

2013

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Recommended Citation

Mary Whisner, *Other Uses of Legislative History*, 105 LAW LIBR. J. 243 (2013), <https://digitalcommons.law.uw.edu/librarians-articles/25>

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Other Uses of Legislative History*

Mary Whisner**

Although we usually think of using legislative history to determine legislative intent when interpreting statutes, Ms. Whisner shows that legislative documents can be useful for other, less controversial purposes as well.

I am rumored to believe that the only legitimate use of legislative history is to prop open heavy doors or to put under the seats of little children not quite tall enough to reach the table.

— Hon. Alex Kozinski¹

¶1 Debate swirls around the use of legislative history for interpreting statutes.² Recognizing this, many of our presentations on how to research legislative history begin with a caveat that some judges and scholars think it shouldn't be used at all.³ After the caveat, we go on to describe the documents that legislatures produce and how to find them—but the whole enterprise is clouded by the uncertainty about their use. Meanwhile, no one seems to talk about the other uses of legislative history (and, more broadly, legislative documents).

¶2 This column is not an attempt to wade into the fracas over using legislative history to divine the meaning of statutes.⁴ My goal here is to illustrate a variety of other uses for legislative history. The examples are drawn from real legal work and

* © Mary Whisner, 2013. I am grateful to Mary A. Hotchkiss and Nancy C. Unger for their assistance with this piece.

** Reference Librarian, Marian Gould Gallagher Law Library, University of Washington School of Law, Seattle, Washington.

1. *Interbranch Relations: Hearings Before the Joint Comm. on the Organization of Congress*, 103d Cong. 83 (1993) (statement of Judge Alex Kozinski). While cautioning against courts “allow[ing] legislative history to do too much of the work of interpretation,” Kozinski states that it “can be an immensely valuable tool for resolving certain types of problems in statutory interpretation.” *Id.*

2. See STEVEN M. BARKAN ET AL., *FUNDAMENTALS OF LEGAL RESEARCH* 157, 158 n.3 (9th ed. 2009) (citing sources).

3. See, e.g., Georgetown Law Library, *Legislative History Research: A Tutorial*, at slide 6, <http://www.law.georgetown.edu/library/research/tutorials/lh/upload/leghist-slide01.pdf> (Jan. 2, 2013) (“Can be controversial!”). See also BARKAN ET AL., *supra* note 2, at 158–59 (“This conflict has led to a re-examination of legislative histories as a subject in law school legal research courses.”).

4. I can't resist sharing something I learned during my research: a number of state legislatures have enacted statutes instructing courts to use legislative history as an interpretive aid. The statutes are listed in the appendix, *infra*, for readers who, like me, might have heard talk about the use of federal legislative history in the federal courts without considering whether there might be different rules in the states.

scholarship. Together they provide many reasons to learn to find legislative history materials.

Legislative Advocacy

¶3 The students in my law school's legislative advocacy clinic try to persuade the state legislature to enact or amend laws to address perceived problems. In recent years, students have worked on measures concerning juvenile records, juvenile runaways, and compensation for people released from prison after wrongful convictions. When the clinic's instructors asked me to speak to the students about legislative history research, I realized they needed to think about how to mine legislative history for different nuggets than the appellate lawyer who wants to argue for a particular interpretation of ambiguous statutory language. If the students hope to advocate amending an existing statute, they might ask

- Which legislators pushed for it?
- What did they say they wanted to accomplish? Can we go back and argue that the law didn't do what they hoped?
- Which citizens groups and government agencies testified for and against it? What were their concerns? Can we find potential allies for our efforts today? Are there potential opponents we should be aware of?
- Has the legislature's makeup changed in a way that will help us or hurt us?

Whatever measures the students are promoting, they should look at measures on related topics in the last few legislative sessions:

- Which legislators have proposed bills? Who is interested in our issues?
- Which committees considered the bills? Were hearings held? Who testified?
- How far did the bills go?

Gathering all this information can help students plan their own efforts in more ways than one. When they view committee hearings, not only can they look at the substance of what legislators and witnesses say, but they can also see what the committee room is like and anticipate the experience they will have when they travel to Olympia to testify. Now that the clinic is a few years old, the students can even watch webcasts of former students testifying.⁵

¶4 Clearly, these students can learn a lot from legislative history research. In fact, the process is generally more fruitful for them than for the researcher who is trying to find a key sentence to unlock the mystery of an ambiguous phrase in a statute (preferably to the advantage of the researcher's client). We all know that those keys are rare and hard to find.

5. See, e.g., *Senate Human Services and Corrections Comm. Hearing*, TVW (Mar. 17, 2011), http://www.tvw.org/index.php?option=com_tvwplayer&eventID=2011030125 (testimony of clinic student Ramona Whittington in support of Substitute House bill 1793, restricting access to juvenile records) (video at 53:00).

¶5 Of course, clinic students are not the only ones for whom this research would be helpful. Practicing lawyers, lobbyists, public interest groups, and citizens can also benefit from being able to find information about the workings of the legislature.

Current Awareness

¶6 To advise their clients well, lawyers often need to anticipate changes in the law, so it is useful to be aware of measures that are introduced and how they are faring. It is not unusual to see coverage of pending legislation in legal newsletters. For instance, *Interpreter Releases*, a newsletter for immigration lawyers, has a regular feature titled “Newly Introduced Legislation.”⁶ A recent government contracting newsletter notes: “Bills Would Expand Contractor Whistleblower Protections.”⁷ Another newsletter reports on a Senate bill, the Prepaid Card Consumer Protection Act, that would add some consumer protections and require the Consumer Finance Protection Board and the Federal Deposit Insurance Corporation to issue appropriate regulations.⁸

¶7 Litigators also need to keep up with new legislation. When the Protection of Lawful Commerce in Arms Act was enacted,⁹ the gun manufacturers who had been sued by the City of New York moved to dismiss the case or alternatively to stay the proceedings and vacate the approaching trial date. The city argued that the act did not apply and, if it did, it was unconstitutional. But Judge Jack Weinstein didn’t want to move the trial date, and he thought the recent passage of the law was hardly a reason for delay:

The bill embodied in the Act has been pending for a long time. . . . It can reasonably be assumed that the parties have already given a great deal of thought—supported by legal and other research—to its application and validity. They should be capable of promptly briefing both the constitutional and other statutory issues now raised.¹⁰

6. *Interpreter Releases* is published forty-eight times per year and is available on Westlaw.

7. *Bills Would Expand Contractor Whistleblower Protections*, GOV’T CONTRACTOR, Sept. 26, 2012, at ¶ 296.

8. Monica C. Platt, *An Uncertain Regulatory Future for Prepaid Cards*, BANKING & FIN. SERVS. POL’Y REP., July 2012, at 5–6. The article uses 2012 Senate hearings for information about prepaid cards.

9. Pub. L. No. 109-92, 119 Stat. 2095 (2005).

10. *City of New York v. Beretta U.S.A. Corp.*, 2005 WL 2979104, *1 (E.D.N.Y. Nov. 7, 2005) (citing the *Congressional Record* and news stories). On interlocutory appeal, the Second Circuit held that the statute did apply. *City of New York v. Beretta U.S.A. Corp.*, 524 F.3d 384 (2d Cir. 2008). So, as it turned out, the trial did not begin on schedule after all. But the point remains: the judge believed that the lawyers must have been following legislation that could have such a big impact on their business and the case. Indeed, the general counsel of the named defendant, Beretta U.S.A. Corp., had testified at a hearing on a bill with the same name in an earlier Congress. *Protection of Lawful Commerce in Arms Act: Hearing on H.R. 2037 Before the Subcomm. on Commerce, Trade, and Consumer Protection of the H. Comm. on Energy and Commerce*, 107th Cong. 79 (2002) (statement of Jeff Reh).

Facts

¶8 A recent student-written law review article about sex trafficking opens with the story of Sonia, a teenager from El Salvador who was forced to work in a brothel in the United States and then faced the Department of Homeland Security, the Department of Health and Human Services, and the Department of Justice.¹¹ Using a story is one way to capture the reader's attention and set the scene for an article,¹² and this story does its job well. Where did the student author find Sonia's story? It was in a witness's statement in a congressional hearing.¹³ Later in the article, the author uses legislative history materials to support the propositions that the sex trade is a quick way to make money,¹⁴ that sex trafficking is a "human calamity,"¹⁵ that the Trafficking Victims Protection Act was "part of an ambitious endeavor to combat human trafficking,"¹⁶ and that the act "took a decidedly victim-centered approach."¹⁷ The author does not use legislative history to argue for an interpretation of the law. Instead he uses the materials to provide context for his discussion of the law and his eventual recommendation that Congress amend it.

¶9 Many authors use legislative materials as sources for facts and stories. For instance, two academics used committee reports alongside journalistic accounts to summarize insider-trading scandals.¹⁸ A judge cited two committee reports to support his assertion that "[t]he declining fortunes of the nation's rail industry came to a crucial focus in the 1970's, when the collapse of several major carriers necessitated a substantial federal effort to ensure the continuation of vital service and to restore the rail industry to a level of financial health."¹⁹ A student drew facts about the danger of algae blooms from committee reports.²⁰ Another student used legislative materials as sources for statistics about the number of people with disabilities, their high rate of unemployment, and their low incomes.²¹ A judge reviewing

11. Theodore R. Sangalis, Comment, *Elusive Empowerment: Compensating the Sex Trafficked Person Under the Trafficking Victims Protection Act*, 80 *FORDHAM L. REV.* 403, 404–05 (2011).

12. See, e.g., CHIP HEATH & DAN HEATH, *MADE TO STICK* 206 (2007) (discussing the power of stories); HELEN SWORD, *STYLISH ACADEMIC WRITING* 85–86 (2012). By the way, I highly recommend both of these books.

13. Sangalis, *supra* note 11, at 404 n.1 (citing *Legal Options to Stop Human Trafficking: Hearing Before the Subcomm. on Human Rights and the Law of the S. Comm. on the Judiciary*, 110th Cong. 74 (2007) (statement of Katherine Kaufka, Nat'l Immigrant Justice Ctr.)).

14. *Id.* at 412 n.77 (citing *International Trafficking in Persons: Taking Action to Eliminate Modern Day Slavery: Hearing Before the H. Comm. on Foreign Affairs*, 110th Cong. 19 (2007) (statement of Sharon Cohn, Senior Vice President, Int'l Justice Mission)).

15. *Id.* at 413 n.96 (citing H.R. REP. NO. 110-430, pt. 1, at 34 (2007)).

16. *Id.* at 417 n.141 (citing H.R. Rep. No. 106-487, pt. 2, at 2 (2000)).

17. *Id.* at 418 n.144 (citing *Implementation of the Trafficking Victims Protection Act: Hearing Before the H. Comm. on Int'l Relations*, 107th Cong. 3 (2001) (statement of Hon. Henry J. Hyde, Chairman, H. Comm. on Int'l Relations)).

18. THOMAS L. HAZEN & JERRY W. MARKHAM, *BROKER-DEALER OPERATIONS UNDER THE SECURITIES AND COMMODITIES LAW* § 2:28 (Westlaw Nov. 2012).

19. *Simmons v. I.C.C.*, 697 F.2d 326, 328 (D.C. Cir. 1982).

20. Marcel De Armas, *Changing Tides: The Need for New Legislation to Prevent Algae Blooms*, 7 *SUSTAINABLE DEV. L. & POL'Y* 44, 44 nn.1–2, 4, 7–8, 10 (2006).

21. Reese John Henderson Jr., Special Project, *Addiction as Disability: The Protection of Alcoholics and Drug Addicts Under the Americans with Disabilities Act of 1990*, 44 *VAND. L. REV.* 713, 714 n.3 (1991) (citing the *Congressional Record* and a committee report).

an asylum denial cited NGO human rights reports that had been published in the *Congressional Record*.²² Another judge used statistics from the *Congressional Record* to support a claim of tepid enforcement by the Department of Justice under the Child Support Recovery Act.²³

¶10 Two more examples come from state search and seizure cases. In a Vermont case, the issue was whether officers had reasonable suspicion to pull over a car after seeing a thin red beam, which the officers thought might be a laser-sighting device for a gun but was in fact a laser pointer. The majority found that the officers' inference that it was a sighting device—and that a sighting device was of concern—was reasonable, citing introduced bills, statements in the *Congressional Record*, and a committee report to support the claim that laser sights are becoming prevalent and are used in committing crimes.²⁴ In a Florida case, the issue was whether officers had reasonable suspicion to stop and frisk a young man at a bus stop, based on an anonymous tip that he had a gun. The majority held that the officers did not, and hence suppressed the evidence they found.²⁵ A dissenter believed that the anonymous tip was sufficient, bolstering his position with a description of the prevalence of gun violence and citations from the *Congressional Record* about violent crimes committed by juveniles.²⁶

¶11 Why use legislative materials as a source for facts? First, they're widely available. It's easier for a law student to find a committee report that summarizes the hazards of algae blooms than to sort through marine biology journals. If a judge wants support for his assertion that juvenile crime is on the rise, the *Congressional Record* is handier than formal criminology journals and texts.²⁷

¶12 Second, the materials probably seem like good, credible sources. But are they? Maybe, maybe not. On the one hand, many people preparing to testify before a congressional committee take great care to get their facts straight and to present careful, well-reasoned arguments. Reliability might be increased by the setting, since their assertions could be probed by committee members, other witnesses, or the press. On the other hand, a wide variety of people, representing many interests and views, testify. Even without intending to deceive, they could present "facts" that are less than rock solid. Likewise, the assertions senators and representatives make in the *Congressional Record*, many of them motivated by politics, might not be entirely reliable. Despite these cautions, legislative materials are a useful, practical source for many facts.²⁸

22. *Marcu v. I.N.S.*, 147 F.3d 1078, 1082 (9th Cir. 1998). The dissenting judge also cited reports and statements in the *Congressional Record*. *Id.* at 1087.

23. *United States v. Mussari*, 168 F.3d 1141, 1145 (9th Cir. 1999) (Kozinski, J., dissenting from denial of rehearing en banc).

24. *State v. Kindle*, 751 A.2d 757, 758–59 (Vt. 2000). The court also cited legislation from two other states.

25. *J.L. v. State*, 727 So. 2d 204, 209 (Fla. 1999).

26. *Id.* at 211 n.8 (Overton, J., dissenting).

27. This point is weaker now than it was twenty or thirty years ago. I suspect that most law students are more comfortable searching Google Scholar, newspaper archives, or periodical indexes from other disciplines than they are working with legislative history materials. See, e.g., Frederick Schauer & Virginia J. Wise, *Nonlegal Information and the Delegalization of Law*, 39 J. LEGAL STUD. 495, 513 (2000) (“[I]n previously barely imagined ways the universe of nonlegal information is now easily and cheaply available to lawyers, judges, and other legal decision makers.”).

28. For a discussion of judges' use of outside research, see Elizabeth F. Judge, *Curious Judge*:

Overview and Perspective

¶13 It is often hard to make sense of a statute by jumping into it section by section. It helps to get an overview and some sense of what motivated the legislature. Here, legislative history can be very useful. (Note that I'm not saying that the reports and so on would trump the clear words of the statute—just that they can provide a context.)

¶14 If you wanted to learn about the Child Protection Act of 2012, you could go directly to the statute. After Section 1 (Short Title), you would find:

SEC. 2. ENHANCED PENALTIES FOR POSSESSION OF CHILD PORNOGRAPHY.

(a) CERTAIN ACTIVITIES RELATING TO MATERIAL INVOLVING THE SEXUAL EXPLOITATION OF MINORS.—Section 2252(b)(2) of title 18, United States Code, is amended by inserting after “but if” the following: “any visual depiction involved in the offense involved a prepubescent minor or a minor who had not attained 12 years of age, such person shall be fined under this title and imprisoned for not more than 20 years, or if.”

(b) CERTAIN ACTIVITIES RELATING TO MATERIAL CONSTITUTING OR CONTAINING CHILD PORNOGRAPHY.—Section 2252A(b)(2) of title 18, United States Code, is amended by inserting after “but, if” the following: “any image of child pornography involved in the offense involved a prepubescent minor or a minor who had not attained 12 years of age, such person shall be fined under this title and imprisoned for not more than 20 years, or if.”²⁹

Unless you are already steeped in the statutory framework, you would have some trouble figuring out what the old law was, how the new law changes it, and how it fits into the bigger picture. Is the twenty-year penalty new? Or is it changing a penalty that was in the statute being amended?

¶15 The Congressional Research Service summary (available on THOMAS) says of this portion of the law: “Amends the federal criminal code to impose a fine and/or prison term of up to 20 years for transporting, receiving, distributing, selling, or possessing pornographic images of a child under the age of 12.”³⁰ It's quicker and easier to understand than section 2 of the statute itself. The section-by-section analysis in the bill's committee report summarizes: “This section increases the maximum penalty from 10 to 20 years for offenses under sections 2252(b)(2) and 2252A(b)(2) of Title 18 involving prepubescent minors or minors under the age of 12.”³¹ That gives us important information (the penalty is doubling) in a concise statement.

¶16 Reports are also valuable for the context of the legislation. In this situation you aren't looking for something short (the report on the Child Protection Act is more than six times as long as the act³²), but rather for something that explains the

Judicial Notice of Facts, Independent Judicial Research, and the Impact of the Internet, 2012 ANN. REV. CIV. LITIG. 325. In the cases I've mentioned, judges are generally using the *Congressional Record* and other materials for “legislative and social framework facts” rather than “adjudicative facts.” See *id.* at 331.

29. Child Protection Act of 2012, Pub. L. No. 112-206, § 2, 126 Stat. 1490, 1490.

30. *Bill Summary & Status, 112th Congress (2011–2012)*, H.R.6063, CRS Summary, THOMAS, <http://thomas.loc.gov/cgi-bin/bdquery/z?d112:HR06063:@@D&summ2=m&> (last visited Feb. 6, 2012).

31. H.R. REP. NO. 112-638, at 17 (2012).

32. The report is thirty-two pages, while the session law is barely five pages long.

prior state of the law, the problem the law is supposed to address, and how the law's sponsors think it will help. The report includes a discussion headed "Background and Need for the Legislation."³³ You'll also find "Dissenting Views," which contains a discussion of the bill, its background, and the reasons three of the committee members opposed it.³⁴ If you are interested in the due process concerns raised, you can use this section as a starting point for further research, since the dissenters cite and discuss two Supreme Court cases.³⁵

¶17 The authors of treatises and practice guides recognize the value of context and often include a discussion of legislative history when they outline a statutory scheme. For example, the *Bankruptcy Desk Guide* uses committee reports to compare the Bankruptcy Code with the Securities Investor Protection Act.³⁶ *Securities Litigation: Damages* uses legislative history to give context for the provisions concerning lead plaintiffs and lead counsel in the Private Securities Litigation Reform Act of 1995.³⁷ The *Department of Justice Manual* uses legislative history for the background of the Freedom of Access to Clinic Entrances Act.³⁸ Hazen and Markham cite hearings from the 1920s through the 1980s to demonstrate the long history of broker-dealer regulation.³⁹ The *Health Law Handbook* cites hearings in explaining the statutory framework for the Stark Act's specialty hospital loophole.⁴⁰ And *Food and Drug Administration* uses a variety of materials to discuss the history of premarket approval of medical devices.⁴¹

Critique and Analysis

¶18 Sifting through legislative history is also useful for commentators who want to step back to analyze the work of the legislative body. For example, a student author carefully traced the history of legislation protecting the domestic catfish industry.⁴² A central provision defines "catfish" in such a way that Asian fish resembling the North American catfish cannot be labeled "catfish." The author does not argue that the statute should be interpreted otherwise. Her point, rather, is that the definition was written as it was because of the influence of the catfish industry.⁴³

¶19 A researcher can look at a very specific provision—like the definition of "catfish"—or at a broad class of legislation. When William Eskridge wanted to

33. H.R. REP. NO. 112-638, at 4–11.

34. *Id.* at 24–32.

35. *Id.* at 27 (citing *Sandstrom v. Montana*, 442 U.S. 510 (1979), and *Francis v. Franklin*, 471 U.S. 307 (1985)).

36. 3 BANKRUPTCY DESK GUIDE § 34:147 (Westlaw Aug. 2012).

37. MICHAEL J. KAUFMAN, SECURITIES LITIGATION: DAMAGES § 3:14 (Westlaw Sept. 2012).

38. 4 DEPARTMENT OF JUSTICE MANUAL, at tit. 8, no. 6 (Westlaw 2013).

39. HAZEN & MARKHAM, *supra* note 18, at § 8:15.

40. 2006 HEALTH LAW HANDBOOK § 13:4 nn.4, 7, 9–12, 14 (Alice G. Gosfield ed., Westlaw June 2012).

41. 1 JAMES T. O'REILLY, FOOD AND DRUG ADMINISTRATION § 18:61 (3d ed., Westlaw Dec. 2012).

42. Kerrilee E. Kobbeman, Legislative Note, *Hook, Line and Sinkers: How Congress Swallowed the Domestic Catfish Industry's Narrow Definition of this Ubiquitous Bottomfeeder*, 57 ARK. L. REV. 407 (2004).

43. *Id.* at 417.

determine how often Congress overrides the Supreme Court's interpretation of a statute—and what sorts of decisions are most often affected—he and his research assistants reviewed all the reports published in *United States Code Congressional and Administrative News* to spot occasions when the committee indicated that a statute “overruled,” “modified,” or “clarified” a federal judicial interpretation of a statute.⁴⁴ Like the catfish piece, this article did not use the legislative history to interpret the statutes, but rather to explore how the legislation came about.⁴⁵

¶20 Eskridge's work looking at the institutional roles of Congress and the courts could be seen as a work of political science as well as legal scholarship. Another field that draws from the rich body of legislative material is history, including legal history.⁴⁶ Biographers of federal judges, political scientists, and legal scholars can all find useful material in judicial confirmation hearings and debates.⁴⁷

¶21 Legislative history materials can also be used as raw material for rhetorical analysis. For instance, John Nagle looked at “endangered species” as a trope,⁴⁸ citing instances from the *Congressional Record* of politicians using the term to include “the fine people of San Antonio,”⁴⁹ the public lands states,⁵⁰ the middle-class taxpayer,⁵¹ small gas stations,⁵² “our maritime industries,”⁵³ the American-made typewriter,⁵⁴ and—hold onto your hats—the legal profession.⁵⁵ Another author examined the emotionally charged language used in discussing sex offender laws.⁵⁶ Someone else analyzed the rhetoric in the debates on the Detainee Treatment Act of 2005, placing the debates “within broader American cultural narratives about the law and lawyers' roles in society.”⁵⁷

44. William N. Eskridge Jr., *Overriding Supreme Court Statutory Interpretation Decisions*, 101 YALE L.J. 331, 336 (1991). They weeded out some references and also searched other reports, selected hearings, and secondary sources. *Id.* at 336–37.

45. Eskridge found, among other things, that “decisions that were overridden were more likely to have relied on a statute's plain meaning or the canons of construction than either decisions not scrutinized or decision[s] scrutinized but not overridden.” *Id.* at 351.

46. See, e.g., Edward J. Larson, “*In the Finest, Most Womanly Way*”: Women in the Southern Eugenics Movement, 39 AM. J. LEGAL HIST. 119, 130–37, 141–47 (1995) (discussing legislation in Louisiana in the 1920s and in Georgia in the 1930s and citing state legislative journals).

One reviewer of the eleventh edition of the *Bluebook* said, “Use e.g. when there are other examples you are too lazy to find or are skeptical of unearthing.” Peter Lushing, Book Review, 67 COLUM. L. REV. 599, 601 (1967). I am not at all skeptical of being able to unearth many more examples of historians using legislative history material.

47. In a sense, these aren't “legislative history” because they don't relate to legislation. But they are documents produced by the legislature, and they are researched using many of the same tools used for legislative history documents.

48. John Copeland Nagle, *Endangered [sic] Species Wannabees*, 29 SETON HALL L. REV. 235 (1998).

49. *Id.* at 237 n.18.

50. *Id.*

51. *Id.* at 237 n.19.

52. *Id.* at 238 n.21.

53. *Id.* at 239 n.25.

54. *Id.* at 239 n.24.

55. *Id.* at 240 n.27.

56. Mona Lynch, *Pedophiles and Cyber-Predators as Contaminating Forces: The Language of Disgust, Pollution, and Boundary Invasions in Federal Debates on Sex Offender Legislation*, 27 LAW & SOC. INQUIRY 529 (2002).

57. Ariel Meyerstein, *The Law and Lawyers as Enemy Combatants*, 18 U. FLA. J.L. & PUB. POL'Y 299, 300 (2007).

Conclusion

¶22 None of the examples discussed here is startling. As I've gone through each set of examples—legislative advocacy, current awareness, facts, overview and perspective, critique and analysis—I'm sure that readers have nodded their heads, thinking that each use was familiar.

¶23 If we are aware of all these uses, why do we focus only on using legislative history to interpret statutory provisions?⁵⁸ Perhaps because first-year law students spend so much time reading appellate cases and often compete in an appellate moot court, we emphasize research that is important in appellate work. And because all eyes are on the U.S. Supreme Court, we pay attention to research tools that are important in appellate work. That's important and students should learn about using legislative history in statutory interpretation (or not, depending on jurisdiction and interpretive approach). But let's remember the many other uses for legislative history.

58. Maybe I'm wrong about this. I haven't sat in on the hundreds of presentations about legislative history that are offered across the country each year. Maybe lots of people go beyond statutory interpretation.

Appendix

State Statutes on Using Legislative History in Statutory Interpretation

1. Explicit Direction to Use Legislative History

Colorado

If a statute is ambiguous, the court, in determining the intention of the general assembly, may consider . . .

- (c) The legislative history, if any;

COLO. REV. STAT. ANN. § 2-4-203 (West, Westlaw through ch. 2 of 2013 1st reg. sess.).

Iowa

If a statute is ambiguous, the court, in determining the intention of the legislature, may consider . . .

- (3) The legislative history.

IOWA CODE ANN. § 4.6 (West, Westlaw 2012 reg. sess.).

Louisiana

A. When the meaning of a law cannot be ascertained by [code provisions concerning plain language and interpretive rules], the court shall consider the intent of the legislature.

B. (1) The text of a law is the best evidence of legislative intent.

- (2)(a) The occasion and necessity for the law, the circumstances under which it was enacted, concepts of reasonableness, and contemporaneous legislative history may also be considered in determining legislative intent.

LA. REV. STAT. ANN. § 24:177 (West, Westlaw through 2012 reg. sess.).

Minnesota

When the words of a law are not explicit, the intention of the legislature may be ascertained by considering . . .

- (7) the contemporaneous legislative history;

MINN. STAT. ANN. § 645.16 (West, Westlaw through 2012 1st spec. sess.).

New Mexico

C. [T]he following aids to construction may be considered in ascertaining the meaning of the text: . . .

- (2) the purpose of a statute or rule as determined from the legislative or administrative history of the statute or rule;

N. MEX. STAT. ANN. § 12-2A-20 (West, Westlaw through 2012 2d reg. sess.).

New York

The courts may in a proper case indulge in a departure from literal construction and will sustain the legislative intention although it is contrary to the literal letter of the statute.

Where there is doubt as to the meaning of the language of a statute, various extrinsic matters throwing light on the legislative intent may be considered by the courts.

In ascertaining the purpose and applicability of a statute, it is proper to consider the legislative history of the act, the circumstances surrounding the statute's passage, and the history of the time

If the interpretation to be attached to a statute is doubtful, the courts may utilize legislative proceedings to determine legislative intent.

N.Y. STAT. §§ 111, 120, 124, 125 (McKinney, Westlaw through ch. 2, 2013).

North Dakota

If a statute is ambiguous, the court, in determining the intention of the legislation, may consider . . .

3. The legislative history.

N. DAK. CENT. CODE ANN. § 1-02-39 (West, Westlaw through 2011 reg. & spec. sess.).

Ohio

If a statute is ambiguous, the court, in determining the intention of the legislature, may consider . . .

(C) The legislative history;

OHIO REV. CODE ANN. § 1.49 (West, Westlaw through file 201 of the 2012 gen. assembly with exceptions).

Oregon

(1)(a) In the construction of a statute, a court shall pursue the intention of the legislature if possible.

(b) To assist a court in its construction of a statute, a party may offer the legislative history of the statute. . . .

(3) A court may limit its consideration of legislative history to the information that the parties provide to the court. A court shall give the weight to the legislative history that the court considers to be appropriate.

OR. REV. STAT. ANN. § 174.020 (West, Westlaw through 2012 reg. sess.).

Pennsylvania

(c) When the words of a statute are not explicit, the intention of the General Assembly may be ascertained by considering . . .

(7) The contemporaneous legislative history.

1 PA. CONS. STAT. ANN. § 1921 (West, Westlaw through 2012 reg. sess.).

Texas

In construing a statute, whether or not the statute is considered ambiguous on its face, a court may consider . . .

(3) legislative history;

TEX. GOV'T CODE ANN. § 311.023 (West, Westlaw through 2011 reg. sess. & 1st called sess. of 82d legis.).

2. Arguable Acceptance of Use of Legislative History***Georgia***

(a) In all interpretations of statutes, the courts shall look diligently for the intention of the General Assembly, keeping in view at all times the old law, the evil, and the remedy.

GA. CODE ANN. § 1-3-1 (West, Westlaw through 2012 reg. sess.).

Hawaii

Where the words of a law are ambiguous:

....

(2) The reason and spirit of the law, and the cause which induced the legislature to enact it, may be considered to discover its true meaning.

HAW. REV. STAT. ANN. § 1-15 (West, Westlaw through 2012 reg. and spec. sess.).

Massachusetts

(b) A court may take judicial notice of . . . legislative history . . .

MASS. GEN. LAWS ANN. § 202 (West, Westlaw through ch. 464 of 2012 2d ann. sess.).