Federal Legislative History 101

Presented by Rick McKinney, Assistant Law Librarian, Federal Reserve Board As a Webinar for Federal Depository Librarians, March 2, 2017

Information That Will Be Covered in This Presentation

- 1) What Federal Legislative Histories Are and How They Are Used
- 2) Understanding How Federal Laws Are Published and Cited: Key Access Points
- 3) Normal Steps and Documents in How Federal Legislation Gets Enacted
- 4) Documents and Order of Priority Generally Included in a Federal Legislative History
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- 6) Tangible Sources and Information for Federal Legislative Histories
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What Federal Legislative Histories Are and How They Are Used

- Legislative histories are compilations of related documents that precede a specific law's enactment.
- A chronology or list of documents on the bill's or bills' development is usually set out as well, including related legislation in previous Congresses.
- The focus in legislative history research is normally on understanding the legislative intent of a provision of law (who, what, when, how, why enacted).
- Legislative histories assist agencies and the courts to interpret or clarify a provision in a particular law, especially if the statutory text is ambiguous.

Commentary

The phrase "legislative history" is sometimes also applied to a description of how a law was amended over time or how a bill developed into a law without any accompanying documents, but for researching the legislative intent of specific statutes specific documents related to those statutes are generally needed. To a researcher of legislative intent, a history of how a particular provision of law was amended over time only means that there may be more than one public law's legislative history to examine. Many judges might be considered "textualists," like the late Supreme Court Justice Antonin Scalia, and only look at the grammar and text of a statute and not its legislative history, but Federal agencies promulgating regulations to implement a statutory provision generally do consider the legislative history of the provision and those commenting on proposed rules can note the history as well.

Understanding How Federal Laws Are Published and Cited: Key Access Points to Legislative Histories

U.S. Statutes at Large citation – from 1789 by volume and page number. A statute here is considered as all the laws in a "Congressional session" and an act is one "chapter" in a statute. Thus, in the past, one volume could have many chapters with the same number. Cited before 1957 as in "Dec. 23, 1913, ch. 6, 38 Stat. 251" with a date, chapter number, volume number, publication abbreviation, and a page number when the act or provision begins. Available free via search engines, GovInfo or FDsys (from 1951), Library of Congress American Memory Project (1789-1875). See examples: 70 Stat. 133, 124 Stat. 1376. See Table of Congressional Publication Volumes and note by 1863 1 Congress = 1 vol.; by 1937 1 Cong. Sess. = 1 vol.; by 1941 1 year (usually) = 1 vol.; by 1957 no more chapter #s; by 1975 each act starts on a new page with legislative history notes at the end. See also authority citation links at the end of each section of the U.S. Code or in its stat viewer.

Public Law Number citation – unique numbers assigned to each act since 1907 with the first number representing a particular Congress and the second as the numerical order of laws enacted chronologically within a Congress. Cited as in Pub. L. No. 86-374 (official) or Pub. L. 86-374 or just PL 86-374. Formerly cited as in Pub. No. 43, 63d Cong. Available free via GovInfo or FDsys (from 1995/1951), Congress.gov (from 1973/1995). Examples: Pub. No. 43, 63d Cong., Pub L 86-374, PL 104-66.

U.S. Code citation – Since 1926 all general and continuing law passed by Congress and arranged by subject. Cited as in 12 U.S.C. § 221 with the first number representing the subject title and the second as the section number. Available free via <u>USCode.House.gov</u> (from 1994), <u>GovInfo</u> or <u>FDsys</u> (from 1994), <u>Cornell's LII</u> (near current) and others. About half the titles in the U.S. Code are "positive law" (all prior statutes having been repealed and popular name and cite no longer necessary), the rest are "prima-facie" evidence of the law. See section notes to statutory authorities at end of each USC section and to amendment notes describing changes. Examples: 12 U.S.C. § 221, 12 USC 1841.

Popular Name of an act – official short title or popular title to an act of Congress. Not every Federal law has a popular name, especially in previous centuries. You can use search engines, <u>GovInfo</u> or FDsys (from 1951), Congress.gov (from 1993), GovTrak.us (from 1951), or popular name indices like that on <u>USCode. House.gov</u> or <u>Cornell's LII</u>. Some acts are abbreviated, as in HIPAA - search engine can lead to <u>PL 104-191</u>; or COBRA - search engine can lead to <u>42 USC 300bb-1 et seq.</u>, <u>100 Stat. 232</u>).

Section of an act – See search engines or use U.S. Code Table III (section of act to U.S. Code section) on GovInfo, FDsys USCode/House (from 1994). Examples: being <u>Sec. 508</u> compliant (<u>29 USC 794d</u>); or filing a Chapter 11 (<u>Chapter 11</u> of Title 11 U.S.C).

Bill Number – House (H.R. ### or H.J.R. ###) and Senate (S. ### or S.J.R. ###) bills and resolutions numbers are needed to find the history or chronology of a bill enacted into law. Available via GovInfo or FDsys (from 1951), Congress.gov (from 1973), GovTrack.us (from 1951), Congressional Record Index and its "History of Bills and Resolutions" for each session of Congress. See: S. 564 – 103rd Cong.; H.R. 5062 – 113th Cong.; Applicable bill numbers (or joint resolution numbers) have been applied to U.S. statutes since 1903. Before that time it is helpful to use Eugene Neighbor's Legislative Reference Checklist Key to Legislative Histories, 1789-1903, published by Rothman (out of print but available by subscription in HeinOnline's U.S. Legislative History Library).

Normal Steps and <u>Documents</u> in How Federal Legislation Gets Enacted Example: E-Government Act of 2002, H.R. 2458 / S. 803 – 107th Congress

- 1) A bill is introduced by a member of Congress and referred to committee(s); intro remarks (CR).
- 2) A committee or subcommittee may hold <u>hearings</u> and/or make *mark-up* amendments to it.
- 3) A committee orders the bill, as reported, out of committee accompanied by a committee report.
- 4) The bill may be brought up for floor consideration, debated, amended and passed; <u>Cong. Record.</u>
- 5) The bill as passed goes to other chamber which may go through same process or have own bill.
- 6) If chambers disagree on text, a joint conference committee is appointed to come to agreement.
- 7) Conf. committee issues conference report of agreed text often with a joint explanatory statement.
- 8) House and Senate chambers must both agree to the text of a conference report; Cong. Record.
- 9) The <u>enrolled bill</u> or act as passed (or agreed to) by both chambers is referred to the President.
- 10) The President has ten days to sign the bill into law often accompanied by a signing statement.
- 11) Enrolled act is assigned USC cites & a PL # and published as a slip law; later in U.S. Statutes.

Commentary

The above eleven steps are the "normal" way a bill become a law, but of course Congress is not a normal entity and these are not normal times in which legislation is considered and enacted. In recent times, for significant legislation that clears both the House and Senate, the leadership of those chambers generally take a heavy hand in its production and often legislation gets folded into "omnibus" bills or continuing resolutions that somewhat bypass the committee consideration.

Documents and Order of Priority Generally Included in a Federal Legislative History

- 1) **Public Law** (the plain text of the law is the most binding in any interpretation)
- 2) **Committee Reports** (explains legislation; like a conf. report joint explanatory statement)
- 3) **Congressional Record** (remarks & debate especially from chief sponsors)
- 4) **Bill Texts** (how provision changed in its various stages, including related bills)
- 5) **Congressional Hearings** (especially related testimony from implementing agencies)
- 6) **Congressional Committee Prints** (often <u>studies</u>, but also named for <u>draft legislation</u>)
- 7) **Presidential Signing Statements** (found in Compilation of Presidential Documents)

Commentary

As seen in this list, many documents may have bearing on the interpretation of a law or one of its provisions or its words and phrases that could be included in a Federal legislative history. Some other documents not listed above may be studies and reports published during the legislative process from Federal executive or legislative agencies (CRS, GAO, CBO, etc.) There may also be a transcript or webcast of deliberations in a conference committee or standing committee as well as the text of committee mark-up amendments. Other documents might even include press releases, correspondence, or news articles some of which may get inserted into a published Congressional hearing or the Congressional Record. It must be noted however, that the further one strays from official documents, the less likely a U.S. court will give it consideration, that is, if a particular judge is even willing to consider any document other than an enacted statute. Nonetheless, as noted earlier, when Federal agencies propose regulations to implement a law or one of its provisions, any related document to interpret the meaning of a statute may be found to be helpful and those writing comment letters regarding those proposed regulations may find relevant language in a legislative history that supports their comments. Bear in mind, that points or issues brought up in comment letters generally have to be summarized by an agency in its preamble to a finalized rule, including a response as to how or why a particular point was or was not adopted.

How Compiled Federal Legislative Histories Are Generally Arranged

- **Chronological** (see, for instance, the <u>Truth in Lending Act</u> FRB/LLSDC history)
- **Reverse Chronological** (see <u>USA PATRIOT Act</u> by Center for Democracy & Tech.)
- By Document Type or Size (see <u>Electronic Communications Privacy Act</u> by DOJ)
- Other Arrangements or Combinations (see <u>Dodd-Frank Act</u> FRB/LLSDC history)

Commentary

Legislative history compilation is a craft, not a science, but a craft that can be learned. However, a good deal of discretion may be left to the compiler as to the format of the history and what indeed are the "related documents" that go into it. The core material will generally be the same for different compilers, but many compilers, may which to leave no stone unturned and no related document un-presented.

Tangible Sources and Information for Federal Legislative Histories

- Congressional Record Index This publication, located in many Federal depository libraries, has a subject and name index as well as "History of Bills and Resolutions" for each Congressional session from 1873. The Congressional Globe Index has bill histories from 1867.
- <u>CCH Congressional Index</u> Loose-leaf publication from 1937 to the present, now published by Wolters Kluwer. Lists all congressional bills and resolutions and briefly outlines the history of those that went beyond just being introduced.
- *CCH Public Laws Legislative Histories on Microfiche* by Commerce Clearing House (96th Congress through 105th Congress; 1979-1988). Out of Print.
- <u>CIS Legislative Histories of U.S. Public Laws</u> (annual abstracts of documents for each public law; available in hard copy and on ProQuest Congressional and LexisNexis, 1970/1984 to near present
- <u>Federal Legislative Histories: An Annotated Bibliography</u> and Index to Officially Published Sources by Bernard Reams an annotated bibliography of over 250 legislative histories compiled between 1862 and 1990 by Federal staff. It is indexed by public law number, popular name, and Statutes at Large citation. See call # KF 42.2 1994. Out of print, but may be available on Amazon.
- *IHS Legislative History Microfiche Program*. Information Handling Service. Contains histories of major laws from the 82nd Congress through the 96th Congress, 1951-1980 and internal revenue laws back to the 61st Congress (1909). Out of Print.
- <u>Sources of Compiled Legislative Histories</u> by Nancy Johnson, 2012, 2d ed. The work is organized by public law number and lists a variety of different types of available legislative histories, including books, journal articles, and online legislative history collections. Also available on HeinOnline's *U.S. Federal Legislative History Library*.
- <u>U.S. Code Congressional and Administrative News</u> by Thomson-Reuters (1941 to Current). Contains nearly all the text of laws and selected committee reports related to those laws (not appropriation law); Also has Presidential signing statements from 1985. Available in part on on Westlaw with selected committee reports from 1948 and all committee reports from 1990.

- <u>Union List of Legislative Histories</u> by Law Librarians' Society of Washington, D.C., Inc.(LLSDC). Union list of histories housed in libraries in the D.C. area. Seven editions, last update was in 2002. Out of print but available to LLSDC members online.

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Free Electronic Sources for Compiled Federal Legislative Histories or for Bill Histories or Chronologies with Possible Links to Documents

- <u>Congress.gov</u> for All Legislation from 1973 has chronology of actions with links to documents from 1993 for bill texts, from 1995 for committee reports, and from 1999 for Congressional Record debates. No hearings are linked.
- GovInfo or FDsys U.S. Statutes at Large file has brief legislative history citations at the end of each law from 1975 and "History of Bills and Resolutions" files from 1983 with citations to Congressional Record dates and page numbers from 1993.
- GovTrack.us presents graphic images with dates of a bill's development (from 1973) and text or links to enrolled bills or statutes (from 1799) as well as most recent version of related bills (from 1993). See Browse Bills and Resolutions Find Bills Advanced Search.
 - <u>Hathi Trust</u> Congressional Record or Congressional Globe indices by session including history of bills and resolutions (**1867 to 1956**)
- <u>Library of Congress</u> *American Memory Project* has **history of bills and resolutions** in House and Senate Journals, **1789-1873** and in Congressional Globe Indices, 1867-1873.
- <u>LLSDC.org</u> Links to more than 150 compiled legislative histories on the Internet available for free and organized by both popular name and public law number.

Commercial Electronic Sources for Federal Legislative Histories or Chronologies

- Bloomberg Law has legislative tracking information and analysis from 2011
- <u>CQ.com</u> has detailed bill actions from 1995 with links to related bills, reports, & C. Rec. pages
- <u>CQ.com</u> has CQ Bill Analysis for selected legislation from 1995
- CQ.com has CRS Bill Digest from all bills from 1995; CQ Archives 1985-1998
- <u>HeinOnline</u> U.S. Cong. Doc. Library has Cong. Rec. History of Bills and Res. separated (1867+)
- <u>HeinOnline</u> U.S. Fed. Leg. History Library has **hundreds of histories** (by title, pop. name, PL#)
- <u>HeinOnline</u> Tax & Economic Reform (banking) & IP libraries have dozens of other leg. histories
- <u>LexisNexis</u> Congressional Bill Tracking Reports from 1989 with links to Bills, Cong. Rec., Reports
- <u>LexisNexis</u> Federal Legislative Bill History from 1970 (CIS abstract & lists with links after 1989)
- <u>Lexis.com</u> 15 legis. histories (primarily on environment; see LLSDC commercial leg. history links)
- <u>LLMC</u> has Digest of Public General Bills by CRS, 1937-1945, 1948, 1965-1968, 1971-1972)
- ProQuest Congressional has CIS leg. history indices from 1970 with abstracts & many doc links
- <u>ProQuest Legislative Insight</u> has some 23,400 compiled legislative histories from 1815
- StateNet has U.S. bill chronologies from 1991 (102nd Cong.) but no links
- Westlaw has a dated 12 stage Cong. Lawmaking Process site with various file links for each stage
- <u>Westlaw</u> has U.S. Public Laws from 1973 with linked legislative history materials (usually reports)
- <u>Westlaw</u> has U.S. Code Congressional and Administrative News (from 1948)
- Westlaw has Arnold & Porter Legislative Histories (31 selected histories from 1976 to 2003)
- Westlaw has U.S. GAO Federal Legislative Histories (some 21,000 digitized, 1924-1995)
- <u>Westlaw</u> has Federal Bill Tracking from 2005 (bill chronologies but no links)

See also Legislative Histories of U.S. Laws on the Internet: Commercial Sources

Sources for the Text of Congressional Bills, Public Laws and Statutes

- GPO sent requesting Federal depository libraries all bills in microfiche (1979-2002, 96th-107th Cng.)
- GPO sends to requesting Federal depository libraries slip laws and U.S. Statutes at Large volumes.
- Congress.gov has full text of bills in all versions from 1993 in PDF; from 1989 in text
- GovTrack.us has text of bills in most recent version from 1989 and statutes from 1951
- GovInfo & FDsys have full text of bills in all versions from 1993 (103rd Cong.) (text & PDF)
- GovInfo & FDsys have PDF text of all public laws from 1995 & U.S. Statues at Large from 1951
- <u>Library of Congress</u> Century of Lawmaking project has U.S. statutes & many bills, **1789-1873**
- Bloomberg Law has bill texts from 1995; Statutes At Large 1789-Present; & selec. Acts as amended
- CQ.com has Bill Text of all versions from 1995 (104th Cong.) & CQ Archives from 1987-1994
- <u>CQ.com</u> Bills have compare side-by-side of different bill versions and companion bills
- <u>CQ.com</u> Bills have Law Track that links to the U.S. Code section it would amend (from 2011)
- <u>DSCS.com</u> (DataStream Content Solutions) has bill texts from 2005; Statutes at Large from 1789
- <u>HeinOnline</u> has searchable U.S. Statutes at Large from 1789 to near present
- LexisNexis has text (not PDF) of public laws from 09/09/1988 (100th Cong.; 101 pl 73, etc.)
- LexisNexis has U.S. Statutes at Large from 1789 (search as in 63 pl 43 or 38 Stat 251, etc.)
- <u>LexisNexis</u> has Congressional Full Text of Bills from 105th Congress (1997 forward -not PDF)
- <u>LLMC.com</u> has digital U.S. Statutes At Large (1789 to near current with some gaps)
- <u>ProQuest Congressional</u> Digital Bills and Resolutions (from 1789 not fully complete)
- <u>ProQuest Congressional</u> U.S. Statutes at Large (from 1789 complete for published volumes)
- <u>Westlaw</u> has U.S. Statutes at Large (1789-1972) in PDF
 <u>Westlaw</u> has U.S. Public Laws Historical (from 1973) and U.S. Public Laws
- <u>Westlaw</u> has Congressional Bills 105th Congress (1995-1996) forward

Sources for Committee Reports

- GPO sends to requesting Federal depository libraries all committee reports in paper or microfiche
- <u>Congress.gov</u> has all congressional committee reports **from 1995** (104th Cong. in html)
- GovInfo & FDsys has all cong. committee reports from 1995 (104th Cong.; in text & PDF)
- GovInfo & FDsys has list of docs & reports found in U.S. Serial Set vols. 1957 to near current year
- <u>Library of Congress</u> has selected Serial Set reports & documents **1817-1917**
- <u>Bloomberg Law</u> has committee reports from 1995 (104th Congress)
- <u>CQ.com</u> has Committee Reports from 1995 and in CQ Archives from 1989-1998
- <u>DSCS.com</u> (DataStream Content Solutions) has committee reports from 2007
- <u>LexisNexis</u> has all Committee Reports from 1993, 103rd Cong. (text format not PDF)
- LexisNexis has CIS abstracts of reports from 1970 (links after 1990) & CIS hist. index before 1970
- ProQuest Congressional has all House and Senate reports from 1817
- <u>ProQuest Congressional</u> has U.S. Serial Set (1817+) & American State Papers (1789-1838)
- Readex has U.S. Serial Set (1817-1994) with all committee reports & American State Papers
- <u>Westlaw</u> U.S. Code Congressional & Administrative News (all reports from 1990, sel. from 1933)

Sources for the Congressional Record

(CR has bill actions, votes, floor debate, remarks, & daily digest of floor & committee actions)

- GPO sends to Federal depository libraries the daily ed. (P, MF, or EL) & the bound to the regionals
- Congress.gov has full text of daily edition from 1993 / THOMAS has daily from 1989 (not in PDF)
- GovInfo & FDsys has daily edition from 1994; in PDF from 1995 (daily has H, S, & E pages from 1967)
- GovInfo & FDsys has bound edition from 1999 (straight numeric pages for each Cong. session vol.)
- GovInfo & FDsys has Congressional Record Index from 1983 with pages & dates from 1993
- <u>Library of Congress</u> Century of Lawmaking project has pre Cong. Record (1789-1874) (not in PDF)
- LLSDC has Cong. Rec. overview & Cong. session table with dates, Cong. Rec. vol. #s & notations
- <u>Bloomberg Government</u> has daily Congressional Record from 2011
- Bloomberg Law has Cong. Record daily edition from 1989 & bound Cong. Record 1933-1988
- CQ.com has full text of daily ed. from 2000 (Archives 1987-98) and abstracts of proceedings
- CO.com has Floor Videos of Cong. proceedings from 2003 and Floor Votes from 1991
- DSCS.com (DataStream Content Solutions) has Cong. Record daily edition from 2000
- HeinOnline U.S. Cong. Doc. Library has daily Cong. Rec. 1980+ & daily to bound page locator
- HeinOnline US Cong Doc Lib. has Cong. Rec. & predec. vols. 1789+ with indices & history of bills
- <u>LexisNexis</u> has Congressional Record from 1989 (Daily Ed. with individual sessions)
- <u>LexisNexis</u> has Congressional Record Retro (1873-1997) (searchable Bound edition)
- <u>LLMC</u>.com has bound Record by vol. # (1873-1876, 1992-93, 1995, 1999 to near current)
- ProQuest Congressional has bound Cong. Record vols. & predecessor publications from 1789
- <u>Westlaw</u> has Congressional Record from 1985 (Daily Edition, 99th Congress to present)

Sources for Congressional Hearings

- GPO sends hard copies to Federal depository libraries that request them for specific committees
- GovInfo & FDsys has published hearings in PDF from 'most' committees, some as early as 1997
- House.gov Most Committee pages have prepared testimony for recent years with archived webcasts
- <u>Senate.gov</u> Most Committee pages have prepared testimony for recent years with archived webcasts
- Google Books has digitized **thousands of hearings** with accessible snippets & purchase/library info
- <u>Hathi Trust Digital Library</u> has thousands of digitized Cong. hearings & docs (**1800s to recent**)
- Rutgers Congressional Docs has thousands of Cong. hearings & committee prints (1970-2000)
- Bloomberg Government has prepared statements and selected transcripts (FNS & CQ) from 2007
- C-Span Video Library has audio & video coverage of many congressional hearings from 1987
- <u>CQ.com</u> has CQ Congressional Transcripts of selected testimony **from 1995** (formerly FDCH)
- <u>Federal News Service</u> FNS has most prep. statements & selected transcripts of testimony from 1993
- HeinOnline has thousands of hearings from 1980s to near present (U.S. Cong. Doc. Library)
- LexisNexis has most prepared statements from 1993 (CO Congressional Testimony)
- LexisNexis has CQ Congressional Testimony from 1988 (prepared statements & selected oral))
- LexisNexis has U.S. CIS Index from 1970 (abstracts/summaries of hearings & other docs)
- LexisNexis has CIS Historical Index before 1970 (abstracts/summaries of hearings & other docs)
- LexisNexis has nearly all Cong. hearings(1823+) in four files marketed only to law firms
- ProQuest Congressional has nearly all published & unpublished hearings 1823 to current
- Westlaw has U.S. Congressional Testimony from 1993 (prepared statements & selected oral)
- <u>Westlaw</u> has U.S. Political Transcripts from 1994 including selected oral committee testimonies

Sources for Committee Prints

(studies/compilations; also the name for bill drafts before markup)

GPO sends hard copies to Federal depository libraries that request them for specific committees

GovInfo & FDsys has selected prints of many committees from 1997 (105th Cong.)

- House.gov many Committee Web sites have selected prints from 1997 (105th Cong.)
- <u>Senate.gov</u> many Committee Web sites have selected prints from 1997 (105th Cong.)
- <u>Hathi Trust</u> Digital Library has many committee prints in limited form or full text (**1900 to present**)
- Rutgers Congressional Docs has thousands of Cong. hearings & committee prints (1970-2000)
- <u>LexisNexis</u> has Committee Prints from 1994 to 2003 (selected)
- <u>ProQuest Congressional</u> Research Digital Collection has most committee prints from 1830

Sources for Presidential Signing Statements

(from Daily/Weekly Compilation of Pres. Docs & Public Papers of the President)

- GPO sends to requesting Federal depository libraries Public Papers of the Pres. (formerly Weekly...)
- American Presidency Project has signing statements from 1929 (U. of Calif., Santa Barbara)
- GovInfo & FDsys has Daily/Weekly Compilation from 1993 & Public Papers of Pres from 1992
- <u>HeinOnline</u> has Weekly (**1965-2008**) & **Daily** (**2009**+) Compil. of Pres. Docs (U.S. Pres. Library)
- HeinOnline has Public Papers of the President (from 1931) in U.S. Presidential Library
- <u>LexisNexis</u> has Public Papers of the President **from 1981** (includes recent docs as well)
- <u>Westlaw</u> has U.S. Code Congressional & Administrative News: Presidential Messages and Signing Statements **from 1986**

Options in Using Free and Commercial Electronic Sources

(problems in changing URLs, in copyright, and in license agreements)

- Free Congressional Document Downloading (can freely build own history)
- Free Linking to Documents in Public Domain (build own linked history; beware of URL changes)
- Link to Commercial Histories and Docs (has advantage of search engines; possible URL changes)
- Site or Multiple User License Agreements (access for whole organization or certain users)
- Have Commercial Source Digitize Your Histories (free access to your histories, others may pay)
- **Purchase Electronic Database Products** (build or link to histories on private Intranet)
- **Download to a Private Server** (construct your own private history electronically for own use)
- **Print and Compile a History in Paper** (can then put in file, in binders, or bind together)
- **Obtain Permission for Downloading to Your Intranet** (usually for limited number of docs)