

# Statutory and Legislative History Research Using Print and Electronic Sources

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I. Introduction

A. Overview of what the class will cover.

1. This class is jointly offered by the Law Library of Congress and the Congressional Research Service.
2. We will cover both print and electronic sources. In legislative history research, materials in the print medium are important to understand. (1) Even today, not all legislative materials are available electronically. For the vast bulk of the existing *United States Code*, the legislative history is unavailable electronically. (2) The official legislative and statutory sources are the print versions, not electronic ones. (3) The organization of the electronic versions of legislative materials is largely based on how the print materials are organized, and thus an understanding of the organization of the print versions is necessary for effective electronic research.
3. We will not discuss subscription based services, such as Lexis and Westlaw, here (except occasionally in passing). However, we will discuss Lexis Congressional, a subscription database made available to the public by some libraries open to the public, including the Library of Congress.
4. This course is focused on legislative history (although you will learn things relevant to legislative tracking).
5. We will first cover enacted law, i.e., statutes and the *United States Code*. We will then discuss legislative history sources, such as bills and resolutions, hearings, committee reports, congressional debates, and indirect legislative history resources.

B. Definition of legislative history: “The background and events leading to the enactment of *a statute*, including hearings, committee reports, and floor debates. Legislative history is *sometimes* recorded so that it can later be used to aid in interpreting the statute.” *Black’s Law Dictionary* 911 (7th ed. 1999) (emphasis added).

1. The term "legislative history" can denote different things depending on the context.<sup>1</sup> It is important to be clear about the objective of your research at the outset.
2. For example, the difference between a statute and a code section is important when discussing legislative history. A particular section of the *United States Code* often consists of language from multiple statutes enacted over time, each of which has its own separate legislative history.
3. Legislative history sources are only *sometimes* recorded.
4. The existence of a compiled legislative history for a particular statute is the exception rather than the rule.

C. Reasons to research legislative history

1. Legislative history is sometimes used by courts in statutory interpretation.
  - a. While the use of legislative history in interpreting statutes has a long tradition in American courts,<sup>2</sup> some judges and scholars have debated whether legislative history should be used in statutory construction.<sup>3</sup>

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<sup>1</sup>The phrase is sometimes used to refer to a compilation of the documents comprising the published legislative history of a statute, a list of the documents comprising the published legislative history, a narrative description of the events leading to the enactment of a statute, a list of the statutes that have amended a particular section of the U.S. Code, or a even a historical narrative of the development of statutory law in a particular field of law.

<sup>2</sup>*See, e.g., Wheaton v. Peters*, 33 U.S. 591, 690-91 (1834) (citing committee report to interpret 1831 copyright statute). The history of the U.S. Supreme Court's use of legislative history is discussed in CHRISTIAN E. MAMMEN, USING LEGISLATIVE HISTORY IN AMERICAN STATUTORY INTERPRETATION 77-88 (2002).

<sup>3</sup>Supreme Court Justice Antonin Scalia has stated, for example, that "Committee reports, floor speeches, and even colloquies between Congressmen . . . are frail substitutes for [a] bicameral vote upon the text of a law and its presentment to the President." *Thompson v. Thompson*, 484 U.S. 174, 191-92 (1988) (Scalia, J., concurring). Supreme Court Justice Stephen Breyer (a former Chief Counsel of the Senate Judiciary Committee), in contrast, has argued that legislative history can be helpful in interpreting unclear statutory language, such as in cases

- b. Regardless of which side of this debate is correct, lawyers continue to cite, and courts continue to use, legislative history.<sup>4</sup>
  2. In addition to the interpretation of statutes, legislative history research is of interest to current legislators concerned with the legislative intent or procedure of prior statutes; to agencies charged with enforcing or regulating pursuant to statutory authority; and to political scientists, historians, and other scholars interested in the legislative process.

## II. Public Laws

- A. Numbering of public laws – Since 1957, the public law number has been the primary way of identifying public laws, with the number of the Congress enacting the law as the first part of the number, and the second part of the number reflecting the sequence of public laws passed by that Congress. For example, Public Law No. 107-56 is the 56<sup>th</sup> public law enacted by the 107<sup>th</sup> Congress.
- B. Publication of public laws

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where there are apparent legislative drafting errors, specialized meanings of terms in a statute, and the like. Stephen Breyer, *On the Uses of Legislative History in Interpreting Statutes*, 65 S. CAL. L. REV. 845, 848-61 (1992). See also WILLIAM N. ESKRIDGE, JR., DYNAMIC STATUTORY INTERPRETATION (1994) (study of, among other things, how the use of legislative history has evolved over time).

<sup>4</sup>For example, in the U.S. Supreme Court's October 1996 term, 23.8% of the Court's majority opinions included at least one citation to a congressional hearing or a report. William H. Manz, *Citations in Supreme Court Opinions and Briefs: A Comparative Study*, 94 L. Libr. J. 267, 283-84 (2002). Moreover, congressional hearings or reports were cited in 53.1% of petitioners' briefs, 40.8% of respondents' briefs, and 54.2% of amicus briefs. *Id.* at 284.

The use of legislative history does not appear to have been significantly affected by recent changes in the makeup of the Court. For example, in *Zedner v. United States*, 126 S. Ct. 1976, 1985-86 (2006), an eight-Justice majority, in an opinion written by Justice Alito, relied in part on legislative history in interpreting a statute. Justice Scalia, in a concurring opinion signed only by himself, decried this "illegitimate and ill advised" use of legislative history. *Id.* at 1990-91.

1. Print format

a. Slip laws

- (1) When a bill becomes law (by signature of the President or override of a veto), the Office of the Federal Register of the National Archives & Records Administration ("NARA") assigns a public law number, and prepares it for publication as a slip law (and later in the *United States Statutes at Large*).
- (2) The slip laws are published with the same pagination as will appear in the *United States Statutes at Large*.
- (3) The Office of the Federal Register adds various editorial enhancements to the enrolled law as it is prepared for publication as a slip law. The bill number and date of enactment are included in the margin. Notations of where sections will appear in the U.S. Code are included in the margin. A partial summary of the law's legislative history, with citations to any House, Senate or Conference Report, and dates of consideration and passage in each chamber of Congress, are added at the end of the slip law.
- (4) The Government Printing Office ("GPO") publishes and distributes the slip laws in print form and electronically. They are made available in print form at some of the libraries participating in the Federal Depository Library Program.

b. *United States Statutes at Large*

- (1) The *United States Statutes at Large* contains all the laws enacted since 1789. In addition to public laws, the *Statutes at Large* includes private laws, concurrent resolutions, presidential proclamations, reorganization plans, and constitutional amendments. (Until 1950, treaties and executive agreements were published in the *Statutes at Large*, but those were then moved to a separate publication.)

- (2) The *Statutes at Large* was first published in 1846, at which time all laws enacted from 1789 up to that time were retrospectively published.<sup>5</sup>
- (3) Citation form

The *Statutes at Large* is abbreviated "Stat." The citation 107 Stat. 773 means volume 107 of the *Statutes at Large*, at page 773.

Prior to 1957, there was both a public law number and a chapter number for each statute, and the chapter number was used in citation.<sup>6</sup> Therefore *Statutes at Large* citations from prior to 1957 are cited as follows:

Act of July 28, 1956, ch. 769, 70 Stat. 703

or

Housing Act of 1956, ch. 1029, 70 Stat. 1091

In 1957, in an effort to reduce confusion in the way statutes were referred to, the *Statutes at Large* dispensed with the chapter numbers, and began using public law numbers exclusively, with the number of the Congress as the first part of the public law number, e.g., Public Law No. 85-13. The citation form became:

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<sup>5</sup>For information on the predecessors to the *Statutes at Large*, see Ralph H. Dwan and Ernest R. Feidler, *The Federal Statutes – Their History and Use*, 22 MINN. L. REV. 1008 (1938). When the *Statutes at Large* was first published, the statutes up to that point (from the 1st through the 28th Congresses) were retrospectively published with the public laws placed in volumes 1-5, the private laws placed in volume 6, treaties between the United States and Indian nations placed in volume 7, and international treaties found in volume 8. Volume 9 covers the 29th to the 31st Congresses; volumes 10 through 12 cover two Congresses each (the 32nd to 37th Congresses); and volumes 13 to 49 cover one Congress each (the 38th to 74th Congresses). Since 1936, a separate volume of the *Statutes at Large* has been prepared for each session of Congress.

<sup>6</sup>Prior to 1957, the number of the Congress was not integral to the public law number; thus one might refer to "Public Law 827 of the 84<sup>th</sup> Congress," but not "Public Law No. 84-827," as we do today.

Act of April 2, 1957, Pub. L. No. 85-13, 71 Stat. 10  
or  
Airways Modernization Act of 1957, Pub. L. No. 85-141,  
71 Stat. 355

- (4) The *Statutes at Large* is the official source of federal laws. It serves as "legal evidence of laws . . . therein contained, in all the courts of the United States, the several States, and the Territories . . ." 1 U.S.C. § 112. In contrast, the *United States Code* is only prima facie evidence of federal law, except for those titles of the Code that have been formally enacted by Congress into positive law. 1 U.S.C. § 204.<sup>7</sup>
- (5) Features in the *Statutes at Large* facilitating research:
  - (a) There is a subject index.
  - (b) Since 1991, there has been a popular name index.
  - (c) The bill number from which the law was derived is noted in brackets in margin at the beginning of each law.<sup>8</sup> Having the bill number gives you a starting point in legislative history research.

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<sup>7</sup>See, e.g., *Royers, Inc. v. United States*, 265 F.2d 615, 618 (3d Cir. 1959) (where there is a difference between the *U.S. Code* and the *Statutes at Large*, the *Statutes at Large* controls; "the official source to find United States laws is the *Statutes at Large* and . . . the *Code* is only prima facie evidence of such laws."). Indeed, "[e]ven where Congress has enacted a codification into positive law, . . . 'it will not be inferred that Congress, in revising and consolidating the laws, intended to change their effect unless such intention is clearly expressed.'" *United States v. Weldon*, 377 U.S. 95, 98 n.4 (1964) (quoting *Fourco Glass Co. v. Transmirra Corp.*, 353 U.S. 222, 227 (1957)).

<sup>8</sup>This feature began in 1904. To locate bill numbers for laws passed before 1903 use EUGENE NABORS, LEGISLATIVE REFERENCE CHECKLIST: THE KEY TO LEGISLATIVE HISTORIES FROM 1789 TO 1903 (Fred B. Rothman & Co. 1982). This publication has been reprinted on the HeinOnline Legislative History database.

- (d) From 1957 to 1976, each volume included a table indicating the sections of the *United States Code* that were affected by the public laws in that volume.
  - (e) As with slip laws, a partial summary of the legislative history of each law appears at the end of each law, with citations to any House, Senate or Conference Report, and dates of consideration and passage in each chamber of Congress. This feature began in 1975.
- c. *United States Code Congressional & Administrative News* ("USCCAN") – West Publishing (a subsidiary of Thomson Co.) – includes a reprint of the public laws appearing in the *Statutes at Large*.
- (1) Many law libraries, particularly those at private firms, may have *USCCAN* but not the *Statutes at Large*.
  - (2) Since 1975, the reprint of the public laws in *USCCAN* has been with the identical pagination of the *Statutes at Large*.
  - (3) *USCCAN* is published faster than *Statutes at Large*, and the pamphlets are published monthly.
  - (4) *USCCAN* has a "Table of U.S. Code Sections Affected," in both the pamphlets and the bound volumes.
  - (5) Unlike the *Statutes at Large*, which includes Presidential proclamations but not executive orders, *USCCAN* does include executive orders.
  - (6) Unlike the *Statutes at Large*, *USCCAN* does not include private laws.
  - (7) The *USCCAN* set also includes partial legislative history (which will be covered later).
- d. *United States Code Service* pamphlets. The public laws of the United States are also published in the pamphlets that are included

with the *United States Code Service* published by Lexis Publishing (Reed Elsevier).

2. Electronic format

a. GPO Access, [www.gpoaccess.gov](http://www.gpoaccess.gov)

- (1) Public laws beginning with the 104<sup>th</sup> Congress are available on GPO Access. The laws on GPO Access are exact versions of the slip laws, and include the *Statutes at Large* pagination. Thus GPO Access is the best place to go to view public laws online.
- (2) To browse, click on "browse" for the number of Congress in question, and simply cursor down to the law you are looking for.
- (3) To search, choose the Congress (or highlight more than one Congress), and enter a search query. The search will cover the text of all the laws passed in that Congress. Search results are listed by order of relevance.
- (4) On GPO Access, the default operator is "or"; thus to search for a phrase, use quotation marks.
- (5) You may use boolean phrases like AND, NOT, and ADJ (for adjacent words). You may also truncate words.

b. Thomas: <http://thomas.loc.gov>. A limited public version of what is available to congressional staff on the LIS system.

- (1) Thomas links to the GPO Access version of public laws. To find a public law using Thomas: (1) click on "public laws" (under "Find More Legislation"); (2) choose the number of the Congress that passed the legislation; (3) choose the range of public laws in which the one you are researching falls; and (4) click on the hyperlink next to the bill number. (This will direct you to the GPO Access version of the public law.)

- (2) Public laws on GPO Access begin with the 104<sup>th</sup> Congress. If you are looking for the text of a public law passed by the 101<sup>st</sup> to the 103<sup>rd</sup> Congresses, you can access the enrolled version of the legislation (which necessarily is identical to the language of the public law) from Thomas, via the following steps: (1) click on "public laws"; (2) choose the number of the Congress that passed the legislation; (3) choose the range of public laws in which the one you are researching falls; (4) click on the hyperlink of the bill number; (5) choose "text of legislation"; (6) click on the version of the bill with "ENR" (for "enrolled") in the bill number.
  - (3) Information about public laws (but not the text of public laws or bills) for the 93<sup>rd</sup> to 100<sup>th</sup> Congresses is available on Thomas.
  - (4) You can search for a public law on Thomas by conducting a word or phrase search using the "Bills, Resolutions" feature. This feature permits searches within the full text of bills and resolutions, or using the "Search Bill Summary and Status" option, which allows searching within particular fields.
    - (a) Searching for legislation using the "Search Bill Summary and Status" option allows for limiting a word or phrase search by sponsor, committee, date of introduction, etc. You can also combine various features in a search. For example, you could find all enacted laws from the 108<sup>th</sup> Congress sponsored or co-sponsored by Sen. Hatch by identifying Hatch as such and choosing "public laws" in the box for "stage of legislative process."
    - (b) Using the "Search Bill Text" screen allows for searching words in the text of legislation. You can limit your search to bills sent to the President by limiting the search to enrolled bills.
- c. Historical *United States Statutes at Large*, 1789-1875

- (1) This is part of Century of Lawmaking website, at <http://memory.loc.gov/ammem/amlaw/> (from this page click on link to Statutes at Large).
  - (2) If you know the Stat. cite, you may click on the volume, click on the title page, and then enter the page number in the box labeled "turn to image" (e.g., 1 Stat. 130). Or you can browse the List of Public Acts for each volume.
- d. In addition to the foregoing free resources that are freely available on the Web, the *Statutes at Large* for the period from 1789 to the present is available from subscription databases, including Lexis, HeinOnline, and the Law Library Microform Cooperative (LLMC). While HeinOnline and LLMC are subscription databases, they are freely accessible at computer terminals within many research libraries, including the Library of Congress. Lexis requires a subscription and password.

### III. *United States Code*

- A. The *United States Code* is comprised of laws of a permanent and generally applicable nature, organized by subject. 1 U.S.C. 204(a) (2000). (All the substantive content of the *Code* appeared at some point in the *Statutes at Large*, but not everything in the *Statutes at Large* makes it into the *Code*, because the *Code* includes only law of a permanent and generally applicable in nature.)
- B. The U.S. House of Representatives Office of Law Revision Counsel is responsible for the placement of newly enacted provisions in the *Code*. 2 U.S.C. 285b (2000).
- C. Codification seeks to achieve three things: (1) the collation of a particular law with all amendments to it over time; (2) the organization of the laws so that those of a similar subject matter are placed together; and (3) the elimination of repealed, superseded, or expired laws.
- D. There are 50 titles. Titles are divided into chapters, sub-chapters, parts, sub-parts, and sections. Sections are divided into sub-sections, paragraphs, sub-paragraphs, clauses, and sub-clauses.<sup>9</sup>

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<sup>9</sup> The standard method for subdividing a section into smaller units and numbering these units is described in TOBIAS A. DORSEY, LEGISLATIVE DRAFTER'S DESKBOOK: A PRACTICAL

- E. The sections of statutes often do not match up in any obvious way with their section number in the *Code*.
1. For example, section 302 of the Congressional Accountability Act, Pub. L. No. 104-1, § 302, 109 Stat. 3, 26 (1995), appears at 2 U.S.C. § 1382 (2000). There is no obvious relationship between the section number in the Act and the section number in the *U.S. Code*.
  2. Sometimes, there will be one particular place where most of a particular act appears in the *Code*. For example, most of the Clean Air Act, as amended, is put in title 42, the title for “public health and welfare,” in chapter 85 (sections 7401 to 7671q). Other times, however, when a particular act affects different subject matters, a single piece of legislation will be divided up among various titles of the *Code*. For example, sections of the Disaster Relief Act of 1974 are codified in six separate titles of the *Code*: titles 12 (Banks and Banking), 20 (Education), 26 (Internal Revenue), 31 (Money and Finance), 40 (Public Buildings, Property, and Works), and 48 (Territories and Insular Possessions).
  3. To find out where a section of a particular act is codified, refer to the Statutes at Large Table, which is Table III in the *United States Code*.
- F. Certain titles of the *United States Code* have been enacted by Congress as “positive law.”
1. Until the title is enacted as “positive law,” the title is only prima facie evidence of the law, and the *Statutes at Large* will control in the event of differences. See 1 U.S.C. §§ 112 & 204.
  2. As of today, about half of the titles of the *Code* have been enacted into positive law. The titles of the *Code* that have been enacted as positive law are set forth in the preface to the volumes of the *Code*, and in the notes to 1 U.S.C. § 204. The most recent was title 46, enacted into positive law by the Act of October 6, 2006, Pub. L. No. 109-304, 120 Stat. 1485.
  3. Enactment of a title into positive law affects (1) how Congress, when drafting new legislation amending former legislation, refers to the prior

law; (2) how the Office of Law Revision Counsel places amendments to that title into the Code; and (3) under some circumstances, how you cite to the law using *The Bluebook: A Uniform System of Citation* (18th ed. 2005).

- a. When a title has been enacted into positive law, Congress, when amending that title, should refer to the *Code* version of the prior law. In contrast, when Congress is amending a law codified in a title that has not been enacted into positive law, then Congress should refer to the *Statutes at Large* version of the prior law.<sup>10</sup>
- b. Sometimes, problems occur when Congress enacts legislation that does not properly refer to the appropriate prior positive law. It is therefore important for staff drafting legislation to ascertain the positive law they seek to amend, and refer to it appropriately.
- c. For persons writing publications or legal briefs that have to comply with *The Bluebook*, Rule 12.2.2(c) of *The Bluebook* states: "If the language in the current code (including its supplement) differs materially from the language in the session laws and the relevant title has not been enacted into positive law, cite the session laws." Otherwise, however, under *The Bluebook*, you may use the *Code* citation, regardless of whether the title in question has been enacted into positive law.
- d. The enactment of a title into positive law does not affect the substance of the law. If there is a difference between the *Statutes at Large* language and the *Code*, the *Statutes at Large* language controls absent an explicit expression in favor of the *Code* language.<sup>11</sup>

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<sup>10</sup>As explained by a treatise on legislative drafting, "[n]ot only will a nonpositive-law provision's own section number always be wrong . . . , but such things as indentation, internal cross-references, and some of the key terminology will also have been changed (to fit the Code format) from the way they actually appear in the law." Thus, while the nonpositive-law *U.S. Code* titles are useful for research, they cannot be amended or relied upon when drafting legislation. LAWRENCE E. FILSON, *THE LEGISLATIVE DRAFTER'S DESK REFERENCE* 341 (1992).

<sup>11</sup>"Even where Congress has enacted a codification into positive law, . . . 'it will not be inferred that Congress, in revising and consolidating the laws, intended to change their effect

- G. In some instances, when statutory language does not properly belong in the body of the *Code*, the language may be placed in a note following a section, or in an appendix to a title.
1. Statutory language may be placed in a note or an appendix because it is not of general or permanent nature. For example, an appendix to title 50 of the *Code* was created in which to place laws that were originally expected to be temporary in nature but which remained in force.
  2. Statutory language may be placed in a note or an appendix because it amends a title enacted into positive law but was not properly drafted. For example, the Privacy Act of 1974, Pub. L. No. 93-579, 88 Stat. 1896, which amends title 5 (a title enacted into positive law), included a section, section 7, that could not be placed into the text of title 5. The Office of Law Revision Counsel therefore placed section 7 in the note following section 552a rather than in the text of title 5 or elsewhere in the *Code*.<sup>12</sup>
  3. The fact that statutory language is placed in an appendix or a note rather than in the text of the *Code* does not mean that the language lacks legal force. Except with respect to sections (but not notes and appendices) of enacted titles, the *Code* is only prima facie evidence of the law; the *Statutes at Large* is the definitive, positive law in other circumstances. 1 U.S.C. §§ 112 & 204(a).<sup>13</sup>

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unless such intention is clearly expressed." *United States v. Weldon*, 377 U.S. 95, 98 n.4 (1964) (quoting *Fourco Glass Co. v. Transmirra Corp.*, 353 U.S. 222, 227 (1957)).

<sup>12</sup>See Michael J. Lynch, *The U.S. Code, the Statutes at Large, and Some Peculiarities of Codification*, 16(1) LEGAL REF. SERV. Q. 69, 78-79 (1997). At least two U.S. district courts have erroneously ruled that section 7 of the Privacy Act was not good law because it appears in a note rather than in the text of the *Code*. See *Stoianoff v. Commissioner of Motor Vehicles*, 107 F. Supp. 2d 439, 442 (S.D.N.Y. 2000) (noting that section 7 was "never codified" and erroneously assuming it had been "deleted in Committee" because it did not appear in the text); *Schwier v. Cox*, 340 F.3d 1284, 1288 (11th Cir. 2003) (reversing District Court ruling predicated on section 7 being a "dead letter" because it was not codified).

<sup>13</sup>See, e.g., *National Bank of Oregon v. Independent Insurance Agents of America*, 508 U.S. 439 (1993) (holding that a 1916 banking statute erroneously omitted from the *U.S. Code* remains in force).

4. The citation “16 U.S.C. § 431 note” refers to language in a note following section 431 of title 16. The citation "50 App. U.S.C. § 2405" refers to section 2405 of the appendix to title 50 of the *Code*.

H. Historical Development of the *United States Code*

1. Prior to 1875 there was no codified version of federal laws, but only the *Statutes at Large*.
2. The first codified version of federal laws, the *Revised Statutes of the United States* (1875), was prepared by a commission appointed by President Andrew Johnson, which attempted to find all public laws still in force of a general and permanent nature as of 1873, and to arrange the laws into titles based on subject. The *Revised Statutes* was submitted to Congress, introduced as a bill, and went through the legislative process of becoming a public law, and thus was made into positive law. The legislation also repealed all prior legislation; thereafter it was no longer necessary to cite to the *Statutes at Large* for such prior legislation.<sup>14</sup>
3. After it was enacted, the *Revised Statutes* (1875) was found to have various inaccuracies and unauthorized changes in the law. A second edition of the Revised Statutes was authorized in 1877 to be prepared to add new legislation enacted since 1873 and to correct the errors in the first edition. That second edition, however, was not enacted into positive law by Congress, and thus all changes indicated in it are only prima facie evidence of the law. Therefore, until 1926, the positive law for federal legislation was contained in the *Revised Statutes* (1875), plus the subsequent volumes of the *Statutes at Large*.<sup>15</sup>

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<sup>14</sup>The first seventeen volumes of the *Statutes at Large* remain valuable, however, for interpreting ambiguous language in the *Revised Statutes*, for tracing legislative history, for viewing laws that were not placed in the *Revised Statutes* because they were not of general or permanent nature, for researching treaties, and for various types of historical research..

<sup>15</sup>Congress intermittently provide for the publication of supplements to the *Revised Statutes*, but these were only prima facie evidence of the law, not positive law. One source for researching changes in federal statutory law during the time period between the *Revised Statutes* and the *U.S. Code* is WALTER H. McCLENON & WILFRED C. GILBERT, INDEX TO THE FEDERAL STATUTES, 1874-1931 (1933).

4. The *Revised Statutes* (2d ed.) is found in Volume 18, Part 1, of the *Statutes at Large*, and as such is available online at the Century of Lawmaking website.
  5. In 1926, the *United States Code* was published. All sections of the *Revised Statutes* (1875) that were not repealed, plus all the public and general laws still in force from the *Statutes at Large* since 1873, were included, but Congress provided that the Code would only serve as prima facie evidence of the law.
  6. Since 1926, Congress periodically has enacted a particular title of the *United States Code* into positive law, so that as of today, about half of the titles in the *Code* have been enacted into positive law.
- I. Print format – there are three versions of the *Code* in print format.
1. *United States Code* ("USC")
    - a. This is the official version, prepared by the Office of the Law Revision Counsel, and published by the Govt. Printing Office.
    - b. The *United States Code* is republished every six years. The current version is the 2000 edition, and it represents a consolidation and codification of the general and permanent laws in force as of January 2, 2001.
    - c. The official *USC* is updated by annual supplement volumes, which are cumulative between republication.
    - d. Each section of the *USC* includes, in addition to the text of the section, the following features:
      - (1) Historical notes that provide information on the origin of the section, amendments, and the like. **Note:** This is frequently the best place to first turn when researching legislative history, because it often enables the researcher to locate the statute from which was derived the language of interest as the code section developed over time. However, for language derived from the Revised Statutes, the notes will only go back to the Revised Statutes, and in titles that

have been enacted into positive law, the original citation will be to the enacting statute; in these circumstances further research will be necessary to locate the original enactment.

- (2) Cross references to other sections that refer to the section.
  - (3) Other helpful notes inserted by the Office of Law Revision Counsel.
- e. Indexes and Tables at the end of the *USC*
- (1) Acts Cited by Popular Name list – alphabetical list of Acts of Congress by their popular name (e.g., "Megan's Law"). If the Act listed is set forth in a discrete chapter or subchapter in the *USC*, the citation will be given, but otherwise this list will give the *Statutes at Large* citation, which the researcher may use in the Statutes at Large Table.
  - (2) Table of Revised Titles – Shows where former sections of the titles that have been revised and renumbered since adoption of the *Code* in 1926 have been placed in the current edition of the *Code*.
  - (3) Table of Revised Statutes of 1878 – Shows where the sections of the 1878 version of the Revised Statutes were placed in the current *Code*.
  - (4) Statutes at Large Table – Shows where sections of particular acts in the *Statutes at Large* are codified.
  - (5) Table of Executive Orders -- gives a list of those Executive Orders that are reprinted in the notes of sections of the *Code* because they implement general and permanent law.
  - (6) Table of Proclamations – gives a list of those Proclamations that are reprinted in the notes of sections of the *Code*.
  - (7) Table of Reorganization Plans – gives a list of those Proclamations that are reprinted in the U.S. Code.

- (8) Table of Internal References – gives a list of cross references of sections of the *Code* in other sections.
- (9) General Index – a subject index to the *Code*. Comprises six volumes in the 2000 edition.

2. *United States Code Annotated* ("*USCA*")

- a. Unofficial version published by West Publishing Co. (owned by Thomson)
- b. Has most features of the official *USC*.
- c. Unlike the official *USC*, the *USCA* has extensive annotations after every section, with digests and citations of decisions of courts interpreting the section, citations to law review articles, citations to other Thomson-West publications, etc.

3. *United States Code Service* ("*USCS*")

- a. Unofficial version published by Lexis Publishing (Reed Elsevier).
- b. Like *USCA*, includes annotations and other editorial enhancements.

4. Updating the Code using print resources.

- a. The *USC* is updated by annual cumulative supplements. Also, every six years it is completely revised. Because it is published slowly, the print version of the *USC* is not the best resource for determining whether a code section has been recently amended.
- b. *USCA*
  - (1) Each volume is updated annually with pocket parts placed in the back of the volume (or sometimes separate supplemental pamphlets). Eventually, volumes get completely replaced, as needed (rather than every six years as with the *USC*).
  - (2) In addition to the pocket parts, West issues a paperback "pamphlet" mid-way through the year with updates to each

code section reflecting changes in the law from the first half of the year, with annotations. The pamphlet is shelved at the end of the set.

- (3) West also issues pamphlets of public laws too new to appear in the code supplements. The "Table of Code Sections Amended, Etc.," arranged by title and section number, allows the researcher to determine any amendment, repeal, addition, etc., to Code titles and sections, and allows the researcher to update research up to the date on the cover of the pamphlet.

c. USCS

- (1) Like USCA, USCS also updates each volume with annual pocket parts placed in the back of the volume, with annotations.
- (2) USCS issues paperback pamphlets updating the code sections a few times a year.
- (3) USCS issues a pamphlet with new public laws on a monthly basis, with a cumulative "Table of Code Sections Added, Amended, Repealed, or Otherwise Affected."

5. Other Differences between USC, USCA, USCS

- a. The USC is an official publication of the United States Government.
- b. Of the two annotated versions, USCA usually has more extensive annotations than USCS. USCA's annotations are tied to the West Digest system, a system for finding case law using subject headings. USCS's annotations seek to be more selective, avoiding repetitive decisions.
- c. The source text used for the USCA is the USC, while the source text for the USCS is the Statutes at Large. Therefore the USCS will use statutory phrases like "as used in this Act," and then provide a parenthetical note citing what part of the Code that means, while the USC and the USCA will use the phrase "as used

in this Chapter.” Similarly the dates of enactment in the USCS will be referred to as “at the date of the approval of this Act” with the date identified in brackets, while the USC and USCA will simply say the date in the text of the law.

J. Online Format

1. Office of the Law Revision Counsel, <http://uscode.house.gov/>. This is the website of the office responsible for preparing the U.S. Code.
  - a. Browsing the Code. You can browse the titles and chapters of the Code from this site. You can view the chapters of a title by clicking on "Download titles and chapters." But if you don't know what chapter the section you wish to view is in, instead of browsing use the "Searching the Code" page.
  - b. Searching the Code. Simple searches can be done using the "Search the U.S. Code" template at:  
<http://uscode.house.gov/search/criteria.shtml>.
    - (1) Entering the number of one of the 50 titles of the Code will display each document in the title, including each section, as a separate hit.
    - (2) If you know the section you want to view, enter the title and section number. Once you open a section, you may forward to the next document, or backward to the previous document.
    - (3) You can search using phrases, boolean or proximity operators, etc.
    - (4) You can search within fields by putting certain commands in the "search word(s)" box. See the "Help Searching" page for the list of fields you can search in this database.
    - (5) You can search prior versions of the Code (e.g., the 1988 version of the Code and Supplement IV if you wanted to see a snapshot of the law as it appeared in 1993) here:  
<http://uscode.house.gov/search/prevcode.shtml>.

- (6) To search the Popular Names table, include "AND 'popular names'" to a phrase search. (Unfortunately the Popular Names table cannot be browsed at this site.)
  - (7) Truncation, and similar search functions, are available.
- c. Currency and Updating – The Code Classification Tables on the Office of Law Revision Counsel's Website, at <http://uscode.house.gov/classification/tables.shtml>, are the most reliable place to update the Code using free online sources.
- (1) First, note how current the Code section is that you are researching (which is stated at the top of the section).
  - (2) Use the Code Classification Tables to see if any more recent public laws have amended that section since that time. For example, if the section you viewed is current through January 2004, then you need to check the public laws of the 108<sup>th</sup> Congress, 2nd Session, to determine whether Congress has amended the section since January 2004. Use the tables marked "Sorted in U.S. Code Order" to update your section of the Code.
2. GPO Access version of the Code:  
<http://www.gpoaccess.gov/uscode/index.html>
- a. Browsing the Code. Here you can drill down from title, to chapter, to subchapter, to part, and to section. Thus there are more levels to drill down using this site, compared to the site of the Office of Law Revision Counsel.
  - b. Searching the Code. To search, you must enter a search term in the single search box. The GPO Access site does not give as many options for advanced searching as the Law Revision Counsel's site. All of the GPO Access search functions are the same across all GPO Access databases, so you may use the same operators here as we learned before when discussing the public laws.
  - c. Currency and Updating – To update the Code, you are better off switching to the Code Classification Tables on the Office of Law Revision Counsel's website.

3. Cornell LII version: <http://www.law.cornell.edu/uscode/>
  - a. Cornell takes the Office of Revision Counsel's data and puts it in a more user-friendly interface.
  - b. Browsing – you can choose a title, and then drill down to the chapter level, and then to the section level.
  - c. Searching – you can search within titles.
  - d. Updating – you must switch and use the House version to update.
4. Lexis Congressional - a subscription database available for free use in many public and academic libraries, including the Library of Congress, which includes an electronic version of USCS.
  - a. While USCS is included in Lexis Congressional, this access is incidental to the main purposes of the Lexis Congressional database; it is not meant as a database for searching the U.S. Code, and the functionality is limited compared with the traditional password-protected Lexis databases.
  - b. The electronic version of USCS is updated very quickly as new laws are enacted.
  - c. Annotations to case law, law reviews, regulations, etc. are provided, and links are provided to the text of the case law, etc. Thus, using Lexis Congressional, one can search case law, etc., that appears in USCS annotations, without having a Lexis password.
  - d. To access, from the opening Lexis Congressional screen, choose "Legislative Histories, Bills and Laws."
    - (1) Keyword search option - choose "U.S. Code" as the "Search within" option, and enter a keyword search. Boolean operators are permitted. Note that a keyword search here searches all fields, including annotations. This gives rise to the danger of overbroad searching using the keyword search function. There is no option for limiting the fields within which a keyword search is conducted.

- (2) If you know the section of the Code you need, choose "Get a Document," choose "U.S. Code" in the drop down menu, and enter the section in question.
- (3) There is no easy way to browse portions of the Code above the section level. (A work-around this problem is to try to formulate a keyword search using terms appearing in the headings of all sections within the portions of the Code desired, but this will usually result in overbroad searches.)

5. Comparison of the Online Versions of the U.S. Code

- a. If you are at a library that provides access, Lexis Congressional's USCS is superior in terms of currency, and it provides access to annotations. It is not very good for browsing above the section level.
- b. Office of Law Revision Counsel's site is the most authoritative, has many useful search features, and is the best of the freely available Web sources for updating your research (even if you initially use another site).
- c. GPO Access's version of the Code has a user interface consistent with other GPO Access products.
- d. Cornell's LII site has the most attractive user interface.

IV. Bills and Resolutions

- A. Changes in language as a bill moves through Congress can be significant in divining legislative intent.<sup>16</sup> Thus it can be valuable to understand how a bill as it moves through the legislative process.

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<sup>16</sup>For example, courts sometimes rule that Congress's rejection of a legislative proposal indicates that the statute cannot be interpreted to follow the rejected proposal. *See generally* WILLIAM N. ESKRIDGE, JR., DYNAMIC STATUTORY INTERPRETATION 245-46, 312-15 (1994).

B. Steps in a Bill Becoming a Law<sup>17</sup>

1. Preliminary Congressional inquiry/hearings or Presidential initiative identifies potential subject for legislation.
2. A bill introduced in the House or Senate by a member.
3. The bill is referred to a committee (complex bills may go to multiple committees).
4. The committee may hold hearings on the bill.
5. The bill is "marked up" (amended) by the committee members.
6. The bill is reported out of committee, with recommendations set forth in a committee report authored by the committee staff.
7. The bill is debated on floor of the chamber, and may be amended.
8. The bill passed ("engrossed") in one chamber.
9. The same or a related bill is introduced in other chamber, and the process is repeated.
10. If the two chambers' versions differ, the bill is referred to a conference committee to resolve the differences in the two versions.
11. The conference committee reports out the bill, with a conference report.
12. The conference version of the bill is passed by both chambers ("enrolled")
13. President signs the enrolled version of the bill and it becomes law.

C. Categories of bills and resolutions

1. There are public bills and private bills. Public bills are those that would affect the public at large, rather than private individuals. Most legislation today is in the form of public bills. Private bills are for the relief of private parties, e.g., providing immigration relief for particular individuals. Formerly they took up significant legislative business, but in the modern era only a few private acts are enacted each Congress.
2. Joint resolutions are used for "incidental, unusual, or inferior purposes of legislating" (section 397 of *Jefferson's Manual*, and based on precedent of the House). Bills and joint resolutions have the same legal effect: if enacted and approved by the President, they become binding law. Joint resolutions are like bills in that they must pass both chambers and be

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<sup>17</sup>This is a simplified model. For more detailed procedure, see "House – How Our Laws Are Made," by Charles W. Johnson, House Parliamentarian, at <http://thomas.loc.gov/home/lawsmade.toc.html>, and "Senate – Enactment of a Law," by Robert B. Dove, Senate Parliamentarian, at <http://thomas.loc.gov/home/enactment/enactlawtoc.html>.

signed by the President to become law. One exception is that joint resolutions are the form used when Congress proposes amendments to the Constitution, and in that case the President's approval is not required (although the President often signs them before submission to the states for ratification).

3. Concurrent Resolutions are used to effect the operations of both chambers, such as establishing adjournment dates, recess periods beyond three days, etc., or to express the sense of Congress on certain issues (the collective opinion of the membership of the two chambers). They do not have to be submitted to the President for approval.
4. Simple resolutions are used to express the collective opinion of the membership of one chamber (expression of the sense of the chamber); and to effect the operations of the chamber in which it was introduced (such as adoption of the rules of procedure, providing for a rule on debate, etc.).

D. Printing of bills and joint resolutions

1. Introduced – after a bill is given to the clerk of the chamber, the bill is assigned a number that is noted in the *Congressional Record* for that day, and sent to GPO for publication.
2. Reported – when a bill is reported favorably by the committee to which it was referred, the committee will have the bill ordered to be printed as reported, with committee amendments shown in *italics* or stricken-through type (~~like this~~).
3. Engrossed – when a bill is approved by one chamber, the "engrossed" version of the bill in the precise form that it passed that chamber is printed. At this point, the title of the legislation officially changes from "A Bill" to "An Act" (although colloquially, people still call legislation that has not been passed by both chambers "bills").
4. Reported (by the second chamber's committee(s)).
5. Conference – After a conference committee has agreed to amendments, the conference committee issues a conference report with recommendations. Sometimes the version of the bill with the changes the conference committee recommends are set forth in the conference committee report.

6. Enrolled – When the bill has been agreed to in identical form by both chambers, the "enrolled" version is prepared for presentation to the President. The enrolled version is not printed for distribution, but it is available in electronic form from Thomas and GPO Access. The official copy of the enrolled bill as signed or approved is sent to the National Archives.
7. Vetoed bills are often printed as part of the Presidential veto messages, which are published as either a House or Senate Document and therefore are included in the *United States Congressional Serial Set*.
8. In the case of bills defeated as a result of pocket vetoes (i.e., where the President does not sign the law and Congress adjourns during the 10 day period), the enrolled version is not sent to the National Archives as an approved measure.

E. Locating bills and resolutions

1. Print – Available at Law Library of Congress.
2. Microform – Law Library of Congress, and selectively available some other libraries (either through CIS or GPO).
3. Online
  - a. Browsing bill text
    - (1) GPO Access – from 103<sup>rd</sup> Congress to present.
    - (2) Thomas – from 101<sup>st</sup> Congress to present. Note that Thomas also provides a handy table for appropriations bills for Fiscal Year 1999 to the present.
    - (3) Century of Lawmaking – Senate bills available from 16<sup>th</sup> to 42<sup>nd</sup> Congress; House bills available from 6<sup>th</sup> Congress to 42<sup>nd</sup> Congress. (The Century of Lawmaking site attempts to be comprehensive, but there are some bills missing.)
  - b. Searching for bills

- (1) Thomas -- allows searches using the "Bills, Resolutions" feature back to 93<sup>rd</sup> Congress (even though bill text is available only back to the 101<sup>st</sup> Congress).
    - (a) The "Search Bill Summary and Status" option enables tracing the history of bills as they move through Congress.
    - (b) Hyperlinks enable access to related legislation, *Congressional Record* debate, committee reports, roll call votes, et cetera.
  - (2) Lexis Congressional (where available) – allows searching bills back to the 101<sup>st</sup> Congress.
    - (a) Keyword searching of the full text of bills is available
    - (b) You may search by bill number under the "Get a Document" tab
    - (c) Bill Tracking is also available. This feature is analogous to the "Summary and Status Information" option on Thomas.
- V. Committee Hearings – Senate and House committees hold hearings on proposed bills, matters of public concern, and subjects under investigation (e.g., nominations, oversight investigations, disasters). Government officials, experts and interest group representatives deliver prepared statements and answer questions for committee members. Committees often require witnesses to file a written statement of their proposed testimony.
- A. Transcripts of public hearings are frequently printed and distributed. However, hearings are not held on all legislation, and not all hearings are published.
  - B. Selected hearings are available from the issuing committee, and are published by the Government Printing Office (and are thus distributed through the Federal Depository Library Program).

- C. Hearings are not technically congressional publications, but rather committee publications, since they are not ordered to be published by one of the two chambers of Congress, but by the committees. Therefore, they are not included in the *Serial Set*, since that only includes materials (such as committee reports) ordered to be published by the chambers of Congress.
- D. Hearings are of limited persuasive guidance with respect to congressional intent, since hearings do not contain Congressional deliberations, and instead consist largely of the views of interested parties. (However, in some circumstances some aspects of the material published in the hearings can be illuminating on congressional intent, such as the statements of individual members of Congress, the views of executive branch officials, and the like.)
- E. Although there are at least three types of hearings (oversight, investigative and legislative), for legislative history purposes, we are most concerned with the legislative hearings, as they are held by a (sub) committee as part of its deliberations on proposed legislation.
- F. Hearings are not always printed, but in recent years, most have been printed. In earlier years, they were sometimes printed as documents or as a part of a report. Generally, they are printed months after they occur. Prepared statements and unofficial transcripts can often be acquired before that time from the committee web site, or from the website of the organization represented by the person testifying.
- G. Hearings might have been held on proposed legislation during a prior session of Congress.
- H. Content description:
  - 1. Identified by the title, bill number, name of the committee or subcommittee, term of Congress, and the year.
  - 2. Includes a table of contents identifying witnesses, verbatim transcript of testimony, prepared statements, and other related material such as letters, article reprints and statistical information.
- I. Where to Find Hearings:
  - 1. Print sources:

- a. House and Senate Libraries have collected sets of hearings.
  - b. Most hearings are available in print from the Law Library of Congress. Use the LOC Catalog to find the location and call number of individual hearing titles.
  - c. Once printed by GPO, hearings are distributed to libraries within the Federal Depository Library Program.
2. CIS Microfiche – The CIS indexing system may be used to find citations to specific hearings, and the hearings themselves are available on microfiche. Indexes include:
- a. *CIS Annual Index* – provides detailed information about hearings from the 91<sup>st</sup> Congress (1970 to date).
  - b. *CIS US Congressional Committee Hearings Index, 1833-1969.*
  - c. *CIS Index to Unpublished U.S. House of Representatives Committee Hearings, 1833-1964.*
  - d. *CIS Index to Unpublished U.S. Senate Committee Hearings, 1823-1976.*
  - e. The Lexis Congressional electronic database (a subscription database available in some libraries), aggregates these hearing indexes into one database, but does not provide the full text content (except in limited circumstances noted below). The indexes are also made available through the traditional password-accessible Lexis, under the "CIS Index" and "CIS Historical Index" databases.
3. Electronic Sources
- a. GPO Access (<http://www.gpoaccess.gov/chearings/index.html>) – limited number are available from the 105<sup>th</sup> Congress (1997-98) through the present Congress. They may be searched or browsed at this site.
  - b. House Committee Hearings (<http://commdocs.house.gov/committees/>) - Selected house hearing transcripts organized by committee. The availability and currency

of transcripts from this page varies dramatically from committee to committee.

- c. Rutgers School of Law - Camden Law Library - <http://lawlibrary.rutgers.edu/gdoc/search.shtml> - an ongoing retrospective scanning project of selected hearings from the 1970's up to 1998, with a search feature.
  - d. Individual Senate or House Committee Web sites - Some of these sites provide access to hearing schedules, transcripts and/or prepared witness statements.
  - e. Lexis Congressional (a subscription database) provides indexes of hearings back to 1824, but currently provides the text of hearings only back to 1988. The transcripts are obtained by Lexis Congressional from the Federal Document Clearing House and the Federal News Service. (A retrospective digitization project of hearings has been undertaken by Lexis Congressional, and initial releases are planned for early 2007.)
  - f. Interest group web sites sometimes will include the prepared testimony of a speaker. (See, e.g., Natural Resources Defense Council testimony on the Clear Skies Act of 2003, S. 485 (108<sup>th</sup> Cong.), at: <http://www.nrdc.org/air/pollution/tdh0403.asp>.)
  - g. Videotapes and DVDs of selected hearings from recent years may be purchased from C-Span ([www.c-span.org](http://www.c-span.org)). Videos, tapes or transcripts of very recent hearings may also be available for a fee from private companies such as Federal News Service ([www.fednews.com](http://www.fednews.com)) and Federal Document Clearing House ([www.fdch.com](http://www.fdch.com)).
- VI. Committee Reports – Committee reports include both legislative reports, as well as reports on various investigations, nominations, treaties and hearings not related to pending legislation.
- A. With respect to legislative reports, after a bill is introduced it is referred to a committee of the chamber. For those bills on which the committee favors further action, the committee will "report out" the bill the full chamber. At the stage the committee submits a report that analyzes and describes the purpose and scope of

the proposed law and explains the recommendation. These are simply called “House Reports” or “Senate Reports.”

- B. In addition to legislative reports issued by committees with jurisdiction over legislation, legislative reports may be issued by conference committees of the two chambers to reconcile differences between versions of legislation passed by the House and the Senate, known as “conference reports.” Conference reports are usually issued as House Reports and called “House Conference Reports.”
- C. For legislative history purposes, in most (but not all) circumstances, committee reports are the most important type of legislative documents, because they provide direct evidence of the committee’s analysis of the intent of the proposed legislation.
- D. In addition to legislative reports, a second category of reports are Senate Executive Reports. These include reports of the Committee on Foreign Relations relating to treaties between the United States and foreign nations which have been submitted to the U.S. Senate for ratification, and reports of various Senate committees regarding nominations of individuals to offices requiring the advice and consent of the Senate (such as the Senate Judiciary Committee on judicial nominees).
- E. Content of legislative reports generally include the following (See House Rule XIII and Senate Rule XXVI for the specific requirements of different types of reports):
  - 1. Analysis and description of the purpose and scope of the bill.
  - 2. Committee rationale for recommending, generally with a section-by-section analysis setting out specifically what each section is intended to accomplish.
  - 3. Cost projections, regulatory impact statements, and the like.
  - 4. Changes in existing law and the text of laws being repealed.
  - 5. Minority or supplemental views of committee members.
  - 6. Conference committee reports contain recommendations for reconciling the differences between the two chamber versions of a bill and a statement explaining the effect of the actions.

- F. Publishing of committee reports:
1. Committee reports are numbered first by Congress and then sequentially (e.g., House Rpt. 108-1).
  2. Reports of conference committees are usually issued as House reports.
- G. Where to find committee reports:
1. Print Sources:
    - a. Law Library Collection – Since the 95<sup>th</sup> Congress, the Law Library has a bound collection of house and senate reports on public bills. These are arranged by type (House or Senate) and then report number. (Reports from the 96<sup>th</sup> Congress to present are in the Reading Room.)
    - b. Both House and Senate reports are placed in the *United States Congressional Serial Set*, which has been published since 1817 and currently has close to 15,000 volumes.
    - c. *U.S. Code Congressional and Administrative News (USCCAN)*- contains selected House and Senate reports from the 78<sup>th</sup> Congress (1943) to date. The reports are included in the “Legislative History” volumes.
    - d. Conference Reports are sometimes reprinted in the *Congressional Record*.
  2. Microfiche Sources
    - a. *CIS U.S. Serial Set Index* (1789-1969) – covers the American State Papers (forerunner of the *Serial Set*) to the 91<sup>st</sup> Congress.
    - b. *CIS Annual Index* (1970 – present)
    - c. These indexes are available electronically in some libraries as part of the Lexis Congressional database, and are also made available through the traditional password-accessible Lexis, under the "CIS Index" and "CIS Historical Index" databases.

3. Electronic Sources

- a. GPO Access  
(<http://www.gpoaccess.gov/serialset/creports/index.html>) – includes committee reports from the 104<sup>th</sup> Congress (1995) to the present.
- b. Thomas (<http://thomas.loc.gov>) – includes reports from the 104<sup>th</sup> Congress (1995) to the present.
- c. Lexis Congressional (subscription database) – includes committee reports from 1990 to the present (coverage for year 1990 described as limited, but coverage should be complete beginning in 1991); in addition the Serial Set module of Lexis Congressional includes the full text of reports published in the Serial Set (and its predecessor, the American State Papers) up to 1969.

VII. Congressional Debates – Although debate on a bill can take place at almost any time during the legislative process, it most frequently occurs after a bill has been reported out of the committee to which it was assigned. During these debates, amendments can be proposed, arguments for and against are made and discussion/explanation of ambiguous or controversial provisions can occur. The *Congressional Record*, which began in 1873, is the primary source for floor debates of bills in Congress.

- A. The *Congressional Record* is only a ‘substantially verbatim’ transcript of Congressional proceedings, since legislators frequently revise their statements (members have the right to "revise and extend" their remarks, request removal of "unparliamentary remarks," and the like). To help distinguish between what was said on the floor and what text was inserted afterwards, the House uses a different typeface to differentiate statements not actually delivered; the Senate tags the beginning and end of inserted (undelivered) speeches with black bullets.
- B. There are two main forms of the *Congressional Record*, the Daily Edition and the Permanent Edition.<sup>18</sup> The two editions are necessary to insure members are able

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<sup>18</sup>There formerly was a version put out every two weeks, the "Greenback" edition, which you might run across in some libraries.

to exercise their rights to revise and extend their remarks prior to publication of the Permanent Edition after they have reviewed the Daily Edition.

1. Contents of the Daily Edition (issued in soft bound volumes)
  - a. Four sections:
    - (1) House proceedings
    - (2) Senate proceedings
    - (3) Extensions of remarks; and
    - (4) Daily Digest.
  - b. Since 1967, the Daily Edition has placed a letter in front of the page number signifying these different sections (H, S, E and D)
  - c. Senate and House proceedings include records of votes and legislative actions, and the full texts of many bills.
  - d. “Extensions of Remarks” are undelivered texts that members ask to have appended to the record (formerly “Appendix” prior to 1968).
  - e. The “Daily Digest” was first included in 1947. It is a summary of daily activities, and provides a concise factual record of committee and floor proceedings, including action on bills, votes, hearings, meetings, bill status, and at the week’s end, the agenda for the next week.
  - f. At the start of each new month, the digest offers a “resume of Congressional Activity” with statistics of activity, bills enacted into law, measures reported from committee, reports, votes taken, vetoed bills, executive nominations, etc.
  - g. At the end of a session, the Daily Digest is issued as a separate part of the bound *Congressional Record*, with a subject index and a table of bills enacted into public law.
2. Contents of the Permanent Edition (annual, hardbound)
  - a. The bound *Record* is considered the authority for interpreting legislative intent.
  - b. Usually it is printed a few years after the Daily Edition.

- c. It takes the different sections of the Daily Edition and does some editing (such as integrating the ‘Extension of Remarks’ sections into the body of the text). As a result, not every word from the Daily Edition makes it into the Permanent Edition. The Permanent Edition renumbers the separately paginated Senate and House sections into one sequence. There is no direct way to convert the page numbers of the Daily Edition to the corresponding page numbers of the Permanent Edition.

C. *Congressional Record Index*

1. Issued bi-weekly as part of the Daily Edition and annually as part of the Permanent Edition.
2. Indexing by subject, title of legislation and name of legislator.
3. Includes a “History of Bills and Resolutions” section that lists all bills introduced and summarizes their legislative history.

D. Predecessors to the *Congressional Record*:

1. *Annals of Congress* (1789-1824) – Retrospectively published by a private company from newspaper and other sources.
2. *Register of Debates* (1824-1837) – Contemporaneously published by a private company under contract with the Federal Government.
3. *Congressional Globe* (1833-1873) – Published by a private company. Note that there is overlap between the dates of publication of the *Register of Debates* and the *Congressional Globe*.
  - a. In 1848 in the Senate, and in 1850 for the House, near verbatim reporting of the debates began, when shorthand reporting was adopted by the respective chambers.
  - b. In 1867, the Globe began featuring the History of Bills and Resolutions for the two chambers. (Prior to that, the best source for bill histories is the table of bills in the House and Senate Journals.)

4. In 1873, the Government Printing Office was established, and the *Congressional Record* began publication.
- E. How to find the *Congressional Record* electronically:
1. Thomas (<http://thomas.loc.gov>) – includes the Daily Edition of the *Congressional Record* from the 101st Congress (1989) to the present. Thomas also includes the *Congressional Record Index* from the 104<sup>th</sup> Congress (1995) to the present, which can either be searched or browsed.
  2. GPO Access (<http://www.gpoaccess.gov/crecord/index.html>) – includes the Daily Edition of the *Congressional Record* from 1994 (volume 140) to the present. Also includes the *Congressional Record Index* from 1983 to the present.
  3. Lexis Congressional – daily edition coverage from 1985 to the present.
  4. Century of Law Making (<http://memory.loc.gov/ammem/amlaw/lawhome.html>) includes full text scans of the *Congressional Record* predecessors, the *Annals of Congress*, *Register of Debates*, and the *Congressional Globe*, as well as the *Congressional Record* through 1875 (plus a portion of the *Record* from 1877 concerning the Electoral Commission of 1877).

### VIII. Indirect Sources of Legislative History

- A. Congressional Documents – Congressional documents are chamber publications, like reports, but unlike reports, they are not directly concerned with particular legislation. Examples include the *Budget of the United States Government*, special studies or exhibits prepared for Congress, treaty information, and presidential messages and communications from executive departments or agencies reprinted by the House or Senate. For legislative purposes, one of the most important documents is a Presidential veto message.
1. Types of Congressional documents:
    - a. House and Senate Documents.

- b. Senate Treaty Documents (until 1980 called Senate Executive Documents); contain the text of treaties as they are transmitted to the Senate for its consideration.
  - c. House Executive Documents (a pre-1895 category of documents containing material transmitted to the House by executive agencies)
  - d. House Miscellaneous Documents (a pre-1895 category of documents containing other types of material the House wanted published).
2. Published in a numbered series for each house (ex., S. Doc. 108-1).
3. Where to find Congressional Documents:
- a. Print Format
    - (1) *United States Congressional Serial Set*
    - (2) LOC Catalog (as stand-alone documents)
  - b. Microfilm
    - (1) *CIS Serial Set Index*
    - (2) *CIS Annual Index*
    - (3) *CIS Index to U.S. Senate Executive Documents and Reports*
    - (4) These indexes are available electronically in some libraries as part of the Lexis Congressional database, and are also made available through the traditional password-accessible Lexis, under the "CIS Index" and "CIS Historical Index" databases.
  - c. Electronic format –
    - (1) GPO Access  
<http://www.gpoaccess.gov/serialset/cdocuments/index.html>  
1) - contains selected House, Senate, and treaty documents from the 104th Congress (1995-96) forward.

- (2) Lexis Congressional - contains selected House, Senate, and treaty documents from the 104th Congress (1995-96) forward; in addition the Serial Set module of Lexis Congressional includes the full text of documents published in the Serial Set (and its predecessor, the American State Papers) up to 1969.
- B. Committee Prints – A congressional committee may request a special study in a specific subject area that relates to proposed legislation, or other matters of legislative concern. These studies are prepared by or for a committee primarily for internal use, to aid the committee members in their work. They can provide valuable information such as statistical analyses or historical background research. Until recently, they were difficult to obtain since they were not intended for public use. They are published by the Government Printing Office at the direction of the Committee.
1. Committee prints include monographic studies on topics of public concern; investigative reports to supplement information developed during hearings; section-by-section analyses of bills and comparative prints of bills; confidential staff reports; directories, bibliographies and other reference materials; reports on committee activities, drafts of legislative reports; and other publications used by committees in their day-to-day work.
  2. Because the committee system developed slowly, many committee publications are non-existent until the late 1800s, and most committee prints now available are from the post WWII era.
  3. Most prints are published in inconsistent formats, because they are the creatures of the committees using them; some are serially numbered, others are just identified as a “committee print.”
  4. Examples of useful committee prints:
    - a. *Compilation of the Social Security Laws through January 1, 2005* (available electronically in PDF at: <http://www.gpoaccess.gov/wmprints/109.html>, or in HTML format at: [http://www.ssa.gov/OP\\_Home/ssact/comp-ssa.htm](http://www.ssa.gov/OP_Home/ssact/comp-ssa.htm)).

- b. See others listed in the LOC handout entitled "Compilations: Selected Compilations and Other Congressional Committee Prints in the Law Library Reading Room Reference Collection" (available electronically at: <http://www.loc.gov/rr/law/llrrcomp.html>).
5. Where to find committee prints:
- a. Print format: LOC Online Catalog
  - b. Microfiche
    - (1) *CIS Congressional Committee Prints Index, 21<sup>st</sup> to 91<sup>st</sup> Congress* (1830-1969)
    - (2) *CIS Annual Index* (1970 to present)
    - (3) These indexes are available electronically in some libraries as part of the Lexis Congressional database, and are also made available through the traditional password-accessible Lexis, under the "CIS Index" and "CIS Historical Index" databases.
  - c. Electronic Format
    - (1) GPO Access (<http://www.gpoaccess.gov/cprints/index.html>) – provides the full-text of selected committee prints from the 104<sup>th</sup> Congress (1995) to the present.
    - (2) Lexis Congressional – Coverage chart indicates it provides selected committee prints from 1993 forward.
- C. Presidential Documents – The statements that the President uses when sending proposed legislation to Congress or when signing or vetoing a bill are printed in the *Weekly Compilation of Presidential Documents* and are usually incorporated in the *Serial Set* as a House or Senate Document. Presidential materials do not

show legislative intent, per se, but they may be relevant in showing certain aspects of the context of legislative enactments.<sup>19</sup>

1. *Weekly Compilation of Presidential Documents*. It has been published since 1965.
    - a. Available in print in libraries participating in the Federal Depository Library System.
    - b. Available in electronic format at GPO Access (<http://www.gpoaccess.gov/wcomp/index.html>) – 1993 forward.
  2. For prior to 1965, consult the *Public Papers of the Presidents*, a publication of the National Archives and Records Administration that covers back to the Hoover administration.
  3. *United States Code Congressional and Administrative News (USCCAN)* – since 1986, *USCCAN* reprints the text of Presidential signing statements in the legislative history volumes of the set.
  4. Additionally, Presidential messages can also be found in the *Congressional Record*, the House and Senate Journals, and in the *Serial Set* if considered as a House or Senate Document.
  5. Historical executive orders are indexed in the *CIS Index to Presidential Orders and Proclamations, 1789-1983*.
- D. Legislative Journals – The annual House Journal and the Senate Journal are the official legislative logs of the respective chambers.
1. Because art. I, § 5 of the Constitution demands that Congress publish a journal of its proceedings, the House Journal and Senate Journal record the daily minutes, plus a concise record of legislative action, including

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<sup>19</sup>For a discussion of legal significance of signing statements and whether they create legislative (or "executive") history that should be given weight by courts in statutory interpretation, see *The Legal Significance of Presidential Signing Statements*, 17 OP. OFF. LEGAL COUNSEL 131 (1993) (memorandum by Asst. Attorney General Walter Dellinger), available at: <http://www.usdoj.gov/olc/signing.htm>.

motions and votes. (The *Congressional Record* was never intended to be the official record of congressional proceedings.)

2. Journals omit the text of floor debate, but they are useful for tracing action in either chamber.
3. Each volume of the Journal corresponds to a session of Congress, one for each chamber, and each has its own index at the back of the volume. Index entries refer to bill or resolution numbers, which then must be looked up in lists of bills, House Resolutions, and House Concurrent Resolutions which immediately precede the index. The entry for the bill or resolution gives the dates when the matter was discussed or acted on in some way.
4. The Journals are not compiled for publication until the conclusion of a session of Congress.
5. Two journals for the Senate: the Senate Journal, and the Senate Executive Journal. The latter covers the Senate's activity in confirming nominees and consenting to the making of treaties, and is printed several years after the action reported was taken, only by special order of the Senate.
6. Where to find Journals
  - a. Published as stand-alone publications, available at Library of Congress
  - b. Before 1954 House and Senate journals were also published as part of the *Serial Set*.
  - c. GPO Access, House Journals  
<http://www.gpoaccess.gov/hjournal/index.html> - from 1991-1999, with some exceptions. The database is updated irregularly as the House provides information to the Government Printing Office.
  - d. Century of Law Making  
<http://memory.loc.gov/ammem/amlaw/lawhome.html>- Project includes full text scans of the House Journal, Senate Journal, and Senate Executive Journal from 1789 – 1875.

- E. House and Senate Calendars – These are useful for legislative tracking. The History of Bills and Resolutions in the *Congressional Record* is derived from the calendars.
1. House Calendars cover both chambers, and thus can be useful for legislative tracking of bills reported out of committee from either the House or the Senate.
    - a. Published every day the House is in session; with the calendar for the first legislative day of the week containing a cumulative subject index to legislation which has been reported out of Committee of either chamber, as well as any further legislative action taken on those bills during the Congress. Other than the subject index, the information in the calendar is cumulative from and including the reporting state of the bill.
    - b. There is an interim cumulative calendar published at the conclusion of a session, and a final calendar published at the end of the Congress.
    - c. The House Calendar includes various components, such as the Union Calendar (covering legislation raising, authorizing or spending money), the House Calendar (major legislation not relating to money), and others. Also includes Tables of Public Laws and Private Laws, a History of Bills and Resolutions, reported bills which have been sequentially referred to more than one committee, bills in conference and bills through conference, index of short titles, and subject index.
    - d. The interim and final calendars also contain a table listing bills that failed to become law; broken into four categories: vetoed while Congress in Session; vetoed after adjournment; pocket vetoes and pocket vetoes after adjournment.
  2. Senate Calendar, unlike the House Calendar, contains a listing of daily Senate activities only.
    - a. Two Senate calendars: the Calendar of General Orders and the Executive Calendar

- b. Published daily while Senate is in session, with cumulative information concerning bills reported out of Senate Committees
- c. Indexing by bill number and Senator
- d. Cumulates into a final calendar of the Senate but much less useful for legislative history research
- e. Contents of Senate Calendars includes senate membership, committee assignments, Cross Index of bills to General Order Number and numerical sequence of General Order numbers, resolutions and motions to to be covered on the next legislative day, Bills and Joint Resolutions read for the first time, Motions for Reconsideration, Bills in Conference, and Status of Appropriation Bills.

3. Where to find Calendars –

- a. Print format – Library of Congress
- b. Electronic format – GPO Access  
(<http://www.gpoaccess.gov/calendars/index.html>) - GPO Access contains the calendars for both the House of Representatives and the Senate from the 104th Congress (1995-1996) forward.

IX. Sources of Compiled Federal Legislative Histories – At times, the phrase “compiled legislative history” is used to describe a published set of all of the documents comprising the legislative history of a particular statute are reprinted.<sup>20</sup> Other times it is applied to a secondary source that summarizes and provides citations to the legislative history of a statute, such as a law review article or a book. Other times the phrase is used to describe a list of those documents that comprise the legislative history of a statute. The following are sources for such compiled legislative histories, in any of these senses of the phrase:

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<sup>20</sup>An example of such a compiled legislative history in this sense is: Bernard D. Reams and Faye Couture, eds., *The Civil Rights Act of 1991: A Legislative History of Public Law 102-166*, published in 1994 by W.S. Hein & Co. (a seven-volume work that reprints 133 documents, including legislative reports, *Congressional Record* excerpts, committee hearings, etc.). This compiled legislative history is now available online via the subscription database HeinOnline.

- A. Nancy Johnson, *Sources of Compiled Legislative Histories: A Bibliography of Government Documents, Periodical Articles, and Books* (1988 - ). An index to published compilations of statutes and secondary sources such as law review articles that summarize the legislative history of statutes. This index is now online as part of the Federal Legislative History Library of the subscription database HeinOnline, <http://www.heinonline.org/>, available at the Law Library of Congress and some academic and public law libraries. Also available in print at the Law Library Reference Desk, call number KF42.2 1979.
  
- B. Bernard D. Reams, *Federal Legislative Histories: An Annotated Bibliography and Index to Officially Published Sources* (1994). An index that lists U.S. government documents containing legislative histories. Available at the Law Library Reference Desk, call number KF42.2 1994.
  
- C. Congressional Information Service ("CIS") Indexes - Various CIS products contain lists of documents comprising legislative histories of statutes, or alternatively provide the means by which one may compile such lists oneself.
  - 1. *CIS Legislative History* volumes – 1984 to present - For public laws enacted from 1984 forward, there are separate index volumes that, for each public law, set forth the list of documents relevant to that law's legislative history. The documents themselves are available on microfiche.
  
  - 2. *Annual Abstracts* volumes - For the period from 1970 to 1983, the CIS Annual Abstracts volumes include pages setting forth lists of documents relevant to public laws' legislative history.
  
  - 3. For public laws enacted prior to 1970, one can compile one's own list of available published legislative history material using the following CIS products (together with the indexes to the *Congressional Record* or predecessor publication for floor debate material):
    - a. *CIS United States Serial Set Index* (1789-1969) (for House and Senate reports and documents).
  
    - b. *CIS Committee Hearings Index* (1789-1969)
  
    - c. *CIS Unpublished House Hearings Index* (1833-1954)
  
    - d. *CIS Unpublished Senate Hearings Index* (1823-1964)

4. All of these indexes are available electronically in some libraries as part of the Lexis Congressional database. (They are also made available through the traditional password-accessible Lexis, under either the "CIS Index" or "CIS Historical Index" databases.)
- D. *U.S. Code, Congressional and Administrative News* (U.S.C.C.A.N.), published by West Publishing (a Thomson Co. subsidiary), 1948 – present. (Law Library Reading Room, Row 1, KF48 .W45; also available in most law libraries) – Arranged by Congress and session, USCAAN prints excerpts of selected Congressional reports for selected acts, and also provides reference to the *Congressional Record* dates of debate and to signing statements.
- E. *Congressional Record* (Law Library Reading Room, Row 41B, KF 35) – The History of Bills and Resolution index section provides page references to where bills were considered..
- F. *United States Statutes at Large* – (Law Library Reading Room, Row 7, KF50 .U5) For volumes 77 (1963) through 88 (1974), a table was provided entitled "Guide to Legislative History of Bills Enacted into Public Law." This table was discontinued after volume 88, and since then, citations to legislative history materials (reports, *Congressional Record*, *Weekly Compilation of Presidential Documents*) appear at the end of each public law.
- G. Web-based compiled legislative histories are becoming available now. See, e.g., the compiled legislative history of the Digital Millennium Copyright Act by the Home Recording Rights Coalition, at: <http://www.hrrc.org/>, and the collection by the Law Librarians' Society of Washington, D.C. of Legislative Histories of Selected U.S. Laws in Electronic Format, at: <http://www.llsdc.org/sourcebook/leg-hist.htm>.
- H. The *Congressional Quarterly Almanac*, published annually by Congressional Quarterly Inc., is an outstanding secondary source that includes useful summaries of the legislative history of more significant pieces of legislation.