

**FEDERAL LEGISLATIVE HISTORY RESEARCH:**

**A Practitioner's Guide to Compiling the Documents  
And Sifting for Legislative Intent**

**By Richard J. McKinney  
Assistant Law Librarian  
Board of Governors of the Federal Reserve System,  
and  
Ellen A. Sweet  
Legislative Reference Specialist  
Tax Division  
U.S. Department of Justice**

**Originally published in 2001; Last revised in May, 2006**

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**Washington, D.C.**

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**DETAILED OUTLINE**

**A. Introduction: What Federal Legislative Histories Are and How They Are Used**

1. Compilation of related legislative docs that precede the enactment of a U.S. public law
2. Used by federal agencies, attorneys and courts to interpret a law
  - a. At the least tells you general purpose of a law or particular title in a law
  - b. Usually harder to decipher legislative intent in smaller provisions in a law
3. Controversy about relying on documents that are not enactments
  - a. Many law journal articles written debating the merits of leg. Histories - see bibliog.
  - b. Recent critics, textualists like Justice Scalia, have dampened use in courts

**B. The Federal Legislative Process and Legislative History Documents**

1. Typically a bill is introduced, numbered sequentially & referred to committee(s)  
 (GPO prints bill, and frequently an intro statement & sometimes the text, summary & correspondence in Cong. Record, especially on the Senate side)
2. Possible committee action on bill (most see no action unless a chair is sponsor/cosponsor)
  - a. Possible subcommittee hearings and markup of bill. Amended bill not printed yet.
  - b. Hearings usually published months later. Cmte Web sites may have prepared testimo.
  - c. FNS & FDCH have selected unofficial transcripts & most all prepared testimony
  - d. Possible committee hearings and markup - text of amndts may be avail. to attendees
  - e. Unofficial (CQ, NJ) & official summaries of markups may be available
  - f. After markup, committee orders bill reported as amended; not yet officially reported
  - g. May wait a day or weeks for official reported text & its accompanied cmte report
  - h. Committee report (numbered sequentially) has explanation/summary - key
3. Bill is brought up by chamber leadership for floor action
  - a. House Rules Cmte may submit resolution with specific rules for bill consideration  
 (the resolution and an accompanying report is printed, resolution also printed in C.R.)
  - b. House resolution on the rule will be debated and adopted before bill considered (C.R.)
  - c. Senate will allow unlimited amndts & debate unless cloture motion adopted by 60%
  - d. Senate may also take up by unanimous consent; House by suspension of the rules
  - e. The House or Senate considers, debates, amends and passes the bill (see C.R.)
  - f. The "engrossed" bill (now called an Act) as passed is printed in the Cong. Record
4. Bill (Act) is referred to the other chamber and is printed as referred by GPO
  - a. Similar process occurs in the other body - committee & floor consideration
  - b. Other chamber may report & pass its own bill first (see Cong. Record)
  - c. May then pass the referred bill deleting all after enacting clause & insert own bill
  - d. Usually they just pass the other chamber's bill or make few amds before sending back
  - e. Sometimes GPO publishes engrossed amds of the Act as passed by other chamber
  - f. If cannot agree a conference is requested, accepted, & conferees appointed (C.R.)
5. Conferees deliberate, come to agreement - conference report submitted to both chambers
  - a. Conference report containing agreed text & explanatory statement always in C. R.
  - b. Conference report also published as a House report (sometimes also as Sen. doc/rept)
  - c. Conference report debated and agreed to by both chambers no amds permitted (C.R.)

6. Enrolled version of bill (Act) prepared, signed & sent to President
  - a. Enrolled version not printed but available electronically (same pagination as law)
  - b. President has 10 days (Sundays/holidays excluded) to sign, veto, or pocket veto bill.
  - c. If President signs, may prepare a signing statement (see Weekly Comp. Of Pres. Docs)
  - d. Upon President's signature the law becomes effective unless specified otherwise
  - e. Office of Fed. Register assigns public law # and statute pages (takes a few days)
  - f. Few weeks or months later the law is published as a slip law in pamphlet form by GPO and later in *United States Statutes At Large* (same pagination as slip law)

### **C. Finding Already Compiled Federal Legislative Histories**

1. Borrowing from or going to a library that has the legislative history
  - a. *Union List of Legislative Histories* by LLSDC, 2000 & 2002 supp.; listserv requests
  - b. *Sources of Compiled Legislative Histories* by Nancy Johnson, 2003 - biennial updates
  - c. *Federal Legislative Histories: An Annotated Bibliography* by Bernard Reams, 1994
2. Legislative histories on microfiche - IHS Fiche (1909-1979), CCH Fiche (1979-1988)
3. Selected legislative histories online - LLSDC Source Book, Lexis, Westlaw, HeinOnline
4. *U.S. Code Congressional and Administrative News* (USCCAN - published by West)
  - a. From 1941 contains all U.S. laws, Pres. docs, selected committee reports, indices
  - b. From 1948 USCCAN committee reports & signing statements on Westlaw's LH file
  - c. U.S.C.A. notes that reference USCCAN legislative histories can be misleading

### **D. Compiling a Comprehensive Federal Legislative History in Paper Format**

1. Arrangement of docs – If bound, similar sized material usually bound together with ToC
  - a. Slip law, conf rept, cmte reports, bills, debates, signing statement, hearings, misc. docs
  - b. Arrangement may also be in chronological order, reverse chron. order, or by each title
  - c. Some histories may be very short; others may be more than 30 volumes
  - d. Possible additional leg. material - unpublished bill drafts, cmte markup amendments, cmte markup descriptions, press releases, draft conf. report, conferee transcripts, news articles, correspondence, and reports from exec. agencies or CBO, GAO, & CRS
2. CIS Legislative Histories Index Volume - basis for compiling own legislative history
  - a. From 1970 to 1983 back of annual abstract vol. has selected leg. history references
  - b. From 1984 to latest year has separate vol. with detailed indexing across congresses with law summaries, cmte report abstracts, references to related bills & dates of floor consideration, abstracts of committee hearings, prints, and misc. material
  - c. CIS leg. hist. may not have all you need; then again may have far more than you need
  - d. CIS leg. hist. on LexisNexis - links to full text of many documents
3. Obtaining the leg. docs - follow bills (H&S doc rooms) or beg, borrow, copy & buy
  - a. Contact LNALs document offprint service (1-800-227-2477) for prints of CIS microf.
  - b. GPO Access docs in PDF beginning with 104th Cong. - bills, reports, Cong. Rec., etc.
  - c. Federal depository libraries may have bills on MF (96<sup>th</sup>-106<sup>th</sup> Congresses) & other docs

### **E. Compiling a Federal Legislative History Electronically**

1. THOMAS, a service of the Library of Congress, is a good starting point
  - a. Bill summaries/status back to 1973, bill texts 1989+, Cong Rec. 1989+, Repts 1995+
  - b. No Boolean operators but results first given with exact phrase
  - c. Direct linking tricky – “Finding & Establishing Direct Links to Thomas & GPO Access
2. GPO Access - has PDF and TEXT documents
  - a. Bill texts back to 1993, Cong. Reports 1993, Cong. Rec. 1994, many Cmte pubs 1995

- b. Some Boolean operators available; phrases must be in quotation marks
  - c. Direct linking tricky - Finding & Establishing Direct Links to Thomas & GPO Access
  - d. Adobe Acrobat Suite (fee) allows PDF document indexing, notations, book marking, highlighting, etc. - can download own history on a disc and e-mail relevant portions
3. LexisNexis, Lexis.com, and LexisNexis Congressional
    - a. Has RECORD back to 1985, BLTRCK & BLTEXT back to 1989, CISINX 1970+, CMTRPT 1990+, CMTPRN 95+, trans./test.(FEDNEW 1988+) (POLTRN 95+) etc.
    - b. Boolean operators, multiple Congresses at once, key word in context  
Also can subdivide Record into Congresses 101st, etc. or Senate, House, Digest, etc.
    - c. Direct linking via Lexis.com is also possible, but beware that Lexis URLs may change
  4. Westlaw and Westlaw.com
    - a. Has CR back to 1985, selc. cmte repts (LH) from 1948, all reports (LH) from 1990, US-BILLTRK, BILLTRK-OLD (1991+), CONG-BILLTXT from 1995, USTESTIMONY 1993+, USPOLTRANS 1994+, CONGTMY 7/1995+
    - b. Boolean operators available; field searching, multiple congresses at once
    - c. Direct linking via Westlaw.com also possible but links may change (need tool kit)
  5. Other electronic sources – see “Internet & Online Sources of Legislative & Reg. Info.”
    - a. House and Senate web pages - good for committee hearing links, especially House
    - b. OnCongress.CQ.com - CQ Archives 1989+ for committee schedules, markups, etc.
    - c. GalleryWatch.com - linked testimony, cmte schedules, bill comparisons, etc.
    - d. NationalJournal.com - news, markup reports 9/99+, etc.
    - e. Cmte hearings - Fed. News Service, Fed. Doc. Clearing Hse, Nat'l Narrowcast Net

## **F. Compiling a Federal Legislative History from Older Records**

1. Need to find out public law number (or statute number) and then the bill number as key
  - a. USC notes - examine, but beware when USC title has been codified - more history
  - b. Popular name tables, CCH Congressional Index (1943+), Final House Calendars
  - c. USC tables show what sections of a public law go with what USC sections
  - d. U.S. Statutes At Large (& slip laws) gives brief legislative history cites from 1975+
  - e. U.S. Statutes At Large gives bill number reference in margin from 1904 forward
  - f. Before 1904 (58<sup>th</sup> Cong.) use *Legislative Reference Checklist: the Key to Legislative Histories from 1789 to 1903* by Eugene Nabors, 1982, Fred B. Rothman & Co.
2. Congressional Record Index and the History of Bills and Resolutions - Key Tools
  - a. History of Bills shows C.R. pages for intro, debates, cmte report numbers, etc.; 1867+
  - b. *Congressional Record* Index will show related bills, remarks, etc. (1873+)
  - c. *Congressional Record* Daily Digest summary volume is available from 1947
  - d. GPO Access has Cong. Rec. Index & History of Bills from 1983 forward (daily ed.)
3. U.S. Congressional Serial Set - 1817 forward, has all committee reports
  - a. Over 14,000 vols. contains all numbered congressional reports & documents
  - b. CIS Serial Set Index: 1789-1969 now with bill # index; incl. Amer. State Papers
  - c. Numerical Lists and Schedule of Vols. of the U.S. Serial Set (GPO/Hein 1933-1980)
  - d. U.S. Serial Set supplement for the 97<sup>th</sup> Congress (1981-82) - Numerical List addendum
  - e. U.S. Serial Set Catalog (with Numerical Lists & Schedule of Vols. - 1983-84 forward)
  - f. Schedule of Serial Set Vols. (LLSDC.org 1970+; GPO Admin. Notes Tech. Sup. 93+ )
4. Text of old House & Senate bills, resolutions & hearings
  - a. Fed depository libraries microfiche collection (1979-2000, 96<sup>th</sup> - 106<sup>th</sup> congresses)
  - b. CIS microfiche of bills, res., laws (1933-present) (offprint service - 800-638-8380)
  - c. Law Library of Cong. & selected libraries (OCLC) - bills & res. on microfilm, 1789+

- d. Center for Legislative Archives/NARA - Cmte Bill files - available after 20 to 30 years
- 5. *Congressional Globe, Register of Debates and Annals of Congress* - pre 1874 records
  - a. Note: these are generally not verbatim speeches - use related indices - many libraries
  - b. Located on Library of Congress American Memory Project - not word searchable
  - c. House and Senate Journals - official minutes/no debate; have table of actions on bills
- 6. Using Historical CIS Indices (available in paper & electronically) and Microfiche
  - a. *CIS Serial Set Index* and CIS Serial Set on Microfiche (1789-1969)
  - b. *CIS Congressional Committee Hearings Index* & Microfiche (1833-1969)
  - c. *CIS Unpublished Senate Committee Hearings Index* & Microfiche (1823-1972)
  - d. *CIS Unpublished House Committee Hearings Index* & Microfiche (1833-1958)
  - e. *CIS U.S. Congressional Committee Prints Index* & Microfiche (1830-1969)
  - f. *CIS Senate Executive Documents and Reports Index* & Microfiche (1817-1969)
  - g. All Indices on Lexis, Lexis.com, LexisNexis Congressional, & Cong. Master File I

### **G. Sifting for Legislative Intent Language in a Federal Legislative History**

1. Summary of documents to examine in a legislative history, generally in order of priority
  - a. Statute text followed by conf. report's joint explanatory statement (if there is one)
  - b. Committee reports relevant to legislation - House, Senate - Other bills & Congresses
  - c. Remarks, debates, summaries in the Cong. Record especially by principal sponsors
  - d. Text of bills in various versions to see when provision got in and how different
  - e. Witness statements in committee hearings especially by administering agency
  - f. Other documents, prints and reports, signing statements, drafts, news articles, etc.
2. Key - look for the point the provision entered the legislative process & ask questions
  - a. Closely examine the provision and its context in the law and earlier bill versions
  - b. Was it introduced that way? If so, were there introductory remarks? (usually in Senate)
  - c. Was the provision commented upon in the hearings by the administering agency?
  - d. Was it inserted in committee markup? Whose amdt? Was there a markup summary?
  - e. Was it reported that way in committee? What did the cmte report say about provision?
  - f. Did it come only from the Senate or House side? Was there other relevant legislation?
  - g. Were references to provision in C.R. debates/remarks, especially by key sponsors?
  - h. Was it introduced as a floor amendment and if so what did the amdt sponsor say?
  - i. Did it appear first in the conf. report? What did the joint explanatory statement say?
  - j. Were there references to provision when the House and Senate agreed to conf. report?
  - k. Did the President issue a signing statement? Did key sponsors make later remarks?
3. Electronic search methods for legislative intent language in recent legislation
  - a. Search relevant phrases in all cmte reports elec. - THOMAS, GPO, Lexis, Westlaw.
  - b. Search relevant phrases in electronic Congressional. Record - THOMAS, GPO Access, Lexis (RECORD 85+), Westlaw (CR 85+), LN Congressional CQ.com, GalleryWatch
  - c. Search relevant phrases in electronic bill texts - THOMAS, GPO Access, LexisNexis (BLTEXT, BLT105, etc. 89+), Westlaw (BILLTXT-OLD 91+), CQ Archives 87+, etc
  - d. Search relevant phrases in available electronic hearing records - House & Senate cmte pages, GPO Access, Lexis (FEDNEW 88+), Westlaw (USTESTIMONY 93+), etc.
  - e. Search for relevant law journal articles and court cases for interpretations
  - f. Search relevant phrases in news & other doc databases (like BNA, CQ weekly rept,)
  - g. Note: Courts not likely to accept other documents outside normal legislative history

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**Introduction:**  
**What Federal Legislative Histories Are and How They Are Used**

Federal legislative histories are compilations of the related documents that precede the enactment of a U.S. public law. These documents can include related committee reports (including the conference report), debates, earlier texts of the bill(s), floor amendments, congressional hearings, committee prints, and other documents. The history of the bill's (or bills') development is normally set out as well. These compilations and chronologies are usually compiled by in-house legislative librarians or legislative specialists in a law firm, agency, court or publishing house. They are bound together or placed together in a file or loose-leaf binder, usually with a table of contents. Occasionally, histories are also produced by congressional committees or by commercial publishers. Legislative histories can be very extensive, especially for laws with many titles and sections and on legislative matters that may have been percolating over several congresses in various legislative measures.

Traditionally, the legislative history of a U.S. public law is looked to by federal agencies, attorneys and the courts in order to determine the Congressional intent of a particular statute or one of its provisions, especially if the plain reading of the statutory text is somewhat ambiguous. Some U.S. laws state their purpose in a preamble of findings at the beginning, but most U.S. laws do not set forth their purpose in the text. At the very least, a legislative history will usually answer the general question about why Congress is making a particular law or particular title of a law. However, what Congress intended when they enacted a particular provision in a law or what they meant by a particular word or phrase in a law is usually harder to decipher.

In recent decades, many law review articles have been written that have debated the merits of relying on documents that are not themselves legislative enactments (see selected bibliography). Many critics, like Supreme Court Justice Antonin Scalia, advocate a strict textual interpretation of public laws. This

criticism has led to a dampening of the use of federal legislative histories in some federal courts (see “The Supreme Court’s Declining Reliance on Legislative History: The Impact of Justice Scalia’s Critique” by Michael H. Koby in v. 36 *Harvard Journal on Legislation*, pp. 369-395 (1999)). None-the-less, legislative histories are still widely used today by the U.S. legal community as a means to further decipher the legislative intent of Congress. Even Justice Scalia has concurred in opinions that have strayed considerably from a strict textual reading of the law (for instance see *United States National Bank of Oregon v. Independent Insurance Agents of America* (1993) 508 U.S. 439, noted at 12 U.S.C. 92 notes).

### **The Federal Legislative Process and Legislative History Documents**

In comprehending federal legislative histories it is important to know the general legislative process of how a bill becomes a law and the documents that normally accompany that process. For instance, all bills must be introduced by a member of Congress and are then referred to the committee or committees with jurisdiction over the bill's subject matter. Legislation written by the members of the President's Administration also follows this process and a committee chairman or ranking minority member may be asked to introduce such legislation “upon request”. The text of the bill as introduced will be printed as a separate document by the Government Printing Office (GPO), usually a few days after its introduction. The text of a bill as introduced may also be included in the published committee hearing on the bill.

Introductory statements on a bill, accompanied perhaps by the text, summary, and related correspondence may also be inserted into the *Congressional Record* by the bill's sponsor or cosponsor. On the Senate side inserting introductory remarks into the *Record* is now the norm for most bills and they also are occasionally inserted on the House side in the Extension of Remarks section of the *Record*. In any case, the *Congressional Record* will always publish a daily list of bills and resolutions introduced that day with the bill number, sponsor, cosponsors, official caption (short title), and committees to which bills are referred.

House and Senate bills are numbered sequentially within a Congress. A bill that has not been enacted during a two-year Congress dies at the end of the Congress and has to be reintroduced, usually with a new number, in the next Congress if it is to be considered. House and Senate resolutions are also numbered sequentially and through a similar legislative process, but only joint resolutions

(not simple or concurrent resolutions) can become law. For more details on Congressional bills, resolutions and other matters see LLSDC's "Questions and Answers in Legislative and Regulatory Research" (<http://www.llsdc.org/sourcebook/legis-Q-and-A.htm>).

A committee or a subcommittee may hold hearings on a bill (or related bills) or its subject matter, but most bills just languish in committee unless the bill (with some exceptions) is sponsored or cosponsored by the chairman of the relevant committee or subcommittee (chairmanships are controlled by the majority party within a chamber). Congressional hearings are generally published months after they occur but prepared statements and unofficial transcripts can often be acquired before that time from the committee Web site or from two commercial services, Federal News Service (<http://www.fnsg.com>) and CQ.com (formerly Federal Document Clearing House - <http://www.fdch.com>) or from other commercial databases that have contracts with them. Hearings are not published in the *Congressional Record*, but they are normally noted in the Daily Digest, published as part of the *Congressional Record* since 1948.

Next, a committee or subcommittee may schedule a meeting to "mark up" (amend the bill by voting in committee) a bill and then refer it, as amended, to the full committee or to the full House or Senate. Subcommittee amended versions of bills that incorporate markup amendments do not get officially printed. Those attending subcommittee or committee markups may be able to obtain photocopies of the amendments being considered, but these amendments are also never officially published. Since 2001 GalleryWatch.com has optically scanned most of these markup amendments for their clients. Two commercial publishers, Congressional Quarterly Inc. and National Journal Group Inc., will send staff members to committee and subcommittee markup sessions, who then prepare unofficial markup summaries and the recorded votes on amendments (available by subscription on CQ.com and National Journal.com with the latter also being available on LexisNexis and GalleryWatch.com). Sometimes an official markup summary with recorded votes will be included in a committee report that accompanies a bill.

A draft of a bill, instead of a previously introduced bill, may also be "marked up" by a committee or subcommittee. These draft bills, frequently called "prints" complete with line numbers like other bills, are not officially published, but may be available from a committee right (or its web site) before a scheduled mark up.



GalleryWatch.com has also been known to obtain and publish some of these draft bills on its Web site in an optically scanned PDF format.

When a bill is approved by a majority of members of a full Committee it is ordered reported by that committee to the full House or Senate. However, before a bill is officially reported, a committee report to accompany the bill is usually prepared (especially on the House side) and only then is the bill reported and placed on the calendar as a possible measure to be considered by the full House or Senate. The committee report is a key component of a legislative history as it is there that an explanation and summary of a bill can be found. Sometimes it is many weeks later that a bill, which has been ordered reported, is officially reported to the House or Senate and printed in amended form with its accompanied report. The *Congressional Record* notes when a bill is officially reported and what the report number is of the report that accompanies the bill. These are both printed as separate documents by the Government Printing Office, and their texts do not appear in the *Congressional Record* itself. In recent decades House committee reports usually include the text of the bill as reported (in small print) at the beginning of the report. Like congressional bills, House and Senate reports are numbered sequentially within a Congress.

If a chamber's leadership decides to bring a reported bill to the floor, it can then be debated and amended. On the House side non-controversial legislation is usually considered under suspension of the rules -- with no amendments allowed. However, controversial legislation on the House side is normally accompanied by a report from the Rules Committee, which governs how the bill is to be considered and what amendments will be allowed. A resolution to adopt the rule must first be passed by the House before proceeding with consideration of the bill. The text of the House resolution to consider the bill is published in the *Congressional Record* as well any accompanying debate and votes. The bill itself and any of the bill's amendments are then debated and voted upon with the debate transcript, the record of votes, and the text of the amendments placed in the *Congressional Record*.

Unlike those of the House, the rules in the Senate allow for unlimited debate on bills and their amendments unless the Senate 1) votes to table an amendment, 2) agrees to limit debate by unanimous consent (frequently done), or 3) agrees to close debate on a bill or amendment with at least 60% of duly sworn Senators voting to "invoke cloture".

Should a measure pass one chamber, a new version of the bill as passed is prepared and generally printed in the *Congressional Record* (usually on the day of passage, but sometimes a day or two later). The text of the bill as passed (now termed an Act) is called the engrossed version and it is available electronically. The act is then referred to the other chamber; and it is this newly received bill in the other chamber that is officially printed in paper form and it is then immediately referred to the committee with jurisdiction.

In recent decades, it is customary for the receiving chamber's committee to be working on its own bill with a similar subject matter. Frequently the committee may report its own bill and that bill is the one considered on the chamber floor. After they pass their own bill, it is then that they take up the bill referred from the other chamber, often deleting all after the enacting clause, and inserting the language of their own chamber's bill. This bill with its new amendments will then be sent back to the other chamber for consideration. The original chamber may agree to the new amendments and thus clear the bill for the President, or it may agree to the amendments with a few additional amendments of its own before sending it back.

If agreement can not be reached between the two chambers, then a conference is usually requested by one of them (sometimes immediately by the second chamber). The other chamber will then agree to a conference and conferees are appointed from both chambers. This committee on the conference will normally hammer out a compromise text accompanied by a joint explanatory statement and send it back to both chambers in a conference report. Earlier congresses frequently had a manager's statement from just the House side or no statement at all. Even recent conference reports, if time is critical, may contain no explanatory statement or only a very short one. Normally, an explanatory statement in a conference report is the first item to be reviewed in a legislative history. Conference reports, unlike a standing committee reports, are always published in the *Congressional Record* and are given sequential House report numbers (in earlier congresses they may also be given Senate document or Senate report numbers) and published by GPO as such. If both chambers agree to the conference report (these deliberations are also recorded in the *Congressional Record*), the measure is cleared for the President. Most legislation that has cleared Congress does not need to go through a conference, but controversial legislation and appropriations measures typically require a conference.

The enrolled text of cleared legislation is prepared and signed by officers of the House and Senate and presented to the President, but it is not officially published. The enrolled version of a bill is available electronically and its page formatting (in PDF) will correspond exactly to the statutory page formatting it will have should the bill become law. On rare occasions, when a bill is quite large and a Presidential signature is needed right away, an enrolled text is not prepared. However, for political reasons it may take some time, even weeks, before an enrolled measure is presented to the President, but once it is presented the President then has ten days (starting at midnight on the day he receives it, but not including Sundays and holidays) in which to sign or veto the act. Many times when he signs the bill he will prepare a signing statement which is published in the *Weekly Compilation of Presidential Documents*. Unless the law specifies otherwise, the effective date of a law is the day the President signs it (the date of enactment). A specific provision in a law may also have its own effective date.

A few days after a law's enactment the Office of the Federal Register will assign a public law number and *Statute At Large* pages to a new act, and usually a few weeks later a new law will be published in pamphlet form (called a slip law) by the Government Printing Office. Since 1975 the form and pagination that this published slip law has will be exactly replicated when it is published as part of the *United States Statutes At Large* with U.S. Code citations in the margin of each of section of the law. The U.S. Code citations are assigned by the Office of the Law Revision Counsel in the U.S. House of Representatives, usually during the enrollment process. At the end of the text (also since 1975, and since 1963 for slip laws) will be brief legislative history notes, including bill numbers, committee report numbers, dates of floor consideration, and any Presidential signing statement citation to the *Weekly Compilation of Presidential Documents*.

### **Finding Already Compiled Federal Legislative Histories**

Of course one of the easiest ways to obtain a compiled legislative history of a specific U.S. public law is to borrow it from or go to a library that has already compiled it. The *Union List of Legislative Histories*, 7th Edition (2000 and 2002 Supplement), published by Law Librarians' Society of Washington D.C., Inc. (LLSDC), contains an extensive list of thousands of legislative histories owned by member libraries. A list of many other federal legislative histories, published either by commercial firms or by a congressional committee with jurisdiction, can be found in *Sources of Compiled Legislative Histories* by Nancy Johnson (2003,

Fred B. Rothman & Co.- now William S. Hein & Co.). Johnson's publication is updated biennially and includes references to many law journal articles discussing the legislative history of specific laws. Many law journal articles and judicial opinions may have already examined the legislative history of a particular law or one of its provisions. Another resource is *Federal Legislative Histories: An Annotated Bibliography and Index to Officially Published Sources* compiled by Bernard D. Reams (1994, Greenwood Press). This work, now out of print, also has detailed descriptions of government produced legislative histories (usually committee prints). Once you find a title to a published legislative history of the public law you are researching, you can search for that book on OCLC in order to find a library that may own it or you can purchase it from the publisher (assuming that it is still in print). You can also make requests for legislative histories on various law library listservs like LLSDC-L and LawLib.

Selected U.S. legislative histories are being increasingly digitized and made available on the free Internet by various federal agencies and other organizations. Links to many of these can be found at <http://www.llsdc.org/sourcebook/> and is entitled *Legislative Histories to Selected U.S. Laws in Electronic Format*.

It should also be noted that a number of legislative histories compiled by Washington D.C. law firms (and other sources) are available electronically on the menus of Lexis, Westlaw, and HeinOnline. These are subscription services. LexisNexis has numerous selected federal legislative histories of its own a few are from the law firm of Wilmer, Cutler and Pickering. Westlaw's menu includes selected histories from the law firm of Arnold and Porter, and HeinOnline has begun digitizing histories from the law firm of Covington & Burling as well histories from published books. Having an entire (or near entire) legislative history online makes searching for particular words and phrases much easier than doing it on a piecemeal basis. In addition to these resources Tax Analysts, Inc. produces a CD-ROM product that contains the committee reports on most all the tax legislation enacted since the 99<sup>th</sup> Congress.

At various times certain commercial firms have also attempted to place full-text federal legislative histories on microform. Information Handling Service (IHS), in its *Legislative History Service*, compiled histories for selected U.S. public laws (primarily tax laws) from the 61<sup>st</sup> to 96<sup>th</sup> congresses (1909 to 1979). IHS has a hard copy index, "The Legislative Histories Indexed Guide", that accompanies the collection. Another company, Commerce Clearing House (CCH), in its *Public Laws - Legislative Histories Microfiche*, compiled histories for all U.S. public laws

from the 97<sup>th</sup> to the 100<sup>th</sup> Congress (1979 to 1988 - no hearings). Various libraries around the country hold these microform collections (now out of print) and a search on the Online Computer Library Center (OCLC) may reveal those holdings.

By far the most commonly available federal legislative history collection is the one under the misleading title *United States Code Congressional and Administrative News* (USCCAN). Published by the West Publishing Company (now Thomson West) since 1941, USCCAN is a regular staple in most U.S. law library collections. This annual publication does not reproduce the U.S. Code, nor does it contain congressional and administrative news articles. However, it does reproduce the text of all U.S. public laws and provides some of the important legislative history material for most of those laws. These include explanatory statements to most related conference reports (but not those to appropriation bills), the selected texts of related reports from standing committees (no more than one), and all Presidential signing statements (since 1986), executive orders and Presidential proclamations. The service also contains references to companion committee reports and dates of consideration on the House and Senate floors (since 1964), legislative history tables (since 1964), as well as indices to subjects covered, to U.S. Code sections affected that year, and to popular names of public laws. There are also annual lists of House and Senate members, standing committees and their members, and the names and titles of the President's cabinet. In earlier volumes (1945-1954), there were lists of U.S. government agencies and information on their origins. From 1948 forward, conference report joint explanatory statements, committee reports and Presidential signing statements (since 1986) have been placed electronically on Westlaw's LH file.

It is important to note that references to USCCAN legislative histories in West's popular *United States Code Annotated* (USCA) do not always contain relevant information to the specific U.S. Code section being referenced, especially if the public law's history being referenced is particularly large or complicated. USCCAN is a good starting point, but it is by no means all-inclusive for pertinent legislative documents.

## **Compiling a Comprehensive Federal Legislative History in Paper Format**

The arrangement of documents in federal legislative histories may vary considerably, but they should generally contain the text of all of the important documents or at least cites to them. Documents in some histories are sometimes arranged in chronological order. Others are arranged in reverse chronological order and still others are arranged by each title in a public law. It is up to the discretion of the compiler how best to organize the related documents.

Large legislative histories that are bound usually will have similar sized documents bound together. In these histories the public law itself in pamphlet form, known as the "slip law", is usually placed at the beginning. The law may be followed by the similarly sized conference report (if there is one) and the related reports from standing committees. Frequently, related bills (as introduced, reported, and passed) are bound together. In a similar manner related remarks, debates, votes, amendments, bill texts, and Daily Digest pages, photocopied from the *Congressional Record*, are also bound together. With the *Congressional Record* pages might be placed a photocopy of the Presidential signing statement excerpted from the *Weekly Compilation of Presidential Documents*. Related committee hearings (sometimes published long after the law's enactment) are also usually bound together. Finally, other miscellaneous documents such as related committee prints (studies, side-by-side comparisons or early bill drafts), House and Senate numbered documents (usually accompanying a Presidential communication like a veto message) or Congressional Budget Office reports may be bound together. Because of the diverse and lengthy nature of many legislative histories it is important for the compiler to prepare a title page and a detailed table of contents (or chronology of actions) which can be placed at the beginning of each volume of the history. Some histories can be very short with only the law, the text of the bill, a few pages from the *Congressional Record*, and with one or perhaps no reports. However, for some large public laws with multiple titles and perhaps a history in prior congresses, a compiled legislative history may be more than 30 bound volumes long.

To make compiling legislative histories easier, LexisNexis Academic and Library Solutions, formerly known as Congressional Information Service (CIS), has, since 1984, produced an annual legislative history volume that contains citations and abstracts to most of the aforementioned documents related to each U.S. public law of a non-ceremonial nature and to all public laws after 1998. In the annual volume each public law is summarized, related Congressional reports

are abstracted, references are given to related bills as are references to the dates of consideration on the House and Senate floors (there are no CIS abstracts of debates). Related committee hearings and prints are abstracted, and citations may be given to other miscellaneous materials like Presidential signing statements. CIS legislative history volumes accompany the annual *CIS Index/Abstract* volumes that cover all congressional committee hearings, reports, prints and documents. From 1970 to 1983, limited legislative history citations to each U.S. public law were placed in the back of annual *CIS Index/Abstract* volumes. CIS legislative histories have become a standard tool for compiling recent federal legislative histories; from 1970 forward, they can be found on the CISLH file on LexisNexis or Lexis.com with hypertext links in recent years to the full text of bills, committee reports and *Congressional Record* pages with floor consideration. LexisNexis Congressional, available to academic institutions, also has CIS legislative histories with many hypertext links to related full text documents.

While the many documents cited in a CIS legislative history may seem like overkill, it is important to note that some CIS legislative histories may not be comprehensive enough. Left out are references to introductory and extraneous remarks and some bills referenced in the history may also have extensive legislative histories themselves with related committee reports and their own floor consideration, which are not noted. There are also other documents that relate to a law's legislative history that CIS legislative histories do not cite or abstract. These may include related published reports from a federal executive agency, the General Accounting Office, the Congressional Research Service of the Library of Congress, or another body. They may also include unpublished bill drafts, committee markup amendments, committee markup summaries, draft bill comparisons, and unofficial transcripts of conferee deliberations. Also outside the scope of CIS legislative histories are congressional press releases, correspondence, and news articles, any of which may have importance to a bill's legislative history and answer the question of why Congress did what it did. However, note that in a court of law, the further you stray from the actual text of the law, the less likely it will be acceptable to a judge.

How do you find and obtain all these documents that relate to a legislative history? For the unpublished sources you generally have to have contacts with committee staffers or at least have someone at the committee meetings to pick up copies of committee markup amendments or other handouts. GalleryWatch.com has been providing optically scanned markup amendments since 2001 and CQ.com has done so since 2005. Keeping track of specific legislation and obtaining copies

of the various bill versions is also helpful. Of course you can also beg, borrow and copy documents from a colleague who has been following the legislation as well. Federal depository libraries may hold many of the published documents. For a fee, LexisNexis Academic and Library Solutions has a documents offprint service (800-638-8380, <http://www.lexisnexis.com/academic/3cis/offprints.htm>) where you can order requested items from their voluminous CIS microfiche collection, including hearings, bill texts, committee reports and other documents (but no *Congressional Record* pages). However, you must provide them with the CIS accession number.

### **Compiling a Federal Legislative History Electronically**

What if you need to produce a legislative history before CIS has produced its annual legislative history volume? As you may know, frequently attorneys and other patrons want those histories soon after a bill has been cleared for the President or even for bills that will never reach the President's desk. What's a librarian to do? Fortunately, for recent congresses, most of the material in a federal legislative history will be available electronically on THOMAS, GPO Access or commercial services. You just have to do a little research to find out which documents relate to the bill or law in question. A near comprehensive guide to electronic sources available for this task is contained in the document, "Internet and Online Sources of Legislative and Regulatory Information", found on LLSDC's Legislative Source Book (<http://www.llsdc.org/sourcebook/>).

THOMAS (<http://thomas.loc.gov/>), a free service of the Library of Congress, is a good starting point. It has a reasonably good bill summary and status tracking system (as far back as 1973). If you have a bill number you can easily obtain the references and links to bill texts, committee reports, *Congressional Record* pages of floor consideration and amendments, the companion bill in the other chamber, and even when hearings were held on your bill. THOMAS bill status service will not tell you what someone said in testimony, nor when someone made extraneous remarks on a particular bill, or all the other bills and reports that may relate to the bill that was enacted. But you can do research on THOMAS or on congressional committee web pages to obtain most of this information. One drawback in conducting research on THOMAS is that it does not utilize Boolean terminology (and, or, near, etc.). THOMAS has the full texts of bills and the *Congressional Record* from 1989 forward and congressional committee reports from 1995



forward. It does not have hearings but it does have links to the House and Senate Web sites, and to many other resources as well.

GPO Access (<http://www.gpoaccess.gov>) is a free electronic document service of the U.S. Government Printing Office, which is the legislative branch agency that publishes most congressional and many other government documents. Included in GPO Access are the *Congressional Record Index* and *History of Bills and Resolutions* from 1983 forward, bill texts from 1993 forward, the *Congressional Record* from 1994 forward, committee reports, and House and Senate documents from 1995 forward, selected committee prints from 1997 forward, and many congressional committee hearings from recent congresses (105<sup>th</sup> Congress forward). Some Boolean operators are available on GPO Access searches; phrase searches should be surrounded by quotation marks. As GPO Access documents are available in text and PDF formats (PDF stands for Portable Document Format and looks just like the printed copy), you can print out most of the documents you need to compile a paper based legislative history. Moreover, using Adobe Acrobat Suite software (the fee-based software, not just the Adobe Reader that you download) PDF documents can be indexed, highlighted, bookmarked, and manipulated in ways so that a near-entire legislative history can be downloaded on a diskette or e-mailed with relevant portions highlighted and bookmarked.

A federal legislative history can also be assembled electronically by using direct links to THOMAS, GPO Access, and congressional committee documents and placed on an Intranet home page or on electronic mail. Care should be taken as the links found by conducting electronic searches on THOMAS or GPO Access are frequently temporary links, not direct links. However, there are ways to obtain those direct links as illustrated in the article entitled "Finding and Establishing Direct Links to THOMAS and GPO Access Documents" (<http://www.llsdc.org/sourcebook/establishinglinks.htm>) published on the web on in the Legislative Source Book of the Law Librarians' Society of Washington D.C., Inc.

Of course you can also assemble a federal legislative history electronically using LexisNexis software (<http://www.LexisNexis.com/>). Lexis has Boolean operators, segment searching, and is able to search across congresses or an individual Congress. In the Lexis LEGIS Library its RECORD file (Cong, Record) goes back to 1985 and its BLTRCK and BLTEXT files go back to 1989. The Lexis CMTRPT file (committee reports) goes back to 1990 and its CMTPRN file (selected committee prints) goes back to 1995. It also has Federal News Service

(FEDNEW and POLTRN files) transcripts and testimony of selected congressional hearings from August of 1988 forward (TESITIMONY file). The CIS Index/Abstract service (CISINX) and the CIS Legislative History service (CISLH), discussed above, are also available on LexisNexis and Lexis.com from 1970 forward. Lexis has other relevant information as well that are full-text searchable, and most of these congressional resources and the above mentioned files can be searched and documents downloaded and assembled into an electronic legislative history. CIS Legislative histories on Lexis link to the all documents available on Lexis that are referenced, including statutes, bills, committee reports, debate pages in the *Congressional Record* and abstracts of committee hearings. LexisNexis has also digitized the U.S. Congressional Serial Set (1789-1969) containing all congressional documents and reports. Reports associated with bill numbers that have been enacted into public laws can be easily found on this premium service.

Westlaw (<http://www.westlaw.com/>) also has extensive legislative files that can be used to compile electronic federal legislative histories. Westlaw's LH file, discussed above, has selected committee reports that directly relate to public laws from 1948 to 1989 and all committee reports from 1990 forward. It also has the *Congressional Record* (CR) from 1985 forward and State Net's federal bill tracking and bill text services (BILLTRK-OLD, CONG-BILLTXT) from 1991 to the present as well as selected committee hearing transcripts and prepared testimony (USPOLTRANS - 1994 forward, USTESTIMONY - 1993 forward and CONGTMY - July, 1995 forward). Westlaw has Boolean operators, field searching, and the ability to search across congresses. From 1974 to the present Westlaw's public law collection is linked to whatever related legislative history documents there are on Westlaw, including reports, debates, and compiled histories. As a premium service, Westlaw also now has the U.S. Statutes at Large from 1789 to 1972 (not directly searchable) as well as new graphical statutes (also a premium service) with links to legislative history documents as well as court cases, related law reviews, and the text of U.S. Code sections at any given time from 1996 to the present.

There are other electronic sources for compiling federal legislative histories including the extensive files on Congressional Quarterly's CQ.com service (<http://www.cq.com/>). CQ has news services as well as committee schedules, committee markup summaries and extensive archives back to 1989 with bill tracking, bill texts, committee reports and *Congressional Record* files. CQ also links to many remarks on legislation in the *Congressional Record* that are not noted by other services. The *CQ Weekly Report*, the annual *CQ Almanac* (not

available electronically), and other CQ news services are also extremely valuable in obtaining an understanding of legislative measures. Another subscription service providing committee markup reports and other legislative news services are those of the National Journal Group (<http://nationaljournal.com/>). Subscribers to the hard copy of the weekly journal are eligible for passwords to many of the electronic services. GalleryWatch.com (<http://www.gallerywatch.com/>) is an electronic provider of congressional information (documents no earlier than 1997), which has many similar services to CQ including bill tracking, bill texts, committee reports, the *Congressional Record*, and committee schedules. GalleryWatch.com also has committee markup amendments, CRS reports and many lobbyist and agency position letters to and from Congress.

Of course, House and Senate committee Web pages frequently have committee hearing testimony and transcripts (especially on the House side) back to the 105th Congress (1997). However, there is no guarantee that committees will retain information from a previous Congress. Information on these Web pages is provided in LLSDC's Legislative Source Book under "Quick Links to House and Senate Committee Documents and Hearings" (<http://www.llsdc.org/sourcebook/gpolinks.htm>). You can generally find a link to a specific hearing or witness statement to add to a legislative history, but the search capability is limited and generally depend upon your browser's "Edit" functions.

In addition to official government testimony and transcripts of congressional hearings there are unofficial ones published selectively by the Federal News Service (<http://www.fnsg.com/>) and CQ Transcripts (CQ.com; formerly Federal Document Clearing House transcripts - <http://www.fdch.com>). Many other commercial vendors use for these two sources for testimony and transcript files. There are also audio and video recordings available from Fednet.net and C-SpanArchives.org, which can then be transcribed.

## Compiling a Federal Legislative History from Older Records

In compiling legislative histories for older (pre 1970) U.S. public laws, the first priority is to find the public law number (or statute citation) and from it the bill number that was signed into law which you can use as a key to find the legislative actions on the bill. If you know the popular name of an Act you can generally find its public law number in the Popular Names Table of *United States Code* (U.S.C.) or in the Popular Name table of the commercially produced *United States Code Annotated* (U.S.C.A.) or the *United States Code Service* (U.S.C.S.). The commercial popular name tables have more extensive entries than the official one in the U.S.C. The table or the index to the Code will also cite to the U.S. Code sections where each part of a law that is general and continuing was assigned by the Office of the Law Revision Counsel of the U.S. House of Representatives according to its subject matter. The parenthetical note following each *U.S. Code* section will tell you what public laws amended or established that section and further historical notes will briefly explain how each amendment may have changed that section.

Be careful in using notes within *U.S. Code* titles that have been revised, codified and enacted into positive law, as detailed notes on amendments to any section will only go back as far the Act which established the new codification. However, these positive law titles are not intended to change the law. The Office of the Law Revision Counsel in the U.S. House of Representatives, which prepares *U.S. Code* revisions, will generally only reorganize and perhaps rephrase the law to make it more coherent and consistent. Public law derivations and any changes will be noted in revision notes following the section. To obtain more detailed amendment notes, and the appropriate laws to research for legislative history purposes, you may need to find an older issue of the *U.S. Code* title that preceded its enactment into positive law, but not for laws before 1926 when the U.S. Code was adopted. The titles of the *U.S. Code* that have been revised, codified and enacted into positive law include titles 1, 3, 4, 5, 9, 10, 11, 13, 14, 17, 18, 23, 28, 31, 32, 35, 36, 37, 38, 39, 40, 44, 46, and 49. Also, Title 26, although not enacted, exactly mirrors the Internal Revenue Code, which has been enacted. See *United States Code: Positive Law Titles with Enacting Cites and Location to Revision Notes* (<http://www.llsdc.org/sourcebook/docs/usc-pos-law-titles.pdf>).

If you have the public law number (used officially since 1957 but applied uniquely to U.S. public laws since 1908), then from it you can access a variety of sources to find the bill number that was enacted and from it find the chronologies

of actions taken on the bill. These include the biennial *CCH Congressional Index* which is a loose-leaf service published since 1941 with a chronological history on each bill (including, what few other indices note, the committee and beginning date that hearings were held on a bill). There is also the final House Calendar published for each Congress since the 1920's (officially called *Calendars of the United States House of Representatives and History of Legislation: Final Edition*), which shows a chronology on each bill having some action. Another reference tool is the *Digest of Public General Bills and Resolutions*, produced from 1955 to 1989 by the Library of Congress Congressional Research Service (CRS). This publication series includes summaries and floor action listings on each measure introduced from the 84<sup>th</sup> Congress to the 101<sup>st</sup> Congress. The Library of Congress Internet service, THOMAS, continues to make these CRS summaries and floor action listings available for each bill and resolution from 1973 to the present and from 1979 to the present the service includes detailed bill status chronologies (with committees and dates of hearings noted).

A convenient source for legislative history references is in the notes of the *United States Statutes At Large*. Since 1975 the *Statutes At Large* gives brief legislative history references on the final page to each U.S. public law, including bill numbers, committee report numbers and dates of floor consideration or passage. The bill number or joint resolution that was enacted into law is also placed in the margin at the beginning of each law included in the *Statutes At Large* since 1904. Information on corresponding bill numbers for U.S. laws prior to 1904 (the 58th Congress) are laid out in a publication by Eugene Nabors entitled *Legislative Reference Checklist: the Key to Legislative Histories from 1789 to 1903*, Fred B. Rothman & Co., 1982 (no longer in print but now on HeinOnline). The *Statutes At Large* is available in PDF on Lexis (STATLG file), Lexis.com, LexisNexis Congressional, Potomac Publishing Company (CD-ROM or Internet), and Westlaw (1789-1972). In addition, committee reports that accompany many bills that are reported from committee, may have a section that shows how existing law would be changed by the committee's proposed legislation.

However, probably the key tool for finding related legislative history documents to U.S. public laws before 1970 is the bound "Congressional Record Index", especially its accompanying "History of Bills and Resolutions". The index and history of House and Senate bills has been produced for each congressional session since the *Congressional Record* began in 1873. It is generally placed in the last (or second to last) part in the bound volume series of the *Congressional Record* that is published for each congressional session. Usually each

congressional session covers one year, but before 1941 a biannual congress frequently had more than two sessions and sessions did not normally begin in January. See *Sessions of Congress with Corresponding Debate Record Volume Numbers* (<http://www.llsdc.org/sourcebook/docs/sess-cong.pdf>).

The "Congressional Record Index" and the "History of Bills and Resolutions" are available on GPO Access from 1983 (98<sup>th</sup> Congress) forward, but for the daily edition only, which has a completely different pagination from the bound edition. Since 1967, the daily edition of the *Congressional Record* has placed a letter in front of the page number signifying different sections -- S for Senate section, H for House section, E for Extension of Remarks section, and D for Daily Digest section. In contrast, the bound edition is in straight numeric pagination and integrates House and Senate pages together on a daily basis. Before 1967, the daily edition was also in straight numeric pagination but the page numbers do not correspond to the page numbers in the bound edition. Also before 1968 the Extension of Remarks section (usually only inserted by members of the House) was published as an appendix to the Record and sometimes not even there (see Appendix section in *An Overview of the Congressional Record and Its Predecessor Publications* - <http://www.llsdc.org/sourcebook/cong-record.htm>). The daily edition of the *Congressional Record* is available electronically in full text on both Lexis and Westlaw from 1985 forward. There is currently only one volume of the bound *Congressional Record* in electronic format, and that is volume 145 (1999) on GPO Access. The bound edition of the Record becomes the official citation reference after it comes out in print, which is usually several years after the daily edition.

The "History of Bills and Resolutions" at the end of each index provides *Congressional Record* page numbers (but no the dates before 1993) for actions on a specific bill. Noted are page numbers for when a bill is introduced, reported from committee (with the report number) and considered on the House or Senate floors. It also notes the conference report number and the page numbers in the Record showing where the conference report was considered as well as page numbers noting when House and Senate officials signed the enrolled bill just before sending it to the President. Finally, it gives the page number noting when a bill was signed into law and the public law number. Frequently the page numbers noting House or Senate floor consideration only present the beginning page number but consideration could have continued for multiple pages. The "History of Bills and Resolutions" does not note committee hearings or companion measures in the other chamber or similar measures introduced in the same

chamber. However, the "Congressional Record Index" of subjects and names will assist you in finding related measures and remarks not noted in the "History of Bills and Resolutions".

The "Congressional Record Daily Digest" volume part placed at the end of each *Congressional Record* volume after 1947 summarizes daily floor action and notes committee actions and hearings for that day. The text of committee hearings and committee reports are not normally placed in the *Congressional Record* with the exception of conference reports and occasional excerpts of congressional testimony. The text of committee hearings and committee prints are published as separate paper bound copies (tan outside binding for large House hearings and green for Senate). Although committees may number their hearings and prints in a series, they are normally published in single paper bound copies. Some hearings may be only some 20 or 30 pages in length while others that were held over many days may be issued in a number of volumes or parts and each part may be several hundred pages in length.

Unlike Congressional hearings, most all numbered committee reports and House and Senate numbered documents are placed in the voluminous *United States Congressional Serial Set*, which has been published since 1817 and now has over 14,000 volumes. As committee reports and other documents are considered critical to most legislative histories, the *U.S. Serial Set* is of immeasurable value in legislative research. If you are able to obtain a committee report number you can take that number and look it up in an index to find out which volume of the *U.S. Serial Set* contains the specific report or document you need. Indices to the *U.S. Serial Set* include the *CIS U.S. Serial Set Index* (1789-1969) which now has a very useful bill number index arranged by Congress. Also there is the *Numerical Lists and Schedule of Volumes* published by GPO for the years 1933-1980 (73<sup>rd</sup> - 96<sup>th</sup> Congresses) and republished in three volumes by William S. Hein & Co. A *U.S. Serial Set* supplement was published by GPO for the 97<sup>th</sup> Congress (1981-1982) with an addendum entitled "Numerical Lists of the Documents and Reports". Beginning with the 98<sup>th</sup> Congress (1983-1984), GPO has produced a catalog volume of all documents and reports issued each Congress. It is entitled *United States Congressional Serial Set Catalog*. At the start of each volume is a "Numerical List of Documents and Reports" and a "Schedule of Serial Set Volumes". Lastly, GPO publishes final schedules of Serial Set volumes for each congressional session in GPO's newsletter to federal depository libraries entitled *Administrative Notes Technical Supplement*. The schedule of volumes for the

*Serial Set* from 1970 to present is now also available at <http://www.llsdc.org/sourcebook/sch-v.htm>.

Sometimes the text of bills as introduced is reprinted in related hearing documents, but usually in order to obtain the text of old congressional bills and resolutions you generally have to go to a microform set of them. The Law Library of Congress has two sets of congressional bills on microform and also maintains a bound hardcopy set of most all Congressional bills from the 6<sup>th</sup> Congress forward. Various libraries around the country have also acquired these microform sets, and a search on OCLC with the phrase "bills and resolutions" should reveal most of those libraries. The CIS collection of bills, resolutions and laws on microfiche from 1933 to the present (73<sup>rd</sup> Congress forward) is also available for purchase as a set, as a Congress, or as an individual bill from the LexisNexis Academic and Library Solutions document offprint service (1-800-638-8380). Finally, between the 96<sup>th</sup> Congress and the 106<sup>th</sup> Congress (1979-2000) the Government Printing Office has published all House and Senate bills on microfiche with a final cumulative finding aid for each congressional session. Many federal depository libraries around the country have this series in their depository collection.

Thousands of bill files from previous congresses are maintained at the Center for Legislative Archives of the National Archives and Records Administration (202-501-5350). Pursuant to congressional instructions, most Senate archives are available to researchers after 20 years have past and most House archives are available after 30 years. The documents generally come from congressional committees but the quality and quantity of material sent to the National Archives may differ significantly according to the policies and practices of a chamber and those of the committee at the time they are sent. The papers of individual members of Congress are not sent to the National Archives but may be stored in local libraries or other establishments. At the Center, those researching the legislative history of a public law may find the text of related bills as well as correspondence to a House or Senate committee concerning it. The Center is also likely to have committee hearings and other documents related to the legislation.

Before the government began publishing the *Congressional Record* in 1873 there were various private publishers of congressional proceedings and debates. The most noteworthy of these are the *Annals of Congress* (1789-1824, published retrospectively by Gales and Seaton), the *Register of Debates* (1824-1837, published each session by Gales and Seaton), and the *Congressional Globe* (1833-1873, published weekly by Blair and Rives). The debates in these publications



were often news summaries or selected speeches (sometimes called sketches) rather than verbatim remarks and each volume (normally organized by congressional session) has an attached index. The Library of Congress has optically scanned these early records in its American Memory Project's *A Century of Lawmaking For a New Nation*. Although generally legible, these optically scanned PDF documents (with quite small print) are not full text searchable, but they do have various indices as “navigators” to the system. Many libraries around the country also hold these old series in paper or microform.

The *Constitution of the United States* (Article I, section 5) requires that congressional proceedings be published in a *House Journal* and a *Senate Journal*, but these journals, still being published since 1789, do not reproduce any congressional debate. The journals merely publish the daily minutes on what measures were introduced, what measures passed, what appointees were confirmed, what communications were received, what votes were taken, and so on. However there is an index to each journal volume and a tabular index showing what actions were taken on bills and resolutions and on what page number of the journal that action is related. Since predecessor publications to the *Congressional Record* did not (until 1867) have any history of bills and resolutions, these journals can be an aid in early legislative history research, but for the most part the contents of the journals are covered in the *Congressional Record*. Before 1954 House and Senate journals were published as part of the *U.S. Congressional Serial Set*. Indices to the *House Journal* are available on GPO Access from 1991 to the last completed Congress.

For researching early Congressional documents, there is no substitute for the comprehensive legislative indices produced by LexisNexis Academic and Library Solutions (LNALS), formerly known as Congressional Information Service, Inc. (CIS). CIS also supplies the full-text in microfiche of the documents cited in its indices. For instance there are the *CIS U.S. Serial Index* and the *CIS Serial Set on Microfiche* (1789-1969). The new Part 13 (in four volumes) to the Serial Set index is organized by bill number in each Congress and shows related report numbers, even to reports (1817-1845) that may not have originally included the bill number to which they pertain. There is also the *CIS Congressional Hearings Index and Microfiche* (1833-1969), the *CIS Unpublished Senate Committee Index and Microfiche* (1823-1972), the *CIS Unpublished House Committee Hearings Index and Microfiche* (1833-1958), the *CIS Congressional Committee Prints Index and Microfiche* (1830-1969), and the *CIS Senate Executive Documents and Reports Index and Microfiche* (1817-1969). All these indices (but not the full text) are

available electronically on the CIS Congressional Master File I (Compact Disk), on the LexisNexis Congressional service marketed to academic institutions, on the LexisNexis service (LEGIS library; CISHST file), and Lexis.com (Federal - U.S.; Legislative Histories and Material; CIS/Historical Index). If you use these services with key phrases, field limiters, and date parameters, you may find a wealth of legislative history material on any particular law. If your library does not have the complete CIS full text microfiche collection, the LNALS documents offprint service (1-800-638-8380) will, for a fee, supply you with the full text of specific microfiche or paper copies referenced in the CIS indices, but you must have the CIS document accession number.

Many older legislative documents including bills, reports, hearings, the *Congressional Record* and other items, can also be located in federal depository libraries, and the libraries of law firms, federal agencies, U.S. courts, universities, and local governments around the country. For information on such documents in libraries in the Washington, D.C. area, see LLSDC's *Union List of Legislative Documents*, also available on LLSDC's Legislative Source Book (<http://www.llsdc.org/sourcebook/>)

### **Sifting for Legislative Intent Language in a Legislative History**

In determining congressional intent the greatest weight is almost always accorded to the plain meaning of a statute. Legislative histories to laws are used to help clarify the meaning of a statute, especially when that meaning is in doubt. Although there is considerable variation, generally, in a legislative history of a U.S. public law, the greatest weight is usually accorded to the joint explanatory statement in a bill's conference report (when there is one) followed by the explanations and summaries in committee reports. Next, congressional debate or remarks, especially by the bills' principal sponsors or floor managers, are usually accorded stature followed closely by the text of the bill(s) as it developed from earlier versions (differing language may show intent). Then congressional hearings and statements of witnesses (especially witnesses from agencies that may implement the law) have bearing followed by committee prints (studies or drafts of pre-introduced legislation) and markup amendments and other documents in committee (not usually published). When no explanations are available from official sources sometimes secondary source material, like news articles, may be accorded some weight as to why Congress is taking a particular action.

Usually the easiest way to find relevant material on a particular provision is to first find the point that the provision got into the law's (or bill's) development and then look for documents associated with that point. First, closely examine the provision and its context in the law and in earlier bill versions. Then ask pertinent questions. Was it introduced that way, and if so did the sponsor have any introductory remarks on the issue (usually on the Senate side and sometimes on the House side in the Extension of Remarks)? Was it favorably received by the administering agency in their testimony or did they suggest amendments that were subsequently adopted? Did it first appear when the committee reported the bill? Is there a committee amendment markup summary to the bill? What did the accompanying committee report say about the bill or its provisions? Was there a section-by-section summary in the committee report? Did it only come up in one chamber (House or Senate) or in both chambers? Were there other relevant legislative measures or reports in the current Congress or in prior congresses? Were there any references to it in the *Congressional Record* debates or in a member's inserted remarks? Was it introduced as a floor amendment and if so what did the amendment sponsor say on the floor? Did it appear first in the conference report? What does the joint explanatory statement in the conference report say about it? Were there other references to the provision when the House and Senate agreed to the conference report on the bill? Did key sponsors or floor managers make other remarks or explanatory summaries? Did the President make a statement when signing the legislation into law (see *Weekly Compilation of Presidential Documents*)? These and other questions are ones that should be asked when sifting for language of legislative intent.

In recent years searching for legislative intent language became much easier by the ability to perform word searches using electronic databases. Language in committee reports (including conference reports) can be searched across multiple reports and congresses on various services including Westlaw (back to 1948 on LH file), Lexis (back to 1990 on its CMTRPT file), THOMAS (each Congress back to 1995), GPO Access (each Congress back to 1993), CQ.com (each Congress back to 1989), and GalleryWatch.com (each Congress back to 1997). Language in the daily edition of the *Congressional Record* can also be searched all at once in various services including Westlaw (back to 1985 in its CR file), LexisNexis (back to 1985 in its RECORD file), THOMAS (by Congress back to 1989), GPO Access (by Congress back to 1994), CQ.com (CQ Archives by Congress back to 1989), and GalleryWatch.com (by Congress back to 1999).

These same electronic services are also available to search across the text of bills and resolutions for particular words or phrases. This may be helpful in determining what other measures may have had similar provisions or what bill versions first saw the appearance of a particular provision. For free, THOMAS has the full text of bills from 1989 forward. It is searchable for each Congress beginning with the 101<sup>st</sup> (1989). GPO Access also has the full text of bills and they can be searched across congresses beginning with the 103rd Congress (use the shift key and block the congresses desired). LexisNexis has full text of bills searchable by each Congress (BLTEXT, BLT105, etc.) from 1989 forward and Westlaw has full text of bills searchable across congresses (BILLTXT-OLD) from 1991 forward, not including the present Congress (BILLTEXT). CQ Archives has the full text of bills searchable by each Congress, starting with the 100th Congress (1987) and Gallery Watch has searchable bill text beginning with the 105th Congress (1997).

There is no comprehensive way to search electronically for legislative intent language in congressional hearings. Selected congressional committee web sites, especially on the House side, have begun, with 105th Congress, to make available prepared written statements and transcripts of oral remarks. However, these statements and transcripts are not searchable simultaneously, as you generally have to use your browser's edit/find function for each document. GPO Access also has many selected full text congressional hearings in PDF format beginning in 1997 with the 104th Congress. LLSDC's Legislative Source Book web site "Quick Links to House and Senate Committee Documents and Hearings" is a good source to use to quickly find these documents on both GPO Access and committee web sites.

Two commercial services, Federal News Service (FNS) and CQ Transcripts (formerly Federal Document Clearing House - FDCH) do make available in electronic form all written statements they can obtain. These two services also selectively transcribe the oral statements and questions and answers of selected witnesses (CQ) or selected committees (FNS) holding a hearing. They also provide transcripts of many Washington press briefings and news shows and make all of these available to secondary providers like Lexis, Westlaw, and Factiva. In addition to FNS and CQ, audio and video recordings of delivered testimony may be available from Fednet.net and C-SpanArchives.org, which can then be transcribed by others.

LexisNexis has several electronic files with hearing material from the above services in its LEGIS library including FEDNEW (from August, 1988 forward), CNGTST (from September, 1993 forward) POLTRN (from 1995 forward) and NNNTRN (1993-2000). Westlaw also has several congressional hearing files including USTESTIMONY (from 1993 forward), USPOLTRANS (from 1994 forward), and CONGTMY (from July, 1995 forward). Committee testimony and Congressional transcript files begin in 1995 on CQ.com and its CQ Archives file of transcripts begin in 1990. A near complete listing and quick comparison of the above (and other) material can be found in an article and chart in LLSDC's Legislative Source Book entitled "Internet and Online Sources of Legislative and Regulatory Information".

Of course searching electronically or manually for relevant journal articles and judicial opinions on the legislative intent of certain public laws can often uncover relevant legislative interpretations. Even if the opinions expressed are not what one hoped it is only prudent to know about them.

Electronic searching for legislative intent can also be done in omnibus news databases like those located on Lexis, Westlaw, and Dow Jones. You can also search specialized newsletters like those published by the Bureau of National Affairs, Inc. Such searches, as well as those searching all reports, bills, debates, and testimony can take you far beyond the documents prescribed in a public law's compiled legislative history. But sometimes it is these searches that turn up related legislation and explanations of actions not covered (or not easily found) in a normal legislative history. For researchers interested in finding any explanation of legislative intent for the smallest provision of a law such searches may indeed prove fruitful. However, in a law's interpretation, courts are not likely to give much weight to non-legislative documents or to legislative documents far removed from the original legislation. On the other hand, to a federal agency that must construe the intent of Congress when proposing implementing regulations stemming from a law or to a third party commenting on those proposed regulations, any support from a law's legislative history may prove persuasive.

Good luck in hunting, compiling, and sifting those documents.

Legislative history research refers to efforts to track the progress of a bill through the legislative process and to the examination of documents created through that process. The purpose of conducting such research is to ascertain the legislative intent, that is the purpose for the legislation as intended by Congress. In the words of Morris Cohen, *Legal Research in a Nutshell*, 6th ed. (1996), at 160. Federal Legislative History Research: a Practitioner's Guide to Compiling the Documents and Sifting for Legislative Intent by Richard J. McKinney and Ellen A. Sweet. Published by the Law Librarians' Society of Washington, D.C. Last revised in May 2006. 1 LEGAL RESEARCH GUIDE #6 Federal Legislative Histories BOSTON COLLEGE LAW LIBRARY WHAT IS A LEGISLATIVE HISTORY AND HOW IS IT USED? A legislative history is a collection of the documents created by Congress or a state legislature during the process leading up to the enactment of a law or the rejection of a proposed law. Different documents carry varying degrees of weight in showing congressional intent. The documents which can make up a legislative history include: 1. Bills and amendments. To compile a legislative history you must first obtain citations to the documents that comprise a legislative history, then locate and read the documents. Listed here are steps to follow and finding tools to use. Guide to legislative history of bills enacted into public law . 89-516. 89-517. 89-518. 89-519. Location, Location, Location: Where to Find the Documents You Need .27 i. State Archives .27. ii. In order that legislative intent be given effect, the statute should be construed with due regard for the ordinary meaning of the language used and in harmony with the whole system of law of which it is a part. California State Restaurant Assoc. v. Witlow (1976) 129 Cal..Rptr. 824, 58 Cal.3d 340.