

法學譯粹

IN RE GROBAN^{*}

李正雄^{**} 譯

一、原文及翻譯

原文：

After a fire occurred on premises of a corporation owned and operated by appellants in Ohio, the State Fire Marshal subpoenaed appellants to appear as witnesses in an investigation by him of the cause of the fire. Relying on Page's Ohio Rev. Code, 1954, 3737.13, which provides that such an investigation "may be private" and that the Marshal may "exclude from the place" where the investigation is held "all persons other than those required to be present," he refused to permit appellants' counsel to be present at the proceeding. Appellants declined to be sworn and to testify in the absence of their counsel. This was treated as a violation of 3737.12, which forbids any witness to refuse to be sworn or to refuse to testify; and, pursuant to 3737.99 (A), the Marshal committed appellants to jail until such time as they should be willing to testify. Denial of their application for a writ of habeas corpus was affirmed by the State Supreme Court. Held:

翻譯：

上訴人等所擁有和經營之座落於俄亥俄州的公司房地發生火災後，州消防隊長傳喚上訴人等為證人，接受失火原因的調查，根據俄亥俄州1954年修正法典第3737.13條規定，此類調查「得以秘密方式」，而且進行調查時，消防隊長可以將「所有未經要求到場的人排除離場」，因此他不

^{*} 本篇摘錄自美國最高法院判決IN RE GROBAN, 352 U.S. 330 (1957)，為翻譯之便利，判決原文中之註釋（含大法官協同與不同意見）均未納入。

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准許上訴人等的律師於調查程序中在場，上訴人等在其律師缺席的情形下，拒絕宣誓作證，他們的行為違反第3737.12條，禁止任何證人拒絕宣誓或作證的規定，消防隊長並依據第3737.99條(A)款，將上訴人等處以監禁，直到他們願意作證為止，他們聲請人身保護令遭裁定駁回，並經該州最高法院維持。本院判決如下：

原文：

1. Under 28 U.S.C. 1257 (2), this Court has jurisdiction of this appeal.
2. Appellants had no constitutional right to be assisted by counsel in giving testimony at the investigatory proceeding conducted by the Fire Marshal; and, insofar as it authorizes the exclusion of counsel while a witness testifies, 3737.13 is not repugnant to the Due Process Clause of the Fourteenth Amendment.

164 Ohio St. 26, 128 N. E. 2d 106, affirmed.

James F. Graham and Ernest B. Graham argued the cause and filed a brief for appellants.

Earl W. Allison and J. Ralston Werum argued the cause and filed a brief for appellee.

MR. JUSTICE REED delivered the opinion of the Court.

翻譯：

- 1.依據美國法典28 U.S.C. 1257 (2)規定，本院有權管轄此上訴案。
- 2.上訴人等在消防隊長進行的調查程序中作證，不能享有憲法上由律師協助辯護權，在俄亥俄州法典第3737.13條有關證人作證時排除律師在場規定的授權範圍內，該條並不違悖憲法第十四修正案的正當法律程序條款。

維持俄亥俄州最高法院判決（案號：164 Ohio St. 26, 128 N. E. 2d 106）。

James F. Graham 和 Ernest B. Graham具狀為上訴人等辯護。

Earl W. Allison 和 J. Ralston Werum具狀為被上訴人辯護。

大法官Reed先生陳述本院意見如下：

原文：

The question presented by this appeal is whether appellants had a constitutional right under the Due Process Clause of the Fourteenth Amendment to the assistance of their own counsel in giving testimony as witnesses at a proceeding conducted by the Ohio State Fire Marshal to investigate the causes of a fire.

翻譯：

本上訴案所提出的爭點問題是，上訴人等在俄亥俄州消防局進行調查火災原因的程序中，以證人身分作證時，是否享有憲法第十四修正案正當法律程序條款所賦與的律師協助辯護權。

原文：

After a fire occurred on the premises of a corporation owned and operated by appellants, the Fire Marshal started an investigation into the causes of the fire and subpoenaed appellants to appear as witnesses. The Fire Marshal refused to permit appellants' counsel to be present at the proceeding, relying on 3737.13 of the Ohio Code, which provides that the "investigation may be private" and that he may "exclude from the place where [the] investigation is held all persons other than those required to be present" Appellants declined to be sworn and to testify without the immediate presence of their counsel, who had accompanied them to the hearing. Their refusal was treated as a violation of 3737.12, which provides that "No witness shall refuse to be sworn or refuse to testify" Section 3737.99 (A) provides that "Whoever violates section 3737.12 . . . may be summarily punished, by the officer concerned, by . . . commitment to the county jail until such person is willing to comply with the order of such officer." The Fire Marshal accordingly committed appellants to the county jail until such time as they should be willing to testify. Appellants' application for a writ of habeas corpus was denied by the Ohio Court of Common Pleas, and this denial was affirmed on appeal by the Ohio Court of Appeals and by the Ohio Supreme Court.

翻譯：

上訴人等所擁有和經營的公司房地發生火災後，消防隊長開始對失火原因進行調查，並傳喚上訴人等到場為證人，根據俄亥俄州法典第3737.13條，消防隊長拒絕許可上訴人等的律師於調查程序中在場，該條法律規定，「調查得以秘密方式為之」，且消防隊長可以將「所有未經要求到場的人排除在調查場所之外…」，上訴人等由律師陪同前往接受訊問，但其律師卻無法即時在場，因此拒絕宣誓作證，他們的拒絕行為被視為違反第3737.12條「證人不得拒絕宣誓或證言…」的規定，第3737.99條(A)款規定：「無論何人違反第3737.12條…相關官員得予以簡易裁決處罰…，拘禁於郡監獄中，直到該人願意遵守此官員之命令為止」，因此，消防隊長將上訴人等送入郡監獄中，直到他們願意作證為止，上訴人等聲請人身保護令，遭俄亥俄州普通法院裁定駁回，經上訴後，俄亥俄州上訴法院與最高法院均維持原裁定。

原文：

We postponed further consideration of the question of jurisdiction to the hearing on the merits. The Ohio Supreme Court construed 3737.13 to authorize the Fire Marshal to exclude appellants' counsel from the proceeding. Since appellants' attack is on the constitutionality of that section, we have jurisdiction on appeal. 28 U.S.C. 1257 (2).

翻譯：

基於本案實體上的主張，我們將是否有權管轄的程序問題擱置，不做進一步審酌。俄亥俄州最高法院解釋認為第3737.13條授權消防隊長將上訴人等的律師排除於調查程序之外，因為上訴人等的攻擊是針對第3737.13條的合憲性，依據美國法典28 U.S.C. 1257 (2)規定，我們對此上訴案有權管轄。

原文：

We note at the outset that appellants explicitly disavow making any direct attack on the Fire Marshal's power of summary punishment under 3737.99 (A). They challenge not the validity of the procedure

by which they were committed to jail, but the constitutional sufficiency of the grounds on which they were so committed. Their sole assertion is that the Fire Marshal's authority to exclude counsel under 3737.13 was unconstitutional because they had a right, under the Due Process Clause, to the assistance of their counsel in giving their testimony.

翻譯：

我們注意到在一開始時，上訴人等明顯地不對消防隊長依據第3737.99條(A)款行簡易裁決處罰的權力為任何的直接攻擊，他們挑戰的不是他們被送入監獄程序的有效性，而是他們被裁罰的基礎是否滿足憲法的要求，他們唯一的主張是消防隊長依據第3737.13條授權排除律師在場是違憲的，因為在正當法律程序條款下，他們在作證時有權要求律師協助。

原文：

It is clear that a defendant in a state criminal trial has an unqualified right, under the Due Process Clause, to be heard through his own counsel. Prosecution of an individual differs widely from administrative investigation of incidents damaging to the economy or dangerous to the public. The proceeding before the Fire Marshal was not a criminal trial, nor was it an administrative proceeding that would in any way adjudicate appellants' responsibilities for the fire. It was a proceeding solely to elicit facts relating to the causes and circumstances of the fire. The Fire Marshal's duty was to "determine whether the fire was the result of carelessness or design," and to arrest any person against whom there was sufficient evidence on which to base a charge of arson.

翻譯：

很顯然地，在正當法律程序的條款下，被告在州的刑事審判程序中，應完全享有辯護律師代表出庭的權利，然而，對個人的刑事起訴與損及經

濟或危及公眾事件的行政調查，是有很大的區別的，在消防隊長所進行的程序，絕不是判定上訴人等火災的責任的刑事審判或行政調查程序，它只是一個究明失火原因與情況等事實的程序而已，消防隊長的責任是「決定火災是因疏失或設計不良所致」，並逮捕任何因有足夠的證據而被指控縱火的人。

原文：

The fact that appellants were under a legal duty to speak and that their testimony might provide a basis for criminal charges against them does not mean that they had a constitutional right to the assistance of their counsel. Appellants here are witnesses from whom information was sought as to the cause of the fire. A witness before a grand jury cannot insist, as a matter of constitutional right, on being represented by his counsel, nor can a witness before other investigatory bodies. There is no more reason to allow the presence of counsel before a Fire Marshal trying in the public interest to determine the cause of a fire. Obviously in these situations evidence obtained may possibly lay a witness open to criminal charges. When such charges are made in a criminal proceeding, he then may demand the presence of his counsel for his defense. Until then his protection is the privilege against self-incrimination. This is a privilege available in investigations as well as in prosecutions. We have no doubt that the privilege is available in Ohio against prosecutions as well as convictions reasonably feared. The mere fact that suspicion may be entertained of such a witness, as appellants believed existed here, though without allegation of facts to support such a belief, does not bar the taking of testimony in a private investigatory proceeding.

翻譯：

上訴人等在法律上有陳述的義務，以及他們的證詞可能被供作控訴他們自己刑事犯罪基礎，但是以上的事實並不意味著他們可享有受辯護律師協助的憲法權利，在此案中上訴人等是證人，失火原因的資訊是從渠等身上取得，就憲法權利而言，證人在大陪審團面前或其他調查機構程序中，不能堅持須有律師為其訴訟代理人的權利，所以在消防隊長為公共

利益決定失火原因程序中，也沒有理由允許律師在場。顯然地，在此情況下所取得的證據很可能使證人受到刑事控訴，當這種控訴在刑事訴訟程序中被提出時，他便可要求他的律師到場為其辯護，那時候他的保障就是不自證己罪特權。這是在調查與起訴中可享有的特權。我們確信，在俄亥俄州人們所疑慮的起訴與審判程序中，都可以享有這個權利，上訴人等相信在本案中擔任此種證人會被認為有犯罪嫌疑，但是在沒有事實的指控去支持此想法之下，僅憑臆測是無法禁止以秘密的調查程序取證。

原文：

It may be that the number of people present in a grand jury proceeding gives greater assurance that improper use will not be made of the witness' presence. We think, however, that the presumption of fair and orderly conduct by the state officials without coercion or distortion exists until challenged by facts to the contrary. Possibility of improper exercise of opportunity to examine is not in our judgment a sound reason to set aside a State's procedure for fire prevention. As in similar situations, abuses may be corrected as they arise, for example, by excluding from subsequent prosecutions evidence improperly obtained.

翻譯：

或許在多人出席的大陪審團程序中較能確保證人不會受到不當的取證，然而，我們認為在沒有受到反對事證的挑戰前，我們推定州政府官員的行為是公正、合法的，並不存在威脅或曲解，在我們的判決中，這種藉機進行不當訊問的可能性，並非推翻該州火災預防程序的充足理由，因為在類似的情況中，當有濫權之情形出現時，將會獲得糾正，例如：不當取得的證據在後來的起訴程序會被排除。

原文：

Ohio, like many other States, maintains a division of the state government directed by the Fire Marshal for the prevention of fires and reduction of fire losses. Section 3737.13, which has been in effect since 1900, represents a determination by the Ohio

Legislature that investigations conducted in private may be the most effective method of bringing to light facts concerning the origins of fires, and, in the long run, of reducing injuries and losses from fires caused by negligence or by design. We cannot say that this determination is unreasonable. The presence of advisors to witnesses might easily so far encumber an investigatory proceeding as to make it unworkable or unwieldy. And with so weighty a public interest as fire prevention to protect, we cannot hold that the balance has been set in such a way as to be contrary to "fundamental principles of liberty and justice." That is the test to measure the validity of a state statute under the Due Process Clause.

翻譯：

俄亥俄州像許多其他州一樣，為了防止火災的發生，在州政府部門下設了一個消防部門，在消防隊長的指導下，執行火災預防和減少火災損害的工作，1900 年生效的第 3737.13 條是代表俄亥俄州立法機關的決定：對火災案件進行秘密調查，可能是發現火災發生原因，以及最終可減少因過失或設計錯誤引發火災造成損傷的最有效方法。我們不能說這個決定是不合理的。如果允許證人的律師在場可能很容易阻礙調查程序，使它無法或難以進行。由於預防火災發生這個如此重大公益須要保障，基於利益衡平，我們無法做出違反“自由和公平正義基本原則”的判決，那是一個檢驗州法律是否符合正當法律程序條款的試金石。

原文：

Appellants urge, however, that the Fire Marshal's power to exclude counsel under 3737.13 must be considered in the light of his power of summary punishment under 3737.99 (A), and they would have us hold that, so considered, his power to exclude counsel was unconstitutional. We held in *In re Oliver*, 333 U.S. 257, that a witness before a one-man grand jury, a judge, could not constitutionally be punished summarily for contempt of the grand jury without being allowed to be represented by his counsel. We see no relation between the premise that appellants could not be punished without

representation by counsel and the conclusion that they could not be questioned without such representation. Section 3737.13 may contain a constitutional flaw if it should be construed to authorize the exclusion of counsel while the Fire Marshal determines that a witness has violated 3737.12 and orders the witness committed. The sole assertion of a constitutional violation that appellants relied upon before the Ohio Supreme Court and the only one open on the record here - the authorization in 3737.13 of the exclusion of counsel while a witness testifies - is not well founded. We hold that appellants had no constitutional right to be assisted by their counsel in giving testimony at the investigatory proceeding conducted by the Fire Marshal, and that 3737.13, insofar as it authorizes the exclusion of counsel while a witness testifies, is not repugnant to the Due Process Clause of the Fourteenth Amendment.

Affirmed.

翻譯：

然而，上訴人等極力主張消防隊長依照第 3737.13 條規定排除律師在場的權力，必須與他可依第 3737.89 條為簡易裁決處罰的權力一併考量，他們要本院判決他（消防隊長）有權排除律師在場是違憲的，我們在 Oliver 案判決（案號：333 U.S. 257）中表示，證人在獨任法官兼大陪審團¹面前，在法官未核准他的律師代為辯護的情況下，便以其藐視陪審團而予以簡易判決處罰，是不合憲的。我們沒有看到，上訴人等沒有律師代理不能被處罰這個前提與他們沒有律師代理不能被訊問這個結論之間，有何關聯，如果第 3737.13 條應該被解釋為，當消防隊長決定證人違反第 3737.12 條，並命該證人受監禁處分時，授權消防隊長排除律師在場，那麼第 3737.13 條可能含有合憲性上的瑕疵，上訴人等以上訴俄亥俄州最高法院時所憑的唯一主張，也就是此案卷內所載唯一展現的理由——第 3737.13 條授權在證人作證時排除律師在場——其立論基礎顯不足

¹ 此處係指美國密西根州的「獨任法官兼大陪審團制度（One-man grand jury system）」，該州在 1917 年通過獨任法官兼大陪審團法，依據該法，法官除聽訟外兼具大陪審團進行調查訊問之職權。

採，我們判決認為上訴人等在消防隊長進行的調查程序中作證，不能享有憲法上由律師協助辯護權，在俄亥俄州法典第 3737.13 條有關證人作證時排除律師在場規定的授權範圍內，該條並不違悖憲法第十四修正案的正當法律程序條款。

維持原判決。

二、英文字彙

1. premises (n.) 房地，建築物
premises liability insurance 建築物責任險
2. corporation (n.) 法人，公司
corporate (adj.) 法人的，公司的
corporate acquisition 公司併購
corporate bond 公司債券
3. subpoena (n.) 傳票
subpoena (v.) 傳喚
4. investigation (n.) 調查
Bureau of Investigation 調查局
investigatory (adj.) 調查的
investigatory proceeding 調查程序
investigatory power of Congress 國會調查權
investigate (v.) 調查
5. private (adj.) 私人的，秘密的，非公開的
privacy (n.) 隱私（權）
6. exclude (v.) 排除，不許（入內）
exclusion (n.) 排除，除外
exclusionary (adj.) 排除的
exclusionary rule 證據排除法則
exclusive (adj.) 除外的，獨佔的，唯一的
exclusive jurisdiction 專有管轄權
exclusive agency 獨家代理
7. present (adj.) 現在的，在場的，出席的

- presence (n.) 在場
presence of counsel 律師到場
8. counsel (n.) 律師，顧問，(法律) 建議
exclusion of counsel 排除律師 (在場)
assistance of counsel 由律師協助
9. commit (v.) 犯罪，將某人監禁
be committed to jail 被送入監獄
commitment (n.) 犯罪，監禁
10. writ of habeas corpus 人身保護令，提審令
11. affirm (v.) 維持原判，確認
affirmance (n.) 維持原判，確認
affirmance of judgement 維持判決
12. jurisdiction (n.) 管轄權
jurisdictional (adj.) 管轄權的
13. repugnant (adj.) 不相符的，矛盾的
repugnant provisions 相抵觸條款
repugnancy (n.) 不相符，矛盾
14. Due Process Clause 正當法律程序條款
15. amendment (n.) 修正 (條文、案)
The Fourteenth Amendment 美國憲法第十四修正案
amendment of statute 法律修正
amend (v.) 修正，改正
amendable (adj.) 可修正的，可改正的
amendable process 可改正的程序
amendatory (adj.) 修正的，改正的
amendatory statute 修正法
16. brief (n.) 律師辯論狀，判決摘要
brief on appeal 上訴摘要
17. deliver (v.) 交付，傳送，發表，宣布
to deliver the opinion 發表 (判決) 意見
delivery (n.) 交付，傳送
18. summary (n.) 概要，摘要，簡易程序

- summary (adj.) 扼要的，簡易的
summary judgement 簡易判決
summary court-martial 簡易軍事法庭
power of summary punishment 簡易裁決處罰權
summarily (adv.) 扼要的，簡易的
be summarily punished 受簡易裁決處罰
- 19.merits (n.) 當事人的法定權利，訴求的實質依據
on the merits 依據實體上的事實或權利（為判決）
merits of case 案件的實質問題，（訴訟中）實體權利
- 20.construe (v.) 解釋或分析（法律）
- 21.disavow (v.) 否定，取消
- 22.assertion (n.) 主張，斷言
assert (v.) 主張，聲明
assertory (n.) 確認的
assertory oath 確認宣誓
assertory covenant 確認條款
- 23.unqualified (adj.) 不合格的，不受限的，無保留的
unqualified opinion 無保留的意見
- 24.administrative (adj.) 行政的，管理的
administrative investigation 行政調查
administrative proceeding 行政程序
administrative law 行政法
administration (n.) 行政，遺產管理
administration letters 遺產管理授權書
- 25.adjudicate (v.) 判決，裁判
adjudication (n.) 判決，裁判
- 26.arson (n.) 放火罪
- 27.jury (n.) 陪審團
grand jury 大陪審團
- 28.represent (v.) 陳述，代表，代理
be represented by counsel 由律師代表（出庭）
representation (n.) 陳述，代表，代理

- representation by counsel 由律師代表（出庭）
representative (n.) 代表人，代理人
- 29.self-incrimination 自證己罪
privilege against self-incrimination 不自證己罪權
- 30.conviction (n.) 定罪，有罪判決
convict (v.) 定罪，宣判有罪
convict (n.) 已決犯，宣判有罪者
- 31.entertain (v.) 心存，思考
- 32.presumption (n.) 推定
presumption of death 死亡推定
presumption of innocence 無罪推定
presumptive (adj.) 推定的
presume (v.) 推定
- 33.coercion (n.) 脅迫
coerce (v.) 脅迫，強制
- 34.distortion (n.) 扭曲，曲解
distort (v.) 扭曲，曲解
- 35.examine (v.) 訊問，詰問
examination (n.) 訊問，詰問
cross-examination (n.) 交互詰問
- 36.negligence (n.) 過失，疏忽
negligent (adj.) 過失的，疏忽的
negligent homicide 過失殺人
- 37.contempt (n.) 藐視
contempt of the grand jury 藐視大陪審團
contempt of court 藐視法庭
- 38.premise 前提，前述事項