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硕 士 学 位 论 文

论我国司法鉴定制度的改革

The Innovation of Judicial Expertise
System in our Country

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内 容 摘 要

本文分为引言、正文以及结语三个部分。

引言从两个案例出发，引发一些关于司法鉴定的问题，并表明了本文的选题原因。正文分为四章。

第一章：司法鉴定概念之比较。本章中笔者通过比较分析两大法系对司法鉴定概念的表达，以及我国理论界和实务界对司法鉴定概念的认识，指出了现有司法鉴定概念的不足，明确了司法鉴定概念的重要性，在此基础上，笔者提出了对界定司法鉴定的一些看法。

第二章：我国司法鉴定制度现状分析。本章从我国司法鉴定的立法和实务现状进行阐述，具体指出了我国当前司法鉴定实务中存在的问题，主要有：司法鉴定范围和次数没有限制、鉴定机构设置不合理、鉴定人出庭制度不完善、社会鉴定机构存在违法鉴定、司法鉴定错案的责任难以追究、司法鉴定启动权不平等、鉴定人考核晋升标准不明确。

第三章：两大法系司法鉴定制度的比较及借鉴。本章首先对两大法系司法鉴定制度的内容进行了概述，通过对两者的分析比较，分析了其发展趋势。其次，在总结大陆法系和英美法系司法鉴定制度的优缺点的基础上，结合我国实际情况，提炼出两大法系司法鉴定制度中可供我国借鉴之处。

第四章：我国司法鉴定制度改革的设想。本章是全文的重点。笔者在前三章论述的基础上，提出了关于完善我国司法鉴定制度的一些设想。总体上是从理念和制度两个层面进行布局。笔者本着“改革未动，理念先行”的精神，认为要彻底完善我国的司法鉴定制度首先必须树立法治、平等、程序公开、保障人权等理念。之后，笔者对司法鉴定制度改革提出了一些设想，主要包括：健全司法鉴定机构的管理、改革司法鉴定的启动、完善鉴定人和鉴定结论相关制度、制定司法鉴定结论科学采信的规定。

关键词：司法鉴定；鉴定人；司法鉴定结论

ABSTRACT

This thesis consists of three parts: Introduction, Main body and Conclusion.

The introduction starts from 2 cases from which the writer abstracts several questions on judicial expertise, then the writer expresses her reason why she has chosen this topic. The main body has four parts.

The first part is about the concept of judicial expertise. Through the comparison and analysis of the two legal families, and the introduction of the ideas of judicial expertise concept in our country, the writer concluded the importance and the shorts of the judicial expertise concept. On this base, the writer gave out some advice on defining judicial expertise concept.

In the second chapter, firstly, the status of legislation and the judicial expertise practice were talked about. Words about some problems existing in our judicial expertise system take a good place of this part. They are : no range and time limit, the improper establishment of the organization, the imperfection of the system of experts presenting in the courts, the inequality to launch the judicial expertise proceedings, etc.

In the third chapter, the writer compared and analyzed the judicial expertise rule of the two legal families on the base of brief introductions on their status. After that, the writer concluded the advantages and disadvantages of the two legal families and discussed the developing trend of them. Lastly, think of the status of our country, the writer gets some merits that can be useful for our country.

The last part is the most important one in this article. In this part, the writer conceived some ideals on vision and rule about how to make our ongoing judicial expertise system much better. Ideals on visions included vision of governing by law, vision of equality, vision of human rights. Ideals on rule included innovation of judicial expertise organization, innovation of launching judicial expertise proceedings and how to point the most scientific judicial expertise conclusion when there are many of them, etc.

Key words: Judicial Expertise; Expert; Judicial Expertise Conclusion

目 录

引 言	1
第一章 司法鉴定概念之比较	3
第一节 两大法系对司法鉴定概念的定义	3
一、大陆法系对司法鉴定的界定	3
二、英美法系对司法鉴定的表述	3
三、两大法系司法鉴定概念之分析	3
第二节 我国对司法鉴定概念的认识	4
一、我国理论界对司法鉴定的界定	4
二、我国实务界对司法鉴定的表达	5
三、最高立法机关对司法鉴定的定义	6
第三节 界定司法鉴定之我见	7
一、界定司法鉴定应遵循的前提	7
二、界定司法鉴定应反映的特征	7
第二章 我国司法鉴定制度现状分析	9
第一节 我国司法鉴定制度立法现状	9
一、立法进程之回顾	9
二、立法问题分析	10
第二节 我国司法鉴定的实务现状	11
一、司法鉴定人出庭制度不完善	11
二、司法鉴定范围及次数欠规范	12
三、司法鉴定启动权不平等	12
四、社会鉴定机构存在违法鉴定	13
五、司法鉴定机构设置不合理	13
六、司法鉴定错案的责任难以追究	14
七、司法鉴定人考核晋升标准不明确	14

第三章 两大法系司法鉴定制度的比较及借鉴	15
第一节 两大法系司法鉴定制度概览	15
一、大陆法系司法鉴定制度概览	15
二、英美法系司法鉴定制度概览	16
第二节 两大法系司法鉴定制度之比较	17
一、诉讼中鉴定人地位之比较	17
二、对司法鉴定权认识之比较	17
三、司法鉴定人鉴定资格之比较	18
四、司法鉴定结论审查之比较	18
五、司法鉴定人权利义务之比较	19
第三节 两大法系司法鉴定制度的发展趋势	19
第四节 两大法系司法鉴定制度之借鉴	20
一、英美法系司法鉴定制度之借鉴	21
二、大陆法系司法鉴定制度之借鉴	21
第四章 我国司法鉴定制度改革设想	23
第一节 确立现代司法鉴定理念	23
一、法治理念	23
二、平等理念	24
三、程序公开	24
四、证据规范	25
五、保障人权	25
第二节 健全司法鉴定机构的管理	26
一、完善司法鉴定机构的设置	26
二、增强社会鉴定机构的法律援助义务	27
三、明确鉴定机构对鉴定材料的保管责任	27
第三节 改革司法鉴定的启动	28
一、给予辩方无需申请的鉴定启动权	28
二、完善重新鉴定的启动	28

第四节 完善司法鉴定人和鉴定结论的相关制度	29
一、确保鉴定人出庭作证	29
二、建立、完善鉴定人出庭质证的经济补偿制度	30
三、健全鉴定人出庭的司法保护制度	31
四、完善鉴定结论的交叉询问程序	31
第五节 制定司法鉴定结论的科学采信规定	32
一、司法鉴定结论科学采信的标准	32
二、司法鉴定结论科学采信的方法	33
结 语	34
参考文献	35

Contents

Introduction	1
Chapter 1 Comparison of the Judicial Expertise Concept	3
Subchapter 1 The Judicial Expertise Definition of Two Legal Families	3
Section 1 The Judicial Expertise Definition in Civil Law System	3
Section 2 The Judicial Expertise Expression in Common Law System	3
Section 3 Analysis of The Judicial Expertise Definitions Two Legal Families	3
Subchapter 2 Judicial expertise concept in our country	4
Section 1 The Understanding of Judicial Expertise Concept in Theory	4
Section 2 The Understanding of Judicial Expertise Concept in Practice.....	5
Section 3 The Definition on Judicial Expertise In the Highest Legislature.....	6
Subchapter 3 My opinion on Defining Judicial Expertise	7
Section 1 The base of defining Judicial Expertise	7
Section 2 The feature we should pay attention to	7
Chapter 2 The Status of Judicial expertise system in our country	9
Subchapter 1 The Status of Legislation of Judicial Expertise System in Our Country	9
Section 1 The Legislation History	9
Section 2 The Problems Existing in the Current Legislation	10
Subchapter 2 The Status of Practice of Judicial Expertise System in Our Country	11
Section 1 The Imperfection of the System of Experts Presenting in the Courts	11
Section 2 No Range and Time Limit	12
Section 3 The Inequality to Launch the Judicial Expertise Proceedings	12
Section 4 The Existence of the Illegal Practice in Some Organization	13
Section 5 Improper Establishment of the Organization	13
Section 6 The Failure of the Investigation of Misjudged Cases Caused by Judicial Expertise.....	14

Section 7	Uncertain Checking and Promotion System of the Expert	14
Chapter 3	The Comparison and Analysis of Judicial Expertise Between Two Legal Families	15
Subchapter 1	Brief Introduction of Judicial Expertise System of Two Legal Families	15
Section 1	Brief Introduction of Judicial Expertise System of Civil Law System	15
Section 2	Brief Introduction of Judicial Expertise System of Common Law system	16
Subchapter 1	The Comparison of Judicial Expertise System Between Two Legal Families	17
Section 1	The Comparison about the Position of the Experts in Lawsuit	17
Section 2	The Comparison about Judicial Expertise Right	17
Section 3	The Comparison about Qualification of the Experts	18
Section 4	The Comparison about Checkup of Judicial Expertise Conclusion	18
Section 5	The Comparison about the Rights and Duty of the Experts	19
Subchapter 3	The Developing trend of Two Legal Families	19
Subchapter 4	Merits Useful for Our Country in Two Legal Families	20
Section 1	Merits of Useful For Our Country in Civil Law System	21
Section 2	Merits of Useful For Our Country in Common Law System	21
Chapter 4	Conceiving of Innovation about the Judicial Expertise System In Our Country	23
Subchapter 1	Set Up the Vision of Modern Judicial Expertise	23
Section 1	Govern by Law	23
Section 2	Equality	24
Section 3	Open Procedure	24
Section 4	Standard Witness	25
Section 5	Human Rights protection	25
Subchapter 2	Improve the management of the Judicial Expertise Organization	26
Section 1	Improve the Judicial Expertise Organizations	26
Section 2	Enhance the Duty of Legal Help of Judicial	

	Expertise Organizations	27
Section 3	Standardize the Responsibility of Keeping Judicial Expertise Material	27
Subchapter 3	Improve the Starting Procedure of Judicial Expertise	28
Section 1	Give Defendant the Right of Starting Judicial Expertise Procedure Without Application	28
Section 2	Improve the Rule of Restarting Judicial Expertise Procedure	28
Subchapter 4	Improve Rules on Experts and Judicial Expertise Conclusion	29
Section 1	Make Sure That the Experts Can Present in the Court	29
Section 2	Establish and Improve Rules About Compensating the Experts	30
Section 3	Improve rules about judicial protection for experts	31
Section 4	Improve the Procedure of Intersection Query of the Judicial Expertise Conclusion	31
Subchapter 5	Establish Rules About How to Point Out the Most Scientific Judicial Expertise Conclusion	32
Section 1	Standard of the Most Scientific judicial Expertise Conclusion	32
Section 2	Way of How to Point Out the Most Scientific Judicial Expertise Conclusion	33
Conclusion	34
Bibliographies	35

引 言

在正文开始之前，笔者先讲述两个案例。

案例 1：黄静裸死案。

黄静，女，原湘潭市临丰小学音乐教师。2003 年 2 月 24 日上午黄静被人发现裸体死于其工作的小学宿舍，现场的卫生纸团遗留有男性精液后鉴定为其欲分手的男友姜俊武所留。随后湘潭市公安局和湖南省公安厅尸检认定黄静系患心脏疾病急性发作导致急性心、肺功能衰竭猝死。家属对此持异议拒绝火化尸体。湖南省公安厅再次做出复核鉴定，结论仍然认定黄静系正常死亡。2003 年 7 月 3 日，南京医科大学对湘潭市、湖南省公安厅的三份鉴定书做了书证审查，认为黄静死于心脏病和肺梗死的理由不充分，提出黄静属非正常死亡。2003 年 6 月 2 日姜俊武被刑拘，7 月 8 日被批捕。8 月 1 日，姜被湘潭市公安局以涉嫌强奸（中止）罪移送湘潭市检察院审查起诉。2003 年 8 月 14 日，中山大学法医鉴定中心鉴定认为：“黄静因风湿性心脏病、冠状动脉粥样硬化性心脏病、肺梗死致死缺乏证据。”2003 年 12 月 22 日，雨湖区检察院以“涉嫌强奸（中止）罪”为由，对姜俊武提起公诉。2004 年 3 月中旬，姜俊武被取保候审。2004 年 3 月 22 日，司法部法医鉴定中心专家赶到湘潭，因主要证据被保存机构焚毁不复存在，鉴定终止。据统计，“黄静”案曾做过五次尸体检查，六次死亡鉴定，每次鉴定结果都不尽相同，甚至互相矛盾。公诉人湘潭市检察院在用尽三次补充侦查权后最终采用了第三次鉴定结果——由湖南省公安厅于 2003 年 6 月 18 日做出的鉴定，此鉴定结果认定黄静系因肺梗死致急性呼吸循环衰竭而死亡。而后来两次分别由南京医科大学、中山大学做出的否认黄静死于以上疾病的鉴定没有被检察机关采信，最近一次由最高人民法院司法鉴定中心做出的鉴定也没有被检察机关采信。

案例 2：邱兴华特大杀人案。

2006 年 7 月 15 日晚 10 时左右，家住陕西安康市汉阴县凤凰山脚下的一些群众忽然发现，山顶出现熊熊火光。由于山上的铁瓦殿周围数十公里范围内没有人烟，且距山下有 20 多公里山路，山下村民上山均需徒步攀登，即使走最近的路，最快也需要 4 个小时。16 日上午，平梁镇政府组织群众和护林员上山救火。

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