



Legal Research法律检索

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Housekeeping

- Your purposes to take this class?
- Your English?
- Have you used Chinalawinfo/PKULAW, Westlaw, Lexis, or Heinonline?
- Your outcomes?
- Pathfinder for your dissertation



看到明时方恨少



書到我時方恨多

胡武



一九八六年七月
華君武





受过检索训练和没受过检索训练

- 没受过检索训练型：顺藤摸瓜，查阅已有研究；缺乏创新
- 受过检索训练型：按图索骥，搜集可用素材；日积月累，李贺锦囊；



What is legal research?

- How to find legal authorities: the process of
 - searching the relevant legal authorities governing your issues,
 - finding materials explaining or analyzing those legal authorities, and
 - sometimes, identifying distinguishing facts to support your advocates.

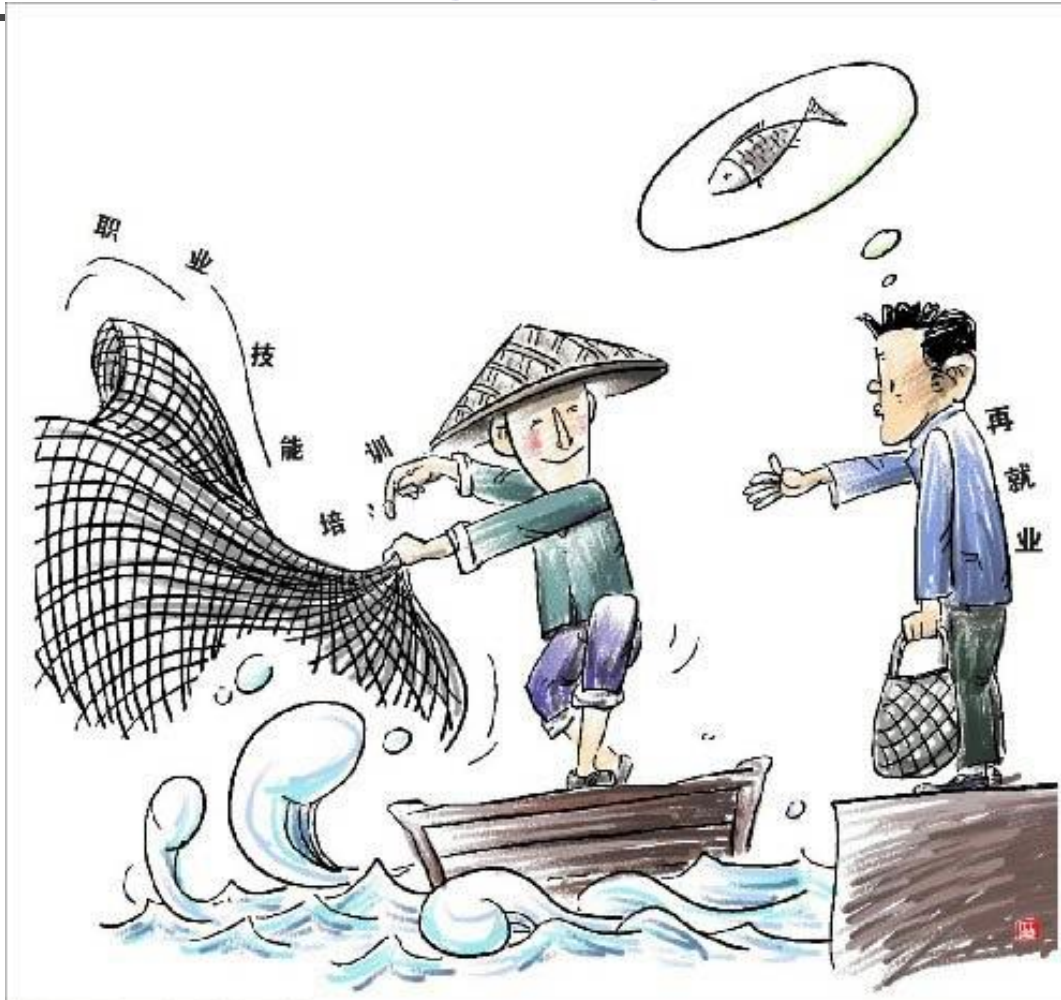


How is this class different?

1. This is not a doctrinal class. In your other classes you are learning about the law and how to think like a lawyer.
2. This is a skills course; it is about teaching you to use the tools of your profession.



“Teaching people how to fish is better than giving people fish.”



授人以鱼不如授人以渔

图/ 冯印澄 新华社发



法律检索的重要性

- 美国律师职业道德
 - Relationship to Clients
 - 有能力，能胜任的律师
（“**competent lawyer**”）



ABA Requirement (1)

1. ABA Model Rule of Professional Responsibility 3.3(a): a lawyer should not knowingly
 - make a false statement of material fact or law to a tribunal, or
 - fail to disclosure legal authority ... to be directly to be adverse to the position of the client ...



ABA Requirements (2)

- ABA Standards and Rules of Procedure for Approval of Law Schools, 302(a)(2):
“A law school shall require that each student receive substantial instruction in: ... legal analysis and reasoning, legal research, problem solving, and oral communication; ”



Why Do Legal Research?

Globalization: integrating nations and peoples – politically, economically, culturally, and legally – into a larger community.

To be a successful law student, lawyer, or scholar



代表好的法律检索的四个 Cs



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omprehensive全面

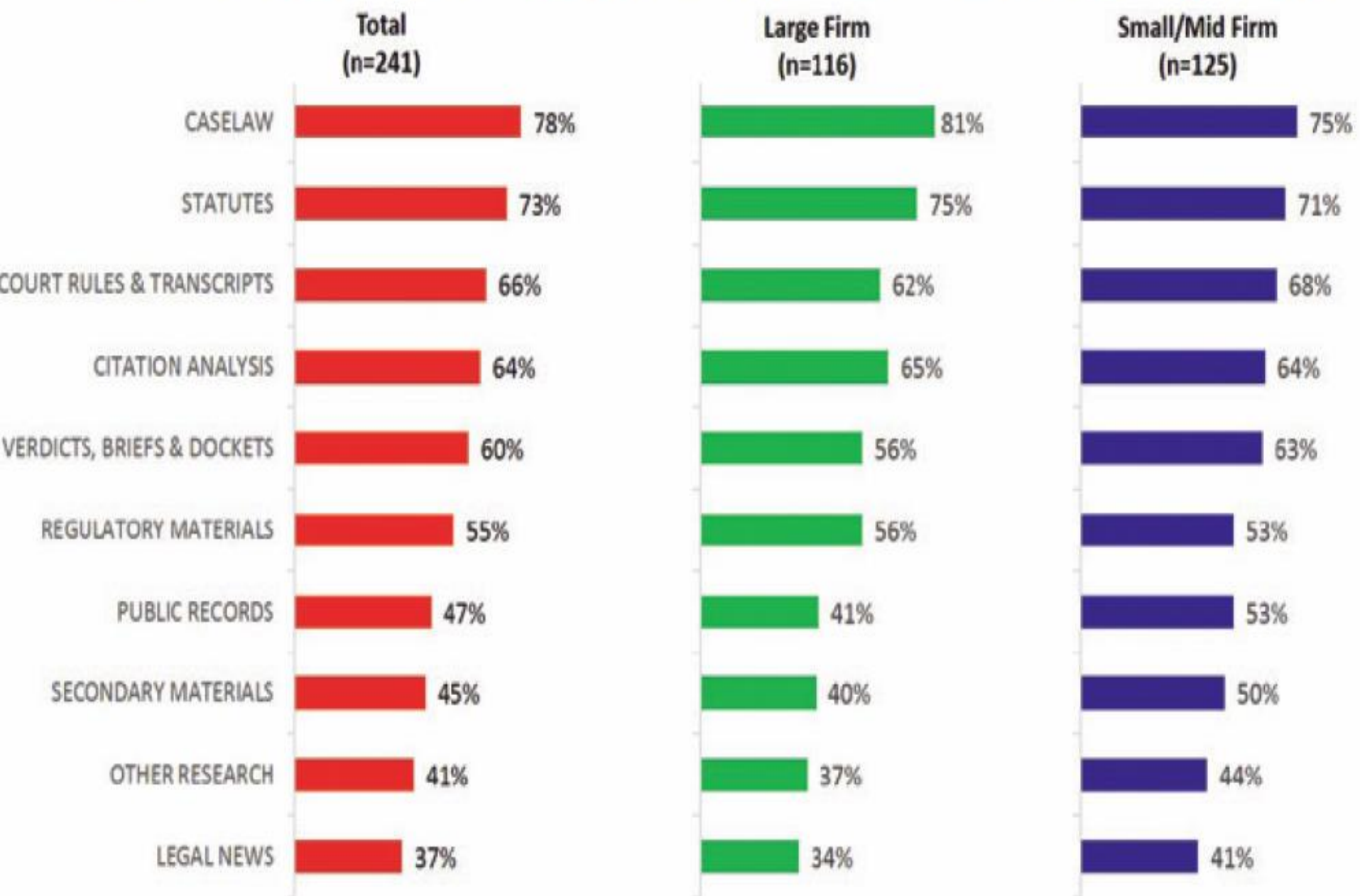
redible可信

ost-effective经济（省
时、省钱）

2015 Legal Research Survey Conducted by Lexis

- New attorneys spend between 40-60% of their time conducting legal research and an average of 12 hours per week on paid services like Lexis Advance
- 88% of hiring partners think proficiency using “paid for” research services is highly important for practitioners
- 86% of hiring partners and supervising attorneys deem legal research skills as highly important in young associates
- Over 60% of attorneys would be pleased to see a Research Certification, Drafting certification or similar certification designation on a candidate’s resume.

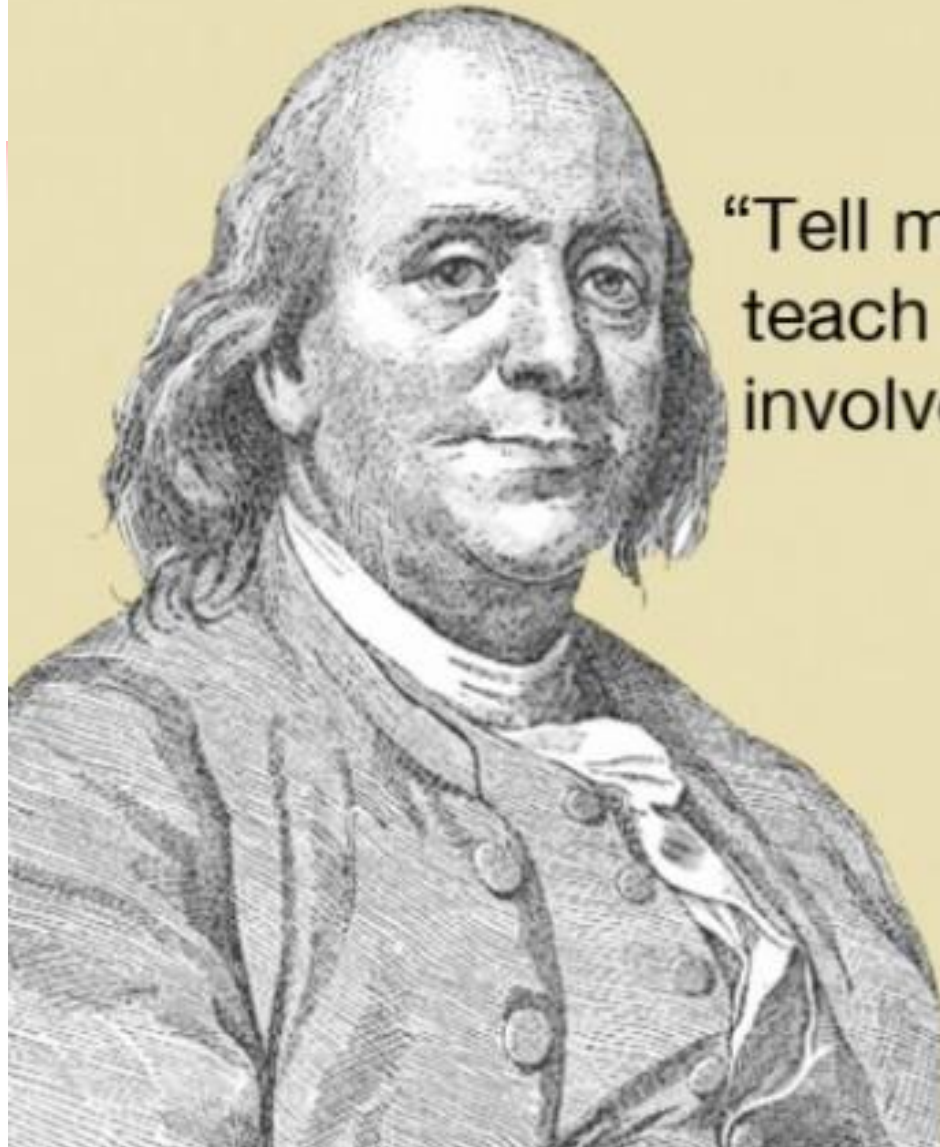
Importance Of Legal Research Proficiency Within Content Types (7-10) ratings)





法律检索与其他学科的检索有何不同？

- 要通晓各种法律文献及其相互的关系
- 如何运用法律资源来解决法律问题？
- 常需要利用多种资源，而且每种资源的检索技巧和手段可能都不一样
- 常需要全面检索所有原始资源
- 检索到的法律是否最新？
 - 法律是个有机体（Law is **organic**）



“Tell me and I forget,
teach me and I may remember,
involve me and I learn.”

-Benjamin Franklin



Pathfinder 法律检索指南、文献检索报告

- 结合你们的论文选题
- 这门课的课后作业
- 汇报
- 成绩



Evaluate Research Outcome

1. Beginning: did not consult secondary sources covering the relevant area of law
2. Developing: selected one or more sources that cover the topic, but either too generally or too specifically to serve as an adequate starting points; source(s) was unlikely to contain citations to the specific jurisdiction.
3. Proficient: selected one or more sources providing an accessible overview of the relevant area of law; source(s) was either jurisdictionally or topically specific.
4. Highly Proficient: Selected multiple sources providing an accessible overview of the relevant area of law along with a more in-depth treatment of specific issues; at least one of the sources was jurisdictionally specific.



选题

■ 选题要点：

- 小：小到足以把握。
- 新：不要耕熟地。
- 熟：熟悉。

■ 常见问题：

- 过大、过旧、过生；
- 根源在于检索不够。



“四部研究法”

经史子集

IRAC

- 【经】问题提出——中心【思想】；
- 【史】文献综述——二手【材料】；
- 【子】素材梳理——一手【材料】；
- 【集】学术阐释——理论【分析】；

- Issue
- Rules
- Application
- Conclusion



第一部分 法律文献检索导论

- 法律资源分类 **Sources of Law**
 - 一、原始、一次、规范性法律资源Primary Source
 - 二、二次法律资源Secondary Source
 - 三、强制性规范Mandatory Authority
 - 四、说服力规范Persuasive Authority
- 问题：一个国家有几种权利机关？



Three Branches of US Government 美国政府的三权分立

Legislative



Executive



Judicial





NPC 立法



司法

行政



法律资源（渊源）：原始 **vs.** 二次？



Primary Sources (Types) of Law

原始（一次）法律资源（渊源）

- Legislative (Congress) 立法（议会）
 - Statutes enacted by elected bodies 成文法
- Executive (President and Agencies) 行政
 - Executive Orders and Directives from President) 行政命令
 - Rules and Regulations 法规
- Judicial (Judges and Courts) 司法
 - Opinions issued by Courts 判例



Primary Sources

1. Statutes: bills, acts, statute compilation, codes,
2. Administrative Regulations: regulations, rules, executive orders, regulation/rule compilations, administrative code,
3. Judicial interpretations, cases, court rules, sentencing guidelines, etc.



Secondary Sources 二次资源: about law 解释法律

- Legal Textbooks: case books 法学教材：案例书
- Study Aids: hornbooks, nutshells, etc. 学习辅导
- Legal Encyclopedias 法律百科全书
- Legal Periodicals 法律期刊
- Monographs 学术专著
- Treatises 法律分题综述
- Practicing Guides 执业指南
- Etc. 等



Secondary Sources

- Textbooks
- Periodicals: journals, law reviews, magazines, newsletters, newspaper
- Monographs 专著
- Practicing materials 实务
- Legal encyclopedias
- Legal Dictionaries



渊源： 原始文献 v. 二次文献 Primary v. Secondary Source

或 规范性法律资源/正式性法律渊源 v. 非
规范性法律资源/非正式性法律渊源

Statutes, court opinions, administrative
regulations 法律、判例、行政法规

v.

commentary on the law 讲解法律



效力：强制性规范 v 非强制性规范

Binding v. persuasive Authority

- 强制性规范：宪法、法律、法规、法律解释、“案例？”
- 非强制（说服）性规范：X省的法规对Y省是非强制性规范、行业公会制定的规则、法学理论



法律渊源和法律效力比较

渊源

- 规范性或原始资源：
宪法、法律、法规、法律解释、“案例”
- 非规范性或二次资源：
法学专著、文章，法律百科等

效力

- 强制性规范：宪法、法律、法规、法律解释、“案例”
- 非强制（说服）性规范： X省的法规对 Y 省是非强制性规范、行业公会制定的规则、法学理论



法律检索的目的

- 找到能引用的强制性法律规范文献，
或
- 非强制性但有说服力的法律文献



法律检索概述

- 检索步骤Legal Research Process
 - （一）问题分析Spot out issues
 - （二）选择检索工具或数据库research tools or database
 - （三）检索策略Research strategies
- 布尔检索法(Boolean Search Concepts)
- 检索结果评估Evaluate results

做好法律检索：使得法律从业或理论研究能执简驭繁



- 放眼全局、细微入手
- 规划、坚持、不懈

Saint Louis Real Estate & S x Directory x

Database Structure

web2.westlaw.com/directory/default.htm?sv=Split&fn=_top&mt=Westlaw

Westlaw Classic

FIND & PRINT KEYCITE DIRECTORY KEY NUMBERS SITE MAP

COURT DOCS FORMFINDER PEOPLE MAP EXPERT CENTER COURT WIRE

Preferences Alert Center Research Trail

Law School Westlaw NewsRoom with Reuters Missouri

Add a Tab

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Favorite Databases

To access a database, type all or part of a database name or identifier in the *Search for a database* text box.

To access multiple databases, type up to 10 database identifiers separated by commas or semicolons in the *Search for a database* text box.

[Find a Database Wizard](#)

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[U.S. State Materials](#)

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Database Structure

- Website or Database
 - Databases or various sub-databases
 - Documents
 - **Fields or segments: heading/title, author, abstract, main text, notes, etc.**

 **Browse**

All Content

Federal Materials

State Materials

Practice Areas

Tools

Cases

 Key Numbers

Trial Court Orders

Statutes & Court Rules

Regulations

Administrative Decisions & Guidance

Secondary Sources

Forms

Briefs

Trial Court Documents

Expert Materials

Jury Verdicts & Settlements

Proposed & Enacted Legislation

Proposed & Adopted Regulations

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Push for encryption law falters despite Apple case spotlight

5/27/2016 | REUTERS

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All Federal & State Cases (ALLCASES) 

Terms & Connectors

Natural Language

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[Thesaurus](#)

[Term Frequency](#)

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Dates: Unrestricted ▼

Fields: Select an Option ▼



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Synopsis - SY()

Digest - DI()

Synopsis/Digest - SY,DI()

Background - BG()

Holding - HG()

Words-Phrases - WP()

Topic - TO()

Headnote - HE()

References - RE()

Judge - JU()

Attorney - AT()

Opinions - OP()

Full-Text - FT()

Lead - LE()

Concurring - CON()

Dissenting - DIS()

Prelim - PR()

Notes - NO()

same sentence

ceding within sentence

same paragraph

ceding within paragraph

thin n terms of

ceding within n terms of

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C

China First Pencil Co., Ltd. v. U.S.

30 C.I.T. 1200, 427 F.Supp.2d 1236

CIT,2006.

March 07, 2006 (Approx. 7 pages)

KeyCite

30 C.I.T. 1200, 427 F.Supp.2d 1236, 28 ITRD 1352

[Motions, Pleadings and Filings](#)
[Judges and Attorneys](#)

United States Court of
International Trade.
CHINA FIRST PENCIL CO., LTD., et al., Plaintiffs,
v.
UNITED STATES, Defendant,
and
Sanford Corporation, et al., Defendant-Intervenors.

Slip Op. 06-34.
Court No. 04-00242.
March 7, 2006.

Background: After voluntary remand, Department of Commerce issued its final results and partial results of an antidumping duty administrative review of certain cased pencils from China, and importers sought review. Commerce Department filed motion for judgment upon the administrative record.

Holdings: The Court of International Trade, [Wallach](#), J., held that:

(1) Commerce Department's decision to continue to collapse two Chinese importers and to consider them a single entity for purposes of antidumping analysis was supported by substantial evidence and was in accordance with law;

(2) Commerce Department's decision to utilize Indian import statistics adjusted for inflation was in accordance with law; and

首页 → 北大法宝 → 赵立爱煽动颠覆国家政权案



会员登录 帐号

密码

登 录

注 册

申请试用

帐户管理

收藏夹

对比方式: ☒ 全部项 ☐ 部分项

赵立爱煽动颠覆国家政权案 (一审)

【案 由】 刑事 -> 危害国家安全罪 -> 煽动颠覆国家政权罪

【审理法院】 新疆维吾尔自治区乌鲁木齐市中级人民法院

【审理法官】 张亚豪、刘玉涛、魏绪

【案件字号】 (2009)乌中刑一初字第151号

【审结日期】 2010.03.18

【代理律师】 金光玛

【代理律所】 北京亿嘉律师事务所

【摘 要】

6.证人谢斌的报案材料及证言证实,2009年6月1日,我在东方花园4号楼巡楼时,在16至20层发现业主门上粘贴有塑料白色的,没封口,没写字,里面是手写后复印的材料,题目是“给有缘人的一封信”,共32份,每份3张纸。2009年6月18日,在4号楼电梯监控中发现昨天监控录像中散发传单的那人乘电梯到了11楼,我们保安上楼在8楼发现这人正在张贴“法轮功”传单。从他口袋里发现了5张传单,从11楼至13楼的住户门上发现了已经张贴的“法轮功”传单18张。传单用塑料袋包裹的白色信纸,和这段时间在我们小区张贴的“法轮功”传单一样。这段时间东方花园小区经常有“法轮功”传单出现,昨天我们和警察,确定嫌疑人的形象。[查看全文](#)

【判决结果】

- 判定罪名 煽动颠覆国家政权罪
- 刑 罚 被告人李梦春犯煽动颠覆国家政权罪,判处有期徒刑四年,剥夺政治权利一年。
- 民事赔偿 无

【罪刑情节】

- 明知、刑事责任年龄、有期徒刑、剥夺政治权利



Questions?

