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Today's podcast is getting a better understanding of California legislative history and intent research.

Attorneys, lobbyists, legislative staff, and other interested parties who examine California statutes should understand the basics of legislative history and intent research in this state.

Unfortunately, for many attorneys, the subject of legislative intent is not a particularly well-covered aspect of the typical law school curriculum, where the usual heavy emphasis is on the case method of studying law, which tends to restrict the discussion of legislative purpose to what the courts say on a particular subject.

However, because California courts have a long tradition of relying upon bill analyses and other indicia of legislative history in the same manner as they do case law. That is, to clarify the meaning of a statute and properly apply the intent of the legislature. Legislative practitioners and attorneys would do well to know how to discover and apply the legislature's intent with respect to the statutes that are at issue in their cases.

Of course, many law review articles and books have been written on legislative history and intent. However, this podcast covers it in a summary fashion.

For lobbyists, staff, or even the media, our focus is typically upon the proposed solution contained in a particular piece of legislation and not upon the accompanying expressions of legislative intent. However, both are important.

At a minimum, it's a good idea to confirm one's understanding of a proposed legislative solution with the statements of legislative intent that you can glean from the bill's legislative history. Here are a couple reasons why, that have been identified by my friend, Carolina Rose.

One, our codes' statutes are rife with ambiguities that the courts will look to the legislative history in an attempt to clarify.

Two, the courts will overlook a statute's plain meaning if it collides with evidence of the legislator's actual intent, or it's an effort to avoid an absurd application.

Three, courts will also look to legislative history to confirm their own plain reading of a statute.

Both attorneys and Sacramento State Capitol watchers would do well to understand that evidence of California legislative history and intent serves as an important aid for interpreting statutes and understanding what was intended by the California Legislature in enacting a particular new law or amending an existing law.

You may recall that Sir Francis Bacon has been attributed with the statement of knowledge is power. Applying that wisdom here, lobbyists and others would be well-versed in history and intent of a code section that their clients have hired them to watch, to monitor, maybe to amend.

Attorneys should utilize a well-established area of legal research that can shed light on the meaning of statutory terms that are at issue in a dispute.

Solid news reporting by the media should include relevant aspects of a story surrounding how and why the bill was passed or defeated.

Turning to California specifically, the primacy of legislative intent has long been established by both California statute and case law.

For example, the Code of Civil Procedure, Section 1859 provides the following mandate to the courts, "In the construction of a statute, the intention of the legislature is to be pursued, if possible."

CCP, Section 1859 was actually enacted in the year, 1872. Also, the judicial notice statutes in California identify admissible legislative history materials, which is contained in Evidence Code, Section 452, subdivision (c).

The cases cited under those two sections identify various records with which the courts have a high level of comfort in determining legislative intent.

In general, evidence of legislative intent can be derived from two primary sources, either an intrinsic analysis of the statute and its surrounding statutory context, according to traditional standards, and principles of statutory construction, or by the use of extrinsic aids which are used to reconstruct the legislative history of a statute.

The wider historical circumstances that surround the adoption, or amendment, or repeal of a statute can also yield extrinsic evidence of legislative intent that's found outside the statute itself, such as relevant historical background, or maybe the chronology of events, and the presumption that the legislature is aware of prior law existing at the time.

Again, such evidence may even contradict any so-called plain reading of a statute, so you want to determine whether or not there's persuasive extrinsic evidence of legislative intent.

In properly researching legislative history and intent in California, interested persons should ask some of these questions to help guide their efforts. Again, a thanks to my friend, Carolina Rose.

What is the plain meaning of the language in the statute, and to what extent is that meaning self-evident? Next, why was the statute adopted? What need or needs prompted it? What problem or problems was the Legislature trying to correct?

Next, what happened in the Legislature during the process of adopting the bill? That is, what's the statute's legislative history? What was the law prior to the adoption of the statute?

Finally, what has happened since the statute was adopted? What has been the response of the courts, the agency charged with administering the statute, the legislature's view, the public's view, perhaps scholars' view, and the media?

The California State Archives has a vast collection of original legislative papers that can be accessed by sources and session year.

For example, at the state archives, you can find bill authors' files, committee files, research study files, the governor's chapter bill files, party caucus files, senate floor analyses files, files from state agencies, and even law revision commission study files.

Please note that interested persons can phone in their research requests to the state archives. They can be contacted at 916 area code, 653-2246. Be prepared to wait as they often have backlogs in research requests.

Note that walk-ins receive priority treatment, and the cost is 25¢ per page to be paid in advance for photocopies of any state archive materials.

In addition, a wide variety of state legislative offices have insightful materials often available to the public. For example, legislative offices, committee offices, party offices, and the offices of the floor analyses units. This is true, especially when it comes to more recent legislation.

Also, there are agency analyses and bill files that may be accessed by members of the public. Access to the records held by these offices varies widely, depending on the persons involved and their willingness to make these files available to members of the public.

Note that the legislative Open Meetings/Records Act, which is found in Government Code, Sections 9070 and the following. This act assures public access under specified circumstances.

Note finally that there are numerous sources to help determine the legislative history and intent of a bill's provisions. These include the legislature's own online databases maintained by the Office of the Legislative Counsel.

These documents provide committee and floor analyses, the different versions of bills, the final calendars of the Legislature, votes the governor vetoes, past session laws, Daily Journals, Daily Files.

It is not recommended that you rely upon the minimal collection of legislative history materials that Westlaw and other providers include.

In the main, it merely provides materials that you can obtain for free from the Legislature's websites. You should also look at previous, related, or failed legislation.

The history of predecessor failed bills can be considered relevant when the legislative effort spans multiple sessions.

Also, interim hearing study and/or transcripts and related files. The excerpts from testimony of public legislative hearings which preceded the enactment of a statute may be of relevance in ascertaining legislative intent.

There are other formal studies and/or recommendations, such as those published by the California Law Revision Commission, or a relevant state agency, or department.

Of course, all versions of the bill as introduced, amended, enrolled, and chaptered, along with the Legislative Counsel's digest on the face of these bills are also helpful. Note that when your language of interest came into being and the relevant amendments thereto.

Legislative journal entries addressing substantive matters are also helpful. These include letters of intent by the author provided in the journal, copies of committee reports, and similar information.

Also, bill background worksheets. These are often requested by a legislative committee and filled out by the author's office, sometimes with valuable attachments. Of course, there are the policy and committee analyses, both the partisan and nonpartisan versions.

The Department of Finance prepares fiscal analyses on bills. Also, the floor analyses on the third reading file bills, which include both partisan and nonpartisan versions.

Statements by the author for committee and floor purposes are often helpful. A legislative bill author's letter to the governor. Note that the courts can be more friendly toward such letters, if they cast light on the history of a measure, and that they express a reiteration of legislative discussion and events, and that they're not merely expressions of personal opinion by the bill's author.

Statements by proponents and opponents, such as: letters of support and opposition, testimony, and position papers can also be relevant and opinions of the Legislative Counsel and/or the Attorney General.

Enrolled bill reports provided to the governor from various state entities, such as the Legislative Counsel office, relevant agencies, and departments, and the governor's old staff can also be utilized to ascertain intent.

Contemporaneous unpassed legislation may be an indicator of intent underlying the legislation that was later passed during the same legislative session. There are also online research manuals that can be helpful.

For example, Legislative Research and Intent LLC, which is a commercial provider of legislative history research, often supplies numerous complementary research and assistance resources at their website found at www.lrihistory.com.

It's important for attorneys, and capital-interested parties to possess a basic understanding of what legislative history consists of and where to look for insights into what the Legislature intended when it enacted a new law, or amended, or repealed an existing statute.

An insistence upon going beyond simply reading the statute allows one to consider valuable extrinsic evidence of what was likely intended by the legislature in the adoption of a particular piece of legislation.

Thanks for joining this podcast on California legislative history and intent research. I hope you enjoyed it.