



主编◎王 晔

法律英语 报刊选读

Reading Course in
Legal News Publications



南京大学出版社

主 编◎王 晔

副主编◎周 诚

编 委◎王 晔 周 诚 郭 琼

柴 焱 李 静 朱 蓓

法律英语 报刊选读

Reading Course in
Legal News Publications

 南京大学出版社



图书在版编目(CIP)数据

法律英语报刊选读 / 王晔主编. —南京: 南京大学出版社, 2009. 9

ISBN 978-7-305-06271-1

I. 法… II. 王… III. 法律—英语—阅读教学—高等学校—教材 IV. H319.4

中国版本图书馆 CIP 数据核字(2009)第 109676 号

出版者 南京大学出版社

社 址 南京市汉口路 22 号 邮 编 210093

网 址 <http://www.NjupCo.com>

出版人 左 健

书 名 法律英语报刊选读

主 编 王 晔

责任编辑 裴维维

编辑热线 025-83686029

照 排 南京玄武湖印刷照排中心

印 刷 南京紫藤制版印务中心

开 本 787×1092 1/16 印张 15.25 字数 371 千

版 次 2009 年 9 月第 1 版 2009 年 9 月第 1 次印刷

ISBN 978-7-305-06271-1

定 价 29.00 元

发行热线 025-83594756

电子邮箱 Press@NjupCo.com

Sales@NjupCo.com(市场部)

* 版权所有, 侵权必究

* 凡购买南大版图书, 如有印装质量问题, 请与所购图书销售部门联系调换

前 言

随着我国法制建设的不断完善与改革开放的不断深入,法律英语课越来越受到我国高校的重视。尤其是设有外语系或是法律系的综合类院校。法律英语课程有越来越细化的发展趋势。

《法律英语报刊选读》是了解国际国内法律文化的重要窗口,同时也是学习和掌握现代法律英语的理想资料。法律英语报刊题材广泛,内容新颖,贴近现代法律脉搏。开设法律英语外刊课对于培养应用型、复合型法律人才与外语人才十分有益。

本书在分类上没有按照法律意义上的部门法进行分类,如:经济法、婚姻法、刑法等,而是采用了宏观的文化意义范畴上的分类法,如:企业经济,军事国防,死刑犯、少数群体利益等。原因如下:(1)部门法之间有相互重合部分,容易混淆;(2)本书的着重点在于法律文化这一宏观层面,而不局限于微观的法律范畴与法律案件;(3)本书不仅是一本探讨法律文化的书籍同时也是学习法律英语的书籍。

本书编著的指导思想突出在能力上。法律类新闻报道种类繁多,内容浩如烟海,教材不可能囊括一切。采用专题为线编排内容,可以提高教材的系统性,有利于报刊法律类文章的阅读。《法律英语报刊选读》及笔者先前所出的《最新实用英语——法律口译》除了适合作为高等院校法律系、英语系学生的法律英语教材,也可供副修法律、外交、国际贸易、国际金融等专业的本科学习者学习法律和英语之用。本教程还可作为律师以及立法、司法等部门的公务员作为提高专业和英语水平的教材。

本书所选题材均为报刊上出现频率较高的一些人们颇为熟悉的题材,每篇课文后均设四个项目:

知识介绍(Background Information),根据课文内容简明介绍相关报道题材的相关内容。

难点注释(New Words),旨在帮助学生了解掌握相关法律报道内容及语言点。

法律特点(Legal Feature),旨在拓宽读者社会、法律文化等方面的知识面。

思考练习(Questions on the Article),旨在培养学生融会贯通法律报道中所涉及的法律问题的能力。

在此,感谢我的丈夫周诚,在我工作之时给予我的全力支持与鼓励。期间,他承担了照顾刚出生的双胞胎女儿的重担,让我安心编写本书。在此还要感谢我的导师王波,是他给了我做学术的勇气与信心。

由于功力有限,书中不足与疏漏之处,欢迎各位同仁提出宝贵意见。

主编 王 晔
2009年9月1日

目 录

第一单元

司法体系

Lesson 1	New York Lawyer Is Arrested in Toronto	1
Lesson 2	Prosecution Rests in R. Kelly Child-porn Trial	5
Lesson 3	Wiretap Trial Sheds Light on Lawyers' Work with Private Eyes	11
Lesson 4	California Supreme Court Ruling Makes It Easier for Prisoners to Win Parole	17
Lesson 5	Judicial Races Much Too Vital to Bypass in the Voting Booth	23
Lesson 6	American Judges	28

第二单元

司法理念

Lesson 7	Lexington; Land of the Free?	34
Lesson 8	A Defeat for Judicial Reform	39
Lesson 9	Supreme Court Affirms Suspects' Right to Keep Silent	44
Lesson 10	When Human Rights Extend to Nonhumans	50
Lesson 11	Courtroom Powder Incidents	56
Lesson 12	O. J. Simpson, Once Acquitted of Murder, Now on Trial for Robbery and Kidnapping	61

第三单元

婚姻家庭

Lesson 13	"Jewish Clause" Divides a Family	70
Lesson 14	Adult Children, Aging Parents and the Law	76
Lesson 15	Madonna, Ritchie Granted Divorce	82
Lesson 16	Costly Custody Feud	86
Lesson 17	FBI; Couple Offered Sex with 5-year-old for Used Car	91
Lesson 18	Child Neglect Charges	97
Lesson 19	Putative Father	104

第四单元

企业经济

Lesson 20	Litigation	109
-----------	------------------	-----

Lesson 21	Think Film and Chairman David Bergstein Face Allegations of Unpaid Bills	115
Lesson 22	Culver Knocks Agriprocessors, Company Answers back	122
Lesson 23	Countrywide Financial Corp.	128
Lesson 24	Mich. Court OKs Ban on Credit Scoring in Insurance	134
Lesson 25	FBI Saw Threat of Mortgage Crisis	140

第五单元

军事国防

Lesson 26	Two Marines Refuse to Testify in Ex-comrade's Case	146
Lesson 27	Bush Signs off on Army's 1st Execution in Decades	152
Lesson 28	U. S. Judge Approves First Trial of a Guantánamo Bay Detainee	158
Lesson 29	U. S. Psychologists Debate Role in Military Interrogations	165
Lesson 30	Guantánamo	171

第六单元

医患、枪支管理

Lesson 31	Legislative Malpractice	176
Lesson 32	Judge Hears Arguments over Wis. Medical Fund	181
Lesson 33	Federal Court Upholds Drug Privacy Law	187
Lesson 34	Police Taser Guns	192
Lesson 35	Gun Control; The Supreme Court Opens Fire	197

第七单元

死刑犯、少数群体利益

Lesson 36	Gay Marriage: The Guys Next Door	202
Lesson 37	Gay Marriage Foes Mobilize for Ban in California	208
Lesson 38	No Fatal Mistakes	214
Lesson 39	Pardoned Illinois Death Row Inmate Is Investigated for Same Crime	220
Lesson 40	Death Penalty	226
Lesson 41	A Dream Deferred?	232

参考文献	237
------------	-----

Lesson 1

New York Lawyer Is Arrested in Toronto

By Al Baker and Ian Austen

Updated, 4:23 p. m., a prominent New York lawyer, Marc S. Dreier^①, was arrested in Toronto earlier this week and charged with fraudulent impersonation^②, according to the Canadian authorities.

According to Constable Wendy E. Drummond, a spokeswoman for the Toronto Police Service, Mr. Dreier, 58, was arrested at 11:25 p. m. on Tuesday on Yonge Street, a major thoroughfare in Canada's largest city, on a charge of impersonation with intent. After a court hearing on Friday morning, Mr. Dreier was released on bail^③, Constable Drummond said.

"The allegations are that he represented himself both verbally and with a business card as someone else and conducted business under that name," Constable Drummond said. Law enforcement officials in Canada said that Mr. Dreier was accused of impersonating Michael Padfield, a lawyer for the Ontario Teachers' Pension Plan^④.

Mr. Dreier's lawyer, Edward L. Greenspan, said Mr. Dreier hired him this week. Mr. Dreier was released after handing over a check for 100,000 Canadian dollars, and was directed to return to New York by Sunday. Under the bail conditions he may only be in Toronto for court appearances to attend hearings with his lawyers. Under the conditions, he may travel but must provide an itinerary to the police if he wishes to leave the continental United States.

The Globe and Mail of Toronto reported that Mr. Dreier was "charged with impersonation in connection with a proposed multimillion-dollar agreement between the Ontario Teachers' Pension Plan and the financial company Fortress Credit Opportunities^⑤."

Debra Hanna, a spokeswoman for the Ontario Teachers' Pension Plan, said in a statement on Friday morning:

① Marc S. Dreier, 他在一场被《纽约时报》称之为美国和加拿大精心编排的无耻骗局中,于1996年成立了一家拥有250名律师的公司。据说德瑞尔利用目前的金融危机试图通过向渴望获得投资的对冲基金出售伪造的债券而从中获利。但是 Breakingviews 从不同角度来观察这场所谓的欺诈后,想要知道这些对冲基金为什么会上当。据 Breakingviews 报道,该原因是由于这些基金组织很少恪尽职守。

② Impersonation 欺诈假冒。

③ Bail 保释金。保释金是以金钱换取暂不对犯罪嫌疑人采取强制限制人身自由措施的一种制度,说通俗一点,就是“你现在是犯罪嫌疑人,但我现在不关你,但你要交一点钱,在未定罪之前,你享有被限制的部分人身自由。如果你跑了,保释金被没收;如果你规规矩矩,将来保释金还你。”和以后的有罪无罪无关。

④ Ontario Teachers' Pension Plan 安大略教师退休金计划。自2000到2002年网络泡沫破碎后,人们开始寻求投资房地产、基础设施和私募基金,以缓解股票涨跌带来的巨大影响。随着越来越多的婴儿潮时期人士开始退休,这些退休计划的退休福利开支也越来越大,他们再不能仅仅依靠债券或波动性很大的股票市场,而需要寻找新方法,提高投资的产出。

⑤ Fortress 公司; Credit Opportunities 基金。

On Tuesday afternoon, we learned of fraudulent behavior by an individual visiting our premises^①. We immediately alerted the police. An individual was arrested by the police and has been charged.

No Teachers' Pension fund staff member was involved in the fraudulent behavior. We've reviewed our security procedures in relation to this situation and we believe that no Teachers' Pension funds are involved.

Lilly Donohue, a spokeswoman for Fortress Investment Group, which includes Fortress Credit Opportunities, said in a statement: While visiting Ontario Teachers' offices on Tuesday afternoon, a Fortress employee^② observed suspicious behavior by an individual and immediately alerted Ontario Teachers' staff. We continue to cooperate with law enforcement authorities in the investigation.

Until his release on Friday, Mr. Dreier was being held at the Maplehurst Correctional Complex, a jail in Milton, west of Toronto.

A person who works with Mr. Dreier but spoke on the condition of anonymity because of the sensitivity of the matter said that partners at Dreier L. L. P., the law firm he founded and of which he is managing partner, were taken by surprise by the arrest. The law firm canceled a holiday party scheduled for Thursday evening at the Waldorf-Astoria.

Numerous lawyers at the firm did not respond to inquiries about the case, and efforts to reach a representative of Mr. Dreier by telephone were not successful. The legal blog "Above the Law" reported the arrest on Thursday evening.

Mr. Dreier, who is a graduate of Yale College and Harvard Law School, worked at the law firms of Fulbright & Jaworski and Rosenman & Colin before founding Dreier L. L. P. in 1996.

Mr. Dreier or his firm are involved in numerous other legal or business concerns, including an affiliated law firm, Dreier Stein Kahan Browne Woods George L. L. P., based in Santa Monica, Calif.; Dreier Sports Opportunities Group L. L. C., a sports marketing and consulting firm, also in Santa Monica; Pitta & Dreier L. L. P., an employment and benefits law practice; and Berry Block & Bernstein L. L. C., a management consulting firm.

From *The New York Times*, December 5th, 2008

I. Background Information

知名纽约市律师——德瑞尔——被控假冒多伦多律师而被拘押。3天后,以100,000加元交保获释。

德瑞尔在1996年创立德瑞尔法律事务所(Dreier L. L. P.),如今在美国6个城市设有办公室,旗下有律师250名以上。他被控蓄意假冒多伦多律师被拘押在米尔顿的麦普

① Premises 住所,场地。

② Fortress employee 该对冲基金的一位雇员被认为具有可疑的行为,因为他拜访了安大略省教师退休金计划办公室,而那里据称就是德瑞尔先生实行诈骗并被揭发的地方。

荷斯特拘留所(Maplehurst Detention Center),出庭时顾不得修边幅。

辩护律师爱德华·格林斯潘说,保释令人高兴但其实并不意外,因为委托人犯的是加拿大法律中的轻罪。

德尔瑞的假冒对象是安大略省教师退休金计划局(Ontario Teachers' Pension Plan Board,OTPPB)的投资法律顾问迈克·帕费尔德,OTPPB发言人黛布拉·韩娜说,没有任何退休计划成员牵涉到这宗诈欺行为。

治安法官萨维利奥·奈斯提克问德瑞尔是否了解保释条件时,他只说了一个是字。法庭命令他不得拥有非本人的证件,周日离开加拿大前要住在未曾对外公布的多伦多所在地,也不能跟任何OTPPB成员来往。

德瑞尔的网站指出,德瑞尔是商业律师,专精智慧财产权。物业纪录表示,他拥有纽约市中央公园旁的柏文大厦的物产,并在汉普顿市有房子。

II. New Words

Bail *n.* & *v.* 保释金。例句: Bail was set at \$50,000.

Allegation *n.* 辩解; 无证据的陈词。例句: Several of her patients have made allegations of professional misconduct about this doctor.

Itinerary *n.* (详细)路线。例句: Travellers who are willing to fix their own itinerary are able to avoid the tourist crowds.

Anonymity *n.* 匿名。例句: The police have reassured witnesses who may be afraid to come forward that they will be guaranteed anonymity.

Sensitivity *n.* 敏感。

Consult 1. *vt.* ① 与……商量。例句: I'll do nothing without consulting you. 我采取行动之前一定和你商量。② 找(医生)看病; 请教。例句: He went to town to consult his doctor. 他进城去看医生。③ 查阅(词典、参考书等)。例句: He consulted his notebook repeatedly during his speech. 他讲演时频频看他的笔记本。2. *vi.* ① 商议, 磋商。例句: We will consult together about her education. 我们将一起商议她的教育事宜。② 当顾问。例句: The retired executive consults for several large companies. 那位退休的总裁在好几家大公司当顾问。

Affiliate *vt.* & *vi.* ① 使紧密联系。如: a school affiliated with the church 有教会背景的学校。② 接纳……为成员(或分支机构); 使隶属于。例句: We are affiliated with a local club. 我们加入了当地的一个俱乐部。③ 追溯……的来源。例句: They tried to affiliate that play to its author. 他们试图追寻那个剧本的作者。④ 【律】判定(私生子女)的父亲。

Pension *n.* 养老金, 抚恤金, 退休金。

Suspicious *adj.* 怀疑的, 有疑心的。如: be suspicious about sth. / of sb. 对某事或某人有疑心。例句: He is suspicious of the stranger who has just come into the yard. 他对刚进入院子的那个陌生人产生了怀疑。

Represent *v.* ① 代表, 象征。例句: What does the X represent in the equation? 这个方程式中的X代表什么? ② 作为……的典型; 体现(某事物)。例句: The quartet represents a major

new trend in modern music. 这首四重奏曲反映了现代音乐的一种主要的新趋向。

III. Legal Feature

加拿大的保释

加拿大的保释方式有以下几种特点: (1) 保释方式呈现出多种类、多层次、由轻到重的结构。从最轻的无条件的承诺方式到最重的有保证人附条件并实际交付保证金的方式。加拿大保释的方式跨度大、种类多、层次性强,因而具有较强的根据案情加以调整的能力,能适应司法实践对于保释方式的不同要求。(2) 保证人与保证金可以同时适用。在保证书和实际交付保证金的方式下,都可以同时确定保证人对被保释人的行为进行监管。(3) 可以同时确定多名保证人对被保释人进行监管并共同承担连带责任。(4) 保证金既可以实际交付,也可以不实际交付;实际交付中既可以现金交付,也可以用实物替代现金。保证金以契约拟制方式来交纳,一方面给予当时无法交纳现金的被告人保释的机会;另一方面也免去了实际交纳保证金的手续,节约了司法资源。而保证金以实物的方式来交纳,也能够给予当时只能提供实物而无法交纳现金的被告人保释的机会。(5) 决定保释时,可以根据案件的具体情况附加一定的条件,这种极具针对性的附加条件也有助于加强保证效果。

事实上,保释或取保候审是被追诉者的一项基本权利,故而应当尽可能地对被追诉者适用保释或取保候审,同时考虑到保释或者取保候审的风险,在保释或取保候审的方式和适用上就应当遵循以下两个原则: (1) 只要适当,法律就应当尽量拓展可以适用的方式; (2) 只要方式的适用不会对被追诉者造成过重的负担,为了确保保证的效果,避免风险,方式的适用就不应有数量和种类上的限制。只有同时符合这两项原则,才能实现既尽量适用保释或取保候审,同时又尽量降低风险的目的。

加拿大的取保候审方式有几点值得借鉴: (1) 在保证人保证的方式上,应允许同时确定多名保证人,以加强监管和责任承担; (2) 保证金保证的方式应从唯一的现金交纳扩展至既允许以契约拟制的方式交纳,也允许以其他有价实物交纳,同时还应允许以房屋等不动产抵押的方式; (3) 明确规定保证人保证和保证金保证可以同时适用; (4) 应当增设承诺的取保方式,允许犯罪嫌疑人以书面承诺的方式取保,以满足办理犯罪情节轻微、取保风险极小的案件在取保候审上的需要,避免司法资源的浪费。

IV. Questions on the Article

1. Why was the prominent New York lawyer, Marc S. Dreier arrested?
2. How did Debra Hanna learn of fraudulent behavior?
3. Why numerous lawyers at the firm did not respond to inquiries about the case?

Lesson 2

Prosecution Rests in R. Kelly Child-porn Trial

By Michael Tarm

CHICAGO—Prosecutors rested their case in R. Kelly's child pornography trial after a day of sensational testimony^① about alleged trysts^②, extortion plots and a duffel bag full of sex tapes.

Star prosecution witness Lisa Van Allen cried on the witness stand, pausing to regain her composure, as she described several alleged three-way sexual encounters with the R & B star and the alleged victim, some of which she claimed Kelly videotaped.

Van Allen, 27, also told jurors in more than three hours of testimony Monday that Kelly offered her \$250,000 last year to recover a tape of one of the trysts.

During cross-examination^③, a defense attorney accused Van Allen of plotting to extort money from the singer, which she denied. Under further questioning^④, she admitted she once stole Kelly's \$20,000 diamond-studded watch from a hotel.

"Van Allen is an admitted thief and liar who wouldn't know the truth if she tripped over it," Kelly's business manager, Derrel McDavid, said in a statement.

Kelly, 41, faces up to 15 years in prison if convicted of child pornography for allegedly videotaping himself having sex with a female prosecutors say was as young as 13. He has pleaded not guilty^⑤ and both he and the alleged victim, now 23, deny being on the video—which is separate from those Van Allen testified to being on.

The state, which called more than a dozen witnesses over two weeks, rested its case after Van Allen's testimony. Jurors will get Tuesday off before the defense begins its presentation^⑥ on Wednesday.

Van Allen told jurors Monday she first had sex with Kelly and the alleged victim in 1998. Kelly would have been around 30 years old at the time, Van Allen about 18 and the

① Sensational testimony 耸人听闻的证词。testimony that incriminated the defendant 表明被告有罪的证词。

② Tryst *n.* 约会, 幽会。这里指与未成年少女发生的性行为活动。

③ Cross-examination 在英美法系中, 询问分三种, 一种是控辩双方对该方证人的询问, 称为直接询问(direct examination); 第二种是控辩双方对他方证人的询问, 称为交叉质询(cross-examination); 第三种是控辩双方在认为有必要时对交叉质询过的该方证人再做询问, 称为复问(re-examination)。

④ Questioning 【律】审问, 讯问, 质问。专指检察机关公安局等机构对犯罪嫌疑人进行的提问。

⑤ Plead not guilty, plead guilty 是惯用语, 一般是在法庭上用的, 表示承认有罪。这和中国的法律不太一样, 只适用于美国等一些国家的法律。一般在审判前, 法官会问被告 Plead guilty 还是 Plead not guilty, 也就是问你是否认为自己有罪。如果你 Plead guilty, 审判是一种方式; 如果你 Plead not guilty, 审判将用另一种方式。

⑥ Presentation 这里指的是辩护方举证(Presentation of Defendant's)。

alleged victim would have been 14, according to prosecutors' estimates.

Van Allen said Kelly told her then that the alleged victim was 16. The age of legal consent^① in Illinois is 17.

The three-way sex took place in the same home on Chicago's North Side where prosecutors say the sex tape at the center of the case was made, Van Allen told jurors.

She said she began crying during a second sexual encounter in 1999 with Kelly and the alleged victim, causing upset Kelly to pick up the video camera and leave the room. She said that encounter took place at the house's basketball court.

"I started crying ... because I didn't want to do it," Van Allen testified. She said Kelly complained that her crying ruined the footage and that he never kept tapes during which she cried.

A final three-way encounter occurred in a trailer during a video shoot in Chicago in 2000, Van Allen said. When someone came to the trailer door, the alleged victim "had to run into the bathroom naked" because Kelly did not want others to see her there, she told jurors.

Several months pregnant, Van Allen, from Georgia, initially appeared relaxed on the witness stand and smiled frequently. But she wept when she discussed the second alleged encounter. Prosecutors paused for two minutes as she dabbed tears from her face.

Kelly looked on from across the room as Van Allen testified, at least once appearing to shake his head and other times staring at his folded hands.

Van Allen told jurors that Kelly offered her \$250,000 last year to recover a tape of one of the encounters with the alleged victim. She said acquaintances of hers took the tape from Kansas City to a Chicago hotel, where it was handed over to a Kelly associate who paid \$20,000 in cash.

Van Allen portrayed Kelly as obsessed with videotaping his sexual exploits, testifying that he even carried around a duffel bag with his homemade sex tapes in it.

"He carried it everywhere with him," she said. "Wherever he was at, the bag would follow him."

Van Allen said she first met Kelly at the making of a music video in Georgia about 10 years ago. She later appeared in several Kelly music videos, including one for the song "I Wish," in which she braids the singer's hair.

During a 1998 Kelly concert tour, Van Allen said she simulated having sex with the singer in front of the audience.

"You didn't cry then, did you?" asked defense attorney Sam Adam Sr., who repeatedly suggested Van Allen's tears in court were disingenuous.

Before Van Allen took the stand, Judge Vincent Gaughan advised that she had been

① Age of legal consent 【律】承诺年龄(尤指少女法律上达到可以自主的年龄)。

appointed an attorney, saying some of her testimony might be “self-incriminating^①”. She was granted immunity^② by prosecutors.

Van Allen said she approached prosecutors about testifying in the case only several months ago—six years after Kelly was charged.

“It’s the right thing to do,” she told jurors.

But Adam said Van Allen had ulterior motives when she contacted prosecutors in March, including to help get a reduced sentence in a weapons case for a man she lives with.

Adam also noted that Van Allen told prosecutors only Monday that she stole Kelly’s watch in 2001.

“So the spirit didn’t move you to do the right thing about this (the watch) until today?” Adam asked. He pointed across the courtroom at Kelly. “You tried to extort that man over there,” he said.

Van Allen denied the accusation, saying Kelly asked her in 2007 whether she could hand over the tape of one of their three-way encounters.

Asked whether she knew of any other copies of that tape, Van Allen gestured at Kelly across the room, referring to him by his birth name.

“Robert would know,” she said.

From Associated Press, August 22nd, 2008

I. Background Information

美国 R & B 歌手罗凯利(R. Kelly)被控与未成年少女发生性行为一案,拖了 6 年终于在 2008 年 5 月 9 日于芝加哥库克县的刑事法庭开审。

凭《I Believe I Can Fly》而成名的 41 岁歌手罗凯利,当日身穿深蓝色西装在保镖的陪同下出庭。现场除了有多人举牌示威,指责罗凯利是恋童癖外,还有该歌手的支持者到场声援,其中一名女歌迷德怀特·泰勒更向示威人士指骂。

罗凯利在 1998 年 1 月至 2000 年 11 月期间,被拍下与一名当年只有 13 或 14 岁的少女发生性行为,该影带长达 26 分钟。除了做爱外,罗凯利还对女孩“撒尿”,十分变态。案件因为罗凯利多次提出延期而延至 2008 年 5 月 9 日才正式开审。不过有报道指出,被指

① Self-incriminating “任何人不得被迫自证其罪”,或称“任何人不得被强迫自证其罪”。这条法谚一般认为包含两层含义:一是不得以暴力、威胁、利诱和其他方法迫使犯罪嫌疑人、被告人作出有罪供述;二是犯罪嫌疑人、被告人享有沉默权(Privilege of Silence),即有拒绝招供(Confession)的权利。前者是刑事诉讼中保障人权的最低标准,后者则是进一步要求。

② Immunity 豁免。它有两种表现形式,一种是“证据使用豁免”,另一种是“罪行豁免”。“证据使用豁免”是指经许诺豁免的涉嫌犯罪的证人所提供的证词或者其他资料以及根据这些资料所获得的材料,不得在随后进行的任何刑事诉讼中用作不利于该证人的证据,但证人在经许诺豁免后的作证过程中由于犯伪证罪被追诉时不在此限。“罪行豁免”是指经过许诺豁免的涉嫌犯罪的证人在就其涉嫌参与的犯罪行为作证或者提供其他资料后,对于该人不得再因其证词或者提供的证据所涉及的犯罪行为提出指控,证人因作证或提供证据而被彻底免除刑事责任。但如果证人作伪证,可以追究其伪证罪的责任。

是受害者的少女,已否认自己是“带中人”,也会担任罗凯利的证人。

II. New Words

Pornography *n.* 色情描写,黄色书刊,色情画,色情照片,色情文学。例句: Kids playing wildly popular online strategy games are inundated with pornography advertisements. 小孩痴迷于网上流行的游戏攻略,其间却充斥着色情广告。

Extortion *n.* 勒索,敲诈,强取。如: a confession obtained by extortion 逼出来的供词。

Duffel bag 行李袋。

Prosecutors 【律】起诉人,告发人,检举人。

Witness *n.* ① (=eyewitness)目击者;(在法庭上经过宣誓的)证人,主要用于 give witness, bear witness。② 证据,证明;证词(常省略定冠词)。③ 【律】连署人,证人。例句: The witness is recalled to the witness box. 证人被召回至证人席。

Victim *n.* 受害者;牺牲者;遭难者。如: a victim of a mugging 走私活动的受害者

Trip over 绊,绊倒。例句: He tripped over a brick. 他被一块砖头绊倒了。

Trailer *n.* 拖车。

Dab *vt.* 轻拍,轻擦。例句: She dabbed at her mouth with a tissue. 她用面巾纸擦拭嘴唇。

Braid *vt.* 编成辫。

Disingenuous *adj.* 不真诚的,无诚意的;诡诈的,阴险的。

Associate *n.* 同事;伙伴。例句: Filed charges against my associate. 对我的同事提起诉讼。

III. Legal Feature

美国陪审团制度

美国陪审团制度是从英国传入,至今在美国仍受到尊重,其原因除了陪审团制度具备浓厚的社会、文化和法律基础外,更主要的是陪审团制度的价值意蕴,即陪审团(本文仅指小陪审团)制度本身的功能有现实的社会意义。这里主要就美国陪审团制度的人民性作一个介绍:

1. 组成成员的人民性

陪审团在古英语中的解释至少是一组与自己同等地位的人,或自己的同辈,所以17至19世纪时英国人受同一阶级的人们的审判,如一个有世袭爵位的人被指控犯罪,他有权由从上院选出来的人组成的陪审团进行审判,否则,就不由陪审团审判。但美国被认为是没有阶级的社会,没有世袭爵位,不具备属于陪审团成员的专有资格。因此,如果说英国那时陪审团还有阶级性,那么自美国独立时,美国陪审团就有了超越阶级的人民性。现代美国法律规定陪审员应是21至70岁的美国公民,每年

纳税 250 美元以上的有钱人,还要求能阅读和书写英语,还要除开一些不得担任陪审员的人。早期妇女不能担任陪审员,但现在也可以。美国现有学者主张陪审员的挑选应不受贫富、经济地位、国籍等状况的影响,从而在法律上确定了陪审团的人民性。

同时为确保陪审团的人民性,建立了陪审员召集制度。美国对陪审员的选任由法官召集,具体由陪审团选审官或法院办事员负责,一般在受理案件的辖区内选任。最初是从电话号码簿上挑选陪审员,这一做法被一些人指责是以不公正的方式选定陪审团名单,因为它排除了那些装不起电话的人。近年来通常联合使用选民名单、电话号码簿名单、汽车登记名单以及通过其他程序进行挑选。目的是使陪审团能够超越种族、经济方面的偏见,使审判公正,同时也使更多的人有机会参加到司法民主中。

2. 组成人数的人民性

从数量上说,人民总是代表多数,也只有多数才能代表人民。而合议庭一般人数较少,如我国民事诉讼中合议庭一般由 3 人组成,刑事诉讼中一般由 3 人、5 人或 7 人组成,司法实践中多是 3 人,而美国陪审团一般由 12 人组成,是我国合议庭组成的 2 倍甚至 4 倍。陪审团人数的众多性使其不易腐败,正如凯文所言,要影响甚至收买 12 个人,比影响甚至收买 1 个人要困难得多。人数的人民性是裁判人民性的根本保障。

3. 裁判的人民性

美国的陪审团负责事实审,判决实行多数同意制度,即 12 名陪审员的多数意见作为陪审团的裁决。相对于法官的裁决,更有人民性。首先,这是因为陪审团的裁决是众多人的裁决,陪审员通过对证人证供之可信性和可靠性而做出的综合判断而取得一致意见,比法官一己的判断更为稳当;其次是因为陪审团裁决是来自普通民众的裁决,美国人认为某种程度上法官必然与杂乱无章的社会脱节,常误认所有的人都像他们一样的合逻辑,而陪审员来自普通民众,他们常常比较明了普通人的昏乱和谬误。所以,陪审团进行事实审,法官进行法律审,法官和陪审团相互影响、交流,很可能比法官单独工作更能取得健全的结果。从而使司法更贴近社会生活,反映民意。

为了保证陪审团裁决的人民性,一是建立了陪审团审查制度。为尽可能地排除那些对特定案件抱有明显的或可察觉的偏见的人,美国采取询问主义。即从候选陪审员宣誓就职开始,法庭将询问他们的姓名、职业,是否与案件有利害关系,是否对案件具有可能影响判断的特殊知识,是否对诉讼的一方当事人有偏见,是否认识证人以及其他任何不能担任陪审员的原因。二是法官对陪审团裁判不加干预。他们只是告诉陪审员如何投票,如何选出陪审长主持评议、看待证人、分析证据的方法,而不对证据发表意见,宣布他们应当运用的法规。即使有的州如加利福尼亚宪法允许法官对证据发表意见,但他们从不这么做。三是对陪审团裁判的低效。美国则认为陪审团是社会正义的一个重要平衡器,因此即使使用陪审团费时费财,也是实现社会正义所必须付出的成本。相对于时间和金钱而言,社会正义更重要。

正是因为陪审团审判的人民性,相对于合议庭制度,即完全由专业法官组成合议庭进行审判,其组成成员的身份不是普通民众,而是社会的管理者,是与普通民众相对的人,这种身份的不认同使得人们对他们的审判心存芥蒂。而陪审团由普通民众组成,其身份被被审判者和社会公众认同。因此,陪审团审判相对于完全的专业法官审

判在民众中有更强的公信力,可以促进公众对司法程序的信心。陪审团制度使人民成为真正的审判者,也只有人民的审判才会得到人民的信任。

IV. Questions on the Article

1. What do you know about Kelly's child pornography trial?
2. According to your own judgement, what kind of conclusion(s) could you make?
3. Summarize the legal terms in the article and give us a brief introduction of them.

Lesson 3

Wiretap Trial^① Sheds Light on Lawyers' Work with Private Eyes^②

By Victoria Kim

Recordings of Pellicano and an attorney^③ made public in court are making other lawyers cautious about whom they hire and how they obtain their information.

In one of their first phone calls, the lawyer and his private investigator outlined in no uncertain terms one ground rule: Their discussions were to be strictly confidential.

"The conversations are just between you and I," the private eye tells the attorney. "Right," the attorney says. "Period," the private eye adds.

In the end, however, their conversations were anything but confidential. That phone call and dozens of other recordings were played in federal court in Los Angeles this month, where the attorney, Terry Christensen, and the private detective, Anthony Pellicano, are on trial for allegedly conspiring to wiretap the former wife of billionaire Kirk Kerkorian.

Because Pellicano was a well-known sleuth-to-the-stars, with clients such as comedian Chris Rock and actor Tom Cruise, his legal troubles have generated interest in Hollywood circles. But his current trial is also being closely followed by Los Angeles' legal community^④ because it thrusts into the limelight a type of relationship the public rarely sees: that of a lawyer and his private investigator. According to prosecutors, Christensen paid Pellicano to illegally wiretap Lisa Bonder Kerkorian, who was engaged in a bitter child-support battle^⑤ with his billionaire client Kirk Kerkorian. Christensen then used information gleaned from the wiretap to gain a legal advantage in the case, prosecutors allege.

The key evidence in the case is 6.5 hours of secretly recorded phone conversations between Pellicano and Christensen. In the conversations, prosecutors allege, the pair deliberately avoided discussing how Pellicano was getting his information and used code words to refer to the wiretap.

① Wiretap trial “窃听门”案件，主角安东尼·佩利卡诺被认为是好莱坞“第一私家侦探”，涉嫌使用窃听、敲诈勒索、恐吓等非法手段，帮助明星们“摆平”麻烦，从而得到了“明星之眼”的代号。

② Private eyes 私家侦探。The wife hired a private eye to keep a close eye on her husband. 妻子雇了一位私家侦探对她的丈夫进行监视。

③ Attorney 指由当事人授权处理法律事务的律师。lawyer 用得最为广泛，凡经过专业培训获得开业资格的任何一种律师都可以称 lawyer。因此可以说：Mr. Smith is a lawyer, but he is not my attorney. solicitor 多用于英国初级律师：不是律师界成员，只能在低级法庭出庭的律师。

④ Legal Community 法律共同体，是法律人结合的形式，有共同的思维模式和共同的知识系统。

⑤ Child-support battle 抚养费，米高梅公司最大的股东柯克·克尔科里恩，面临着前妻邦达·克尔科里恩向其索要每月 32 万美元的巨额抚养费。