

# Misconceptions Regarding the Exclusion of Illegally Obtained Evidence in the Pre-Trial Stage of Criminal Proceedings

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**Abstract:** Bound by due process principles, the two major Western legal systems impose strict requirements on means and standards of proof only during the trial phase, resulting in a clear distinction between pre-trial and trial procedures in criminal litigation. The non-evaluation of evidence materials' legal attributes during pre-trial proceedings serves as the logical starting point for substantive trials. Consequently, the current Chinese practice of including pre-trial investigative and prosecutorial authorities as entities subject to exclusion rules is questionable, running counter to judicial reform measures centered on trials. Potential avenues for improvement include amending relevant legal provisions, enhancing the functionality of pre-trial conferences, and restricting the use of investigative case files during the trial phase.

**Keywords:** Pre-Trial Proceedings; Exclusion of Illegally Obtained Evidence; Trial-Centered Approach; Investigative Files

## 1. Introduction

The current Criminal Procedure Law of the People's Republic of China (hereinafter referred to as the "Criminal Procedure Law") provides detailed provisions on both substantive and procedural aspects of illegal evidence. The former encompasses the definition and scope of illegal evidence, its attributes, and exceptions, while the latter covers the initiation of exclusion procedures, the entities responsible for exclusion, conditions, and the burden of proof [1-3]. This constitutes a comprehensive evidence exclusion system spanning both pre-trial and trial phases of criminal proceedings. In fact, whether in medieval or modern Western legal systems, evidence laws have historically imposed minimal requirements on criminal pre-trial procedures. Consequently, the pre-trial stage predominantly reflects an epistemological perspective grounded in natural law principles, while judicial epistemology only surfaces

during the trial phase. The Criminal Procedure Law's approach of imposing obligations and liabilities for excluding illegal evidence on investigators and prosecutors during the pre-trial phase fundamentally contradicts judicial principles and due process. The concept of "illegal evidence" should not exist prior to the commencement of trial proceedings. The legal characterization of evidence materials can only occur upon concluding the pre-trial phase and entering the trial phase. Therefore, requiring investigative and prosecutorial organs to review the legal attributes of evidence during the pre-trial stage and exclude unlawful evidence is utterly preposterous. Within China's ongoing judicial reform centered on trial proceedings, this approach will only further entrench the interdependence and coordination among public security, procuratorial, and judicial organs, while continuing to erode the substance and efficacy of fair trials.

This paper addresses and argues the aforementioned issues from four main perspectives, attempting to propose corresponding improvement measures. First, why has the exclusion of illegal evidence in the pre-trial stage become problematic? Second, under due process, the significance of evidence to procedure in the 13th-century European continental inquisitorial system. Third, the 16th-century English Marian Statutes' adherence to trial-centeredism. Fourth, improvement measures for China's relevant issues.

## 2. Why Has the Exclusion of Illegal Evidence in the Pre-trial Stage Become Problematic

In 2014, China proposed to "promote the reform of the litigation system centered on trials to ensure that the facts and evidence of cases investigated, reviewed and prosecuted can stand up to the test of law", thereby initiating the "trial-centered litigation system reform". This "trial-centered" reform not only responds to the functional demands of judicial neutrality, independence, and impartiality but also aligns

with the core significance of modern rule of law in protecting human rights and controlling public power, serving as the overarching principle in the entire criminal justice reform. However, as some scholars have pointed out, "'trial-centered' is a 'two-sided unity' institutional structure: the unity is the 'trial center,' and the two sides are the requirements for prosecution and adjudication. [4]" This succinct observation reveals that the "trial-centered" reform requirement encompasses the entire criminal process—from pre-trial to trial—meaning every stage of criminal proceedings must undergo corresponding adjustments based on this principle. Failure to do so constitutes a limitation and bottleneck for reform, hindering its progress and significantly diminishing its effectiveness. The exclusion of illegal evidence by investigative and prosecutorial organs under the current Criminal Procedure Law exceeds the inherent functions of the pre-trial process itself. Corresponding amendments and corrections must be made; otherwise, they will inevitably obstruct the advancement of the "trial-centered" reform. On one hand, discussing the definition and exclusion of "illegal evidence"—issues intrinsically linked to the substantive trial aspects of convicting and sentencing defendants—during the pre-trial phase misinterprets and distorts the procedural significance of evidence, leading to functional overreach of the pre-trial process. On the other hand, the failure to distinguish factual evidence materials blurs the substantive distinction between criminal pre-trial and trial procedures, severely confusing the functions and significance of pre-trial investigation, prosecution, and adjudication. This renders judges' trials formalistic and formulaic, undermining the due process of a "trial-centered" system.

Pursuant to Article 56(2) of the Criminal Procedure Law, which states: "Evidence discovered during investigation, review of prosecution, or trial that should be excluded shall be excluded in accordance with the law and shall not be used as the basis for prosecution opinions, prosecution decisions, or judgments," investigative and prosecutorial organs in China possess the same statutory authority and obligation to exclude illegally obtained evidence during criminal pretrial proceedings as judicial organs [5]. This

provision is grounded in two principles: First, it constrains and limits unlawful evidence-gathering practices through procedural sanctions that invalidate the use of illegal evidence as the basis for prosecution opinions and decisions. This prevents violators from benefiting from their unlawful actions, thereby preventing police abuse and protecting human rights. Second, by subjecting evidence materials to multiple layers of scrutiny by investigative and prosecutorial organs during pre-trial proceedings, the goal is to ensure that evidence entering the trial phase is as free from flaws and contamination as possible, thereby enhancing the efficiency and integrity of judicial adjudication. In essence, the aforementioned functions of protecting human rights and ensuring fair trials also represent the overarching value orientation of the exclusionary rule for illegally obtained evidence, though the procedures and entities responsible for its implementation appear misaligned. The purpose and function of pre-trial proceedings is to gather evidence proving case facts, preparing for the smooth conduct of trials. Excluding illegal evidence at this stage constitutes an overcorrection aimed at curbing unlawful investigative practices—a laborious and ineffective measure. The exclusion of illegal evidence should be confined to the trial phase. Refining the pretrial conference system is the effective pathway to exclude illegal and tainted evidence, thereby genuinely realizing the "trial-centered" due process. The review of the legality of evidence collection should be regulated through the judicial warrant system. The following sections will examine the structure of the 13th-century European continental inquisitorial system and the provisions of England's 16th-century Marian statutes concerning criminal pre-trial investigations and indictments for non-political felonies. From an evidentiary perspective, they will describe how pre-trial and trial procedures are distinguished within the two major Western legal systems and how court-centered adjudication is upheld.

### **3. The Significance of Evidence in the 13th-Century Continental Inquisitorial System**

Traditional legal scholarship has long characterized the inquisitorial system of continental Europe as a conglomeration of "barbaric," "authoritarian," and "cruel"

litigation practices. This perception stems from features that diverge from modern rule of law principles, such as: the judge acting as accuser, investigator, and judge; initiating charges *ex officio* and conducting criminal investigations; judges conducting solitary, secret interrogations of witnesses to gather incriminating evidence, and employing torture to extract confessions from suspects. However, as scholars have noted, "this represents a misunderstanding and unfair criticism of the Inquisitorial System" [6]. The true nature of the Inquisitorial System was far more nuanced. In fact, by the dawn of the 13th century, the inquisitorial system pioneered the separation of pre-trial and trial procedures based on a statutory evidence regime. This not only directly gave rise to the continental European public prosecutor system and the foundation for assessing the legitimacy of pre-trial proceedings, but also revealed both the value and limitations of evidence in safeguarding due process.

Medieval Europe operated under two parallel judicial systems: ecclesiastical justice and secular justice. The Inquisitorial System originated as a tool for the Church to deal with political prisoners accused of heresy and clergy corruption. Later, to address the crisis in criminal trials caused by the Fourth Lateran Council of 1215 prohibiting clergy from participating in or presiding over trials by ordeal, the King of France introduced the Church's Inquisitorial System procedures as the trial process for secular capital crimes [7]. In a sense, the Church established the Inquisitorial System to uphold the purity of religious faith and judicial integrity, while its secular adoption was profoundly influenced by the Christian concept of "blood sins"—avoiding divine punishment and hellish torment. As is well known, medieval continental Europe was an era dominated by Christian faith, profoundly shaping the formation and development of social thought, culture, and institutions, including judicial trials, particularly those for serious criminal offenses. Christian doctrine forbids any form of bloodshed or homicide. Violating this prohibition constituted one of the gravest "moral crimes," with theological consequences including "being cast into hell during the Last Judgment." This was because "it displeases God, signifying that the sinner forfeits heaven and faces eternal punishment." [8]. Consequently, criminal judges, tasked with

"shedding the blood of others," faced the peril of damnation, making it a profession most people dreaded. To prevent criminal justice from collapsing, early theologians developed procedural formalism. By strictly adhering to procedural rules, criminal judges could separate their "private identity from their public identity," thereby legitimizing criminal trials. As Augustine stated, "When you kill justly in your public capacity, it is the law that kills him, not you." [9]. Thus, medieval Western criminal judges invariably presented two distinct personas: one of private identity and another of public identity. The traditional inquisitorial view that judges "combine the roles of accuser, investigator, and judge" focuses solely on the private persona, overlooking and neglecting the public persona. In reality, influenced by the concept of "blood crimes," criminal judges never dared to overstep the boundaries of their "private identity" by even a hair's breadth, much less utilize knowledge acquired in that private capacity. How then could they attain their "public identity" to achieve a just trial? The path lay in adhering to procedural rules and rules of evidence. Although 13th-century ecclesiastical and secular courts adopted the inquisitorial system for different purposes, both exhibited identical structural features: a three-stage investigative process—preliminary inquiry, general inquiry, and specific inquiry. The transition between investigative stages signified the judge's shift between public and private roles, facilitated by changes in evidentiary methods and requirements. This underscores the pivotal role of evidence in procedural dynamics.

### **3.1 The Investigation Initiating the Inquisitorial Procedure**

Like the accusatory and denunciatory systems, the inquisitorial process required a plaintiff to initiate proceedings. The key distinction lay in the nature of the plaintiff: while the former two relied on natural persons, the inquisitorial system did not—it relied on "public rumor". In essence, the inquisitorial process commenced criminal proceedings without a natural person as plaintiff, instead through the judge's investigation into the existence of "public rumor." Criminal proceedings initiated by "public rumor" incorporate an additional investigative step compared to those initiated by a natural person as plaintiff: the investigation

into whether "public rumor" exists. The outcome of this investigation constitutes a sufficient criminal accusation, replacing the complaint of a natural person. Because the investigation into the existence of "public rumor" is led by the judge, who summons and interrogates witnesses, traditional views conflate it with the trial proceedings investigating criminal facts. This further leads to the conclusion that "the judge and the plaintiff are one and the same," which is clearly a misinterpretation of the inquisitorial judge's role. In reality, within the criminal justice culture dominated by the Christian concept of "blood guilt," initiating criminal proceedings equated to setting in motion a machinery of killing and bloodshed. "For criminal judges handling capital offenses, the formal criminal accusation brought by the plaintiff was indispensable to activate this machinery of death. Thus, 'no plaintiff, no suit' and 'the judge and the plaintiff cannot be the same person' became judicial principles in the early Christian world." Even if a judge heard of a criminal act, he could not initiate a criminal trial based on that alone. Instead, he was required to investigate the widespread existence of this rumor and only initiate criminal proceedings based on the results of that investigation. In essence, it was not the judge who initiated the inquisitorial process, but the judge's investigative findings [10].

Based on the need for Christian judges to "take refuge," the importance of plaintiffs in initiating criminal proceedings is highlighted. Even in the absence of a natural person as a substantive plaintiff, a procedure must be established to externalize "public rumors," thereby making this "invisible plaintiff" visible and perceptible to the public. Therefore, the investigative procedure for the "invisible plaintiff" differs functionally from subsequent general investigations and specific investigations. Consequently, its evidentiary methods and requirements also differ from those of general and specific investigations, constituting an independent pretrial preparatory procedure. First, the investigation procedure for the "invisible plaintiff" primarily relies on witness testimony as its evidentiary means. The judge must summon witnesses to prove the existence of "public rumor." Witnesses may be selected through random sampling. "The broader the scope of the community sampling investigation,

the stronger the evidence becomes." The testimony need only establish awareness of the criminal act's existence. Even if based on hearsay, witnesses are not required to identify their source or provide evidence of any witnesses present at the time. In other words, the pre-trial preparatory process for proving the plaintiff's existence and the allegations' validity imposes no restrictions on the admissibility of evidence. Second, the evidentiary standard for the "invisible plaintiff" investigation procedure is the common knowledge and prevalence of "public rumor." This prevalence does not require unanimous agreement; if the majority of witnesses summoned by the judge can confirm the existence of the "public rumor," criminal proceedings may proceed smoothly." Canonist Tancrede defined the public nature of 'public infamy' in his Manual of Procedural Law as 'publicly held belief,' serving the function of 'initiating judicial investigation,'" In essence, witness testimony during this investigative phase carries no evidentiary significance under evidence law; it does not prove the objectivity or authenticity of a criminal act but merely determines the disreputable nature of a suspect's reputation or character [11]. Finally, if the investigative process for the "invisible plaintiff" is omitted or its substance is absent, subsequent trial proceedings may not commence. Even if a trial is forcibly conducted, its outcome remains invalid. This represents a natural extension of the Christian judicial tradition of "no trial without a plaintiff" and "no trial without an accusation." In essence, procedural non-compliance also leads to substantive invalidity.

### 3.2 Inquisitorial System's General Investigation

The procedure for investigating the existence of "public rumor" is not unique to the inquisitorial system. In essence, whether in the early medieval ecclesiastical confession and absolution process or secular divine judgment proceedings, in the absence of a natural person as plaintiff, "public rumor" served as the "invisible plaintiff" initiating criminal proceedings. The specialized procedure for proving its existence was the prerequisite for commencing subsequent proceedings and ensuring their legal validity. However, the inquisitorial investigation was pioneered by the inquisitorial system, originating from the Church's political need to combat corruption

and eradicate heresy. In fact, within the inquisitorial framework, the stage where judges proactively investigate criminal circumstances and gather evidence pointing to criminal facts begins with the general inquiry. The aforementioned investigation of "public rumor" does not address the objectivity or authenticity of the criminal facts themselves, whereas the general inquiry investigates the content of the criminal facts. As in Genesis, when Yahweh declared: "I have heard of the great wickedness of Sodom and Gomorrah." However, guarding the courtroom doors and insisting on conducting investigations, evidence collection, and trials within the courtroom were the means by which judges maintained their public identity as adjudicators. Stepping outside the courtroom meant the judge lost this public identity, and any evidence investigated or collected could not serve as the basis for subsequent judgments. This distinction between general and specific investigations is crucial.

First, the function and purpose of general investigation is to identify and pinpoint specific criminal suspects. If the "public rumor" initiating criminal proceedings merely outlines a vague, general criminal fact, then general investigation advances to a more specific level—by investigating a criminal act to pinpoint a suspect. If general investigation concludes without identifying a specific suspect, subsequent specific investigation, i.e., the trial process, cannot commence [12]. Second, the preliminary investigation concludes once a suspect who committed the criminal act is identified. Therefore, it is impossible for the judge to summon the suspect and obtain their confession at this stage. In other words, during the preliminary investigation, the judge may collect any evidence except for the suspect's confession. Finally, the purpose of gathering evidence and leads during the preliminary investigation is to identify a specific suspect for formal investigation. However, this evidence does not establish the suspect's guilt. Consequently, evidence obtained during the preliminary investigation is not considered judicial evidence. The law imposes no requirements regarding its admissibility, capacity, or probative value. Judges may freely determine whether a suspect exists based on any information gathered through their investigations. "When the judge is convinced that a specific individual should be tried as a

defendant, he concludes this preliminary investigation and proceeds to the specific investigation stage." "No matter how substantial the suspicion against a specific individual may be, no guilty verdict can be rendered against them at the conclusion of the preliminary investigation stage." [13].

### 3.3 Inquisitorial System: Substantive Investigation

The specific investigations conducted under the inquisitorial system constitute the trial proceedings in the modern sense. Whether initiating investigations to prove the existence of an "invisible plaintiff" or conducting general inquiries to proactively uncover crimes and locate offenders, these are all pre-trial procedures. All three distinct investigative processes are led by judges. In essence, the judge's identity remains that of an investigator from start to finish. Yet it is the specific investigation that fundamentally instills a sense of crisis in the judge. This is because the moral condemnations of "blood guilt," "hellish calamity," and "divine punishment" mentioned earlier ultimately culminate in the delivery of a criminal verdict. The fear that initiating criminal proceedings and conducting investigations outside the courtroom evokes in judges is merely a derivative of the former. Thus, the substantive investigation procedure fundamentally differs from the preceding two pre-trial stages: evidence acquires genuine legal significance. A comprehensive statutory evidentiary system emerges, meticulously defining admissibility, proof requirements, and standards of proof.

First, the specific investigation phase—the trial stage—defined the types of evidence, recognizing only two categories: defendant confessions and witness testimony. "Under the statutory evidence system of the inquisitorial process, evidence was primarily divided into two types: defendant confessions and witness testimony. The evidentiary qualification of physical evidence was never recognized; the concept of physical evidence as evidence only emerged in the 17th century." [14]. This stands in stark contrast to the judge's ability during the preliminary investigation phase to determine the suspect's guilt using all available evidence, including physical evidence and other forms of circumstantial evidence. Second, during the specific investigation phase, witness testimony

is subject to the hearsay rule. Witnesses must disclose the source of their evidence, and their testimony must pertain to what they personally witnessed at the crime scene—not hearsay about the crime incidentally overheard from others. Furthermore, the testimony cannot consist of fragmented pieces of information about the crime but must encompass all coherent facts of the crime. Third, the specific investigation phase strictly adheres to due process requirements for in-court confrontation. Evidence gathered outside court proceedings is strictly prohibited from forming the basis of a judgment in the specific investigation. The defendant must be informed of the witness's name, and the witness must testify in court to enable the defendant to raise lawful objections, thereby preventing the consequences of recklessly providing false testimony to defame others. "Upon concluding the general investigation, if the investigator discovers that a specific individual committed the crime, they must summon that person to court and provide them with...the name of the witness he intends to summon for the crime. The investigator should also summon the suspect identified in the prior general investigation to witness those witnesses taking an oath." Even if the judge summons the same witness during the preliminary proceedings of the "invisible plaintiff" investigation and the general investigation, this witness must still appear in court to testify during the specific investigation, i.e., the trial proceedings. If they fail to appear, the testimony given during the preliminary proceedings cannot be used as evidence to prove the defendant's guilt, because "(during the general investigation stage) the witness cannot be used against the defendant, they must be questioned a second time..." "In all cases, testimony obtained during the pre-trial investigation cannot be used to prove the defendant's guilt; even if the same witness is used in both distinct procedures, the two interrogation investigation processes must be distinguished." Fourth, during the substantive investigation phase, interrogation of the defendant to obtain confessions is permitted only under statutory conditions; the use of interrogation is prohibited during pre-trial out-of-court investigations. During the specific investigation phase, judges may not resort to torture to extract confessions based on any incriminating evidence obtained during out-of-

court investigations. Instead, they must summon the defendant to court to witness the witness taking an oath and providing testimony under judicial questioning. If the defendant fails to challenge or question the witness testimony obtained through court questioning, torture may then be applied. "The judge may not torture the defendant based on the witness's initial out-of-court testimony (referring to the preliminary investigation stage), as the defendant did not appear in court as required by law to witness the witness's oath. Therefore, the out-of-court statement has no legal effect." Finally, after the specific investigation phase concludes, the judge may only render a guilty verdict based on sufficient evidence. There are two standards for sufficient evidence: first, a guilty confession made by the defendant; second, consistent testimony from two witnesses. In essence, judges possess no discretionary power under these statutory standards for guilt evidence. The interwoven web of evidentiary admissibility, courtroom rules, hearsay rules, and interrogation rules ultimately achieves a system where "witness testimony substitutes for factual adjudication" and "witnesses replace judges."

#### **4. The 16th-Century English Marian Statutes' Commitment to Trial-Centricism**

The 13th-century inquisitorial system on the European continent upheld trial-centered justice, achieving a substantive separation between pretrial and trial procedures through evidentiary rules. Across the Channel in England, the emergence of justices of the peace exercising investigative functions prompted successive legislative measures to regulate and guide their conduct. These comprised: and second, legislation governing pre-trial investigation and committal for non-political felonies (2 & 3 Philip and Mary c.10 1555). Together, these formed the Marian statutes [15]. In fact, the original intent of the first part of the Marian statutes—the pre-trial bail legislation—was to curb the unrestrained collusion between justices of the peace and suspects of serious crimes that led to the issuance of bail orders. The second part—the pre-trial procedure legislation—extended and expanded the aforementioned bail mechanism, establishing a systematic framework for examining and interrogating criminals and witnesses. The investigative procedures under Part II legislation can be divided into three distinct stages: the first stage

involves oral interrogation of the suspect and the complainant; the second stage requires the transfer of relevant investigative findings within two days; and the third stage entails the certification of the transferred written investigative records. The most significant function of the Marian Laws lies in establishing, during the first stage, an investigative mechanism for both the defendant and relevant witnesses. This is widely recognized as a positive development. In cases of serious crimes where private plaintiffs are often reluctant to initiate criminal proceedings, it compels magistrates to assume the modern prosecutorial functions within lawful and appropriate bounds. Firstly, it enables magistrates to commence investigations immediately upon the discovery or reporting of serious crimes, maximizing the preservation of the crime scene's original state. Second, it enables magistrates to secure witnesses crucial for establishing the facts of the crime and ensure their availability for court testimony. Third, it allows magistrates to acquire relevant knowledge while ensuring the smooth initiation of charges. Fourth, through the prosecutorial work of magistrates, circuit judges can effectively guide trials in complex and challenging cases. The controversial downside of the Marianne Code lies in its potential attempt to construct a written trial mechanism that undermines due process. This is because the preliminary investigation procedure transforms suspect confessions and witness testimonies into written records—the very essence of the continental European systems of case file transfer and appeals prevalent at the time. However, while the Marian Laws facilitated the formation of case files during the pre-trial investigation phase, they denied the evidentiary validity of these written records. Pre-trial evidence retained only its natural attributes as "material" or "information." Only after undergoing court examination during the trial phase did such evidence acquire legal attributes and transform into judicial evidence. This separation of pre-trial evidence materials from trial evidence not only distinguished pre-trial functions from trial functions but also upheld and maintained the centrality of court trials. On one hand, the evidence materials relied upon by magistrates for pre-trial investigative actions, detention decisions, and bail determinations merely establish the

"justification" for such actions at the time they are taken, but cannot form the basis for trial outcomes. On the other hand, as long as the relevant evidence materials relied upon for pre-trial detention decisions meet the "legality" standard, even if the detained defendant is later acquitted after trial, it does not constitute wrongful detention.

The Marian Statute's regulation of pretrial procedures does not establish a system of trial by written evidence, nor does it recognize the evidentiary value of such written review records. Justices of the peace may gather and investigate relevant evidence, but the case files compiled from such materials lack evidentiary weight. In essence, written evidence documented in case files cannot serve as the basis for a jury's factual determination. This stands in stark contrast to the contemporary continental legal systems' case file transfer and appellate mechanisms, where judicial investigators' reports constitute authoritative grounds for factual rulings. First, the Marian Law stipulates that written records of interrogations conducted by magistrates with defendants and witnesses serve as affidavits. These affidavits compel defendants and witnesses to confront each other and testify orally during the public proceedings of jury trials. "For defendants, the affidavit guarantees their appearance at trial; for witnesses, it guarantees their attendance to provide necessary testimony incriminating the accused." Second, the Marian Statute permits magistrates a two-day delay in forwarding written materials containing defendants' statements and witness testimony, which contradicts the fundamental principle of the written evidence trial mechanism—the immediate transmission of evidence. In contemporary continental European written trial systems, the written evidence compiled in the case file serves as the sole basis for appellate and final court adjudications. Unless justified by statutory exceptions, this file must be transmitted immediately. "A two-day delay diminishes its reliability and consequently undermines the probative value of the evidence." Third, the Marian Statute does not require witnesses to take an oath when providing testimony before trial, mirroring the defendant's exemption from swearing to prove their case. In contrast, witnesses testifying for the prosecution must take an oath, making prosecution witnesses true sworn witnesses. It should be clarified that

under a written evidence model, oaths are a prerequisite for witness testimony to qualify as admissible written evidence. However, in a trial-centered model where witnesses must undergo cross-examination in court, whether testimony is sworn before trial does not inherently confer evidentiary weight. Thus, the Marian Statute's provisions align with trial-centered principles. Fourth, the Marian Statute in no way alters the requirements for confrontation and due process inherent in the traditional British criminal trial procedure. Where the prosecution does not appear in court but merely submits relevant written materials from the pre-trial investigation, the jury will never convict the defendant based solely on these materials. "Without an oral indictment in court, the jury will acquit the defendant." This effectively transformed the pre-trial case file into a "memorandum" guiding magistrates in court to present charges and reinforce the impact of oral accusations. It aided and reminded magistrates on how to conduct thorough, planned, and step-by-step accusations during court appearances, "serving as a reminder, much like a note modern police officers make to aid their recollection." Finally, the 16th-century English common law trial system featured relatively primitive and rudimentary evidentiary rules, rendering it incapable of establishing a model where trials based on written evidence could replace courtroom hearings. It is important to note that the continental European case file system emerged from a religious context where judges sought to evade trial responsibilities—the concept of "blood crimes" briefly mentioned in the preceding section on the inquisitorial system, where meticulously detailed and complex evidentiary rules served as a refuge for judges in determining facts. In contrast, England, which consistently practiced jury trials, placed the entire responsibility for determining facts in felony cases upon randomly selected jurors. There was simply no need for evidentiary rules to help judges evade liability.

## **5. Improvement Pathways for Relevant Issues in China**

### **5.1 Insights from the Relationship between Pre-trial Procedures and Evidence in the Two Major Legal Systems**

The analysis above reveals that the tripartite

investigative structure of 13th-century continental inquisitorial systems emerged as a natural consequence of the trial phase's adherence to due process principles. The formal requirement of due process mandates that the tripartite structure of plaintiff, defendant, and judge must be present simultaneously in court. Its substantive requirement is that the judge's final judgment must be based on evidence heard within the courtroom. However, even the formal requirement was difficult to achieve during formal trials, leading to the first investigative stage for proving hearsay evidence and the second stage for preliminary fact-finding. In fact, the purpose and function of the first two investigative stages—to secure a valid accusation or plaintiff and to identify a specific defendant—demonstrate that they essentially serve as pretrial preparatory functions, laying the groundwork for the smooth commencement and progression of the trial proceedings. The pre-trial procedures satisfy the formal requirements of due process, while the substantive requirements are fulfilled through evidentiary rules and trial rules—together weaving a dense net that provides a refuge for judges to render criminal judgments smoothly. Thus, in the medieval inquisitorial system of continental Europe, the legal significance of evidence existed solely within the trial proceedings. On one hand, during the first two investigative stages of the pre-trial process, the judge, acting as investigator, may gather and examine all information and leads deemed useful. The types, forms, and methods of evidence presentation face no restrictions. In other words, evidence assumes a naturalistic character, unbound by legal regulation. On the other hand, the judge's evaluation of evidence during pre-trial proceedings was based on free conviction. Whether determining the existence of an "invisible plaintiff" or identifying a specific suspect, the judge only needed to achieve a certain level of "inner certainty" through their own understanding and judgment, without needing to announce a conclusion at the end of the preliminary investigation. In contrast, during trial proceedings: on one hand, the scope of evidence recognized and judged by judges is significantly narrowed by legal provisions, transforming naturally occurring evidence materials into judicial evidence through legal filtering; on the other hand, the assessment of evidence's probative value shifts from free to

statutory, virtually eliminating all subjective factors from judicial discretion.

In 16th-century England, two statutes established the Marian Statutes governing pre-trial investigation and committal for non-political felonies, marking the emergence of written case files compiled during the pre-trial phase. However, these British case records served only as the basis for reviewing the legality and propriety of the magistrate's investigative actions during the pre-trial phase. They bore no relevance to the defendant's guilt during the trial phase. In essence, these written materials—containing interrogation records and witness statements—did not acquire evidentiary capacity merely because their content related to the facts of the crime. Thus, the Marian Laws established a substantive distinction between England's pre-trial and trial procedures through written evidentiary records. This heightened the requirement for in-court testimony and reinforced the centrality of trial proceedings. On one hand, the pre-trial case records served only as "evidence" proving the justness of the magistrate's actions, not as "evidence" proving the defendant's guilt. Therefore, even if the trial outcome acquitted the defendant, the pre-trial investigative actions are not necessarily unlawful or invalid, as they are based on different materials and standards. On the other hand, the pre-trial case file records serve no purpose in the court trial itself; they are merely "a memorandum for the prosecution to formulate its case and arrange for witnesses to testify in court". In short, appearing in court and confronting witnesses are the conditions that transform evidence with legal significance into judicial evidence.

## 5.2 Pathways for Improvement in China's Relevant Issues

The 13th-century European continent and 16th-century England marked the starting points for the gradual development of pre-trial procedures in the two major legal systems. By briefly describing and summarizing the state of Western criminal procedure at these two junctures, this paper aims to restore the significance of evidence within the procedural context: evidence only acquires legal significance within the trial process. Conversely, in non-trial procedures—including pre-trial proceedings—evidence retains only its natural attributes. Therefore, in China's current "trial-

centered" substantive trial reform, it is absurd for investigative and prosecutorial organs to determine the legal attributes of evidence materials during the pre-trial stage and construct a so-called "illegal evidence exclusion system." This violates the core functions of these entities and the purpose of procedural design. Consequently, three issues must be addressed: First, amend relevant provisions of the current Criminal Procedure Law to align legislative provisions with the spirit of judicial reform. Second, fully leverage the function of pre-trial conferences to ensure the exclusion of illegal evidence is genuinely implemented. Finally, strictly restrict or prohibit the use of investigative case files during the trial phase to realize the function and value of a "trial-centered" approach.

First, Article 54(2) of the Criminal Procedure Law—which states, "Evidence discovered during investigation, review for prosecution, or trial that should be excluded shall be excluded in accordance with the law and shall not be used as the basis for prosecution opinions, prosecution decisions, or judgments"—requires essential revision. Investigative and prosecutorial organs should not bear the obligation or responsibility to exclude illegal evidence. In practice, investigative authorities bear the duty to self-examine the evidence they collect, while prosecutorial authorities must self-examine the evidence materials transferred by investigative authorities. However, this duty is inherent within their respective functional roles and must not exceed their boundaries. The exclusion of illegal evidence is not a function of investigative or prosecutorial authorities during the pre-trial phase but rather a potential adverse consequence they may face. In other words, under China's model where the burden of proof rests entirely with the prosecution, if these pre-trial entities fail to fulfill their corresponding review obligations, they will bear the negative consequences imposed by subsequent trial proceedings—namely, the exclusion of certain illegal evidence, which may result in an inability to sufficiently clarify doubts through evidence presentation. In summary, the current Criminal Procedure Law confuses the functions of pre-trial procedures with the respective roles of pre-trial investigative and prosecutorial organs, extending the prosecution's self-review and oversight of incriminating evidence into the exclusion of illegal evidence. This requires

corresponding amendments.

Second, provisions in both evidentiary law and procedural law impose a legal layer upon evidence beyond its inherent nature, dividing its application into two dimensions: within-law and outside-law. As demonstrated by the preceding analysis of the two major legal systems, legal restrictions on evidence only arise during the trial phase. In other words, only evidence presented at trial can be considered judicial evidence. Therefore, reviewing the legality of evidence falls within the functions and responsibilities of the trial process and judges. Before commencing the legal phase of fact-finding, a dedicated procedure should be established to address issues of evidence legality. Article 187(2) of China's Criminal Procedure Law stipulates: "Before the commencement of the trial, the presiding judge may convene the prosecutor, the parties, defense counsel, and litigation agents to understand the circumstances and hear opinions on issues related to the trial, such as recusal, the list of witnesses to appear in court, and the exclusion of illegal evidence." This serves as the legal basis for holding pretrial conferences in China. Generally, pretrial conferences are considered the primary preparatory stage for clarifying points of contention between prosecution and defense, resolving evidentiary and procedural legal issues, and facilitating smooth trial proceedings. However, both legislative provisions and judicial practice in China demonstrate a significant lack of emphasis on pretrial conferences. The provision to "understand the situation and hear opinions" weakens and diminishes the examination and scrutiny of evidence legality during the trial phase. This not only leaves pretrial conferences in China in an awkward position where matters are raised but not discussed, and discussed but not resolved, but also introduces illegal evidence into the evaluation of probative value, significantly undermining the neutral and fair adjudication of fact-finders. Amid heated discussions on establishing a pre-trial illegal evidence exclusion system, some scholars advocate for prosecutors to hold hearings on evidence exclusion during the review and prosecution phase. Such a cumbersome approach, which defies judicial norms, is difficult for this author to endorse. Wouldn't the most direct and straightforward solution be to fully leverage the pre-trial conference

procedure to achieve substantive exclusion of illegal evidence? On one hand, pretrial conferences represent a standard tripartite hearing structure involving prosecution, defense, and adjudication, maximizing limited judicial resources and aligning with the principle of procedural economy. On the other hand, these conferences are judge-presided proceedings where legal issues are adjudicated, with the judge serving as both facilitator and decision-maker—thus upholding the principle of procedural fairness. "Trial-centered" reform integrates substantive pre-trial conferences with substantive trials. Substantive pre-trial conferences form the prerequisite and foundation for substantive trials. Therefore, reforming pre-trial conferences to ensure substantive adjudication of evidence legality issues is imperative.

Finally, the "trial-centered" reform requires that information for criminal judgments be formed during court proceedings. Pre-trial information should not serve as the basis for adjudication but merely as necessary preparation to ensure the smooth commencement and conduct of trials. Therefore, the use of investigative case files during the trial phase should be strictly limited to reduce or eliminate their substantive influence on court proceedings. China currently operates under a "file transfer system." Article 176 of the Criminal Procedure Law stipulates: "Where the People's Procuratorate deems that the facts of the crime committed by the suspect have been ascertained, the evidence is reliable and sufficient, and criminal liability should be pursued according to law, it shall make a decision to prosecute, initiate public prosecution with the People's Court in accordance with the provisions on trial jurisdiction, and transfer the case files and evidence to the People's Court." This deals a fatal blow to the flow of pre-trial information into the trial process, thereby influencing judges' independent assessment of evidence. This is because "regardless of legislative provisions over the past decade or so, in practice, judges have access to the entire case file before the trial commences or after the first hearing." In reality, even when witnesses and experts appear in court for questioning and cross-examination, these written records documenting investigative agencies' collection of incriminating facts fundamentally shape judges' guilty verdicts. This is especially true

given China's underdeveloped rights to cross-examination and defense. The "assembly-line operation model" among public security, procuratorate, and courts in criminal cases inevitably leads to an alarmingly high conviction rate. The urgent priority is to halt the flow of pre-trial information into the trial phase. More precisely, judges responsible for fact-finding determinations should be prohibited from accessing and reviewing case files.

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