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Research Guides

FEDERAL LEGISLATIVE HISTORY

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I. INTRODUCTION

The “**legislative history**” of a particular law consists of all the documents created by the legislature during the process of the law’s passage. This material often becomes valuable later, when disputes arise from vague or ambiguous statutory language. Although some courts disapprove of using such “extrinsic evidence” to clarify the meaning of a law, the sheer volume of legislation in recent years has resulted in an increasing reliance on legislative history, particularly in the federal court system.

Today there is an abundance of legislative history material published for most federal statutes. All legislative history materials have only persuasive legal authority, although courts consider certain types of documents to be more persuasive than others. Normally, the **reports** of the congressional committees that considered the proposed legislation and recommended its enactment are considered the best source for determining the intent behind a law. Other documents generated prior to enactment include statements made on the floor of Congress in legislative **debate**, statements or testimony at committee **hearings**, and earlier or alternative versions of the **bill**. Statements made and reports written after enactment are usually found to be less persuasive, and are not considered part of the “legislative history”.

This guide should serve as an introduction to the basic documents and procedures for researching the legislative history of a federal law.

II. GETTING STARTED

All federal legislation “of a general and permanent nature” which is currently in force is codified in the official *U.S. Code* (U.S.C.), which is published every six years with annual supplements. The current U.S.C. is available in the Law Library’s Stevens Federal Area (Level 3), as well as online through the U.S. Government Publishing Office’s **GovInfo** site (<https://www.govinfo.gov/app/collection/USCODE>), and the **Office of the Law Revision Counsel** (<http://uscode.house.gov>). Unofficial, annotated versions of the current *Code* text are also available in the Federal Area, and online to the Law School community via the research databases **Bloomberg Law**, **LexisNexis** and **Westlaw**, and to the University community via **Nexis Uni**. Historical versions of the *U.S. Code* can be found at Documents Y 1.2/5; and online in **GovInfo** (1994-present) and **HeinOnline**’s *U.S. Code* library (1925 - present, <http://search.library.duke.edu/search?id=DUKE003131760>).

The language of each *Code* section is based on the original act that created it and any later laws that amended it. To compile a complete legislative history for a current federal law, it is necessary to locate the documents related to both the creating act and any later amendments. To begin the process, it is helpful to locate as much as possible of the following information for each act:

1. its **Public Law** (or chapter) number;
2. its location in the *U.S. Statutes at Large*;
3. the **date of enactment**;
4. the **number of the House or Senate bill** that was enacted.

The **Public Law number** and **Statutes at Large citation** are easily found with the text of the codified language in the official *U.S. Code* or the annotated unofficial versions. Each section of the *Code* also provides a short parenthetical note explaining how the amendments changed the existing text.

The *U.S. Statutes at Large* are the official federal session laws, compiling laws enacted during a particular congressional session. Prior to 1957, each act was given a separate chapter number in the *Statutes at Large*. Later laws are identified and cited by individual Public Law numbers and by their volume and page location in the *Statutes at Large*, e.g.: “ch. 347, 61 Stat. 516 (1947)” or “Pub. L. No. 96-374, 94 Stat. 1367 (1980).” The *Statutes at Large* can be found in the library’s Federal Area; Documents AE 2.111; and online in **GovInfo** (1951 - present, <https://www.govinfo.gov/app/collection/STATUTE>); via the **Library of Congress** (1789 - 1950; <https://www.loc.gov/law/help/statutes-at-large/index.php>) and in HeinOnline’s **U.S. Statutes at Large library** (1789 - present, <http://search.library.duke.edu/search?id=DUKE003131760>).

Although it is increasingly easier to find material with only the Public Law number or *Statutes at Large* location, much information in the official records of Congress is indexed and organized around the **bill number**. The bill number for a law enacted since 1903 can be found with its text in the appropriate volume of the *Statutes at Large*. Bill numbers are also published with the full text of the act in the unofficial session laws set *U.S. Code, Congressional & Administrative News* (USCCAN) (1941- present) (Federal Area & online in Westlaw). For very recent acts, bill numbers are included with the slip law (a pamphlet version of the new law, which serves as the official version until the next

compilation of *Statutes at Large* is published). Slip laws are available in the Federal Area (current Congress) and full-text via **GovInfo** (1995 - present; <https://www.govinfo.gov/app/collection/PLAW>).

Bill numbers for earlier laws can be most easily found through the Bills section of **ProQuest Congressional** (<http://search.library.duke.edu/search?id=DUKE002487153>), containing the full text of bills from 1789-present. They can also be found through the tables in Eugene Nabors, *Legislative Reference Checklist: The Key to Legislative Histories from 1789-1903* (1982) (Ref. KF49 .L43 & online at <https://search.library.duke.edu/search?id=DUKE005374062>) and the indexes and tables of the *Congressional Record* and its predecessors (see section V, part B, for more information on the *Congressional Record*).

III. COMPILED LEGISLATIVE HISTORIES

Considerable research time can be saved if a legislative history has already been compiled for the law in question. Available compilations of legislative histories are listed by Public Law number and by *Statutes at Large* location in *Sources of Compiled Legislative Histories: A Bibliography of Government Documents, Periodical Articles, and Books*, 4th ed. (Ref. KF42.2 2018 & online via HeinOnline's U.S. Federal Legislative History Library, <http://search.library.duke.edu/search?id=DUKE003131760>), which includes materials dating back to the 1st Congress. Most sources listed provide the actual texts of legislative history documents (with many available in the library's book collection or electronically through Hein); some are journal articles or other sources that provide only citations to relevant documents. Hein's Federal Legislative History Title Collection includes online versions of many compiled legislative history publications, making it an excellent starting point for legislative history research.

The Law Librarians' Society of Washington, D.C. (LLSDC) indexes **Legislative Histories of Selected U.S. Laws on the Internet** (<https://www.llsdc.org/legislative-histories-laws-on-the-internet-free-sources>) as part of its *Legislative Sourcebook*. The site points to compiled legislative histories in Lexis, Westlaw, HeinOnline, the Department of Commerce, and other sources.

Another valuable source for compiled legislative history materials is **ProQuest Legislative Insight** (<http://search.library.duke.edu/search?id=DUKE005897733>), available to current members of the Duke University community. It includes nearly 30,000 compiled legislative histories for federal laws (mostly 1929 - present, with some coverage back to 1897). Files are provided in PDF.

Current members of the Duke Law community also have access to **Westlaw's FED-LH** database, which includes PDFs of legislative histories compiled by the U.S. Government Accountability Office from 1921-1995. This database provides a comprehensive and searchable collection of documents related to a particular Public Law number, including alternate versions of bills which did not become the final law. Westlaw's **Arnold & Porter Legislative Histories** collection includes compiled legislative histories for many major federal statutes. A complete list can be accessed in Westlaw by selecting "Legislative History" from the Westlaw Browse menu.

Federal Legislative Histories: An Annotated Bibliography and Index to Officially Published Sources (Ref. KF42.2 .F42) is an annotated bibliography of sources published from 1862 -1990. The

information provided includes a history of the law and publications associated with the law. This source includes popular name, author, congressional session, Public Law number, and Bill Number indexes.

IV. ASSEMBLING LEGISLATIVE HISTORIES

If compiled legislative history publications are not available, it is a more complicated process both to determine whether useful documents exist and where they can be located. Fortunately, online resources have greatly simplified the process of locating legislative history documents.

Congress.gov provides free federal legislative information (<https://www.congress.gov/legislation>) for the 93rd Congress forward (1973 - present). This site provides the text of legislation as well as related bills, amendments, debates, and committee documents. The “Actions” tab for a particular bill is useful for determining what legislative history materials exist for a particular law, and will link to any available reports and debates (generally 1994-present).

Current members of the Duke University community also have access to other legislative history resources. **ProQuest Congressional** is the online counterpart to **Congressional Information Service (CIS)**, an index/abstract service and full-text microfiche publisher of congressional documents (online <http://search.library.duke.edu/search?id=DUKE002487153>; print Index/Abstracts in Reference Collection, Level 3). CIS provides detailed and highly specific subject indexing of congressional publications. For a particular Public Law Number, both the electronic and print versions provide citations to associated bills, reports, hearings and dates of consideration on the floor of each house. References are given to each document's CIS accession number (e.g., S183-4), which provides access to its CIS abstract (the accompanying microfiche collection is **not** available at Duke, but CIS numbers can be used in ProQuest Congressional to retrieve a document by accession number). ProQuest Congressional provides direct links to full text where it is available through their interface; note that certain types of materials or certain time periods may need to be accessed via other online sources.

The rest of this guide discusses research procedures for several common types of legislative history material.

V. LOCATING SPECIFIC DOCUMENT TYPES

A. COMMITTEE REPORTS / SERIAL SET

Usually, the most persuasive sources of legislative history are the written reports that accompany a bill from committee to consideration on the floor of the House or Senate. This is because committee reports are written to explain the proposal, as well as its intended effects, by the legislators who looked at the bill most closely. Normally, there are separate **House and Senate reports** available for each enacted law, as well as a **conference report** if the final language was developed by a conference committee of legislators from both chambers.

There are separate numbered series of House and Senate reports for each two-year congressional term. Conference reports are numbered within either the House or Senate series. The documents are commonly referred to by a number including that of Congress, e.g., "H.R. Rep. 97-857" (i.e., the 857th House report issued by the 97th Congress). House reports began this numbering system in 1817; Senate reports in 1847.

Sources for Committee Reports

Committee reports are published individually in paper and, since 1979, in microfiche. The paper copies normally are not preserved in libraries, however, because they are republished by the government (along with several other congressional documents) in the series of bound volumes known as the "Serial Set". Each serial set volume is numbered in consecutive order, from the first volume issued in 1817 to date. There is a print version of the serial set in the Perkins/Bostock Public Documents department, as well as a number of electronic options for accessing the serial set or individual committee reports. The *CIS U.S. Serial Set Index* (Ref. Z1223 .Z9 .C65 & online in ProQuest Congressional & Lexis Advance's CIS/Historical Index) provides detailed subject indexing, and electronic sources for reports are fully searchable. Resources marked with an asterisk (*) are available only to current members of the Duke Law community.

- **GovInfo:** 1995 - present (<https://www.govinfo.gov/app/collection/CRPT>)
- **HeinOnline:** 1817 – 2014 (<http://search.library.duke.edu/search?id=DUKE003131760>)
- **ProQuest Congressional:** 1817 – 1994 (<http://search.library.duke.edu/search?id=DUKE002487153>)
- **ProQuest Legislative Insight:** 1897-present (reports related to enacted laws only) (<http://search.library.duke.edu/search?id=DUKE005897733>)
- **U.S. Congressional Serial Set Digital Collection:** 1817-1994 (includes reports related to unenacted laws) (<http://search.library.duke.edu/search?id=DUKE003457404>)
- **Bloomberg Law*:** 1995 - present
- **LexisNexis*:** 1989 - present (Committee Reports database)
- **Westlaw*:** 1921 - present (FED-LH database: PDFs of reports related to selected public laws 1921-1995; LH database: 1948-1989 for public laws published in USCCAN; 1990 - present for all reports, including for bills that did not become law)

Selected reports are published as part of West's *U.S. Code, Congressional and Administrative News (USCCAN)* (1941 - present) (Federal Area & Westlaw); legislative history materials were generally not published in this set before 1947. For most laws, either a Senate or a House report and the conference report (if there is one) are reprinted.

The predecessor to the serial set, the *American State Papers*, contains selected committee reports from 1789-1838 and may be searched electronically at the **American Memory Project** (<http://memory.loc.gov/ammem/amlaw/lwsp.html>). The *American State Papers* are also available through the U.S. Congressional Documents Library of **HeinOnline** (<http://search.library.duke.edu/search?id=DUKE003131760>), the **Archive of Americana** database (<http://search.library.duke.edu/search?id=DUKE003876811>), and in microform at the Law Library.

B. CONGRESSIONAL DEBATES

Statements made in floor debates have been found useful as sources of legislative intent, although they have only limited value as accurate explanations of a bill's meaning. Remarks made by the sponsor of the legislation or the chairperson of the committee that considered it tend to carry more authority than the opinions of members at large.

Congressional Record

Since 1873, congressional debates have been published in the *Congressional Record*, which appears first on a daily basis, then is recompiled into annual bound volumes at the end of each session of Congress (known as the “**permanent,**” or “**bound**” edition). There are separate *Bluebook* citation formats (Rule 13.5) for the daily and permanent editions of the *Congressional Record*; researchers should cite to the daily edition only if the material has not yet appeared in the permanent volume.

The *Congressional Record* is available in the library's Microforms Room (Level 1), on the Web through **Congress.gov** (<https://www.congress.gov/congressional-record/browse-by-date/>) since 1989; and via **GovInfo** from 1994 – present (daily) and 1891-present (bound).

HeinOnline's U.S. Congressional Documents library (<http://search.library.duke.edu/search?id=DUKE003131760>) has also digitized the bound *Congressional Record* (1873-present); the daily edition is also available here from 1980-present. Hein has also developed a search tool which converts daily edition citations to bound edition citations (currently available back to 1980).

The daily *Congressional Record* is also available online to the Duke Law community through Lexis Advance and Westlaw beginning in 1985, and in Bloomberg Law from 1989-present. **NOTE** that Lexis and Westlaw do not revise these daily page numbers once the permanent edition is published; although the *Bluebook* requires citation to the permanent edition, these databases contain only the pagination for the daily edition. Bloomberg Law contains the bound *Congressional Record* from 1933-1988; Lexis Advance includes a “Congressional Record Retro” database with PDFs of the bound edition from 1873-1997.

When using a print, microfiche or PDF copy of the *Record*, the best source for locating the text of debates on the floor of Congress is the “History of Bills and Resolutions” table for each annual volume of the *Congressional Record*. It is necessary to know the number of the bill that was enacted, but the annual table provides page citations to the voluminous text of each *Congressional Record*. References to **dates** of consideration for each bill can be found in the *Digest of Public General Bills and Resolutions*, USCCAN, CIS and the *Statutes at Large*, but because those references are published before the daily edition of the *Record* has been compiled into the permanent bound edition, they include no page numbers.

Pre-1873 Sources

The publication known today as the *Congressional Record* has undergone a number of title changes in American history. Earlier versions are available in the Law Library Documents Collection (Level 1) as well as full-text online through the Library of Congress's **American Memory Project**

(<http://memory.loc.gov/ammem/amlaw/lwdebt.html>), **Lexis Advance** (Statutes & Legislation > Congressional Record) and **HeinOnline**'s U.S. Congressional Documents library (<http://search.library.duke.edu/search?id=DUKE003131760>).

- **Congressional Globe** (1833 - 1873); Documents X 72-180
- **Register of Debates in Congress** (1824 - 1833); Documents X 43-X 71
- **The Debates and Proceedings in the Congress of the United States** (1789-1824); Documents X 1-42 (labeled on spine as *The Annals of Congress*)

C. COMMITTEE HEARINGS

Statements made in testimony before the committee considering the proposed legislation or by committee members have been accepted by courts as evidence of legislative intent. Their usefulness is limited by the large amount of testimony, both pro and con, on many bills and the difficulty in establishing a connection between particular remarks made at the hearing and the final language of the bill.

Hearings are not held on all pieces of federal legislation, and not every hearing is published. **Unpublished hearings** are sent to the National Archives, and remain under seal for 20-50 years, depending upon the chamber which originally held the hearing and the sensitivity of its content. In addition, even hearings which are selected for official publication may be delayed due to the lack of a mandatory printing schedule for congressional committees; the amount of time between the hearing and its official publication can vary widely, from a few weeks to several years.

The best source for accessing congressional hearings online at Duke University is **ProQuest Congressional** (<http://search.library.duke.edu/search?id=DUKE002487153>), which provides PDFs of selected hearings from 1824 - present as part of its digital collection. The full text of selected hearings is also available for free through **GovInfo** (<https://www.govinfo.gov/app/collection/CHRG>) from 1985 - present. Hearings related to U.S. Supreme Court nominations are also available back to 1971 on GovInfo (<https://www.govinfo.gov/collection/supreme-court-nomination-hearings>). Individual congressional committee websites also often make the full text of their hearings available (often with video); however, their archives generally do not predate what is available through GovInfo.

HeinOnline's U.S. Congressional Documents Library (<http://search.library.duke.edu/search?id=DUKE003131760>) includes thousands of hearings from the 50th Congress (1889) to the present. The **Law Library of Congress** (<http://www.loc.gov/law/find/hearings.html>) has also digitized selected historical hearings related to the areas of immigration, freedom of information/privacy law, and the United States Census.

Many federal hearings can be located in print in the Duke University Libraries' catalog (<http://search.library.duke.edu/>) with a search of the hearing title. Most are housed in the libraries' off-site storage facility, the Library Service Center, but may be requested for delivery.

Additional information about hearings is provided by the following historical print indexes:

- **CIS U.S. Congressional Hearings Index** (Ref. KF40 .C56 1981). Dating back to the 23d Congress in 1833, the Index provides subject access, descriptive information on the hearing, and (most importantly for legislative history purposes) an index by bill number, that brings together citations for available hearings on each bill. CIS, Inc. also distributes a microfiche collection of these pre-1969 hearings included in the index; however, this microfiche set is **not** available at Duke. (Instead, use ProQuest Congressional for electronic access to the Digital Collection of hearings.)
- The basic index for hearings (and most other government documents) has historically been the **Monthly Catalog of United States Government Publications**, which began publication in 1895, and is available in the Law Library at Documents GP 3.8 from 1911-2004 (at which point it moved exclusively to <http://catalog.gpo.gov>), as well as full electronic access in HeinOnline's U.S. Federal Agency Documents, Decisions, and Appeals library. Along with detailed bibliographic information about each published hearing, the *Monthly Catalog* includes its Superintendent of Documents (SuDocs) classification number, which determines its physical location in most documents libraries.
- Hearings of both houses are also indexed in the U.S. Senate Library's **Index of Congressional Committee Hearings** (Ref. KF40 .C86). The original volumes cover hearings in the Senate Library published before 1935; later supplements cover up to 1978. Each provides access by subject, committee name and bill number. This index does not provide Superintendent of Documents classification numbers for the hearings, but indicates the bound volume where they can be found in the Senate Library. However, the indexes do allow the researcher to verify whether or not a hearing has been published for a particular bill and simplify locating its SuDocs number in the *Monthly Catalog*. Pre-1935 hearings not held in the Senate Library are indexed in Harold O. Thomen, **Supplement to the Index of Congressional Committee Hearings prior to January 3, 1935** (1973) (Ref. KF40 .C862).

D. BILLS

Frequently, before the final version of a bill is reported to the floor, a committee will consider alternative versions or proposed amendments. Comparing the enacted language with that found in earlier versions of the bill, or in amendments that were not accepted, can better illustrate the intent of the final version. Comprehensive historical collections are available at the Library of Congress and in the offices of each house, but at few locations outside of Washington, D.C. aside from microform sets.

However, bill texts have become increasingly available online, at least for more recent Congresses. **Congress.gov** (<http://www.congress.gov>) provides the full text of federal proposed and enacted bills back to 1973. **Lexis Advance** offers the full text of bills dating back to the 101st Congress (1989 - present). **Westlaw's** Historical Federal Bills coverage begins with the 104th Congress (1995 - present); its FED-LH database also offers PDFs of alternate versions of bills which later became public law (1921-1995). **Bloomberg Law** includes federal bills back to 1993.

For historical bills, the Duke University community can access the Bills & Laws library in **ProQuest Congressional** (<http://search.library.duke.edu/search?id=DUKE002487153>), which includes the full text of all bill versions and amendments from 1789-present. The Library of Congress has also digitized **selected** historical bills and resolutions through its **American Memory Project**, at

<http://memory.loc.gov/ammem/amlaw/lwhbsb.html>. House materials are available from the 6th - 42nd Congress (1799-1873); Senate materials from the 16th - 42nd Congress (1819-1873). Note that this archive is not comprehensive.

In addition to the sources listed above, it is sometimes possible to locate the bill text reprinted in published hearings, committee reports, or the *Congressional Record*.

E. OTHER PUBLICATIONS

Other congressional documents, although not usually related to particular bills, may provide useful background for legislative history research.

1. Committee Prints

Many committee studies and reports are published under the general classification: “committee prints.” Committee prints are not usually related to a particular bill, but are often released in support of the committee’s general functions and activities. Although not widely distributed in hard copy, **ProQuest Congressional** (<http://search.library.duke.edu/search?id=DUKE002487153>) provides the full text of committee prints back to the 19th century. Committee prints are also freely available back to 1991 via **GovInfo** (<https://www.govinfo.gov/app/collection/CPRT>). Individual committees may also make them available on their websites. The *CIS U.S. Congressional Committee Prints Index* (Ref. Z1223 .Z7 C66 & electronic equivalent in ProQuest Congressional) includes indexes by subject, title, committee and congress, SuDocs number and bill number.

2. Congressional Research Service (CRS) Reports

Many congressional committee studies are prepared by the **Congressional Research Service (CRS)**, an office of Congress which prepares nonpartisan research reports meant to help members of Congress understand public policy issues. (For example, see the report *Legislative History Research: A Guide to Resources for Congressional Staff*, available at <https://www.everycrsreport.com/reports/R41865.html>.) For many years, CRS was not able to provide the full text of these reports directly to the public, although citizens could request copies through the office of their congressperson. Beginning in 2018, Congress lifted the prohibition on public access to CRS reports, making them freely available through **Congress.gov** (<https://crsreports.congress.gov/>). The Library of Congress is adding new reports to this site, with plans to also upload a complete collection of retrospective reports by spring 2019.

Additional sites for locating older CRS reports include the subscription database **ProQuest Congressional** (<http://search.library.duke.edu/search?id=DUKE002487153>), which provides an index and full-text PDFs of CRS reports dating back to 1916. The site features a number of search options for locating CRS reports on a topic. In addition, a number of organizations have created free online archives of selected reports. The most comprehensive is the **University of North Texas Libraries** (<http://digital.library.unt.edu/govdocs/crs/index.tkl>), which attempts to compile available reports dating back to 1990. Its “Related Resources” page links to a number of other subject-based CRS report libraries, on topics such as the environment, national security, and foreign policy. **EveryCRSReport** (<https://www.everycrsreport.com/>), the **Federation of American Scientists** (<https://www.fas.org/sgp/crs/index.html>) and Stanford’s **Archive-It CRS Reports** collection

(<https://archive-it.org/collections/1078>) are more excellent sources for locating these often elusive historical CRS reports.

VI. OTHER SOURCES OF INFORMATION

Although there is much current journal literature on the uses of legislative history in statutory interpretation, there is no useful current bibliography. The standard American treatise on statutory interpretation is the multi-volume treatise by Singer, *Statutes and Statutory Construction*, 7th ed. (KF425 .S966 2007 & online in Westlaw's SUTHERLAND database), known as "Sutherland on Statutory Construction" for its former editor. This treatise provides only a limited treatment of legislative history problems, although a small bibliography is included in volume 4.

Compilation and uses of legislative histories are covered in general texts on legal research, such as *Fundamentals of Legal Research*, 10th ed. (Reserves KF240 .P65 2015) and *Federal Legal Research*, 2d ed. (Reference KF240 .F48 2015). Historical federal legislative history texts, while obviously outdated with regard to new publications and electronic resources, may be a good introduction to the documents of legislative history and research techniques for early U.S. laws, and can be found in the Duke University Libraries catalog with a subject heading search for "Legislative histories -- United States."

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