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# THE SEARCH FOR INTENT: AIDS TO STATUTORY CONSTRUCTION IN FLORIDA

ROBERT M. RHODES,\* JOHN WESLEY WHITE,\*\*  
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## I. INTRODUCTION

Statutory construction is the inevitable consequence of the separation of powers doctrine. Primary lawmaking authority in American government is vested in the legislative branch, while the judiciary has the duty to interpret laws to further the legislative will. This latter obligation has compelled the courts to develop techniques to guide their search for the intent of a statute where the language is unclear.

These techniques, often called aids to construction, may be classified as either intrinsic or extrinsic. Intrinsic aids confine the search for statutory meaning to the four corners of the statute. Included in this category are familiar canons of construction, such as *ejusdem generis*<sup>1</sup> and *expressio unius est exclusio alterius*.<sup>2</sup> Extrinsic aids, on the other hand, contemplate matters outside the statute. Included in this class are conditions at the time of the enactment, the history of related legislation, administrative constructions, and evidence of legislative intent reflected during the process of enactment.

This analysis focuses on the latter category of extrinsic aids and includes committee reports, statements of sponsors and other legislators, transcripts of committee hearings and floor debates, and house journals.<sup>3</sup> This article will consider the value of these materi-

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1. "[W]hen an enumeration of specific things is followed by some more general word or phrase, then the general word or phrase will usually be construed to refer to things of the same kind or species as those specifically enumerated." *State ex rel. Wedgworth Farms, Inc. v. Thompson*, 101 So. 2d 381, 385 (Fla. 1958).

2. "[E]xpress mention of one thing is the exclusion of another . . . ." *Dobbs v. Sea Isle Hotel*, 56 So. 2d 341, 342 (Fla. 1952).

3. For convenience, the terms "extrinsic aids" and "statutory history" as used herein refer exclusively to this genus of materials, although they are generally regarded as embracing all matters outside the statute.

als to judicial interpretation of statutes and will explore options for improving the availability of reliable extrinsic aids in Florida. The disposition of Florida courts to recognize these materials will also be analyzed.

## II. PLAIN MEANING RULE

The cardinal rule of interpretation is that "a statute should be construed so as to ascertain and give effect to the intention of the Legislature as expressed in the statute."<sup>4</sup> Many statutes are clear and unambiguous, and the courts normally will not apply rules of construction to question the effect of clear statutory language. "Where the legislative intent as evidenced by a statute is plain and unambiguous, then there is no necessity for any construction or interpretation of the statute, and the courts need only give effect to the plain meaning of its terms."<sup>5</sup> This principle, known as the "plain meaning rule," requires judicial determination of statutory ambiguity as a prerequisite to judicial construction. The rule has an important qualification, however:

When the legislative intent is clear from the words used in the enactment, courts are bound thereby and may not seek a meaning different from the ordinary or common usage connotation of such words unless, upon a consideration of the act as a whole and the subject matter to which it relates, the court is necessarily led to a determination that the legislature intended a different meaning . . . .<sup>6</sup>

As a practical matter, the question of whether the meaning is "plain" often generates controversy. Harry Willmer Jones' comment on the precision one can expect from language is instructive:

The statutory proposition must be expressed in words, and words are notoriously inexact and imperfect symbols for the communication of ideas. Even if it be assumed that careful selection of the statutory language will communicate to later interpreting judges the same connotations, or general meanings, that the draftsman had in mind, the infinite number of possible combinations of fact is certain to cause some doubt as to the effect of the statute in particular cases. Careful and expert draftsmanship may reduce the

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4. *Deltona Corp. v. Florida Pub. Serv. Comm'n*, 220 So. 2d 905, 907 (Fla. 1969).

5. *State v. Egan*, 287 So. 2d 1, 4 (Fla. 1973).

6. *Garner v. Ward*, 251 So. 2d 252 (Fla. 1971); 2A C. SANDS, *SOUTHERLAND STATUTORY CONSTRUCTION* § 48.01 (4th ed. 1973).

incidence of interpretative doubts; it can never make of statutory interpretation a purely mechanical process.<sup>7</sup>

The effect of the plain meaning rule is to spur litigants whose interests are advanced by construction to seek to persuade the court that the statute is ambiguous. Conversely, even the most doubtful statutory language will be "plain" in its meaning to the party whose cause will suffer if the rules of construction are invoked.

Moreover, the determination that no ambiguity is present does not foreclose construction. There is still room for dispute over whether the legislature really meant what it so clearly expressed.<sup>8</sup> Assuming, however, establishment of prima facie ambiguity, what means will the courts employ to discern legislative intent?

### III. EXTRINSIC AIDS: THE ARGUMENTS

Justice Frankfurter once referred to statutory construction as "alchemy."<sup>9</sup> Surely intrinsic aids warrant such a characterization. These canons with their mystical Latin names confine the search for meaning to the statute itself. In fact, intrinsic aids do not really represent a search for "meaning" since their application is rigorously structured: simply apply the proper maxim and behold the legislative intent.

Unfortunately, statutes are not identical, and legislators and draftsmen do not know which maxim will be applied in the future to elucidate intended meaning. To be sure, the canons do not always destroy the intent of the legislature. It seems illogical, however, to rely on them exclusively when direct evidence of legislative intent is within reach. For this reason, the trend in the United States since the turn of the century has been increasingly to recognize extrinsic aids to statutory interpretation.<sup>10</sup>

Although extrinsic aids are frequently unavailable at the state level,<sup>11</sup> courts will rely on them in varying degrees when given the

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7. Jones, *Extrinsic Aids in the Federal Courts*, 25 IOWA L. REV. 737, 739 (1940) (footnote omitted).

8. See *Gay v. City of Coral Gables*, 47 So. 2d 529 (Fla. 1950).

9. *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448, 462 (1957) (Frankfurter, J., dissenting).

10. See Stringham, *Crystal Gazing: Legislative History in Action*, 47 A.B.A.J. 466 (1961) [hereinafter cited as *Crystal Gazing*]. See also Jones, *supra* note 7.

11. Although the trend in recent years is to improve recordkeeping in state legislatures, a great deal of historical data remains unavailable in most states. Availability generally depends on the nature of the information in question. Committee reports, for example, are far more likely to be available than transcripts of floor debates in a given jurisdiction. See G. FOLSOM, *LEGISLATIVE HISTORY: RESEARCH FOR THE INTERPRETATION OF LAWS* 5-6 (1972); THE COUNCIL OF STATE GOVERNMENTS, *THE BOOK OF THE STATES*, 1970-71, at 70-72 (1971).

opportunity. The dual reasons underlying the judicial willingness to consider extrinsic materials are noteworthy. First, if "legislative intent" is the criterion of decision, it seems clear that the meaning which the legislators themselves attributed to any measure during the lawmaking process has evidentiary value. "If the purpose of construction is the ascertainment of meaning, nothing that is logically relevant should be excluded."<sup>12</sup> Second, legislative history, when available, allows a court to avoid "all the artificialities which make the rules of statutory construction an impenetrable tangle of waste words. State court opinions are replete with archaic and meaningless maxims which achieve results but which guarantee neither achievement of legislative policy nor professional respect."<sup>13</sup>

The trend toward increasing use of legislative materials also has its critics. The principal objections and their counterarguments follow.

(1) One objection reduces "legislative intent" to a legal fiction. There is no such thing, it is said, as a collective purpose underlying a particular enactment. Different legislators may have different purposes in mind when they vote. Justice Jackson, in *United States v. Public Utilities Commission*, argued for interpretation

by analysis of the statute instead of by psychoanalysis of Congress. When we decide from legislative history, including statements of witnesses at hearings, what Congress probably had in mind, we must put ourselves in the place of a majority of Congressmen and act according to the impression we think this history should have made on them. Never having been a Congressman, I am handicapped in that weird endeavor. That process seems to me not interpretation of a statute but creation of a statute.<sup>14</sup>

The answer to this argument is that lawmakers must be presumed to possess a general understanding of the meaning and legal effect of their enactments. If legislative history is available which clearly reveals this understanding, a court is more likely to reach a result consistent with the legislative will. On the other hand, if the historical evidence is itself ambiguous, the solution is for courts to accord it less weight.

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12. Frankfurter, *Some Reflections on the Reading of Statutes*, 47 COLUM. L. REV. 527, 541 (1947) [hereinafter cited as *Reading of Statutes*].

13. Horack, *Cooperative Action for Improved Statutory Interpretation*, 3 VAND. L. REV. 382, 387 (1950).

14. *United States v. Public Utils. Comm'n*, 345 U.S. 295, 319 (1953) (Jackson, J., concurring). *But see* *Boone v. Lightner*, 319 U.S. 561 (1943), in which Justice Jackson arguably relied on considerable statutory history while professing otherwise.

(2) This criticism also has refinements. Legislatures, it is argued, often enact deliberately vague statutes, casting upon the courts the burden of decisions which lawmakers wish to avoid. Thus, the search for statutory history may produce a frustrating scenario wherein judges are "running in circles with the legislators, looking for something that isn't there . . . . The judges . . . are passing the buck to the legislature, the same buck originally passed to the court in the form of unclear words."<sup>15</sup>

This proposition does not withstand scrutiny. It ignores the limits imposed on judicial decisionmaking by the doctrine of separation of powers. As Professor Horack observed, that doctrine is not absolute: "The necessary legislative effect of many interpretative decisions is so clear that it hardly can be imagined how the court might discharge its judicial functions without interstitially exercising a limited legislative function."<sup>16</sup> To suggest that the construction of a statute involves an element of judicial legislation is one thing; to suggest that a court should ignore available information that would minimize this element is quite another. The primary responsibility for enunciating the policy and purpose of legislation is with the legislature.<sup>17</sup>

If the courts must ignore statutory history and must also avoid making legislative policy, what remains to guide them? Their personal predilections? Anachronistic canons of construction? Even assuming that extrinsic aids to which a court might otherwise resort are "misleading," is there any reason to believe that adherence to the canons will produce a better result?

Some ambiguity must be expected in statutes. The legislature cannot be expected to foresee every factual situation that may arise, for "[s]tatutes come out of the past and aim at the future."<sup>18</sup> However, deliberate ambiguity should not be presumed as a basis for rejection of extrinsic aids.

(3) It is often suggested that legislative history is "manufactured" in a deceptive fashion. Many statements appearing in the Congressional Record, it is said, are not offered in debate or are made merely to establish "legislative intent" consistent with

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15. Wasby, *Legislative Materials as an Aid to Statutory Interpretation: A Caveat*, 12 J. PUB. L. 262, 267 (1963) [hereinafter cited as *A Caveat*].

16. Horack, *supra* note 13, at 389.

17. Justice Frankfurter once observed: "The vital difference between initiating policy, often involving a decided break with the past, and merely carrying out a formulated policy, indicates the relatively narrow limits within which choice is fairly open to courts and the extent to which interpreting law is inescapably making law." *Reading of Statutes*, *supra* note 12, at 534.

18. *Id.* at 535.

the declarant's wishes.<sup>19</sup> Fordham and Leach respond to this contention:

Abuses in the form of manufactured legislative history would be disturbing if beyond control. But are they? Where the facts as to the ersatz character of legislative history can be ferreted out by opposing counsel that material can, of course, be discredited. We favor enlargement of the sources of legislative interpretation at the same time that we would eliminate formal rules in the nature of presumptions. Instead of indulging assumptions we would weigh all relevant data.

A concomitant of a thorough legislative process at the state level would be the development of committee reports, hearings and other documents which constitute 'legislative history.' It, thus, would enrich the sources of interpretation of state statutes.<sup>20</sup>

(4) An additional criticism is that use of extrinsic aids abrogates a fundamental legal premise—that the citizen is held accountable for his actions because he is presumed to know the governing law. A citizen, however, should not be punished for violating a committee report or a sponsor's statement during debate.<sup>21</sup>

These objections are persuasive. Were it not for the existence of adequate means to avoid these pitfalls, the courts would certainly discard the use of extrinsic materials. However, when basic rights are at issue, the courts may construe a statute prospectively<sup>22</sup> or find it unconstitutionally vague.<sup>23</sup> The light which statutory history

19. Nunez, *The Nature of Legislative Intent and the Use of Legislative Documents as Extrinsic Aids to Statutory Interpretation: A Reexamination*, 9 CAL. W.L. REV. 128 (1972) [hereinafter cited as *A Reexamination*]; *A Caveat*, *supra* note 15, at 264.

20. Fordham & Leach, *Interpretation of Statutes in Derogation of the Common Law*, 3 VAND. L. REV. 438, 455 (1950).

21. See generally *United States v. Korpan*, 354 U.S. 271 (1957). In a blistering attack on judicial use of legislative history, one commentator argues:

There was no reason to believe that [litigant] Korpan was in the visitor's gallery when Senator So-and-So made his speech. How then was Korpan bound to know that the speech was part of the law? Is everyone in the United States charged with knowing every word that is uttered on the floors of Congress? Must we read all of the *Congressional Record* every day—and remember it day after day, year after year, in order to keep out of jail? Is that due process of law?

*Crystal Gazing*, *supra* note 10, at 467. On another occasion, the United States Supreme Court regarded use of extrinsic aids as a practical circumvention of the ex post facto clause: "If a state legislature is barred by the *Ex Post Facto* Clause from passing such a law, it must follow that a State Supreme Court is barred by the Due Process Clause from achieving precisely the same result by judicial construction." *Bouie v. City of Columbia*, 378 U.S. 347, 353-54 (1964).

22. *Bouie v. City of Columbia*, 378 U.S. 347, 353 (1964). See also *Keeler v. Superior Court*, 470 P.2d 617 (Cal. 1970).

23. *Lanzetta v. New Jersey*, 306 U.S. 451 (1939).

sheds on legislative meaning need not blind a court to the constitution.

Each of these arguments has been raised frequently in objection to the use of extrinsic aids to statutory construction. The preponderance of case law dismisses attempts to limit the evidence which the courts may consider, although the weight accorded such evidence varies from case to case.

Recognizing the lack of clearly defined general standards for use of extrinsic aids, we now turn to an examination of specific aids. We shall consider federal and other states' court decisions on the use of specific aids in an effort to determine appropriate criteria which might be of use in Florida. In this process, we will also see the manner in which these specific aids are now used in Florida.

#### IV. REPORTS OF STANDING COMMITTEES

Standing committee reports are frequently relied on by the courts to determine legislative intent.<sup>24</sup> Committee reports have been said to be "the most persuasive indicia of legislative intent."<sup>25</sup> In *Zuber v. Allen*,<sup>26</sup> the United States Supreme Court gave virtually conclusive weight to a house report that arguably conflicted with a less "impressive" floor debate. Woodrow Wilson depicted the committees as "little legislatures,"<sup>27</sup> and scholars have equated committee intention with legislative intention:

The great weight which is attached to the reports of legislative committees indicates that the federal courts, within certain limits,

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24. *Wheeler v. Barbara*, 417 U.S. 402 (1974); *Passenger Corp. v. Passengers Ass'n*, 414 U.S. 453 (1974); *Miller v. Monrean*, 507 P.2d 771 (Alaska 1973) (House Judiciary Committee Report); *Southern Pac. Co. v. Industrial Accident Comm'n*, 120 P.2d 880 (Cal. 1942) (Congressional committee report); *People v. Swinney*, 46 Cal. App. 3d 332 (Cal. 3d Dist. Ct. App. 1975) (Assembly Committee on Criminal Procedure report); *Menzies v. Fisher*, 334 A.2d 452 (Conn. 1973) (committee member's statement in presenting bill regarded as committee report); *People v. Touhy*, 201 N.E.2d 425 (Ill. 1964); *Lightbody v. Russell*, 58 N.E.2d 508 (N.Y. 1944) (Congressional committee report); *North Carolina Corp. Comm'n v. Southern Ry.*, 117 S.E. 563 (N.C. 1923) (statement by member of committee in charge of bill—federal statute); *Sorlien v. North Dakota Workmen's Comp. Bureau*, 84 N.W.2d 575 (N.D. 1957) (Congressional committee report); *Central Trust Co. v. Gilardi*, 186 N.E.2d 771 (Ohio Ct. Com. Pl. 1962) (committee comments in annotated code); *State v. Laemoa*, 533 P.2d 370 (Or. Ct. App. 1975) (committee minutes); *City of Philadelphia v. Phillips*, 116 A.2d 243 (Pa. Super. Ct. 1955).

25. *Housing Auth. v. United States Hous. Auth.*, 468 F.2d 1, 6 n.7 (8th Cir. 1972). In *Getman v. NLRB*, 450 F.2d 670, 673 n.8 (D.C. Cir. 1971), the court attached greater weight to a Senate report where the House report was not published until after the Senate had already passed its bill.

26. 396 U.S. 168 (1969).

27. G. FOLSOM, *supra* note 11, at 26 (citing W. WILSON, CONGRESSIONAL GOVERNMENT 113 (1913)).



have come to accept the 'intention' of the committees as the 'intention' of Congress. Formal committee reports, in which prospective enactments are explained to the general membership of the House and Senate, are the most favored of all of the extrinsic aids, and there are many decisions in which the courts have been greatly influenced in their interpretation of doubtful statutory language by the construction placed upon the respective bills in the reports of House, Senate, and conference committees.<sup>28</sup>

"Further extension of the use of this aid in state courts depends only on the development of the standing committee report in the state legislatures to something more than a mere recommendation."<sup>29</sup>

The primary justification for attaching great weight to standing committee reports is explained by Folsom:

The primary function of the committee report is to inform the house to which the committee reports—to apprise that body of the substance of the committee's recommendations and its reasons therefor. To the extent that the house passes the provisions as recommended by the committee, it is considered to have adopted as its own the views stated in the report.<sup>30</sup>

An example of the weight given standing committee reports is *Gooch v. United States*,<sup>31</sup> in which the clear legislative purpose disclosed by a standing committee report prevailed over the rule of *ejusdem generis*.<sup>32</sup>

The principal criticism of the use of committee reports as an aid to construction is that the reports do not represent true legislative intent since they are generally prepared by only a few legislators who fully appreciate the substance of the reports. The same argument has been made about the use of records of committee hearings. Judge Learned Hand's response to these contentions is instructive:

It is of course true that members who vote upon a bill do not all know, probably very few of them know, what has taken place in committee. On the most rigid theory possibly we ought to assume that they accept the words just as the words read, without any background of amendment or other evidence as to their meaning. But courts have come to treat the facts more really; they recognize

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28. Jones, *supra* note 7, at 743.

29. C. SANDS, *supra* note 6, § 48.06, at 204.

30. G. FOLSOM, *supra* note 11, at 28.

31. 297 U.S. 124 (1936). See also *Southern Pac. Co. v. Industrial Accident Comm'n*, 120 P.2d 880 (Cal. 1942).

32. *Gooch v. United States*, 297 U.S. 124 (1936).

that while members deliberately express their personal position upon the general purposes of the legislation, as to the details of its articulation they accept the work of the committees; so much they delegate because legislation could not go on in any other way.<sup>33</sup>

Florida appellate court cases are noticeably silent on the use of standing committee reports to assess legislative intent. This appears to result from two facts: (1) committee reports on bills are not required by the Florida Senate and House of Representatives, and (2) reports which are prepared are often misplaced and ultimately inaccessible.

Legislative committees in Florida do, however, prepare reports on many bills.<sup>34</sup> Generally, these reports are written to support legislation developed de novo by a committee, although, less frequently, reports are prepared to explain legislation which has been referred to the committee for consideration and recommendation. In many instances, these reports are prepared for use by the committee itself, or for release to the public, and do not appear to be intended to educate or persuade the general membership of the legislature.<sup>35</sup> More often, when the purpose is to persuade the members of the whole body, materials take the form of "fact sheets" or memoranda which are extremely transitory and are rarely retained beyond the time of floor consideration of the bill.<sup>36</sup> When full reports are prepared, there is generally an adequate effort to disseminate the report to interested persons, although it is not unusual for the personnel of the legislative library incidentally or randomly to discover an oversight in providing the library with a copy of a report.<sup>37</sup>

In 1976, the legislature enacted chapter 76-276,<sup>38</sup> which requires the house and the senate to "consider the economic impact . . . legislation will have upon the public and the agencies of government" prior to enactment of any general or special law.<sup>39</sup> Committees of both houses implement this law by preparing "Economic Impact Statements" (EIS). These are generally updated as necessary as bills are amended by various committees and distributed to legislators on the floor. After a bill is passed, a copy of the EIS is

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33. *SEC v. Robert Collier & Co.*, 76 F.2d 939, 941 (2d Cir. 1935).

34. Interviews with Allen C. Morris, clerk, Florida House of Representatives (Sept. 10, 1976) and Joe Brown, secretary, Florida Senate (Sept. 23, 1976) [hereinafter cited as Interviews with Morris and Brown].

35. *Id.*

36. *Id.*

37. Interview with B. Eugene Baker, director, Legislative Library Division, Tallahassee, Fl. (Sept. 17, 1976) [hereinafter cited as Baker Interview].

38. Ch. 76-276, 1976 Fla. Laws 750 (current version at FLA. STAT. § 11.075 (1977)).

39. *Id.*

filed with the legislative library along with the bill, indexed by bill number.

The respective houses have different methods of implementation, however. The senate prepares EIS's for all proposed legislation, while the house first determines whether the fiscal impact warrants an EIS. The house has incorporated the EIS requirement by direct reference to the statute in house rule 7.16, governing preparation of fiscal notes. The corresponding senate provision, rule 3.13, includes no such reference.

Although the house and senate EIS forms are not identical, basically they require the same information. The purpose of the bill must be set forth, with a description of the present situation and the intended effect of the legislation. This is followed by a cost/benefit analysis.

When substantive reports on legislation other than EIS's are received by the legislative library, they are coded by subject matter and are incorporated into the materials held by the library.<sup>40</sup> Although appropriate as a procedure for a legislative reference library, this process does not build productive resources for researching legislative intent.

Whether or not committee reports are filed with the legislative library, committee offices generally retain copies of reports which have been produced on specific legislation, but there is no requirement to do so, and retrieval or location of such reports in committee files several years after enactment may be difficult.<sup>41</sup> Despite conscientious work by the legislative library, one must conclude that retention of reports of standing committees in a manner which might be helpful to research on legislative intent is haphazard at best. These are indeed the most important of extrinsic aids. And lack of adequate access to these reports undoubtedly has contributed to the paucity of appellate decisions relying on these aids.

## V. REPORTS OF SPECIAL COMMITTEES

Reports of standing committees at the state level often include only the committee's recommendation regarding a measure. Frequently, however, special committees are created specifically to investigate problem areas and propose legislation. The reports of these committees are generally extensive, and the courts have found them useful aids in construing statutes enacted pursuant to committee recommendation.<sup>42</sup>

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40. Baker Interview, *supra* note 37.

41. Interviews with Morris and Brown, *supra* note 34.

42. *Bincezyck v. Finucane*, 342 U.S. 76 (1951); *Reimel v. Alcoholic Beverage Control*

Reliance on . . . the committee reports can be justified in two ways. First, because of their specialization and the concentration of their experience, these committees possess a good deal of expertise in their respective areas. Second, since the legislature establishes the committees for specific purposes, it is reasonable to assume that in voting for the bill the legislature accepts the definition of its purpose promulgated by the committee.<sup>43</sup>

Many states have also established revision commissions to study and recommend legislation.<sup>44</sup> The courts generally treat the reports and comments of these commissions in the same fashion as reports of special committees of the legislature.<sup>45</sup> Similar treatment is often accorded reports and notes of national commissions.<sup>46</sup> The Florida Supreme Court, for instance, relied upon the notes of the Commissioners on Uniform State Laws in *Sheffield-Briggs Steel Products*,

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Appeals Bd., 254 Cal. App. 2d 340 (Cal. 1st Dist. Ct. App. 1967); *Connecticut Rural Rds. Improvement Ass'n v. Hurley*, 197 A. 90 (Conn. 1938); *Hood Rubber Co. v. Commissioner of Corps. & Taxation*, 167 N.E. 670 (Mass. 1929); *Kuperschmid v. Globe Briefcase Corp.*, 58 N.Y.S.2d 71 (App. Div. 1945); *Lithium Corp. of America v. Bessemer City*, 135 S.E.2d 574 (N.C. 1964); *State v. Chase*, 355 P.2d 631 (Or. 1960); *Mullis v. Celanese Corp. of America*, 108 S.E.2d 547 (S.C. 1959); *Buehler Bros. v. Industrial Accident Comm'n*, 265 N.W. 227 (Wis. 1936).

43. Comment, *Statutory Construction—Legislative Intent—Use of Extrinsic Aids in Wisconsin*, 1964 Wis. L. Rev. 660, 663-64.

44. The Council of State Governments reports that all states and United States territories have such commissions or councils except the following: Georgia, Idaho, Illinois, Hawaii, Maine, Massachusetts, Missouri, New Hampshire, New Jersey, Rhode Island, Puerto Rico, South Carolina, Virgin Islands, Washington, and West Virginia. See THE COUNCIL OF STATE GOVERNMENTS, *THE BOOK OF THE STATES 1975-1974*, at 86-91 (1975).

45. *Western Pac. R.R. Corp. v. Western Pac. R.R.*, 345 U.S. 247 (1953); *Keeler v. Superior Court*, 470 P.2d 617 (Cal. 1970) (commissioners' notes); *Reimel v. Alcoholic Beverage Control Appeals Bd.*, 254 Cal. App. 2d 340 (Cal. 1st Dist. Ct. App. 1967); *Hohreiter v. Garrison*, 184 P.2d 323 (Cal. 1st Dist. Ct. App. 1947); *Ketchmark v. Lynch*, 246 N.E.2d 133 (Ill. 3d Dist. Ct. App. 1969) (notes); *State v. Gyles*, 313 So. 2d 799 (La. 1975); *Allers v. Tittsworth*, 309 A.2d 476 (Md. 1973); *Byfield v. Newton*, 141 N.E. 658 (Mass. 1923); *State v. Johnson*, 141 N.W.2d 517 (Minn. 1966) (comments); *Deerfield Bldg. Corp. v. Yorkstate Indus.*, 353 N.Y.S.2d 331 (S. Ct. 1974); *State v. Laemoa*, 533 P.2d 370 (Or. Ct. App. 1975) (minutes of law revision commission); *In re Martin's Estate*, 74 A.2d 120 (Pa. 1950).

46. *Bindczyk v. Finucane*, 342 U.S. 76 (1951); *Kaplan v. Superior Court*, 491 P.2d 1 (Cal. 1971); *Van Arsdale v. Hollinger*, 437 P.2d 508 (Cal. 1968); *H. Duys & Co. v. Tone*, 5 A.2d 23 (Conn. 1939); *Sheffield-Briggs Steel Prods. v. Ace Concrete Servs. Co.*, 63 So. 2d 924 (Fla. 1953) (notes of Commissioner on Uniform State Laws); *Warren's Kiddie Shoppe, Inc. v. Casual Slacks*, 171 S.E.2d 643 (Ga. Ct. App. 1969); *Eads v. J. & J. Sales Corp.*, 275 N.E.2d 802 (Ind. 1971); *City of New Bedford v. New Bedford*, 114 N.E.2d 553 (Mass. 1953); *Bank of America Nat'l Ass'n v. LaReine Hotel Corp.*, 156 A. 28 (N.J. Ch. 1931); *In re McComb's Estate*, 80 N.E.2d 573 (Ohio Prob. Ct. 1948) (report, comments of Ohio Bar committee); *Young v. Kaye*, 279 A.2d 759 (Pa. 1971) (UCC comments); *People's Sav. & Trust Co. v. Munset*, 249 N.W. 527 (Wis. 1933). *But see Twentieth Century Furniture, Inc. v. Labor & Indus. Relations Appeal Bd.*, 482 P.2d 151 (Hawaii 1971) (studies by nonmember of legislature carry less weight than legislative committee reports or debates).

*Inc. v. Act Concrete Services Co.*<sup>47</sup> The action was brought to establish priority of mechanic's liens under chapter 84, Florida Statutes.<sup>48</sup> The court noted that the statute was in all pertinent respects identical with the Model Mechanic's Lien Act of the Commissioners on Uniform State Laws:

In ascertaining the legislative intent, courts consider, among other factors, the history of the Act. *State Board of Accountancy v. Webb*, Fla., 51 So. 2d 296. The subject Act had been published—along with the Commissioners' explanatory notes—for at least two years prior to its enactment by the Florida Legislature. The same notes we quote from here were available to the Legislature when the Act was adopted.<sup>49</sup>

The court then quoted the Commissioners' notes and relied on them in its holding. This treatment of the Commissioners' notes suggests that the court would have a similar attitude toward reports of special committees of the Florida Legislature.<sup>50</sup>

Special or select committees and commissions in Florida are much more likely to present specific reports on proposed legislation than standing committees.<sup>51</sup> Many of the same problems associated with location and retrieval of standing committee reports also apply to reports of special committees or commissions. However, the singular focus of these special groups may make their submittals more formal and visible. Florida appellate courts have not yet relied on a report of a special committee or a state commission to establish legislative intent. However, the cases suggest that the courts would be favorably disposed to rely upon such aids.

## VI. REPORTS OF CONFERENCE COMMITTEES

Reports of conference committees become particularly important where the language differs in the versions of similar legislation passed by the two houses. This importance springs from the fact that usually a conference committee recommendation cannot be amended by either house, but must be either accepted or rejected.<sup>52</sup>

Few courts outside the federal system have been presented with

47. 63 So. 2d 924 (Fla. 1953).

48. FLA. STAT. ch. 84 (1977).

49. *Sheffield-Briggs Steel Prods., Inc. v. Ace Concrete Servs. Co.*, 63 So. 2d 924, 926 (Fla. 1953).

50. See sources cited notes 40, 42 and 43 *supra*.

51. Interview with Morris, *supra* note 34.

52. See, e.g., Rule 4.5 of the Rules of the Florida Senate and Rule 6.14 of the Rules of the Florida House of Representatives.

conference committee reports.<sup>53</sup> However, when such reports are used, they are likely to receive great weight.<sup>54</sup> Florida appellate courts have not relied on conference committee reports in determining legislative intent. Probably this is because such committees report only recommendations on resolution of differences, with virtually no explanation of reasoning.

A review of the journals of the Florida Senate and the Florida House of Representatives reveals that reports of conference committees generally take the form of brief letters of transmittal to the officers of the two houses, recommending specific amendments to reconcile the differing versions of the legislation. Little is revealed about explicit legislative intent, although much can be inferred by the adoption of one alternative instead of another. In some instances, comparison summaries are made among the house, senate, and conference committee recommendations. Usually, however, these are informal "fact sheets" revealing very little about intent and they are not systematically retained.

Perhaps the closest thing to a true conference committee report in Florida is the "Letter of Intent" signed by the chairmen of the senate and house committees responsible for appropriations. This letter is prepared collaboratively by the staffs of these committees, purportedly as a result of matters resolved by the respective committees and/or the appropriations conference committee. The letter is usually prepared after adjournment of the legislature. It is not available to the membership of the legislature when voting on final passage of the appropriations bill. Nonetheless, it is a potentially valuable source of information for the courts in determining legislative intent in state fiscal and administrative matters.

## VII. COMMITTEE HEARINGS

The federal courts are willing to consider records of committee proceedings in construing statutes,<sup>55</sup> but other extrinsic aids (*e.g.*, committee reports) may carry more evidentiary weight.<sup>56</sup> Judicial reliance on committee proceedings has been criticized. Wasby points out the dangers of resorting to such materials:

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53. C. SANDS, *supra* note 6, § 48.08.

54. *Brotherhood of Maintenance of Way Employees v. United States*, 366 U.S. 169 (1961) (highly persuasive); *Leedom v. International Union of Mine Workers*, 352 U.S. 145 (1956) (highly persuasive).

55. *Passenger Corp. v. Passengers Ass'n*, 414 U.S. 453 (1974); *International Tel. & Tel. Corp. v. General Tel. & Tel. Corp.*, 518 F.2d 913 (9th Cir. 1975).

56. C. SANDS, *supra* note 6, § 48.10. In *Zuber v. Allen*, 396 U.S. 168 (1969), the Supreme Court regarded oral statements by witnesses as more persuasive than written presentations.

Although a hearing transcript does provide some indication of the intention of some of the committee members, at best it provides only partial evidence. Hearings may, for example, be held by only those committee members interested in the passage of the legislation, or in its defeat. The questioning of witnesses is not unlikely to be conducted with the aim of eliciting support for the questioner's position or discrediting the statements of hostile or unfavorable witnesses, and the latter may not be as well represented as those taking the majority view, because of invitations the committee has extended to those it already favors.<sup>57</sup>

Nevertheless, courts are likely to continue to consider statements made at committee hearings where the records are available. Certainly, one may assume that judges will exercise reasoned judgment in relying on these materials. The weight attached to committee proceedings as extrinsic aids should vary with their reliability as disclosed by the circumstances of each factual situation.

In Florida, although committee proceedings are almost always taped, these tapes usually are not transcribed.<sup>58</sup> Some committees forward their tapes to the legislative library, where they are retained for an indefinite period. Other committees do not deliver their tapes to the library. Rather, they erase them for re-use or retain them indefinitely. Thus, the researcher interested in Florida legislative committee proceedings must determine: (1) whether the proceeding was taped, (2) if so, whether the tape still exists; and (3) if so, where it is located. In many cases, the difficulties associated with making these determinations are insurmountable. The result is a complete absence of case law in Florida in which committee hearings have been offered to prove legislative intent.

### VIII. FLOOR DEBATES

Courts have generally refused to consider statements made during floor debate as evidence of legislative intent.<sup>59</sup> Various reasons have been advanced for this rule. Some legislators may not have been

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57. *A Caveat*, *supra* note 15, at 272.

58. Baker Interview, *supra* note 37.

59. *Duplex Printing Press Co. v. Deering*, 254 U.S. 443 (1921); *Ex parte Goodrich*, 117 P. 451 (Cal. 1911); *Bagg v. Wickizer*, 50 P.2d 1047 (Cal. 1st Dist. Ct. App. 1935); *Charlton Press, Inc. v. Sullivan*, 214 A.2d 354 (Conn. 1965) (dictum); *Cicchino v. Biarsky*, 61 A.2d 163 (N.J. 2d Dist. Ct. App. 1948); *In re Martin's Estate*, 74 A.2d 120 (Pa. 1950); C. SANDS, *supra* note 6, § 48.13. Arguments against use of statements made in floor debates based upon the probable absence of some legislators are advanced by Stringham, *Crystal Gazing*, *supra* note 10, at 470. The problem presented by the opportunity which congressmen have to amend their remarks prior to publication of the *Congressional Record* is noted in *A Caveat*, *supra* note 15, at 264.

present during floor debate. Often what is said in debate is for the benefit of constituents only and may be regarded by courts as self-serving. Furthermore, supporters of a controversial measure may fear that too much explanation and discussion will cause its defeat, and thus they attempt to minimize debate. At the federal level, congressmen have been free to amend their remarks before publication, so the record may not accurately reflect the proceedings.

The United States Supreme Court, speaking through Justice Peckham, stated:

[I]t is impossible to determine with certainty what construction was put upon an act by the members of a legislative body that passed it by resorting to the speeches of individual members thereof. Those who did not speak may not have agreed with those who did; and those who spoke might differ from each other . . . .<sup>60</sup>

Similarly, in a recent decision, the Pennsylvania Supreme Court concluded: “[W]hat was said on the floor of the legislature is irrelevant and inadmissible here, of no consequence whatsoever and, as this case illustrates, can be so ambiguous as to cause confusion rather than clarification.”<sup>61</sup>

Nunez warns that those opposed to a bill may attempt to place their own construction of the measure in the record in order to influence subsequent judicial construction.<sup>62</sup> He also points out that the process of enactment is lengthy and complicated. A bill passes through committees, public hearing, and floor debates in one house of a bicameral legislature, only to begin a similar journey in the other. Thus, the “intent” expressed during a debate at one point in the process may not be the intent at all when the vote is taken.<sup>63</sup>

These arguments merit response. The choice is not between a rule of absolute exclusion and one that would obtain legislative intent solely by reference to floor debate. To *permit* courts to resort to such statements is not to *compel* them to do so. Proper techniques for dealing with ambiguous statutory history also apply to floor debates. If, from a consideration of all relevant materials, the court concludes that statements made during debate are not determinative, or that they confuse rather than clarify, they should be given

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60. *United States v. Trans-Missouri Freight Ass'n*, 166 U.S. 290, 318 (1897).

61. *Commonwealth v. Alcoa Properties, Inc.*, 269 A.2d 748, 749 (Pa. 1970) (footnote omitted).

62. *A Reexamination*, *supra* note 19, at 133.

63. *Id.* at 134; see *International Tel. & Tel. Corp. v. General Tel. & Elec. Corp.*, 518 F.2d 913 (9th Cir. 1975).



less consideration. In his article on extrinsic aids in federal courts, Jones explains:

It would seem that the factors mentioned should be regarded as going to the probative value of the debates in particular cases, and not to their general admissibility. A judge is certainly not bound to accept the construction put upon a statute by a legislator who may have been speaking only for himself, but as a judge he will surely have had sufficient experience in weighing evidence to enable him to make an accurate estimate of the degree to which a statement made during debate reflects the general understanding of the legislative body as a whole.

The discovered circumstance that no objection was taken to the construction placed upon a bill by a speaker in debate would be at least some evidence that the speaker's understanding of its meaning was shared by the other members. If, moreover, a comparison of the several speeches made in debate on a measure indicates that each speaker was of the same belief as to the meaning or legal effect of the statute, that concordance would be highly persuasive evidence of a prevailing legislative judgment. The flat exclusionary rule, barring any introduction of the records of debate, would withhold from the consideration of the judges evidence of "intention" which might be of great assistance in difficult cases, particularly when the other legislative sources are silent or conflicting.<sup>64</sup>

Decisions in the federal courts since 1950 reveal an increasing relaxation of the rule excluding reliance on legislative debates. Explanatory statements by the sponsor of a bill may now be considered<sup>65</sup> as well as those of a standing committee member in charge of presenting the bill to the house.<sup>66</sup> These remarks are regarded as supplemental committee reports.<sup>67</sup>

Also admissible are debates reflecting a common agreement among legislators of the meaning of ambiguous language<sup>68</sup> and remarks of legislators during debate which tend to show the evils at which the statute was aimed.<sup>69</sup> Often the courts will vary the weight

64. Jones, *supra* note 7, at 751-52 (footnote omitted).

65. *National Woodwork Mfrs. Ass'n v. NLRB*, 386 U.S. 612 (1967); *Schwegmann Bros. v. Calvert Distillers Corp.*, 341 U.S. 384 (1951).

66. *United States v. Enmons*, 410 U.S. 396 (1973); *Johansen v. United States*, 343 U.S. 427 (1952).

67. *Duplex Printing Press Co. v. Deering*, 254 U.S. 443 (1921). See also note 27 *supra*.

68. *First Nat'l Bank v. Walker Bank & Trust Co.*, 385 U.S. 252 (1966); *Federal Trade Comm'n v. Raladam Co.*, 283 U.S. 643 (1931).

69. *National Woodwork Mfrs. Ass'n v. NLRB*, 386 U.S. 612 (1967); *Galvan v. Press*, 347 U.S. 522 (1954).

attached to floor debates according to the apparent authority of the speaker and other relevant circumstances.<sup>70</sup> Statements made by opponents of a bill have also been considered.<sup>71</sup> Finally, courts may refer to floor proceedings to corroborate a result already reached.<sup>72</sup>

Because most states do not maintain records of legislative debates,<sup>73</sup> few state courts have had the opportunity to consider their probative value.<sup>74</sup> In Florida, floor debates in both houses are recorded but are rarely transcribed.<sup>75</sup> Tapes are kept in the offices of the clerk of the house of representatives and the secretary of the senate. Both officers stress, however, that the manner of recordation and storage makes these tapes informal working tools rather than official records of legislative proceedings.<sup>76</sup> Neither house has a formal policy on retention of tapes, although current practice is to retain them indefinitely pending the development of such a policy.

70. *United States v. Five Gambling Devices*, 346 U.S. 441 (1953); see Note, *Trends in the Use of Extrinsic Aids in Statutory Interpretation*, 3 VAND. L. REV. 586 (1950) [hereinafter cited as *Trends*]; cf. *Arizona v. California*, 373 U.S. 546 (1963).

71. *Arizona v. California*, 373 U.S. 546 (1963); *United Shoe Workers v. Bedell*, 506 F.2d 174 (D.C. Cir. 1974); cf. *Holtzman v. Schlesinger*, 414 U.S. 1304 (1973).

72. *Federal Trade Comm'n v. Raladam Co.*, 283 U.S. 643 (1931); *United States v. Bhagat Singh Thind*, 261 U.S. 204 (1923); Jones, *supra* note 7.

73. A 1971 study by the Council of State Government reveals that only Connecticut, Guam, Maine, Nebraska, Nevada, New York, Pennsylvania, Puerto Rico, Tennessee, Utah, Vermont, the Virgin Islands, and West Virginia "always" maintain verbatim records of house proceedings. In New York, the record is available only to the press; in Utah tape recordings are made and are unavailable to the public for ten years. The Hawaii and New Hampshire Senates are listed as "usually" keeping a verbatim record; Washington "sometimes" keeps house records, and Michigan and North Dakota "rarely" maintain records of debate. Louisiana keeps them "in part." See THE COUNCIL OF STATE GOVERNMENTS, *THE BOOK OF THE STATES 1970-71*, at 70-72 (1971). See also Cashman, *Availability of Records of Legislative Debates*, 24 REC. A.B. CTRY N.Y. 153 (1969).

74. *Hartford Elec. Light Co. v. Wethersfield*, 332 A.2d 83 (Conn. 1973) (statement of purpose of statute "strong indicator" of legislative intent, though not controlling); *Bird v. Plunkett*, 95 A.2d 71 (Conn. 1953) (statement of committee chairman in the nature of a supplemental committee report); *Twentieth Century Furniture, Inc. v. Labor & Indus. Relations Bd.*, 482 P.2d 151 (Hawaii 1971) (dictum); *Moran v. Bowley*, 179 N.E. 526 (Ill. 1932) (federal statute); *Decatur Tp. v. Board of Comm'rs*, 39 N.E.2d 479 (Ind. Ct. App. 1942) (dictum); *Tennessee Gas Transmission Co. v. Violet Trapping Co.*, 176 So. 2d 425 (La. 1965) (dictum); *State ex rel Rogers v. Swanson*, 219 N.W.2d 726 (Neb. 1974) (floor debate considered); *People v. Cooney*, 87 N.Y.S.2d 23 (Mag. Ct. 1949) (dictum); *Fontheim v. Third Ave. Ry.*, 12 N.Y.S.2d 90 (App. Div. 1939) (dictum); *Seneca County v. State*, 47 N.Y.S.2d 687 (Ct. Cl. 1942), *aff'd*, 292 N.Y. 501 (1944); *Neff v. Cleveland Trust Co.*, 21 Ohio Op. 461 (Com. Pl. 1941) (sponsor's statements regarded as supplemental committee report); *Southern Ry. v. Fowler*, 497 S.W.2d 891 (Tenn. 1973) (speech to state senate by sponsor of constitutional amendment); *Ex parte Peede*, 170 S.W. 749 (Tex. Crim. App. 1914) (plain meaning of federal statute corroborated by author's remarks in Congress); *Snow's Mobile Homes, Inc. v. Morgan*, 494 P.2d 216 (Wash. 1972) (committee chairman's responses to questioning taken as the opinion of the committee as to the meaning of the bill).

75. Interviews with Morris and Brown, *supra* note 34.

76. *Id.*

Both houses maintain a cooperative attitude toward supplying copies of tapes of floor debates to interested persons, and a high-speed tape copying machine has been acquired to facilitate this service.

### IX. JOURNALS

American courts uniformly utilize legislative journals to track changes in a bill as it proceeds through the enactment process.<sup>77</sup> Florida decisions are in harmony with the other jurisdictions. In *State ex rel Finlayson v. Amos*, the court consulted the journals and relied on the action taken on amendments:

It was through no mere inadvertence that the Legislature did this [changed the basis for fixing the price of a license on a given class of vehicle], because the amendment was first considered and adopted in the House, next considered and rejected in the Senate, then considered by a conference committee composed of members from both houses, and thereafter adopted by the Senate upon recommendation of the conference committee.<sup>78</sup>

Similarly, in *McDonald v. Roland*,<sup>79</sup> the Florida Supreme Court referred to the history of the statute as reflected in the journals:<sup>80</sup>

[O]riginal House Bill No. 154 was modified in committee by changing the word "shall" throughout section 39.18 of the original bill to "may" and by inserting the word "permissible" in subsections 39.18(2) (f) and 39.18(6). . . . Thus it appears that in the process of enactment of the provisions relevant to the matter before us, the use of the word "shall", having a normal mandatory meaning and connotation, has been rejected in favor of "may", having a normal meaning of permission. We think, therefore, that the specific purpose and intent of the legislature with respect to section 39.18 is so clear that it must withstand whatever inconsistent general intent may be argued for the Chapter as a whole. Where the legislature has thus advisedly expressed its specific intention, we are not permitted, by the application of a general rule of statutory construction, to read into the resulting statute a contrary meaning and effect which the legislature has manifestly rejected.<sup>81</sup>

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77. C. SANDS, *supra* note 6, § 48.18.

78. 79 So. 433, 435 (Fla. 1918).

79. 65 So. 2d 12 (Fla. 1953).

80. See text accompanying notes 52-55 *supra*.

81. 65 So. 2d at 14.

So where the legislature adopts language expressed in an amendment to the original bill, the courts consider this persuasive evidence that the original language and its connotation were rejected. Conversely, rejection of a proposed amendment strongly suggests that the language or amendment is inconsistent with the legislative will. Sands adds a note of caution, however.<sup>82</sup> An amendment may be adopted because it clarifies, rather than changes, the intended meaning. On the other hand, the amendment may be rejected because the bill as originally written better expresses the legislative intent.

The disposition of an amendment, then, is not necessarily an unequivocal indicator that only the language ultimately enacted comports with the legislative will. Nevertheless, the use of journals is regarded as reliable in the vast majority of cases. This view will undoubtedly persist.

#### X. POST-ENACTMENT STATEMENTS

Statements of legislators subsequent to the enactment of a statute are generally disapproved as evidence of legislative intent, whether by affidavit, oral testimony, or otherwise.<sup>83</sup> In the federal courts, such statements are entitled to little or no weight at all. A recent federal case explained the rationale this way:

Such statements are not offered by way of committee report and are not offered for response by other members of the law-making body. The intent which is helpful in interpreting a statute, is the

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82. C. SANDS, *supra* note 6, § 48.18.

83. Numerous decisions reject post-enactment statements: *Waterman S.S. Corp. v. United States*, 381 U.S. 252 (1965); *N.C. Freed Co. v. Board of Governors of Fed. Reserve Sys.*, 473 F.2d 1210 (2d Cir. 1973) (letter of sponsor one year after enactment entitled to no weight); *Epstein v. Resor*, 296 F. Supp. 214 (N.D. Cal. 1969), *aff'd*, 421 F.2d 930 (9th Cir.), *cert. denied*, 398 U.S. 965 (1970); *Lynden Trans., Inc. v. State*, 532 P.2d 700 (Alaska 1975) (testimony of sponsor rejected); *Wiseman v. Madison Cadillac Co.*, 88 S.W.2d 1007 (Ark. 1936); *Tillie Lewis Foods, Inc. v. City of Pittsburg*, 52 Cal. App. 3d 983 (Ct. App. 1975); *Bayon v. Beckley*, 93 A. 139 (Conn. 1915); *Security Feed & Seed Co. v. Lee*, 189 So. 869 (Fla. 1939); *Decker v. Russell*, 357 S.W.2d 886 (Ky. 1962); *D & W, Inc. v. City of Charlotte*, 151 S.E.2d 241 (N.C. 1966); *Financial Indem. Co. v. Cargile*, 288 N.E.2d 861 (Ohio Ct. Com. Pl. 1972); *Murphy v. Nilsen*, 527 P.2d 736 (Or. Ct. App. 1974); *City of Philadelphia v. Depuy*, 244 A.2d 741 (Pa. 1968); *Bowaters Carolina Corp. v. Smith*, 186 S.E.2d 761 (S.C. 1972); *City of Spokane v. State*, 89 P.2d 826 (Wash. 1939) (affidavits of over 100 legislators excluded); *Wisconsin S. Gas Co. v. Public Serv. Comm'n*, 205 N.W.2d 403 (Wis. 1973). Other decisions approve use of post-enactment statements: *Alaska Pub. Employees Ass'n v. State*, 525 P.2d 12 (Alaska 1974) ("cautious" evaluation of sponsor's affidavit—some weight); *Campbell v. Board of Dental Examiners*, 53 Cal. App. 3d 283 (Ct. App. 1975); *In re John Children*, 306 N.Y.S.2d 797 (Fam. Ct. 1969) (letter from assemblyman); *Neff v. Cleveland Trust Co.*, 21 Ohio Op. 461 (Com. Pl. 1941) (letters from legislators); *Northern Trust Co. v. Snyder*, 89 N.W. 460 (Wis. 1902) (panel testimony of legislators).

intent of the legislature and not of one of its members. For purposes of statutory construction, a legislative body can only speak through a statute, with the words that are used in light of the circumstances surrounding its enactment.<sup>84</sup>

Florida is in accord with the majority view in rejecting post-enactment statements of legislators. In *Security Feed & Seed Co. v. Lee*,<sup>85</sup> the Florida Supreme Court relied on prior case law in refusing to consider senators' affidavits as legislative intent: "The law appears settled that such testimony is of doubtful verity if at all admissible to show what was intended by the Act. Lewis and Southerland, *Statutory Construction*, 882."<sup>86</sup> This state of affairs regarding post-enactment statements adds emphasis to the need to identify and preserve other sources for determining legislative intent.

## XI. METHODS OF PRESENTATION

Authorities disagree on the proper method of presenting statutory history to the courts. One view holds that the attorney must present extrinsic data in the trial court to preserve the record, since an appellate court cannot be compelled to consider matters outside the record. On the other hand, courts often consider other judicially noticeable facts for the first time on appeal, and a rigid rule in the case of statutory history seems harsh. Moreover, technical rules of evidence may inhibit the presentation at trial.<sup>87</sup> To add a margin of safety, the lawyer is probably well advised to attempt the introduction of statutory history in the lower court. Any difficulties encountered will then be preserved for appeal.<sup>88</sup>

## XII. SUMMARY

In Florida, anyone interested in statutory history must be both diligent and fortunate. The researcher may strike gold at the legislative library. If he does not, he must determine what committees

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84. *Epstein v. Resor*, 296 F. Supp. 214, 216 (N.D. Cal. 1969), *aff'd*, 421 F.2d 930 (9th Cir.), *cert. denied*, 398 U.S. 965 (1970); *see United States v. United Mine Workers*, 330 U.S. 258 (1947).

85. 189 So. 869 (Fla. 1939).

86. *Id.* at 870.

87. The primary problem is the requirement of authentication. Stringham argued in *Crystal Gazing*, *supra* note 10, that extrinsic aids should be regarded as hearsay; however, no case has been discovered in which the authenticity or the verity of extrinsic aids offered by a party were in dispute.

88. *See* READ, MACDONALD, FORDHAN & PIERCE, *MATERIALS ON LEGISLATION* (3d ed. 1973); *Trends*, *supra* note 70, at 595.

handled the bill and consult them, hoping meanwhile that relevant materials still exist and can be found. The search must be carried on at least twice: once in the house and once in the senate. And perhaps the search will lead to the legislative library and the state archives as well. The fact that few Florida cases test the propriety of using extrinsic aids further suggests the inadequacy of current procedures.

On the other hand, if historical materials are available in Florida, the courts can be expected to rely on them in construing statutes for three reasons. First, and of greatest importance, the Florida decisions reveal a judicial willingness to rely on materials outside the statute. Second, the overwhelming weight of national authority approves the use of extrinsic aids. Third, statutory history can be a valuable tool in construing an ambiguous provision and confirming a result reached through other means, even where the language is clear. As Justice Murphy once remarked: “[W]ords are inexact tools at best, and for that reason there is wisely no rule of law forbidding resort to explanatory legislative history no matter how ‘clear the words may appear on superficial examination.’”<sup>89</sup>

There may be problems in determining how much weight to accord particular legislative history. Also, there is potential for judicial abuse in selective reliance on the sources which will support a desired result. However, such factors already inhere in the judicial process. In the absence of extrinsic aids, a court need only announce that the meaning of the language is “plain” or apply the intrinsic canon which will yield the favored result.

The case law and scholarly commentary suggest that the following criteria and standards are significant in evaluating the probative force of extrinsic aids:

(1) *Contemporaneity* - Materials developed before and during the process of consideration are given greater weight than later efforts to explain the intended meaning. In addition, the greater the time between the development of the extrinsic aid and the instant of legislative action, the less persuasive the aid.

(2) *Credibility* - The more explanatory and analytical and less contrived the extrinsic aid, the greater the weight it will be accorded. Therefore, reports of committees are generally regarded with respect by the courts. Floor debates, on the other hand, have been excluded as too unreliable in many jurisdictions.

(3) *Proximity* - The closer the source of the aid to the essence of legislative action, the more persuasive the aid is viewed by the

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89. *Harrison v. Northern Trust Co.*, 317 U.S. 476, 479 (1950).

courts. For instance, a substantive report by a conference committee would probably be given greater weight than a conflicting report by a standing committee. Likewise, remarks by a committee chairman, floor manager, or sponsor of a bill are regarded as more persuasive than statements by other legislators.

(4) *Context* - The weight given a particular aid will vary depending on other factors in the legislative history of the statute, such as consensus and availability. Was the member's remark or explanation accepted or opposed by others? How closely does the enacted bill conform to the recommendation of the committee whose report is offered as evidence of legislative intent? How likely is it that legislators were aware of the existence of the aid?

These criteria and standards overlap. In any event, they must be considered in relation to one another. The entire context must determine the final, cumulative weight to be given any particular extrinsic aid. As Justice Frankfurter once remarked:

Unhappily, there is no table of logarithms for statutory construction. No item of evidence has a fixed or even average weight. One or another may be decisive in one set of circumstances, while of little value elsewhere. A painstaking, detailed report by a Senate Committee bearing directly on the immediate question may settle the matter. A loose statement even by a chairman of a committee, made impromptu in the heat of debate, less informing in cold type than when heard on the floor, will hardly be accorded the weight of an encyclical.<sup>90</sup>

### XIII. RECOMMENDATIONS

We have seen that the courts are favorably disposed toward accepting extrinsic aids in determining legislative intent. We have also seen that use of such aids in Florida is very difficult, not because of any reservations of Florida courts, but because there is no systematic means by which such materials are developed, collected, and preserved. It would appear, therefore, that recommendations seeking to facilitate the documentation of legislative intent should relate to procedural improvements in legislative management as well as to articulation of specific aids. The recommendations which follow deal primarily with such procedural matters, most of which can be implemented without additional legislation or any significant increase in cost. These recommendations, if implemented, would provide a simple, systematic means of locating and documenting materials which bear significantly on legislative intent.

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90. *Reading of Statutes*, *supra* note 12, at 543.

(1) The most immediate need is to *identify or select a single or central repository for materials revealing legislative intent*. Presently, such materials are kept variously by the clerk of the house of representatives, the secretary of the senate, the legislative library, the various house and senate committees, and the secretary of state. This responsibility should be vested in the Department of State, which already is the principal agency responsible for records management and for maintaining many documents bearing on legislative intent. This recommendation would not infringe on the responsibility of the clerk and secretary to administer the legislative process, the legislative library to provide an information resource to the legislature, or the committees to consider legislation and make recommendations to their respective houses.

(2) Another important need is for the development of a *uniform policy on the retention of relevant materials*. Presently, various materials are retained for differing lengths of time and are disposed of differently. Materials which bear on legislative intent should be retained a minimum of ten years.

(3) Each general bill which is introduced should be accompanied by a *sponsor's statement of explanation and intent*. The format of such a statement should be prescribed by the legislative leadership and should be as nearly identical as possible for the two houses. At the least, these statements should provide a general overview of the purpose of the legislation. This general statement should be supplemented with a brief explanation of purpose and intent for each section or other major subdivision of the bill.

A resolution incorporating this general idea was introduced in the regular session of the 1977 legislature but failed. House Concurrent Resolution 268 would have required each bill enacted into law to "include a statement of the specific intent of the Legislature including clear and unambiguous statements as to its applicability, scope, and exceptions and guidelines for its proper administration . . . by state or local officials."

An approach for which the procedural framework already exists is offered by the statutory Economic Impact Statements, which have been discussed previously. To implement this idea, it is suggested that such statements be prepared in both houses for *all* legislation, and that the forms and procedures employed be unified in the house and the senate.

(4) Committees should be required to issue *committee reports on all general bills reported favorably*. These reports would not be the extensive narrative or analytical reports sometimes prepared by committees for major legislation. Rather, they would be similar to the statements of sponsors recommended above. These reports



should be distributed to the membership as a part of floor consideration of general legislation. Of course, more detailed and analytical reports should also be prepared and distributed to the membership, especially on major legislation.

(5) *Conference committees should prepare and submit more substantive reports* regarding the resolution of differences in legislation and the rationale or intent of those changes.

(6) Committees, legislators, and their staffs should be required to *file* with the clerk of the house of representatives or with the secretary of the senate *a copy of any material which is distributed to the membership* of the respective houses relating to legislation under consideration. This would include reports, memoranda, fact sheets, and other such material which seeks to analyze, explain, "sell," or defend legislation.

(7) For each legislative biennium, the secretary and the clerk should *maintain a master file on each bill*, into which would be placed all appropriate materials relating to legislative intent. At the end of the biennium, these officers would transmit the files to the Department of State for retention. The files should be merged, and duplicative materials should be discarded. Then the files relating to unsuccessful legislation should be disposed of in a fashion consistent with state records management policy. Files on enacted bills should be retained for a period determined by the Department of State—a period of *at least ten years*.

(8) *All hearings of committees and subcommittees should be electronically recorded* by committee staff. The tapes of these hearings should be placed in containers on which would be marked the date of the hearing and the bill numbers of legislation considered. These tapes should be maintained securely in the committee offices for a period of time determined by each house to allow for needed in-office reference—perhaps no more than thirty days. Then the tapes would be delivered to the secretary or the clerk, who would maintain them securely until the end of the legislative biennium. At that time, they would be forwarded to the Department of State for retention with other legislative materials.

(9) *Floor debates* in each house *should be recorded and the tapes appropriately annotated for easy reference*. The tapes should be retained by the secretary and the clerk for two years after the conclusion of the legislative session, then forwarded to the Department of State with other materials.

(10) Consideration should be given to a more liberal *policy regarding insertion of materials (statements or memoranda) in the Senate and House journals* where such material was presented on the floor and is available in *written* form. Because of difficulties in

daily production of the journals, insertion of verbal statements not delivered from a written text, which would require transcription, should continue to be disallowed.

(11) Committee and floor *debate on major legislation should be fully transcribed* and inserted in the master file of the bill. Standards should be developed to determine which legislation is "major" for this purpose.

(12) The annual legislative "*letter of intent*" should be placed in the master file of the appropriations act.

(13) To implement recommendations 1 and 2, legislation providing the necessary authorization for the Department of State should be enacted.

(14) To implement recommendations 3-11, appropriate amendments should be made to the rules of the Florida Senate and the Florida House of Representatives.

#### XIV. CONCLUSION

This article has examined various extrinsic aids to statutory construction, considered the reliability of and judicial attitudes toward such material, and offered alternative methods for increasing the availability of reliable statutory history in Florida. By providing the courts with a panoply of reliable legislative history, the legislature can help judges discern and apply legislative intent.

Florida judges now must rely primarily on the canons of construction, synopsized journal remarks, untranscribed tapes of proceedings, and visceral disposition when called upon to construe an ambiguously drafted statute. Commenting on the pitfalls of loose legislative drafting, Justice Frankfurter reminded his audience of the cartoon in which one legislator said to his colleagues, "I admit this new bill is too complicated to understand. We'll just have to pass it to find out what it means."<sup>91</sup> Development and preservation of extrinsic aids should enable courts to discern and perpetuate legislative intent in a more predictable and reliable manner.

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91. *Id.* at 545.

