美/国/法/学/院/经/典/教/材

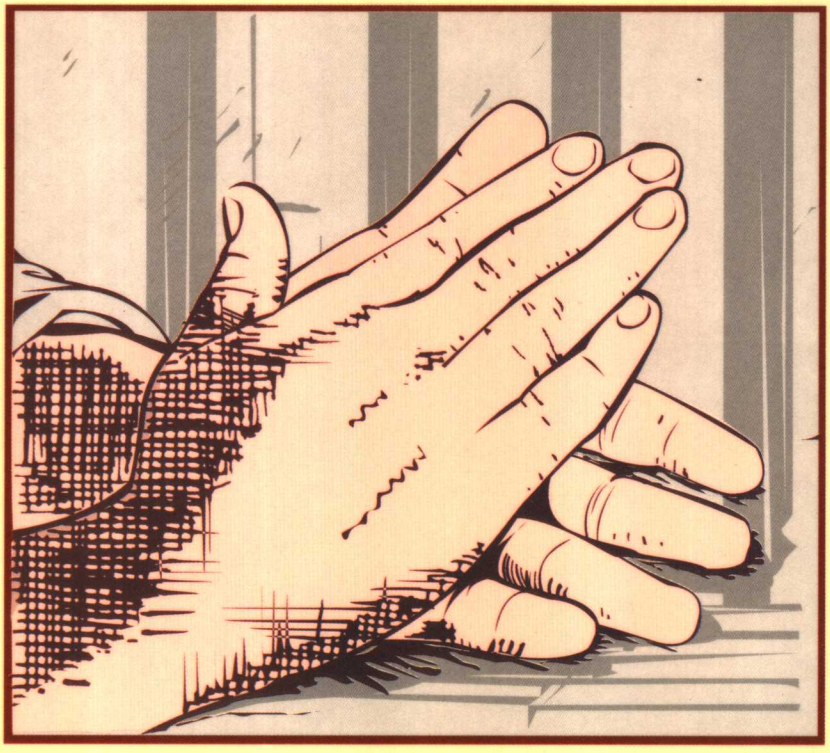
•ASPEN 释例系列•

Criminal Procedure (Third Edition)

EXAMPLES & EXPLANATIONS

刑事诉讼法（第三版）

注译本



Robert M. Bloom
Mark S. Brodin /著
郝银钟 张泽涛 /注
孙 远 /校

方正出版 策划出品

中国方正出版社
CHINA FANGZHENG PRESS

CRIMINAL PROCEDURE (Third Edtion)

美／国／法／学／院／经／典／教／材

刑事诉讼法（第三版）

•ASPEN 释例系列•

注译本

Robert M. Bloom
Mark S. Brodin /著
郝银钟 张泽涛 /注
孙 远 /校

西北书局策划出品

中国方正出版社
CHINA FANGZHENG PRESS

图书在版编目(CIP)数据

刑事诉讼法/(美)布鲁姆、布罗顿著.北京:中国方正出版社,2003.8
(Aspen 美国法学院教材系列)

ISBN 7-80107-654-0

Ⅰ.刑… Ⅱ.①布②布… Ⅲ.刑事诉讼法-研究-美国-英文 Ⅳ.D971.252

中国版本图书馆 CIP 数据核字(2003)第 041835 号

刑事诉讼法(注译本)
Robert M. Bloom & Mark S. Brodin/著
郝银钟 张泽涛/注
孙远/校

责任编辑:包瓯鸥 (E-mail: Bao@FZPress.com)
责任校对:张 蓉
责任印制:郑 新

出版发行:中国方正出版社(http://www.FZPress.com)
(北京市西城区平安里西大街 41 号 邮编:100813)
发行部:(010)66124758 门市部:(010)63094573
编辑部:(010)83085204 出版部:(010)66510958
经 销:新华书店
印 刷:北京外文印刷厂

开 本:787×1092 毫米 1/18 开
印 张:23.875
字 数:450 千字
版 次:2003 年 8 月第 1 版 2003 年 8 月第 1 次印刷

ISBN 7-80107-654-0 定价:48.00 元

总　序

在人类文明的发展与进步中，中华民族以其悠久的文化传统率先开启了东方文明的大门，古老的中华文明不仅创造出人类历史上最悠久的法律文化，而且在法制思想、法制观念及法律人才的培养上进行了积极的探索与实践。自战国时代著名法家人物邓析开创私家教授法学的传统以来，数千年来，法律教育与法律训练一直为历朝历代所重视，如最早的封建王朝——秦朝就曾经在政府内专门设置执掌法学研究与法学教育的“律博士”，到了三国两晋南北朝时期，律学的发展更是带来了中国古代法律理论的进步和法律人才的大量涌现，隋唐以后，以律典、断案以及律学为“明法”科考内容的选拔官吏制度，充分反映了法学教育在社会中的地位与影响。

人类进入二十世纪后，随着西方法律思想的“西风东渐”，中国的法律教育体系也在融会中西的潮流下形成了一定规模。中华人民共和国成立以后，中央人民政府积极创办新中国的教育事业，发展完善中国的法学教育体制。1950 年，国家创办了中国人民大学法律系，这是新中国建立的第一所正规的高等法学教育机构。随后，北京大学法律系、北京政法学院（现中国政法大学）、复旦大学法律系等高等政法院系次第复办和新建，新中国法学教育无论在规模、体系以及内容上均有了显著的发展。虽然在文化大革命期间中国法学教育受到很大冲击，但改革开放以来，随着政治体制和经济体制改革的日益深化，中国的法制建设得到了长足的发展，中国法学教育事业以前所未有的速度飞跃发展，一个从普法教育到专业法律人才培养的完整法律教育体系已经初步建立起来，目前，经教育部认可具有法律专业本科学位授予权的学校已达 298 所。

新中国法学教育是在国家改革开放的大环境下快速发展起来的，中国法学教育界始终以积极主动的姿态，以开放的胸襟，采取走出去、请进来的办法，不断加强与世界各国法律界、法学教育界的沟通、交流与合作，有效地推动了中国的法律教育不断迈向更高层次。其中“中美著名法学院院长联席会议暨中美法学教育的未来”学术研讨会（1998 年 6 月）、“中国——欧洲著名大学法学院院长联席会议暨欧洲一体化与中欧法学教育合作”学术研讨会（2000 年 6 月）、“亚洲法学教育改革与发展论坛”（2001 年 12 月）等一系列国内外法学教育交流活动，在国内外产生了巨大影响，特别是 2000 年 12 月举行的“21 世纪世界百所著名大学法学院院长论坛暨中国人民大学法学院成立五十周年庆祝大会”，是中国法学教育走向世界具有里程碑意义的国际法学教育盛会，不仅表明中国法学教育的蓬勃发展已为世界各国所肯定，而且架起了东西方法学教育交流合作的桥梁。在中西法律文化的交流和碰撞中，中国法学教育兼收并蓄，不断吐故纳新，保持着永续发展的

势头。

随着经济全球化的发展，特别是中国加入世界贸易组织后，培养精通外语、精通涉外贸易规则的复合型专门人才成为新世纪高等教育的重要目标。为了适应这种新形势，2001 年教育部提出在我国高等教育中推行双语教学，无疑是一个具有前瞻性的重要举措。在中外法律文化交流和合作日益频繁的新形势下，推行法学领域中的双语教学有利于中国法制体制改革和法学教育的深化；有利于创造一个适应国际规则的中国法律人才成长的环境；有利于中外法律文化的相互吸收与借鉴。目前，全国法律院校纷纷展开双语教学的尝试和探索，并且取得了一定的成效。但是，由于国内尚无一套具有一定权威性和较高水准、可供高等法学教育直接使用的原版教材，使法学双语教育缺少有效的载体，在一定程度上影响了法学双语教学的进一步推行。中国方正出版社副社长、中国人民大学法学院在职博士研究生胡驰同志利用在美国哥伦比亚大学法学院作为期一年访问学者的机会，通过认真细致的调查并邀请专家论证，从美国排名前十位的法学院数十种法学教材中经过精心筛选，选择了一套适应我国法学教育实际的经典法学教材，并从美国以出版法学教材而著名的出版公司 Aspen 处购得版权，邀请专家加以注解，以全新的形式在国内出版，供各法学院校双语教学之用。

这套教材的英文原版部分，无论在内容、容量和形式上比较适合我国法学院校本科高年级学生和研究生研习美国法律和专业英语之用；特别是它每一章节所附的“释例和解析”部分（Examples & Explanations），是每一个作者吸收美国法院多年判例的精华总结整理出的理解和指导该法在实践操作中的精要之所在，因而也是该系列教材的特色之所在，值得我们国内的教材编写者借鉴学习。另外，中国方正出版社此次并没有简单地采用“影印版”的方式引进本系列教材，而是充分考虑到中国学生英美法知识背景相对薄弱、相应方面辅助读物有限等实际困难，特地邀请有关专家学者和一些有英美法留学背景的人士，为本系列教材中的关键词、核心概念和一些具有深远影响的法院判例做了详实准确的注释，同时指引读者在中国法与美国法之间建立一定的联系，活学活用、融会贯通。此举更是为这套教材增添了可观的附加值，值得向各大法律院校的广大在校生和工作在司法第一线的法官、检察官们推荐。

在本套教材即将付梓之际，中国方正出版社嘱吾写几句话，该社襄助法学教育的义举值得赞赏，欣然援笔以为序。

曾宪义

2002 年 10 月 20 日

（曾宪义教授担任中国人民大学法学院院长、教育部高等学校法学学科教学指导委员会主任委员、中国法学会法学教育研究会会长）

《刑事诉讼法:案例与分析》中文注释版导读

亲爱的中国读者:

我们衷心希望本书能对您学习美国刑事诉讼法提供有价值的参考。以下是一个简短的说明,旨在让您对我们研究这一重要课题的方法有更深的了解。

在美国,主要的法律渊源是判例法,即法官对提交到法院的争端所做的裁判。撰写并公布的这些裁判不仅解决当事人之间的直接争议,并且还阐明了作为解决未来案例之先例的法律原则(遵循先例)。通常,制定法、甚至宪法的条文在语言表达上都相当概括,这就把对它们进行解释和适用的任务留给了法院。

本书的重点是美国宪法中被称为"权利法案"的那一部分内容,特别是第四、第五和第六修正案。合众国的缔造者们通过制定这些宪法条文,力求限制政府权力并保障犯罪嫌疑人的人权。第四修正案为政府搜查公民身体和居住场所做出了限制,第五修正案保障被告人免受强迫自证其罪,第六条修正案确保被告人在审判过程中的某些权利(例如聘请律师为其辩护的权利)。多年来,通过无数的案件,宪法中的这些规定都得到了最高法院的解释,这些裁判所确立的原则指导着刑事控诉活动的进程。

宪法刑事诉讼程序在过去 50 年中经历了深远的变化,而且,法律的这些变化深受最高法院之组成的影响。60 年代,在首席大法官 Earl Warren 的带领下,法院在保护公民免受警察和检察官滥用权力之侵害方面创建了一些标志性的判例(如 *Miranda v. Arizona*)。然而,在 Warren Burger 和现任首席法官 William Rehnquist 的领导下,法院作出了一些更具保守色彩的判决,这便大大削弱了那些先例的作用。在个人与政府长久以来的矛盾中,法律的钟摆明显的摆向了后者,对政府行使权力施加的许多限制已经被解除了。

本书的每一章都分为三个部分。正文部分概要地阐述了现行法律,另外,为了便于理解,我们还设计了一些表格和图形。接下来是问题部分(通常取材于真实的案例),这一部分由浅入深地探讨一些基本的法律概念,并启发读者将这些一般性的概念适用于具体的案件事实。最后一部分是解释部分,这一部分将分析前面提出的案例,并提出可能的解决方案。本书编写的前提是:在一个由读者身处其中的互动环境下学习会收到最好的效果。

Robert Bloom
Mark Brodin
2002 年 9 月
(胡河　译)

We specially dedicate this edition to the memory of our dear friend and colleague, Sanford J. Fox. In his extraordinarily distinguished academic career, he demonstrated great intellect, curiosity, courage, and principle. His tireless fight for the rights of children throughout the world is a constant inspiration. Sandy was an elegant and decent man who always stood up for what he believed in. He will be greatly missed.

— R.M.B.
— M.S.B.

July 2000

Preface

No area of the law evokes more passionate debate about the balance between the prerogatives of government and the liberty of the individual than constitutional criminal procedure. The social and political history of the United States in the past four decades has been written in significant part by the opinions of the Supreme Court, adjusting and readjusting this balance. As the Court under Chief Justice Warren gave definition to the 1960s with landmark "civil liberties" decisions like *Mapp v. Ohio* and *Miranda*, so the Rehnquist Court has reflected the transformation of the political landscape in its decisions of the 1980s and 1990s, lifting many constraints on the police in their "war on crime and drugs." With the curtailment of civil liberties protections by the United States Supreme Court, state courts in recent years have turned to their own constitutions to reassert safeguards against the excesses of law enforcement.

Although there is undeniably an ideological dimension to the cases in this area, there is also a wealth of legal doctrine that must be mastered by student and practitioner. It is the purpose of this book to facilitate this mastery, while at the same time keeping the reader focued on the overarching policy issues raised in the cases.

The format of this book is a combination of text, examples, and explanations. Each chapter begins with an accessible summary of the controlling law. That summary is followed by a set of examples of increasing difficulty that explore the basic concepts, and then challenge the reader to apply them to hypothetical situations (frequently derived from reported cases) in the ever-present gray areas. The explanations permit students to both check their own work and provide additional insights not developed in the text. The goal is to convey the richness of the evolving case law while at the same time helping to demystify this highly complex domain of law. We aim, in short, to stimulate the Socratic classroom at its best.

The book's organization is designed to assist the student in the critical task of problem solving. This is accomplished by breaking down the constitutional analysis of police conduct into component issues. The "search and seizure" chapters of the book, for example, are organized to first pose the threshold issue of applicability, and then deal with the discrete questions of justification and the warrant requirement. Similarly, the chapters on "interrogation and confessions" sequentially follow the questions

that must be resolved to determine the admissibility of a statement obtained by the police.

The ***Third Edition*** takes account of the significant judicial developments and trends since 1995 by way of new text, examples, and explanations. It also adds a new chapter concerning emerging issues raised by sophisticated law enforcement technology at the start of the new millennium.

Mark Brodin wishes to gratefully acknowledge three mentors who kindled his interest in and shaped his thoughts about the criminal law: Joseph L. Tauro, Moe Tandler, and the late Reuben Goodman. He dedicates this edition affectionately to Andrea, Rachel, Laura, Shirley, Susie, and to the memory of his late father, Hy.

Bob Bloom wishes to recognize two colleagues and mentors, Dean Richard G. Huber and the late Professor James Houghteling, who have been supportive throughout his career. He dedicates this edition to his wife Christina Jameson, his children, David and Martha, and to the memory of his uncle Victor Katz and his father-in-law Paul Jameson.

Mark Brodin
Robert Bloom

May 2000

目录

第二部分 讯问与供认

第三部分 其他调查程序

图 表

1

Overview of Constitutional Criminal Procedure

Consider the following situation: One afternoon two city police officers, while patrolling in a marked cruiser, observe a car pull up to a street corner. A man emerges from the car and begins talking with an individual whom the officers recognize as Michael Chestnut, identified by an informant as the main narcotics dealer in that neighborhood. The first man hands Chestnut a large leather pouch and promptly departs. Chestnut, observing the police cruiser, begins running in the opposite direction. The officers follow Chestnut and overtake him. They inform him that he is under arrest, handcuff him, and take the pouch, which they open to find several plastic bags filled with a white powder. Chestnut is brought to the station house and booked for unlawful possession of narcotics. He is then taken into an interrogation ① room where he is questioned by a detective, and he makes several incriminating statements. The substance seized from Chestnut is sent to the police lab and is determined to be cocaine. Chestnut is charged with narcotic offenses in violation of state law.

Before the 1960s Chestnut's encounter with the police would represent the first step in a criminal justice process that in many states focused exclusively on the question of Chestnut's guilt or innocence. The way in

---

① [讯问] 刑事诉讼中的讯问又称审讯、审问，是指警察或者检察官对被告人发问，使其陈述案件情况的一种行为；其目的是使被告人陈述犯罪事实和于己有利的情况，以便查明案件的真相。讯问对于检察官和警察来说，是收集证据，核对证据，了解案情和听取被告人辩解的重要手段。对刑事被告人来说，通过回答讯问，既可陈述犯罪事实，又是行使辩护权进行申辩、维护自己合法权益的重要方式。但是，在美国，警察或者检察官讯问犯罪嫌疑人或者被告人时不得违背自白的排除法则等一些规定。

which the police conducted the arrest, search, and interrogation of Chestnut would not be pertinent to the proceedings, unless made so by local law. Given the circumstances described above, either a guilty plea or a verdict of guilt ① after trial would be the likely conclusion of the process.

The criminal justice system in the United States underwent a transformation in the 1960s, a "revolution from above" initiated by the U. S. Supreme Court. By the end of a decade of ground-breaking precedent, the question of an accused's guilt or innocence came to share the judicial spotlight with questions concerning the legality of the police conduct. Was the arrest of Chestnut and the seizure of his possessions lawful? Was the interrogation properly conducted? These questions were to be answered not under local law, but according to the U. S. Constitution as interpreted by the Supreme Court. The answers would determine whether the prosecutor could use at trial the evidence seized and the statements obtained against Chestnut, or whether they would be kept from the jury by operation of the exclusionary rule② . As some commentators have put it, criminal procedure had been federalized and constitutionalized.

How did this transformation come about?

The Constitution adopted in 1787 divided sovereign power between the states on the one hand and the newly formed federal government on the other. Each had the power to prosecute offenders of its criminal laws in its own courts. Those prosecuted in the federal system were beneficiaries of the considerable procedural protections established by the Bill of Rights (the original ten amendments to the Constitution), most notably the rights to be free from unreasonable search and seizure and from compelled self-incrimination. Those prosecuted in state court (which group has always constituted the majority of criminal defendants), however, were afforded only those protections created by state constitution or other local law, which usually were significantly less protective than their federal counterparts.

The seeds of change were sown with the adoption after the Civil War of the Fourteenth Amendement, which provides that the states may not "deprive any person of life, liberty, or property without due process of law." This limit on state power raised the possibility that defendants in state prosecutions might be able to claim the same procedural protections afforded federal defendants. The "incorporation" of such rights against the states, however, was a long time coming. At first the Supreme Court applied the due process clause to state trials by employing an amorphous standard of "fundamental fairness," which did not encompass all the specific protections of the Bill of Rights. In the few cases in which the clause

---

① [有罪判决/有罪裁判] 通常是指由陪审团作出的认定被告人犯有指控罪名的一种裁决。有罪裁决是关于指控的事实是否成立的正式裁决，它在追诉方的指控达到排除一切合理怀疑时才能作出。

② [证据排除规则] 由法院所确立的在刑事审判过程中禁止采用通过违宪搜查或扣押而获取的材料的证据规则。详见第七章。

was successfully invoked to reverse state criminal convictions, such as *Rochin v. California*, 342 U.S. 165 (1952)[①] the Court refused to define the mandate of due process [②] more precisely than requiring that state law enforcement officers not engage in conduct that "offends a traditional sense of justice" or "shocks the conscience."

Throughout the first half of the twentieth century, state criminal defendants were without the constitutional protections provided in the Bill of Rights, which were available to those facing federal charges. The difference in treatment was magnified when, in 1914, the federal courts adopted an exclusionary remedy requiring suppression of evidence obtained in violation of the Fourth Amendment. See *Weeks v. United States*, 232 U.S. 383 (1914). A search that would be deemed illegal under federal standards and consequently result in suppression of the evidence (and perhaps the dismissal of charges) in federal court might nonetheless be considered lawful in a state prosecution under the less stringent due process measure, opening the way to the introduction of the evidence (and possible conviction). Even after the Court imposed the same federal constitutional standards on searches conducted by state (and local) police in 1949, the exclusionary remedy was not mandated in state prosecutions.[③] As a result, dramatically inconsistent results could follow depending upon which court system the accused happened to be prosecuted in.

In the early 1960s the Court, under the leadership of Chief Justice Earl Warren, set out on a new path of uniform application of both constitutional standards and remedies in which specific provisions of the Bill of Rights were "incorporated" through the due process clause and applied to the conduct of state and local law enforcement officers. In the seminal case of *Mapp v. Ohio*, 367 U.S. 643 (1961)[④], the Court held that the violation of a state defendant's right against unreasonable search required

---

① [***Rochin v. california***] 洛杉矶的警察在没有搜查证的情况下进入Rochin的家里去搜查毒品。当他们强行打开Rochin卧室的门并发现他的时候，他已经把两个胶囊放进自己的嘴里。警察抓住Rochin并试图将胶囊取出来，但他还是吞了下去。于是警察便把Rochin带到一位医生那里，医生把一种化学溶液注入他的胃，迫使他将胶囊呕吐出来。法院裁定，控方不能在审判中将那些胶囊作为证据使用。

② [正当程序] 正当程序意味着为保护个人权利，政府只能在按法律确立的方式和法律限制范围内进行活动，其目的是为了防止政府专横、任性地行使权力。美国宪法中有两个条款中含有正当程序术语。第五修正案禁止"不经正当程序而剥夺生命、自由或财产"，而且对联邦政府的专断和不合理行为设置了限制。正当程序要求政府按照既定的正规的程序行事，它使那些程序受到在保护个人权利方面的宪法和制定法上的限制。有两类正当程序，首先是"程序性正当程序"（procedural due process），它专注于政府政策执行的方法和程序，在一个人作为一方当事人时应当被正式告知一切程序活动，并且有得到公正审判的机会。其次指的是"实体性正当程序"，它主要是规范政策合理性的，当政策不当地脱离法定的立法目标或当政策有不允许存在的模糊性时，政策就会否定实体性正当程序。在本书中，基本上都在第一种含义上使用该术语。

③ （原作者注）参见*Wolf v. Colorado*，338 U.S. 25（1949）。应当注意的是，到了1961年，已经有几个州通过立法或法院判例确立了非法证据排除规则。

④ [***Mapp v. Ohio***] 克里弗兰州的警察在没有搜查证的情况下，强行进入马普太太的家里去寻找一个与不久前发生的一桩爆炸案有关的人的线索。经过一番冲突之后，他们拷住了马普太太，然后进行更为仔细的搜查，并最终查获了一些可疑的淫秽物品。法院裁定，控方在审判中不得将这些物品作为证据使用。

precisely the same remedy as was mandated in federal prosecutions, namely suppression of the evidence obtained from the search. Five years later in *Miranda v. Arizona*, 384 U.S. 436 (1996), the Court imposed on both state and federal authorities a comprehensive set of rules (and corresponding exclusionary remedy) designed to protect the accused's Fifth Amendment ① right against compelled selfincrimination. Before the decade was out, the Sixth Amendment rights to counsel and to a jury trial and the Eighth Amendment ② protection against cruel and unusual punishment were also applied to the states.

In sum, an accused's fate in the criminal justice process would no longer depend fortuitously upon whether he was prosecuted by the state or the federal government. A uniform body of constitutional principles now applied to both sovereigns. The Warren Court also expanded the scope of habeas corpus, thus providing state prisoners with access to federal court to enforce their newly found rights. See *Fay v. Noia*, 372 U.S. 391 (1963).

Not surprisingly, these developments generated considerable controversy in both legal and political arenas. Some argued that the "preservation of a proper balance between state and federal responsibility in the administration of criminal justice" had been upset by the adoption of nationwide standards and that the fundamental concept of "federalism" had thus been wrongly ignored. *Mapp v. Ohio*, supra, 367 U.S. at 680 (Harlan, J., dissenting). Others complained that the Warren Court decisions would tie the hands of local law enforcement officers and make the world safe for criminal offenders. ③ Criticism was levelled at the use of the criminal trial as a vehicle for enforcing norms of police conduct rather than solely as a means for determining the guilt or innocence of the accused.

The lightning rod of the controversy was (and remains) the exclusionary rule itself. As Cardozo posed the question: Should the criminal go free because the constable has blundered? *People v. Defore*, 150 N. E. 585 (N.Y. 1926). Justice Clark explained for the *Mapp* Court that other remedies such as civil actions for monetary relief and criminal prosecutions against the offending officers had proven worthless, and thus suppression of evidence unlawfully seized was the only means to enforce the Fourth Amendment. Police officers and prosecutors would abide by the

---

① [第五修正案] 美国的宪法修正案中的很多条款都是为了保障被告人在刑事诉讼活动中的各种人身权利和财产权利而规定的。第五修正案的内容是："除非依据大陪审团的报告或起诉书，任何人不得受到重罪或其他剥夺公民权利的罪行的审判，但战争时期或国家危急时期在陆军或海军部队或在服现役的民兵中发生的案件除外；任何人不得因为同一犯罪在生命和身体上受到两次刑事追究；任何人不得被迫在刑事案件中自证其罪；非经正当法律程序，不得被剥夺生命、自由或财产；非经公平补偿，私有财产不得充作公用。"

② [第八修正案] 第八修正案的内容是："不得要求过多的保释金，不得处以过高的罚金，不得施加酷刑和非常之刑。"

③ (原作者注) 自从里查德·尼克松在1968年总统大选中获胜之后，这就成为美国政治生活中的一个主旋律。

constraints of the Fourth Amendment ①, it was asserted, if they knew that evidence obtained unlawfully could not be used against the accused in court. To this deterrence rationale the *Mapp* Court added "the imperative of judicial integrity": "The criminal goes free, if he must, but it is the law that sets him free. Nothing can destroy a government more quickly than its failure to observe its own law, or worse, its disregard of the charter of its own existence." 367 U.S. at 659.

Yet discontent with the exclusionary remedy has persisted. Chief Justice Burger, in one of his early dissents on the Court, bitterly criticized the doctrine that hides probative evidence from the fact finder. See *Bivens v. Six Unknown Named Agents of the Federal Bureau* of *Narcotics*, 403 U.S. 388 (1971) (Burger, C.J., dissenting). Heralding a change in the Court's course that would come some years later, the Chief Justice disputed both the efficacy and necessity of the exclusionary remedy and argued for the substitution of other means (such as civil actions) to enforce constitutional dictates. He characterized the deterrence rationale as nothing more than "a wistful dream" with no empirical support, and he emphasized "the high price" it extracts from society — "the release of countless guilty criminals."② In explaining what he characterized as the failure of the suppression remedy to deter unlawful police conduct, Burger observed that: the rule provides no direct sanction against the offending officer; that the prosecutor who may lose the case because of the suppression generally has no official authority over the offending officer; that the time lapse between the police action and the final ruling excluding the evidence is often so long that whatever educational effect it might have had is lost; and that much police action is not directed at ultimate prosecution of the subject and therefore is not conducted in anticipation of a trial requiring proof. Moreover, he complained that the exclusionary remedy allows for no proportionality — that is, regardless of the magnitude of the police misconduct or the nature of the crime involved, the remedy is always the same. 403 U.S. at 416－418.

Since the 1970s the Court, apparently influenced by this critique, has significantly chipped away at the scope and applicability of the exclusionary rule in both the Fourth and Fifth Amendment contexts. Limitations have been imposed on those deemed to have "standing" to raise Fourth Amendment objections, as well as on the types of proceedings in which the suppression remedy applies (it has been held inapplicable, for

① [第四修正案] 宪法第四修正案的内容是："人民保护其人身、住所、文件和财产不受无理搜查与扣押的权利不受侵犯，并且不得颁发搜查证或扣押证，除非依据经宣誓或郑重声明提出确实理由并且具体指定了被搜查的地点和被扣押的人或物。"

② (原作者注) 403 U.S. at 416. 因排除规则的运作而获释的实际人数已经成为一个引起激烈争论的问题。参见 Oaks, Studying the Exclusionary Rule in Search and Seizure, 37 U. Chi. L. Rev. 665 (1970); Spiotto, Search and Seizure: An Empirical Study of the Exc lusionary Rule and Its Alternatives, 2J. Legal Studies 243 (1973); Impact of the Exclusionary Rule on Federal Criminal Prosecutions, U.S. Gen. Acctg. Office (GGD－79－45), 1979。