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Uncovering Federal Legislative History

“Legislative history” is the process of uncovering “intent” in the words and actions of the legislature when enacting a particular statute or amendment. “Legislative history” also refers to the paper trail that is generated as a bill makes its way through the various phases of the legislative process. Documents such as bills, committee reports, and transcripts of floor debates and hearings can provide practitioners with the means to interpret ambiguous statutes when the ordinary rules of statutory construction fail.¹

An earlier article discussed the difficulties in conducting Colorado legislative history research due to the lack of written materials documenting the legislative process.² By contrast, the federal legislative process is quite well documented in print, although that does not necessarily ensure that conducting a legislative history search is easy.

The ease of conducting such a search often depends on the nature of the request. Whether researchers seek information on a bill considered by Congress within the past five to seven years or seek only a few specific documents, the search may be as simple as using a few reliable government Internet sites, such as THOMAS³ or GPO Access.⁴ However, if the legislation is older or researchers need to locate every document generated during the legislative process, they will probably need to turn to print resources.

This article covers online sources that are useful for conducting a simple legislative history search. A second article, which will appear in the May 2004 issue, will focus on print resources that can be used to research older laws or to compile a more comprehensive federal legislative history.

Using the THOMAS and GPO Access Websites

The THOMAS website, hosted by the U.S. Library of Congress, provides free online access to federal legislative informa-

tion. Among the types of materials available on THOMAS are the full texts of public laws, committee reports, and bills in various phases of the legislative process. To understand what to search for, here are examples of some of the various phases of a bill: (1) *introduced* (the bill as introduced for the first time in the House of Representatives or Senate by either a Representative or Senator); (2) *engrossed* (after it passes one House, a bill that is certified as accurate by either the Secretary of the Senate or the Clerk of the House of Representatives); and (3) *enrolled* (the final version of a bill that is approved by both Houses and sent to the President for signing).⁵

Other available records are the results of roll-call votes and the contents of the Congressional Record. For more information about the documents provided by THOMAS and the date ranges covered, see http://thomas.loc.gov/home/abt_thom.html.

Before beginning a search on THOMAS, researchers may want to locate the Public Law (“P.L.”) number for the law being researched; having this number can help simplify the search process (the P.L. number is the number assigned to the final version of a bill that has been enacted into law). The P.L. number may be located in a variety of ways; for example: (1) by looking at the legislative history section immediately following the text of the statute in the U.S.C., U.S.C.A., or U.S.C.S.; or (2) by checking the set of *Shepard’s Acts and Cases By Popular Name* in a nearby law library. Having additional information, such as the bill or committee report number, exact title of the legislation, or congressional session during which it was passed also will make it easier for researchers to locate relevant materials on THOMAS.

Researchers who know the number of the P.L., bill, or committee report may begin searching online by selecting the “Bill Summary & Status,” “Bill Text” or “Public Laws” links in the “Legislation” column. After linking to one of these categories, researchers will need to choose a corresponding congressional

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session. If researchers are unsure of the congressional session, but the year is known, they may select any congressional session initially to determine which Congress corresponds to the year of legislation. For example, if users select the 105th Congress, they will see that 1997 and 1998 are the corresponding years and can use that information to extrapolate the years of previous and subsequent congressional sessions.

When the P.L., bill, or report numbers are unknown, but the researchers do know the title of the law or a few key words from the title, they may conduct a word search of the "Bill Summary & Status" or "Bill Text" databases through THOMAS. When entering a search, quotation marks around the term(s) being searched are not needed. Search options provided include the ability to search for "exact words" or "variants," such as plurals.

Search results are grouped into four categories: (1) phrase exactly as entered; (2) articles containing all search words near each other in any order; (3) articles containing all search words, but not near each other; and (4) articles containing one or more search words. Easy fill-in templates provide additional restrictions at the front end of the search. These restrictions include member of Congress, section (House, Senate, Extension of Remarks),⁶ phase in bill process, and date.

At this level of research, the results include links to related bills, the full-text of various versions of the bill, resolutions relating to the bill, a status report, and other relevant documents. By examining the full text of the bill, including its section and title numbers and headings, additional search terms can be gleaned for further research in the Congressional Record.

To find out more about the intent of the bills, researchers should first read any summaries that are related to the bill in question. The second step is to look for references in the Congressional Record, because the Congressional Record contains debate transcripts. If the date of debate is already known, and it is during the current Congress, researchers may select "This Congress by Date" and simply scroll down to the date in question or use the "Find" command in the browser to locate the date more quickly. If the date is not known, either the "Text Search" or "Index" links may be used to locate the applicable pages in the Congressional Record. Researchers again should select the corresponding Congress and then input the search.

The same options that were available in the "Bill Summary & Status" and "Bill Text" databases are available in the Congressional Record "Text Search" database. However, in the "Index" search, researchers may search only with a key word or phrase. Another option would be to scroll down to the alphabetic range in which the term would appear and go from there to the index term and, consequently, to the corresponding documents.

Tips When Facing Search Problems

When searching the Congressional Record using THOMAS, researchers may encounter some glitches. Here are some hints for dealing with them.

THOMAS Website

When linking to a Congressional Record section on the THOMAS website, unless the exact page or speaker is known, link to "printer friendly display." While these files can be quite large, using the "Find" command on the browser with appropriate search terms will speed up the time it takes to review each corresponding section. The links behind searches are temporary. Thus, a "bookmark" or "favorite" will not be preserved

on the website. If researchers wish to save the Congressional Record pages, the better option is to use the "File, Save" option on the browser and save the document to a hard drive.

The fourth selection under the "Congressional Record" column, "Roll Call Votes," is misleading because it includes much more than the results of roll call votes. For example, the same links and information that can be found in the "Legislation" column also can be found here. However, to use this link effectively, researchers must know the Congress and its session (first or second), as well as the bill number.

The last column on the THOMAS website is the "Committee Information" column. The first link, "Committee Reports" is archived only to 1995. Search options are similar to those for the "Bill Summary & Status," "Bill Text," and Congressional Record "Text Search" databases.

Finally, researchers may use THOMAS to access the websites of various U.S. House and Senate committees. By reading the bill status notes, researchers can find out which committees have introduced, debated, and modified the legislation. It may be useful to visit the websites of those committees to search for further information because additional information often is posted on committee websites, particularly if the bill is a major piece of legislation. If researchers monitor legislation as it develops, linking to the appropriate committee websites also is valuable in that many include committee schedules.

For lengthy research projects with multiple documents, researchers will need to start a new search periodically as the results "time out." According to Mike Newman at the Library of Congress, most searches produce temporary search results pages to save server space. There are ways to build a permanent URL, and programmers at THOMAS are working on a system that will not use temporary URLs. However, they do not anticipate completion until 2005–06. Some additional features on THOMAS include quick links to the U.S. House and Senate schedules, directories, and websites. On the GPO Access website (<http://www.gpoaccess.gov/legislative.html>), a two-minute time-out feature is built in to prevent resource drain on the server.

GPO Website

As an alternative to searching THOMAS, researchers may want to search the GPO Access website for legislative information. This site, hosted by the U.S. Government Printing Office, provides free electronic access to many documents produced by the federal government, including legislative materials.

The GPO Access site is template-driven, which may appeal to less experienced researchers. However, those searching the GPO Access site should note that it primarily covers the current legislative session, so it is not as comprehensive as THOMAS. For more information about the materials provided by GPO Access and the date ranges covered, visit <http://www.gpoaccess.gov/legislative.html>.

Other Legislative History Options

If researchers are more comfortable with the commercial products, such as Westlaw® (<http://www.westlaw.com>) or LexisNexis™ (<http://www.lexis.com>), they can conduct the same types of searches that can be conducted on THOMAS and the GPO Access websites. They also may find it easier to locate the items.

These online databases have many similar files for federal legislative research, such as: on LexisNexis—House and Sen-



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ate Docs, US-CIS/Index, US-CIS Legislative Histories, Congressional Voting Records, Member Profiles & Financial Information, Congressional Record—House, and more; on Westlaw—“Bill Tracking,” Bill Status, U.S. Public Laws—Current and Historical, Presidential Signing Statements, and more. LexisNexis and Westlaw each has strengths not found on the other. For example, only LexisNexis has “Statutes at Large” (from 1789 to 2002) and “Congressional Information Service” (“CIS”) files.

Westlaw recently introduced a new product called “Congressional Lawmaking Process.” Congressional Lawmaking Process is a “Legislative History-Fed” option, which can be accessed through the “My Westlaw” tab in <http://www.westlaw.com>. Researchers should select the “Jurisdictional Federal” category and link to “Legislative History-Fed” at that point. A chart (Congressional Lawmaking Process) showing the steps in the legislative process allows researchers to link to any stage in the process, select files to search from a list, and input a search.

For someone unfamiliar with the legislative process or less handy in finding the appropriate files to search, this product may help simplify the process. Additionally, in 2004, Westlaw will be introducing several new features in their statute files, which also will make it easier to research legislative intent. Researchers may want to schedule time with their representatives or librarian to view and become familiar with the new features.

Locating Older Documents Online

The legislative history research techniques outlined above provide guidance for conducting simple and straightforward

searches online. However, researching older legislation via the Internet can be more of a challenge. In this situation, it might be best to look for sources of compiled legislation, particularly if the chosen topic covers a major federal law. In LexisNexis, among some of the legislative histories available, the “Legis library” or “Federal Legal US Tab” lists the Clean Air Act, CERCLA, Hazardous and Solid Waste Amendments Act, and Superfund Amendments and Reauthorization Act.

In Westlaw, the Arnold & Porter legislative history files may be found in the “Genfed” section or under the “US Federal Materials” file. Some of the compiled histories include the Government Securities Act of 1986, NAFTA, and the Telecommunications Competition and Deregulation Act of 1996.

For those who prefer using print resources, it should be noted that some compiled legislative histories can be found in area libraries such as the University of Denver College of Law Westminster Law Library, University of Colorado Law Library, Colorado Supreme Court Library, and the Denver Public Library.

A search of their respective catalogs⁷ using the phrase “legislative history” and some terms from the popular name of the act (for example, “legislative history clean air”) generally will turn up any holdings on the topic. Moreover, librarians at any of these institutions would be more than willing to help researchers ferret out needed information.

The next column, to be published in May 2004, will take researchers beyond the basics for older legislative histories where little or no electronic resources are available. In addition, the article will cover alternative sources for the documents mentioned here and provide tips to shorten the research process.

NOTES

1. Singer, 2A *Statutes and Statutory Construction* at §§ 48.01-48.20, 6th ed. (Eagan, MN: Thomson/West, 2000).

2. “Uncovering Legislative History in Colorado,” 32 *The Colorado Lawyer* 47 (Feb. 2003).

3. THOMAS (<http://thomas.loc.gov>) is a free legislative information service provided by the Library of Congress. The service was created in 1995 and is reliable and widely used (an average of 326,540 files were transmitted daily in 2002).

4. GPO Access (<http://www.gpoaccess.gov>) is a service of the U.S. Government Printing Office (“GPO”) that provides free electronic access to many documents produced by the federal government, including legislative, administrative, and judicial material.

5. See Mersky and Dunn, *Fundamentals of Legal Research* 150 (New York, NY: Foundation Press, 2002).

6. *Id.* at 212. Extension of remarks are reprints of articles, editorials, book reviews, and tributes.

7. These catalogs are available to search at the following sites: Westminster Law Library (<http://pacman.law.du.edu>); University of Colorado-Boulder Law Library (“LAWPAC”) (<http://lawpac.colorado.edu>); Colorado Supreme Court Library (<http://www.cslibrarycat.state.co.us>); and the Denver Public Library (<http://catalog.denver.lib.co.us>). ■

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