

Research on the Construction of Criminal Character Evidence Rules in China

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Abstract

Although the current criminal law does not specifically regulate character evidence, its application is quite common in judicial practice. In the Lao Rongzhi case, the defendant presented character evidence to the first-instance court, stating, "I have never killed a chicken or a duck in my life," to prove her kind and caring character, asserting that she could not have committed the crime. In the second instance, the defense lawyer even submitted an interview with a friend of Lao Rongzhi, in which the interviewee stated, "In my impression, Lao Rongzhi was kind and not vain." The procuratorial organ recognized the above character evaluations and personality descriptions as character evidence, deeming them irrelevant to the case. The Supreme People's Procuratorate clearly stated in the Guidelines for People's Procuratorates on Carrying out Sentencing Recommendation Work in Cases of Pleading Guilty and Accepting Punishment issued in 2021 that evidence involving character traits should not be used as the basis for conviction in principle. However, if such character is related to the crime, it should be comprehensively considered as a discretionary sentencing circumstance. These evidences involving moral and character aspects, although they cannot be the basis for conviction in the litigation process, can still strive for leniency opportunities for the defendant. Based on the characteristics of China's legal system and judicial practice, this paper analyzes the basic theory of character evidence rules, draws on the experience of foreign legal systems, analyzes the application status of character evidence in China's practice, explores the feasibility of applying character evidence rules and the problems existing in the application process, and puts forward countermeasure suggestions for constructing character evidence rules.

Keywords

Character Evidence; Criminal Evidence; Fact Recognition

1. Basic Theories of Criminal Character Evidence Rules

1.1. Connotation of Character Evidence

Character evidence, also known as , refers to evidence used to prove an individu-

al's character or traits to infer their behavior, usually including reputation, (behavioral personality), and prior events (such as criminal records). In Anglo-American evidence law, its core rule is the exclusion principle, that is, prohibiting the inference of a person's behavior in a specific situation based on their character to avoid the prejudice of "determining behavior by character", defining character as a description of an individual's personality.

First, character evidence has relative stability. Character is the accumulation of an individual's behavioral and verbal expressions formed over a long period in daily life, or the relatively stable behavior shaped after a long period of education and training. An individual's character traits are not formed overnight and will not easily change due to a single act or statement. In other words, as long as the social environment does not change significantly, everyone may repeat their behavior to some extent, and their views on things and ways of analyzing problems are basically unaffected by time, space, and environmental constraints. Precisely because of the relative stability of character evidence, it is often used to judge the social dangerousness of actors.

Second, character evidence has diverse forms of expression. Any evidence that can prove the actor's character may be used as character evidence, including but not limited to an individual's behavior, words, attitude, beliefs, etc. For example, the defendant's previous criminal records are often used as discretionary circumstances for heavier punishment, and defense lawyers usually present evidence materials proving that the defendant has no previous criminal record and has always performed well, or submit that the defendant is friendly and has made outstanding contributions at work to request leniency. In addition, descriptions and subjective evaluations of the actor's character, performance, or personality are also commonly used in the risk assessment of community correction.

Third, the application of character evidence is dependent. Character evidence cannot be used alone as the basis for deciding a case; it must cooperate and corroborate with other forms of evidence to form a complete and exclusive chain of evidence before it truly has the significance in evidence law. A typical example is sexual assault cases. Restricted by the privacy and concealment of the crime scene, evidence collection and proof in sexual assault cases are difficult. In most cases, the victim's statement can only be used as the main evidence. In this case, the credibility of the victim's statement is low, and the probative force is weak, which may lead to insufficient evidence to pursue the crime; if the defendant's character evidence is applied alone, the rights of the suspect cannot be guaranteed, so as to ensure a fair trial. Therefore, according to the requirements of the evidence proof standard, appropriately introducing character evidence to form a complete chain of evidence with other relevant evidence in the case to ensure a fair trial.

1.2. Theoretical Foundations of Criminal Character Evidence Rules

The relevance of evidence is the most basic and important concept in evidence law and is the premise and basis for the admissibility of evidence. Rule 401 of the Federal Rules of Evidence clearly stipulates "logical relevance", that is, there is a connection between the "evidence" and the "fact to be proved", requiring that the evidence must be related to the fact in issue. The judge finds the facts of the case based on the perspective of a normal, rational person combined with their basic thinking logic and daily experience, and excludes irrelevant evidence. In contrast, American scholars put forward the "legal relevance theory", that is, it is not enough for evidence to meet the "quantity" requirement, but it must also have the "quality" condition. Only a weak value is not enough; to be adopted, it must have additional value. This requires that the evidence must meet the degree of the proof standard stipulated by law to conform to the rigor of the law. Analyzing the content of the character evidence rules, it can be seen that character evidence generally has no relevance, so it is usually excluded. However, in exceptional circumstances, as long as the character evidence can reflect the actor's behavioral tendency and achieve the purpose of proving the facts of the case according to the actor's previous behavioral performance, it is considered logically relevant to the case. At the same time, whether the character evidence is admitted also requires the judge to fully use their discretion in a specific case to explore the evidence materials with objective proof value. The common law system takes "beyond a reasonable doubt" as the main criminal proof standard of evidence. As long as the evidence that can prove the actor's character is sufficient to question his statement and can cause reasonable doubt, it can be determined that there is a legal relevance between the character evidence and the facts of the crime.

The individualization of punishment means that based on personality characteristics and individual differences, combining the personal dangerousness of the perpetrator with criminal measures and execution methods to achieve the purpose of preventing and curbing crimes and ensuring social stability. The selection and execution of punishment must take into account both the criminal act and the actual situation of the criminal, which is not only a requirement for punishment but also an emphasis on the process of punishment execution. At this time, there is a certain connection between the character evidence rules and the individualization system of punishment. In other words, the application of character evidence is a manifestation of implementing the principle of individualization of punishment. By using character evidence, we can pay attention to the circumstances of individual cases and the individual differences of actors, so as to specifically analyze the social dangerousness and recidivism possibility of criminals and formulate evaluation standards suitable for individual defendants in individual cases. The "presentence report" in common law countries, the "defendant character investigation" in civil law countries, and other related systems are all specific manifestations of implementing the principle of individualization of punishment and using character evidence to con-

duct a detailed investigation of the relevant circumstances of criminals. Japanese criminal law scholars have proposed that "behavior is the external expression of a person", emphasizing that "person" is the "substantiation" of the criminal. This theory believes that human behavior is based on biology and sociology. In the process of interaction between the individual and the outside world, it will be affected by the actor's subjective attitude. However, everyone's activities are not disorderly and unpredictable. Comprehensive research on personality psychology shows that from the perspective of consciousness and behavior, the more abstract personality is hidden in human consciousness, forming each person's unique personality traits, which may affect or even determine human behavior. The actor's psychological factors are continuously stimulated by the outside world, showing that the individual's behavior is not isolated and tends to show the characteristics of persistence and stability. From the cross perspective of law and psychology, in-depth analysis of the internal connection and logical relationship between the individual personality system and its behavior shows that the driving role of individual character in behavior is significantly decisive, especially in the predictability of individual behavior through character in specific situations. In other words, a person's inherent character traits can provide a certain predictive reference for their reactions and behavior in a specific environment. For example, if someone frequently behaves dishonestly in daily life, the truthfulness of their statements in court proceedings may also be questioned. On the other hand, given the stability of personality traits, once a person's character or morality is formed, it can often remain relatively constant for a long time, which is the basis for using personality analysis to reasonably predict an individual's future behavior. Therefore, in real life, it is often possible to more accurately predict the behavior that an acquaintance may show due to their character. It is precisely because "character" and "personality" are consistent in terms of behavioral tendency, both showing the character tendency of the actor's behavior style. Therefore, when using character evidence to assess personal dangerousness, there is a theoretical basis for predicting the possibility of future recidivism based on the personality characteristics shown in the actor's past behavior.

2. Problems Existing in Criminal Character Evidence

2.1. Application of Social Investigation Reports

The current relevant laws stipulate that social investigation reports are the basis for determining whether criminal suspects or defendants are applicable to community correction. However, according to the first-instance criminal judgments on social investigation reports sorted out on China Judgments Online, since the content of social investigation reports is related to character evidence, it is equivalent to the background description of the defendant, including the defendant's social performance, personality characteristics, social relations, and other factors related to

conduct, which have a certain impact on the application of punishment. Therefore, in practice, the types of punishments applied based on social investigation reports are varied, not only community correction but also discretionary circumstances for lighter or mitigated punishment, and even sentencing evidence for applying fine punishment or exemption from punishment.

In addition, the current regulations state that the community correction decision-making organ may entrust the investigation and evaluation, which excludes the procuratorial organ, resulting in the community correction institution refusing to accept the social investigation entrusted by the procuratorial organ based on this regulation. In the judicial practice of handling cases of pleading guilty and accepting punishment, the review and prosecution stage is precisely the stage involving the most entrusted social investigation and evaluation, especially for cases of relative non-prosecution and suggestions for applying probation, control, etc., which often require entrusted investigation and evaluation of the social dangerousness of criminal suspects. In this regard, this regulation cuts off the relationship between criminal litigation and the character evaluation of criminals, which will affect the implementation of the leniency system for pleading guilty and accepting punishment by the procuratorial organ.

2.2. Determination of Social Dangerousness

In the investigation stage, the public security organ does not adequately assess the actual social dangerousness of criminal suspects. As long as the evidence conditions for arrest are met, they can be submitted for approval of arrest. Although this procedure does not violate legal provisions in form, it lacks the link of criminal risk assessment and determination in substance. Therefore, in the stage of examining and approving arrest, the procuratorial organ's method of examining whether to approve arrest tends to be written and administrative, focusing on the review and judgment of the written materials submitted by the investigation organ. The analysis and judgment of the evidence materials on the actual social dangerousness of the criminal suspect are templated and procedural, and the specific circumstances are not clearly identified. In the cross-examination procedure of the trial stage, the cross-examination of social investigation reports is unclear. In the vast majority of cases, there is no dispute over social investigation reports, which only provide a basis for the trial organ to determine that the conditions for applying community correction are met. As a result, the system of social investigation becomes a mere formality, unable to find the substantive problems in the investigation report, weakening the effectiveness of its cross-examination procedure and unable to achieve the substantive determination of the defendant's social dangerousness.

3. Introduction and Direction of Criminal Character Evidence in China

3.1. Determining the Legal Status of Character Evidence

Based on the reality that character evidence is widely used in China's judicial practice, due to the lack of clear regulations on the application of character evidence in legislation, problems such as inconsistent determination of the relevance between character evidence and the fact to be proved in practice, inconsistent adoption results of character evidence submitted by different subjects, non-standard application standards of character evidence in different forms, and different judgments in the same case in the submission and application of character evidence in the same case. If only based on the judge's experience and free evaluation of evidence, it is likely to lead to judicial confusion. Therefore, to break this situation and truly achieve evidence-based and law-based adjudication in case trials, it is more necessary to clarify the legal status of character evidence. In addition, character evidence plays an important role in the sentencing stage. Judges can use it to comprehensively evaluate the relatively stable personality characteristics and behavioral tendencies of the parties, fully consider the personal dangerousness and recidivism possibility of the defendant, and achieve the consistency of crime, responsibility, and punishment. From this point of view, the application of character evidence is in line with the direction of China's judicial system reform. Establishing the legal status of character evidence and constructing China's criminal character evidence rules are in line with the needs of the development of the rule of law. This paper suggests that the fourth chapter of the Criminal Law on sentencing provisions can be added with "taking the criminal suspect's personality characteristics and behavioral tendencies as the reference basis for assessing personal dangerousness." Comprehensive consideration should be given when sentencing and punishment should be accurately applied.

The key to clarifying character evidence through legislation lies in determining the attribute of character evidence. That is, to which type of evidence does character evidence belong in the evidence system? On this issue, there are different views in the academic circle. Some believe that "character evidence" should be established as a new type of legal evidence through the legislative process to better play the value function of character evidence. This paper believes that there is no doubt about recognizing the evidence attribute of character evidence in law, but it is unnecessary to create a new type of legal evidence for it. It can be directly corresponding to the existing types of evidence through the forms of character evidence. This is because the complex and diverse forms of character evidence in practice can almost correspond to all current types of evidence one by one. If character evidence is stipulated as a new type of legal evidence, it will be unnecessary. The forms of character evidence can be verbal, such as the (confessions and defenses) of criminal suspects, victim statements, and witness testimony, or in the form of documentary evidence, expert opinions, audio-visual materials, etc. At the same time, it may directly come from the facts of the case as original evidence, such as criminal records, or indirectly

come from other evidence materials as hearsay evidence, such as witness testimony. Therefore, this paper suggests that regardless of the new form of evidence submitted, as long as it reflects the character traits of the parties and meets the relevant requirements of evidence law, it can be corresponding to the existing types of evidence for application. This approach can not only determine the legal status of character evidence and clarify the evidence attribute of character evidence but also make it more operable in practice and give full play to the value function of character evidence.

3.2. Clarifying the Application Principles of Character Evidence

In view of the inherent characteristics of character evidence and the complexity of practical application, jurisdictions often adopt an extremely cautious attitude towards such evidence, even (tending to) excluding it from judicial consideration. Although character evaluation plays an irreplaceable role in social life and is closely legally linked to criminal cases, it may also bring potential threats to judicial fairness. Therefore, when constructing the character evidence system, we need to adhere to the principle of prudence, set it as the object of routine exclusion, and only adopt it under specific exceptional conditions.

In the sentencing stage, the application of character evidence should be conservative. For example, "recidivism as a sentencing consideration means that past criminal behavior is only related to the current sentencing, and generally not directly used as the basis for determining whether the defendant has committed the currently charged crime. In fact, the existence of a criminal record may lead to suspects and defendants facing unfair treatment in the criminal justice process. Therefore, for the character evidence of past behavior, we should cherish its proof value while being alert to and trying to avoid the risk of prejudice arising from it.

4. Improving the Institutional Guarantee for the Application of Criminal Character Evidence Rules

4.1. Standardizing Evidence Collection

If the evidence attribute of character evidence is to be recognized, the collection of character evidence should be strictly limited in combination with China's existing evidence collection procedures, that is, stipulating that the legal subject collects the character proof materials of different subjects according to the legal procedures. First, in China's criminal litigation procedures, the acquisition subjects of character evidence are clearly defined. A series of laws, regulations, and judicial interpretations such as the Criminal Procedure Law and its Interpretation of the Criminal Procedure Law have all given clear legal basis for the collection scope of character evidence. In view of the professional knowledge required for character assessment, which not only covers law but also includes multiple disciplines such as psychology and sociology, within the framework of legal provisions, a special team can be orga-

nized or entrusted to rely on the strength of relevant professional institutions and adopt diversified investigation means to carry out in-depth investigation and analysis of the character situation of the personnel involved.

4.2. Sufficient Cross-Examination

The key to whether character evidence can be admitted lies in the evidence cross-examination stage. At this time, both the prosecution and the defense need to test all the evidence. The proposal and application of character evidence must comply with the statutory application standards and cross-examination procedures and must be closely related to the focus of the dispute. If it is only a baseless debate on the quality of character, it should not be regarded as evidence. The cross-examination of character evidence also needs to be limited in time. For example, if the defense takes the initiative to provide its good character evidence to prove the defendant's innocence, the prosecution has the right to request to present the defendant's bad character evidence. The cross-examination process should not be too lengthy. If the main core of the dispute is basically clear, the debate on the character evidence should be stopped to prevent deviating from the focus of the litigation dispute.

4.3. Strict Authentication

Generally speaking, there is no direct causal relationship between the character attributes of criminal suspects and the crimes they are charged with, and from the collection of character evidence to becoming the core support for case characterization, it needs to go through a rigorous and complex review process. In this process, the relevance between the evidence and the case itself should first be examined, that is, whether the evidence is closely related to the core facts of the case and can effectively prove the true situation of the case. The key to rising from mere "evidence materials" to "basis for deciding a case" is to evaluate the substantive role and proof efficiency played by character evidence in the "fact-finding" process. Although character evidence is relatively weak in proof compared with other types of evidence and cannot be used alone as direct evidence to determine the facts of the case, it can indeed play a certain proof effect when corroborating with other evidence.

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