

INTRODUCTION: THE RECORDS OF CONGRESS

The Founding Fathers believed that government's authority rested on the consent of the governed. To create a more perfect union, the Framers of the Constitution entrusted Congress, the branch of government directly responsive to the people and the defining institution of representative democracy in America, with a broad range of powers and responsibilities. The records of Congress represent a rich documentary legacy to the nation. They reveal not only the legislative branch's central role in the federal government, but also its responsibility to represent and reflect the will of the people. To understand the American democratic system, one must study the history of the United States Congress.

In the 1930s the National Archives surveyed the records of both the House of Representatives and the Senate as part of a comprehensive examination of federal government records. Archivists found the records on Capitol Hill contained a "great wealth of material touching every phase of our national existence" which constituted "perhaps the most valuable collection of records in the entire Government." This assessment remains true today. What has changed is that, while the House and Senate retain ownership of their records, most of the records have been transferred to the National Archives where they are administered by the Center for Legislative Archives.

Preservation of Senate records owes much to the fact that in 1789 the Senate elected as its secretary, Samuel Allyne Otis of Massachusetts, whose record-keeping accomplishments have stood the test of time. Otis, a former delegate to the Continental Congress, brother of the noted patriot James Otis, and close friend of John Adams, served as secretary for a quarter of a century until his death in 1814. The House was not as fortunate in its choice of its first clerk, John Beckley, who served from 1789 to 1797 and from 1801 to 1807. Beckley was well regarded by his contemporaries and came to his post with superb qualifications. A confidant to Thomas Jefferson and James Madison, he had served ten years as clerk of the Virginia House of Delegates. By today's standards, however, his recordkeeping practices left something to be desired.

From the beginnings of the federal government until the initial transfers of legislative records to the National Archives in the 1930s, congressional documents were housed in offices, attics, basements, and storerooms. In 1814 the records of Congress suffered a major catastrophic incident when British troops burned significant House files that the clerk's staff had been unable to evacuate. Yet during the intervening years both House and Senate records suffered catastrophes no less significant than that of 1814 through neglect, vermin, and pilferage.

The rules of Congress also affected the extant record. Before 1946, Senate committees were instructed to return to the secretary of the Senate at the end of each Congress all papers "referred" to the committee; but the rule (at that time Rule XXII) said nothing of materials received directly by the committee or created by the committee. Also, it was not clear whether the records of special and select committees were under the secretary's jurisdiction. The clerk of the House was more fortunate in this regard. In 1880 House rules required all committee records to be delivered to the clerk within three days after the final adjournment of Congress and appropriate committee permission be obtained for the withdrawal from the custody of the clerk of any records. This provision greatly increased the clerk's control over these materials.

By the turn of the twentieth century, both houses of Congress had to deal with the problem of overcrowded records storage. In 1901 the House temporarily solved this problem by transferring some 5,000 of its oldest bound volumes to the newly constructed Library of Congress. Although physical custody of these records was lodged with the librarian of Congress, the records remained "a part of the files of the House . . . subject to its orders and rules." During the next forty years, clerks of the House constantly added bound and unbound records to the original deposit; and by 1940 the House records at the Library of Congress exceeded those retained by the House itself.

While the House records were at the Library of Congress, the staff of that agency's Manuscript Division culled from the core collection some sixty cubic feet of petitions, private claims, executive branch reports and papers which the librarian described as reflecting "the growth and fluctuations in public opinion on all the great questions . . . before Congress." Still more House and Senate records were removed from their original file designations in conjunction with the publication of the Territorial Papers of the United States, begun in the mid-1920s. The Library of Congress collection of House records and the House and Senate territorial papers files are today discrete segments of the holdings of the Center for Legislative Archives. The printed House journals from the Clerk's office were retained for the Rare Book Division in the Library of Congress.

The National Archives was established in 1934 as the depository for the historical records of the executive, legislative, and judicial branches of the federal government. A preliminary survey by the National Archives in late 1936 revealed that Senate records, stored in the Capitol, were not receiving adequate care. The Archives report indicated some materials were on the floor in damp rooms where they were subject to mold and fungi. Other records showed signs of damage due to insects and rodents. The National Archives recommended the Senate transfer all but its most recent records to the new Archives building. In April 1937 the Senate sent approximately 4,000 cubic feet of records to the National Archives.

The transfer of House records came a decade later. In late 1936 the archivist of the United States received permission from the clerk to examine House records. A comprehensive survey revealed conditions even more distressing than those observed for Senate records. In June 1937 the House Committee on the Library favorably reported a resolution providing for the transfer to the National Archives of all House records that the clerk deemed unnecessary for current House business. For a variety of reasons, however, the House declined to transfer its records to the National Archives for nearly a decade.

In December 1944, Congress formed a joint committee to explore its administrative and legislative operations. This gave the National Archives a chance to present its case on a whole range of congressional records problems. The result of the joint committee's deliberations was the Legislative Reorganization Act of 1946. Among other reforms, the act required congressional committees to maintain a record of their proceedings. It provided that a legislator's committee staff and personal staff had to remain separate, thereby reducing the possibility that personal papers and committee records would be intermixed. In addition, the statute gave the Secretary greater authority over all Senate committee records and required the House to transfer all of its records for the first 76 Congresses (through 1941) to the National Archives. Finally, it directed the secretary and clerk, acting jointly at the close of each Congress, to obtain all non-current records of the Congress and of each committee and "transfer these records to the National Archives for preservation, subject to the orders of the Senate or the House of Representatives, respectively." These statutory provisions today appear in Senate Rule XI and House Rule XXXVI.

Within two months of the act's passage, the clerk transferred 7,500 cubic feet of House records to the National Archives. The act implied that the House and the Senate were to keep in their custody the records of the two most recent Congresses for the transaction of current business. In the intervening forty-five years both houses of Congress have transferred their records to the National Archives on a regular basis.

The passage of the Federal Records Act of 1950 completed the legal structure that currently governs the records of Congress. This act empowered the administrator of General Services (an authority since transferred to the archivist of the United States) to accept for deposit within the National Archives "the records of any Federal agency or of the Congress of the United States that are determined by the Archivist to have sufficient historical or other value to warrant their continued preservation by the United States Government."

Presently each house of Congress has a rule that governs access to its records. Although both Senate and House investigative records and other records potentially detrimental to personal privacy are closed for fifty years, most other unpublished Senate records are available for public inspection twenty years after their creation, and most House records are available for research when they are thirty years old. In addition the House rules require researchers to obtain authorization from the clerk before they can have access to unpublished House records.

How the National Archives administered legislative records has varied over the years. From 1938 through 1949 it cared for the records of Congress first in the Division of Legislative Archives and then in the Legislative Reference and Records Division. Over the next thirty-six years the responsibility for House and Senate records rested with a succession of divisions, sections and branches. Only in 1985 did the National Archives re-establish a separate, more visible unit for legislative archives in the Legislative Archives Division. In October 1988 as part of yet another reorganization, the National Archives changed the division's name to the Center for Legislative Archives. At the same time the newly established Center gained custodial responsibility for the 20,000-cubic-foot collection of U.S. government publications that the superintendent of documents had begun assembling in the 1890s. The last major change affecting legislative records occurred with the enactment of Public Law 101-509 (November 5, 1990). This act created the Advisory Committee on the Records of Congress; upgraded the position of director, Center for Legislative Archives; and provided for a "specialist in congressional history" to be added to the Center's staff.