Lessons from Vermont's Legal Past

January 13, 2018
Le Sheraton Montreal
Quebec, Canada

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Every lawyer is part historian. The history of the law—the history of a particular idea, sentence, or word—is an essential tool in legal analysis. For statutory interpretation, you must know how to do legislative history. For motions for summary judgment, you must know every precedent, in order to exploit or distinguish prior cases, including the development of those fundamental ideas from the beginning. For title examinations, you must investigate all of the recesses of town vaults, when lease lands or ancient roads are involved, and know how to access the town’s earliest records. Beyond the quotidian, however, lies a vast body of legal history that provides a foundation for what comes after and fills out the understanding of the law.

This guide is intended in part to introduce you to basic resources for the study of the history of Vermont law. The vast resources of the web are fertile with records relating to Vermont and its history, but visits to the State Archives at Middlesex, the VHS library in Barre, and the Wilbur Collection at UVM may illuminate the research you need to satisfy your professional obligations.

1. Legislative Records. The best source for digital copies of the Acts and Resolves and Journals of the Vermont Legislature is through hathitrust.org. Here is the url for the Acts:

   https://catalog.hathitrust.org/Record/100634652

   And here are the contacts for the House and Senate Journals:

   https://catalog.hathitrust.org/Record/000061789

   https://catalog.hathitrust.org/Record/000597942

   The State Archives has all of the acts and resolves and journals by year. Before 1836, when the Vermont Senate was created, the complementary legislative function was a body called the Governor and Council. E.P. Walton edited eight volumes of the records of the Council, and filled each volume to the brim with original records on specific subjects raised during the first 49 years of our history. Each of these is available through Google Books. Records of the Vermont Governor and Council is the title of the series.

   The State Archives at Middlesex has copies of the drafting records for bills, which can only be accessed with permission from the Legislative Council. Contact the Council at 828-2231 or through the State webpage. Legislature.vermont.gov. The Archives also receives minutes of committee meetings, at the end of each legislative session.

   The legislative home page provides word-searchable access to the current constitution and statutes, as well as acts and resolves and journals for the last several decades.

   The Archives stores copies of bills introduced and not enacted for many years, and a complete set of pocket parts from the beginning of the Vermont Statutes Annotated. Sometimes the best source of former versions of statutes are pocket parts from former years. This occurs
when a law that has appeared in a compilation is amended more than once in the interim before the next new volume of the V.S.A.

The Legislative Council can provide digital copies of committee hearings upon request. Twenty years ago the magnetic tapes were transcribed, but that service is no longer available.

The State Papers series has a volume compiling early legislative reports, and the State Archives has prepared a listing of all reports. See Vermont Legislative Reports: An Index to Reports found in the Journals of the Vermont House and Senate, State Papers of Vermont XXII (1991), which is available online at the State Archives web site (accessed through the Secretary of State’s home page).

Daniel B. Carroll wrote The Unicameral Legislature of Vermont, which was published in the 1932 Proceedings of the Vermont Historical Society, describing the Vermont legislature before the creation of the Vermont Senate, and arguing why that decision was a mistake.

2. Constitutional Research. The Vermont Council of Censors met every seven years, beginning in 1785, to propose amendments to the constitution, identify laws that violated the constitution, and recommend impeachment where warranted. The Records of the Council of Censors of the State of Vermont was published in 1991, and is available through the Secretary of State’s web page.


Records of the Vermont Constitutional Conventions have not been compiled.

In 1992, the Secretary of State published an annotated constitution which listed each of the proposals for amendment made through the state’s history, including those that were rejected. Chief Justice John W. Rowell wrote, “Constitutional History of Vermont,” which is a chapter in Volume 3 of The New England States (1897).

Justice William C. Hill’s The Vermont State Constitution: A Reference Guide (1992) includes separate chapters on each article and most sections of our constitution, with discussions of leading precedents.

Chief Justice John Watson gave an address entitled, “In re Vermont Constitution of 1777, as regards its adoption, and its declaration forbidding slavery; and the subsequent existence of slavery within the territory of the sovereign state,” which appears in full in 94 Vt. 501-525.

Justice Thomas Hayes gave an address at Vermont Law School in 1985 entitled, “Tenting on New Ground: Recent Development in State Constitution Law.” Justice Hayes also participated and published an article following the “Clio in the Courtroom” conference in the 1988 issue of Vermont History, along with other talks by leading historians, including Professor Sam Hand.

3. Court records. The State Archives has the original records of the Supreme Court from 1778 onward for many Vermont counties, although they have not been indexed. The briefs of parties to appeals, formerly stored at the State Library, are also now available through the Archives. William Slade’s Vermont State Papers (1823) contains the first records of the Vermont Supreme Court. Vermont Reports begins in 1824, and there are eight other volumes of early reports, published privately by the judges. These are:


4. Court history. Volume V of Walter Hill Crocket’s *Vermont The Green Mountain State* (1926) contains a history of the Vermont courts and biographies of the members of the Supreme Court up to the year of publication. Judge Russell Taft also prepared a history and biographies of the court, and published them in a journal called *The Green Bag* in 1893-1894. His “Judicial History of Vermont” was included in W. Ted Davis’s *New England States III*, 1409-1431 (1893). Judge Taft also wrote “The Supreme Court of Vermont,” which was published in the 1935 *Legislative Directory*. Jacob G. Ullery’s *Men of Vermont: An Illustrated Biographical History of Vermonters and Sons of Vermonters* (1894) has a chapter on the judges as well, written by Hiram Huse. See pp. 169-190. The *Vermont Bar Journal*, published by the Vermont Bar Association from the time of its creation in 1878, includes biographical sketches of judges and lawyers, many of them eulogies.


Paul Gillies has completed a history of the Vermont courts, which is presently being edited and prepared for publication by the Vermont Historical Society. His *Uncommon Law, Ancient Roads and Other Ruminations on Vermont Legal History* (2013) contains essays on the history of the court. He has written essays on the subject that have been published in the *Vermont Bar Journal*, beginning in 1991. The VBA website has a page listing the titles, and those of others who have written on the subject and published in the *Journal*, including Virginia Downs’s delightful series of biographies of modern lawyers and judges.

Robert Mello’s *Moses Robinson and the Founding of Vermont* (2014) is more than a biography of the first Chief Judge of the Vermont Supreme Court. It is the best modern history of the founding of Vermont.

Gary Shattuck’s *Insurrection, Corruption & Murder in Early Vermont* (2014) provides a comprehensive view of Vermonters’ response to the embargo of 1808, the smuggling and the prosecution of smugglers, and the abuse of the court system. His *Opium Eaters, The Opium Epidemic in Late 19th Century Vermont* (2017) reveals the extent of Vermonters’ addiction to this drug and the awakening of state and federal action to control it.


Chief Justice George M. Powers was the subject Roberta F. Powers’s *George M. Powers: A Biography* (1989).

Peter Langrock has published two volumes of memoirs of his practice, *Addison County Justice: Tales from a Vermont Court House* (1998) and *Beyond the Courthouse: Tales of Lawyers and Lawyering* (1999).

Gretchen Holbrook Gerzina wrote *Mr. and Mrs. Prince* (2008), which tells the story of the first woman of color to argue before the Vermont Supreme Court, in 1803. Lucy Prince was not only successful in claiming rights to lands in Guilford, but earlier in her life had written the first published poem by a black American.

Lucius Chittenden’s *Personal Reminiscences 1840-1890* (1893) contains droll stories of his days as a lawyer and legislator in Vermont.

Samuel Hand’s *The Star That Set; The Vermont Republican Party, 1854-1974* (2003) is the best political history of Vermont, for that time period.

Esther Munroe Swift’s *Vermont Place Names: Footprints of History* (1977, 1996) is an essential introduction to the names of Vermont towns, counties, mountains, rivers, and other places.

John Stark Bellamy’s *Vintage Vermont Villanies: True Tales of Murder & Mystery from the 19th and 20th Centuries* (2007) is a popular account of various trials, including that of Mary Rogers, hanged for the murder of her husband in 1905.

Randolph Roth’s *American Homicide* (2009) includes analysis and discussion of Vermont murders and trials, among other states, through the Criminal Justice Research Center’s web page, which includes an Historical Violence Database.

William C. Hill’s “Vermont’s Judicial Crisis of 1914-1915,” 38 *Vermont History* 124-138” describes the constitutional crisis that led the members of the Supreme Court to resign, due to a failure to address the lapse in terms caused by the change from October to January for the opening date of the legislature.

5. Newspapers.

First stop is the Library of Congress digital project “Chronicling America,” at https://chroniclingamerica.loc.gov/newspapers/Vermont/. Not all newspapers are available as yet, so a subscription to newspapers.com will provide additional resources. Vermont newspapers are available at the State Archives, both physically and on microfilm.

6. Famous trials.

David Redding’s murder trial is described in Slade’s *Vermont State Papers* and Michael Bellesiles’s *Revolutionary Outlaw* (1995), among others. John Spargo’s *The Story of David Redding Who Was Hanged* (1945) is a revisionist view of the trial.

Matthew Lyon’s trial for violating the Alien and Sedition Acts is described in Volume 6 of John Davison Lawson’s *American State Trials* (1916), which includes quotations from the transcript of the hearing. The companion trial of Anthony Haswell, the printer, is in the same volume.

*The Trial of Cyrus B. Dean for the Murder of Jonathan Ormsby and Asa Marsh, revised and corrected from the minutes of the Judge* was published in 1808. Lawson’s Volume II has a chapter on the Dean trial. See also Gary Shattuck’s *Insurrection, Corruption & Murder in Early Vermont* (2014).

The Trial of Joseph Burnham, Before the County Court Held At Woodstock, in the County of Windsor, June, 1826 was published that year. Burnham was charged with rape.

E.C. Carrigan wrote the complete history of the John P. Phair murder trial, published in 1879.

Mildred Brewster’s murder trial was covered by the Montpelier Evening News during the summer of 1898, with transcripts of testimony and argument in the newspaper. Susan Fromberg Schaeffer wrote The Madness of a Seduced Woman (1983), a fictional account of the murder.

7. General Histories. There have been more than a dozen general histories of Vermont. Freedom and Unity (2004) by Michael Sherman, Gene Sessions, and P. Jeffrey Potash, is the best modern history. Samuel Williams published the first history, The Natural and Civil History of Vermont (1794, 1808). Ira Allen’s The Natural and Political History of Vermont (1798), written by one of the founders, had a deep influence on subsequent historians. Others include LaFayette Wilbur, The History of Early Vermont (1900); Hiland Hall, The History of Vermont From Its Discovery to Its Admission into the Union in 1791 (1868); Benjamin H. Hall, The History of Eastern Vermont (1858); Walter Hill Crockett, Vermont The Green Mountain State (1921); Matt Bushnell Jones, Vermont in the Making, 1750-1777 (1914); Charles Miner Thompson, Independent Vermont (1942); Paul M. Searls, Two Vermonts: Geography and Identity, 1865-1910 (2006); Nathan Hoskins, A History of the State of Vermont: From Its Discovery and Settlement to the Close of the Year 1830 (1831); Zadock Thompson, History of Vermont, Natural, Civil, and Statistical (1842); John Andrew Graham, Descriptive Sketch of the Present State of Vermont (1797); Samuel Read Hall, The Geography and History of Vermont (1871); John Garibaldi Sargent, The Early History of Vermont (1927).

8. General Sources of the History of Law. The Medieval Legal History web page is misnamed as it includes a rich library of digitized classics from the early and modern eras from many different cultures, including digital access to Kent, Blackstone, Grotius, and others.

9. Specialities. Walter T. Bogart’s the Vermont Lease Lands (1950) is the most comprehensive treatment of public lands.
Nathaniel Chipman’s *Sketches of the Principles of Government* (1793), later revised and published as *Principles of Government; a Treatise on Free Institutions* (1833), is one of the first books of jurisprudence published in the United States. His brother Daniel Chipman’s *An Essay of the Law of Contracts: For the Payment of Specifick Articles* (1822) is the first published legal treatise on a single topic published in Vermont. Daniel was also the author of *The Life of Nathaniel Chipman, LL.D.* (1846), which includes essays by the former Chief Judge.


*The History of Public Welfare in Vermont* (1948), written by Lorenzo D’Agustino, treats the development of public programs to assist the poor and disabled.

11. **Town records**

There are two reference guides that prove essential to research on towns and private corporations. D. Gregory Sanford edited *Vermont Municipalities: An Index to their Charters and Special Acts* (1986). There the Archivist has collected the act number and year for town charters, and special acts relating to municipalities. The Archives webpage has copies of both, as well as lotting plans for most Vermont towns, which are essential tools in road and boundary research.


Many towns have proprietors’ records in the vault; some have been lost. The vault includes deeds and mortgages, of course, but also the town meeting records. Road surveys may be found in a separate volume or lodged into the land records or town meeting records.

At the AOT Mapping division website, the present town highway map and archives of every town highway map produced by the State back to 1931 are available.

Beers Atlas is an indispensable source for town highways and residents for the 1870s.

Doten and Walling each produced county maps, from the 1850s and 1860s.

The Sanborn Insurance maps are another rich source of information about boundaries, highways, and even pipes and lines for the last part of the nineteenth and first half of the twentieth century. Paper copies are available at the AOT Mapping Division, and digital access is available to members of the VHS through its webpage.

The web page of the Vermont Geographical Information System provides a variety of ways of seeing the land, including LIDAR maps that provide views of much of Vermont using technology that removes the canopy and penetrates into the ground to locate roads and homesites.

Some older maps of Vermont are available on line through the Hollis or Dartmouth Library webpages.

USGS Topo maps are available on the net through the University of New Hampshire.

Town and county histories are available, often on the net.

At the State Archives, there is microfilm of town land records, photographed by the Church of the Latter Day Saints in the 1960s and updated from time to time.
12. Corporation records

The Archives web page also links you to Vermont Corporations: An Index to Private Corporations Formed by the Legislature (1987), which lists the act number and year for every private and public corporation formed by special act of the legislature.

The Corporations Division home page provides access to the status of corporations, partnerships, limited liability companies, and business names, with basic information on officers and board members, as well as a link to the registered agent for these businesses.

The UCC database is also fully searchable through the Corporations portal.

13. Legislative history

Statutory construction, like medicine, is not an exact science, but there are ways of seeing what statutes mean. The plain meaning is the obvious place to start. Then there are other rules—ejusdem generis, expressio unius est exclusio alterius, in pari materia, and reddendo singula singulis.1 Sometimes newer beats older, specific beats general, meaningful beats absurd results.2 “[E]ven the most basic general principles of statutory construction,” however, “must yield to clear contrary evidence of legislative intent” as found in the history of a statute.3

To understand the meaning of a present law, knowing how it evolved over time can be critical. For this work, the various compilations of Vermont statutes are most valuable as finding aids, in conjunction with the volumes of the Acts and Resolves and Journals for the various years. The compilations are listed in Appendix A below. Access to Acts and Resolves and Journals are described at the beginning of this essay. There are paper copies at Bailey-Howe Library, the State Archives, and the Vermont Historical Society Library.

Legislative notation has not remained consistent over the years. Each new law was styled, “An act relating to _____,” at first. When an amendment was adopted, the title became, “An act to amend, ‘An act relating to _____.” Often the date of the original law was repeated; sometimes it’s up to you to find it. The first compilation to systematize titles and chapters was the Revised Statutes of the State of Vermont (1840). When the Compiled Statutes of the State of Vermont (1851) was published, it included marginal notes giving the section of the Revised Statutes. The General Statutes of the State of Vermont (1863) was the first compilation to include pre-1840 annotations to acts from 1778 forward, as well as references to compilations, including those preceding the Revised Statutes. This is the form that’s used with the Vermont Statutes Annotated.

Daniel Pierce Thompson’s Laws of Vermont of a Publick and Permanent Nature (1825) takes a different approach, copying each of the acts for specific subjects from the compilation of

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1 In statutory construction, ejusdem generis, Latin for of the same kind or nature, is a rule for construing a statute with a series of terms to include only those things similar in character to those specifically defined. Vermont Baptist Convention v. Burlington Zoning Board, 159 Vt. 28, 30 (1992). “Expressio unius est exclusio alterius” applies when a statute, having identified a particular object of prohibition or license, has necessarily excluded others not listed. Grenafge v. Department of Employment Security, 134 Vt. 288, 290 (1976).


1797, and then compiling the acts that amended the source, up to 1825. The compilation of 1797 provides no reference to the laws before that time. There is a compilation of 1787, but the best way to research laws before 1797 is simply to follow the index for each volume of the *State Papers of Vermont* series, published by the Secretary of State. Some volumes of that series have incomplete indices, and greater care should be used. Comparing three sources—the acts, the journals, and Walton’s *Governor and Council* may be the best way of ensuring comprehensive research on early law.

Let’s use the laws on abuse of alcohol as the first example. Suppose you want to know the history of its regulation. Title 7 is dedicated to the regulation of alcohol. Section 501 prohibits sale of alcoholic beverages to intoxicated persons. Skip to the bottom of this statute as you see this note: “(Amended 1987, No. 103, § 1; 1999, No. 116 (Adj. Sess.), § 1; 2017, No. 83, § 73.)” Translated, that means your next stop is the Acts and Resolves of 1999, Act No. 116. This was passed in 2000, the adjourned session of that biennium. Jump back to the main page of the Vermont General Assembly, choose “Bills & Resolutions,” slide over the right and choose “Acts & Resolves.” Now on the left, pull down the listing for the 1999-2000 session, hit “Acts and Resolves” again, and scroll down to No. 116. “An act relating to children, alcohol, and safety,” enacted that year, amends Section 501 by adding definitions to that section.

Your journey is not over, but for early years including 1987, the legislative home page doesn’t give you access to the acts themselves. Hathitrust provides acts only to 1982, so you must find a library for the 1987 amendments. By the annotation of Section 501, you might be expecting that the 1987 act is the original source, but that isn’t true. Stopping there would be a mistake. The annotations are not always the last word in researching laws through the years. Title 19 on highways is an example of this. Recodified in 1987, the annotations include no reference to the two centuries of laws on the same subject that preceded this title-wide amendment, and the case citations usually found following statutes in the V.S.A. do not generally describe the major cases that construe the statutes.

Being drunk is not a crime by itself. There are licenses and rules on selling alcohol, and driving drunk is a criminal offense. Selling alcohol to a drunk person exposes the seller to liability for the damage caused by the buyer. Disorderly conduct is a crime, but 13 V.S.A. § 1029(a) states, “No political subdivision of the state may adopt or enforce a law or rule having the force of law that includes being found in an intoxicated condition as one of the elements of the offense giving rise to a criminal or civil penalty.” At the bottom of that section the following appears: “(Added 1977, No. 208 (Adj. Sess.), § 12.)” That’s Act No. 208 of the 1978 session of the legislature, where this subsection was first adopted. There have been no amendments since that time. As there are no notations indicating some earlier history in the V.S.A. (or the Westlaw version), you might be led to conclude that your search is over, just as with the selling of alcohol to intoxicated persons, but you would be wrong.

Vermont was a very drunken place for its first several decades. Inns and retail sellers of alcohol were licensed from the first, but the closest the law came to regulating intoxication was its requirement that the innkeeper not sell to drunken customers. Because we’ve been stuck in

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4 23 V.S.A. § 1201.
5 7 V.S.A. § 501.
6 Even before the formation of the first legislature, Thomas Chittenden, acting as President of the Council of Safety, ordered the licensing of taverns and inns, to address the drunkenness, idleness, quarrels, and other evils from spirituous liquors. Marlene Wallace, ed., *The Public Papers of Thomas Chittenden* (Montpelier, Vt.: Secretary of State, 1969), 210-211.
1987, based on the annotations under Section 501, I will jump back to the first laws, and then trace them forward in time, using the compilations as a source.

In this case, to learn what was done, I started with the State Papers of Vermont volumes of laws, using the index for each under leading terms, such as “spiritable liquors.” That took me to 1799, when that series stops. Then I moved to the Laws of Vermont of a Publick and Permanent Nature (1825) which, as has been written, compiles statutes by subject matter. The index led me to the subject of intemperance, which is covered in two chapters. This is the challenge, to find the right key words to make the index useful. In some compilations, the source is “retail dealers,” and there is no entry for “alcohol,” “drunk,” or even “spiritable liquor.” Exhausting that series without finding any hit, I turned to the 1825 compilation, which frankly never fails to save me when all else seems lost.

There, under a chapter entitled “Intemperance,” the legislature enacted an 1821 law that allowed selectmen to give notice to every tavern or store in town, naming common tipplers, and prohibiting the sale of spirituous liquors to them. Alcohol could still be used for medicinal purposes, through physicians, and there was an exception for persons who were “labouring, regularly by day’s work, or for a longer period, . . . in the ordinary way of refreshment for labourers, and in such quantities, and at such periods, as cannot be in danger of producing intoxication.” This gave rise to the tale, retold several times, that Vermont suspended the laws on drunkenness during the harvest, which is not precisely what the law provided. Looking at the compilation of 1840, no similar law is to be found, and the only effective way of identifying when that law was repealed is a year-by-year look at the Acts and Resolves between 1825 and 1840. If you need that, use Hathitrust.

The index to the 1825 compilation also led me to the laws on legal settlement and provisions for the poor. The 1797 act that appears first in that chapter includes a provision that persons who “by excessive drinking, gaming, idleness, or debauchery of any kind, shall so spend, waste, or lessen his or her estate, as thereby to expose him or herself, endanger or expose the town, to which he or she belongs, in the judgment of the selectmen and civil authority of such town, or a major part thereof, to a charge and expense for the support and maintenance of him or her, or his or her family, or any of them,” can be made wards of the selectmen, their property under the board’s control, and the individuals subject to being hired out for service.

It took until 1852, however, before the dreams of the temperance movement were institutionalized, when the legislature adopted statewide prohibition. This remained Vermont law until 1906, when local option became the law of Vermont. But this historic law, which would be so poorly enforced in the decades to come, did not address drunkenness. That came finally at the 1855 session of the legislature, the first law prohibiting drunkenness was adopted, with a fine of $5.00. Tracing that law forward, it appears unchanged in the compilations of 1863 and 1880. The compilation of 1894 reveals the law was amended every biennium from 1886 to 1894, providing for an increasing fine for a second and third offense, and imprisonment for a third or

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8 “An act, defining what shall be deemed and adjudged a legal settlement, and for the support of the poor, and for the punishment of idle and disorderly persons,” March 3, 1797, id., 374.
other offense. The Public Statutes (1907) continues the law, adding that for a third offense the person would be deemed a habitual drunkard. Statewide prohibition ended in 1906, and towns could vote themselves wet or dry. The General Laws (1917) authorized arrest and conviction of the crime of disorderly conduct, if found intoxicated and the individual was disturbing the public or domestic peace and tranquility, but no longer treated drunkenness alone as an offense.

At this point I should rest, but I could be wrong. The maze we’ve followed during this chase of sources may have missed a trap door, unindexed, buried deep in some other chapter, and no researcher should rest with confidence. You can only do what you can do, and there is always a risk.

The net allows most of this research to be performed from your keyboard. It takes some diligence and patience, and there will be times when you become lost and could benefit from a return to books on paper, but it can be done.

**What to do with legislative history.** Early on, the Court felt very uncomfortable about looking further than the statute. If the plain meaning didn’t satisfy, the Court didn’t want to hear what it meant. Judge Isaac Redfield explained, somewhat crankily, in 1847, “If the legislature desire to pass a law, . . . it is a very easy matter to do so. But if they are too delicate, or too timid, to do it in so many words, or, for any reason, do not choose to do it, we do not choose to do it for them. We choose to have a law on this subject, and then we will enforce it, if we can. But it is enough for us, to enforce such laws as are made to our hands, without usurping the proper functions of the legislature.” This reluctance was soon overcome, however, and today it is not uncommon to read the litany of statutory construction in a case that hinges on the interpretation of a law. In 1976, Justice Milford Smith explained, “[W]here the statute appears equivocal and its meaning uncertain, resort may be had to such matters as the history of a particular enactment and the trend of the legislation.” Precisely when a statute is equivocal is elusive.

The court may refuse to consider legislative history when the meaning is plain. It has explained “there never could be a repeal of previous legislation” if the court could not usually enforce laws according to their obvious terms.

Many statutes are, of course, equivocal without the need for clever argument, when the facts of a case just don’t fit with the law. In one early case involving a dispute between two towns on which should pay for the support of a transient pauper, for instance, the court discovered that while the language of the statute was plain and unambiguous, the words were “directly repugnant to the whole spirit and intent of all our legislation on the subject and in the same act, and seem to involve an absurdity. . . .” To help it through the difficult process of looking behind the law, the court adopted the “present legislator” test, imagining that the “law maker were present, and so interrogated, he would answer that he did not intend to comprehend it within this statute.”

In another case, the plaintiff bought cigars for the jury, after it had rendered a decision in his favor, and the trial court, learning this, set aside the verdict. The plaintiff complained, saying the statute specifically permitted setting aside a verdict only if a party gave any juror “victuals or

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10 General Statutes, (1863), 592; Revised Laws (1881), 737; Vermont Statutes (1894), 804-805.
11 Public Statutes (1907), 1011.
12 General Laws (1917), 1126.
16 Ryegate v. Wardsboro, 30 Vt. 746, 750 (1858).
drink,” and that cigars were not within the meaning of the statute. The high court affirmed the judgment and found cigars were within the intent and spirit of the law. The court found solace in the corroboration of the subjunctive legislator.\textsuperscript{17}

Should someone who breaks out of prison be guilty of a felony, when the “escape” comes after the prison is on fire? Should the sick sailor, too ill to leave a ship, fall heir to all the provisions, abandoned by those well enough to get off when a storm breaks? Should a surgeon who bled a man who fell down in the street in a fit be guilty of shedding blood in the streets? These ancient examples, from Puffendorf, Blackstone, and Cicero, have been cited as examples of the old truth, that “courts have the power to declare that a case that fails within their letter is not within the statute because not within its spirit and reason and the intention of the legislature.”\textsuperscript{18}

In \textit{Swanton v. Highgate} (1973), the court reviewed the 1949 enactment of a statute relating to the taxability of municipally-owned lands lying outside the territorial limits of a municipality. The court compared the bill as introduced and passed by the House of Representatives with the amendments made in the Senate version and the compromise act finally adopted, using the journals of the two chambers.

In the taxation of real property, the tax appraisal is usually measured by the market value of the land together with its improvements as a whole. However, in reaching a compromise between the intent of the House of Representatives to tax all improvements to the land owned by municipal corporations and the intent of the Senate not to tax improvements made subsequent to the acquisition of such land, the legislature separated the tax levied on the land and the tax levied on improvements.\textsuperscript{19}

Clearly, the best arguments using legislative history are those which rely on the progress of a bill through the various stages of enactment. By comparing various versions, you can demonstrate alternatives which were rejected or modified, and illuminate a statute’s meaning by eliminating stronger, weaker, or different words that the act as finally adopted doesn’t include.

The court may use any information that it can glean from an act or from the legislative process to help it construe the statute. “When the language used creates a doubtful meaning, the true meaning may be ascertained by consideration of its policy and purpose with reference to all of its provisions, its title, pre-existing legislation on the subject and circumstances indicative of the intent.”\textsuperscript{20}

Generally, advocates have had an uphill battle arguing that amendments of existing legislation do not change the basic thrust of the law. “It is a general law of construction that when the legislature amends a law, it intends to change the law, the contrary not appearing.”\textsuperscript{21} Inconclusive legislative history is insufficient to overcome plain language.\textsuperscript{22}

Punctuation can be critical. The phrase “imposed under the provisions of No. 21 of the Acts of 1925 and amendments thereto by said town during 1930” was glossed by the high court

\textsuperscript{17} \textit{Baker v. Jacobs}, 64 Vt. 197 (1891).
\textsuperscript{18} \textit{Osgood v. Central Vermont Ry. Co.}, 77 Vt. 334, 337 (1904), citing Justice John Marshall, in \textit{United States v. Fletcher}, 2 Cranch 358, 386, for the idea “that when the mind labors to discover the design of the Legislature, it seizes everything from which it can derive aid.” See also \textit{Town School District v. School District No. 2}, 72 Vt. 451, 456 (1898), explaining that “the more obvious meaning of the language must yield to the manifest purpose of the enactment.”
in *Town of Brandon v. Harvey* (1933) to keep a taxpayer from a $20,000 reimbursement of taxes from the Commissioner of Taxes:

> There is no comma following the word “thereto.” The use of the coplicative “and” indicates an intention that not only must the tax be “received,” but also that it must be “imposed,” during 1930 in order to come within the provision for reimbursement. Without such a construction as this, and, as we have seen, effect must be given to it, if possible.\(^{23}\)

Not all information you might glean of legislative intent will be respected by the court.

> The thin threat of argument is that because the witness, whose deposition was then being sought in *Hackel v. Williams, supra*, by the counsel for the defendant was, as the State claims, an occurrence witness, that the attorney involved, in his alter-ego as chairman of the Senate Judiciary Committee, must have had the intent to limit the meaning of the word “witness” in the statute now being considered. This, says the State, is evidence that such intention on part of the attorney became that of the legislature.

Lacking before us is any history of the enactment that discloses that the chairman of the Senate Judiciary Committee drew or amended the final version of the bill, or that any statement was made by him, or anyone else in the legislative proceedings that the meaning of the word *witness* was to be limited as the State here contends. Even if this were so we would doubt that it would have the effect which the State would give it in the ascertaining of legislative intent.\(^{24}\)

It seems surprising that the court would even consider statements by members of committees, or even “anyone else in the legislative proceedings,” or give any credence to what must have amounted to testimony by the attorney for a party on what an act meant while he was chairing a legislative committee. Yet in 1982, the court quoted the testimony of a witness before a Senate committee, concluding that subsequent drafting was in “apparent response” to the testimony, and used the testimony to find what it called the “definitional intent” of the statute.\(^{25}\)

A more conservative court, in 1995, concluded that “the remarks of a witness at a committee hearing are accorded little weight in determining the intent of the legislature in enacting a statute.”\(^{26}\)

The preenactment history can be critical. What moves the legislature to enact certain laws is always important evidence of intent. The Special Session of 1981 was called to amend the law on treating juveniles as adults, after a young girl was brutally murdered in Essex Junction. The act adopted that session is clearly and directly related to that event. So with legislation that corrects a decision of the Vermont Supreme Court. When the high court invalidated a decision of the Water Resources Board in 1983 because it had been signed by the Executive Officer, instead of the board members, the legislature amended the law the next year to allow it.\(^{27}\)

Sometimes two statutes adopted in the same year treat the same subject. The court works hard to find consistency. “It will not be supposed that the Legislature, whose proceedings are presumed to be conducted with wisdom and deliberation, with these measures concurrently before it, gravely and solemnly passed them through all the various stages and sent them to the Governor, intending that the one, and that alone, should become a law of the land to which he

\(^{23}\) *Town of Brandon v. Harvey*, 105 Vt. 435, 440 (1933).

\(^{24}\) *Sorrell v. White*, 103 Vt. 277 (1931); *Clifford v. W. Hartford Creamery Co.*, 103 Vt. 229 (1930).

\(^{25}\) *In re Agency of Administration*, 141 Vt. 68, 78 (1982).


\(^{27}\) *In re Airport and Pond Brooks*, 142 Vt. 458 (1983); No. 190 (1983, Adj. Sess.)
happened last to affix his signature.” In such cases, to resolve an inconsistency, the high court will find that the specific will preempt the general, in order to find harmony between two laws.\textsuperscript{28}

Researching legislative history requires patience and focus. It can offer small rewards that make a difference in the outcome of a dispute. Becoming adept at it is an asset to any attorney.

**Appendix A: Compilations**


*Revised Statutes of the State of Vermont.* Burlington, Vt.: Chauncey Goodrich, 1840.


*Vermon Statutes 1894.* Rutland, Vt.: The Tuttle Company, 1894.

*Public Statutes of Vermont 1906.* Montpelier, Vt.: Secretary of State, 1907.

*General Laws of Vermont 1917.* Montpelier, Vt.: Secretary of State, 1918.

*Public Laws of Vermont 1933.* Montpelier, Vt.: Secretary of State, 1934.

*Vermont Statutes Annotated.* Various publishers. 1947 to present.

Note: The V.S.A. uses abbreviations for the compilations. “P.L.” is for the Public Statutes; “R.L.” is the Revised Laws. There is an excellent discussion of the various compilations and their compilers at the beginning of the first volume of the V.S.A.

**Appendix B: State Papers and Publications**


\textsuperscript{28} *In re James,* 99 Vt. 265, 271, 273 (1925).


