The Court of Appeals at the Cocktail Party: the Use and Misuse of Legislative History

Jack Schwartz

Amanda Stakem Conn

Follow this and additional works at: http://digitalcommons.law.umaryland.edu/mlr

Part of the Courts Commons

Recommended Citation
Available at: http://digitalcommons.law.umaryland.edu/mlr/vol54/iss2/6

This Article is brought to you for free and open access by the Academic Journals at DigitalCommons@UM Carey Law. It has been accepted for inclusion in Maryland Law Review by an authorized administrator of DigitalCommons@UM Carey Law. For more information, please contact smccarty@law.umaryland.edu.
THE COURT OF APPEALS AT THE COCKTAIL PARTY: THE USE AND MISUSE OF LEGISLATIVE HISTORY

Jack Schwartz*
Amanda Stakem Conn**

Judge Harold Leventhal described the use of legislative history as "the equivalent of entering a crowded cocktail party and looking over the heads of the guests for one's friends."¹

INTRODUCTION

In 1984 this law review published a rarity: an article that directly produced a change in the behavior of judges.² In that article, Melvin J. Sykes, a leading appellate practitioner, challenged the Maryland Court of Appeals to abandon its use of the canons of statutory construction and instead explain honestly why the court construed a statute in a particular way:

Courts must come to grips directly with their relationship to legislatures. It will not help to solve these problems by concealing them with fictions compounded of equal parts of hyperbole and hypocrisy. Repetition of confusing and meaningless tenets of construction cannot help but undermine confidence in the judicial process. The Court of Appeals should turn instead to the task of explaining more

* B.A., University of Maryland Baltimore County, 1972; J.D., Yale University, 1975. Mr. Schwartz is an Assistant Attorney General and Chief Counsel for Opinions and Advice in the Maryland Attorney General's Office.

** B.A., University of Maryland College Park, 1988; J.D. candidate, University of Baltimore, 1995. Ms. Conn formerly was a law clerk in the Opinions and Advice Division of the Maryland Attorney General's Office. The authors are grateful to David Iannucci, Mary Lunden, Jane Nishida, Robert Roth, Michael Volk, Kimberly Smith Ward, and Robert Zarnoch for their comments on an earlier draft of this Article. The views expressed in this Article are those of the authors and should not be attributed to the Attorney General's Office.


forthrightly its reasons for adopting a particular construction in an individual case.³

To the astonishment and delight of many observers, the Court of Appeals heeded this admonition. In Kaczorowski v. City of Baltimore,⁴ the court, citing the Sykes article, implicitly acknowledged the truth of his indictment that courts often misuse canons of construction to rationalize their results, rather than explaining the actual reasoning that produced those results.⁵ While the court declined Sykes's suggestion that it abandon its use of canons of construction altogether, it did announce its intention to "apply the canons . . . and at the same time attempt to give forthright explanations for the result we reach."⁶

But Kaczorowski did more than that. It identified the court's task as discovering the intended result of the legislative process:⁷

3. Id. at 667; see also Karl N. Llewellyn, Remarks on the Theory of Appellate Decision and the Rules or Canons About How Statutes Are To Be Construed, 3 Vand. L. Rev. 995, 401-06 (1950) (observing that the canons of construction have a certain Newtonian character: for every canon, one can find an equal and opposite canon); see generally KARL N. LLEWELLYN, THE COMMON LAW TRADITION: DECIDING APPEALS 521-35 (1960). Judge Posner, though calling Llewellyn's criticism "an exaggeration," also has noted defects in the canons of statutory interpretation:

[B]ut what is true is that there is a canon to support every possible result. If a judge wants to interpret a statute broadly, he does not mention the plain meaning rule; he intones the rule that remedial statutes are to be construed broadly, or some other canon that leads toward the broad rather than the narrow. If he wants to interpret the statute narrowly, he will invoke some other canon.

RICHARD A. POSNER, THE FEDERAL COURTS: CRISIS AND REFORM 276 (1985). The main vice of the canons, then, is the one Sykes identified: use of the canons masks the actual reasoning process by which a court reaches its result.


5. Id. at 512, 525 A.2d at 631. Judge William Adkins, the author of Kaczorowski, had foreshadowed this view while serving on the Court of Special Appeals. See Christian v. State, 62 Md. App. 296, 303 n.4, 489 A.2d 64, 67 n.4 (1985) (citing Sykes, supra note 2, at 647, but stating that judges "are constrained to follow and to attempt to apply the rules as they now exist").


7. See Felix Frankfurter, Some Reflections on the Reading of Statutes, 47 Colun. L. Rev. 527, 538-39 (1947) ("Legislation has an aim; it seeks to obviate some mischief, to supply an inadequacy, to effect a change of policy, to formulate a plan of government.").
However fictional the notion of institutional intent may sometimes be, it is fair to say that legislation usually has some objective, goal, or purpose. It seeks to remedy some evil, to advance some interest, to attain some end. If we characterize the search for legislative intent as an effort to "seek to discern some general purpose, aim, or policy reflected in the statute," we state the concept more accurately and avoid the fiction.\(^8\)

Thus, an understanding of the words in the statute is necessary but not always sufficient, because the text is merely the skin of something deeper: the General Assembly's "'purpose, aim, or policy.'"\(^9\)

To be sure, the text is still primary: "Of course, in our efforts to discover purpose, aim, or policy we look at the words of the statute. . . . [W]hat the legislature has written in an effort to achieve a goal is a natural ingredient of analysis to determine that goal."\(^{10}\) The Court of Appeals has never claimed, as the United States Supreme Court once implied, that it need not look at the text if the legislative history is clear.\(^{11}\)

As the "ingredient" metaphor suggests, however, statutory construction in the Court of Appeals often includes more than consideration of the statutory text alone. A one-ingredient meal is boring. The other ingredients of the analysis are what the court labeled "context":

When we pursue the context of statutory language, we are not limited to the words of the statute as they are printed in the Annotated Code. We may and often must consider other "external manifestations" or "persuasive evidence," including a bill's title and function paragraphs, amendments that occurred as it passed through the legislature, its relationship to earlier and subsequent legislation, and other material that fairly bears on the fundamental issue of legislative purpose or goal, which becomes the context within which we read the particular language before us in a given case.\(^{12}\)

---

8. Kaczorowski, 309 Md. at 513, 525 A.2d at 632 (citations omitted) (quoting Sykes, supra note 2, at 553).
9. Id. (quoting Sykes, supra note 2, at 553).
10. Id.
11. Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 412 n.29 (1971) (because of ambiguity in the legislative history, "we must look primarily to the statutes themselves to find the legislative intent"). Thus did the Supreme Court make law of what had been but a scholarly flippancy. See Frankfurter, supra note 7, at 543 ("Spurious use of legislative history must not swallow the legislation so as to give point to the quip that only when legislative history is doubtful do you go to the statute.").
When the court spoke of "other material that fairly bears on the fundamental issue of legislative purpose or goal," it opened the door to an examination of anything and everything in a statute's legislative history.

In the post-*Kaczorowski* era of statutory construction, we know where the Court of Appeals starts: with "the words of the statute, giving them their ordinary and natural import." We also know where the court wants to end: with a construction that is reasonable in light of "the purpose, aim, or policies of the Legislature reflected in the statute." En route, the court adduces "evidence of the Legislature's intent... from a statute's 'relationship to earlier and subsequent legislation.'" The court also "look[s] to the context surrounding the enactment of a statute to determine the intention of the legislature."

In our view, the court set off in the right direction in *Kaczorowski*. Given the nature of the General Assembly as a part-time citizen-legislature, the court must be realistic about the frailties of the process. Textual uncertainty sometimes results from a decision by the General Assembly to avoid answering an apparent question, perhaps because a struggle over the answer would doom the bill. Most often, however, the uncertainty regarding the application of statutory text results from the simple failure to foresee a question:

The most important reason why statutes are so frequently ambiguous in application is not that they are poorly drafted—though many are—and not that the legislators failed to agree on just what they wanted to accomplish in the statute—though often they do fail—but that a statute necessarily is drafted in advance of, and therefore with imperfect

---

13. *Id.* at 515, 525 A.2d at 632.
18. *See infra* notes 30-31 and accompanying text.
appreciation for, the problems that will be encountered in its application.\textsuperscript{19}

However imperfectly, the General Assembly passes laws to achieve some result in the world, and the court should look past the sins of the text, whether ones of commission or omission, and help bring about that intended result.

The legislative discussion . . . provides information that is often useful in figuring out what the statute is all about, what policies it purports to incorporate, and indeed what the truth of the statute is. If legislative supremacy means anything, it at least means a willingness, indeed an eagerness, of the interpreter to listen to what our elected representatives had to say about a text, even if the record is incomplete or biased.\textsuperscript{20}

The General Assembly knows that its enactments will not answer all possible future questions, so the real issue is whether it manifested a plan for how future interpreters shall resolve such questions. Did it intend for the agency that administers a given statute to decide interpretative questions through adjudication or rulemaking? Did it intend for the courts to resolve such issues by applying common law methodology to the statute's development?\textsuperscript{21} Or did it intend for the eventual interpreters of the statute to resolve uncertainties by applying whatever law controlled before the statute's enactment?

\begin{footnotes}
\item[19] Posner, supra note 3, at 280.
\item[20] William N. Eskridge, Jr., Gadamer/Statutory Interpretation, 90 Colum. L. Rev. 609, 665 (1990). Other commentators have made the same point. See, e.g., Daniel A. Farber & Philip P. Frickey, Legislative Intent and Public Choice, 74 Va. L. Rev. 423, 448 (1988) ("American public law has quite properly recognized that statutory meaning is necessarily greatly influenced by statutory context. Legislative history is part of that context, and some aspects of it—such as committee reports—will frequently represent the most intelligent exposition available of what the statute is all about."). For an earlier formulation, see Frederick J. de Sloovere, Extrinsic Aids in the Interpretation of Statutes, 88 U. Pa. L. Rev. 527 (1940): Legislative history should be searched only (1) to determine the broader contextual meanings of the statutory language; (2) to clarify the purpose or objectives of such legislation in view of the existent evils, the suggested remedies and the relevant customs and usage both before and after its enactment; and (3) to use this knowledge not only to choose the best meaning in view of these objectives, but also to apply the statute so as to give them full effect. Id. at 533. Professor de Sloovere also offered a cautionary note that will recur in this Article: "In all three instances, extrinsic factual aids should be employed only from the most clear and authoritative sources . . . ." Id.
\item[21] "Where . . . a statute is phrased in broad general terms, it suggests that the legislature intended the provision to be capable of encompassing circumstances and situations which did not exist at the time of its enactment." Kindley v. Governor of Md., 289 Md. 620, 625, 426 A.2d 908, 911 (1981).
\end{footnotes}
Legislative history might suggest which course the Legislature intended, but legislative history has value only to the extent that it helps courts to choose accurately among competing interpretations. When litigants present a court with a choice among interpretations, the court must assign probabilities to the alternatives and ask how likely it is that a particular interpretation accurately reflects what the Legislature intended to accomplish.\(^2\) If legislative history increases the probability that the court's choice is correct, it is useful; if not, it is worthless.

The Court of Appeals has gone awry by failing to make clear that not all legislative history has equal value in the court's exercise of assigning probabilities to various statutory readings. Too often the court has not differentiated the reliable from the unreliable, evidence that genuinely might reflect the legislative purpose underlying the enacted bill from evidence that reflects little more than someone's effort to gain leverage in the process. By indiscriminately assigning essentially the same weight to each form of legislative history, the court makes an error of the same type as affording legislative history too much or too little weight altogether.\(^2\)

This Article will review how the Court of Appeals currently approaches issues of statutory construction, how its use of legislative history potentially disserves the court's stated goal, and why a more disciplined use of legislative history would better serve the quest for "the truth of the statute."\(^2\)

I. STATUTORY CONSTRUCTION AND THE REALITY OF MARYLAND'S LEGISLATURE

In the seven years since *Kaczorowski*, the Court of Appeals has not wavered from its commitment to the approach expounded in that case. The court thus established for itself a task Professors Henry Hart and Albert Sacks classically described as

[d]ecid[ing] what purposes ought to be attributed to the statute and to any subordinate provision of it which may be involved; and then . . . [i]nterpret[ing] the words of the statute immediately in question so as to carry out the purpose as best [the court] can, making sure, however, that it does not give the words either . . . a meaning they will not bear, or . . .

\(^{22}\) Farber & Frickey, *supra* note 20, at 462-64.

\(^{23}\) Cf. Otto J. Hetzel, *Instilling Legislative Interpretation Skills in the Classroom and the Courtroom*, 48 U. PITT. L. REV. 663, 685 (1987) ("According too much weight to legislative history is as bad as according it too little.").

\(^{24}\) Eskridge, *supra* note 20, at 665.
a meaning which would violate any established policy of clear statement.25

In many cases since Kaczorowski, the court has reiterated its commitment to the pursuit of the legislative purpose or goal. In a recent opinion the court wrote, "Every statute is enacted to further some underlying goal or purpose—'to advance some interest, to attain some end'—and must be construed in accordance with its general purposes and policies."26

Similar declarations about the goals of statutory construction in opinions of the United States Supreme Court have inspired a strong and sometimes successful counterattack from formalist critics, most notably Justice Antonin Scalia.27 Justice Scalia has argued, with char-


acteristic vigor, that the Supreme Court should abandon its traditional reliance on legislative history and insist that Congress express itself fully in the statutory text, for the text alone is the law.\textsuperscript{28}

Whatever one may say of Congress’s ability to respond to the austere regime Justice Scalia proposes, few would expect the Maryland General Assembly to achieve the foresight and precision of expression that Justice Scalia’s approach demands of Congress. One eminent observer has wryly remarked, “[A]s law is an instrument of governance rather than a hymn to intellectual beauty, some consideration must be given to practicalities.”\textsuperscript{29}

The most important constitutional and practical fact about the General Assembly is that, barring extraordinary circumstances, it meets for only ninety days each year.\textsuperscript{30} Within those ninety days, the General Assembly must pass a bill from introduction through hearings, floor action, hearings in the other chamber and sometimes a conference committee, a process that in Congress often takes a year or two. The recent exponential growth in legislation that the General Assembly produces has worsened the tyranny of the calendar.\textsuperscript{31}

Within this maelstrom, participants in the legislative process try to achieve something. Sponsors have some purpose in mind when they introduce legislation, and the bill drafters in the Department of

\textsuperscript{28} See, e.g., Blanchard, 489 U.S. at 99-100.

\textsuperscript{29} Newman-Green, Inc. v. Alfonzo-Larrain R., 854 F.2d 916, 925 (7th Cir. 1988) (Posner, J.).

\textsuperscript{30} Md. Const. art. III, §§ 14 and 15(a).

\textsuperscript{31} During the term of Governor McKeldin from 1955 through 1958, the General Assembly passed 3623 pages of legislation. This amount was only slightly greater than the General Assembly’s output of 3405 pages during the term of Governor Goldsborough from 1912 through 1915, nearly a half-century earlier. From 1967 through 1970, the term Governor Agnew began and Governor Mandel completed, the Assembly’s output totaled 7103 pages. During the first term of Governor Hughes, from 1979 through 1982, the output was 13,619 pages. During the first term of Governor Schaefer, from 1987 through 1990, the output was 16,002 pages. Although this method of measuring legislative output admittedly is crude and tends to overstate activity when recodified articles of the Maryland Code are presented, see infra note 37, it serves as a rough gauge. It also has an honorable antecedent in Frankfurter, supra note 7, at 527 (measuring increase in the volume of congressional enactments by reference to page count).
MARYLAND LAW REVIEW

A. Sources of Legislative History

Because bills rarely appear out of thin air, many statutes have histories that precede their introduction in bill form. Study groups within the executive or legislative branch often issue reports that identify problems and propose solutions. For many years an entity called the Legislative Council officially served that role. The Court of Appeals often has cited reports of the Legislative Council, which existed from 1939 to 1976, in determining the purpose of legislation. The Legislative Policy Committee, the standing committees, the Revisor of Statutes and various ad hoc groups serve the same purpose now. Similarly, agency and interest group requests for legislation might an-

32. The Departments of Legislative Reference and Fiscal Services are the support arms of the General Assembly. Bill drafters, research analysts, and committee counsel for the Senate Judicial Proceedings and Economic and Environmental Affairs Committees and for the House Judiciary, Environmental Matters, Commerce and Government Affairs, and Economic Matters Committees work for the Department of Legislative Reference. Committee staff for the Senate Finance and Budget and Tax Committees and the House Ways and Means and Appropriations Committees work for the Department of Fiscal Services.

33. As far as we are aware, the only existing account of legislative history in Maryland is the aptly titled Ghost Hunting. See Michael S. Miller, Ghost Hunting: Finding Legislative Intent in Maryland, a Checklist of Sources (1984) [hereinafter Ghost Hunting] (unpublished manuscript on file with authors and available in the State Law Library). This version of Ghost Hunting is the one the Court of Appeals most often cites. See, e.g., Franklin Square Hosp. v. Laubach, 318 Md. 615, 619, 569 A.2d 693, 695 (1990); In re Kemmo N., 315 Md. 193, 195, 553 A.2d 1273, 1274 (1989). A slightly revised version was later published. Michael S. Miller & Judith Levinson, Ghost Hunting: Searching for Maryland Legislative History, Md. B.J., July-August 1989, at 11.


swer the question of where a particular bill originated. As long as the court takes care to identify the ways in which the Legislature departed from the recommendations of such a source, these reports can provide valuable information regarding the statutory context.\textsuperscript{38}

Documents reflecting the origins of a bill, the initial draft, and any additional materials are consolidated in a file, maintained first by the committee to which the bill is assigned and later by the Department of Legislative Reference Library.\textsuperscript{39} Although the volume of material varies markedly from one bill to another, some elements of legislative history are universal to all bill files, or at least typical to most of them.

A fiscal note, prepared by the Department of Fiscal Services, summarizes every bill and estimates its fiscal impact.\textsuperscript{40} Because the Maryland Constitution imposes a balanced budget requirement,\textsuperscript{41} and therefore any outlay of State funds imposes opportunity costs, participants in the process pay particular attention to fiscal notes.\textsuperscript{42} Because it assesses a bill's projected fiscal impact, a fiscal note often can be important evidence of a bill's scope or intended effect.\textsuperscript{43}

In addition, the staffs of all committees of the State Senate and most committees of the House of Delegates prepare official committee documents concerning bills. These documents typically are a "bill

\textsuperscript{38} See Reed Dickerson, Statutory Interpretation: Dipping into Legislative History, 11 HOFSTRA L. REV. 1125, 1130-31 (1983) (arguing that study group reports prepared by official bodies researching legislative solutions to social problems are reliable because the resulting legislation likely embodies the same purposes as those in the report, but cautioning that other indications in the legislative history should confirm this probability).

\textsuperscript{39} Before the early 1970s, legislative committees created but then discarded bill files by the end of each session. The bill files of certain committees for the years 1973 to 1976 still exist. Files exist for all bills from 1977 to the present. Bill files remain in their respective committees for one or two years before being sent to the Department of Legislative Reference Library. The library maintains these files in hard copy for two to three years before converting them to microfilm. Files for the years 1977 to 1990 are now available on microfilm in various libraries; original files are in the State Archives.

\textsuperscript{40} The practice of creating fiscal notes for all bills and resolutions began in 1968. The Department of Fiscal Services now must, by law, prepare a fiscal note for each bill; a committee may refuse to vote on a bill unless a fiscal note accompanies it. Md. Code Ann., STATE Gov'T § 2-1505 (1993).

\textsuperscript{41} Md. Const. art. III, § 52(5a).

\textsuperscript{42} Estimates of fiscal impact often originate with executive branch agencies, which sometimes have an incentive to manipulate the projections, inflating the cost estimates for bills that the agency opposes and deflating them for bills that it supports. Legislators are familiar with this phenomenon and presumably apply appropriate discounts.

analysis" of legislation pending before the committee and a "floor report" of legislation that is favorably reported. These two documents embody the present committee reporting system in Maryland.

Bill analyses often simply paraphrase the main provisions of bills, without elaborating upon underlying objectives. For this reason, bill analyses generally are not as rich a source of information as congressional committee reports.

The purpose of floor reports is to help the committee chairman describe a bill when it comes up for a floor vote. Floor reports generally provide more valuable clues than bill analyses to the purpose underlying the bill, because floor reports often summarize the key testimony at hearings and the import of any significant amendments made in committee. Ordinarily, a committee does not explain why it rejects proposed amendments; the Court of Appeals, however, sometimes infers that a committee rejected an amendment because the committee disagreed with the amendment's substance.

Apart from formal journal entries that simply record actions taken, floor debate yields no legislative history. Whatever insights

44. Bills that are defeated in committee receive an "unfavorable report," but there is no document articulating the reason for the committee's decision.

45. The present committee reporting system began as a pilot project by the Department of Legislative Reference in 1982 for the purpose of creating an official legislative history of a bill. The pilot project started in the Senate Judicial Proceedings, Economic Affairs, and former Constitutional and Public Law Committees. The House of Delegates did not participate in the project after some committee chairmen voiced concerns that the bill reports would better reflect the bias of the staff member drafting the report than the objective that the Legislature was trying to achieve. Also, the House did not want to create a system similar to the congressional committee system. Since then, however, the House Economic Matters and Environmental Matters Committees have instituted the committee reporting system. While its original purpose was to create official legislative history, it has evolved into a less formal process geared to meet the individual needs of each committee chairman. Thus, the reports differ in form and content depending on the committee that drafted them. Indeed, committee counsel often view the reports as tools to assist the chairman and the members of the committee in understanding and explaining the bill in committee and on the floor rather than as documents that courts subsequently will use to infer legislative purpose.

46. See Farber & Frickey, supra note 20, at 449-50 (arguing that a thorough analysis of legislative intent must include an examination of committee reports—documents legislators and staff probably will read more carefully than the resulting bills); see also Abner J. Mikva, A Reply to Judge Starr's Observations, 1987 Duke L.J. 380, 385 (stating that the committee report, which "represents the synthesis of the last meaningful discussion and debate on the issue," is the most useful device in determining legislative intent).

47. See, e.g., NCR Corp. v. Comptroller of the Treasury, Income Tax Div., 313 Md. 118, 125, 544 A.2d 764, 767-68 (1988); see also infra notes 136, 155 and accompanying text.

48. Md. Const. art. III, § 22 ("Each House shall keep a journal of its proceedings, and cause the same to be published."). These journals record the introduction of bills, amendments proposed by committees and adopted on the floor, and voting results.
into legislative purpose that floor colloquies can reveal are lost, for there is no Maryland equivalent of the Congressional Record.\(^49\)

A last source of explanatory material that legislative decision-makers consider is advice from the Counsel to the General Assembly, a division of the Attorney General's office. Frequently during a session, someone will ask for an explanation of a bill's relation to other law or of its legal effect. One usually can infer that the General Assembly accepts such requested advice as a premise for further legislative action.\(^50\) The Court of Appeals has recognized this reliance factor and therefore the significance of such advice in revealing the purpose underlying a statute.\(^51\)

A statute also has a limited post-passage, but pre-enactment, legislative history. The Attorney General reviews every passed bill for constitutionality and legal sufficiency, and a "bill review" letter to the Governor embodies the results of that review.\(^52\) The Governor then takes account of the Attorney General's legal assessment, along with any policy considerations, in deciding whether to veto a bill. If the Governor does veto a bill, a veto message may be part of the context for revised legislation in the future.

**B. The Authoritative Voices of the Key Players**

The role of committee chairmen as floor managers is but one aspect of their larger task: to maintain control of, and establish policy priorities within, a process that often threatens to careen toward the edge of chaos. Committee chairmen exercise significant influence by

\(^{49}\) Since 1991, floor debate in the Senate has been recorded but not transcribed. The tapes are available to the public for a small fee. Memorandum from Library and Information Services Division, Department of Legislative Reference (July 1994) (on file with authors). As far as the authors are aware, no litigant has yet proffered a privately transcribed version of floor debate as part of a bill's legislative history.

\(^{50}\) The General Assembly similarly relies on the much less frequent formal opinions of the Attorney General regarding the legal landscape within which the new statute will fit. By contrast, the Legislature may view as mere advocacy pieces the legal analyses written by those sections of the Attorney General's office that counsel the various executive branch agencies, each of which seeks to promote its own legislative agenda. Also, on occasion the Attorney General avowedly advocates for or against legislation.

\(^{51}\) See State v. Burning Tree Club, Inc., 315 Md. 254, 297-99, 554 A.2d 366, 388-89, cert. denied, 493 U.S. 816 (1989). In Burning Tree Club, the court held that the Legislature intended one portion of a statute to be severable because the Attorney General's office had so advised the Legislature, despite the court's opinion that the advice had been incorrect! Id.

\(^{52}\) Bills that raise no issues worth discussing receive the Attorney General's approval in a form letter.
trying to ensure passage of those bills identified with the legislative leadership and to kill those bills the leadership actively opposes.

As in Congress, committees "serve as devices to screen out the vast majority of policy proposals." Committees also save time on the floor by resolving identifiable problems with the bills that have enough political support to pass. While this process results in widely varying degrees of understanding of the bills by committee members, the chairman of the jurisdictional committee understands the basic purpose of most bills and is responsible for the explanation of bills in committee documents.

Another consequence of the time pressure and the sheer volume of legislation is specialization among legislators. Sometimes the specialization is recognized formally. This occurs, for example, when a handful of committee members with a particular interest in an issue is designated as a subcommittee or work group to hammer out legislation on the issue. Often, specialization is simply a matter of self-selection; a legislator who is interested in a topic develops a reputation for expertise on that topic. For example, a few members of the House and the Senate receive wide recognition from their colleagues and outside observers as articulate and knowledgeable proponents of environmental protection.

One consequence of this specialization is collegial deference, especially in the House of Delegates. If a legislator generally favors environmental protection measures, for example, but has not taken the time to assess the merits of some particular environmental bill, seeing whether a recognized environmental leader in the chamber is a sponsor or cosponsor is an easy and reliable guide to voting on the bill.

---

53. Many bills that the Senate President, Speaker of the House, and committee chairmen introduce do not reflect their personal policy views. By custom, the President and the Speaker introduce "administration" bills that the Governor has proposed, while committee chairmen introduce "departmental" bills that executive branch agencies have proposed. DEPARTMENT OF LEGISLATIVE REFERENCE, MARYLAND GENERAL ASSEMBLY, LEGISLATOR'S HANDBOOK 13, 49 (1990).

54. William N. Eskridge, Jr., Overriding Supreme Court Statutory Interpretation Decisions, 101 YALE L.J. 331, 370 (1991). More than half of all bills die in the committee to which they are referred after introduction. DEPARTMENT OF LEGISLATIVE REFERENCE, supra note 53, at 57. The Maryland General Assembly has only ten principal standing committees—four in the Senate, and six in the House. Thus, these committees have broad jurisdiction. The House Environmental Matters Committee, for example, has jurisdiction not only over environmental legislation but also over "general health policy, mental health and the developmentally disabled, the elderly, health occupations regulation, and agriculture." Id. at 17.

55. That staff members actually draft these documents is of little consequence. Committee chairmen would have a strong incentive to pay attention to what is written there, especially if the Court of Appeals were to give greater weight to these documents than to other parts of the legislative history. See infra text accompanying notes 163-164.
The views of a sponsor, then, speak for many legislators through a kind of ideological delegation. "[I]t is not necessarily true that each member of a legislative majority behind a particular bill will have bothered to study the details of the bill he voted for; he may simply have assented to the deal struck by the sponsors of the bill."56

In addition, legislators sometimes vote on a bill for reasons entirely unrelated to its merits. Simple vote-trading is hardly unknown: If you vote for my bill X, I'll vote for your bill Y. A variant is voting to avoid the committee chairman's displeasure; in a system that invests enormous power in committee chairmen, including control of the committee's agenda,57 a legislator may assent to the chairman's wishes on many bills of little interest simply to improve the prospects in committee of the bills about which the legislator really does care. Institutional tradition also guides some votes: when a bill is reported out of committee to the floor, a committee member usually does not vote against the committee's favorable report, even if the member voted against the bill in committee and might vote against the bill again when it is up for final passage. In addition, under a practice known as "local courtesy," everyone votes for another delegation's local bills so that the favor will be returned.58

These realities of the legislative process in Maryland suggest that some parts of the legislative history—sponsor testimony, committee

56. Posner, supra note 3, at 269 (pointing out also that those to whom other legislators defer have an incentive to represent the purpose of their bills fairly, for "unless the terms of the deal are stated accurately in the committee reports and in the floor comments of the sponsors, the sponsors will have difficulty striking deals in the future"); see also Hetzel, supra note 23, at 685 (noting that while the remarks of sponsors, party leaders, and the committee chair can be instructive as to legislative intent, the comments of those opposing the bills are not); James Landis, A Note on "Statutory Interpretation," 43 Harv. L. Rev. 886, 888-89 (1930) (observing that "[t]hrough the committee report, the explanation of the committee chairman and otherwise, a mere expression of assent becomes in reality a concurrence in the expressed views of another"). But see William N. Eskridge, Jr., Legislative History Values, 66 Chi.-Kent L. Rev. 365, 402 (1990) (arguing that some statements in committee reports merely are "'sales talk' put in the legislative history as a respectable explanation for the deals that actually were made.").

57. See Farber & Frickey, supra note 20, at 431 ("[A]genda rules increase the power of the legislative leadership to control outcomes, at least in the short run. Having powerful leadership should increase the predictability and intelligibility of results."). Committee chairmen in Maryland have augmented power because the jurisdiction of each committee is so broad. See supra note 54.

58. See Porten Sullivan Corp. v. State, 318 Md. 387, 408 n.6, 568 A.2d 1111, 1121 n.6 (1990) ("Under the tradition of local courtesy, [local bills] would ordinarily pass . . . if supported by legislators from that County.") (citation omitted); M. Peter Moser, County Home Rule—Sharing the State's Legislative Power with Maryland Counties, 28 Md. L. Rev 327, 343 (1968) ("Local laws are nearly always passed if recommended favorably by a select committee dominated by the local delegation from the area to which the law would apply.").
bill analyses, and committee floor reports—are likely to be especially reliable evidence of the purpose or goal underlying a statute. These materials reflect the views of those most likely to know something about the legislation and to whom other members, for a variety of reasons, tend to defer.

C. Voices from the Outside

The bulk of a typical bill's in-session legislative history has no legislative branch provenance. A bill file generally contains a copy of letters written about a bill and any written testimony of witnesses at a hearing. Unlike congressional hearings, initial hearings on bills in the General Assembly are open to the public.

These parts of the legislative history are not necessarily a reliable guide to the General Assembly's purposes. Indeed, they might be altogether misleading. "[I]t is one thing to assume that legislators who vote for a bill defer to the understanding of the bill expressed by its sponsors and another to assume that they adopt the statements of witnesses, or nonsponsoring legislators (perhaps opponents of the legislation), who want to impart some twist to the statute when it is applied by the courts." As we shall explain, the failure of the Court of Appeals to make important distinctions among the various types of legislative history is an invitation to mischief.

II. The Interpretive Process of the Court of Appeals

This portion of the Article will explore the methods by which the Court of Appeals discerns the legislative purpose underlying the statutory text at issue in a case. In particular, this section will summarize the ways in which the court uses legislative history in that pursuit. The Appendix to this Article provides an overview of the court's recourse to legislative history by identifying the types of legislative history the

59. Since 1992, Senate standing committees have recorded each bill hearing. Although the tapes are available on request, they are not transcribed. See Memorandum, supra note 49, at 1. Some files contain synopses of hearings, presumably prepared by a committee staff member. See, e.g., file on S.B. 717, 1981 Session. One may find the ultimate in cryptic legislative history in the files of some bills heard by the Senate Economic Matters Committee when the late Harry McGuirk was chairman: McGuirk had an aide take shorthand notes of testimony. These untranscribed notes remain preserved in the files. See, e.g., file on S.B. 538, 1978 Session.

60. When a bill passes out of the chamber of origin and is heard in the other chamber, often only the bill's sponsor testifies.

61. Posner, supra note 3, at 270; see also Dickerson, supra note 38, at 1131 (testimony at hearings is "so unreliable, even when it appears to make good sense, that courts should pay little heed to it, except possibly for confirmatory purposes").

62. See infra notes 128-130 and accompanying text.
Court of Appeals has used in statutory construction cases from *Kaczorowski*, decided in May 1987, through mid-1994.63

As the court made clear in *Kaczorowski*, and has confirmed in many later cases, the text of the statute is the starting point of analysis.64 Judge Posner terms this approach "[a] milder version"65 of the traditional "'plain meaning' rule, [which] holds that in interpreting a statute courts should begin, though perhaps not end, with the words of the statute."66 The Court of Appeals used this approach in the manner Judge Posner details: the "start with the words" canon has both temporal and logical priority.67 That is, the court does more than recite the text in question first; it also treats the text as "the most important evidence of [the statute's] meaning—which it normally is—or at least indispensable evidence—which it always is."68 Sometimes the court stops there, finding it unnecessary "to go further than the scrutiny of statutory language, for the language itself may be sufficiently expressive of the legislative purpose."69

Sometimes, although the meaning of the text seems clear, the court nevertheless dips into the legislative history. For example, in *In re Demitrius J.*,70 the issue was whether a juvenile court had the authority to order the Department of Juvenile Services both to place a delin-

63. The Appendix omits statutory construction cases in which the court did not refer to legislative history. It also omits cases that refer to legislative history for purposes unrelated to statutory construction. See, e.g., Murphy v. Edmonds, 325 Md. 342, 368-70, 601 A.2d 102, 115-16 (1992) (citing legislative history to establish legislative objective for purposes of constitutional review).


66. Id. Judge Posner posits that "as a description of what judges do, the proposition is false. The judge rarely starts his inquiry with the words of the statute, and often, if the truth be told, he does not look at the words at all." Id. at 807-08.

67. Id. at 808.

68. Id.


quent child in a specific private facility and to pay the cost of that placement. 71 After reviewing the language in the pertinent statute, and its relationship to other statutes bearing on the authority of the juvenile court and the Department, the court concluded that "the legislative scheme shines bright and clear." 72 According to the court, "the plain language of the statute places these matters within the sound discretion of [the Department]." 73 Nevertheless, the court went on to recite the history of the provision, citing fiscal notes, state and local government agency position papers, and two letters from the Attorney General. 74

While the court commonly uses legislative history to confirm its interpretation of the statute's plain language, Kaczorowski itself is the rare case in which the court used legislative history to negate the result that the text otherwise would compel. 75 As the plaintiff in Kaczorowski pointed out, the General Assembly unquestionably had repealed the law authorizing the Industrial Development Authority of Baltimore City. 76 The court recited the sequence of enactments concerning industrial development financing to demonstrate that the Legislature intended to promote economic development through these means, but that the drafting process had gotten muddled. 77 Against this background, it was most improbable that the General Assembly actually sought to repeal the basis on which industrial development activity took place in Baltimore City. The court then verified this assessment by reviewing the stated purposes of a relevant legislative study and legislative committee notes. 78 Discerning from these materials that "the legislative goal [was] improvement of the [industrial development financing] mechanism," 79 the court declared that it

71. Id. at 470, 583 A.2d at 259.
72. Id. at 474, 583 A.2d at 261.
73. Id. at 475, 583 A.2d at 262.
74. Id. at 476-77, 583 A.2d at 262; see also In re Kemmo N., 315 Md. 193, 200, 553 A.2d 1273, 1276 (1989) (reciting legislative history to confirm statutory meaning although text "could not be more clear").
75. In a few cases, the court simply defies unambiguous text by declaring the result unreasonable, without adducing any basis in the legislative history for doing so. See, e.g., Dickerson v. State, 324 Md. 163, 596 A.2d 648 (1991). However courts might dress up decisions like this as explications of legislative intent, see, e.g., id. at 173, 596 A.2d at 653, these cases actually reflect a straightforward substitution of the court's policy views for those of the General Assembly. See id. at 176, 596 A.2d at 654 (McAuliffe, J., dissenting).
77. Id. at 509, 525 A.2d at 630.
78. Id. at 513, 525 A.2d at 632.
79. Id. at 520, 525 A.2d at 635.
would not "permit a patent drafting error to frustrate this goal by bringing about the demise of the Baltimore Authority." 80

The most interesting cases are those in which the court uses legislative history to choose between competing interpretations of ambiguous text. 81 In Motor Vehicle Administration v. Shrader, 82 for example, the pertinent statute stated that the Motor Vehicle Administration "shall set a hearing for a date within 30 days of the receipt of [a] request" for a hearing after a driver's license had been suspended on the basis of a driver's refusal to take a blood alcohol test. 83 The Administration had missed this deadline when scheduling the appellee's hearing. 84 The question was whether the proper sanction for noncompliance was dismissal of the Administration's action. 85

The court focused on the statute's omission of any specified sanction for the Administration's failure to meet the deadline:

While a statute or rule may dictate a mandatory duty on the part of any agency or party, non-compliance with that statute or rule does not necessarily require a dismissal of the case. Thus, we must examine the provisions of § 16-205.1, which are silent as to any sanctions to be imposed for non-compli-

80. Id. Even "new textualists" accept the need to "look at legislative history when there is a strong possibility that the text reflects a scrivener's error," or "when the apparent textual meaning of a statute is unreasonable." Eskridge, supra note 27, at 697. Kaczorowski involved an error of commission: the General Assembly accidentally repealed provisions that it undoubtedly meant to retain. An example of the converse—using Kaczorowski to correct an inadvertent error of omission—appears in 75 Op. Att'y Gen. ___ (No. 90-060), 18:2 Md. Reg. 104 (Dec. 12, 1990) (concerning omission of "grandfather" provision from statute tightening licensing requirements for nursing home administrators).

81. This article does not address the interpretive role of the court if an administrative agency has construed an ambiguous statute in a regulation. In the federal system, such a regulation, if reasonable, would preclude a contrary judicial construction. Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984). As one commentator put it, Chevron is a frank recognition that sometimes interpretation is not simply a matter of uncovering legislative will, but also involves extratextual considerations of various kinds, including judgments about how a statute is best or most sensibly implemented. Chevron reflects a salutary understanding that these judgments of policy and principle should be made by administrators rather than judges.

Cass R. Sunstein, Law and Administration After Chevron, 90 COLUM. L. REV. 2071, 2088 (1990). The Court of Appeals never has cited Chevron, though the court sometimes gives a weaker form of deference to agency interpretations. See, e.g., Christ v. Department of Natural Resources, 335 Md. 427, 445, 644 A.2d 34, 42 (1994) (stating that the authority delegated to executive branch agencies may include a broad power to promulgate rules to implement the statute).

84. Shrader, 324 Md. at 458, 597 A.2d at 940.
85. Id. at 459, 597 A.2d at 941.
ance with the 30 day scheduling requirement, to determine whether dismissal of the order of suspension is a proper sanction... The Court of Appeals concluded that dismissal was not mandatory. The court sought to relate the hearing deadline provisions to the purpose of the law as a whole, and in turn sought evidence of that purpose in the legislative history: an advice letter from the Counsel to the General Assembly, a letter from an official of the Baltimore City Police Department, and a Senate committee floor report. The court concluded that "the General Assembly's desire for swift and certain action against drunk drivers" would not be served by mandatory dismissal: "[D]ismissing a suspension under these circumstances would be inimical to the interests of the public and would enhance the interests of the presumptively drunken driver, an outcome that is contrary to our holdings and to the General Assembly's expressed sentiments."

When the court uses legislative history, it does so avidly. Some of the court's opinions read as if a law clerk copied everything in the bill file and then arrayed this material in a draft opinion like laundry on a clothesline. In *State v. Runkles*, the court announced that it had "perused all of the items in the legislative file" in order to "tree[ ] the ghost of legislative intent." The court, however, does not always pay sufficient attention to a document's relationship to the enacted statute. In *Runkles*, the court reviewed a floor report prepared by the Senate Judicial Proceedings Committee on Senate Bill 58 of the 1989

86. Id. at 462, 597 A.2d at 943.
87. Id. at 463, 597 A.2d at 943.
88. Id. at 464, 597 A.2d at 944.
89. Id. at 467, 597 A.2d at 945.
90. Id.
91. When a law clerk drafts an opinion, the draft might reflect the failure of law schools to prepare students sufficiently to work with statutory materials. See *Posner, supra* note 3, at 336-37; William N. Eskridge, Jr. & Phillip P. Frickey, *Legislation Scholarship and Pedagogy in the Post-Legal Process Era*, 48 U. Priii. L. Rev. 691, 691-93 (1987); Farber & Frickey, *supra* note 20, at 451 n.101; ("In this light, it is understandable, although lamentable, that law clerks less skilled in statutory areas than other matters end up drafting opinions that mechanically treat every conceivable source of statutory interpretation at length and find all of them supportive of the ultimate result.").
93. Id. at 393, 605 A.2d at 115.
94. *Runkles*, 326 Md. at 398, 605 A.2d at 118. The legislative file contained everything from committee reports to newspaper clippings to an unsigned document that the court, without any basis, attributed to a committee chairman. Id. at 393-98, 605 A.2d at 115-18.
Session, which eventually became Maryland's "baby selling" statute. The court, calling the floor report "inaccurate in several respects," described alleged discrepancies between the report and the enacted bill. In fact, it was the court's own characterization that was inaccurate, not the report. The floor report described Senate Bill 58 in the form in which the Senate Judicial Proceedings Committee had passed it. The House Judiciary Committee then significantly amended the bill, and that amended version ultimately was signed into law. Thus, the floor report's authors never had intended it to describe the final version of the bill. Indeed, the only document the court even mentioned that contained an accurate description of the enacted bill was entitled "Explanation of Concurrence."

Frequently, and properly, the court relies on a bill sponsor's testimony in ascribing purpose to a statute. Yet the court also is willing to assign to the General Assembly purposes that only advocates identify, with no explicit evidence that any key participant in the enactment process had adopted the piece of advocacy. In Eagan v. Ayd, for example, the issue was whether the statute imposing specific sanctions on a putative father who fails to take a court-ordered blood test should be read to limit the court's power to hold the recal-

96. Runkles, 326 Md. at 397 n.6, 605 A.2d at 117 n.6.
97. Id. at 397, 605 A.2d at 117-18.
98. Id. at 395-96, 605 A.2d at 117. The Court of Special Appeals also made a similar error in the same case. Runkles v. State, 87 Md. App. 492, 590 A.2d 552 (1991), rev'd, 326 Md. 384, 605 A.2d 111 (1992). The court used the Senate floor report to support its interpretation of the baby-selling statute without recognizing that the floor report did not actually describe the bill that ultimately passed.
citrant father in contempt. As part of the analysis leading to its holding that the statute did not have this effect, the court stated that one "goal of this legislation was to 'assist [the State] in arriving at more pre-trial settlements' in paternity cases and thus curtailing the expenditure of 'court time, prosecutor time and staff time.'" The court did not draw its articulation of the supposed legislative goal from a committee report or a sponsor's testimony. Rather, the quotation was from the "testimony of George Sinclair." Who George Sinclair was, and why the court believed it properly could ascribe his views to the General Assembly, the court did not explain.

In *State v. Sheldon*, a case involving the constitutionality of Maryland's cross-burning statute, one of the points in dispute was whether the statute was a content-based speech regulation and therefore subject to the most exacting level of review under the First Amendment, or whether it was a content-neutral fire safety regulation. The court concluded that "the legislative history of the cross burning statute reveals that the State's true purpose in enacting the statute was to express disagreement with the act of burning religious symbols." The court determined this "true purpose" in part through the testimony of one of the bill's sponsors, which is a reliable indicator. The court, however, went on to cite testimony and letters from supporters of the legislation outside the General Assembly, none of whom, the court pointed out, described the legislation as intended to prevent fires. "These comments," wrote the court, "all indicate that the General Assembly regarded the cross burning statute not as a fire prevention measure but as a means of obstructing the message inherent in cross burning." The court's guess about the General Assembly's purpose might have been correct, but the testimony of advocates by itself proves

102. *Eagan*, 313 Md. at 268, 545 A.2d at 56.
103. *Id.* at 275, 545 A.2d at 59 (quoting testimony in committee file).
104. *Id.*
106. The statute prohibited the burning of "any cross or other religious symbol upon any private or public property... without the express consent of the owner of such property and without first giving notice to the fire department." *Md. Ann. Code* art. 27, § 10A (1992).
107. *Sheldon*, 332 Md. at 56, 629 A.2d at 759.
108. *Id.*
109. *Id.* at 57, 629 A.2d at 760.
110. *Id.*
nothing about what the General Assembly regarded as the objective of the legislation.\textsuperscript{111}

Sometimes the court's taste for legislative history has caused it to rely on materials that it ought to ignore as inherently dubious—namely, unidentified notes that happen to be in the bill file.\textsuperscript{112} In \textit{Warfield v. State},\textsuperscript{113} one issue involved the mens rea requirement for the crime of breaking and entering a storehouse.\textsuperscript{114} In concluding that the statute required proof of a general intent to break and enter, the court bolstered its understanding of legislative purpose by quoting "[a] handwritten note undated and unidentified."\textsuperscript{115}

Perhaps most oddly, the court has treated documents prepared outside the Legislature long after the enactment of the provision in question as if they were legislative history. In \textit{In re Adoption No. 9979},\textsuperscript{116} the issue was whether a statute that generally prohibited payments in connection with adoption placement barred the adopting parents from paying for the birth mother's maternity clothes.\textsuperscript{117} In ruling that the prohibition did extend to this payment, the court quoted from a 1988 report by a subcommittee of Maryland judges.\textsuperscript{118} How this report could be relevant legislative history about a statute that was enacted in 1947 is puzzling indeed.\textsuperscript{119}

\textsuperscript{111} Testimony that one can link to a specific legislative response is probative evidence of the legislative objective. \textit{See infra} note 166 and accompanying text.


\textsuperscript{114} \textit{Warfield}, 315 Md. at 495, 554 A.2d at 1249.

\textsuperscript{115} \textit{Id.} at 497, 554 A.2d at 1250.


\textsuperscript{117} \textit{In re Adoption No. 9979}, 323 Md. at 41, 591 A.2d at 475.

\textsuperscript{118} \textit{Id.} at 45, 591 A.2d at 471.

\textsuperscript{119} The concurrence hammered the point home:

The subcommittee report is nothing more than the particular view of the four trial judges making up the subcommittee as to how [the statute] should be applied. It is not "legislative history" with regard to [the statute], as it in no way reflects the views of members of the General Assembly. Moreover . . . [u]nder no circumstance can the report be said to be contemporaneous with the enactment of the statute.

\textit{Id.} at 63 n.6, 591 A.2d at 480 (Eldridge, J., concurring).
III. PROBLEMS WITH THE COURT’S APPROACH

A. Lobbying the Court

The evidence of the post-Kaczorowski era shows a Court of Appeals that loves legislative history not wisely but too well.120 In over one-third of the cases listed in the appendix, the court cited materials originating with advocates outside the General Assembly. The court’s seine net approach to legislative history increases the risk that the court will attribute a purpose to the General Assembly that it never really legislated.

Some legislation ultimately passes only because the enacting legislators compromise or paper over controversial points. For this reason, a court must be careful not to confuse what the interest group or agency that promoted the legislation wanted and what the Legislature ultimately gave it:

[E]ven when it is obvious that a particular statute was procured by an interest group . . . it will often be unclear, without an inquiry that is beyond judicial capacity to undertake, how completely the group prevailed upon [the Legislature] to do its will; the statute as ultimately enacted may well represent, to some unknown degree, a compromise with competing interest groups.121

Overreliance on selected testimony might cause a court to “miss the intended compromise and, by interpreting the statute broadly, give the interest group behind it more than it actually gained in the legislative bargaining process.”122

When the Court of Appeals uncritically latches on to anything in the file as a basis for its judgment about legislative purpose, it augments its discretion to apply its own policy preferences—to pick out a friend in the crowd of legislative history, to use the metaphor in the epigraph to this Article.123 Yet to give weight to advocacy pieces in the bill file may be inconsistent with the Legislature’s objective of going no further than the compromise of which the statute is the product:

121. Posner, supra note 3, at 268.
122. Id.
123. See supra note 1 and accompanying text.
In the case of interest group legislation it is most likely that the extent of the bargain . . . is exhausted by the subjects of the express compromises reflected in the statute. The legislature ordinarily would rebuff any suggestions that judges be authorized to fill in blanks in the "spirit" of the compromise. Most compromises lack "spirit," and in any event one part of the deal is to limit the number of blanks to be filled in later.¹²⁴

Excessive reliance on legislative history invites lobbyists to try to win indirectly, through the legislative history, what they lack the votes to win directly. Efforts to create, forestall, or negotiate legislative history are the stock in trade of congressional lobbyists, what Judge Starr calls "a virtual cottage industry in fashioning legislative history so that the Congress will appear to embrace their particular view in a given statute."¹²⁵

Such efforts by lobbyists to exert influence over legislative history are not particularly objectionable, any more than are their attempts to shape the wording of the statute itself. Justice Breyer has offered a sophisticated defense of the lobbyists' role in Congress's "complicated, but organized, processes of interaction with other institutions and groups, including executive branch departments, labor unions, business organizations, and public interest groups."¹²⁶ In the end, legislators control the content of official documents.¹²⁷

---

¹²⁴. Easterbrook, supra note 25, at 541.
¹²⁵. Starr, supra note 27, at 377; see also Note, Why Learned Hand Would Never Consult Legislative History Today, 105 HARV. L. REV. 1005, 1018-19 (1992). According to data from the State Ethics Commission, the number of registered lobbyists in Maryland has increased 33% from 1986 to 1993. The number of entities with representation by lobbyists has increased 76% over that period. Telephone Interview with Joann Rigby, Maryland State Ethics Commission.
¹²⁶. Breyer, supra note 27, at 858.
¹²⁷. How effectively they exercise control is another matter. For some bills, the process in Annapolis resembles the congressional process that Justice Breyer describes:

On important matters, staff members for legislators who are directly involved will examine with care each word and proposed change, often with representatives of affected interest groups or institutions, not only in the language of the statute, but also in each committee report and the many floor statements. Significant matters will again be brought to the attention of the legislators for development of their individual positions, and for them to discuss and resolve with other legislators. The process involves continuous interaction among legislators, staff members, and representatives of those institutions or groups most likely to be affected by the proposed legislation.

Id. at 859. For many bills, however, the General Assembly's helter-skelter pace makes so painstaking a process unattainable. If a committee staff member or committee chairman listens to only one side, the resulting documents probably will be skewed.
By contrast, there is no legislative control over advocacy pieces that wind up in a bill file. All testimony and letters lobbyists or other groups submit automatically enter the legislative bill file, and thus become part of the legislative history regardless of whether the chairman, members of the committee, or committee staff agree with the contents of the testimony or letter. Indeed, some chairmen and committee staff may not even be aware that documents containing an inaccurate description of a bill's legislative purpose or goal have entered the file. At least in the federal system, interest groups must persuade a Member of Congress to parrot a position of the group in the Congressional Record, or convince committee staff to include the group's preferred language in a committee report, in order to elevate the group's views to the status of legislative history.

Given the willingness of the Court of Appeals to credit such advocacy pieces, a lobbyist need only paper the file with letters or testimony in order to set up a future argument that those planted characterizations of the issue reflect the legislative purpose or goal. A particularly explicit effort to manufacture self-interested legislative history appears in a memorandum from an advocate for interior designers to the then Chairman of the House Economic Matters Committee. The interior designers and the architects had fought a long battle over whether interior designers could engage in space planning (determining the location of interior partitions and the like). New legislation about the practice of interior design was inconclusive on the point because neither profession had enough political clout to win a clear victory. In the memorandum from their lobbyist, the interior designers laid out an interpretation of ambiguous statutory text in a way most favorable to their position, then stated to the committee chairman an understanding that "it is your intent" to adopt the interpretation.

This device can be an effective way of extracting an unfair gain from compromise legislation. For instance, if a lobbyist wants X for a client but lacks the votes to achieve X directly, the lobbyist could adopt the alternative strategy of pushing for ambiguous language in the bill. Those opposed to X might accept the ambiguity in order to

128. See Memorandum to Delegate Casper R. Taylor, Jr., Chairman of House Economic Matters Committee (Feb. 21, 1991) (on file with the authors and in the file on House Bill 734, 1991 Session, in the Legislative Reference Library).

129. Id. at 2. The chairman of the committee subsequently distanced himself from the interpretation in the lobbyist's memorandum. Letter from Delegate Casper R. Taylor, Jr. (Apr. 8, 1991) (on file with the authors and in the file on House Bill 734, 1991 Session, in the Legislative Reference Library).
move the bill along, and then the lobbyist need only make sure that the file contains a letter contending that the bill language means X (even though the committee members might think quite otherwise), and later argue in court that the bill's purpose was to achieve X, as evidenced by material in the file. Such a strategy might fail, for a host of reasons, but why should a lobbyist not try it? Perhaps X will seem to the Court of Appeals to be sound policy, and the existence of the letter in the bill file will be just the bootstrap that the court needs to reach its desired result. As Judge Posner has observed, "[b]uilding up statutory meaning out of isolated and self-serving statements in hearings or on the floor is one of the less edifying forms of judicial formalism."191

B. The Oxymoronic World of Subsequent Legislative History

The Court of Appeals generally eschews after-the-fact accounts of legislative purpose by individual legislators. Particularly as time passes from the original enactment, postenactment statements will simply reflect the "current preferences" of legislators, which bear no necessary relationship to those of the enacting legislators, who may have been reacting to a different constellation of interest-group pressures. To give effect to the current legislator's preferences is to risk spoiling the deal cut by the earlier legislators—to risk repealing legislation, in whole or in part, without going through the constitutionally prescribed processes for repeal.194

Precisely the same is true when later bills on a subject are defeated. Whatever causes the defeat of such bills, the outcome reveals nothing about the import of the original legislation. The defeat of a bill neither repeals nor interprets existing laws.195 It is one thing to

130. See William N. Eskridge, Jr., & Philip P. Frickey, Statutory Interpretation as Practical Reasoning, 42 STAN. L. REV. 321, 357 (1990) ("Rent-seeking . . . private interests . . . will often find it easier to insert evidence of private-interest deals in the legislative history than in the statutory language. . . . "); Farber & Frickey, supra note 20, at 445 (identifying the risk that "judicial interpretation of a statute will be skewed by legislative history planted just for that purpose").
131. Posner, supra note 3, at 270.
133. Posner, supra note 3, at 279.
134. Id.
135. See American Trucking Ass'ns v. Atchison, T. & S.F. Ry., 387 U.S. 397, 418 (1967) (agency rulemaking authority unaffected by Congress's failure to amend statute to author-
infer a legislative objective from a committee's rejection of proposed language in its consideration of the very statute before the court;\textsuperscript{136} it is quite another to infer anything about a prior General Assembly's purpose from a later General Assembly's rejection of proposed legislation.\textsuperscript{137}

In \textit{Makovi v. Sherwin-Williams Co.},\textsuperscript{138} the central issue was whether a claim for abusive discharge could be brought when the breach of public policy alleged in the tort action (in this case, sex discrimination) could be remedied under the Maryland Fair Employment Practices Act.\textsuperscript{139} A closely divided court held that "[the tort of] abusive discharge is inherently limited to remedying only those discharges in violation of a clear mandate of public policy which otherwise would not be vindicated by a civil remedy."\textsuperscript{140} Although the court based its decision on several factors, this Article will focus only on the court's buttressing of its conclusion through use of bills rejected by the General Assembly.

Even though the Fair Employment Practices Act did not specify that its remedy was exclusive, the majority used rejected bills to conclude that the General Assembly intended to limit the remedy for em-

\textsuperscript{136} See Leppo v. State Highway Admin., 330 Md. 416, 424, 624 A.2d 539 (1993) ("amendments occurring as a bill progresses through the General Assembly fairly bear on the fundamental issue of legislative purpose or goal," including omission of key language from amendment); NCR Corp. v. Comptroller of the Treasury, Income Tax Div., 313 Md. 118, 125-26, 544 A.2d 764, 767-68 (1988) (stating that a committee's rejection of an amendment "helps our understanding of overall legislative history, though it does not in-fallibly indicate legislative intent"). \textit{But see} Automobile Trade Ass'n v. Insurance Comm'r, 292 Md. 15, 24, 437 A.2d 199, 203 (1981) (amendment rejection theory "is a rather weak reed upon which to lean in ascertaining legislative intent").


\textsuperscript{140} \textit{Makovi}, 316 Md. at 603, 561 A.2d at 180.
ployment discrimination to equitable relief, including back pay.\textsuperscript{141} The majority reviewed several bills in the 1976 and 1977 Sessions of the Legislature that would have allowed the Human Relations Commission to award compensatory and punitive damages.\textsuperscript{142} The majority reasoned that because these bills were defeated, "the General Assembly directly rejected compensatory damages for violations of Art. 49B's employment provisions."\textsuperscript{143}

The dissent, however, took a different view of the Legislature's motive for rejecting these bills. Relying in part on letters from opponents of the 1976 bill, the dissent argued that the bill's opponents killed it because it would have curbed severely the Human Relations Commission's administrative and investigative powers, not because it would have allowed the commission to award damages.\textsuperscript{144} The dissent concluded that the rejection of damages as proposed in the 1977 bill might have reflected a reluctance "to allow an administrative agency to award tort damages" but did not prove "that the legislature meant to prevent the judicial award of damages."\textsuperscript{145}

The majority's approach read far too much into the defeat of the proposed legislation. As the dissent illustrated, one often can attribute a proposal's defeat to one or more of several possible objections. A court indulges in policy-driven speculation when it assigns a reason that happens to fit neatly into the court's analysis. Even if the court's surmise about the reasons for the bill's defeat were correct, a later General Assembly's sentiments are not law and do not illuminate the objectives of the prior General Assembly that did make law.

The court committed the same error in \textit{Allied Vending, Inc. v. City of Bowie},\textsuperscript{146} where it held that the General Assembly had pre-empted local government regulation of cigarette vending machines, thereby preventing municipalities from restricting the location of the machines to make them less accessible to minors.\textsuperscript{147} The only pieces of state legislation that could have achieved this pre-emption were certain licensing provisions enacted in 1890 and 1956, and a 1990 measure requiring the machines to display a notice about the illegality of

\begin{itemize}
  \item \textsuperscript{141} \textit{Id.} at 623-26, 561 A.2d at 189-90.
  \item \textsuperscript{142} \textit{Id.}
  \item \textsuperscript{143} \textit{Id.} at 624, 561 A.2d at 189. The majority then went on to conclude that allowing claims for full tort damages in discrimination cases "upsets the balance between right and remedy struck by the Legislature in establishing the very policy relied upon." \textit{Id.} at 626, 561 A.2d at 190.
  \item \textsuperscript{144} \textit{Id.} at 642, 561 A.2d at 198 (Adkins, J., dissenting).
  \item \textsuperscript{145} \textit{Id.}
  \item \textsuperscript{146} 332 Md. 279, 631 A.2d 77 (1993).
  \item \textsuperscript{147} \textit{Id.} at 282, 631 A.2d at 78.
\end{itemize}
sales to minors. The pre-emptive effect of these provisions is arguable, but surely inaction by the General Assembly in 1991 and 1992—when proposals to tighten state law on minors' access to cigarette vending machines were defeated—says nothing about the earlier legislation's purpose, contrary to the court's suggestion that it did.148

Bills die in Annapolis for a host of reasons, some having nothing to do with their merits. Perhaps the sponsor has done something to anger the chairman of the committee with jurisdiction over the legislation; perhaps some other provision in the bill is the real source of difficulty; perhaps the bill gets caught up in a feud between House and Senate committees, with each committee pressuring the other to move legislation by holding unrelated bills hostage; perhaps time simply runs out.149 The rejection of later bills provides the court with no basis for interpreting a statute before it one way rather than another.

The court's reliance on subsequently defeated legislation as a basis for conclusions about the meaning of previously passed legislation might well discourage efforts to change the law. In the 1994 Session of the General Assembly, two delegates introduced separate bills that would have imposed restrictions on smoking in public places and work sites.150 Some county officials who favored such smoking restrictions nevertheless sought to persuade the delegates to withdraw the legislation. These county officials feared, with reason, *Allied Vending II*—that is, that the bills' likely defeat would bolster the potential argument of the tobacco industry in a future lawsuit that counties lacked the authority to impose their own restrictions on smoking in public places.151

---

148. The court wrote: "The failure to enact such measures 'strongly suggests that there was no intent to allow local governments to enact different . . . requirements.'" *Id.* at 304, 631 A.2d at 81 (quoting Talbot County v. Skipper, 329 Md. 481, 493, 620 A.2d 880, 886 (1993)).

149. See Easterbrook, *supra* note 25, at 538 ("There are a hundred ways a bill can die even though there is no opposition to it.").


151. In order to allay the concern of the county officials, one of the authors, on request, provided advice to the delegates on the issue. Letter from Assistant Attorney General Jack Schwartz, Chief Counsel for Opinions and Advice, to Delegates Virginia M. Thomas and Joan Pitkin (Feb. 10, 1994). The advice was that jurisdictions with police power were not pre-empted from enacting restrictions on smoking in public places, and that defeat of the proposed legislation would leave such local authority unaffected. *Id.* This letter of advice was an effort to "inoculate" the legislative history against the type of misapprehension of the meaning of failed legislation that *Allied Vending* exemplifies.
IV. RECOMMENDATIONS

This Article does not call upon the Court of Appeals to retreat to strict textualism and join Justice Scalia's twelve-step program, Legislative History Users Anonymous. The problems that this Article has identified can be remedied largely through a more thoughtful use of legislative history.

The Court of Appeals should do in every case what it now does in some: follow a disciplined methodology of statutory interpretation that avoids unnecessary recourse to legislative history. The court should always begin by teasing out the meaning that the text alone most probably would have conveyed to the reasonable legislator. The court should then test this apparent meaning by examining it against its narrowest context, that is, by testing it for consistency with other parts of the same bill, including the bill's title, any preamble, and other substantive provisions. The court then should widen its inquiry further to include a limited consideration of the history of the bill's language, that is, whether any changes in the wording of the bill's relevant provisions as it moved through the legislative process reinforce the court's initial hypothesis about the meaning of the text. Next, the court should explain how the provision, under the court's construction, would fit with related law, including other statutes, relevant court decisions, and formally adopted administrative agency interpretations. If the fit is a reasonable one, the exercise is over.

In other cases, when the meaning the court derives from particular statutory text alone is indefinite or seems not to fit within the context of the language of the statute as a whole, the legislative

152. Every bill is to "embrace but one subject, and that shall be described in its title." Md. Const. art. III, § 29. Although a bill's title usually sheds little light on ambiguous statutory text, courts can and occasionally do consult the title to clarify the scope of a disputed provision. See, e.g., Mass Transit Admin. v. Baltimore County Revenue Auth., 267 Md. 687, 695-96, 298 A.2d 413, 418 (1973) ("That the title of an act is relevant to ascertaining its intent and purpose is well settled.").

153. See supra note 69.


155. During this stage of the inquiry, the court may often be able to infer that the legislators' rejection of given language indicated disapproval of its substantive import, not merely its phraseology. See supra text accompanying note 47.

156. See, e.g., Government Employees Ins. Co. v. Insurance Comm'r, 332 Md. 124, 132, 630 A.2d 713, 717 (1993) ("Context may include related statutes . . . ."). Professor Eskridge terms this approach "horizontal coherence"—that is, construing new provisions so that they fit reasonably with the rest of the body of law on the subject. Eskridge, supra note 27, at 678.

157. See supra text accompanying notes 152-154.
evolution of the statute’s language, \textsuperscript{158} or related law, \textsuperscript{159} then the court should turn to the legislative history. A clear sense of hierarchy should guide the court’s review of legislative history, with some elements of the history receiving more weight than others. \textsuperscript{160}

For all bills, we suggest that the court rely on General Assembly documents that are most likely to reflect actual legislative purpose: fiscal notes, committee bill analyses, and floor reports. \textsuperscript{161} If the court announces clearly that these documents will carry the most weight, legislators likely would pay more attention to what the documents say. Then the reliability of the documents as reflections of legislative purpose in turn would increase. \textsuperscript{162}

Giving greater, and often determinative, weight to these official documents will provide the added benefit of illuminating more special interest deals. A legislator who formerly could work quietly to transfer wealth to some favored lobbyist’s client by allowing deliberate ambiguity in a proposed statute and packing of the bill file with useful material \textsuperscript{163} might have to confirm the deal in the statutory text or a committee document. Because naked greed is politically unattractive, exposing it to legislative daylight is likely to deter some rent-seeking and thereby serve the public interest. \textsuperscript{164}

If a bill goes through the legislative process essentially unchanged, the court should give significant weight to the views of the sponsor. Likewise, if the bill is an administration bill, a departmental bill, or otherwise clearly the product of an entity outside the General Assembly, and the bill does not significantly change during the legislative process, then the views of the originating entity should receive significant weight. \textsuperscript{165} If a bill is amended, then of course the court should seek and consult a reliable explanation of the reasons for the

\textsuperscript{158} See supra text accompanying note 155.

\textsuperscript{159} See supra text accompanying note 156.

\textsuperscript{160} See Eskridge, supra note 27, at 636 (diagramming a hierarchy of congressional legislative history materials).

\textsuperscript{161} The court should also, of course, set a document correctly within the legislative chronology in order to avoid misplaced reliance on a description of a bill that was later amended. See supra text accompanying notes 96-98.

\textsuperscript{162} The court should also make clear that it will never rely upon unsigned notes in a bill file that might or might not be accurate and pertinent to what the legislators ultimately passed.

\textsuperscript{163} See supra note 130 and accompanying text.


\textsuperscript{165} See, e.g., Rose v. Fox Pool Corp., 335 Md. 351, 370, 643 A.2d 906, 915 (1994) (citing testimony of Governor’s chief legislative officer to explain the purpose of an administration bill enacted largely as proposed); Board of Trustees v. Life & Health Ins. Guar. Corp., 335 Md. 176, 200, 642 A.2d 856, 864 (1994) (giving weight to the characterization of a bill’s
amendments. To the extent that advice from the Counsel to the General Assembly describes the legal premise the legislation followed, that advice too should be an authoritative piece of legislative history.

By contrast, the court should avoid citing testimony or letters from individuals outside the General Assembly as evidence of legislative purpose, unless the court explains the basis on which it draws the inference that such material reliably indicates legislative purpose. The court should rely on only those advocacy pieces that the court credibly can link to the Legislature's decision-making. For example, the court justifiably could treat advocacy pieces as legislative history when a committee document explicitly adopted the advocate's position, or when advocates themselves proposed the language in question and explained it in testimony (provided that the language did not change significantly later in the process).\textsuperscript{166}

The court also can map the rough contours of legislation by looking at what advocates told the General Assembly. In this instance, the court would not misuse advocacy as direct evidence of the statute's purpose; rather, the court legitimately might infer that the General Assembly probably legislated within the confines of the problem advocates and others put before it.\textsuperscript{167}

The court should almost always decline to draw inferences about the meaning of enacted legislation from failed efforts at a later session to pass a bill dealing with the same topic. The one exception should be that the failure of a bill written to overturn a court's or administrative agency's prior construction of an ambiguous text may serve as evidence of the General Assembly's acquiescence in that construction.\textsuperscript{168}

---

\textsuperscript{166} See Baltimore City Police Dep't v. Andrew, 318 Md. 3, 16, 566 A.2d 755, 761 (1989).

\textsuperscript{167} In United States v. Streidel, 329 Md. 533, 620 A.2d 905 (1993), the issue was whether a statutory cap on noneconomic damages applied to wrongful death cases. The court reviewed the bill file, which it described as "extensive," and noted that none of the committee reports, task force reports, or individual statements contained any mention of the wrongful death statute. \textit{Id.} at 546, 620 A.2d at 912. The court concluded that "[i]f the General Assembly had intended that the cap statute apply to wrongful death actions, it would seem that some indication of that intention would be present in either the language of the statute or in the considerable legislative history." \textit{Id.}

\textsuperscript{168} See Life & Health Ins. Guar. Corp., 335 Md. at 195, 642 A.2d at 865. The legislative acquiescence doctrine rests on the premise, albeit often dubious premise that the General Assembly knows of agency interpretations and would amend the law if it were dissatisfied with them. The court sometimes notes legislative acquiescence without any evidence that the Legislature ever faced the issue of the agency interpretation. See, e.g., Sinai Hosp. v. Department of Employment & Training, 309 Md. 28, 46, 522 A.2d 382, 391 (1987). When a bill to overturn an interpretation is introduced, at least the bill creates evidence of legisla-
Finally, the General Assembly must take some action as well. If the Court of Appeals is to rely so much on legislative history, the Legislature should safeguard it against manipulation, to the extent possible. Committee chairmen and staff should try to make bill analyses and floor reports as clear and complete as possible. Beyond summarizing the bills, these documents should identify and explain key legislative policy decisions. The committees that do not routinely prepare bill analyses and floor reports should do so. Otherwise, these committees run the risk that eventually someone else’s description of their legislative objective will prevail.

The Department of Legislative Reference also should consider tightened procedures for handling and safeguarding legislative files. Under the present practice, the bill files that the Court of Appeals reviews for evidence of legislative purpose are not secure until they are microfilmed years later. With minimal effort, someone who is reviewing the file could insert or remove materials. Documents in the file should be date-stamped and perhaps numbered in order to deter improper insertions or deletions. Those who inspect the files should have to identify themselves and sign a register; some, but not all, committees already follow this practice. Furthermore, anyone caught removing documents from a bill file should face criminal charges under the statute that makes it unlawful to “wilfully alter, deface, destroy, remove, or conceal any public record.” The prospect of three years in jail might give even the most zealous lobbyist pause.

**CONCLUSION**

The Nobel laureate Murray Gell-Mann has described the need for “coarse graining” in physics—identifying the correct scale on which to...
observe, and so hope to understand, a phenomenon. If one looks at something at too fine-grained a level of detail, one might well miss the basic process at work.

The Court of Appeals needs to be more "coarse-grained" in its view of legislative history. To be the faithful investigator of legislative purpose that it claims to be, the court should discard its fascination with potentially misleading scraps in the legislative history and focus instead on the clues that matter.

## APPENDIX

<table>
<thead>
<tr>
<th>Case</th>
<th>Materials Used</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Kaczorowski v. City of Baltimore</em></td>
<td>Report of the Legislative Committees to 1981 General Assembly; Notes to SB 215,</td>
</tr>
<tr>
<td></td>
<td>Senate Committee on Economic Affairs; Notes to Proposed Modifications to Maryland</td>
</tr>
<tr>
<td></td>
<td>Industrial Financing Act, House Economic Matters Committee.</td>
</tr>
<tr>
<td><em>Kelly v. Marylanders for Sports Sanity</em></td>
<td>Report by Department of Fiscal Services; Senate Budget and Taxation Committee Floor</td>
</tr>
<tr>
<td></td>
<td>Report.</td>
</tr>
<tr>
<td></td>
<td>Governor’s Task Force Report on Child Abuse.</td>
</tr>
<tr>
<td><em>Wildermuth v. State</em></td>
<td>Minutes of Legislative Committee of the Maryland Judicial Conference; letter from</td>
</tr>
<tr>
<td></td>
<td>Secretary of Judicial Conference to House Judiciary Committee; comment from Senate</td>
</tr>
<tr>
<td></td>
<td>Judicial Proceedings Committee File; Report of the Commission to Study the Judicial</td>
</tr>
<tr>
<td></td>
<td>Branch of Government; Senate Judicial Proceedings Committee Report.</td>
</tr>
<tr>
<td><em>Maus v. State</em></td>
<td>Testimony of witnesses in Senate Judicial Proceedings Committee; Testimony of bill’s</td>
</tr>
<tr>
<td></td>
<td>sponsor; Senate Judicial Proceedings Committee Bill Reports.</td>
</tr>
<tr>
<td><em>Carolina Freight Carriers Corp. v. Keane</em></td>
<td>Chart from legislative bill file; letter from State Court Administrator to House</td>
</tr>
<tr>
<td></td>
<td>Judiciary Committee; Revisor’s Note.</td>
</tr>
<tr>
<td></td>
<td>Report of the Committee on Taxation and Fiscal Reform.</td>
</tr>
<tr>
<td><em>In re Taylor</em></td>
<td>Letter from Department of Fiscal Services to State Senator.</td>
</tr>
<tr>
<td><em>Comptroller v. American Satellite Corp.</em></td>
<td>Final Report of the Commission to Study Problems of Illegitimacy Among Recipients of</td>
</tr>
<tr>
<td></td>
<td>Public Welfare Monies in the Program for Aid to Dependent Children; testimony of</td>
</tr>
<tr>
<td></td>
<td>advocates before Senate Judicial Proceedings Committee; testimony of Department of</td>
</tr>
<tr>
<td></td>
<td>Human Resources.</td>
</tr>
</tbody>
</table>

*Note: The table is not perfectly aligned and may require manual adjustment for full clarity.*
APPENDIX (continued)

<table>
<thead>
<tr>
<th>Case</th>
<th>Materials Used</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Kee v. State Highway Admin.</em></td>
<td>Budget Message from Governor to General Assembly; Senate Judicial Proceedings Committee Report.</td>
</tr>
<tr>
<td>313 Md. 445, 545 A.2d 1312 (1988)</td>
<td></td>
</tr>
<tr>
<td><em>State v. Crampton</em></td>
<td>Letter from American Council on Alcoholism to State Senator; Position Papers of Maryland Department of Transportation and Maryland State Police.</td>
</tr>
<tr>
<td>314 Md. 646, 552 A.2d 904 (1989)</td>
<td></td>
</tr>
<tr>
<td>315 Md. 62, 553 A.2d 667 (1988)</td>
<td></td>
</tr>
<tr>
<td><em>State v. Toney</em></td>
<td>Testimony of bill’s sponsor.</td>
</tr>
<tr>
<td>315 Md. 122, 553 A.2d 696 (1989)</td>
<td></td>
</tr>
<tr>
<td><em>In Re Kemmo N.</em></td>
<td>State of the Judiciary Address by Chief Judge of the Court of Appeals to the General Assembly; letter from Governor to Boys Town Homes of Maryland.</td>
</tr>
<tr>
<td>315 Md. 193, 553 A.2d 1273 (1989)</td>
<td></td>
</tr>
<tr>
<td><em>State v. Burning Tree Club, Inc.</em></td>
<td>Letter from Attorney General’s Office to State Senator; Bill Review; letter from Attorney General to Governor; Committee Report.</td>
</tr>
<tr>
<td><em>Woods v. State</em></td>
<td></td>
</tr>
<tr>
<td><em>Spratt v. State</em></td>
<td></td>
</tr>
<tr>
<td><em>Rucker v. Harford County</em></td>
<td></td>
</tr>
<tr>
<td>316 Md. 275, 558 A.2d 399 (1989)</td>
<td></td>
</tr>
<tr>
<td>Case</td>
<td>Materials Used</td>
</tr>
<tr>
<td>------------------------------------------</td>
<td>-------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>316 Md. 603, 561 A.2d 179 (1989)</td>
<td></td>
</tr>
<tr>
<td><em>State v. Runge</em></td>
<td>Testimony of bill's sponsor; letter from advocate; Senate Judicial Proceedings Committee Report.</td>
</tr>
<tr>
<td>317 Md. 613, 566 A.2d 88 (1989)</td>
<td></td>
</tr>
<tr>
<td><em>Porten Sullivan Corp. v. State</em></td>
<td>Fiscal note; letter from Prince George's County Executive and Chairwoman of County Council to Prince George's County legislators.</td>
</tr>
<tr>
<td>318 Md. 387, 568 A.2d 1111 (1990)</td>
<td></td>
</tr>
<tr>
<td>318 Md. 615, 569 A.2d 693 (1990)</td>
<td></td>
</tr>
<tr>
<td><em>Morris v. Prince George's County</em></td>
<td>Fiscal note; Joint Committee on Pensions, 1980 and 1987 Interim Reports to the Maryland General Assembly.</td>
</tr>
<tr>
<td>319 Md. 597, 573 A.2d 1346 (1990)</td>
<td></td>
</tr>
<tr>
<td><em>Webber v. State</em></td>
<td>Testimony of bill's sponsor; handwritten note on bill in bill file; testimony of Maryland Department of Transportation.</td>
</tr>
<tr>
<td>320 Md. 238, 577 A.2d 58 (1990)</td>
<td></td>
</tr>
<tr>
<td>321 Md. 275, 582 A.2d 981 (1990)</td>
<td></td>
</tr>
<tr>
<td><em>In re Demitrius J.</em></td>
<td>Fiscal note; position memorandum of Department of Health and Mental Hygiene; letter from Attorney General to Governor's Executive Assistant; position statement of Baltimore County Law Office and Baltimore County Department of Legal Services.</td>
</tr>
<tr>
<td><em>Erie Ins. Co. v. Chops</em></td>
<td></td>
</tr>
<tr>
<td>322 Md. 79, 585 A.2d 232 (1991)</td>
<td></td>
</tr>
<tr>
<td>Case</td>
<td>Materials Used</td>
</tr>
<tr>
<td>-------------------------------</td>
<td>-------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>In re Adoption No. 9979</td>
<td>Senate Judicial Proceedings Committee Report.</td>
</tr>
<tr>
<td>Motor Vehicle Admin. v. Shrader</td>
<td>Senate Judicial Proceedings Committee Report; veto message from Governor; testimony of Maryland Department of Public Safety and Correctional Services.</td>
</tr>
<tr>
<td>Moats v. City of Hagerstown</td>
<td>Senate Judicial Proceedings Committee Report.</td>
</tr>
<tr>
<td></td>
<td>Fiscal note.</td>
</tr>
<tr>
<td>Case</td>
<td>Materials Used</td>
</tr>
<tr>
<td>-------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>State v. Runkles</td>
<td>Newspaper articles; letter from State's Attorney to State Senator; letter from State Senator to Department of Legislative Reference; testimony of bill's sponsor in Senate Judicial Proceedings Committee; Senate Judicial Proceedings Committee bill analysis; letter from Maryland Judicial Conference to Senate Judicial Proceedings Committee; letter from Department of Human Resources to Senate Judicial Proceedings Committee; position statement of Department of Human Resources; unsigned, undated document in legislative bill file; Department of Legislative Reference Floor Report; letter from constituent; testimony of bill's sponsor in House Judiciary Committee.</td>
</tr>
<tr>
<td>326 Md. 384, 605 A.2d 111 (1992)</td>
<td></td>
</tr>
<tr>
<td>Jones v. Baltimore City Police</td>
<td>Letter from Maryland Municipal League to Senate Judicial Proceedings Committee; Senate Judicial Proceedings Committee Report.</td>
</tr>
<tr>
<td>326 Md. 480, 606 A.2d 214 (1992)</td>
<td></td>
</tr>
<tr>
<td>State v. Harris</td>
<td>Position statement of Maryland Department of Transportation; Review of Enacted Legislation.</td>
</tr>
<tr>
<td>327 Md. 318, 609 A.2d 319 (1993)</td>
<td></td>
</tr>
<tr>
<td>Tracey v. Tracey</td>
<td>Senate committee staff report; staff memorandum.</td>
</tr>
<tr>
<td>Kline v. Central Motors Dodge</td>
<td>Revisor's Note.</td>
</tr>
<tr>
<td>328 Md. 448, 614 A.2d 1313 (1992)</td>
<td></td>
</tr>
<tr>
<td>Waters v. United States Fidelity &amp; Guar. Co.</td>
<td></td>
</tr>
<tr>
<td>328 Md. 799, 616 A.2d 884 (1992)</td>
<td></td>
</tr>
<tr>
<td>Abramson v. Montgomery County</td>
<td></td>
</tr>
<tr>
<td>328 Md. 721, 616 A.2d 721 (1992)</td>
<td></td>
</tr>
<tr>
<td>Case</td>
<td>Materials Used</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Williams v. State</td>
<td>Senate Judicial Proceedings Committee Bill Analysis; Governor's Legislative Office briefing document, synopsis of act; Legislative Session Review, Department of Legislative Reference.</td>
</tr>
<tr>
<td>United States v. Streidel</td>
<td>Overview by the Department of Legislative Reference; letters from advocates to House Economic Matters Committee; House Economic Matters Committee bill analysis; Revisor's Note.</td>
</tr>
<tr>
<td>Belcher v. T. Rowe Price Foundation, Inc.</td>
<td>Draft of bill; testimony of Governor's Chief Legislative Officer.</td>
</tr>
<tr>
<td>329 Md. 709, 621 A.2d 872 (1993)</td>
<td>Memorandum to Senate Committee from bill's sponsor.</td>
</tr>
<tr>
<td>Fairbanks v. McCarter</td>
<td>Bill analysis; drafts of bill.</td>
</tr>
<tr>
<td>Leppo v. State Highway Admin.</td>
<td>Letters and testimony of advocates; testimony of bill’s sponsor.</td>
</tr>
<tr>
<td>Maryland State Police v. Warwick</td>
<td></td>
</tr>
</tbody>
</table>
### APPENDIX (continued)

<table>
<thead>
<tr>
<th>Case</th>
<th>Materials Used</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Allied Vending Inc. v. Bowie</strong></td>
<td>Report of the Legislative Council of Maryland; Revisor's Note; testimony of</td>
</tr>
<tr>
<td><strong>Thanos v. State</strong></td>
<td>Letter from Public Defender to House Judiciary Committee; flow chart in</td>
</tr>
<tr>
<td>332 Md. 511, 632 A.2d 768 (1993)</td>
<td>legislative bill file; request form for bill drafting; Senate Judicial</td>
</tr>
<tr>
<td>332 Md. 571, 632 A.2d 797 (1993)</td>
<td>House Journal; letter from Comptroller to Department of Fiscal Services;</td>
</tr>
<tr>
<td><strong>Comptroller v. Jameson</strong></td>
<td>House Ways and Means Committee Bill Analysis.</td>
</tr>
<tr>
<td>332 Md. 723, 633 A.2d 93 (1993)</td>
<td>Senate Economic Affairs Committee Bill Analysis; letter from Maryland</td>
</tr>
<tr>
<td><strong>Popham v. State Farm</strong></td>
<td>Automobile Insurance Fund to Department of Fiscal Services.</td>
</tr>
<tr>
<td><strong>Dumont Oaks Community Ass'n, Inc. v. Montgomery</strong></td>
<td>Senate Judicial Proceedings Committee Bill Analysis.</td>
</tr>
<tr>
<td><strong>Curran v. Price</strong></td>
<td></td>
</tr>
<tr>
<td>334 Md. 149, 638 A.2d 93 (1994)</td>
<td></td>
</tr>
<tr>
<td><strong>Gargiulo v. State</strong></td>
<td></td>
</tr>
<tr>
<td>334 Md. 428, 639 A.2d 675 (1994)</td>
<td></td>
</tr>
</tbody>
</table>