

SELECTED CLASSIC READINGS AND CASES ON  
AMERICAN CRIMINAL PROCEDURE LAW  
[美]弗洛伊德·菲尼 岳礼玲 选编

# 美国 刑事 诉讼法

经典文选与判例



中国法制出版社

# 美国刑事诉讼法 经典文选与判例

SELECTED CLASSIC READINGS AND CASES  
ON AMERICAN CRIMINAL PROCEDURE LAW

[美] 弗洛伊德·菲尼 岳礼玲 选编

(以下以姓氏笔划为序)

卫跃宁 王树平 吴宏耀

郑旭 胡铭 温小洁

程味秋 岳礼玲 校

译

中国法制出版社

## 图书在版编目 (CIP) 数据

美国刑事诉讼法经典文选与判例/ (美) 菲尼,  
岳礼玲编. —北京: 中国法制出版社, 2006. 5

ISBN 7-80226-187-2

I. 美... II. ①菲... ②岳... III. ①刑事诉讼法  
- 美国 - 文集 ②刑事诉讼法 - 案例 - 美国 IV. D971.252

中国版本图书馆 CIP 数据核字 (2006) 第 046028 号

## 美国刑事诉讼法经典文选与判例

MEIGUO XINGSHI SUSONGFA JINGDIAN WENXUAN YU PANLI

编者/ (美) 菲尼 岳礼玲

经销/ 新华书店

印刷/ 三河市紫恒印装有限公司

开本/ 880 × 1230 毫米 32

印张/ 14.875 字数/ 280 千

版次/ 2006 年 5 月第 1 版

2006 年 5 月印刷

---

中国法制出版社出版

书号 ISBN 7-80226-187-2

定价: 32.00 元

北京西单横二条 2 号 邮政编码 100031

传真: 66070041

网址: <http://www.zgfzs.com>

编辑部电话: 66032584

市场营销部电话: 66033393

邮购部电话: 66033288



与美国联邦最高法院历史上首位女大法官  
桑德拉·戴·奥康纳合影



编者在美国加利福尼亚大学戴维斯分校法学院合影

# 前 言

自从1996年刑事诉讼法修改至今，已经经历了10年的实践。在这十年中我国的法制建设取得了很大进展；在世界范围，也有许多国家对刑事诉讼法进行了修改。在去年，全国人大法工委将刑事诉讼法的再修改纳入三年立法规划。此外，我国在1998年签署了联合国《公民权利和政治权利国际公约》，现在我国政府也在积极酝酿对这个公约的正式批准。这个公约中的不少条款，直接涉及我国刑事司法制度的改革，特别是有关生命权、自由权、反对酷刑权和公正审判权等。在目前的研究和法律修改活动中，我们明显地意识到为了能够更好地修改刑事诉讼法，使其符合国际准则并在我国实践中能更好地实施，我们需要更多的有关国际刑事司法方面的信息和从比较研究的角度看他国刑事司法改革的经验。我们希望，能够通过这本书给大家提供从新的角度更深入地了解美国刑事诉讼程序的途径，并且促进对美国刑事诉讼理论与实践进一步发展的更广泛和基础的研究。

这本书的风格与其它介绍美国刑事诉讼程序的书有所不同，不是对指导美国刑事诉讼实践的规则进行简单的叙述，而是非常谨慎地选择了一系列论文，旨在展示那些影响美国刑事诉讼发展的主要辩论。它的目的是帮助读者除了了解那些规则外，

更深入地了解美国刑事诉讼的理念和现实，并从其渊源了解社会、历史、文化和传统的不同因素对刑事诉讼发展进程的影响。

本书的每一章都以一个简要的概述开始，其后是美国宪法的相关条文及有代表意义的判例。这些案例通常是那些创制美国刑事诉讼程序中最著名规则的判例。每章的最后一部分我们选择了那些最具有代表意义的专家的文章，目的是展示美国的学者在刑事诉讼理论进一步发展方面的不同观点和争论。最后一章论述了美国刑事诉讼程序的一些最新发展。

在此，我衷心感谢美国福特基金会，特别是其前项目官员张乐伦女士在最初的立意和选题方面的帮助，以及现任项目官员刘晓堤女士在后期编辑出版上的关注与支持。这本书的计划工作最初是在加利福尼亚大学戴维斯分校的法学院完成的。弗洛伊德·菲尼教授和我在当时设计了本书的结构，筛选了相关的资料并进行了编辑。菲尼教授撰写了每一章的概述，并协助收集了所有文章翻译的版权许可。程味秋教授对译稿的审查提供了重要帮助并编写了书后所附的有关刑事诉讼程序的词条。卫跃宁副教授、王树平博士、吴宏耀副教授、郑旭副教授、胡铭博士和温小洁博士共同翻译了本书。我也非常感谢我的学生郭烁、吴迎曦、刘晓丹、马贤丽、孙晓琦、蔡国华在文字校对上给予了很重要的帮助，并且还要感谢我校211工程办公室对本书出版的补贴资助。对所有这些专家、学者和学生所进行的认真工作和对本书的重要贡献表示真诚的谢意。

岳礼玲

2006年5月于北京

## Foreword

Since 1996 revision of Criminal Procedure Law, it has been 10 years practice of law. During these 10 years, China's legal reform has made great progress. Last year, Legislative Affair Office of People's Congress has put Criminal Procedure Reform into the law revision plan. In addition, China has signed International Covenant on Civil and Political Rights in 1998, right now Chinese government is preparing for the ratification of the Covenant. There are quite some of articles related to the Criminal Procedure Law reform, specially the right to life, right to liberty, right to against torture and right to fair trial etc. During recent research, we have recognized that greater knowledge about international criminal justice and the comparative aspects of criminal justice reform would be helpful for the Criminal Procedure Law revision. No single book can supply all the information and research needed for this purpose. We hope, however, that this book—by providing a fresh, and deeper look into American criminal procedure—will help to stimulate the broader research and study essential for further development of theory and practice.

The style of this book differs from others which seek to introduce

American criminal procedure. Rather than a statement of the rules governing American practice, the book is a carefully selected collection of articles intended to show some of the major debates that have shaped the development of American criminal procedure. Its purpose is assist readers who would like to go beyond the rules in order to develop an understanding of the rationale and reality of criminal procedure—learning from original sources how the different elements of society, history, culture, and tradition influence the process of development of criminal procedure in another society.

Each chapter begins with an introduction. This is generally followed by the relevant article or parts of the American Constitution and by one or two leading cases. Often the cases included are those creating the best-known rules in the particular area of criminal procedure discussed. The last part of each chapter contains excerpts from leading articles showing how American scholars debate with each other the future development of their criminal procedure theory. The final chapter discusses some of the most recent developments in American criminal procedure.

I would like to thank the Ford Foundation, and particularly Ms. Phyllis Chang, the Foundation's former Program Officer, for encouraging the idea of the book and the current Program Officer, Ms. Titi Liu, for providing further support for editing and publication. The book itself was planned at the University of California at Davis, School of Law. Professor Floyd Feeney and I planned the structure, selected the



materials, and edited the book. Professor Feeney also wrote an introduction for the book and for each of the chapters, he also collected all permissions of copyright for translation and publication. Professor Cheng Wei Qiu helped with the important work of reviewing the manuscript and editing the glossary. Associate Professor Wei Yuening, Dr. Wang Shuping, Associate Professor Wu Hongyao, Associate Professor Zheng Xu, Dr. Hu Ming, and Dr. Wen Xiaojie were responsible for the translation. I am also very grateful to my master students Guo Shuo, Wu Yingxi, Liu Xiaodan, Ma Xianli, Sun Xiaoqi, and Cai Guohua. They helped a lot with updating materials and further checking translation. I would like to express my great appreciation to all of these scholars for their careful work and their important contributions to the book.

Yue, Liling  
May 2006 in Beijing

## 版权许可

本书收录的文章及著作得到下列著作权人和版权持有者的翻译和出版许可：

Extracts from the following works appear with the kind permission of the copyright holders:

Craig Bradley, "United States," in Craig Bradley, ed., *Criminal Procedure: A Worldwide Study* (Chapel Hill, N. C. : Carolina Academic Press, 1999) . Copyright © 1999 by Carolina Academic Press. Reprinted by permission.

Jon M. Van Dyke, "Trial Juries and Grand Juries," in Robert J. Janosik, ed., *Encyclopedia of the American Judicial System* (New York, N. Y. : Scribner's, 1987) . Copyright © 1987 by Charles Scribner's Sons. Reprinted by permission.

Floyd F. Feeney and Lawrence Herman, "Summary Proceedings in Penal Matters in the United States," 42 *American Journal of Comparative Law* 747 (Supplement 1994) . Copyright © 1994 by the American

Journal of Comparative Law. Reprinted by permission.

Richard Frase, "Fair Trial Standards in the United States of America," in David Weissbrodt and Rudiger Wolfrum, eds., *The Right to a Fair Trial* (Berlin: Springer, 1997). Copyright © 1997 by the Max—Planck—Institut fuer auslaendisches oeffentliches Recht und Voelkerrecht, Heidelberg, Germany. Reprinted by permission.

William J. Genego, "The Future of Effective Assistance of Counsel: Performance Standards and Competent Representation," 22 *American Criminal Law Review* 181 (1984). Copyright © 1984 by the American Bar Association. Reprinted by permission.

Yale Kamisar, "Remembering the 'Old World' of Criminal Procedure: A Reply to Professor Grano," 23 *University of Michigan Journal of Law Reform* 537 (1990). Copyright © 1990 by the University of Michigan Journal of Law Reform. Reprinted by permission.

Wayne R. LaFave, "'Case by Case Adjudication' Versus 'Standardized Procedures': The Robinson Dilemma," 1974 *The Supreme Court Review* 127 (1975). Copyright © 1975 by the University of Chicago. Reprinted by permission.

Herbert L. Packer, "Two Models of the Criminal Process," 113

*University of Pennsylvania Law Review* 1 (1964) . Copyright © 1964—1965 by the University of Pennsylvania Law Review. Reprinted by permission.

Kate Smith Cabranes, “The Criminal Jury in Our Time,” 3 *Virginia Journal of Social Policy and Law* 133 (1995) . Copyright © 1995 by the Virginia Journal of Social Policy and Law. Reprinted by permission.

Peter Westen, “The Three Faces of Double Jeopardy: Reflections on Government Appeals of Criminal Sentences,” 78 *University of Michigan Law Review* 1001 (1980) . Copyright © 1980 by the University of Michigan Law Review. Reprinted by permission.

The cover photograph is of the west entrance of the United States Supreme Court Building (June 1995) . Photograph from the Collection of the Supreme Court of the United States.

## 目 录

第一章 序 言 .....	1
第二章 总 论 .....	29
第一节 导论——制度总览 .....	29
第二节 刑事诉讼的两种模式 .....	30
第三节 美国的公正审判标准 .....	44
第四节 美国刑事诉讼 .....	100
第三章 搜查与扣押 .....	150
第一节 导论 .....	150
第二节 宪法第四修正案和马普诉俄亥俄州 .....	154
第三节 关于“普遍授权”的可能限制的评论 .....	162
第四章 警察讯问 .....	177
第一节 导论 .....	177
第二节 宪法第五修正案和布朗诉密西西比州 .....	183
第三节 米兰达诉亚利桑那州 .....	189
第四节 记住刑事诉讼的“旧世界”——答格兰诺 教授 .....	209
第五章 获得律师帮助的权利 .....	227
第一节 导论 .....	227

第二节	宪法第六修正案和吉迪恩诉韦温赖特	230
第三节	履行标准和代理资格	238
<b>第六章</b>	<b>答辩与答辩交易</b>	<b>254</b>
第一节	导论	254
第二节	联邦刑事诉讼规则第11条	256
第三节	答辩谈判	261
<b>第七章</b>	<b>陪审团审判</b>	<b>273</b>
第一节	导论	273
第二节	宪法第六修正案和邓肯诉路易斯安那州	276
第三节	陪审团审判	285
第四节	我们时代的刑事陪审团	299
<b>第八章</b>	<b>证据法</b>	<b>307</b>
第一节	导论	307
第二节	宪法第五、第六和第十四修正案	314
第三节	美国联邦证据规则(2004年)	315
第四节	怀特诉伊利诺伊州	358
<b>第九章</b>	<b>双重危险</b>	<b>374</b>
第一节	导论	374
第二节	宪法第五修正案和格雷迪诉科尔宾案	378
第三节	禁止双重危险的三个方面	389
<b>第十章</b>	<b>新近发展</b>	<b>411</b>
<b>附录</b>	<b>英汉译名对照表</b>	<b>447</b>
	补充阅读书目	458

# TABLE OF CONTENTS

**Chapter One Introduction** ..... 1

**Chapter Two Overview** ..... 29

    2.1 Introduction—System Overview ..... 29

    2.2 Two Models of the Criminal process ..... 30

    2.3 Fair Trial Standards in the United States of America ..... 44

    2.4 Criminal Procedure of the United States of America ..... 100

**Chapter Three Search and Seizure** ..... 150

    3.1 Introduction ..... 150

    3.2 Fourth Amendment and Mapp v. Ohio ..... 154

    3.3 A Critique on Possible Limitations of “ General  
        Authorization” ..... 162

**Chapter Four Police Interrogations** ..... 177

    4.1 Introduction ..... 177

    4.2 Fifth Amendment and Brown v. Mississippi ..... 183

    4.3 Miranda v. Arizona ..... 189

4. 4 Remembering the “Old World” of Criminal Procedure; A Reply to Professor Grano .....	209
<b>Chapter Five Right to a Defense Attorney .....</b>	<b>227</b>
5. 1 Introduction .....	227
5. 2 Sixth Amendment and Gideon v. Wainwright .....	230
5. 3 Performance Standards and Competent Representation .....	238
<b>Chapter Six Pleas and Plea Bargaining .....</b>	<b>254</b>
6. 1 Introduction .....	254
6. 2 Federal Rules of Criminal Procedure, Rule 11 .....	256
6. 3 Plea Negotiations .....	261
<b>Chapter Seven Trial by Jury .....</b>	<b>273</b>
7. 1 Introduction .....	273
7. 2 Sixth Amendment and Duncan v. Louisiana .....	276
7. 3 Trial Juries .....	285
7. 4 The Criminal Jury in Our Time .....	299
<b>Chapter Eight Law of Evidence .....</b>	<b>307</b>
8. 1 Introduction .....	307
8. 2 Fifth Amendment, Sixth Amendment, Fourteenth Amendment .....	314
8. 3 Federal Rules of Evidence .....	315
8. 4 White v. Illinois .....	358



<b>Chapter Nine Double Jeopardy</b> .....	374
9.1 Introduction .....	374
9.2 Fifth Amendment and <i>Grady v. Corbin</i> .....	378
9.3 The Three Faces of Double Jeopardy .....	389
<b>Chapter Ten Recent Development</b> .....	411
<b>Glossary</b> .....	447
<b>Some Source for Additional Study</b> .....	458