



Legal Research法律检索

罗伟 (Wei Luo) , JD & MLS

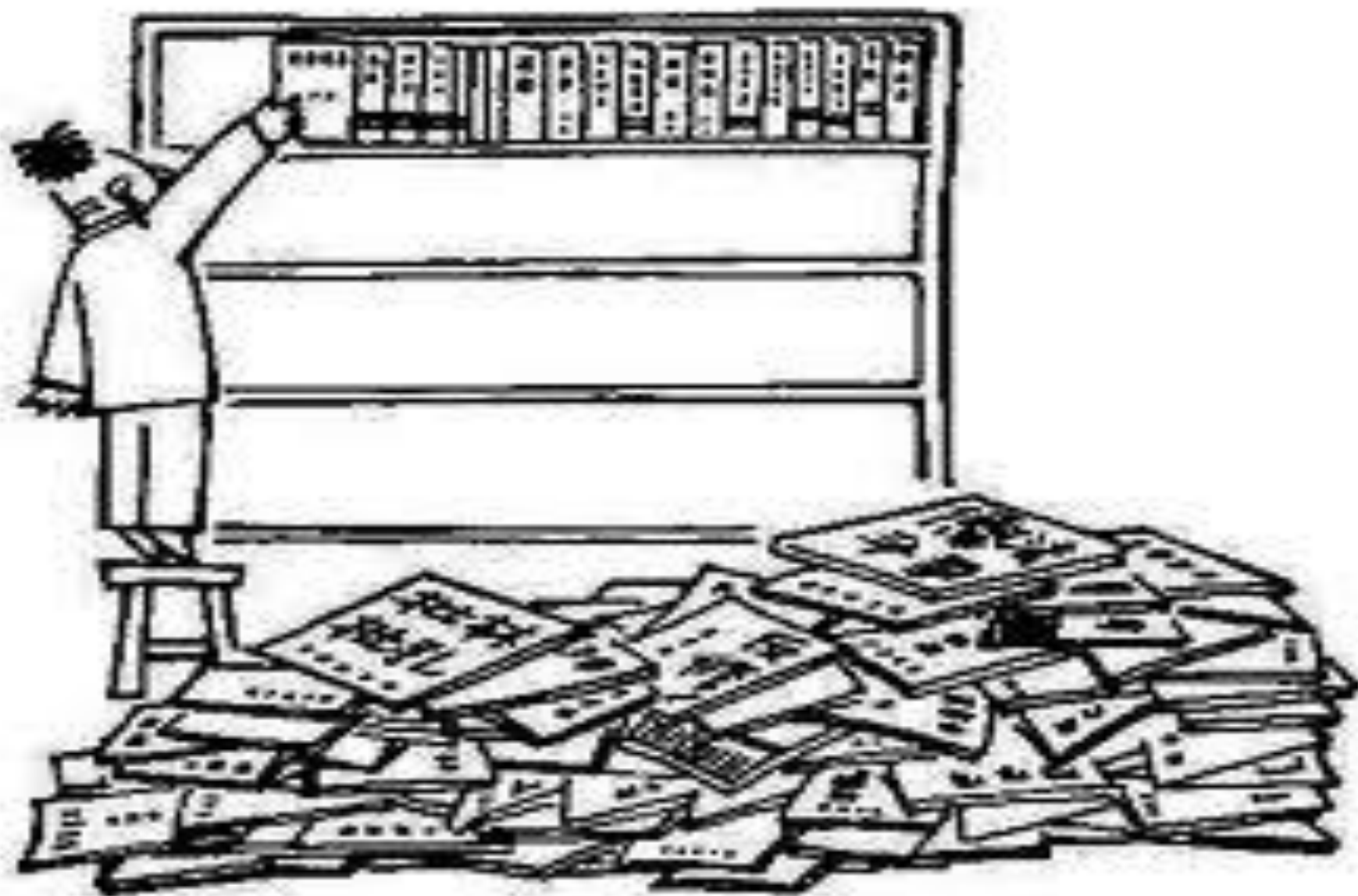
weiluowulaw@yahoo.com

Updated 03-2014



Housekeeping

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



书到用时方恨少



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.

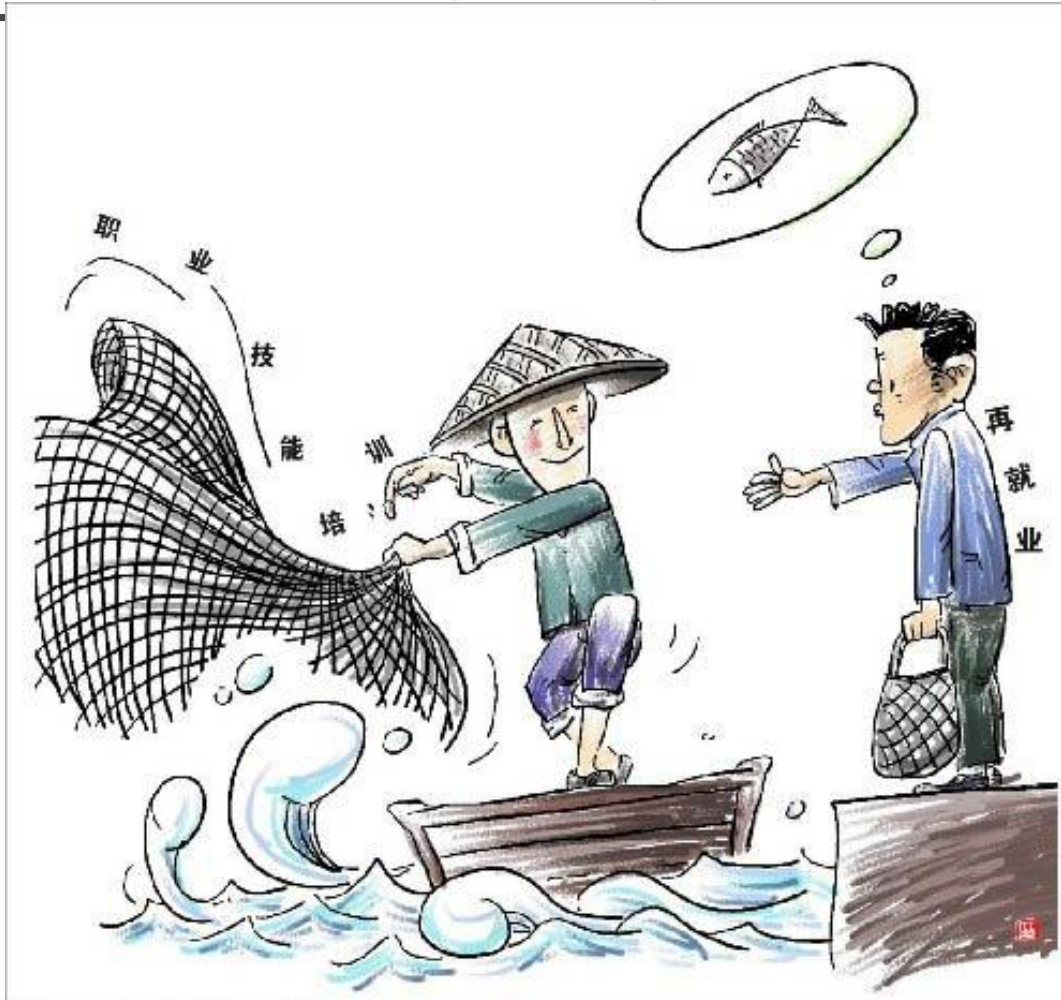


How is this class different?

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?

1. Legal duty: many courts require, such as the Federal Rule of Civil Procedure:
 - to provide existing laws to support your claim or defenses
2. Complexity of American legal info: rule of law, common law, & federalism



Why Do Legal Research?

3. Globalization: integrating nations and peoples – politically, economically, culturally, and legally – into a larger community.
4. To be a successful law student, lawyer, or scholar



代表好的法律检索的四个 Cs



orrect准确

omprehensive全面

Redible可信

ost-effective经济（省
时、省钱）



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**）



主要内容

- 第一部分 法律文献检索导论
- 第二部分 中国法律检索
- 第三部分 国际法律检索
- 第四部分 外国法律检索：美国、日本、英国、法国、德国等



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



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】** 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】** ；



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v.非规范性法律资源

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

v.

commentary on the law 讲解法律

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- International Law
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- Litigation Practice & Procedure
- Patent Law
- Securities
- Taxation
- Trademark Law

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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



法律信息载体

- 纸质：图书、报刊
- 微缩胶带胶片 microforms: old newspapers
- 电子 digital: CD-Rom, flash drive, portable hard drive, database
- 网络 Internet:



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



Generating Search Terms

- Based on Categories of Information
 - Who: parties
 - Where: places
 - What: things
 - When: day, evening, time
 - Why: potential claims & defenses
- Determine:
 - Legal Theory
 - Legal Relief
 - Issue Statement



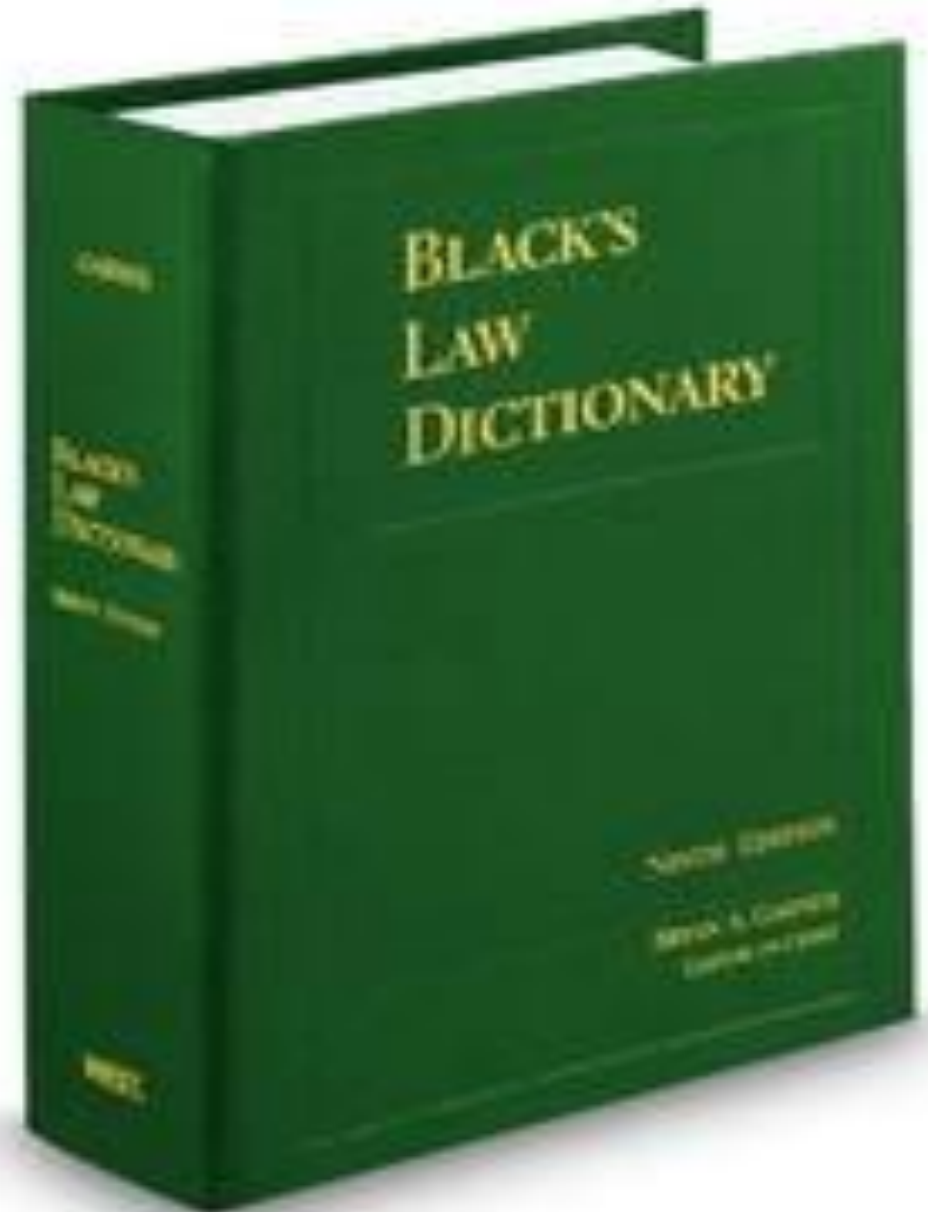
Expanding the Initial Search

- Increasing breadth with synonyms and related terms:
 - Motel — Hotel — Inn
 - Lottery — Sweepstake — Gamble
- Increasing depth with levels of abstraction:
 - seagull — bird — animal
 - 猎狗- 狗- 动物
 - Lottery — Gamble — Illegal Contract (彩票 - 赌博 - 非法合同)



Sources to
generate
search terms

- Black's Law Dictionary, 9th ed
KF156 .B53 2009
Available on
Westlaw also



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视频 英文 “感谢有你，一路同行” 专题 法规 北大法宝「2013年度报告」 期刊 法规

北大法宝 > 法律法规

效力级别

- 法律(1888)
- 行政法规(7379)
- 司法解释(5722)
- 部门规章(172527)
- 团体规定(3550)
- 行业规定(14512)
- 军事法规(102)
- 军事规章(55)
- 军事规范性文件(293)

发布部门

- 全国人民代表大会(524)
- 全国人大常委会(1349)
- 最高人民法院(5095)
- 最高人民检察院(1150)
- 国务院(4403)
- 国务院各机构(154403)
- 中央其他机构(47221)

法律法规

司法案例

法学期刊

律所实务

专题参考

标题 全文 检索

匹配: 精确 模糊 同篇 同句 同段

- ☒ 中央法规司法解释
- ☐ 法律动态
- ☐ 合同与文书范本
- ☐ 外国法
- ☐ 地方法规规章
- ☐ 立法背景资料
- ☐ 中外条约
- ☐ 港澳台

中央法规司法解释 (206028篇)

法律(642篇)

- 全国人大常委会关于修改《中华人民共和国海洋环境保护法》等七部法律的决定
主席令第8号 / 现行有效 / 2013.12.28发布 / 2013.12.28实施
- 中华人民共和国烟草专卖法(2013修正)
主席令第8号 / 现行有效 / 2013.12.28发布 / 1992.01.01实施
- 全国人大常委会关于修改《中华人民共和国消费者权益保护法》的决定(2013)
主席令第7号 / 尚未生效 / 2013.10.25发布 / 2014.03.15实施
- 中华人民共和国消费者权益保护法(2013修正)
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Terms & Connectors

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Holding - HG()

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Headnote - HE()

References - RE()

Judge - JU()

Attorney - AT()

Opinions - OP()

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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

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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



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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”。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

Example



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- Tobacco related smoking health law issues for workers in workplace/factory



Searching for Words via Computer: Boolean and Connector Search

- single-word term (with or without root expander or universal character,): **work, work*, work**, work***, work!**
- several-word phrase: **"non-working hour"**
- multiple terms for the same concept: **worker or laborer, cigarette or tobacco or smoke**
- Both in a document: **(worker or laborer) and (cigarette or tobacco or smoke)**
- exclusion of non-pertinent usage: **smok! But not marijuana**



- (worker or laborer) and (cigarette or tobacco or smoke) But not marijuana
- multiple-concept search employing connectors: /s, /p, /n,
- (worker or laborer) /5 (cigarette or tobacco or smoke) But not marijuana



Questions?

