have to worry about giving evidence, in contrast to having to inform the police first and then report to their superiors. Second, the legal system's pre-trial department is mainly responsible for the legal affairs of the Public Security Bureau. This department has high legal literacy, is in close contact with the Public Prosecution Service and the Criminal Court, and can assist the police in preparing for their

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<sup>3</sup> First, if the content of the police testimony in court involves state secrets, they may not appear in court as a witness. Second, if the content of police testimony in court is still classified as a secret investigation, which will affect unsolved cases, the police may be exempted from the obligation to testify or be granted the right of exemption from answering relevant questions. Third, for those police who go deep into underworld organizations, drug trafficking groups, terrorist groups, and other organizations to carry out undercover investigations, the case can be proved through other means. Due to the consideration of the personal safety of undercover police and their close relatives, they are generally exempted from the obligation to testify. Their appearance in court would also be required to take the form of the covert testimony referred to above. Finally, in certain historical periods, the police have been exempted from the obligation to testify as appropriate, such as in times of war or social unrest.

appearance before the court. Third, the legal system's pre-trial department is responsible for examining and reporting criminal cases, transferring prosecutions, and standardizing law enforcement by the public security forces.

### **Fulfill the Duty of Disclosure**

After the court has agreed to allow the police to testify, the court must take the initiative to inform the prosecution and defense of the situation, prepare them accordingly, and serve a notice of appearance to the police witness three days prior to the hearing that states the time, place, reason, task of the court session, and possible consequences of not appearing in court on time (Wu & Zhou, 2015). A notice of appearance may be served on the police witness by the Public Security Bureau, which will promptly forward it for processing. This duty to inform ensures that the police presence in court does not amount to a surprise attack on the prosecution and the defense, the facts of the case are communicated to the prosecution before the hearing, and adequate preparations are made for the evidence to be presented in court.

### **Pre-deposition Procedure**

In accordance with the provisions, court staff must follow these preparatory procedures before the appearance of witnesses (Zhang & Wang, 2013). First, witness identities and the relationship between the parties and the case need to be verified. Second, the staff has an obligation to inform. Third, the staff must get witnesses to sign the guaranty certificate of truthful testimony. In practice, some courts have failed to follow these three preliminary procedures after the police's appearance in the court, and some judges have allowed cross-examination by the prosecution and defense to begin after simply verifying the identity of the witnesses. They either consider that verbal warnings to the police against perjury and signing a warrant by the police would embarrass the police, or that police witnesses—unlike ordinary witnesses—are well aware of the consequences of perjury, and they need not be re-emphasized. The author believes that if police witnesses engage in negligent or illegal evidence-gathering behavior during the process of investigating the case, they are more likely to provide false testimony during the court trial out of fear of being investigated regarding their legal responsibility and may face an administrative sanction. Therefore, to reflect the authority of the court, the same preparatory procedures should be followed for police and general witnesses to ensure that the attention of the Public Security Bureau is attracted where necessary. For example, the executive branch includes police testimony in its annual performance review. The Public Security Bureau did not comply with the decision of the three joint meetings and urging the police to testify in court results in points being deducted, directly affecting the results of the Bureau's performance appraisal of city-wide entities. Within the Public Security Bureau, the assessment will be linked to the annual assessment of each department; if a department does not comply with the provisions, points will be deducted from the department's annual performance assessment results. Finally, if the police, for personal reasons, ignore the court's notice and fail to appear in court to participate in the proceedings, the court may recommend internal disciplinary action to the Public Security Bureau or refer the matter to the disciplinary committee and the political and Legal Affairs Committee for intervention.

### **Questioning**

With the permission of the tribunal and in accordance with the principle of who has priority in asking questions, one party to the application will ask questions. After that, the other party will ask questions; finally, the

question will be accepted by the full court. If the People's Court voluntarily informs the police to testify, the presiding judge will decide on the order of the questioning (He, 2016). In practice, the police are found to answer the public prosecutor's and the collegiate bench's questions calmly and positively because of the nature of the identity of both sides. In the face of the defense, a certain degree of resistance will exist, especially to the defendant's questions. In particular, defendants tend to be more emotional and use more aggressive language with the investigators who appear in court on illegal evidence-collection issues. The limitation of specialization will significantly increase the ineffectiveness of asking questions and result in blindly accusatory questioning or rhetorical questions. When such a situation arises, the judge should stop the questioning and provide guidance. However, police witnesses should restrain their emotions and answer questions succinctly or draw the attention of the judge to how the questions are being asked.

### **Enhancing the Quality of Police Testimony in Court**

If the police who testify in court are not sufficiently prepared, the risk is that a confession will be forced into passivity by inappropriate ways of testifying or formal flaws in the evidence. In practice, the police witness's ability to testify is often found to be insufficient (Li, 2016). Therefore, the police should make sufficient preparations before appearing in court to testify and further enhance the effect of appearing in court. First, at present, the police system of appearing in court as a witness is still in the early stages. The untransformed concept and unfamiliarity of the system will increase the mental burden of police witnesses, which will lead them to make many mistakes or be emotionally unstable when giving testimony. Some police witnesses had to attend the trial before giving evidence and were stopped by the court staff in time court. Police witnesses appear in court and face cross-examination by the prosecution, defense, and court. Answering these questions is not only the main task of the police testifying in court but also is the key to the success of their testimony. Therefore, to improve the effectiveness of the trial and the success rate of the prosecution, strengthening the police witness's ability to respond at a trial is necessary. Police in many areas have been trained by public security entities to help them understand court proceedings, become familiar with court orders, master court etiquette and the basic legal language, and improve their response skills. If conditions permit, the front-line police can also be organized to observe police testimony in court to prepare themselves for the future. The police should sit in a courtroom, experience a court trial, understand the trial content, become familiar with the cross-examination process, and understand how the defense asks questions (Li, 2018). If the public prosecutor needs the police to appear before the court as a prosecution witness, he or she may also communicate with the police, familiarize the police witness with the case, summarize the focus of the dispute, and anticipate the questions raised by the defense to teach debate skills and response strategies to the police. If the content of the testimony is more complicated, predicting the questions that the defense may ask, drawing up the outline of the reply, or advancing the simulation training is also possible to ensure the quality of the testimony at the trial. The court may also voluntarily disclose court information on public open days, at open court sessions, using live microblogs or live video broadcasts, and in other ways, allowing the police to understand and study its processes.

Second, as the time between the police appearing in court to give evidence and the investigation of a case is often several months, the police will inevitably have a vague memory. Therefore, after receiving a notification to appear in court, the police should carefully recall what may be involved in giving evidence in court to avoid

loopholes and omissions and to prevent the court from doubting the credibility of police witnesses. To help to refresh their memory, the police can use a variety of high-tech equipment to help with memory and law enforcement; for example, wearing an open law enforcement recorder can play a positive role. The video from the law enforcement recorder can help the police recall the scene of the crime. Depending on the content of the testimony given by the police witness, the court may also allow them to review the documents before the hearing. A police witness who only gives an account of the source of the evidence and the legality of its collection procedure may consult the relevant case files before the hearing. In the event that a police officer fails to appear at the hearing after being notified, the pre-trial department of the rule of law will supervise this situation after the hearing, the absence will be noted in the police department's year-end assessment, and the corresponding points will be deducted to urge the police to testify in court on time (Shangguan, 2015). Doing so also enables the pre-trial department of the rule of law to understand the situation of the police officer appearing in court for the first time, analyze the problems with the investigation work, and pay attention to the examination of relevant situations during the pre-trial examination of future cases to avoid problems from recurring.

### **Protecting the Rights and Interests of Police Witnesses**

To eliminate the ideological concerns of police witnesses and to consider the extra time and economic cost that may be incurred by giving evidence in court, the police's behavior in court should be regulated from three aspects: protection, punishment, and linkage. Such regulation will encourage the police who appear in court to be on time when providing evidence and to enact disciplinary punishment for the police who do not appear in court on time or refuse to appear in court without just cause. Doing so will guarantee the implementation of a system for the police appearing in court to provide evidence (Li, 2016).

#### **Protection Mechanism**

Compared with ordinary witnesses, police witnesses are more hated by criminals, and the person and property of their close relatives may be subject to greater retaliation. The protection of police witnesses should be more comprehensive and detailed (Xie, 2014). First, while police witnesses' real names are not disclosed in court proceedings, they may still need protection. They should receive protection in addition to the usual protections, such as by bringing forward the identification process to a confidential pre-trial stage. In addition to measures such as the absence of personal information in legal documents, protecting police witnesses should also be strengthened through the case file management process. For example, cases involving the identity of police witnesses should be independently documented and managed without certain approval procedures, no one should be allowed to make or borrow copies, the witness box should be kept separate from the public gallery and the accused during the trial (in practice, the witness box is separated from the public gallery by the use of ground glass), special access for the police should be allowed, and public access isolation (need to protect the police witness, taking a police car into the court hearing area, and using the judge's access directly to the witness waiting room line to avoid the public, the accused, and the audience) and other protections should be implemented. Second, criminal gang cases, terrorism-related cases, other major cases, and personal danger cases can be expected to involve hidden testimony. When a police witness is about to testify in court, he or she goes directly into the hidden testimony room and connects to the court by video. The video that appears in the court will

automatically change the police witness's voice presentation, the face and other body parts of the police witness will be blurred, and the witness will be moved and have an auto-mask face. In 2017, a total of 18 witnesses in the Beijing area testified in court using hidden testimony equipment, and certain results were achieved. Witnesses are not allowed to have access to any of the file materials.

### **Disciplinary Mechanism**

How should the police be disciplined for refusing to comply with their obligation to appear in court? The special nature of the police's status makes it more difficult to address this issue than it is for the refusal of general witnesses to comply with their obligations to appear before the court. Does the court have the capacity to impose compulsory attendance measures on persons who are themselves entities of state violence? What will happen if the police is forced to appear before the court? Such problems cannot be solved through a judge's admonition, requiring compulsory attendance, or the authorization of the president of the court for detention (Wang, 2016). Combined with the existing relevant practices in Beijing, the author makes four suggestions.

First, coordination and communication should be ensured, which is illustrated in the context of the following linkage mechanism.

Second, administrative assessments should be used. The local administration can do its best to include in the system of police testifying in court in the annual performance appraisal, make use of the personal safety protection considerations of the procedural rules of testifying in the local administrative court, and implement a covert testifying provision that allows witnesses to request that their personal information not be made public. However, the contents that are not made public should only include identity verification before the court and the non-disclosure of identity in court hearings and legal documents. No mention is made of how the personal information of the persons concerned, including police witnesses, is properly protected. To effectively protect their personal information, a provision could be added to the article stating that materials containing the true personal information of witnesses, victims, and authenticators, such as evidence and legal documents, should be kept in a separate book and in the custody of the People's Court, and any and all leaks should be avoided. According to the different consequences caused by the act of divulging the personal information of the relevant personnel, their administrative and criminal responsibilities shall be investigated according to the circumstances. The authority of the system of police testifying in court can be strengthened by considering it from a legislative perspective. Independent publications and detailed rules for the system can be issued that specify in detail the conditions, procedures, methods of compulsory attendance, and safety and security measures for police to provide evidence in court and the consequences of giving false testimony. If the police refuse to testify in court, leading to key evidence being omitted as a basis for conviction or the facts not being ascertained, the accused should be acquitted in accordance with the principle of the presumption of innocence. If the police give false testimony in court, cover up the facts of a case, or obstruct the normal activities of the judiciary, it should be stipulated that the trial court may directly transfer the materials related to the police witness giving false testimony to the disciplinary and supervisory committees. Those who request that the relevant police be investigated and disciplined or an administrative act in law in accordance with the law should be investigated for criminal responsibility according to the provisions of Article 303 of the criminal law on perjury—if the circumstances are serious enough to constitute a criminal offense. Legislative intransigence can better show the

authority of this system and not only play a leading, exemplary role but also better allow the implementer to implement (Li, Wang, & Liu, 2017).

Third, the pre-trial meeting system should be used effectively. Compared with the trial, the pre-trial meeting has the incomparable advantages of fewer participants, high flexibility, and convenience. The Supreme Court has stipulated that the prosecution and defense parties may apply for, and the judge can convene on his own initiative, a pre-trial meeting to hear opinions and learn about issues related to the trial, including the exclusion of illegal evidence. Then, in cases in which the prosecution and the defense apply for the exclusion of illegal evidence, an attempt can be made to inform the police witness to explain the situation in the pre-trial meeting. The issue of the exclusion of illegal evidence can be resolved directly in the pre-trial meeting, reducing the difficulty and cost of police witness protection.

Fourth, the costs of witness testimonies and the necessary costs incurred by police witnesses as a result of their testimony and other property losses resulting from intimidation, threats, and injury should be included in the annual budget and be paid by the court on behalf of the state. Police testimony in court should also be supported by the Public Security Bureau, which should take the initiative to adjust its police work to ensure that police witnesses can appear in court on time.

### **Linkage Mechanism**

In the context of the trial-centered reform of the litigation system, the police testifying in court is an inevitable requirement for the exercise of judicial power and one of the most important measures to ensure the quality of criminal cases, and the duty to promote the smooth operation of this system is possible (Liao, 2011). First, the public prosecutor's office and the People's Procuratorate can reach consensus on the implementation of the system of police testifying in court, strengthen the interactive exchanges, and communicate and discuss in a timely manner in joint meetings the new situations and issues that arise in specific court proceedings. On the basis of such discussions, developing written material for understanding consistent questions allows the related personnel to carry on the suitable study. Good results of how a trial is handled can be reported to the next level in the department to promote them (Zhao & Wang, 2019). Second, the witness protection mechanism, including police witnesses, cannot guarantee the strength and intensity of protection only by relying on the court's human and material resources. For example, to ensure the personal safety of witnesses and their families, including police officers appearing in court, the People's Court in Ouhai District in Zhejiang Province applied to the municipal government for funds to establish a witness safe house. Witnesses whose personal safety may be threatened or who may be harassed by the party concerned, such as the victim or the defendant, may be placed in a safe house in advance, and the Public Security Police is responsible for regular vigilance and security. Infrared sensors are installed in the living room, on windows, and in passageways of the safe house. Once an abnormal signal is received, the monitoring platform in the safe house and the alarm platform in the Public Security Bureau immediately receive the alarm information. Witnesses can also avoid the dangers of travel by remotely providing testimony in the safe house's witness room and by connecting directly to the courtroom via the Internet. The establishment of safe houses can provide significant protection for the personal safety of witnesses, including the police. The project can be launched quickly and implemented without the support of the local political and legal committee, Procuratorate, Public Security Bureau, and other departments. The courts alone cannot solve the

problems of housing, money, and personal protection (Ji, 2016). Third, the scope of criminal defense can be expanded, and full coverage of criminal defense can be attempted. The lawyer's defense function can be brought into full play during the criminal proceeding process, which will undoubtedly promote substantial reforms of court trials, including the system of police appearing in court to testify (Ji, 2015a). The Bar Association can regularly carry out studies, seminars, and case analysis to assist lawyers with understanding the use of police testimony in criminal defense systems in courts, which can assist with defendants' innocence and assistance for misdemeanor defenses and improve the effectiveness of their defense. For accused persons who cannot afford to hire a lawyer, resources are coordinated by the executive branch and the Bar Association to guarantee that a criminal defense can be conducted free of charge by an assisted lawyer. Alternatively, a duty lawyer assigned to the detention center or the court can provide legal assistance to the defendant.

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