

J. Y. Interpretation No.249 (November 24, 1989) *

ISSUE: Is it constitutional to order an informer in a criminal case to appear before the court and, if he fails to do so without good cause, arrest and force him to appear to give testimony, like a witness?

RELEVANT LAWS:

Article 178, Paragraph 1 of the Code of Criminal Procedure (刑事訴訟法第一百七十八條第一項); J.Y.Interpretation Yuan-tze No. 47 (司法院院字第四七號解釋).

KEYWORDS:

informer (告發人), witness (證人), summon (傳喚), arrest (拘提), testify (作證), yuan (元). **

HOLDING: An informer is a third person other than a “party” in a case as defined by the Code of Criminal Procedure. If the court deems it necessary to call an informer to testify, he may of course be summoned in pursuance of Article 178 of the Code of Criminal Procedure concerning a witness. He may also be arrested and forced to appear before

解釋文：告發人為刑事訴訟當事人以外之第三人，法院如認為有命其作證之必要時，自得依刑事訴訟法第一百七十八條關於證人之規定傳喚之，無正當理由而不到場者，並得加以拘提，強制其到場作證，以達發見真實之目的。基此，本院院字第四十七號解釋，認對告發人得適用當時之刑事訴訟法第九十五條即現行刑事訴訟法第一百七十

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the court for the purpose of discovering the truth if he fails to appear without good cause. Accordingly, our Interpretation Yuan-tze No. 47 holding that Article 95 of the Code of Criminal Procedure then prevailing, i.e., Article 178 of the present Act as amended, may be made applicable to informers is not in conflict with the Constitution.

REASONING: A witness is a third party who is ordered by the court to state what he has seen or heard in relation to an action, and whatever he has seen or heard may serve as an important basis for discovery of the truth and is non-substitutable. Unless otherwise prescribed by law, every person has the duty to testify before a court. Thus, the Code of Criminal Procedure provides in Article 178, Paragraph 1, that “a lawfully summoned witness who fails to appear without proper reason may be fined a sum of not more than fifty yuan, and in addition thereto may be arrested with a warrant. If he fails to appear when summoned again, the same punishment may be imposed.” Discovery of the truth of a case may be

八條之規定辦理，與憲法並無牴觸。

解釋理由書：證人係依法院之命，在訴訟上陳述其見聞事實之第三人。此項見聞事實為發見真實之重要根據，且有不可替代性。除法律有特別規定外，不問何人於訴訟程序上，均有作證之義務。是故刑事訴訟法第一百七十八條第一項規定：「證人經合法傳喚，無正當理由而不到場者，得科以五十元以下之罰鍰，並得拘提之；再傳不到者亦同」。俾藉訊問證人而達發見真實之目的。此為維持社會秩序，增進公共利益所必要。告發人為刑事訴訟當事人以外之第三人，法院如於訴訟程序中認有命其陳述見聞事實之必要時，自得以其為證人而依上開規定辦理。本院院字第四十七號解釋，認對告發人得適用當時之刑事訴訟法第九十五條即現行刑事訴訟法第一百七十八條之規定，與憲法並

achieved through examination of the witness, and is essential to maintaining the social order and increasing the public interest. Like a witness, an informer is a third party other than a “party” in a criminal case. If the court deems it necessary to call an informer to state during the proceeding what he has seen or heard, he may of course be taken as a witness and treated in pursuance of the provision quoted above. Accordingly, our Interpretation No. Yuan-tze 47 holding that Article 95 of the Code of Criminal Procedure then prevailing, i.e., Article 178 of the present Act as amended, may be made applicable to informers is not in conflict with the Constitution.

無牴觸。