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Bertha R. White

University of the Pacific; McGeorge School of Law

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Sources Of Legislative Intent In California

BERTHA ROTHE WHITE*

In the last ten years there has been a significant expansion of background material on California legislation. The Journal includes this article to apprise the practitioner of the material available to him in his attempt to find and establish legislative intent. The author lists the official and unofficial reports, hearings, studies and journals which can serve as extrinsic aids to the court in construing legislative enactments. The author briefly discusses the type of information found in the enumerated reports, hearings and studies. Also included is a list of the indexes which will enable the researcher to locate the material available on a specific subject or statute. Finally, the author discusses the procedure to be utilized for researching legislative intent. An appendix is added which lists and numbers the material as it is discussed in the text.

INTRODUCTION

California attorneys who go to their law library to research a point of California law to find its legislative background soon have their eager expectancy dulled when they find there is no instant, ready-mix history which will show them just what the legislators meant by a certain piece of legislation. But search they must for even one little phrase which will show the intent of the lawmakers. When realization dawns that there is no verbatim record of debates on the floor of the Assembly or

* A.M., B.S. in Library Science, Syracuse University; J.D., LL.M., The George Washington University School of Law; Asst. Head Reference Librarian, Los Angeles County Law Library; Member of D.C. Bar.

Senate, as congressional debates are reproduced in the Congressional Record, despair becomes profound.

But perseverance and a knowledge of the bibliographical and historical resources described in this article will enable the researcher to unearth background material useful in determining the intent of the legislature.

In the more than ten years that have elapsed since the last article on legislative research appeared in a California legal journal,¹ the availability of materials on legislative intent has improved greatly. The turning point was in late 1962 when the Subcommittee on Legislative Intent of the Assembly Interim Committee on Rules held hearings² on legislative intent as a result of the widespread indignation following the decision in *In re Carol Lane*.³ Many municipalities disagreed with the decision of the California Supreme Court which held invalid a provision of the Los Angeles Municipal Code under which Miss Lane was convicted for having illicit relations in her own home with someone to whom she was not married. The Supreme Court decided that the state had adopted a general scheme for regulating the criminal aspects of sexual activity in the Penal Code and had thus pre-empted the field to the exclusion of local regulation.⁴

People who disagreed with the decision, including certain members of the 1962 Legislature, felt that the Legislature should pass a resolution declaring, in 1962, what its intent had been in 1961. The entire question of legislative intent was thereby raised and interested persons were invited to give their testimony at the hearing. Various recommendations were made by witnesses, such as requiring a written committee report with the bill, as in the federal system; printing more Legislative Counsel opinions on legislation in the Assembly Journal; printing statements of sponsors of bills; increasing publication of reports; and so on. Nearly everyone mentioned organizing and printing material on legislation to make it more available.⁵

These suggestions were considered by the committee which issued its Final Report⁶ in July, 1963. The committee recommended that all processed legislative materials, such as hearing transcripts, be reproduced

1. Van Alstyne and Ezer, *Legislative Research in California: The Unchartered Wilderness*, 35 L.A. BAR BULL. 116 (1960).

2. *Hearings on Legislative Intent, before the Sub-committee on Legislative Intent, California Assembly Interim Committee on Rules*, November 29, 1962, San Francisco; December 6, 1962, Los Angeles.

3. 58 Cal. 2d 99 (1962).

4. *Id.* at 103.

5. See note 2 *supra*.

6. Final Report on Legislative Intent, see JOURNAL OF THE CALIFORNIA ASSEMBLY APP., VOL. 2 (Reg. Sess. 1963).

in sufficient number to allow distribution to depository law libraries, and that they be indexed in such a way as to make them easy to use.⁷ The committee also recommended that the publishers of the California Codes be urged to expand their annotations of material that will show legislative intent.⁸

Since that time an increasing number of printed hearings and reports, other than those published in the Assembly and Senate Journals, have been made accessible through indexing and distribution to depository libraries. Materials still not readily accessible include tapes of committee hearings, reports accompanying bills through the legislature, and reports prepared for the Governor.

However, with the material at hand, especially since 1962, the attorney is better able to establish legislative intent for presentation in court. This is extremely important since many of the cases heard by the Supreme Court involve some problem of statutory interpretation. Checking the volume of cases in McKinney's or West's Digest under the topic "Statutes" will give an idea of the number of cases that arise in this area.

Of course, if the meaning of the law on its face is plain and unambiguous the Court will not go behind the statute, or use extrinsic aids in construing it. But where the meaning is in question, presenting the purpose of the law is of utmost importance since one of the most important principles of statutory construction is that statutes should be given a reasonable interpretation in accordance with the apparent purpose and intention of the legislature.⁹ This principle dates from the earliest Code of Civil Procedure, Section 1859.¹⁰ Therefore the history of the particular statute may be researched to discover the meaning and purpose of the act. Reliance may have to be placed on certain extrinsic aids to establish the purpose of the act.

In determining what material influenced the Legislature one must find out if the Legislature was aware of it and then whether it relied on the material. Therefore committee reports are probably the best single documents to persuade the court to a particular point of view in a situation where the meaning or purpose of a statute is in question.

Research of this type is usually not possible except in the larger county law libraries where the bills, with their amendments; the Assembly and Senate Journals; and hearings and reports are maintained, or

7. *Id.* at 23.

8. *Id.* at 24.

9. *Kesler v. Dept. of Motor Vehicles*, 1 Cal. 3d 74 (1969). 82 C.J.S. *Statutes* § 311 (1953).

10. CODE OF CIVIL PROCEDURE OF THE STATE OF CALIFORNIA VOL. 2 at 397 (1st ed. 1872).

in the State Law Library and complete depository libraries¹¹ throughout the State which have their material available for research and for interlibrary loan. Material in the State Archives is not available for loan.

SOURCES OF LEGISLATIVE INTENT

The following is a list of basic, official materials on the California Constitution and Statutes.¹² They are listed as they will be found in the card file of most libraries.

A. *Basic Materials on the California Constitution*

1. California Constitutional Convention, 1849. Report of the Debates . . . by J. Ross Browne. Washington, printed by J. T. Towers, 1850. 479 pages.

This supplies background for provisions that date back to 1850, but is unindexed.

2. California. Constitutional Convention, 1878-79. Debates and Proceedings . . . E. B. Willis and P. K. Stockton, official stenographers. Sacramento, State Printing Office, J. D. Young, Sup't., 1880-81. 3 v.

This is useful for unamended constitutional provisions.

3. California. Constitution. Proposed Amendments to the Constitution: Propositions together with Arguments. Sacramento, State Printing Office, 1908 to date.

The text of the proposed amendments, initiatives or referendums and the official arguments for and against are contained herein. The compilation is by the Legislative Counsel.

11. The complete depositories are:

California State Library
Library and Courts Bldg.
Sacramento, CA 95809

Fresno County Free Library
Fresno, CA 93721

Los Angeles Public Library
530 S. Hope St.
Los Angeles, CA 90017

Oakland Public Library
125 Fourteenth St.
Oakland, CA 94612

San Diego Public Library
820 E. St.
San Diego, CA 92101

San Diego State College Library
5402 College Ave.
San Diego, CA 92115

San Francisco Public Library
Civic Center
San Francisco, CA 94102

Stanford University Libraries
Stanford, CA 94305

University of California Library
Documents Dept.
Berkeley, CA 94720

University of California Library
Documents Dept.
Davis, CA 95616

University of California Library
Government Publications Room
405 Hilgard Ave.
Los Angeles, CA 90024

12. For ease in presenting this material, it has been divided into two groups, Basic Materials on the California Constitution, and Basic Materials on Legislative Enactments. However, the dividing line between the two is very tenuous, and there is much overlapping in the material to be used to define legislative intent. This is especially true in the second group, which would have material that would apply to the Constitution and its amendments.

4. California. Secretary of State. Statement of the Vote. 1912-date.

This is useful in checking the vote on constitutional amendments, initiative and referendum propositions, as well as the vote on presidential electors and on legislators.

5. California. Constitution Revision Commission. Minutes of Meetings, Background Studies, Committee and Commission Recommendations, Drafts of Sections, 1964-71.

After seven years of work the Commission presented its final report in April 1971. To date the electorate has adopted proposals for eleven articles.

6. Senate and Assembly Constitutional Amendments.

See next items.

B. *Basic Official Materials on Legislative Enactments*

1. California. Legislature. Senate and Assembly Bills, Resolutions, and Constitutional Amendments. Sacramento, State Printing Office. Printed and distributed by the Clerk of the Legislative Bill Room, State Capitol, Sacramento.

The bills are very important because they are often the only source of intent. By comparing the various amended forms, a kind of negative legislative intent may be inferred. Selection of one over several similar bills also may be indicative of intent. Each bill has a short digest, prepared by the Legislative Counsel, explaining the content of the bill and its effect on the existing law. Amended bills must have an amended digest. The requirement is set forth in Rule 8.5 of the Joint Rules of the California Legislature.¹³ Some bills now expressly include the intent or statement of policy as part of the bill, e. g. 1971 Senate Bills 216 and 956 which state "findings" of the Legislature.¹⁴ In the past, in most in-

13. D. WHITE, J. DRISCOLL, CALIFORNIA LEGISLATURE, 1971, 346 (1971). (Popularly called Handbook.) The Joint Rules were completely re-enacted by the 1971 Legislature when it passed ACR 66, which became Resolution Chapter 120, and will become effective on the sixty-first day after the Legislature adjourns.

14. 1971 Senate Bill 215 states, as proposed section 5097.9 of the Public Resources Code that

The Legislature hereby finds and declares that California's archaeological, paleontological, and historical heritage is fast disappearing as a result of public and private land development and that the state's total effort to preserve and salvage these precious resources is fragmented and uncoordinated.

1971 Senate Bill 956 would add as part of proposed section 25533 of the Education Code the statement that

The Legislature finds that the unique circumstances facing the community colleges in the City and County of San Francisco arising out of their need for urban facilities, the lack of space for urban construction, exceptionally high destruction and construction costs, and the availability of existing and adequate

stances, the "findings" have not been codified, so reference must be made to the original bill to see if an intent is expressed.

Most complete depository libraries have bills from at least 1945 to present; the state law library has the most complete set available for loan, while the State Archives has the complete set. To find the bill, when one knows only the code section, he must first go to that section in the annotated code, find the chapter and year at the end of the code section, and then convert this into the bill number by using the "Table of Code Sections Affected," found in the FINAL CALENDAR OF LEGISLATIVE BUSINESS or in the STATUTES AND AMENDMENTS TO THE CODES. If one is checking a particular subject, use the Final Calendar index or the Legislative index, which appears bi-weekly during the session, to find the bill numbers on the particular subject. The Final History in the Final Calendar of Legislative Business, or in the case of current legislation, the Daily or Weekly History, will describe the history of each bill, as well as all of the amendments offered to the bill and identify the committees that studied the proposal. If not all of the amendatory bills have been retained, the wording of the amendment will be found in the Senate or Assembly Journal.

2. California. Statutes and Amendments to the Codes. 1850 to date.

These contain the Constitution of the State and of the United States, the chapter laws, cross reference tables of code sections amended, and the Statutory Record from 1959 to the present. The extra and budget sessions which met during the even-numbered years appeared more or less regularly in the next year's volume of the statutes from about 1900 until 1968.

3. California. Civil Code, two volumes. Code of Civil Procedure, two volumes. Penal Code, one volume. Political Code, two volumes. Sacramento, H.S. Crocker & Company, 1872.

These are the original California Codes, revised and annotated by the Code Commissioners, Creed Haymond and John C. Burch, and privately printed. They were also printed as separate documents by the state. The need for revision and codification of the laws had been felt for many years and this commission was the second one appointed, empowered to accept or reject what had been done before. The Codes were adopted after an advisory committee

urban facilities require special legislation and that a general statute cannot be made applicable to these circumstances within the meaning of Section 16 of Article IV of the California Constitution.

recommended their passage, even though some preceding legislation was not repealed in them. Several commissions were appointed after the codes were passed to revise and reform them, but later legislation was not always integrated into the Codes and this caused some difficulties. There are several interesting historical accounts of these commissions and bibliography of early California codes, laws, and code commission reports that may provide useful background information.¹⁵ The Field draft of the New York Civil Code is the basic background draft of California's Civil Code; there were Field drafts for the other basic codes as well. The 1872 codes were separately enacted and do not appear in the California Statutes and Amendments to the Code so there is no background for them aside from the Field drafts and the commissioner's notes.¹⁶

4. California. Legislature. Assembly. Journal 1849/50 to date.
California. Legislature. Senate. Journal 1849/50 to date.

Sacramento, State Printing Office, 1850 to date.

The Journals correspond in California to the Congressional Record for the United States Congress with the important difference that there are no debates or texts of bills included. Journals contain day by day procedural information relating to each bill, a record of vote, messages and statements from the Governor, and infrequently committee reports and reports from boards, commissions, departments, agencies, and legislative counsel opinions, when released by the legislator who requested the opinion. The bound volumes of the Journals for each house are separately indexed; however, they are not always completely indexed with an "eye" to the researcher.

5. California. Legislature. Committee Reports.

There are 21 standing committees in the Assembly and 17 in the Senate.¹⁷ Until 1968 there were Interim Committees in the Assem-

15. Kleps, *The Revision and Codification of California Statutes 1849-1953*, 42 CALIF. L. REV. 766 (1954). Miller, *History of the California Code of Civil Procedure*, 23 WEST'S ANNOT. CAL. CODES 1-44 (1955). Not included in the current revision of the CAL. CODE OF CIV. PROC., Parma, *The History of the Adoption of the Codes of California*, 22 L. LIB. J. 8 (1928). Parma, *The Codes and Statutes of California: A Bibliography*, 22 L. LIB. J. 41 (1929).

16. The Field Drafts are as follows: New York. *The Civil Code of the State of New York*, reported complete by the Commissioners of the Code. Albany, Weed, Parsons & Co., 1856. 776 Pages. New York. *The Code of Civil Procedure of the State of New York*, reported complete by the Commissioners on Practice and Pleadings. Albany, Weed, Parsons & Co., 1850. 791 pages. New York. *The Code of Criminal Procedure of the State of New York*, reported complete by the Commissioners on Practice and Pleadings. Albany, Weed, Parsons & Co., 1850. 486 pages. New York. *The Penal Code of the State of New York*, reported complete by the Commissioners of the Code. Albany, Weed, Parsons & Co., 1865. 406, clxvii pages.

17. J. DRISCOLL, CALIFORNIA LEGISLATURE ASSEMBLY, 1971, 108-109, 273 (1971).

bly, and Fact-Finding Committees in the Senate, in addition to the regular Standing and Joint Committees. Interim and Fact-Finding Committees met between the legislative sessions to gather material for legislation to be considered at the next session, or to make investigations. Their Reports were printed in the Journals and the Appendices and Supplements, according to the rules of both houses. To correlate the interim committee reports with the legislation, and thus make determination of legislative intent easier, it was suggested in a study by the Alfred W. Baxter firm of Berkeley, California, that the utility of the format of committee reports be improved by establishing a tradition, that, generally, the proper output of interim study is a draft bill, with committee sponsorship and a discussion of the consideration leading to it, or else statements of why no legislation is required or appropriate to an assigned problem.¹⁸

Reports of Standing and Joint Committees, which met during the sessions, were, in the past, published in the body of the Journal and indexed in the Journal. Since 1946 for the Senate and 1956 for the Assembly they have appeared in the Journal Appendices.

There is also a Senate General Research Committee with rather sweeping investigative powers, as provided for by Standing Rule 12.5 of the Senate;¹⁹ an Assembly counterpart is provided for in Standing Rule 22 of the Assembly.²⁰ These committees do research primarily for the Legislature. Special investigative committees may be created pursuant to Senate Rule 17,²¹ and Assembly standing committees may become investigating or interim committees, or new ones created according to Assembly Rule 19.²² Joint investigating committees are formed according to Joint Rule 36 and 36.5.²³

Some committee reports are issued separately in processed form and do not appear in the legislative Journals or the Supplements or Appendices; a few are not available to the public. Processed reports are those reproduced by state departments and agencies but not printed by the State Printing Plant. Those reports that appear in the Appendices and Supplements to the Journal usually also appear as separate prints. Since 1955 West's Annotated

18. Baxter, Alfred W., jr., firm, Berkeley, Calif. *The Management of Legislative Research. A Report to the Honorable Chairman and the Assembly Rules Committee* 12 (1964).

19. D. WHITE, J. DRISCOLL, *supra* note 13 at 111-112.

20. *Id.* at 280-81.

21. *Id.* at 119.

22. *Id.* at 278.

23. *Id.* at 365-368.

Codes have included references to reports found in the Journal Appendices, so resort to indexes of the committee reports after this date is not necessary (see numbers 4, 5 and 6 under Aids and Indexes, *infra*).

The State Archives, according to a recent article,²⁴ is now also preserving what is called the Legislative Papers File Record Group.²⁵ For the period from 1850 to about 1930 there are reports of action on bills referred to committee, occasional amendments not found elsewhere, reports on the bill's faults and merits, and other material. This is especially true in the case of papers of committees dealing with contested elections. In these papers one would also find messages exchanged between the two houses, and between them and the Governor, and reports from other than legislative sources.

6. California. Legislature. Interim Committee Hearings.

Before 1935 very few transcripts were reproduced for use by anyone outside the legislature. The transcripts that were produced usually became the property of individual committee members and a few were placed in the State Archives. There are now more than seven hundred hearing transcripts filed in the State Archives; ninety-five percent of the transcripts are from the years 1945 to 1970 and two-thirds of these are Assembly records.²⁶ However, many of these transcripts are not complete. The Senate and Joint Legislative Budget Committee are also planning to make the Archives their depository for materials which will be available for public use.

Since 1961 an increasing number of verbatim transcripts of interim committee hearings have been issued in processed form for limited distribution.

7. California. Commission to Examine the Codes Adopted by the Nineteenth Legislature. Report of the examiners of the codes . . . Sacramento, T. A. Springer, State Printer, 1874.

This is a single report on the Codes adopted by the Nineteenth Legislature.

8. California. Code Commission. Reports. Sacramento, 1930-1953. State Printing Office, Sacramento.

The California Code Commission was established by California Statutes of 1929, chapter 750. It was created to prepare a statu-

24. Snyder, *Legislative Source Materials in the California State Archives*, 66 NOTES OF CAL. LIBRARIES 363 (Spring, 1971).

25. *Id.* at 364.

26. *Id.* at 365-66.

tory record, codify, consolidate, compile or revise all statutes in force, repeal all statutes repealed by implication or held unconstitutional, or made obsolete, and to correct errors in form or substance.²⁷ The first report contains the Probate Code with notes. The other reports note the progress of code revision and proposed enactments. The final report of the Commission is dated September 1, 1953. This Commission is succeeded by the Law Revision Commission. Commission notes are cited in Deering's Codes.

9. California Code Commission. Drafts of Proposed Codes. Sacramento, various dates.

Various libraries in the state have collections of mimeographed drafts. These drafts include strike outs, rewordings and notes of changes of previous laws, and thus furnish some indication of legislative intent.

10. California. Commission for Revision of the Law. 1870-1911.

A list of reports promulgated by these commissions from 1870 to 1907 is printed in 22 *Law Library Journal* 55, 56 (1929). These reports in many cases may be found in the Appendices to the legislative Journals.

11. California Law Revision Commission. Reports, Recommendations and Studies. 1953 to date.

The California Law Revision Commission was created by Statutes of 1953, chapter 1445, to examine the common law, statutes, and judicial decisions; to discover defects and anachronisms and recommend needed reforms; to consider changes recommended by the American Law Institute and the National Conference of Commissioners on Uniform State Laws, bar associations and other learned bodies; to receive and consider suggestions from judges, lawyers, officials and the public generally; to recommend changes in the law which would modify or eliminate antiquated and inequitable rules of law; and bring the law of the state into harmony with modern conditions.²⁸

Reports are issued in separate pamphlets which are later bound in permanent volumes. These bound volumes also contain cumulative tables of constitutional and statutory provisions affected by recommendations of the Commission, a cumulative table of cases, and a cumulative subject index for volumes 1-3. There is no cumulative index for the set to date, but individual studies on sov-

27. CAL. STATS. 1929, c. 750, § 2, p. 1428.

28. CAL. STATS. 1953, c. 1445, p. 3038; CAL. GOV'T CODE § 10330-10334.

foreign immunity, published as the fifth volume in the series, and the Uniform Rules of Evidence, the sixth, have their own indexes. Both the West's and Deering's Codes cite these reports.

12. California. Law Revision Commission. Studies, recommendations, reports and miscellaneous papers, 1956 to date.

These are processed papers preliminary to the final reports and recommendations described in the preceding paragraphs. Among the subjects included are jury instructions, escheat, evidence, condemnation, attachment and garnishment, Small Claims Court law, fictitious name statute, sovereign immunity, service of process, inverse condemnation, powers of appointment, and arbitration. These papers probably had limited distribution, but the State Law Library and the Los Angeles County Law Library with approximately sixty bound volumes would be among the libraries with fairly complete sets.

13. California. Commission on Uniform State Laws. Reports 1951/52 to date. Sacramento, State Printing Office, 1952 to date.

Established by California Statutes of 1927, chapter 498, this Commission considers the Uniform Laws and proposes them for adoption by the California State Legislature. More specific information on the drafting of the Uniform Laws can be found in the *Handbook of the Conference of Commissioners on Uniform State Laws*, 1891 to date.

Reports for the early years are not available in published form. The 1931 Report is located in the Senate Journal, page 195; the 1933 Report in the Senate Journal, page 265. Reports for 1938-39 and 1945-46 as well as those from 1954-55 to date are available in separate form.

14. California. Legislative Counsel. Report on Legislation Necessary to Maintain the Codes. March 1, 1954 to date. Sacramento, State Printing Office.

The California Statutes of 1946, chapter 111, (Government Code Section 10242) empowered the Legislative Counsel to advise the legislature on needed revision of the Codes and to present to each session of the Legislature a statement calling attention to laws which have been repealed by implication or declared unconstitutional by the courts.²⁹ Reports for 1947 and 1949 are found in the legislative Journals (1947 in Assembly Journal pp. 1325-1327; 1949 in Assembly Journal, pp. 752-753 and Senate Journal, pp. 360-361). Reports for 1951 and 1953 were pub-

29. CAL. STATS. 1945, c. 111, p. 430.

lished separately. In California Statutes of 1953, chapter 1445, the Legislative Counsel was given the functions of the then defunct California Code Commission in maintaining the codes and codifying the statutes as they are enacted by the legislature.³⁰ Beginning in 1964 reports are issued every two years.

15. California. Legislative Counsel. Opinions.

Some opinions of the Legislative Counsel have been printed in the legislative Journals since 1927. They are sometimes cited in the annotated codes. They also can be found in the indexes to the Journals under subject matter, Legislative Counsel, or under the name of the legislative counsel. Opinions are printed in the Assembly Journal if released by the legislator requesting the opinion. They are listed in the Assembly Final History portion of the Final Calendar of Legislative Business. Often this list is not complete, nor is the listing in the index to the Journals. The opinions in the Appendices and Supplements are not included. Since 1963, all published opinions are indexed in the California State Law Library's "Guide to Legislative History." They are cited in Deering's Codes.

Papers in the Office of the Legislative Counsel, consisting of letters of individual legislators requesting the drafting of legislation and related matters, are being microfilmed and will later be available for research.³¹

16. California. Attorney General. Opinions. January 1899 to January 1943, 42 reels of microfilm.

California. Attorney General. Opinions. Albany, Hanna Legal Publications. January 1943 to date.

Index of Opinions of the Attorney General, 1935-40. Sacramento, State Printer, 1940. Supplements to 1942.

Twenty-five Year Index, 1943-1967. Albany, Matthew Bender, 1968.

The early opinions (on microfilm) are arranged by date of promulgation rather than numerically by opinion number; the opinions from 1943 to date are arranged numerically. The Opinions of the Attorney General are an important source of statutory construction. They are persuasive, but are not binding upon the courts.

17. California. Governor. Messages and Press Releases.

30. CAL. STATS. 1953, c. 1445, p. 3039. Chapter 1445 also transferred to the Law Revision Commission the duty of recommending express repeal of all statutes repealed by implication or held unconstitutional by the California or U.S. Supreme Court (p. 3038).

31. See note 24 *supra*, at 366.

The Governor's Messages to the Legislature state his legislative program. The messages may be found in the legislative Journals.

Press releases are issued only for certain major legislation. They are indexed in the California State Law Library's "Guide to Legislative History."

18. California. Governor. Chaptered Bill file. 1943 to date.

This is a new group of records in the State Archives³² which contains an arrangement of bill chapters by legislative session in separate file units. These records include a copy of the bill as finally passed, a statement by the author of the bill as to the background and legislative intent, analyses by the Legislative Counsel and the Attorney General on the constitutionality of the proposed law and its effect upon already existing laws, and a summary and analysis by the Governor's Legislative Secretary with a recommendation for approval or veto. Additional material may be included, such as letters from citizens of the state and affected groups supporting or opposing the proposed law. The bill reports made by the Attorney General to the Governor are confidential.

19. California. Judicial Council. Reports, No. 1 to date. Sacramento, State Printing Office, 1927 to date.

The Judicial Council was established by a Constitutional Amendment, Article VI, Sections 1a, 6, 7 and 8 in 1926. This Council was empowered to survey the conditions of business in the several courts with a view to simplifying and improving the administration of justice. It submits recommendations to the Governor and Legislature for amendment and changes in practice and procedure; and adopts and amends rules of court. Reports have been issued every two years since 1927. There is no index, but there is an over-all table of contents. Since 1963 recommendations are indexed in the State Law Library's "Guide to Legislative History." They are not cited in the Codes.

20. Departmental Reports and Nonlegislative Commission Reports.

Through the year 1945 state department and commission reports, which include many recommended legislative measures, were published in the Appendices to the legislative Journals. Since 1943 they appear only as separate items, although a few are included in the text of the legislative Journals. *California State Publications* lists the reports received but does not index the contents. There are now agency legislative files in the State Archives³³ with rec-

32. *Id.* at 366.

33. *Id.* at 367.

ommendations for legislation, background information, and analyses of how the bills will affect agency programs; correspondence between the agency and the legislator who introduced the measure; and possibly hearings transcripts.

21. Committee Files and Processed Publications.

Many of the legislative committees preserve letters, reports, and other materials, which are placed in the committee chairman's files. The Senate Committee on the Judiciary issues a processed publication called "Analysis and final action on the measures considered by this committee during the session of the Legislature," which summarizes bills, digests their purposes, and occasionally names the sponsors.

22. Members of the Legislature.

Testimony of individual legislators is usually excluded by the courts,³⁴ but it has been used where the legislator drafted the law,³⁵ and as a confirmation of discussion and events which occurred during committee hearings.³⁶ There are some who believe that the author of a law should be consulted, and some attorneys do consult them, especially when the purpose of an enactment is spelled out in a concurrent resolution.³⁷ However, legislative intent is not an individual matter, but a matter of what the entire legislature enacted.

23. Non-California Sources.

Intent can be determined from non-California sources when enactments are of uniform or other out-of-state laws, *e.g.*, the Commercial Code, and when patterned after federal laws, *e.g.*, Government Code §§ 9900-9911, which follows the Federal Regulation of Lobbying Act. Among the groups whose model acts or codes would have influential background material are the American Law Institute, with its Model Penal Code, the Model ABA Probate Code, the Uniform Laws of the National Conference of Commissioners on Uniform State Laws, the Model Ordinances of the National Institute of Municipal Law Officers, and the suggested state legislation of the Council of State Governments.

34. *In re Lavine*, 2 Cal. 2d 324, 327 (1935).

35. *Estate of Simoni*, 220 Cal. App. 2d 339, 343 (1963). *See also*, *Ballard v. Anderson*, 4 Cal. 3d 873 (1971).

36. *Rich v. State Board of Optometry*, 235 Cal. App. 2d 591, 603-604 (1965).

37. *Hearings on the Medical Assistance for the Aged Program, before the California Senate Fact Finding Committee on Labor and Public Welfare*, October 24, 1963 (San Francisco). [Hearing on S.C.R. 19] Legislative intent is discussed at 127-128.

C. *Aids and Indexes*

This list includes indexes and secondary material which are useful in finding and understanding the primary materials listed in Parts A and B.

1. California. Legislative Counsel. Index to the Laws of California 1850-1920, including the Statutes, the Codes and the Constitution of 1879, together with amendments thereto. Sacramento, California, State Printing Office, 1921. Supplement. Sacramento, 1933. 1207 pages.

The Index to the Laws has not been cumulated since 1932. For an index to later legislation not currently in effect, the volume of session laws for the year in question must be consulted. For current legislation see Larmac or the index volumes of West's or Deering's Codes.

2. Current Indexes:

A. Deering's California Codes. General Index to the Constitution and Laws. 4 vols. San Francisco, Bancroft-Whitney.

B. Larmac Consolidated Index to Constitution and Laws of California. San Francisco, Recorder Printing and Publishing Co. Annual.

The advantage in using this index is that it includes in one volume and in one alphabet not only the Constitution of the State, but also the 27 Codes and the General Laws.

C. West's Annotated California Laws. General Index. 6 vols. St. Paul, West Publishing Co.

As its title suggests, it indexes the laws only. The Constitution is separately indexed.

3. California. Legislative Counsel. Statutory Record, 1850-1932. Sacramento, State Printing Office, 1933.

Supplement, Statutory Record, 1933-1948. Sacramento, State Printing Office, 1948.

Supplement, Statutory Record, 1949-1958, Sacramento, State Printing Office, 1958.

Supplement, Statutory Record, 1959-1968, Sacramento, State Printing Office, 1968.

The Statutory Record was compiled to indicate the changes which had occurred in legislation over the years. It is currently supplemented in the annual volumes of session laws. The Record consists of a Table of Code Sections, added, amended, or repealed

from 1872 on. There is also a subject index showing all code sections and/or statutes which were changed through 1932.

4. California. Legislative Counsel Bureau. Summary Digest of Statutes Enacted and Proposed Constitutional Amendments Submitted to the Electors, including Table of Statutes Affected. Sacramento.

These volumes published in legislative years contain short summaries of the effect of each law enacted and each constitutional amendment proposed, arranged by bill number and by number of the amendment with the chapter number of the law inserted following the bill number. Table of Sections Affected was included for the first time in 1953.

5. California. Legislature. Assembly. Rules Committee. Subcommittee on Legislative Reference Services. Hearings and Reports of Committees of the California Legislature: Summary and Listing.

This has been issued since 1961. Prepared during the session, it lists reports which will be issued during the session by committees of both houses. It is not a subject index, but an alphabetical listing of the committees and their publications.

6. California. Legislature. Joint Budget Committee. California Legislative Interim Committees and their Reports. Sacramento, State Printing Office 1937-1953. Supplements, 1953-55, 1955-57, 1957-59, 1959-61, 1963-65, 1967-69.

This index was prepared by the Legislative Auditor from 1937-53 and continued by the Legislative Analyst from 1955. It lists the interim legislative committees created by year, the house or joint name, the number of members and chairman, citation of legal authority, a statement of the scope of activity and a listing of the printed report both as a separately printed document and its citation in the legislative Journals. This index also contains a list of the reports of boards and commissions having legislative members, a list of current legislative committees and a subject index.

7. California. Legislature. Final Calendar (or History) of Legislative Business. History and Index of all Senate and Assembly Bills, Constitutional Amendments, Concurrent, Joint, Senate and House Resolutions introduced. Sacramento, State Printing Office.

A Final History is published after each legislative session. It includes a history of all action taken, arranged by bill number with cross references from code section, together with additional material on the organization of the legislature. All proposed legislation, whether or not enacted, is included.

8. California. State Library. Union List of Hearings in Law Libraries in California.

The State Law Librarian is in the process of compiling this list.

9. California. State Publications and Documents. Distributed by Supervisor of Documents. Sacramento, State Printing Office, 1945 to date.

Similar to the *Monthly Catalog of United States Government Publications*, it is compiled by the California State Library at Sacramento and issued monthly in mimeographed form. There are annual cumulations since 1945. It indexes processed and printed materials.

10. California. University. Bureau of Public Administration. Legislative Problems Series. Berkeley, 1937 to 1961.

This publication is a series of reports prepared at the request of California legislators.

11. Hasse, Adelaide R., Index of Economic Material in Documents of the States of the United States, California, 1849-1904. Washington, D.C., Carnegie Institution, 1908.

A broad subject index to the printed reports of administrative officers, legislative committees and special commissions of California, including governors' messages.

12. Larsen, Christian. List of Special Committees and Commissions by Legislative Session, 1850-1936.

This unpublished Ph.D. thesis contains a list of special committees and describes their work from 1850-1936. It is available in the State Library, Sacramento, University of California Library, Berkeley, and the Los Angeles County Law Library.

13. Palmer, William J. and Selvin, Paul P. The Development of Law in California. 1 West's Annotated California Codes; Constitution 1-64 (1955).

D. *Periodicals and Surveys*

The following is a list of some unofficial periodicals and surveys devoted to legislation.

1. State Bar of California. Committee on Legislation. Reports.

These are published in the *Proceedings (1928-1950) of the State Bar* and in the *Journal of the State Bar of California* 1926 to date and outlined in *State Bar Reports*. They include proposed legislation sponsored and drafted by the State Bar.

2. State Bar of California. Committee on Continuing Legal Educa-

tion. Review of Selected Code Legislation. (Prepared by Department of Continuing Education of the Bar of the University of California Extension).

The first of this series appeared in 1955 and was published as a separate volume. The 1957 through 1963 Reviews of Selected Code Legislation appeared in volumes of the *Journal of the State Bar of California* for those years. The volumes for 1965, 1967, 1968, and 1969 appeared separately. The text of some legislation is included together with citations to cases and legislative and State Bar Committee reports. This is continued by the *Pacific Law Journal*, beginning in 1970.

3. *Pacific Law Journal*. University of the Pacific, McGeorge School of Law. Sacramento.

This law review publishes articles and comments on significant California legislation. An "Annual Review of Selected Code Legislation" was begun in 1970.

4. The Sacramento News Letter: Report on California Legislation, Government, and Politics.

This is a weekly publication covering, in summary form, the current work of the Legislature and its interim committees, activities of state officials and departments, political developments, and election campaigns. Started in 1948, it was formerly called "MacBride's Newsletter" and "MacBride-Booe Sacramento Newsletter." No index is made.

5. Annual Survey of California Law.

This was issued by the University of Santa Clara College of Law from 1948-49 to 1955 in 7 volumes. It contains summaries of California law written by subject specialists.

6. Cal Law—Trends and Developments.

This survey of California law was published in 1967, 1969 and 1970 by the Golden Gate School of Law. It includes developments in legislation as well as developments in case law.

7. Southern California Law Review "The work of the California Legislature" was a biennial feature from 1937 through 1949 in the following volumes: v. 11 (1937); v. 13 (1939); v. 15 (1941); v. 17 (1943); v. 19 (1945); v. 21 (1947); and v. 23 (1949).

SECONDARY AND SPECIFIC MATERIALS

At occasional and irregular intervals, various agencies and commissions make special reports which later become the basis for legisla-

tion. The following compilation is an incomplete list of such materials to suggest what is available by searching library card catalogs and bibliographical indexes.

1. California. Attorney General's Committee of Water Lawyers on County of Origin Problems. Report to Edmund G. Brown, Attorney General of California. Sacramento, 1957.

2. California Bar Association. Report of Section "B" on Criminal Law and Procedure. San Francisco, 1916-1920. 2 Nos. in 1 vol.

3. California. Board of Corrections. First Interim Report of the Special Crime Study Commissions on Criminal Law and Procedure, Adult Corrections and Release Procedures, Juvenile Justice, Social and Economic Causes of Crime and Delinquency and Organized Crime. Sacramento, 1948.

4. California. Citizens Technical Advisory Committee on Open Space Lands. Semi-final Report to the Joint Legislative Committee on Open Space Lands of the California Legislature. [Sacramento] 1969.

5. California. Commission on Uniform State Laws. California Annotations to the Proposed Uniform Commercial Code, Sacramento, 1953.

6. California. Crime Commission. Report, 1929-31. Sacramento, 1934. 2 vols. in 1.

7. California. Crime Problem Advisory Committee. Report . . . submitted to the Governor for Transmission to the Legislature . . . Dec. 1932 [Sacramento] State Printing Office, 1933.

8. California. Department of Insurance. Papers for Conference on Insurance Laws. Sacramento, 1942-46. 2 vols.

9. California. Department of Insurance. Proposed Insurance Legislation, 1955, 1958 sessions. Mimeographed. Sacramento, 1955-58.

10. California. Departmental Reports. Reports of the various departments of the State often contain suggestions and recommendations for new legislation or amendments to existing laws. For example, see: California Horse Racing Board, Fourth Biennial Report in 1 App. to Journal of Senate and Assembly (1941), and California State Banking Department Forty-eighth Annual Report (1957).

11. California. Governor Edmund G. Brown's Committee on Pesticide Review. Report on Pesticides in California. A Description of Current Programs . . . Sacramento, 1965.

12. California. Governor's Automobile Accident Study Commission. Final Report. [Sacramento, 1971] 3 vols.

13. California. Governor's Commission on Metropolitan Area Problems; Report. [Sacramento] 1960.
14. California. Governor's Commission on Reemployment. Reemployment . . . Sacramento, State Printing Office, 1939.
15. California. Governor's Commission on the Family. Report. [Sacramento] 1966.
16. California. Governor's Commission on the Law of Pre-Emption. Report and Recommendations. mimeo. [Sacramento] 1967. 1 vol. variously paged.
17. California. Governor's Commission on the Los Angeles Riots. Transcripts, Depositions, Consultants Reports, and Selected Documents of the Governor's Commission . . . Los Angeles, 1965. 6 reels (18 vols.) microfilm.
18. California. Governor's Commission on the Rumford Act. Report. [Sacramento] 1967. 1 vol. variously paged.
19. California. Governor's Committee on Organization of State Government. The Agency Plan for California. Report to Governor Edmund G. Brown. Sacramento, 1959.
20. California. Governor's Survey on Efficiency and Cost Control. Summary Report and Recommendations, February 1968. Sacramento, 1968.
21. California. Legislative Counsel Bureau. Analysis of California District Laws. Prepared for the Use of the Assembly Interim Committee on Municipal and County Government, by Ralph N. Kleps, Legislative Counsel. Sacramento, Assembly of the State of California, 1955.
22. California. Legislative Counsel Bureau. Changes in the California Corporation Laws, effective August 14, 1931, and Analysis by Legislative Counsel Bureau of Assembly Bill No. 1000 (Chapter 862) compiled by Frank C. Jordan, Secretary of State. Sacramento, California State Printing Office, 1931.
23. California. Legislative Counsel Bureau. Opinions of Legislative Counsel; Central Valley Project—No. 1323. Sacramento, California State Printing Office, 1954.
24. California. Special Commissions on Problems of Insanity Relating to Criminal Offenders. Interim Report. 1961. Oakland, 1961.
25. California. Special Crime Study Commission on Juvenile Justice [Reports] Sacramento, 1949. 2 vols.
26. California. Special Crime Study Commission on Organized

Crime. Combined Reports. Sacramento, 1950. 1 vol. variously paged.

27. California. Special Crime Study Commission on Organized Crime. Final Report. Sacramento, 1953.

28. California. Special Study Commission on Correctional Facilities and Services. Probation, Jails and Parole. Sacramento, 1957. (Interim Reports, No. 2)

29. California. Special Study Commission on Juvenile Justice. Report. Sacramento, 1960.

30. California. Special Study Commission on Narcotics. Final Report. Sacramento, 1961.

31. Hichborn, Franklin. Story of the Session of the California Legislature of 1909, 1911, 1913, 1915, 1921. San Francisco, Press of the James H. Barry Co., 1909-21 5 vols.

32. Olson, C. L. State Papers and Public Addresses, January 2, 1939, to January 4, 1943. Selected by Stanley Mosk, Executive Secretary to the Governor. Sacramento, State Printing Office, 1942.

33. Weigel, S. A. A Preliminary Report on Plans for Inquiry into the Wisdom of a California Automobile Accident Commission. Sacramento, State Printing Office, 1959.

PROCEDURE FOR FINDING LEGISLATIVE INTENT

The above list of materials on legislation can provide insight into legislative intent. However, the most important problem is to find the material listed above that pertains to a specific code section. The directions given below will, hopefully, assist the researcher in locating specific legislative material.

It is very important to read the statute in question carefully and analytically. Can only one meaning be attached to it, or does it seem inconsistent or ambiguous when applied to a particular problem? If so, then where can one turn to have it interpreted? There are specific rules of statutory construction which have been delineated elsewhere.³⁸ However, it is very important to remember a principal rule of construction is that the court will attempt to give effect to the intent of the Legislature. The Court will use the same sources in interpreting the statute that are available to the practitioner in law libraries.³⁹

38. 82 C.J.S. *Statutes* § 311-386 (1953). 45 Cal. Jur. 2d *Statutes* §§ 113-135 (1958).

39. For a recent article on the California Supreme Court's construction of a statute in deciding a case, and the use of legislative history in arriving at the decision, see Chenen, *California Penal Code Section 834-A: An Infringement of the Constitutional Right to Resist Unlawful Arrest*, 5 U. SAN FRANCISCO L. REV. 195 (1971).

As an important part of the analysis of the statute, read it in its entirety and then the other statutes that might be referred to in the act or section in question. Check for definitions in the act, or for a preamble where the purpose of the act is stated. You may have to go to the CALIFORNIA STATUTES AND AMENDMENTS TO THE CODE to find this.

Do not neglect to Shepardize the act for further information.

Then check the legislative history as given in the annotated code and pursue the leads given there. As previously pointed out in the discussion under Codes and Statutes, there is more information for the recently enacted legislation with references to committee reports, Legislative Counsel opinions, and the like, than there is for older sections.

Next obtain the chapter number of the code section from the annotated code legislative history references, found at the end of the section, and convert this into the bill number as outlined. With this number locate the legislative history of the bill in the Final Calendar or Final History, and also note the names of the committees which heard the measure. This is often the only source of information about a bill, and, of course, is basic to your search.

Check the Legislative Analyst's *Interim Legislative Committees and Reports*, to find out if a report was made by a committee on your particular bill.

Then check any of the pertinent remaining sources outlined in the Sources for Legislative Intent as listed in this article. Some will be eliminated automatically because they were not current at the time the legislation was enacted.

If you can obtain bibliographical data for what you need to consult, it can almost certainly be consulted in the State Law Library or a depository library, and will sometimes be available for interlibrary loan.

It may be helpful to develop a checklist similar to the following, so that you will have a systematic procedure for your search.

CALIFORNIA LEGISLATIVE
HISTORY WORK SHEET

- Code Section _____
- Chapter No. & Year _____
- Bill Number _____
- Committees _____
- Committee Reports _____
- Interim Committee Hearings _____
- Senate/Assembly Journal _____

Law Revision Commission _____
State Bar Jour. Legislation Issue _____
Leg. Counsel's Ops. _____
Atty. Gen. Ops. _____
Jud. Council Rpts. _____
Continuing Education of the Bar Selected Code Legislation or Pacific
Law Journal _____
Other _____

CONCLUSION

The materials listed in this article can be very valuable "extrinsic aids" for interpreting statutes. The California supreme court has recently noted the importance of legislative reports in construing statutes.⁴⁰ In *Van Arsdale v. Hollinger*⁴¹ the court stated

Reports of Commissions which have proposed statutes that are subsequently adopted are entitled to substantial weight in construing the statutes. [citations omitted]. This is particularly true where the statute proposed by the commission is adopted by the Legislature without any change whatsoever and where the commission's comment is brief, because in such a situation there is ordinarily strong reason to believe that the legislator's votes were based in large measure upon the explanation of the commission proposing the bill.⁴²

Of course, where there is evidence of a legislative intent contrary to the views expressed by the commission report, the commission's view must yield to the legislature's intent.⁴³ California courts have even stated that a "mere literal interpretation will not prevail over that which accords with the obvious purpose of the legislation."⁴⁴ Thus, it would appear that the practicing attorney may be able to avoid a literal interpretation of a statute by a court if he can establish a contrary legislative intent. The best evidence of legislative intent must surely be the records of the legislature itself and the reports which the committees relied on in recommending passage of the legislation.

40. *Keeler v. Superior Court*, 2 Cal. 3d 619 (1970). *Van Arsdale v. Hollinger*, 68 Cal. 2d 245 (1968).

41. 68 Cal. 2d 245 (1968).

42. *Id.* at 249-250.

43. *Keeler v. Superior Court*, 2 Cal. 3d 619 (1970); *People v. Valentine*, 28 Cal. 2d 121, 138 (1946).

44. *In re Kernan*, 242 Cal. App. 2d 488, 491 (1966). See also *Hidden Valley Municipal Water District v. Calleguas Municipal Water Dist.*, 197 Cal. App. 2d 411, 420 (1961).

APPENDIX

SOURCES FOR LEGISLATIVE INTENT

A. BASIC OFFICIAL MATERIALS ON THE CALIFORNIA CONSTITUTION

1. California Constitutional Convention of 1849.
2. California Constitutional Convention of 1878-79.
3. Proposed Constitutional Amendments.
4. Statement of the Vote.
5. Constitution Revision Commission, 1964-71.
6. Senate and Assembly Constitutional Amendments.

B. BASIC OFFICIAL MATERIALS ON LEGISLATIVE ENACTMENTS

1. Bills.
2. Statutes and Amendments to the Codes.
3. 1872 Codes.
4. Assembly and Senate Journals.
5. Committee Reports.
6. Committee Hearings.
7. Commission to Examine the Codes, 1874.
8. Code Commission Reports, 1930-53.
9. Drafts of Proposed Codes.
10. Commission for Revision of the Law, 1870-1911.
11. Law Revision Commission Reports, 1953 to date.
12. Law Revision Commission Studies and Miscellaneous Papers, 1956 to date.
13. California Commission on Uniform State Laws, Reports, 1951 to date.
14. Legislative Counsel's Report on Legislation Necessary to Maintain the Codes, 1954 to date.
15. Legislative Counsel Opinions.
16. Attorney General Opinions.
17. Governor's Messages and Releases.
18. Governor's Chaptered Bill File.
19. Judicial Council Reports.
20. Departmental Reports and Nonlegislative Commission Reports.
21. Committee Files and Processed Publications.
22. Members of the Legislature.
23. Non-California Sources.

C. AIDS AND INDEXES

1. Legislative Counsel's Index to the Laws, 1850-1920 with Supp. to 1933.
2. Current Indexes.
3. Statutory Record, 1850-1932, with Supp. to 1958.
4. Legislative Counsel Bureau's Summary Digest.
5. Hearings and Reports of Committees, 1961-date.
6. California Interm Legislative Committees and Reports. 1937 to date.
7. Final Calendar or History.
8. State Law Library Union List of Legislative Hearings.
9. California State Publications and Documents.
10. Bureau of Public Administration's Legislative Problems Series, 1937-61.
11. Hasse's Index of Economic Material in Documents of the States, 1849-1904.
12. Larsen's List of Special Committees and Commissions by Legislative Session, 1850-1936.
13. Palmer and Selvin, Development of Law in California.
14. State Bar Committee on Legislative Reports.
15. State Bar Review of Selected Code Legislation.

D. PERIODICALS AND SURVEYS

1. State Bar of California. Committee on Legislation. Reports.
2. State Bar of California. Review of Selected Code Legislation.
3. Pacific Law Journal Legislative Issue.
4. Sacramento Newsletter.
5. Annual Survey of California Law, 1948-49 through 1955.
6. Cal Law—Trends and Developments, 1967-70.
7. Hichborn's Legislative Bulletin, 1915-17.
8. Southern California Law Review, 1937-49.