A Thought of Legal Research with Examples and Demonstrations

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I. The Legal System in Differences: A Focus on the Legal Research Method

Legal System and Legal Research

The policy makers or lawyers may face the need of legal research for reasons. The congressmen may plan to make new laws to address the challenges of their constituent or to the interest of nation. The lawyers may need to serve their clients who like to know the legal issues involved, the strategies to deal with their loss and recovery, and prospect for winning the case if the dispute has gotten worse. The lawyers may practice in a solo business or might work as an associate lawyer in the law firms. A senior lawyer or partner in some cases may like to exploit the junior work force about the problems or grievances from the potential clients. Since he needs to focus their attention on other matters, such as the business expansion of his law firm or more lucrative cases in need of career hands, he may tap the junior lawyer for the legal research, who could assist with the basis of his final legal opinion. The memorandum, opinion letter and brief would be such forms of professional communication for the lawyers and legal researchers. The congressman also can be supplemented with the aid of staffs in terms of his legal expertise and grasp of the issues standing for carrying their responsibility more effectively. For the lawyers and legal researchers, the structure of state and federal legal system is the kind of important variants to orient their work direction and basic frame for the most efficient and adequate scope of search and analysis (Murray, M.D., Desanctis, C.H. , 2009). Let me recall several aspect of legal research in the comparative purpose and from the neighborly practice or concept.

The structure of legal system actually precondition on the disposition of research work. It is important to note and distinguish whether it would involve the federal issues or laws or purely a state matter. Moreover, the lawyers and legal researchers may undertake the international character of legal question which may affect their work frame of research. They must search the different part of sections within the Westlaw or Lexis-Nexus, such as EU laws and British materials. Hence, the basic categorization about the nature of his research work in consideration of state, national and international phase of legal information should be pretty determinative. That may be said analogously and in equal importance if the researchers of social science would meditate on the methods, i.e., qualitative, quantitative and mixed one (Frankfort-Nachmias, C., & Nachmias, D., 2008).

A more facile exposure to the structure of each level of legal system would make the research work convenient, economical and adequate, and could lead to more an accurate, persuasive, authoritative research outcome (2009). For example, the state law issues must be resolved within that dimension, and so true if it could be gone with the federal law and issues. This does not say if the comparative work for a different level of legal system would be meaningless, but the power of persuasion would differ. For example, we may compare the criminal law issues of Minnesota with the case law or statute of Florida which was intended

to reform the criminal policy of Minnesota State. We may work on the comparative method of legal research between Korea and US concerning the extent of protection on the intellectual property right. Then the comparative way of investigation would effect on the purpose of research. Nonetheless, the lawyers and legal researchers oftentimes are squeezed to yield the research product based on the best direct authorities and to resolve the problems from which the client would suffer. Then the researchers are responsible to design his research in any more direct and reduced scale on best impact.

Between the State and Federal Legal System, and Foreign Peers

Narrowing our concern between the state and federal level, we can find it helpful the basic understanding of structure of legal system. We can advert on the two most governing elements about the relationship. First, the federal constitution and law are the supreme law of land as a matter of legal hierarchy so that the state laws repugnant to the federal constitution, statute and executive orders would not be the law of United States (Olson, K. C., 2014). The researchers may report their findings in this context and with the logic or suggestion. He or she also may encounter during his course of research if some state laws may be struck down or about the history of repeal and so. Second, the constitution obligates the federal government to ensure a Republican form of government for each state. Therefore, the structure of state legal system could not be diverted from this constitutional dictate. For example, the monarch could not be instituted within the state constitution. For this reason, the structure of state government and legal system would largely replicate the typology of federal government only with little variance in cases (State Government of Minnesota, 2014). The Governor would be the chief executive officer in parallel with the presidency from the federal government. The state legislature often takes the bicameralism in structure and practice. Hence we can see the state Senate and House, which compose the two units of legislature (2014). The state judiciary would be structured in the three tier of appeal system, which runs through the supreme, appellate and district level of courts. Some jurisdictions would have a different name as their highest court other than the Supreme Court, for example, superior court. As the federal supremacy is the principle and laws of US constitution, rarely could we find four tiers of appeal which differs from normal case of universal wisdom embedded on the three tier appeal system. Germany and the Common Wealth of Nations may be some rare peer if the Privy Counsel is responsible as a final jurisdictional authority for their imperial states. German constitutional court can be considered generally superior to other sectional supreme courts, such as federal labor court and social courts, which may exercise a final authority. They may, then, incur four times of review about important state affairs as presented in the form of legal dispute. The Korean controversy hedged over the decade between the Supreme Court and Constitutional Court has arisen in this context where the interbranch disagreement on the scope of constitutional authority came to be argued. The point of contention would involve the issue of which court would have an ultimate say on the interpretation of laws. The laws in their purview would cover the congressional act and

executive orders or decrees other than the constitution. The legal system of Korea has a dual line of judicial authority where the constitutional issues generally vests within the constitutional court. Other than its exclusive powers and responsibilities clearly prescribed by the written constitution, the Supreme Court is responsible for other judicial nature of controversies. It models after the European ways of constitution in contrast with the Japanese judiciary, say, one supreme court as the US (U.S. Courts: Federal Judiciary, 2014). The constitutional court develops its own theory to expand their jurisdiction which enables a scope of intervention in the constitutional authority of legislature and the Supreme Court. The horizon to be cultivated by the constitutional court is quite consequential. The advantage on the progress would be that the constitutional case laws have evolved in volume and its substantial impact. It can contribute to the prosperity of constitutional culture and can well be paired with the development of Korean Republicanism. The disadvantage cannot be disregarded if we need to articulate on any congruent and agreeable understanding of constitutional structure among the branches of government. It entails major interpretive issues of constitution, which is beyond this discussion purpose. In the least, the implications on this progress would be remarkable for the lawyers and legal researchers. Now their first priority in the research work would be concerned which portal or website is any more direct source for their issues or factual ground.

Differences and Legal Research

Korea is the nation state which is supreme and as the federal government of US. The understanding of structure of legal system allows a delicate aid for the search and analysis of legal data or documentary basis of evidence. This aspect comes largely same with the federal and state government of US which also is relevant with the work of legal research. Concerning the state of Minnesota, we can find some differences in relation with the legal research despite the similar attribute of structure within the legal system (2014).

First, the legal sources would be limited than those of federal governments. The website open to public access would contain smaller information than the Federal Registra, for example. The hornbook or case book generally deals with the important federal issues where some notable state cases only could eye-catch the author’s interest. The Nutshell and Emmanuel, generally a summary presentation of these sources would be destined as same.

Second, in effect of the Erie doctrine, the state law, however, should be any determinative authority where the federal and state court judges are bound. In this context, it is not surprising that the court reports of state case law are extensive in coverage. More importantly, the legal researchers need to prepare themselves with the preliminary undertaking of fact and issue analysis, which generally makes them narrowed to either the state or federal research (Harrington, C. B. & Carter, L. H., 2009). In this sense, the two dimensions would implicate an independent meaning for them.

Third, the lawyers may work for the comparative investigation which may be plenary in case of the legal reformers or law reform project. In this case, the researchers may suffer from the linguistic challenge. They may hire an interpreter for the foreign source of authority, but the global age makes them simpler with the English language. In some cases, however, the legal researchers may need to present in several linguistic forms of research report, for example, concerning the UN documents, WTO or Canadian materials. In Korea, the interpretation project was funded by the government and the statutes, in the first place, now see much complete form of progress. The case laws would follow which implies Korea is the state of civil law tradition.

Fourth, the structure of government also effected to compile the tremendous case laws in the US as Dean Roscoe Pound once lamented. The importance of precedent and much more emphasis on the case laws since the US are common law countries allow a different scene in their research work. His collaboration with *Kelsen* in laying the foundation of UN can give an insight for the flexible mind, but equally evidence the hard nature of work to resonate with the uniformity of legal research between the two major legal traditions.

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II. The Three Branches of Government and Legal Research

A Brief Comparison on the Three Branches of Government

The Congress is placed in the Article I of Constitution and fulfills their constitutional duty in dual unit, what we call bicameralism (T. Christine, 2008). The power of Congress is enumerated specifically in the federal constitution. The contract clause and commerce clause has long been patronized to debate on the meaning of constitution. These clauses, therefore, would be considered to key on the sustenance of US federalism and inviolable private rights. The case laws on the two clauses would be tremendous in view of legal research, which may contrast, for example, with the power to coin or raise the army. The copyright clause would make more salient in terms of legal research if we now face with the era of e-technology and flourishing economy related with the transformation of informative society. The necessary and proper clause can work squarely to increase and reduce the scope of legislative power vested within the Congress. The Congress proposes the bills and approves the budget, which would make into the laws of United States. The state legislature also comes to enact the state statutes in the same context, but with the differing nature of law from the federal one. In terms of legal research, the Congress produces the statutes which would be the kind of political expression of United States. In this nature, the statutes would govern the conflicting case laws if they clearly contradict each other although the United States is one of major common law tradition. Nonetheless, the judges are a final arbiter still with the statute, who can exercise his legal expertise and wisdom and uniquely could make the law in the sense of Justice Holm's understanding unless their ruling would inter the statutory provision on its face. They could maintain on the *stare decisis* principle and devise the laws in any most adequate meaning for the specific case at hand. It is echoing from his famous word if "the law is nothing but the words of judgment in the courtroom." In terms of legal research, the researcher may prefer the case laws to address his facts and issues since it could be more straightforward and easy. Other researchers, often from the lawyers of civil law countries, may prefer to firstly look at the statute in coverage of his fact and issues since it can possibly alter all the cumbersome avenues of case law by one statutory principle. In any case, they would eventually combine both sources to settle on their legal question.

The judiciary in the respective state and the Article III courts of US Constitution exercise the power to review and render the legal rulings for the dispute, which are to be presented in the form of "case or controversy" (T. Christine, 2008). Therefore, the adversary proceedings often are preconditioned, and a preliminary issue, for example, the standing requirement or mootness, comes as fairly an important legal doctrine. Their basis of ruling would be harder on the law and professional conscience of respective judge which can be compared with other public policy makers. The kind of elements for the judiciary would be either absent or little matter that the public agencies need to respect the science-based or democratic process of decision making. In terms of legal research, the judiciary produces the document of case law so that we can have an access to the brick and mortar law library or on-line sources of case law. We can also access the updated Supreme Court rulings through the on-line website, which perhaps would be impossible a decade ago.

The executive branch is expected to execute the laws, and responsible to promote the general welfare of nation in collaboration with the co-equal branches (2008). The executive in these modern times would be any more important so that we often call the nature of contemporary state, as "active," "welfare" or "positive." The executive branch would differ

in structure and in view of function which depends on the structure of constitution. The presidential system would require an independent election to choose the president, and the parliamentary system of government could be created from one general election for the legislature and prime minister (2008). The executive branch would take an important part if to veto or approve the bill into the laws in effect for the nation. This system of presidential veto could not be instituted as a matter of nature within the parliamentary system of government. The prime minster would be a leader of legislature and chief executive officer, who, however, is submissive to the recall of legislature. He or she would be more than effective leader who can collaborate within the two branches, but generally vulnerable without the independent political ground. The executive branch would create the rules in a different name, to say, order, decree, regulation, disposition, and so. In the US, the legal researchers would be mostly helped to refer to the Federal Registra where he can access the rules made on public notice for the notice and comment. In the process, they could not be arbitrary, but respect the evidence or science-based rule making. They are also called to enforce the procedure and comply with the paradigm of democratic process. Therefore, they have to ensure the due process if they adjudicate on a serious dispute. It is generally required to respond with the requirements of APA in their rule making process, such as the participation of interested parties, adequate public forum, notice and comment. The document of public agency is very practical and effective to deal with the legal questions since it is detailed and concrete in terms of client interests. The judicial control is generally same with the statutes that the rules repugnant to the constitution or statutes could be deemed invalid.

A Thought on the Legal Research

According to Olson, "Legal research is the skill of successful navigation, the ability to craft searches that identify the necessary document and ensure that significant information is not overlooked of online and print resources and a mastery of a variety of specialized procedures" (p. 11., 2014). The definition and ideals for legal research, therefore, generally requires the researchers to prepare themselves with the facts, more detailed preferably, but neither purposelessly inclusive nor unrefined with no due ambit, as well as the issues they center to investigate. The preparatory work requires to consume a time and labor which includes the interview of client, follow-up meeting to supplement with the missing facts or new ideas of relevance, preliminary search of evidence to spot the issues, alignment with the facts and issues, as well as some form of research design. For example, the researcher may be asked by his supervisor, "This guy has put a trailer on my land and he looks like he is going to stay there and live in it indefinitely. What can I do about?" (p. 12, Murray, M.D., Desanctis, C.H., 2009). This tip to request the kind of research assistance would be simple on its face, but may drive the researcher for a considerable time of work. He may contact the guy to detail the facts, and may expand or reduce the allegation initially heard of supervisor. His work also would be necessary what scope of legal issues could be embroiled to contend on the interest and rights of his supervisor. His basic from the law school education and training would work to structure the thought process on issue spotting. Is it a torts claim of trespass or controversy of property law? From the new fact gathering effort, he may obtain important information which may invite the invasion of privacy or other written agreement on the dispute. The contract law issue may be brought into his mind whether he includes that claim if the dispute developed into any cause of action. His effort also must be made with the office of public registry to prepare for a property right claim including the theory of adverse

possession or so. From an exhaustion of preliminary effort about the research design involving the refined fact and issue, he now can begin with searching through the law-related databases to support his opinion. Then we may be available of two classes of source, often called primary and secondary source in terms of legal research. According to Olson, "Primary sources are the official pronouncements of the governmental lawmakers; the court decisions, legislation, and regulations that form the basis of legal doctrine……Secondary sources include treatises, hornbooks, Restatements, practice manuals, and the academic journals known as law reviews" (p. 14, 2014). In order to effectively research the data sources and evaluate their nature and attribute, the researchers need to have a basic awareness of the US legal system. It was firmly settled on these basic ingredients, to say, federalism, three branches of government, the tradition of common law, and doctrinal areas.

The three branches of government would be a unique generator of primary sources of legal research, which would be of binding nature and often most consequential through the end of research (Kim, K., 2014). It would be made distinct from the secondary sources. For example, the Restatement would be an authoritative document that the judges, policy makers and lawyers would refer to support their reasoning and opinion. It takes the form of important case law rules in corresponding structure to the titles of civil code. Nonetheless, it would not have a binding power since it is the outcome of secondary process of articulation on the case laws. In the international plane, we may encounter the kind of symbolic expression, such as "Republic of Scholar," which characterizes the uniform law initiative. The scholars' work could enable to produce the kind of UNIDROIT Principle or ICC code on the international private laws, which would be an important authority to guide the legal intelligence. Nonetheless, it is per se never a hard law without the official and state process of making the laws. It could be known in same structure with the Restatement in the US context. That is, of course, true if such international norms of soft nature might borrow the idea of uniform law initiative from the US. In the case of Restatement, ALI and American Bar Association would organize their labor to engage, and the international lawyers would contribute to the success of uniform private laws in areas. The difference would lie that the latter effort would often be less fruitful since the harmonization of private laws at the global scale would never be an easy task.

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The Secondary Sources and Legal Research

III. Secondary Sources-A

One Policy and Legal Research

The policy issue for the purpose of this work arises from the controversy and public resentment involving the immunities and privileges (IP) of congressman on the criminal justice system. It had persisted history long in practice of national government in Korea that the member of national assembly (NA) has been constitutionally granted the IP as a matter of written law. Korean public had welcomed this constitutional provision and practice in the earlier version, 1970's and 1980's, in which period of time the democracy of Korea is considered to be crippled in many senses. The environment turned rapidly through the 1990's and new millennium within the democracy of Korea while civilian leadership would rise to the presidency. However, the IP had stood to govern the public issue between the NA and executive long afterwards through the current controversy. The practical point of imbalance now stirs a public attention and criticism. In some circle, the atrocities of flak could help to define the nature of controversy from the bottom of public voice. The fighting words or libelous comment attacked the policy makers and political arena which debases their peerage like protectionism. In their perception, it could not be accommodated and against their sense of justice that the obviously criminal NA members could be safeguarded from the constitutional shield. In response with this worse public poll, the political parties promised to ensure approving the request of criminal arrest, which, however, was recently breached. Five NA members had been alleged to commit a bribery and racketeering in the course of his official duty. Some of them have been detained, but one of them was referred to the vote of NA as a matter of constitutional law. The government requested to quell the constitutional privilege in due course of resolution, but the turnout disappointed the Korean public (The Constitutional Privileges of National Assemblyman, 2014). They rather protected their peer NA members, and the pledge of parties was derogated as the kind of sham. The reform movement now appeals to the public and some members of NA organize their initial plan to reform. Most of all, they would like to know the nature and laws of this issue in which your supervisor leads the initial group (Murray, M.D., Desanctis, C.H., 2009).

Some Thought on the Secondary Sources

The secondary sources can be made distinct with the primary ones in terms of its role and scope concerning the research design and operation.

First, the secondary sources are diverse and flexible to include a wider context of documents and interdisciplinary works (Olson, K. C., 2014). It would be creative and could be intrinsically sorted on its basis of non-state character. On the contrary, the primary sources of legal research generally stems from the state norms, which cover the constitution, statute, types of executive regulation, and case laws on the common law legal tradition.

Second, the role of sources, therefore, could affect the research work in subtlety of

difference although both serve the entirety of research purpose depending on the nature of individual project. The primary sources generally play more definitely on the solution the legal researchers since the sources would have a binding power within the standing system of law and legal institutions. It represents a prevailing thought and concept that be sustained by the state power in terms of general purview. According to Olson, the legislative enactment and judicial determination generally shapes the rights and govern procedures. It provides statutory definition, rights or procedure, the epitome of rulings or specific disposition of Courts, which, however, requires a comparison and generalized head of the legal issues (2014). The secondary sources would cover the explanation and support, scholarly sophistication, criticism and legislative suggestion, as well as the public forum for the legal reform or law education. It would be available in span and in many formalities to the convenience and purpose of authors or drafters as we see the American Jurisprudence 2nd and *Corpus Juris Secondum*, Restatement, hornbooks, case books, law review articles, legal digest, dictionaries and encyclopedias, Nutshell and Emmanuel, statistics and public record, and so. Therefore, it is true to say "….[*the primary sources*] can be notoriously difficult places to find answers. It is generally best to begin a research project by looking first for an overview and analysis written by a lawyer or legal scholar education" p. 254 (2014). The secondary sources paradoxically could spearhead the whole process of legal research, and facilitates the best design to surf onto the primary sources. For example, we would be indebted to the kind and comprehensive exposure of hornbooks which offers the historical and comparative background of subject matter as well as the evolution of case laws in the timeline and sociological transformation of nation. He could have a critical eye to evaluate and assess the court rulings which can dispose the identification of research problem and frame of argument in the specific court proceedings.

In the search of secondary sources, we could find some aspect of strengths and weaknesses.

First, the secondary sources require a critical assessment on the nature and attribute of sources. For example, the newspaper or magazine, general and professional, would offer the information pertinent to the research work, but may mislead to prejudice the neutrality and scholarly weighing of the issues. Recently, self-help publication would offer a helpful information open to public access, but the authority or his field of competence on the authors need to be explored to make the research work on good standing. The researcher also needs to appreciate the difference between the Oxford Companion to the American Law and CJS. The first piece would be a liberal encyclopedia on the legal topics while the second one is condensed quality on the legal discourse on the American law and legal system. He also considers not only the importance of final draft of Restatement but also the history of drafting as a valuable source of reference work (2014). The Reporter, Members of ALI and council intensely interact to crystallize as the final version of Restatement, hence, the process would involve the scholarly interchange to evince the nature of legal issues, their thought process

and interaction. This context would embroil myself about the research assignment from the policy issue in question. There could I encounter a plethora of secondary of sources in which the newspaper article could be one of them. It provides the vigor and societal ethos most powerfully, but no hard ways of dealing often characterized as a legal discussion would often be absent. Additionally, they may represent one camp of thought to reinforce his public message. For the researcher's case, it is necessary to refine in addressing his purpose on the legal research.

Second, the secondary sources generally are not organized in any systemic way which potentially makes the research fragmented or missed on the important legal issues (FindLaw: Law Dictionary, 2014; Law.Com, 2014; Onelook, 2014). In this sense, the secondary sources would come into our use in limited purpose (i) basic of research problems (ii) interdisciplinary implications and challenge (iii) an aiding role to make the research problem within the adequate scope (iv) merely dictum-related guide or legislative suggestion (v) general exposure to the laws and legal principles or most notable cases in history (vi) some assistance on the key terms and definition. The weaknesses of limited purpose also came into play in my legal research. The newspaper article and textbooks on the constitution or public website of legal topic would enable to know the nature of research problems and general information of the kind. The sources would lack or come fairly insufficient to apprehend the details of legal question, which could divulge, at least, the official stance of constitutional court and NA about the same or similar issues and controversies. For example, it could only be legally structured by referencing the law of criminal procedure on the arrest and detention including the statutory provision and case laws.

I may consider some strengths of secondary sources which facilitates the purpose of legal research.

First, the sources allow the researchers to open his eyes and cultivate intellectual lens to appreciate the socio-legal problem of issues. Often the primary sources could help to find the legal rights and governing procedure, but that is the kind of narrow rigidities for the researchers or scholarly work. As a matter of institutional integrity, the common law judges would work on comparative analysis and employ an inductive reasoning to generate a useful source of reference. Nonetheless, it could be subject to further inquiry or skepticism for those who are in search for legal truthfulness or better laws to serve the liberal citizen or justice and public good of community. This is plainly evident when we are instructed with the note and comment section of casebooks, for example. The law professors would give his learned hand in more of inquisitive or sophisticated way by providing the comparative views and criticism.

Second, the secondary sources could serve diverting legal issues and make the research work more creatively beyond the standing laws.

Third, they are typically useful in the preliminary stage of legal research which

perhaps would be wild and indefinite poorly with a small bit of primary sources from his law basics.

These points are more extensively projected in my case of IP reform topic since it basically requires exploring the ideal ways of dealing. The research assignment involves the law reform on the Constitution and statutory provisions which relate with not only the standing laws, but also the reform suggestion. It could be made similar in structure and flavor with the opinion letter of law firms more than the brief of trial courts or draft contract for the clients. A memorandum for the intra-organizational purpose of law firms or prepared for the clients might come similar in trait in terms of structure and presentation on the final version of research conclusion. This requires more a point and elements to persuade beyond the legal reasoning, which purports, in one way, to prevent worse development of controversies. In this nature, my research could have a greater aspect to exploit the secondary sources which could enable a wider of alternatives and enrich the preliminary stage of research.

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IV. Secondary Sources-B

An Introducing comment

The secondary sources are useful for the legal researchers on the policy issue. They are especially working to expose the researchers to the background knowledge, basics of an issue concerning the legal terms and viewpoint, interdisciplinary meanings and implications, historical and comparative evaluation as well as policy recommendations. Often the policy or reform-oriented researchers would have a stronger need to refer to a wider source of document while the lawyers on a specific dispute and placed within the trial setting or other adversary nature of proceedings would churn on the most direct and authoritative authority, such as precedents and statutes. In this sense, it could be compared with the usual practice of lawyers, who are responsible to the clients for the specific issue at law and contended more intensely on the standing laws. Of course, the difference would be a matter of extent that both researchers would eventually obtain an insight and content of relevance from the two sources. For example, the trial lawyers could complement to increase his persuasion of argument by illustrating the law review articles, legal encyclopedia, and part of treatise, which could support his views and legal opinions. The lawyers or assistants for the policy makers would pursue his work more realistically by developing his initial undertaking with the secondary sources. Hence, the two sources would mutually be reinforcing to serve the needs of researchers. One useful point would be that the secondary sources could help to frontier the issue at matter and ignites the whole process of research operation. They provide a basic definition of legal terms and socio-historical development or implications, which can help to derive the useful search terms and form the sense of justice or interdisciplinary structure of views for the specific issue (Olson, K. C., 2014). The researchers would be asked by the employing congressman to prepare for a brief on the reform of immunities and privileges of congressmen in the course of his official duty. He would be facilitated in the initial stage that he needs to look up the legal encyclopedia, hornbooks on the constitution, and law review articles to deal with the issue academically or in the interdisciplinary perspective. He may be available of a scope of terms or theories involved, which was initially instinct or constrained. He now has a sense that many terms need to be explored or searched and the secondary sources on the issue could be considered, which cover, for example, the immunity and privileges, parliamentary and presidential system of government, debate and speech clause, arrest and detention, history and democracy, comparative law of constitution, tyranny and congress, and so on. Of course, the research work on the secondary sources would serve one important purpose that leads to the researchers into the next stage of research progress on the primary sources, such as constitution, cases, statutes, executive orders and other (Murray, M.D., Desanctis, C.H., 2009).

One Policy Issue and Legal Research

The policy issue for the purpose of this work arises from the controversy and public resentment involving the immunities and privileges (IP) of congressman on the criminal justice system. It had persisted history long in practice of national government in Korea that the member of national assembly (NA) has been constitutionally granted the IP as a matter of written law. Korean public had welcomed this constitutional provision and practice in the earlier version, 1970's and 1980's, in which period of time the democracy of Korea is considered to be crippled in many senses. Institutionally for example, the separation of

powers principle would be derogated that the president appoints one third of members within the national assembly. The emergency power prescribed in the 1980's constitution would be vast and in fair imbalance which threatens the civil society and liberty interest of Korean public. Realistically for example, the governments in those times would be militaristic which could be questioned about its legitimacy. Practically for example, the intellectual society was thrilled or in the least, chilled in terms of the freedom of expression. The aura of government was authoritative to forge the paradigm of developmental state. It could be a great excuse for the dictatorship in the cause of "heavenly endowed" or "national supervision of minded leadership." In this case, the assumption for the modern basis of democratic government was inverted. No human rights of Korean citizen deserved such words, "heavenly endowed," at least practically and intellectually, which would be entitled exclusively for the national leadership. His superiority and might would not be challenged and the shift of government could virtually be foreclosed. The arrest and suppression of NA members could be plotted to support the dictatorship which justified the constitutional institution of their criminal immunities and privileges (The Constitutional Privileges of National Assemblyman, 2014). The societal ethos and circumstances may resemble the earlier congress of feudal age in Great Britain in which the kind of institution is indispensable for the purpose of parliament and workable representation against the absolute power of monarch. The environment turned rapidly through the 1990's and new millennium within the democracy of Korea while civilian leadership would rise to the presidency. Notably, the extensive revision on the constitution had been realized in the late of 1980's while the written constitution became structured and was spelled out in provisions to prescribe the inviolable essence of liberal democracy, i.e., political freedom and free election, popular vote for the presidency, no emergency powers on the fundamental rights, no presidential prerogative to recall the national assembly, increase or fundamentalism and substantiation of the bill of rights, moderate term of presidency and so. In this revision, the last and most reformative in the history of Korean constitutionalism, there has been no attempt to react against the National Assembly since it had been one of victimized institution from the mightier presidency. The IP had stood to govern the public issue between the NA and executive long afterwards through the current controversy. The practical point of imbalance now stirs a public attention and criticism. In some circle, the atrocities of flak could help to define the nature of controversy from the bottom of public voice. The fighting words or libelous comment attacked the policy makers and political arena which debases their peerage like protectionism. In their perception, it could not be accommodated and against their sense of justice that the obviously criminal NA members could be safeguarded from the constitutional shield. In response with this worse public poll, the political parties promised to ensure approving the request of criminal arrest, which, however, was recently breached. Five NA members had been alleged to commit a bribery and racketeering in the course of his official duty. Some of them have been detained, but one of them was referred to the vote of NA as a matter of constitutional law. The government requested to quell the constitutional privilege in due course of resolution, but the turnout disappointed the Korean public (2014). They rather protected their peer NA members, and the pledge of parties was derogated as the kind of sham. The reform movement now appeals to the public and some members of NA organize their initial plan to reform. Most of all, they would like to know the nature and laws of this issue in which your supervisor leads the initial group (Murray, M.D., Desanctis, C.H., 2009).

The Secondary Sources in Scope

The researcher seeks secondary sources which inform the background knowledge and basic tools of research. As we know, the common word and legal terms search could be made of concept which also practically matters with the different return of sources. The encyclopedias, hornbooks and law review articles come into his scope to be searched (FindLaw, 2014; Law.com, 2014; Onelook, 2014; Olson, K. C., 2014). We can locate them any more easily as we now subsist in the e-communication society. For example, the e-government would be an important paradigm in these times who aspires to maintain a good public relationship. The online encyclopedias evolved in ambit and scope of subject matters, and the Wikipedia, for example, is notorious in its coverage and volume. It provides a version on the different linguistic basis, and the Britannica also exploited on-line sources of provision which is available in the Korean language. The public website, for example, the law brief from the Cornell University, may be specialized in their subject matters. This website is made to public access with the case laws and important points of brief. The general of legal encyclopedia would also be available when you perform your research activities. The Wikipedia is especially useful to horizon the issues in the interdisciplinary way because of its article-type formality and deals. For example, it provides a citation reference which is peculiar in the circle of encyclopedia. The content is lengthier and generally includes details about the topic. It would be the kind of college textbook for the undergraduate students in terms of its practical effect. Nonetheless, as we learn, it would be cautionary to refer to this source for reasons when we conduct on the purpose of professional research. The hornbooks or other legal books on the constitution and criminal procedure would foreground his research operation, which involves the kind of issues, for example, structure of government, the immunity and privileges of its officers, as well as square aspect of discussion from various lens. The Nutshell or Emanuel could provide the basics of law and summary understanding of the legal issues which is also secondary, or tertiary for some, to be considerate to cite. The law review articles are typically put to the liberal nature of contention and scholarly articulation, which includes criticism and novelty. It would be the most extent of original research, but the focus might be too narrowed to require a care and prudence on sifting and winnowing.

Use of Sources and Linkage to the Primary Sources

Based on the search and assessment of secondary sources in relevance, the research could be directed on the nature and theoretical perspective of research questions or issues and may reduce his scope of research operation with key terms (Murray, M.D., Desanctis, C.H., 2009). The project actually involves the laws of sociology in which the researchers need to be minded of the change of environment and legal reform. He now turns to be inquisitive if the written provision is still necessary to afford the constitutional shield of protection. He would be recalled, for example, the pejorative of Voltaire's work on the common law judges or feudal officers, who are resilient, conservative and inefficient from the general public. He could develop his eyesight for the earlier of congress, *Curia Regis*, or the political backdrop to impose the *Magna Carta*, and the hybrid nature of Star Chamber entered with both powers of legislation and adjudication. The context harbingers around the interest of researcher, i.e., "What is the nature of immunities and privileges of congressmen?" and "How can we credit the national criminal justice system from the eyes of Voltaire?" He now may have some awareness on the comparative laws among the countries and between the history or practice-based constitutionalism and written constitutionalism. He may fear if the removal of

provisions in this kind adversely alters the democratic constitutionalism in Korea since we focus on the written constitution. He also might be inculcated about the weightier process of constitutional reform which is an important vehicle from the derogation of normal enactment as well as typical apparatus for the modern constitutionalism. The basic sense of justice and socio-historical perspective could be framed in this stage of research and might reduce his scope of key terms search on the primary sources. Nonetheless, the search and analysis of secondary sources may offer important insights, especially for the legal research of policy issues and the case of legal reformers. You may imagine if the legislative history works to deepen the context of contention and that the comparative lessons could be statistically articulated to support his research outcome. For example, he may provide the number of countries which provide the system and institution of this kind through the written laws and based on the constitutional practices of IP.

The research work on the secondary sources could make him linked with the primary sources. For example, the kind of inquiries, i.e., "How do we distinguish between the debate/speech and criminal immunities clause?" "What are the legal requirements for the IP of NA or NA members as prescribed in the constitution and relevant statute?" "Are they provisionally entitled to claim the IP when the session of NA ceased and become intermittent?" "How would the lower norms, such as statutes and executive decrees, substantiate the details of procedure in enforcing the constitutional provisions?" "What makes it practically differ if the Korean constitution is crystal clear with the written provisions while the issue would be less dealt expressly in the US constitutionalism?" The case laws or statutes may come into play in the US which could allow the interaction more flexible to adapt with the changing environment and societal ethos. Then you may become skeptical if the issue should be dealt in the grand scale of constitutionalism and especially in the times of popular democracy. In this logic, you may be led to suggest the reform of constitution, and argue to leave it more flexibly. The case laws from the Courts, especially the Constitutional Court, involving the important state matters would also help to solve the legal questions, which are critically associated with the topic, for example, the limits and exceptions of NA members in his course of official duty, the ideals of government and criminal justice system, and the nature of Congress in the democratic government.

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V. Primary Sources: Case Law

The State Case Laws as a Primary Source

The case law of state practically is an important source to deal with the questions of law, and many legal disputes from routine lives often arise involving the state laws. The civil and commercial matters, as a matter of constitutional jurisdiction would be governed by the state laws. The federal courts, in exercising a diversity jurisdiction, also are required to apply the state law within which they sit in terms of the Erie doctrine. The federal constitution, statutes and orders or regulations would be an authority for the subject matter jurisdiction of federal court. The interplay within two dimension of jurisdiction, nonetheless, would not be separable in any absolute way since the legal arguments would be instructive and have a gamut across both nature of laws. Though not usual in the court proceedings, the federal lawyers may cite a persuasive state case law as a theory or model idea for the case at hand. The reverse could be true, but the frame, in this possibility, often develops to embroil for a want of federal jurisdiction. Hence, it should turn to be a matter of law than theory so that the case should be disputed in the federal courts. The legal system of United States relies on a geographical distribution in response with each level of federal courts. Over ninety district courts are responsible for administration of justice as the first instance court. This indicates almost two courts will be placed within the territory of one state depending on the difference of sizes. The Court of International Trade, and US claims court would not be defines in geographical terms, but must be on the standing from the concern of subject matter. The Court of Appeals would be numbered at 13, which function as an appellate court in the nation. The circuit courts are on the basis of geographical defines. We have one Supreme Court which is constitutionally responsible for the original and appellate jurisdiction.

The case laws can be viewed as a hybrid of nature in terms of legal research since they are intertwined to make the case compounded on one hand and distinct on the other between the federal and state courts. The relationship would be dynamic practically depending on the nature of case and professional dealings of respective lawyer. But the theory and legal standard are clear in terms of the lawful exercise of jurisdiction (Olson, K. C., 2014). The principal provider of the state case laws would be the Westlaw and LexisNexis which are major commercial establishments devoted to the service of legal research. The commercial businesses on the state case law or other sources on the state level have not yet to deal with a whole scope of states, in which only the larger states, such as Texas, New York, California, Ohio and some others, had been processed into incorporation (Murray, M.D., Desanctis, C.H., 2009). The electronic mode of communication and interaction now brought the e-government and e-community, so that the commercial strands have to be negotiated for a due share of respective players. In fact, we now question if an unlawful downloading of music score should be tolerated any more. It could be consulted how we distribute the subscription income between the journal authors and publishing services. The public nature of role within the professional journals would make their business open for public access, but

the reverse would be just if the works of authors are goods to be sold privately. I am not sure if the context could pose same challenges between the state government and commercial providers, but in my search, some state's webpage would lack the information section on the state case laws. I also suppose it might involve the anti-trust law or monopoly issues about that stalemate. The homepage on the state Wisconsin could lead us to some of primary sources which are not easy to navigate for the specific case laws in the event. The Iowa state government seems more curtailed in which the state case laws would not be traced.

The State of Florida and *Florida v. Vinci*

In the third attempt at the State of Florida, I was made to be directed into the state court cases, which is on responsibility for the region (The State of Florida. 2014). The case is practically a state matter, and involves an important legal question on the suppression of evidence collected during an unlawful search. The same nature of controversy would come active around the federal issues of constitution, but the state constitution is the basis of legal contention and argument in this case. The Flordia District Court of Appeals is an intermediary appellate court created to reduce the caseload of state supreme court. The title "District" might not be matched to denote an appellate court. The State of California had a same concern and similar system, but the title was dropped to make a Florida unique. This instance of convenience could be due to the Findlaw.com which is one branch of commercial service associated with the Westlaw (FindLaw: Law Dictionary, 2014). The logo and ads are impressive, "Change of Landscape in Legal Service," "A print media used to serve legal profession, and "Use Westlaw to win a case and use Findlaw to win a client" (2014). The context seems to reveal a typical discourse between the efficiency of private sector and public justice of government, which also is not irrelevant with the legal profession. The English authority has long practiced their reporting of case laws with the aid of commercial entities, whose issue brought many thoughts into the public forum and had been debated as one policy issue of judicial branch. In the least, the jurists, of course, will engage in selecting the reportable cases. A diversification and monstrous nature of new mode publication would raise a same concern from many viewpoints in the US, such as selection of cases, citation form, extent of open access, increasing extent of contents, share of participation between the commerce and government and so.

The case name I retrieved from the State of Florida is *Florida v. Vinci*, and the citation for this case would be No. 2 D13-4638 (The State of Florida, 2014). It was decided Sep. 12, 2014 and made open to public access. It is a criminal law case, and defense lawyers claimed to suppress the evidence from allegedly unlawful search. The trial court granted a motion to suppress, and the State of Florida appealed the decision. The appellate court reversed. At the suppression hearing, Deputy Travis Sibly was the only witness to testify. As Vinci stepped out of the vehicle, Deputy Silby observed a large orange pill bottle in the driver's side door pocket. The deputy picked up the prescription bottle, knowing there was Xanax in the Suboxone bottle (2014). The state law proscribes a possession of contraband

without the prescription, and the pills collected through the police stop and safety inquiry in the interest of drivers of State rose as an issue if it is admissible as a matter of state constitutional law. The unlawful search and seizure would be a constitutional ground to suppress the evidence, and the State must prove a probable cause for the search. The place was well lit and Vinci implied he possessed a gun. Therefore, the search would not be out of the normal condition in which the police could conduct a search. The appellate court found that the probable cause exists in these circumstances, and also ruled that the stop command would be proper to ensure the safety of traffic in the public highway. The court distinguished the cases cited by the defense counsel.

In the course of this discussion work, I experienced the website of state government has changed so that the case was not fully available, but merely showed the case name and other nominal feature. It occurred in one day, which suggests a competitiveness in the public relation policy of e-government. The latter part of case brief in this discussion entirely depends on my best recollection on the yesterday's reading. I also found it helpful the website of case briefing posted today by Dr. Fitzerald, which would be orderly and refined to facilitate our work on the summary presentation of cases.

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VI. Researching the Case Law

A Comparative View on the Primary Sources

The case law is a most direct nature of primary sources since it provides a precedent. A doctrine of president or *stare decisis* generally is a major attribute to define the common law legal system. The judicial branch other than political organs would be deemed distinct to generate what the common law lawyers and people of that tradition recognize or sense as a law. The concept is a judge-made law the notion and passion of which have been embedded in the legal tradition. We can see earlier history of common law court, which began with the conquest of Duke William in the 11th century and evolved over the centuries (Glendon, M.A, Gordon, M.W., Osakwe, C., 1994). The heritage and tradition would be profound in its struggle with the monarchy and on the later frame of higher law or constitutional review. Politically, the glorious revolution, Independence of US as well as French revolution would be a direct factor to create the modern form of democracy or Republicanism. The judiciary and thought of jurists or legal thinkers could support idealistically the right foundation of democratic government and rule of law. The insulation and independence from the politics could enable their mediation on humanity, individual and social justice and philosophy of government. We may recall on this point, for example, with the Bickel's least dangerous branch to deal with a highlight of judicial branch on its propriety of constitutional review, the thesis on distrust of politics or anti-majoritarian difficulty. The trait of common law system may be paired in points of comparison that the continental laws of Europe may be based on the kind of codification initiative from the rule of Napoleon and subsequent emergencies in Germany or Switzerland. Between the statutes and case laws, we could find the differences of origin, history and foundation concerning the two major legal traditions (1994). The French people concerned of basic function that the state could not dispense away some years after the Revolution. It led to the codification of five modern basics of law including the civil law and civil procedure. In other continent, the US constitution had inaugurated as the foundation of new Republic which is public in nature to deal with important national matters. In this development, we can note that (i) the constitution and statutes are political and centralized response with the legal affairs of nation; (ii) they could be epochal and often be seen more ready as a national uniformity of law; (iii) it would contain a somewhat abstract nature of provisions requiring the interpretive issues; (iv) their historical wake could offer an insight on the mode of interaction within the three branches of government, which is institutional basically.

The implication from these points would come in our work on legal research, concerning the recognition of laws and legal system as well as the theoretical ground of legal effect. The case laws are generally considered as a law for the common law lawyers. Their basic training in the law school would begin with the case books and should have to surf onto three years of time in the sea of case laws or logic, analogy and distinguishing of similar cases. The *stare decisis* rule, perhaps, would always be harbored as an intellectual pillar and standard of profession (1994). They prefer an inductive reasoning to devise the law, and made their work of research suited with the similar and distinguishable cases. The case laws would be a playground to endorse, reject and appeal to the prior court decisions. This shapes their mind, perspective and attitude to deal with the legal question. Simply for example, they more conveniently recognize the civil code of continental traditions as a quasi-constitution beyond

the statute. They would be disgruntled with the abstract nature of code if he or she works on the drafting of important contract for the big clients. It would be awkward perhaps if the Congress would enact such comprehensive civil code besides the piecemeal revamp of public problem, as we illustrate juvenile laws on the liquor shop against the general theory of tort case laws. The remains other than this vein or mainstream of legal culture would be the kind of mediate endeavor as we find in the Restatement, SCJ, general nature of work on the encyclopedias, and so. The international initiative on the uniform laws, particularly, private law areas, would be notable about the codification ways of dealing. Not internationally alone, we can identify a uniform law domestically, what we now cheer as UCC. The effort of American Law Institute and Bar Association should not be neglected on the model laws approach. The uniform penal code would be one example, which is authoritative though not endorsed across the jurisdictions.

The two of primary sources show the strands within the reservoir of modern leading democratic nations. The views on the kind of historical institutionalism may allow if the insulation and independence of judicial branch would be more safeguarded in the common law traditions. A persecution of the judicial branch in the collapse of *Ancien Regime* can come in contrast. It would be fortunate, however, the modern terms share the indispensable value of independent judiciary within both traditions. The last progeny of democratic judiciary in terms of world history, what we experience within the socialist tradition, perhaps would be least when we consider the merit of judicial independence (1994). While some circle of intelligence questions the virtue of democracy, the views or thoughts on institutionalism or professionalism could save the kind of dilemma. It would be more practically imbrued with our intelligence which should be a fundament eventually.

Researching the Case Laws

In search of the case law data bases, we may make it work in several ways of access. The first way to begin with would be to use the number of cases officially assigned by the government and case reporters (Murray, M.D., Desanctis, C.H., 2009). For example, we may enter "433. F. 3d 273." In this case, we need to know the citation for a case and could use the volume number, reporter abbreviation, and page number in correct Bluebook or ALWD citation form or some recognizable facsimile of the correct forms. This means that 433 f3d 273 also allow to locate the same case, i.e., *United States v. Martha Stewart*. The case name, for example, *Nickson v. Fitzerald*, could work as a key to locate that specific case. For other way, we can search the cases relevant with the issues and concerns by implementing the key words search. As of nature, the first two cases would often be used in the situation where the researchers have already been narrowed to the issues and research plan. The case name can be gleaned from the secondary sources to serve his research purpose, which means the law review articles may make them to be disposed in the initial phase of work (2009). This might be usual for many of legal researchers, but the caution also would be adequate for reasons. For instance, the law review articles might not include all the useful cases of reference which can prejudice a view and scholarly way of research work.

In the search of case law, the Westlaw provides a useful tool of research convenience, by which we can refer to the same or similar points and its current status as a good law. The Citing References link and the Full history and Direct History links could offer these services (2009). Westlaw also provides a link to the PDF version which serves distinctively the user's

need. Even the court briefs from the counsel can be traced for our reference. The Westlaw data base is structured in orderly fashion and the extensive coverage is typical, ALLCASES, ALLFEDS, ALLFEDS-OLD, SCT, CTA, ALLSTAES, FEDx-ALL, and so (2009). The keywords search would be primary given the research often is not definite or narrowed to a specific case. The Boolean legal connectors subsidize the expediency of users. For example, you may need to phrase search queries in a number of words, before or after (2009). In this case, you can simply type dog/3 bite, which will pull up any document where the word "dog" shows up three words ahead of or behind the word "bite." We experience multiplied examples on this format. A "dog/s bite" and "dog/p bite" respectively means a sentence and paragraph, which serves to define a search scope (2009). We also need to have a tip for expanders and alternative forms, such as a space, asterisk, and exclamation point. Plurals and possessive forms can be retrieved when you type a singular form of words, unless unusual plurals, such as women and mice, are not picked up (2009). The context would not be out of your expectation when you have an issue on acronyms, abbreviations, compound words, and phrases. We would learn to simply practice as manual guides, and we could increase our skills if we practice putting it altogether over several queries.

Three Cases in the Experiment of Search

In the purpose of assignment, I used the Walden library and FindLaw.com website to search the case (FindLaw: Law Dictionary, 2014). The assignment directed to apply three typical of ways in researching the case laws. The Walden Library (WL) provides the LexisNexis to cover the legal documents, and we may simply put a database name to find the sources. An indirect way to reach the court cases would also be possible while the case name search often will locate you to the LexisNexis. The Westlaw seems not available in the WL which often would be open to the universities, colleges, public research institute and individual researchers. If the researchers need to base their search on key terms, it would be unwise to rely on the database name since the research work from adjacent sciences can be captured from the journals of humanity and social science. While you expand your horizon of search, you can narrow your interest into the adequate pieces you think pertinent to your research goal. Otherwise, you may be immediate to the LexisNexis if you intends on the case name or citation search. The FindLaw.com is one branch of Westlaw which provides a less condensed service for the legal researchers (2014). The coverage and depth of service seem to fit in the interest of convenience, readiness, but may possibly be less intricate. It could be handy and serves the need of practicing attorneys, as the ads impressed, "Change of Landscape in Legal Service," "A print media used to serve the legal profession" and "Use Westlaw to win a case and use FindLaw to win a client." It would be dubious if the information gleaned from this slot of database could suffice the in-depth scholarly way of research project. While I discarded the Cornell University Website in this work, I once found it convenient and very serving in the process of my legal research. It may be a comparable worth with the Findlaw.com in terms of depth and width of legal information available to the researcher.

I used the case name "Rubin v. Coors Brewing Co." to locate the case after I selected the LexisNexis within the WL. Simply 763 sources were retrieved which are books, articles, cases and other secondary sources. 204 incidents are cases, which would mean the case name appears within that number of cases. Among them, the case we pursue would be one and other cases would be related with citations or in other way. The case name in full is ROBERT

E. RUBIN, SECRETARY OF THE TREASURY, PETITIONER v. COORS BREWING COMPANY. It was a Supreme Court case which was argued November 30, 1994, and decided April 19, 1995. The citation for this case would officially be 514 U.S. 476 (115 S. Ct. 1585). The other form of citation would be 131 L. Ed. 2d 532 or 1995 U.S. LEXIS 2844 and many other informal forms of citation could be 63 U.S.L.W. 4319, 23 Media L. Rep. 1545; 95 Cal. Daily Op. Service 2864, 95 Daily Journal DAR 4920, 8 Fla. L. Weekly Fed. S. 707. This wide coverage of citation information seems distinct in the LexisNexis. I initially intended on the FindLaw database, but failed to locate the case. The Cornell University LII seems to cover more extensively than FindLaw on this case. However, the case name led me to a tremendous amount of documents in a width of classification. It seems effectively working since the classification was based on the area of subject issues, such as federal rules of civil procedure, federal rules of evidence and Supreme court rules. I visited the section of Supreme Court cases, which led me to the database ordered according to the time of decision and party name. The citation for this case was provided clearly, Rubin, Secretary Of The Treasury v.Coors Brewing Co., 514 U.S. 476 (1995), 19 Apr 1995. It is noted that other form of citation was not available in this case.

In the second item, I experienced same that the citation "*583 S.E.2d 780 (Va. Ct. App. 2003)"* led to the jumble of documents numbered around 800. The cases would roughly be 300, which requires additional work to locate the case. Within the result groups, I found that the VA appellate courts came to matter in 28 instances. It fairly reduced my search in which I was finally helped to use the year of decision to locate the case. The case name for the citation was *Jackson v. Commonwealth*. The Findlaw.com website again responded with "no results find" when I simply type the citation. This allows me to use the Cornell LII to search the case. The website led me to the state court portal of Virginia which compelled me to search by citation. It turned not to provide the case with only one case in my retrieval outcome. The Cornell LII website also returned a tremendous amount of documents which contributed to massive difficulty for that specific case. I realized the Walden Llibrary is precious to facilitate the legal research. The commercial service actually worked to make it more systemic and efficient.

The third item was delivered to locate the case by applying the key words search. I have simply typed three set of key words, "right to abortion," "right of privacy" and fetus. It retrieved cases of similar issue, such as the Planned Parenthood v. State and others, but failed to reach the Roe v. Wade which is most popular and foundational in this area of laws. I utilized "Look Up Legal Cases" section with the same set of key words, yet to fail once again. I was once advised to reduce the key terms if the retrieved documents are not the ones we like to find. Hence I typed one set of key term "right to abortion," which was futile once again. I visited the FindLaw website and typed that set of words, which instantly led me to the case name, Roe v. Wade. On the page, I can be informed about the introduction of case, gist of rulings, and its aftermath (2014). That could be available in the Abortion section of that website. The article was provided in the PDF format, and enabled us to access the whole of court opinion with a citation, ROE v. WADE, 410 U.S. 113 (1973).

Generally the commercial services have the strengths in legal research. However, we can realize that the kind of most popular cases could not be reached easily unlike our general expectations. Hence, it seems proper that the researcher needs to apply all the ways possible to search for the sources which they like to refer to.

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VII. Case Law and Case Briefing

General on the Case Briefing

Case briefing is performed basically to communicate within the community of law people. The appellate brief intends to persuade the court of appellate review which summarizes and critiques the decision of lower court. Nonetheless, it should not be merely a case note or case summary, but must be structured in usual forms of case brief and argument to support his client's side. The appellate brief, in any significant cases for the law firms or offices, may be the basis to share the problem of lower court decision and create the strategy to increase the chance of winning the case (Pyle, C., 1999). Then, the case brief needs to be in facile forms and expedites an exchange of ideas among the firm lawyers. The student case brief should be prepared to effect on the study outcome (1999). He or she is required to respond with many cases from the class assignment that the case brief needs to be consistent, informative, and focused to yield a best study effect. It would be wise to exploit the commercial aids of case brief if the work imposes a serious burden beyond his due competence. In any case, the case brief would effect on the efficiency and settled practice on the track of student and professional activities.

The Service of Case Briefing

Within the circle of policy community, case briefing would be required vastly since the court is responsible to make an important decision for the nation and oversees the legislative and executive branch. The separation of powers principle would be founded and the three branches interact to check and balance. The court would function on the case or controversy requirement, and often delivers the meaning of constitution by which the branches are bound. The important cases created by the judicial branch would always be a work of reference in policy formulation (Kerr, O. S., 2007). For example, the superintendent of public high schools needs to have an awareness of what the Brown v. Topeka actually means. The policy makers in the EPA should know what the court specified in Mass. V. EPA when the EPA had knowingly left it unregulated on the auto-bicycle about the carbon emission. The case brief could work effectively to the points of case for easy sharing in these instances. Otherwise, the policy makers may be loose or unprepared which could increase the chance of failing again. This is probable if the court opinion often would be sophisticated and could possibly be unstructured to deal with the specificities (Texas Southern University, 2006). Provided if the case brief includes an analysis, it could effect more intellectually to expose the policy makers to the rules of law. In this case, the case brief would bring a comparative view historically and horizontally with other cases, and can provide the enriched understanding of case law and policy implications. The legal staff or lawyers of government often would be responsible to work on a case brief. In some cases, ranked administrators may involve to prepare the case brief. The policy makers, in any case, need to have a basic idea of court rule and make them familiar with the case briefing. As a matter of theory, the case briefing would entail a greater significance in the common law system since the countries in that legal tradition practice the rule of *stare decisis.* Often the civil law countries have a provision in contrary language, "The court decision could only bind the case at bar as a matter of its legal effect," as you also note in the ICJ Rule. This does not necessarily exclude

the importance of precedent as we see in the practice of ICJ. The domestic brief of appellate attorney in Korea, Japan, France and Germany as well as the court opinion of ICJ would often cite the precedent to support his view or argument, and claims. Therefore the case briefing would equally be demanding for the professional community, but actually less in practice than the common law countries for reasons. The culture of case briefing would increasingly be acclimatized for the national assemblymen and executive officers in Korea. In this case, the constitutional review, as promoted since the new born 1987 constitution, would factor principally. The national assemblymen or law reformers in the political party or department of government now often mentor if the new proposal could pass any challenge from the constitutional court. Then their collaborators or staffs would see a caution about the judicial issue. The plan to progress about a policy formulation in Korea tends, henceforth, to seek a judicial conference which would be usual in a case briefing and discussion. Case briefing would be occasioned in the larger public organization. The legal staffs or lawyers of large firms or corporations would hold a meeting about the legal prospect on their business or projects. The non-profits may face challenge from the legal dispute or could be embroiled with the civil actions or criminal charge. For example, Chosun University, my work place, would have over ten suits annually to dispute the assets of university and employee's action against the board of regent. In this case, key decision makers like to know the legal issues, prospect of case outcome, and strategy to progress on the action or public relations. It would hardly be deniable that the case laws as well as case brief as a common tool for the effective exposure would be indispensable not only for the lawyers, but also for the career of policy administrators (2006).

Challenges and Strategies for the Case Briefer

The case briefers need to be leery of the challenges and difficulties from the case briefing. Less experienced policy administrators may be tough in that context. Generally, we may encounter several possibilities as a challenge in the case briefing work.

First, the terms or jargon would be specific and conventional which must be stiffly dealt thorough the practice. We generally do not use claimant in the US cases. The plaintiff needs to be constant. Defendant or respondent needs to be used in uniformity in the case briefing, the practice of which can increase the order and coherence through a track of professional activities. Petitioner or appellant could have its own context to represent the parties in which we would pay a due attention not to confuse. It would be easy if to follow the indication of court text on this point. These terms may be less intimate or conventional to the common people which originated from the medieval court language in French. These words to govern the case briefing would serve a uniform and expedient communication within the professionals. Hence, it could be one strategy to keep straightforward with the court words in written indication unless you have any important reason otherwise.

Second, it is not only challenging, but also important to distinguish the legally meaningful facts from those not. The facts are highly significant in creating a case law, what we call a judge-made law. They are determinative actually since the judge works on case or controversy than the abstract nature of public agenda. The latter would fall within the legislative power which is in contrast with the role of judiciary. The facts need to be presented in a concise way, which corresponds with the issues spotted perhaps in the next section. It should neither be unnecessarily lengthier nor omit the necessary facts leading to

the issues and legal conclusions. One strategy would be to construct to match between the issues and facts in accordance with the structure of logic and reasoning from the text. Other strategy may be effective to locate the facts summarized by the separate opinion. It includes a hot point of facts to make the court divergent. The facts themselves would often be important in my experience, but the legal dubbing in facts part of court opinion may come as issues than facts.

Third, the case brief would be discursive if we would not practice in any ordinate section. An essay form of dealing would make it inefficient or one time experience. Hence, it would be a general practice with typical headings attached and guiding, "(i) title and citation, (ii) facts, (iii) issues, (iv) reasoning, (v) separate opinion, and (vi) analysis (Pyle, C., 1999)." Often the issues and reasoning would be a main part to deal with the case briefing. One strategy to accelerate the work efficiency would be to juxtapose the issues and reasoning in points. The domestic court rarely applies the student look paragraph-to-paragraph dealing, which, however, could decrease a possible confusion from missing and being unclear. For example, the WTO reports tend to have this format on the points of contention, which could realize from the massive attorney briefs. The practice of panels in the WTO could be one insight for the case briefers if not the court. In this case, we put a number to cover three or four lines of sentence for each issue and court words from reasoning.

Fourth, the section of analysis would be typically useful for the policy makers. It is challenging, however, since it requires some deals beyond the case text itself. It could include the rules of law devised in that case, implications of court decision, as well as the criticism and impact on the later evolution of public governance. Hence, the strategy to react with these challenges would be to conduct a follow up research, seek opinion from the professionals or law professors, or hold a conference.

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VIII. Legal Research and the Case Briefing

A General Comment on the Case Briefing

The case brief can be classed in two types, which includes an appellant brief and student brief. The appellate brief is prepared by counsel or attorneys which purports to meet their practical needs. The student brief is prepared to serve the needs of law school classes. Both briefs would identify the elements of case and summarize the gist of court opinion, which deal with "a description of facts, a statement of the legal issues presented for decision, the relevant les of law, the rules of law applied to the particular facts of the case, and policies or reasons to support the court's decision or holding (Kerr, O. S., p. 52, 2007)." The appellate brief has a purpose to persuade the higher court in the shoes of one party, which, therefore, is aligned to discuss and argue in his client's favor. This is in comparison with the student brief, which includes the neutral assessment of casebook cases to serve his academic need. The case brief should have a quality, to say, formality in consistence, conciseness, entirety on its own, and adequate coverage on the essences of case, which could communicate the ideas professionally expressed in the court opinion. As the student brief, the most successful example could be a book of commercialized case brief as we see in the Emmanuel and Legalines. The Barbri would be a companion to the kind of commercial booklet, which, however, includes the summary articulation of case laws in the jurisdiction in the end of bar exam preparation. Hence, the Barbri includes the basic law of US and respective jurisdiction, which is not necessarily a case brief of specific case. For the intensity on the real dispute, the "appellate briefs from both sides are really valuable to the ones, who assess the legal issues raised in a case (Pyle, C., 1999)." It is indeed true that the legal argument and laws finally delivered by the court would be steered from the counsel or attorneys. It is common between the civil and common law traditions that the court is passive to identify the legal issues or facts, although it could be autonomous or active to recognize and announce the laws. The traditional maxim, "the party knows the facts and the court knows the law" would generally be explicative of adversary paradigm within the court proceeding. The facts, in this understanding, would include an extended nature to include the legal issues. Hence, the court may not grant a murder charge provided if the prosecution merely seeks a manslaughter. The court could not grant the contract damages once the party based his claim restrictively on the tort action. The party autonomy, both in civil and criminal dispute, would often govern that the points of focus brought by the attorney to the consideration would generally be determinative of shape and content on the court opinion. This benefit of appellate brief, however, must be limited since they are rarely published. The Supreme Court is the only court for which briefs are regularly available, and the Landmark Briefs (REF. LAW KF 101.9 .K.8) series uniquely include the full texts which is a very few of many Supreme Court cases (Murray, M.D., Desanctis, C.H., 2009; Pyle, C. 1999). The U.S, Supreme Court Reports, Lawyer's Ed, 2nd, series (REW.LAW KW 101 .A42) provides summaries of all cases reported (1999). Both sources are available for our reference on the paid basis from the Westlaw.

The case brief requires a deal of many terms and conventional words practiced in the legal profession, which originated earlier from the Medieval Europe. The conquest of Duke William imposed the national court system which altered the old English-based local courts (Kerr, O. S., 2007). This calls upon the beginning of common law history, and official

language in the English common courts was French through the two centuries ago. The current terms often frequented in the work of case briefing would have a root basis on French, which would be plaintiff, defendant, appeal, tort, crime, judge, attorney, counsel, court, verdict and so on (2007). A familial exposure to use it handily will speed up the case briefing work and increase an efficiency of study on the case note or brief.

The case brief typically would be structured in several headings, (i) Title and citation (ii) Facts of the Case, (iii) Issues, (iv) Decisions, (v) Reasoning, (vi) Separate Opinions, and (v) Analysis (Pyle, C., 1999). The parties would be indicated in types, say, plaintiff, defendant, appellant and appellee, petitioners and respondents, and especially with the Amicus Curiae. The last name of parties always appears through the end result of cases within the judicial ladder, while the order of name may be reversed to indicate the initiating party within the specific rank of court. In the criminal cases, the plaintiff is a government, which is indicated as State. The Amicus Curiae, as meant a friend of Court in English, is an interested third party, which, however, receives no effect from the specific outcome of case, but can provides insight or views of public interest, for example, the Department of Justice in the habeas corpus action. The facts of case would be important since the judge-made law is pivoted on them (Kerr, O. S., 2007). It could be lengthier in some cases or short in others. The similarities or differences of facts led to the adequate law in same or other way, which grounds the role and working frame for the common law judges. The inductive reasoning is on attribute which requires a comparison or analysis of various cases similar or distinguishable to create a final rule of law fitted within the specific facts at hand. Therefore, the importance of facts in the common law system is hardly overlooked, and the facts in a salient contrast may be found in the separate opinions. The law student, in this context, would do their good job if they imagine as many as hypotheticals to compare with the facts in case (2007).

A Case Brief : *Conti v. ASPCA et al.* 353 N.Y.S. 2d 288 (1974).

The assignment requires to work on the case brief and to discuss the rule of laws. The case name is *Conti v. ASPCA et al*. The citation of this case is 353 N.Y.S. 2d 288. It was decided Jan. 30, 1974. Perhaps we could be fine if reporting the case in this citation for the published form, *Conti v. ASPCA et al.* 353 N.Y.S. 2d 288 (1974). The case name in full was available, i.e., Edward Conti, Plaintiff v. ASPCA et al, Defendants. Other form of citation would be 77 Misc. 2d 61 and 1974 N.Y. Misc. LEXIS 1082. It was a state case from New York, and the court name is the Civil Court of the City of New York, Queens County. For the two ways standing, I may write a case brief in the shoes of appellant and student, but my deals in this work would hypothetically arise from the comparative research for the uniform law project. The case brief needs to be distinct from the case summary, but the student brief would not be necessarily so.

From the Representative of South Korea

Title and Citation : *Conti v. ASPCA et al.* 353 N.Y.S. 2d 288 (1974).

Facts of the Case

The case is the rescuer’s replevin action. Chester is a parrot, which is fourteen inches

tall, with a green coat, yellow head and an orange streak on his wings. Red splashes cover his left shoulder *(Conti v. ASPCA et al, p. 289,* 1974). Chester is a show parrot devoted to the educational use by defendants. On June 28, 1973, Chester flew the coop during an exhibition in Kings Point, New York, and found refugee in the tallest tree he could find. The efforts to save and retrieve the parrot from the defendant proved futile, and two weeks search efforts were discontinued from the approach of darkness. A return to the area on the next morning revealed that Chester was gone. On July 5, 1973, the plaintiff had found similar look of parrot in his backyard (*p. 289*). His offer of food was eagerly accepted by the bird, and this was repeated on three occasions each day for a period of two weeks. This made them intimate that the plaintiff eventually placed him in a cage of his home. The next day he phoned the defendant ASPCA to seek the advice of parrot's care, but the defendant, instead, claimed the parrot back upon the examination by two representatives (*p. 289*). The parrot was removed from the plaintiff's home, and the defendant denied the request of return by the plaintiff. The plaintiff now brings the action in replevin.

Issues

Two issues arise in this case. First, is the parrot in question truly Chester, the missing bird? Second, if it is in fact Chester, who is entitled to its ownership? (*p. 289*)

Decisions

The Court held that Chester was a domesticated animal, subject to training and discipline (ii) that the rule of *ferae naturae* does not prevail (iii) that the defendant as true owner is entitled to regain possession (*p. 290-291*).

Reasoning

Upon all the credible evidence, the court dose find as a fact that the parrot in question is indeed Chester and is the same parrot which escaped from the possession of defendant ASPCA (*p. 290*). The plaintiff's argument on the qualified ownership and the immediate passage of ownership right upon the escape of from Defendant ASPCA's possession is not merited. In the *Matter of Wright* (15 Misc 2d 225), it is well settled law that the true owner of lost property is entitled to the return thereof as against any person finding same. This general rule is not applicable when the property lost is an animal. In such cases, the court must inquire as to whether the animal was domesticated or *ferae naturae* (wild). Where an animal is wild, its owner can only acquire a qualified right of property which is wholly lost when it escapes from its captor with no intention of returning. This important distinction between the domesticated and wild animals were demonstrated in *Mullet v. Bradley* (24 Misc. 695), *Amory v. Flyn* (10 Johns. 102), and *Manning v. Mitcherson* (69 Ga. 447, 450-451;Ann. 52 A.L.R. 1063).

There is no separate opinion in this case, but the Court had a dicta for the neighborly relationship; "The court wishes to commend the plaintiff for his acts of kindness and compassion to the parrot that it was lost and was gratified to receive the defendant's assurance that the first parrot available would be offered to the plaintiff for adoption (*p. 291*)."

Analysis

This case typically shows the trait of common law system, which is on inductive reasoning (Olson, K. C., 2014). The specific fact is the very ground to create the rules of law on the replevin action. It differs in ways of approach from the civil law tradition. In theory and practice, the legal relationship would be defined in abstract nature from the legislature in the civil law countries. For example, the Civil Code from Korea provides in effect that the lost or stolen property should be retrieved to the holder of ownership right, but must be claimed within one year from the official public notice (Art. 253). The owner could not claim his right to retrieve against the bona fide bailer, who was not negligent and acquired with value (Art. 249). The lost or stolen property could not be claimed against such bona fide purchaser after two years from the date of event (Art. 250). The bailers of property without any legal ground should compensate the damages in the whole when he or she knowingly acquired it. In case of innocent bailer, he or she is only liable to return the interests still extant (Art. 202). In case that the bailers return the property, he or she is entitled to the expenses and maintenance sacrifice as a matter of right (Art. 203). These provisions would pertain to resolve the controversy raised in this case. Among the differences in terms of the comparative view of two legal systems, it is most distinct that the common law rule considers the quality of lost property to control for this area of law, to say, between the animals and others. The case law also considered it dispositive between the domesticated or trained and wild animals. One other issue in this case is whether the subject matter of this replevin action is actually same parrot lost by defendant ASPCA. This last issue is important, but had an evidentiary basis of resolution. Then the first two issues would be more kind of issues to be related with the rules of law emanating from this case. It needs further research if the bona fide third party would affect the outcome of legal relationships. But the case is not involved with any transfer from the plaintiff. The parties seemed not to dispute the expenses or maintenance sacrifices which would be nominal in this case. The rules of law in this concern would perhaps be same from the sense of justice and right, but also necessitates the follow up research if the cause of action would be presented to include the matter (Quimbee: The Case Brief Database, 2014).

Then, we inquire why the two systems perceived differently between the animals and general of tangible goods. In other words, what compels the common law judges to distinguish between the wild and domesticated animal. It would be same if we generally stand in the shoes of property owner. The wild animal generally could not override the control and power of owner. In that sense, they are same if to be controlled and used to serve the needs of owner. In the shoes of plaintiff, an incidental bailer of animal, both are also same if he acquired the possession and gained an effective control. The instinct on this common law rule may be explained that the common law judges might be in the shoes of animal. The animal would feel freed from the possession of owners if it is wild. If domesticated, the bird or animal may feel merely astray who must be returned to owner's control. Once the Korean public was captured as wrong by the international society if they abused a dog. Animal loving would be one international cause for civil congruence. It could be environment-friendly on one hand, and elevates a human sharing for its very generosity. The research ethics on the animal treatment is also one topic we are driven to attention. The difference could be approached from the Buddhism or Darwinism in other sense. The buddhists stress that all sorts of lives except the plants, are precious and inviolable. The Darwinism saw that the animal is an ancestor of human being. Some research reports revealed that the animal could be spiritual or has some cognitive function like the humans. A parrot in this case is very typical that we could be confused if only on the voice. The Creation theory generally on the

civil law traditions might be extreme if they are too general about the legal dealings of lost or stolen property. It might be embroiled with the extent of possession and effectiveness of control by the owners. Wild animals might not be effectively subject to the perfect possession. This point was dealt "deductively" between the humans and animals in the civil codes. The logic we can draw is on impasse if the civil code statutorily defined a natural or juristic person as a unique source of right or interest holders. In the common law court, the point was observed "inductively," which might evince a range of incidents on experientialism, derogating an effective control of owners. What about the technological advancement to affect the change of rules? The modern possessors would often seek to ensure his safe and effective control of wild animals. In some jurisdictions, the animal may be a person in legal effect as entitled to legal rights, such as the right of succession. Actually a scope of factors across the ways of thinking, culture, history and communal sensibility, intellectual strands, or chaos between the science and religion would be implied to create the kind of laws (Texas Southern University, 2006). This divergence could be one factor to make the uniform laws difficult to be achieved in the international plane. The case-by-case analysis may be only way to have details to share in areas of law. The technical nature of law, such as merchant law or commercial contract, may go otherwise in some extent, which had been successful in the title Convention of International Sales of Goods. The UCC would be a domestic product in this type.

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IX. The Primary Sources: Statute

The Legislative Process on the Policy Shift and Trends

The legislature is one of political branches in the modern constitutionalism. It plays a creative role in terms of constitutional rule and separation of powers principle. The judiciary would be assumed to create a judge made role, hence creative, but should be conditioned from the structural limitations. Plainly, they could not initiate to formulate the laws and only could react with the adversary contention in dispute. The technicality of common law on the standing would taint more for its passivity and expensiveness. The executive branch could be creative to enact rules and regulations in various names which could, however, be the kind of subject to be contended or overseen by its peer branches. Its creativity, therefore would be submissive, which has to respect the constitution and statutes. For their loyalty and essences in role, it is also obviously challenging to interact with the constituents and promote the public good or popular will of nation. In this sense, they would respond with the complexities of democratic command, perhaps bitter in cases or satisfactorily in others. They could be most effective to deal with the national agenda, but generally expected of structural values and inviolable communal concepts. This means that their role is generally delegated from the higher sources, notoriously from the constitution and generally from the statutes or case laws. The legislature, in this thought, would be most creative and comprehensive to determine the fate of nation. This can be plainly shown in the common display about the chapter orders in the written constitution. The Congress in the United States was placed in the Article one following the preamble. This order would not vary if the government is structured or its power is distributed in any system of nation. The collegiate body is, therefore, underlain in the very concept of anti-barbarianism and human mode of interaction. This consequence can be illustrated in the *Curia Regis*, an antedated form of modern congress, and the rivalry between King John and a group of barons in the 13th century in England (Glendon, M.A, Gordon, M.W., Osakwe, C., 1994). This structural stroll in the formality would not betray our expectation given the global jurisdictions. The socialist states would subject the judiciary and executive under the control of people's assembly. The parliamentary system of government generally practices on the mixed nature of government from the elected officials and ministers. Perhaps the presidential system would be most generous for other branches than congress, which is a product from the utmost fear of arbitrary legislature in the colonial period. This would be true if we imagine of Cromwell's dictatorship against the monarch. It is also exemplary if the judicial nobility was suppressed so deadly by the collegiate dictatorship in the revolutionary France. Guillotine was a tool to execute not only their mission but also the heads of traditionalists. Spawning the distrust of politics, the founding fathers would perhaps be sensible in designing their paradigm of government. The politics or public administration, however, could improve for various reasons, and the contemporary criticism would take other aspect, for example, the inefficiency of administration and especially on the collegiate body. This generally does not negate the creative role of

legislature and their conclusive impact on the policy shift and trends. Their unique restraints would stem from the Constitution itself. To illustrate briefly, they could not contravene the bill of rights, federalism, bicameralism, and expressive language on the separation of powers principle. This restraint is inextricable although we generally prefer to draw upon the fundamental recourse for the public lives from the collegiate nature of institution. The Justinian code in the Roman Empire could be one example, which might be a hospitable piece, however, in favor of one man rule given its nature of superannuated event. The *Magna Carta* would be a very successful evolution in this concern, which documented a relationship explicitly between the King and ruling class. This evinces the collegiate nature of public lives could be destined in any instrumental support, such as written constitution or Marxism-Leninism code. This also corroborates with the anti-barbarianism or human psychology. The creativity in the nature of power generally shares with the notion that it is plenary, hence, comprehensive to interact with the policy needs of nation. This does not necessarily presuppose an impact which requires a further examination. Nonetheless, the role of Congress would be perceived to face an advantage of contemporary ethos in which we interact in the density of interchange. The subject issues would multiply and the demand of normative control could surge conspicuously (1994). The legislature may even develop the tools of legislative delegation, which might be a least response necessary to ensure the integrity of institution and reduce their workload. In this context, the legislative impact arises from the prudence in process and deliberative nature of creativeness. The bicameralism would double this aspect of strengths. In the least, the statutes, in various forms of indication and especially in terms of legal research, would enjoy the rank of norms in higher status, which is related with the concern of impact on the policy shift and trends.

The Legislative Process and Legal Research

The legal researchers tend to face with an usual chance to seek the legislative sources to progress on their research plan. In this case, we would be assisted with the basic perspective on the scope of reference. One thought, as exemplified with the view of Justice Scalia, would consider the final message from the legislature would suffice the role and responsibility of judiciary (Olson, K. C., 2014). This means that the statutes standing in force only would be a source to be focused in terms of judicial reference. This idea would champion the stern adherence to the constitutional structure and institutional independence among the branches. In his implicit assumption, the judiciary is placed in the independent chapter of constitution, bred in the inherent suspicion of political process, and delegated a separate authority of sovereign people. Other thought is granted to recognize the importance of legislative history as a source of reference, hence "…see no reason why conscientious judges should not be free to examine all public records that may shed light on the meaning of a statute (p. 110, 2014)" This view espouses the benefit of legislative history,…"to correct drafting errors, to provide information on specialized meanings or terms, or to identify the purpose of a statutory phrase" (p. 110, 2014).

Given the abstractness of both thoughts, we still see an extent of sharing on the importance of legislative history in the stage of legal research. This drives the research student of law who needs to understand the legislative process and different stage of legal sources on the same topic. The bicameralism would lead to the separate nature of sources, bills and joint resolution, for example. The presidential power to veto the bills presented from the congress would temporarily and constitutionally stall the effect of bills as an enforceable US law. Given a signing of president into the bills, the name to indicate the products would change to be code or statute other than bill, which perhaps would confuse the researcher on the identity of product if without a due understanding of legislative process. You will find a shelf of legislative materials in the law library or other venues, which bears a different title with the same or proximate content. A lacking to understand the legislative process and library system would lead to the ineffective or inefficient deals in your search work. The demand of legal research, especially involving the public policy aspect, may require his horizon of search to touch on the presidential speech or annual instructions which implore on the key national agendas and collaboration of congress. An adequate understanding of legislative process will breed the effective lens to appreciate the nature of different materials in name or character (Murray, M.D., Desanctis, C.H. (2009). For example, the session laws would be most expositive among the various titles of same legislative product. The code would be a final form of official effect, but could not excel the content of session laws for the researchers in that need. A need to expedite the research process on the legislative history would procure some distinct business of the D.C. based law firms, which exploit their locality to provide a professional service on the research of legal history. Given that the understanding of legislative history is consequential in terms of legal research, we may know such popular websites on the scope of information, such as the US Congress/Thomas (The Library of Congress: THOMAS, 2014). Within the website, we can be exposed to the scope of pending bills referred to the legislative process.

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X. A Policy Issue and Researching the Statute

North Korea and Foreign Relations

One policy issue I selected for the assignment purpose is the challenge of North Korea and diplomatic response for the national interests. I am assumed to be a legal researcher working on the request of Korean Society which expressed a great deal of interest on the current US laws and legislative prospect in dealing with the North Korean issues. They specifically inquired of two or three federal statues with respect to the issues of North Korea, and one bill now on the legislative process for enactment within the due procedure of Constitution. In my research plan, I realized that the LexisNexis is one of most comprehensive and powerful service provider of legal information. It could be reached in the Walden library where you can locate the left section displaying "Research Guides." If you click on the word, you will be readily introduced to the sections of major source, such as court case or federal statute. You will find three titles of website which cover the CFR, code and statute, and statutory materials. The first initial means Code of Federal Regulation, which is a general nature of congressional act on the federal regulation, and the second website contains codes and statutes in force and according to the general issues of federal government. This second section would be the most proximate and effective website in this research purpose. Provisions of respective statute on the issues pertaining to the title coverage were offered with the key brief of LexisNexis on headings, history, court cases of same or similar topic, unpublished opinion, and textbooks and law review articles supposedly useful for the researcher.

My work on the secondary sources had been conducted on the history of two Koreas, in which the newspaper articles or scholarly sources of background information was investigated to draw on the focus of consideration (Seo, J.S., 2014). Two Koreas were created from the liberation of Japanese imperial rule in 1945. The world major powers from the victory of World War II had conferred on the plan of post war structure in the region, as we note on the Potsdam declaration and Yalta Conference, in which the US steered a prime role to occupy the southern peninsular. The North Korean territory would fall under the influence of Soviet Russia and new born Chinese communist regime. In this process, Il-sung Kim, a soviet affiliated communist leader seized the power in the northern land, which led to the fatal nature of current regime and bears a significant implication on the current deal among the involved parties. A breakout of Korean civil war in 1950 would contribute to the beginning of cold war in terms of world politics, which also aided to adhere with the current perspective of US (2014). The war generally is viewed to create a basic tone and ethos, as well as the interests of national security and peace regime in the region, say, East Asia or Far East more specifically. In terms of world politics, the economic transformation in the region would be fairly consequential so that Japan would be a second in the world economy, and China would rise as most a candidate of world economic hegemony according to the sources. Narrowing to the three interested nations, i.e., SK, NK and US, the economic trend in development and concern of welfare within the region would be a mitigating factor which could extenuate the tension on one hand and enabled a strategy more available and diversified. This structural thought on the region would generally not be isolated from the basic policy posture of US in dealing with the issue of North Korea. From any more salient controversy in the region, we had long noted the development of nuclear power and performance of nuclear

test, which is generally considered as a threat to peace in the region. North Korea alleged their untamed devotion to the nuclear power as one of sovereignty issue, but could be plausible if we conceive of a byproduct of cold war and political showcase to support their dynasty regime. The threat to peace of nations would also be occasioned periodically involving the arms export to the African states from North Korea. The issue involves seriously in concern of foreign relations and diplomacy of US as well as national defense. The background information also allows to comprehend the US response against North Korea (2014). The US, upon the termination of two world wars, took a lead of world politics which is expected of police role in the international community. The foundation of UN had been promoted decisively from the auspice of US, and the cold war could not make its role as ambiguous. The veto power of permanent members would practically be ineffective, while the US role in the international peace and humanity generally would not be abridged, at least, from any facial or equal counteraction.

Under this backdrop, the issue of North Korea would be multifaceted, to say, historical, structural, political and militaristic, economic, civilian or universal such as human rights.

The Human Rights and Nuclear Non-proliferation Controls

Any most contentious or continually surfacing would be the nuclear strategy of NK, which is generally against the anti-proliferation agreement of nuclear arms and threats the stability and prosperity of region (The Nuclear Threat of North Korea, 2013). A joint of public speech from the two ministers of US and NS in the press conference also merely affirmed a previous disagreement on the nuclear issues. The basic understanding of NS is that the nuclear power is the kind of must for their sovereign status, which cleaves foundationally among the affected parties (2013). Some experts took a more hopeful view that the nuclear strategy is to be pursued in seeking a diplomatic favor from the US and its alliance. In other words, they might use a nuclear card to obtain, for example, an economic aid or food program. Other view is that it could divert a possible disloyalty and internal skepticism from the dynasty nature of rule. In this view, the nuclear strategy could assuage a discontented denizen and centralize their attention to one man rule (2013). Other major issue would be a civilian nature of universal value, which involves the distorted practice of human rights standard. This contravenes the ideals of UN as prescribed of normative status and one of causes for the coercive action in UN laws. The lower phase of national economy in the NS would be taken into account if the positive liberty could be presumed of economic and fiscal feasibility. Hence, the issue of human rights on the NK is generally contended to focus on the classic liberty, such as freedom of expression, interest to life and limb, political oppression, and so. A recent call publicly brought from John Kelly, the Secretary of State, would also point to the prison camp for the persecuted political dissidents. Other issue is concerned of occasional emergence of illegal sales of the arms to the terrorists or revolts to the legitimate government. In response with this peace-threatening practice, the Congress continued to watch its progress and acts or attempts to act an adequate sanction according to the US and international laws as well as to the interest of nation.

I may state briefly a couple of attitudes or patterns on the issue of NK. First, the US constituents may inquire of a kind of fundamental question. Granted with the elements, is it a kind of principle or ideal, such as strategic patience being resulted in benign neglect? This

perception might be correct of inherent staticism and sovereignty concept. Nevertheless, this view may be questionable avoiding the reality and historical understanding of issue (Seo, J.S., 2014). The realism is a basic tool and prevailing attitude of Anglo-Saxons to comprehend and respond with the phenomenon. Second, the issue seems to be evolutionary, dynamic, and circumstantial which unsettles any consistent tone of measure. For example, key power elites had a surprise meeting right on the day when South Korea closed the 2014 Asian Games. This has never been an event over the decades. The past administrations in the late 1990's and earlier millennium, often characterized as the government of national socialists, maintained a constructive ties with the NK. The UNDP program of economic development was set out and the tourists plan was launched as a matter of cooperative exchange. In this interim, the US could be saved simple only with the issue of regional security while intensifying a constructive six party talks about the NK nuclear issue. The conservative government of SK generally is seen to chill the consequence, which persisted later through the present days. The last night's event is remarkable from the current mainstream of Korean politics. Third, given the issue is of fluctuating quality, it would be a great classroom for the need of interdisciplinary studies of law. The regional and world politics are intertwined to embed as a major influence on the legislative policy. In more depth, structuralism ideas or socio-historical structuration, as from the Gidden's, would interplay to base the foundation of issues. We may say an institutional response or institutionalism idea in besting to resolve the issue. The issue would involve the twilight of national and international laws, but may take an inherent character of sociology of law and from the lens of essence. Political and legal deals would a built-in to form and dress the issue, while the Korean culture and national ethos would be a secondary spring. In this tone, we often find the statutory language in the Acts or Bills of US, "The Congress sensed…" other than "The Congress found…."

Two Federal Statutes

The two federal statutes are North Korean Human Right Act and Nuclear Non-proliferation Controls Act. The First Statute includes a comprehensive provision, which ranges 22 USCS 7801, 7802, 7803, 22 USCS 7811-17, 22 USCS 7831-34, 22 USCS 7841-43, and 22 USCS 7845. As we note, the citation of published from might be 17 USCA 101 from the West United State's Code Annotated. In the LexisNexis, we use USCS, which means US Code Service than US Code Annotated respectively.

The North Korean Human Rights Act was signed by President Bush, and took an effect as the US law (North Korean Human Rights Act, 2004). The Act was structured in three major objectives, i.e., promotion of human rights, assisting the North Koreans in need, and protection of North Korean Refugees (2004). The congressional commentary also specified its intended purpose concerning promoting the human rights and freedom of North Koreans. It also included the funding assistance of human rights organization in the US. Among the various titles of federal issue, it pertains to the Foreign Relations and Intercourse in which we find the series of provision. The Act was located to utilize the Research Guides in the left section of LexisNexis in which we entered by clicking the website link titled "US Code Service." We simply entered the key words, "North Korea," which retrieved fifty five pieces of statute. The service was well in system which provides a scope of important information besides the statutory provision itself. The short history of provision, case laws relating with the provision, textbooks, law review articles, and even unpublished opinion

were offered to the researchers needing the details. In the first chapter, the statute pronounces the importance of promoting the human rights of North Koreans (2004). The human rights are a key concept in the negotiation with the North Korea. The non-profits on that mission will be assisted with the funds commensurate with two million US dollars. The radio broadcasting to North Korea will be increased 12 hours a day in collaboration with the Voice of America and Radio Free Asia. Two million dollars shall be assigned to collect the internal information not controlled by the North Korean government. The special envoy will be appointed, who is responsible to coordinate and collaborate to promote the human rights of North Koreans. In the second chapter, the Act prescribes assisting the North Koreans in need. In the commitment, the Act generally finds it distinct between the internal and external aid (2004). The internal aids may be provided through an NGO and other international organizations, which would be on the humanitarian consideration. The aid needs to be carefully monitored which should not be misappropriated for the military purpose. Other countries may be advised to provide the aids through the monitored and transparent ways rather than a direct bilateral interchange. The non-humanitarian aid shall be conditioned on the substantial progress of North Korea. The external aid shall be directed to the international organizations devoted to the aids, grants, and savory programs. In the third chapter, the Act includes the US policy on North Korean refugees, standard of review on the petition of refugee or asylum, and standard of findings on such status (2004).

The second statute is concerned of nuclear non-proliferation controls. The citation of this statute is 22 USCS § 2799aa-1. The Act deals with the general nature of NNPC issue, and other provisions relating to this issue were entailed which covers a waiver of problematic nations. A w**aiver of certain sanctions against North Korea was dealt in the** Act June 30, 2008, P.L. 110-252, Title I, Subch C, § 1405, 122 Stat. 2337. The Act is titled with the ambit of statutory purpose,

"Nuclear reprocessing transfers, illegal exports for nuclear explosive devices, transfers of nuclear explosive devices, and nuclear detonations" (Nuclear Non-Proliferation Controls Act, 2014). Following will be those (i) Prohibitions on assistance to countries involved in transfer of nuclear reprocessing equipment, materials, or technology, (ii) Exceptions and (iii) Procedures Applicable (2014). The sanctions include "(A) The United States Government shall terminate assistance to that country under the Foreign Assistance Act of 1961, except for humanitarian assistance or food or other agricultural commodities. (B) The United States Government shall terminate- sales to that country under this Act of any defense articles, defense services, or design and construction services…." (2014).

The statute specified to North Korea was found in the above citation. It provides sections of prescription which include (i) Waiver Authority (ii) Exceptions (iii) Notification and Reports (Waiver of Certain Sanctions Against North Korea, 2008). In the Waiver Authority, the Act provides,

"… the President may waive in whole or in part, with respect to North Korea, the application of any sanction contained in subparagraph (A), (B), (D) or (G) under section 102(b)(2) of the Arms Export Control Act for the purpose of providing assistance related to—" (2008).

In the Exception, the Act provides,

"… The authority under subsection (a) shall not apply with respect to a sanction or prohibition under subparagraph (B) or (G) of section 102(b)(2) of the Arms Export Control Act unless the President determines and certifies to the appropriate congressional committees that "(A) all reasonable steps will be taken to assure that the articles or services exported or otherwise provided will not be used to improve the military capabilities of the armed forces of North Korea; and (B) such waiver is in the national security interests of the United States.." (2008).

In the Notification and Reports, the Act provides,

"…The President shall notify the appropriate congressional committees in writing not later than 15 days before exercising the waiver authority under subsection (a), (2)… . Not later than January 31, 2009, and annually thereafter, the President shall submit to the appropriate congressional committees a report that….." (2008).

It also requires the report on verification measures relating to **North Korea's** nuclear programs.

One Bill from the House

One of bills I searched was the North Korea Sanctions Act of 2014. It was introduced in House 4/26/2013, and the latest title is the North Korea Sanctions Act of 2014. It was received in the Senate, read twice and referred to Senate Committee on Foreign Relations. The Official Title as introduced is "To improve the enforcement of sanctions against the Government of North Korea and for other purposes." The bill was introduced by Rep. Royce, E. R. and 147 representatives, including Rep Bachmann, M., Rep Bass, K. [CA-37], Rep Benishek, D., and others cosponsored it. The bill could be located in the website Congress/Thomas, and I entered the key words, "North Korea Nuclear Issue." Within the box, the categories of information were tendered, such as all information, text of legislation, or CRS summary and clicking on the item located the indicated materials. For example, the bill summary and full text could be retrieved. The full text could be available with the PDF version bearing a verification logo of GPO. The bill contained a scope of system and measure, which has four Titles with 22 sections and one leading section for general introduction (North Korea Sanctions Act, 2014). The purpose of bill could be found in the summary of bill;

"(i) directs the President to investigate credible information of sanctionable activities involving North Korea and to designate and apply sanctions with respect to any person the President determines is knowingly (a) contributing, through the export to or import from North Korea of any goods or technology, to the use, development, production, stockpiling, or acquisition of nuclear, radiological, chemical, or biological weapons, or any device or system designed to deliver such weapons (b) exporting, or facilitating the export of, defense articles and services to North Korea, or from North Korea to any other country…(ii) directs the President to designate and exercise IEEPA authorities with respect to the government of North Korea as well as any person or foreign government the President determines has been (a) listed or sanctioned under any regulation, specified executive order, or the IEEPA for illicit activities or activities concerning North Korea's proliferation of weapons of mass destruction (b) sanctioned under U.N. Security Council resolutions concerning North Korea's

proliferation of weapons of mass destruction…(iv) Sets forth civil and criminal penalties under the IEEPA…" (2014).

The bill would likely impact on the policy shift, which corresponds with the freezing atmosphere and continued violation of the international standard by North Korea. In this pulse and compassion, the bill provided a scope of initiative summarized in the 18 leading sentences to key on the intention of bill proposal. For example, the bill requires setting forth civil and criminal penalties under the IEEPA (International Emergency Economic Powers Act). Nevertheless, US commitment to the human rights would not be affected seriously while the Act requires establishing the North Korea Enforcement and Humanitarian Fund in which assets subject to criminal, civil, or administrative forfeiture or penalties are to be deposited for the enforcement of this Act and to carry out humanitarian activities under the North Korea Human Rights Act of 2004. Interestingly, the bill intended to increase the monitoring policy and expanded scheme utilizing the state and local governments in the role and responsibility against North Korea. Hence, the Act requires preparing the report of prison camp in North Korea while authorizing state and local governments to divest assets and prohibit investments in companies that invest in North Korea.

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XI. Judicial Role in the Interpretation of Statute

A General Overview

In telling the role of court in the interpretation of statute, we once again would be called upon the quality of law. What is law? This question is proper to provoke our work on this theme since both branches are authorized from the Constitution, supreme law of land (Olson, K. C., 2014). A little more beyond the discussion scope, we may assume a level of mediation involving the written or unwritten practice of constitutionalism, and could have any more indefinite dimension of history or philosophy as well as areas of diverse scholarly interests. For example, the law may be of soft nature, which is normative, but not binding without any coercive force. Perhaps the Incoterms or UCP would be one kind which is formulated by the international chamber of commerce. The law may be viewed philosophically or historically in the standing point of major classification, what we term the natural law, and positive law, often making a presence in the form of codification. Hence the concept and definition of law could be amenable to the use of authors and drafters of public document as well as theorists. In any phase of history and community, the law or legal system is indispensable and elementary, which is evolutionary and never abandoned. Even the Post-Bolshevik Russia, allegedly one of most harsh dictatorship in the world history could not deny the elements of law maintained by the previous system. Upon the success of revolution, they had to look back the civil laws of Russian empire and European influences to create the law of their civil code. In this light, we have two thoughts in portraying the quality of law. First, it is indispensable and very proximate with our lives in the political community. Second, the concept and understanding of law could be pluralistic, in some cases, hierarchical, and could be classified (Murray, M.D., Desanctis, C.H., 2009). The point in this aspect is that the interpretive issue arises from the written law system and the role of court could be defined in terms of constitutional interplay among the branches, generally considered a most authoritative political blueprint from the consent of citizen. One other point relevant with our discussion purpose is the perception and belief of jurists on the question, "what is law?" In the common law system, the case laws would be successful to attain a professional and popular sharing that the court would be a typical institution to create the law. The professionals and common people generally perceive the opinion of court is the essentials of law as we see in the words of Justice Homes, "the law is nothing but the statement of judges in the courtroom." In the civil law system, the codification work in the 19th century of France and Germany would alter the basic perspective of law, which eradicated the mode of laws, such as Euro Jugens or customary thicket and annotated practice of legal scholars. The basic attitude and prevailing understanding of the role of court in this system would be an interpretation of statute or code, than generating the law. The court role would come on the limited ambit which must have been interrupted from the past privileges and noble subscription to the ancient regime. It is the kind of proscription that the judiciary has to be insulated from the popular democracy and national will of politics. The third road could be on the tendency of British practice although they are an original state of common law system. They would tend to be traditional or more conservative, at least to say if we draw upon the ethos of judiciary in the state. They generally would be defensive from the public policy and its legislative expression, which perhaps would favor the traditional doctrine of tort case laws than new statutes. The means that the judiciary in this case tends restraining its role as less expansive in interpreting the statute. The property concept traditionally embedded could have

any more chance to take a precedence over the social redistribution of wealth. The regulations on the new terms of fair contract negotiated through the parliament may phase a less profile of effect from the narrow endorsement of judiciary. Hence the institutional autonomy, beyond the concept or value of judicial independence, would well be in strand and deserves a highlight in terms of the inter-branch extent of constitutional responsibility. Given the constitutional history and political practice formed a structure and function of government in Britain, the role of judiciary would come proximate very intimately about the intrinsic of common law system than the US system, in which the role of judiciary is stuck with the general perception of judge-made law. Then, the US tendency in the current practice of statutory interpretation may be placed in the middle of two extremes about such spectrum (State Bar of Michigan. (n.d.).; Tolley, M., 2003). Of course, this is not to negate the role of judiciary in generating the case laws and legal theory. They accept the view that even the Constitution can only take a legal meaning once processed into a tangible form of court opinion, what we term the process as "judicial sanctification." Hence the practice of common law courts in England and our foundational subscription to the case, Marbury v. Madison, is no surprise at all. It would be a kind of symbol to distinguish the two major legal traditions that the case law has originated such important system of judicial review without an explicit provision.

One Useful Deal from Siegel

Here do we take the view from Siegel, Yale law professor, concerning the proper role of judiciary in interpreting the statute (2005). This query takes an increasing importance given the active or positive state being generally envisaged in the contemporary passion of people. The role of government has increased in response with the advancement of technology and growing national economy. The standard of public lives would become improved that the environmental issue would be a patron of legislative agenda. The market failure or social justice would direct the intervention of government as common. The public law generally becomes salient at least in terms of its statutory volume which requires a time of reflection about the role of judiciary. As Siegel classed, we are able to identify two possible adherences in the interpretive work or philosophy (2005). One is a textualist position which stresses the consistency of ruled meaning given that the terms or phrases are same within the statute. Other view emphasizes looking into the congressional intent beyond the plain language or mechanic understanding of terms. In the event, this led to the effect that the interpretation of court would be more flexible and standard-based. In other words, the view would prefer a judicial discretion or allow a judicial choice in defining the terms of public policy in the United States. This compassion would not be a one time contrast or disagreement of justices, but should be viewed as chronicled. If offered and continues to offer the kind of clue and fueled the dissidence as retrenchment to cleave on the different understanding of statutory provisions. For example, Justice Scalia has well underwritten the first thought who would be a campaign leader as described by Siegel. One recent case, titled Clark v. Martinez, would instigate an implied shift of court policy which may be construed to turn on the general favor for the first thought (2005). The case involved the removal of illegal aliens, and one typical of immigration case. The court enunciated that a different dose with the same terms in give a meaning of statutory phrases and words is not only "novel" but also "dangerous." Given the critical role of judiciary idealized as predictability and stability, the court description for the second nature of deals implicate a painful wrong from an arguably

capricious interpretation. Siegel countered this ruling, in which he perceives the second thought as inherent and congruent in terms of interpretive role of judiciary on the statute. He first classed the issue to phase on the principle and labeled the attitude as "Strong Unitary Principle" and "Polymorphic Principle" We also have one term which he called "Weak Unitary Principle," perhaps the meeker position of court to support the Unitary Principle before Clark and Martinez. In the unitary or weak unitary principle, the court generally would be entangled with the question, "…is whether a single term in a single statutory provision should have a single meaning, even when the term must interact with multiple other statutory provisions in different circumstances (p. 343, 2005)." In Clark v. Martinez, the court was brought to the attention involving 8 USC 1231, which provides three separate categories of aliens while granting the government a single authority, to say, the authority to detain aliens beyond the removal period. The question presented to the court then "implicated the unitary principle by presenting the question of whether the government's authority to detain aliens beyond the removal period has the same meaning with regards to aliens in categories A, B, and C (p. 347)." In effect, the court opened a controversy involving a stiff turn on the unitary principle in which "the Court did not apply the unitary principle as it had in previous cases as one indicator of statutory meaning." We can have a very exciting kind of new deals in this past Term, as commented by Siegel "….[the] Supreme Court took the unitary principle to a new level. The Court declared that the unitary principle is not simply one indicator of statutory meaning, but an inviolable force (p. 346)." On different footing from the strong tone of court opinion, Siegel explored the polymorphic principle and demonstrated that it has a considerable feature and share in the actual judicial practices. He concluded that the Courts had not embraced the strong unitary principle despite the prevailing illustrations of case. In some cases, the Court would go otherwise, determining "….[that] a single statutory term or phrase must bear different meanings under the different circumstances (p. 352)." Borrowing a term from the computer science, Siegel evinced a parade of polymorphisms which also reveals instances of application in the specific case and on differing degrees of authority. He also surveyed the motivation of polymorphism in the judicial ruling, which includes constitutional avoidance and sub-constitutional concern. In the latter case, the court applies the principle, "…[even] though a statute under any possible interpretation occurs would be perfectly constitutional, the statute nonetheless treads in an area where constitutional concerns have given rise to a special rule of statutory interpretation… (p. 359-10)." He also discussed some other motivations for this principle, such as policy polymorphism and stare decisis polymorphism as well as the polymorphism in constitutional interpretation. He also ordered his aspect of argument so persuasively, which relates the principle with the judicial role (2005). His journey continued to address the issues of relevance, especially with our theme of this week. A pure linguistic approach and canonical approach could be a base to deliberate on the judicial role which engages in the interpretive work. Our note needs to be shared more in focus on the separation of powers principle and role of Congress (2005). Nevertheless, his message on the judicial role can be found with any most of appealing force in his argument that the strong unitary principle may bring the Ratchet effect (2005). In his view, the Strong unitary principle would bring "[this effect] because the strong unitary principle takes the initial judicial choice, which may be a highly contestable choice that implements judicial willingness at the expense of what the legislature has prescribed, and compels its application even more broadly than might otherwise required (p. 379-380)."

Some Insights

The law review article provides a great insight about the judicial role in the statutory interpretation. It instructed a comprehensive profile of interpretive principle which generally lends the view to support the institutional autonomy of judiciary. As I implied, the judiciary in the common law system was undisrupted by the exterior force, hence, has been able to keep its domain of intelligence, culture of government and inviolable preserve of independent case laws. We generally see if there would be no policy reason to restrain the judicial discretion and choice of view in taking the legislative will. One lesson from the article in my case is that the court needs to be more intricate and considerate writing the judge-made law. Perhaps the most provocative to pen on Clark v. Martinez by Siegel would be the wholesale emphasis of unitary principle with the metaphor "novel" and dangerous." The civil law judges generally would come short in the judicial style. Given its lengthier dealing, the civil law lawyers would often pay less an attention to the court language or phrases provided that the outcome would be acceptable. The cases of Supreme Court, in this aspect, are really a law which possesses the normative power to bind the subsequent court. The role of judiciary in the interpretive work, in this sense, would stem from other elements, the kind of judicial or intellectual style, culture of professionals and reality in volumes or study materials. In this aspect, it appears that the role of judiciary in the interpretive work would enter the quality of intricacies than the civil law court, which requires much work to avoid the potential conflict among the case laws.

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XII. One Statute and Court Interpretation

The State of Wyoming and Blackmail Statute

I tried to reach the webpage of state government, which provides the fine system of state laws and structure of government (The State Government of Wyoming, 2014). The statutes and constitutions are open to public access, and the session archives as well as research products are placed for the review of website visitors. The statutes were ordered in 99 subject issues along with the state constitution of Wyoming. The subject issue is located in the Title 6, Crimes and Offenses. The criminal statute of Wyoming is structured in ten chapters in which several articles were provided. It begins with the general provisions in Chapter 1, crimes and offenses as correspond with the criminal interest, such as "Against the Person" or "Against the Property," as well as weapons and even the sentencing in the last chapter. The citation in this case represents the Title, Chapter and Article respectively. Hence, the WS 6-2-401 means that the blackmail statute is located in Title 6 of WS (Wyoming Statute), Chapter 2 (Against the Person), and Article 4. Given the *Robbins v. Wilkie* from the Supreme Court, we can note that the Court considered the 2005 version of Wyoming blackmail statute, which implies that the statute has a history of repeals over time. The website would inform only the standing version of criminal statute, as of the date of July 2014. The blackmail statute was dealt with other two crimes, robbery and intimidation in furtherance of the interest of a criminal street gang. The legislative goals of blackmail statute principally are to protect the liberty of person, which combines with the criminal interest on property. The other two crimes also can be viewed in that context. The blackmail statute has two sorts of crime, which includes an aggravated blackmail as considered more culpable (The Blackmail Statute of Wyoming, 2014). I had briefly outlined the elements of statute with the exceptions and results in the table below.

Outline of the Blackmail Statute

- Blackmail & Aggravated Blackmail

Elements of Blackmail	Results	Exceptions
● With the intent to obtain property of another or to compel action or inaction by any person against his will ● Threatens bodily injury or injury to the property of another person ● Accuses or threatens to accuse a person of a crime or immoral conduct which would degrade or disgrace the person or subject him to the ridicule or contempt of society	● Felony ● imprisonment for not more than 10 years	None

Elements of Aggravated Burglary	Results	Exceptions
● In the course of	● Felony	None

committing the crime of blackmail ● Causes bodily injury to another person	● Imprisonment for not less than five (5) years nor more than twenty-five (25) years	

An Interpretive Issue and Court Dealings

For this assignment purpose, I have selected the case titled *Otte v. State*. The citation for this case is *Otte v. State* 563 P.2d 1361, 1977 **Wyo.** LEXIS 255 (**Wyo.** 1977). The fact of this case involves a faked plan of robbery or blackmail against the City Market of Rock Springs, Wyoming. The plan actually was an entrapment from the plot of Wyoming Attorney General's Office and Rooney (Otte v. State, 1977). The gist of the plan was that Rooney and Otte, a defendant of the criminal proceeding, would place a telephone call to the manager of City Market and inform him that they were holding the manager's wife as a hostage and that unless he, the manager, placed the money from City Market in a bag and delivered it to the store's parking lot for Rooney and Otte, they would kill the manager's wife (p. 1362). Rooney kept other agents informed of all the plans and discussions made and had by him and defendant-appellant in this case. Mr. Delozier, the manager of City Market was informed of general nature of proposed threat and assured that no actual threat would be made and his wife would be safe and protected. As the plot involves such nature, he was requested to mark some money for identification, and requested to cooperate with the agents and so on (p. 1362). According to the plan, Otte entered the City Market and Rooney called the manager of City Market and, in substance, told him that he was with the Task Force people and go ahead and cooperate and not worry. The Amended Information filed in the Court charged defendant Otter in three criminal counts. He was found guilty of robbery and blackmail in the lower court. The issues of this case involve several arguments on entrapment, heresy and larceny. One issue raises an important interpretive disagreement of statutory elements on the blackmail statute. The court opinion is split about any plausible construction of the statutory elements of blackmail. As presented in the table, the person is punished if he "threatens a bodily injury or injury" to the property of another person. The case was decided earlier in 1977 which allows me unsafe of the exact language of blackmail statute at the time. Assuming if it is same, we can receive the meaning of such terms as defined by the Otte Court. As opined, the threat, firstly, must be communicated to the intended victim to establish the crime of blackmail (pp. 1364-66). According to the court opinion, the second element is that the threat need not be communicated directly, but can be communicated by any number of third persons so long as it is given and received as a threat (pp. 1364-66). Thirdly, the threat must strike fear in ordinary man. In applying these elements, the court found [that] "the existence of Otte's threat of harm to another – not as a threat but as a part of a plan to catch a thief – a plan with respect to which he was one of the planners" (p. 1366). It also held that "the communication of the threat of harm to another-no matter by how many mouths communicated – is the gist of the offenses prohibited. There was no such communication here" (p. 1366). Two justices of Wyoming Supreme Court dissented in part who argued on the Court's misconstruing the statutory elements of blackmail statute. First, they countered the inconsistency on the logic of majority court (pp. 1367-73). The larceny crime requires the element "demand" while a menace or threat is an element of blackmail. In their view, it is illogical to find differently, stating that demand was communicated while the threat was not communicated. They also conceived that the crime of blackmail was complete when the

threat was made and imparted and disagreed that communication of the threat is the gist of the offense prohibited. The dissenting opinion emphasizes on the element of "threat" than its communication in interpreting the statute. Two reasons seem to be effective to support this view (p. 1372). One is the public policy rationale that many prudent and conscientious citizens should be protected and some due police scheme on this ideal should be supported. The other would be a focus of the culpable state of mind on the defendant than the victim's part. The dissenting opinion pointed out that the majority rule "has in effect given the defendant immunity from the design of his threat…" (p. 1372). It also presented a contrary point concerning if the fear actually needs to be generated in the mind of victim. The case plainly demonstrates the importance of court role in the interpretation of statute.

Reference

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XIII. Primary Sources: The Federal Regulation

The Federal Agencies and Public Policy

The role and impact of federal agencies on the public lives of Americans would be tremendous. Given the three branches of government, we may generally state that two branches would be noble, but either passive or principled (Glendon, M.A, Gordon, M.W., Osakwe, C., 1994). It is mostly true that the businesses or industries would be more touched by the details of regulations and adjudicative decisions rather than the congressional act of under-delivered nature or litigation of misfortune. Generally in terms of structure and resources, the congress and judiciary would act to adhere with the principles and to perform an oversight role. The delegation doctrine plainly evinces that the Congress would be but to subscribe and with due constitutional limitations (Olson, K. C., 2014). The court, as a defender of national laws and normative conscience, could craft the rules of law with a binding power, yet to be as amenable to agencies interpretation from its principled deals. From the analytical tests and the variety of facts from the precedents, the Court would perform an inductive reasoning crystalized into any viable rules of law. Hence, the rules of law can well leave a latitude of interpretive possibilities, which creates the situation of which the agencies should be leery in his specific duties. This consequence and effect from this way of interaction is that the rules would come principled and the court would function as an authority of supervision and oversight. Hence, we would be concerned of the extent of administrative discretion between the rule making and adjudication. Besides the delegation practice, the Congress would increase the democratic control and oversight tension by attaching a legislative veto, which is intended to safeguard the legislative will and their expectation. While it could lead to the constitutional controversy in some cases, it also demonstrates the importance of oversight role but with the scanty of resources. The oversight and principle, however, would be indirect for the normal businesses and industries. We may suppose if the large enterprises or businesses would manage a strategic team for the Congress or judiciary. However, the vast of businesses would come on the regulations and rules of agencies in their business field.

Their Role and Impact on the Policy Shift and Trends

The increasing profile of federal agencies on the policy shifts and trends could be explicated in several aspects.

First, the paradigm of government in its role and function has shifted in response with the growth of businesses and industries. The modern administrative state requires an extended role for the federal agencies.

Second, the advancement of science and technology should be responded more properly and in the first hands of deals when we consider the role and function of federal agencies.

Third, the expertise and competence in the subject areas of public issue could more instantly be found in the executive branch. Given the Congress and judiciary would conduct their responsibility from the political and normative standard or adherence, the equipment and resources of executive would be associated more in focus on the subject issues, hence, the career bureaucrats or research professionals in their field. Therefore, it is no surprise that the APA commanded the science and evidence-based rule-making on the agencies. This may be received to counteract the history that the classic mode of agencies action, perhaps in 19th century and earlier, might be like a trade deals or feudal prerogative as we see the Royal Charter or others. Hence the "science-based" may mean that the agencies would act on the standard and ideals of law, such as equality and equity, which is similar to the notion of juridical science. But its narrow understanding would negate the reality of executive role in this advanced society. It includes a large ambit of modern science, which perhaps would cover the business, natural or health sciences and so on. Consider the issues and controversies as well as the development of federal agencies in the history, which affect our public lives. We may recall upon the three stages of agencies' booming (2014). In order that the government sought to deal with the increasingly complex problems of industrial society, the first agency named Interstate Commerce Commission was created in 1887 to administer the Interstate Commerce Act. In early of 20th centuries, such important federal agencies, FTC, FRB, FCC, FDIC, NLRB, were instituted to deal with the financial and fair capitalism (2014). This expansion was lastly complemented with the EPA and CPSC, say, concerned agencies of the consumers. The issues would be routinely heralded. For example, NIH specialists would become intense and interrogated in the public scene about an Ebola disease. The WHO advises the smoking should be duly regulated from the humanly standard of health. The EPA and other agencies would involve the concern of climate change and the kind of research would proliferate through the anticipation and caution. A poverty issue would prevail the social mind of Americans which is one of important focus from the economists, sociologists and political scientists. The expertise may be provided by the specialists within the agency as well as can be bought. In any case, the role and function of agencies would fairly fail to reach the important aspect of modern public lives without a collaboration and support from the staff and outside experts in the field of administration.

Third, the frequency and feelings from the executive branch and the extent of interchange or public impression would perhaps outrival other branches. The President would be a routine actor featured in TV, and the public, generally employees of firms and businesses, would often need to mill forward to persuade the boss or supervisor. They would be active rather than defensive or passive and would often work under the regulation. Their mode of work and subsistence would be promoting than reflexive, which is akin to the executive branch than the legislature or judiciary. In some cases, they may enter the contract with the agencies and participate in the public program. They may have to keep pace with the policy of agencies to survive or increase on their business. They would perform under the regulations which are prepared more in specifics about their business, and also toned or

attuned in the same progress and concern provided that the growth of capitalism is such a factor for the modern administrative state. This generally brings that the agencies' role is significant to shift the policy and incur the trends.

Fourth, the types of documents in terms of legal research also corroborate with the extended stretch in creating and administering the public policy. It reflects such diverse sources to impact the policy shift and trends. From the office of president, executive orders and proclamations are two basic forms of executive fiat, which "are used to perform presidential functions pursuant to statutory authority or inherent powers (p. 163, 2014)" They are published in the Federal Register initially, which "are compiled and published as a Title of the Code of Federal regulations (CFR) at the end of each year (p. 163, 2014)." In view of constitutional law, the executive power is simply provided, "the Executive Power shall be vested in a President of the United States." This leads to any constructive extension while we consider the inherent powers without any explicit provision. In view of practical effect, the "ossification" in rule making is stark which implicates the expanded or immediate role and function of executive branch in creating the public policy. Collectively, this requires the researcher being flexible and dynamic over the scope of public documents (Hairston, P., 2007). Coverage of proclamations and executive orders could be traced by using the KeySite and Shepards which have strengths in each way (Murray, M.D., Desanctis, C.H., 2009). The other sources would cover Memoranda and Directives, Reorganization Plans, Messages to Congress, Executive Agreements, and Compilations of Presidential Papers.

The sources of legal document from the federal agencies also demonstrate the critical role of federal agencies in terms of the public policy and transformation of community. We can find a soft form of laws extensively beyond the traditional forms of executive order and regulations. Guides and directories can be valuable sources for the purposes of legal researcher (2014). Pending regulations may be an interesting item for lawyers who need know more than the rules currently in force, which would be to meet the client's interest. Guidance documents, excepted from the notice and comment requirement, would rise as a new form of regulation which includes handbooks, policy statements, interpretive rules, and private advice letters. These documents provide "important indications of how an agency perceive its mandate and how it will respond in a specific situation" although it has no binding force. In the course of agencies' service for the legal researchers, three important statues would ground a legal cornerstone to mandate or allow the public disclosure. The FOIA, e-Government Act as well as the Federal Register Act would be consulted to create the agencies' policy on information and public relations. The rules and soft terms of regulations or public communication had multiplied. The websites become abundant about the sources and the information could be searched in some readier speed. This transformation also proves the extended role of federal agencies on the policy shift and trend.

Reference

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XIV. The Legal Research and Federal Regulation

One Policy Issue

The same sex marriage has long been discussed as one important issue on the privacy, religion, culture and social custom, family system and federalism in the United States. New pope, Francesco, would be the kind of liberal leader on the Catholic Church, who now seriously considers the homosexuals acceptable. His new deals and public relations in this stream would influence that the issue becomes more attractive. The same sex marriage brings a constitutional question, which is probed in terms of equal protection of laws or right of privacy. People generally have the right to pursue the happiness and create his or her own destiny and family. It would incur a compelling state interest to ban for the reasons of public policy, however. Among them, the general moral and public order would be one of them and the health or hygiene could be another. Nonetheless the challenges from the same sex marriage and rights of LBGT would echo much since they entail an important impact on their public lives. As the issue is civil and familial, we generally receive it within the state jurisdiction (Olson, K. C., 2014).

A controversy on the same sex marriage legally resulted in different treatment involving many issues, which affects the rights and interests of married person (2014). Many of legal treatments employ the concept of marriage as one element of statutory dealings, which would also matter with the federal regulations and agencies. For example, one important health board would be comprised of nine experts who, however, should not be related with the blood or marriage. The pension and benefits for the spouse of veterans would be determined on the basis of finding a legal marriage. The immigration laws and regulations also use a legal marriage as its element, which would be a prerequisite to administer the removal or deportation. The department of homeland security also is responsible to act based on the findings of legal marriage. Hence we can note that the legal recognition of same sex marriage would entail a consequence, virtually all the ambit where the marriage is prescribed as a statutory or regulatory element. In terms of federal treatment, however, one very general scheme has been codified in the title "Defense of Marriage Act" enacted in 1996. We can find two distinct dealings in section 2 and 3, one of which says "no state need to recognize the legal validity of a same sex relationship even if recognized as marriage by another state." More problematically from the section 3, it provides a definition of marriage for the purposes of federal law as a union of one man and one woman (Defense Marriage Act, 1996).

Three Federal Agencies

The Presidential roles and responsibility on the same sex marriage are not certain given the DOMA enacted in 1996. As said, a gay right or same sex issues on legal marriage entails not only the constitutional liberty but also the kind of practical discrimination in applying the federal laws. The section 3 provides a definition of marriage which should be consistently applied to all scope of federal codes and regulations, encompassing a crucial of public lives for them, i.e., pension right, immigration laws, qualification to be elected for the board of governmental organizations, tax regulations, and so on. In 2013, the Supreme Court granted a certiorari to review the case, which involves an issue whether the section 3 of DOMA would violate the due process of law and equal protection applicable to the federal

government (*United States v. Windsor,* 2013). The Supreme Court ruled the section 3 of DOMA unconstitutional, which made the presidential proclamation echoing and made the scope of federal statutes and regulations uniformly enforced. He stated, "Last year, supporter of equality celebrated the Supreme Court's decision to strike down a key provision of Defense of Marriage Act….In keeping with this decision, my administration is extending family and spousal benefits-from immigration benefits to military family benefits-to legally married same sex couples (Presidential Proclamations, 2014)." The second federal agency is the U.S. Immigration and Customs Enforcement (ICE), which is an American federal law enforcement agency under the United States Department of Homeland Security (DHS). The ICE is charged with the investigation and enforcement of over 400 federal statutes within the United States, which often are concerned of enforcement and removal operations involving the statutory or regulatory finding of legal marriage. The third federal agency would play a role to decide on the pension and benefits of military family. Their role and enforcement of laws would depend on the finding of legal marriage which necessitates to review whether the gay or lesbian couples entered a valid marriage as a matter of state law. The Department of Veteran's Affairs is responsible for the subject issue we are interested in. It was created to promote the rights and privileges of veterans and administer the statute and regulations on their specific field of competence. The mission statement on its public website clarifies this, "Our mission is to support those who serve or have served in defense of our nation and commemorate their service and sacrifice." Its jurisdiction is extended from rehabilitation, health and well-being, pension and compensation, benefits and services, as well as some quasi-judicial role on eligibility and claims. The issue of same sex marriage and its consequence on the public administration would not be limited with those three federal agencies. For example, the IRS may need to reorient in administering the tax regulations, which has a statutory element of the kinds, i.e., marriage, born child, or spouse. Hence, if the "spousal account" is the term of statute, the IRS needs to investigate whether the same sex couples could be viewed as a legally valid marriage. The agency may need to explore the place of marriage or other legal strands based on the state law in concern provided that the DOMA was deemed invalid as a matter of constitution.

Three Federal Regulations

One federal regulation pertaining to the ICE would fall within the subject issue "Aliens and Nationality" in the title 8 of code of federal regulation. Within the title, the chapter I provides the Department of Homeland Security, and the subchapter A included the general provisions. In the subpart B, the board of immigration appeals was prescribed where we find some procedural clauses, such as C.F.R. § 1003.1(e)(4) C.F.R. § 1003.1 (d)(3) (iv) (DHS The Board of Immigration Appeals, 2014). The citation of regulation is 8 CFR 1003.1 (2014). In enforcing the provisions, the board will critically rely on the marriage status and its proof. There would be many cases, which denied the procedural rights to appeal to the immigration judge. For example, in the *Baig v. Ag of the United States,* the court ruled that the *BIA did not abuse its discretion in concluding that alien failed to present in motion to reopen prima facie case establishing that his second marriage to U.S. citizen was bona fide as materials he submitted established only existence of marriage and was not probative of motivation for the marriage, so it was not probative of bona fides of marriage.* (2008). The rulings would, and the practice of immigration board will be affected to the extent that the

case at their hand involves the issue of same sex marriage. Often the sham marriage or bona fide marriage was determined on various factors and legal requirements. As the same sex marriage is largely legalized across the jurisdictions, the application of provisions would bring a new landscape for the immigration status of same sex couples.

The second federal regulation would be on the issue of veteran's pension, the citation of which is 38 CFR 3.50 (Veteran's Benefits/Definitions, 2014)**.** In this provision, the terms "spouse and surviving spouse" had been defined. This federal regulation was codified under the authority 38 U.S.C. 101 (31), and made effective as of the date, Feb. 1997 (2014). The federal regulation would make an impact seriously to expand the benefits of surviving spouse who entered the same sex marriage since the section of DOMA would be declared unconstitutional and the presidential proclamations implored to respect the decision. This would elicit that the system of constitutional review is orthodox in the US if without the constitutional or statutory provision concerning the effect of Supreme Court decision of unconstitutionality, while the Korean Constitution and statutes would have an explicit provision on its effect.

The third federal regulation is 26 CFR 31.6011(b)-2 (Employment Taxes, 2014). It would be located in the title 26, and the subject issue is concerned of internal revenue. The chapter I provides the internal revenue service, department of treasury, and subchapter C and part 31 regulate on the employment taxes and collection of income tax at source. The subpart G deals with the administrative provisions of special application to employment taxes (2014). The code prescribes a legal requirement on the employee's account number. It provides the changes and corrections in (3),

"Any employee may have his account number changed at any time by applying to a district office of the Social Security Administration and showing good reasons for a change. With that exception, only one account number will be assigned to an employee. Any employee whose name is changed by marriage or otherwise,…"

As discussed, the code would make a significant effect on the filing requirement and the changes or corrections of his or her account, who is classed as an employee in the purpose of employment taxes. I am not sure if the legalization of same sex marriage would bring any benefit or loss on the employee in terms of tax administration, but the uniformity of laws would require the same sex couple should respect the provision or sanctioned as the statute requires.

Reference

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XV. Researching the State Regulation

One State Regulation for the Reform

I found the professional or business code to be workable serving the learning of interpretive challenges on the state regulation. The rules regulating the admission to practice law in California are a state regulation I will explore to reform it. It was enacted under the authority, i.e., the business and professional code division 3, chapter 4, article 4. The chapter 4 covers attorneys and article 4 prescribes the admission to practice of law (APL, 2006). The number citation of this code is Cal Bus & Prof Code 6064 (2014). The Rules are considered as amended in 2006. According to the code, the Supreme Court may admit to the practice of law any applicant whose qualifications have been certified to it by the Committee of Bar Examiners (BPC/APL 6064, 2014). To qualify, an applicant has the burden to demonstrate that he or she is possessed of "good moral character." The Rules stipulated the attorney exams, as provided in Rule IV Sec. 2, "An Attorney applicant who has been admitted to practice in a sister state, or any United States Jurisdiction, possession, territory….may elect to take the attorney's Examination……has been an active member in good standing of the bar of admitting state…" The Rules employ a similar terms, "good standing of the bar" with the code language, "good moral character" (2006).

Between the Interpretation and Amendment

In the assignment of this week, I was concerned how we interpret these terms used both in code and rules of the State of California. This issue would not be unusual and can be seen a type of contributor to many disputes involving the dismissal action from the state bar across the jurisdictions. I may recall on several guidelines in contemplation of proper or permissible interpretation. As Newman suggested, the interpretive method or reality would a little differ from that of statute when we take account of same issue on the statutes (1947). The effect from his discourse led me that the "plain language rule" and consideration of "purpose in view" may govern most of challenges arising from the interpretive doubt. In this purview, I have suggested some elements of understanding on "good moral character" or "good standing at bar." It seems to improve the regulatory dealings as more certain and predictable for the interested parties that we explore the reform of regulation. As we learn, the interpretation of regulation is some of feeble way given a void of political legitimacy on the part of state agency. In some cases, the Court merely treats it as a fact than law. In order to be a law, we generally share an awareness that it should be consistent in application, objective in coercion, and leveled onto the general expectation and vested concept or rights. In the case of fact view than law, the Court might find as contrary or different from other places of regulatory effect depending on the merit of evidence and power of persuasion from the counsel on the meaning of regulatory terms or phrases (Murray, M.D., Desanctis, C.H., 2009). On the contrary, the province of law generally falls within the responsibility of Court which is notwithstanding of counsel's assertion or emphasis. The evidence would not affect the

established laws but to be staged only relating with the determination of facts. The law is assumed as not tainted, but stands as it does, which should be distinguished from the party or counsel's work on the courtroom. The court may fail to apply the law correctly since they may come short on the precedent or neglect on the existence of statute. Nevertheless, the Court could not deny the command of law relying on the evidence or assertion of counsels. The distinction may be ambiguous, of course, when we take the foreign acts or law in the international quality of litigation. The court in some nations may consider the foreign laws as a fact other than law so that the failed counsel would be penalized for his unawareness of and passage from the favorable foreign laws. If the foreign laws are viewed a law, the Court is responsible to acknowledge its operability even without the counsel's mention or specification, the failure of which constitutes a cause of appeal to the State Supreme Court. Otherwise, it would be a fact so that it could not be appealed to it since the fact determination often would be out of the Supreme Court jurisdiction (Olson, K. C., 2014). We also might occasion if the Counsel's argument is directed to the dimension of law or merely urging a precise determination of fact. As the dimension of law is exclusively with the Court, the Counsel's argument on this focus should be merely suggestive and can even be foregone with no statement or opinion. The division of labor in the court practice and appeal system can be corroborative with this assumption between the fact and laws. The trial judge often would be urged on the importance of fact finding in his role and responsibility while the higher court would come less in this dimension of responsibility. The jury trial also underlies this assumption although the jury instruction is the kind of popular item that the appellate attorneys contended on its propriety.

Another aspect is that the interpretation may under-serve the interest of stakeholders or falter with the due process of law and procedure commanded by APA and others. The comment and notice would be required to respond with the Federal Registra. The public conference or forum to debate the policy or regulations has to be duly processed to serve the principle of democracy. Hence, the amendment or reform would often be more effective and legally certain to meet the challenges more safely on behalf of state agency (Newman, F., 1947).

A Suggestion for the Reform of California Code and Rules

Collectively from the above version, I suppose that the reform or amendment of regulations would yield a better response unless other compelling reasons are present. In consideration of types in amendment, the classification may be applied such that addition, deletion, change and complementary. The additive amendment would fill a lacking or insufficiency of regulatory terms or phrases. For example, the automotive may be added with the passenger cars in the regulation of carbon emission. The deletion amendment would be void the existing terms or phrases since they are unnecessary or impair a coherence of regulations. The change amendment would occur if the regulatory terms or phrases are replaced with new ones which the state agencies find to make an efficacy or need to increase

an efficacy of. In terms of the Code and Rules I address in this post, these types of amendment would be implausible since the current language is essential to regulate the admission of state bar. The terms, "good moral character" and "good standing at bar" are truly uniform which likely appear in the kind of rules from virtually all the jurisdictions of United States. Nevertheless, the dispute arises not infrequently which raises the interpretive controversy in specific instances (1947; APL, 2006; BPC/APL, 2014). Therefore, it seems adequate to reform the existing code and rules in the form of complementary amendment. The case laws would be a useful reference in contemplating a language of new amendment. I also suppose that this approach would often be employed in dealing with this kind of administrative needs. As follows the provision of code and rules, I suggest to enact the complementary ones which illustrate the elements of case law with respect to the definition and legal status. In the pertinent part, the new clause will be inserted as complementary to find a good moral character (i) absence of conduct imbued with elements of moral turpitude (ii) qualities of honesty, fairness, candor, trustworthiness, (iii) observance of fiduciary responsibility, respect for and obedience to the laws of the state and nation, and (iv) respect for the rights of others and for the judicial process. The other amendment will ensue; (v) In determining the moral character, the national constitutional standard of freedom of speech and press should be held as governing; (vi) a petit crime and crimes sorted to be unrelated with the moral character as provided in the attachment should not be affirmative in finding (i); (vii) the proof of showing his or her good moral character should be duly presented by the applicant.

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XVI. The Legal Research and Interpretation of State Regulation

On the State Regulation

The state government is responsible to enact the statutes and administer the state laws as well as public policy. The state government generally assume the role and function in the scheme of tripartite paradigm, as well as check and balance among another. The branches are the generator of state laws, which however, should not contravene the federal laws as a matter of federalism. The typical names of state law would be plain, while the Governor and administrative agencies of state would be more flexible in creating a variegated name of regulations. That would not be same as the practice of federal government, as we have experienced a scope of titles to denote the regulations therefrom, i.e., orders, proclamations, regulations, code, messages to Congress, guides and directions, private advice letter, and so. In the state government, the office of Governor often would dispatch the commissions and initiatives or plans and strategy, but the state regulations would be called simply as executive orders and administrative orders. The state of Illinois provides a fine profile of e-government in their public web site, and the information on the state statutes was open to public notice. It includes the bills and resolutions besides the current laws. The website also provides the process that the specific bills become into a law as well as the Illinois Handbook of Government. In terms of legislature, we can identify two sources of action as denoted the public acts and statutes. The public acts would cover the funds, budget and refunds, which relate with the power of purse ascribing to the legislature. The compiled statutes were organized to enhance a systemic discourse to the public use. The subject matter began with the Government, to education and election, through the transportation as well as business and employment. It is totaled at nine sections in accordance with the public matters concerned. Each section is divided into several subsections, which include a scope of statutes. Interestingly, one section is noted in the name of Regulation which is however the statutory acts created as follows the legislative procedure. In this way, we could locate the state regulations, but it would not be so easy if the state regulations pose the challenges involving an interpretive doubt.

A Regulation of State Agencies on Bar Admission

One state regulation I chose to make for this assignment is the professional code of judicial branch. The state government tend to enact regulations in the fields of public health and commerce or environmental protection more than other subject matters. The regulatory measures would be in compass, but would not be frequent as to the interpretive disagreement. In many cases, the key word, “state regulation” would involve the controversy if the state authority can constitutionally exercise its power involving the key clauses of constitution. For example, the commerce clause and interstate trade commission would be concerned whether the state commission could determine the price of electricity or rate of intrastate bus fare. The Court may rule that the disparity between the interstate and intrastate bus fare would offer a most powerful basis to accept a petition as to increase the bus fare filed by the intrastate bus businesses. Hence the state commission would be improper to deny a petition even though their investigation was through and comprehensive and the judgment was alleged sound squarely from points of policy consideration. In the ruling, the “state regulation” should be treated impotent, which, in this case, however, is merely heard as the kind of adjudicative or administrative decision other than general prescriptions. So we see some difficulty in many

instances of search if any terms or provisions exist or involves any interpretive doubt on them (Murray, M.D., Desanctis, C.H., 2009; Olson, K. C., 2014). Many cases deal with the interpretive issues of "state statute," especially relating with the state criminal justice system, but we would often fail to match exactly with the lower norms, what we call "state regulation." The cases cited in the article of this week could make us generally futile if the regulations are of federal nature, or related with the state statutes, or outdated ones untraceable within the LexisNexis. From this backdrop, I found the professional or business code to be workable serving the learning of interpretive challenges on the state regulation. The rules regulating admission to practice law in California are a state regulation I will explore to discuss the interpretive issue. It was enacted under the authority, i.e., the business and professional code division 3, chapter 4, article 4. The chapter 4 covers attorneys and article 4 prescribes the admission to practice of law (APL, 2006)). The number citation of this code is Cal Bus & Prof Code 6064 (2014). The Rules are considered as amended in 2006. According to the code, the Supreme Court may admit to the practice of law any applicant whose qualifications have been certified to it by the Committee of Bar Examiners (BPC/APL 6064, 2014). To qualify, an applicant has the burden to demonstrate that he or she is possessed of "good moral character." The Rules stipulated the attorney exams, as provided in Rule IV Sec. 2, "An Attorney applicant who has been admitted to practice in a sister state, or any United States Jurisdiction, possession, territory….may elect to take the attorney's Examination……has been an active member in good standing of the bar of admitting state…" The Rules employ a similar terms, "good standing of the bar" with the code language, "good moral character" (2006).

How to Interpret the Regulation

I am concerned how we interpret these terms used both in code and rules of State of California. This issue would not be unusual and can be seen a type of contributor to many disputes involving the dismissal action from the state bar across the jurisdictions. I may recall on several guidelines in contemplation of proper or permissible interpretation. As Newman suggested, the interpretive method or reality would a little differ from that of statute when we take account of same issue on the statutes (1947). First of all, the interpretation of state agencies could not be afforded as the kind of law status, which is received as mere a fact or one time adjudication. In other words, it lacked the quality as an objective norm, which must be invariable and common in application or enforcement. This can result that the evidence or lawyer's skill as presented or effected in a specific case would wage the outcome of case differently. Therefore it is no surprise that the interpretation turns to be impotent in many cases, and the Court would consider as less seriously. The authority of regulations is also one good reason that the interpretation was deemed ineffective or invalid in cases. The doctrine of federal supremacy also bars the regulations and interpretation of state agencies to be null which is not reconciled with the federal purpose and interest. Second, the interpretation may be present in more of formality when it is shrouded as amendment (1947). The amendment perhaps could work most effectively if the state agencies prefer it to be invariable and consistent as the kind of law. Especially, the notice and comment requirement as well as other procedural concern would force the agencies to take a step and process necessary to enact amendments. In this case, the interpretation could not suffice in executing their responsibility as a generator of law. Third, we still see a need of interpretation if the terms or phrases of state regulation are ambiguous or vague. In this case, we can imagine several principles and

standard of practice. The extrinsic aids could be exploited, which generally leads to the respect of state practice and vested credible relations with the people or interested parties. The maxims often urged in the interpretation of statutes also could operate to support a more plausible view on the disputed terms or phrases. The policy of the regulation and administrative intent also are relevant if the court constructs a true meaning of regulatory provision. In my sense, the basic distinction could be set between the plain language rule and some constructivist approach, especially as stressed by Newman, "purpose in view" (1947). The difference, however, is that the Court perhaps would have more than leniency in the case of regulations than statute. Hence the application of plain language rule would fare in a limited ambit in the phase of regulatory interpretation. The "purpose in view" also implies a flexibility and soft nature of engagement when the courts work on the interpretation of regulations other than statutes. Importantly, however, the need of interpretation arises only in the clearer context as Justice Frankfurter reminded "fair content between two readings. Hence, the "interpretive doubt" would not exist "when a particular reading is sponsored by [literary perversity or jaundiced partisanship]. Given if the agency's interpretation should be objective as a norm, this point is critical since the public is affected normally by the fair of language other than discrete ascription.

In interpreting "good moral character" or "good standing at bar," I will consider the operation of plain language rule and purpose in view doctrine as suggested by Newman. In terms of literary definition, the good moral character requires a personal quality and basic element as a human. When we consider the approach of "purpose in view," it should include an expanded understanding to cover the professionalism as a lawyer. Therefore, it comes short if we only investigate the personal nature of morality, but the traditional role and expectation or utility as a lawyer should have to be taken into account in interpreting its true meaning. In this sense, the good moral character can be found to admit the bar applicants into the Bar of California when the conditions are met (i) absence of conduct imbued with elements of moral turpitude (ii) qualities of honesty, fairness, candor, trustworthiness, (iii) observance of fiduciary responsibility, respect for and obedience to the laws of the state and nation, and (iv) respect for the rights of others and for the judicial process. Especially regarding (iii) and (iv), we can agree that the lawyers especially are demanded of those qualities. We can add some thoughts to define the good moral character more practically to respond with the specific issues. First, the first requirement often leads to background check, hence, tend to be retroactive. From this nature, the specific guideline must be set forth clearly and prescribed in sterner terms. A past misdemeanor or petit crimes has to be excluded and the nature of crimes must be provided or interpreted properly to relate with the moral turpitude element. Second, the requirement has the purpose to shape and maintain a proper identity of lawyer profession in the society. This is generally provisional and affirmative, neither least nor protective in recognition so that the interpretation may not be presumed in the interest of bar applicants (1947). Hence, the understanding of regulatory terms can well be neutral and in the interest of administration if the interpretive doubt arises. It could have an attribute of quasi-criminal dealings in some sense, but should be made distinct given the status and quality of bar organization. Third, the liberty to beliefs and thoughts or academic freedom should not be abridged, which otherwise is safeguarded as a matter of constitutional freedom. That is because the lawyer is constantly learning and need to provide a quality service. Often the nations have the statute of anti-sedition or communism, which is not an exception in the US. The rules need to be construed in the same or similar extent with the lay

persons, which needs to be weighed according to the kind of rules, for example, clear and present danger rule. That is because the rights are fundamental and deserve universally so as not to be chilled.

XVII. Local Laws and Smoking Regulation

One County Ordinance

The local law under consideration concerns a smoking, and my search was based on the website named "Municode." The website provides the municipal codes and ordinances corresponding with the respective state (Murray, M.D., Desanctis, C.H., 2009; Olson, K. C., 2014). I chose Franklin county, state of Washington, and the county ordinances were marshaled in accordance with the subject matters. The titles would be structured similarly with the laws of federal and state government with some attributes as distinct. For example, the kind of titles, such as public peace, morals and welfare, streets, sidewalks and public places, buildings and constructions, or zoning, would be most adequately dealt by the local government. The Municode provides a fair extent of service including the information on the adopted not yet codified ordinances. This seems partly because the ordinance is most direct to govern the ordinary citizens in their public lives. This point also offers the main theme regarding the research of local laws, which was highlighted to deal with the study goals of this week. The regulation of smoking can show the context most palpably that our routine days could be affected. The ordinance is officially numbered, and thought to be cited in that designation, which is Smoking, WA Code of Ordinances, 2-88 (1988). Within the 16 titles of total county codes, the smoking regulation is placed in chapter 8 concerning the health and safety. In that chapter, Chapter 8.32 provides the smoking issues in four sections, which cover findings, definitions, smoking prohibited where, and compliance (1988).

In the findings, the board of county commissioners provides their understanding of current standard or precaution based on the information and advice of national science. Especially, their emphasis was put on the innocent victims where the harms of passive smoking or side stream were seriously cited. It also highlights an impact on the officers and employees with preexisting health conditions. The interesting point in the finding section is that the kind of "precautionary principle" was adopted to increase a preventive initiative notwithstanding the determinative scientific evidence being present. This idea has become a hyperbole in the law of environment, especially when the contention was exchanged involving the international covenants or treaties.

In the second section, three terms were defined as a matter of application, which include "common areas", "enclosed work area" and "smoking." For example, it provides [that] "common areas means that area enclosed by a roof and walls in facilities which are owned. leased or rented by the county…." (§2-88-1, 1988). I found the regulatory scheme comes lesser to the 2014 standard of Korean practice in major cities. As the ordinance was old, the detesters of smoking may anticipate some rigorous reform to forbid. The third section provides the place of prohibition, but with two exceptions. While the regulation restricts the freedom of person, the place or venue is limited to the common areas and enclosed work area. However, the scope of regulatees is encompassing once the place or venue falls within the

statutory definition. The ordinance set forth two exceptions to deal with a peculiar impact on the particular bargaining unit as well as the similar context of non-represented officers and employees. The fourth section sets forth a compliance in which enforcement shall be the responsibility of the elected county officials and department heads….Franklin County government" (§2-88-4, 1988).

A Reform Plan, Strategy and Collaboration

Over the period of time, the scientific findings have maturated in extent and tone of message that smoking is not only harmful, but also determinatively consequential to affect the public health. The litigations in private terms turned to take a phase, in which the many theories or views were presented to fortify its ill effect on the health condition. This led a federal measure to compel the side effect ads to alarm the smokers. The general sense of community neighbors would become hostile and adverse against the smoking behaviors. The extent of public pressure on rigorous regulation was surveyed that the poll shows a supportive stance at 62 percent. The paradigm of "precautionary measure" on the health and environment issues would become pressing for some reasons. One reason is good to support the constitutional rights to health and pleasant environment. Other reason might be supposed that the new frontier of businesses and professions could be exploited to fill the stalemate of capitalist economy. This version is not firm if the less developed countries stress the more advanced measure in terms of environmental protection while the health issues would generally be seen contrary. Generally, the businesses or industries disfavor the kinds of regulation in this aim and purpose since it requires more than expense and resources (Deibert, R., et al., 2006). The multifaceted nature of challenges would press the legal reformers who work on the due extent of smoking regulation in the Franklin County. The reform task force collected the data and views from various sources and outsourced for the suggestions. From the initial investigation, they decided to expand the scope of regulation, which aimed to include the open nature of public space. The item to be specified in the section of definitions should be projected over the urban park area, school sanitary facilities, bus stop and taxi station, gas station, public street designated specially for the public health and other policy objective, and other places as determined necessary of non-smoking by the board of county commissioners.

In the pursuit of legislative reform, the initiative of board in findings and outlining the specific measure is crucial to get through the end result. A likelihood to bend from the influence or other intervention seems minimal, but more recognition or shared governance would be desirable. It is especially demanding that the requirement and procedure simulate the kind of APA requirement, say, notice and comment or public conference for the exchange of stake and interest holders. The democratic process is the kind of ideal that policy makers have to respect. In the course of process, the normative deals and science push should be reconciled to yield any most acceptable consequence in reform. Hence, the collaboration would be necessary to satisfy various challenges against the smoking reform (Redding, R., &

Shalf, S. , 2001).

First, the county head has to be consulted although the board of county commissioners would enjoy the status as an independent agency in carrying their legal responsibility. That is because the compliance plan requires an extended workforce to reprimand and deter a smoking. Recall the reform is concerned of open space to the street workers and the compliance would touch on anonymous citizens. A budget to draw the workforce matters so that the board would share an issue with the county head.

Second, the county assembly or its head needs to be contacted to draw a support. The county head may oppose the reform plan, but nevertheless may be approved by the assembly. In this case, the kind of procedural requirement would provide a think-point in interchanging and consulting. For example, the Local Administration Act in Korea would set forth the terms and provisions governing a legislative process in the local government. The ordinances can be adopted by the assembly, but can be failed because the local head may refuse to sign. His or her veto may be overridden by two thirds of approval and finally becomes the local law. A legitimacy of passed local laws may be challenged by the local head in the Supreme Court. This would not be an exact replica in the law or practice of Franklin County, but casts an insight to be explored by the board. A direct consultation may not be available, which necessitates an alternative and option in ways to yield a same result. A local media could be used to create the atmosphere of reform and public conferences could serve the process in which the jurists, lawyers, county assemblyman, professors and concerned public could gather and discuss. Third, the team of legal affairs inside the county government could be an essential partner to phrase the language of ordinances and prevent from the possibility of litigation.

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Smoking, WA Code of Ordinances, § 2-88 (1988).

XVIII. Primary Sources-Local Laws

Smoking, WA Code of Ordinances

The local law in this assignment concerns a smoking, and my search was based on the website Municode. The website provides the municipal code and ordinances corresponding with the respective state. I chose Franklin county, state of Washington, and the county ordinances were marshaled in accordance with the subject matters. The titles would be structured similarly with the laws of federal and state governments with some attributes as distinct. For example, the kind of titles, such as public peace, morals and welfare, streets, sidewalks and public places, buildings and constructions, zoning, would be most adequately dealt by the local governments. The Municode provides an fair extent of service including the information on the adopted not yet codified ordinances. This seems partly because the ordinance is most direct to govern the ordinary citizens in their public lives. This point also offers the main theme regarding the research of local laws, which was highlighted to deal with the study goals of this week. As the reading materials exposes, the youth violence deaths, especially involving the school gun shooting agonized the policy makers and concerned citizens over the years and decade. We can approach from the federal, state and local ways of response and measures, which could reinforce among another to deal with specific problems and challenges. Nonetheless, it is reflexive that the federal prosecutions are minimal for reasons, especially involving the authority and structural dilemma, while the states are active to investigate and incriminate the violators. In this case, both governments can do good to collaborate, and especially the partnership being an effective option to press their paradigm of deterrence. I agree that the geographical location can make the quality of issue as differs, being empirically typical between the inner-city high schools and rural or suburban ones. In this light, we can share a thought that the interdisciplinary studies, psychology and sociology, would serve shaping the American legal system. This also requires a separate strategy to counter the youths gun violence, which leads to the importance of local regulations. The authors draw some possible measure involving the reform of school regulations and fostering the preventive environments. As the school themselves are most immediate and direct actors or specific planners, the assertions would come in comport with the concern of this week. The new theory in the civil liability also could be immediate, specific although it is indirect since the damages from the parents and school authority, not a violator himself, were intended to readjust. Hence, as the author make a succinct reservation, the effect to modify the traditional vicarious liability is dubious in terms of its deterrence effect on the gun shooting, but could complement with more direct measure on the potential youths. The crucial effect of local law in terms of deterrence and prevention also is hinted in other article, which discusses the impact of local regulations in unrestricting the syringe sales for IDUs. The test buy was planned to explore the correlative between the behavior of each pharmacists and reform of local law. The author empirically demonstrated the determinative factor lies with the personal belief of respective pharmacists whether to sell or refuse to sell the syringes. This can suggest that the local custom and community passion would play either to increase or decrease the legislative goals. This generally support that the local authority would do better to regulate. However, the research findings also suggests that the cause of trend between the 1996 studies and 2001 one would not be clear whether legal or regulatory reform actually brought a change effect or not. Given a divergent perspective on the effect of local laws, we can still agree that the local laws would symbolize the grassroot concept of

democracy and situates us within the kind of self-rule ideals or its experimental classroom.

The regulation of smoking can show the context most palpably that our routine days could be affected. The ordinance is officially numbered, and thought to be cited in that designation, which is Smoking, WA Code of Ordinances, 2-88 (1988). Within the 16 titles of total county codes, the smoking regulation is placed in chapter 8 concerning the health and safety. In that chapter, Chapter 8.32 provides the smoking issues in four sections, which cover findings, definitions. Smoking prohibited where, and compliance. In the findings, the board of county commissioners provides their understanding of current standard or precaution based on the information and advice of national science. Especially, their emphasis was put on the innocent victims where the harms of passive smoking or side stream was seriously cited. It also highlights an impact on the officers and employees with preexisting health conditions. The interesting point in the finding section is that the kind of "precautionary principle" was adopted to increase the preventive initiative notwithstanding the determinative scientific evidence being present. This idea has become a hyperbole in the law of environments especially when the contention was exchanged involving international covenants or treaties. This also pertains with the shift of burden of proof in the environmental damages or perhaps in the litigation of smoking harms. On the other hand, the Koreans would not be accustomed to this formality in the local ordinances. Findings would not precede or become a part of statutes or local ordinances generally in Korea. The dictum in the judicial style would normally not be present in the civil law countries, but it could be found occasionally in Korean cases. This may be some point to be investigated for the comparativists in law. In the second section, three terms were defined as a matter of application, which include "common areas", "enclosed work area" and "smoking." For example, it provides "[that] common areas means that area enclosed by a roof and walls in facilities which are owned. Leased or rented by the county…." I found the regulatory scheme comes lesser to the 2014 standard of Korean practice in major cities. As the ordinance was old, the detesters of smoking may anticipate some rigorous reform to forbid. The third section provides the place of prohibition, but with two exceptions. While the regulation restricts the freedom of person, the place or venue was limited to the common areas and enclosed work area. However, the regulatees are encompassing once the place or venue falls within the statutory definition. The ordinance set forth two exceptions to deal with a peculiar impact on the particular bargaining unit as well as the similar context of non-represented officers and employees. The fourth section sets forth a compliance in which enforcement shall be the responsibility of the elected county officials and department heads….Franklin County government." The elements, results and exceptions were placed in the below.

(Figure) Smoking and Local Ordinance of Franklin County

Elements	Results	Exceptions
● Common Areas ● Enclosed Areas ● Smoking ● Repeatedly Violate the provisions of Chapter ● Counseled by his or her supervisor for such violations provided	● Dismissal or Suspension	● When it occurs within the first sixty (60) days after the effective date of this chapter, April 1, 1988. ● A Particular Bargaining Unit whose exception Request Submitted and Concluded in the collective bargaining ● Non-represented officer and

		employees whose exception request is submitted and allowed

The ordinance would impact the community which is expected to diminish a smoking in the regulated places or venues. The legislative objective would be served more effectively than any other ambit of regulation because of its characteristic. First, it deals with the enclosed facilities which is notorious and on plain exposure among the officers and employees. The existence of regulation as well as act of smoking is obvious and the supervision or monitor would not be difficult. It is in contrast of gun regulation given the violation arises in a hidden attempt. Second, the relationship of compliance officer and regulatees are on employment and work companion which is paid and compensatory basis. Hence it is fairly odd that the paid workers do not comply with the work nature of command for forbearance of smoking. Otherwise, he or she would seek other workplace for his personal freedom. As concerned of youths gun violence, the unpaid and compulsory nature of public education in the high schools would be distinct. Third, the smokers could enjoy his taste in non-regulated places, which allows a most effect on the kind of regulation on one hand and, on the other, generally creates a common sense if the violators would go mad with any violation. The smokers, in this sense, could well feel aggrieved which poses challenges necessitating any plausible deals than any other area of regulation. In other aspect, the regulation may under-serve the intended aim to minimize the smoking and protect the public health. The possibility is that outside actors would dare to smoke since he may be one time visitor or contractors. Given the enclosed nature of regulated facilities, the chance would not be great, however. This is some point of comparison with other ordinances, for example, the municipal code of Gwangju, South Korea. The code includes an open nature of facility, such as some spot of public street and forum of public gathering. In this type of extended regulation, the violation would not be infrequent. The enforcement of regulation would be ineffective for reasons, for example, shorthand of compliance officer. One distinct challenge involves a constitutional controversy in Korea, which is uncertain in the case of US public administration. A general agreement against smoking seems to be created, but the disproportionate measure may be challenged since the intervention may abridge the personal freedom.

XIX: The Legal Research and On-Line Sources

The International Sales Law as a Policy Issue

It is assumed that I might be called upon to join the working group for an evaluation of diplomatic strategy whether to sign the CISG or not. I had been working long years as an international trade lawyer in the law firm, and my competence and expertise would range over the kind of laws, commercial law, international trade and competition law, as well as intellectual property. The working group was comprised of four practitioners on the concerned area, two commercial diplomats, two professors and one judge as well as the team leader from the treaty bureau of foreign ministry. The CISG was envisaged decades ago in the initiative of UNCITRAL, one special agency of UN devoted to the uniform private law and in the end to regulate the international sales law uniformly. I was specially requested to investigate the legal aspect of CISG and comparative analysis with the US case. It involves a policy area of commercial diplomacy, which is highlighted as important for the national economies of special status. The nation is adjacent with one of G2 economies and world second major power in the global economy. The national economy is highly dependent on the international conditions while the export and trade are major portions of it. It is a small country, but has achieved a great deal of economic development in the short period of time. It is now generally considered as one of developed nations in the world, but the prospect seems unclear because the international arena of economic battle has turned to be challenging. The CISG is one of most dominant norms as a uniform private law for the sale of goods, It is an international treaty, but includes the details of provision analogous to the domestic commercial code. For reasons, CISG is treated as the kind of domestic laws, meaning that it brings a serious consequence on the business entities of nation. Hence, the advice and findings of working group is very important that the government showed an intent to rely on the final report (Murray, M.D., Desanctis, C.H., 2009; Olson, K. C. (2014).

The Websites and Assessment of Usefulness

The Global Sales Law Project (GSLP) is a non-profit organization based in Bangalore, and publicly represents themselves as to its organizational goals, "…promote CISG research and related policy, litigation and legal education" (2014). It seems a research association based on the Faculty of Law, University of Basel, as performs a research project, publishes its findings, and proposes the recommendations while the exact source of research income or funding would not be identified (2014). The website seems neat and prepared to serve their project goals, which generally seems insufficient for the researcher in my case. It seems generally true that the kind of non-profit organization would exhibit a similar nature of deals in the scope of provision, extent of engagement, and attribute of organization or nature of objective (often in public cause). Their engagement seems not full-time based and lacks the kind of whole devotion or entrustment about the information service. They are professors or lawyers who intend to increase their expertise and fame as well as extend their reputation

or interaction with the group of concerned people. Their main job seems not related with the website, and the funding source would be from their personal purse or nominal income from the management of website. The website seems relatively comprehensive and neatly organized in due focus on the scope of sources. The legal information, however, seems to be put on public use by connecting with other main provider of information. Thus the way of provision is mediate, which also can possibly be short in terms of coverage and time alertness. The recent CISG case laws could be confirmed finally as of July 25th, 2014, which seems less updated if compared with the competitive provision of LexisNexis. The legal texts and commentaries were made accessible while the access points are based on the first or last name of authors. In this research work, it seems to be least useful since the Asian context of consequence and interactions were under-dealt or lacking (2014). The comparative purpose of studies could be served, but may not be with hundred percent satisfaction (Whisner, M., 2007). The information would not be exhaustive, especially in concerns of the US aspect. This implies that the assessment of public websites in terms of legal research mostly is depending on the individual situation of researcher.

One other public website available for the CISG research would be the International Institute of Commercial Law managed by the Pace University Law School (Cohen, M., 2007; The Institute of International Commercial Law, 2014). A managing professor of website is Albert H. Kritz. It seems comparable with the GSLP, but can be seen more than provisional, hence, more useful. The system of website has a neater structure and considered more structured and easier for the fast, convenient and economical research. For example, it offers the Chinese version of CISG text, which follows an extended scope of foreign versions including Lithuanian and Korean. The cases in coverage seem more exhaustive (2014). The website also includes the drafting of CISG contract, ambit of scholarly writings on the CISG issues as well as legislative history. The website seems to collect an ample scope of materials relating with the CISG laws. Its compilation would likely be surprising, which, in some surmise, outpaces the LexisNexis coverage. The ways to search and to interact within the website system would be convenient and expedient since it was focused and specialized. I am not sure if the Pace University would employ a technological aid to improve the function of webpage. But the general exposure of lawyers to the LexisNexis and Westlaw may create a feel to be naïve or complex on the website. Except from that facet, the website seems most authoritative on the CISG research. An insight from my experience is that (i) the public cause of web provision generally seems less useful as of its nature (ii) the special commitment with a ties of international reputation could make it feasible any more improved scene in the legal research (iii) in aspect of free service, the funding and support of sponsors seem highly consequential to affect the quality of information provision (iv) a wiser researcher needs to exercise his situation in consideration of specialty of issues and quality of information provision service.

General Thought on the Online Resources

Between the Traditional Ways and Online Research

The online community incurs a vast of general attitude as transformative on the global public. One empirical study suggests that the contemporary neighbors would incline to avoid memorizing. The brain response falls less responsive to store the information in person probably because the online sources would guarantee a search. This militates against a strains and capacity of brains, which may spoil the contemporary person in some dimension. The online interaction also exacerbates the traditional value of privacy and confidentiality involving a person and businesses. The trade secret can more easily transgress and a personhood could suffer from the invasion of privacy. A plagiarism would face the procuring conditions, and the issue of intellectual property is seriously contended to meet new challenges from the internet mode of lives. As the researchers are a contemporary personhood, the development involving the on-line research shares an extent of common problems as stated. The researchers would prefer a readier and more expedient reality exploitable from the online sources. The traditional attitude of researchers gradually becomes less tense. This brings some a of reflections (Cohen, M. 2007; Whisner, M., 2007) : (i) Are the online sources reliable and provide a due authority to strengthen our research? (ii) Is it all the way through effective if we stay at home doing research in the face of PCs (pajama way of research)? (iii) What do we see any developments, bearings or negative aspect from the traditional sources, often print materials to the online exposure of legal information (Researching law and history)?

Between the Fee-based and Free Online Sources

In evaluating the usefulness of online providers, the standard would bear the quality of legal information, extent of coverage and organization of website to suit with the ease and convenience in meeting the need of researchers. Overall, it is hardly deniable that the major commercial services generally would come salient or superior to serve the researchers. The information is paradigmatic and comprehensive or exhaustive, most updated from a competition, and well-structured to enable one-stop solution. Perhaps, the expert group and business ties with the eminent lawyers or professors would bring such intricacies of system. The technology team and aids would enable to maintain and enhance their quality service. Generally, free websites would not be comparable with them, but the special issues or adjusted effort may bring same or comparable consequence. That is because the special area of research question may work to set off the general low profile of website while many factors may complement as an advantage. The PULS CISG website is one notable example in my evaluation. The GCL website is one of specialized public website on the same issue, which seems a little more powerless than that of PULS. Overall, I believe that three websites seem to provide the excellent assistance for a CISG researcher. One concern is the kind of Pajama research attitude. The two free websites have a contact address to inquire and ask for a help. They are managed by the professors and experts on the CISG law which could be exploitable beyond the home stay research. It is unlikely to interact with any legal expert and

on the substantive aspect of research in the case of major commercial providers. In this aspect, the two free public websites could be more useful. It is especially interesting to define a student section in the website, and also provides the information on the LLM/SJD studies of CISG.

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The International Sales Law as a Policy Issue

I was called upon to join the working group for an evaluation of diplomatic strategy whether to sign the CISG or not. I had been working long years as an international trade lawyer in the law firm, and my competence and expertise would range over the kind of laws, commercial law, international trade and competition law, as well as intellectual property. The working group was comprised of four practitioners on the concerned area, two commercial diplomats, two professors and one judge as well as the team leader from the treaty bureau of foreign ministry. The CISG was envisaged decades ago in the initiative of UNCITRAL, one special agency of UN devoted to the uniform private law and in the end to regulate the international sales law uniformly. The consulting and drafting work had taken a decade of hard track of work from the challenges of differences in the national legal system, and was completed in early of 1980's. It turned to be open for the signature of nations, and had been successful attaining a number of nations as a member state. The member states of CISG amounted to nearly 100 countries as of the date 2014, which is in sharp contrast with the Hague convention concerning the same area of laws. Until now the home nation has not signed the treaty for reasons. One of them arises from the statute of limitations which governs the inspection and default claims. The period of time to raise a default claims upon inspection shows a substantial disparity with the national code of commerce. Perhaps a scope of reasons raising a disagreement and problem of ambiguities about the effect on the national businesses could well be identified with a scrutinizing effort of the working group. The research and consulting session was organized by the bureau of FM, and it funded to support the three months project (Murray, M.D., Desanctis, C.H., 2009). The interim meeting will be held in the mid date of project, and the final report from a respective panel will be reported around the days before one week of final conference date. I was specially requested to investigate the legal aspect of CISG and comparative analysis with the US case. It involves a policy area of commercial diplomacy, which is highlighted as important for the national economies of special status. The nation is adjacent with one of G2 economies and world second major power in the global economy. The national economy is highly dependent on the international conditions while the export and trade are major portions of it. It is a small country, but has achieved a great deal of economic development in the short period of time. It is now generally considered as one of developed nations in the world, but the prospect seems unclear because the international arena of economic battle has turned to be challenging. The CISG is one of most dominant norms as a uniform private law for the sale of goods, It is an international treaty, but includes the details of provision analogous to the domestic commercial code (Olson, K. C., 2014). For reasons, CISG is treated as the kind of domestic laws, meaning that it brings a serious consequence on the business entities of nation. Hence, the advice and findings of working group is very important that the government showed an intent to rely on the final report.

The Websites and Assessment of Usefulness

The Global Sales Law Project (GSLP) is a non-profit organization based in Bangalore, and publicly represents themselves as to its organizational goals, "…promote CISG research and related policy, litigation and legal education" (2014). It seems a research association based on the Faculty of Law, University of Basel, as performs a research project,

publishes its findings, and proposes the recommendations while the exact source of research income or funding would not be identified (2014). The association also contributes to the enhancement of legal education and fosters the authors to produce legal textbooks suitable for law students. Their task and responsibility appear to be stretching into the legal practice, and may be led by one career European international lawyer. It consists with the law professor, professionals and law students, and manages an international network with the global universities in the mainland China and Europe. It seems to operate the publication service with the support of university. The website seems neat and prepared to serve their project goals, which generally seems insufficient for the researcher in my case. It seems generally true that the kind of non-profit organization would exhibit a similar nature of deals in the scope of provision, extent of engagement, and attribute of organization or nature of objective (often in public cause). Their engagement seems not full-time based and lacks the kind of whole devotion or entrustment about the information service. They are professors or lawyers who intend to increase their expertise and fame as well as extend their reputation or interaction with the group of concerned people. Their main job seems not related with the website, and the funding source would be from their personal purse or nominal income from the management of website. The website provides a legal informatics section which can be located by clicking, Database, Legal Texts, Materials, respectively (2014). The website provides Useful Links, which is sectioned in The CISG Advisory Council, Schlechtriem & Schwentzer Commentary, CISG Networks, Related Conventions, Arbitration, International Organisations, Associations & Institutes Research (2014). This style generally does not appear in the commercial providers. As the region seems to be focused on Europe, the CISG cases would seem to be vastly concerned of European nations, but also complemented with the US case laws. The version of CISG was available in UN official languages, so that European lawyers could be much helped. The translations were offered in other languages, for example, Italian, which would enable an extended use (2014). This is the point of comparison with the LexisNexis since it is entirely on the English basis of service provision. In the above website, the Chinese or Japanese service was not found, which implies a foundational disparity of legal studies or research. The regional basis of approach in legal studies needs to be encouraged given the present structure and reality of legal circles. The website seems relatively comprehensive and neatly organized in due focus on the scope of sources. The legal information, however, seems to be put on public use by connecting with other main provider of information. Thus the way of provision is mediate, which also can possibly be short in terms of coverage and time alertness. The recent CISG case laws could be confirmed finally as of July 25th, 2014, which seems less updated if compared with the competitive provision of LexisNexis. The legal texts and commentaries were made accessible while the access points are based on the first or last name of authors. In this research work, it seems to be least useful since the Asian context of consequence and interactions were under-dealt or lacking (2014). The comparative purpose of studies could be served, but may not be with hundred percent satisfaction (Whisner, M., 2007). The information would not be exhaustive, especially in concerns of the US aspect. This implies that the assessment of public websites in terms of legal research mostly is depending on the individual situation of researcher.

The common experience, however, tends to reveal that the convenience in search, economy of research operation, richness and systemic offering of information as well as accuracy or precision would be some strengths of the LexisNexis. LexisNexis is the most

useful resource for the researcher, who has to work on the comparative assessment with the US trade laws and international perspective on the Convention. As in other cases, a scope of important articles on the CISG has been listed, and the federal or state cases involving the controversy and interpretation of CISG provisions and its statutory meaning could be traced with other helpful context of offerings. The information is being updated enabling an immediate reference of cases rendered days or weeks ago. The coverage is wide, and especially I have drawn much of benefit from the message of President, which offers a deep analysis of respective articles in terms of law and public policy aspect. The resource was featured in the International Legal Materials, vol. 22, no. 6 (1983). Its bluebook citation would be 22 I.L.M 1368, and published by the American Society of International Law, Washington, D.C.

An Insight in the Concern of Legal Research

One other public website available for the CISG research would be the International Institute of Commercial Law managed by the Pace University Law School (Cohen, M., 2007; The Institute of International Commercial Law, 2014). A managing professor of website is Albert H. Kritz. It seems comparable with the GSLP, but can be seen more than provisional, hence, more useful. The system of website has a neater structure and considered more structured and easier for the fast, convenient and economical research. For example, it offers the Chinese version of CISG text, which follows an extended scope of foreign versions including Lithuanian and Korean. The cases in coverage seem more exhaustive (2014). The website also includes the drafting of CISG contract, ambit of scholarly writings on the CISG issues as well as legislative history. The website seems to collect an ample scope of materials relating with the CISG laws. Its compilation would likely be surprising, which, in some surmise, outpaces the LexisNexis coverage. The ways to search and to interact within the website system would be convenient and expedient since it was focused and specialized. I am not sure if the Pace University would employ a technological aid to improve the function of webpage. But the general exposure of lawyers to the LexisNexis and Westlaw may create a feel to be naïve or complex on the website. Except from that facet, the website seems most authoritative on the CISG research. An insight from my experience is that (i) the public cause of web provision generally seems less useful as of its nature (ii) the special commitment with a ties of international reputation could make it feasible any more improved scene in the legal research (iii) in aspect of free service, the funding and support of sponsors seem highly consequential to affect the quality of information provision (iv) a wiser researcher needs to exercise his situation in consideration of specialty of issues and quality of information provision service.

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XX. The Legal Research and Issue of Death Penalty

The Issue of Death Penalty and Its Challenge

The issue of death penalty generally deals with the state criminal law, which is basically state issue in fundament. The issue can evolve to embroil a federal constitution in the US, the controversy of which often centers on the due process of law and eighth amendment on the cruel and unusual punishment. In that sense, it could be a federal issue. The issue would involve a human philosophy and societal justice which concerns the deep nature of state justification or questions a due limitation of criminal muscle. It questions the kind of state police power in the ultimatum of life interest which would be fabricated in such sacred attribution, for example, a God's creature or communal justice and national consensus (Abolition Proposal of Death Penalty, 1999; Berman, D. A., 2002). The policy issue of death penalty in the jurisdiction of Korea would also be characteristic provided if the legal history of nation is short of 60 years and massively imported from the foreign authorities, principally Germany and Japan as well as the US or other developed legal cultures. This requires a comparative study of laws or legal question would actually come in primacy in terms of legal research, and patterned practically in span of secondary sources, notwithstanding the legal books and articles or ways of thinking. In this backdrop, we derive the nature of legal research on the death penalty adjusted with the special context of research project.

First, it needs to be thought nationally which means to entail both traits as a state and federal issue. Second, it includes an international character of legal issue partly because it often has been highlighted from the human right perspective and because we share the institution in common understanding of humanity, philosophy and communal value. The Amnesty or UN, and regional compact of human rights tribunal, as said, would be notable leading us at the basic point. Third, it involves a scope of interdisciplinary concerns and viewpoints which makes it the kind of topic investigated and argued in terms of sociology of law. This would be especially because the issue involves a public policy and legal reform than briefing on a standing law (Amendment of Korean Criminal Code, 2010). That is also because the criminal policy area is communal and on the basis of value and passion of than specific community (2010).

The researcher is specifically required to answer such questions, (i) the status of abolition issue of death penalty, and a special request was added to provide an equal attention to (ii) the implications in terms of legal research and (iii) provide a comparative view among the US, South Korea, and global states, with an emphasis on the US laws and for a lesson of Korean authority. In response, I will (i) show the research plan briefly, and (ii) describe a search and course of deals, (iii) discuss three secondary sources, (iii) two statutes (one treat and one congressional act), several cases and one case brief from the US death penalty law (iv) describe the current status of issue and points of consideration, (v) some prospect for both countries, and (vi) finally some comment on the cost-effective research under the budgetary constraints.

The Secondary Sources

In the process of research on death penalty, we would instantly realize that the two major commercial businesses provide a vital convenience for the legal researchers. I utilized

the key word search, who simply typed death penalty in the search box of LexisNexis Window. It signaled about over 900 documents were retrieved among which 131 pieces are law review articles bearing that title within the document

The classification of 131 articles would allow it to effective to frame our search work, which was conducted basically on the titles of article (Cohen, M., 2007; Murray, M.D., Desanctis, C.H., 2009; Whisner, M., 2007). The classification can be grouped in five classes of work. First, the article could be dealt in-depth, which structures the thoughts and messages on the philosophy, socio cultural perspective and original nature of deliberation. It may develop in many cases, however, into the current law, system and public policy since the article is on legal perspective eventually. Second, the article may entirely profile and discuss the legal issues, which comprehensively concern the current status of death penalty in the national scale. It could be explicative, comparative and analogical or on criticism and often can include a policy suggestion or discuss the prospect (2009). Third, the article may deal with the specific case or state action to affect the issue of death penalty. Fourth, the issue may be dealt with the empirical evidence which can make it distinctive from normal jurisprudence. In this case we may find the usual method employed by the social scientists, which could be compared with the massively documentary basis examination of issues or research questions. Concerning the issue of death penalty, I found only several of empirical studies, which may be quantitative or qualitative with the interviews or in-depth contact on research subjects. Fifth, the international lens would characterize the article in this classification, which share more than empirical studies, specifically on the death penalty issue. I consider however the share would largely not shift over the scope of legal issues since the comparative or international perspective seems generally patterned in the behavior of legal scientists. The empirical studies in comparison seem to less fare which basically defines the legal research in some unique nature of qualitative studies. I also consider the aspect of public policy often come much entangled to orient the structure, content, and tone of legal research as well as a basic point of author's focus. The message of article on death penalty simply demonstrates a popular use of policy discussion in terms of purview and destination at which the author likes to arrive.

With respect with the research goal, the Korean sources of law obviously serve discussing and resolving a question. The database for the primary and secondary sources could not be located basically within the LexisNexis. In order of this ambit, The Korean Research Information Database would be most effective to collect the documents orienteering and basing the research work. That would, however, be restrictive on one of secondary sources, i.e., law review articles generally authored by the Korea-based professors of law and social science. Two articles from Korean authors were especially helpful (Joo, H.N., 2012; Lee, D. M., 2010). One public website, named Law@B and operated on the paid basis, has a coverage to include a pure nature of law review articles, cases of court and constitutional court as well as the statutes and executive regulations. In these characteristics, it can well be said of peer service provider in Korean context which is same with the Westlaw and LexisNexis in nature.

In sum, I successfully narrowed my scope of search down which includes the three law review articles, several cases in timeline and two case briefs, two statutes, which are from both countries, but largely from the US source. The cases could be identified in which I

utilized the law review articles to locate the specific cases (Olson, K. C., 2014). The statutes could also be identified in the same way, in which I considered the powerful role of law review articles to structure the whole of research operation. A citation of cases and other primary sources fortunately provided a fit within a schema of research. In respect with the court cases, I have introduced those which are perceived important and controlling in understanding the Supreme Court policy. I added one case brief. As the statutes generally stem from the state authority in this area of concern, the location of useful statutes would not be gone simply from one article which requires some more work to endeavor on the selection. But my focus on search was given to the federal statute since we conduct a comparative analysis between the US and Korea. One article bears a title to deal with the acculturation and death penalty, and other articles dealt in the international context and with the statutory way of approach on the issue. The three articles were considered to meet my purpose most finely to narrow my search on the statutes. From the articles, one international treaty and one federal statute were played out to provide a useful point to ascertain the policy preference of US.

- Three Secondary Sources : (i) Acculturation and the development of death penalty doctrines in the United States (ii) A study on unconstitutionality of capital punishment system (iii) Abolition of the death penalty and its alternative.

The Statutory Primary Sources

As the issue involves an international character and civil rights, we generally expect that the international covenant on civil and political rights (ICCPR) has come into play in shaping the issue in any normative way. The ICCPR is a multilateral treaty adopted by the UN General Assembly in 1966, and monitored by UNHRC. It came into force from 23 March, 1976, and the Covenant has 74 signatories and 168 parties. It is one of peer covenants of UN, others of which are the International Covenant on Economic, Social and Cultural rights and the Universal Declaration of Human Rights. The United States and South Korea are signatory state of this Covenant that entered the treaty in 1992 and 1990 respectively. The ICCPR deals with the issues, i.e., (i) rights to physical integrity Liberty and security of person (ii) procedural fairness and rights of the accused (iii) individual liberties and right to life, (iv) torture and slavery (v) freedom of movement, freedom of religion, freedom of thought, freedom of speech, freedom of assembly and freedom of association (1976). The Covenant is composed of preamble, 6 parts and 53 articles, the second optional protocol to the ICCPR is directly committed to the international confirmation on the abolition of death penalty. Therefore, it is generally called the death penalty treaty, and both countries have not yet signed this protocol. The second optional protocol is a side agreement to the ICCPR, and was created in 1991. It entered into force on 11 July 1991, and has 81 state parties in April, 2014. The Optional Protocol commits its members to the abolition of the death penalty within their borders, though Article 2.1 allows parties to make a reservation allowing execution "in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime". Some states, i.e., Cyprus, Malta and Spain, initially made such reservations, and subsequently withdrew them. Azerbaijan and Greece still retain this reservation on their implementation of the protocol, despite both having banned the death penalty in all circumstances (1976).

As we noted, the criminal policy of nation tends to implicate a multifaceted deals with the social ethos, passion, and sensibility of community. The 9.11 terrorism and occasions of terrorist attack has created the plausible backdrop for the anti-terrorism and effective death penalty act. The US has expressed a firm commitment to counteract the terrorism in ways that modifies the vertebra of criminal justice system and peacetime institution such as habeas corpus, period of appeal, and so. The act entered into force as of date April 24, 1996, and its citation for the published form of act would be Antiterrorism and Effective Death Penalty Act of 1996, 110 Stat. 1214. The legislative objective of the act was notoriously pronounced that the Senate and House of Representatives assembled enacted it to deter terrorism, provide justice for victims, provide for an effective death penalty, and for other purposes. The titles, subtitles, and sections are extensive in coverage which reflects a shock and adequate measure for the terrorism. The title I deals with the habeas corpus reform, and title II spells out affords and provision for the victims, which includes the mandatory victim restitution and assistance to victims of terrorism. Especially, the act sets forth a jurisdiction for lawsuits against terrorist states which recover the funds to compensate for the victims. The act also includes the provisions and requirement to be concerned of the prohibitions of international terrorism, i.e., prohibition on terrorist fundraising, prohibition on assistance to terrorist states, prohibition on assistance under Arms Export Control Act for countries not cooperating fully with United States antiterrorism efforts. The other titles deals with the important reforms, i.e., terrorist and criminal alien removal and exclusion (title IV), nuclear, biological, and chemical restrictions (title V), implementation of plastic explosives convention (title VI), criminal law modifications to counter terrorism (title VII). The act generally supports the argument that (i) the death penalty or criminal punishment is affixed with the culture and passion of community (ii) the US would likely be consistent to put emphasis on the state or national authority in managing the criminal justice system

The practice of various nations would differ that the international laws has an extent of variegated effect in terms of its operation as a national law. For example, the non-presumption doctrine of US court effectively subjugated the treaties or covenant as non-applicable on its face, which could be rebutted if such presumption was proven to be inapplicable. The court will review the treaty language, formality and quality of provision to determine if it could be applied as it stands or could not be done unless it transformed into any forms of domestic statute. The European states would have a strong aura in respecting the international norms while the common law countries would consider more aptly or in basic sense, as focusing on the dimensional concern. From this backdrop, the ICCPR often fail to play as any cardinal standard in shaping the laws of death penalty in respective nation. Once the Korean constitutional court considered the treaty in the case where the counsels argued an abolition of death penalty and cited as the basis of his abolition cause. It ruled that the ICCPR could not directly govern the nation as a law, but only could have a status as some of idealistic standard (Korean Constitutional Court, 2010). My investigation of US practice also reveals a same consequence that the treaty would generally no or little influence in the death penalty issue. This view seems to be evidenced with reference to the United States reservation and statement. The resolution of Senate provides in part:

"The United States reserves the right to impose the death penalty in accordance with the provisions of Article 68, paragraph 2, without regard to whether the offences referred to

therein are punishable by death under the law of the occupied territory at the time the occupation begins (1955)."

Pursuant to the Art. 6. Para. 5, the Covenant requires that sentence of death shall not be imposed for crimes committed by persons below 18 years of age (1976). This provision could raise a serious consequence to the domestic criminal system of death penalty, but that expectation could well be presaged to exclude its effect that (i) in 1992, U.S. Senate ratified ICCPR with various reservations, understandings, declarations, and proviso, stating in pertinent part (ii) U.S. reserves right, subject to its constitutional constraints, to impose capital punishment on any person (other than pregnant woman) duly convicted under existing or future laws permitting imposition of capital punishment, including such punishment for crimes committed by persons below 18 years of age (iii) U.S. declares that provisions of Articles 1 through 27 of ICCPR are not self-executing; (iv) Fifth Circuit recognizes validity of these Senate reservations (Senate Report, 1992) .

The Part III, article 6 of ICCPR might be pertinent to our concern (1976). However, a less profile of ICCPR seems because that the treaty did not render a definite commitment of abolition. It merely provides a principle which has same ideal and tones with the language of Preamble in US constitution. However, we can find a practical statement in clauses which could be applied specifically in the court. For instance, the first paragraph may operate to institute the national system on amnesty, pardon or commutation, although it should not be considered as binding. The Republic of Korea continues on the same policy attitude with no institution and system while it also assumed the treaty obligation in 1990 (Korean Constitutional Court, 2010). Hence, the signing of Second Protocol is governing and can only bring a legal effect to bind both countries. In other words, they can be said of same status while the abolition of death penalty is just one of statutory and constitutional issue. The age limitations, however, could resonate with ICCPR across the nations, and discussed in deep concern in the Supreme Court of US as shown later.

The Case Laws

As the death penalty is an essential ingredient of state criminal policy, it is not surprising that the federal case laws would not be a direct source to consult its policy implications or in terms of enforceable law. As surveyed in the article, it is indeed true that the death penalty is surely a matter of state criminal justice system through the beginning of 1970 since the US constitution began to take an effect. The first case profiled in the Supreme Court of US, *Furman v. Georgia*, in 1972, and the cases in this issue has followed over time. *Gregg v. Georgia* was decided in 1976 four years thereafter, and Coker v. Georgia one year after in 1977. The constitutional ground to review the cases generally raises a concern on the Eight Amendment and Fourteenth Amendments. From the provisions, the state government could not administer a cruel and unusual punishment, and be prohibited from depriving a life, liberty or property without a due process of law. In Furman, the first case on this issue and leading to a de facto moratorium on capital punishment throughout the United States, the court rules on the requirement for a degree of consistency in the application of death penalty. The impact of this ruling has ended in *Gregg* decided in 1976, in which the court specified two essential guidelines on which the state government should base their system of capital

punishment in order to meet the Eighth Amendment challenge on the cruel and unusual punishment. Both cases, in principle, sustain the general or theoretical comport with the legitimacy of death penalty, but the control of state practice infused the engagement or concern of court. In *Coker v. Georgia*, the court ruled that the rape crime could not be the basis to impose the death penalty (1977). The court, opined that rape alone does not cause serious injury since which made a highlight on the proportionality jurisprudence on this issue and decision on objective evidence. In *Enmund v. Florida*, the proportionality principle once again contested if it is constitutional to impose the death penalty on the crime of certain quality (1982). The court, by slim majority, decided that it disproportionately prejudiced the criminal to make the statute inconsistent with the due process of law. The crime was found heinous, atrocious, and cruel, but with no statutory mitigating factors leading *Enmund* to the death penalty, who was the driver of a getaway car in a robbery-murder of an elderly Florida couple. In *Atkins v. Virginia*, the Supreme Court ruled on the constitutionality of executing the mentally retarded individuals (2002). The case dealt with the specific issue of execution than prescription of statutes, and set forth the first kind of rule to outlaw certain context of execution. However, the court reserved a plenary scope of leniency with the state authority in defining the "mentally retarded" element. In *Thompson v. Oklahoma*, the Court was called upon to review if the execution of minor under the age of fifteen or fewer was permissible under the current constitution (1988). The court found it unconstitutional, but later in case, the scope of age faced with some limitations in *Stanford v. Kentucky* (1989). The court, in this case, upheld the constitutionality of applying the death penalty to someone who was seventeen years of age at the time of the crime. Interestingly, the issue of involving an execution of minor seems adjudicated on the evolving Eight Amendment standard. Hence, the decision in *Roper v. Simmons*, the Court found the execution of those under the age of 18 at the time of the crime to be unconstitutional (2005). We can note some implications from these several cases that Supreme Court respected the state authority in detail the requirement of death penalty or its execution on one hand, and the court turned on the "national consensus," or evolving standard of justice

One Case Brief

Title and Citation : *Enmund v. Florida*, 458 U.S. 762 (1982).

Facts of the Case

Petitioner and a codefendant, at a jury trial in a Florida court, were convicted of first-degree murder and robbery of two elderly persons at their farmhouse, and were sentenced to death. In the trial, he argued that he did not himself kill, was not present at killings, and did not intend that the victims be killed or anticipated that lethal force might be used to effectuate the robbery or escape.

State Supreme Court

The Florida Supreme Court affirmed. The court held that, although the record supported no more than the inference that petitioner was the person in a car parked by the side of the road near the farmhouse at the time of the killings waiting to help the robbers and

killers (the codefendant and another) escape, this was enough under Florida law to make petitioner a constructive aider and abettor and hence a principal in first-degree murder upon whom the death penalty could be imposed. Other arguments were thus irrelevant to petitioner's challenge to the death sentence

Issue

Is the imposition of death penalty for a certain specific crime, a robbery in this case, is consistent with the Eighth and Fourteenth Amendments?

Decision

The Court ruled that the imposition of the death penalty upon the criminal of robbery is inconsistent with the Eighth and Fourteenth Amendments (pp. 788-801).

Reasoning

(a) The current judgments of legislatures, juries, and prosecutors weigh heavily on the side of rejecting capital punishment for the crime at issue. Only a small minority of States allow the death penalty in the same kind of situation involving the robbery crime. The evidence is overwhelming for those concerned professionals to consider death a disproportionate penalty for those who fall within petitioner's category. (pp. 788-796).

(b) While robbery is a serious crime deserving serious punishment, it is not a crime "so grievous an affront to humanity that the only adequate response may be the penalty of death" (*Gregg* v. *Georgia*, 1976). The death penalty, which is "unique in its severity and irrevocability," is an excessive penalty for the robber, who, as such, does not take human life. Here, the focus must be on petitioner's culpability purely on the individual basis. (pp. 797-798).

(c) Neither deterrence of capital crimes nor retribution is a sufficient justification for executing petitioner. Putting him to death to avenge two killings that he did not commit or intend to commit or cause would not measurably contribute to the retribution end of ensuring that the criminal gets his just deserts. (pp. 798-801).

Analysis

In this case, the Court employed a same way of approach to categorize a crime in the specific purpose to determine whether the death penalty is permissible to restore a justice from the crime. A robbery was once again viewed as not “so grievous an affront to humanity” deserving the imposition of death penalty. From this ruling, the court view introduced in *Gregg v. Georgia* was reinforced meaning that the proportionality principle is one element predicated on the ultimate decision whether the death penalty is sustainable or not. The court also illuminated that the adequacy of death penalty has to be viewed in the shoes of individual participant of organized crime although the general criminal theory collectively

define the crime for a different quality of engagement in the crime. The court also deals with the ideals and objectives of criminal law, namely deterrence and retribution, which is viewed as little service in this kind of situation.

The Current Status of Issue and Points of Contention

The International and State Practice

Since World War II there has been a trend toward abolishing the death penalty. In 1977, 16 countries were abolitionist, and in 2012, 97 countries had abolished it altogether in 2012 according to the Amnesty International in 2012, 97 countries had abolished capital punishment altogether (2012). In 2014, seven have abolished it for ordinary crimes only and maintain it for special circumstances such as war crimes, and 35 have abolished it *de facto* meaning that they have not used it for at least ten years and/or are under moratorium (The Amnesty International, 2014). The United Nations General Assembly has adopted, in 2007, 2008 and 2010, non-binding resolutions calling for a global moratorium on executions. It was planned to realize an to eventual abolition. Although many nations have abolished capital punishment, over 60% of the world's population live in countries where executions take place, and about 90% of all executions in the world take place in Asia (Hood, R. & Hoyle, C., 2008).

The state generally has accepted this system as part of their criminal law, of course, in response with the kind of worst and most cruel class of crimes. The inculcation and increasing profile of scientific awareness began to lead a change within some of states in the nation. The State of Massachusetts seems important to turn the general sense of being granted toward a sensitive issue of public, which abolished it in 1984. Thereafter, seven states had abolished it which made a total of eighteen states with non death penalty statute. Michigan had denied to accept the death penalty far earlier before its statehood, and Wisconsin or other some has same wake of progress in the year of 1853 right after its statehood. North Dakota abolished in 1974, and several states excluded it from its criminal justice system before 1970. One statistic supports this view which was reported from Houston. In 1981, the murder rate in the city marked as worst in number among all cities of United States, which was 701. The state of Texas responded with revival of execution on the death penalty, and Harris County in Houston witnessed a sharp decline of murder rate. In 1996, the murder crimes dropped at 261 which is 63 % in reduction from 1981. The advocates contend that no scientific evidence firmly verifies the preventive effect. In contrary, we have a countervailing evidence from the state, US and UN. The State of Delaware reported an adverse trend of murder crime growth once it reinstates the death penalty. According to the FBI, no general truth could be said that the murder crime would diminish from the effect of death penalty. Canada outlawed the death penalty in 1975, but the murder rate per residents 100,000 has steadily declined, 3.09 in 1975, in 2.41 1980, and 1.78 in 2001, which indicates 42 % decline from 1975. The two reports of UN released in 1988 and 2002 commented, “The statistic consistently vindicated that the state need not fear of their policy change to make the death penalty illegal in the jurisdiction.”

The Constitutionalism, Philosophy, and Current Laws.

The controversy of death penalty still provides to fuel the contention and disagreement from the points of thought. Major issues concern if the death penalty is permissible under the liberal constitutionalism (Korean Constitutional Court, 1996; Korean Supreme Court, 1972). The second aspect involves the kind of policy ideals, such as deterrence, retribution and prevention or education. The third issue would deal with the international civilization in which the global jurisdictions would be questioned about the barbarian practice of cruel punishment, especially if embroiled with a political persecution. Finally, the group of thinkers raises an issue if the false justice may happen to divest the lives permanently. The interest to the life, limb and property right is a point of carnage from the monarchy and dictatorship (Korean Constitutional Court, 2010). Above all, the life interest is most sublime and basic which should not be derogated from the power of government. The preamble of US and German as well as Korean constitution has incorporated this idea as a root concept of governmental power. There would be no express mention specifically for the life interest or fundamental right to life, but the constitutional scholars and judiciary agree that it is implied, for example, within the 10th of Korean constitution. The provision expressed the human dignity and value, the central concept and ideals between the people or citizen and the government. This ultimatum on the life interest is self-evident because no other set of bill of rights would enter into any meaning (2010). The constitutional shield to ensure a free exercise of religion, freedom of expression, due process within the criminal procedure, right to union, right to decent housing and pleasant environment, and others would go futile if the life was divested. Then we question how we define the role of government to protect the life interest of people. Some thoughts argue that the right to life is absolute from the power of government. The logic and reasoning of this view asserts (i) its fundamental nature to be independent from the government (ii) the nature of constitution to be presumed of life itself. In their interpretation, the intent to spell out the bill of rights is the thread the constitutional drafters foreclose the divestment of life which is inconceivable. The Korean law and Constitutional Court generally have long espoused this view on philosophy (1972; 1996; 2010). From the counter-thesis, the view argued that the due process clause could logically offer the basis of death penalty since it presumes the divestment of life could occur on the condition that the due process of law is granted. This view was challenged to adapt with the Eighth Amendment which proscribes cruel and unusual punishment. The basic structure of argument in this dualism could be traced to the US jurisdiction. In other structure, the thought is that both combine to forbid an arbitrary or abusive use of death penalty. This leads to subsequent question in response with dualism (i) if the death penalty falls within the scope of constitutional language, unusual and cruel punishment; (ii) how the government deals with this issue to meet the due process of law challenge. The constitutional language in this view would generally be historical, cultural, or standard of decency on the power of government than the balance of value or proportionality. Then the challenge to the court involves the due process of law question how the statute should be civilized, if mostly required of reasonable prescription and procedural details to avoid the imbalance between the state and human being, to meet the challenge of due process of law. This context has been investigated to seek the case laws on this area. The cases on this issue would be restrained to the federal court, which implies that the state would generally not be an effective forum to debate on its constitutionality.

The issue generally compounds with the international interchange or civilized concept of understanding on the death penalty. The point of policy considerations can be approached from the perspectives. I may state two of them (i) it involves an important issue of state authority to prescribe the criminal justice system (ii) it is intertwined with the

progress of civilization and universal constitutionalism, political dissidence and disagreement within the general ethos and consonance of international community. Hence it brings some attention to the concept of continued learning to search for an optimal strategy of nation and diplomacy. Now a considerable number of countries had surrendered their death imposing authority by signing the second optional protocol of ICCPR. Based upon the finding from the research, we can state (i) US and South Korea adhere with the view that the death penalty is necessary to address the criminal justice (ii) it seems largely with a negative impulse to surrender that authority from the convincing evidence of ICCPR history and the Effective Death Penalty Act (iii) the case laws have played to create a domestic justice to respond from the principle (non-abolition) through its impermissible conditions, such as proportionality justice of specific crimes, execution of minors or mentally retarded defendants.

A Prospect of the Abolition Issue

My expectation is eclectic with mixed ways of policy response. Basically, the current institution would be sustained for a period of time. The death penalty is a lawful punishment to be reacted against any most culpable crimes, such as armed robbery and murder or rape, and treason. Nevertheless, Korean government has long employed some measure to reserve an execution as a matter of practice and at the discretion of Justice Ministry (Kim, D.J., 2012). That is to resonate with the progress of international cause and universal awareness. I would expect that two possibilities of policy progress or shift would be realistic for the future. First, the "death penalty, but reservation" policy would be buttressed to favor the international progress. The stage of execution would arise as a main vehicle to moderate two competing needs; (i) the need of death penalty as a criminal sanction (ii) its cruelty and international consonance. Second, the approaches of death penalty would have a focus on individual factors, such as age and mental state, and ways of execution.

I forecast on the above prospect since Korea is keenly affiliated with the American legal system and national security. As we see, the anti-terrorism and effective death penalty act even legalizes the kind of repressive action to increase the role and function of death penalty. The policy makers in Korea often would take a same pace and sharing with the US and be unlikely that the abolition would happen. The constant threat from North Korea would make us analogous with anti-terrorism country, notably US. As the criminal policy reflects with the social compassion and culture or history, the argument for civilized approach of abolition would have less option. Koreans experienced a bitter history of Korean civil war, and generally have an attitude and imagery of strong government to exercise the power of capital punishment. The culture and general awareness of Korea as involved with some of atrocious felonies also seems to push a precedence over abolition advocates. Some may argue that the Korean subscription to the international criminal court may promise a progress on the death penalty issue, but the nature of both issues seems not be congruent to one version. It is an international court which is restricted with a narrow scope of crimes. That should not be construed that Korean government would become flexible and liberal to throw away the criminal sovereignty to the international authority. The US and some major powers would show a reluctance to sign the treaty of ICC, and this may be viewed to buttress the difference of two nations in the criminal justice system. I disagree with the argument as the US ambassador made an effective reservation to bar any direct effect of death penalty clauses as viewed above. The ethos and policy attitude highly echo same with the Constitutional Court

of Korea (Korean Constitutional Court, 2010). According to the court opinion, the nine justices of CCK would agree to deny any binding effect of that international covenant

Some Thoughts on the Cost-Effective Research

The legal research would be financed in various ways, which depends on the status of researcher, nature and purpose of research, and many other contingencies where the researcher is actually situated. The legal research often would be lawyers who have a client, and their research plan should be structured under the budgetary restraint. The fees from the client would enable a research, and the ambit of research would be approached modestly and practically. Therefore, it would be most accurate as well as neat, whose focus is narrowed and intensified on the result of outcome and any best strategies to the interest of client. The research would be purported to answer the legal question and issues involving the client's case (Murray, M.D., Desanctis, C.H., 2009). This would be distinct from the general social science research where the work "takes eighty percent of a researcher's time to learn about an unfamiliar area and just twenty percent to provide a specific answer." Much time spent could be seen two distinct steps "(i) coming up to speed in the way governing a situation, and (2) searching for the specific rules that apply." These require different tasks and different approaches. It is necessary to think like a lawyer and determine the areas of law involved in a particular problem. Hence, the preliminary research is important to define the whole of research project, which would concern an investigation of factual situation, legal issues and areas of law, jurisdictional focus (federal/state/local), and formulation of tentative issues, and preparation to revise on the research progress (2009; Redding, R., & Shalf, S., 2001). As the sum of interest varies, the structure and quality of research would be affected in its scope and substantiation. For the hot cases, the law firm may expend special funds to support a research and task teams might be organized to address the sections of research question. Often the attorney's research falls within his special expertise and work hours, which is conducted on the basis of documentary examination. The legal research from a reformer or parliamentary expert staffs would be required of some fundamental thinking and practical point of policy disputes. The interdisciplinary work would be indispensable in many cases which could increase their power of persuasion. It requires an empirical finding to assess whether to legalize the sales of syringes for IDUs and the extent of effect from new permission laws. It could be more responsive and suit a specialized measure between the inner-city and suburban area of high schools given the empirical studies suggests a different aspect of socio, economic and psychological attributes between two groups (2001). In this case, the scope of research would not be limited to the province of law, and collaboration or team based approach may be necessary. The legal research would be conducted by the law professors and could have a characteristic in same elements and in diversity. The professor of legal history must be versed with the knowledge of history and their ways of thinking. The source of funding institutions may be in accord with their expertise and performance. In some cases, the department of culture and tourism may fund the research of legal historians, and the immigration agency may provide a research grant for the investigation of immigration issues which requires a joint work with the professors of other discipline.

In most of these cases, the budgetary concern is some critical part of research project which requires a professional ways of response (Murray, M.D., Desanctis, C.H., 2009). Two

points seem to come most instant, but needy to bear through the end of result. First, the research ethics should be respected. Some reporting would be adequate if the research is funded explicitly from the sources. Second, it is truly for the responsibility of research that process on most cost effective ways of research design and operation. The budgetary restraint has been no small barrier in my case, which pushes me to apply a strategy.

First, I would curtail the survey and interviews which was scheduled to create any empirical basis of current status in the death penalty issue. A scope of clergyman, psychologists, prisoners, victims, as well as other related group of people on this issue were included to turn the research project as grand and comprehensive. Over the progress, however, my scope of query specifically imparts an emphasis on the law and national as well as international legal system. This could make my research refined as well as cost effective.

Second, I applied for the research grant which is launched from the Korean government, Department of Justice. It provides a moderate amount of funds to meet the expense of this research. Korea is considered as a rising star in the international community economically, philanthropically and sociologically. The past imagery on state capitalism and stiff feel of developmental control generally seems to disappear. The growth rate turned to be reasonable from sharp march until the end of 1980's and K-pops assuage the global friends with the international hospitality (Kim, D.J., 2012). The stewardship of experts in specific field has increased, and the professional service can take a pair with the western states. The budget to support UN and international organizations has steadily increased which evinces the increasing profile of Korea in the global village. Most importantly, two Koreas still pose a problem and may be spent with an occasional time of concern from the global public, and the human rights, perhaps not irrelevant with the death penalty, are one of challenges (2012). The reality is that the UN office of human rights would be inaugurated in South Korea this year. In this stream, the research needs on the death penalty and its abolition can take a place, and 3,000 US dollars in award from the government has a purpose to promote a recognition and awareness of the issue.

Third, the publication will be sought with peers and companions in same concern and professional experience in which my research will take a chapter. The revenue from the publication could complement any excess of research expenditure to be restored to balance.

First, the research would be processed on the documentary examination and the basic tip could fulfill my situation to meet the budgetary restraints since it seems to prevent a redundancy and unnecessary deals of work. In the preliminary concern, a trustworthy secondary source would be referenced, such as treatise and law review articles (Olson, K. C., 2014). The encyclopedias, such as American Jurisprudence 2d or Corpus Juris Secundum as well as Wikipedia could be used to shape your ideas and approaches. It is advisable not to be discursive over materials, while one document often can lead to a number of other sources. In the in-depth stage of research, the Annotated codes and key number digests could help to progress. In this stage, your criterion to self assess your performance would be that "the in-depth research must be sufficient to give you confidence that your work is based on information that is complete and accurate.

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XXI. The Contemporary Legal Research

Introduction

A research in the contemporary times generally sees the kind of turns from a previous understanding and awareness. I may be more precise if I say transformations than the turns. The change is inextricable and hardly resistible, and more importantly, comprehensive, embedded as well as revolutionary (Schmidt, E. & Cohen, J., 2014). The issue for my final project concerns an abolition of death penalty and provides a comparative view between Korea and United States as well as related with the international response. It requires a scope of preliminary investigation and extensive source of legal information which would have a great potential to make a research unproductive or costly. I have some thoughts generally and specifically to improve the economy of research.

Some Thoughts and Strategies

First, the paradigm change is revolutionary to impact the general base of people (2014). Decades ago, the research or researcher only related with the class of professionals, such as professors, lawyers, career officers and cadres of enterprises. They would enjoy insulation and exploit their research work as an entrance barrier from lay people. Their large shelves at home study or in the room or corner of office thrust an impression that he or she is learned and knowledgeable. This impliedly communicates his or her prestige of social or professional success. The books and articles seem to symbolize a kind of monopoly which bears to exclude unclassified or non-professional workers. The change is remarkable that every citizen could benefit from the on-line sources of information, which, of course, is generally true of professional knowledge (2014). Now professors fear of plagiarism that students often are the kind of suspect. The legal research would turn on the help of digitization which revolutionizes to incur a new mode of research operation. About the query, the citizens and people can readily verify its truth or falsity with one clique within the personal computer. An enormous amount of information is currently flowing on the internet and on-line sources of reference, which shapes an informative and knowledgeable society. As the medical doctors warned decades ago, the precept is any most effective, "forbear from your intelligence or knowledge work for your health." Many of them now spend long hours a day to satisfy their curiosity and intelligent search. He or she may be well awarded an academic degree if to recognize their hard work on his PC. Nevertheless, this information age does not always bring a positive progress, which arouses the kind of issues, say, right of privacy, on-line fraud. In some cases, this transformation may lead to an inferior attitude of researcher (Whisner, M., 2007). My today's experience is one of exotic case. I have received an e-mail from Google CEO stating that I have been selected as one of twelve winners from the pool of Google users. The award money is enormous which stalls me for some time. The authenticity and reliability have hit my head, and I utilized a verification service website managed by the team of lawyers. It costs five dollars and remaining 24 dollars would be processed upon the progress of interaction. I am waiting for an answer from the team. Then the research nowadays is not limited to the basic context of our subsistence, but influences in any depth into the professional lives.

Strategy I : In order to make your research economical, please develop the strategy to make your activities and product as distinct from the work of general people.

This strategy is applied to my case, and requires me to sharpen a focus in terms of the shape and deals of death penalty issues. I have tried the secondary sources from scholarly articles, but need to treat them for the core of information and authentic issues to be investigated. That would allow to avoid a desultory and unnecessary or excessive work to search or formulate the research design.

In the second aspect, we can see that the research is sellable which is deeply intertwined with the protection of intellectual property (2014). This implies that a research is defined in the economic terms, hence, poses the challenges concerning the importance of cost-effective research.

Strategy II: It is advisable to use a bluebook citation form and keep trained with the legal writing skills. Avoid a redundancy in work so that we exercise a lesson and wisdom, such as keeping a note and stage-wise research plan (preliminary investigation, secondary and primary sources).

This maxim should be carried always to meet the time and budgetary constraint. It also coincides with the first point of lesson. The bluebook and APA style must be a vehicle to put an authority and weight to our research piece. For example, the anti-terrorism and effective death penalty act should be cited as instructed. Furman v. Georgia would appear in the adequate form of citation to bear your work as valued and classed.

Thirdly, a research becomes more salient to boost the industries and businesses in other concern. The creative economy requires an extent of collaboration from the science and technology. It is plainly true to consider the growth of Google and Amazon as a major enterprise in the world (2014). The ResearchGate or academia.edu also has a public commitment to breed the research professionals and to suit their business interest. This also can be thought in terms of benefit and challenges involving the cost-effective research. For example, the researcher may deposit his query in the process of his research so that quickly obtains an answer from a more experienced researcher on that specific question. It is needless to say that the Wikipedia is any most helpful source to gather the secondary information for the lawyers and professors. One point in this case, however, the websites and free sources are not exactly the kind of interest seekers, which have a hybrid of motives, then partly with a public cause.

Strategy III: Develop the ability to evaluate various sites, free and fee-based, as a source of legal information. Please be minded not to become an accidental tourist, or lost in the websites of legal information.

The reliability and authenticity would often be one of important aspect to evaluate a website. The commercial providers and government website tend to have a best strength, but in some cases, you can yield a most cost-productive or effective result as varying with your specialty of question (Olson, K. C., 2014). For example, a CISG researcher could benefit from the free website provided by the Pace University Law School. In the same effect, Korean sources could be consulted since it provides a useful reference for the death penalty issue. In this case, it is part of research elements which is special and indispensable against the LexisNexis, Westlaw and portals of US government. The context is similar in Korea between the fee and free websites. The sources of government branch have a trait, which are

most readily verifiable and reliable.

Fourthly, a research now can be viewed expansively, which has types of engagement. As in my case of lottery notice e-mail, the website provides the ads that the answer will be e-mailed within one day, but often in ten minutes or less. It is surprising that the lawyers themselves practice this kind of business on one hand, and the time to return an answer is such short. They are perhaps a specialization lawyer while the legal profession tends to shrink in its demand. The idea may pertain to an hourly charge often employed by the law firms and law offices. The professional researchers are advisable to shape an adequate ambit of work to meet the time and budget constraint. The professors may be funded by the institutions, such as NSF and NIH, agencies and departments as well as public organizations. That defines the scope and limitations of research generally. This could be same with the legal researcher or lawyers who struggle with the hourly charge and client's compensation. It is also true of career officers about a special grant for the project and time constraint. In this interest, it is wise to consult five hypothetical situations and research strategy as presented by Desanctis; "(i) When a statute, rule, or administrative regulation is involved (ii) When you have lots of time (and expense is not an issue), whether or not you are familiar with this area of law (the "more than a week" research plan) (iii) When you cannot or do not want to spend much time, but you are well familiar with this area of the law (the "2-5 day" research plan) (iv) You cannot or do not want to spend much time, but you are NOT familiar with this area of the law (v) No real time at all, whether or not you are familiar with this area of law (the "few hours to day" plan) (pp. 211-215, Murray, M.D., Desanctis, C.H., 2009)."

Strategy IV: Please consider the situation or contingencies involved with your research, and apply a different strategy to maintain a satisfactory balance.

In the death penalty issue, the Plan II would be properly trod to bring a cost effective research when we consider the classification of Desanctis (2009). The lessons for a typical dealing would be; (i) I can be thorough as I want; (ii) Read the cases cited in the annotations or most authoritative articles on my topic; (iii) Move on to a different treatise and perhaps a third treatise; (iv) Read several law review articles on point (iv) Make sure I have most up to date information about the law (v) Shepardize or Keycite my cases again and re-read the best authorities one more time (vi) Make copies of every authority if the cost can be met.

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XXII. Socratic Conversation

[Week 1]

Kiyoung:

Why do you think it is important for researchers to "undertake the international character of a legal question"? Explain.

Judith Fitzgerald

Dear Dr. Fitzgerald,

Thank you for the question. One reason would be that the globalization would accelerate with the advancement of technology and economic integration. The legal reformers for UN and WTO would need to know the private law of global countries. The uniform private laws, such as CISG, will require to review and resolve the international character of a legal question. The choice of law questions for the lawyers in the law firm would also compel to research on other countries. Since they like to retain a foreign corporation as a client, it is fairly necessary to find the better laws on their transaction and contract drafting. In this case, the lawyers would be disposed to search for the facts, practice and legal question of international character. In other cases, the comparative lawyers and legal scholars would prefer to study the law of other countries in due course of their professionalism. For example, the copyright holders in the US may have an interest to deter an unlawful downloading of their music recordings since this unfair practice could contribute to the loss of their income. They may like to know the criminal justice system of the unfair countries, and laws of copyright protection, legal culture and extent of civilization as well as the international status involving the WTO membership. In this case, the lawyers need to undertake a span of research questions to persuade the client. The lawyers of diplomacy or intelligence agency might have other cause for the international character of a legal question. Respectfully.

Hello Kathy,

Thank you for the informative post. I see there would be many similarities between the federal legal system and that of Ohio State. I may not be correct, but the Congress is known to override the veto of President by the two thirds supermajority of vote. Three fourths in the constitution of Ohio State seem fairly weightier which implies more a decisive role of Governor in the law making procedure. I may ask if this constitutional system could frustrate the wishes of Ohio residents. You mentioned that the Congress could enact on the jurisdictional issue of Courts comprehensively. How do you consider if the Congress would institute the special court of public matters, which could not be appealed to the Supreme Court? Do you consider the tribunal of NAFTA could be compatible with the structure of domestic court system? Respectfully.

Author: Kathy Howse **Date:** Wednesday, September 3, 2014 9:54:05 PM EDT **Subject:** RE: Discussion - Week 1

Ohio State Government

According to Rosenbloom, Kravchuk, and Clerkin (2009) the structure of Ohio state government tends to be analogues to that of the U.S. federal government. Both government structures have three branches; Executive, Legislative, and Judicial (see appendix). The federal executive branch is headed by the President and the Vice President, while the State of Ohio is headed by the Governor followed by stakeholders that includes Lieutenant Governor, Secretary of State, Auditor of State, Attorney General, Treasurer of State, State Board of Education and the Governor's Cabinet (Ohio, 2014; USA, 2014). The state and federal executive branch includes cabinet members in the State of Ohio have stakeholder that serve as directors or the many state agencies and are appointed by the Governor (Ohio, 2014; USA, 2014).

The State of Ohio has a bicameral legislature similar to other states (Rosenbloom, Kravchuk, & Clerkin, 2009).The legislative branch of the state is, titled the Ohio General Assembly is divided into two houses: the Senate that has 33 stakeholders and the 99 stakeholders makeup the Ohio House of Representatives, which is composed of 99 members elected from single-member districts of equal population (Ohio, 2014). Each of the 33 senate districts is formed by combining three house districts within the state. Senators serve four-year staggered terms, and representatives serve two-year terms. The General Assembly, with the authorization of the Governor, draws the U.S. congressional district lines for Ohio's 16 seats in the United States House of Representative (Ohio, 2014). The Ohio Apportionments Board draws state legislative district lines in Ohio. The Legislative Service Commission, a staff of trained legal experts and personnel, drafts proposals for new laws and law changes, is one of several legislative agencies that are also part of the Legislative branch of Ohio's state government.

Within the State of Ohio In order to be legislated into law, the bill must be adopted by both houses within the General Assembly and authorized by the head of the Executive branch. In the case of a veto by the Governor, the General Assembly can supersede the rejection with a three-fifths supermajority of both houses (Ohio, 2014). In the State of Ohio, a measure will also become law if the Governor fails to sign or veto it within ten days of its being presented. The official Laws of Ohio publishes session's laws which in turn have been classified in the Ohio Revised Code (Ohio, 2014).

The Ohio Supreme Court which has; numerous judiciary bodies is the Judicial branch of the state government that has the power of judicial review (Rosenbloom, Kravchuk, & Clerkin, 2009). The Ohio Supreme Court-is comprised of 12 appeals courts of appeals, courts of common pleas in each county, municipal court, and many county courts; and lastly the Court of Claims.

Key difference between federal and national governmental branch systems is in the structure of the judicial branch. At the federal level there is the Supreme Court, the Federal Courts of Appeals, U.S. Bankruptcy, U.S. Courts of Special Jurisdiction, and

Federal District Courts (Harrington & Carter, 2009; U.S. Courts, 2014). The U.S. Constitution gives Congress the authority to assemble federal courts other than the Supreme Court and to regulate their jurisdiction. It is legislature's branch specifically Congress, not the judiciary, which controls the type of cases that may be addressed in the federal courts.

Congress has three other essential obligations that determine how the courts will function. Initially, it decides how various judges will sit. Second, through the confirmation process, Congress determines which of the President's judicial contenders eventually federal judges become. Lastly, Congress endorses the federal courts' budget and appropriates money for the courts to function (U.S. Courts, 2014).

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[Week 2]

Hello Matias,

Thank you for the good post. The federal judges are granted a life time tenure and constitutionally guaranteed against the decrease of remuneration. The institution of this kind generally works to ensure the independence and neutrality of judicial branch. How do you find this kind of constitutional requirement in the Commonwealth of Virginia? Once the issue of excusal of state supreme court judges had been disputed in the State, who were embroiled with an allegation of unbecoming officer? In that case, the state constitution could allow an impeachment trial as same with the federal constitution? Respectfully.

Author: Matias Matondo **Date:** Thursday, September 4, 2014 1:55:42 PM EDT **Subject:** RE: Main Discussion - Week 1

Federal and State Legal Systems

The United States legal system is shaped by the US Constitution which also determines the parameters within which it operates under a Federal system of government and the separation of power between the three branches of government; the Legislature which comprises the House of Representatives and the Senate (Article I), the Executive headed by the US President (Article II) and the Judiciary which comprises the Supreme Court and Inferior Courts (Article III).

Based on the Common law system in which the law or its doctrine is construed by judges in specific cases that are later used under the doctrine of the precedent or *stare decisis* (Olson, 2009, p. 4) to judge future cases, the US Legal System presents basically the same configuration or structure at federal, state and local levels.

The State I have selected for this discussion and comparative studi is the Commonwealth of Virginia whose Legal System operates according to the Constitution of Virginia of 1971, the Commonwealth's seventh Constitution, which also establishes the three branches of the State's government: legislative, executive, and judicial.

The Legislature in Virginia is known as the General Assembly, is a bicameral body (Senate and House of Delegates) just like the US Congress. The Senate of Virginia consists of 40 members. Each Senator is elected from a separate and distinct district for a term of four years. Each Senator is elected from a separate and distinct district for a term of four years. All Senators' terms begin and end at the same time. The Virginia House of Delegates consists of 100 members. Each Delegate is elected from a separate and distinct district for a term of two years. All Delegates terms begin and end at the same time. Similar to the Federal structure, the House of Delegates is presided over by a Speaker of the House, currently Mr. William Howell (R), while the Senate is presided over by the Lieutenant Governor of Virginia, currently Mr. Ralph Northam (D).

Governor Terry McAuliffe (D) is currently the Head of the State's Executive.

The Judiciary comprises the Supreme Court of Virginia (made up of seven justices), the Court of Appeals of Virginia, circuit courts in thirty-one judicial circuits, general district and juvenile and domestic relations district courts in thirty-two districts, and magistrates in offices in thirty-two districts. The administrative office of the courts, known in Virginia as the Office of the Executive Secretary, supports the administration of the court system under the direction of the Chief Justice and the Executive Secretary (Virginia Judiciary official webpage).

It is obvious that this structure is a copy-paste replication of the US Federal legal system with minor changes in terms of the nomenclature, mandates, locations and composition. For instance, the three branches of the US federal Government function in different buildings while in Virginia the three of them occupy the same building; The Virginia State's Capital. One third of US Senate is renovated every two years while in Virginia all Senators' terms begin and end at the same time.

It is worth noting that the Constitution as the Supreme Law of the Land determines, under the "doctrine of Supremacy clause" the supremacy of federal power over state authority in cases of conflict.

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Author: Judith Fitzgerald **Date:** Thursday, September 11, 2014 7:36:36 AM EDT
Subject: RE: Discussion - Week 2 - Reply to Kiyoung

Kiyoung:

Can you state why you think that secondary sources are not organized in any systematic way?

Hi. Dr. Fitzgerald,

It might not be experiential if we see the secondary sources as a whole. The primary sources would be marshaled in response with the formulating organs and system of documents. We could have an access to the statute in coherent structure of citation, for example, 283 U.S.C. 309. We would also be obvious between the federal reporter and respective state brief when we surf onto the brick and mortar law library. The Federal Registra could lead us to the central compilation of orders and regulations. For the researcher, the secondary sources would pose challenges from identifying the nature or source of documents through their

weight as an authority. The coverage would be more extensive and diverse generally with no defines and definite characterization which often requires a selective mind and appreciation of the materials. The term, secondary sources, would be residual in some sense which denotes the others from the primary sources.

In terms of individual source, the casebook, for example, would not be same to reflect the choice and taste of law teachers. The tone or perspective, in some cases, is subjective from the cause and intellectual basis of respective authors or editors. Among the secondary sources, I suppose that the Restatement and Corpus Juris Secondum could only be comparable with the primary sources in terms of system, weight authority, and coverage or extent of dealings. The process to produce these sources would be prudent and in stages to reduce the bias or miscarriage in the effort to present any most useful source of reference. The legal encyclopedia would be organized in systemic way, but the dealings would come at the basic and definitional level. The hornbooks or textbooks would be ordinate on the thesis, but still the subjective views would complement. That serves the academic development in the field, while we would not be more plain with the ordered structure of article-type in the Restatement. Other scope of secondary sources would largely be desultory which gives the researchers both advantages and disadvantages. He could have a creative lens in some cases, but could be confused if he would not be considerate on the legal nature of research.

I consider the modern way of key terms search from the benefit of electronic access can allow the researchers to make his needs to be met easily. However, in this aspect, we perhaps would be more facile with the primary sources since they are systemically managed in the Westlaw or Lexis Nexis. That might be only available for the law review articles or a few of authoritative secondary sources. In that sense, we also can see the primary sources are more systemic? Respectfully.

Judith Fitzgerald

Author: Matias Matondo **Date:** Friday, September 12, 2014 9:50:02 AM EDT **Subject:** RE: Discussion - Week 2 Comment and quastion to Kiyoung

Hello Matias,

Thank you for reading my post. You are fairly precise since the law per se has an intrinsic as a state norm. This would be a prevailing thought through the history, but non-state norms or legal materials on teaching and research now became abundant. You said that the primary sources would be the basis of secondary ones, which would be correct in the main. The teaching not relevant with the standing laws would be unpersuasive or puppet. However, the secondary sources would influence a legal reasoning in the court and legislative reform within the legislature. That would come in practice if we see the cites of academic source in the case law. Hence both sources could exchange ideas to create a judge-made law or to explain a case law and suggest a better law. Since the US is a common law country, the role of judiciary is primary and it is a generator of case laws, which is considered as leading both the government and legal academics. The continental state in Europe would often come inverted between the law professors and jurists. In these instances, such as Germany and

Korea, law professors would be esteemed to exercise more a role in explaining national laws and legal system. In theory, they have no concept of judge-made law so that the legislature would be any unique organ to produce the national laws. The law professors can construct a bridge, by way of publishing the textbooks and articles, to make the statute practical which inculcates jurists. Therefore, their authority and honor could be greater than judges. That would not be within the US jurisdiction. The case laws, therefore, is of secondary nature in Korean and Germany, at least in theory and tenet, although the lawyers practically may prefer to look up the case law in resolving their issue. Then we may say it largely true that the legal tradition or culture as well as legal system defines the relation and interaction between the primary and secondary sources.

Your second question is thought of interesting illustration. The judiciary had been very inactive in the period of dictatorship if the case or controversy involves a sensitive constitutional issue. The judicial review of legislation based on the constitution had been only nine instances over the 40 years of constitutional history until 1987 in Korea. This means that the constitution was merely an ornament which is in some sharp contrast with the US. The new and current constitution enacted in 1987 shifted this pattern in the practice of Constitutional Court which is seen more proactive than the US Supreme Court. Now it is true that nobody could generally challenge the Korean democracy nowadays. As you surmise, the 1970 and 1980's period in time largely chilled the academic community by publication ban and prior restraint. Along with the inactive judiciary and their loyalty to the developmental presidency, the secondary sources would not be paradigmatic in the sense of neutral research and scholarly activities. A most striking example would be that the constitutional scholars in that time would be but to endorse the extreme version of legal positivist viewpoint, such as be found in Tae-yeon Han and Il-kyung Park. They even legitimated, in their textbook, the Hitler-type dictatorship as affordable for the rule of nations. No more powerful anti-thesis could systemically react to these academic authorities for the said reason which means a bias and prejudice in the legal circle or law education. Hence, the legal researchers at that time in Korea would be disappointed with the scarce primary sources and unbalanced views of academic.

Hello Kiyoung

> Thank you for this well written and argumented piece. I agree with you that one of the weaknesses of secondary resources stems from the fact that they may mislead through prejudice of lack of neutrality. Many people people also believe that the fact that secondary resources can't exist without the primary resources (from which they frequently pick the arguments for their analysis or comments) constitutes also a weakness. I wonder what is your opinion on this.
>
> Furthermore, i would appreciate if you could explain how legal secondary resources are leaned or independent from the mainstream primary resources in Korea whose democracy you considered "crippled" in many senses.
>
> Thanks

Matias

Author: CHINWE MORDI **Date:** Friday, September 12, 2014 6:14:24 PM EDT **Subject:** RE: Discussion - Week 2

Hello Kyoung,

Interesting discussion post, i like that you stated that primary sources carry more weight. i totally agree with you. what avout secondary sources that have been judicially noticed? do you think that they are as persuasive as primary sources?

Cheers,

Chinwe

Hello Chinwe,

I consider both sources could attain a persuasiveness as independent from one another. The case laws could be persuasive since the adversary interest and ways of interaction could promote to pursue through the end of justice any thoroughly. For example, the counsel would compete in their best and with the aid of most competitive expert testimony. The two parties in contention and disagreement would provide to create any best wisdom for the issues. The kind of dialectic process for justice tends to increase the persuasiveness of case laws. A debate in the floor of Congress between the ruling and opposing party would also come effectively in this structure. The kind of thesis and anti-thesis through the truthfulness would interact which would lead to produce the primary sources of document. The secondary sources would often rely on the experience, skill and knowledge, logic and metaphor as well as creativity of researchers and textbook writers. With the collective and systemic organization of workforce and prudent process, the Restatement may add up with more a strength in terms of persuasiveness. In the least ambit on the editions of text or hornbooks and Restatement or CJS, I suppose that the authority and persuasiveness could be equaled with the primary sources. Nonetheless, it is important to note that the primary sources only could be the law of binding power to be enforceable. Thank you for the question.

Author: Deidre Hunter **Date:** Thursday, September 11, 2014 9:55:14 PM EDT **Subject:** RE: Discussion - Week 2

The policy issue I selected is gun violence. According tothe National Crime Victimization Survey (2013), in 2011, there were approximately a half a million people that reported being a victim of a crime committed involving a gun. In today's society, it seems like the number of crimes committed involving a gun has definitely increased. For instance, every morning when I watch the news there is always some reference to a crime being committed that involved gun violence. According to the Brady Campaign (2014) the United States firearm homicide rate is 20 times higher than the combined rates of 22 countries. "The lifetime medical cost for all gun violence victims in the United States is estimated at $2.3 billion, with almost half the costs borne by taxpayers" (Brady Campaign, 2014, p.1). According to The White House (2014) most gun owners that buy their guns from the store

and/or pawn shop are responsible law-abiding citizens that use their guns safely. Therefore, if law officials were able to effectively implemented public policies that made it harder for gun owners to sell privately, then it could help reduce the number of crimes committed in our communities involving a gun; as well as the cost associated with gun violence.

A possible strength of secondary resources is that the information found within the resource is specific to the subject matter. Another possible strength, according to Olson (2009) scholarly journals can lead to a wealth of primary sources in their footnotes that can be very beneficial for the researcher. A possible limitation of secondary resources is that certain types, such as law dictionaries, can be too broad with the information provided on a specific topic. Another possible limitation of secondary resources is trying to locate up to date information on a specific subject matter.

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Hello, Deidre,

Thank you for the good post. I agree that the scholarly journals could help in the initial stage of legal research. We may save a time and labor with the information of footnotes. On the other, the scholarly articles are highly specific and detailed, which often comes as a piecemeal in coverage. Can you illustarte one strategy to overcome this challenge? Respectfully.

Hello Dr. Judith.

In my search, the information on this case available at this time in the website of state government is (i) the case was located in the Florid Second District Court of Appeal (ii) the case number is 2D13-4638 (iii) the context is final criminal appeals notice from Pinellas County (iv) the case name in full is STATE OF FLORIDA vs. CHRISTOPHER VINCI (v) the case number of lower tribunal case is CRC 13-05817 CFANO. It was decided Sep. 12, 2014, which was several days ago. I suppose that the citation on the published from of case would not be available at this time

In our research on the court cases, the cases from the federal court needs to be made distinct about citation. The Florida State is larger to have its own denominator for the federal case. In this reality, the citation “232 F.3d 684” indicates a case from the UNITED STATES COURT

OF APPEALS FOR THE NINTH CIRCUIT. The case name is the Luis Felipe Cervantes-gonzales, Petitioner, v. Immigration and Naturalization Service, Respondent, which includes all the information, full names of party and status in the proceeding. It was submitted October 5, 2001, and filed November 14, 2000.

As learned, the major reporting services would report a state case of about ten states, in which Florida, Ohio and California are one of those. The citation of state cases would be rendered in some of typical abbreviations and number. For example, the Ohio case is would be described in this way, which is about the published form of cases, i.e., **S**tate ex rel Walls v. Ohio Masonic Home, 98 Ohio St. 3d 285, 2003-Ohio- 370, 782 N.E.2d 581, 2003 Ohio LEXIS 151 (2003).The Cleveland-Marshall College Law Library website contains that information

The common state reporters may include **p**arallel citations**:** "The parallel citations contain the same text of the opinion, but they are printed in reporters published by other companies or posted on the web or within one of the major legal databases These parallel citations are often available before the official reporter." (From the website)

We often face with the abbreviations to indicate the common state reporters and some details from the Bluebook. The Bluebook would be the most authoritative guide in forms of citation, and Ohio state cases were exemplified below. I hope this makes a sense. Respectfully.

[Week 3]

Hi. Okechkwu,

Thank you for the excellent post. You introduced succinctly to the court system of Nigeria and essence of case law research. You stated "….looking for decisions from courts that have binding or persuasive precedent" You implied that Nigeria practices the common law system. Provided if Nigeria was legally implanted by the common law legal tradition, the precedent from the common law countries may be a persuasive authority. Do you search a scope of other common law countries in dealing with the legal questions? Are your courts bound by the precedents from other courts of Nigeria? If you had historically been related with the British rule, did your nation have a specific need to enact a written constitution, which differs from the United Kingdom in terms of constitutional practice? You said of federalism in your country. How does it differ from the frame of US constitution? Respectfully.

Author: OKECHUKWU NDECHE **Date:** Friday, September 19, 2014 5:14:38 AM EDT
Subject: RE: Discussion - Week 3

State and Federal Court Systems

Lagos State Judiciary of Nigeria

The Lagos High Court System according to the Lagos State Judiciary website (https://lagosjudiciary.gov.ng/jis_new/index.aspx) is comprised of the Criminal Division, the Land Division, the Probate and Family Division, the Commercial Division, and the General Civil Division. The High Court of Lagos State of Nigeria is established by the 1999 Nigerian Constitution, §. 270 which conferred original jurisdiction on it with respect to certain civil and criminal matters. As the highest court of the state, it interprets the laws passed by the Lagos State House of Assembly, and also hears and determines appeals from subordinate courts such as the magistrate courts. Appeals from the decisions of the Lagos High Court lie to the Court of Appeal which is a federal court in Nigeria. The Lagos State judiciary maintains an online search and case status information within the above website as part of its judiciary information system (JIS) and a list of cases and their statuses is indicated in the "cause list" webpage showing the suit number, the parties, classification, name of the presiding judge, court room number, and the status of the case. Access to the webpage is free but there is no detailed report of any case yet as the site is either under construction or maintenance as at the time of this search. The case selected for this discussion is titled *Kayneth Wig Ltd v. R. Olowokere & Ors.* (2014) with suit number ID/913/14, and having its classification under "lands", an area in which the High Court of Lagos State has jurisdiction conferred on it by virtue of Land Use Act (1978), a Nigerian federal enactment. Appeal if any from the decision of this court on this matter will lie to the Court of Appeal in accordance with the structure and hierarchy of the court system in addition to the jurisdictional system.

The Supreme Court of Nigeria

This is the court of last resort in the country and is established by the 1999 Nigerian Constitution, §. 230 and conferred with original jurisdiction in any dispute between the

federation and a state or between states and also to hear appeals from the Court of Appeal of Nigeria. The Supreme Court maintains a judgment information system (JIS) similar to the judiciary information system of the Lagos High Court system. The selected federal case is *Attorney-General of Lagos State v. Attorney of the Federation* (2004) regarding some constitutional issues concerning the allocations to Local Government Councils from the Federation Account. The case arose as a dispute between the Lagos State government and the federal government.

Each of the above cases was heard and determined in accordance with the jurisdictional powers conferred on the respective courts by the constitution. The electronic case search according to Olson (2009) is about "looking for decisions from courts that have binding or persuasive precedent" (p. 270). In the latter case, the decision of the Supreme Court is authoritative and binding on all other courts in the country in accordance with the common law doctrine of precedent.

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Hi. Kelly,

I enjoyed reading your post. The bond issuance would be a critical part to serve the purpose of state government. The Revenue Bond Law would be common across the state jurisdictions. In this case, I suppose that the citizens of other state or cities could purchace the bonds issued by the state government. Then the discriminated party from the bond issuance has to have a legal vehicle to dispute the possibly unfair or illegal enforcement of issuance process or

similar context of injustice. Did the court rule to deny the standing of Sherman and Eichler, perhaps citizens of other state as implied from your posting? Do you see any reason if the supreme court decided untimely? Did the supreme court have dealt with the subject matter issue other than procedural matters? Respectfully.

Author: Kelly Gilbert **Date:** Thursday, September 18, 2014 10:55:05 PM EDT **Subject:** RE: Discussion - Week 3

Kelly Gilbert

September 18, 2014

Week 3 Discussion State and Federal Court Systems

Main Post

Purpose

The purpose of this assignment is to examine our state's court system and to review the law databases from the learning resources to examine a state and federal law case.

Georgia's Court System

The Georgia court system has five classes of trial-level courts: the magistrate, probate, juvenile, state, and superior courts. In addition, there are approximately 350 municipal courts operating locally. There are two appellate-level courts: the Supreme Court and Court of Appeals (Georgiacourts.gov, 2014). The Supreme Court, the state's highest court, reviews decisions made in civil and criminal cases by a trial court judge or by the Court of Appeals. This court also rules on questions involving the constitutionality of state statutes and all criminal cases involving a sentence of death. No trials are held at the appellate level, nor do the parties appear before the court. Each case accepted for review by the Supreme Court is assigned to one of the seven justices for preparation of a preliminary opinion (decision) for circulation to all other justices (Georgiacourts.gov, 2014).

Case Law

I currently work for the City of Atlanta so I decided to research a case against the city. The case I selected is Sherman et. al. v City of Atlanta. In this case Sherman and Eichler filed a notice of appeal from the trial court's judgment confirming and validating a bond issuance by the City of Atlanta. At the bond validation hearing, the City disputed Sherman and Eichler standing to become parties and raise objections in this case, and no competent evidence was admitted to show that either were was a Georgia citizen and Atlanta resident, which were the prerequisites to becoming a party under the Revenue Bond Law.

Appellees—the Atlanta Independent School System, City of Atlanta, and Atlanta Development Authority—argue in response that Woodham invalidated only a particular bond issuance for the BeltLine project and had no effect at all on the constitutional validity of the local government approvals for the BeltLine TAD, much less the Perry.

On October 23, 2012, the Court of Appeals transferred the case to this Court based on our constitutional question jurisdiction. See Ga. Const. of 1983, Art. VI, Sec.VI, Par. II(1). On December 10, we denied Sherman's motion to return this case to the Court of Appeals and also denied his motion to consolidate this appeal with his appeal of an order by a different trial judge in a separate case confirming and validating the issuance of bonds secured by the Perry–Bolton TAD tax allocation increments. This case was untimely decided on February 4, 2013.

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Case Law: Sherman et. al. v City of Atlanta 293 Ga. 169; 744 S.E.2d 689; (GA 2013)

[Week 4]

Author: CAnna Ulaszewski **Date:** Thursday, September 25, 2014 11:52:01 PM EDT
Subject: RE: Discussion - Week 4

Week 4 Discussion Challenges of briefing a case

I'm not sure I had two challenges. This case seemed pretty much straightforward. Although, perhaps I erred but don't know it yet. There are cases that have multiple issues or, like case that address constitutional rights, are complex. In these cases it is necessary to read the case several times and parse it. One approach would be to identify each point of law, determine the implications in the case and read relevant citations. It is also helpful to be consistent in the format of the brief so that in time it becomes a matter of thinking in a certain way and filling in the blanks. Of course if my brief is incorrect, I would have to rethink this and consider it a short coming that is my challenge.

The biggest challenge was brevity. Short of using a smaller font, I was not able to keep it to one page, or the "facts of the case" to one sentence. I took many of the adverbs and adjectives out and rewrote it several times. For my own use it was just as long as I needed it. If I was writing it for someone else, maybe it would be too brief or too long. Does the "audience" dictate how brief a brief should be?

One thing I have a question about: I used the "draft" Turnitin and was surprise to get a high "similarly." I went back to my document and made sure I had quoted properly, and I did a considerable amount of rewrite and the similarly didn't change much. Is this normal?

My area of expertise and interest is water resource management and water policy. In California during this extreme drought, it is important to be able to understand the main points of a case, law or policy. So much is being published about water right now in response to the drought that it would be impossible to know everything without doing a lot of reading time and again.

Right now the EPA is going through two landmark issues: Water Transfer Rule and the Expanded Navigable Waters Rule. The court's decisions in the WTR cases are important to the schema of water issues. The WTR has been heard in several appeal courts and EPA is again partitioning. The ENWR was proposed in April 2014 and is facing a great deal of opposition. Each Rule is very convoluted and complex. It is necessary to identify all key points, and set them out logically and briefly. Sitting down and writing a brief for a court case, or some other legal issue or policy helps to focus on the main points.

Hello Canna.

Thank you for the excellent post. The Water Resources are challenged globally for the prospective shortage. That reality seems for the executive branch generally, and the court would be more constant with the traditional paradigm between the public use and concept of property right. The regulation may involve the interested industries and quality of water for the consumers or pleasant environment. How do you assess the two new rules and case law as

a water policy researcher? How do you serve your need of case briefing as a researcher if you deal to prepare for the dissertation work? Is it preferably to be made in brevity or in ambit to detail the subtleties from the court opinion or EPA rules? Respectfully.

Hello Arthur.

I have enjoyed reading your post. I agree that your point on the relevancy and the need of appreciation on the sources would be an important structural thought for the case briefers. Those who excel on these points would perhaps be a best legal researcher. Depending the ranks or gravity of work responsibility, I suppose, however, that the policy administrators may do good practice simply on case notes or summaries which would be more flexible to goals and purpose within his responsibility. Is there any merit policy to discipline or award if the litigation would be at minimum. Respectfully.

Author: Arthur NixonJr **Date:** Thursday, September 25, 2014 3:50:04 PM EDT **Subject:** RE: Discussion - Week 4

Challenge I

While preparing for the case brief, I learned so much about the case itself that I found it intriguing. I did not know there would be a procedural difference in the ownership of property, ownership of an animal, and if it is domesticated or wild. Replevin was a word I had not heard of before so researching it to fully understand the case was a must. The first challenge I encountered was addressing the legal information that I had on the case. When I say legal information, I mean the information on the case brief itself that reference other cases to justify the outcome (opinion) of the case brief. For instance, in Conti v. ASPCA, this case brief referenced Mullett v. Bradley, Matter of Wright, Manning v. Mitcherson, and Amory v. Flyn as references for Conti v. ASPCA. Due diligence would require that some form of research be done on those cases to fully understand how the opinion was made in Conti V. ASPCA.

With the scholarly sources of information that was available, determining the relevancy of what I was going to actually use became an issue. I did not want to put too much information in to the FACT section of the brief.

Challenge II

Another challenge that I found was the importance of making sure your secondary and primary sources of information are scholarly sources. There is a plethora of information on Conti v. ASPCA, **BUT** if you do not use a good secondary or primary resource, the information you may retrieve, may be a "watered down" version of what actually took place. Also, you may not get the legal citations used to understand how the Court came to its decision. One would also want to read the opinions of the justices.

Relevancy of a case briefing to my career as a public administrator or policy practitioner

Relevancy of a case briefing to my career as a public administrator or policy practitioner would be the art of hearing, reading, and understanding a case thoroughly. As a policy practitioner, it would be our duty to adhere to policy. We do that by staying informed of changes or trends in policy. One example would be your workplace domestic violence policy. The National Football League is in hot water for how it handled a domestic violence situation in which the player physically struck and made unconscious his fiancé. The problem is this, there has not been a consistent way the National Football League (NFL) has dealt with this problem. Drug use in the NFL has been a problem and can be a problem in our workplace as a public administrator. Are we going to dismiss one employee for failing a drug/alcohol test and suspend another for failing a drug/alcohol test?

As public administrators it is our duty to make informed decisions and most importantly, staying consistent when applying it to the employee. Future litigation will be at a minimum if this is practiced.

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Author: CHINWE MORDI **Date:** Thursday, September 25, 2014 7:02:17 PM EDT **Subject:** RE: Discussion - Week 4

Hello Chinwe and Professor.

Thank you for reading my post. You are right that the brief needs to be easy for the purpose intended on. The case briefing is to communicate for himself, peer students, professors, appellate judges, peer policy workers and supervisors, as well as peer attorneys within the firm. They often are versed well and conventional in their work dealings or exchange of ideas. Hence, the terms would be in common use if it comes to denote a defined concept. We generally do not say, problem, rather say, issues, when they work on case briefing. The lawyer would get it eagerly if we put "replevin action" on this week assignment. It would distract the nature of case or decrease the credibility of brief, at least for the law people, if we put "recovery suit" instead. Your statement is true that the brief should be easy with common

words, but the terms or jargons in some use may alter the meaning entirely. Especially, the words to typical or headings of brief should be fixed in my experience. We would mislead the case of trial court to be confused with that of the injunctive action or a certiorari of Supreme Court if we use petitioner than plaintiff. The fee simple or fee defeasible used in the property law perhaps would have no adequate replacement from the common words. As you state, however, we could be encouraged to use a common word given if no compelling reason exists from convention or need of distinction.

Hello Dr. Judith.

Thank you for the question, Professor. As replied, the rules or court holdings would be entangled much with the policy administrators. The oversight role of court in the structure of constitution is fairly implicating that the agencies should watch constantly and within track of awareness in their specific areas of policy. The facts would also be a concern and interest. That is because it offers the basis of case laws. For example, the attitude of policy shift in the case law concerning the American environmentalism has to be delved as focused on the difference of facts between the last case and earlier one decades ago. In this aspect, we may note that the Sierra club could come consistent to bring up the challenge in subtleties of facts pattern. Respectfully.

Hello Kiyoung.

Interesting discussion post. on your first challenge however i personally did not experience any use of legal jargons inthe case for review. furthermore, i would say that all professions has its jargons but it is at the time of briefing that those jargins are reduced to normal word. ANother usefulness of case briefing.

Cheers.

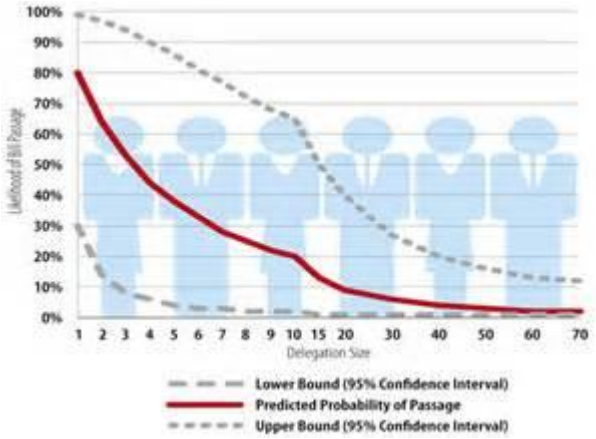
That is an excellent point you made about the analysis section being very helpful for policymakers. There is another section of the brief that is also very helpful, do you know what section that is?

Judith

[Week 5]

Hi. Iberkis,

Thank you for the thoughtful post. In order to support the ideas of policy makers, the legislative process or history seems fairly effective since the code or statutory provision is static and ordained not to be allowed of latitude of meditation for the policy designer. As you illustrated, the anti-terrorism generally hit to be a top agenda, and was played out on the patterns to deal with. I had become concerned of US policy against North Korea these days, and the agenda had a history and patterns of response. Many bills are prone to drop from the legislative process meaning a slim rate of bills become the law. From the unknown internet source, only 2-3 % of bills would survive to be successful. Within the 95 % confidence interval, 0.5-16 % bills had a chance to become the law. The bills on anti-terrorism and foreign relations or diplomacy, such as the issue of North Korea, would likely see less chances of failing to become a law. Do you agree? If you agree, what do you think a factor that the passage rate would differ according to the topic. Respectfully.



(From unknown internet source)

Author: Iberkis Faltas **Date:** Thursday, October 2, 2014 11:39:27 PM EDT **Subject:** RE: Discussion - Week 5

United States legislative processes involve an array of steps and administrative enforcement procedures that must be successfully implemented when processing legislatures. The legislative process itself must include pedigrees of regulatory compliances to the agency's specific rules and legislative adjudication process. And of course, the overall process must include the direct involvement of organization, agency, or Departments' stakeholders.

Furthermore, because the legislative process needs the full collaboration of government's officials, they must proficient their knowledge. It includes knowledge of the industry governance and guides, comprehension of legislative material, understanding historical documents, Courts precedence's, consent settlements, affirmative disclosures, corrective orders, congressional hearings, legislative sources books, thousands of printed hearings, transcripts, etc.

Public administrators and researchers must not only have the capability, dominium, and understanding of legislative material and specific scholarly language appropriate to their professional field, but they must also have the knowledge and capability on how to research it. Olson (2009) recommended to policymakers, lawmakers, researchers, and public officials to have the knowledge of researching through historical guides for lawmaking procedures, law-specific databases, historical Newspapers, the Internet, databases of legislative guides, congress library, and "major retrospective online sources" (p-116).

How the legislative process impacts policy shifts and new trends is time-sensitive and extremely crucial for the continuing development of the country's well balanced democratic system, and the nation's international and domestic socio-political and economic stability. Knowing the process—or at least knowing how to research historical data, specific legislature and court procedures concerning specific policy and ruling will provide the researcher, policy-maker, law-maker, or anyone involve with the administrative process of the agency or department with the baseline for the next best challenging decision. The information will provide researcher with the specific of policies failures. Hence, it will help researchers to implement new trends. Also, it will provide policymakers with the knowledge and agility to fast-shift for better decisions.

One example of the importance of understanding the legislative process for legal research, and the impact that it can have on policy-shifting and new policy trends, is the nation's current state of alert facing a possible terrorist attack.

ISIS' terrorist threat against the nation is of public knowledge. Well, researchers, policy and law-makers in the field of counterterrorism and national security must be aware of the country's history of terrorist attacks. What changed? What policies shifted? Which one have been affected because of previous terrorist attacks? What policies were newly created immediately after the attack? What international affairs changed? Where new laws created or amended because of the attacks? All stakeholders involved in the process must know how to research that information. Having the knowledge at the tip of their fingers—sort of speak, will help all stakeholders involved in the policy developments process to target the necessary weakness to safeguard the nation from a terrorist attack. Hence, learning from previous policy-failures will help researcher and policy makers to develop and implement a more successful one.

Iberkis

Olson, K. C. (2009). *Principles of legal research*. St. Paul, MN: West.

[Week 5]

Hi. Joe,

Thank you for the informative post. I agree that you correctly touched on the crucial implications of legislative process among the lobbyists or power brokers, congress and President. I suppose that often the bills maturated from the industry-sensitive response could be incubated from the lobbying activities. The stage reflects a creative role of congress within the constitutional paradigm. On the other, the normative views of orthodoxy could be rigorous and focused between the government and private sectors. They would see the lobbying activities unethical which trods the sanctity of governmental role. They would proscribe, as a matter of professional ethics or with a stern regulation, such as consulting or sharing a business 6time with the expense paid by the interested parties. For example, they would apply a higher standard of criminal act to punish a tainted congressman or public employees. They would seek a police to deter the consultation request or sharing of time for conference with the National Association of Farmers. Given the paid staffs and due compensation of office expenditure, the congressman should be loyal as a scared missionary that the normative views can prevail. In other context, the lobbying practice could be an effective reservoir to interact, be informed and to learn for the policy making in any real consequence. What do you think it adequate as a divisive line between the informed government and sanctity of rule or administration. In the face with the policy shift from a lawful quota to the tariff-based regulation of imported rice, the NAF in Korea had requested a conference time with the Ministry of Agriculture, but was denied. They persisted to withdraw the policy and planned of interface conference, which consumed a futile of two days in the August. 2014. They eventually were suppressed by the police, who responded with the call of MA. Do you consider it right? Respectfully.

Author: Joe Lambongang **Date:** Thursday, October 2, 2014 12:47:29 PM EDT **Subject:** RE: Discussion - Week 5

Impacts of the legislative process on policy shifts and trends

Law making is the main business of Congress (Harrington and Carter, 2009; Jones, 2010). The process of law making arguably starts from the lobbyists, pressure groups and political parties (mostly during election campaigns) before Congress. Law making is not complete until the bill receives Presidential accent. Through this process, the trend of public policy is affected.

Lobbyists, pressure groups and other power brokers set the agenda of public policy in the first place (Jones, 2010). As they campaign for elections, politicians use their views to set their campaign agenda. Once elected into office, Congress is expected to follow a certain trend based on their election promises and agenda. As all laws necessarily must come from Congress, it means that if for any reason there is inaction on their part, major priority policy areas will not be attended to. Currently, Congress is facing immense pressure from the American public for the enactment of an appropriate legislation to deal with immigration challenges. Ringquist, Neskova and Aamidor (2013) have argued that legislators in the United States routinely defect from their campaign promises, especially those around the

environment. This shift constitutes to impact on the policy trends. The law making process allows for all forms of public participation including lobbying and influencing such that a change in emphasis might be caused in the legislation or it can be dropped. Harrington and Carter (2009) for example, explain the influence that environmentalists have had on laws since the 1970s. The impact that gay and lesbian rights groups have had on law and public policy is immense, transcending the US to other countries. The role of these groups is effectively to shape opinion and policy around gay and lesbian rights.

Also, Presidents might use executive orders and signing statements to change the course of a law and hence policy. A veto from the President sends the bill back to Congress for reconsideration. This might be that the anticipated policy effect of the bill, if passed, might not be in tandem with the President's own policy agenda, the basis of which they were elected. This again changes the face of public policy.

Importance of understanding the legislative process for legal research.

I would argue that understanding this process is important for legal research. First, it is important to understand the background and circumstances surrounding the making of laws. This I think enhances the understanding of the statute and to be able to make good analysis of what Congress had in mind. Olson (2009) explains that being able to make good analysis of information is the key function of a legal researcher.

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Hi. Essence,

I have enjoyed reading your post. You stated, "…is supposed to be the specific duty of Congress, groups such as these can have a major influence on how the process transpires and what ultimately happens …" This implies a view that the interested groups would exercise an extent of definite influence on their initiative. You also corroborated with the LBGT case.

As in the response with Joe's, I consider that the standard and practice depends on the view and circumstances of political community. It is often no case that the underdeveloped or less civilized countries could favor the industry or civilian influence for their policy making process. Plainly some African states would rely on the government entirely for their state rule where we can be wild with no buildings or factories. The developmental states consider the role of government central, but with the guide from selected groups of economist. The economists in this case would have a strategic affiliation with bureaucrats and key administrators. The states of this kind may grow, which requires a turn of phase in the policy making process. In this stage, the civilian group would raise a voice beyond the state-fostered businesses and industries. How do you assess the quality of developmental state, such as Korea and east Asian countries, given no comparable experience in the US history? Do you consider if the plutocracy tradition has contributed to such long composure of US democracy in the initiative of civil or industry sectors? How much do you expect any strong government will rise in the US, which will be like the developmental authority of elite rule? What do you see as wrong if the consumerism group would be ineffective while the industry would be an affecting interested group on the politics of Congress? Respectfully.

Author: Essence Uke **Date:** Thursday, October 2, 2014 7:26:17 PM EDT **Subject:** RE: Discussion - Week 5

The Impact and Importance of the Legislative Process

The legislative process has everything to do with how bills navigate through Congress and become law. The whole process is not as simple as it may seem, however. Each Bill goes through a series of floor debates and hearings, examination of Committee reports, and passage through Congress and the President where it is either rejected, approved, or vetoed (Olsen, 2009). How Bills are prioritized is directly the result of current policy trends and public influence. But Congress's attention and interest in specific bills can impact the shifts and trends in policy as well.

The process that legislators go through to move Bills through the floor can have a tremendous impact on policy shifts and trends depending on the views of the political parties. Special interest groups, lobbyists, and politicians themselves can influence the process and use it as an opportunity to bring attention to their own political views and to advance their own political campaigns. Although lawmaking is supposed to be the specific duty of Congress, groups such as these can have a major influence on how the process transpires and what ultimately happens (Harrington and Carter, 2009).

An example of this would be the widespread new laws concerning the LBGT community. 10 years ago, special interests groups that were formed to demand the rights for this population didn't have nearly the influence they have within the political arena today. However, they have been able to influence not on local and state government, but the Federal government to change existing laws and write laws in favor of their lifestyle choices.

Understanding the legislative process and its impact and importance is significant to legal research because it provides a foundation for understanding the circumstances

surrounding how policy shifts and trends within public policy prioritize bills that are brought to forefront. It also is important because it explains the public's opinions on specific topics and how the transform and progress overtime.

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[Week 6]

Hi. CAnna.

I agree that the interpretation of court terms or phrases could change the entire concept of the Rule. As the interested parties would watch the consequence seriously and could frame their conflict of interest or dispute with the aid of lawyers, the court ruling could have much say than the abstraction of statutes. In this case, the basis of law generating power would be on the selection process as you also hinted. I consider the judiciary is novel a creature that could protect the minority as well as a unique branch from the distrust of politics. My balance in this concern is about who should be the minority in this paradigm. Given the plutocracy version of constitution, is it always for the big businesses or industries? Does it be reinforced within the international arena of competing economies among the interested global states? I am interested in the EPA issue. How did the EPA react against the statute by emphasizing "adding the pollutant" to be excluded? In this case, do you see the citizens as the minority that the Court should protect? Does EPA have a good ties with the international community for the pleasant environment? How do you assess the comment of Marxists, "At least the communists are on major from the concern of headcount?" Do you accept that the general base of people already turned inculcated to support the businesses or industries and that the statement should be wrong? Respectfully.

Author: CAnna Ulaszewski **Date:** Friday, October 10, 2014 1:57:53 AM EDT **Subject:** RE: Discussion - Week 6

Week 6 discussion Role of the Court Decision in the Interpretation of the Statutes

According to Article III of the Constitution vests the judicial power of the United States in one Supreme Court. Section 2 states: "The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority." As such, it is the duty of the Federal Court System to interpret and adjudicate laws. Although the Court does not have enforcement powers, it is easy to see how and individual's ideologies might influence their interpretation of a Constitution which might be silent or ambiguous on some points of law

Since the members are not elected nor do they represent a political party, they are nominated by the president and confirmed by the Senate, and because they often support the administrative polices; perhaps "quasi-political" might be an acceptable term. One can only assume that the selection process allows for political ideologies to enter the Court Chamber.

Take this example:

In 2004, the administration had different agendas. An important definition within EPA's NPDES Water Transfer Rule (2008) CWA was re-interpreted by the court A similar matter was reviewed by the federal district court *in South Fla. Water Mgmt. Dist. v. Miccosukee Tribe of Indians, 541 U.S. 95, 109 (2004).* The Court ruled at that time that the transfer of such water was indeed excluded from the NPDES program. However, since the promulgation of the Rule, there have been several challenges related cases in at least three

District Courts. This is a case of how the court defined "adding pollutants from a point source." The EPA contends that the Rule does not involve "adding pollutants." Just the interpretation of one word has the potential to change the entire concept of the Rule.

Resources:

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Hi. Matias,

Thank you for the good post. Let us consider that the government enacted the statute to sell the documents they produced. The statute requires a subscription fee to access the court opinions and congressional acts. The tendency might be a reverse of scholarly journal which would convert into an open access deal. Do you consider it constitutional? Does the court defer to the decision of agencies which perhaps suffers from a fiscal cliff? The government in Korea now planned to increase the price of cigarette which monopolizes the market. It frustrated the less well-to-do class who find a small pleasure from the smoking. The intellectuals and smoking seniors would be the kind of minority who must be considered from the constitutional right of the pursuit of happiness. Do you always believe if the science is absolutely right about an ill effect from the cigarette? Men in countries lived longer than non-smokers who would be over ninety at his death. Do you think that the government should always be sacred not to engage in such sales? You said, "the letter and spirit of statute" and also the practice of "judicial deference." I generally disagree on the recent Korean ethos about smoking and the wholesale of science to disgust the smokers. The constitutional court in Korea also continued to be disinterested in the smokers' right to happiness. They defer to the agencies' finding and ways of dealing. Do you consider if the "letter and spirit" of public policy could be more feasible from the intelligent individuals than collegiate body? How do you consider the standard of "judicial deference" be framed? Respectfully?

Author: Matias Matondo **Date:** Thursday, October 9, 2014 5:12:06 PM EDT **Subject:** RE: Main Discussion - Week 6

The role of court decisions in the interpretation of statutes.

One of the main roles of the Court is to interpret the law and ascertain its conformity with the Constitution by way of the judicial review powers vested to it by the Congress. (Olson, 2009, p. 4). Court's judicial review powers also apply to statutes. This function of the court is of paramount judicial and legal importance considering the fact that it also helps in setting the true meaning of each word contained in the statutes, preserving the legislative original intent by clarifying the letter and spirit of the statutes, dissipating ambiguities and so one (Tolley, 2003).

In order to successfully conduct this function, the court is duty bound, not only to the rules of statutory interpretation mentioned above, but also the postulates of the *strong unitary* and *polymorphic* principles. The unitary principle, according to Siegel (2005) requires courts to determine that a single word or phrase in a single statutory provision maintains a single meaning. (p. 340). But this unitary principle is conversely related to the polymorphic principle that courts apply to confer multiple meanings to words or phrases contained in a single statutory provision depending on the specific context or circumstances in which the interpretation is taking place. (p. idem, p. 341)

The other essential dimension on the role of court decisions in the interpretation of statutes is the extent to which courts defer to agency interpretation taking into account the different deference doctrines. Tolley (2003) concluded that a higher level of deference to administrative interpretation of statutes may narrow the scope of judicial review and reduce adopted standards of review to mere minimal rationality. On the flip side, a lower level of deference to administrative interpretation may engender a wide range of administrative actions to be brought in the courts and would be seen as an anti-democratic attempt to constrict the interpretative powers bestowed to administrative agencies by the Congress within the scope these agencies' autonomy. (idem, p. 13).

For example, in the Conti v. ASPCA case, judge Martin Rodell of the Queens County, City of New York civil court, observed the unitary principle by giving the arguments from both the plaintiff, Mr. Edward Conti, and the defendants, Mrs. Diana Henley and ASPCA, the same meaning throughout the trial. In other words, and reading from the excerpts of the case, he the court tried as much as possible to avoid falling into any polymorphic interpretation of the case. Furthermore, the court displayed a total deference towards the agency's (ASPCA) interpretation on the ownership of the lost parrot by ruling in favor of the defendant.

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Kiyoung,

This is a very informative post with a lot of good information. From your perspective how has the law evolved over the course of the last three centuries and how has the application of many of these laws resonated wth current day events. Do you see any parallel events that come to mind that appear similar between past law events and current events going on now?

Good probing question. I'm looking forward to Kiyoung's response

Judith Fitzgerald.

Week 6 Reply to Kiyoung and Question for the Class

When it comes to the judicial role of the Supreme Court, would you consider yourself more of a textualists, meaning you believe that the judicial role should be a mechanical, rules-based method of interpretation or do you believe the court's role should be more flexible, standards-based approach, which calls upon courts to make intelligent choices and, on appropriate occasions, to deviate from a canonical reading of statutory text in order to reach the most appropriate result. Explain.

Judith Fitzgerald.

Hi. Tariq and Dr. Judith.

Thank you for reading the post. I may illustrate some event or fact that bears on our theme. In the 1970's, the judiciary of Great Britain has been angulated with the concern if the stare decisis rule would limit the practice of courts and could bring the kind of Ratchet effect from the inviolable rulings of highest court. According to Lord Denning, the stare decisis rule would be importantly related with the resilience of judicial practice and its general insensitivity of public reform. This concern was shared in 1970's and the Lord Chancellor, the same of Chief of Supreme Court Justices from other countries, had expressed a little of new understanding on this rule and encouraged a flexible deals with the rule. This event would be self-directed to the judiciary itself, but can have some implications between the textualists and arguably constructivists as Dr. Judith was concerned. One other is the research findings of judicial attitude as focused on the Supreme Court. The research article was based on the empirical evidence which probes the attitude of nine justices in their extent of role or adherence between the policy and law. It concluded that the justices generally adhere with the law and legal theory than a policy reason of issues. The article suggested that the judicial branch is intrinsically conservative, which brings the kind of impression from medieval annotators. This impression would not solve the query between the textualists and other

justices, but convey a message that their differences basically would be mild than thick in some extent.

As the court opinions are a law other than merely an intelligent product, it must provide a certainty, predictability and legal stability. The textualists view, at least in formality, could increase this aspect of law ideals. Justice Holmes once lamented with the tremendous amount of case laws, which imposes the practical difficulties in handling the resources and leads to the effect of case laws no significantly. I may say if the statutes could play a savory role, which orders the rule of nation more conspicuously? In this aspect, the textualists may have a strength. The constructivists, however, arguably could come to make an active judiciary promoting the court role in shaping the public policy. Respectfully.

Hi. Dr. Judith.

Thank you for the question. The court would employ several analytical tests which include a reasoning by analogy, balancing of interest, juridical tests as well as consideration of public policy behind the rule. Comprehensively, those tactics and skills could increase the persuasion and effect of the court rulings for any principle and distributive justice the court wishes to deliver. A variety of facts from the precedent, hyoptheticals in rare cases, would incline to defend the stare decisis and inherent system of common law and its ideals, such as uniformity and consistency, certainty as well as sociological operation of law in the community. I may illustrate a same sex marriage case decided by the supreme court in 2013. The case involves the issue whether sections of DOMA would violate the due process of law and equal protection applicable to the federal government. The gay right or same sex issues on legal marriage entails not only the constitutional liberty but also the practical discrimination in applying the federal laws. Section 3 provides a definition of marriage which should be consistently applied to all scope of federal codes and regulations, encompassing a crucial of public lives for them, i.e., pension right, immigration laws, qualification to be elected for the board of governmental organizations, tax regulations, and so on. Ms. Winsor married her female husband based on the Canadian law, but his home state, New York denied to grant it as legal within the purpose of state law. That was despite the contrary proclamations of Governor and some of lower court judgments. Attorney Kaplan, her counsel in the state litigation, was unsuccessful to challenge the legal barrier of state on the same sex marriage eventually in the state supreme court.

It later was framed to dispute as a federal issue, and the Supreme Court ruled the section 3 unconstitutional. Justice Kennedy authored a court opinion where we can find aspects on court approach. The consideration of public policy was exercised to find the issue be examined on the heightened scrutiny. In the jurisprudence of equal protection, the court arguably had devised three tiers of judicial standard in examining the statutes and regulations. The rational basis test would be lowest which often leads to endorse the statutory provision of alleged discrimination. The intermediate scrutiny can be responsive to the quasi-suspect classification. The suspect classification has to be controlled in a sterner standard which includes the race or nationality-based. This attitude of court and their discrete approach on the equal protection issue could be considered as one analytical test, an evaluation of behind public policy. As the race is concerned of past wrong over history and would often contrasted sensitively in shaping a public policy, the statutory measure based on race classification can deserve a strict scrutiny. The court in had ruled that a heightened scrutiny would be proper

and commanding in the constitutional review of same sex marriage and eventually struck down the section 3 of DOMA. The court would work on reasoning by analogy and facts from the precedents of equal protection of law, which assured to arrive at the heightened standard of review. The court also exercised to balance the interests which is considered if the government has any compelling interest. The balancing of interest often would be the terms of art used in the rational basis test, which however could come into play in different extent in the heightened scrutiny. The court perceived the interested family members as serious and depraving which the de-recognition of same sex marriage would affect. The DOMA also effectively effaces a proper consequence the normal citizen would expect around a wide of public issues based on the concept of spouse, born child and marriages. This tends to weigh supporting the finding of imbalance to be restored between the fraction of governmental interest and serious harms that the family members would incur.

Section 3 of DOMA (codified at 1 U.S.C. § 7

*United States v. Windsor*570 U.S. ___ (*more*) 133 S.Ct. 2675; 186 L.Ed.2d 808

[Week 7]

Week 7 Reply to Kiyoung

Thank you for your post. Can you provide an example for this statement " From the analytical tests and the variety of facts from the precedents, the Court would perform an inductive reasoning crystalized into any viable rules of law."? Judith Fitzerald

Hello Kiyoung

Thank you for this, another, interesting post. I totally agree with you on how you view the role of Federal Administrative Agencies (FAA)on policy shifts and trends. Historically the creation of these agencies has been informed by the course of event in the society (technological, scientific, commerce advances and even challenges from mother nature) that needed to be addressed with specific expertise . (Olson, 2009, p.168). In the past the legislative initiative to create FAA rested on the Congress but this changed quickly with the development of the private sector to the point of pushing the Congress into a reactive position. For example, the advent of internet and e-commerce preceded any rules or regulations. Both the Congress and the Executive had to react to it by quickly enacting laws to regulate the new socio-economic reality and/or technological trend

What do you think should hold the legislative initiative for the creation of FAA between the Congress and the Executive, and what are the advantages or disadvantages of each option? Furthermore, in which circumstances do you think FAA can optimally impact policy shift or option?

Thanks

Matias

Hi. Matias,

Thank you for reading my post. The federal administrative agencies are created to perform the constitutional responsibilities of Congress. The power of Congress is specifically enumerated, but with some important reservation, necessary and proper clause, to amply expand them. Hence the modern Congress in the United States would be similarly comprehensive in terms of its role and responsibility with other countries. The federalism and bicameralism would be a source of limitation, however, which would be a groove that needs to be reconciled with the provisions and interpretation of constitution. For example, the United States of Mint would coin as the Constitution empowers, and American Disability Act would offer the basis of administrative agencies, which corresponds with the role of promoting the general welfare. In the thought, I may state that the initiative to propose the bill of creating federal agencies involves a delicate point. The bills to raise the revenue should be initiated by the House. The Congress generally would be the power of domestic affairs, especially if it involves the debt, tax and the kind of issues to raise an army. The Presidential power would be vastly on foreign affairs or some of war-related ones as well as his status as a commander in chief. This is so if excluding the caring for faithful execution of laws and appointment powers. This allows us incline to ascribe more responsibility to the Congress in creating the federal agencies. It requires a budget and fiscal resources to be controlled by the

Congress. That would perhaps be adequate since the power to purse is such strong emphasis of founding fathers and essential to serve their ideal of plutocracy on the new land. In other aspect, the executive branch would be wiser or with a proper expertise in some sense, which would appreciate the quality of public problems and adequate response. In this aspect, the executive branch could do good to initiate the proposal of concerned bills. In any case, the standard of practice would be that the separation of powers principle would ideate not only on the check and balance, but also on the collaborative or workable government. I think that the agencies have to take an account of a multifaceted quality of administrative issue if they are to be said as the kind of optimal administrator. The constitution and statutes would require them to be normative and conscientious. In other way, they would be social minds and professionals as a career bureaucrat. This may lead to an ethical conflict in some instances. They would consider the resources, policy environments, tools to be available, and need to be strategic in some cases. They are also responsible to the Congress and judiciary. Under the sound circumstances squarely on these aspects, the administrators could yield any best result. Respectfully.

Hi Kathy,

Thank you for the good post. The citizens would be concerned of civil rights, which was progressed and achieved from a bitter struggle and sacrifice of activists. As you mentioned, the Civil Rights Act and ADA would be notable examples in the history of US democracy. In the course of evolution, I consider the "state politics, roles of Congress and executive branch, as well as judiciary" would be entangled to be resilient and promoting. How do you assess among the four actors if any actor would most be attuned with the popular quest of equality? Respectfully.

Author: Kathy Howse **Date:** Friday, October 17, 2014 7:32:54 PM EDT **Subject:** RE: Discussion - Week 7

Olson (2009) discussed that federal administrative agencies are created by the Congress to administer specialized task, primarily because of these agencies perform most of the day to day work of the government. Further adding that their actions directly affect stakeholders more regularly and directly of other government entities (Anderson, 2011; Olson, (2009). Anderson (2011); Murray and Desanctis (2009); and Olson (2009) conferred federal administrative agencies responds to contacts from congressional hearings and investigations, based on their expertise, interest and activities. Gives legislators suggestion and observations on policy shifts and trends, along with identifying problems and formulate proposed courses of action.

One of the most relevant federal agencies is The Equal Opportunity Commission. A consequence that grew out of decades of resistance and opposition to the segregation and discrimination that restricted opportunities and access, President Lyndon Baines Johnson signed the Civil Rights Act of 1964(EEOC, 2014). This comprehensive civil rights legislation for citizens of The United States banned discrimination in public accommodations - in all programs and activities funded by the federal government. It was, however, Title VII of the legislation that answered the call for equal opportunity in the nation's workplaces. Title VII of the Civil Rights Act of 1964 prohibited employment

discrimination on the basis of race, color, religion, national origin, or sex and also made it illegal to retaliate against those who sought relief or assisted others in their exercise of rights secured by the law. Title VII created the EEOC, and on July 2, 1965, one year after the law was signed, the agency opened its doors.

The 1960's and 1970's were decades that through advocacy, leadership policies that protected and advanced the civil rights of disabled persons began to take on a real steam. When the Americans With Disabilities Act (ADA) was signed into law on July 26, 1990, it was the most far-reaching law advancing access of individuals with disabilities. The law, signed by President George Bush, expanded gives civil rights protections to individuals with disabilities that are like those provided to individuals on the basis of race, sex, national origin, and religion, just as Title VII of the Civil Rights Act of 1964 was mandated to do.

President George W. Bush believed that The ADA has been an integral component of the movement toward full integration of individuals with disabilities but recognizes that there is still much more to be done (Karger & Rose, 2010). He also recognized the need to integrate individuals with disabilities into the workforce, more needs to be done to promote ADA compliance (ADA, 2014).This legislative action has been and is for the betterment of persons with disabilities and the community, in an attempt to stay abreast of the challenges, disputes, and controversies that have blighted this social policy over the past decades, changes have been made by the ADA Amendments Act of 2008 (P.L. 110-325), which became effective on January 1, 2009(ADA, 2014). EEOC is a federal administrative agency that is directly working day to day keeping track for the need trends and policy shifts.

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Hi. Appolos,

I have enjoyed reading your post. I generally agree on the points you raised. You stated, "The general idea is that specialist agencies are often in a better position than courts to resolve the ambiguities,….by reasoning employed by courts (Tolley, 2003)." Nonetheless, we are incline to perceive that the court proceeding is exhaustive to resolve the controversies to the extent

possible. Often the court or lawyers would use the terms of art, “national standard of modern science” or “best available evidence,” “to the best knowledge of witness,” which are related with the exhaustive or standard-based deals of court disposition. In the Constitution of Korea, the finality principle would be instituted to preserve an ultimate say of judicial branch. That would also be operative as same as we illustrate the International Court of Justice. How do you think it to be corrected if the specialist agencies are often in a better position than courts to resolve the ambiguities? Do you find if the court is some kind of flawed institution which must be bound by the stern evidence rule or procedural restraints, hence, inefficient or less responsive? Respectfully.

Author: Apollos Nwafor **Date:** Thursday, October 16, 2014 4:22:14 PM EDT **Subject:** RE: Discussion - Week 7

Introduction

Congress could not legislate the detailed requirements of complex industrial activities and the court could not cope with the mass of adjudication required to enforce the legislative and regulatory standards (Olson, 2009). It is against this background that administrative agencies were created to handle serious social problems and crises that are beyond the expertise of legislators and judges. They are staffed with subject-matter experts related to their missions. For example, you will find many Economists in departments of treasury and Commerce as well as many health experts in the Department of Health.

Role of Administrative Agencies

Basically, Federal administrative agencies are charged with key broad functions of regulation, like the Federal Communications Commission and the Environmental Protection Agency (EPA); implementation like the presidency which ensures that the law is enforced; rulemaking for the administration of key specialized areas; policy making where they are responsible for developing key policies and frameworks that will guide implementation and regulation of a public issue. For example, a bill may mandate public vaccinations, but a rule will explain which age groups and demographics need the vaccination. Another role is adjudicating as judicial function requiring them to settle disputes and mete out punishment for a violation of a rule or statue or policy related to the agency’s remit. In summary, the three main functions of administrative agencies include rule-making, adjudicating and investigating.

Generally, most of the administrative agencies have investigative, rulemaking, and determinative functions. Additionally, some statutory schemes permits administrative enforcement, and some administrative agencies are given express authority to reconsider, amend, correct, or modify orders. An administrative agency must act within its authority even if its action is determined to be legally incorrect at a later stage

The impact of their role

Rulemaking: As earlier stated, this is a major role of federal administrative agencies and this role enables them determine the rules and regulations that guide the actions of people on an issue of public policy. An administrative agency’s rules can be categorized as legislative rules, interpretive rules, procedural rules, and general statements of policy. Where they are

legislative rules, they may change an existing policy or rather strengthen an existing policy. These rules also have an impact on court decisions and site certain precedents that the courts use in making future decisions which become law and also impact on existing policy. Legislative rules have the force and effect of law, can be enforced and have binding effect on all individuals and courts. However, legislative rules do not leave the agency free to exercise discretionary powers.

Their impact also stems from the kind of documents they produce which can change a policy and have an effect on trends. For instance the abolition of the "don't ask don't tell" rule gave way to the recognition of gays in the military and ensured that they are protected with full rights and responsibilities. Furthermore, if we consider that there is always political influence in the way federal agencies write and enforce rules, then their impact on policy shifts and trends can be viewed from that perspective.

The general idea is that specialist agencies are often in a better position than courts to resolve the ambiguities, and interpreting a statute in a way that promotes effective public policy may depend more on the expertise of the agency and less on the limited knowledge and modes of reasoning employed by courts (Tolley, 2003). This then puts the agency in a vantage position to reflect its political considerations in making rules or enforcing them under the guise of technical grounds and this is due to more often than not the political leanings of the head of the agency.

Another impact is linked to their judicial role where they adjudicate on certain violations. This is usually based on their rules and where person or organizations violate these rules, enforcement and adjudication follow. The idea of going through an adjudicatory process or facing sanctions impacts on the behavior of institutions and organizations that deal with the public.

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[Week 8]

Hi. Joe,

Thank you for the good posting. Your approaches are fairly paradigmatic since the creation of public policy or regulation should not be set apart from the stake or interest holders. I may ask a question if the issues illustrated as hypothetical should be dealt in other provinces of law, such as insurance law, civil claims act or UCC? I also may consider if the procedure you like to avail of is not merely desirable, but also required as a matter of state statute or public law? Respectfully.

Author: Joe Lambongang **Date:** Thursday, October 23, 2014 4:20:45 PM EDT **Subject:** RE: Discussion - Week 8

A brief description of the New York State Motor Carrier Regulations Part 820 (2008).

To deal with the challenges associated with the transportation of goods by commercial operators in New York State, the State adopted the federal Motor Carrier Safety Regulation found in Title 49 of the Code of Federal Regulations (49 CFR) parts 390. 391, 392, 393, 395, 396 and 397 (www.dot.ny.gov/divisions/operating/os). The resultant regulation is the New York State Motor Carrier Regulations part 820 (2008).

This regulation repeals Parts 507 and 819 of Title 17 of the Official Compilation of Codes, Rules and Regulations of the New York State and adds a new Part, 820. The new addition seeks to regulate the operations of commercial motor vehicles and the drivers of commercial motor vehicles in line with existing transportation and vehicle and traffic laws of the New York State.

My approach to reform this regulation.

After reading this regulation several times from the perspective of a non-US resident, I had a number of issues with the regulation. Among other things, it specifies guidelines for the transportation of hazardous material and other goods listed by this regulation. What is conspicuously missing is the issue of insurance for such goods and materials, protection for owner-operator leasing, loss and damage claim procedures and other issues that might impact freight shippers and the public. There may also be issues with distortions in vehicle numbering and processes for such numbering may be cumbersome. These issues however remain hypothetical and will need to be validated by those who are impacted by it before any reform can be initiated.

My approach to reform the regulation will start from the key stakeholders whose actions are affected by the regulation. I would imagine that commercial motor vehicle drivers are unionized. If they are, it will be interesting to get their views and feedback on the regulation. The public is also another important stakeholder and it will be important to do a quick survey to get their views. I would do this just so that I can tell the specific action to take: whether the reform should be an amendment or a repeal and re-introduction of a new regulation that takes care of the views so generated.

Once this is clarified, the processes laid down for the repeal and creation of new regulations as defined by the APA (Kerwin and Furlong, 2011) will then be followed. An important aspect of this process is the requirement that the draft regulation must be publicly displayed to allow all interested parties to input into it before they are finalized. This for me is an important step which can ensure that the regulation is well understood and that there is compliance with it.

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New York State Motor Carrier Regulations, 17 NYCRR Part 820 (2008)

Hi. John,

I have enjoyed reading your post. I agree that the DEL could merge the two programs within its responsibility. From that reform, TANT may not be an expensive haven against the government, nor abused by the exploiting or neglecting families. It is a necessary safety net for the needy families, but the fate should remain ultimately for the recipients. Given the paradigm of provision and adjustment, DEL seems to be most plausible in the division of responsibility as you suggested. That is because the education and learning are intrinsically tied with the job and economic activities. On the other, the fiscal difficulties seem prevalent over the nations, and Koreans are generally sensitive where their tax is spent. That would be similar with the US. It is squeezing indeed to respond with the effective and efficient government on the imposing public issues.

I consider, however, how the increase of minimum wage could be accepted by the citizen of WA. You would be right if the double effect would set off the benefits of high minimum wage. But it is also true that the policy subjects would be more interested in the number itself than the amount of substantial effect. Given the minimum wage being one of highest in the nation, I suppose that the resilience to reform (10.95 $- 12 $) would be anticipated. How do you consider if the reform could pass the legislature or any strategy to reconcile with the businesses or industries? Respectfully.

Author: John Naegele **Date:** Friday, October 24, 2014 11:03:35 PM EDT **Subject:** John N's main post

Regulation Reform: Washington WorkFirst

WorkFirst is a training and employment regulation for individuals receiving Temporary Assistance for Needy Families (TANF). An associated regulation is Working Connections Child Care (WCCC) subsides. Families receiving TANF funds and those who meet income eligibility requirements may apply to receive a subsidy to pay for childcare while in training, working or attending school.

The Department of Social and Health Services (DSHS) administers WorkFirst, writing regulations, and making policy. The Department of Early Learning (DEL) oversees and enforces WCCC; this was a recent change moving WCCC from DSHS to DEL. WCCC funds are available to subsidize the cost of child care for children four weeks to age 12.

Reforms. Moving WorkFirst to DEL seems to be an efficient and effective way to administer the two programs. DSHS is the largest state department in Washington. It oversees a large number of programs and services, consequently must account for various "pots of money," some of which have strict guidelines. One umbrella agency would best serve to coordinate WorkFirst and WCCC for TANF and low-income families.

Second, individuals using community jobs, work experience, on-the-job training, job skills training, and community service engage in activities to prepare them to work in a variety of settings. Basic job skills, i.e. attendance, being on time, learning to use technology, customer service skills, and working as a member of a team, focus on skills necessary to be a reliable employee. WorkFirst regulations require individuals to complete job searches on their own time and to be in WorkFirst activity, too (WAC 388-310-1000).

One must accept a job offer that meets WAC 3388-310-1500 requirements. The job must pay minimum wage, provide unemployment compensation, provide benefits received by other employees, allows membership in a union if received by other employees, and allows work for tribal governments. In some cases, individuals have not sufficiently mastered the basic job skills stated above. Changing the regulation to competency-based criteria for achieving basic job skills would reduce the number of individuals who are not successful transitioning to a paid position. Often, people lose a job, not because of they cannot do the work, but because they have not mastered basic skills.

Finally, individuals must accept a position that pays at least minimum wage. Washington has the highest minimum wage of $9.32/hour or $26,096 annually (www.lni.wa.gov). In some locations, i.e. Seattle, Tacoma, Spokane, the Tri-cities, this wage cannot sustain a family of four. The federal poverty level (FPL) for a family of four is $23,052, just $3,044 below the annual salary for an individual making minimum wage (www1.wa.gov).

Families making minimum wage may lose other benefits, i.e. WCCC, food stamp, TANF, housing subsidies or Medicaid benefits. Raising the minimum wage level to accept a job to $12.00/hour (or more) may allow the family to be more financially stable.

These are three reforms to consider for WorkFirst recipients. Helping people move from TANF to stable employment, and fiscal independence is of utmost importance.

Hi. Iberkis,

I have enjoyed reading your post. Anti-terrorism certainly would be a kind of soaring issue to be combated. It deserves a whole push from the state, nation and global community generally. In this stream, the Act 2001 of New York was a fine measure to address the state and national grief and anguish. I consider the reform is necessary, but I also raise a concern if the reform could be reconciled with the traditional constitutional theory. *Snowden* once had been

subjected to the public focus, but the interception or analysis of public or private communication might be entangled with a tough challenge from the constitution. Currently Korea is being debated about legalization of governmental eavesdrop, interception, and analysis of the *Kakaotalk* communication based on the need of criminal investigation. One of major internet service provider in Korea, *Daum*, declared its policy publicly in Oct., 2014, which avowed denying the request of government to collaborate the interception and analysis. Without its collaboration and assistance, the ambit or pledge of government would hardly be practicable. How do you prospect if the reform measure could survive the constitutional muster between the right of privacy and compelling state interest? Respectfully.

Author: Iberkis Faltas **Date:** Thursday, October 23, 2014 11:25:48 PM EDT **Subject:** RE: Discussion - Week 8

The regulation that I used for my application assignment was the State of New York Anti-Terrorism Law Act of 2001. New York implemented the captioned Act to amend the state's penal law and criminal procedure law, to include penalties of crimes of terrorism. No the terrorist's act after the facts, but the preliminaries actions of terroristic intent.

The preliminaries actions of terrorism includes, soliciting terrorism, providing any type support to terrorist's actors, terrorism threats, and hindering prosecution of terrorism. (Anti-Terrorism Act, 2001) The regulations of the Act were outlined as follow:

- Soliciting or providing support for an act of terrorism in first-degree
- Crime of terrorism
- Making terroristic threats and
- Hindering prosecution of terrorism

New York's Anti-Terrorism law and regulations allows the court to prosecute terroristic intent in the form of soliciting, participation in terrorist activities, providing propaganda, facilitating social networking, by direct proliferation, and or by third party involvement. Providing any form of financial support—in the form of food, housing, and or goods, as of any other form of support to terrorist activities.

The approach that I would take to reform the NY Anti-Terrorism Act would implement four steps: Leadership, information sharing, priority settings, TCA (Technology, collection, and analysis) of information. As of today, lone-wolf terrorists represent as much of threat as the Islamic State does. Consequently, I need a reform that would bond the immediate threat with the immediate need.

In the wake of the current terrorist threats, my reform to the NY Anti-Terrorism Act of 2001 would allow the interception and analysis of electronic communication with the purpose of disrupting the overreaching of lone-wolf terrorists. It would also have the objective of preventing the spread of the new terrorist's threat against the people and the infrastructure of the homeland. To implement the new reform, I need agencies' leader to work together at the state level by improving security and putting bureaucratic bloat aside. Agencies would be mandated to step-up information-sharing capabilities, would require to prioritize operational strategies, and to improve TCA—technologic collection and analysis of information within

social networking environment. We must understand that terrorists are in desperate need of attention, before and after their terroristic actions. And everyone must promote and extend the "if you see something—say something" to social network as well. In fact, if someone would have said something about Alton Nolen's twitter home page, or if his network prints would have intercepted before the fact, his lone-wolf action would have been prevented.

Iberkis

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Narrative perspective. *Policy Studies Journal, 31*(3), 421-440.

[Week 9]

Hi. CAnna,

Thank you for reading my post. I generally consider that the smoking issue would have a dual flip of coins as to its approach and points of dispute. It is fairly consequential that the power of modern science would affect the thinking and culture of person. The smoking-defensive tone and argument had not been such silenced as we have no countering voice against the smoking regulation. The public would be easily domiciled to accept the science people and regulatory bodies. It is likely that Koreans would be more smoking-defensive, but even here in Korea, the new millennium saw a unilateral version of anti-smoking. However, I suppose something is missing in this progress if we cherish a liberty to person, diversity, and social justice. I am not sure how much the car owners would harm the health and environment, but the equity between the car owners and walk commuters may be thinkable or comparable with our issue. The car owners would be prideful citizens, but the smokers must bear a shame from a square of influences, such as detesting ads and implied pressure from the neighborhood. They may pay tax for their use of car, but the high price of cigarette may set off. In diversity, some persons may be served in same way that car driving or other hobby entertainers would be served from his activities. The golfers would relax themselves to fuel new energy for his or her business, and the smokers may benefit similarly from his smoking. The exploitation of natural resources for a golf course and other entertainment establishments may amount to a same level of pollution or climate change, perhaps not relevant to the health and fate of people. My view is that the people generally had gone too far, which may abridge with some due share of smokers. The proportionality principle would guide a balance between two groups. In the open space facing the heaven and horizontal view, the smokers may not be regulated. Once in history, the suicide of person was a crime since it incurs a loss for the nation. The concept was changed that no nations would criminally respond with the suicide. For the scientists, smoking would be seen as the kind of suicide, but somebody may take it a source of happiness. Given they are adults, the proportional justice needs to be weighed. I am also curious why any smoking-defensive views or ads would be so much closed, while we are affected heavily from the unpleasant anti-smoking ads. I suppose that the Department of Health would be a most direct agency to regulate the smoking. The passive smoking and side stream of smoke could be effectively combated by that department. Respectfully.

Author: CAnna Ulaszewski **Date:** Friday, October 31, 2014 7:07:52 PM EDT **Subject:** RE: Discussion - Week 9

Hi Kim,

The State of California, counties and municipalities have very strong anti-smoking laws. There is an ambitious anti-smoking, educational program that supports the laws. The State and city departments of health are part of the anti-smoking programs. Do you think this is an appropriate approach? Should the Departments of Health be the lead agency in directing anti-smoking campaigns?

Thanks

CAnna

Author: Melissa Rosa **Date:** Friday, October 31, 2014 6:12:05 PM EDT **Subject:** RE: Discussion - Week 9

In the town of Bristol, Rhode Island Sec. 13-2 Display and Sale of Tobacco Related Products states that all tobacco products including cigarettes, pipes, tobacco, and other tobacco related products need to be displayed and continuously supervised by an employee of the business that sells tobacco products. The business will be penalized $100 for the first offense, $200 for the second offense in one year, and $300 for the third offense in one year with a ninety day suspension of the privilege to sell tobacco products. (Ord. No. 2001-05, 1-24-01)

Many stores such as pharmacies and food markets have stopped selling tobacco products because of the negative impacts that the products cause on human lives. The point is to create a more healthful environment for employees and customers. These stores are now only carrying smoking cessation products. The companies that still sell tobacco products should make all employees go through a training program where they are now certified to sell tobacco products safely. Employees need to understand the responsibilities that come along with selling tobacco products. The training should provide education on the products being sold along with the precautionary measures that need to be taken in order to avoid theft and selling the products to an underage patron. The employees should also be made aware of the disciplinary actions that would take place if the rules were broken. All stores should be required to keep all tobacco products under a lock and key in a display case. This would avoid the theft of the products and the sale to an underage individual. It is very important to keep these products out of the hands of underage individuals. Tobacco vending machines should also be taken out of stores and areas where people under the age of eighteen can get their hands on the products. There is a worry that there is no one to constantly monitor who is using the machine.

Rhode Island just received Tobacco Control Program funding in the amount of $388, 027 from the state that was provided for tobacco prevention and cessation programs. The American Lung Association and the Department of Health and Licensure should work together in order to build a policy that would provide business owners to provide the education for themselves and employees in order to obtain the license to sell the tobacco products in the store. The policy should also include that a display case is necessary to provide an extra layer of protection from the mishap of the product getting into a minors hands.

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Hi Mellisa.

Thank you for the good posting. It seems that your town is fairly moderate to deal with the tobacco issues. In some cases, the smoking in the public street or forum is regulated, and the violators will be imposed a fine. In this case, the smoker himself would be punished, and would be more serious in terms of policy tools. As your ordinance triggers the related businesses or shops, the likelihood is that the consequence is less imposing given they have both facets, as being regulated on one hand and benefiting from a profit on the other. Instead, you implied that the state administers a cessation program and related education on the smokers or potential smokers. How do you find the share of smokers and non-smokers in your town or state? Is there any voice to oppose the public intervention into a smoking. Respectfully.

Author: Arthur NixonJr **Date:** Thursday, October 30, 2014 10:55:52 PM EDT **Subject:** RE: Discussion - Week 9

The local law that I chose to write about is one here in Douglasville, Georgia, not foreign to any other city or county, but some cities in Georgia recently legalized the purchase of alcohol on Sundays. Here in the South….especially the Bible belt, that is unheard of. According to Barker (2012), "November 25, 2012 was the first day alcohol could be sold on Sundays. Sec. 3-23 is titled License restricted to off-premises consumption, exceptions. The ordinance specifically states that hotels, motels, and restaurants may have customers who purchase alcoholic drinks consume them on the same premises it was purchased in.

For me, this is a quality of life issue and I agree that the purchase of alcohol should be taken elsewhere to be consumed if not in one of the approved areas. If jurisdictions did not have this law in place, it could turn into a very unsafe and unhealthy place to live.

If you are from or either familiar with the south, you no doubt have heard of "Blue Laws". Blue Laws were/are laws enacted to enforce religious standards and morals.

According to Brown (2011), "religiously motivated blue laws were once common across the Bible Belt. But over the decades, they have been struck down as anachronistic or unfriendly to business. Georgia was the last Southern bastion of a statewide all-day ban on Sunday alcohol sales in package or grocery stores. (Indiana and Connecticut also still have such laws).

In that quote, the key word is "business". It is a revenue maker. Now, Sec. 3-23 reads

Sec. 3-23. - License restricted to off-premises consumption, exceptions.

Alcoholic beverages sold in the unincorporated areas of this county shall be for off-premises consumption only subject to the following exceptions:

1. Hotels or motels as defined in section 3-1, Article I hereof may be granted an alcoholic beverage license for on-premises consumption; and

2. Any restaurant as defined in Article I, section 3-1 herein may be granted an alcoholic beverage license for on-premises consumption, provided that such on-premises consumption is incidental to the serving and consumption of meals.

3. Except in those instances where an establishment obtains a pouring license pursuant to article III of this chapter.

These are businesses that are allowed to have on premise consumption of alcohol. They provide a place to sit and in most instances, food. A license to do this has to be obtained or law enforcement may be involved. According to Olson (2009), "legal problems and issues are governed not only by federal and state law, but also by the laws of counties, cities, and other local units (p. 202).

There are other businesses that are applying for alcohol licenses that I would have a problem with them having a license. That business is the gun range. Across America, gun ranges are applying for a liquor license. According to Johnson (2014), "you'll be able to get a shot and a beer after an Oklahoma City gun range was granted a liquor license this week, much to the distress of some city leaders".

The reason this was done was for revenue just as when Douglasville chose to start allowing alcohol sales on Sunday. I am in favor of the ordinance for consuming alcohol in the approved places. Local law enforcement needs to be on patrol to ensure drivers who find themselves under the influence are recognized and taken off the streets. I would provide more information on how someone may be able to get home if they find themselves in a situation where they cannot drive. This information would be provided inside the business itself.

References

Johnson, M. (2009 May 29). Bullets and Booze: Oklahoma Gun Range Awarded Liquor License. Retrieved October 30, 2014 from http://www.nbcnews.com/news/us-news/bullets-booze- oklahoma-gun-range-awarded-liquor-license-n117976

Sec. 3-23. - License restricted to off-premises consumption Retrieved October 30, 2014 from https://www.municode.com/library/ga/douglas_county/codes/code_of_ordinances?nodeId =COOR_CH3ALBE_ARTIILIPR_S3-23LIREOEMCOEX.

Olson, K. C. (2009). *Principles of legal research*. St. Paul, MN: West. ISBN: 97803 Hi. Raymond,

Hi. Arthur.

Thank you for the exciting post. I agree that the consumption of alcoholic beverages have an issue, involving the kind of quality life, public peace and safety, and liberty of person. In shaping a local law, the belief and culture of that specific locale seems to factor. The Bible belt would matter to shape a public life. I may be concerned if the establishment clause of US

constitution would require the government neutral and disentangled from a religious-prone intervention. Your idea to assist with the heavy drinker and to locate his home seems interesting. In Korea, the kind of liquor shops has a network for alternative drivers who are paid of small sum for a home of drinkers. I may ask if any federal or state measure (perhaps the state constitution would have the same of Establishment clause) would overrule the kind of religious-prone regulations? Do you see any barrier to import or promote the idea of alternative drivers into the state system? Respectfully.

[Week 10]

Hi. Raymond,

Thank you for the excellent posting. The education policy is the area where many of concerns and interests would be crossed or intersected. The advice and information from the psychology, sociology and economy are the basis of adequate solution. The laws or legal information could also in fair extent of compass if we are concerned of the area. Korea had long been administered centrally in creating and delivering the educational policy. It is only feasible around 1990's that the educational policy was handled by the special local government. This development incurs a much more challenge from the social benefit, such as free lunch and child fostering. Then the Department of Education would consult many statutes beyond the kind of direct source, No Child Left Behind Act. You mentioned that its website would be most useful in view of reliability and authenticity. How do you consider if its coverage ir adequate relating with their responsibility? About the scholarly articles, what extent of share have you apprehended between the articles of general social science and law materials in terms of educational policy? Respectfully.

Author: RAYMOND IBEH **Date:** Thursday, November 6, 2014 10:45:11 AM EST **Subject:** RE: Raymond Ibeh Discussion - Week 10 Initial Post

WEEK 10 – DISCUSSION

LEGAL RESEARCH FOR POLICY PRACTITIONERS:

Strength and Limitations of Online Resources

Identify the Policy area selected:

Education policy known as No Child Left Behind is a legislation passed by Congress and signed into law by President W. Bush. It is codified as Public Law PL.107. The education policy under the legislation requires that states establish challenging academic standards for all their schoolchildren in elementary and secondary schools. The legislation also requires states to test their students regularly to ensure they are meeting those standards prescribed by the legislation. Furthermore, the legislation requires states to employ highly qualified teacher to teach in their schools (Nolo's Plain-English Law Dictionary).

Describe the online resources that you think are the most useful for researching the policy area that you selected and explain why:

In the course of completing this Discussion Assignment, I looked into a myriad of online resources that have something to say about the policy issue selected. Some of these online sources come from scholarly articles such as those from Sage Publications, Cornell, Harvard, Yale, Texas, etc. Law journals. Others come from libraries such as Walden library online resources, private and educational research organizations, and a host of private bloggers. Others include commentators on education issues. Of the online resources that I perused, none appeared more authentic and less biased as the source from Ed.gov. Ed.gov is the US Department of Education website, fully maintained and run by the department. The website contains the entire legislation on No Child Left Behind as passed by Congress. The

website also contains policies regarding the implementation of the legislation and the effect the legislation had on states. The reliability and authenticity of the source – Ed.gov can be neither put into doubt nor can the information it contained be padded with any bias whatsoever. The reason is that information issued by the government is authentic.

As a result of completing this assignment, explain at least one insight you had or conclusion you drew about using online resources for legal research:

The insight or conclusion that I drew from using online resources for policy research is that there are numerous online sources, either from reputable universities or from private research organizations. Some of these online sources are free, others are fee-based; their patrons pay a certain amount before use. Most of the online sources are scholarly articles, and these have to be paid for by intended users before use. These types of sources include sources from government and non-governmental organizations. These sources are also reliable and authentic.

Reference

"No Child Left Behind Act Of 2001 | Nolo's Free Dictionary of Law Terms and Legal Definitions." *Nolo.com*. N.p., n.d. Web. 24 Oct. 2014. Retrieved from http://www.nolo.com/dictionary/no-child-left-behind-act-of-2001-term.html>.

Hi. Melisa,

I have enjoyed reading your post. The unemployment insurance would be an area that the policy makers and officers would consider difficult and challenging. The need of research may be raised in many aspects of cause. A supervisor may ask for a one day or hours research about specific questions, which could be answered generally simplistically. Our research project sometimes may be the kind of grand initiative such as national reform of insurance scheme. Korea now experiences a harsh reaction of the retirement benefit law (concerning the employees of government) as pursued in the end to save the rationalization and adequacy of fiscal conditions. You stated that the Cornell website would be more useful. Upon the two kinds of research need, from short to some projected, how do you find the utility of Cornell website? Do you think if it might be lacking or insufficient to consult the extended national reform? In a day or hours research, can you say if the Wash website could be more effective? Respectfully.

Author: Melissa Rosa **Date:** Thursday, November 6, 2014 11:49:51 PM EST **Subject:** RE: Discussion - Week 10

Unemployment insurance is a poverty prevention program. It is temporary aid for someone that has lost their job through no fault of their own. The program is governed by the federal government but the individual states determine eligibility requirements for benefits, the amount and duration of the benefits, and the amount that the employer must contribute. (Marx, 2012) The three federal unemployment insurance programs cover veterans, railroad workers, and federal employees. 85% of the American labor force is covered by unemployment insurance. (Marx, 2012) Farmers, domestic workers, and self-employed are not eligible for benefits the unemployment. The basic program provides up to twenty-six

weeks of benefits replacing about half of a person's wages. Extended benefit programs will provide another thirteen to twenty weeks to those who cannot find a job and are struggling.

The Cornell Legal Information Institute was fairly easy to use. The website gave a breakdown of the unemployment system along with all of the laws, regulations, and cases for each state individually. The website also offered a link to find information on the federal side of the system. The information was organized and easy to find. However, there was a lot of information to sift through. Searching for one part of the policy became difficult when using the search option. The results were very broad.

WashLaw.edu brings a researcher directly to the United States Department of Labor website. This website will provide a researcher with information on every aspect of unemployment insurance dealing with federal or state government. WashLaw.edu is a great website to use to get directed toward the right source of abundant information. The WashLaw.edu website did not provide information on unemployment insurance in itself but directed a researcher to other websites. I find the Cornell Legal information Institute website to be more useful when searching any policies, regulations, or laws. I always find what I am looking for when using that site. The Cornell website is more user-friendly than the others even though the searches provide more broad results. The trick is to use the website itself to sift through that information.

Marx, J. (2012). Current issues and programs in social welfare. *The Social Welfare History Project*. Retrieved from http://www.socialwelfarehistory.com/recollections/current-issues-and-programs-in-social-welfare/

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Cannon, A., Swenson, D., & Fisher, P. (2010). *The recovery act and unemployment insurance*. Retrieved from http://www.iowafiscal.org/2010docs/100225-arra-UI.pdf

law.cornell.edu. (2014). *Unemployment compensation*. Retrieved from http://www.law.cornell.edu/wex/Unemployment_compensation

Author: CHINWE MORDI **Date:** Friday, November 7, 2014 10:03:34 AM EST **Subject:** RE: Discussion - Week 10

Strengths and Limitations of Online Resource

The policy selected is the policy on Employment Discrimination. Employment Discrimination is regulated by laws that aims to prevent discrimination and redress incidences if discrimination when occurred based on sexual orientation, race, religion, nationality and physical disability amongst others.

Cornell University Law School Website (Cornell, 2014)

This website proved to be the most useful for me while researching my selected policy of Employment Discrimination because, asides from the vast collection of statutes and legislations, the website was well laid out and there were clearly defined tabs that made it

easy for me to search by topic. The tab was called Legal Encyclopedia. The website grouped topics under employment in a single tab and provided the laws regulating them underneath. It proved to be a highly efficient way to research. Also, the website in listing the relevant laws, listed all the laws that relate to employment discrimination regardless of state.

WashLaw (Washington University School of law) (Washlaw, 2014).

This website was in my opinion the least useful for researching on the selected policy. This is because the website categorized research by state so it was painstaking to go from state to state to determine the relevant statutes on the policy.

Conclusion. The above website discussed above are free websites where the users do not pay a fee to use. This can impact the quality of the website when compared the paid legal research websites nevertheless, it doesn't meant that free websites are les authoritative than paid website but may have fewer resources. From the research carried out, the insight gained by using online research resources is that it is very easy to get overwhelmed by information found on the internet because the information is limitless hence, the researcher should ensure that he remains focused on his research question.

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Cornell. (2014). *Employment Discrimination*. Retrieved from Cornell University School Law School: www.law.cornell.edu

Washlaw. (2014). *Washington University School of Law*. Retrieved from Washington University School of law: www.washlaw.edu

Hi. Chinwe,

Thank you for the insight. I agree that a current researcher has to train himself adjusted with the extent of information, in some cases, unbelievably a large number of pages. In the desire to cover, the researchers may incline to collect, which distracts from a due focus and requires an unnecessary work to search, retrieve and compile. Generally, it seems on trend that the on-line mode of interaction would certainly be imposing and consequential. How do you reflect if any strategy or maxim could make an effect on the contemporary researcher about a focus, strains, adequacy and stewardship to complete the research finely? Respectfully.

[Week 11]

Hi. Dr. Judith,

Thank you for the question. The bluebook citation provides a standard of practice for the lawyers and law professors in their citing of reference. While the APA style is prevailing in the research of social science, the bluebook practice specifically governs the law people. As the preparation in this class requires the APA style, law review articles generally would prefer the bluebook form of citation. The abbreviations and formats in terms of citing reference would go a little discrete to facilitate the work of citation in the Bluebook. For example, the bluebook citation may be shorter since the audience would be more close and intimate. It is wise to respect a specific requirement prearranged for the plan of respective professional journal if we try a contribution. A citation serves increasing the reliability and trustworthiness of research product. It also functions to assist with the subsequent research. For this, we often would be indebted to the comprehensive or insightful articles to plan on the research work. For example, some important article or treatise could help to frame an approach and offers the ground to search the primary sources. It also is useful to distinguish between the scholarly ones and non-academic nature of articles. Respectfully.

Hi. Matias,

I enjoyed reading your post. I share a same feel that the research could get straight to the point if we are experienced to evaluate the sources and trim to get speedier over the secondary sources. It is good idea to fasten the stage which enables to work on the primary sources. I consider some complements if the research project has some mixed nature of requirements over perspectives beyond the concern or discussion of laws. Then we may need to share a concern and views from other sources than law. In this purview, I suppose that the cost-effective research truly depends on the situation and resources feasible. The immigration issue surely is a hyperbole attracting a public attention. How do you suggest any plausible solution for a good and effective policy? If requested to expand your research for the legal reform, do you mind to explore the view of socio-cultural, economic, and political scientists? Respectfully.

Author: Matias Matondo **Date:** Wednesday, November 12, 2014 12:53:39 PM EST **Subject:** RE: Main Discussion - Week 11

Cost-effective Strategies for Researching Policy issues

The policy issue I selected for my Final project is the Arizona SB 1070 Immigration Law of 2010 (Arizona-SB-1070), a controversial Act passed by the Senate of Arizona and signed into law by Governor Jan Brewer on April 23, 2010, seen by many as xenophobic and prone to racial profiling. The law originally designed to control the massive uncontrolled immigration and restrict employment of unauthorized immigrants was later seen by many as targeting the Hispanic community namely its Section 2(B), also known as the "show me your papers" provision, that since 2012 requires police officers to ask about the immigration status of people they "suspect" of being undocumented.

The Tucson police said Arizona's controversial SB1070 immigration law was designed to make the immigrant community afraid of law enforcement authorities and leave the state. Arizona's Hispanic community has continued to fight against SB1070 since it went into effect in 2010, and they complain about cases of abuse by the law enforcement agencies.

The two cost-effective strategies I would use to research this issue are (1) evaluation of the sources of information, and (2) approach the Primary source directly. These strategies are cost-effective in light of the fact that, after identifying the subject matter of the research and asking the questions digital researchers should begin with (Smith-Butler, 2008, p. 14), the evaluation of sources will ascertain that only credible sources will be used or cited in the research.

Approaching the primary sources (Law, Court decisions, legislations, regulations) directly, helps researchers explore the text of the law (its persuasive authority) as originally passed by the Legislature without being influenced by any interpretation. For instance, getting direct access to Arizona-SB-1070 will allow me to personally grasp the letter and the spirit of this Act without being influenced by any secondary source such as treatise, hornbooks, academic journals which provide their own review or interpretation of the law that may be biased.

References

Murray, M. D., & DeSanctis, C. H. (2009). *Legal research methods*. New York: Foundation Press.

Smith-Butler, L. (2008). Cost-effective research redux: How to avoid becoming the accidental tourist, lost in cyberspace. Florida Coastal Review, 9(293).

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Author: Kelly Gilbert **Date:** Thursday, November 13, 2014 10:06:09 PM EST **Subject:** RE: Discussion - Week 11

Kelly Gilbert

November 13, 2014

Week 11 Discussion

Cost-Effective Strategies for Researching Policy Issues

The first thing when researching policy issues you first need to identify the issue of interest. The policy issue of my interest is cyber bullying and cyber security because this is something you are starting to hear more about in news. I grew interest because my accounts were hacked

on the internet and my bank account was charged multiple of times without my knowledge. This made me want to look into how to protect my accounts more and I also notice my mistakes that lead to my accounts getting hacked.

One cost effective strategy when researching is to plan your research out accordingly. If you fail to plan how you are going to attack all of the resources made available to research your topic. This will help save time especially when you know which websites to use for your sources. For example, LegalTrac, WestLaw, and LexisNexis are all great resources to use in order to effectively research your policy interest of choice. When you are prepared and brainstormed your ideas before attempting to research your topic you will save a lot of time and long hours of reading to find what you are looking for.

The second cost effective strategy is narrowing down the resources you will use for your study. When analyzing cyber bullying and cyber security I decided I will use LexisNexis to narrow down what I want to discuss for my final project. This site helped pull up potential cases I can use to explain the effects of cyber bullying and security. For example, we have been working on this project for weeks if you chose something you were interested in you can easily to enter keywords to find the cases you're looking for.

Hi Kelly,

Thank you for the good post. It comes to mind that the research can be made well-meaning in the case where the researcher himself has a personal stake and interest of that specific issue. You said that your aggrievances and loss grew an interest in cyber bullying and security. It seems a good engineer to adhere with your research progress and through the end of satisfactory result. One other point is that, in some cases, the research plan itself can be assisted with the sources. The preliminary investigation may be entered without a concrete plan. However, I generally agree that the clear idea on the quality, basic content and course of research would certainly facilitate the cost-effective research. Do you bring that topic into the dissertation? Respectfully.