

# The Evolution and Development Trend of the American Federal Rules of Evidence

## – *Inspiration for China's Evidence Legislation*

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### Abstract

It has been nearly 50 years since the promulgation of the Federal Rules of Evidence in 1975. What changes have taken place in the Federal Rules of Evidence for a long time? For the evidence legislation in China, it is a very noteworthy issue. Through historical analysis and comparative research, we can find that the development of the Federal Rules of Evidence can be roughly divided into two stages: the first is the exploratory stage, during which the Federal Rules of Evidence were neglected and Congress continued to be actively involved. The second is the rapid development stage, during which the Advisory Committee on the Rules of Evidence were established and the number and quality of revisions steadily increased. The following major trends can be seen in the development of the Federal Rules of Evidence: Congress was replaced as the primary body responsible for updating the Federal Rules of Evidence by a special Advisory Committee on the rules of Evidence; the Rules of Evidence's form changed from fragmented common law to systematic codification; the exclusionary rule's scope of exceptions and judges' discretion gradually expanded; the level of procedural safeguards increased; and the Rules of Evidence were influenced by the development of electronic evidence and the Internet. For the development of China's evidence law, what can be inspired is that we need to systematize and codify the evidence rules, establish a special evidence law committee, strengthen the procedural guarantee, and pay attention to the evidence rules in the digital age.

**Keywords:** Federal Rules of Evidence, exclusionary rules, electronic evidence

### 1. 1975-1992: Preliminary Development Stage

After the enactment of the Federal Rules of Evidence, the Federal Rules of Evidence first experienced a relatively slow development process, which roughly covered the period from 1975 to 1992. The most obvious mark was the establishment of the Advisory Committee on Rules of Evidence in 1992 as the dividing line. During this period, two aspects of its development can be seen: one is the judicial body responsible for the revision of the Federal Rules of Evidence, and the other is the content of the revision of the Federal Rules of Evidence.

#### 1.1 Absence a Special Advisory Committee on the Rules of Evidence

Generally speaking, in the process of the revision of the Federal Rules of Evidence, the Advisory Committee on rules of Evidence plays an important role. On the one hand, it monitors the rules, evaluates the proposals and starts the revision process, which is the source of the revision of the rules. On the other hand, its work is comprehensive, not only reviewing the text of the rule, but also focusing on relevant academic research, new developments in federal jurisprudence, and the response of state judicial systems to the revision of the rule. However, for a long period of time after the enactment of the Federal Rules of Evidence, there was no advisory committee on Rules of Evidence. The revision of the Federal Rules of Evidence was jointly undertaken by the Advisory Committee on Civil and criminal Rules. Since October 1990, there has been a loose informal division of responsibility for rule revision by the Advisory Committee on Civil and Criminal Rules, both of which have the power to recommend changes to the Federal Rules of Evidence but rarely do so. Under the premise that the evidence law is uniformly applicable to civil and criminal proceedings, the judicial body responsible for the revision is the civil division of punishment, so it is inevitable that the revision of the rules of evidence will only focus on one party. The proposal

of the Civil Rules Committee may ignore the special needs of the prosecution and the defendant in criminal proceedings. Or the issue of the proposed rule, which ostensibly deals only with civil cases and in essence is closely related to criminal proceedings, does not attract sufficient attention from the Criminal Procedure Commission.

### *1.2 The Revision of the Federal Rules of Evidence Was Ignored*

In the nearly 20 years since the Federal Rules of Evidence was issued, the rules monitoring and revision have been ignored. Of the 12 revisions, only six were substantive, made by Congress and the Supreme Court. Congress initiated three revisions. First, Rule 410 -- pleas, plea discussions, and related statements was amended in the 12 December 1975 Act. This substantial amendment is to add admissibility circumstances to avoid the defendant escape prosecution of perjury. Rule 412, also known as the Privacy Protection for Rape Victims Act 1978, was added in the 1978 amendment to protect the privacy of victims in rape cases by stipulating that evidence of the victim's past sexual conduct is not admissible in cases of sexual crimes; The 1984 amendment amended Rule 704, Opinion on the Final point of contention, to allow, in principle, an expert to express an opinion on the final point of contention. The amendment added the (b) exception where the expert was not allowed to express an opinion on whether the accused had a mental state or condition that constituted an element of the offence charged or a defence element. The amendments initiated by the United States Supreme Court were carried out on the recommendation of the Standing Committee on Rules of Procedure and the Judicial Conference. In 1979, Rule 410 -- pleas, plea discussions, and related statements were amended to adjust the structure of the article, restate and refine the circumstances that should be excluded, and make it more clear and organized; In 1990, Rule 609 was amended to impeach witnesses based on conviction judgment, which cancelled the provision that witnesses could only be impeached based on conviction judgment in the process of cross-examination, because in judicial practice, it was found that the restriction was meaningless, and witnesses usually disclosed their previous crimes during direct inquiry, so as to eliminate the adverse effects of "impeachment" in advance. In 1991, Rule 404 (b), the exception to the use of evidence of crime, wrongs or other acts to prove character, was amended to add a requirement for pretrial notice by the prosecution in criminal cases, with the aim of reducing evidence raids and facilitating early resolution of admissibility issues. In addition to the above substantive amendments, others are more purely technical amendments, mainly through restatements to make the provisions easier to understand and remove ambiguities.

Generally speaking, the establishment and development of the Federal Rules of Evidence in this period were in the exploratory stage both in terms of the revision subject and content. First, in terms of the number of revisions, mainly technical revisions, substantive revisions less. During the same period, the Federal Rules of Civil Procedure underwent more than 100 substantive amendments through the rule revision process, by contrast, the revision of the Federal Rules of Evidence looks very absence. Second, in terms of the subject of revision, during this stage, the Congress often directly revised the rules of evidence in the form of promulgation of bills, bypassing the regular procedures of revision of rules such as deliberation of bills by the Standing Committee on Procedural Rules. Amendments are often made with a strong purpose, such as to correct the great injustice caused by the rules in judicial practice cases, or to achieve some political purpose, such as in the "Hinckley amendment to Rule 704", prohibiting expert testimony on the ultimate issue of sanity. Third, in terms of the revised content, the enactment of the Federal Rules of Evidence has relaxed many restrictions in the rules of evidence compared with the common law. This relatively liberal attitude has been upheld in the revision process of the Federal Rules of Evidence. For example, Rule 404 (b) provides that "evidence of a crime, wrong, or other act" may be admissible for "another purposes", which are broad in scope and include any purpose other than proving the defendant's predisposition to commit a crime, creating a tendency for inclusive admissibility. Compared with the common law, which only limits the use of the evidence to the limited purpose of "motive, identity and intention", the admissibility standard of evidence is relaxed to a large extent. During this period, the evolution of the federal Rules of evidence generally expanded in terms of the admissibility of evidence. The liberal tone of the federal Rules of Evidence remains unchanged, aiming to bring as much evidence as possible into the court.

## **2. 1992-Present: Rapid Development and Maturity Stage**

Nearly 20 years after the promulgation of the Federal Rules of Evidence, a special Advisory Committee on Rules of Evidence was established in 1992 to evaluate the amendment proposal of the Federal Rules of Evidence and to continuously monitor the operation and effect of the rules of evidence. The establishment of the Advisory Committee on Rules of Evidence has provided a new impetus for the further development of the Federal Rules of Evidence, with steady progress in both the quantity and quality of the revisions.

### *2.1 Constitute to the Advisory Committee on Rules of Evidence*

Under the strong appeal of judges and some scholars, the Advisory Committee on the Rules of Evidence was

established and began to take charge of the revision of rules of evidence. By examining the meeting minutes of the Advisory Committee on the Rules of Evidence, it can be found that since 1993, the Advisory Committee has held two meetings every year, in spring and autumn, and formed a convention with standardized meeting agenda, meeting minutes and Advisory committee report. In the spring session of 1994, the Advisory Committee on Rules of Evidence formally put forward its revised opinions, and its monitoring and revision work began to gradually get on track. In its attitude towards revision, it has adopted the conservative concept of "minimal revisions—only those changes necessary to resolve the most compelling problems— nothing that could be considered law reform." In recent years, the Advisory Committee on Rules of Evidence has focused on cutting-edge topics by convening seminars and discussing how these topics will impact the revision of the rules of evidence. For example, in 2014, a seminar themed on the challenge of electronic evidence was held to discuss the intersection between evidence rules and emerging technologies, and to respond to technological change through the formulation and revision of rules. In 2015, a seminar on hearsay rule reform was held to discuss the relaxation of restrictions on hearsay in the Federal Rules of Evidence. In 2017, a symposium titled "Forensic Scientific Expert Testimony, Daubert, and Federal Rule of Evidence 702" will explore a new round of regulation of forensic evidence and scientific evidence more generally. As a whole, the Rules of Evidence Advisory Committee is indispensable to the revision of the Federal Rules of Evidence and is becoming more important.

### *2.2 Frequent Amendments to the Federal Rules of Evidence*

Since the establishment of the Advisory Committee on the Rules of Evidence, the revision of the Federal Rules of Evidence has moved forward rapidly, the number of revisions has increased, and the content of revisions has also taken into account both theory and judicial practice. Significant progress has been made in the rules of character evidence, hearsay evidence, expert testimony and electronic evidence. During this period, the rules were revised with the following characteristics: 1. The logic and expression of the rules were reorganized, and the basic structure of the rules was excluded in principle, adopted in exceptional cases and the corresponding procedures adopted; 2. Increase the exceptions in the exclusion rule, especially the elastic exceptions that need to be judged by the discretion of the judge, which are mainly manifested in the increase of other exceptions; 3. Pay attention to protecting the parties' right of confrontation, and impose more procedural notification obligations on the prosecution organs; 4. Pay attention to the influence of technological development on evidence rules; 5. It is shown as periodic centralized revision. At a certain stage, a certain type of evidence rules is used as a thematic study for revision, which is conducive to the systematic and logical construction of the internal evidence rules of a specific topic, and then a complete exclusion system of evidence rules is formed.

## **3. The Modern Development Trend of the Federal Rules of Evidence**

### *3.1 Establish a Special Organization for Monitoring and Revising Rules*

Since 1975, there have been two leading bodies in the process of revising the Federal Rules of Evidence – Congress and the Advisory Rules of Evidence, representing the legislative and judicial powers. Congress delegated the basic rulemaking function to the Supreme Court through the Rules Enabling Act, while reserving the power to review and reject any rule passed by the Court. In terms of the revision process of the rules of evidence, in the early stage, especially before the establishment of the Advisory committee on Rules of Evidence, the Congress revised the rules of evidence relatively frequently. When there were only six substantive revisions, the Congress revised half of the rules of evidence. However, after the establishment of the Advisory Committee on Rules of Evidence, the involvement of Congress became significantly less. The new attorney-client privilege rule was enacted by the Congress in 2007, but in the process of formulating the rule, the Advisory Committee on Rules of Evidence was mainly responsible for it, and the Congress played a very limited role. In addition, the rule revision work led by the Rules of Evidence Advisory Committee is usually adopted by default by the Congress and takes effect, which keeps the modesty in the process of rule revision. This also means that the work of the Rules of Evidence Advisory Committee is on track and is well qualified to monitor and revise the rules of evidence. This change reflects the gradual stability and maturity of the revision procedure of evidence rules, from the absence of special rules committee responsible for the revision of evidence rules in the early days to the establishment and real functioning of evidence rules advisory committee, from the Congress and the Rules committee jointly responsible for the revision of evidence rules, to the gradual withdrawal of Congress from the revision of evidence rules in essence. This change has been beneficial for the development of rules of evidence. Early congressional revisions to the rules of evidence were highly political, and when Congress intervened, the rules were changed for political reasons. For example, Rule 413-415 was added in 1994 because of Congress's political goal of being "tough on crime." These revisions did not go through the regular rulemaking process and lacked participation, leading to problems in the value selection and application of the rules. The addition of rules 413-415 has been strongly criticized as a direct breakthrough in the rules of character evidence. It allows a specific instance of sexual assault to be used to

show that a person has the character or inclination to engage in such conduct in order to prove the conduct in a particular situation, deprives the defendant of equal protection, and may violate the constitutional clause of double jeopardy, whereby the defendant is in danger of being retried in this case for an act for which he has not previously been convicted. Despite the many critics, Congress rejected the judicial Conference's criticism and the proposal for reconsideration, and the revision eventually went into effect. The congressional revision focuses on the political purpose of cracking down on crime, but ignores the value choice in evidence law and the guarantee of due process in litigation. Although there is a close link between politics and legislation, amendments to the rules of evidence that avoid consideration in a heated political atmosphere and include a wide range of expert and public opinions will be more conducive to the scientific development of the rules.

### *3.2 The Increase of the Exceptions of Evidence Exclusion Rule and the Expansion of the Judge's Discretion*

The increase in exceptions to the evidence exclusion rule means that more and more evidence is being brought into court. The Federal Rules of Evidence have the revolutionary idea that any relevant evidence that would help a trier of fact can be admissible if it is not deemed inadmissible for policy-based reasons. In the process of the development of the federal rules of evidence, the exceptions to the exclusion rule are still increasing, which is reflected in the revision process of the rules of character and hearsay evidence. In the rule of character evidence, the revision in 1994 added the exceptions of civil cases in Rule 412 and Rules 413, 414 and 415 as exceptions to the rule of character evidence exclusion. Character evidence is likely to be increasingly used. However, the Court unanimously held that the trial judge retains the discretion provided for in Rule 403 in applying these rules. In order to balance the adoption of exceptional cases of character evidence with the judge's discretion, Rules 413 to 415 will not cause significant damage to the principle of the rule of character evidence. The same trend is also shown in the evolution of hearsay evidence rules. The expansion of admissibility is reflected in two aspects: one is the increase of the exception clause of hearsay rule. Since the 17th century, the exception of hearsay rule has almost increased in one direction, but never decreased; Second, in addition to specific exception rules, the provision of "other exceptions" is added to cover other exceptions. The judge's discretion also expands with the application of the backstop clause. Compared with the relatively conservative and restrained revision of the Federal Rules of Evidence, the academic community has a more radical attitude towards the hearsay rule. Some scholars advocate abolishing the hearsay rule, some scholars advocate abolishing the hearsay rule in the trial of judges, and although they do not advocate abolishing the hearsay rule, they severely criticize the hearsay rule and put forward various rules of discretion. A personalized judicial assessment is required. Predictions of the impending death of the hearsay rule have been rife, but to this day, the Advisory Committee on the Rules of Evidence has protected the existence of the hearsay rule by only extending the exception to achieve the admissibility of evidence and reduce the adverse effects of the exclusion rule. Although the amendment of Expert testimony Rule 702 does not add the exception clause, the change from Frye standard to Daubert standard has relaxed the adoption standard of expert testimony to some extent, and more especially updated scientific results can be adopted to prove the facts of the case. The development from the Daubert standard to the Kumho Tire case has expanded the scope of cases that Daubert standard applies to. Under the more flexible criteria is an expansion of the judge's discretion, with judges having "wide latitude" in determining whether the factors established in Daubert are helpful in determining the reliability of testimony. Generally speaking, the scope of admissibility of the federal Rules of Evidence shows a tendency to expand. With the addition of "other exceptions" and other provisions, the rules of evidence gradually change from rigid to flexible.

### *3.3 Procedural Safeguards Are Increasingly Enhanced*

In the Federal Rules of Evidence, procedural protection is realized by imposing a reasonable notification obligation on a party, which aims to protect the rights of the relatively disadvantaged party in the litigation and achieve the balance of interests as far as possible. Generally, it is reflected that before adopting the evidence that should have been excluded, the prosecution should provide reasonable notice before the trial, give the other party fully know the opportunity, make defense preparations in advance, avoid the injustice brought by the evidence raid, and realize the procedural protection for the defendant in this way. The relevant rules include the rule of character evidence and the rule of hearsay evidence. Among them, Rule 404 and Rule 413-415 stipulate the obligation of the public prosecutor to give reasonable notice to the defendant in advance. The adoption of such evidence is likely to increase the probability of conviction of the defendant, so the defendant should be given enough opportunities to prepare for defense. Rule 412 stipulates that in a sexual crime case, the defendant must file a motion in advance before presenting evidence related to the victim's past sexual behavior, and the court must hold a secret hearing to hear the victim and all parties' opinions before accepting the evidence. The admissibility of the evidence is likely to prejudice the jury and exonerate the defendant, and has implications for the privacy of the victim, so adequate procedures are needed to ensure that the judge hears multiple opinions and makes a reasonable decision about

whether to admissible the evidence. Other exceptions to Rule 807 hearsay rule stipulate that hearsay is admissible only when the person who presented the evidence gives reasonable notice in advance and the parties have a fair opportunity to respond to it. The purpose is to protect the equal right of confrontation between the parties. In general, the increasing enhancement of procedural protection is mainly reflected in the obligation of reasonable notice. On the one hand, the obligation of reasonable notice has emerged from scratch in the Federal Rules of Evidence. The amendments to Rule 404 in 1991 and Rule 803 (10) in 2013 both added the obligation of reasonable notice when the public prosecutor wants to present the corresponding evidence. On the other hand, the degree of the obligation to give reasonable notice ranges from broad to specific. The 2019 amendment to Rule 807 and the 2020 amendment to Rule 404 both require the notice to be given in written form, and the reason for providing such evidence (including intention, content, etc.) should be stated in the notice to ensure the practical effect of reasonable notice.

### *3.4 The Influence of Scientific and Technological Progress on the Rules of Evidence Is Increasing Gradually*

The emergence and frequent use of photocopying technology and electronic evidence have broken through the original requirement in the rules of best evidence and simplified the self-authenticating procedure of evidence, thus affecting the traditional rules of evidence. The development of photocopying technology has made copies as admissible as originals. Rule 1003 stipulates the admissibility of duplicates, elevates the evidentiary status of duplicates to a new height, which is a breakthrough to the rule of best evidence and a major reform to the common law. With the development and general application of electronic evidence, this provision becomes more and more indispensable. In the case of excluding human intervention and equipment failure, electronic evidence can realize the exact same of the original and the copy, so that the distinction between the original and the copy is no longer obvious, and the necessity of the original requirement in the best evidence rule will decrease with the increase of electronic evidence. The second is the simplification of the evidence self-authenticating procedure. In 2017, the amendment to Rule 902 Self-authenticating was added in paragraph (13) and (14), which stipulates that the certification records generated by the electronic system and the certification data copied from the electronic equipment, storage media or documents can realize self-verification, without the need to provide external evidence about verification in order to be adopted. Its purpose is to simplify the authentication procedure of electronic evidence. Based on the maturity of electronic data technology, it is no longer necessary to supplement the proof through identification, expert testimony or other evidence methods. It can be directly adopted. In addition, technological advances are also affecting the traditional rules of evidence, such as the 2017 amendment to Rule 803 (16) hearsay exception "ancient documents" and the 2022 amendment to Rule 615 excluding witnesses. Advances in storage technology have made "ancient documents" are not ancient, and the growth of the Internet has determined that it is not enough to order witnesses excluded from the court. The development of video technology has changed the existing way of court hearing, and in fact accelerated this change under the influence of COVID-19, which will have an impact on the way of evidence presentation, cross-examination and authentication. Online testimony has changed the dilemma of witnesses not being able to appear in court, which may reduce hearsay evidence and make it more likely that discussions on abolishing hearsay will reach an agreement and make new progress in the future. It is reasonable to believe that in the future, technological progress and the development of the Internet will further influence the rules of evidence, and this influence will be permanent rather than temporary.

## **4. The Enlightenment of the Development Trend of the Federal Rules of Evidence to China**

McCormick, a scholar of evidence law, once asked: "what is worth keeping in our Anglo-American system of evidence law and how can it be preserved? Can the useful rules be repaired and retained, the obsolete junked and thrown away?" This problem also can apply to the development of the rules of evidence in China. The previous article examines the revision process of Federal Rules of Evidence, and summarizes its development rules and new trends. For China's evidence law, it can answer the question of what direction China's evidence law should go in the context of complex judicial reform and technological development to a certain extent. There are many differences between Chinese and American evidence laws, but as a late developing country of legal system, we can always see the impact of learning British and American evidence laws in the process of rapid development. First of all, in terms of the judicial system, the establishment of the pretrial conference system in 2012 and the grand jury mode in 2018 both absorbed some key features of the Anglo-American litigation system and provided institutional space and soil for the development of evidence exclusion rules in China. Secondly, in terms of the development of rules of evidence, From the Two Provisions on Criminal Evidence in 2010 to the Provisions on Several Issues concerning the Collection, Extraction, Examination and Judgment of Electronic Data in Handling Criminal Cases (hereinafter referred to as the Provisions on Electronic Data) to the Provisions on Several Issues concerning the Strict Exclusion of Illegal Evidence in Handling Criminal Cases (hereinafter referred to as the

Provisions on the Strict Exclusion of Illegal Evidence), Hundreds of rules of criminal evidence have been established, and the number of exclusion rules, especially those of illegal evidence, has increased greatly. In this context, it is natural to pay attention to the development trend of the Federal Rules of Evidence. As the symbol of the American evidence law, the Federal Rules of Evidence has been developed so far with its unique system and strict logic, and the laws, directions and trends reflected in the development process can provide experience and inspiration for the further development of the Chinese evidence law to a certain extent.

#### *4.1 Systematization and Codification of Evidence Rules*

The existing rules of evidence, except for the special chapters on evidence in the Civil Procedure Law of the People's Republic of China and the Criminal Procedure Law, are mostly concentrated in various special judicial interpretations. In recent years, the rules of evidence have made great progress in both quantity and quality. In civil litigation, Several Regulations of the Supreme People's Court on Evidence in Civil Litigation were revised and improved in 2019, and a large number of evidence rules related to online litigation were added to Online Litigation Rules of the People's Court in 2021. In criminal procedure, the Provisions on Several Issues of Examining and Judging Evidence in Handling Death Penalty Cases and the Provisions on Several Issues of Excluding Illegal Evidence in Handling Criminal Cases issued in 2010 established basic principles of criminal evidence such as the principle of evidence adjudication, the principle of legal procedure, the principle of cross-examination of evidence, and added admissibility rules such as the rule of opinion evidence and the rule of best evidence. In 2016, the Provisions on Electronic Data were promulgated to regulate the collection, extraction, review and judgment of electronic data. The Regulations on Strictly Excluding Illegal Evidence issued in 2017 expanded the scope of the exclusion of illegal evidence and detailed rules for the exclusion of illegal evidence from investigation to trial. However, the most prominent problem is that the number of evidence rules in judicial interpretation is far more than that in legislation, and the content provisions are more detailed and functional. It is similar to making patches where there are problems. There are many repeated or contradictory provisions among various judicial interpretations, resulting in logic confusion and inconsistent application and other problems. Therefore, it is imperative to integrate and form systematic rules of evidence, and the best way is to codify rules of evidence.

#### *4.2 Establish a Special Evidence Law Committee*

A special committee on Evidence law has been set up to monitor the development of the theory and practice of evidence law and put forward suggestions for legal revision. In addition to completing the systematization of evidence rules, daily attention and monitoring of evidence rules are also important, such as paying attention to the problems that may occur in the application process of evidence rules, the impact on evidence rules with the emergence of new developments such as electronic evidence and online litigation or the reform of the judicial system, and whether further amendments are needed. This kind of monitoring is helpful to discover and solve problems in time and promote the sound development of evidence law. The Evidence Law Committee should gather experts from various fields of legislation, judicature and theory as members, hold regular meetings to put forward reports, opinions and suggestions on the revision of the rules, which can strengthen the interaction and information communication among legislation, judicature and theoretical research, and timely reflect the development of theoretical research and judicial practice into the process of the revision of the rules.

#### *4.3 Procedural Safeguards Need to Be Enhanced*

For a long time, China lacks evidence admissibility rules, and often turns evidence admissibility into a problem of credibility. The reason why this feature appears, mainly lies in the lack of corresponding program guarantee. In recent years, with the development of evidence law, the number of evidence admissibility rules in criminal proceedings has been increasing. According to different types of evidence, a classified evidence adoption rule system has been initially formed, and a two-stage evidence review mode of examining the admissibility of evidence first and then examining whether it is credible has been constructed in judicial practice. In the Federal Rules of Evidence, where exclusion is the principle and adoption is the exception, the defendant is required to be given written notice of the detailed contents of the evidence in advance for the evidence that is not clearly stipulated and depends on the judge's discretion to decide whether to adopt or not. Then, in the rules of evidence adopted as the principle and exclusion is the exception in China, for the evidence provided by the prosecution, It is even more important to give the defense procedural safeguards to dispute the admissibility of evidence. The establishment of the procedural guarantee system can be carried out from the following aspects: First, evidence discovery should be carried out before the trial to give the opposing party sufficient opportunities to understand the evidence, and to prepare for attack and defense, prevent the lack of evidence into the court investigation, at the same time to determine the main dispute points of the case. Although the Supreme Court of China has improved the procedure of pretrial conference in the People's Court Handling Criminal Cases, it is more guidance than mandatory. Secondly,

it is a long way to guarantee the defendant's cross-examination right and establish a standard and practical cross-examination mechanism during the trial. Although the Supreme Court of China has refined the rules of cross-examination in the Court Investigation Rules of the Ordinary Procedure of the People's Court for the First Instance of Criminal Cases (Trial), there are logic confusion and principle errors in the rules of cross-examination in this rule. In civil proceedings, although there are not as many rules of admissibility, there are the same problems with the substance of pretrial conferences as in criminal proceedings, and the degree of discovery needs to be enhanced.

#### 4.4 Focus on the Change of Evidence Rules in the Digital Age

The development of the Internet, artificial intelligence, blockchain and big data has had a profound impact on laws, regulations and the judicial system, and it is foreseeable that with the continuous innovation of technology, it will have a more long-term and far-reaching impact. China's judicial organs have also made positive responses to these changes in the formulation of relevant rules. Following the promulgation of the Provisions of the Supreme People's Court on Some Issues concerning the Trial of Cases by Internet Courts in 2018, and the promulgation of the Online Litigation Rules of the People's Courts in 2021 to amend the Civil Procedure Law, the evidence rules of online litigation have been evolving. Among them, the Online Rules of Litigation lays emphasis on the submission, validity and review of electronic materials, as well as the validity, review and identification of blockchain certificates. However, compared with the Federal Rules of Evidence, China develops the rules too fast. Although the rapid formulation of rules provides a legal basis for the application in judicial practice, there is a lack of sufficient demonstration and consideration of rules in the early stage. In the background of insufficient research on evidence theory, there are great disputes over the relevant rules. Take the blockchain evidence rules as an example. Articles 16 to 19 of the Online Litigation Rules of the People's Court stipulate the validity of blockchain evidence and the authenticity review before and after the link. But the rule is so technical that terms such as "cleanliness, system environment, technical security, encryption mode" are incompatible with the rules of evidence law, making it difficult for judges to judge directly. In the United States, the blockchain evidence is included in the category of electronic evidence, and the authenticity judgment is made according to the examination method of electronic evidence, such as the expert testimony rules, self-verification rules and judicial cognition rules in the Federal Rules of Evidence. Some states have further expanded these rules through legislation. But generally speaking, it does not break away from the scope of legal theory and existing rules of evidence. It should be noted that when making rules to regulate these new types of highly technical evidence, it is necessary to base on the authenticity in the legal sense rather than the technical sense, and our evidence rules should belong to the legal norm rather than the technical norm. It will be more scientific and practical to reject the deification of blockchain evidence and consider the formulation of blockchain rules on the basis of existing rules, especially on the basis of electronic evidence review rules.

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