

CONVERGENCE OF EVIDENCE SYSTEMS:
CHALLENGES AND PATHWAYS UNDER
CHINA’S OVERSIGHT AND CRIMINAL
PROCEDURE LAWS

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Abstract:

The coordination and unification of the Oversight Law and the Criminal Procedure Law are crucial guarantees for handling duty-related crime cases and inherent requirements for deepening the reform of the national oversight system. Based on considerations such as the unified coordination of the legal system, the protection of citizens' fundamental rights, and judicial efficiency, the convergence of evidence has become the nexus linking these two laws. Given the characteristics of duty-related crime cases, the oral evidence of the person under investigation is central to this evidentiary convergence. Currently, there remains room for improvement in both legislation and judiciary regarding evidence convergence. Issues include the lack of a differentiated review approach for oversight evidence, the systemic positioning of the statements, confession, and arguments of the person under investigation, and difficulties in implementing the rules for the exclusion of illegal evidence. In response, a differentiated review approach towards oversight evidence should be upheld. Combining the 2024 Oversight Law of the People's Republic of China and the 2025 Regulation on the Implementation of the Oversight Law of the People's Republic of China, interpretations should be provided for the aforementioned issues, considering factors such as the political orientation of the oversight procedure and the protection of fundamental human rights, thereby offering solutions for evidence convergence.

Keywords: *Oversight Law, Criminal Procedure Law, Oral Evidence, Convergence*

Since the decision of the Standing Committee of the 12th National People's Congress on December 25, 2016, to pilot the national oversight system reform in Beijing, Shanxi, and Zhejiang, following the Party Central Committee's deployment, the reform has been comprehensively and deeply advanced. The 2018 Oversight Law of the People's Republic of China provided the

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fundamental legal basis for this reform. To further implement the Party's anti-corruption work, strengthen the legal institutional framework against corruption, and address practical uncertainties since the reform's inception, the Standing Committee of the 14th National People's Congress passed the Decision to Amend the Oversight Law of the People's Republic of China at its 13th session, leading to the promulgation of the 2024 Oversight Law (hereinafter referred to as the 2024 Oversight Law). The 2025 Regulation on the Implementation of the Oversight Law of the People's Republic of China (hereinafter referred to as the 2025 Regulation), revised and adopted at the plenary meeting of the National Oversight Commission, serves as an important supporting provision for implementing the 2024 Oversight Law, providing specific operational guidelines to ensure the impartial exercise of oversight power in accordance with the law. As the jurisdiction over duty-related crimes by oversight authorities was transferred from procuratorial organs, and cases, after investigation by oversight authorities, are transferred to procuratorial organs for examination and prosecution, the convergence between the oversight investigation procedure and the criminal procedure, and between the Oversight Law and the Criminal Procedure Law, becomes a critical bridge for handling duty-related crime cases justly, fairly, and efficiently according to law. Modern litigation prioritizes evidence, adhering to the principle of evidentiary adjudication. Evidence is the soul and cornerstone of litigation procedure; without it, the procedure cannot advance. Specifically, in duty-related crime cases, the oral evidence of the person under investigation is paramount. Since jurisdiction over duty-related crimes lies with oversight authorities, most oral evidence is generated during the investigation procedure. How to handle the convergence of oral evidence between the investigation procedure and the criminal procedure presents a practical challenge for procuratorial organs. Based on practical case handling and considerations of legal system coherence, the 2024 Oversight Law addresses several issues related to oral evidence in oversight practice. The 2025 Regulation further stipulates, from the perspective of specific case handling guidance, various aspects such as the types, collection, transfer, and exclusion of evidence in the investigation procedure, thus forming a guide for how oversight authorities standardize their treatment of the oral evidence of the person under investigation during the investigation procedure. This paper, taking certain provisions of the 2024 Oversight Law and the 2025 Regulation as objects of analysis, intends to discuss the convergence and transformation of the oral evidence of the person under investigation between the oversight procedure and the criminal procedure, attempting to elucidate the dilemmas and pathways for improvement in the convergence of the evidence systems of the Oversight Law and the Criminal Procedure Law.

I. WHY SHOULD OVERSIGHT EVIDENCE CONVERGE WITH CRIMINAL EVIDENCE?

For a duty-related crime case, it typically flows through the following process: case docketing and investigation by an oversight authority, transfer to a procuratorial organ for examination and prosecution, prosecution by the procuratorial organ to a people's court, adjudication by the court, and finally execution. In this process, the correct handling of the case by oversight authorities, procuratorial organs, and people's courts alike relies on the examination and evaluation of evidence. Precisely for this reason, evidence is the sole medium for the transition from the oversight procedure to the criminal procedure. Efficient and standardized evidence admission and application can avoid duplicate evidence collection, save judicial resources, and enhance the efficiency of handling duty-related crime cases. Evidence convergence is the core nexus linking the oversight procedure and the criminal procedure.¹ The question of why oversight evidence should converge with criminal evidence can be answered from three aspects: unified coordination of the legal system, protection of human rights, and judicial efficiency.

A. BASED ON CONSIDERATIONS OF UNIFIED COORDINATION OF THE LEGAL SYSTEM

All legal norms can, and must, be understood within the entire legal system.² For duty-related crimes, despite repeated emphasis on their feature, they cannot escape the concept that "duty-related crimes are one category of crime", nor the essence that "the prosecution of duty-related crimes involves the use of state power to prosecute defendants according to law." Therefore, discussions on duty-related crimes under the jurisdiction of oversight authorities cannot avoid the parts involving criminal procedure. Moreover, the jurisdiction over duty-related crimes was transferred from procuratorial organs to oversight authorities. Under the current institutional framework, after concluding the investigation procedure, if the oversight authority determines that the person under investigation has committed a duty-related crime, it shall transfer the case to the procuratorial organ for examination and prosecution according to law. Evidence is the

¹ Wei Yuening (卫跃宁) & Geng Yuxuan (耿宇轩), *Jiancha Zhengju Zai Xingshi Susong Zhong De Zhunru Yu Yunyong* (监察证据在刑事诉讼中的准入与运用) [Admission and use of supervisory evidence in criminal proceedings], 7 ZHONGGUO JIANCHA GUAN (中国检察官) [THE CHINESE PROCURATORS] 8 (2025).

² Lei Lei (雷磊), *Rongguan Xing Yu Falü Tixi De Jiagou-Jianlun Dangdai Zhongguo Falü Tixi De Rongguan Hua* (融贯性与法律体系的建构——兼论当代中国法律体系的融贯化) [Coherence and the Construction of Legal System: How to Improve the Coherence of Contemporary Chinese Legal System], 2 FAXUE JIA (法学家) [THE JURIST] 1 (2012).

key to maintaining the normal operation of both procedures. Without coordinated handling of evidence, a correct and objective understanding of the case cannot be formed. If there is a lack of convergence and transformation between oversight evidence and criminal evidence, it is possible that oversight authorities and procuratorial organs might hold different views on the evidence and the case, affecting case handling and thereby reducing the effectiveness of the legalized anti-corruption work. Therefore, to better achieve the goal of conducting anti-corruption work justly, fairly, and efficiently according to law, the coordination between the Oversight Law and the Criminal Procedure Law should be promoted, conflicts between the two laws should be avoided, and the basic understanding and positioning of evidence by oversight authorities and procuratorial organs should be unified, thereby reducing differences in evidence examination and evaluation, and ensuring the just and objective handling of duty-related crime cases.

B. BASED ON CONSIDERATIONS OF PROTECTING HUMAN RIGHTS

Compared to ordinary crime cases, the institutional design of duty-related crime cases since the oversight system reform has excluded the possibility of lawyer intervention during the investigation procedure. Furthermore, some scholars believe that, judging from current reform trends and policy experience, the absence of the right to legal defense for the person under investigation in oversight cases is unlikely to change fundamentally in the short term.³ It is generally believed that during the investigation stage, due to practical factors like solving the case and the urgent need for evidence, situations where the fundamental rights of the criminal suspect are infringed upon most easily occur. Therefore, legal assistance is crucial for criminal suspects during the investigation stage, helping them counter strong investigative power and preventing investigative organs from violating their fundamental rights. In duty-related crime cases, although the oversight authority initiates an investigation procedure, viewed from the structure of the entire criminal procedure, the oversight authority acts as the “investigative organ” in duty-related crime cases, playing a role similar to that of the “investigative organ” in ordinary crime cases, yet without being fully subject to the legal restrictions imposed on investigative organs in ordinary crime cases—the inability of lawyers to intervene in the investigation procedure to provide legal assistance is a case in point. Additionally, judicial practice has seen instances where people’s courts and people’s procuratorates

³ Wei Yuening (卫跃宁) & Liu Shuai (刘帅), *Jiancha Zhengju Yu Xingshi Zhengju Xianjie De Lilun He Shijian Fansi* (监察证据与刑事证据衔接的理论和实践反思) [*Theoretical and Practical Reflection on the Connection between Supervisory Evidence and Criminal Evidence*], 1 BEIFANG LUNCONG (北方论丛) [THE NORTHERN FORUM] 97 (2025).

face difficulties in obtaining synchronous audio and video recordings from oversight authorities. Therefore, the status of human rights protection for the person under investigation in the investigation procedure led by oversight authorities often attracts significant attention, and the legality and authenticity of oral evidence, closely linked to human rights violations, are often questioned.

Precisely for this reason, the convergence of oversight evidence and criminal evidence emphasized in this paper, manifested as the procuratorial organ's examination and even judicial transformation of the oral evidence of the person under investigation after receiving the case transferred by the oversight authority, not only helps verify the legality and authenticity of such evidence but also plays a role in protecting human rights. It prevents the oversight authority, due to the lack of lawyerly restraint on its power during the investigation procedure, from engaging in conduct that infringes upon the fundamental rights of the person under investigation.

C. BASED ON CONSIDERATIONS OF JUDICIAL EFFICIENCY

As we can observe, not all evidence used by procuratorial organs in criminal procedure is collected by the investigative organs or the procuratorial organs themselves. Beyond the distinction between the oversight procedure and the criminal procedure, there may also be issues of evidence convergence between administrative organs and procuratorial organs. Therefore, Article 54, Paragraph 2 of the Criminal Procedure Law stipulates: "Physical evidence, documentary evidence, audio-visual recordings, electronic data, and other evidentiary materials collected by administrative authorities in the process of administrative law enforcement and case investigation may be used as evidence in criminal proceedings". This reveals that physical evidence collected by administrative authorities is granted direct access to the criminal procedure without requiring evidence transformation. Conversely, oral evidence collected by administrative authorities cannot be directly used in criminal proceedings and must undergo evidence conversion through re-collection by the investigative department of the procuratorial organ.⁴ The differentiated approach adopted for evidence convergence between administrative and judicial organs, treating different types of evidence differently based on their characteristics—such as the stronger objectivity and lower volatility of physical evidence compared to oral evidence—is worthy of adoption for the convergence of oversight evidence and criminal evidence. This is because judicial resources are always

⁴ Yao Li (姚莉), <Jiancha Fa> Di Sanshisan Tiao Zhi Fa Jiaoyi Xue Jieshi—Yi Fafa Xianjie Wei Zhongxin (《监察法》第33条之法教义学解释——以法法衔接为中心) [*Rechtsdogmatik Interpretation on Article 33 of Supervision Act: Focusing on the Connection between Different Laws*], 1 FA XUE (法学) [LAW SCIENCE] 64 (2021).

limited, especially in the context of firmly advancing the national oversight system reform. Adopting a differentiated approach, treating different evidence according to their characteristics, can improve judicial efficiency and avoid duplicate evidence collection.

II: THE LEGISLATIVE STATUS AND PRACTICAL DILEMMAS

A. LACK OF A DIFFERENTIATED REVIEW APPROACH

Article 36, Paragraph 1 of the 2024 Oversight Law stipulates: “Evidentiary materials collected by the oversight authority in accordance with this Law, including material evidence, documentary evidence, testimony of witnesses, confessions and defenses of the person under investigation, audiovisual materials and electronic data, may be used as evidence in criminal proceedings.” This provision is regarded as the general rule granting oversight evidence the qualification to enter criminal proceedings, providing the legal basis for oversight evidence to be used in criminal proceedings. However, comparing it with Article 54, Paragraph 2 of the Criminal Procedure Law⁵ reveals that the 2024 Oversight Law does not adopt a differentiated review approach, making no different arrangements based on the distinct characteristics of physical evidence and oral evidence. The consequence is that all evidence collected by the oversight authority during the investigation procedure, whether oral or physical, is granted direct access to criminal proceedings.

Compared to physical evidence, oral evidence is more subjective, volatile, and susceptible to external influences, hence its prominence in instability, often requiring verification through methods like re-interviewing or re-interrogation. Furthermore, the reason why oral evidence collected by oversight authorities during the investigation procedure is often criticized, and its authenticity and legality questioned, lies in the investigation procedure’s exclusion of lawyer assistance, leaving the person under investigation without legal help. This highly independent and closed procedural design often causes unease regarding the

⁵ “Physical evidence, documentary evidence, audio-visual recordings, electronic data, and other evidence gathered by an administrative authority in the process of law enforcement and case investigation may be used as evidence in criminal procedures.” Xingshi Susong Fa (刑事诉讼法) [Criminal Procedure Law] (promulgated by the Standing Comm. Nat’l People’s Cong., Oct. 26, 2018, effective Oct. 26, 2018), art. 54, para. 2, CLI.1.324538(EN) (Lawinfochina).

evidence obtained.

B. THE EVIDENCE CATEGORY OF “STATEMENTS OF THE PERSON UNDER INVESTIGATION”

Among the types of evidence listed in Article 36, Paragraph 1 of the 2024 Oversight Law that can enter criminal proceedings is “confessions and defenses of the person under investigation”. However, Article 66 of the 2025 Regulation lists “statements, confession, and arguments of the subject of investigation” as types of oversight evidence. Here, “statements of the person under investigation” refers to the statements made by a person under investigation suspected of duty-related violations when the oversight authority holds a talk with them, requiring them to explain the suspected illegal conduct.⁶ Theoretically, statements of the person under investigation belong to evidence of duty-related violations and should not enter criminal proceedings. Since this paper discusses the convergence of oversight evidence and criminal evidence, statements of the person under investigation seem irrelevant. Some scholars hold this view, arguing that while “statements of the person under investigation” are a type of oversight evidence, they cannot be used as evidence in criminal proceedings. There is also a potential for confusion with “confessions and defenses of the person under investigation”, and the reason lies in that “statements of the person under investigation” are derived from the illegal investigation procedure and thus lack the admissibility to directly enter into criminal proceedings.⁷ However, practice often presents a different scenario. Based on the “unified investigation model”⁸ adopted by oversight authorities, it is difficult for them to determine at the outset whether the conduct of the person under investigation constitutes a duty-related violation or a duty-related crime. Therefore, although the statements of the person under investigation take the form of evidence for duty-related violations, their content is often closely related to the facts of duty-related crimes. Consequently, in practice, many oversight authorities transfer statements of the person under investigation to judicial

⁶ During the course of the investigation, the oversight authority may hold a talk with the person under investigation who is suspected of any duty-related violation of law, requiring him or her to make statements on the suspected violation of law, and when necessary, shall issue a written notice to the person under investigation.

⁷ See Shi Pengpeng (施鹏鹏) & Ma Zhiwen (马志文), *Lun Xingshi Susong Fa Yu Guojia Jiancha Tizhi De Xianjie* (论刑事诉讼法与国家监察体制的衔接) [*Study on the Consensus Issue of the Criminal Procedure Law and the Supervision System*], 2 ZHEJIANG GONGSHANG DAXUE XUEBAO (浙江工商大学学报) [JOURNAL OF ZHEJIANG GONGSHANG UNIVERSITY] 41, 43 (2020).

⁸ See Xie Xiaojian (谢小剑), *Zhiwu Weifa Yu Zhiwu Fanzui Jiancha Diaocha Chengxu “Xiangdui Eryuan Hua Moshi” Tichang* (职务违法与职务犯罪监察调查程序“相对二元化模式”提倡) [*Advocacy for the “Relative Dualistic Model” of Supervisory Investigation Procedures for Official Irregularities and Official Crimes*], 5 FASHANG YANJIU (法商研究) [STUDIES IN LAW AND BUSINESS] 159, 159–160 (2021).

organs as criminal evidence, which are ultimately used as the basis for criminal conviction.⁹ This reveals that the 2025 Regulation, integrating oversight practice, attempts to patch the category of “confessions and defenses of the person under investigation” listed in the 2024 Oversight Law by adding the oral evidence category of “statements of the person under investigation”. The problem, however, is that among the statutory evidence categories in the Criminal Procedure Law, the only one involving “statements” is “statements of the victim”. Therefore, the admission of “statements of the person under investigation” faces an awkward situation—forcibly using it as a basis for conviction would break through the statutory evidence categories. Moreover, in judicial practice, not all procuratorial organs recognize the admissibility of “statements of the person under investigation”. Some tend to re-collect evidence, while others prefer corroborative proof. This inconsistency in the understanding of evidence leads to differentiated practices regarding “statements of the person under investigation” in judicial practice, causing confusion in the application of law and further hindering the convergence between the Oversight Law and the Criminal Procedure Law.

C. THE EVIDENCE ADMISSIBILITY OF “CONFESSIONS AND DEFENSES OF THE PERSON UNDER INVESTIGATION”

Compared to statements of the person under investigation, the evidence category of “confessions and defenses of the person under investigation” faces less controversy. This is because confessions and defenses of the person under investigation are oral evidence closely related to the facts of duty-related crimes, collected by the oversight authority through interrogating the person under investigation during the investigation procedure. They are inherently intended to prove the facts of duty-related crimes and thus can enter criminal proceedings; from the perspective of probative value, there is no impropriety. However, this does not mean that judicial practice holds a uniform understanding of confessions and defenses of the person under investigation. On the contrary, controversy mainly focuses on whether confessions and defenses of the person under investigation need to undergo transformation before they can enter criminal proceedings.

Regarding this, differing views exist in both academia and judicial practice. Some scholars argue that, considering judicial efficiency and the feature of duty-related crime cases, practical departments should interpret it as synonymous with “confession

⁹ See Wei Yuening (卫跃宁) & Wang Weiwei (王玮玮), *Jiancha Yu Xingshi Susong Zhengju Xianjie Wenti Yanjiu* (监察与刑事诉讼证据衔接问题研究) [*Research on the Coherence of Evidence between Supervision and Criminal Proceedings*], 5 HAINAN DAXUE XUEBAO (SHEHUI KEXUE BAN) 海南大学学报(社会科学版) [JOURNAL OF HAINAN UNIVERSITY (SOCIAL SCIENCES)] 161, 165 (2024).

and defense of a criminal suspect or defendant”, pending an amendment to Article 50(5) of the Criminal Procedure Law.¹⁰ Conversely, other views deny the admissibility of confessions and defenses of the person under investigation, arguing that since they are not absorbed into the Criminal Procedure Law as a statutory evidence type, their role in determining criminal guilt is extremely limited.¹¹ In judicial practice, different judicial organs often hold varying attitudes and adopt different practices towards confessions and defenses of the person under investigation—some tend to convert them into confessions and defenses of the defendant, while others prefer to recognize their status as statutory evidence in criminal proceedings.¹² Due to the inconsistency in statutory evidence categories, the lack of unified legal guidance, and the high degree of independence of the oversight procedure, how to reasonably and correctly apply confessions and defenses of the person under investigation is both a theoretical challenge requiring clarification and a practical hurdle for judicial organs.

D. DIFFICULTIES IN THE RULES FOR THE EXCLUSION OF ILLEGAL EVIDENCE

In the United States, the birthplace of the exclusionary rule, the U.S. Supreme Court in the famous case *Mapp v. Ohio* defined the primary justification for the rule as “deterrence”, explaining its purpose as “to deter—to compel respect for the Constitution in the only effectively available way—by removing the incentive to disregard it”.¹³ The exclusionary rule, one of the most important rules in criminal procedure, aims to deter law enforcement officers from violating the Constitution and laws, thereby preventing infringements of citizens’ fundamental rights.

Although the oversight authority leads the investigation procedure in handling duty-related crimes and possesses a high degree of independence and closedness, similar to ordinary crimes, the oversight authority acts as the “investigative organ” during the investigation procedure and should still abide by the rules for the exclusion of illegal evidence. In light of this, the 2024 Oversight Law and the 2025 Regulation have actively responded. Article 36, Paragraph 3 of the 2024 Oversight Law provides a general rule for

¹⁰ See Guo Shuo (郭烁) & Feng Jiaming (冯嘉明), *Lun Jiancha Zhengju Yu Xingshi Susong Zhengju De Xianjie—Yi <Xingshi Susong Fa> Di Si Ci Xiugai Wei Shijiao* (论监察证据与刑事诉讼证据的衔接——以《刑事诉讼法》第四次修改为视角) [*On the Connection between Supervisory Evidence and Criminal Procedure Evidence: From the Perspective of the Fourth Revision of the Criminal Procedure Law*], 2 *JIANGSU JINGGUAN XUEYUAN XUEBAO* (江苏警官学院学报) [JOURNAL OF JIANGSU POLICE INSTITUTE] 5, 10 (2025).

¹¹ Zhu Fuhui (朱福惠), *Lun Jiancha Jiguan Dui Jiancha Jiguan Zhiwu Fanzui Diaocha De Zhiyue* (论检察机关对监察机关职务犯罪调查的制约) [*A Study on the Checks and Balances by Procuratorial Organs Over Supervisory Organs’ Investigation of Duty-Related Crimes*], 3 *FAXUE PINGLUN* (法学评论) [LAW REVIEW] 13, 13–21 (2018).

¹² Wei & Wang, *supra* note 9.

¹³ *Mapp v. Ohio*, 367 U.S. 643, 655 (1961).

the exclusion of illegal evidence: “Evidence collected by illegal means shall be excluded in accordance with the law, and shall not be taken as the basis for the disposition of cases.” Certainly, prior to the promulgation of the 2025 Regulation, the exclusionary rule established in the 2018 Oversight Law and even the 2024 Oversight Law was heavily criticized for adopting a “one-size-fits-all” approach without distinguishing between oral and physical evidence. Building upon the 2024 Oversight Law, the 2025 Regulation, in its Article 72, differentiates the exclusion models for oral evidence and physical evidence.¹⁴ This not only helps improve judicial efficiency but also aligns with the exclusionary rule established in the Criminal Procedure Law, contributing to the unity and coordination of the legal system. However, despite addressing practical difficulties, the implementation of the exclusionary rule within the oversight procedure still faces challenges. As crucial auxiliary means for the exclusionary rule, obtaining synchronous audio and video recordings and securing the court appearance of oversight interrogators still face tensions between norms and practice. The consequences corresponding to the failure of these auxiliary means require further doctrinal argumentation. Regarding Article 36, Paragraph 3 of the 2024 Oversight Law, some viewpoints point out its lack of specification regarding the subject source of illegal evidence,¹⁵ which also involves the question of how to provide a comprehensive interpretation.

III: HOW TO ACHIEVE THE CONVERGENCE OF ORAL EVIDENCE BETWEEN THE TWO PROCEDURES

A. PROCURATORIAL ORGANS SHOULD ADOPT A DIFFERENTIATED REVIEW APPROACH TOWARDS OVERSIGHT EVIDENCE

As mentioned earlier, oral evidence itself is unstable and highly susceptible to external influences. Due to the feature of duty-related crime cases—often characterized by concealment and long cycles, with criminal acts usually committed in closed spaces—the handling of such cases heavily relies on oral evidence. According to Article 36, Paragraph 1 of the 2024 Oversight Law,

¹⁴ The confession of the subject of investigation, the testimony of the witness, and the statements of the victim collected by investigators by violence, threat, illegal restriction on personal freedom, or other illegal means shall be excluded in accordance with the law. If any physical or documentary evidence is not collected under the statutory procedures, which may seriously affect the impartial handling of the case, supplements or corrections shall be made or a reasonable interpretation shall be made; otherwise, such evidence shall be excluded.

¹⁵ Yao, *supra* note 4.

the oral evidence of the person under investigation collected by the oversight authority, including confessions and defenses, can directly enter criminal proceedings without undergoing judicial transformation by the procuratorial organ. Such a provision and interpretation align with the practicalities of case handling by oversight authorities, enabling efficient transfer and fixation of evidence and facilitating the advancement of anti-corruption work.

Although granting the oral evidence of the person under investigation direct access to criminal proceedings aligns with practical work conditions, scholars have expressed concerns since the inception of the national oversight system reform. For oral evidence, including confessions and defenses of the person under investigation, given the inability of lawyers and judicial organs to intervene in the oversight procedure, the authenticity of their content and the legality of their collection procedures are inevitably questioned.¹⁶ Therefore, this paper argues that examination for prosecution, being the next stage after the oversight authority concludes its investigation, requires procuratorial organs to remember their role as legal supervision organs. They should not “accept all evidence collected by the oversight authority at face value” but rather adopt a differentiated review approach. Adopting this approach is not only a proactive concern for the high independence and closed nature of the oversight procedure but also aligns with the prevailing corroborative proof model in China’s criminal procedure. The so-called corroborative proof model requires that individual pieces of evidence must be corroborated by other evidence, and all evidence used to determine the facts of the case must corroborate each other, forming a stable and reliable proof structure through mutual support and corroboration among evidence.¹⁷ In duty-related crime cases dominated by oral evidence, applying a differentiated review approach to oversight evidence helps implement the corroborative proof model and facilitates objective mutual corroboration among different evidence. It is worth mentioning that Article 72 of the 2025 Regulation has already adopted a differentiated review approach for the exclusion of illegal evidence in the oversight procedure, making different judgments for oral and physical evidence. Therefore, procuratorial organs adopting a differentiated review approach towards oversight evidence complies with legal provisions and interpretative coherence.

¹⁶ Chen Weidong (陈卫东), *Zhiwu Fanzui Jiancha Diaocha Chengxu Ruogan Wenti Yanjiu* (职务犯罪监察调查程序若干问题研究) [*Researches on Several Issues Relating to Investigative Procedure of Duty-related Crime Supervision*], 1 ZHENGZHI YU FALÜ (政治与法律) [POLITICAL SCIENCE AND LAW] 19 (2018).

¹⁷ Luo Can (罗灿), *Jiancha Zhengju De Sifa Rendeng Guize* (监察证据的司法认定规则) [*Judicial Determination Rules of Supervision Evidence*], 1 ZHONGGUO YINGYONG FAXUE (中国应用法学) [CHINA JOURNAL OF APPLIED JURISPRUDENCE] 163 (2023).

Specifically, physical evidence collected by oversight authorities can directly enter criminal proceedings. For oral evidence collected by oversight authorities, procuratorial organs should intensify their review efforts, focusing on the authenticity of the content and the legality of the collection procedure. Furthermore, the connection between the oral evidence and the facts to be proven should also be a key focus. Moreover, procuratorial organs should examine and determine the admissibility of oral evidence for criminal proceedings through appropriate means such as re-interrogation, verification of transcripts, and comparison with synchronous audio and video recordings. For repeated confessions, attention should be paid to comparing previous and subsequent transcripts; for contradictory statements, the influence of external factors such as interrogation time and methods should be considered. Simultaneously, based on experience from judicial practice, procuratorial organs must remain vigilant regarding details like signatures on interrogation transcripts, rights advisements, etc. During the review of oral evidence, if necessary, they should require the oversight authority to provide explanations or conduct re-verification.

B. JUDICIAL TRANSFORMATION OF THE “STATEMENTS OF THE PERSON UNDER INVESTIGATION”

Based on the differentiated review approach, we can observe that for oversight authorities adopting the “unified investigation model”, the statements of the person under investigation often contain content that can prove the duty-related criminal acts of the person under investigation, which is not uncommon in judicial practice. For statements of the person under investigation, this type of evidence is categorized as evidence of duty-related violations under the 2024 Oversight Law. Therefore, in principle, evidence of duty-related violations should be prohibited from entering criminal proceedings aimed at prosecuting duty-related criminal acts. However, given the context of China’s current oversight system, the case handling model of oversight authorities determines that they cannot accurately determine at the outset whether the person under investigation has committed a duty-related violation or a duty-related crime. Therefore, it is difficult to avoid statements of the person under investigation containing some content related to duty-related criminal acts. Furthermore, for potential duty-related crime cases, preliminary talks can often break through the psychological defenses of the person under investigation from an ideological education perspective, aiding in evidence collection and case resolution.

From the above analysis, it is evident that although the differentiated review approach requires distinguishing between evidence of duty-related violations and evidence of duty-related crimes, and prohibits statements of the person under investigation from entering criminal proceedings, the characteristics of handling

duty-related crime cases determine that such statements possess certain evidentiary value. In view of this, it is necessary to urge oversight authorities to transform the content within the statements of the person under investigation that can prove facts of duty-related crimes into confessions and defenses of the person under investigation. Oversight authorities should, adhering to the principle of distinguishing between evidence of duty-related violations and duty-related crimes, re-collect the content capable of proving duty-related crime facts from the statements of the person under investigation according to the procedures and standards for collecting confessions and defenses of the person under investigation, thereby achieving a transformation of the evidence category. Such oral evidence collected by the oversight authority can avoid the awkward situation of lacking a statutory evidence category, thereby better facilitating the convergence between the Criminal Procedure Law and the Oversight Law. Additionally, it should be noted that if the oversight authority fails to complete the transformation of the statements of the person under investigation, the procuratorial organ receiving the evidence for prosecution should have the authority to require the oversight authority to complete the transformation or to independently re-collect the evidentiary content from the statements of the person under investigation that proves facts of duty-related crimes. Of course, if the acts of the person under investigation are limited to the level of duty-related violations, then the oversight authority need not perform evidence transformation.

During the transformation of the statements of the person under investigation, the issue of how to handle repetitive confessions often arises. In other words, regarding the content in the statements of the person under investigation that involves alleged criminal facts, the procuratorial organ or the oversight authority should conduct a review. If illegal evidence-gathering practices are identified, the corresponding content should be deemed illegal evidence.

Regarding repetitive confessions, the predominant view in academia holds that if a confession is determined to be illegal evidence, other repetitive confessions obtained by the same interrogator should also be excluded. If the interrogator is different, the confession obtained by the subsequent interrogator is not affected by the illegal evidence-gathering practices of the previous interrogator.¹⁸ Article 66, Paragraph 2 of the 2025 Regulation confirms this. However, in practice, whether it is the procuratorial organ or the oversight authority, besides changing the interrogator, the impact of the previous illegal evidence-gathering practices on the interrogated person must also be eliminated—specifically, by “informing the person of their

¹⁸ *Id.*

procedural rights and the legal consequences of pleading guilty, and ensuring the confession is made voluntarily”¹⁹ before the evidence transformation can be considered complete.

C. STRENGTHEN THE REVIEW OF “CONFESSIONS AND DEFENSES OF THE PERSON UNDER INVESTIGATION”

Regarding confessions and defenses of the person under investigation, this paper does not endorse interpreting them as synonymous with “confession and defense of a criminal suspect or defendant”, even though this stance may face criticism for wasting judicial resources and reducing judicial efficiency. This is because, based on adhering to the differentiated review approach, ideally, the oversight authority would only transfer confessions and defenses of the person under investigation, not statements, to the procuratorial organ. Equating “confession and defense of a criminal suspect or defendant” with “confessions and defenses of the person under investigation” would contradict the differentiated review approach and undermine the procuratorial organ’s review function regarding oversight oral evidence. Instead, this paper argues that “confessions and defenses of the person under investigation” must still undergo review by the procuratorial organ before being admitted as criminal evidence into criminal proceedings. Specific review methods, as discussed earlier, include verifying transcripts, comparing audio and video recordings, etc. In response to potential criticisms of wasting judicial resources and reducing efficiency, it must be clarified that supporting procuratorial organs in differentiating evidence types and intensifying the review of oral evidence is not equivalent to evidence transformation. That is, review methods are not limited to re-collection; thus, it does not necessarily lead to the drawbacks of wasted resources and reduced efficiency. Both during the oversight stage and the procuratorial stage, the evidence type of confession and defense will be generated in the respective stage. Once the procuratorial organ conducts an interrogation, it necessarily generates the confession and defense of the criminal suspect or defendant.²⁰ From this perspective, it is even more untenable to support the synonymous interpretation of “confessions and defenses of the person under investigation” and “confession and defense of a criminal suspect or defendant”, as it would cause confusion between evidence generated in the procuratorial stage and oversight evidence. Therefore, only by insisting on the procuratorial organ’s intensified review of confessions and defenses of the person under investigation can the

¹⁹ Guanyu Banli Xingshi Anjian Yangge Paichu Feifa Zhengju Ruogan Wenti De Guiding (关于办理刑事案件严格排除非法证据若干问题的规定) [Provisions on the Several Issues concerning the Strict Exclusion of the Illegally Collected Evidence in the Handling of Criminal Cases] (promulgated by Sup. People’s Ct., Sup. People’s Proc., Ministry of Public Security, Min. of Pub Sec., Min. of State Sec., Min of Just., June 20, 2017, effective June 27, 2017), art. 5, para. 2, CLI.3.297059(EN) (Lawinfochina).

²⁰ Yao, *supra* note 4.

convergence between the Oversight Law and the Criminal Procedure Law be effectively promoted.

D. IMPLEMENTATION OF THE RULES FOR THE EXCLUSION OF ILLEGAL EVIDENCE

Synchronous audio and video recordings are considered as introducing a “third eye” into the closed investigation procedure.²¹ This highlights the significant role of such recordings, especially in an investigation procedure lacking lawyer assistance. The pre-2024 Oversight Law and its Regulation merely stipulated that oversight authorities should cooperate with requests for synchronous audio and video recordings, providing them upon approval according to law. This attracted considerable criticism from academia, as obtaining these recordings was very difficult, making it hard to effectively challenge the legality of oversight evidence collection.²² Fortunately, Article 60 of the 2025 Regulation removes the approval requirement, stipulating that oversight authorities shall provide synchronous audio and video recordings to judicial organs according to law.²³ This removes the procedural obstacle for judicial organs to obtain such recordings from oversight authorities at the normative level, though the actual situation remains to be observed.

Removing the obstacle to obtaining synchronous audio and video recordings at the textual normative level promotes the implementation of the exclusionary rule from a positive aspect. This is because the existence of these recordings can verify whether there were infringements of the fundamental rights of the person under investigation during the interrogation procedure. Additionally, promoting the implementation of the exclusionary rule from a negative aspect can be achieved through a *contrario* interpretation of the normative text. As some scholars argue, in situations requiring explanation of the legality of oversight evidence, although oversight personnel are not investigative personnel, their prosecutorial function is essentially consistent, and thus they cannot be exempt from the obligation to testify in court.²⁴ Similarly, in the context of obtaining synchronous audio and video recordings, since the 2025 Regulation has cleared the institutional obstacle, if the oversight authority refuses to provide the recordings, and the existing evidence cannot rule out the

²¹ Luo, *supra* note 17.

²² Wei & Geng, *supra* note 1.

²³ Synchronous audio and video recordings shall be properly kept, archived in a timely manner, and retained for future reference. The case supervision and management department of the oversight authority shall carry out regular inspections. If the people's procuratorate or the people's court needs to obtain synchronous audio and video recordings, the oversight authority shall provide them in accordance with the law.

²⁴ Wang Haiyan (汪海燕), *Shenpan Zhongxin Yu Jiancha Tizhi Gaige—Yi Zhengju Zhidu Wei Shijiao* (审判中心与监察体制改革——以证据制度为视角) [*Trial-Centeredness and the Reform of the Supervisory System: From the Perspective of the Evidence System*], 3 XINJIANG SHEHUI KEXUE (新疆社会科学) [SOCIAL SCIENCES IN XINJIANG] 118 (2018).

possibility that oversight personnel collected evidence by illegal means, the oral evidence collected by the oversight authority should be excluded.

Article 36, Paragraph 3 of the 2024 Oversight Law states: “Evidence collected by illegal means shall be excluded in accordance with the law, and shall not be taken as the basis for the disposition of cases”. This paragraph does not restrict the subject source of the illegal evidence. This is not an oversight by the legislature; on the contrary, not restricting the subject source is the correct choice that aligns with the Criminal Procedure Law and the fundamental purpose of the exclusionary rule. The Criminal Procedure Law does not restrict the subject source of illegal evidence, merely stipulating the causal relationship between the illegal act and the obtained evidence, without limiting it to the illegal acts of “a specific organ”. Therefore, oversight authorities and other organs providing evidence during the oversight procedure are naturally included. The fundamental purpose of the exclusionary rule is to regulate government conduct and protect citizens’ fundamental rights. Therefore, any evidence presented in court to accuse the defendant should be subject to the constraints of the exclusionary rule. Consequently, for evidence collected during the oversight procedure, regardless of which organ collected it, if the act of obtaining the evidence constitutes an illegal method, seriously infringing upon the fundamental rights of the person under investigation, it should be suppressed.

Specifically, to achieve the goal of implementing the exclusionary rule for illegal evidence in the connection between the investigation procedure and the criminal litigation procedure, the following interpretations should be made in conjunction with existing norms and the background of judicial practice.

First, the exclusionary rule for illegal evidence should be systematically established. Although Article 36, Paragraph 3 of the 2024 Oversight Law does not enumerate specific methods such as “threats, inducements, or deception”,²⁵ the interpretation of the exclusionary rule should not be limited to the differences in wording or phrasing. This view is supported by some judicial personnel. They believe that the 2024 Oversight Law provides a principled framework for the admissibility of oversight evidence in criminal litigation and the exclusion of illegal evidence. Therefore, the requirements for reviewing the admissibility of evidence are largely consistent overall. For reasons of legislative technique and length, the 2024 Oversight Law and the 2025 Regulation need not reiterate all exclusionary rules.²⁶

²⁵ Xingshi Susong Fa (刑事诉讼法) [Criminal Procedure Law] (promulgated by the Standing Comm. Nat’l People’s Cong., Oct. 26, 2018, effective Oct. 26, 2018), art. 52, CLI.1.324538(EN) (Lawinfochina).

²⁶ Wu Juping (吴菊萍), Liang Chuncheng (梁春程) & Cao Yue (曹越), *Jianjian Xianjie Zhong Zhengju Xianjie Yu Zhuanhua De Nanti Yu Huajie* (监检衔接中证据衔接与转化的难题与化解) [*Difficulties and Resolution of Evidence Connection and Conversion in*

Second, the role of procuratorial organs as legal oversight bodies should be emphasized. Research analyzing work reports submitted by procuratorial organs in 14 provinces from 2019 to 2022 to the Standing Committee of the National People's Congress—focusing on data related to the exclusion of illegal evidence and the correction of illegal investigative activities—concluded, among other findings, that procuratorial organs rarely apply the exclusionary rule. One reason is the relatively weak enforcement of the exclusionary rule against oversight authorities by procuratorial organs.²⁷ The 2025 Regulation removes the approval procedure for obtaining synchronous audio and video recordings, which undoubtedly provides favorable conditions for procuratorial organs to strengthen their legal oversight functions and examine the quality of evidence during review for prosecution. Therefore, procuratorial organs should incorporate the legality of oversight evidence into the application of the exclusionary rule, using synchronous audio and video recordings to visually reflect the entire process of evidence collection by investigators.

Third, the court's judicial review of evidence should be reinforced. Once a case reaches the court stage, it enters the final line of defense in the narrow sense of the criminal litigation procedure, and courts must treat it with utmost caution. Some studies suggest improving the review and oversight mechanism to resolve the contradiction arising from the dual identity of oversight authorities, proposing a dual structure within oversight authorities that separates evidence collection from evidence review.²⁸ This article argues that, considering the actual status of oversight authorities in China's judicial practice, such an internal institutional arrangement is difficult to implement. Instead, from the perspective of court trials, the exclusionary rule should be implemented through reasoned allocation of the burden of proof. That is, in criminal litigation procedures, when a party applies for the exclusion of illegal evidence, they should not bear an excessive burden of proof. The court may only require them to meet the standard of "raising reasonable suspicion". For oversight authorities, on one hand, their proof of "no illegal evidence collection" must meet the standard of "beyond a reasonable doubt"; on the other hand, if they cannot provide synchronous audio and video recordings or arrange for investigators to appear

Supervision-Procuratorial Connection, 7, ZHONGGUO JIANCHA GUAN (中国检察官) [THE CHINESE PROCURATORS] 17 (2025).

²⁷ Heng Xiaoliang (衡孝良) & Zhu Yu (诸玉), *Jiancha Jiguan Shiyong Feifa Zhengju Paichu Guize De Kunjing Ji Duice* (检察机关适用非法证据排除规则的困境及对策) [*The Illegal Evidence Exclusion of Procuratorial Organs: Problems and Countermeasures*], 2 FANZUI YANJIU (犯罪研究) [CHINESE CRIMINOLOGY REVIEW] 35 (2025).

²⁸ Wan Minghao (万明灏) & Shi Qiuyu (石湫雨), *Jiancha Chengxu Zhong Feifa Zhengju Paichu Guize De Shiyong* (监察程序中非法证据排除规则的适用) [*Application of the Exclusionary Rule for Illegally Obtained Evidence in Supervision Procedures*], 2 JINGXUE YANJIU (警学研究) [POLICE SCIENCE RESEARCH] 118 (2025).

in court, and simultaneously cannot dispel the suspicion of illegal evidence collection, the oversight authority should bear the adverse legal consequences. Through this reasoned allocation of the burden of proof, the legitimate rights of parties in criminal litigation procedures can be protected, while normal investigative outcomes and trial order can also be safeguarded.

IV: CONCLUSION

According to the requirement for value unity under the principle of the unity of the legal order, the so-called convergence of value concepts does not mean their assimilation but should refer to their synergy, i.e., forming a joint force to jointly implement the requirements of sound laws and good governance within the systematic project of comprehensive law-based governance.²⁹ Both the Criminal Procedure Law and the Oversight Law are important components of the anti-corruption legal system under the background of the national oversight system reform. Promoting the convergence and coordination of these two laws helps facilitate the lawful and efficient conduct of legalized anti-corruption work. Among these, the oral evidence of the person under investigation plays a decisive role in the procedure for handling duty-related crimes. How to promote the convergence of this oral evidence between the oversight procedure and the criminal procedure becomes a significant proposition for the coordinated unification of the legal system and the coherent development of judicial practice. In this regard, factors such as the rule of law principles, coordination of the evidence system, and the characteristics of duty-related crimes should be properly handled. The differentiated review approach of procuratorial organs towards oversight evidence should be upheld, treating different types of evidence differently based on the classification of oral and physical evidence. The review intensity of procuratorial organs towards confessions and defenses of the person under investigation should be increased. Simultaneously, an internal judicial transformation mechanism within oversight authorities for statements of the person under investigation should be established and improved, enabling appropriate convergence and transformation of oral evidence between different procedures. Finally, regarding the exclusionary rule that protects the fundamental rights of the person under investigation, the provisions of the 2025 Regulation on obtaining synchronous audio and video recordings should be highly affirmed and implemented in judicial practice. Furthermore, interpretative methods should be skillfully used to argue a *contrario* on issues such as obtaining synchronous recordings, the court appearance of

²⁹ Lei Lei (雷磊), *Fa Zhixu Tongyi Xing Yuanli Zhi Jiangou* (法秩序统一性原理之建构) [*The Construction of the Principle of the Unity of Legal Order*], 1 FAXUE YANJIU (法学研究) [CHINESE JOURNAL OF LAW] 22 (2015).

oversight personnel, and the subject source of illegal evidence, allowing the exclusionary rule to truly become a weapon that deters unlawful government acts and protects citizens' fundamental rights.