

 中国社会科学院创新工程学术出版资助项目



审判中心主义的 第二路径

马 可◎著

中国社会科学出版社



中国社会科学院创新工程学术出版资助项目



审判中心主义的 第二路径

马 可◎著

中国社会科学出版社

图书在版编目(CIP)数据

审判中心主义的第二路径 / 马可著. —北京: 中国社会科学出版社, 2016. 9

ISBN 978-7-5161-9218-4

I. ①审… II. ①马… III. ①审判-诉讼程序-研究-中国
IV. ①D925.184

中国版本图书馆 CIP 数据核字(2016)第 258468 号

出 版 人 赵剑英
责任编辑 任 明
责任校对 郝阳洋
责任印制 李寡寡

出 版 中国社会科学出版社
社 址 北京鼓楼西大街甲 158 号
邮 编 100720
网 址 <http://www.csspw.cn>
发 行 部 010-84083685
门 市 部 010-84029450
经 销 新华书店及其他书店

印刷装订 北京君升印刷有限公司
版 次 2016 年 9 月第 1 版
印 次 2016 年 9 月第 1 次印刷

开 本 710×1000 1/16
印 张 16.5
插 页 2
字 数 266 千字
定 价 75.00 元



凡购买中国社会科学出版社图书, 如有质量问题请与本社营销中心联系调换

电话: 010-84083683

版权所有 侵权必究

摘 要

十八届四中全会通过的《中共中央关于全面推进依法治国若干重大问题的决定》中明确提出了“推进以审判为中心的诉讼制度改革”，对我国司法改革和刑事诉讼制度的完善具有重要的指导意义。审判中心主义意味着整个诉讼制度和活动围绕审判而建构和展开，侦查、起诉、执行都是为了使审判能够进行或者落实审判结果，审判是整个诉讼活动的中心环节和核心活动。

如果说审判中心主义的第一路径，是推动我国刑事诉讼从侦查中心主义向审判中心主义过渡；那么审判中心主义的第二路径，则是推动司法裁判权向程序法事实（项）^①领域和审前阶段这两个方向的扩张和延伸。审判中心主义的第一路径，主要着眼于实体法事实的裁判和证明；审判中心主义的第二路径，则主要着眼于程序法事实的裁判和证明。

在我国现行刑事司法职权配置中，法院的司法裁判权仅限于审判阶段，不能在审前阶段行使，这种司法裁判权裁判的对象主要是与定罪量刑有关的实体法事项，大多数与程序性违法^②有关的程序法事实（项）不属于其裁判的对象。其他国家的法院除去审判权之外，其司法职权往往还包括以下几种：A 在审前阶段，对侦查机关的逮捕和搜查请求进行事前司法

① 程序法事实，也可称为程序法事项、程序性事实或程序性事项，是指涉及当事人诉讼权利义务、在诉讼程序上具有法律意义的事实。在本书中，“程序法事实”和“程序法事项”是两个通用的概念，“程序法事实”对应于“实体法事实”的概念而提出，是更加严谨的概念，而“程序法事项”则是更易于阐释和理解的概念，本书视语境交替使用这两个概念。

② 程序性违法，主要是侦查人员、检察人员、审判人员，在诉讼活动中，违反了刑事诉讼法规定的法律程序，侵犯了公民的诉讼权利，情节严重的违法行为。参见陈瑞华《刑事诉讼的前沿问题》，中国人民大学出版社2013年版，第195—243页。

审查。B 对辩方提出的侦查或检察机关的程序性违法行为进行事后司法审查^①。C 对未决羁押的决定、延长和解除等事项进行司法审查。这三种职权都是与程序法事实（项）紧密相关的职权，法院对这些事实（项）的审查，其性质都是对程序法事实（项）的司法审查。

审判中心主义的第二路径，就是推进针对程序法事实（项）的司法审查的开展，推动司法裁判权向程序法事实（项）领域和审前阶段这两个方向的扩张和延伸，其主要领域就是程序法事实（项）的裁判和证明这两个问题。

在现代刑事诉讼中，程序法事实（项）扮演着越来越重要的作用。随着 2010 年《非法证据排除规定》的出台，2012 年《刑事诉讼法》的修改，以及此后一系列司法解释的颁布，我国第一次出现了程序性裁判机制，针对非法证据排除的程序法事实裁判制度（司法审查程序）第一次在我国刑事诉讼法律体系中出现，程序法事实由此成为了不同于实体法事实的新的裁判对象。程序法事实裁判^②的初步确立，也使得程序法事实证明^③第一次有了用武之地，第一次能够在实然状态下被运用，由此，程序法事实也成为不同于实体法事实的新的证明对象。而新的刑事诉讼法律关系因程序法事实裁判和程序法事实证明的出现而出现，新的刑事诉讼法律关系客体因新的裁判对象（审判对象）和证明对象的形成而形成。今日

① 笔者认为，司法审查可分为事前司法审查和事后司法审查。事前司法审查主要发生在审前阶段，主要是对侦检机关提出的程序性请求事项的审查。多为侦检机关提出实施某种强制性侦查行为的申请，由法官对实施该行为是否具有合法性，即是否符合法定条件进行审查。事后司法审查，也可称为程序性争议事项的司法审查，主要是对诉讼行为合法性的事后审查。一般由辩方提出对某一诉讼行为合法性的审查要求，由法官进行审查，有时法官也可依职权主动进行审查。如果该诉讼行为不合法，则实施程序性制裁。详见第二章第二节司法审查的概念。本处为事前司法审查，本质即不完整形式的程序性裁判，后文详述。

② 程序法事实裁判是与程序法事实证明相对应的概念，即程序性裁判，本书为了便于论述和理解，会交替使用“程序法事实裁判”与“程序性裁判”这两个概念。程序性裁判、程序性制裁和程序性辩护的一系列基本概念，见陈瑞华：《刑事诉讼的前沿问题》，中国人民大学出版社 2013 年版，第 195—243 页。对程序法事实裁判或程序性裁判的论述参见第二章第一节和第三章第一节。

③ “程序法事实证明”这一概念由本书作者在博士论文《程序法事实证明研究》中提出，并对这一问题进行了成体系的论述。程序法事实证明，是在刑事诉讼审前阶段或审判阶段，控方或辩方依照司法审查的要求提出证据，就某一程序法事实的性质问题，向裁判方进行的论证说服活动。

之程序法事实于中国刑事诉讼而言,同时担当着三个重要的角色——新的裁判对象(审判对象)、新的证明对象和新的刑事诉讼法律关系客体。程序法事实的三个载体——程序性裁判、程序法事实证明和程序性裁判法律关系,于今日中国之刑事诉讼发挥着昨日不可想象的巨大作用。

(一) 程序性裁判,也可称为程序法事实裁判。在我国,法院的司法裁判权仅限于审判阶段,不能在审前阶段行使,同时,大多数重要的程序法事项不属于其裁判对象。程序法事实裁判或者说司法审查之诉将法院的司法权延伸到了审前领域和程序法事项领域。程序性裁判提供了程序法事项裁决的理论依据,有利于遏制程序性违法行为,规范侦查、检察和审判机关公权力的行使,解决广大民众所关注的司法腐败问题。

(二) 程序法事实证明,是在刑事诉讼审前阶段或审判阶段,控方或辩方依照司法审查的要求提出证据,就将要实施或已经实施的某一程序法事项(诉讼行为)的合法性问题,向裁判方进行的论证说服活动。程序法事实证明把传统的刑事证明从实体法领域拓展到程序法领域,使大量的程序法事项成为证明理论发挥作用的新对象。程序法事实证明和实体法事实证明组成了刑事证明的完整体系,使证据法学的内涵得以拓展,指导司法实践的价值大大增强。由于诉讼(审判)与证明的紧密联系,程序法事实证明为程序性裁判提供了证明基础,为司法审查之诉在我国的确立提供了证明理论支持。

(三) 程序性裁判法律关系,也可称为程序法事实裁判法律关系。程序性裁判(司法审查之诉)的出现导致程序性裁判法律关系的形成。程序性裁判法律关系和传统的刑事诉讼法律关系组成了刑事诉讼法律关系的完整体系。程序性裁判法律关系的形成又导致程序法事实客体的出现,程序法事实客体和传统的实体法事实客体组成了刑事诉讼法律关系客体的完整体系。程序性裁判法律关系和程序法事实客体把传统的刑事诉讼法律关系和刑事诉讼法律关系客体从实体性领域拓展到程序性领域。这二者可以有力地支持程序性裁判理论和程序法事实证明理论,为这两个理论从刑事诉讼基本范畴角度提供较为坚实的基础理论支撑,在刑事诉讼本质属性的认知上达到知其然知其所以然的效果。^①

^① 程序法事实裁判法律关系或程序性裁判法律关系,并非本书阐释重点,详见马可《刑事诉讼法律关系客体研究》,中国方志出版社2013年版。

本书包括引言和正文两部分，正文分为九章：

第一章审判中心主义的两条路径。首先，介绍十八届四中全会开始推进的司法改革，以及对审判中心主义的理解，阐释审判中心主义的两条路径。其二，分析审判中心主义改革的第一路径——从侦查中心主义向审判中心主义的转变，阐述审判中心主义改革的第二路径——推进针对侦查机关和检察机关程序法事项的司法审查，推动司法裁判权向程序法事项领域和审前阶段这两个方向延伸。其三，分析开辟审判中心主义第二路径的缘由。

第二章审判中心主义的第二路径——程序法事实的裁判与证明。首先，概述程序法事实，并对程序法事实进行三维度分析，即新的程序法事实裁判中的裁判对象，新的程序法事实证明中的证明对象，以及新的刑事诉讼法律关系中的诉讼客体。其二，介绍了程序法事实裁判（程序性裁判）的概念，提出了程序法事实证明的概念，解释了程序法事实的裁判与证明和实体法事实的裁判与证明的区别，着重对程序法事实的证明对象进行了体系化的分类。其三，阐述了程序法事实的裁判与证明在证据法学和诉讼法学上的重要意义。

第三章程序法事实裁判概述。程序法事实的裁判，即程序性裁判。首先，介绍其定义，分析其与实体性裁判的联系与区别，其理论枢纽地位，以及其与程序性制裁、程序法事实证明的关系。其二，对程序法事实裁判的理论基石司法审查进行阐释，介绍其概念和渊源，阐述刑事诉讼中司法审查原则的重要性，分析其与程序法事实裁判和程序法事实证明的关系。

第四章程序法事实证明概述。首先，简要介绍程序法事实证明的诸要素，即程序法事实证明的主体、程序法事实证明的证明责任、程序法事实证明的证明标准、程序法事实证明的证明方法。其二，分析程序法事实证明的价值：对实体法事实证明的扩展，为司法审查之诉提供了新的证明基础，有利于限制法官过大的自由裁量权，有利于维护犯罪嫌疑人、被告人的正当权益。

第五章程序法事实证明的证明责任。首先，分析程序法事实证明责任和实体法事实证明责任的不同——前者多遵循“谁主张谁举证”的原则，而后的证明责任经常会发生转移。其次，以非法证据排除为例分析程序性违法引发的程序法争议事实的控辩双方证明责任。其三，分析程序法请求事实中控辩双方的证明责任，以及证明责任产生的依据。其四，分析非

程序性违法引发的程序法争议事实^①中控辩双方的证明责任。

第六章程序法事实证明的证明标准。首先,介绍国内证明标准研究的一般共识,阐述程序法事实证明标准的显著特点——层次性。接着分析可用于构建程序法事实证明标准体系的几种不同的证明标准。既而,分析控方提出的程序法请求事实和辩方提出的程序法请求事实的证明标准。最后,以非法证据排除为例分析程序性违法引发的程序法争议事实中控辩双方不同的证明标准,以及《非法证据排除规定》以及2012年修订的《刑事诉讼法》中存在的问题。

第七章程序法事实证明的证明方法。首先,对严格证明和自由证明的发源、差异、意义加以介绍,分析为什么一般而言应运用自由证明的方法对程序法事实加以证明,并对自由证明进行分类。其二,以非法证据排除为例分析程序性违法引发的程序法争议事实中控辩双方的证明方法,并对实践中存在的问题加以剖析。其三,以逮捕为例分析控方提出的程序法请求事实的证明方法。其四,阐明辩方提出的程序法请求事实的证明方法。最后,对非程序性违法引发的程序法争议事实中控辩双方的证明方法进行简略分析。

第八章程序法事实证明的主体,从纵横两个线索分别分析程序法事实裁判和证明的主体。首先,纵向分析刑事诉讼构造、制度、原则和司法职权配置的历史演进,讨论刑事诉讼的四次变革,着力研究第四次变革——审判者权力的扩张;其二,横向分析第四次变革后的两造当事人和证明主体,对相关的四个问题进行讨论;其三,横向分析第四次变革后的裁判主体和认证主体,对司法职权配置问题进行讨论。

第九章对程序法事实裁判和证明的建构加以展望。首先,探讨程序性

① 程序法事实可分为程序法争议事实和程序法请求事实,程序法争议事实(项)是指就某一程序法事实(项)的性质问题(该事项是否符合法定要求),控辩双方存在相对立的诉讼主张,需要通过程序性裁判加以确认或进行选择的重大程序法事项。程序法争议事实(项)可分为程序性违法引发的程序法争议事实(项)和非程序性违法引发的程序法争议事实(项)。非法证据排除是程序性违法引发的程序性争议事实(项)的典型代表。非程序性违法引发的程序法争议事实(项)主要包括未决羁押的决定、延长和解除等事项。程序法请求事实(项)可分为控方提出的程序法请求事实(项)和辩方提出的程序法请求事实(项)。控方程序法请求事实(项),是控方对实施某一程序法事项提出的请求,多为申请采取强制性措施。辩方程序法请求事实(项),是辩方对实施某一程序法事项提出的请求,主要是申请恢复诉讼期限、证据保全等。

裁判制度的完善，继而讨论程序法争议事实证明的模式和程序法请求事实证明的模式。最后，分析程序法事实证明建构的困难和变通的思路，并对“推进以审判为中心的诉讼制度改革”带来的机遇加以阐释。

关键词：审判中心主义 司法裁判权扩张 诉讼行为合法性 程序法事实（项） 程序法事实裁判 程序法事实证明

Abstract

“Boosting the reform of trial-centered litigation system” is proposed precisely in Decision of CPC Central Committee on Major Issues Pertaining to Comprehensively Promoting the Rule of Law, which was passed in the Fourth Plenum of 18th CPC Central Committee, and had key guidance meaning for judicial reform and perfection of criminal procedural system. Under the context of principle of trial-centered criminal procedure, the instruction of criminal procedure system and the litigious activities, including investigation, prosecution and implementation, are centered on the trial. They are designed to boost the conduct of trial and implement trial result. The trial is the key link and core activity in the whole litigation.

If promoting the transition of the national criminal procedure system from investigation-centered principle to trial-centered principle is the first way of trial-centered principle reform, the expansion and extension of jurisdiction to field of procedural matters and pre-trial stage in these two directions is the second one. As to the main purpose, the first way focuses on the judgment and proof of substantive matters, whereas the second one is mainly about procedural matters.

In our existing criminal judicial power allocation, the exercise of court's judicial power is restricted to trial stage, which means we are not allowed to judge in the pre-trial stage. The object that we judge under the existing judicial power is mainly connected to the substantial matters related to conviction and sentence, while the most procedural matters related to procedural illegality are out of its power boundary. Except for judicial power, the criminal jurisdiction in other countries also includes the following authorities: A. The ex ante judicial re-

view on the request of arrest and search from investigative organization in the pre-trial stage. B. The ex post judicial review on the procedural illegality of investigative organization filed by the defense. C. The judicial review on the decision, extension and rescission of pre-trial custody. The review on procedural matters is the nature of court's review on these three matters, in terms of that these authorities is closely related to the procedural matters.

The main field of trial-centralism is the judgment and proof of procedural matters. Boosting the development of judicial review on procedural matters, extending and stretching of jurisdiction from the traditional area to procedural matters and pre-trial stage, that is the second way of trial-centralism.

In 2010 and 2012, Illegal Evidence Exclusion Rules and the revised new Criminal Procedure Law are issued respectively, thereafter, the series of judicial interpretations of criminal procedure laws. As those legal documents were promulgated, we have established the mechanism of judgment of procedural matters for the first time in Chinese law system. Specifically, mechanism of judgment of procedural matters (judicial review), which is established for illegal evidence exclusion, has brought fresh blood for Chinese criminal procedural system. And initial establishment of judgment of procedural matters makes proof of procedural matters practical in the realistic proceedings. Thus, procedural matters have become a new object of judgment and proof, and distinguished from substantive matters. The present procedural matters for Chinese criminal procedural law are playing two important roles—new object of judgment and new object of proof. The carriers of procedural matters, judgment of procedural matters and proof of procedural matters, are playing unimaginably significant roles in today's Chinese criminal procedural development.

Judgment of procedural matters namely is procedural judgment. In China, the court's judicial power is only applied to the trial stage, not for the pre-trial stage, meanwhile, most of significant procedural matters are out of its boundary. The judgment of procedural matters, which is also judicial review proceedings, promotes the extension of judicial power to the field of pre-trial and procedural matters. Judgment of procedural matters provides the theoretical basis for adjudication of procedural matters. Jurisdiction is also in favor of preventing pro-

cedural illegality, restricting the exercise of public power of investigation, prosecution and trial, and solving judicial corruption concerned by general public.

Proof of procedural matters is a pre-trial or trial activity, the process of prosecution or defense submits evidence to the court in accordance with the requirement of judicial review, and argues to and convinces the judge on the legality of a procedural matter that will be/has been implemented. The proof of procedural matters makes traditional proof of crime an expansion from the field of substantial law to the field of procedural law and makes massive procedural matters being the new object of theory of proof. The situation, that the proof of procedural matters and proof of substantial matters have formed the complete system of criminal proof, expands the connotation of the science of evidence law, and greatly increases the value of judicial practice instruction. Owing to the close connection between trial and proof, the proof of procedural matters provides the proof basis for judgment of procedural matters, and provides theoretical support for the establishment of judicial review proceeding in China.

This paper is consisting of the prologue and nine chapters:

Chapter I is about the principle of trial-centered criminal procedure. The first part is the introduction and interpretation of the principle of trial-centered criminal procedure reform, according to the judicial reform decision of the Fourth Plenum of the Eighteenth CPC Central Committee and the relative instructions made by Xi Jinping. In the second part, we have summarized two ways, the one is from investigation-centered principle to trial-centered principle, the other is judgment and proof of procedural matters, which is aiming to make good progress during the trial-centered criminal procedure reform. In addition, the writer analyzes a series of reasons why it needs to open up a second way of the trial-centeredness.

Chapter II introduces the second way of the trial-centered criminal procedure reform, namely judgment and proof of procedural matters. Firstly, it outlines procedural matters and analyze of it on three aspects, i. e. the new judgment object and judgment of procedural matters, new proof object and proof of procedural matters, and new criminal procedural relationship and object. Secondly, it is defining the concept, explaining the differences between proof of

procedural matters and proof of substantive matters and dividing their object of proof. Thirdly it elaborates the meaning of proof of procedural matters in both procedural law and evidence law.

Chapter III is an outline of judgment of procedural matters. The judgment of procedural matters namely is procedural judgment. The first part is an introduction of judgment of procedural matters, and discusses on its differences and connections with substantive judgment, its hub position in theory fields, its relationship between procedural sanctions and proof of procedural matters. The second part is an explanation of judicial review principle, which is the theoretical basis of judgment of procedural matters. Then this chapter introduces its conception and legal resources, expounds its importance during criminal proceeding, and analyzes its relationship with judgment of procedural matters and proof of procedural matters respectively.

Chapter IV is an outline of proof of procedural matters. Firstly, it briefly introduces the elements of proof of procedural matters which includes the subject, responsibility, standard, proving method as well as the process. Secondly, it analyzes an outlook of proof of procedural matters, i. e. expanding proof of substantive matters, providing new proof basis for complaint of judicial review, and helping to limit judge's discretion and defend rights of defense/suspect.

Chapter V is about the proof responsibility of procedural matters. First of all, it analyzes the differences between the responsibility of the procedural law and substantive law—the former one adheres to the principle of “who advocate who approve”, while the responsibility of the latter one is transferred frequently. Secondly, it takes the illegal evidence exclusion rules as an example to analyze the proof responsibility of the prosecution and the defendant in procedural disputes. Thirdly, it analyzes proof responsibility of the prosecution and the defendant in procedural request. Fourthly, it analyzes proof responsibility of the prosecution and the defendant in procedural disputes caused by non-procedural violation of law.

Chapter VI elucidates proof standard of procedural matters. The first part introduces domestic general consensus on proof standard and describes the notable features of proof standard of procedural matters, which is hierarchy. Then it

analyzes different proof standards that can be used to build the proof standard system of procedural matters. The second part analyzes the standards of proof of the procedural request of the prosecution and the defendant. Finally, it takes illegal evidence exclusion rule as an example to analyze its existing problems and the different proof standards of the prosecution and the defendant in procedural disputes.

Chapter VII is about proof methods of procedural matters. First of all, it introduces the origin, difference and meaning of the strict proof and free proof, then analyzes why we should use the method of free proof to prove the procedural matters, and classify free proof. Second of all, it takes illegal evidence exclusion rule as an example to analyze the existing problems and proof methods of the prosecution and the defendant in procedural disputes caused by violation of procedural law. Third of all, it takes arrest as an example to analyze the proof method of the prosecution's procedural request. The fourth part is the proof methods of the defendant on procedural request. Finally, this chapter briefly analyzes the proof methods of the prosecution and defendant on procedural disputes triggered by non-procedural violation of law.

Chapter VIII is about the subject of proof of procedural matters, which is analyzed from vertical, horizontal two pieces of latitude. Firstly, we vertically analyze the historical development of the structure, system, principle and subject of criminal proceedings and then discuss four times revolution of the criminal proceedings, especially the fourth revolution which is related to the power expansion of judge. Secondly, we vertically analyze the two parties and the main body of proof, discussing four relevant issues. Thirdly, we horizontally analyze the referee body and the main body of proof that originated in the fourth revolution, discussing the allocation of judicial power.

Chapter IX describes that we have firm confidence in the construction of judgment and proof of the procedural matters. To begin with, this chapter expounds the procedure of prove during judgment and proof of the procedural matters. Afterwards, it discusses the verification mode of procedural dispute matters and the corresponding mode of Procedural request matters. In the end, the chapter tries to probe the difficulties in judging and proving procedural matters and

the resolving mechanism. We firmly believe that it will bring opportunities to boost the reform of trial-centered litigation system and analyze it in this chapter.

Key Words: Trial-centered principle / Expansion of judicial power / Legality of actions at law / Procedural matters / Judgment of procedural matters / Proof of procedural matters

目 录

引言	(1)
第一章 审判中心主义的两条路径	(4)
第一节 审判中心主义的第一路径	(4)
一 审判中心主义的理解	(5)
二 实现审判中心主义的两条路径	(7)
三 审判中心主义第一路径阐释	(9)
第二节 审判中心主义的第二路径	(10)
一 开辟第二路径的原因之一——遏制冤假错案的产生	(12)
二 开辟第二路径的原因之二——实现刑事诉讼法的 第二目的	(15)
三 开辟第二路径的原因之三——解决实践中侦查行为 监督问题	(18)
第二章 审判中心主义第二路径的主要内容——程序法事实的 裁判与证明	(22)
第一节 程序法事实的三维度分析——新的裁判对象、证明对象 和客体	(22)
一 程序法事实发挥作用的三个维度	(23)
二 程序法事实概述	(24)
三 新的程序性裁判和新的裁判对象	(26)
四 新的程序法事实证明和新的证明对象	(29)
五 新的刑事诉讼法律关系和新的客体	(31)
第二节 程序法事实裁判与证明的对象	(35)
一 程序法事实裁判与证明的对象之一——程序性违法引发 的程序法争议事实（项）	(36)

二	程序法事实裁判与证明的对象之二——非程序性违法引发的程序法争议事实（项）	（40）
三	程序法事实裁判与证明的对象之三——控方程序法请求事实（项）	（44）
四	程序法事实裁判与证明的对象之四——辩方程序法请求事实（项）	（46）
第三节 程序法事实裁判与证明的意义		（49）
一	程序法事实裁判与证明提供了程序法事项裁决的理论依据	（49）
二	程序法事实裁判与证明有利于规制侦检权力的运用	（51）
三	程序法事实裁判与证明可以促进司法裁判权的延伸	（52）
第三章 程序法事实裁判概述		（55）
第一节 程序法事实裁判——程序性裁判		（55）
一	程序性裁判的定义	（55）
二	程序性裁判与实体性裁判的联系与区别	（55）
三	程序性裁判的理论枢纽地位	（57）
四	程序性裁判和程序性制裁	（59）
五	程序性裁判与程序法事实证明	（61）
六	程序性裁判制度的完善	（63）
第二节 程序法事实裁判的理论基石——司法审查		（64）
一	司法审查的概念和渊源	（64）
二	刑事诉讼中的司法审查	（66）
三	司法审查原则的重要性	（67）
四	司法审查对程序正义的保障	（69）
五	司法审查和程序性裁判	（70）
六	司法审查与程序法事实证明	（71）
第四章 程序法事实证明概述		（72）
第一节 程序法事实证明的要素		（72）
一	程序法事实证明的主体	（72）
二	程序法事实证明的证明责任	（74）
三	程序法事实证明的证明标准	（76）
四	程序法事实证明的证明方法	（79）