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Successful Federal Legislative History Research

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Researching federal legislative history might appear at first glance to be a simple enough process; after all, there are materials now readily available on recent congressional session bills either at your local **congressional depository library** (“CDL”) or posted on the web (*i.e.*, <https://www.gpo.gov>). In California, for example, there are approximately 93 CDLs in city, county, law and university libraries. (*Id.*, “How to Locate a Federal Depository Library”) More complete collections of federal documents are generally found at university or state capitol law libraries. We have prepared a **Legislative History and Intent as Aids to Statutory Construction in Federal Court**, which functions as a points and authorities guide. (<https://www.legintent.com/>)

To make it even simpler, there are less than a handful of document *types* to research on a federal public law: 1) the bill; 2) committee reports; 3) committee hearing transcripts; 4) congressional debates; and 5) committee prints/reports or studies. There are other miscellaneous documents (*e.g.*, *Congressional Information Service* indices, presidential statement on signing a bill) but these five documents are the primary document types that are generated on federal bills by the congressional committees reviewing the bills and are usually located at CDLs.

It also helps that all of this modern material is organized and indexed as far back as the 1700’s. By going through the indices to the *Congressional Record*, the *U.S. Serial Set*, and the *Congressional Information Service*’s indices of legislative histories, hearings and reports, one can, by subject matter and often by section, search and locate relevant documents to any public law and bill. On the web, research of these same document types can be conducted from about 1989 forward at GPO Access (a service of the U.S. Government Printing Office) at <https://www.gpo.gov> and at the Thomas site (maintained by the Library of Congress) at <https://www.congress.gov/>, just to name two of the most popular websites.

But the difficulty of federal research lies not in finding these already organized and net-posted materials. What makes a federal legislative history research effort a challenge is that most public laws are omnibus or comprehensive bills in nature, with the individual subjects or sections covered by these bills likely to have been a product of a five- to ten-

year prior history of failed legislation. Keeping in mind that the bill that is enacted covers various and miscellaneous titles addressing an overall subject, a researcher also needs to remember that existing prior to the enactment that became the public law there may have been anywhere from six to thirty or more earlier *significant* bills carrying *some or all* of the proposals enacted finally in the public law.

What seems to also challenge the research process is the fact that Congressional legislative history documents are often very lengthy and without indices or tables to provide a roadmap for the researcher looking for a single subject or section. When federal bills are omnibus or comprehensive in nature, addressing numerous subjects relating to the primary topic carried in a series of titles, the bills can be several hundreds of pages in length for each amended version. The bills' accompanying committee reports will usually follow suit and require careful review. Transcripts relevant to a bill are commonly 500-1000+ pages in length; with ten to thirty or more cited as relevant to a public law and its subject. We have found that the quantity of Congressional debate in the *Congressional Record* seems to reflect the dimensions of the bills, reports and transcripts.

So, the once-simple federal legislative history bill research has become a voluminous challenge. In fact, simply "gathering it all," by itself, becomes a time-consuming effort. The collection can result in literally thousands of pages of documentation to review. While some cases may justify this type of "complete" research, our experience has taught us that in many cases such a complex and complete collection is not necessary, especially when considering the economics of an attorney's investment of time to review this massive amount of information.

You might ask, why not just gather only the materials on *the* bill which became *the* public law being researched and ignore the early materials. In most cases, you would likely miss examination of the development of the language of any given section in earlier bills, and substantive discussion accompanying the initial proposal of, and later development of, the language. Thus, the ultimate reports and debates on *the* bill that became *the* public law may provide you with an insufficient understanding of the historical development of the text and the commentary generated on it as it was considered, revised, and later amended.

What of file materials generated by the committees, or even the members of Congress introducing the bill? Such files, if retained, are not readily available directly from the committee or a member's offices primarily for political reasons. While many files are transmitted to the National Archives, we have found they are subject to a 20- (Senate) or 30- (House) year hold prior to public availability, and once available, are available only through on-site research in Washington D.C.

Most attorneys that we talk to in need of congressional legislative history research have a point of focus, such as a code section, a subdivision within a code section, or a particular subject matter. With this knowledge, in most cases the more appropriate approach to research is to focus on this section, subdivision or topic, and trace vertically back in time to its appearance in the bills preceding the enacting bill that became the public law.

Once the substantive prior bills have been identified, you can then move out horizontally and gather the reports and congressional debates generated on the relevant earlier measures at the chronological point in time the prior bills were being considered.

Like the enacting bill and public law, these earlier materials can be excerpted for relevant commentary to the research focus. The earlier bills' hearings and background materials (i.e., congressional biography, newspaper articles) can be examined for potential relevancy once bills are identified. Abstracts located in the Congressional Information Service's yearly indices provide a list of the hearings on the earlier and enacting bills to enable one to see very brief statements as to who the speakers were and the subjects addressed by them. From these and the research process described herein, one generally can pinpoint potentially relevant hearing transcripts for review.

We have learned the importance of organizing these federal materials in a coherent manner that makes it easier for an attorney to review the documents and understand the process by which the statute in question developed. This organization is important when the reviewer is unfamiliar with the legislative process and is trying to shift through reams of documents.

By following this thoughtful process of federal legislative history research, you can obtain the most relevant discussion on the federal section, subdivision or subject of interest. While you can never guarantee the depth, extent, quantity, or quality of the materials and discussion to be found, you can be assured that in reviewing the volumes of legislative history materials available on a public law, the materials located and gathered will be the most relevant and substantive commentary on your point of focus.