

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

Four General Types of Federal Law

Constitutional Law – the U.S. Constitution and its amendments as interpreted by the Courts

Statutory Law – Legislative enactments such as U.S. public and private laws

Administrative Law – Executive promulgations such as executive orders & agency regulations, interpretations, orders, etc.

Case Law – Opinions of the U.S. courts concerning the law and the precedents they set

Four Traditional Ways to Publish Federal Laws

As Part of Other Publications – newspapers, bulletins, gazettes, books, loose-leaves, etc.

As Individual Pamphlets – slip opinions, slip laws, agency press releases, etc.

As Part of a Volume Series – U.S. court reporters, U.S. statute or session law series, federal regulation series, etc.

As Part of an Updated Subject Arrangement – subject compilations, U.S. Code, Code of Federal Regulations, etc.

Publications and Legal Citations for U.S. Constitutional, Administrative and Case Laws

Generally, most legal citations follow the format of a number representing a title or volume number, followed by a publication abbreviation, followed by another number representing a section number or beginning page number with perhaps other parenthetical information such as the year or date published. See: *The Bluebook: A Uniform System of Citation*, 18th ed. (Harvard Law Review Association, 2005).

Constitutional Law – the *U.S. Constitution* and its amendments are officially published in the certain past editions of the *U.S. Statutes at Large*, periodic House documents, the *U.S. Code* (published every six years) and other unofficial publications (e.g., U.S. Const. art. III, §2, cl. 2). Under judicial review the U.S. courts interpret the Constitution (e.g., *Marbury v. Madison* 5 U.S. (1 Cranch) 137 (1803)) and they also have the power of review over statutory law, administrative law and the case law of lower courts or prior court precedents.

Administrative Law – Executive orders of the President (e.g., Exec. Order 11,609, 3 C.F.R. 586 (1971-1975), *reprinted as amended in* 3 U.S.C. § 301 app. at 524-26 (2000)); proposed and final

rules and regulations published in the *Federal Register* (e.g., Request for Burden Reduction Recommendations, 71 Fed. Reg. 287, Jan. 4, 2006) or as parts and sections of the annual *Code of Federal Regulations* (e.g., FRB Equal Credit Opportunity Act Rule, 12 C.F.R. pt. 202 (2005)).

Case Law – Opinions/decisions of the U.S. Federal district courts published in the *Federal Supplement* series (e.g., Burt v. Rumsfield, 322 F. Supp. 2d 189 (D. Conn. 2004)), opinions of the U.S. circuit court of appeals published in the *Federal Reporter* series (e.g., American Bankers Association v. Gould, F.3d 1081 (9th Cir. 2005); opinions of the Supreme Court of the U.S. published in the official *U.S. Reports* (e.g., Roe v. Wade, 410 U.S. 113 (1973)) or the *Supreme Court Reporter* (e.g., Roe v. Wade, 93 S. Ct. 705 (1973), also at 35 L. Ed. 2d 147, 1973 U.S. LEXIS 159); and other courts.

Publication and Citation to U.S. Statutory Law

The Act of September 15, 1789, ch. 14, 1 Stat. 68, provides for publication of **U.S. laws in at least three state newspapers** and this continued until 1875. Unofficial publications like books, loose-leaves, bulletins and such still continue this practice (e.g., See definition of term “bank” in section 1 of the Federal Reserve Act at 1-002 F.R.R.S.).

With the 1789 Act the practice of publishing laws as individual pamphlets, called **slip laws** also began. This practice is continued today by the Office of the Federal Register which prepares public laws for publication by GPO (e.g., the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (codified in scattered sections of 11, 12, 15, and 28 U.S.C.)). The cite is also often given as just P.L. 109-8)

The United States Statutes at Large

Bound volume series that set out U.S. public laws chronologically include the *Laws of the United States* (1789-1814, by Folwell), and the *Laws of the United States* (1789-1845, by Bioren & Duane and others). These works were authorized by Congress, but privately published. However, in **1845**, another private publisher, Little, Brown & Co. of Boston, proposed a new edition of laws, the *United States Statutes at Large*, and became its first publisher. In Resolution 10 of March 3, 1845, 5 Stat. 798, the Attorney General was authorized to review and contract out the new edition. The new edition was to contain the Articles of Confederation, Constitution, public and private laws, foreign treaties, and Indian treaties, with footnotes indicating subsequent laws or repeals and applicable court decisions. Also to be concluded was a general index and appendix listing all acts, resolutions and treaties. The *U.S. Statues* is arranged in chronological order, each set of laws in a congressional session being a **statute** and each public or private law being a **chapter** in a statute. The public and private acts were grouped separately so that numerical gaps appear and since each Congress could have 2 to 4 sessions more than one law per congress could have the same chapter number. No unique numbering meant that approval dates and official long titles were often used to refer to prior acts by subsequent acts amending them (e.g., That the act entitled “An act to provide a national currency, secured by a pledge of United States stocks, and to provide for the circulation and redemption thereof,” approved February

twenty-fifth, eighteen hundred and sixty-three, is hereby repealed.). However, the *Blue Book* would cite this repealed law as Act of Feb. 25, 1863, ch. 58, 12 Stat. 665. The chapter citation system was continued until **1957 when public law numbers began to be used officially**. Eight volumes of the *U.S. Statutes* were initially published (covering the period 1789-1845) and the Secretary of State was empowered to contract with Little & Brown to furnish annual *Statutes At Large* to the government. From volumes 14-50 (39th – 74th Congresses, **1865-1938**) **each volume covered one Congress**. From volume 53 (76th Congress, **1939**) **to the present, each volume covers one congressional session**, which, since 1941, basically corresponds to one calendar year. With volume 18 (43rd Cong.; 1873-1875) of the *U.S. Statutes* the U.S. Government Printing Office, established in 1861, began publishing the *Statutes* under State Department auspices continuing the volume numbers of Little, Brown & Co. In 1950, the Federal Register Division (now **Office of the Federal Register**) in the National Archives was given responsibility to prepare the *Statutes at Large*.

Due to the difficult nature of determining what was current U.S. statutory law in any given subject area, Congress, in 1866, established a commission "to revise, simplify, arrange, and consolidate all statutes of the United States, general and permanent in their nature" (Act of Jun. 27, 1866, ch. 140, 14 Stat. 74). After much review by legal experts, the end product, the *Revised Statutes of the United States*, was enacted with 70 titles and published in part I of volume 18 of the *U.S. Statutes* (1875). The *Revised Statutes* entirely revises, reorganizes and consolidates of all permanent and general U.S. laws with the repeal of all prior law as of December 1, 1873. It is also legal evidence of the law and treaties contained therein. A replacement volume, the *Revised Statutes of 1878*, was published which made many corrections and updated the *Revised Statutes of 1873*. It is legal (and apparently prima facie) evidence of the law, but not conclusive evidence. See Act of Mar. 2, 1877, ch. 82, 19 Stat. 268 and Act of Mar. 9, 1878, ch. 26, 20 Stat. 27. See also 7 Cong. Rec. 1137, 1376-77 (1878).

Over time various changes have taken place in the way the *U.S. Statutes* are presented. For instance beginning with volume 33 (58th Cong., 1903-1905) the *Statutes* began **showing in the margin the bill number** or joint resolution that was enacted into law. In volume 35 (60th Cong., 1907-1909) the *Statutes* began assigning each public and private act a **unique public or private law number within a Congress** rather than a congressional session. This number was placed in the margin and at the heading of each slip law (e.g., Pub. No. 43 – 63rd Congress). In volume 55 (77th Cong., 1st Sess., 1941) the *Statutes* began using the title "Public Law" in the margin instead of "Public, No." Also in **1941** West Publishing (now Thomson West) began its publication, *U.S. Code Congressional Service*, which contains most of the U.S. *Statutes* and selected related legislative history documents. It was succeeded in 1951 by *U.S. Code Congressional and Administrative News*. With volume 65 (**1951**) **the Statutes no longer published treaties and international agreements**. As noted above, in 1957 public law numbers, instead of chapter numbers, began to be officially used in citations. Finally, in **1975** (vol. 89) the *Statutes At Large* began printing **each public law on a new page** thus allowing Statute page references to be included in the initial publication of individual slip laws. **Brief legislative history references also** began to be published in 1975 at the end of each law, which had been the practice on slip laws since 1963.

The United States Code

As time went on during the late 19th and early 20th centuries the difficulty of determining current statutory law became a problem once more as the *Revised Statutes* was not always used in enacting or amending new laws (nor could it unless one drastically changed the section numbering sequence). During this time a Criminal Code (1909) and a Judicial Code (1911) were enacted and various commercial publishers came up with their own subject arranged code (*U.S. Compiled Statutes Annotated* by West Publishing Co, *Federal Statutes Annotated* by Edward Thompson Co., *Barnes Federal Code* by Uriah Barnes and published by Virginia Law Books and the Bobbs-Merrill Co.). But beginning in 1919, in the 66th Congress, Colonel E.C. Little, Chairman of the House Committee on the Revision of Laws, began the work to codify U.S. statutory law. Measures to enact a 60 title code were introduced by him, and passed by the House in the 66th, 67th, and 68th congresses, but the Senate either did not take them up or rejected them as containing numerous errors. Finally, in the 69th Congress, after the House and Senate Revision of Laws committees, employed the help of West Publishing Co. and the Edward Thompson Co., a newly prepared **U.S. Code with 50 titles and laws in force as of December 7, 1925** (H.R. 1000), was passed by the House on April 19, 1926, to be “prima facie” evidence of the law until July 1, 1927, by which time it was assumed that errors could be found and corrected. However, the Senate, ultimately, did not go along with this compromise and **enacted the measure as prima facie evidence only**, with no effective date for it to be legal evidence of the law and no repeal of related prior law. As the House agreed to the Senate amendment no act was really adopted. At first sight, or on the face of it, **the U.S. Code is the law of the land, but it is a rebuttable presumption** that may be corrected by the production of unrepealed prior acts of Congress at variance with the *Code* (see 1 U.S.C. § 204 (2000)).

Later some 537 errors in the *Code* were found; 88 of them errors of substance. These errors were corrected by the Act of May 29, 1928, ch. 911, 45 Stat. 1008 as amended by the Act of Mar. 2, 1929, ch. 586, 45 Stat. 1540. Those acts also provided that **cumulative supplements to the Code**, under the supervision of the House Committee on Revision of Laws, be compiled and published at the end of each congressional session and that a **new edition of the Code** be prepared and published not oftener than once every five years and the practice became **every six years**. There have now been 12 new editions of the *U.S. Code* (1934, 1940, 1946, 1952, 1958, 1964, 1970, 1976, and 2000). Besides the official *U.S. Code* there are two unofficial commercial publications that update the *Code* each year with cumulative pocket parts and, following each section of the *Code* are additional notes and references to court cases and other material that may have interpreted a particular *U.S. Code* section. (*United States Code Annotated* (U.S.C.A.) by Thomson West and the *United States Code Service* (U.S.C.S.) by LexisNexis).

The desire by many to enact the *U.S. Code* into positive evidence of the law was eventually satisfied, in part. First, the **Internal Revenue Code was enacted in 1939**. This did not amend the *U.S. Code*, but **Title 26 of the Code exactly mirrors the Internal Revenue Code** so in essence, Title 26 of the *U.S. Code* is positive law (despite the misunderstanding of many U.S. tax avoiders who claim that they do not have to abide by sections of Title 26 as it is not positive law). Latter, the Internal Revenue Code of 1954 replaced the 1939 Code and the Tax Reform Act of 1986 renamed the 1954 Code as the Internal Revenue Code of 1986. Finally, beginning in the 1940's, certain titles of the *U.S. Code* were revised, codified and enacted to

positive law. The process has been gradual and done title by title over the past 60 years. **Presently, about half the titles of the U.S. Code have been enacted into positive law** (see *United States Code: List of Positive Law With Enacting Cites and Location to Revision Notes* at <http://www.llsdc.org/sourcebook/docs/usc-pos-law-titles.pdf>).

Since 1975, the **Office of the Law Revision Counsel** in the U.S. House of Representatives (with a staff of 18 attorneys) has been charged with the **task of preparing new titles for enactment** as well as preparing new editions of the *U.S. Code* and its annual cumulative supplements and for assigning *U.S. Code* sections to new law. In preparing titles for enactment a reviser's note is prepared for each newly prepared section that explains the derivation of the section and any changes that were made in the language. Statutory provisions omitted by the reviser as unnecessary by the reviser, but not repealed, are still valid law. The reviser's notes are published in the committee report (usually from the House Judiciary Committee) to accompany the legislation to enact a title and are then almost always placed in the note area following each related section of the revised and enacted title. **Only non-substantive changes are suppose to be made** in revised titles, but sometimes, to make language uniform, changes that appear substantive do appear in a newly enacted title of the Code. However, courts have ruled that changes to revised and codified laws can not be construed to change their effect unless such intention is clearly expressed in the reviser's notes (see *U.S. v. Neifert-White Co.*, 390 U.S. 228 (1968) and other cases referenced in the notes area of 1 U.S.C.A. § 204 and 1 U.S.C.S. § 204).

Publication of Proposed Legislation

Proposed legislation is published by GPO as separate House and Senate bills and resolutions (H.R. 45, S. 267, H.J.Res. 97, etc.). The vast majority of bills are not enacted, but those that are related to enactments become **integral pieces in the legislative history of a U.S. public law** along with congressional committee reports, congressional hearings, debates (published in the *Congressional Record*; e.g., 151 Cong. Rec. H13179-81 (daily ed. Dec. 22, 2005)) and other documents.

U.S. Government Printing Office

The U.S. Government Printing Office, established in 1861, prints all congressional documents. Traditionally, GPO's Superintendent of Documents has systematically distributed these documents to some 2500 Federal depository libraries around the country using a list of publication classes to be selected by the receiving libraries. To the stem of these classes are added additional numbers identifying specific documents, popularly called sudoc numbers. For many libraries the sudoc number is how congressional documents are organized and listed in their catalogs. Of course now, GPO Access has available in PDF most all congressional documents.