

On the Distribution and Application of Evidence in Economic Crime Cases

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Abstract: *China's criminal evidence rules show scattered, high abstraction, lack of systematic and systematic problems, which gradually can not meet the needs of criminal justice practice. In the process of handling economic crime cases, the public security and judicial organs have encountered difficulties in the direction of investigation and the comprehensiveness of the evidence, so it is urgent to collect and review the evidence of similar crimes to guide and standardize the relevant evidence work. Explore and use the law of evidence distribution in economic crime cases to provide practical considerations and ideas for the formulation of evidence collection and review norms in economic crime cases.*

Keywords: *Economic crimes, distribution of evidence, rules of evidence, norms of collection and review*

1. Introduction

At present, China has not yet issued a unified criminal evidence law, and the norms related to criminal evidence are scattered in the criminal Procedure Law, its judicial interpretation and relevant normative documents. In the field of criminal evidence norms, there are scattered provisions, lack of systematic system and high abstraction, which makes it is difficult to realize the positive guiding role of the public security and judicial organs in handling cases. Therefore, many problems, such as "lack of key evidence", "evidence cannot be verified with each other", and "evidence cannot constitute a closed evidence chain", occur frequently, and this phenomenon is particularly significant in the judicial activities of prosecuting economic crimes. With the frequency of major economic cases, criminal means emerge in endlessly under the background of scientific and technological revolution in the new era, which are updated day by day. The relevant work of the public security and judicial organs is slightly inefficient and powerless due to the lack of guidance of evidence collection and review norms, resulting in serious damage to the country and the society, and to commit rampant crimes by criminals. To this end, the Supreme People's Procuratorate pointed out that it is the basic task of the reform of the criminal procedure system centered on trial to formulate the basic evidence standard guidelines for all stages of criminal proceedings in order to standardize the investigation, prosecution and trial activities.[1]The Opinions on Promoting the Reform of the Trial-centered Criminal Procedure System, jointly issued by the two High Schools and three Departments, also said to "establish and improve evidence collection guidelines that meet the requirements of judges and adapt to the characteristics of various cases."At present, it is urgent to construct the guidelines for the evidence collection and review of similar crimes, and the efficient and orderly work depends on the consolidation of the relevant basic theoretical work. This paper intends to study the basic role of the evidence distribution theory in the construction of the evidence collection and review guidelines of similar crimes and in the construction of the norms of the evidence collection and review guidelines in the field of economic crimes.

2. The evidence operation pattern in the current economic crime cases

2.1 Dilemmas in the application of rules of evidence

Jiang Yongliang, deputy chief procurator of Jiangsu Provincial Procuratorate, believes that there is no unified criminal evidence law in China. The evidence norms in the field of criminal proceedings are

scattered in the criminal procedure law, judicial interpretation and other normative documents, and the degree of systematization is not high, so it is difficult to give full play to the guiding role of evidence collection and review.[2]From the current situation of legislation in our country, The provisions of the relevant contents of criminal evidence, In terms of content, the exclusion of illegal evidence, the distribution of the burden of proof, the testimony of witnesses, and the respect and protection of human rights are the main components; The judicial interpretation of the Criminal Procedure Law in 1996 and 2012 expanded a small number of the provisions on the collection and application of criminal evidence, In addition, some later content was added specifically to special crimes, It also involves the collection and application of evidence; Among other normative documents have "two high three" issued about the death penalty case review judgment evidence provisions of several issues and the provisions on criminal cases exclude illegal evidence and in 2017, the Supreme People's Procuratorate and the Ministry of Public Security issued on the public security organs for economic crime cases provisions and other related to the collection of criminal evidence review. On the whole, the norms about evidence are scattered, lack of systematization, high abstraction and lack of positive guidance, lack of internal logical consistency, and many repeated provisions, showing a fragmented state, which cannot fundamentally meet the needs of judicial practice.[3]

In addition to the problems of the criminal evidence rules themselves, the judicial workers also face the problem of differentiation within the evidence law. This kind of problem is not only reflected in the criminal procedure, civil litigation, administrative litigation about the provisions of the evidence is different, but also reflected with the development of society and science and technology, in criminal litigation activities for charges (crime elements), criminal means, criminal circumstances and produce the different plight of the criminal evidence rules of applicable. That is, with the development of the society, the criminal evidence law itself also has a trend towards becoming more complicated. Taking economic crimes as an example, in the process of the gradual development of social economy, the crimes of economic crimes gradually increase. According to their respective crime characteristics, criminal means and methods, they are divided into four categories of economic crimes: trade crime, smuggling crime, tax crime and financial crime. Each kind of economic crime is composed of multiple different economic crimes, and for each kind of economic crimes or each crime case of evidence collection, application, review, identification and other work also has its own characteristics and should apply standards, so also need to match the evidence rules play the role of guidance and specification.

2.2 The dilemma of the investigation and evidence collection of economic crimes

With the development of social economy and the progress of science and technology, the crime methods and means of crime in the economic field are also constantly renovated. Due to the lack of targeted guidance and guidance of the evidence rules of economic crimes, the practice of economic crimes has encountered the problem of obtaining evidence collection in the work practice.

2.2.1 The dilemma of the investigative direction

With the rapid development of Internet technology, the implementation site of economic crimes is gradually shifting from the real world that we live in to the virtual world in the network, and the economic crimes implemented in the network virtual world are fundamentally different from the traditional economic crimes. Such as opening a casino on the Internet, illegal fund-raising, the implementation of pyramid selling activities such as the implementation of the crime is taking advantage of the network virtual space, with the help of mobile phones and computer communication equipment in do not appear, without any direct contact face to face with the victims of the victim property rights and the infringement of the socialist economic order in our country. In the related network economy crimes, criminal suspects often try to hide their identity information so as to avoid the restrictions of the network real-name system set up on the virtual network in China, so as to effectively achieve the purpose of "stealth" to avoid the prosecution of the public security and judicial organs. In addition, the criminal suspect on the network of economic crime by the mobile phone number and other related contact information, set up the company's business license and other related company information, used by bank card number and other financial information can be through illegal means to forge and purchase to completely hide behind the scenes. Taking the crime of falsely issuing VAT invoices as an example. In such cases, the suspects took advantage of loopholes in the supervision of the network supervision of tax authorities to set up and operate "shell companies" with forged or purchased ID information, fabricate information of economic transactions in a short period of time, and ran away after falsely issuing a large number of VAT invoices. Once these false VAT invoices are circulated in China's economic market, they will bring great damage to the national tax revenue and economic market order.

The above characteristics of such economic crime cases directly determine the way the public security organs investigate such cases. In the practice of investigation, investigation activities no longer only collect and extract criminal evidence in the real space and time, but comprehensively search and screen through the real space and virtual space for all real or virtual network information related to criminal behavior. The change of this investigation mode directly poses a great challenge to the traditional economic crime investigation thinking, investigation methods and investigation skills and technology. The difficulty of this challenge is especially reflected in the investigators' collection, screening and processing of various complicated information of economic criminal activities through the network. Because in the virtual network trace information on the crime as a special crime evidence with other evidence does not have tamper-proof, concealment, loss, directly determines the investigators if you want to complete specification and timely extraction they have to need amounts of raw data and derivative data analysis and processing. In the absence of such criminal evidence rules to guide and standardize the investigation work, it is easy for investigators not to find the direction of solving the case when faced with a huge amount of network virtual information, and have no way to start.

2.2.2 The dilemma of comprehensive evidence collection

Under the background of the widely used Internet technology in the society, the economic crimes in the new era often have the new characteristics such as gang and chain. In criminal justice practice work often encounter a large economic crime cases hidden behind the huge criminal gangs, these criminal gangs some professional level is higher, clear internal and external division of labor, with a clear organizational structure, for every collective implementation of economic crime has carried on the careful and careful design. Some of the gangs are formed based on a family, the whole family out, close internal relations, mutual protection, brought huge problems for the breakthrough of investigation; some gangs are formed by multiple different criminal gangs work with each other, this kind of criminal gangs independent of each other, through the single line contact, thus forming a chain crime.[4]This chain of crime is often composed of several illegal industrial chain staggered, interdependent between each other, makes the whole economic crime crime scale rose to the industrial chain mode, to the people's public and private property rights and socialist economic order has a greater threat, at the same time to the investigation work also has greater challenges.

For these cases of economic crimes, the limited amount of evidence available for the public security and judicial organs is often encountered, and it is difficult to meet the proof standard of "true and sufficient evidence"; the collected evidence can only prosecute the criminal responsibility of individual suspects without catching all the members of the whole criminal gang, and can only strike some of the forces of the whole large criminal gang. To solve these problems, the public security and judicial organs urgently need to formulate corresponding evidence collection and review guidelines and norms for such crimes on the basis of summarizing the experience in handling such cases.

2.3 Exploration of evidence collection and review guidelines

In recent years, one of the main reasons for many unjust, false and wrong cases is the lack of evidence norms in criminal litigation activities. In the absence of direction guidance and the pressure from the society and the upper leadership, the investigators often tend to rely on the confession of the suspect, and ignore the normative and comprehensive requirements for evidence collection, and finally identify the crime of the suspect under the circumstances of the actual lack of evidence. At the same time, another direct result of insufficient evidence norms is the lack of crackdown on some premeditated and planned crimes. Investigation organs in the face of some criminal experience and professional skills of the criminal activities of criminals often appear not to prove the key facts of key evidence to fully collect extraction and fixed problems, lead to under the requirement of the current "confirm" proof model can not form a complete closed "evidence chain", thus unable to effective prosecution of criminal suspects. In addition, other problems caused by the lack of evidence norms in criminal litigation activities are also more reflected in the collection, review, application, identification and other links of criminal evidence. At present, under the background of the trial-centered litigation system reform, in order to solve the problem of insufficient evidence norms in criminal litigation activities, both the practical and theoretical circles have called for the accelerated research of evidence collection and review guidelines.

2.3.1 Work practice of evidence collection and review guidelines

Since 2015, China's Supreme People's Procuratorate in response to criminal proceedings activities

about the demand of evidence collection review guidelines and formulated the criminal case review arrest guidelines and the criminal prosecution case evidence guidelines, the two have about the evidence of the normative documents of the collection and review in the investigation practice of the work often encountered dozens of charges in the implementation of arrest activities and prosecution activities need to meet the evidence requirements and standards made detailed provisions. Local level, Guiyang city public security judicial organs jointly formulated the criminal case approved arrest evidence guidelines and the criminal case evidence collection guidelines, requirements in the public security law connectivity of big data handling platform of political science and law, the investigators must guide in a kind of criminal cases of evidence collection complete, input big data handling system of political science and law, the case can through levels, smoothly the next link. The Zhejiang Provincial Public Security Department, together with the High People's Procuratorate and the High Court, have jointly formulated the "Guidelines on the Collection and Identification of Evidence in Drug Cases", with clear guidelines and provisions on the relevant evidence collection, review and judgment activities conducted by the public security and judicial organs in the process of handling such cases.

Shanghai specifically for common economic charges in life made the illegal fund-raising cases arrest basic evidence standard, the fraud (network telecom fraud) case arrest basic evidence standard, the theft evidence standard and other normative documents specially used to guide the public security judicial organs in dealing with related types of economic crime cases of evidence collection review work. These evidence norms make specific provisions on the collection and examination of evidence according to the characteristics of each of the corresponding charges and the specific requirements of different stages of criminal proceedings, which timely responds to the urgent needs of the public security and judicial organs in the practice of handling cases, and has a strong guiding significance. In addition, Shanghai also efforts to explore the criminal proceedings combined with advanced computer science and technology, with the help of big data search, cloud computing and other technology research and development of "criminal case intelligent auxiliary case system" used to guide the public security judicial organs of evidence activities, namely to investigators with different types of cases need to collect evidence and how to standardize evidence guidance.[5] In 2019, the system was officially put into use in Shanghai and achieved great results.

2.3.2 Evidence collection to review guidelines for the theoretical needs

The exploration of the collection and review of criminal evidence works on the prevention of unjust, false and wrong cases, improving the efficiency and accuracy of the handling of the public security organs in the criminal procedure activities, and improving the quality of the evidence involved in the specific activities, and the requirement of the legal evidence system. As an important exploration of the work practice of public security and judicial organs nationwide, the formulation of the collection and review of criminal crime evidence has achieved phased success, but it is urgent to summarize, summarize, analyze and refine from the theoretical level to promote the leap of "from experience to theory".[6]

3. General expression of the distribution of evidence and its value

3.1 What is the distribution of the evidence for this matter

In the criminal field, the concept of evidence distribution has the following three connotations: the first is the difficulty of the case, the second is the distribution of all evidence in a certain space, and the third is the regularity of the type and quantity of evidence involved in a certain type of criminal cases. The object studied in this paper refers to the distribution of evidence in the third meaning.

"Evidence is information related to the facts to be proved to prove the possibility of the facts claimed by the parties." [7] From this point of view, the distribution of criminal evidence mentioned in this paper is used to prove the claims of both the prosecution and defense, and jointly acts on the distribution state and law of various information that restore the original facts of the case. Special attention should be paid that the study of this regularity is more focused on the macro level than the micro level. For example, in bribery crime cases, the evidence such as the confession and defense of criminal suspects and defendants often appears more frequently in the judgment of statistics based on a certain number of local courts, while the evidence of witness testimony and victims' statements is often rarely appeared. How to make this macro phenomenon accurate and intuitive representation of corruption and bribery crimes; the deep causes behind this phenomenon, and how to use the accurate grasp of this phenomenon and law to support the development of evidence collection guidelines are the

focus of evidence distribution. However, in a specific bribery crime case, problems such as whether there are one or several specific kinds of evidence, the reasons behind the emergence, and the impact of the emergence on the detection of the case are often not the objects of evidence distribution theory research.

3.2 Factors influencing the distribution of the evidence

Because the criminal evidence itself is a legal phenomenon rather than a natural phenomenon, the distribution of the criminal evidence is affected by the attributes of the evidence itself and is mainly affected by the legal factors. Legal factors, as the main part of the internal factors affecting the distribution of criminal evidence, involve the provisions on the constitutive elements of crime in the substantive law and criminal law, the definition of criminal evidence in the criminal procedure law of the procedural law, and the provisions on the types of legal evidence.

The distribution of criminal evidence is mainly affected by the internal factors, which is also affected by the external factors. The distribution of criminal evidence and criminal evidence is not only a legal phenomenon, but also a social phenomenon, so they are affected by many social factors, such as: social cognitive ability, external social environment, social public behavior, etc. For the existence of the influence relationship, the public security judicial organs can get the enlightenment is: can study the law of the distribution of criminal evidence to reverse cognitive external specific social factors, to timely adjust the relevant criminal case methods and ideas, such as evidence specification rules are timely modified to meet the needs of reality.

3.3 Value significance of the evidence distribution

Under the background of deepening the trial-centered reform in China, it requires the correct implementation of the principle of evidence judgment. The foothold of the standardization and adjustment of the whole criminal procedure activities should also be to improve the attention to the evidence. The activity of in-depth study and discussion of the evidence should start from the logical starting point of the evidence problem, that is, to pay attention to the distribution of the evidence after the occurrence of the criminal behavior.[8]Professor Bian Jianlin pointed out that the law of criminal procedure and certification rules should be unified, so as to formulate criminal evidence standards applicable to different stages of litigation activities on the basis of the existing laws, so as to play a role in standardizing the whole criminal litigation activities. And the law of evidence distribution itself belongs to the category of criminal procedure law. Only by paying more attention to the distribution of criminal evidence can the characteristics of the evidence involved in various types of criminal cases be found, so that the collection and review norms of criminal crime evidence can be formulated with a relatively high guidance and operability according to the law of litigation, and the follow-up relevant evidence work can be carried out. The study of the law of evidence distribution provides a theoretical and practical basis for the formulation of the current criminal evidence collection and review norms.

4. Applied Analysis of Evidence Distribution in Economic Crime Cases

When a crime is committed, it leaves various relevant information in the objective world. In all the stages of the criminal proceedings, the relevant information can prove the facts of the case, that is, the evidence used to finally convict and sentence the defendant. The screening process of these information in all stages of criminal proceedings is just the process of constantly optimizing the quality of evidence. Generally, for the evidence, its participation in the whole process of criminal proceedings ends in the criminal judgment issued by the court. Therefore, we can make statistics and analysis on the evidence of economic crime cases by statistics and analysis of the evidence in the criminal judgment of economic crime cases. However, it should be noted that the presentation of the case evidence in the criminal judgment is only a way of expression of the law of evidence distribution, rather than the law of evidence distribution itself.

4.1 Data collection and statistics

The type and quantity of evidence (involved in the first instance judgment of all smuggling and tax economic crimes included in the period from January 1,2017 to December 31,2021. This number is the number of cases involving a certain kind of evidence), as shown in Table 1. At the same time, in order to facilitate the regularity characteristics of the evidence contained in these two types of economic

crimes, the author also calculated and counted the ratio between the number of cases involving a certain kind of evidence during this period and the number of all such economic crimes during this period, as shown in Figure 1 and Figure 2. The author tries to take the two types of economic crime cases as an example to show the evidence distribution law of these two types of criminal cases through such statistical methods

As can be seen from Figure 1 and Figure 2, these two types of economic crimes respectively have their own evidence characteristics. Such as in smuggling crimes, documentary evidence, witness testimony, witness testimony, identification opinion and the record class evidence frequency is higher, all reached 60%, become the main evidence used in the process of such cases, and several other evidence frequency is low, are below 40%, especially the frequency of the victim statement is only about 0.1%. In tax crime cases, the frequency of different kinds of evidence can be clearly divided into three levels: the frequency of witness testimony and confession evidence is over 80%; the frequency of documentary evidence and documentary evidence is about 40%, and the frequency of material evidence, victim statement, audio-visual data and electronic data is the lowest, less than 10%. At the same time, the two types of economic crime case evidence characteristics have certain similarities, such as confession class evidence frequency is very high, are 94%, and the victim statement of the frequency of the evidence is very low, are less than 1%, which reflects the two types of economic crime in crime methods, ways, there are certain commonality. It has strong guiding and practical significance to grasp the evidence characteristics of each kind of crime through the law of evidence distribution.

Table 1: Type and quantity statistics of criminal evidence statistics

order number	A:physical evidence	B:documentary evidence	C:witness testimony	D:statement of a victim	E:Evidence of affidavit	F:expert opinion	G:Record class evidence	H:Audio -visual data, electronic data	I:Total number of cases
Smuggling crime	2418	3782	4011	6	5686	4066	4571	1553	6051
Tax crime	1269	8317	17506	81	19914	4168	10262	1316	21191

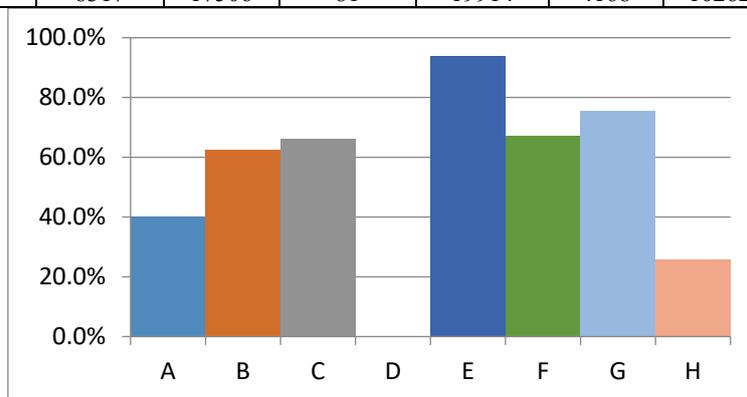


Figure 1: Statistics on the evidence of smuggling criminal cases from 2017 to 2021

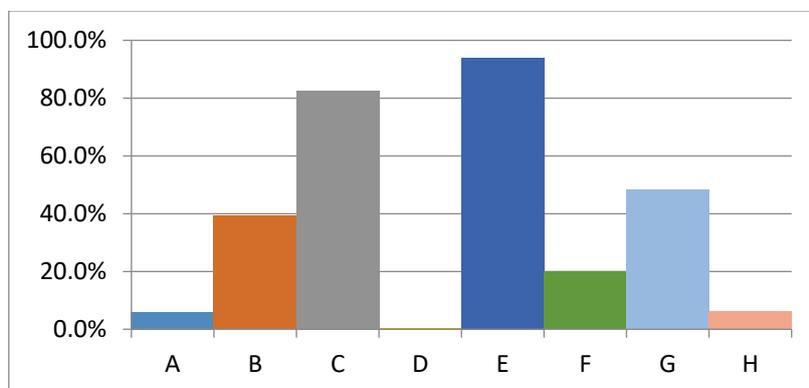


Figure 2: Statistics of evidence of tax crime cases from 2017 to 2021

In addition, in order to explore and prove the external influence of evidence distribution factors on

the influence of economic crime evidence distribution law, the author in 2016 China fully implement "business tax to VAT" tax system reform (hereinafter referred to as "camp to add") to false invoice crime influence of VAT invoice evidence distribution status as an example to elaborate. China fully push "camp to add" pilot time for May 1,2016, so the author to this point in time as the basis, the judgment documents online from January 1,2014 to December 31,31,2018 within 5 years in the each year of false invoice crime verdict screening and statistics, and calculate the false invoice crime VAT invoice evidence distribution and change trend, as shown in figure 3. According to Figure 3, it can be seen that the evidence distribution of VAT invoices in false invoice crime cases from 2014 to 2018 can be divided into two obvious trends with time: a flat state from 2014 to 2016, and a rapidly rising state from 2016 to 2018. The year 2016 has become a time turning point connecting the changing trend of the evidence distribution between the two paragraphs, corresponding to the reform of China's tax system.

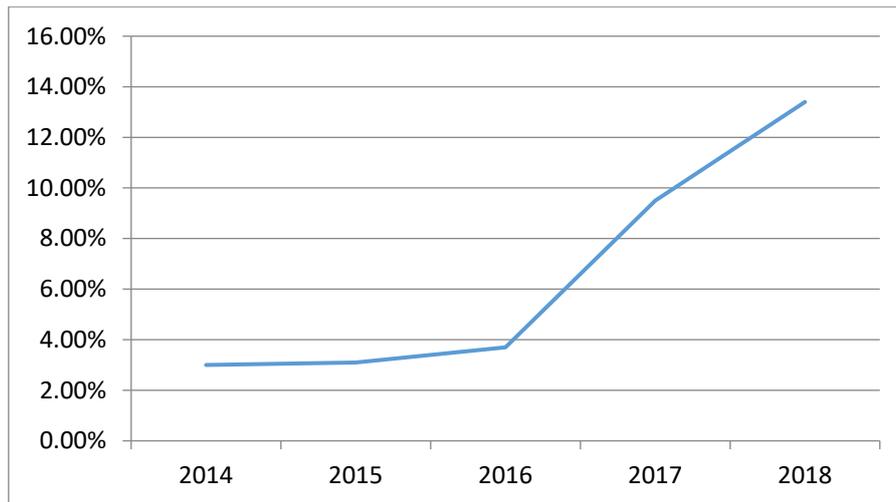


Figure 3: Evidence distribution and change trend of VAT invoices for false invoicing crimes from 2014 to 2018

4.2 Theoretical basis for the application of the evidence distribution law

The practical considerations required for the formulation of criminal evidence collection and review norms should not only stay at the level of problems in the work practice of the public security and judicial organs, but also go back to the specific elements of the crime composition, that is, the criminal evidence collection and review norms should be formulated under the guidance of the requirements of crime composition. However, in reality, the specific constitutive elements of the crime often can not directly have a specific guiding significance for the formulation of the norms, and there is not a medium between the two. The study of the distribution of evidence plays a role as this medium. Specifically, the information contained in the constitutive elements of crimes is shown by the evidence of specific criminal cases in reality, and the law of evidence distribution has a direct guiding role in the formulation of the evidence collection and review norms of similar crimes by summarizing the characteristics of the evidence of related criminal cases.

Criminal law on different charges provides different crime elements, the characteristics of the crime elements in the main degree determines the particularity of the same crime case evidence, class crime evidence collection review specification construction must fully consider the existence of the particularity, and the distribution of evidence law just can be to all kinds of crime cases involving the particularity of the evidence "counterpart".

4.3 To provide practical considerations for the construction of economic crime evidence collection and review norms

According to the law of evidence distribution, the public security judicial organs in dealing with a kind of criminal cases can be based on the characteristics of such crime evidence to case evidence for planning, focused collection review work, avoid every time untargeted for legal eight types of evidence type "eyebrows grasp". In tax evasion crimes in the past, for example, engaged in production and business operation activities of the criminal suspect in trading often to "ious invoice", the invoice

"receipt invoice" means of tax evasion crime, and the main evidence besides the criminal suspect, the defendant's confession and defense is related "ious", "receipt" and related trade activities traders witness testimony. Then these three kinds of evidence are the focus and breakthrough of the public security and judicial organs to collect, use and review the evidence in handling the tax evasion criminal cases of "other vouchers instead of invoices". In addition, the public security and judicial organs can also start from the law of evidence distribution of "other vouchers instead of invoices", combined with the accumulated work experience in handling such cases, to formulate norms for evidence collection and review of "ious", "receipt receipt" and restrict the relevant evidence collection.

At the same time, the law of evidence distribution can provide solutions to the difficult problem of confirming the unified application of the proof mode in the field of criminal litigation in China. Taking taking, for example, in such economic crimes, bribery and bribe often take "point-to-point" mode of criminal activities, the form is very secret, coupled with criminals often have relatively rich experience in crime, may become the conviction evidence information intentionally concealment and destruction, lead to the final case for investigators to collect and review the evidence is very scarce. This is clearly reflected in the distribution of evidence in such crimes. According to statistics, in the handling of bribery crime cases, the conviction evidence can be mainly manifested as the confession and defense of the bribe-taker, the witness testimony of the briber and the relevant property. In addition, most of the property involved belongs to species rather than specific objects, resulting in its proof role as physical evidence. In the situation that criminal evidence is so scarce, China's unified proof standard of "clear criminal facts, true and sufficient evidence" is difficult to achieve under the requirements of unified verification and proof mode in criminal justice practice. Therefore, it is necessary to stand in the reality of evidence distribution of the criminal justice field confirm proof pattern of unified thinking, namely whether the study need to according to the judicial practice of individual charges of special evidence distribution status and to confirm the application of proof pattern set exceptions or special circumstances, so as to develop the corresponding class crime evidence collection review specification.

5. Conclusion

In the work practice of handling economic crime cases, there is a lack of norms of evidence collection and review. Using the distribution of evidence to summarize and study the law of evidence in economic crime cases provides practical considerations and ideas to solve this problem. The author briefly demonstrates and expounds the evidence distribution law of such criminal cases through the record of the evidence of relevant economic criminal cases on the statistical judgment documents. However, due to the imperfection of the retrieval method and the ambiguity of relevant words and other factors, the statistical results have certain errors. Regarding the evidence distribution theory, Feng Junwei, Gong Dachun and other scholars have carried out a preliminary basic theoretical research, which provides a reference for the work of subsequent researchers. On the basis of previous research, the author tries to introduce the theory of criminal evidence distribution as a tool into the criminal justice practice of handling economic crime cases in China, and explores the practical application value and theoretical basis of evidence distribution with the problems existing in practice. In addition, the evidence distribution theory can also be applied to our country before all kinds of errors, the evidence in the regularity of the excavation, facilitate the legislature to further analyze the root cause of the present errors and on the basis for the perfection of illegal exclusion rules for evidence. How to use more and more advanced ways to accurately display the law of evidence distribution and how to combine the law of evidence distribution with modern science and technology such as big data justice and artificial intelligence to formulate electronic modelled evidence collection and review norms is also one of the important future research and exploration directions.

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