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THE SEARCH FOR INTENT: AIDS TO STATUTORY CONSTRUCTION IN FLORIDA—AN UPDATE

ROBERT M. RHODES* AND SUSAN SEEREITER**

“ . . . the intention of the law-giver is the law.”¹

I. INTRODUCTION²

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 the familiar canons of construction, such as *eiusdem generis*³ and *expressio unius est exclusio alterius*.⁴ 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 in the process of enactment.

This analysis focuses on the last category of extrinsic aids and includes committee reports, statements of sponsors and other legislators, transcripts of committee hearings and floor debates, and

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1. 4 C. SANDBURG, ABRAHAM LINCOLN 128 (1939) (quoting Abraham Lincoln's first inaugural address).

2. This Article is an update of Rhodes, White, & Goldman, *The Search for Intent: Aids to Statutory Construction in Florida*, 6 FLA. ST. U.L. REV. 383 (1978).

3. "Under the well-established doctrine of *eiusdem generis*, where general words follow the enumeration of particular classes of persons, the general words will be construed as applicable only to persons of the same general nature or class as those enumerated, unless an intention to the contrary is clearly shown." *Soverino v. State*, 356 So. 2d 269, 273 (Fla. 1978) (citations omitted).

4. "It is . . . a general principle of statutory construction that the mention of one thing implies the exclusion of another; *expressio unius est exclusio alterius*." *Thayer v. State*, 335 So. 2d 815, 817 (Fla. 1976). A computer-assisted search of reported Florida cases dating from 1978 to 1985 revealed eight instances of statutory construction in which courts applied the canons of *eiusdem generis* or *exclusio unius*.

legislative journals.⁵ This Article considers the value of these materials to judicial interpretation of statutes and explores options for improving the availability of reliable extrinsic aids in Florida. The disposition of Florida courts to recognize these materials is also analyzed.

II. THE PLAIN MEANING RULE

The cardinal rule of interpretation is that "courts will look to legislative history only to resolve ambiguity in the statute."⁶ This principle, known as the "plain meaning rule," requires judicial determination of statutory ambiguity as a prerequisite for judicial interpretation. If the application of a statute to a particular fact situation is unambiguous, the courts normally will not apply rules of construction to question the effect of clear statutory language. "While legislative intent controls construction of statutes in Florida . . . that intent is determined primarily from the language of the statute. . . . The plain meaning of the statutory language is the first consideration."⁷

However, "[p]lain words, like plain people, are not always so plain as they seem."⁸ The question of whether the meaning is "plain" is often a source of controversy. Litigants whose interests are advanced by construction will argue that a 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. Professor Jones' comment on the precision of statutory drafting 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

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

A computer-assisted search of reported Florida cases from 1978 to 1985 revealed more than 300 instances of statutory construction in which courts applied the criterion of "legislative intent." Of these, approximately 10% used one or more extrinsic aids from enactment history.

6. *Department of Legal Affairs v. Sanford-Orlando Kennel Club, Inc.*, 434 So. 2d 879, 882 (Fla. 1983) (citations omitted). "Where . . . the resulting law is proper and unambiguous, we need look no further than the statute itself." *Id.*

7. *St. Petersburg Bank and Trust Co. v. Hamm*, 414 So. 2d 1071, 1073 (Fla. 1982) (citations omitted).

8. Smith, *Explaining Judicial Lawgivers*, 11 FLA. ST. U.L. REV. 153, 156 (1983) (quoting Traynor, *No Magic Words Could Do It Justice*, 49 CALIF. L. REV. 615, 618 (1961)).

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 incidence of interpretative doubts; it can never make of statutory interpretation a purely mechanical process.⁹

However, the determination that no ambiguity is present does not foreclose construction. Frequently it is still possible to dispute whether the legislature really meant what it so clearly expressed.¹⁰ In practice, before announcing that the meaning is plain, courts often examine both the statutory language and the legislative history.¹¹

The Florida Supreme Court has consistently affirmed its commitment to the plain meaning rule.¹² Nevertheless, courts cite legislative history even when the wording of the statute is clear. Florida courts have used extrinsic aids to corroborate their construction of an "unambiguous" statute,¹³ or to construe a statute "to give effect to the evident legislative intent, regardless of whether such construction varies from the statute's literal meaning."¹⁴ This practice comports with the Florida Supreme Court's mandate: "It is a fundamental rule of statutory construction that

9. Jones, *Extrinsic Aids in the Federal Courts*, 25 Iowa L. Rev. 737, 739 (1940) (footnote omitted).

10. The Supreme Court reaffirmed this view by quoting Justice Frankfurter's observation, "The notion that because the words of a statute are plain, its meaning is also plain, is merely pernicious oversimplification." *FBI v. Abramson*, 456 U.S. 615, 625 n.7 (1982) (quoting *United States v. Monia*, 317 U.S. 424, 431 (1943) (Frankfurter, J., dissenting)).

11. Sneed, *The Art of Statutory Interpretation*, 62 Tex. L. Rev. 665, 686 n.90 (1983). "When confronted with a statutory interpretation case, my initial response is to ask what the legislature was trying to do with this statute. . . . This focuses attention on the purpose of the statute and reflects a concern for the separation of powers. To fix the purpose firmly in mind, it is necessary to read the statute carefully and then to examine the relevant legislative history." *Id.* at 685-86 (footnotes omitted).

12. *City of Tampa v. Thatcher Glass Corp.*, 445 So. 2d 578, 579 (Fla. 1984); *Roush v. State*, 413 So. 2d 15, 19 (Fla. 1982); *Carson v. Miller*, 370 So. 2d 10, 11 (Fla. 1979); *Heredia v. Allstate Ins. Co.*, 358 So. 2d 1353, 1355 (Fla. 1978); *S.R.G. Corp. v. Department of Revenue*, 365 So. 2d 687, 689 (Fla. 1978); *First Sarasota Serv. Corp. v. Miller*, 450 So. 2d 875, 877 (Fla. 2d DCA 1984); *Cobb v. Maldonado*, 451 So. 2d 482, 483 (Fla. 4th DCA 1984).

13. *State v. Ross*, 447 So. 2d 1380, 1383 (Fla. 4th DCA 1984) (although the court found the statute clear, it added that it was "significant" that there were no express indications that the legislature intended otherwise); *Reino v. State*, 352 So. 2d 853, 860-61 (Fla. 1977) (the statute was "unequivocal" but the court also noted the actions of the legislature expressing its intent); see also *Florida Ins. Guar. Ass'n v. State*, 400 So. 2d 813, 815-17 (Fla. 1st DCA 1981).

14. *Griffis v. State*, 356 So. 2d 297, 299 (Fla. 1978) (citations omitted).

legislative intent is the polestar by which the court must be guided, and this intent must be given effect even though it may contradict the strict letter of the statute."¹⁵

Assuming a determination that the statute's language or its application is ambiguous, what means will a court employ to discern legislative intent?

III. EXTRINSIC AIDS: THE ARGUMENTS

Justice Frankfurter once referred to statutory construction as "alchemy."¹⁶ Surely intrinsic aids, with their mystical Latin names, warrant such a characterization. These canons confine the search for meaning to the statute itself. In fact, intrinsic aids do not really represent a search for "meaning" because their selection is outcome determinative: simply apply the proper maxim and behold the legislative intent.¹⁷

Unfortunately, legislators and bill-drafters cannot know which maxim will be applied in the future to determine intended meaning. To be sure, the canons do not always destroy the intent of the legislature. However, it seems illogical to rely on them exclusively when direct evidence of legislative intent is available. For this reason, modern American courts have increasingly relied upon extrinsic aids to statutory interpretation.¹⁸

15. *State v. Webb*, 398 So. 2d 820, 824 (Fla. 1981).

16. *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448, 462 (1957) (Frankfurter, J., dissenting). For a humorous look at the transmutation of a horse into a bird, see Note, *Judicial Humour—Construction of a Statute*, 8 CRIM L.Q. 137 (1966).

17. For a vivid discussion of canons of construction being outcome determinative, see Llewellyn, *Remarks on the Theory of Appellate Decision and the Rules or Canons About How Statutes are to be Construed*, 3 VAND. L. REV. 395, 401-06 (1950). The author lists 28 common canons of construction and their opposites, i.e., "A statute cannot go beyond its text," but "[t]o effect its purpose a statute may be implemented beyond its text." *Id.* (footnotes omitted).

18. The extrinsic aids available, their use by the courts, and suggestions for their evaluation are the topic of many current articles. These articles recognize and support the increased use and availability of extrinsic aids tailored to the legislative process of their particular states. See, e.g., Allison & Hambleton, *Research in Texas Legislative History*, 47 TEX. B.J. 314 (1984); Divilbiss, *The Need for Comprehensive Legislative History in Missouri*, 36 J. MO. B. 520 (1980); Perman, *Statutory Interpretation in California: Individual Testimony as an Extrinsic Aid*, 15 U.S.F.L. REV. 241 (1981); Smith, *Legislative Intent: In Search of the Holy Grail*, 53 CAL. ST. B.J. 294 (1978); Snyder, *Researching Legislative Intent*, 51 KAN. B.A.J. 93 (1982); Wendt, *Researching Illinois Legislative Histories—A Practical Guide*, 1982 S. ILL. U.L.J. 601 (1982); White, *Sources of Legislative Intent in California*, 3 PAC. L.J. 63 (1972); Comment, *Statutory Interpretation—The Need for Improved Legislative Records in Missouri*, 38 MO. L. REV. 84 (1973); Comment, *Evaluating Oregon Legislative History: Tailoring an Approach to the Legislative Process*, 61 OR. L. REV. 421 (1982); Comment, *The Use of Extrinsic Aids in Determining Legislative Intent in California: The*

The twentieth century emphasis is on coming to a specific focus on a given statute in its full-dimensional particularity of policy, rather than emphasizing material or values not immediately connected to that enactment. Courts now seem usually to strive to grasp the distinctive message of statutory words, taken in their own context, with reference to the documented process that produced that particular act, including legislative history deserving credibility, and policy guides supplied by the legislature's successive development of the given policy area and related areas.¹⁹

Two reasons underlie judicial willingness to consider extrinsic materials. First, if "legislative intent" is the criterion of decision, 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."²⁰ 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."²¹

The trend toward the increased use of legislative materials has its critics. One objection reduces "legislative intent" to a legal fiction. There is no such thing, some critics say, as a collective purpose underlying a particular enactment. Different legislators may have different purposes in mind when they vote.²² Justice Jackson, in *United States v. Public Utilities Commission*,²³ 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 Con-

Need for Standardized Criteria, 12 PAC. L.J. 189 (1980); Comment, *Legislative History in Washington*, 7 U. PUGET SOUND L. REV. 571 (1984); *The Use of Legislative History in Construing Pennsylvania Statutes Part II*, Pa. L. J.-Rep., May 25, 1981, at 18, col. 1.

19. J. HURST, *DEALING WITH STATUTES* 65 (1982).

20. Frankfurter, *Some Reflections on the Reading of Statutes*, 47 COLUM. L. REV. 527, 541 (1947).

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

22. Radin, *Statutory Interpretation*, 43 HARV. L. REV. 863, 870 (1930).

23. *United States v. Public Utils. Comm'n*, 345 U.S. 295 (1953).

gressmen 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.²⁴

The response 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 which has this information before it is more likely to reach a result consistent with the legislative will.

Of course we use a fiction if we speak of the legislature as if it were a being of one mind. But so durable a fiction endures because it has a use validated by experience. This formula reminds all who deal with a statute that they are operating in a field of law in which they are not free to define public policy simply according to their own judgment.²⁵

On the other hand, if the historical evidence is itself ambiguous, the solution is for courts to accord it less weight.

Critics also argue that legislatures often enact deliberately vague statutes, casting upon courts the burden of decisions lawmakers wish to avoid. Thus, the search for statutory history may produce a frustrating scenario where 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."²⁶

This proposition does not withstand scrutiny. It ignores the limits imposed on judicial decisionmaking by the separation of powers doctrine. 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."²⁷ To suggest that the construction of

24. *Id.* at 319 (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).

25. J. HURST, *supra* note 19, at 33.

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

27. Horack, *supra* note 21, at 389.

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.²⁸

Thus, this criticism ignores a fundamental legislative function—making public policy choices through statute. Professor Hurst's comment on the Supreme Court's validation of the Sherman Act in *Standard Oil Co. v. United States*,²⁹ illustrates this point: "Upholding the constitutionality of the Act, the Supreme Court spoke both for the reality and the legitimacy of generalization of public policy as an important part of the legislative function"³⁰

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 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 foresee every factual situation that may arise, for "[s]tatutes come out of the past and aim at the future."³¹ Professor Hurst suggests that although legislators do not always forecast a particular situation, "they may well supply sufficient specifications to provide a discernible frame of reference within which the situation now presented quite clearly fits."³² In any case, deliberate ambiguity should not be presumed as a basis for rejection of extrinsic aids.

Commentators have suggested that legislative history is "manufactured" in a deceptive fashion. Many statements appearing in

28. 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." Frankfurter, *supra* note 20, at 534.

29. 221 U.S. 1 (1911).

30. J. HURST, *supra* note 19, at 36.

31. Frankfurter, *supra* note 20, at 535.

32. J. HURST, *supra* note 19, at 35. Professor Hurst gives the example of an 1853 Massachusetts statute prohibiting possession of "any engine, machine, tool, or implement adapted and designed for cutting through, forcing or breaking open a building, room, vault, safe or other depository, in order to steal therefrom money or other property." 1853 Mass. Acts 475-76. In 1940 the Massachusetts Supreme Court applied the statute to a defendant charged with possessing keys to automobile trunk locks of other persons. *Commonwealth v. Tilley*, 28 N.E.2d 245 (Mass. 1940).

the *Congressional Record* are not offered in debate or are made merely to establish "legislative intent" consistent with the declarant's wishes.³³ The response to this criticism is that such abuses can be checked.

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.³⁴

An additional criticism is that use of extrinsic aids abrogates a fundamental legal premise—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.³⁵

This objection is persuasive. Were it not for the existence of adequate means to avoid these pitfalls, the courts might be persuaded

33. 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, 133 (1972); cf. Wasby, *supra* note 26, at 264.

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

35. See generally *United States v. Korpan*, 354 U.S. 271 (1957) (where interpretation of statutory reference to "so-called 'slot' machines," based upon Senate debate, was determined to include pinball machines). In a blistering attack on judicial use of legislative history, one commentator argues:

There was no reason to believe that [the 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?

Stringham, *Crystal Gazing: Legislative History in Action*, 47 A.B.A. J. 466, 467 (1961).

On another occasion, the 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) (citation omitted).

to ignore extrinsic materials. However, when basic rights are at issue, the courts may construe a statute prospectively³⁶ or find it unconstitutionally vague.³⁷ The light that statutory history sheds on legislative meaning need not blind a court to the Constitution.

As application of extrinsic aids to statutory interpretation becomes more prevalent in Florida judicial practice, the need for clearly defined standards for their use becomes more urgent. We shall now examine the specific aids available in Florida, and consider federal and state court decisions to determine and suggest appropriate criteria for the use of these aids.

IV. REPORTS OF STANDING COMMITTEES

Standing committee reports are frequently relied on by the courts to determine legislative intent.³⁸ Committee reports have been said to be "the most persuasive indicia of Congressional intent."³⁹ In *Zuber v. Allen*,⁴⁰ the 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,"⁴¹ 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, 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

36. *Cohen v. Katsaris*, 530 F. Supp. 1092 (N.D. Fla. 1982).

37. *State v. Wershow*, 343 So. 2d 605 (Fla. 1977).

38. "The committee is the key workplace of the legislature, as is recognized in the primacy judges give to committee reports as admissible evidence of legislative intent." J. HURST, *supra* note 19, at 37. A survey of the most recent decisions shows the reliance courts place on these records: *Howard Univ. v. Best*, 484 A.2d 958, 978 (D.C. 1984) (committee report); *Gentry v. State*, 640 S.W.2d 899, 901 n.6 (Tex. Crim. App. 1982) (bill analysis accompanying committee report); *State v. Turner*, 658 P.2d 658, 660-62 (Wash. 1983) (standing committee analysis and recorded proceeding of committee hearings); *see also White*, *supra* note 18, at 69-71; *Smith*, *supra* note 18, at 299-301.

39. *Mills v. United States*, 713 F.2d 1249, 1252 (7th Cir. 1983), *cert. denied*, 104 S. Ct. 974 (1984) (mem.); *see also International Tel. & Tel. Corp. v. General Tel. & Elec. Corp.*, 518 F.2d 913, 921 (9th Cir. 1975), *on remand*, 449 F. Supp. 1158 (D. Hawaii 1978) ("Committee reports are indeed entitled to greater weight than less formal indicia of Congressional intent such as floor debates.").

40. 396 U.S. 168, 186-87 (1969).

41. G. FOLSOM, *LEGISLATIVE HISTORY: RESEARCH FOR THE INTERPRETATION OF LAWS* 26 (1972) (quoting W. WILSON, *CONGRESSIONAL GOVERNMENT* 113 (1913)).

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.⁴²

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

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.⁴³

"Further extension of the use of this aid in the state courts depends only on the development of the standing committee report in the state legislatures to something more than a mere recommendation."⁴⁴

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 possible 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 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.⁴⁵

Florida courts reflect the national tendency to cite committee re-

42. Jones, *supra* note 9, at 743 (footnote omitted).

43. G. FOLSOM, *supra* note 41, at 28.

44. 2A C. SANDS, STATUTES AND STATUTORY CONSTRUCTION § 48.06, at 309 (4th ed. 1984).

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

ports to assess legislative intent.⁴⁶ Although they are usually cited to support the reasoning of the court in interpreting a statute, in a recent decision, the committee legislative history was dispositive.⁴⁷

Standing legislative committees in Florida prepare a variety of reports and studies during the bill enactment process. These reports may be generally classified as follows:

A. Full Committee Reports

House Rule 7.16 and Senate Rule 2.15 require standing committees to report on all matters referred to them. Actually these reports are nothing more than a record of the time, place, and tabulation of voting on the legislation heard by the committee. They contain no analysis or explanation of legislative intent.

B. Staff Analyses

The staff analysis is the committee report most often relied on by Florida courts. This analysis is not required by rule, but is expected to be available when a committee considers a bill. The analysis can be updated if the bill is amended in committee hearings, or can serve as the basis for subsequent analysis if the bill is heard in more than one committee.⁴⁸ A printed copy of each analysis is kept in the respective committees, and a copy is filed with the House Clerk or Senate Secretary when a bill is reported out of committee. The staff analysis is available to every member when a bill is considered on the floor of the House or Senate.⁴⁹ The staff

46. *State v. Page*, 449 So. 2d 813, 816 (Fla. 1984) (Adkins, J., dissenting) (citing sponsor's notes and Senate staff analysis); *Novo v. Scott*, 438 So. 2d 477, 478-79 (Fla. 3d DCA 1983) (citing staff analyses from both the House and Senate); *Childers v. American Auto. Ass'n*, 424 So. 2d 116, 119 n.3 (Fla. 1st DCA 1982) (citing House committee report); *Florida Ins. Guar. Ass'n v. State Dep't of Ins.*, 400 So. 2d 813, 817 n.5 (Fla. 1st DCA 1981) (citing Senate staff analysis and EIS, and House committee report); *Fields v. Zinman*, 394 So. 2d 1133, 1135 (Fla. 4th DCA 1981) (citing House committee report); *Goodson v. State*, 392 So. 2d 1335, 1336 n.1 (Fla. 1st DCA 1980) (citing House committee report).

47. *Auto-Owners Ins. Co. v. Prough*, 463 So. 2d 1184, 1186 (Fla. 2d DCA 1985). The court was faced with two possible constructions of the 1980 exclusion of uninsured motorist coverage from the general antistacking statute. The court quoted the House committee report, and cited the Senate staff analysis and EIS saying, "Our review of the legislative history of the 1980 amendment requires us to conclude that appellee's argument is correct." *Id.* at 1186.

48. Interview with the Honorable Allen Morris, Clerk, Fla. H.R. (Mar. 26, 1985) (tape on file, *Florida State University Law Review*) [hereinafter cited as Morris Interview]; Interview with Fred Breeze, Chief of Staff, Office of the Speaker, Fla. H.R. (Mar. 27, 1985) (tape on file, *Florida State University Law Review*) [hereinafter cited as Breeze Interview].

49. Interview with the Honorable Joe Brown, Secretary, Fla. S. (Apr. 8, 1985) (tape on

analysis format is standardized and is typed directly into the legislative computer.⁵⁰ The originals of staff analyses are kept in the committee office with other material relating to a particular bill. When the committee no longer needs the bill files, usually at the end of each biennium, the files are sent to the legislative library, which indexes each file by bill number and title. Bill files are eventually sent to the state archives for permanent storage.⁵¹ The state archives files committee papers by committee and year. Copies of each staff analysis on the computer are usually erased at the end of the session.⁵²

The staff analysis is first written after the introduction of the bill and may include information from several different sources. The legislative staff member may ask the legislator responsible for drafting the bill to provide information regarding the bill, including its intent. Additionally, depending on the subject matter of the legislation, the staff member may also discuss the purpose of the bill with persons potentially affected by the bill or call upon his own experience with the subject area to identify the basis and rationale for the legislation. After the committee meeting the analysis is completely rewritten if the bill is made into a committee substitute; otherwise, any changes are discussed in the amendments section of the analysis. At the end of the session, staff often update the analysis to reflect the final form of the legislation; this may involve a total rewrite of the analysis or only revisions to the amendments section.

C. Fiscal Notes

In 1976, the legislature enacted chapter 76-276, which requires the House and the Senate to "consider the economic impact . . . legislation will have upon the public and upon the agencies of government" prior to enactment of any general or special law.⁵³ The Senate complies with this Act by requiring a fiscal note to appear as the economic impact statement (EIS) in each staff analysis for all proposed legislation reported favorably by a standing commit-

file, *Florida State University Law Review*) [hereinafter cited as Brown Interview].

50. *Id.*; Breeze Interview, *supra* note 48.

51. Interview with B. Gene Baker, Director, Jt. Legis. Mgt. Comm., Div. of Legis. Library Servs. (Mar. 22, 1985) (notes on file, *Florida State University Law Review*) [hereinafter cited as Baker Interview].

52. Breeze Interview, *supra* note 48.

53. Ch. 76-276, 1976 Fla. Laws 750, 752 (current version at FLA. STAT. § 11.075 (1983)).

tee.⁵⁴ The House requires individual fiscal notes only for bills referred to the Appropriations or Finance and Taxation committees;⁵⁵ the "Economic Impact Statement" that appears in the House staff analysis is only required by the House's informal policy and not by chapter 76-276.

Although the House and Senate EIS forms are not identical, they require essentially 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.⁵⁶ These are generally updated as necessary as bills are amended by various committees and are distributed to legislators on the floor when a bill is considered. A copy of the Senate EIS or House fiscal note is filed with its bill.

D. Formal Investigative Reports

During the legislative interim, the committee staffs often conduct investigations into various matters that result in formal reports. These staff reports may concern examinations of alleged defects in a statute or problems experienced by an agency in its implementation and enforcement of a statute. The product of these reports often is specific legislation drafted by the committee staff in the form of a proposed committee bill. These reports therefore reflect the scope of the problem the legislation should address, possible statutory solutions, and their potential application. They are available to committee members when they consider the proposed committee bill and are a part of the bill file. Substantive reports are usually sent to the legislative library, where they are coded by subject matter and incorporated into the other materials of the library.⁵⁷

Sunset and Sundown reports are comparable to formal investigative reports, except that they review existing legislation as directed by sections 11.61 and 11.611, Florida Statutes. These reports are filed with the bill file and often with the legislative library as well.

V. REPORTS OF SPECIAL COMMITTEES

Special committees are frequently created to investigate specific

54. FLA. S. RULE 3.13.

55. FLA. H.R. RULE 7.16.

56. Interview with William Ryan, Staff Director, Fla. H.R., Comm. on Fin. & Tax. (Mar. 28, 1985) (tape on file, *Florida State University Law Review*).

57. Baker Interview, *supra* note 51.

problem areas and propose legislation. These committee reports are generally extensive, and the courts have found them useful aids in construing statutes enacted pursuant to committee recommendation.⁵⁸

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.⁵⁹

Many states have also established revision commissions to study and recommend legislation.⁶⁰ The courts generally treat the reports and comments of these commissions in the same fashion as reports of special committees of the legislature.⁶¹ Similar treatment is often accorded reports and notes of national commissions.⁶² The Florida Supreme Court, for instance, relied upon the notes of the National Conference of Commissioners on Uniform State Laws in *Sheffield—Briggs Steel Products, Inc. v. Act Concrete Services Co.*⁶³ The action was brought to establish priority of mechanic's

58. "Often, however, much of the state's most important legislation is preceded by investigations conducted by special or interim legislative committees . . ." 2A C. SANDS, *supra* note 44, § 48.04, at 301. In *Estuary Properties, Inc. v. Askew*, 381 So. 2d 1126, 1134-35 (Fla. 1st DCA 1979), *rev'd on other grounds*, *Graham v. Estuary Properties, Inc.*, 399 So. 2d 1374 (Fla. 1981), the court cited ENVIRONMENTAL LAND MGT. STUDY COMM., ENVIRONMENTAL LAND MANAGEMENT: A FINAL REPORT AND RECOMMENDATIONS 5 (Dec. 1973) to support its construction of the Environmental Land and Water Management Act, FLA. STAT. § 380.06 (1983). This special committee was created by the legislature in the Florida Land and Water Management Act of 1972, ch. 72-317, § 9, 1972 Fla. Laws 1162. See also *Brown v. Keill*, 580 P.2d 867, 872 (Kan. 1978); *Austin v. Lewis*, 412 A.2d 457, 459 (N.J. Super. Ct. App. Div. 1980), *rev'd*, 427 A.2d 1105 (N.J. 1981); *State v. Stanfield*, 314 N.W.2d 339, 342-43 & n.9 (Wis. 1982).

59. Comment, *Statutory Construction—Legislative Intent—Use of Extrinsic Aids in Wisconsin*, 1964 WIS. L. REV. 660, 663-64.

60. See THE COUNCIL OF STATE GOVERNMENTS, THE BOOK OF THE STATES 1985-1986, at 274-75 (1985).

61. "We believe that the Commission's comments on the amended bill are instructive as to the intent of the legislature." *Kelly v. Stratton*, 552 F. Supp. 641, 647 (N.D. Ill. 1982) (footnote omitted); see also *State v. Rastopsoff*, 659 P.2d 630, 639 (Alaska Ct. App. 1983); *Penobscot Nation v. Stilphen*, 461 A.2d 478, 490 (Me. 1983); *Shapiro v. Essex County Bd. of Chosen Freeholders*, 424 A.2d 1203, 1206 (N.J. Super. Ct. Law Div. 1980), *aff'd*, 453 A.2d 158 (N.J. 1982); *Milwaukee County v. Department of Indus.*, 259 N.W.2d 118, 121-22 (Wis. 1977).

62. *Bindzyck v. Finucane*, 342 U.S. 76 (1951).

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

liens under chapter 84, Florida Statutes.⁶⁴ The court noted that the statute was, in all pertinent respects, identical to the Model Mechanic's Lien Act drafted by the Commissioners:⁶⁵

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' . . . 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.⁶⁶

The court then quoted the Commissioners' notes and relied on them in its holding.⁶⁷

Special or select committees and commissions in Florida are much more likely to present specific reports on proposed legislation than standing committees. Recent decisions indicate courts rely upon special committee reports of the Florida Legislature as a valuable aid to discern legislative intent. In *Paterson v. Deeb*,⁶⁸ the First District Court of Appeal cited the report of the Florida Law Revision Council to determine that the Residential Landlord and Tenant Act "imposes definite obligations upon the landlord . . . which did not exist under the common law."⁶⁹

VI. REPORTS OF CONFERENCE COMMITTEES

Reports of conference committees are 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.⁷⁰

64. *Id.*

65. *Id.* at 925.

66. *Id.* at 926.

67. *Id.*

68. *Paterson v. Deeb*, 472 So. 2d 1210 (Fla. 1st DCA 1985).

69. *Id.* at 1419; see also *Lewis v. Judges of the District Court of Appeal*, 322 So. 2d 16 (Fla. 1975) (reporter's notes of Fla. Law Revision Council); *Department of Revenue v. American Tel. and Tel. Co.*, 431 So. 2d 1025, 1029 (Fla. 1st DCA 1983) (after finding the statute plain, the court addressed the Department of Revenue's arguments by citing A. ENGLAND, ENGLAND'S REPORTS TO HOUSE OF REPRESENTATIVES: REPORT TO THE HOUSE ON PROPOSED CORPORATE TAX LEGISLATION (Nov. 3, 1971) (available at Jt. Legis. Mgt. Comm., Div. of Legis. Library Servs., the Capitol, Tallahassee, Fla.).

70. See, e.g., FLA. S. RULE 4.5; FLA. H.R. RULE 6.59.

The use of conference committee reports outside the federal system is limited; however, when such reports are used, they are likely to receive great weight.⁷¹ In Florida, many of the most important and controversial bills go to conference committees. Often appointed in the last days of the session, they are informal and result-oriented, and their reports generally contain only recommendations on resolution of differences, with virtually no explanation of reasoning.⁷²

A review of the journals of the Florida Senate and the Florida House of Representatives reveals that conference committee reports 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. Sometimes a fact sheet is attached. Little is offered about legislative intent, although much can be inferred from the adoption of one alternative instead of another. The Florida courts readily analyze the conference committee reports to determine legislative intent from the enactment history of a bill.⁷³ In some instances, comparison summaries are made among the House, Senate, and conference committee actions, but they are not systematically retained.⁷⁴

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 document is prepared collaboratively by the staffs of these committees, purportedly as a result of matters resolved by the respective committees or the appropriations conference committee. It 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 legis-

71. *Brotherhood of Maintenance of Way Employes v. United States*, 366 U.S. 169 (1961) (highly persuasive); *Leedom v. International Union of Mine Workers*, 352 U.S. 145 (1956) (highly persuasive); *Claim of Maldonado*, 683 P.2d 394 (Hawaii Ct. App. 1984) (conference committee report enlightening), *rev'd*, 687 P.2d 1 (Hawaii 1984) (conference committee report to another statute cited).

72. Interview with John B. Phelps III, Deputy Clerk, Fla. H.R. (Mar. 26, 1985) (tape on file, *Florida State University Law Review*); Morris Interview, *supra* note 48. See, e.g., FLA. H.R. JOUR. 1104 (Reg. Sess. May 30, 1985) (Conference Committee Report on HB 1352); FLA. S. JOUR. 982 (Reg. Sess. May 30, 1985) (Conference Committee Report on HB 1352).

73. Conference committee actions are an important part of tracing the enactment history of a bill. See, e.g., *State v. Insurance Servs. Office*, 434 So. 2d 908, 911 n.5 (Fla. 1st DCA 1983) (approval of a conference committee report indicative of legislative intent).

74. Brown Interview, *supra* note 49.

lative intent in state fiscal and administrative matters.⁷⁵

VII. COMMITTEE HEARINGS

The federal courts are willing to consider records of committee proceedings in construing statutes,⁷⁶ but other extrinsic aids, such as committee reports, may carry more evidentiary weight.⁷⁷ Judicial reliance on committee proceedings has been criticized. Professor Wasby points out the dangers of resorting to such materials:

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.⁷⁸

Nevertheless, a majority of states now record committee hearings⁷⁹ and state courts have relied on statements made in hearings to clarify legislative intent. "[T]estimony of legislators recorded in the minutes of the committee meetings and other legislative sessions are entitled to consideration as they are statements of public events."⁸⁰

75. See, e.g., STAFF OF FLA. S. COMM. ON APPROP. AND FLA. H.R. COMM. ON APPROP., 1985-86 GENERAL APPROPRIATIONS ACT AND SUMMARY STATEMENT OF INTENT (July 1, 1985) (on file with committees).

76. *National R.R. Passenger Corp. v. National Ass'n of R.R. Passengers*, 414 U.S. 453, 459-61 (1974); *International Tel. & Tel. Corp.*, 518 F.2d at 921-22.

77. *International Tel. & Tel. Corp.*, 518 F.2d at 921; 2A C. SANDS, *supra* note 44, § 48.10. In *Zuber v. Allen*, 396 U.S. 168, 182-85 (1969), the Supreme Court regarded oral statements by witnesses as more persuasive than written presentations.

78. Wasby, *supra* note 26, at 272.

79. M. FISHER, *GUIDE TO STATE LEGISLATIVE MATERIALS* (1983).

80. *Bishop v. Linkway Stores, Inc.*, 655 S.W.2d 426, 431 (Ark. 1983) (Hatfield, S.J., dissenting) (citation omitted); see also *People v. Luciano*, 662 P.2d 480, 482 n.5 (Colo. 1983) (recordings of Senate and House committee hearings); *Hayes v. Smith*, 480 A.2d 425, 432 n.10 (Conn. 1984) (remarks in committee hearings); *Jackson v. City of Kansas City*, 680 P.2d 877, 883 (Kan. 1984) (statements in judiciary committee hearing); *Wiseman v. Keller*, 358 N.W.2d 768, 771 (Neb. 1984) (judiciary committee hearing); *Linlee Enters., Inc. v. State*, 445 A.2d 1130, 1131 (N.H. 1982) (House committee hearing and subcommittee report); *Dickinson v. Fund for Support of Free Public Schools*, 469 A.2d 1, 6 nn.5-6 (N.J. 1983) (statements made in subcommittee and committee hearings); *Sager v. McClenden*, 672 P.2d 697, 700 (Or. 1983) (minutes of committee hearings).

Florida courts follow this trend. In determining that an administrative code rule was in conflict with a statute, the First District Court of Appeal said, "[T]he transcript of the legislative committee hearings . . . clearly indicates that one of the major purposes of that legislation was to prevent bid shopping by contractors"⁸¹ 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. They are considered working papers by the legislative staff and exist primarily for internal use.⁸² Some committees forward their tapes to the legislative library with the bill files, from where they are later forwarded to the state archives; other committees erase the tapes for reuse 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 discourage their use as extrinsic aids.

VIII. FLOOR DEBATES

Courts have refused to consider statements made during floor debate as evidence of legislative intent for various reasons.⁸³ Some legislators may not have been 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, members of Congress have been free to amend their remarks before publication, so the record may not accurately reflect the proceedings.

81. *E. M. Watkins & Co. v. Board of Regents*, 414 So. 2d 583, 587 (Fla. 1st DCA 1982); see also *Baxley v. State*, 411 So. 2d 194, 196 (Fla. 5th DCA 1981) (dissent citing transcript of Senate committee hearing as indication of intent).

82. Morris Interview, *supra* note 48; Brown Interview, *supra* note 49.

83. See, e.g., *Zuber v. Allen*, 396 U.S. 168, 186 (1969); 2A C. SANDS, *supra* note 44, § 48.13. Arguments against use of statements made in floor debates based upon the probable absence of some legislators are advanced by Stringham, *supra* note 35, at 470. The problem presented by the opportunity which legislators have to amend their remarks prior to publication of the *Congressional Record* is noted in Wasby, *supra* note 26, at 264; Stringham, *supra* note 35, at 469-70.

The 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 other⁸⁴

Professor 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.⁸⁵ He also points out that the process of enactment is lengthy and complicated. A bill passes through committees, public hearings, 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.⁸⁶

These arguments deserve response. The choice is not between a rule of absolute exclusion and one that would establish 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 less consideration. In his article on extrinsic aids in federal courts, Professor 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

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

85. Nunez, *supra* note 33, at 133.

86. *Id.* at 134.

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.⁸⁷

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 have been considered⁸⁸ as well as those of a member in charge of presenting the bill to the legislature.⁸⁹ These remarks are regarded as supplemental committee reports.⁹⁰

Debates reflecting a common agreement among legislators of the meaning of ambiguous language⁹¹ and remarks of legislators during debate which tend to show the evils at which the statute was aimed have also been admitted.⁹² Often the courts will vary the weight attached to floor debates according to the apparent authority of the speaker and other relevant circumstances.⁹³ Statements made by opponents of a bill have also been considered.⁹⁴ Finally, courts may refer to floor proceedings to corroborate a result already reached.⁹⁵

Because a majority of states now record legislative debates,⁹⁶

87. Jones, *supra* note 9, at 751-52 (footnote omitted).

88. *United States v. Enmons*, 410 U.S. 396, 404-05 (1973); *National Woodwork Mfrs. Ass'n v. NLRB*, 386 U.S. 612, 624 (1967); *Schwegmann Bros. v. Calvert Distillers Corp.*, 341 U.S. 384, 394-95 (1951).

89. *Johansen v. United States*, 343 U.S. 427, 437 (1952).

90. *Duplex Printing Press Co. v. Deering*, 254 U.S. 443, 475 (1921).

91. *First Nat'l Bank v. Walker Bank & Trust Co.*, 385 U.S. 252, 259-60 (1966); *Federal Trade Comm'n v. Raladam Co.*, 283 U.S. 643, 650 (1931).

92. *National Woodwork Mfrs. Ass'n*, 386 U.S. at 624-26; *Galvan v. Press*, 347 U.S. 522, 526-27 (1954).

93. *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, 588-89 (1950); cf. *Arizona v. California*, 373 U.S. 546, 572-75 (1963).

94. *Arizona*, 373 U.S. at 582 n.85; *United Shoe Workers v. Bedell*, 506 F.2d 174, 182 n.50 (D.C. Cir. 1974).

95. *Raladam*, 283 U.S. at 649-50; *United States v. Bhagat Singh Thind*, 261 U.S. 204, 214 (1923); Jones, *supra* note 9, at 752.

96. M. FISHER, *supra* note 79.

state courts have had the opportunity to consider their probative value.⁹⁷ In Florida, floor debates in both houses are recorded but rarely transcribed. Tapes are kept in the offices of the House Clerk and the Senate Secretary. Although tapes are still considered informal working tools, their value as a source of legislative intent is increasing. As legislators become more aware of the importance of extrinsic aids, members request that statements of intent be read into the record or initiate debate so the purpose of the legislation will be addressed on the floor and thus included in the record.⁹⁸ 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. Both houses maintain a cooperative attitude toward supplying copies of tapes of floor debates to interested persons, and a high-speed tape copying machine is available to facilitate this service.

The proceedings in the House and Senate are also videotaped from gavel to gavel by Florida Public Broadcasting. The tapes are edited into a one-hour daily program covering floor debate and committee hearings on major legislation. The videotapes are recycled, but the edited programs are archived and copies are available with the written permission of House and Senate leaders. The videotape medium with its record of words, actions, and demeanor, overcomes many of the evidentiary objections to recordings of debate and committee hearings.⁹⁹

IX. JOURNALS

American courts uniformly utilize legislative journals to track changes in a bill as it proceeds through the enactment process.¹⁰⁰ Florida decisions are in harmony with other jurisdictions. Many

97.

The evidentiary value attached to a sponsor's statements during floor debate on a bill derives from the weight which other legislators will attach to these statements. The theory is that other legislators will generally regard the sponsor's statements as knowledgeable with regard to the nature and effect of the bill, so that these statements will reflect to some degree the subsequent legislative intent.

Alaska Pub. Employees Ass'n v. State, 525 P.2d 12, 16 n.14 (Alaska 1974) (citation omitted). See also *Franco v. District Court*, 641 P.2d 922, 927-29 (Colo. 1982); *Spence v. Terry*, 340 N.W.2d 884, 887 (Neb. 1983).

98. See, e.g., *FLA. H.R. JOUR.* 286 (Reg. Sess. 1984) (statement of intent on Fla. CS for CS for HB 1187 (1984)); *FLA. S. JOUR.* 420 (Reg. Sess. 1984) (statement of intent on Fla. CS for CS for HB 1187 (1984)).

99. *Morris Interview*, *supra* note 48. Dr. Morris noted that a transcript might tell what was said, but that a videotape would show how it was said as well.

100. 2A C. SANDS, *supra* note 44, § 48.18, at 341.

cases cite the legislative history of a statute through the House, Senate, and conference committees as reported in the House and Senate journals. Their value as evidence was confirmed by the Florida Supreme Court in *State v. Kaufman*:¹⁰¹ "This Court has held that the legislative journals are the only evidence superior in dignity to recorded acts and that acts can only be impeached by showing a clear constitutional violation on the face of the journals."¹⁰²

In *State v. Insurance Services Office*,¹⁰³ the First District Court of Appeal decided whether an administrative rule prohibiting use of sex, marital status, and scholastic achievement as factors in auto insurance rating conflicted with section 626.9541, Florida Statutes, and was therefore invalid. The court traced the history of the statute through the House and Senate journals and found the legislature expressly considered, but rejected an amendment to prohibit the use of these factors as unfairly discriminatory. "This provides strong evidence that the legislature did not intend . . . to completely prohibit use of these factors."¹⁰⁴

Where the full 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. Professor Sands, however, adds a note of caution.¹⁰⁵ 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 expressed legislative intent.

The disposition of an amendment 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. POSTENACTMENT STATEMENTS

Statements of legislators subsequent to the enactment of a stat-

101. *State v. Kaufman*, 430 So. 2d 904 (Fla. 1983).

102. *Id.* at 905 (citations omitted) (footnote omitted).

103. 434 So. 2d 908 (Fla. 1st DCA 1983).

104. *Id.* at 911.

105. 2A C. SANDS, *supra* note 44, § 48.18, at 341.

ute are generally disapproved as evidence of legislative intent, whether by affidavit, oral testimony, or otherwise. In federal courts, such statements are entitled to little or no weight at all.¹⁰⁶ One federal court explained the rationale in 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 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.¹⁰⁷

Florida is in accord with the majority view in rejecting postenactment statements of legislators. In *Security Feed & Seed Co. v. Lee*,¹⁰⁸ 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."¹⁰⁹ Florida courts have also quashed subpoenas to legislators and committee staff seeking discovery of intent in preparing extrinsic aids or proposing legislation.¹¹⁰

Although postenactment statements continue to be disfavored as indicia of legislative intent,¹¹¹ the Florida Supreme Court appeared

106. Numerous decisions reject postenactment statements. *E.g.*, *Petry v. Block*, 697 F.2d 1169, 1171 (D.C. Cir. 1983) ("Such statements have no probative weight . . ."); *Goolsby v. Blumenthal*, 581 F.2d 455, 460 (5th Cir. 1978) ("post-passage remarks of legislators . . . cannot serve to change the legislative intent") (quoting *Regional Rail Reorganization Act Cases*, 419 U.S. 102, 132 (1974)).

107. *Epstein v. Resor*, 296 F. Supp. 214, 216 (N.D. Cal. 1969), *aff'd*, 421 F.2d 930 (9th Cir. 1970), *cert. denied*, 398 U.S. 965 (1970); *see United States v. UMW*, 330 U.S. 258, 282 (1947).

108. 189 So. 869 (Fla. 1939).

109. *Id.* at 870 (citation omitted). But the inflexible disregard of these statements may be eroding. *See Note, Extrinsic Aids to Statutory Interpretation: The Use of Legislative History in Florida* 28-30, nn.230-32 and accompanying text (summer 1985) (unpublished student work on file, *Florida State University Law Review*).

110. Telephone interview with D. Steven Kahn, Attorney, Fla. S., Office of the President (Apr. 9, 1985) (notes on file, *Florida State University Law Review*) (copies of orders granting motion to quash from the 2d, 17th, and 20th Judicial Circuits on file, *Florida State University Law Review*).

111. *See McLellan v. State Farm Mut. Auto. Ins. Co.*, 366 So. 2d 811, 813 (Fla. 4th DCA 1979) (The court describes an affidavit from a member of the legislature at the time the act was passed as "generally not accepted as admissible evidence to demonstrate legislative intent."); *see also Fields v. Zinman*, 394 So. 2d 1133, 1135-36 (Fla. 4th DCA 1981) (The court discusses affidavits from members of the legislature as an indication of intent. "Even so, subjective intent does not rise to the level of evidence and, in fact, has little probative force

to depart from this rule in one recent case. In *Osterndorf v. Turner*,¹¹² the trial court had admitted an affidavit by a legislator as evidence of the purpose of a statute requiring five years' residency for an increased homestead tax exemption. There were no objections at trial. The appellant contended on appeal that the affidavit should have been excluded as hearsay. The Fifth District Court of Appeal declined to exclude the affidavit, saying "we will not consider such [an] objection made for the first time on appeal."¹¹³

The supreme court reviewed the case, found an insufficient purpose in the residency discrimination for the exemption, and admitted the affidavit, without comment, as an expression of legislative intent.¹¹⁴ Thus, the uncertain status of postenactment statements further demonstrates 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 because 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 their presentation at trial.¹¹⁵ 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.¹¹⁶

in the absence of ambiguity or conflict . . . in this statute."); *Department of Revenue v. Markham*, 381 So. 2d 1101, 1108-09 (Fla. 1st DCA 1979) (The trial court admitted an affidavit from the author of the statute not as evidence of legislative intent but as evidence concerning the evils sought to be remedied. The appellate court concluded it was given minimal weight and did not warrant reversal for the trial court's failure to exclude the affidavit.), *rev'd*, 396 So. 2d 1120 (Fla. 1981).

112. 411 So. 2d 330 (Fla. 5th DCA), *rev'd*, 426 So. 2d 539 (1982).

113. *Id.* at 334 n.4.

114. *Osterndorf v. Turner*, 426 So. 2d 539, 545 (Fla. 1982).

115. The primary problem is the requirement of authentication. Stringham argued that extrinsic aids should be regarded as hearsay. Stringham, *supra* note 35, at 469-70. However, no case has been discovered in which the authenticity or the verity of extrinsic aids offered by a party was in dispute.

116. See H. READ, J. MACDONALD, J. FORDHAM & W. PIERCE, *MATERIALS ON LEGISLATION* 946 (4th ed. 1982).

XII. RECOMMENDED JUDICIAL CRITERIA

When historical materials are available, the courts can be expected to rely on them in construing statutes for three reasons. First, the Florida decisions indicate 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.'" ¹¹⁷

There may be problems in determining how much weight to accord particular legislative history, but it is not assured that "courts can ever do more than bring their generally critical faculties to bear on the totality of evidence in the legislative record in the same way that they deal with other kinds of complex evidentiary records."¹¹⁸ Also, there is the potential for judicial abuse by selective reliance on the sources which will support a desired result. However, such factors already inhere in the judicial process. Making the totality of enactment history available to Florida courts would allow them to be more discerning and critical in their application, and lessen the chance that a decision would turn on a scrap of extrinsic evidence.¹¹⁹

Case law and scholarly commentary suggest that four criteria are significant to courts in determining whether to consider and, if so, the weight to be given extrinsic aids. We recommend these standards for consideration and application by the courts:

(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 legislative action, the less persuasive the aid.

117. *Harrison v. Northern Trust Co.*, 317 U.S. 476, 479 (1943) (citations omitted).

118. Wald, *Some Observations on the Use of Legislative History in the 1981 Supreme Court Term*, 68 IOWA L. REV. 195, 214 (1983).

119. A scrap of highly questionable evidence was used in one case to discern legislative intent. The court said: "It hardly needs mentioning that 'in Maryland there usually is little prepassage evidence of intent.' However, with this particular bill we are provided with a note contained in the files of the Senate Judicial Proceedings Committee, author unknown." *Director of Fin. v. Cole*, 465 A.2d 450, 460 (Md. 1983) (citation omitted).

(2) *Credibility*: The more explanatory, 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 to the 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. Nevertheless, they should 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.¹²⁰

XIII. RECOMMENDATIONS TO THE LEGISLATURE

Florida courts are favorably disposed to consider extrinsic aids in determining legislative intent. However, use of these aids is still difficult, not because of judicial reservation, but because there is no systematic method by which materials are developed, collected,

120. Frankfurter, *supra* note 20, at 543.

and retained. Some of the recommendations made seven years ago have been informally adopted or implemented by custom, but the need for a comprehensive official policy to retain materials indicating legislative history is more critical than ever. Therefore, our recommendations address procedural improvements in legislative management and development of specific aids. The following recommendations primarily address procedural matters, most of which can be implemented without additional legislation or any significant increase in cost. If implemented, these recommendations would provide a simple, systematic means of locating and documenting materials which bear significantly on legislative intent.

(1) The most immediate need is to *identify or select a single or central repository for legislative intent materials*. These materials presently are kept 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 at the state archives 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) 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 the legislation. At the end of the biennium, these officers would transmit the files to the Department of State for retention in the state archives. The files should be merged, and duplicative materials discarded by Department of State archivists. The files relating to unsuccessful legislation should then 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. The legislature is also considering the feasibility of developing a central computerized data base for storing documents prepared in the enactment process.¹²¹ This would provide centralized storage of staff analyses, bill drafts, and documents prepared for enactment, increasing the probability of a com-

121. Breeze Interview, *supra* note 48.

plete document record being retained.

(3) Another important need is to *develop a uniform formal policy on the retention of relevant materials*. A systematic method for forwarding all materials to the master file and central repository should be established. Presently, various materials are retained for differing lengths of time and are archived on an ad hoc basis. A uniform formal policy applicable to both houses would facilitate use of materials.

(4) 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 legislative rule. 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.

One approach for which the procedural framework already exists is the staff analysis, which has been discussed previously. Sponsors could submit statements to committee staff to be incorporated into the bill analysis. Another format would require an inclusion of intent in the bill itself.¹²² Either procedure would insure the statement of intent would be available to all members during consideration of the bill. To implement this idea, such statements should be prepared in both houses for *all* legislation, and the forms and procedures employed in the House and the Senate should be uniform.

(5) *A staff analysis on each bill heard in committee* should be required by rule. A standard format should be adopted by both the House and the Senate. Of course, more detailed and analytical reports should also be prepared and distributed to the membership, especially on complex legislation.

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

(7) Committees, legislators, and staff 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,

122. Many consequential bills have preambles explaining legislative intent. Morris Interview, *supra* note 48. A computer-assisted search of the data base of the Jt. Legis. Mgt. Comm., Div. of Statutory Revision revealed 260 references to "legislative intent" in the statutes (printout on file, *Florida State University Law Review*).

“sell,” or defend legislation. These would be included in the master file.

(8) *All hearings of committees and subcommittees, including conference committees, 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. The tapes would then 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) *Recordings of floor debates in each house 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 contemporaneously with the action discussed and was available in *written* form to the members. 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) *Videotapes of the committee and floor debate on major legislation should be retained* by the Clerk and Secretary for the biennium and then stored with the master file. 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.

To implement recommendations 1 and 2, legislation providing the necessary authorization for the Department of State should be enacted. To implement recommendations 3-12, 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, suggested criteria for determining their evidentiary

value, and offered alternative methods for increasing the availability of reliable statutory history in Florida. It has also illustrated judicial willingness to consider all aspects of the enactment process in construing and applying statutes in accordance with the legislature's purpose. The debate over the existence of legislative intent or the efficacy of extrinsic aids is academic—Florida courts are using them. Legislators should take an active role in preserving and documenting a record of their purpose in drafting and enacting legislation. By providing the courts with a panoply of reliable legislative history, the legislature will enable judges to understand and apply legislative intent, furthering the constitutional mandate for separation of powers.

Without the ability to consult reliable extrinsic aids, courts must rely solely on legislative language, aptly described by Professor Jones as "notoriously inexact and imperfect symbols for the communication of ideas."¹²³ Moreover, these "imperfect symbols" must be molded and applied by bill-drafters subject to the pressures and vagaries of the legislative process. Therefore, it is not surprising that legislative language often is less than exact. Commenting on the pitfalls of loose legislative drafting, Justice Frankfurter reminded his audience of a 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."¹²⁴ The legislature owes it to the people of Florida to ensure the laws passed by their representatives are the laws applied by the courts. Development and preservation of extrinsic aids is the best way to fulfill that obligation.

123. Jones, *supra* note 9, at 739 (footnote omitted).

124. Frankfurter, *supra* note 20, at 545.