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>> This is Laura a GPO just coming on for an audio check. We will be getting started at 2:00 p.m. Eastern in three minutes.

>> Good afternoon everyone. How laws are made the legislature. My name is Laura Flynt and with me today is our presenter Sharon Bradley. The special collections librarian at the University of Georgia school of Law. Is possible for the schools archives, rare book room and portrait collection. She teaches in the introduction to legal research program for first-year law students. Presents a number of talk it topics legal issues in social media, technology used in law practice, and her latest interest technology labs and libraries. Before get started I'm going to walk you through a few housekeeping reminders. If you have any questions or comments on the presentation, please please feel free to chat them in the chat box located in the bottom right-hand corner of your screen. I will keep track of all questions that command and at the end of the presentation Sharon will respond to each of them. We are recording today's session and well e-mail a link to the recording and slides to everyone who registered for this webinar. We will be sending you a certificate a presentation using the e-mail you used to register for today's webinar. If anyone needs additional certificates because multiple people watch the webinar with you please e-mail FDLPoutreach@GPO.gov and include the title of today's webinar along with the names and e-mail addresses of those needing certificates. If you need to zoom in on the slides being shown by the presenter you can click on the full screen button in the bottom left side of your screen. To exit full-screen mode mouse over the blue bar at the top of your screen to expand and click on the blue return button to get back to the default view. At the end of the session will be sharing a webinar satisfaction survey with you. We will let you know when the survey is available and the URL will approve here in the chat box. We appreciate your feedback after the session is through today. Please keep in mind to reserve your comments about presentation value and value of the webinar for the survey. Use the chat box for questions you would like us to ask the presenter and any technical issues you may encounter. Now I will hand the microphone over to Sharon who will take it from here.

>> Thank you Laura for that lovely introduction. Good afternoon and welcome to the FDLP Academy and my presentation on how laws are made, the legislature. My contact information is there, my email, if you would like to communicate with me after the webinar, feel free to do so. I also should probably add I have actually licensed to practice law. I choose not to do so any longer but speaking about the law and legal topics is one of my favorite things to do. This is the description that was distributed through the FDLP Academy program, just so you can confirm that you are in the right webinar. Today I'm talking about the legislative branch of government and how lawyers use some of the documents that are generated during the legislative process. Have created a research guide to accompany the program. And I've included links to the documents I'm going to be discussing. generally, they are available on free government sites, but on the guide I did include the links to a few subscription sites, specifically ProQuest and [Indiscernible]. Only work for people that you GA but I included them as a reminder for you to check with your institution. Those of you at academic institutions may actually have access to these resources. This is what the page looks like so again you can be sure you found the right website. I did include what I call a rather aggressive info graphic, because it's really very thorough, it is award-winning, and you are able to get your head around the legislative process. I assure you that I am going to go through all of those steps this afternoon. There are a massive number of documents produced by Congress and I'm only going to deal with a small number. But they are the ones most used by lawyers and legal researchers.

>> We are probably all familiar with the well-known aphorism comparing laws and sausages. Is popularly attributed to Otto von Bismarck the chairman leader of the late 19th century. But research by quote investigator believes the credit should actually go to lawyer poet John Godfrey Sachs. With an attribution as early as 1869. Actually best known for his retelling of the Indian parable the blind man and the elephant. But at least with regard to law, I think that he is wrong. That a citizens we have to be

familiar with our legislative process. We need to see the work of our elected officials. The federal depository library program and the government publishing office make it possible to see what is happening. And while the FDLP and the GPO make a large number of documents available to us, it is incumbent upon all of us and incumbent upon any researcher to have knowledge of the legislative process. It is essential to tracing legislation and identifying the documents generated at each step. Who actually does this kind of research? Who is interested in these documents and why? Who includes people like your legislative efforts. Those of the people who work for the senators and representatives. You have your lobbyist represented in various trade associations and industries. And lots and lots of nonprofits. People who want to propose new legislation will look at previous legislation. What succeeded and what might not have succeeded. People and organizations with members and advocacy groups and policies, anyone who has an interest in how law changes or how changes to the law can affect people and places. Many of these people may have trained as lawyers but they work for associations -right-double-quote rations and monitor the legislative process to protect the interest of their association or corporation. They look at previously proposed laws for inspiration and closely follow the current legislative session. That in order to give structure to my presentation and keep within my allotted time, I'm going to focus on my world of attorneys and legal researchers. And the documents that are generated during the legislative process that are of most interest to us and how we use them. >> Bottom line, the reason lawyers are interested in the legislative documents is because of legislative intent. Broadly speaking, what is the point of this law? Lawyers represent clients for whom a law may have had a negative impact. One mechanism for representing a client is to challenge the law itself. Perhaps we can actually argue the law is unconstitutional. That is actually a very rarely successful argument. More often we can argue that the law as being carried out does not achieve the original goals or that it is being applied to broadly or too narrowly. The law was not intended to apply to particular individuals like our clients but to make those arguments we have to determine the legislative intent, and we do that I looking at the documents generated during the legislative process. These documents are collectively referred to as the statutes legislative history. Law dictionary finds legislative history as the background and events including committee reports, hearings, hearings, and floor debates leading up to the enactment available. Beginning with the original bill there can be lots of documents like various revisions, debates, hearings, hearings, and reports. There are also a lot of less useful documents like schedules or agendas, summaries, indexes although the those tend to be very useful to the legislators and their staff so they have a more internal use. But again for this presentation I'm going to further focus on a smaller number of documents that are most useful to attorneys. And in the research guide, in the box titled congressional activity I've listed the documents and where you can find them online. Generally, that that is that Congress .gov and Gov Info. Gov Info is the new planned successor. I did not include the [Indiscernible] links because I presume that they are going to be going away and they would be redirected URLs to Gov Info. The U.S. Constitution in article three sets out the powers of the court's. And one of those powers is statutory interpretation. All of the state constitutions also grant this power to the state courts. And the primary fundamental cardinal rule of that you Tory interpretation or construction of statutes is to determine and give effect to the attention of the legislature. A court should never adopt a construction or interpretation that nullifies, destroys, or defeats the intention of the legislature. I will be giving a presentation later on in the courts and go into more detail about how the courts interpret statutes but for today, I'm going to focus on the lawyers role in determining legislative intent and making an argument to the court that is most favorable to our clients. We all know that the legislative process begins with a bill. And almost more for nostalgia stake say, I did put in the little video, the Schoolhouse Rock video on I'm just a bill. Many of us have seen it and loved it. And it's almost touching in a way where the little Bill tries to make its way through the process. But bills are introduced by members of Congress and their respective chamber. Legislators can develop their own legislation, or their lobbyist or advocacy groups that try to work with legislators to develop legislation, to develop a bill

and so there are many sources and prorations but once a legislator has decided to take action, than it falls into one of the four types of legislation. There are bills and then there are three types of resolutions. The joint concurrent and simple. You can see there are some simple definitions of those resolutions. And also just to let you know on the research guide I did include this slide presentation there so you don't have to scramble to write down those definitions. And then there are also two types of bills. The public and private. I'm only going to talk about the public bills, because they are the one that pertain to the public at large or two classes of citizens. Bills can actually be useful when we are looking for legislative intent. Bills can go through a number of revisions where certain terms or ideas are developed, added or even eliminated. And a lawyer can argue to the court that these alterations may be some proof of a legislature's intentions. Lawyers tend to be interested in looking at the original bills to see how much the text has changed from the original version to the version that was enacted. Physically, the first reading is where the legislative process starts in the collection of documents begins. That collection is what I referred to as the legislative history. In the house, you have this quaint procedure where the representative physically places the bill in the hopper. And the hopper is that little been attached to the side of the clerk's desk. The Senate is a little more formal. The senator has to be recognized by the officer in charge and then they present their bill. Both chambers of Congress are a long way from electronic filing.

>> The bill is assigned a number which is a very important piece of the process, because because we use that to track the bill through the entire process. Only at the end after traversing both chambers and then going to the President -- the presidents desk does it become law and that it receives a new number, the Public Law number. After the first reading the bill is assigned to a committee. I feel at this point there ought to be some kind of ominous music because the odds of a bill ever getting any further are very small. Committees are referred to as the place bills go to die. Reportedly only about 15% of bills actually make it out of committee and a smaller percentage actually become law. About 4% to 5% of the bills filed. Most of the real work of Congress is performed by the committees. One of the most newsworthy and visible activities of committees is to hold a hearing. A committee can decide to hold hearings for numerous reasons including fact-finding or for political reasons. A common objective is gathering background information for legislation. They haven't introduced a bill yet just deciding whether one might be appropriate. They can even be held to foster support for a pending bill, maybe to gauge public opinion or even to try to achieve some kind of compromise. There are three particularly important publications that come out of the committee process thereof particular relevance to our search for legislative intent. The first our actual transcripts of the hearings. We can read the statement of the committee members which are often made at the beginning of the hearing. We get to read the testimony of the witnesses and the questions and answers between committee members and witnesses. The committee itself might have a discussion amongst the members that is recorded, and then there can be supplementary materials inserted into the record such as exhibits or related reports or statistics, letters, and taught even sometimes magazine and newspaper articles. Anything that is said by committee member could be a useful piece of information and supporting our legislative intent argument. The testimony is transcribed verbatim and compiled. The members of Congress or the members of the committee and the witnesses are allowed to make corrections to there grammar, syntax, syntax, correcting any typos that are there in this process is called smoothing. Off the record statements are excluded, and testimony about confidential matters disclosed in closed session is noted in the transcript, but it is not divulged. If you want a televised hearing you may hear statements that do not make it into the final official transcript. Another potentially useful document is the committee print. The committee may commission a special background research report on proposed legislation. Now the report could be prepared by the committee research staff, they could asked the Congressional research service to conduct the study, or goes to outside consultants. Committee Prince can be just a gold mine of information. Lots of things about statistics and background information. Legislative analysis. Really

lots of juicy stuff for the legislative process. Just a note, the the Congressional research service or CRS work exclusively for the US Congress and they were established in 1914 to provide nonpartisan policy and legal analysis to the members of Congress and to the committees. And they are particularly well regarded for the quality of their reports. As a previously mentioned most bills died committee. 85% of those introduced. Of the rest, occasionally some are reported unfavorably out of committee meeting that the committee recommends against passage. But generally if a bill is reported out of a committee, they are recommending passage of the bill by the larger body. After the work of the committee is completed, the bill goes back to the full chamber along with a committee report. That is our third important publication. The committee may have recommended changes that are included in the report along with their explanation for these changes. The committee reports themselves can also be very detailed, and include analysis, rationale, any issues that might have come up during a hearing. It may some cost projections. Sometimes the minority views of the committee members can be included. If there were rollcall votes taken during the committee meetings those are included. Information that came out of the committee Prince can also end up in the final committee report. And the report informs the other members of the chamber and it helps them in evaluating and eventually voting on the bill. Basically there are so the bills so many bills floating around that the members of Congress don't really have the time to read them all and try to understand them so these committee reports are very important to help them and help the legislative process as a whole.

>> The committee report is generally considered the most important document in terms of determining legislative intent. They are meant to represent the consensus of the committee after review of the relevant information and discussion. They have had a chance to really think about it and talk about it. Sometimes the committee report might even have a census that says the goal of this legislation is -- but that's not always the case either. Because the committee report is written by the people who have spent the most time studying the bill, and considering its impact, it is given the most weight in determining legislative intent. The bills, along with the committee report, go back to the full body for consideration and then floor debate and votes are scheduled. Generally speaking, the floor debates are not considered particularly important to the legislative intent, except for statements made by the individuals who actually had a role in developing the legislation. So generally the committee members. Their statements on the floor and in debate are given some weight and looking at legislative intent. So the Congressional record could then become an important piece of our legislative history. The Congressional record is the official record of the proceedings and debate of the US Congress. It is published daily when Congress is in session, and it began publication back in 1873 and continues up to today. Proceedings and debates before 1873 are available and I have included a link to those on the research guide. Many people believe that the Congressional record is a verbatim transcript of the floor debates. That they would be very wrong to think that. The Congressional record has often been criticized as a sham and a fraud because the legislators may legally alter the text and I am putting air quotes around legally. To most people, making corrections to the transcript for errors in grammar or syntax, that smoothing we had with the hearing transcript, most of us would probably agree that that is okay. But the fact is that some legislators made significant changes to their remarks. They can omit or even add remarks as well. In 1995, the house did enact a rules change to limit the doctoring of these remarks. Different typeface designate statements that were not actually delivered on the floor. The Senate marks inserted or undelivered speeches with lack bullets. But the legislators are able to be getting around by only delivering one sentence of a speech so it is not designated by bullets or different typeface. Within the printed or the online version of the Congressional record, it would appear that the whole speech would have been delivered on the floor, when actually the legislator or congressman or senator only delivered a sentence or may be a paragraph. Senators and Representatives are able to include undelivered text that are appended to the record and these are called extensions of remarks and that is obvious that they were not delivered on the floor. There's some estimate that as many as half of

the words in the Congressional record were never actually spoken. So you can see the problem that a research might have been relying on the Congressional record to find evidence of legislative intent. And my motion that I filed with the court, I need to be able to support my arguments with credible and accurate resources. Understanding of the issues with the Congressional record, a good lawyer is going to have to think about how they might verify what remarks actually were delivered. At the end of the year a final permanent bound Congressional record for the entire annual session is published. And even online it is still referred to as the bound edition. The bound edition can be further smoothed. So the annual accumulations can vary from the daily distance. Once a bill gets three chamber it has to be approved by the other chamber. If they are not identical then it is necessary to reconcile the differences through a conference committee. About 10% of laws have required a conference committee. At the committee issues a conference report which contains the text of this compromise legislation along with any background information that is relevant. You can believe that that conference report is probably a useful document in determining legislative intent. The last action is taken by the President. He can sign the bill into law, and those ceremonies are often a great photo opportunity, it -- the pens he uses, he gives those out as souvenirs and the President can also specifically veto a bill. If he does not sign the bill, it automatically becomes law after 10 days, except if Congress adjourns before the ten-day limit. And then the bill dies. That is referred to as a pocket veto.

>> The present often accompanies his signing by a signing statement this statement might make reference to the goals of the law. And then it is a law. A new law is assigned a number, the Public Law number number I referred to previously. The first part of the number is the actual number of the Congress. 105th Congress which were the years 1997 to 1998 and 18 to 1998 and 18 is a chronological designation. The legislative history portion of a process ends at this point. Remember it that Blacks Law dictionary definition used the phrase leading up to the enactment of a law. Now it has been enacted. But the law is self still has a couple more steps to go to or go through. All the work at this point has been done, the documents are all written and published, so the next stage of a law is to become a slip law and that is a pamphlet format for the law and individual little pamphlets. Sometimes this happens quickly just a couple of days within the enactment of the law. At the end of the Congressional session, the slip laws are accumulated numerically or chronologically and they are published as the United States statute at large. The statutes at large then become the permanent collection of all the laws and resolutions that were enacted during each session of Congress. The statutes at large is prepared and published by the office of the Federal Register. Every public and private law passed by Congress is published in the statutes at large in order of date or that chronological order. The citation format I have given you on the screen here though for the statutes at large, they use a volume and page number citation format. Once it makes it into the statutes at large here have a reference to volume 97, page 113 and then stack -- stat is the abbreviation for statutes at large. Also included are any concurrent resolutions, proclamations by the President, proposed and ratified amendments to the counts the tuition which are very rare, and reorganization plans. Up until 1948, treaties and international agreements approved by the Senate were also published in the statute at large. A little bit of library and nerdiness here in the publication of the statutes at large. The private publishing firm Little Brown and Company began publishing the statutes at large in 1845. Under authority granted by a joint resolution of the 20th Congress. In 1874 the if Doherty to publish was transferred to the US Government printing office. And that was under the direction of secretary of date. In 1950 the Department of State's responsibility for publishing statutes at large was then transferred over to the General services administration and the office of the Federal Register. Upon the establishment of the national archives and records administration in 1985, the archivist of the United States was given the authority to publish statutes at large and acting through the office of the Federal Register. Under the provision of title I section 112 of the United States code the printed edition of the statutes at large is legal evidence of the loss. If you want to have a copy of the laws the statutes at large are the volumes you want to have. And remember again the concurrent resolutions,

proclamations, amendments, all those kinds of things are in the statutes at large. And I just made a reference to the United States code. The United States code is the codification by subject matter of the general and permanent laws. Statutes at large are the chronological or numerical arrangement. Then what happens is the laws there are parsed out by subject and placed into the United States code and that procedure is what we refer to as codification, moving from the chronological to the subject orientation. The United States code has 54 broad subjects that are referred to as titles. And they are published by the office of the Council of the US House of Representatives. The US code was first published in 1926 and the next main addition was published in 1934. And subsequent main additions have been published every six years since 1934. In between those additions their annual cumulative supplements that are published to put the current laws out into the world. And I should tell you that most lawyers and legal researchers as a rule we don't really use the US code. The official code. Club we go coming out of the government. We tend to rely on commercial -- legal research services and commercial publishers for our access to the US code. There are basically three big legal research companies. Bloomberg, Lexis and Westlaw and so most of us tend to use those online services. And the versions of the US code there. The text of the code is going to be the same in all of them. What makes them different is that the commercial publications half they tend to be fast, particularly the print versions and they also have what are called editorial enhancements or annotations to help us research and understand the law. So we as a rule don't tend to use the official US code. Here in the law library, and our main reading room we have the US code and all of those additions since 1926 but right next to it are two commercial versions. One called the US code annotated and the other called the US code service. And so we use those unofficial printed versions also in addition to the online ones. I should mention at this point that 27 of the 54 titles four titles of the US code have been enacted into positive law. And what does that mean? When a title of the code is enacted into positive law, the text of the title, the text in the US code becomes evidence of the law. The titles that have not been an act did into positive law, that text in the US code is only prima facie evidence of the law. If there are any discrepancies, then the statutes at large still govern what is the law. And I am bringing up this point because it is common for -- I'm going to have to call them the conspiracy theory groups. That will often times mention that something isn't a law. They don't have to follow the law because it is not positive law. And that could technically be true that it might not be positive law. It was not enacted into positive law, but it still doesn't mean they don't have to follow the law. In that case, the law is what is in the statutes at large. They still have to follow the law, but it might be the version that is in the statutes at large.

>> The US code is just a more convenient mechanism for reading the law but that doesn't mean that someone doesn't have to follow the law even if it wasn't enacted into positive law. I know I am probably confusing a lot of people but it's an important point for those of us who love this sort of stuff about that distinction about positive law. And actually, that is how a law goes from being just a gleam in the eye of a legislator to the law of the land. I do have one final point about legislative intent. I did make the comment that the committee report is considered the most important document as part of our legislative history. Because that is the report that comes out of the committee after they have done all of their work. But lawyers we're going to use whatever documents that we think might be relevant or might be helpful in making our argument to the court so they could all be useful to us. There is also a divide amongst the judiciary about the role of legislative intent. The late Justice Scalia was a very well-known critic of the use of legislative intent and his position was that basically if the intent of a statute was not clear than it was the job of the legislature to fix it. Others argue that trying to make statutes absolutely crystal clear could mean that we never actually have any laws some of us might say that's a good thing but the process would become hopelessly bogged down. One particularly important point of legislative intent is it provides guidance to the administrative agencies when developing regulations. And I'm going to talk more about that during the presentation on administrative agencies. And there

you have how laws are made, in a very short period of time. And hopefully there are some questions to answer.

>> Thank you so much Sharon. We do have a couple questions. One is from Barbara. What is the difference between first reading an introduction of a bill?

>> Technically speaking there isn't any difference. I think most of us would just say introduction of a bill because it is a more understandable term. The first reading is the introduction of the bill. But that is that funny little process where the legislator has to walk up and drop the bill into the hopper in the house or has to stand up and be recognized in the Senate before introducing their bill. Does that clarify that?

>> It does. She says thanks.

>> We call it first reading. Generally speaking, in the house, the clerk reads a brief summary of the bill in the same thing in the Senate. The senator doesn't generally read the entire text of the bill. They read the executive summary.

>> Okay. And from Albert, you discussed the situations where a legislator edits his comments before publication in the Congressional record and/or seeks to add -- does it happen the legislator seeks to remove statements on the floor?

>> Oh yes. That also happens. That does happen as well. I think that might be a little tougher so to make. But it does happen. Which is why it is a tricky thing to rely on what you see in a Congressional record, because you are not quite sure what happens there because they do sometimes add extra words and things like that. So yes -- I'm not sure how to say that other than it seems kind of shifty and away. That is just the culture.

>> And from Sarah, do you have any favorite laws to use for examples to show legislative intent?

>> Actually, I do not. I was going to say I have some favorites when I'm talking about regulations because the regulations get really weird. So I do have favorite regulations to talk about but I have to admit I don't actually have favorite laws to talk about. But I'm going to make a note and I'm going to get some.

>> Nice. And from Karina, are you saying that if it is in the United States Code as a positive law. If not how do we know something is a positive law?

>> I think I have the list of titles that have been an act did into positive law and I will put those in the research guide. I have them somewhere. I think just within my PowerPoint presentation. So I'm going to copy that list of numbers and I will put them in the research guide so it literally is just about half of the titles have been formally enacted. Into law.

>> Okay. That's all the questions I see for the moment. We will certainly take another couple of minutes and if anybody else has any more questions please do chat them into us. In the meantime, Ashley will put up our satisfaction survey for the webinar and we would appreciate it if you fill that out. Stay on the line for another minute or two and see if there are any less questions.

>> Mark here I see there's a comment about seeing the slides now. I have already posted the slides on the research guide. The box on the left if you scroll all the way to the bottom, the slides are there.

>> Thanks Sharon and the slides will also be in we will send everybody who registered an e-mail and when we put up the archives with the recording the slide deck will also be in there. To places where you can get the slides. Jenny came in about five minutes late. Where's the research guide? Ashley's going to chat the link out to you Jenny. Lots of thanks. I think that's it for questions. Sharon is doing a whole series for us so she will be back next Tuesday October 10 with how laws are made the administrative agencies. Please join us again. And thank you so much Sharon. Thank you everybody who attended, and we will see you next time.

>> Thank you very much, goodbye. [Event Concluded]