

114TH CONGRESS }
2nd Session

SOURCE BOOK PRINT

{ COMMITTEE PRINT
2016-RM

FESTSCHRIFT
in honor of
RICK McKINNEY

SUBCOMMITTEE ON THE SOURCE BOOK

LEGISLATIVE RESEARCH SPECIAL INTEREST SECTION
LAW LIBRARIANS' SOCIETY OF WASHINGTON, D.C.



JUNE 2016

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This Festschrift would not exist without the assistance of the following individuals listed in alphabetical order:

Carrie Ansell, Debra Atkins, Jeff Bird, Dawn Bohls, Christine Ciambella, Blane Dessy, Dennis Feldt, Irv Gutman, Joyce Manna Janto, Peggy Jarrett, Kat Klepfer, Pamela Lipscomb, Ronald McKinney, Theresa McKinney, Cheryl Nyberg, SueAnn Orsini, Roger Skalbeck, Ellen Sweet, and Mike Welsh.

LETTER OF TRANSMITTAL

LAW LIBRARIANS' SOCIETY OF WASHINGTON, D.C.
LEGISLATIVE RESEARCH SPECIAL INTEREST SECTION
SUBCOMMITTEE ON THE SOURCE BOOK

Washington, D.C., June 2016.

THANKS, RICK...

Thanks very much, merci beaucoup, muchas gracias, vielen dank, todah raba. There are neither languages nor words enough for us to express our gratitude to you for all you've done over the years. All of your contributions to the profession of law librarianship, especially those made as part of your activities in LLSDC (Law Librarians' Society of Washington, D.C.) attest to your dedication, knowledge, and selflessness. Directories, union lists, chairmanships, brown bag programs, and last but definitely not least, the Legislative Source Book have made our work lives easier and better. Some, like the Source Book, have arguably established the gold standard for creating and publicizing quality content.

That hasn't stopped us from trying, though. This Festschrift is dedicated to you in recognition of your storied career, and, like all of your efforts, is substantive. In keeping with your history of professional contribution, we've put together a work that we hope, in addition to giving folks the history and background of many of your efforts, adds to our profession. We hope that you find it an appropriate expression of our collective appreciation.

Sincerely,

MEMBERS OF LLSDC

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THE IMPORTANCE OF FEDERAL LAW LIBRARIANS AND FEDERAL LAW LIBRARIES

DENNIS G. FELDT
U.S. DEPARTMENT OF JUSTICE LIBRARIES

What is the value and purpose of federal law librarians?

*What value do they add to a federal agency or court in a week, a month,
over the span of a career?*

*What value has their library services and collections added
to their organization's overall mission, as well?*

Do federal law librarians ever ask themselves these questions, or do they only consider them at the culmination of a dedicated library career at a federal law library, such as the Law Library of Congress, U.S. Supreme Court Library, U.S. Department of Justice Libraries, or the Board of Governors of the Federal Reserve Board Law Library – just to name a few?

This paper is a small tribute to such a dedicated law librarian: Mr. Rick McKinney, Assistant Law Librarian, Board of Governors of the Federal Reserve. Dedicated to supporting the general and legal research requirements, mission and critical work of the Board of Governors over the years, Rick has made a career out of adding significant value to the Federal Reserve Board and his profession. To understand the importance of Rick's career as a federal law librarian, however, it is important to first understand the role of federal law libraries and how they have helped shape our nation of laws.

1789 – THE BEGINNING OF FEDERAL LIBRARIES

Federal libraries had a definite purpose and origin that began with the

founding of our country. The founding fathers recognized the value of federal libraries with the establishment of library collections to support the varied research needs of a fledgling and developing system of government. Law and legal reasoning formed the cornerstone of the country and helped establish a representative government; a government made up of three branches, each formed to develop and interpret federal laws.

1789 saw the establishment of the first federal library at the State Department, founded by the first Secretary of State, Thomas Jefferson.¹ In that same pivotal year, several other historic firsts would lay the foundation for today's Federal Government and the need to this day for federal law libraries and librarians: ratification of the United States Constitution; the first session of the First Federal Congress; inauguration of the first President; establishment of the federal judiciary; and the creation and appointment of the first United States Attorney General.

LEGISLATIVE BRANCH: THE ESTABLISHMENT OF FEDERAL LAW AND FEDERAL LAW LIBRARIES

Article I, section 1, of the Constitution prescribed that: "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."² Charged with carrying out the legislative functions of a Federal Government, the Congress has always had a two-fold purpose: providing for the representation of citizens and for lawmaking designed to benefit citizens and the country. The framers of the Constitution intended primary federal lawmaking in the country to be in the hands of its legislative body representatives. Congress, the "first branch" of the U.S. government, is the primary maker of laws and national policy. As such, the powers, structure, and procedures of the Congress are more clearly defined in the United States Constitution, unlike those of the federal judiciary, for example, which required subsequent legislation to help define and shape the powers and structure of the federal courts and American jurisprudence.

The Constitution provides the core framework of a complicated lawmaking

¹ U.S. Department of State, Library Services: Retrieved December 7, 2015, from <http://www.state.gov/m/a/l/s/>.

² U.S. Const. art. I, § 1.

system. Legislation, resulting ultimately in public laws, follows an intricate, rule-laden course. Each step of the legislative process encounters hurdles to ultimate passage, allowing members of Congress to defer or modify legislation to protect, or better provide for, the civil and economic liberties of their constituents. Therefore, the legislative process resembles an obstacle course that favors more the opponents of legislation over the proponents with many points along the way for potential laws to be delayed or killed. To guard against the speedy enactment of federal laws without consideration or inclusion of the citizens that may be affected by them, such as the tyrannical British rule experienced by the colonies without representation, the framers of the Constitution intended Congress to debate and compromise even with an end result of fewer enacted laws.

LIBRARIES WITHIN THE LEGISLATIVE BRANCH: THE LIBRARY OF CONGRESS / LAW LIBRARY OF CONGRESS

Thomas Jefferson wrote that “there is, in fact, no subject to which a member of Congress may not have occasion to refer.”³ It is this statement that reveals, to this day, the importance of the Library of Congress to Congress’ two-fold purpose of representing citizens and for lawmaking to benefit citizens and the country. Recognizing the growing need for research collections to assist with a variety of legislative topics of concern to its citizens, Congress passed a bill in 1800 to establish a Congressional library. Approved by President Adams, the bill appropriated \$5,000 for “such books as may be necessary for the use of Congress ...” to be located in the Capitol building.⁴

The British attack in 1814 on Washington and burning of the U.S. Capitol during the “War of 1812” resulted in the destruction of much of that early collection. The collections of the Library of Congress were subsequently reestablished through the purchase of Jefferson’s own personal library collection in 1815 by Congress. At the time of the purchase, Jefferson’s collection contained 6,487 volumes in such diverse fields as politics, history, science, law, literature, fine arts, and philosophy, and was recognized as one

³ Jefferson, Thomas. Letter to Samuel H. Smith, Esq., September 21, 1814, *The Writings of Thomas Jefferson*, Memorial ed., Vol. XIV, p. 193. Washington, D.C.: The Thomas Jefferson Memorial Association, 1904.

⁴ Library of Congress, History of the Library: Retrieved December 8, 2015, from <http://www.loc.gov/about/history-of-the-library/>.

of the finest private libraries in the United States.⁵ The Jefferson Library formed the nucleus around which the collections of the Library of Congress have been assembled since, to provide for the wide variety of topical research needs of the members of Congress and the legislative process.

Thomas Jefferson had been a successful lawyer before the Revolution, and his personal library collection contained 475 law titles in 639 volumes. A year after Congress purchased Jefferson's library, Representative Robert Goodloe Harper, a lawyer from Maryland, made the first of several attempts by members of Congress from 1816 to 1830 to recognize the particular legal research needs of Congress to create a law section of the Library of Congress. However, it was not until 1832 that Senators Felix Grundy and William Learned Marcy successfully passed a law to create a separate area of the Library in the Capitol to house the law books of the collection to serve the unique legal research needs of both the Congress and the Supreme Court.⁶ The Law Library of Congress today is the world's largest law library, with a print collection alone of approximately 2.65 million volumes. The Library's collections are a premier source of American and foreign law, heavily relied upon by members of Congress and their staffs and other federal agencies when reviewing legal matters in all areas.

The primary mission of the Law Library of Congress remains the same as in 1832: serving Congress and its diverse legal research needs in representing its constituents and in considering legislation. The legal collections and research of the Law Library have become even more varied and important over the years, reflecting the increasingly global nature of legal issues and economic relationships. As a result, a substantial part of the Law Library's collection concerns foreign and international law and foreign legal systems.

The Law Library's major impact has been the ability to provide multi-faceted legal research for the immediate and important research needs of the Congress and its support staffs. Whether through general or legal research provided from the federal law librarians in the Law Library's Reading Room or the interpretation of foreign law by one of the Law

⁵ *The Library of Congress Rare Book & Special Collections Reading Room, Selected Special Collections: Thomas Jefferson's Library*. Retrieved December 7, 2015, from <https://www.loc.gov/rr/rarebook/coll/130.html>.

⁶ Law Library of Congress (U.S.). *Library of Congress Law Library: An Illustrated Guide*. Washington, D.C.: Library of Congress, 2005.

Library's foreign law specialists, the federal law librarians have had an immeasurable influence upon the laws of the country through their primary research in support of Congress.

JUDICIAL BRANCH: THE ESTABLISHMENT OF FEDERAL LAW AND FEDERAL LAW LIBRARIES

Article III, section 1, of the Constitution prescribed that the “judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.”⁷ However, it made no detailed provision for the composition or procedures of any of the federal courts, leaving this up to Congress to decide with subsequent legislation, molding American jurisprudence.

The Judiciary Act of 1789, “An Act to establish the Judicial Courts of the United States” (ch. 20, 1 Stat. 73), one of the first enactments of the new Federal Government, was passed on September 24, 1789 in the first session of the First United States Congress and signed by the first President, George Washington, establishing the details of a federal judiciary. The creation of a separate federal judiciary had been a source of contention in the debates over the ratification of the Constitution. A powerful judiciary was seen as a potential instrument of oppression by the Federal Government. It was of such concern that of the ten amendments that eventually became the Bill of Rights in 1791, five (the fourth through the eighth) dealt primarily with judicial proceedings. Even after the ratification of the Constitution and acceptance of Article III, some urged limitations on the new federal court system which would have created a Supreme Court as the only major federal court. The Congress, however, agreed upon a federal court system by means of the Judiciary Act that included the Supreme Court and lower level federal trial courts. The Act, thus, effectively created an arm for enforcing federal laws within each of the states.

The Judiciary Act set the number of Supreme Court justices at six originally: one Chief Justice and five Associate Justices. The Supreme Court was given exclusive original jurisdiction over all civil actions between states or between a state and the United States; and original jurisdiction over most

⁷ U.S. Const. art. III, § 1.

other cases in which a state was a party. The Court was given appellate jurisdiction over decisions of the federal circuit courts as well as decisions by state courts holding invalid any statute or treaty of the United States, or holding valid any state law that was challenged as being inconsistent with the federal constitution, treaties, or laws, or rejecting any claim made by a party under a provision of the federal constitution, treaties, or laws.

Congress authorized persons who were sued by citizens of another state, in the courts of the plaintiff's home state, to "remove" the lawsuit to federal court. The power of removal, and the U.S. Supreme Court's power to review state court decisions where a federal law was at issue, established that the power of the federal judiciary – the Federal Government – would be superior to that of the states.

LIBRARIES WITHIN THE JUDICIAL BRANCH: THE U.S. SUPREME COURT LIBRARY

The rule of law and legal research is the primary business of the federal judiciary. Law books, used for recording and organizing legal precedent, ultimately for assisting in making judgments, have always been of critical importance to our legal system beginning during the colonial period with the reliance upon the principles and precedents of English common law. Therefore, the collection of laws and legal research has always been, and will continue to be, the lifeblood of the federal judiciary and those federal agencies that are involved in law enforcement and administrative law. While there are many federal court libraries, the U.S. Supreme Court Library is among the oldest of the federal law libraries and supports the highest Court in the country.

The early Justices of the Supreme Court relied, initially, upon their personal law book collections, then later were able to use the developing collections of the Library of Congress. For historical context, the Library of Congress was created in 1800 and John Marshall was appointed the fourth Chief Justice of the United States the following year. By the mid-nineteenth century, a private "Conference Room" collection had developed to serve the needs of the Justices. The position of Supreme Court Librarian was designated in 1887 as part of the Office of the Marshal, to maintain this collection and those in chambers. The Supreme Court Library was officially established in

1935 with the opening of a dedicated U.S. Supreme Court Building with its own library space. Today, the Court Library contains a collection of over 600,000 volumes: a collection particularly rich in Federal and state primary law, British case law, and treatises on constitutional law and history.⁸

The Supreme Court Library's primary mission is to "assist the Justices in fulfilling their constitutional responsibilities with the best reference and research support in the most efficient, ethical and economic manner."⁹ Outlined in its own Supreme Court Rule (2.1), the Library's resources are available not only to the Justices and their law clerks but also to the Court officers, more than 400 Court support staff, members of the U.S. Supreme Court Bar, members of the Congress and their legal staff, and attorneys for the United States, federal departments and agencies.

It stands to reason that any federal court, but most especially the U.S. Supreme Court, relies heavily upon legal precedent and research and would depend significantly on a staff of dedicated federal law librarians, tasked with collecting, organizing, and facilitating legal research for the Justices and their staffs. It is not difficult to imagine the value that the staff of the Supreme Court Library has added over the years; providing for the research needs of the highest federal court in the country which is faced with the enormous task of reviewing cases of far-reaching importance requires dedicated research and library services. The influence that the federal law librarians of that Court have had may be impossible to measure, but there is no doubt that the value added through the collections and services of the U.S. Supreme Court Library has been incredibly significant.

EXECUTIVE BRANCH: THE ESTABLISHMENT OF FEDERAL LAW AND FEDERAL LAW LIBRARIES

Article II, section 1, of the Constitution prescribed that: "The executive Power shall be vested in a President of the United States of America"; section 2: "The President shall be Commander in Chief of the Army and Navy of the United States...he may require the Opinion, in writing, of the

⁸ *The Supreme Court Historical Society: How the Court Works / Library Support*. Retrieved December 7, 2015, from http://supremecourthistory.org/htcw_librarysupport.html.

⁹ See *supra* note 8

principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices...”; section 7, clause 2: “Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States: If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law.”¹⁰

Accordingly, the President was made the head of the executive branch of the new Federal Government and the ultimate approver of the laws passed by Congress. The President presides over an executive branch comprised of many components which help interpret, regulate, and enforce the federal laws as they are enacted by the Congress, applied by the judiciary, or promulgated by executive order of the President.

LIBRARIES WITHIN THE EXECUTIVE BRANCH: THE U.S. DEPARTMENT OF JUSTICE LIBRARIES

“And there shall also be appointed a meet person, learned in the law, to act as attorney-general for the United States, who shall be sworn or affirmed to a faithful execution of his office; whose duty it shall be to prosecute and conduct all suits in the Supreme Court in which the United States shall be concerned, and to give his advice and opinion upon questions of law when required by the President of the United States, or when requested by the heads of any of the departments, touching any matters that may concern their departments, and shall receive such compensation for his services as shall by law be provided.”¹¹

In addition to the creation of the federal judiciary, the Judiciary Act of

¹⁰ U.S. Const. art. II, § 1, 2, 7, cl. 2.

¹¹ Judiciary Act of 1789, Ch. 20, Sec. 35, 1 Stat. 73, 92-93 (1789).

1789 also created the Office of Attorney General of the United States, making the position the fourth in the order of creation by Congress of those positions that have come to be defined as Cabinet-level positions, and established the federal law enforcement positions of United States Attorney and United States Marshal for each judicial district.

“The title and office of attorney general had existed in the colonies before the Revolutionary War, but it was part of a purely colonial operation, under sanction of the British Crown and not part of a centralized legal system.”¹² In creating the position of Attorney General for the new Federal Government, Congress initially “was thinking more in terms of a legal counselor for the government – an official to interpret and expound the law – than of an official whose long arm would reach out to punish those who transgressed the law.”¹³ The Attorney General would support not just the President with legal advice and representation, but the President’s other cabinet members as well. The position was not a purely dedicated one at first: the initial 22 Attorneys General were allowed to retain their private legal practices, serve part-time, and reside outside the City of Washington.

Although it would be nearly a century before Congress would create the Department of Justice, the establishment of the Attorney General in 1789 marked the first step towards an executive component dedicated to federal law enforcement. The 1870 “Act to Establish the Department of Justice” (ch. 150, 16 Stat. 162) would finally form a component of the executive branch tasked with the enforcement of federal laws and establish the Attorney General as the central executive “to enforce the law and defend the interests of the United States according to the law; to ensure public safety against threats foreign and domestic; to provide federal leadership in preventing and controlling crime; to seek just punishment for those guilty of unlawful behavior; and to ensure fair and impartial administration of justice for all Americans.”¹⁴

¹² United States Department of Justice, Office of the Attorney General. 200th *Anniversary of the Office of the Attorney General, 1789-1989*. Washington, D.C.: United States Department of Justice, 1991.

¹³ See *supra* note 12

¹⁴ *United States Department of Justice, About DOJ*. Retrieved December 7, 2015, from <http://www.justice.gov/about>.

The first law library of the Attorney General of the United States was founded in 1831 by the tenth Attorney General: John MacPherson Berrien. The initial library collection started with \$500 appropriated for the purchase of law books for the Attorney General's use and a single law clerk serving as the de facto first law librarian. By the 1920's, the Department of Justice Law Library collection had grown to nearly 60,000 volumes and was considered one of the best collections of American statutory law in the country, rivaled only by the law holdings of the Library of Congress and Harvard University. In 1934, the Law Library collection and staff moved into the new Department of Justice Building, dedicated by President Franklin D. Roosevelt on October 29, 1934. Today, the U.S. Department of Justice Libraries has grown to over 350,000 volumes in multiple locations.

The Department of Justice Libraries' primary mission is to support the critical work and research needs of the Department's senior leadership offices (Attorney General, Deputy Attorney General, Associate Attorney General, Solicitor General, Assistant Attorneys General) and those of the staff members of the other Offices, Boards, Divisions, and Department components, such as the United States Attorneys, Bureau of Prisons, Drug Enforcement Administration, Federal Bureau of Investigation, etc. The legal collections and research of the Libraries have become even more varied and targeted to the diverse and ever-changing general and legal research needs of the Department over the years. American law has always been the primary composition of the collection and area of legal research; however, research concerning foreign and international law and crime have become more common and relevant to the work of Department attorneys today.

The Library's value has been the ability of its staff of federal law librarians to provide general and legal research and a law collection to support the diverse array of legal matters that Department attorneys are called upon to litigate and investigate. In an executive department with over 100,000 employees, including over 10,000 attorneys, and 42 components, the Department of Justice Libraries' federal law librarians have had to adapt the collection and services over time to stay ahead of the ever-changing research requirements of the frontline federal attorneys appearing before the U.S. Supreme Court and other federal courts. Like the Law Library of Congress and the U.S. Supreme Court Library, the influence that the federal law librarians of the Department of Justice have had over the years may also be impossible to measure, although the effects can be

seen every day, e.g., the legislative research conducted for the Office of Solicitor General that becomes part of a brief to the Supreme Court, or the hundreds of expert witness research reports compiled for the Environment and Natural Resources Division attorneys which assist the Attorney General in obtaining a record settlement on the massive oil spill in the Gulf of Mexico. There is no doubt that the value added by the federal law librarians and their collections and services has been incredibly significant to the outcome of much of the Department's litigation and federal law enforcement activities over the past 184 years.

LIBRARIES WITHIN THE EXECUTIVE BRANCH: THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

The beginnings of the concept of a central bank can be traced back to 1791 when Treasury Secretary, Alexander Hamilton, urged Congress to establish the First Bank of the United States in Philadelphia. The First Bank had a capital stock of \$10 million, approximately \$2 million from the Federal Government and the bulk coming from private individuals. Five of the 25 Bank directors were appointed by the government, while 20 others were chosen by the private investors in the Bank.¹⁵

The First Bank of the United States was headquartered in Philadelphia, but had branches in other major cities. The Bank performed the banking functions of accepting deposits, issuing bank notes, making loans and purchasing securities. It was a nationwide bank and was the largest corporation in the United States at the time. As a result of its influence, the Bank was of considerable use to both American commerce and the Federal Government. However, the Bank's charter ran for only twenty years, and when it expired in 1811, a proposal to renew was defeated in Congress.

It took over 100 years of multiple unsuccessful legislative efforts and attempts to create a central banking system, including a Second Bank of the United States from 1816 to 1836, before the Federal Reserve System was ultimately created through **The Federal Reserve Act of 1913** (ch. 6, 38 Stat. 251, 12 U.S.C. ch. 3). Unlike the First Bank of the United States, the Federal Reserve became a regional Federal Reserve System, operating under a governing

¹⁵ *National Bank History of the United States*. Retrieved December 7, 2015, from <http://www.nationalbankhistory.com/>.

board in Washington. The Act, specifically, provided for the “establishment of Federal reserve banks, to furnish an elastic currency, to afford means of rediscounting commercial paper, to establish a more effective supervision of banking in the United States, and for other purposes.”¹⁶

The Board’s first federal librarian was appointed in 1918. Today, the employees of the Federal Reserve, other federal agencies’ personnel, and the public have access to the two libraries of the Board of Governors: the Research Library and Law Library.¹⁷ From 1913 to 1937, the Board of Governors of the Federal Reserve System met in the United States Treasury building with employees scattered across three locations throughout Washington. With the implementation of the Banking Act of 1935 which centralized control of the Federal Reserve System and placed it in the hands of the Board, it became necessary for the staff to be united in one building. The Marriner S. Eccles Federal Reserve Building was dedicated by President Franklin D. Roosevelt on October 20, 1937, and became home to the Board of Governors’ Research Library and Law Library. The Research Library’s collection was built around a permanent loan from the Library of Congress in 1914-1915 of the volumes from the National Monetary Commission collection; and has evolved over the years to provide for the specific research needs of the Board and the Federal Reserve employees, specializing in the key areas of monetary and fiscal policy, domestic and foreign banking, finance, mathematics, economics, and economic conditions in the United States and abroad.¹⁸ Today, the Research Library has grown to over 60,000 volumes.

The Board’s Law Library collection was created in the 1930s due to the tremendous amount of work arising out of the implementation of the Banking Act of 1933. The legal collection was small at first (less than 1,000 volumes) which included state codes, state and federal digests and reports, law review material, treatises and special banking titles. A dedicated federal law librarian was not hired until the 1970s to manage the legal collection and provide for legal research services. With a current collection of approximately 30,000 volumes, the Law Library collection expanded over the years to include a substantial legislative

¹⁶ The Federal Reserve Act, Ch. 6, 38 Stat. 251, 12 U.S.C. ch. 3 (1913).

¹⁷ Missar, Charles D., Ed. *Management of Federally Sponsored Libraries: Case Studies and Analysis*. Binghamton, New York: Haworth Press, 1995.

¹⁸ See *supra* note 16

history collection, including legislative hearings, committee prints, etc.

The primary mission of the Board's Research and Law Libraries is to support the critical work and specific general and legal research needs of the economists, attorneys and other staff of the Board of Governors. The mission of the Law Library, in particular, is to provide for the critical legal and legislative research needs of the Board and staff members.

The Law Library's value has been the ability of its staff of federal librarians to provide for the critical legal research needs of the Board of Governors of the Federal Reserve System, an independent federal agency responsible for "conducting the nation's monetary policy by influencing the monetary and credit conditions in the economy in pursuit of maximum employment, stable prices, and moderate long-term interest rates; supervising and regulating banking institutions to ensure the safety and soundness of the nation's banking and financial system and to protect the credit rights of consumers; maintaining the stability of the financial system and containing systemic risk that may arise in financial markets; and providing financial services to depository institutions, the U.S. government, and foreign official institutions, including playing a major role in operating the nation's payments system."¹⁹ Like the Law Library of Congress, the U.S. Supreme Court Library, and the U.S. Department of Justice Libraries, the value added and influence that the federal law librarians and the collections and services of the Law Library has been significant in its support of the development of the monetary policies and regulatory activities of the Board and staff members.

THE IMPORTANCE OF FEDERAL LAW LIBRARIANS

What is the value and purpose of federal law librarians?

*What value do they add to a federal agency or court
in a week, a month, over the span of a career?*

*What value has their library services and collections added
to their organization's overall mission, as well?*

¹⁹ *Board of Governors of the Federal Reserve System, Mission*. Retrieved December 7, 2015, from <http://www.federalreserve.gov/aboutthefed/mission.htm>.

This paper was intended to briefly showcase some examples to help answer those questions. More importantly, it was intended to illustrate that the origin and purpose of federal law libraries is worth reflecting upon and of historic significance; how federal law libraries were created to support the important work and legal responsibilities of the three branches of government even to this day. The existence and need for federal law libraries and federal law librarians is more critical than ever as the Federal Government continues to produce complex laws that must be recorded, interpreted, researched, and disseminated; work that is the specialty of a professional law librarian. It is important that federal law librarians remind themselves of their value and to promote and enhance their professional value to their patrons and professional colleagues. The constantly evolving skills, abilities, and knowledge of federal law librarians remain critical now and in the future to provide for the Federal Government's legal research needs, whether their patrons are in the legislative, judicial or executive branch.

A TRIBUTE

This paper is also a tribute to Rick McKinney as he does honor to the title, "Federal Law Librarian." He is the epitome of all federal law librarians in his dedication to the law and legal research; his desire to share his knowledge and experience for the benefit of federal law librarianship and his colleagues, especially through his work over the years on the Law Librarians' Society of Washington, D.C. Legislative Source Book.

Above all, his dedication to the Board of Governors of the Federal Reserve and the patrons of the Board's Law Library is indicative of the devotion that all federal law librarians have to their own federal agency, court or branch of the government. Rick is to be congratulated on a successful career as well as all federal law librarians who continue to strive for excellence in the profession and to offer the same consistent high level of research services and dedication that is Rick's professional hallmark.

AN OVERVIEW OF THE DEVELOPMENT OF U.S. CONGRESSIONAL COMMITTEES¹

MICHAEL WELSH²
WITH ASSISTANCE BY
ELLEN SWEET AND RICHARD MCKINNEY
REVISION BY JEFF BIRD

Congressional committees have served as the primary instruments by which Congress has managed its daily business for most of the last two centuries. From their origins as temporary, ad hoc, legislative drafting bodies at the beginning of the Republic, they have acquired the characteristics of set jurisdictions, professional staffs and relative permanence. Besides their role in crafting legislation, they have become the instruments through which Congress oversees executive agencies and participates in formulating and overseeing national policy.

Congressional committees fall into four broad categories: standing, select, special and joint. Of the four, standing committees are the workhorses of Congress. They are permanent bodies³ created by resolution or statute

¹ This work has been significantly revised for a second time from the version first published as a two-part article in *LAW LIBRARY LIGHTS*, Vol. 47, nos. 3 & 4, Spring and Summer, 2004, Law Librarians' Society of Washington, D.C., Inc. (<http://www.llsdc.org/>).

² Michael Welsh is Senior Legislative Librarian at Pillsbury LLP (formerly Pillsbury Winthrop Shaw Pittman LLP), Washington, D.C.; Ellen Sweet is Legislative Reference Specialist, Tax Division, U.S. Department of Justice, Washington, D.C.; Rick McKinney is Assistant Law Librarian, Federal Reserve Board Law Library, Washington, D.C. Jeff Bird is Senior Legislative Librarian at Latham & Watkins LLP, Washington, D.C.

³ "Permanent" is a relative term. House Committees must be reconstituted each Congress as the House, unlike the Senate, is not a continuing body. Also both House and Senate can eliminate standing committees at their discretion, but they must do so by amending their standing rules.

and authorized to examine and report out legislation to the full House or Senate. They also oversee legislation and federal agencies within their jurisdiction, and conduct hearings and investigations.

A few examples of standing committees include the House and Senate committees on agriculture, appropriations, armed services, financial institutions (or banking), commerce and foreign relations, which, as their names suggest, have jurisdiction corresponding with major economic sectors or national policy concerns.

Select committees and special committees by contrast have a more limited role. They are, in theory at least, temporary committees created for a special purpose, often investigative in nature and may be dissolved once that purpose is completed. They may hold hearings, or issue reports, but they do not generally report out legislation. One observer notes that while the original distinction between select and special committees was that the former were created by the presiding officers of the House and Senate, and the latter by parties or floor leaders, now the basic practical difference is that select committees are usually longer lived.⁴ The term of a special committee is usually reckoned to fall within the two year life span of a Congress, while select committees may span several Congresses. The current roster of special and select committees, however, is replete with exceptions to all of these rules. The Senate Special Committee on Aging for example, was formed in 1961 but is a permanent committee. The Senate Select Committee on Ethics has been in existence since the 95th Congress. The Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence are, in fact, permanent standing committees, which do report out legislation.

Joint committees – at least as they currently exist – are different kinds of entities entirely. They may be temporary or permanent bodies. Their defining characteristic is a membership composed of equal numbers of Representatives and Senators. Currently there are four permanent joint committees and their functions are either advisory or administrative in nature. The Joint Committee on Taxation provides professional tax staff support for the House Ways and Means and Senate Finance committees but does not itself report out legislation. The Joint Economic Committee

⁴ 2 Garrison Nelson, et al. Committees in the U.S. Congress 1947-1992 981 (1994).

is also advisory, charged with examining national economic and budgetary issues. The Joint Committee on the Library of Congress and the Joint Committee on Printing provide oversight for the Library of Congress and the Government Publishing Office. It should be noted, however, that the Legislative Reorganization Act of 1946 conceived of joint committees as instruments for fostering collaboration between the House and the Senate. Indeed, as recently as the early 1970's, the Joint Atomic Energy Committee did report out legislation and oversaw the nation's atomic energy program. Still, of the twelve joint committees named in the 1950's, none survives.⁵

The somewhat elastic nature of committee categories derives largely from the fact that neither the Constitution, nor federal law, nor congressional rules established the "committee system," as such.⁶ Rather, committees were in general, formed singly and at different historical periods, often to handle specific exigencies as they arose. They therefore their structure largely from the work they are required to perform. Committees often evolve by expanding their jurisdictions or consolidating with other committees and may be dissolved once their usefulness has passed. The current committee structure is the sum of surviving committees and subcommittees, together with the laws or resolutions that created them, and the rules, precedents and inter-party agreements governing such things as jurisdiction, chairmanships, numbers of assignments per member, staffing and party ratios in determining committee makeup. It is by examining the process of committee evolution that we can best understand the committee system.

EARLY LEGISLATIVE PROCEDURES AND THE USE OF SELECT COMMITTEES

To set the stage for the emergence of standing committees it is useful to outline the legislative process as it was practiced in the House of

⁵ *Id.* at p. xviii. Note that conference committees represent a category omitted from this discussion because they are ad hoc, generally short lived, and limited to reconciling House and Senate passed versions of legislation.

⁶ That said, the Legislative Reorganization Act of 1946 did transform what had been a large, mismatched and unwieldy collection of committees into something like a committee system, replete with support staff and dedicated research personnel, as will be discussed later.

Representatives during the early Congresses. In the House, the process of enacting legislation began, not as a rule, with the introduction of a bill, but with a broad discussion of a legislative proposal, often presented to the chamber in the form of a petition, memorial, resolution, or a message from the President. After the matter was discussed by the whole chamber, and the broad purpose of the legislation established, an ad hoc, or “select” committee would be appointed to draft a bill incorporating the chamber’s instructions, after which it would be returned to the full House.⁷

Once a select committee’s task was completed, it would be dissolved. The full chamber would then proceed to debate, and generally pass the bill.⁸ It should be noted that although similar procedures were employed by the Senate during the first decades of the Republic, the Senate did not generally initiate major legislation, but instead acted upon bills that were first introduced and passed by the House. The extensive use of select committees, and subsequent consideration by the full chamber ensured that the full House or Senate could maintain control and enforce a high degree of consensus over the legislative process.

Over the course of several Congresses, however, the inconvenience of legislative select committees became apparent. Not only did the House and Senate have to appoint a select committee for each legislative proposal, but they had, in effect, to debate it twice before a floor vote could occur. In the early Congresses, because of their smaller size – the House, for example, had only 59 members during the first Congress – this procedure, although inconvenient, was manageable.⁹ Population increases, however, and the resulting growth in House membership would change this. As a consequence of the 1790 census, House membership rose from 59

⁷ Joseph Cooper and Cheryl Young, *Bill Introduction in the Nineteenth Century: A Study in Institutional Change*, *Legislative Studies Quarterly*, Feb. 1989, at 69, 71. See also Ralph Volney Harlow, *The History of Legislative Methods In the Period Before 1825* at 223-4 (1917).

⁸ Another example of the difference in the legislative process in the early Congresses in the House from current practice: individual members could not introduce bills unless they first received approval from the entire chamber to do so. Cooper and Young, *supra note 5*, at 69.

⁹ Steven S. Smith and Christopher J. Deering, *Committees in Congress* 26 (2nd ed. 1990).

to 106; after 1800 it reached 142, more than double its initial size.¹⁰ As membership increased it became virtually impossible, given the press of business, to create select committees for each bill. The third Congress, for example, raised over 350 select committees.¹¹

THE EMERGENCE OF STANDING COMMITTEES

Standing committees, by providing continuity and defined jurisdictions, promised a means of managing the chaos. Within their structure, members could develop an area of expertise and the competence to effectively handle a higher volume of legislation. Both the House and the Senate experimented with quasi-permanent select committees before moving to true standing committees. The House, for example, borrowed from the experience of Pennsylvania by using its Ways and Means Committee as a model for the House Ways and Means Committee, which was initially created as a select committee in July 1789.¹² While it was dissolved shortly after its creation, it reappeared, essentially, as a continuing select committee in 1795. In 1802 it was established as a true standing committee.

The example of the House Ways and Means Committee illustrates another reason why the House moved slowly in creating permanent committees. The executive departments were being created during the same period, and with their creation, the shape and perquisites of both Congress and the Executive Branch were being defined. Within the British Parliament, a model toward which many of the Federalists and even Jeffersonians initially looked, executive departments performed study and bill drafting functions.

It is generally believed that Alexander Hamilton had the first select Ways and Means Committee killed by persuading House members that the Treasury Department would handle its functions. Indeed, within a week of Hamilton's appointment as Secretary of the Treasury on September 11, 1789, the Ways and Means Committee was dissolved, and its business

¹⁰ CQ Press, Guide to Congress 39-40 (5th ed. 1991).

¹¹ Lauros G. McConachie, Congressional Committees: A Study of Origins and Development of Our National and Local Legislative Methods 124 (Burt Franklin Reprints 1974) (1898).

¹² Harlow, *supra* note 5, at 129-130.

was “referred to the Secretary of the Treasury of the United States to consider and report thereon.”¹³ The State Department and the War Department under Jefferson also handled legislation referred to them by the House.¹⁴ When the House subsequently reestablished the Ways and Means Committee, it was, in part, an assertion of its own prerogatives over revenues and as a means to counterbalance the authority of a parallel Executive department.

During this period of institutional experimentation the House created several standing committees. In 1794 it formed a Committee on Claims to handle the private bills that clogged its calendar. The following year it formed the Committee on Interstate and Foreign Commerce (which continues today as the House Committee on Energy and Commerce). In its first 25 years, the House created 14 standing committees including Public Lands (1805) and Judiciary (1813). By 1825 there were 28 committees, including Agriculture, Foreign Affairs, Naval Affairs, and Military Affairs. Along with the growth of standing committees came new House procedures. By 1830 legislation was routinely referred to committees without first being discussed in the House chamber and by the end of the decade, all standing House committees could report out legislation.¹⁵

Although increases in House membership and the press of business were responsible for the creation of many standing committees, such as the House Committee on Claims, many committees represented an attempt by Congress to promote “special interests” within the country or to establish an oversight or policy role. The Interstate and Foreign Commerce Committee, for example, represented an attempt to promote U.S. manufactured products. The Committee on Public Lands, constituted

¹³ 1 *Journal of the House of Representatives* 113 (September 17, 1789).

¹⁴ *Id.* at 135; for a discussion of the Jeffersonians’ approach to standing committees and ministerial government see Joseph Cooper, *The Origins of the Standing Committees and the Development of the Modern House*, 56 *Rice Univ. Studies* 1-41 passim (1970).

¹⁵ Smith and Deering, *supra* note 7 at 28-29. However, although by this time standing committees exercised autonomy in reporting legislation, legislation referred to them continued to be in the form of petitions, memorials, messages from the President and the like. It was not until a long series of rules changes beginning in the late 1830s and ending around 1890 that bill introduction by members was established. See Cooper and Young, *supra* note 5 at 89-96.

following Jefferson's 1803 Louisiana Purchase, reflected, in part, the House's displeasure at being kept ignorant of this transaction, and represented an assertion of its prerogative to be consulted about any future such undertakings.

While the standing committee system grew rapidly in the House, it evolved more slowly in the Senate and remained far less important in that body until after the Civil War. The Senate, like the House, experimented with quasi-permanent select committees, or "sessional" committees as they were called in the Senate. Beginning in 1806, the Senate adopted the practice of creating sessional committees with set jurisdictions and referring to them jurisdiction-specific legislation during each session of Congress. It was a relatively small step from this procedure to creating standing committees. Still, it was not until 1816 that the Senate created any standing committees with legislative jurisdictions. In that year it raised twelve, including Finance, Commerce and Manufactures, Foreign Relations, Public Lands, Naval Affairs, Claims and the Judiciary.¹⁶ By the time of the Civil War, the Senate had only 22 standing committees compared to 39 for the House.¹⁷ In part this reflected the Senate's smaller size, which allowed for unrestricted debate and amendment and thus made initial action in the committee less important. Also, during this period, the Senate usually did not initiate new legislation, but rather considered measures passed by the House. Senate committees were therefore less important as gatekeepers than their House counterparts.

Senate Committees prior to 1846 were also far less important than House committees as instruments for effecting party policy. Committee members were chosen variously by ballot, by the president pro tempore of the Senate or by other methods before 1846, (when the majority and minority party members agreed to use lists of committee members cleared by party caucuses). Majority party leaders often could not control committees. Indeed it has been estimated that between 1819 and 1832 a fifth of Senate

¹⁶ Smith and Deering, *supra* note 7, at 28. See also *Guide to Congress*, *supra* note 8 at 540-541, which puts the number formed in 1816 at 11, and McConachie, *supra* note 9, at 349-358 for a listing of dates of creation of many committees.

¹⁷ Smith and Deering, *supra* note 7, at 25 for chart on numbers of committees per given time periods. See also *Guide to Congress*, *supra* note 8, at 540 for a chart showing creation dates for some committees.

committees were controlled by the minority party; and that one-fourth were chaired by minority party members.¹⁸

As a result, during this period, Senate leaders would often sidestep committees and perfect legislation on the Senate floor.¹⁹ This difficulty was largely absent in the House where the Speaker appointed committee members and chairs, and thus exercised a far greater control over committee membership and business.

CIVIL WAR AND POST CIVIL WAR ERA

The Civil War, with its enormous demands for funding and debt repayments, led to the formation of separate appropriations committees in the House in 1865 and in the Senate in 1867. Previously the House Ways and Means and Senate Finance committees exercised appropriations authority together with their revenue-raising functions. By 1899, as a result of rules changes, the bulk of appropriations authority was taken over by other committees until nearly 20 committees took part in the appropriations process. This distribution of appropriations authority generally followed the jurisdictions of committees. For example, agricultural appropriations devolved upon the House and Senate Agriculture committees, and Post Office appropriations fell to the Post Office committees, etc. This decentralization of appropriations authority is generally ascribed to a desire by interested committees to exert greater control over programs within their jurisdiction.

The post-Civil War period also saw a major expansion of the committee system. By 1918 the House had almost 60 committees while the Senate had 74.²⁰ Population increases and economic growth impelled the formation of many new committees created to serve developing industries like railroads, mining, banking and the merchant marine. The press of legislation and the need to give priority to more important bills led the House to transform the Rules Committee into a standing committee in 1880. The Rules Committee had existed in prior congresses as a select committee but was

¹⁸ Walter Kravitz, *The Evolution of the Senate's Committee System*, The Annals of the American Academy of Political and Social Sciences Jan. 1974, at 31-32.

¹⁹ Smith and Deering, *supra* note 7, at 30.

²⁰ Smith and Deering, *supra* note 7, at 33-34.

authorized in the 1880's to report special orders determining which bills would be debated and which amendments would be in order. It thus not only gave great personal power to the Speaker, who until 1910 sat on the committee, but also provided the Committee with a large degree of control over legislation reported out by other committees.²¹

This period also saw changes in the means by which committee members were chosen. On the House side, the Speaker still generally appointed committee members and chairmen, the practice since 1790.²² However, the ouster of Joseph G. Cannon as Speaker in 1911 brought with it a major change in the House committee assignment process in that the power to appoint committee members was given to Democratic and Republican party groups. The Senate had used a variety of methods during the 1800's for determining appointments. These included choice by ballot, by the president pro tempore, by the vice president, and, in the mid-1840's by lists drawn up by leaders of the two major parties, and then by the president pro tempore again. By 1846 the Senate had essentially returned to the system of accepting lists drawn up by the major parties, in which seniority figured heavily. That system, with some modifications, has continued into the 21st Century.²³

CONSOLIDATION OF COMMITTEES AND BUDGETARY REFORM

While the 1800's saw the development and expansion of standing committees, the 20th Century was generally characterized by amalgamation, reform and the growth of subcommittees and congressional staffs. The first major order of business for the House and the Senate in the early 1900's was reducing the huge number of committees built up from the 19th Century and consolidating the appropriations process. Indeed, in the Senate the number of committees was in danger of surpassing the number of senators. For instance, in 1914 there were 74 committees and

²¹ George B. Galloway, History of the House of Representatives 104 (1969). See also Guide to Congress, *supra* note 8, at 541.

²² Smith and Deering, *supra* note 7, at 27. See also Harlow, *supra* note 5, at 249-56 *passim*.

²³ Guide to Congress, *supra* note 8, at 541. See also Smith and Deering, *supra* note 7, at 31.

96 senators. Senate committees, such as the long inactive Committee on Revolutionary Claims created to provide pensions for Revolutionary War widows, were typical of the deadwood that had accumulated over the 19th Century, serving no purpose but to provide members with office space and staff. By eliminating such inactive committees and by consolidating its appropriations committees, the Senate in 1921 cut 40 committees, trimming its committee roster from 74 to 34.²⁴

The House, which had 61 standing committees in 1914, managed a somewhat smaller reduction. In 1920 it consolidated jurisdiction over appropriations into one appropriations committee. Seven years later the House folded eleven committees which handled oversight of government expenditures into a single committee on government operations for an overall reduction of 18 committees.²⁵

Underlying the consolidation of appropriations lay an attempt to rationalize the entire federal and congressional budgeting procedures. Before 1920 there was no national budget process. The Secretary of the Treasury transmitted annual budget requests from the various federal agencies to the eight House committees handling appropriations. Following House development of agency requests into legislation and subsequent passage of the legislation, the measures would then be handled by separate committees in the Senate. The process produced great jurisdictional overlap, inefficiency and waste. The Budget and Accounting Act of 1921 was the first step in rationalizing the federal budget process. The Act created a Bureau of the Budget to consolidate federal agency spending estimates and send one comprehensive annual budget to Congress. It also created the General Accounting Office to help Congress monitor government expenditures. Most significantly, the legislative process in creating the Act precipitated the consolidation of appropriations function into a single House and a single Senate Appropriations Committee in 1920 and 1922 respectively.²⁶

²⁴ *Guide to Congress, supra* note 7, at 544.

²⁵ Galloway, *supra* note 20, at 65.

²⁶ Smith and Deering, *supra*, note 7, at 37.

LEGISLATIVE REORGANIZATION ACT OF 1946

With the expansion of executive power during the Roosevelt Administration, Congress felt itself relegated to a kind of secondary status, burdened with a heavy work load, overlapping committee jurisdictions and inadequate staffing, factors that also hindered it in asserting an effective role in policy formulation. To study these problems, in 1945 Congress created the first Joint Committee on the Organization of Congress. As a result of its recommendations, the Legislative Reorganization Act of 1946 was enacted, which reduced the Senate's then 33 committees to 15 and the House's 48 committees to 19.²⁷ The Act also merged committee jurisdictions and transformed many standing committees into subcommittees, a process that – initially, at least – greatly enhanced the power of the remaining chairmen. A kind of jurisdictional pairing was also established between House and Senate committees such that both bodies had banking, tax and foreign relations committees, with roughly corresponding jurisdictions. The 1946 Act, also for the first time incorporated committee jurisdictions within the rules of each chamber.²⁸

The Act also authorized committees to hire as many as four professional and six clerical employees, and it expanded the staff of the Legislative Reference Service, (the predecessor of the Congressional Research Service), thus providing committees greater expertise in handling complicated policy issues. The Act required that committees, where possible, open hearings to the public, keep accurate records and ensure that once bills cleared committees, they would be reported out quickly.²⁹ Finally, the Legislative Reorganization Act formalized the legislative oversight function of committees, a role which committees had played in practice since their founding, albeit without explicit legislative authorization.³⁰ In addition to

²⁷ Smith and Deering, *supra* note 7 at 39. See also Guide to Congress, *supra* note 8, at 64.

²⁸ Organization of Congress: Final Report of the Joint Committee on the Organization of Congress, December 1993, <http://www.rules.house.gov/Archives/jcoc2.htm>.

²⁹ Guide to Congress, *supra* note 8, at 63-64. For a summary history of the Legislative Reorganization Act see George Goodwin, Jr., The Little Legislatures, Committees of Congress, at 18-30 (c. 1970).

³⁰ Walter J. Oleszek, Congressional Procedures and the Policy Process, 290 (6th ed. 2004).

creating the basic short roster of House and Senate standing committees that survives today, the 1946 Act underlies today's system of professional and clerical staffing, and stands as a major stepping stone in the process of opening up committee activities and records to public scrutiny.

HOUSE COMMITTEE REFORMS IN THE 1970'S

Paradoxically, the Legislative Reorganization Act of 1946 set the agenda for reforms over the next half century in part via its unanticipated consequences. By reducing the number of full committees, and then failing to limit the number of subcommittees, the Act produced an explosion of subcommittees in both the House and the Senate. At the beginning of the 81st Congress (1949), for example, there were only 60 subcommittees in the House and an equal number in the Senate. By 1975, however, the number had jumped to over 145 in the House and about 120 in the Senate.³¹ This proliferation led junior members with subcommittee chairmanships – usually younger and more liberal members – to press for more staff and a greater role in policy making, which in turn, tended to erode the power of the generally more conservative full committee chairmen.

The committee reforms of the 1970's began with the recommendations of the second Joint Committee on the Organization of Congress, formed in 1965, which called for increasing member and committee staff and hiring more personnel with technical and scientific backgrounds. The Legislative Reorganization Act of 1970 incorporated many of these recommendations, including increasing the number of permanent professional staffers to six per standing committee, allowing committees to seek additional technical and scientific personnel and to request funding for temporary staff. The 1970 act further required that one third of funding for staff be directed to the minority party, and gave the minority the right to call witnesses at hearings. The act redesignated the Legislative Reference Service as the Congressional Research Service and gave it additional resources. In terms of procedural changes, the Act required that committees have written rules of procedure, that roll call votes be placed on the public record, and that committee reports on bills be made available for inspection three or more days before that legislation could be considered on the floor. It also allowed

³¹ Smith and Deering, *supra* note 7, at 43. See also Final Report of the Joint Committee on the Organization of Congress, *supra* note 26.

broadcast of House committee proceedings by radio or television.³² These reforms further opened committee business to the public and began the process of diminishing the authority of committee chairmen by shifting power to subcommittees.

Other reforms to the committee system in the 1970's were conducted by party organizations. During the 92d Congress (1971-1972), for example, House Democrats and Republicans, acting separately, overhauled the seniority system, authorizing their party organizations to choose chairmen irrespective of their time in office. This reform led to the ouster of three Democratic chairmen in 1975.³³ In the Senate, however, the seniority system continued in force. In 1973 the Senate Democratic Caucus adopted what it termed a "subcommittee bill of rights," allowing subcommittees to choose their own chairmen, providing for subcommittee budgets, and requiring committee chairmen to refer legislation to the appropriate subcommittee within two weeks of referral to the full committee. Subcommittees were allowed to set their own meeting and hearing dates and to act on legislation referred to them.

In 1976, bipartisan reforms increased committee staffing to 18 professional and 12 clerical workers.³⁴ One third of committee staff was reserved for the minority. Committees with more than fifteen members were required to create a minimum of four subcommittees, a move which had its greatest effect on the House Ways and Means Committee, which until then had operated without subcommittees. One year earlier, changes in House rules gave the Speaker multiple referral power over legislation. Now he or she could refer one bill to several committees either jointly, sequentially or through split referral – different parts of a bill to different committees.

SENATE COMMITTEE REFORMS

In the Senate, the reform process was initially directed at opening major

³² Guide to Congress, *supra* note 8, at 72-73, 548. See also Smith and Deering, *supra* note 7, at 46-47.

³³ Leroy N. Rieselbach, Congressional Reform: the Changing Modern Congress, 52-53 (c.1994).

³⁴ Guide to Congress, *supra* note 8 at 550-551. See also Rieselbach, *supra* note 31, at 102-102.

committee assignments to junior members. In 1953, under what became known as the “Johnson Rule” (because it was championed by Senator Lyndon Johnson), Senate Democrats stipulated that every Democratic Senator, regardless of seniority, would be given a minimum of at least one seat on a major committee. By the end of the decade, Senate Republicans followed suit.³⁵ During the mid 1970’s, the Senate adopted several bipartisan rules affecting committee procedures and staffing. Among other matters, the reforms required that nominees for committee chairmen be elected by secret ballot rather than seniority, that committees hold open markups, and that committee staff assistance be provided for junior members. As a consequence of recommendations by the Stevenson Committee, (a panel chaired by Illinois Senator Adlai Stevenson, III, charged with examining the Senate committee system), by 1977 most of the Senate’s select and special committees had been eliminated. Six standing committees were also discontinued including the Aeronautical and Space Sciences, the Post Office and the District of Columbia Committees.³⁶

CHANGES IN THE CONGRESSIONAL BUDGETARY PROCESS

Along with reforms and innovations, the period after World War II saw the birth of many new committees with jurisdictions reflecting emerging national concerns. Among the new committees were the Joint Atomic Energy Committee, the House and Senate Small Business committees, the House Committee on Veterans Affairs, the House Committee on Un-American Activities, and the House and Senate Aeronautics and Space committees, many of which have since been eliminated or absorbed into other committees. Perhaps the two most important committees to emerge were the House and Senate Budget committees authorized under the Congressional Budget and Impoundment Control Act of 1974. As discussed, the 1921 Budget Act represented Congress’ first attempt to reorganize the budget process. It was, however, primarily directed toward the Executive Branch, requiring that agencies submit their separate budget estimates for review by a newly created White House Bureau of the Budget before they were transmitted to Congress. In contrast, the 1974 Act was directed at the Legislative Branch.

³⁵ Rieselbach, *supra* note 31. See also Smith and Deering, *supra* note 7, at 45.

³⁶ *Guide to Congress*, *supra* note 8, at 557.

Until the Second World War, Congress made no further reforms in its budget process. Between 1929 and 1940, federal spending and federal deficits were relatively small; deficits, for example, averaged less than \$3 billion, in current dollars.³⁷ Post war increases in defense and domestic spending, in contrast, necessitated more systematic fiscal planning. Estimates of spending, and any corresponding deficits were required in order to reconcile spending with revenues, raise the debt ceiling and attempt to enforce fiscal restraint over agencies.

The Legislative Reorganization Act of 1946 was Congress' first attempt to centralize its own budgeting process. The Act called for the creation of a joint committee on the legislative budget to consist of members of the House Ways and Means, Senate Finance, and the House and Senate Appropriations committees. Among other functions, this joint budget committee would draft an annual budget containing estimates of revenues and expenditures and a concurrent resolution would be introduced setting appropriations limits for each agency. Amounts exceeding estimated revenues would require passage of a separate debt ceiling measure. In 1947, 1948 and 1949 Congress attempted – and in each year failed – to implement a budget. Further attempts were abandoned and Congress resorted to adding specific spending prohibitions to the text of appropriations bills as a means of enforcing some measure of fiscal constraint.³⁸

The Congressional Budget and Impoundment Act of 1974 represented an effort by Congress to correct its earlier failures. The Act called for the creation of a House and Senate Budget Committee and a support organization, the Congressional Budget Office. While the 1974 Act, like the 1946 Act, left in place the existing appropriations, tax and authorization committee structures, it coordinated their efforts around an annual budget calendar. It also called for submission of two budget resolutions followed by a reconciliation process to conform expected revenue to projected spending.³⁹

³⁷ *Guide to Congress*, *supra* note 8, data from table 4.2, at 166.

³⁸ *Guide to Congress*, *supra* note 8, at 169.

³⁹ Oleszek, *supra* note 28, at 56-67 *passim*.

SUBCOMMITTEE AND OTHER CHANGES
IN THE 1980'S AND 1990'S

Although there were no major changes to the committee system in the 1980's, House and Senate study panels did recommend rolling back several subcommittee reforms of the 1970's. On the House side, the Patterson Committee, named after its chairman, Jerry M. Patterson, recommended in 1980 that the House scale back its roster of subcommittees and limit member subcommittee assignments. These recommendations reflected the view that the growth in subcommittees over the previous decade had, as Congressional Quarterly expressed it, "decentralized and fragmented the policy process and limited members' capacity to master their work." In any event, in 1981, the House Democratic Caucus changed its rules to reduce the number of subcommittees to eight for committees with over thirty-five members and six for smaller committees. House and Senate Appropriations committees were excluded from these limitations and allowed to maintain thirteen subcommittees. On the Senate side, several panels convened during the 1980's recommended curbing the number and power of subcommittees by variously prohibiting them from reporting out legislation, eliminating subcommittee staffing, restricting subcommittees to holding hearings, and limiting the number of committee and subcommittee assignments each Senator was allowed.⁴⁰ None of these recommendations came to fruition at the time.

In the early 1990's, however, Congress returned to its project of reforming its operations, propelled, in part, by a wave of scandals in 1992. One involved mismanagement of funds in the House Bank and another scandal concerned a group of Senators known as the "Keating Five" who were alleged to have interceded on the behalf of Charles Keating, a savings and loan corporation owner. The impetus for reform also came from a desire, carried over from the 1980's, to revitalize the full committees. To these ends, a new, ad-hoc, Joint Committee on the Organization of Congress (the third so named) was created in 1992. In its final report, House panel members called for reducing the number of House subcommittees, limiting member committee assignments, and combining the four existing joint committees into two. Senate panel members also recommended limiting Senate committee and subcommittee assignments, reducing

⁴⁰ Guide to Congress, *supra* note 8, at 556, 558.

the number of subcommittees and, going a step further, abolishing all joint committees. The panel also called for applying existing civil rights and workplace safety laws to Congress, which had previously excluded its own staff from such laws.⁴¹ A year after the Joint Committee on the Organization of Congress was dissolved, the House and Senate introduced separate legislation incorporating parts of the Joint Committee's recommendations styled the "Legislative Reorganization Act of 1994."⁴² Other legislation was introduced to bring Congress under national civil rights and workplace safety laws. None of the proposed legislation was enacted during the 103rd Congress. However, the House Rules Committee, independent of any recommendations by the Joint Committee on the Organization of Congress, abolished four select committees considered redundant.⁴³ These were the Select Committee on Narcotics Abuse and Control; the Permanent Select Committee on Aging; the Select Committee on Hunger; and the Select Committee on Children, Youth and Families.

When the Republican Party regained control of both chambers for the first time in forty years in the 104th Congress (1995-1996), it put forward a set of conservative policy proposals called the "Contract With America." Championed by the newly-elected Speaker, Newt Gingrich, the "Contract" was advertised as the Republican alternative to the Clinton legislative agenda. In addition to outlining national policy proposals involving such matters as tax reduction and welfare reform, the Contract included a series of rule changes designed to limit the power and independence of subcommittees. At the beginning of the 104th Congress, the House Rules Committee cut committee staffs by one-third and reduced the number of subcommittees to five per committee with the exception of the Appropriations, Government Reform and Transportation committees. The House Rules Committee also made subcommittee staff hiring the prerogative of full committee chairmen and imposed term limits of three

⁴¹ Organization of Congress, Final Report, *supra* note 26.

⁴² H.R. 3801 and S. 1824, 103rd Congress (2d Sess. 1994).

⁴³ Guide to Congress, *supra* note 8, at 539, 556.

consecutive terms on House committee chairmen,⁴⁴ later extending these limits to subcommittee chairmen. On the Senate side, the Republican Conference imposed a six-year term limit on chairmen which became effective in 1997.⁴⁵

The first enactment of the 104th Congress was the Congressional Accountability Act, which established in law a process by which congressional staffers could mediate, and if necessary, litigate their workplace complaints.⁴⁶ Both chambers also passed a series of ethics rules in the 1989-1995 period affecting honoraria, outside income and post-employment lobbying.⁴⁷ House Republicans also moved to dismantle the Committee on Post Office and Civil Service and the Committee on the District of Columbia, making them subcommittees of the Committee on Government Reform and Oversight. They also eliminated the Committee on Merchant Marine and spread its jurisdiction over three committees.

Many House committees were also renamed during this period. The Committee on Government Operations, for example, became the Government Reform and Oversight Committee (later just Government Reform and still later in the 110th Congress the Oversight and Government Reform Committee). Among other changes the Committee on Education and Labor became the Committee on Economic and Educational Opportunities (later changed to the Committee on Education and the Workforce and still later back to the Education and Labor Committee).

⁴⁴ Donald R. Wolfensberger, *A Reality Check on the Republican House Reform Revolution at the Decade Mark, Introductory Essay for Congress Project Roundtable on "The Republican Revolution at 10: Lasting Legacy or Faded Vision?"* 9 (January 24, 2005), <http://wilsoncenter.org/events/docs/repub-rev-essay.pdf>. Wolfensberger also discusses the Republican House rules package alternative from the 103rd Congress, "A Mandate for Change in the People's House," which (although it failed to pass) presaged many of the committee changes adopted as part of the Contract With America in the 104th Congress, 139 *Cong. Rec.* 9-31 passim (January 5, 1993). For discussion of committee reforms see also *Guide to Congress*, *supra* note 8, at 586.

⁴⁵ *Guide to Congress*, *supra* note 8, at 559.

⁴⁶ Congressional Accountability Act of 1995. Pub. L. No. 104-1. 109 Stat. 3. For a summary of provisions see *Guide to Congress*, *supra* note 8, at 602 (box).

⁴⁷ *Guide to Congress*, *supra* note 8, at 539 and 556.

At the beginning of the 107th Congress (2001-2002), House Republicans stripped the Committee on Commerce of its jurisdiction over the securities industry and transferred oversight of this industry to the Committee on Banking and Financial Services, which was renamed the Committee on Financial Services. The Commerce Committee was re-christened with its former name, the Committee on Energy and Commerce. The jurisdictional change was primarily intended to consolidate oversight of the banking, financial services and insurance industries in one committee, allowing for more rational supervision of the recently deregulated banking industry.

POST 9/11 CHANGES IN CONGRESSIONAL COMMITTEES

Even before the attacks on September 11, 2001, Congress launched several efforts to address the threat of terrorism, some of which resulted in committee changes. Representative Porter Goss, then Chairman of the House Permanent Select Intelligence Committee, for example, established a Terrorism and Homeland Security Working Group to monitor global terrorism. After the attacks, this panel was transformed into a subcommittee of the Permanent Select Committee on Intelligence. Additionally, the U.S. Commission on National Security for the 21st Century (also known as the Hart-Rudman Commission, a non-congressional body, chaired by former Senators Gary Hart and Warren Rudman) recommended in February 2001 that House and Senate select homeland security committees be created.⁴⁸

In the immediate aftermath of the September 11 attacks it was unclear what changes to the committee system, if any, were required. The homeland security effort was run by the newly created White House Office of Homeland Security, which essentially coordinated the security missions of existing federal agencies such as the Immigration and Naturalization Service, the Coast Guard and the Department of Transportation; because these agencies were already funded and overseen by established committees, the institutional infrastructure of Congress appeared sufficient. However, in May of 2002, Senator Joseph Lieberman

⁴⁸ U.S. Commission on National Security/21st Century, Road Map for National Security: Imperative for Change The Phase III Report of the U.S. Commission on National Security/21st Century (2001). The report is located at <http://govinfo.library.unt.edu/nssg/PhaseIIIFR.pdf>.

and Representative William Thornberry, believing that the White House-directed operation was inadequate, introduced legislation to create a new homeland security department.⁴⁹ Although the White House first rejected this proposal, by early June of 2002 it offered its own plan for creating a Department of Homeland Security (DHS).⁵⁰

The commitment to establish a massive new department virtually guaranteed that Congress would need to modify existing jurisdictions or set up new committees to oversee and fund it. The House of Representatives quickly agreed to form a Select Committee on Homeland Security, chaired by then Majority Leader Dick Armey, to draft enabling legislation.⁵¹ Committees with jurisdiction over agencies to be consolidated in the new department were to submit language regarding their respective components to the Select Committee, which would then introduce a comprehensive bill. With its task accomplished, this first Select Committee on Homeland Security expired at the end of the 107th Congress (2002). Congress postponed the debate over whether a single committee or several would govern the new department until the 108th Congress.

On the Senate side, responsibility for drafting enabling legislation for the new Department fell mainly to the Senate Governmental Affairs Committee, which Senator Lieberman then chaired. This Committee subsequently assumed major jurisdiction over homeland security oversight and legislation on the Senate side. Later, in the 109th Congress, the Senate renamed the committee as the Homeland Security and Governmental Affairs Committee. Its jurisdiction remains similar to the House Committee on Homeland Security except that the Transportation Security Administration, the largest division within DHS, falls under the purview of the Senate Commerce Committee.

At the beginning of the 108th Congress, both chambers established separate appropriations subcommittees to fund the new Homeland Security Department. However, rather than create more than 13 appropriations

⁴⁹ S. 2452, 107th Cong. (2002) and H.R. 4660, 107th Cong. (2002). Both bills were entitled the National Homeland Security and Combating Terrorism Act of 2002.

⁵⁰ David Nather and Karen Foerstel, *Proposal Presages Turf Wars*, 60 *CQ Weekly*, 1505-08 (June 8, 2002).

⁵¹ H.R. 5505, 107th Cong. (2002) (which was enacted as the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135).

subcommittees, each committee chose to consolidate the functions of two existing subcommittees, leaving homeland security appropriations under the auspices of a single purpose subcommittee.

Creating a single House committee to oversee the Department of Homeland Security proved more problematic. According to the 9/11 Commission Report, oversight jurisdiction over the Department of Homeland Security was scattered over 88 congressional committees or subcommittees.⁵² Committee and subcommittee chairmen with oversight responsibilities were loath to cede power over a mammoth department that combined 22 agencies and over 170,000 employees. House leaders chose to mitigate turf conflicts by creating a new, temporary Select Committee on Homeland Security comprised of 50 members including the chairmen and ranking members of committees that already had homeland security jurisdiction. Chaired by Representative Christopher Cox of Connecticut, the Select Committee was tasked with overseeing the new department and drafting its authorizing legislation. This panel was subsequently transformed from a select to a permanent committee at the beginning of the 109th Congress (2005-2006).

In other matters, at the end of the 108th Congress, Senate Republicans voted to allow the majority leader to fill half of the seats open to Republicans on the most coveted Senate committees, also known as the “A” committees (such as Appropriations, Foreign Relations, and Finance), as vacancies occurred, enhancing his or her ability to impose discipline.⁵³ The remaining vacancies would be apportioned by seniority.

CHANGES TO COMMITTEES IN THE 109TH AND 110TH CONGRESSES

Changes during these two Congresses mostly involved the appropriations committees. The Legislative Reorganization Act of 1946 divided the appropriations workload among 13 more or less functionally-paired appropriations subcommittees in each chamber, an arrangement that

⁵² National Commission on Terrorist Attacks upon the United States, The 9/11 Commission Report 421 (2004).

⁵³ Veronica Oleksyn, *Seniority, Loyalty And Political Needs Shape Makeup of Committees*, 63 CQ Weekly 894-96 (April 11, 2005).

lasted for over 50 years and vested a great deal of power in their chairmen, collectively known as “cardinals.” House leaders, in particular, came to view these subcommittee chairs as out of step with their goals of spending restraint and legislative efficiency. Consequently, at the beginning of the 109th Congress, both the House and Senate eliminated their Veterans’ Affairs-Housing and Urban Development (VA-HUD) appropriations subcommittee. The House also eliminated its District of Columbia and Legislative Branch subcommittees, leaving it with ten appropriations subcommittees and the Senate with twelve. The reduction in subcommittees allowed House leadership to reallocate jurisdiction among the remaining subcommittees and pick chairmen more inclined to toe the line.⁵⁴

Additionally, at the start of the 109th Congress, the House adopted new rules governing operations of the House Committee on Standards of Official Conduct (House Ethics Committee) that effectively allowed the Committee to dismiss ethics complaints without investigation. The House leadership also removed Ethics Committee chairman Joel Hefley, under whose tenure the majority leader, Tom DeLay, had been sanctioned several times during the previous Congress. Subsequently, Democratic members voted not to adopt the Committee’s organizing rules, effectively preventing it from conducting business. The committee remained in limbo until April 2005, when, with the support of Speaker Hastert, the House re-adopted the original rules from the 108th Congress.⁵⁵

After winning back the House and the Senate in 2006, Democrats restored parity and matching jurisdictions to their respective appropriations subcommittees. The ten House and twelve Senate appropriations subcommittees had produced jurisdictional mismatches that complicated the appropriations process, particularly when bills went to conference. As a result, at the start of the 110th Congress, both chambers created completely new Financial Services and General Government appropriations subcommittees with jurisdiction over the Federal Judiciary, the Treasury Department, the District of Columbia budget, and agencies such as the Federal Deposit Insurance Corporation and the Securities

⁵⁴ Joseph J. Schatz and Jonathan Allen, *A Challenging Year For Appropriators*, 63 *CQ Weekly* 1220 (May 9, 2005).

⁵⁵ H. Res. 240, 109th Cong. (2005). See 151 *Cong. Rec.* H2616-26 (daily ed. April 27, 2005) for House consideration and re-adoption of the rules from the 108th Congress.

and Exchange Commission. As the Financial Services subcommittee took jurisdiction over District of Columbia-related appropriations, the Senate Appropriations Committee abolished its District of Columbia subcommittee. The House resurrected its Legislative Branch subcommittee, leaving each appropriations panel with twelve subcommittees. It also realigned jurisdictions of several of its appropriations subcommittees, matching them to their Senate counterparts, an organizational scheme that persists to this day.⁵⁶

Apart from Appropriations Committee changes, the new Speaker, Nancy Pelosi, called for the creation of the Select Committee on Energy Independence and Global Warming. At her urging, House Democrats also adopted the existing Republican rule that imposed a term limit of three terms on committee chairmen.

COMMITTEES SINCE 2008

The Democrats retained control of both the House and Senate during the 111th Congress, and few changes were made to committee makeup or operations. The House Armed Forces committee was given a seventh subcommittee, and the Select Committee on Energy Independence and Global Warming was made official. In addition, the House rescinded the six-year committee chair term limits rule that had been in effect since 1994.⁵⁷

⁵⁶ Steven T. Dennis and Chuck Conlon, *Appropriators Plan Reorganization; Two New House Subcommittees Likely*, 43 *CQ Today* 6 (January 4, 2007).

⁵⁷ Changes to the term limits rule appear to have been done at least in part to allow Charles Rangel to remain chairman of the House Ways and Means Committee; Rangel was at the time under investigation by the House Standards of Official Conduct Committee for various tax and financial ethics violations. He stepped down as Chairman in March 2010 as the investigation continued, but although he was found guilty and censured by the House, he has continued to serve both in Congress and on the Ways and Means Committee. Rangel announced plans to retire at the end of the 114th Congress, see e.g., Jack Fitzpatrick, *Former Enemies Seek Retiring Charlie Rangel's Blessing in New York*, *National Journal* (March 10, 2015).

The history of the Patient Protection and Affordable Care Act (ACA)⁵⁸ illustrates the degree to which committee power continued to diminish during the 111th Congress. With a Democrat in the White House, and Democrats controlling both chambers, Congress had an opportunity to pass some significant legislation without much risk of minority objections. In addition, passage of the ACA became the signature project of aging Senator Ted Kennedy. As his health continued to fail and Republican opposition to the ACA grew, leadership in both chambers accordingly began bypassing the regular committee order so as to bring a bill to the floor more quickly.

In the House, leadership along with chairmen of the Education and Labor, Energy and Commerce, and Ways and Means committees worked together on a draft ACA bill,⁵⁹ but each committee reported a different version of the bill, and ultimately none of the committee versions were kept in play, replaced instead by a new bill⁶⁰ drafted in private by the Democratic leadership and never referred to any committee. In the Senate, the Finance and the Health, Education, Labor, and Pensions (HELP) Committees both worked on versions of the health care legislation,⁶¹ largely in private, and the HELP bill was reported without a written report. Then, as in the House, the Senate leadership abandoned both committee bills in favor of a compromise amendment written behind closed doors without committee input that completely replaced the original text of yet another bill,⁶² which was eventually enacted.⁶³ In this way, the process by which the ACA was enacted completely undermined the traditional committee power to lead the way on legislative initiatives.

While committees changed little between the 110th and 111th Congresses, the Republican wave in the 2010 election sparked more substantial differences in the 112th Congress, as the GOP regained control of the House. Many changes were still minor, including three House committee

⁵⁸ Pub. L. No. 111-148 (2010).

⁵⁹ Eventually H.R. 3200 (2009).

⁶⁰ H.R. 3962 (2009).

⁶¹ S. 1796 (2009) and S. 1679 (2009), respectively.

⁶² H.R. 3590 (2009).

⁶³ For more details, see John Cannan, *A Legislative History of the Affordable Care Act: How Legislative Procedure Shapes Legislative History*, Law Library Journal 105:2 (2013).

name changes: from Education and Labor to Education and the Workforce (as that committee had been known during previous Republican-led congresses); from Standards and Official Conduct to Ethics; and from Science and Technology to Science, Space, and Technology. The Select Committee on Energy Independence and Global Warming was quickly disbanded. Several House rules changes forced committees to increase operational transparency, including making bill text available online at least 24 hours prior to a markup session, making any amendment text available online within 24 hours following a markup, and requiring audio and video coverage of most hearings and meetings to be streamed live and archived afterward.⁶⁴

Frayed relationships and mistrust between the Democratic and Republican parties exploded in 2011, with Republicans insisting on tax or other policy concessions in exchange for raising the debt ceiling. Crisis was at least temporarily averted by passage of the Budget Control Act,⁶⁵ which increased the debt ceiling, created a Joint Select Committee on Deficit Reduction (the “Supercommittee”) to write deficit reduction legislation, and gave the committee strong incentives by creating mandatory spending cuts (“sequestration”) beginning in 2013 if the committee failed to act. After nearly four months of negotiations, the Supercommittee admitted defeat,⁶⁶ although sequester would be delayed temporarily at the beginning of January 2013.

Despite the delay, sequestration hung over the 113th Congress’ collective head for much of 2013, eventually climaxing in September, when many agencies and other pieces of the federal government shut down for more than two weeks for lack of funding. The shutdown highlighted the broken appropriations process, as none of the thirteen regular appropriations bills for either fiscal year 2013 or 2014 had been enacted. In part, the shutdown was the result of political gamesmanship by Republicans who wanted to repeal the ACA, among other demands, but it also can be seen as a consequence of the decreasing power of committees, particularly the

⁶⁴ H. Res. 5, 112th Cong. (2011).

⁶⁵ Pub. L. No. 112-25 (2011).

⁶⁶ See e.g. Joseph J. Schatz, *After the Fall of the ‘Supercommittee’*, 69 *CQ Weekly* 2490 (Nov. 28, 2011).

various appropriations subcommittees, which were not held in high regard by Republicans in general.⁶⁷

The shutdown also highlighted the increasingly poor relationship between the parties in Congress as well as the Republican's faulty relationship with President Obama. Nothing illustrated these poor relations in the 113th Congress as did the creation of the House Select Committee on Benghazi. Created in the wake of the September 11, 2012 terrorist attack on the United States diplomatic mission in Benghazi, Libya, the Select Committee exuded partisanship from its inception.⁶⁸ Given an unlimited budget and open-ended timeframe, the Committee was established despite the fact that five other House committees and at least two Senate committees had already investigated the incident;⁶⁹ this investigation continues as of November 2015.

The Republican-led House rolled into the 114th Congress without significant organizational changes to any committees except for considerable turnover in chairmanship: nine of twenty-one standing committees had new chairmen, including three from which the incumbent retired in the wake of losing his chairmanship due to term limits.⁷⁰ Twenty of the twenty-one chairmen were men, the exception being Candice Miller of the Committee on House Administration.

Other key changes expanded the power of certain committee chairmen

⁶⁷ See e.g. Eliza Newlin Carney, Daniel Newhauser and Humberto Sanchez, *Seeking Redemption With No Quick Fix*, 71 *CQ Weekly* 1462 (Sept. 9, 2013); Todd Eberly, *The Death of the Congressional Committee*, *The Baltimore Sun*, 19A (Nov. 27, 2011).

⁶⁸ House roll call vote 209, May 8, 2014; the vote was 232-186 in favor of creating the committee, with only seven Democrats voting in favor and no Republications voting against.

⁶⁹ Clayton Youngman, *Clinton: 7 Benghazi Probes so far*, Politifact.com [<http://www.politifact.com/truth-o-meter/statements/2015/oct/12/hillary-clinton/clinton-there-have-been-7-benghazi-probes-so-far/>] (October 12, 2015).

⁷⁰ Daniel Newhauser, *Brain Drain: Self-Imposed Term Limits Shuffle Committees, House GOP Leadership, Roll Call* [<http://blogs.rollcall.com/218/republican-committee-term-limits-shuffle-house-gop-leadership/>] (April 22, 2014).

to issue subpoenas,⁷¹ and reduced the frequency of required committee activity reports to one every odd-numbered year instead of semiannually. The House Permanent Select Committee on Intelligence expanded its roster by two, and all House committees began requiring witnesses to submit curricula vitae with any written testimony and to disclose any contracts with or payments from any foreign governments.⁷²

The Senate also returned to Republican control in 2015, but the political changes have so far resulted in relatively minor committee alterations. Two Senate Judiciary subcommittees changed names: the Subcommittee on the Constitution, Civil Rights and Human Rights became simply the Subcommittee on the Constitution, and the Subcommittee on Immigration, Refugees and Border Security became the Subcommittee on Immigration and the National Interest.

While the results of the mid-term elections led to few committee changes in the 114th Congress, world events from the end of 2014 contributed far more. In December of that year, Sony Pictures revealed that it had been hacked in a broad attack carried out under the authority of North Korea and inspired by a movie produced by Sony that made fun of Kim Jung-un. This incident, along with several others from 2014, prompted committee changes in Congress. Among these changes, the House Permanent Select Committee on Intelligence created the Subcommittee on the National Security Agency and Cybersecurity.⁷³ The House Oversight and Government Reform Committee also reorganized their entire Subcommittee structure to incorporate cybersecurity as an issue of jurisdiction for the new Information Technology Subcommittee.⁷⁴ Senator

⁷¹ Kristina Peterson and Andrew Ackerman, Several House Committee Chairmen to Get Unilateral Subpoena Power, Wall Street Journal Washington Wire (January 13, 2015) [<http://blogs.wsj.com/washwire/2015/01/13/several-house-committee-chairmen-to-get-unilateral-subpoena-power/>]

⁷² H. Res. 5 (2015).

⁷³ Connor O'Brien, *Intelligence Panel Revamps Subcommittees to Keep an Eye on the Spying*, CQ News (Jan. 28, 2015).

⁷⁴ Press Release, United States Congressman Jason Chaffetz, Chairman-elect Chaffetz Announces New Oversight Subcommittees and Chairs (Dec. 14, 2014), available at <http://chaffetz.house.gov/press-release/chairman-elect-chaffetz-announces-new-oversight-subcommittees-and-chairs>. See also, Matt Fuller, *Chaffetz Lays Out Different Direction for Oversight*, CQ News (Dec. 16, 2014).

McCain, who would become the Chairman of the Senate Armed Services Committee at the beginning of 2015, stated publicly that he would seek to add a new cybersecurity subcommittee as the issue had become one of great importance for national defense.⁷⁵ That specific subcommittee never materialized, but cybersecurity was added as an issue of jurisdiction to the Armed Services Emerging Threats and Readiness subcommittees.

CONCLUSION – GOVERNING BY COMMITTEE OR BY PARTY

From their origins in the select committees of the early Republic, standing Congressional committees became in the 19th Century the principle mechanisms by which Congress drafted legislation and exercised oversight over the federal government. In the 20th Century, standing committees evolved in ways that organized and integrated the budget, appropriations and taxation powers of Congress, asserting greater control over expanding executive agencies.

The creation of standing committees through the end of the Second World War, however, tended to be a haphazard process, leading to competing jurisdictions, and few direct pairings between House and Senate committees. With the Legislative Reorganization Act of 1946, Congress created what, for the first time, could truly be called a “committee system,” that is, a streamlined group of roughly jurisdictionally-paired House and Senate panels that integrated the work flow of both chambers and was supported by professional committee staff. The Act gave committees a level of professional expertise previously lacking and began the process of opening up committee activities to public scrutiny. It also represented an attempt by a more bipartisan Congress to reassert Congress’ role as a co-equal branch in the face of an executive branch whose power and resources had grown enormously during the Great Depression and the Second World War.

By the mid-1990’s, in an era when power had diffused from full committees to subcommittees, a Republican-controlled Congress sought

⁷⁵ Leo Shane, *Sony Hack Could Mean New Senate Subcommittee*, DefenseNews (Dec. 18, 2014), available at <http://www.defensenews.com/story/defense/policy-budget/congress/2014/12/18/sony-hack-could-mean-new-senate-subcommittee/20592267/>

to restore coherence to a policy process it believed fragmented by a proliferation of subcommittees in part by reducing the number and power of subcommittees and total committee staff.⁷⁶ However, the “Gingrich Revolution,” so-called because it was promoted by the new Speaker, Newt Gingrich, proved to be neither a revitalization of full committees nor an empowerment of full committee chairmen. Instead it reflected the imposition of a strict chain of command in which subcommittee and full committee chairmen took direction from party leaders, or were bypassed altogether in favor of policies that were advanced by leadership task forces and often brought to the floor without committee referral.⁷⁷ Indeed, many of the most important party initiatives of the period (such as the Contract with America) were created by Republican Party task forces and moved to the floor of the House without referral to committees.

Pursuing a party agenda outside the committee system can be regarded as simply a tactic, perhaps even an imperative tactic, to governing successfully with a narrow majority. It is also nothing new. It was the practice of the developing political parties in the early decades of the Republic before standing committees evolved. However, it also represents the application of parliamentary practice to governance. That is, the majority party moves key legislation in the House of Representatives without the mediation of standing committees or the effective involvement of the minority in the legislative process, akin to what is done British House of Commons. It is

⁷⁶ See “A Mandate for Change in the People’s House,” 139 Cong. Rec. H17-24 (daily ed. January 5, 1993).

⁷⁷ Richard Cohen, for example, congressional reporter for the National Journal, argues that reforms empowering subcommittees dating from the 1970’s together with the Republican counter-reforms of the mid-1990’s transferred substantial power from committees to floor leaders and leadership task forces. He notes that much of the high profile legislation of the recent Republican era, beginning with the Contract With America, was drafted by party task forces and sent to the floor without consideration or with only cursory consideration by committees. See Richard Cohen, *Crackup of the Committees*, 31 National Journal 2210 (July 31, 1999). Similarly, Walter Oleszek, a senior specialist at the Congressional Research Service writes, “Today, [House] committee review of legislation is problematic on many key issues, partly because of partisan strife, narrow majorities and independent minded law makers. Committee power has diminished compared to party power.” He notes that the need to pass partisan legislation is a strong reason for Republican leadership to bypass committees and bring legislation directly to the floor. See Oleszek, *supra* note 28, at 104.

interesting that despite the growth of an elaborate committee structure over the last two centuries and rules setting out procedures for committee referrals, it is a relatively simple matter for committed majority party leaders to work around the process and bring bills directly to the House floor.⁷⁸

Historically, however, it is useful to remember that Congress originally had no standing committees. Its legislative business was conducted either by temporary select committees, or by referrals to cabinet departments like Treasury, War, and State, and was largely directed by the budding political parties of the era. Congress, however, soon discovered that it needed its own institutions -- permanent committees -- to effectively craft legislation, properly oversee the Executive Branch and assert its standing as the first branch of government. Whether party leaders exercise more or less control over committees and committee chairmen, or circumvent committees to pass party initiatives, they generally lack the expertise to craft effective

⁷⁸ In the mid-1880's, Democrat and future president, Woodrow Wilson, published Congressional Government, which sets out a rationale for party government that is strikingly modern. Wilson criticizes congressional committees for being secretive, beholden to lobbyists and informed by such a hodgepodge of interests that formulating coherent, policy-driven legislation is nearly impossible. He indicates that because of their independence and insulation from party control, committees are inadequate instruments through which the majority can pursue its legislative goals or its popular mandate. In contrast, Wilson holds up the British Parliament as a model for effective democratic government. In Parliament, the majority party, reflecting the nation's will, commands the Commons, the Executive, and the legislative agenda and does so without the interference of bodies comparable to standing committees. Along these lines, Wilson argues that extra-official party groups rather than committees would be preferable to standing committees as instruments to advance the majority's agenda in Congress, serving as a kind of workaround to the defects he ascribes to committee government. Professor William F. Connelly Jr., author of the introduction to the recently republished 15th edition of Congressional Government, draws a parallel between Wilson and Newt Gingrich, another advocate of party control and an admirer of Wilson. "Wilson's book," Connelly notes, "reads almost like a field manual for Gingrich's experiment in Congressional party government." See Woodrow Wilson, Congressional Government: A Study in American Politics 99, ix (15th ed. 2002) (1900).

legislation in many highly complex and technical areas of law without active committee participation in the legislative process.

It is clear that a tension exists between party government and the committee system. Traditionally, committees served to yoke the two parties to the legislative process, to oversight and to the formulation of national policy. Absent any discussion of political parties in the Constitution, committees evolved as the practical mechanisms by which parties exercised and even shared power in Congress. While the majority party may determine most policy results, the inherently democratic process of open hearings, markups and voting, and the existence of cross-party coalitions allows minority members to engage the majority in debate, publicize issues and often broker outcomes. Shifting decision making from committees to leaders or leadership groups greatly diminishes the minority's role in the legislative process. It also moves effective decision making outside the committee system and behind closed doors, frustrating the open government reforms of the last half-century.

Whether turnover in party control restores greater independence to committees is questionable. For instance, Speaker Nancy Pelosi inaugurated the 110th Congress by passing the Democrats "First 100 Hours" agenda by bringing legislation directly to the House floor, bypassing committees and blocking minority party floor amendments. As previously discussed, these same tactics were used by Republican Speaker Newt Gingrich to pass the Republican "Contract with America" more than a decade earlier. Since Democrats in the 110th Congress also governed with a narrow majority, they too were tempted to circumvent the committee system and the regular order of business to advance major initiatives, particularly in light of past Republican successes. It may be noteworthy that despite the changeovers that have occurred between the parties for the 110th, 112th and 114th Congresses, there were no serious initiatives to reform the committee

system.⁷⁹ Governance by committee may reemerge in importance in the future as a controlling influence in Federal legislative matters, but for now, committee power continues to diminish.

⁷⁹ For an alphabetical list of standing congressional committees see the appendix that accompanies this paper entitled Standing Committees of Congress: 1789 to Present. The listing of committees is located at <http://www.llsdc.org/assets/sourcebook/standing-cmtes.pdf>. For another listing from 1802 to 1969, including length of existence, jurisdiction and predecessor committees see CIS U.S. Congressional Committee Prints Index: From the Earliest Publications through 1969: Findings Aids, 641-657 (Congressional Information Service, c1980). See also Nelson *supra* note 2; McConachie, *supra* note 9, at 348-358.

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LLSDC'S LEGISLATIVE SOURCE BOOK: HISTORY AND DEVELOPMENT

ELLEN A. SWEET¹

IN THE BEGINNING

Roughly one score and four years ago (1992), the Law Librarians' Society of Washington D.C.'s (LLSDC's) Legislative Research Special Interest Section (Legislative SIS) brought forth the first incarnation of the Legislative Source Book (hereafter simply called the Source Book). Directed at the needs of fellow members of LLSDC's Legislative SIS and others conducting legislative research, it was initially issued as a spiral bound paper publication entitled the LEGISLATIVE SIS DIRECTORY AND SOURCEBOOK.² This fledgling edition of the Source Book assembled information useful for conducting legislative research, such as a directory of SIS members, an update to the UNION LIST OF LEGISLATIVE HISTORIES, and a list of useful phone numbers, as well as sources of online legislative information. It is still available at <http://www.llsdc.org/assets/sourcebook/legis-sis-1992-dir-sourcebook.pdf>.

Organized under the auspices of the SIS's Publication Committee, then chaired by Mike Welsh, with additional members Debra Atkins, Mary Alice Durphy, Adrienne Eng, Annette Erbrecht, Chris Hays, Rosalind Kelman, Rick McKinney, and Ellen Sweet, the earliest edition was primarily intended to update the UNION LIST OF LEGISLATIVE HISTORIES and the UNION LIST OF LEGISLATIVE DOCUMENTS,³ both significantly out of date at that point. At about the same time as the Source Book's second version

¹ Errors and omissions are the sole responsibility of the author. Please email any questions or comments to her at legislativesis@gmail.com.

² At some point (probably around 1995/1996), the predominant spelling of "Sourcebook" changed to "Source Book," although the first orthography is still used occasionally. The exact timing of the change and the reason(s) behind it are unknown.

³ Conversation with Mike Welsh, Fall 2015.

in 1994, the Legislative SIS compiled the third revision of the UNION LIST OF LEGISLATIVE DOCUMENTS, which was originally issued as a free-standing document. Though the original edition of the Source Book had been a vehicle for updating local “legislative holdings information” and complementary data about the subject profiles of the contributing libraries between editions of the UNION LIST OF LEGISLATIVE DOCUMENTS and the UNION LIST OF LEGISLATIVE HISTORIES (at this point, most recently issued in 19914), once the former union list was updated, this type of information ceased to be a primary source of content for inclusion in the Source Book.

The inclusion of non-directory, non-union list content in the work was secondary to its initial purpose, but over the coming years became its evolutionary path. Rick McKinney’s 1991 article, “Sources of On-Line Legislative Information,” published in the first edition, was perhaps the first example of a piece gathering and analyzing disparate sources of practical information for legislative information specialists featured in the Source Book. These pieces are now typical of its content, along with research guides, compilations of helpful sources, and tabular information (e.g., the “Schedule of Volumes of the U.S. Congressional Serial Set,” and the “Table of Congressional Publication Volumes and Presidential Issuances”). Over time, longer, more substantive write-ups, sometimes the product of original research, appeared in the Source Book (either initially or after publication in *Law Library Lights*⁵), which from approximately 1996 (3rd ed.) to 2000 was issued roughly every year or two in hard copy.⁶ During

⁴ The UNION LIST OF LEGISLATIVE HISTORIES was not updated again until 2000 (with a 2002 supplement), in its pre-existing freestanding loose-leaf format.

⁵ For example, *Law Library Lights* 41, no. 4 (March/April 1998) had legislative information as its theme. One article, “Legislative Inquires and Conundrums,” compiled by Catherine Rogalin, included questions posed by Rick McKinney and Debra Atkins, with responses written by Debra Atkins, Charlotte White, Carole Moroughan, Ellen Sweet, Richard McKinney, Catherine Rogalin, Judy Manion, and Julia Taylor. That article appeared in the Source Book the next year as “Questions and Answers in Legislative Research.” This piece is particularly characteristic of the SIS members’ collective knowledge, interests, and contributions that have supported and shaped the Source Book through the years.

⁶ Verified publication dates for the paper editions are 1992, 1994, 1996, 1998-1999, and 1999-2000.

this period, the SIS membership directory continued as a standard feature in the Source Book.

As a channel for wide-ranging content pertinent to federal legislative history research, the Source Book grew steadily, with much of that growth directly attributable to the efforts of Rick McKinney.⁷ Although many members of the Legislative SIS had been involved in its conception and first edition, over the years Rick McKinney became the primary force behind the Source Book. In addition to organizing and updating the Source Book content (especially the directory and tabular information), often single-handedly, his seminal contribution has been as a “content originator.” Not “just” an author, he has consistently sought to preserve valuable knowledge shared at informal LLSDC meetings and programs over the years by members and others by adding it to the Source Book. Relevant presentations at meetings, conferences and professional symposia have been “captured for posterity” in the Source Book.⁸ Ever attentive and responsive to professional colleagues, to legislative questions received via the LLSDC listserv, and to other avenues as well as to suggestions by others, Rick was often prompted to develop additional content.⁹ While Rick has been its most frequent and voluminous contributor, both Mike Welsh and Sue Ann Orsini have authored substantive pieces in the Source Book.¹⁰

⁷ Full disclosure: the author has been involved with the Source Book since its inception. She primarily served as a behind-the-scenes editor in its early years, but also from time to time as a co-author, or a source of ideas for new content.

⁸ Examples include, but are not limited to: “Basic Overview on How Federal Laws Are Published, Organized and Cited” by Richard J. McKinney for January 12, 2006, FLICC Program on Federal Legislative Research; “Authority of Statutes Placed in Section Notes of the United States Code” by Rick for an SIS meeting on May 26, 2011; and “Legislative History Research for Beginning Practitioners” by Sue Ann Orsini originally presented at a Brown Bag lunch before the PLL-SIS on December 13, 2013.

⁹ For example, at a Department of Justice meeting about a legislative database at which the author was present, a comment made by Mimi Vollstedt regarding the difficulty of tracking down Executive Agency reports to Congress was the seed for the 2013 piece entitled “Sources for Finding Mandated Reports to Congress by U.S. Federal Agencies.”

¹⁰ In 2008, “An Overview of the Development of U.S. Congressional Committees” by Mike Welsh was added. See footnote 8 for Sue Ann Orsini’s work.

In response to changes in our needs and resources and in our dissemination/publication media, the Source Book continued to grow and adapt. Early features emphasized print resources and fee-based databases, reflecting the then-current availability of legislative information resources. The launch of the free government-sponsored databases GPO Access and THOMAS (begun in 1994 and 1995, respectively) also served to stimulate the commercial availability of full-text federal legislative information. Rick's four-page article in the 1992 first edition, "Sources of Online Legislative Information," evolved to become "Sources of On-Line Legislative and Regulatory Information" in 1996, which covered three Internet legislative information resources for the first time. By 1997, the article was twice as long as it had been in 1992. Three years later, the article's title reflected the new reality: "Internet and Online Sources of Legislative and Regulatory Information," and by 2002 it was nine pages long.¹¹ A decade later, it extended to 10 pages.¹²

The advent of free federal legislative information and the greater availability of legislative content from commercial legal database vendors such as LEXIS and Westlaw transformed our professional landscape. How would legislative information specialists with expertise with print resources and sizable paper collections perform their jobs in light of these new electronic resources? Too, how effectively could legislative research now be conducted strictly online, without traveling to a research library or archive? The resulting changes in the compilation of and access to legislative histories were of course reflected in the content of the Source Book. The very practical information in "Questions and Answers in Legislative and Regulatory Research," first included in the Source Book in 1999,¹³ was enhanced by "Legislative History Research: A Practitioner's Guide to Compiling the Documents and Sifting for Legislative Intent," appearing initially the very next year. "Finding and Establishing Direct Links to THOMAS and GPO Access Documents" was present on the initial

¹¹ Dates and statistics about the print editions of the Source Book are drawn from issues of *Law Library Lights* and online library catalogs.

¹² Updated periodically until 2006 and then again in 2012 (see *supra* footnote 10 and www.llsdc.org/sourcebook), the sheer volume of information included coupled with the constraints of the current tabular format as well as changes made by vendors have made this piece very difficult to update.

¹³ See footnote 5.

Source Book Web site in 2000.¹⁴ “A Research Guide to the Federal Register and the Code of Federal Regulations,” which first appeared in *Law Library Lights* in 2002, was added to the Source Book in 2006. A similar research guide about sources of Congressional debate (also initially published in *Law Library Lights* in 2002) had been added the previous year.

GOING DIGITAL

The last edition of the Source Book in print was 1999-2000; dissemination in online format began in 2000, via LLSDC’s Web site. Wider recognition of the work as a very useful resource quickly followed. Soon after its electronic release, the University of Wisconsin-Madison’s Scout Report (<https://scout.wisc.edu/report/2000/0310>) issued this release:

The Law Librarians’ Society of Washington, D.C. recently announced that they have placed online a series of unique informational documents and links of interest to law librarians and government researchers. Compiled by LLSDC’s Legislative Research Special Interest Section, much of the material was previously available in print, but is gathered together online for the first time. Titles include Establishing Persistent Links to Thomas and GPO Access Documents, GPO Congressional Publication Releases (weekly listings), Internet and Online Sources of Legislative and Regulatory Information, Quick Links to House and Senate Committee Documents and Hearings, and the Union List of Legislative Documents, 1994, 3rd. edition.

The very next month the Source Book was cited by *USA Today* as a “new and notable” Web site:

There are no longer any excuses for remaining ignorant about the wheelings and dealings of the government.
The Legislative Source Book of the Law Librarians’

¹⁴ It remained there until early 2012, when it was removed, most likely in response to the changeover from THOMAS to Congress.gov and from GPO Access to FDsys.

Society Washington, D.C., provides a valuable index to government documents that once were only available in print.¹⁵

The Source Book, while initially appearing as one of several listings under the “Publications” header, was given a direct link on left side of the revamped LLSDC Web page by late summer 2007.¹⁶ By approximately September 2013, the Source Book assumed its very prominent “front and center” location (where it remains to this day) next to *Law Library Lights* on www.llsdc.org.

The Source Book, until its re-birth as an electronic resource, had been distributed to SIS members without charge. Early on in its history as a hard-copy edition, its utility caught the interest of those outside the SIS, who were able to purchase it from LLSDC.¹⁷ Once resident on the public part of LLSDC’s Web site, however, it became free to all and was also freed from various constraints imposed by publication in print. Technological changes made both collaboration and editing easier. Also, the immediacy and informality factors of online communication lent themselves to shorter, less formal exchanges. Thus, new information could be added much more quickly and older information updated with less effort. With so much practical content on one Web site available, the popularity of the Source Book grew quickly along with its utility. Library research guides, Congressional Research Service reports,¹⁸ and other specialized sources began to cite to or link to the Source Book with increasing frequency.

¹⁵ Sam Vincent Meddis, “From Flakes to Adventure Divas: If George the Hamster’s Stories Don’t Grab You, Perhaps a Snack is in Order,” *USA Today*, April 20, 2000, 3D.

¹⁶ All historic www.llsdc.org and www.llsdc.org/sourcebook Web site information is approximate and drawn from snapshots of the Web site available from the Wayback Machine at www.archive.org.

¹⁷ Sales of the Source Book appear to have begun in 1996. See Rick McKinney, “Legislative Research/SIS,” *Law Library Lights* 39, no. 1 (May/June 1996): 15.

¹⁸ Conversely, the Source Book began to include links to relevant CRS reports in 2003. See *Law Library Lights* 46, no. 4 (Summer 2003): 24.

RECENT DEVELOPMENTS

Within a decade or so after the Source Book “went electronic,” it became evident that it had grown so large and substantive that expecting only one person to continue to be solely responsible (whether on a de facto basis or formally) for organizing and maintaining it, let alone adding new content as appropriate, would have been both unreasonable and unwise. Given the sheer volume of work to be done on the Source Book, the Legislative Research SIS at first simply put out requests for new volunteers during SIS meetings. However, it was soon obvious that a more organized approach to increased participation would work better. Discussions between Rick McKinney, Ellen Sweet, Sue Ann Orsini (then the President of the Legislative Research SIS), and Tomasz (Tom) Kolodziej led to the formation of the Legislative Research SIS Source Book Subcommittee, with Tom Kolodziej as its chair. On September 19, 2014, the Subcommittee gathered to develop a systematic road map for the Source Book’s future.¹⁹ Subcommittee members have continued meeting from time to time, discussing issues, content, and tasks that need undertaking. Feedback to the Legislative Research SIS from these discussions has helped clarify ongoing Source Book priorities and increased the number of active Source Book participants.

THE FUTURE

The future of LLSDC’s Source Book rests on a decades-long history of excellence and responsiveness to professional need. As it continues to evolve, its emphasis on quality, accuracy, and utility will no doubt continue. Produced by volunteers under the auspices of the Law Librarians’ Society of Washington, D.C., it is a source of pride for members and a “go to” asset

¹⁹ LLSDC Member Newsletter (October 2014), http://www.llsdc.org/index.php?option=com_content&view=article&id=141:llsdc-newsletter-october-2014&catid=24:newsletter. Current Subcommittee members are Tom Kolodziej, Sue Ann Orsini, Jeff Bird, Rick McKinney and Ellen Sweet. Officers of the SIS (currently Kelly McGlynn, President, and Susan Pries, Vice-President) serve as ex officio members. New Source Book volunteers are welcome and should contact Tom at tomasz.kolodziej@hoganlovells.com

for an even wider audience.²⁰ Changes for it certainly lie ahead, but with its strong underpinning from Rick McKinney and the devoted support of new and current participants, we hope it will persist well into the future as a professional resource for all interested in legislative information.

²⁰ The usefulness of the Legislative Sourcebook was mentioned by attendees at the 2014 AALL Conference in San Antonio. See Mary Kate Hunter, "Our Focus Will Be on Our Members," *Law Library Lights* 58, no. 1 (Fall 2014): 9.

THE FUTURE OF LEGISLATIVE HISTORY: A WISH LIST

CHRISTINE CIAMBELLA
HEAD OF REFERENCE, GEORGETOWN LAW LIBRARY

Among librarians in Washington, D.C., the name Rick McKinney is synonymous with legislative history. Rick has contributed his time and talent to the creation and maintenance of the LLSDC Legislative Source Book. He has worked tirelessly to share his knowledge about this mysterious, frustrating, yet important topic. Together, Rick and his associate, Ellen Sweet, along with many others, have created perhaps the most comprehensive guide to legislative history available anywhere. They have generously shared all that they've learned with LLSDC and the rest of the world.

When Ellen approached me about writing a piece on Rick's contributions and the future of legislative history, my first thought was a fervent wish for a Vulcan mind meld. If only we could capture everything that Rick knows about legislative history and preserve it forever for all of us! Until that time, we'll have to get by with the Legislative Source Book, as so many of us have done for so long. Instead of attempting to predict the future, I will share with you my wish list for legislative history. Spoiler alert – all my wish list items have a central theme: make public information public.

The first item on my wish list is that Congressional Research Service (CRS) reports be publicly posted online when issued. These reports, written by highly skilled specialists and researchers for members of Congress and their staff, are an invaluable resource, but they are not readily available to the public. Unlike documents produced during the legislative process, CRS reports are created for use by the Congress, not for the public. However, CRS reports are government information and consequently are not subject to copyright. The general public may obtain copies by contacting their Senator or Representative, but this route is not a very expedient option!

To fill this gap, several private groups collect CRS reports and post them for free on the Internet.¹ Other organizations, such as ProQuest and CQ Roll Call, include them in their subscription databases. What a waste of resources! This method unnecessarily duplicates effort, does not allow for authentication, and does not provide the public with a comprehensive, free resource for documents created at taxpayer expense. ProQuest Congressional has the most complete set of CRS reports, but since it's a commercial database, it's available only to those with means.

Congressionally-mandated reports to Congress are similarly inaccessible. These seemingly-mythical documents are required by law to be produced and submitted to Congress, but they are notoriously difficult to find. Again, there is no central repository in either the Executive or Legislative branch, so locating these reports takes an enormous amount of effort and no small amount of luck.² Again, ProQuest Congressional has a collection, which is helpful to subscribers but not to the general public. Executive and Legislative agency Websites have lists of reports but often lack the actual reports.

While there are other types of documents I'd like to see more widely distributed and preserved for posterity, I'll mention just one more: internal committee documents. Unpublished bill drafts, markup amendments, markup descriptions, conference transcripts, and other materials that are produced (if at all) only for members of Congress and their staffs. These elusive (and sometimes nonexistent) documents would be extremely helpful assets in determining legislative intent.

Looking ahead, I hope to see more organizations that compile and present publicly-available information in ways that make it more useful. Some current examples include the free Web sites like Project Vote Smart, GovTrack, and OpenCongress.³ These Web sites facilitate the use of and access to government information by providing more sophisticated

¹ See, for example, <https://www.crsreports.com>, <http://www.fas.org/sgp/crs/index.html>, <http://digital.library.unt.edu/explore/collections/CRSR/browse/>, among others.

² The Legislative Source Book has a list of places to look for reports to Congress at <http://www.llsdc.org/sources-for-mandated-congressional-reports>.

³ <http://votesmart.org/>, <https://www.govtrack.us/congress/votes>, and <https://www.opencongress.org/>, respectively.

search tools, and by linking data to make it more meaningful. They are not as sophisticated as commercial databases provided by vendors such as ProQuest, Westlaw, Lexis, and Bloomberg Law, but the concept is the same: laying a better interface over top of existing government information thus making it more accessible and useful.

Improved access to all of these sources will make legislative information more readily available to more people. However, the role of the librarian will remain essential and unchanged – to sort through and make sense of all of that information. There is a huge difference in expertise between the generalist and the specialist. Lawyers, judges, professors, and law students will always need librarians to read between the lines, to consider the information both available and missing, and to explain the documents and the process in a meaningful way. Casual exposure to legislative history will not yield the same nuanced result.

Legislative history is as much art as science. It entails understanding the process and the significance of the steps and the documents created, looking for clues, and ensuring that all sources are consulted. Often a lot of effort yields very little insight and yet, the compilation of legislative history is an entrancing puzzle. More often than not, I've spent hours compiling and reading a legislative history only to realize that the language at issue is never explained in the documents. Librarians have the fun of the chase – the thrill of the hunt, the satisfaction of solving the puzzle – without bearing the burden of the result, or lack thereof.

Over the years, tools for finding and reading legislative documents have changed but the process and the documents themselves have not. In 1995, when I started working as a legislative librarian, my favorite tools were the *CCH Congressional Index*, the *LLSDC Union List of Legislative Histories*, and THOMAS. I favored Lexis over Westlaw because of the former's outstanding selection of legislative documents. More than twenty years later, some things have changed. THOMAS has been replaced by Congress.gov, and the *LLSDC Union List of Legislative Histories* is out of print. I now use ProQuest Congressional more than any other source, and Westlaw has become my preferred research database. Through it all, the *LLSDC Legislative Source Book* has been my constant companion (first in print, now on the Web), along with my colleagues in LLSDC's Legislative Research SIS. Even after his retirement, Rick McKinney's influence will live

on through the Legislative Source Book and the memory of his constant support to his librarian colleagues. I don't know what the next twenty years will bring, but I know that I can count on my librarian colleagues to carry on Rick's work, to share their information and expertise, and to advocate for access to information.

AN APPRECIATION FROM “THE OTHER WASHINGTON”

CHERYL NYBERG
PEGGY ROEBUCK JARRETT
UNIVERSITY OF WASHINGTON SCHOOL OF LAW
GALLAGHER LAW LIBRARY

We are long-time law librarians with academic and law firm library experience. We have worked in reference, government documents, and collection development. We have been teachers and trainers of law students and law librarianship students. All the while, and from thousands of miles away from Washington, DC, we have relied on and appreciated Rick McKinney’s work – especially LLSDC’s Legislative Source Book.

CHERYL NYBERG ¹

Rick McKinney is a librarian’s librarian. The depth of his knowledge about the essential materials that law librarians use for federal administrative and legislative research is incomparable. His commitment to sharing his expertise through the *Legislative Source Book* exemplifies the generosity of exceptional reference librarians.

As a veteran law librarian and former government documents librarian,² I have used the *Code of Federal Regulations*, the *Congressional Record*, the *Congressional Serial Set*, the *Federal Register*, and the *United States Code* thousands of times. I’ve learned how to navigate the indexes and other finding tools and have helped many law students and other legal

¹ Reference Librarian, University of Washington School of Law, Marian Gould Gallagher Law Library, Seattle. cnyberg@uw.edu

² My career in law librarianship began when I started working at the University of Illinois Law Library as an undergraduate student in 1974, where I worked for Bob Berring and Nancy Johnson. I served as that library’s government documents and reference librarian from 1982 to 1995. Now at the Gallagher Law Library, I am a reference librarian and web editor.

researchers find the documents and material they need. As these vital sources have been digitized and made available on free websites and in commercial databases, I've become proficient at using these platforms.

But just when I think I know it all, a question puzzles me. What is the RIN number displayed in the heading of many *Federal Register* documents?³ Were any annotated federal codes published before the *U.S. Code Annotated* and the *U.S. Code Service*?⁴ What is the history behind the "Extension of Remarks" section in the *Congressional Record*?⁵ Time after time, Mr. McKinney came to my rescue. To approximate the tremendous impact of his work, multiply my experience by hundreds or even thousands.

A large part of the value of his numerous contributions to the *Legislative Source Book* is information about how the content and organization of sources like the *Congressional Record* have changed. Like the Roman God Janus, the law looks to the future and the past. The further we get from everyday, first-hand experience with older materials, the less we know about them. Mr. McKinney fills in the missing pieces and enables us to conduct research with greater confidence.

I particularly appreciate the economy of Mr. McKinney's remarks. His motto seems to be: all substance; no filler. I can scan or browse for the bits of information I need, avoiding an often fruitless slog through an array of current and older legal research books. Concise presentation of information is valuable when you are seeking just the perfect short answer.

³ Regulatory information numbers "are assigned to descriptions/status reports of agency regulations under development and published twice a year in the *Federal Register* during April and October pursuant to the Regulatory Flexibility Act and Executive Order 12866." Richard J. McKinney, *A Research Guide to the Federal Register and the Code of Federal Regulations*, Law Librarians' Society of Washington, D.C. (Feb. 12, 2016), <http://www.llsdc.org/fr-cfr-research-guide>.

⁴ Yes: *U.S. Compiled Statutes Annotated* (West) and *Federal Statutes Annotated* (Edward Thompson Co.), Richard J. McKinney, *United States Code: Historical Outline and Explanatory Notes*, Law Librarians' Society of Washington, D.C. (June 2011), <http://www.llsdc.org/assets/sourcebook/us-code-outline.pdf>.

⁵ Richard J. McKinney, *An Overview of the Congressional Research and Its Predecessor Publications: A Research Guide*, Law Librarians' Society of Washington, D.C. (Jan. 2016), <http://www.llsdc.org/congressional-record-overview>.

Working with law professors and students, I often consult Mr. McKinney's guides and I link to them in several of our library's guides on U.S. laws⁶ and administrative research.⁷ I introduce his guides to the law librarianship students who work in the reference office. When a future librarian is delighted to discover a tool that unlocks the mysteries behind a commonly used primary source of law, I know that she or he has "the right stuff" to become an excellent reference librarian. Our value is based in part on what we know and in part on how we know to find answers by referring to the work of experts like Mr. McKinney.

Knowledge gleaned from complex and extensive legal research over a lifetime is tremendously valuable. How much of this wisdom will we lose as the boomer generation—with one foot in the print-based past and the other in the digital present—enters retirement? Thanks to Rick McKinney, newer law librarians won't have to enter the future alone and uninformed about the history and evolution of the indispensable primary federal law sources that we use on a daily basis. We all owe him a debt of gratitude.

PEGGY ROEBUCK JARRETT⁸

We have so many roles and so little time. It is a cliché, yes, but the truth is that law librarians have a portfolio of roles including teacher, trainer, researcher, and learner. Very early in my career, I discovered I did not inhabit any of these roles in a vacuum. From my law firm days to my years as an academic,⁹ I did my job by standing on the shoulders of giants –

⁶ *U.S. (Federal) Laws*, Gallagher Law Library (Feb. 11, 2016), <http://guides.lib.uw.edu/law/uslaws/usc>.

⁷ *U.S. Administrative Law Research*, Gallagher Law Library (Feb. 11, 2016), <http://guides.lib.uw.edu/law/usadmin/cfr>.

⁸ Collection Development and Reference Librarian, University of Washington School of Law, Marian Gould Gallagher Law Library, Seattle, pjarrett@uw.edu.

⁹ My first law library job was a Washington, DC law firm. One of my duties was to photocopy multiple sections of the *Federal Register* every day! I spent a few years as a solo and big firm librarian in Seattle before joining the reference staff of the Gallagher Law Library twenty-five years ago. For most of my time here, I have been the "docs" librarian, serving as the Federal Depository Library Program coordinator and selector for state, federal, and international government publications.

which simply means that I freely and often relied on the time and talent of librarians like Rick McKinney who have produced expert, useful reference works.

The role of teacher and trainer at the Gallagher Law Library includes our formal and informal interactions with University of Washington (UW) Information School students. Every year, we have a new class of law librarianship interns, and my hope is that most, if not all of them, learn about the *Legislative Source Book* before they graduate. Training future law librarians is not just saying “here is this great source you should know about” (although that that is part of it). It is also saying “by the way, this is the kind of fabulous professional contribution that you too can make!”

There is a special place in my heart for this particular kind of professional contribution – the librarian-focused resource. Where else could you find detailed information about the history of the *U.S. Statutes at Large* and the *U.S. Code*? Seasoned law librarians do not know everything. We do know a lot, and more importantly, we know how to find what we don’t know – sometimes by relying on a little help from our friends, and taking on the role of learner in order to better help our users. To demystify complicated legal materials for our users, we need to have a thorough grounding ourselves. What is more complicated than primary legal government information? And who better to learn from than another librarian? I think of LLSDC’s *Legislative Source Book* with the same affection as have for “Nancy Johnson’s book”¹⁰ or “Cheryl’s book.”¹¹

As Mr. McKinney taught librarians through his written work, presentations, and listserv posts, he also helped us teach others. Training the trainer is a tried and true way of fulfilling our role (and I’d say responsibility) to provide access to government information. Along with training UW Information School students, I have had the pleasure to give presentations

¹⁰ Nancy P. Johnson, *Sources of Compiled Legislative Histories: A Bibliography of Government Documents, Periodical Articles, and Books, 1st Congress-113th Congress*, 3rd ed. (Buffalo, NY: William S. Hein, 2014).

¹¹ Cheryl Rae Nyberg and Carol Boast Robertson, *Subject Compilations of State Laws: An Annotated Bibliography* (1984-date). I am also quite fond of my battered copy of the classic “Price and Bitner” treatise, Miles O. Price et al., *Effective Legal Research*, 4th ed. (Boston: Little Brown, 1979), given to me by my friend and peer mentor, Donna Bausch, when I moved back to the West Coast.

to non-law librarians. Most recently, the Northwest Government Information Network, our small band of mostly Federal Depository Library Program (FDLP) coordinators in Washington State and Northern Idaho, has done a peer training for our spring meeting. Last year, I talked about the *United States Code* – and one of my early slides was devoted to the *Legislative Source Book*. Looking back at my PowerPoint notes, I see the phrases “excellent resource for librarians,” “a lot of detailed information,” “sometimes we need more esoteric info to help our patrons, like what’s the authority of statutes placed in notes sections?” I like to imagine word of the *Source Book* spreading out from librarian to librarian, from Seattle to Eastern Washington, and then across the states back to Washington, D.C., where it began.

But the primary way librarians who work with government information in other types of libraries benefit from Mr. McKinney’s knowledge and dedication is through the GOVDOC-L listserv. This moderated listserv with well over 2,000 subscribers is a forum for discussion about government information and the FDLP. It is a great place to ask for help with a reference question. A search of the GOVDOC-L archives yielded several hundred messages over two decades from Mr. McKinney. Many of his posts are answers to practical reference questions posed by government documents librarians – questions with subject lines such as “U.S. Code and Supplements,” “reserved sections in CFR,” “searching for old House Executive Document,” and “U.S. Government budget prior to 1923.” Browsing through these responses, everything I saw was answered concisely, correctly, and with the imprimatur of reliability.

It is no surprise that Rick McKinney was awarded the American Association of Law Libraries’ prestigious Robert L. Oakley Advocacy Award in 2009. The award was for both his work on the *Legislative Source Book* and his “impressive willingness to go above and beyond the call of duty to help other law librarians with their research.”¹² It is up to us to continue Mr. McKinney’s work and give our time and talents to creating librarian-focused resources. And we should be grateful for all he has done for the profession, for patrons, and for our collective ability to access government information. I know I am!

¹² Mary Alice Baish, “Congratulations to the Winners of the PAGI and Member Advocacy Awards,” *AALL Spectrum* 13 (June 2009): 6. http://www.aallnet.org/mm/Publications/spectrum/archives/Vol-13/pub_sp0906/pub-sp0906-wash.pdf.

HONORING RICK MCKINNEY AND LLSDC'S *LEGISLATIVE SOURCE BOOK*

ROGER SKALBECK, JOYCE MANNA
JANTO, AND KAT KLEPFER
CONTRIBUTIONS BY LAW LIBRARIANS AT
THE UNIVERSITY OF RICHMOND SCHOOL OF LAW

INTRODUCTION

LLSDC's *Legislative Source Book* contains a wealth of useful information to help us understand legislative sources, especially in finding, compiling, and using legislative histories. It also provides numerous narratives on federal administrative law, with frequently-updated tables, charts, and lists. It is free, functional, and very practical.

Back in the year 2000, the *Legislative Source Book* went online for the first time. I helped set it up on the LLSDC Website and created the collection's earliest online graphics. During my seventeen years as a law librarian in Washington, D.C., I helped migrate it to new websites, including moving it to its current home.

I regularly recommend this collection as a go-to source for its practical and detailed content. Like countless other librarians, I've benefited from this collection without contributing a single syllable to its content.

In this essay, through three vignettes inspired by the *Legislative Source Book*, we honor Rick McKinney for his role as the collection's guiding light and leading author. We also provide a list of permanent links suitable for scholarly citation, where major parts of the collection are now archived online.

For LLSDC's *Legislative Source Book*, Rick has been a tireless and detail-oriented shepherd, muse, architect, steward, and curator. These materials

are a collective effort of many members of the LLSDC Legislative Special Interest Section. We wish to recognize the efforts of all contributors. However, without Rick McKinney's guidance and dedication, it wouldn't have the depth and breadth it has today.

Thank you, Rick,

ROGER SKALBECK
Associate Dean, University of Richmond Law Library

LINK BAIT HEADLINES FOR YOUR FACEBOOK FRIENDS

ROGER V. SKALBECK

ASSOCIATE DEAN, UNIVERSITY OF RICHMOND LAW LIBRARY

In some ways, the *Legislative Source Book* feels like an unsung hero in legislative and regulatory research resources. It is very buttoned-down and practical. Eschewing flair and ignoring commercial appeal, it provides concise descriptions and no-nonsense narratives. Updates are frequent, and no single source is featured more prominently than another.

In today's Facebook-focused world, the *Legislative Source Book* may lack a certain headline-grabbing appeal. To explore this theory, consider the following link bait headlines rewritten for the collection's Research Guides and Explanations entries. In the style of sites like Upworthy and BuzzFeed, this teaser text may be suitable for lots of "likes" on your favorite social network.

A TRIADIC TOME OF TECHNICAL TUTELAGE, OR "IT'S GETTING DRAFTY IN HERE"

The collection begins with this 1989 work by Donald Hirsch, simply named "Drafting Federal Legislation," published by the now-renamed Government Printing Office. As stated in the work's introduction, "[t]he purpose of the book was, and continues to be, three-fold: to serve as a self-help manual to train drafters; to develop their capacity to analyze bills for technical sufficiency; and to strengthen their understanding of the links between legislative ideas and legislative language."

THE FEDERAL ADMINISTRATIVE STATE:
ACTING OUT SINCE 1935

In “Federal Administrative Law: A Brief Overview,” Rick McKinney explains core elements of federal administrative law, describing the balance of federal agency activities, contrasting their quasi-legislative and quasi-judicial powers. There are descriptions and quick facts on major agencies, summaries of Supreme Court cases, and numerous links to outside authorities. There is also a summary of major administrative laws, including the Federal Register Act of 1935. (44 U.S.C. § 1501 et seq.).

TOP 10 LIST FOR THAT CLASS YOU MISSED:
FEDERAL LEGISLATIVE HISTORY 101

In 2014, Rick McKinney presented the webinar “Federal Legislative History 101,” covering a broad selection of legislative history topics. The talk covers the application, access points, process, materials, hierarchy, availability and procedural considerations in legislative history.

SILENCE IS GOLDEN: FINDING MEANING WHEN
WORDS DON’T EXPRESS YOUR TRUE INTENT

From Ellen Sweet and Rick McKinney, “Federal Legislative History Research: A Practitioner’s Guide to Compiling the Documents and Sifting for Legislative Intent” is a comprehensive outline of all elements of the process of compiling and understanding legislative history.

CONVINCE YOUR AUDIENCE YOU’RE THE
BEST DRAFTER SINCE SOLOMON

The “House Legislative Counsel’s Manual on Drafting Style” is written as a guidebook for people drafting federal legislation. One skill the resource recommends for an attorney drafting legislation is to “[c]onvince the client that the drafter is the best to come down the pike since Solomon.” The manual’s tone is refreshingly quirky in parts, with timeless tips on creating the controlling language our laws require.

A SIX PACK OF SUGGESTIONS FOR COMPILING YOUR OWN HISTORY. YOU WON'T BELIEVE NUMBER FOUR ON THE LIST

Developed for a lunch presentation for private law librarians, Sue Ann Orsini frames a basic process for compiling a legislative history in the “Legislative History Research for Beginning Practitioners.” She suggests six access points for starting a legislative history project: U.S. Code citation, law section, name of an Act, public law number, bill number, and the Statutes at Large citation. She also includes a helpful flowchart for the legislative history process based on these starting points.

EXPERTS AGREE: JOURNALING IS THE BEST WAY TO RECORD YOUR TRUE ACTIONS. IT'S IN THE CONSTITUTION

With “An Overview of the Congressional Record and Its Predecessor Publications,” Rick McKinney presents a history of publications that report Congressional proceedings, dating back to the House and Senate Journals, begun in 1789. Article I, Section 5 of the Constitution requires that “[e]ach House shall keep a Journal of its Proceedings, and from time to time publish the same.”

YOU'LL NEVER LOOK AT CONGRESSIONAL COMMITTEES THE SAME WAY AFTER YOU READ THIS!

“An Overview of the Development of U.S. Congressional Committees,” revised and updated by Jeff Bird (originally written by Michael Welsh, with assistance by Ellen Sweet and Rick McKinney), presents a historical view of Congressional committee evolution over more than two centuries. Here we find a well-footnoted summary of Congressional committee types and the evolving roles they play in the legislative process.

73,348 DAYS BEFORE THE SERIAL PODCAST, CONGRESS STARTED TO SET ITS OWN SERIAL IN MOTION

In “An Overview of the U.S. Congressional Serial Set,” Rick McKinney presents the history and research application of this bound set of 14,000+

volumes, compiling the hundreds of thousands of reports and documents published since it was started in 1817.

A LINE OF QUESTIONING TO UNDERSTAND
TWO CODED TEXTS. GUESS WHICH BRANCH OF
GOVERNMENT IS LEFT OUT OF THE STORY?

In “Questions and Answers in Legislative and Regulatory Research,” members of the Legislative Research Special Interest Section answer thirty-seven detailed questions in areas of legislative and executive branch research. This is no watered-down “frequently asked questions” document. Instead, this twenty-one page guide covers complex and often confounding topics to help even expert researchers.

NPRM IS A FOUR LETTER WORD. MAYBE THAT’S
WHY IT GENERATES COMMENTS LIKE THESE

With “A Research Guide to the Federal Register and the Code of Federal Regulations,” Rick McKinney tracks the history of executive branch agency regulations and the rulemaking process. This includes background such as the requirement from the Administrative Procedures Act of 1946 that notices of proposed rulemaking (NPRM’s) be published with certain accompanying details.

THE 54 BEST TITLES IN THE UNITED STATES CODE

A collection of several resources, “United States Statutes and the United States Code: Historical Outlines, Notes, Lists, Tables, and Sources” provides exactly what you expect it to contain: lists, tables, sources, and good explanatory documents. Several guides are written by Legislative Research SIS members, and there are references to sources that help us work with the fifty-four titles that now make up the entire United States Code set.

MINOR FEDERAL GOVERNMENT REGULATORY AGENCIES

KAT KLEPFER

REFERENCE & RESEARCH SERVICES LIBRARIAN,
UNIVERSITY OF RICHMOND SCHOOL OF LAW

Rick McKinney's "Federal Administrative Law: A Brief Overview" is a succinct and helpful place to find information about rulemaking, common administrative law statutes, and the major administrative agencies. But what about those unsung heroes, the minor regulatory agencies whose necessity—and sometimes purpose—are lost to history? We propose this addendum to Rick's article to give a couple of these minor agencies their due.

THE BOARD OF TEA APPEALS

If government spending on bizarre regulation "leaves" a bad taste in your mouth, give a cheer for Representative Scott Klug, who managed to accomplish what Presidents Nixon, Carter, and Clinton could not: eliminating the surprisingly persistent United States Board of Tea.¹

The slapdash manner in which the Sons of Liberty dumped tea in Boston Harbor clearly begged for a more formal bureaucratic process for destroying tea. In the uncontrolled years between the Boston Tea Party and the Tea Importation Act of 1897, attempts at regulating the quality of tea at the port of entry were foiled by shipping rejected tea to Canada and trying again at another port.² The power to set standards—and destroy

¹ Karen De Witt, "Tea, But No Sympathy, for the Tasters," *N.Y. Times*, September 26, 1995, <http://www.nytimes.com/1995/09/26/nyregion/tea-but-no-sympathy-for-the-tasters.html>.

² H. R. Rept. No. 54-3029 (1897).

rejected tea when the experts detected mold or adulteration—gave the U.S. Board of Tea power over the importation of tea leaves for 99 years.³

The Board lasted until 1996, after which it was repealed via the Federal Tea Tasters Repeal Act of 1996.⁴ After pointing out that “[t]ea is the only food or beverage for which the Food and Drug Administration (FDA) samples every lot upon entry for comparison to a standard recommended by a federal board,”⁵ the bill passed without discussion.⁶

THE U.S. BOARD ON GEOGRAPHIC NAMES (BGN)⁷

Anyone who has had to learn the names of a classroom full of children, or survived a journey through central Pennsylvania,⁸ knows full well that the naming of monuments or geographic locations should not be left to individual taste.⁹ To that end, the U.S. Board on Geographic Names

³ Find yourself needing to research old legislative history? Take a look at “Compiling a Federal Legislative History from Older Records,” in Richard J. McKinney & Ellen Sweet, “Federal Legislative History Research: A Practitioner’s Guide to Compiling the Documents and Sifting for Legislative Intent,” <http://www.llsdc.org/federal-legislative-history-guide>.

⁴ Federal Tea Tasters Repeal Act of 1996, Pub. L. No. 104-128, 110 Stat. 1198 (1996).

⁵ H. R. Rept. No. 104-467 (1996). Confused by all this talk of regulation? Curious about how the FDA regulates tea now? See Richard J. McKinney, “A Research Guide to the Federal Register and the Code of Federal Regulations,” <http://www.llsdc.org/fr-cfr-research-guide>, for more information on researching federal regulations.

⁶ 142 Cong. Rec. S2838 (daily ed. Mar. 25, 1996).

⁷ The United States Board on Geographic Names, <http://geonames.usgs.gov/>.

⁸ The advent of the BGN might have served Pennsylvania well if it had been founded earlier, to provide a much-needed “we already have one of those” voice to the state’s tendency to name towns after places that already exist: California, Dallas, Germany, Houston, Indiana, Japan, Jersey Shore, Mars, Moon, Moscow, and Scotland, to name a few.

⁹ The BGN is so tiny it doesn’t even rate a listing on the A-Z Index of U.S. Government Departments and Agencies, which is conveniently linked at: Richard McKinney, “Federal Administrative Law: A Brief Overview,” <http://www.llsdc.org/assets/sourcebook/fed-admin-law.pdf> [<https://perma.cc/75M9-MRU8>]. This is only because it falls under the U.S. Geologic Survey.

has been protecting citizens from themselves since 1890.¹⁰ Before its foundation, official names were a hodgepodge of local determinations, bizarre spellings, and the occasional federally-recognized territory.¹¹

More importantly, the BGN administers the Geographic Names Information System (GNIS),¹² which allows the public to locate official place names and submit suggestions for official names.¹³ Despite the U.S. Geological Survey's motto, "Science for a Changing World," the BGN is a refreshingly uncontroversial agency.¹⁴

¹⁰ Donald Orth & Roger L. Payne, *Principles, Policies, and Procedures: Domestic Geographic Names* (1997), available at http://geonames.usgs.gov/docs/pro_pol_pro.pdf. It even has a policy on name duplication: "[n]ames proposed for unnamed geographic features that duplicate another name in the State or nearby in an adjoining State will not normally be approved by the U.S. Board on Geographic Names."

¹¹ President Harrison's Executive Order of September 4, 1890 created what was likely the understatement of the year when he said, "it is desirable that uniform usage in regard to geographic nomenclature and orthography obtain throughout the Executive Departments of the Government, and particularly upon the maps and charts issued by the various Departments and bureaus."

¹² Geographic Names Information System, <http://geonames.usgs.gov/apex/f?p=gnispq>.

¹³ The author submits, as direct evidence that "trolls" existed before the Internet, that there are no less than 27 places officially named "Nameless" by the USGS. The author also highly recommends searching for your own name in the database. You may have better luck than the author. See, e.g., Geographic Names Information System, Feature Detail Report for: Klepfer Cemetery, http://geonames.usgs.gov/apex/f?p=gnispq:3::NO::P3_FID:437375.

¹⁴ Unless, of course, you are a fan of President McKinley. The recent name change from Mount McKinley, the tallest mountain in North America, to its traditional name Denali, fell a bit under the radar last September. Jon Campbell, "Old Name Officially Returns to Nation's Highest Peak," Sept. 1, 2015, 5:15 PM, http://www.usgs.gov/blogs/features/usgs_top_story/old-name-restored-to-nations-highest-peak/?from=title.

OMG – THE INTERNET IS AMAZING

JOYCE MANNA JANTO
DEPUTY DIRECTOR OF THE LAW LIBRARY,
UNIVERSITY OF RICHMOND SCHOOL OF LAW

At the risk of sounding like an old geezer, reminiscing about walking to school three miles, in a blizzard, uphill, both ways, I have to say when it comes to legislative research, you kids today don't know how easy you have it. A patron requests a copy of a bill filed in Congress yesterday? You can direct her to Congress.gov, FDsys, or the sponsor's website. And those are just some of the free sources! Or maybe your patron wants to confirm language from a Congressional hearing. Easy-peasy you say, let's hop on over to the committee's website. It wasn't always so.

Back in the day (pre-Internet and the before E-Government Act of 2002), finding legislative materials was challenging. If you wanted a copy of a federal bill, your options were limited. You could go to a library that, as a member of the Federal Depository Program, selected the bills in microfiche. Or you could find a library that subscribed to the CIS Microfiche Library. Unfortunately, it could take months for a bill to appear in microform. If you wanted something right away, you had to call the House or Senate Document Room, which provided copies of bills and legislative documents. If you were truly desperate, you could call your Congressional Representative or Senator's office to request a copy. Finding transcripts of hearings and copies of committee reports was equally frustrating. Committee records required a trip to the National Archives. Transcripts of some hearings were published and could either be purchased from the GPO, found in a depository library, or in a library which subscribed to the CIS set.

And that was the beauty of the *Legislative Source Book*. The original *Source Book*, published in 1992, told you where you could find things. The Union List supplied information on the legislative collections, including already compiled legislative histories, of LLSDC members. It gave ILL policies and

contact information. Even more importantly, it listed key phone numbers. That bill you needed? Here were the numbers for both the House and Senate Document Rooms. Phone numbers for every federal entity that dealt with the federal legislative process were provided. With the *Source Book* as your guide, when you needed to compile a legislative history, you could be confident of finding either the information itself, or at least the appropriate contacts for that information.

The original edition also contained a chart outlining the six (yes, count them -- six) online sources for this material, compiled by Rick McKinney. Back then, you were limited to CCH's Electronic Legislative Search System (ELSS), CQ's Washington Alert, Legis-Slate (a subsidiary of the *Washington Post*), Legi-Tech (a subsidiary of McClatchy Newspapers), LexisNexis, or Westlaw. Westlaw at the time was not the robust source for legislative materials we now have. Instead, it largely served as a gateway to Dialog databases and CQ's Congressional Alert. Oh, and the kicker - most of these systems only covered the current legislative session.

I can just hear it now, the collective sigh of relief from you young'uns that you no longer have to go on these treasure hunts or use a "superfluous" guide like the *Source Book*. Au contraire, grasshopper. The *Source Book* is needed now more than ever. One mantra I have in teaching legal research is to "see if someone else has done the work for you." And with the *Source Book*, Rick and the other members of the LLSDC's Legislative Research SIS have done a tremendous amount of work for you. My other mantra is, "the Internet has made librarians more necessary, not less." If you look at the current version of the *Source Book*, you will discover that the creators have adapted this publication for the Internet era. Now, rather than a static union list, there are curated lists of sources -- compiled by people for whom this work is a passion -- for all manner of federal and state legislative research. Links are provided for websites that can provide accurate, authentic information.

Maybe even more useful than the source lists are the original articles by Rick such as "Federal Administrative Law: A Brief Overview" and "Federal Legislative History Research: A Practitioner's Guide to Compiling the Documents and Sifting for Legislative Intent." These publications are invaluable to both the novice and the more experienced researcher who may not conduct legislative research on a regular basis. They keep

researchers up to date on what can be found where -- either on free or commercial databases. Using the *Source Book* is still a way to save valuable research time.

PRESERVING THE LLSDC LEGISLATIVE SOURCE BOOK WITH PERMA.CC

ROGER SKALBECK

ASSOCIATE DEAN, UNIVERSITY OF RICHMOND LAW LIBRARY

With LLSDC's *Legislative Source Book*, Rick McKinney was constantly concerned about the collection's stability, functionality, and availability. With any major revision to the LLSDC.org website, Rick worked to ensure that content was accessible and that he and members of the Legislative Research SIS could keep it updated.

In an effort to preserve the *Legislative Source Book*, the collection's core elements were captured using the Perma.cc service. These links reference archived versions of each source, presented in parallel to its current form. There is more depth and detail than presented here, which shows the collection's complex and comprehensive coverage.

LLSDC'S LEGISLATIVE SOURCE BOOK
[[HTTPS://PERMA.CC/8FJ2-JBBA](https://perma.cc/8FJ2-JBBA)]

Research Guides and Explanations

- Drafting Federal Law, by Donald Hirsch, 2d ed. 1989
[<https://perma.cc/XE3S-76LD>]
- Federal Administrative Law: A Brief Overview, by Rick McKinney, 2015
[<https://perma.cc/75M9-MRU8>]
- Federal Legislative History 101, by Rick McKinney, 2014
[<https://perma.cc/E7HT-M4P6>]
- Federal Legislative History Research, by Rick McKinney and Ellen Sweet 2015

- [<https://perma.cc/6RED-4WL4>]
- House Legislative Counsel's Manual on Drafting Style, 1995
[<https://perma.cc/WA4G-K28D>]
- Legislative History Research for Beginning Practitioners, by Sue Ann Orsini, 2013
[<https://perma.cc/4U9J-ZZKK>]
- How to Compile a Federal Legislative History: For Beginners
[<https://perma.cc/AP5Z-D3LW>]
- Flowchart: Legislative History Research
[<https://perma.cc/DJW6-XJSC>]
- An Overview of the Congressional Record and Its Predecessor Publications, by Rick McKinney, 2012
[<https://perma.cc/WKE9-JS6D>]
- An Overview of the Development of U.S. Congressional Committees, by Michael Welsh, 2008
[<https://perma.cc/4MBZ-D93S>]
- An Overview of the U.S. Congressional Serial Set, by Rick McKinney, 2016
[<https://perma.cc/8HQA-HNZP>]
- Question and Answers in Legislative and Regulatory Research, 2014
[<https://perma.cc/M5WM-BV53>]
- A Research Guide to the Federal Register and the Code of Federal Regulations, by Rick McKinney, 2016
[<https://perma.cc/2PEH-X39D>]
- United States Statutes and the United States Code, 2015
[<https://perma.cc/AF4K-TRMN>]

Tables of Information

- Directory of Federal Law Libraries in the D.C. Metropolitan Area, 2008-2013
[<https://perma.cc/2XQZ-F6PD>]
- Executive Orders and Other Presidential Documents: Sources and Explanations, 2014
[<https://perma.cc/U9RY-3NXT>]
- Federal Equal Employment Opportunity Laws, Cases and Resources, 2015
[<https://perma.cc/UHQ4-HGUH>]

- Finding or Compiling Federal Legislative Histories Electronically, 2013
[<https://perma.cc/59ZR-VVBD>]
- Freedom of Information Act Resources, 2015
[<https://perma.cc/PNG8-J2CA>]
- General Legal Research Sites - Free and Commercial, 2015
[<https://perma.cc/J82K-H8UZ>]
- Laws, Policies and Performance Measures Relating to Federal Agency Web Sites, 2015
[<https://perma.cc/EM39-KDQ5>]
- Laws and Links Related to General Federal Agency Operations, 2015
[<https://perma.cc/NUA5-SA4G>]
- Legislative Histories of Selected U.S. Laws on the Internet: Free Sources, 2015
[<https://perma.cc/Q6QM-BPY6>]
- Legislative Histories of U.S. Laws on the Internet: Commercial Sources, 2015
[<http://perma.cc/GNT5-B5NX>]
- Quick Links and Sources to U.S. Court Opinions, 2015
<http://perma.cc/B4AD-Z9W5>
- Quick Links to House and Senate Committee Hearings and Other Publications, 2012
[<https://perma.cc/E5BS-9ZF3>]
- Selected Congressional Research Service Reports on Congress and Its Procedures, 2015 (also links to all Major Repositories of CRS Reports: Free and Commercial)
[<https://perma.cc/AGN5-L3WC>]
- Selected Telephone Numbers and Web Sites With Useful Legislative Information, 2015
[<https://perma.cc/M74A-T8WS>]
- Sources for Finding Mandated Reports to Congress by U.S. Federal Agencies, 2013
[<https://perma.cc/445E-GJDQ>]
- Sources for the Congressional Record: Free and Commercial, 2016
[<https://perma.cc/JSW6-3Z2R>]
- Sources for the Text of Congressional Bills and Resolutions, 1789 to Present, 2013
[<https://perma.cc/Y99R-GXNB>]
- Standing Committees of Congress: 1789 to Present, 2015

- [\[https://perma.cc/MB9L-AU9A\]](https://perma.cc/MB9L-AU9A)
State Legislatures, State Laws and State Regulations: Website Links & Telephone Numbers, 2014
[\[https://perma.cc/B7UR-YGVH\]](https://perma.cc/B7UR-YGVH)

Other Legislative Publications – Out of Print

- Legislative SIS Directory and Source Book, 1992
[\[https://perma.cc/5Q4P-XG6R\]](https://perma.cc/5Q4P-XG6R)
- Union List of Legislative Documents, 1994, 3rd Edition
[\[https://perma.cc/V86Q-NACL\]](https://perma.cc/V86Q-NACL)