Using Legislative History to Find Legislative Intent

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PART 1. BASIC THEORETICAL ISSUES

This discussion is intended to provide a quick and concise set of suggestions for the underlying theories pertinent to arguing legislative intent. It is aimed at raising possible issues rather than attempting a full treatment on the subject, as a full treatment could easily fill volumes. Please feel free to contact the author if you have questions, comments or suggestions, or would like additional references to authorities addressing various aspects of the topic in more detail.

For a general overview and authorities on Statutory Construction see the wikipedia annotation at http://en.wikipedia.org/wiki/Canons_of_statutory_construction

More traditional treatises that are valuable for older settled law include Sutherland on Statutory Construction, the annotations in Am Jur and Cal Jur 3rd annotation on Statutes.

I. The Plain Meaning Rule

This discussion is applicable to both Federal and California Statutes.

In any contested issue involving Legislative Intent the threshold question is usually going to involve the plain meaning rule. Many cases over the years have discussed the "plain meaning rule", usually as a condition precedent to the court considering legislative intent. The underlying rationale of the rule is if the meaning of the statute is clear, there is no need to resort to legislative intent. Although not explicitly discussed in any case, undoubtedly an appealing characteristic of the "plain meaning" rule to overburdened courts is that choosing to apply the "plain meaning" rule will greatly simplify the amount of data they need to absorb.

On close inspection the diverse body of "plain meaning" case law is much more nuanced, courts often look at legislative intent even while stating the meaning is plain. Some courts and commentators have noted that legislative intent should control over the letter of the law if there is a conflict, which makes some sense as a logical extension of the separation of powers doctrine.

In California CCP Section 1858 is as close as one gets to a statutory version of the plain meaning rule. One can argue Section 1858 is itself in need of construction as the Section provides the Judge's task with regard to statutes is to "ascertain and declare what is in terms **or in substance** contained therein…" (emphasis added). The phrase "or in substance" seems to impose a duty to seek the intent of the enactment as coequal with parsing the words.

The following Section, CCP Section 1859, states explicitly "In the construction of a statute the intention of the legislature…is to be pursued, if possible..."

The recent enactment of Government Code Section 9080(a) adds additional explicit legislative approval of the use of legislative documents to find legislative intent, so the "plain meaning rule" has perhaps less vitality in California than in other jurisdictions. But beyond issues of the vitality of the rule, "plain meaning" is a slippery concept in practice.

A. Problems with the Plain Meaning Rule: Some underlying theoretical issues raised by the plain meaning rule include:

1. Words are imprecise instruments: The apparent simplicity of this rule glosses over the fact words are elusive and imprecise instruments, dependent for meaning on context, and often what might appear as "plain" on first reading becomes less plain the more you think about the context and ramifications of the language. Words the legislature chose with one particular factual circumstance in mind may produce an entirely different result when applied to factual circumstances other than the one the legislature anticipated.

A typical approach to arguing whether the meaning of a statute is "plain" is to resort to dictionary definitions. In the real world this approach sometimes has limited utility. Since the meaning of words can vary according to the context, dictionaries typically provide an "average" meaning. Many of us have had the experience of going to the dictionary for a word we use regularly and found what the dictionary describes as the meaning is different than the way we often use the word.

For an interesting case that faced the problem of the legislature choosing language that had consequences many of the legislator's who voted for the bill probably would have objected to see **Unzueta v. Ocean View School District, 8 Cal Rptr 2d 614 (1992)**

2. Words change in meaning over time: Words evolve. They take on fashionable nuances in different periods of history, so the common meaning of a word today might be significantly different than when the word was used by the legislature drafting the statute. The changes can be documented in some cases by comparisons of present dictionary definitions with old dictionary definitions. Many large libraries maintain copies of old dictionaries, if dictionary definitions become an issue in a plain meaning controversy, it would be wise to try to get a dictionary published roughly contemporaneously with the enactment of the statute to compare with current definitions.

3. Words are a tool of language and logic and don't reflect the full human experience. Words are not ends in themselves, they are tools to achieve communication of thought, but we have modes of thinking that do not operate on the same program as words, for which words are a poor substitute. It is rather like using a word program on your computer to substitute for a picture, or a spreadsheet, or a piece of music. Words just cannot always do the job without reference to other modes of thought. This is perhaps best illustrated by the creation of courts of equity in England many years ago. The law had grown so reliant on words forming a symmetrical and logical body of law as an end in itself, and unwilling to compromise that symmetry with input from other modes of thought, that an entire separate body of courts had to be created to accomplish just results in many areas of the law.

B. Tools for Addressing Plain Meaning Rule Arguments:

1. What other words might the legislature have chosen? A useful tool to determining if the meaning is plain or ambiguous is to consider what other words the legislature might have used that would clarify your particular issue. While the same issues with the evolving nature of language are at work when you undertake to consider other words the legislature might have used, this process is very useful for developing a sense of whether the meaning is really as clear as it might seem at first blush.

2. Consider who actually chose the word. In some circumstance the source of the language in question can arguably influence the level of scrutiny the legislature applied to any particular term. For example, if the language comes out of the deliberations of a committee it suggests a higher level of scrutiny in choosing the term in question, whereas if the legislature simply accepts language brought by some sponsoring agency as part of a larger proposal it suggests a "first impression" meaning could be more applicable.

II. The problem of defining legislative intent – subjective or objective intent?

The case law relating to using legislative documents to determine legislative intent is abundant, but often wildly inconsistent. For many different kinds of legislative documents one can find cases relying on that particular type of document and cases rejecting the particular type of document. The inconsistency is in part a reflection of the fact that there is no consistently applied standard clarifying what factually to look for to find "legislative intent." Is a legislative intent inquiry seeking to determine what each individual legislator subjectively understood and intended? Clearly a virtually impossible task. Is it then seeking an objective intent? What the intent appears to be from the materials that are available? This standard is much more achievable and also has the virtue of putting the legislature on notice they should pay attention to what is being said. This standard also reflects the reality of the often combative legislative process.

To the extent there have been attempts to provide a standard they seem to lean toward the subjective standard. Many cases speak of legislative intent as finding the "collegial" view of the legislature – what the legislature as a group envisioned. Some cases go so far as to require that any statement be presented to the entire legislature in order to be considered as reflective of the collegial view. These cases seem to visualize a collegial view as something akin to a group sitting around discussing every ramification of some proposal in great detail until an agreement on all the possible issues is reached. This fiction is wildly unreflective of the legislative process.

In California in a two-year legislative session typically somewhere around 7000 to 9000 different bills will be introduced. Many, if not most of the bills will be amended, often many times over the course of legislative deliberations. Some bills are very short and concise but many bills are scores, or even hundreds of pages in length amending scores or hundreds of different code sections. It is an enormous volume of material, far beyond the capability of any single legislator to even thoroughly read once, given the myriad other demands on a legislator's time. Any particular legislator will have a relatively detailed knowledge of only a tiny fraction of the pending bills. Even as to that tiny fraction, there could be many possible ramifications from the language chosen which will not have occurred to anyone in the legislature.

Beyond the fact the sheer number of proposed changes in any legislative session is overwhelming large, the legislature virtually never meets collegially. Even within the Assembly or Senate the only time they meet as a body is when a bill comes up on the floor for final vote, and typically in California (and most states) the discussion on any particular bill is short, minimal and very general.

With some documents such as Federal Committee reports, or letters to the Journal in California the legislature is making explicit statements of what they intended – the "collegial view" can work in such situations involving direct statements of intent as long as one accepts the statements as putting other legislator's on notice of the stated intent.

But in the absence of direct statements of intent this formulation of the collegial view breaks down completely when applied to clarify specific details of how tiny parts of any legislation should be construed. Some courts reject many potentially useful documents on the basis they were not viewed by all legislators. This is a particularly glaring fiction in California as virtually no document ever is viewed by all – or even substantially all - legislators. And it is doubtful all the legislators read the actual language of any given statute.

In fact both Congress and the California legislature operate largely by delegation, reliance on staff and colleagues, on reputation and trust, and by relying on people who do not like the legislation to voice their objections. The actual "collegial" view of an individual legislator at best usually does not extend beyond a general understanding of the problem addressed, the general nature of the proposed solutions, the knowledge the legislation is a negotiated agreement between stakeholders who agree that the legislation is probably a good idea and finally, that it has no provisions objectionable to anyone with the political clout to cause problems.

There is probably no theoretical formulation for legislative intent that will be above objection in all cases. One of the strengths of logic is criticism, but criticism doesn't solve problems, and relying on "plain meaning" often means excluding consideration of other modes of thought that are important to human affairs. But moving from "plain meaning" to the "collegial view" is sometimes little improvement in finding a realistic mechanism to understand what the legislature intended. The "collegial view" simply substitutes a fictional view of reality that can lead courts to exclude probative legislative intent documents on the grounds not all legislators saw the document. The end result is not much different than relying on the plain meaning rule, excluding possibly valuable information to focus on parsing the specific words of the statute.

There are alternative theoretical frameworks that more accurately reflect the legislative process and could lead to more consistently realistic findings on legislative intent, particularly if viewed as alternative tools in ones toolbox rather than as a formula that always produces the correct answer. These alternative

rationales are consistent with what many courts have actually done in finding legislative intent. Two examples of useful optional rationales that better reflect the reality of the legislative process and could be useful in particular situations are:

1. Seeking to extrapolate objectively what the legislature would have viewed as the result that is most consistent with their concerns. What would the legislature likely have done if it considered the particular issue before the court? The extrapolation is based on weighing what documents reveal to the be problem to be solved, the general concerns of the legislators, the proposed solutions and the legislative actions on the various alternatives before them, The goal is not to extrapolate what any particular legislator thought or knew, but to find the result that is most consistent with the expressed concerns to be addressed by the Statute.

2. Operating on a "notice" theory. This theory makes sense as a reflection of the enormous volume of materials a legislator is responsible for voting on. The only way a legislator can handle that volume of information is to downplay the details and focus on objections from other parties. In this theory any particular document might act as "notice" to the legislature of a particular detail or construction of the proposal. The probative value of the notice depends on how widely the particular document was distributed, or whether the same concept was presented in a number of documents from a number of sources. Even a document with a relatively low probative value could potentially be decisive if the document is consistent with other documents about how to address the broader goals of the legislation and there are no alternatives addressing the same issue.

III. Countering Objections to the Use of Legislative Documents

A. The Separation of Powers Doctrine Argument: Some commentators have argued that the separation of powers doctrine precludes courts from looking at legislative intent, on the basis it impinges on the courts role in interpreting the law. This argument seems to be grounded in the notion the courts have no obligation to seek the intended purpose of the law, their only obligation is to see what the words chosen mean to the court. On reflection this seems to make the separation of powers doctrine a doctrine of procedure rather than substance and in fact turns the doctrine on its head. In effect the argument requires the legislature cater to some future courts perceptions. Words are tools with which the legislature seeks to communicate the law; they are not in the end the law itself. If the chosen words do not convey the thought behind the words accurately and the means are available to clarify the meaning, the separation of powers doctrine would seem to oblige the court to seek to understand the actual intent.

B. Relying on Legislative Intent Makes the Law Less Predictable: Some cases and commentators have argued the courts should not try to ascertain legislative intent because it makes the law less accessible and precise than simply relying on the words of the statute. Beyond the fact this viewpoint dismisses the possibility of ambiguity in the language it seems to view symmetry and clear black lines in the law as more valuable than fairness to the parties before the court and underlying society. And if the law is ambiguous in a given situation to the court it will presumably be just as ambiguous to the public in that same situation.

C. There is No Definable Legislative Intent. Arguments of this sort often occur as part of an effort to assert the plain meaning rule should control. As noted above it is probably not possible to formulate a theory of legislative intent that fits all circumstances all of the time because of the inherent complexity of the legislative process, and the difficulty of conveying complex thoughts in simple language. There will always be logical objections to the weaknesses of any solution to a construction problem. But we don't look at legislative intent unless there is language construction problem to be solved and a simple basic rule of good decision-making is always applicable – if it is relevant, more information is better than less.

PART 2. BASIC PRINCIPALS IN DEVELOPING A LEGISLATIVE INTENT ARGUMENT

I. Basic principals applicable to both state and federal law.

Once the plain meaning rule has been hurdled, and the court is satisfied sufficient ambiguity exists to require resort to legislative intent, the next step is to develop a thorough understanding of how the legislation developed. Admittedly this takes time, the temptation to do a quick search for a nice quote can be strong. But the more you know about the legislative history, the better you understand the statute and your case. Often as you dig deeper into the legislative history it sparks a deeper understanding of the nuances of the statute that may lead to valuable new insights that go beyond legislative intent. Specific steps include:

1. Develop an understanding of the legislative process both –

    a. Procedurally – How did the language read as first proposed, what committees considered the proposal, when were amendments made and where was the proposal when it was amended

    b. As an adversarial process – who was lobbying in support of the proposal and what were they trying to accomplish, who was active in opposition what were their objections, who was responsible for amendments to the proposal.

2. Become familiar with the documents available pertinent to your issue –

3. Identify where in the process the changes you care about occurred – this provides a mechanism to narrow the scope of your search for explanations for why the language was changed.

4. Be prepared to address the plain meaning rule.

5. Be open to both direct and circumstantial evidence of intent. Your not always going to find a statement directly on point to your issue, but patience and a thorough knowledge of how the proposal developed can often allow you to document who sponsored the language and why.

II. Factors Specific to California Law.

You take an enormous risk in California if you rely on a key word search and just start plugging quotes into your moving papers. Unlike Federal law, California legislative intent materials are primarily working documents, not after the fact statements of intent. You need to understand where in the process the document fits to judge it's probative value. The quote you pick out to rely upon may, for example, turn out to be from a document reflecting the proposal before major amendments revised exactly the language you need to explain, or be from a document that is in the nature of a minor background statement, rather than a highly persuasive official document developed as a formal part of the legislative process. With some documents you may need to use collections of documents with similar statements to corroborate one another.

In understanding California legislative enactments you have to begin by seeking a thorough understanding of who brought the idea to the legislature, and how they justified the proposal. You need to know who opposed the idea, and why. Once you have these factors in mind you need to study the evolution of the language of the proposal as it was amended by the legislature. Once you have identified the points in time that changes to the language you care about occurred you look for contemporaneous documents to help understand why that change occurred.

If the language was in the proposal as introduced, look to the explanations of the sponsors as to why the proposal was necessary. If the language appeared in an amendment to the proposal during the legislative process the changes are often reflective of a direct effort to mollify some party opposed to the proposal whose opposition is strong enough to put the proposals final approval at risk. If you can find why the

objecting party was opposed to the bill, and compare that to the language of the bill as amended, you usually have documented the reason for the change.

III. Factors Specific To Federal Law:

Federal documents are published documents often containing specific statements of intent, but also often containing discussion that is of value in developing arguments of "circumstantial" intent where a specific statement addressing your issue is not available. The following discusses both arguments and the documents ordinarily useful for determining legislative intent of Federal Statutes:

a. Direct intent: The quick key word search to pull out a quote is less likely to expose you to serious loss of credibility in arguing Federal legislative intent, as many Federal documents are prepared as explicit statements of intent. However you still face the issue of being sure the language any quote is addressing is the final version of the language key to your issue. The better practice with Federal law is to make sure you know when the language you care about was finalized in the proposal, so you can insure any quote you want to use is addressing the final language, or, if it is not addressing the final language, clarify why it is still pertinent. Published documents containing statements of intent commonly could include:

   i. Committee Reports – Explicit explanations by committees as to what they are trying to accomplish that accompany a particular proposal to the floor of the House or Senate.

   ii. Congressional Record excerpts – Explicit statements for the record by members of Congress on the floor of the House or Senate explaining their thinking.

   iii. Committee Prints – Published explanations of Committee actions on a particular proposal for more general distribution.

   iv. Presidential signing statements

b. Circumstantial intent: Despite the voluminous documentation often available on Federal enactments, on many occasions you won't find a quote squarely addressing your issue. In that circumstance you need to develop an understanding of the competing forces influencing the legislation so you can develop an argument on how the language you are focused upon fits into the broader policies Congress sought to achieve. The process described above for California law will leave you much better prepared to defend your position as the ground under your feet shifts during the normal give and take of litigation. The better you understand the legislative history the more prepared you will be to deal with new arguments or points raised by opposing counsel. Published documents containing other information that can be used to construct circumstantial evidence of intent:

   i. Committee Reports – Will also contain background discussion of how legislative developed, what prior proposals are pertinent and what hearings were held.

   ii. Congressional Record excerpts – May sometimes contain background discussion of how legislative developed, what prior proposals are pertinent, what hearings were held, what problems are being addressed and what source outside the Congress might have generated a particular proposal.

   iii. Committee Prints – May also contain background discussion of how legislative developed, what prior proposals are pertinent and what hearings were held.

   iv. Committee hearing transcripts – contain testimony from interested parties about pending legislation. Frequently testimony identifying problems or making suggestions at committee hearings will spawn language drafted to address the problem or suggestion.

v. Bill copies – the changes in language made by amendments can raise inferences of intent, particularly when linked to other circumstances documenting the amendments were to address a particular issue or concern.

PART 3. BASIC AUTHORITIES ON USING LEGISLATIVE INTENT MATERIALS

I. Legislative Intent is a matter of Law

Legislative Intent is a matter of law that is often resolved by a factual inquiry. Because it is a factual inquiry many lawyers instinctively think in terms admissibility. But as a matter of law decided by the court, rules of evidence developed to protect juries should have no applicability. Factual inquiries into Legislative Intent need only address two issues, the authenticity of the information relied upon and the probative value of the information.

II. Jurisdictional Considerations

Each state court has its own rules and procedures for inquiring into Legislative Intent, although virtually all jurisdictions treat legislative history documentation as matter to be judicially noticed by the court, rather than as material to be introduced as evidence. Federal Courts look to the law of the particular State for inquiries into the meaning of statutes from that State. The Federal Rules of Civil Procedure govern inquiries into the legislative history of Federal law.

III. California Courts

A. General Authorities

California Code of Civil Procedure 1859 states in pertinent part: "In the construction of a statute the intention of the legislature ... is to be pursued, if possible . . ."

California Government Code Section 9080, enacted by Chapter 928 of the Statutes of 1996, is an explicit statement that the documents generated in legislative deliberations are evidence of the intent of the legislature. Section 9080 begins with the following statement:

"(a) The Legislature finds and declares that legislative records relating to bills, resolutions, or proposed constitutional amendments before the Legislature provide evidence of legislative intent that may be important in the subsequent interpretation of laws enacted in the Legislature…"

Section 9080 discusses specific types of legislative committee documents appropriate for determining legislative intent in Section 9080(d), which provides:

(d) "Legislative records," for purposes of this section, means records contained in an official committee file, including, but not limited to, all of the following:
(1) Committee staff analyses.
(2) Written testimony.
(3) Background material submitted to the committee.
(4) Press releases.
(5) Written commentary submitted to the committee on a bill, resolution, or proposed constitutional amendment. For purposes of this paragraph, "written commentary" does not include the following:
(A) Material not utilized by the staff of a fiscal committee in the preparation of any analysis for the members of that committee.
(B) Communications determined by the committee or its staff to be confidential.
(6) Versions of bills, resolutions, or proposed constitutional amendments assigned to the committee.
(7) Relevant interim hearing materials, studies, case materials, and articles.

That list, while clearly stating some types of documents that can be considered for legislative intent purpose, is not intended to exclude consideration of other types of documents not listed is evidenced by the phrase *"but not limited to"* in the introductory clause. A partial purpose for the list seems to be to guide

legislative staff in interpreting the scope of their obligation to maintain records and grant public access to legislative records.

There are hundreds of California cases addressing the judicial notice of legislative history documents, the vast majority of which predate the enactment of Government Code Section 9080. None of the more recent cases cite or take note of Section 9080, and as of June of 2012 no case is listed in the annotated codes as citing Section 9080. Prior to the enactment of Section 9080 a leading authority for the general proposition that it is appropriate to take judicial notice of legislative history documents, and a decision with significant discussion about the purpose of and authority for relying upon legislative history, is the Supreme Court decision in California Teachers Association v. San Diego Community College District, (1981) 28 Cal. 3d 692. For a discussion in some depth see the annotation regarding "Statutes" in 58 CAL JUR Third. The discussion regarding extrinsic aids commences with Section 177.

B. Authentication

The most common mechanism for bringing legislative history documents to the attention of the court is through the Judicial Notice provisions contained in Evidence Code Sections 450 through 458. These Evidence Code Sections were enacted in 1965 by legislation sponsored by the California Law Revision Commission (CLRC). You will find in the annotated codes that some of the sections have explicit statements of intent from the CLRC that were adopted by the California Legislature.

Key provisions include:

Evidence Code Section 452: "Judicial Notice may be taken of the following matters… (c) Official acts of the legislative, executive or judicial departments of the United States and of any state of the United States."

Evidence Code Section 453: "The trial Court shall take judicial notice of any matter specified in Section 452 if a party requests it and: (a) Gives each adverse party sufficient notice of the request, through the pleadings or otherwise, to enable such adverse party to prepare to meet the request; and, (b) Furnishes the court with sufficient information to enable it to take judicial notice of the matter."

Evidence Code Section 454: "(a) In determining the propriety of taking judicial notice of a matter, or the tenor thereof: (1) Any source of pertinent information, including the advice of persons learned in the subject matter, may be consulted or used… (b) Exclusionary rules of evidence do not apply except Section 352 and the rules of privilege."

A leading case citing Evidence Code Section 452(c) as authority for a court to take judicial notice of legislative documents is **Post v. Prati, (1979) 90 Cal. App. 3d 626, 153 Cal Rptr. 511.** The court relied upon a variety of legislative documents, including correspondence to the Governor from state agencies and individual legislators.

Although a formal request for judicial notice is probably better practice, in **Lafayette Morehouse, Inc. v. Chronicle Publishing Co. (1995) 39 Cal. App. 4th 1379**, the court accepted and relied upon legislative documents simply appended to a brief, apparently with no formal request for judicial notice. The court did extend to each party an opportunity to submit additional briefs, presumably to allow objections to the offered documents. Simple forms to get you started on a Request for Judicial Notice and Points and Authorities can be found at https://www.legislativeintent.com/Web/Free.Library

C. Probative Value

There are many types of documents that can be relevant to interpreting a particular statute, but not all documents are of equal persuasive value. Identifying three categories of documents, primary, secondary and tertiary documents, is useful for discussion purposes, (although case law has not generally categorized documents in this manner). The following discussion addresses a selection of specific categories and documents, beginning with primary sources.

Note regarding proceedings in the Third District Court of Appeal: A recent 3rd district decision sets forth very stringent rules about what documents can be considered as well as the proper way to present documents to the court. The case is ***Kaufman and Broad Communities Inc v. Performance Plastering Inc, 133 Cal. App. 4th 26 (2005)*** *and will impact many of the topics discussed below for those in the Third Appellate District. Two requests for depublication of the October 2005 decision were filed with the Supreme Court. They were denied without explanation, but could be useful for responding to arguments relying on Kaufman in other districts. The Los Angeles Law Firm of Gianelli and Morris request focused primarily on conflicts between the Kaufman and Broad opinion and pre-existing case law. The depublication request of this office argued the opinion was inconsistent with Constitutional and statutory provisions did not reflect the reality of the legislative process and created inappropriate procedural hurdles.*

1. Primary Sources

Documents that are formally developed during the legislative process, pursuant to procedural rules and legislative procedures, might be viewed as primary sources of legislative intent. Primary documents could include the actual legislative bill, in all its amended versions, Legislative Counsel's digests, committee analyses prepared for committee hearings on the bill, floor analyses given to the legislators when the bill is up for vote on the floor of the Assembly or Senate, fiscal analyses prepared by the Legislative Analysts Office and various other official publications. Cases have often treated primary documents as presumptively probative due to their formal status within the legislative process. (See for example, **Wiley v. So. Pacific Trans. Co. (1990) 220 Cal. App. 3rd 177** relying on amended versions of a bill, **Five v. Chaffey Joint Union School District, (1990) 225 Cal.App.3rd, 1548** and **Quelimane Co. v. Steward Title Guar.Co., (1998) 960 P.2d 513 Cal. (1998)** and **California Teachers' Ass'n v. Governing Bd. of Hilmar Unified School Dist., 95 Cal.App.4th 183, 192, 115 Cal.Rptr.2d 323 (2002),** relying upon a Legislative Counsel digest, **Hutnick v. Fidelity and Guaranty Co. (1988) 47 Cal. 3d 456**, relying upon an analysis of the Assembly Committee on Judiciary, and **Youngblood v. Gates (1988) 200 Cal. App. 3d 1302**, relying upon floor analyses.)

2. Secondary Sources

Documents not part of the formal legislative process, but developed in response to the legislation and contained in the files of the legislative or executive branch relating to the legislation, can be viewed as secondary sources. Secondary sources might include items such as documents from the Governor's file, the legislative committee files, the files of the author of the bill, the files of organizations within the legislature that prepare third reading analyses or the files of state agencies. While probably not entitled to the same level of automatic presumptive weight as primary documents, individual secondary source documents can be very probative in particular circumstances, as circumstantial evidence of intent. (See for example **People v. Superior Court (Memorial Medical Center) (1991) 234 Cal. App. 3d 363** relying upon documents from a legislative committee file, **In re York, (1995) 9 Cal.4th 1133** relying on a letter from the Attorney General found in many legislative bill files, **Kern v. County of Imperial, (1990) 226 Cal. App. 3d 391** relying on a statement by the sponsor of the legislation.) Additionally, sponsor statements have been found to be helpful sources of legislative intent, see **Quarterman v. Kefauver, 55 Cal.App.4th 1366, 1373, 64 Cal.Rptr.2d 741 (1997).**

3. Author Statements

One common secondary source, statements about the intent of legislation by the author of the bill, has been subject to relatively extensive discussion in appellate decisions. Author's statements are often found in many legislative files, and in particular in the author's bill file. A series of cases from early in this century found author statements not entitled to consideration. These cases were typically addressing situations where the author of a bill, after the bill was passed, appeared in litigation to testify as to the legislative intent in enacting the bill, or made other statements about the legislative intent outside legislative deliberations. These older cases often refused to consider these statements as reflective of the intent of the entire legislature. A line of lower court cases has built upon the evidentiary approach of the rule in the older cases, taking a restrictive view that many legislative documents must always be disregarded. (See for a recent example **People v. Patterson, 72 Cal. App. 4th 438 (1999))**. The underlying rationale of these cases is not consistent with Government Code Section 9080, so their continued vitality as precedent is doubtful. These cases seem to test documents for admissibility standard rather than for probative value.

This approach tends to require that the document stand alone as unimpeachable direct evidence of intent, and if it cannot then the document is discarded. They thus discard the circumstantial value of documents that provide background and context to the legislative deliberations.

The evolving modern understanding of the law seems to be represented by cases, in some cases decisions of the Supreme Court, recognizing that author statements made during the legislative process are probative. In some cases this finding is supported by explicit discussion, more broadly support can be found in the sheer number of cases relying upon a statement by the author. See, for issue discussion, **California Teachers Association v. San Diego Community College District, (1981) 28 Cal 3d 692.** The guidelines set forth in this 1981 case are much more restrictive than the rule one would distill from the many subsequent appellate decisions that have relied on author's statements. For an example see the Supreme Court decision of the following year, **Commodore Home Systems, Inc. v. Superior Court (1982) 32 Cal. 3d 211**. For a recent case exemplifying what seems to be the evolving mechanism to harmonize the cases see **Estate of Sanders, 2 Cal. App. 4th, 462 (1992), 474, footnote 15**, which states that author statements "...that cast light on the history of the measure and the arguments before the legislature when it considered the matter - as opposed to the personal beliefs of the legislator (which may not reflect the collective view of the enacting legislative body) - are indicia of legislative intent."

4. Agency Analyses

Bill analyses by executive branch agencies do not fit easily into this primary/secondary source categorization. They are not a primary document in that they usually have no official status in legislative rules. However, some executive branch documents, particularly when an agency is directly involved as a sponsor or opponent of the bill, should be viewed as more probative than other secondary documents. The "evolution of legislation from its introduction to its final form may provide some insight into underlying legislative intent; statements by sponsor of legislation are instructive, as are legislative committee reports on proposed legislation" **Quarterman v. Kefauver, 55 Cal.App.4th 1366, 1373, 64 Cal.Rptr.2d 741, (1997)**. Even in those circumstances where the agency was not directly involved in the legislation the official nature of agency analyses gives additional indicia of reliability beyond the fact that they appear in legislative or executive bill files.

One type of state agency document that has generated challenges in past decisions is enrolled bill reports submitted to the Governor. A 2004 decision of the Supreme Court has resolved the question. In **Elsner v. Uveges (2004) 34 Cal. 4th 915,** the Supreme Court took judicial notice of an enrolled bill report from the Department of Industrial Relations (id. at p. 934). The court stated at footnote 19 "Uveges challenges Elsner's reliance on the enrolled bill report, arguing that it is irrelevant because it was prepared after passage. However we have routinely found enrolled bill reports, prepared by a responsible agency contemporaneous with passage and before signing, instructive on matters of legislative intent. (Citations.)"

5. Legislative Counsel's Opinions

Opinions by Legislative Counsel are also difficult to classify as primary or secondary. Legislative Counsel opinions are opinions addressing specific interpretation questions about particular legislation. They often are found in legislative bill files. The opinions are prepared in response to a formal request by a legislator. Legislative Counsel views their opinions as subject to the Attorney client privilege. Thus they are ordinarily provided only to the requesting legislator, who may or may not disseminate the opinion. Despite the inability to be certain if anyone actually saw the opinion, other than the legislator who requested the opinion, courts have viewed Legislative Counsel opinions as highly probative in assessing legislative intent, presumably because of the Legislative Counsel's key role in drafting legislation, and their presumed impartiality, (See **North Hollywood Project Area Committee v. City of Los Angeles (1998) 71 Cal. Rptr.2d 675**), **Zipton v. W.C.A.B., 218 Cal.App.3rd 980 (1990).**

6. Tertiary Sources

The third category of documents relating to legislative history is documents from outside the legislative process. Examples could include files from lobbying organizations, media articles about the legislation, trade publication discussion of the legislation, Law Review articles, Treatises, or other materials providing

background on the law. These types of documents are typically used to confirm legislative intent suggested by other documents, or to place legislation in historical context.

D. Claiming Costs for Obtaining Legislative Intent Documents
Costs expended to obtain legislative history documentation from a commercial service have been found to qualify as costs under CCP 1033.5. **Van DeKamp v. Gumbiner (1990) 221 Cal.App.3rd 1260**.

E. Selected Code References Pertinent to Legislative Intent
The code sections governing the legislature and legislation are primarily in the Government Code in the 8000 to 11,000 sequence of sections. The two sections that become pertinent to legislative intent most frequently are 9600, which governs the date statutes become effective, and 9605, which governs the effect of two or more pieces of legislation affecting one code section in one legislative session.

Provisions in the Constitution also govern the effective date of statutes, primarily in Article IV, Section 8. Some knowledgeable practitioners find Government Code Section 9600 not altogether in harmony with the Constitution. When questions arise about the effective date of statutes it is wise to go to the Constitution first. See also the discussion on effective dates in the preliminary pages of the annotated codes.

In the Government Code Section 8000 to 11000 sequence you will also find the statutory authorization for many of the organizations associated with the legislature, such as the Legislative Counsel (Sections 10200 et seq) and the California Law Revision Commission (Sections 8280 et seq).

F. Citing California Legislative Documents

The Supreme Court Citation booklet provides the form for a few legislative documents, such as Chaptered Statutes, Bills and other basic documents. But many of the most useful legislative documents are not specifically discussed. The Supreme Court also provides general citation guidelines for documents not specifically covered. As the guidelines apply to legislative documents your citation usually should include all the information necessary for the court to determine the source, subject and nature of the document.

IV. Federal Courts

A. Federal Court Applying State Law

A Federal Court exercising diversity jurisdiction and seeking to determine the intent of a State legislative enactment will look to the law of that state to determine how the State statute is to be interpreted, as the federal court is bound to render the same decision as would a state court. (See, generally, 28 USC Section 1652, Erie v. Tompkins, 304 U.S. 64, (1938), and **Guaranty Trust Co. v. York, 326 U.S. 99 (1945)**. Generally state procedural rules will be followed as long as there is no direct conflict with the federal rules. **(Hanna v. Plummer, 380 U.S. 460 (1965))** If the state and federal law do not directly supercede one another, the courts should try to follow both. (See **Gasperini v. Center for Humanities, Inc. 518 U.S. 415 (1996)**)

B. Federal Court Applying Federal Law

Federal Courts have the power under Federal Rule of Evidence Section 201 to take judicial notice of adjudicative facts. (See generally Sutherland on Statutory Construction, Section 48.04) A number of courts have relied on Section 201(b) to judicially notice documents relating to local, state and federal legislative and administrative enactments. (See for example **Carey v. Population Services, Int'l, 431 U.S. 678 (1977)**, **Green v. Bock Laundry Machine Co., 490 U.S. 504 (1989)**, **Rabkin v. Dean, 856 F.Supp. 543 (N.D. Cal., 1994)**, **Heck v. Reed, 529 N.W. 2d 155 (1995)**) Rule 201 (b) (2) allows judicial notice of facts that are "capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned." Under this rule, judicial notice of the legislative history of a statute may be taken. (See **Levy v. Scranton 780 F.Supp. 897, 900 (1991**))

V. Other Jurisdictions

Detailed general discussion of the importance and use of legislative intent in State and Federal Courts is available in a number of treatises and law review articles widely available in law libraries and/or on line. Good sources to start a search for more detailed information on the applicable law in an individual jurisdiction include AM JUR, Sutherland on Statutory Construction, and ALR. The discussion in AM JUR 2d is in Volume 73, the annotation regarding "Statutes", beginning at Section 145. A pertinent annotation in ALR is the annotation at 70 ALR 5.