

Constructing the Exclusionary Rule of Illegal Evidence in China

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Abstract—In recent years, extorting confessions by torture or other illegal acts of non-compliance with judicial proceedings have led to the frequent occurrence of miscarriage of justice, and the public and law scholars have gradually turned their attention on the rule of exclusion of illegal evidence. Many countries in the world have legally regulated the exclusionary rules of illegal evidence. The United States is the first country to establish illegal rules of exclusion of the rules, after a long period of development and improvement, and it has now been more well established. Under the Common Law System like Britain and Civil Law System like Japan and German, have also established rules for the exclusion of illegal evidence with their own characteristics. By contrast, our laws and related provisions in the exclusion of illegal evidence are far from perfect. The introduction of "The provisions on the handling of criminal cases to exclude illegal evidence of a number of issues" and "on the death penalty cases to determine the provisions of a number of evidence to determine the evidence" has a historic significance, it also means that China has established a system of illegal evidence to exclude the rules. Besides, "Supreme People's Court on the comprehensive promotion of the trial as the center of the criminal action system reform and implementation of the views" issue in the new situation of judicial reform proposed suggestion for the practical activities of the judicial personnel. Through the study of the relevant documents, the author finds out the imperfect part of the rule of exclusion of illegal evidence in China, and puts forward relevant reform proposals to make contributions to the future legislative activities.

Keywords: *illegal evidence exclusion, torture, rule amending*

I. THE CONNOTATION AND VALUE OF EXCLUSIONARY RULES OF ILLEGAL EVIDENCE

A. "Illegal Evidence" and "Illegal Evidence Exclusion Rules"

Interpretation of "illegal evidence" in the Oxford Law Dictionary—evidence obtained through illegal means. In the United Nations Convention against Torture, the definition of "illegal" in illicit evidence refers to an act committed in violation of the prohibition of torture in the Convention; the scope of "illegal evidence" is limited to the use of confessions obtained by torture. In contrast, the scope of illegal evidence in China is slightly broader. The current "Criminal Procedure Law" sets the scope of illegal evidence—"the criminal suspects obtained by illegal means such as extorting a confession by torture, the confession of the accused and the witness testimony obtained by illegal methods such as violence and threats, the victim's statement", in addition to

Contains physical evidence and documentary evidence obtained in violation of the law that may seriously affect judicial justice. Thus, illegal evidence can generally be divided into two types: illegal physical evidence and illegal verbal evidence.

Illegal verbal evidence is more unreliable than illegal physical evidence. Most of them are obtained by means of torture and other serious violations of the human rights of the prosecuted. Therefore, countries today adopt a stricter attitude towards illegal verbal evidence and will be excluded. [1] Some scholars in China believe that evidence must have "legality", including the legality of the evidence-acquisition procedure, the evidence must conform to the form prescribed by law, and the evidence-issuing authorities and forensic personnel must comply with the law. [2] According to the current Criminal Procedure Law, not all illegal evidence is illegal evidence, and its establishment needs to meet certain conditions, including:

- The main body of illegal evidence is the investigating organ, that is, the public security organ or the special investigative organ of certain special cases. Whether the evidence collected by other litigants involved is illegal or not, it is not within the scope of illegal evidence.
- Illegal evidence involves illegal means or procedures in the collection process. Mainly refers to: First, the methods and methods used by judicial staff in the process of collecting evidence are illegal, such as evidence obtained by means of extorting confessions by torture, threats, torture, fraud, etc. Second, the procedure for collecting judicial evidence by judicial staff is illegal, did not follow the corresponding legal procedures. If there is no search warrant, search without authorization, or conduct illegal interception. [3]

B. Illegal Evidence Exclusion Rules

The origin of the illegal evidence exclusion rule in the United States means that in the process of criminal proceedings, it is not possible to rely on illegal means to obtain evidence to determine the criminal conduct of the defendant. Illegal evidence includes not only evidence obtained through illegal means such as threats, deception, and concealment, but also illegal evidence obtained in indirect form. In our country, the rule of exclusion of illegal evidence usually refers to the rule that the evidence obtained by law enforcement agencies

and their staff members using illegal acts cannot be adopted in criminal trials. [4]

C. The Theoretical Basis and Established Value of the Rule of Exclusion of Illegal Evidence

The theoretical basis for summarizing the rules for the exclusion of illegal evidence mainly includes: First, safeguarding the fundamental rights of its citizens. The best practice for citizens who are not subject to illegal searches and seizures in the US Constitution is to exclude evidence from illegal searches and seizures. Second, supervise the investigation of judicial personnel to prevent their illegal evidence collection. The ultimate purpose of establishing the rules for the exclusion of illegal evidence is exactly the same. By determining that the evidence obtained illegally has no proof, the investigators can be allowed to avoid the incentives for illegal search and seizure to a certain extent and achieve standardized evidence collection. Third, guarantee the integrity of the judiciary. The judiciary is independent. The illegal evidence exclusion rules have been established so that the status and dignity of the law can be maintained. In the process of criminal proceedings, it is protected from destruction. The confidence of citizens in the fairness and justice of the judiciary can be restored, and the credibility of the judiciary can be established. Fourth, to ensure the effective proof of evidence. In the process of investigation and trial, the use of illegal evidence exclusion rules, so that the collected evidence is from the real and voluntary representation of the participants, to ensure the correct and legitimate trials, and to achieve the best effect of avoiding false and wrong cases.

The establishment of illegal evidence exclusion rules has great value.

First, it is conducive to identifying the facts of the case and achieving both substantive and procedural justice. With the development of the times, the concept of "heavy entity, light procedure" can no longer be adapted to modern society. The desire to establish a society ruled by law is becoming more and more urgent. The application of illegal evidence exclusion rules in judicial practice reflects the meaning of procedure. Pay attention to, eliminate illegal evidence in the process of investigation, and promote understanding of the facts of the case, so as to draw a unique and tangible conclusion, which is conducive to balancing substantive justice and procedural fairness. In many cases, the pursuit of substantive justice, the purpose of punishing crimes and safeguarding human rights, and the use of illegal means to obtain evidence are convenient ways to understand the facts of the case. In addition, when the investigating organ encounters the dilemma of obtaining evidence through other channels, it is so "reasonable" to obtain evidence through illegal means. Therefore, the adoption of illegal evidence has an irreplaceable important role for the investigating organ to ascertain the facts of the case and to punish and punish the crime. In order to achieve the basic requirements for the protection of human rights, the illegally obtained evidence should not be allowed as the basis for the conviction and sentence of the defendant in the trial. It can be seen that the question of whether the evidence obtained illegally has evidence and whether the rule of exclusion of illegal evidence should be established is actually the problem

of conflict and coordination between the two value objectives of the substantive and procedural justice of criminal proceedings. [5]

Second, it is conducive to balancing crime control and protecting human rights. In the setting of litigation system and evidence rules, each country strives to balance the two different values of crime control and human rights protection in the process of criminal proceedings, and strives to achieve a balance between the two. The illegal exclusion rule achieves the effect of suppressing the abuse of public power by stipulating that the illegally obtained evidence is not adopted as the basis for conviction and sentencing; thirdly, it is conducive to improving the efficiency of criminal proceedings. By applying the rules, excluding the evidence obtained by illegal means, and discarding the evidence that is not in accordance with the conviction basis, the prosecution and prosecution behaviors of the parties in the debate are regulated, saving the time of the trial, thereby reducing the litigation costs of all parties; It is conducive to the establishment of judicial authority. The application of the rules for the exclusion of illegal evidence limits public power. At the legal level, it fundamentally denies the use of violence, threats, temptations, bullying and other illegal evidence collection by the investigating organs, which reduces the occurrence of unjust and false cases to a certain extent. Maintain the impartiality of the judiciary among the people and establish judicial authority.

II. INTERPRETATION AND ANALYSIS OF LAWS RELATED TO THE EXCLUSIONARY RULES OF ILLEGAL EVIDENCE IN CHINA

A. Criminal Procedure Law and Judicial Interpretation

The rules for the exclusion of illegal evidence are clearly stipulated in China's criminal procedure law and some judicial interpretations. The scope includes confessions by torture or witness testimony obtained by illegal methods such as threats, inducements, deceptions, victim statements, defendant's statements, and material and documentary evidence obtained in violation of the law that may seriously affect judicial justice. In the judicial interpretation, the criteria for the identification of "illegal evidence" are further clarified, which stipulates that the use of corporal punishment or disguised corporal punishment, or other methods that cause the defendant to suffer severe pain or pain in the body or spirit, forcing the accused to confess It shall be deemed as "an illegal method such as extorting a confession by torture" as stipulated in the Criminal Procedure Law.

In view of the determination of the exclusion of illegal evidence prescribed by the current law, the author believes that there are several defects. First, legal and judicial interpretations simply point out that methods of physical or mental suffering from severe pain or pain are considered illegal. But there is no clear classification and unification. There are some methods of obtaining evidence in judicial practice. For example, in order to obtain the confession of a criminal suspect, to avoid illegal looping of the law, and whether the impact on the defendant caused by overdue custody can be regarded as "pain"? Whether the obtained testimony of the words should also be included in the scope of exclusion, there is no clear explanation and determination.

Second, the rules for the exclusion of illegal evidence are mainly applicable to the trial stage. Although the exclusion of illegal evidence in the investigation stage can better guarantee the fairness of the entity, in the operation, the application of the rules in the actual operation is particularly thin due to the acquisition of evidence and the application of the rules to the same department. The law does not have a guarantee for its application, lacks clear and specific operational steps, and the content principle is abstract, and it does not have a strong binding force on the illegal investigation of the investigation agency.

B. Provisions on Handling Certain Issues Concerning the Exclusion of Illegal Evidence in Criminal Cases and Provisions on Several Issues Concerning the Examination and Judgment of Death Penalty Cases

On May 30, 2010, the relevant departments jointly issued the "Regulations on Handling Certain Issues Concerning the Exclusion of Illegal Evidence in Criminal Cases" (hereinafter referred to as "Illegal Evidence Exclusion" in response to the continual emergence of illegal and wrongful cases caused by extorting a confession by torture. Provisions and the Provisions on Several Issues Concerning the Examination and Judgment of Death Penalty Cases (hereinafter referred to as the "Criminal Provisions for Death Penalty Cases"), and began to be implemented on July 1, 2010. This is the establishment and improvement of illegal evidence in criminal proceedings in China. The huge innovations and breakthroughs in the direction of the exclusion rules have historically progressive significance. Combined with the provisions on the illegal evidence in the "Illegal Evidence Exclusion Regulations" and "Evidence Provisions for the Handling of Death Penalty Cases", the following summary is made:

- The illegal exclusion of evidence is limited to evidence obtained by law enforcement agencies and staff members through illegal acts. It is not that any evidence obtained by illegal means is excluded as illegal evidence.
- Whether it is illegal physical evidence or illegal verbal evidence, it is applicable to the exclusion of illegal evidence exclusion rules.

Thus, highlighting its highlights and positive significance. First, the scope of illegal evidence has been expanded, and it is no longer limited to the exclusion of illegal verbal evidence. It further stipulates that the scope of exclusion includes illegal physical evidence. This is a great progress, which indicates that our country's legislative thinking not only pays attention to the entity, but also pays attention to the procedural value, and respects and guarantees the human rights in the investigation process, which is consistent with international values. Secondly, it is clear that the People's Procuratorate should fulfill its obligation to exclude illegal evidence in both the stage of appraisal and prosecution, and improve the applicable procedures at the trial stage. Finally, considering the power comparison between the prosecution and the defense, the distribution of the burden of proof is stipulated: the main burden of proof lies with the party complaining, and the defending party can only provide some preliminary evidence

and accountability. At the same time, the public prosecutor's burden of proof is clarified, that is, the public prosecutor is obliged to bear the burden of proof, and in particular, the prosecutor is responsible for providing audio and video recordings of the original interrogation process, and the relevant interrogators also have the obligation to testify in court.

C. Implementation Opinions of the Supreme People's Court on the Comprehensive Promotion of the Trial-based Criminal Litigation System

On Feb 21, 2017, the Supreme People's Court formulated and promulgated the "Opinions on the Reform and Implementation of the Supreme People's Court on Comprehensively Advancing the Trial-Criminal Criminal Litigation System" (hereinafter referred to as the "Opinions"), which not only once again emphasized the spirit of judicial reform, but also combined with new phenomena. The new issue proposes a series of complementary measures that are both targeted and highly practical. Advancing the reform of the trial-centered criminal litigation system requires the three organs of the Public Prosecution Law to make clear division of labor, mutual cooperation, mutual supervision, strictly restrict the trial procedures in accordance with the law, effectively implement the judicial responsibility system, and then implement the illegal evidence exclusion. rule. Further clarify the unified standards of judicial adjudication, improve the rules for the identification of evidence, avoid missing key important evidence, and fundamentally reduce the amount of illegal evidence. Behind the phenomenon of false and wrongful cases, the facts show that investigators rely on violence and fail to obtain evidence in accordance with legal procedures are the core reasons for the frequent occurrence of wrongful cases. The "Opinions" stipulate that it is necessary to highly exclude all kinds of illegal evidence in the trial process in accordance with laws and regulations. . The "Opinions" pointed out that in the process of collecting evidence, the authenticity of the evidence and the legitimacy of the process of obtaining evidence should be equal. It is impossible to extort a confession by torture and force the criminal suspect to prove that he is guilty. Evidence obtained through violence, even if the content of the evidence is true, cannot be adopted as a basis for conviction.

III. EXTRATERRITORIAL ILLEGAL EVIDENCE EXCLUSION RULES

A. United States

The illegal evidence exclusion rule first appeared in the United States, and there are two understandings of the illegal evidence exclusion rule: the first exclusion is limited to the evidence obtained in violation of the Fourth Amendment of the US Federal Constitution, and the evidence is not allowed to be used for conviction; The second expands the scope of the rules for the exclusion of illegal evidence, including illegally obtained verbal evidence, and is not limited to the exclusion of physical objects. The Fourth Amendment to the US Federal Constitution states: "The right of the people to protect their personal, housing, documents and property from unwarranted search and seizure is not infringed; unless there is a reasonable

basis for conviction, a sworn or solemn declaration of assurance, and detailed The place to be searched, the person or thing to be detained, otherwise the search and seizure certificate shall not be issued.” [6] However, it is generally believed that there was no illegal evidence exclusion rule in the United States before the end of the 19th century. Evidence can be adopted by considering how the evidence is obtained. The US judge Stori’s opinion in a circuit court clearly pointed out this situation: “In the usual practice of local law, the right to use evidence does not depend on, or It is not assumed to rely on the way it is obtained to determine whether it is legal or illegal... Even if the evidence may be obtained by means of a violation of the person or by any other mandatory or illegal means, it is acceptable for the highest alleged crime.” [7]

In the case of *Weks v. United States* in 1914, the Federal Supreme Court held that if letters and private documents could be illegally seized and confiscated without excluding evidence of illegal searches or seizures, then the Constitution The right of the Fourth Amendment to protect citizens from search and seizure is like the same empty talk, and the legal provisions have no meaning. So far, the US Supreme Court has officially established the rules for the exclusion of illegal evidence, and it also marks the establishment of rules for the exclusion of illegal evidence in the modern sense. It should be noted that from the beginning of the case, the Supreme Court began to require federal courts to exclude evidence obtained by police violations during the trial, but this rule does not apply to the state court systems.

In the 1949 *Wolf v. Colorado* case, the Supreme Court stated that the rules for the exclusion of illegal evidence were only used in the trial practice of the federal courts, and the states did not fulfill their obligations. In the case of *Mapp v. Ohio* in 1961, the Supreme Court made it clear that the application of the rule of exclusion of illegal evidence was universalized to the states, and that the federal and state police officers required legal means to obtain evidence. Thus, the rule of exclusion of illegal evidence in the United States reached its peak and peak. At the same time, in criminal proceedings in the United States, criminal suspects have the right to remain silent and refuse to answer when they are inquiring, that is, the famous "Miranda rights."

B. United Kingdom

Most of the illegal evidence exclusion rules in the United Kingdom follow the common law practice. The judges exercise discretion on whether to adopt illegally obtained evidence without interference from the outside world. The scope of the exclusion rules is very small and has been criticized in many ways. For a long time, the British illegal evidence exclusion rules have undergone a series of evolutionary processes. In the case of *Kuruma v. R.*, the police searched the accused without a search warrant and obtained evidence that the accused illegally held the ammunition. The judge also convicted the accused on the basis of the evidence and eventually the defendant appealed to the House of Lords. The opinion of the House of Lords is: "On whether the evidence collected can be adopted as a basis for conviction and the relevance of the evidence and the issue of the dispute. If the two are relevant, the evidence can be adopted, and the

court does not lie in the access to the evidence and Way." This clearly states that the British judiciary is strictly following the traditional practices of the English common law. British scholars believe that *Kuruma v. R.*, which took place in 1955, is an authoritative jurisprudence that represents the position of the common law. “Even if the evidence is relevant and reliable, then the evidence is important no matter how the prosecution obtained the evidence.” [8]

In the case of *Jeffrey v. Black* in 1978, the British judiciary loosened some of the rules for the exclusion of illegal evidence. In the case, the accused was accused of possessing a drug offence based on the illegal search conducted by the police in the defendant’s room and the discovery of the drug. The judge considered that the collection of the evidence was not legal and could not be adopted, so the evidence was excluded and the prosecution was revoked. The prosecution appealed to the High Court's throne court, and the Throne Court held that if the judge considered that the adoption of an evidence was unfair and unacceptable, then the judge had the freedom to exclude the illegally obtained evidence.

Developed to the Police and Criminal Evidence Act of 1984, the United Kingdom refused to introduce the United States' extensive evidence exclusion rule, but to a certain extent it also reformed the UK's illegal exclusion rules. Article 78 of the Act states: "(1) In any lawsuit, the court may refuse to accept evidence from the prosecution to make an allegation. If it considers all circumstances including the collection of evidence, it believes that the adoption of such evidence would be detrimental to the fairness of the proceedings. Impact, and therefore should not be adopted as evidence. (2) The provisions of this article shall not prejudice the application of any legal rules concerning the exclusion of evidence by the court.” [9] The Police and Criminal Evidence Act, introduced in 1984, compared to previous precedents.” gives the judge greater power to exclude evidence. Although the police or illegal behavior is not an absolute condition for the judge to exclude evidence, the way the evidence obtained by the police will be used as one of the discretion factors for the judge to exclude evidence, and the judge Whether the evidence will adversely affect the fairness of the lawsuit will determine whether it will be excluded.

C. Germany

In the German criminal procedure law theory, the illegal evidence excludes the use of evidence prohibition theory. It includes two aspects: the prohibition of evidence and the prohibition of the application of evidence. Prohibition of evidence is a restriction on the collection of evidence. The subject of such restrictions may be the police, prosecution or judicial organs that pursue the crime. The evidence is prohibited, and the meaning is equivalent to the exclusion of evidence in the Anglo-American legal system. The norm is aimed at the judges who exercise the power of the trial, the investigation of the evidence, and the judges who form the evidence. The content is that the judges must not use the specific evidence as the basis for the judgment. [10] The development of the German evidence prohibition theory has three stages.

The first stage was from the German scholar Behring to the doctrine until the Second World War. In 1903, Behring first proposed that in the process of criminal proceedings, the protection of human rights could not be neglected in order to discover the truth. For the illegally obtained evidence, the courts should not use it to find that the truth is the highest guiding principle must be corrected. However, the opinions of various academic circles are very uneven. The second phase was the transition period from the end of the Second World War to the 1950s. Due to the frequent wars and the prevalence of Nazism, Germany has experienced the painful lessons of human rights being trampled on and began to focus on the protection of human rights in the administration of justice. Article 136 as of the Criminal Procedure Law amended by Germany in 1950 stipulates that the lawsuit of the accused person who is illegally obtained shall not be used. This article embodies the important content of the German illegal evidence exclusion rules, and has epoch-making significance in the development history of German criminal procedure law. The third stage is the period of development of the evidence prohibition theory after 1960. In the secret recording case of 1960, the tape of the defendant and the friend talking on the phone, the court of first instance refused to use the tape as evidence, and the defendant was not guilty. The German Federal Supreme Court cites the provisions of Articles 1 and 2 of the Federal Constitution regarding the “inviolability of human dignity” and the “right to personal development” and rejects the appeal of the prosecutor. [11] Even so, due to the strong influence of the real realism of discoveryism, Germany does not explicitly exclude the exclusion of evidence from other illegal means such as illegal searches, seizures, etc., compared with the strict rules of exclusion of illegal evidence in the United States. However, in recent years, the theory of trade-offs is more prevalent in the German Supreme Court. In the case of a violation of the evidence-acquisition procedure, the court analyzes each case, weighs the pros and cons, and finally decides whether to use the evidence.

D. Summary and Thinking

Through the above brief review and summary of the history of the development of illegal evidence exclusion rules in major Western countries, we can see that the establishment of illegal evidence exclusion rules in various countries has gone through a very long development process, and there are still many twists and turns. repeatedly. The establishment of this rule by each country is not a one-step process. It involves many complicated factors such as the judicial practice of a country and the legal culture tradition.

Comparing the illegal evidence exclusion methods of various countries, it can be seen that the United States adopts a strict automatic exclusion mode, while other countries, including the United Kingdom, which belong to the common law countries, adopt a discretionary exclusion method. Even if there are illegal evidence exclusion rules in civil law countries, there are very few examples of real exclusion of illegally obtained physical evidence in practice. At the same time, compared with the civil law system, the Anglo-American law system created a set of systematic illegal evidence exclusion rules and improved them, strictly implemented, and achieved fair and equitable litigation, and also played a great role in the

human rights protection of criminal suspects and defendants. The role. The civil law system generally adopts an interrogation litigation system. In the interrogation litigation system, the judge actively pursues the crime of *ex officio*. In order to find out the facts of the case, the judge can even collect evidence separately. The active activity of the judge to collect evidence plays a decisive role in the outcome of the litigation. The emphasis is on the substantive impact of court investigation team cases, rather than limiting the discretion of judges through statutory rules of evidence. [12] The United States and other British and American law departments pay more attention to the fairness of the proceedings and the protection of human rights. It is worth learning from. Learning the progress of other countries and localizing them according to their national conditions is the necessary way to improve the rules of illegal evidence exclusion in China. the road.

IV. THE ASSUMPTION AND PERFECTION OF THE RULE OF EXCLUSION OF ILLEGAL EVIDENCE

The popularization of the rule of law in the whole society is an umbrella for the good construction of illegal evidence exclusion rules in China. The elimination of illegal evidence is the practice of implementing and implementing the rules stipulated by the Constitution, as well as the practice of “respecting and protecting human rights” in the current Criminal Procedure Law. It can effectively curb the illegal collection of evidence by investigators, thereby limiting the power of investigation and safeguarding the victims. Legitimate rights and interests, strengthen human rights protection in the process of litigation, and achieve procedural fairness; at the same time, it is also conducive to the realization of the litigation purpose and task of “accurately identifying the facts of the case to punish the crime” as stipulated in the current Criminal Procedure Law, and reasonably excluding illegal collection methods. Evidence can maximize the realization of suspected crimes and crimes, and play a vital role in the construction of a socialist legal system with Chinese characteristics.

In determining whether the illegal acquisition of evidence is excluded, the following factors should generally be considered: First, the degree of illegality of the act of obtaining evidence itself. Evidence obtained for fundamental violations such as search and seizure without the approval of the statutory authority shall be excluded; as for general violations, such as only the time or procedure of investigation is different from the provisions of the law. The evidence obtained may not be excluded depending on the circumstances. Second, the extent of damage to civil rights. The damage to the interests of citizens should be ruled out. Although illegal searches were conducted, no substantial damage was caused to the citizens, and the evidence obtained could not be excluded. Third, according to the degree of criminal harm of the alleged criminal suspect. In cases of crimes that have a major social impact, if the evidence obtained illegally can be confirmed or corrected later, it may not be excluded.

Facing the development of the current illegal evidence exclusion rules and the current situation in China, the author believes that the supporting facilities for the operation of the

illegal evidence exclusion rules should be improved and the supporting institutional mechanisms should be established.

A. Improve the Right to Silence System

The first is to learn from the "Miranda system" of the United States and improve the system of silence of criminal suspects in China. To establish an effective system against confessions by torture, it is necessary to confirm that the suspects and defendants have the right to silence, that is, the right not to speak, or to voluntarily open the evidence to commit crimes. In foreign criminal justice practice, the right to silence is an important right to protect the personal rights of criminal suspects. It is derived from the right not to be forced to self-incrimination. China's criminal procedure law provides criminal suspects to investigate. The questions of personnel should be answered truthfully, which is an important reason for the illegal evidence collection in the process of criminal proceedings in China. China's current criminal procedure law does not recognize the right to silence. Once the suspect suspect has the right to silence, it can reduce the inevitable connection between confession and conviction. From then on, it will change the habit of the judiciary simply judging the case according to the suspect population. Reduce the incidence of illegal investigation and evidence collection by investigators, protect the legal rights of victims, and fundamentally eliminate confession and confessions by torture.

B. Play the Duty Lawyer System

The professional knowledge and legal literacy of duty lawyers are used to fully respect the opinions of lawyers and protect the rights of lawyers. The number of practicing lawyers in the country has been increasing. Compared with the past, in addition to the rapid increase in the number, the level of knowledge has increased substantially. In the process of litigation, the duty lawyer can use his knowledge to implement the lawyer's presence system for the parties. In the process of litigation, defense lawyers can protect the legal rights of criminal suspects according to their own legal literacy, fill the legal blind spots and relevant knowledge gaps of the parties, and know the illegal behaviors of judicial personnel in the process of investigation and evidence collection, avoiding inducement, Threats and other illegal forensics. To a certain extent, it also supervises the behavior of judicial personnel from unfair behavior.

A. Strengthen Supervision of Investigative Behavior

Investigate behavior through modern technology. Article 121 of the Criminal Procedure Law stipulates that investigators may record or videotape the interrogation process when interrogating criminal suspects; for cases that may be sentenced to life imprisonment, death penalty or other major criminal cases, Record or video the interrogation process. Interpretation of this article of law currently only provides for recording or video recording of major criminal cases, and there is no clear record of other cases. In reality, general criminal cases may also result in illegal evidence collection. The law only stipulates that recordings can be recorded, which means that this is not a mandatory requirement. Judicial personnel may choose to record audio or video independently. Is there a

case of extorting a confession by torture in a case where there is no record? We should conduct a comprehensive and mandatory recording of all criminal cases and have a complete record. Record the investigation process of all criminal cases, let the judicial activities be carried out in the sun, eliminate all kinds of illegal evidence collection, and improve the ability to prove the evidence. Finally, in the trial of the case, you can understand the true situation of the case and promote the trial of the case. Protect the effectiveness of human rights and establish the credibility of the judiciary.

The perfection of the legal system and the good use of the rules for the exclusion of illegal evidence also depend on the importance attached by the individual litigants to the exclusion of illegal evidence. On the one hand, the investigating subject should be based on the concept of investigating according to law, collecting evidence according to law, abandoning the psychological cues of confession supremacy, carrying a noble sense of mission to punish crime and safeguarding human rights, paying attention to objective and comprehensive analysis, and collecting all kinds of evidence. At the same time, improve the investigation methods, conduct scientific investigations with the times, improve the work level of investigators, and consciously accept the supervision of relevant organs and the public. On the other hand, the judiciary should abandon the one-sided emphasis on substantive justice and ignore the legal significance of the procedure. During the trial, not only the defendant's oral statement will be paid attention to, but also the legality of collecting evidence will be highly valued. The evidence collection process will be investigated and judged in strict accordance with relevant laws and regulations. In particular, the accused's evidence of illegality should be based on the law. To review the regulations and establish a sense of equal emphasis on factual fairness and procedural fairness, to eliminate illegal evidence in an equal and lawful manner, to adopt legal claims, to use discretionary power correctly and accurately, and to ensure that the trial results truly punish crimes and guarantees. Human rights are highly integrated.

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