



# Research on the Conflict and Coordination between the Protection of Anonymous News Sources and the Duty to Testify in Court

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**Abstract.** Anonymous news sources are indispensable for journalism and media and hold special significance for news organizations. In the judicial practices of news infringement cases, when anonymous information becomes crucial evidence in civil litigation, conflicting obligations arise between the duty to testify in court and the requirement to protect anonymous sources, which puts the media in a predicament: whether to disclose the identity of the anonymous source against professional ethics to win a lawsuit or to bear the risk of losing the lawsuit in order to protect the anonymity. With regard to protecting anonymous information sources and fulfilling the duty to testify in court, this paper analyzes the causes of the conflict with theoretical references and examines the judicial dilemma through specific cases, and intends to balance this dilemma by considering the reasonable allocation of the burden of proof, comprehensive evaluation of infringement elements, establishing a system of privilege to refuse to testify, and the expansion of the scope of anonymous testimony.

**Keywords:** Anonymous news sources, Duty to testify in court, Burden of proof, Privilege to refuse to testify, Anonymous testimony system

## 1 Introduction

The quality of news sources is fundamental for journalism and media to survive and thrive, as it directly determines news coverage quality which can be substantially contributed to by the anonymous source, as a source of news leads.<sup>[1]</sup> Anonymous sources often provide information to news organizations with undisclosed and unauthentic identities. It is noted that news organizations are obliged to maintain the confidentiality of these sources. However, in the judicial practices of news infringement cases, when anonymous sources become crucial evidence to be presented in civil litigation, conflicting obligations arise where compelling witnesses to testify may require the anonymous sources to appear in court, which puts the media into a difficult circumstance. This research thus aims to explore solutions to alleviate this contradiction.

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S. Yacob et al. (eds.), *Proceedings of the 2023 7th International Seminar on Education, Management and Social Sciences (ISEMSS 2023)*, Advances in Social Science, Education and Humanities Research 779, [https://doi.org/10.2991/978-2-38476-126-5\\_145](https://doi.org/10.2991/978-2-38476-126-5_145)

## 2 The Conflict Between Protection of Anonymous Sources and the Obligation to Testify in Court

The term "anonymous sources" is often associated with litigation disputes in the media-related sectors internationally. Protecting anonymous sources, recognized as a necessary measure, has become a code of conduct for media-related professionals. However, in cases of news infringement, the legal obligation to testify in court conflicts with the protection of anonymous sources.

### 2.1 The Necessity of Protecting the Safety of Anonymous Sources

Anonymous sources, also known as undisclosed sources, refer to sources of information provided to media organizations on the prerequisite of remaining confidential to anyone except the organization. The providers of anonymous information are often referred to as "informants" or "tipsters", who frequently help with investigative and in-depth reporting to uncover hidden facts which will subject them to public scrutiny. The protection of anonymous sources is required because of the following reasons. Firstly, information obtained by the sources may be sensitive or exert far-reaching implications, and for the sake of their own safety, they require the news organizations to keep their identity confidential. Secondly, news organizations are willing to protect the anonymity of sources to access a wider range of information. Additionally, exposing societal facts through news and media is a powerful means of respecting the public's right to access information. Failure by media organizations to honor their commitment to anonymizing sources not only causes immeasurable harm to the sources but also damages the credibility of the media organization itself.

In other countries, there are instances where the protection of anonymous sources is upheld.<sup>[2]</sup> In China, news organizations abide by the industry's moral standards of protecting anonymous sources. When the prominent media outlet "The Paper" broke its promise and disclosed the real identity of an anonymous whistleblower, it faced criticism from other major media outlets. Therefore, protecting anonymous sources emerges as a universally recognized principle in both international and domestic media.

### 2.2 The Legal Obligation to Testify in Court

The testimony of the witness in court is a fundamental requirement in civil litigation.<sup>[3]</sup> On the one hand, by having the witness testimony physically present in court during the presentation of evidence, effective cross-examination allows for safeguarding procedural fairness in civil litigation. On the other hand, witness testimony is essential for establishing the facts of a case, enabling both the prosecution and the defense to question the credibility of the witness's statements, which defends the litigation rights of the parties involved and thus ensures procedural fairness.

Article 75 of China's Civil Procedure Law stipulates that "Units and individuals who are aware of the circumstances of a case have an obligation to testify in court." Furthermore, Article 68 of the "Several Provisions of the Supreme People's Court on Evidence

in Civil Proceedings" states that "people's courts shall require witnesses to testify in court and answer questions from the adjudicators and parties. Testimony provided by witnesses who fail to appear in court without justifiable reasons, such as through written statements, cannot be the sole basis for ascertaining the facts of a case." In this sense, court testimony refers to a legally-defined obligation of witnesses. It represents a choice made by the state to prioritize and balance various values in the general interests of society. However, it sacrifices witnesses' partial rights in order to enhance litigation efficiency, better establish the facts of a case, resolve disputes, and uphold social stability and public interests.

### **3 Judicial Practice: The Judicial Dilemma of Anonymous Source Protection and the Obligation to Testify in Court**

Based on the necessity to protect anonymous sources and the legal obligation to testify in court, the conflict between protecting anonymous sources and the compulsory requirement to testify arises in judicial practices. In "World Luxury Association v. The Beijing News" and other cases, this conflict between protecting anonymous sources and meeting the obligation to testify emerges.

#### **3.1 Balancing Professional Ethics and the Risk of Losing Lawsuits**

In the first-instance trial of a case, The Beijing News, in order to uphold media professional ethics, refused to disclose the real identity of the whistleblower in the face of unfavorable conditions such as false testimony provided by the World Luxury Association (Beijing) Company. This showed the news agency's adherence to professional ethics. However, the first-instance court held that although The Beijing News submitted audio recordings, they did not provide enough information about the recorded individuals, i.e., the identity of the anonymous sources, and the anonymous sources did not testify in court. Therefore, the court found it difficult to verify the truthfulness of their statements and concluded that The Beijing News failed to prove that the anonymous source was a former employee of the World Luxury Association. <sup>[4]</sup>This resulted in a disbalance between media-related ethical norms and judicial impartiality, leading to the legal consequences of losing the lawsuit.

In the second-instance trial of the case, faced with immense social pressure and the risk of losing the lawsuit, The Beijing News disclosed the real identities of the anonymous source after obtaining their consent to fulfill the court's requirement for evidence testimony, which also resulted in harassment and profound social impacts on journalists and witnesses who testified against the World Luxury Association with negative reporting. For example, China Youth Daily had to deal with a series of defamation lawsuits, a journalist from Southern Weekly faced criminal investigations by the police, and the initial person who questioned the Luxury Club, known as "Hua Zong," was threatened by someone through private messages on Sina Weibo and even encountered

attacks by unidentified individuals. Despite the fact that the news agency won the lawsuit, many key sources with important news leads were "discouraged" from information provision, thus hurting public interests.

### **3.2 Violation of professional ethics and loss of credibility**

At the same time, some media organizations have violated professional ethics and disclosed detailed information about the sources out of public pressure. Journalist Chen Jieren from "Youth Reference" exposed an anonymous interviewee to the public, leading to public doubts about the authenticity of the report. Although the incident was followed by apologies by China Youth Daily, and the resignation of Chen Jieren, public trust in the media was found to be difficult to restore. As a matter of fact, protecting anonymous sources is merely a kind of media professional ethics, which holds less significance than legal responsibilities, significant economic damages, and even potential harm to personal safety. However, if anonymous sources are not protected in circumstances where they are indirectly pressurized or forced to testify, then it will not only cause the media to lose public trust but also make them more difficult to expose the darker sides of society, therefore undermining the public interests.

From the perspective of how the burden of proof gets allocated, Article 999 of the Civil Code of China defines news infringement as a general infringement. However, during the trials of news infringement cases in China, two opposing views exist: "whoever asserts bears the burden of proof" and "whoever reports bears the burden of proof". The Beijing News case exemplifies the confusion between these two concepts. In addition, China's current laws do not include specific provisions regarding the "privilege to refuse to testify". As a result, if the media don't disclose information about sources, then they may be hit with unfavorable legal consequences (unless they can successfully prove the truthfulness of their reports). Therefore, they are prone to find themselves caught in a dilemma between protecting anonymous sources and facing adverse legal consequences.

## **4 Rule Expansion: Coordinating and Improving the Protection of Anonymous Sources and the Obligation to Testify in Court**

### **4.1 Reasonable Allocation of Burden of Proof**

News infringement differs from other types of infringements, and the allocation of the burden of proof needs to balance the relationship between "press freedom" and "protection of personality rights", which makes it special to a certain extent. To allocate the burden of proof for both parties, it is necessary to clarify the issue of the authenticity of the news report, that is, the relationship between fault determination and the exemption for truthful reporting. If the plaintiff claims that the news report has harmed their personality rights and demands that the news organization shall be held liable for the infringement, then they are required to prove that the news report is false. If the news organization intends to claim exemption, then it needs to prove the truthfulness of the

news report. Furthermore, if the burden of proof is arbitrarily allocated by the court based on individual cases, then it may lead to the abuse of discretionary power and result in inconsistent rulings for similar cases. However, if a reversed burden of proof is directly applied, then a question may be proposed: if the news organization is required to bear the burden of proof and prove that it did not constitute an infringement through the no-fault principles or presumption of fault, does it mean that the news organization needs to assume more burden of proof? The specificity of news coverage lies in its truthfulness, and it is the responsibility and obligation of the news organization to ensure the truthfulness of the sources and the reported content.

In other words, news organizations enjoy the defense of truthfulness when obtaining anonymous information. It is difficult to require the victim to prove their innocence when they demand that the news organization be held liable for infringement in practice. Therefore, news organizations should feel obliged to ensure the truthfulness of their news reports, and the defense of exemption can only be achieved when they manage to prove the authenticity of the information sources and the truthfulness of the reported content.

#### **4.2 Comprehensive Consideration of Elements of Tort Liability**

The Civil Code of the People's Republic of China introduces the theory of a dynamic system in Article 998 regarding news infringement, which stipulates that when a person bears civil liability for infringing upon the personality rights of others, except for the rights to life, body, and health, factors such as the occupation, scope of influence, degree of fault, purpose, manner, and consequences of the perpetrator and the victim shall be taken into consideration.

This means that the court needs to comprehensively examine the elements of tort liability. Subjectively, different standards of care should be applied based on the perpetrator's occupation, scope of influence, and degree of fault. In terms of the actual harm, the severity of the damage to reputation or other personality rights should be decided by considering the victim's occupation, the scope of dissemination, and its impacts. Regarding the tortious act itself, it should be evaluated to determine the legality of the behavior regardless of the following conditions: whether the purpose of the act is based on public interest, whether the manner is justified; and the severity of the consequences.<sup>[5]</sup> In terms of causation, a comprehensive consideration of the aforementioned factors and the interrelationships among them is necessary for judgment.

#### **4.3 The Reasonableness of Establishing the Privilege to Refuse to Testify**

As pursuant to related provisions of the Civil Procedure Law of the People's Republic of China, witnesses are obliged to testify in court. They should appear in court upon being notified even as anonymous sources of information. However, anonymous sources are individuals who are unwilling to disclose their identities, and imposing a burden of proof on them would expose them to public scrutiny and even potentially subject them to undeserved consequences. The unique nature of journalism demands that journalists bear the duty to protect the anonymity of their sources when necessary.

The current lack of protection for anonymous sources in China not only compromises the information channels for news reporting but also hinders the smooth progress of judicial proceedings. The establishment of a privilege to refuse to testify instead helps reconcile the conflict between anonymous source protection and the obligation to appear in court, thus striking a balance between journalistic ethics and judicial fairness.

However, the privilege to refuse to testify does not mean that news organizations are exempt from their responsibility of verifying the truthfulness of the information concerned. When collecting information from anonymous sources, evidence should be kept through means such as recording. News organizations ought to fulfill their duty to properly verify the anonymous information they use and meet the standard of conclusive proof as well.

#### **4.4 Expanding the Scope of Anonymous Testimony**

In China, the anonymous testimony system mainly applies to criminal cases, with the protection of the witness's safety being the fundamental focus. However, currently, no precedent for anonymous testimony in civil cases ever exists. In cases of media-involved defamation, the anonymous sources often choose to remain anonymous due to concerns about potential retaliation. If they were to testify under their real names, then it could jeopardize their interests and inadequately protect their safety. This aligns with the purpose to include anonymous witness testimony in criminal cases, based on which the application of the anonymous courtroom testimony system in news defamation is necessary to honor the goal of witness protection.

The Criminal Procedure Law of the People's Republic of China sets valuable references for civil litigation related to the journalism industry by implementing necessary protective measures such as withholding confidential information, concealing the appearance, and altering the voices of witnesses. Expanding the scope of application of the anonymous testimony system and supporting anonymous sources with anonymous protection not only solves the difficulties of court appearance and testimony but also facilitates the smooth progress of litigation and ensures justifiable judgments while safeguarding the trust between the news organizations and information providers.

## **5 Conclusion and Discussion**

The conflict between the protection of anonymous sources and the obligation to testify in court may appear contradictory in the legal system but is fundamentally a trade-off between journalistic ethics and judicial impartiality. Further research and discussions on how to resolve the conflicts are worthwhile. The privilege to refuse to testify grants journalists the privilege to refuse to testify in court, thereby avoiding the exposure of the identity of anonymous sources and reconciling the conflict between the protection of anonymous sources and the obligation to testify. On the other hand, the anonymous courtroom testimony system seeks to address this conflict by supporting witnesses with anonymous protection. Both approaches attempt to reconcile the conflict from different perspectives, and notwithstanding their own merits and demerits, they both require

more detailed regulations.

Therefore, by taking factors such as the reasonable allocation of the burden of proof, comprehensive consideration of the elements of tort liability, the establishment of privilege to refuse to testify, and the expansion of the scope of application of the anonymous testimony system into thoughtful consideration, professionals can seek to resolve the conflict between the protection of anonymous sources and the obligation to testify, thereby helping keep a balance between journalistic ethics and judicial impartiality.

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