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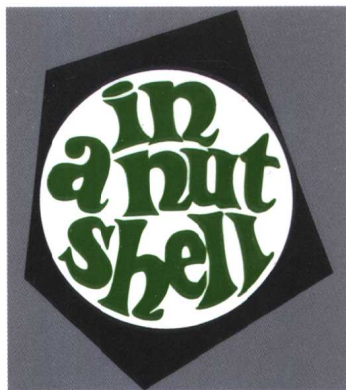


# Legal Research

8th Edition

## 法律检索

[第8版]



Morris L. Cohen

Kent C. Olson

【美】莫里斯·L·科恩  
肯特·C·奥尔森 合著



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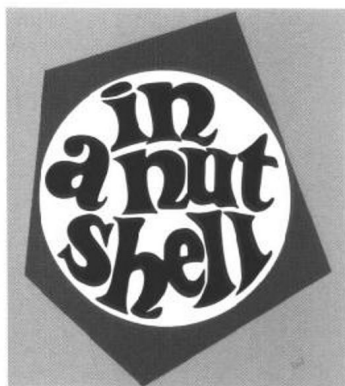
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## 总序

许传玺\*

在美国法律教育界与律师实务界,这套“美国法精要”(Nutshell Series)是颇具特色的一套丛书。这套书最突出的特点当推它们的简捷明快、深入浅出。每种书均由富有教学经验的法学教授执笔,在三、四百页的篇幅内介绍某一法律部门的基本原理、主要法规和重点案例。

由于这些特点,这套丛书受到了无数美国读者的欢迎和喜爱。众多法学院的学生将这套书作为课外的辅助教材,由此掌握美国各主要部门法的精义。执业律师也经常借助这套书,以迅速了解自己尚未熟习的某些部门法,或者温习过去曾经学过的某些课程。

相信这套丛书也能赢得国内读者的欢迎。无论是法律专业的本科生、研究生,还是执业律师或其他人士,都能从这套丛书中获得有关美国法律的大量知识,对自己的学习和工作有所助益。此外,通过阅读原汁原味的英文来学习美国法律也应能提高读者的法律英语水平,促进与美国同行的直接对话与交流。

---

\* 美国哈佛大学法博士(J. D.);耶鲁大学社会文化人类学博士;现任中国政法大学中美法学院院长、教授。

应原出版者的要求,这套丛书的国内版增加了中文前言,以介绍美国各部门法的概况、每种书的内容及原书作者等等。这些前言作者都是在美国受过专业教育或从事专门研究的法律学者甚或专家。相信他们的介绍会对读者有所帮助。

Happy reading!

1999年4月  
于哈佛法学院

## 前 言

张农基\*

十九世纪前后,美国的律师只需要拥有一套《布莱克斯通英国法律评解》就可以办案了。1810年时,美国的司法判例报告汇编只有18册,到1885年时,美国的综合性法律图书馆已收藏3500册判例报告了。美国的出版界于19世纪末、20世纪初开始有系统地出版各种司法案例汇编,案例索引和注解汇编,联邦和州法律汇编等,美国的法律书籍开始变成了“汪洋大海”。

今天,美国哈佛大学法学院图书馆的藏书已超过一百九十万册。仅最高法院,联邦和各州法院的案例汇编,和各种法律法规汇编就占据两个大厅的空间。如果要查找某一个案例或某一个法律条文,未经过专门法律检索训练的人会感到像是在大海里捞针。于是,有关法律检索的图书和课程就应运而生。

在美国,法律检索是每一个法学院学生必修的课程。法律检索这门课并不是把法律作为一种学问来研究,而是专门训练学生如何在浩瀚的法律文献中,有效地查找法律

---

\* 北京大学法理学硕士;美国西门斯学院图书馆学硕士;美国东北大学法律、政策与社会研究方向博士;现任美国哈佛大学法学院东亚法律文献员。

案例,条文和解释性资料的技术性课程。法律检索作为一种技术,是律师迅速准确办案,法律研究和工作人员分析判断法律问题必须具备的专业训练。美国法律文献的繁多和复杂性又决定了必须有一批专业人员,致力于法律文献的编排和管理工作的,帮助和指导他人从事法律检索。这些专业人员就是法律图书馆的管理人员。

在美国法学院,教法律检索这门课的,通常是由既有法律学位(J. D.),又有图书馆学学位(M. L. S.)的法律图书馆馆员担任的。在我工作的哈佛大学法学院,教法律研究这门课的,是有多年教学经验和图书馆管理经验的弗吉尼亚·怀斯(Virginia Wise)女士。怀斯女士所开设的初级美国法律检索,高级美国法律检索,和外国法律检索,对于哈佛法学院学生顺利完成三年学业,参加学期间的实习工作,以及胜任毕业后的法律实践,都是很有帮助的。

在美国法律图书馆,法律资料一般分为三种。第一种是具有法律权威性的首级资料(Primary Sources),第二种是用于查找法律的工具性资料(Finding Tools),第三种是不具有法律权威的次级资料(Secondary Materials)。在美国法律中,司法判例是法律的渊源之一,因此属于首级资料。另外两种首级资料是法律和行政法规。法律检索的工具性资料主要包括案例摘要,索引和注解(Digests, Citations, Annotations)等。次级法律资料则包括范围广泛的法律文章,著作,文件,和文献等。

《法律检索》是其系列丛中,修改再版最频繁的一部。它自1968年首版发行以来,目前的2000年版已是第八次修改发行了。这反映了法律检索本身,变化既迅速又频繁。本世纪电子信息时代的到来,为法律检索手段的多样化创造了新的条件。

《法律检索》是专门为法学院学生写的,因而它力求体现法学院的整个课程安排,和法律图书馆的藏书结构。此书共分15章。第一章概述法律资料的结构和法律检索的步骤,第二至第八章介绍首级法律资料及其查询方法,第九章介绍次级法律资料及其查询方法,第十章介绍活页类法律资料和其他专业性法律文献,第十二和十三章介绍国际法和比较法的法律资料和查询方法,第十四章介绍联邦法系的法律资料和结构,第十五章介绍大陆法系的法律资料和结构。此书结尾按州和主题分类还附有主要案例摘编,案例索引与注解汇编,以及法律法规汇编的名录。

《法律检索》是美国各大学法学院普遍使用的,一本最基本的法律检索教学书籍。然而正像本书的作者们所指出的,仅仅阅读此书并不能使一个人真正掌握法律检索的技能。阅读必须与实践相结合。在美国法学院法律检索课程中,学生们通常要在图书馆里和计算机数据库中做各种练习,才能真正掌握检索法律和案例的技巧。

《法律检索》的作者莫里森·科恩先生曾是耶鲁大学法学院图书馆的馆长和法学教授。他现已退休。科恩先生毕业于哥伦比亚大学法学院,和美国普拉特(Pratt)学院的图书馆学院。他的其他主要著作有:《法律与科学,文献选汇》,《寻找法律》,《法律,公正的艺术》,《早期最高法院报告指南》,《早期美国法律文献》等。

《法律检索》的另一位作者肯特·奥尔森先生,目前是弗吉尼亚大学法学院图书馆咨询部的主任,和法律检索讲师。奥尔森先生毕业于加利福尼亚大学鲍特豪(Boalt Hall)法学院,和加利福尼亚大学图书馆与信息学院。他的其他主要著作有:《实用法律检索方策》,《寻找法律》,《法律,工具书指南》,《法律信息,如何查找,如何使用》等。



我希望《法律检索》在中国的出版,能对中国法律文献资料的编排,整理和管理工作有所启发。我相信,中国法律院校的学生们如果受到类似的法律检索的训练,他们的学习和实际工作能力将会有进一步的提高。

2003年11月于哈佛大学法学院图书馆

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# PREFACE

*Legal Research in a Nutshell* has seen considerable change since it was first published in 1968. Each edition has focused increasingly on electronic methods of research. Lexis and Westlaw were first introduced in the 1978 edition, followed by CD-ROM in 1992. The 1996 edition added the first references to the Internet, although web addresses were not included until 2000. This eighth edition finds a wide variety of Internet resources integrated into a discussion once dominated by books and commercial databases.

Yet in some respects the *Nutshell* of 1968 is not so distant. We continue to devote considerable attention to printed, or “traditional,” legal resources. While electronic methods are essential in today’s legal research, they have not fully supplanted the sophisticated editorial tools that form the basis of our legal literature. Many online sources are based on printed works and thus incorporate their structure and logic. An understanding of these works is required for effective research, whether in print or electronic media. Successful research also requires an appreciation for the computer’s ability to execute searches which are impossible with print materials, and for its power to retrieve information unavailable on a local library’s shelves. An integrated approach to print and electronic sources pervades most of this text and shapes the actual practice of modern legal research.

We present legal materials in the order in which they are often consulted by beginning researchers. The first five chapters provide an introductory overview and cover essential secondary and primary sources in American law. General background sources such as legal encyclopedias

and law review articles are discussed at the outset, just as they are usually the first sources consulted in research. Case law sources and research methods are discussed next, in keeping with the central place of court decisions in the American legal system and in legal education, followed by a discussion of constitutional and statutory law. The next five chapters cover sources such as legislative history, administrative regulations, court rules, looseleaf services, and directories. While these issues are somewhat more specialized than the basic case law and statutory sources, they are no less important in many research situations. The final two chapters provide a brief introduction to research in international and foreign law. These topics may be beyond the scope of many introductory courses in legal research, but we feel that no consideration of legal resources is quite complete without recognizing the place of the United States in a larger community. Our discussion of international and foreign law resources reflects their increased role in practice and in scholarship.

In addition to printed resources and numerous Westlaw and LexisNexis databases, we discuss a wide range of government and commercial Internet sites. The Internet is notoriously fluid, of course, and yesterday's valuable site may be today's dead link. All addresses listed were still valid as of May 2003, but we are also maintaining a regularly updated set of links online <[www.law.virginia.edu/nutshell](http://www.law.virginia.edu/nutshell)>. This should cut down both on frustration caused by obsolete references and on the time wasted in carefully typing lengthy URLs.

This book is designed to serve both as a reference work and as a practical teaching tool, for use by individuals or in legal research courses. In either case, simply reading its text will not make you an effective researcher. Skill in legal research can only be achieved by combining knowledge

with experience. Reading in the *Nutshell* should be accompanied by practice. Ruth McKinney's *Legal Research: A Practical Guide and Self-Instructional Workbook* (4th ed. 2003) can be used as a companion volume to this work and contains extensive cross-references to relevant sections of *Legal Research in a Nutshell*.

The authors wish to thank law library colleagues at Yale and the University of Virginia for supporting the preparation of this edition. We owe a particular debt of gratitude to Elizabeth Lambert, reference librarian at Harvard Law School, who assisted us throughout the composition and editing process. Her keen eye and unflagging enthusiasm have been essential in making this a *Nutshell* that we hope is more durable and at the same time easier to crack.

**Morris L. Cohen**  
**Kent C. Olson**

New Haven, Connecticut  
Charlottesville, Virginia  
May 2003

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