

**LEGISLATIVE ARCHEOLOGY: “IT’S NOT WHAT YOU
FIND, IT’S WHAT YOU FIND OUT.”¹**

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I. INTRODUCTION	248
II. PRE-INTRODUCTION INTERPRETIVE AIDS	254
A. <i>Factors Tending to Limit the Use of Pre-introduction Newspaper Accounts</i>	258
III. NEW JERSEY CASE LAW CONCERNING PRE-LEGISLATIVE NEWSPAPER ARTICLES	261
A. <i>Four New Jersey Examples of Using Pre-introduction Newspaper Accounts to Aid in Statutory Interpretation.</i>	264
i. Golf Ball Statute: N.J.S. 2C:12-2(b)(1).....	264
ii. Doll Clothing Statute: N.J.S. 34:6-131.....	270

¹ DAVID H. THOMAS, *ARCHAEOLOGY* 31 (Holt, Rinehart and Winston, Inc. eds., 2d ed. 1989).

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iii. Bicycle Bell Statute: N.J.S. 39:4-11	276
IV. CONCLUSION.....	284

I. INTRODUCTION

“When I use a word,” Humpty Dumpty said, in rather a scornful tone, “it means just what I choose it to mean—neither more nor less.” “The question is,” said Alice, “whether you can make words mean so many different things.” “The question is,” said Humpty Dumpty, “which is to be master—that’s all.”³

“Do laws mean what the words say or what the authors might have meant when they wrote those words?”⁴ Questions of statutory interpretation frequently hinge upon whether the meaning resides in the text, in the reader, or in the original author.⁵ Members of the legal community are frequently at odds regarding how to discern the “true meaning” of a statute.

“Textualists” rely heavily on intrinsic sources to determine the meaning of a statute.⁶ By contrast, “Intentionalists” focus on legislative history to discern the enacting legislature’s specific intent.⁷ Where the original text provides little guidance and there is a paucity of legislative history, “Purposivists” search all available sources to obtain the enacting legislature’s general intent or purpose.⁸

Generally, any attempt to ascertain the meaning of a statute begins with an examination of the statutory language itself.⁹ Materials that are part of an official act or statute are referred to as “intrinsic sources,” and the examination of those materials is crucial to statutory interpretation.¹⁰ Intrinsic sources include (1) grammar and punctuation, (2) linguistic

³ LEWIS CARROLL, *THROUGH THE LOOKING-GLASS* 205 (Charles L. Dodgson 1872).

⁴ Timothy Shanahan, *Who Has Authority Over Meaning: Authors or Readers?*, *READING ROCKETS* (Jan. 25, 2017) <http://www.readingrockets.org/blogs/shanahan-literacy/who-has-authority-over-meaning-authors-or-readers> (last visited Feb. 2, 2019).

⁵ *Id.*

⁶ Linda D. Jellum, *The Linear Approach to Statutory Interpretation*, adapted from LINDA D. JELLUM, *LEGISLATION, STATUTORY INTERPRETATION, & ADMINISTRATIVE AGENCIES* (Carolina Academic Press eds., 2016); see also LINDA D. JELLUM, *MASTERING STATUTORY INTERPRETATION* (Carolina Academic Press eds., 2d ed. 2013).

⁷ *Id.*

⁸ *Id.*

⁹ *State v. D.A.*, 923 A.2d 217, 220 (N.J. 2007) (citing *DiProspero v. Penn*, 874 A.2d 1039, 1048 (N.J. 2005)).

¹⁰ Jellum, *supra* note 6, at 4.

canons, and (3) textual components.¹¹ The use of commas, “and v. or,” “singular v. plural,” “masculine v. feminine,” and the presence of “mandatory v. discretionary” terms may provide insight.¹² Similarly, the canons of statutory interpretation such as: *in pari materia*; *noscitur a sociis*; *eiusdem generis*; *expressio unis est exclusio alterius*; the rule against surplusage or redundancy; and the presumption of consistent usage and meaningful variation, may provide interpretive assistance.¹³ Finally, textual components including statutory titles; definitions, preambles, provisos; and non-severability clauses, are useful to discern the intent or purpose of a statute.¹⁴

The treatment of statutory titles demonstrates the impact of intrinsic sources. Historically, according to English law, the Clerk of the Parliaments, rather than the legislative body, was responsible for supplying the title for primary legislation.¹⁵ The Clerk was also responsible for preparing the text of Acts of Parliament and endorsing the proper copies of Bills and Acts.¹⁶ Given the origin of an act’s title, the English courts held that the title was not part of the Act and was therefore not a mechanism by which to interpret its meaning.¹⁷

In New Jersey, a statutory title is more significant to the understanding of the statutory provision than its historical English counterpart. The New Jersey Constitutions of 1844 and 1947 stated that “[t]o avoid improper influences which may result from intermixing one and the same act such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title.”¹⁸ The constitutional requirement that all acts have a statute embracing only “one object” is commonly referred to as the “single-object rule.”¹⁹ The “single object rule” is designed to protect the citizenry

¹¹ *Id.* at 8.

¹² *Id.* at 4.

¹³ *Id.* at 6-8.

¹⁴ *Id.* at 8.

¹⁵ 2A N. SINGER & S. SINGER, SUTHERLAND STATUTORY CONSTRUCTION § 47:3 (7th ed. 2014).

¹⁶ UNITED KINGDOM PARLIAMENT, THE CLERK OF THE PARLIAMENTS: ROLE AND FUNCTIONS, <https://www.parliament.uk/about/faqs/house-of-lords-faqs/lords-cofp/> (last visited Feb. 2, 2019). *See also* Jellum, *supra* note 6, at 4 (citing *Taylor v. Caribou*, 67 A. 2, 4 (Me. 1907) ([until 1849, English statutes were] “enrolled upon parchment and enacted without punctuation. No punctuation appearing upon the rolls of Parliament [unlike that] found in the printed statutes simply expressed the understanding of the printer.”)).

¹⁷ *See* 2A N. SINGER & S. SINGER, *supra* note 15.

¹⁸ N.J. CONST. art. IV, § VII, para. 4 (1844). *See also* N.J. CONST. art. IV, § VII, para. 4 (1947).

¹⁹ N.J. Ass’n on Corr. v. Lan, 395 A.2d 889 (N.J. Super. Ct. App. Div. 1978), *rev’d on other grounds*, 403 A.2d 437 (N.J. 1979).

against:

the extreme, the ‘pernicious,’ the incongruous; the manifestly repugnant; the palpable contravention of the constitutional command; fraud or overreaching or misleading of the people; the inadvertent; the ‘discordant;’ or ‘the intermixing in one and the same act [of] such things as have no proper relation to each other;’ or matters which are ‘uncertain, misleading or deceptive.’²⁰

The significance of the statutory title was addressed in *Commissioner of Taxation for Bernards Township v. Same*, where the petitioners sought to set aside tax levies proscribed under an act entitled:

An act to provide for and secure the raising of revenue for the execution of the public duties of maintaining public schools, preventing the destruction of property by fire, preserving the public health, supporting the poor, maintaining police and keeping the highways and streets in a safe condition for public use within the limits of incorporated cities, towns and municipalities, in cases where the local or municipal authorities or officers fail to provide for the performance of such duties.²¹

In *Same*, the New Jersey Supreme Court acknowledged the authority of Article IV, section VII, paragraph 4, of the New Jersey Constitution, stating that “[b]y force of our constitutional provision requiring the object of every law to be expressed in its title, the title limits the sphere within which the enacting clauses can operate.”²² The Court refused to extend the statute beyond instances in which local or municipal officers previously failed to perform their duties.²³ The title of a statute, then, may limit the scope of an act, but it cannot broaden or extend the act’s effect.²⁴

To satisfy the constitutional requirements, the title need only set forth the object of the act, not its product.²⁵ Although not dispositive of legislative intent, the title of a statute may be used to construe the statute

²⁰ *Cambria v. Soaries*, 776 A.2s 754, 759 (N.J. 2001). The rule was also designed to curtail “the pernicious legislative practice commonly known as logrolling.” *See id.* at 764 (defining “logrolling” as a legislative technique whereby a weak or unpopular measure is coupled with an unrelated or popular one in order to facilitate passage of the former).

²¹ *Comm’r of Tax. for Bernards Tp. v. Same*, 31 A. 219 (N.J. 1894), *rev’d on other grounds*, 39 A. 716 (N.J. 1897).

²² *Id.* at 219.

²³ *Id.*

²⁴ 1A N. SINGER & S. SINGER, SUTHERLAND STATUTORY CONSTRUCTION § 18:7 (7th ed. 2014) (citing *Joyce v. Price*, 8 A.2d 226 (N.J. 1939)); *see also State v. State*, 30 A. 480 (N.J. 1894) (holding that the title of a statute is an indication of legislative intent and a limitation upon the enacting part of the law and can have no effect with respect to any object that is not expressed in the title)

²⁵ *Id.*

because the title is a legislative declaration of the tenor and object of the act.²⁶ It has been noted that although the title of a statute has significance, it “is a label, not an index and . . . should not be scrutinized with an overly technical eye.”²⁷ Further, the title cannot control the unambiguous words set forth in the statute.²⁸ The impact of a statutory title on the subsequent interpretation of the law has distinguished the title from other intrinsic sources, including statutory headings.

In *State v. Greene*, the defendant challenged the legality of his criminal sentence after entering a plea and being sentenced.²⁹ The Appellate Division distinguished the treatment of a statutory heading from its title, stating that “the words of the heading, like the inscription on a tombstone, serve only to indicate what lies below” and are not the product of legislative drafting.³⁰ Much like the old English treatment of statutory titles, it is an entity other than the Legislature that typically adds the headnotes to the New Jersey Statutes.³¹ Since headnotes are added by a third-party after enactment of the law, the judiciary has not used them as a guide to interpret “even the most ambiguous of statutes.”³² The title to an act, provided by the Legislature, may aid in the construction of a statute.³³ Headings or labels, attached by the printer, are not part of the statute and are of no assistance in understanding its meaning.³⁴

Like the use of intrinsic guides to statutory interpretation, the use of extrinsic sources has a long and nuanced history. A brief review of that history demonstrates that those sources may, in appropriate circumstances, be of critical importance to courts, legislatures, and others seeking to ascertain the meaning of ambiguous statutes.

Statutory research, much like the discipline of archaeology, examines the means by which those in the present “can be coaxed to

²⁶ 1A N. SINGER & S. SINGER, *supra* note 24, at § 18:7 (citing In re Attorney General’s “Directive on Exit Polling: Media and Non-Partisan Public Interest Groups”, 952 A.2d 1127 (N.J. Super. Ct. App. Div. 2008)), *aff’d and modified*, 981 A.2d 64 (N.J. 2009). *See also* 2A N. SINGER & S. SINGER, *supra* note 15, at § 47:3.

²⁷ *Robson v. Rodriguez*, 130 A.2d 74, 79 (N.J. Super. Ct. Law Div. 1957) (citing *Passaic v. Consol. Police & Firemen’s Pension Fund Comm’n*, 113 A.2d 22, 26 (N.J. 1955)). *See also* *Albert F. Ruehl Co. v. Bd. of Trs. of Sch. for Indus. Ed.*, 203 A.2d 410, 415 (N.J. Super. Ct. Law. Div. 1964).

²⁸ 2A N. SINGER & S. SINGER, *supra* note 15, at § 47:3 (citing *Murray v. Nicol*, 540 A.2d 239 (N.J. Super. Ct. App. Div. 1988)); *see also* *City of Atl. City v. Atl. Cnty.*, 475 A.2d 616 (N.J. Super. Ct. App. Div. 1984).

²⁹ 111 A.2d 65, 67 (N.J. Super. Ct. App. Div. 1955).

³⁰ *Id.* *See also* *Aragon v. Estate of Snyder*, 715 A.2d 1045, 1047 (N.J. Super. Ct. Ch. Div. 1998).

³¹ *Aragon*, 715 A.2d at 1047.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

answer a wide variety of questions, thoughtfully posed about the shifting circumstances of human existence, whether in relation to social, [legal], physical, [and] mental conditions of the past and present.”³⁵ In search of these answers, “all data and approaches are potentially relevant to those questions, from texts of any sort to images, analogy from comparable settings, [and] philosophy. . . .”³⁶ There is little that archaeologists do not use in their pursuit of answers.³⁷ Arguably the same may be said of those pursuing the original intent of a statute.

Here, as with any discussion of statutory interpretation, we begin with an acknowledgment of the long-settled rule that where a plain reading of a statute “leads to a clear and unambiguous result, then the interpretive process should end, without resort to extrinsic sources.”³⁸ There is an obligation to apply the plain meaning of the terms when the statute’s meaning is abundantly clear to all whom it governs.³⁹

If, however, the meaning of the statute cannot be determined from the plain language of the text, a court (or other entity seeking to divine the meaning) may turn to extrinsic evidence to determine the intent of the Legislature.⁴⁰ Extrinsic evidence includes “legislative history, committee reports, and contemporaneous construction.”⁴¹ While the New Jersey Supreme Court has determined that extrinsic evidence may assist the judiciary by clarifying the Legislature’s intent,⁴² courts, giving deference to legislative primacy, may not “rewrite a statute or add language that the legislature omitted.”⁴³

In *Raybestos-Manhattan, Inc. v. Glaser*,⁴⁴ an employer challenged the Private Non-vested Pension Benefits Protection Tax Act, alleging that the Act violated both the New Jersey and United States Constitutions.⁴⁵ The *Raybestos* Court stated that the “intent of the Legislature as to the correct interpretation is not apparent on the face of the statute.”⁴⁶ As a

³⁵ Prof. Stephen D. Houston, *Syllabus for Principles of Archaeology*, BROWN UNIVERSITY, https://www.brown.edu/Departments/Joukowsky_Institute/courses/principles09/files/8992735.doc (last visited Feb. 2, 2019).

³⁶ *Id.*

³⁷ *Id.*

³⁸ *State v. Twiggs*, 135 A.3d 981, 984-85 (N.J. Super. Ct. App. Div. 2016) (citing *State v. D.A.*, 923 A.2d 217, 220 (N.J. 2007)).

³⁹ 82 C.J.S. Statutes § 448.

⁴⁰ *Twiggs*, 135 A.3d at 984-85.

⁴¹ *Id.* (citing *DiProspero v. Penn*, 874 A.2d 1039, 1048 (N.J. 2005)).

⁴² *Id.* at 29.

⁴³ *Id.* (citing *State v. Munafo*, 120 A.3d 170, 175 (N.J. 2015)).

⁴⁴ 365 A.2d 1 (N.J. Super. Ct. Ch. Div. 1976), *aff'd*, 384 A.2d 176 (N.J. Super. Ct. App. Div. 1978).

⁴⁵ *Id.*

⁴⁶ *Id.* at 9.

result, the Court looked to New Jersey Supreme Court's statement in *State v. Madden*⁴⁷ that "it is our initial task to seek [the Legislative] intent, and to that end we must consider *any* history which may be of aid."⁴⁸ Before ultimately determining the Act was unconstitutional, the Court discussed its examination of newspaper articles and a gubernatorial press release to provide contemporaneous commentary on the origins of the Act and its passage through the Legislature.⁴⁹ The parties did not contest that the inclusion of these materials constituted hearsay evidence that was inadmissible under any of the traditional hearsay exceptions.⁵⁰ Nevertheless, the Court in *Raybestos* recognized that New Jersey Courts, "have come to consider an ever widening variety of hearsay materials in ascertaining legislative intention and motivation. . . ."⁵¹

The courts are loathe to reject any source which will assist in clarifying an ambiguous phrase.⁵² In *Raybestos*, the Court examined various materials considered by other courts in an effort to determine legislative intention, including: memoranda prepared by those who drafted the legislation;⁵³ newspaper articles;⁵⁴ the statement appended to a bill at the time of its passage;⁵⁵ the identity of persons or groups sponsoring the legislation in question;⁵⁶ speeches by legislators while the legislation was pending before the Legislature;⁵⁷ the conditional veto messages applicable to the legislation;⁵⁸ comments of the Governor at the

⁴⁷ 294 A.2d 609 (N.J. 1972).

⁴⁸ *Raybestos-Manhattan, Inc.*, 365 A.2d at 9 (emphasis added).

⁴⁹ *Id.* at 10.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² 2A N. SINGER & S. SINGER, *supra* note 15, at § 47:3.

⁵³ In re Estate of Lambert, 308 A.2d 11, 12-13 (N.J. 1973); *see also* Data Access Sys., Inc. v. State, 305 A.2d 427, 432-33 (N.J. 1973) (holding that "while a proposed enactment may first see the light of day in legislative chambers, its conception and preparation have frequently taken place elsewhere . . . Of course[,] such materials must be carefully scrutinized[,] and their weight and authenticity evaluated, but we see no merit in a rule demanding their total exclusion from judicial consideration.").

⁵⁴ *State v. Union Cnty. Park Comm'n*, 225 A.2d 122, 125-26 (N.J. 1966); *see also* *Lloyd v. Vermeulen*, 125 A.2d 393, 397-98 (N.J. 1956).

⁵⁵ *Deaney v. Linden Thread Co.*, 118 A.2d 28, 31-32 (N.J. 1955); *Howard Sav. Inst. v. Kielb*, 183 A.2d 401, 406 (N.J. 1962); *Gudgeon v. Ocean Cty.*, 342 A.2d 553, 555 (N.J. Super. Ct. App. Div. 1975).

⁵⁶ *Group Health Ins. of N.J. v. Howell*, 202 A.2d 689, 693 (N.J. 1964); *Indep. Electricians & Electrical Contractors, Ass'n of N.J. v. N.J. Bd. of Exam. of Electrical Contractors*, 256 A.2d 33, 35 (N.J. 1969); *Grand Union Co. v. Sills*, 204 A.2d 853, 858-59 (N.J. 1964).

⁵⁷ *State v. Jersey Cent. Power & Light Co.*, 336 A.2d 750, 754 (N.J. Super. Ct. App. Div. 1975).

⁵⁸ *Loveladies Prop. Owners Ass'n, Inc. v. Raab*, 348 A.2d 540, 542 (N.J. Super. Ct. App. Div. 1975); *Dept. of Health v. Sol Schnoll Dressed Poultry Co.*, 245 A.2d

time of the enactment of the legislation;⁵⁹ recommendations by study commissions which prompted the legislation;⁶⁰ text commentators' remarks regarding a statute;⁶¹ and materials that have "never met the legislative eye."⁶² Acknowledging the broad scope of extrinsic information that courts consider, the *Raybestos* Court opined that it was appropriate to "consider the proffered newspaper articles and press release as relevant and material aids in ascertaining the meaning of the statutory language."⁶³

Identifying pre-introduction, non-legal, documentary information that explains the problem a bill was intended to address may provide a richer understanding of the law's original purpose. Although the purpose of the law may change as it moves from the pre-introduction phase, through the process of enactment, and into its post-enactment phase, knowledge of its original purpose remains a useful starting point in statutory construction. As discussed below, the assistance provided by these extrinsic sources is not limited to their value to the judiciary. Legislators and others, both within and outside government, benefit from tools that permit a deeper understanding of the purposes underlying the law when considering its application, modification, or elimination. Since older laws often lack "traditional" extrinsic legislative history such as sponsor statements, committee statements, and records of legislative deliberation, the pre-introduction background information and context supplied by sources like historical newspaper archives might be the only interpretive aids available.

II. PRE-INTRODUCTION INTERPRETIVE AIDS

"Pre-introduction" newspaper accounts are articles, usually found in online or microfilm historic newspaper archives, that report on an event, incident, condition, or circumstance triggering the introduction of a bill in a state legislature. Pre-introduction newspaper accounts offer valuable interpretive assistance by identifying long-forgotten problems that gave rise to a bill.

"Unlike common law rules which contextualize events giving rise to their creation, statutorily based rules are less likely to provide a fully

532, 534-35 (N.J. Super. Ct. App. Div. 1968); *Caldwell v. Rochelle Park Twp.*, 342 A.2d 583, 586-88 (N.J. Super. Ct. Law Div. 1975).

⁵⁹ *Irval Realty v. Bd. of Pub. Util. Comm'rs*, 294 A.2d 425, 430 (N.J. 1972); *see also Sills*, 204 A.2d at 856.

⁶⁰ *Data Access Sys., Inc. v. State*, 305 A.2d 427, 431 (N.J. 1973).

⁶¹ *Id.*

⁶² *Raybestos-Manhattan, Inc. v. Glaser*, 365 A.2d 1 (N.J. Super. Ct. Ch. Div. 1976), *aff'd*, 384 A.2d 176 (N.J. Super. Ct. App. Div. 1978).

⁶³ *Id.* at 10-11.

developed discussion for that rule's creation in a more immediate way."⁶⁴ When an extensive legislative record is compiled during deliberations, identifying the events that spurred the legislative action is easier and more illuminating of a particular provision, when viewed alongside the text and official legislative documents.⁶⁵ This does not mean that all of the circumstances surrounding passage of a statute are held in equal regard. Legislative history and historical sources of a non-legal nature are not a substitute for the statutory text. Instead, they are one of the many tools that can be used to understand the statute's "purpose and to confirm the meaning of its normative language."⁶⁶

This article distinguishes between "pre-introduction" newspaper accounts, published before the introduction of a bill, and "post-introduction" newspaper articles, which are often included in legislative history files compiled by a governmental entity such as a state library.⁶⁷ *Sutherland Statutes and Statutory Construction* describes extrinsic aids and categorizes them as follows:

Extrinsic aids relate to a statute's history, and may be legislative, executive, judicial, or nongovernmental in origin. Extrinsic aids can be divided chronologically into: (1) preenactment history, including circumstances and events leading up to a bill's introduction; (2) enactment history, including all actions taken and statements made during legislative consideration of the original bill from the time of its introduction until final enactment; and (3) postenactment history, including amendments and any other developments relevant to a statute's operation subsequent to enactment.⁶⁸

While compiled legislative histories are valuable for purposes of statutory interpretation, limiting consideration of extrinsic materials to the "traditional," post-introduction, or "official" legislative history might inadequately illuminate the point of the law and result in misinterpreting or misapplying it. The risk of misinterpretation or misapplication increases with the age of the statute, since traditional legislative history sources are frequently unavailable for older laws, and pre-introduction

⁶⁴ Mark DeForrest, *Taming a Dragon: Legislative History in Legal Analysis*, 39 U. DAYTON L. REV. 37, 61 (2013).

⁶⁵ *Id.*

⁶⁶ *Id.* at 64.

⁶⁷ See generally, New Jersey State Library, *New Jersey Legislative Histories* (last visited Feb. 2, 2019), https://repo.njstatelib.org/advanced_search.html. The site includes compilations of legislative histories on all New Jersey laws which are general and permanent from 1996 forward, but also selectively includes many legislative histories of older New Jersey laws. Post-introduction newspaper articles are often cited or included in legislative history compilations.

⁶⁸ 2A N. SINGER & S. SINGER, *supra* note 15, at § 48:1.

newspaper accounts are technologically difficult or even impossible to find. In the absence of this information, changes in social conditions, technologies, or other factors may obscure the original purpose of the law, leading a court to misapply the law to a novel, modern-day circumstance. *Sutherland* explains pre-enactment history as follows:

Courts look to a statute's contemporary history and historical background as aids to interpretation. These aids illuminate the circumstances under which an act was passed, the mischief at which it was aimed, and the statute's "object" or "purpose." This form of extrinsic evidence about legislative intent may include court opinions, where a statute is an attempt to codify the rationales of relevant judicial decisions. As with all legislative history, courts generally turn to a law's pre-enactment history to discover its purpose, or object, or the mischief at which it was aimed, when the statute's language is inadequate to reveal legislative intent."⁶⁹

When *Sutherland* refers to pre-introduction sources of legislative history, it refers largely to prior laws, court opinions, or reports of government entities that recommended legislation.⁷⁰

The rationale justifying reliance on "legal" pre-enactment history could arguably be extended to the consideration of events chronologically preceding the introduction of a bill. The Maine Supreme Court recognized this in *Wawenock, LLC v. Department of Transportation*, noting that in "evaluating legislative intent using information beyond the language of the provision, we have relied on a variety of materials, [such as] . . . 'preenactment history, including circumstances and events leading up to a bill's introduction.'"⁷¹

The reference to "legislative archaeology" in this article refers to the process of identifying and considering the circumstances that precipitated the introduction of a bill. In addition to distinguishing between pre-enactment and post-enactment news accounts, the article distinguishes between pre-introduction newspaper accounts that provide a general social, economic, technological, legal, or general cultural background to help explain why a bill was introduced, from pre-introduction newspaper accounts that identify a specific event to explain why a bill was introduced.⁷² The former type of general background research using

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Wawenock, LLC v. Dep't of Transp.*, 187 A.3d 609, 617 (Me. 2018) (citing *Estate of Robbins v. Chebeague & Cumberland Land Tr.*, 154 A.3d 1185 (Me. 2017)).

⁷² See Wallace J. Sheets, *The Use of Contemporaneous Circumstances and Legislative History in the Interpretation of Statutes in Missouri*, 952 WASH. U. L.

newspapers, history books, archives, and other non-legal information sources has, since the 1990's, been cited more often in court opinions.⁷³ The article also distinguishes between "legal archeology" and "legislative archeology." The former has been described as follows:

a kind of legal history that focuses on a specific case and reconstructs its historical and social context. Just as archaeologists reconstruct a site from clues embedded in the earth, legal archaeologists reconstruct the context of a reported opinion from clues embedded in the opinion, the trial transcript, and other contemporaneous documents. Legal archaeology begins where most legal scholarship ends, with a reported case opinion. After selecting the case and analyzing the opinion, the methodology of legal archaeology involves three basic steps: (1) attempting to recreate as complete a record of the litigation as possible, including the trial and appellate records; (2) searching for pertinent information using non-legal sources, such as archives, newspaper accounts, biographies, and autobiographies; fieldwork, such as interviews; and nonlegal secondary literature; and (3) formulating conclusions.

Legal archaeology proceeds from the assumption that there is much to be learned about a case that never makes it into the written opinion.⁷⁴

"Legislative archaeology" is distinguished from "legal archaeology" in two ways. First, "legislative archeology" uses historical non-legal newspaper sources that specifically identify pre-introduction events as extrinsic aids to statutory interpretation, rather than more generalized, non-legal information sources to supplement the facts contained in case law. Second, this article distinguishes the research methodology utilized in the work of "legal archaeologists" because their focus is on case-based enlightenment, while this article focus on statutory interpretation.

A study concerning blasphemous libel provides a recent example of the use of historical newspapers to shed light on and supplement the limited historical information found in case law:

Newspapers are an excellent supplement to the narrow range of legal materials found in case reporters. They offer several advantages over traditional legal research: (1) details about the

REV. 265, 271 (1952).

⁷³ Winne v. Casale, 126 A. 324, 325 (N.J. 1924).

⁷⁴ Debora L. Threedy, *Unearthing Subversion with Legal Archaeology*, 13 TEX. J. WOMEN & L. 133, 135 (2003). See also Debora L. Threedy, *Legal Archaeology: Excavating Cases, Reconstructing Context*, 80 TUL. L. REV. 1197 (2006); Judith L. Maute, *Response: The Values of Legal Archaeology*, 2000 UTAH L. REV. 223 (2000); William Twining, *What Is the Point of Legal Archaeology*, 3 TRANSNAT'L LEGAL THEORY 166 (2012).

specific parties and events involved in a legal dispute that, for one reason or another, were not included by the judge writing a particular opinion; (2) information about the social context in which the case took including the moral presuppositions held by the actors involved (victim, accuser, judge, jurors, and more); and (3) descriptions of cases never recorded in traditional reporters, allowing the researcher to better gauge the real prevalence of certain types of disputes, while also gaining insight into legal decision-making that diverged from mainstream legal doctrine.⁷⁵

The author of that study did note, however, that “newspaper reports offer only a limited snapshot into a prosecution or lawsuit, and they usually lack the detailed explication of facts and doctrine that are the hallmarks of good judicial opinions.”⁷⁶

Legislative archeology parallels and receives support from studies that document the increased use of non-legal research resources in court opinions—including newspaper articles—a research phenomenon that has sometimes been referred to as the “delegalization of the law.”⁷⁷ This article suggests that legislative archeology is not a “delegalization” of the law so much as a recognition of non-legal, pre-introduction documentary sources as useful tools to improve our understanding of large and often complicated bodies of statutes.

A. Factors Tending to Limit the Use of Pre-introduction Newspaper Accounts

Courts looking to extrinsic sources of legislative history generally began at the bill’s introduction and limit themselves to documents produced as part of legislative activity, from bill introduction to final passage. In New Jersey, such documents include the sponsor statements, committee statements, records of deliberation in both houses, fiscal notes, veto messages, governor’s messages on signing, and pertinent post-enactment history, such as executive branch statements. Courts less commonly rely on pre-introduction history to identify the precipitating circumstances triggering the introduction of the bill.

⁷⁵ Jeremy Patrick, *Beyond Case Reporters: Using Newspapers to Supplement the Legal-Historical Record (A Case Study of Blasphemous Libel)*, 3 DREXEL L. REV. 539, 540-41 (2011).

⁷⁶ *Id.* at 560.

⁷⁷ See Frederick Schauer & Virginia J. Wise, *Nonlegal Information and the Delegalization of Law*, 29 J. LEGAL STUDIES 495 (2000) (analyzing the increased use of non-legal sources by the United States Supreme Court and the New Jersey Supreme Court); Ellie Margolis, *Beyond Brandeis: Exploring the Uses of Non-Legal Materials in Appellate Briefs*, 34 U.S.F. L. REV. 197 (2000); Ellie Margolis, *Authority without Borders: The World Wide Web and the Delegalization of Law*, 41 SETON HALL L. REV. 909 (2011).

One possible explanation for this emphasis is that finding relevant pre-introduction newspaper accounts that identified the event triggering the introduction of a bill was extraordinarily difficult before the widespread use of the Internet. In the “pre-Internet” era, a legislative researcher would first have to identify the source law for the statutory text under consideration. The researcher would then need to engage in a wide-ranging, “blind” search of the microfilm records of newspapers that may (or may not) have covered the precipitating event(s). Searching reels of microfilm is labor-intensive, and the lack of any “full text” search capability for microfilm or print copies of older newspapers rendered such an enterprise a nearly impossible and often fruitless task.

Beginning around the year 2000, however, the full text searching of newspaper archives became more accessible, usually at a modest subscription price.⁷⁸ In addition, many local newspapers have been scanned by local libraries, historical societies, and genealogists, and some of the resulting troves of information are searchable using Google, or at the library or facility that scanned the newspapers.

Older newspaper archives are now frequently full text searchable as a result of Optical Character Recognition (OCR), which electronically translates the image of text into a searchable text format. The results of OCR, especially on historical newspapers, are less-than-perfect, and inaccuracies are seldom corrected. Despite these limitations, scanned and OCR’d newspapers are a valuable resource.

The historic lack of documents that are now considered “typical” or “traditional” legislative history is another factor that may have contributed to the limited reliance by the courts on pre-introduction news articles. Although sponsor statements were sporadically appended to New Jersey bills as early as the nineteenth century, the first New Jersey case to cite and use an official extrinsic source was in 1924, when Chief Justice William Stryker Gummere referenced a sponsor statement attached to the introduced version of a bill.⁷⁹ In 1955, the post-1947 New Jersey Supreme Court accepted the citation of bill statements for statutory interpretation.⁸⁰ By the 1970’s, the admissibility of post-introduction newspaper accounts, usually extracted from compiled legislative

⁷⁸ See, e.g., GENEALOGY BANK, <https://www.genealogybank.com> (last visited Feb. 3, 2019); NEWSPAPERS.COM BY ANCESTRY, <https://www.newspapers.com> (last visited Feb. 3, 2019).

⁷⁹ *Winne v. Casale*, 126 A. 324, 325 (N.J. 1924).

⁸⁰ Barbara H. Garavaglia, *Using Legislative Histories to Determine Legislative Intent in New Jersey*, 30 LEGAL REFERENCE SERVICES Q. 71, 81 (2011) (“The court in *Deaney v. Linen Thread Co.*, 118 A.2d 31 (N.J. 1955), held that documents such as ‘introducers’ statements and other materials created as a bill goes through the legislative process should be admitted as aids to statutory construction.”).

histories at the New Jersey State Library, became more common.

The confidentiality associated with bill preparation in New Jersey has also impacted the use of extrinsic sources. Generally, communications associated with bill drafting are confidential.⁸¹ This presents a difficulty to those researching the reasons underlying a bill introduction, even though the individual requesting a bill draft may consent to make the request public.

A traditional reluctance in the legal community to accept non-legal sources, seemingly decreasing with time, may help account for the limited reliance on pre-enactment external sources.⁸² When *Sutherland* refers to “pre-enactment” sources, it generally includes only statutes, cases, or official government reports, rather than newspapers or other non-legal sources of information, explaining that:

[a] statute’s legal history may be as important for interpretation as its historical background. Courts discussing an act’s legal history usually are speaking more specifically about prior statutes on the same subject, and recent statutes on similar subjects, and the case law interpreting such legislation. Consequently, most analyses of an act’s legal history amount to application of the rule of *in pari materia*, even where employing a different vocabulary.⁸³

In addition, the manipulability of even traditional legislative history may explain the legal community’s hesitance to rely on extrinsic sources. A comment focusing on the federal process suggested that:

[o]nce they know that judges will refer to legislative history when interpreting statutes, legislators, staffers, and lobbyists have great incentives to introduce comments in the record solely to influence future interpretations - and especially to insert statements that could not win majority support in Congress. This incentive exposes the critical danger posed by the weak oversight mechanisms in the system used to create legislative history and the ease with which one can manufacture fictional congressional intent. For example, legislators who cannot pass statutory provisions now know they can advance their causes simply by

⁸¹ N.J. STAT. ANN. § 52:11-70 (2018) (“All requests for legal assistance, information or advice and all information received by the Office of Legislative Services in connection with any request for fiscal, budgetary or research service or for the drafting or redrafting of bills, resolutions or amendments thereof for introduction in the Legislature shall be regarded as confidential and no information in respect thereto shall be given to the public or to any person other than the person or persons making such request or any officer or person duly authorized to have such information, unless and until the person making such request consents thereto or the subject matter thereof shall have been made public in some manner.”).

⁸² See, *supra* note 77 and accompanying text.

⁸³ See 2A N. SINGER & S. SINGER, *supra* note 15, at § 48:3.

generating legislative history - no democratic approval is needed to insert statements into the record.⁸⁴

The impact of hearsay objections is another potential limiting factor. The courts have addressed these objections in different ways, and it may be that the concerns about the inclusion or exclusion of post-introduction newspaper accounts on the basis of hearsay are not identical to those associated with pre-introduction newspaper accounts.

III. NEW JERSEY CASE LAW CONCERNING PRE-LEGISLATIVE NEWSPAPER ARTICLES

Although there are historic reasons why the use of pre-introduction newspaper articles was relatively limited, it is clear that New Jersey courts have found newspaper articles useful and appropriate for consideration in a variety of circumstances. A selection of cases that discuss the use of pre- and post-introduction newspaper articles follows.

In *Fox v. Board of Education of West Milford Township*, the plaintiffs brought an action challenging the validity of bus contracts awarded by the West Milford Board of Education for the transportation of children to two private, non-profit parochial schools in the municipality.⁸⁵ The *Fox* Court explained that the “precise issue involving the construction of this statute” had “never been decided judicially in our State,” noting that the “legislative language is undoubtedly ambiguous, and requires resort to legislative history, contemporaneous construction and administrative interpretation to shed light on the true meaning and intent of the statute.”⁸⁶ As a part of its consideration of the legislative history, the court referenced a contemporaneous newspaper article published in the *New York Times* and cited to *State of New Jersey, by State Highway Commissioner v. Union County Park Commission* for use by the New Jersey Supreme Court “of contemporaneous newspaper articles as aids for statutory interpretation.”⁸⁷ In that earlier case, the State of New Jersey, by the State Highway Commissioner, filed a complaint seeking to condemn lands owned by the Union County Park Commission for highway purposes.⁸⁸ The New Jersey Supreme Court noted that:

⁸⁴ *Why Learned Hand Would Never Consult Legislative History Today*, 105 HARV. L. REV. 1005, 1017 (1992).

⁸⁵ 226 A.2d 471, 474 (N.J. Super. Ct. Law. Div. 1967).

⁸⁶ *Id.* at 480-81 (citing *Pringle v. N.J. Dept. of Civil Service*, 212 A.2d 360 (N.J. 1965)); *N.J. Pharmaceutical Ass’n v. Furman*, 162 A.2d 839 (N.J. 1960); *Lloyd v. Vermeulen*, 125 A.2d 393 (N.J. 1956); *Lane v. Holderman*, 129 A.2d 8 (N.J. 1957).

⁸⁷ *Id.* at 481.

⁸⁸ *State by State Highway Comm’r v. Union Cty. Park Comm’n*, 225 A.2d 122, 123 (N.J. 1966).

[n]ewspaper articles and editorials appearing in the Newark Evening News, prior and immediately subsequent to the introduction of the bill which ultimately became L.1928, c. 40 (R.S. 27:7-36 . . .), reinforce the conclusion that there then generally existed at least grave doubt that a conveyance of park lands by the Park Commission to the State for highway purposes was permitted. Such articles and editorials appeared in that newspaper on August 20, 1927, November 25, 1927, November 30, 1927, January 7, 1928, February 7, 1928 and March 13, 1928.⁸⁹

In *Raybestos-Manhattan, Inc. v. Glaser*, discussed above, the Court looked to pre-introduction newspaper accounts that explained the event that inspired the introduction of the bill as well as post-introduction newspaper articles contemporary with the actions of the Legislature.⁹⁰

Later, in *State v. Olivera*, the Appellate Division, reviewing whether the jury was properly instructed regarding one of the elements of the crime of luring, considered both the sponsor's statement regarding the criminal statute and a news article written at the time of the signing of the bill that was included in the "official legislative history."⁹¹

The New Jersey Supreme Court, in *First Resolution Investment Corp. v. Seker*, directly certified an appeal to resolve a conflict in the Appellate Division regarding provisions governing service of process under the Rules of Court.⁹² The Court stated that if "a statute or rule is ambiguous, courts may ascertain the intent of the drafters by looking to extrinsic sources such as the statute's or rule's underlying purpose and history."⁹³ Thereafter, in *Lucier v. Williams*, the Appellate Division found unenforceable a limitation of liability provision in a home inspection contract because that provision was unconscionable and in contravention of public policy.⁹⁴ In doing so, the Court referred to several "press accounts included in the official legislative history" said to "clearly express the Legislature's purpose to protect home buyers from negligence by home inspectors."⁹⁵

The Appellate Division in *In re Amico/Tunnel Carwash* addressed the question of whether the New Jersey Meadowlands Corporation could

⁸⁹ *Id.* at 125.

⁹⁰ *Raybestos-Manhattan, Inc. v. Glaser*, 365 A.2d 1, 17-18 (N.J. 1976).

⁹¹ *State v. Olivera*, 782 A.2d 988, 991 (N.J. Super. Ct. App. Div. 2001).

⁹² *First Resolution Inv. Corp. v. Seker*, 795 A.2d 868, 869 (N.J. 2002).

⁹³ *Id.* at 873 (citing *Clymer v. Summit Bancorp.*, 792 A.2d 396 (N.J. 2002) (citing *Aponte-Correa v. Allstate Ins. Co.*, 744 A.2d 175 (N.J. 2000))).

⁹⁴ *Lucier v. Williams*, 841 A.2d 907, 909 (N.J. Super. Ct. App. Div. 2004).

⁹⁵ *Id.* at 915.

delegate the power to grant a variance to its staff.⁹⁶ The court determined that the Hackensack Meadowland Reclamation and Development Act did not confer such authority, looking to news articles dating back to when the bill advanced through the legislative process.⁹⁷ Later, in *BASF Corp. Coating & Ink Division v. Town of Belvidere*, the Tax Court considered, as a matter of first impression, whether Chapter 101 required an approved compliance plan in order for a tax assessor to change a single property tax assessment.⁹⁸ The *BASF* Court concluded that Chapter 101 did not require a compliance plan for a change in the assessment on a single property in a municipality, suggesting that its conclusion was “buttressed by a newspaper article in The Press of Atlantic City reporting that the motivation for introduction of this legislation was changes in assessments in neighborhoods or areas of certain municipalities.”⁹⁹ The Court further suggested that:

[c]onsideration of this newspaper article is appropriate when, as here, more traditional legislative history, such as committee statements, is not helpful in interpreting a statute.

Not only may extrinsic aids be used to resolve legislative ambiguities, they may also appropriately supply reassuring confirmation of literally apparent meaning, as is here the case. Nor do we think it is improper to consider materials which may never have met the legislative eye. While a proposed enactment may first see the light of day in legislative chambers, its conception and preparation have frequently taken place elsewhere. . . . Of course such materials must be carefully scrutinized and their weight and authenticity evaluated, but we see no merit in a rule demanding their total exclusion from judicial consideration.¹⁰⁰

The *BASF* Court explained that references to the motives of the legislators in enacting a law are generally disregarded unless they are expressed in the statute itself, but “motive which led to the enactment of the statute is one of the most certain means of establishing its own true sense” so “courts have viewed the context of events which prompted legislation.”¹⁰¹

⁹⁶ In re Amico/Tunnel Carwash, 852 A.2d 277, 286 (N.J. Super. Ct. App. Div. 2004).

⁹⁷ *Id.*

⁹⁸ *BASF Corp. Coating & Ink Div. v. Town of Belvidere*, 22 N.J. Tax 550, 553 (2005), *aff'd*, 24 N.J. Tax 416 (App. Div. 2009).

⁹⁹ *Id.* at 563.

¹⁰⁰ *Id.* (citing *Data Access Systems, Inc. v. State*, 305 A.2d 427 (N.J. 1973) (citations omitted)).

¹⁰¹ *Id.* at 564.

A. *Four New Jersey Examples of Using Pre-introduction Newspaper Accounts to Aid in Statutory Interpretation*

i. Golf Ball Statute: N.J.S. 2C:12-2(b)(1)

In addition to providing a benefit to the courts, New Jersey's golf ball statute exemplifies the manner in which extrinsic pre-introduction news sources may be of assistance to the Legislature as it considers the modification or elimination of a statutory provision. The New Jersey Legislature enacted a law in 1913 that prohibited the manufacture and sale of "any golf ball containing a fluid substance, acid or corrosive in character."¹⁰² The bill had no sponsor statement, associated committee statements, record of debate during passage in the legislature, nor gubernatorial messages on bill signing. The only amendment made to the bill described in the minutes of each House was by the Senate in removing section 2.¹⁰³ After being codified and re-codified in various compilations of New Jersey's general and permanent statutes, the golf ball law was eventually subsumed within the criminal code provision concerning reckless endangerment.¹⁰⁴ The text of the law provided that "[a] person commits a crime of the fourth degree if he . . . [m]anufactures or sells a golf ball containing acid or corrosive fluid substance."¹⁰⁵ The law, including the provision regarding golf balls, was repealed in 2015, more than 100 years after the enactment of the original golf ball law.¹⁰⁶

In 2015, when legislative analysts performed background research for a bill that sought to create a more severe penalty for the reckless endangerment of persons with developmental disabilities, they realized that the reckless endangerment statute included an odd mix of miscellaneous crimes, including the golf ball law. Traditional legislative history provided no explanation of the original intent of the golf ball provision, and during the Assembly Judiciary Committee deliberations on S2940/A4531, Chairman John McKeon said

¹⁰² P. L. 1913, c. 285 (1913). New Jersey was the first state to pass a law specifically criminalizing the manufacturing or sale of acid- or corrosive-filled golf balls. Massachusetts introduced (and later approved) its own version of the law on April 22, 1913, after two incidents involving minors being severely injured by dissecting golf balls in that state. *See also, Golf Ball is Mark for New Law: Bill to Prohibit Manufacture or Sale of the Explosive Article – Board of Health Views*, SPRINGFIELD (MA) DAILY NEWS, April 23, 1913, at 10. Massachusetts is the only state that currently has this statutory prohibition. *See, MASS. GEN. LAWS* ch. 148, § 55 (2019).

¹⁰³ New Jersey Senate Journal, March 18, 1913 at 625. Section 2 concerned the use of such golf balls.

¹⁰⁴ N.J. STAT. § 2C:12-2 (2014) (repealed 2015).

¹⁰⁵ *Id.*

¹⁰⁶ P. L. 2015, c. 186, § 2.

“[i]t is interesting if you look back at the bills being repealed, you first look at the description of this. When the sponsors went back and looked at reckless endangerment on the whole, it’s a real odd-ball statute. It deals with golf balls [[another unidentified Assemblyman adds]: “acid filled golf balls”]. It’s really quite interesting.”¹⁰⁷

The law baffled legislators and legislative analysts, with some suggesting that the provision referred to exploding golf balls used as practical jokes.¹⁰⁸ No reported cases in New Jersey interpreted the golf ball provision, and secondary source references were limited. One of the few legal researchers that commented on the possible intent said “[o]ne cannot help but wonder which member of the New Jersey Legislature made the mistake of buying an acid-filled golf ball.”¹⁰⁹ The reference in *Golf Digest* said: “If you were thinking about manufacturing dangerous golf balls, don’t do it in New Jersey. Check the State Code of Criminal Justice, under section 2C:12-2 (recklessly endangering another person) [. . .] Presumably, this has nothing to do with the USGA’s Overall Distance Standard.”¹¹⁰

Pre-introduction newspaper accounts of the original golf ball law unravel the mystery behind its intent. An article published the day that the bill was introduced said:

Judge Robert Carey has drawn up a bill designed to prohibit the manufacture, sale and use of golf balls containing any fluid substance of an acid or corrosive character. The bill will be introduced into the Legislature by Assemblyman Charles M. Egan, and Judge Carey will personally appear in its behalf before the committee to which it is referred.

About a year ago Judge Carey’s young son while examining the fluid core of an old golf ball was severely burned about the face and eyes by the fluid which was later found to be chloride of zinc, a highly corrosive chemical. Only by promptly bathing his eyes in cold water was the chemical so diluted that the boy’s sight was not destroyed. Cases of injuries of this kind and even more serious have been reported. A liquid chemical core is used because of its

¹⁰⁷ *Assembly Judiciary Committee Hearing on S2940/A4531*, 2015 Leg., Sess. 2014-15 (N.J. 2015) (statement of Assembl. John McKeon, Chairman, Judiciary Committee), https://www.njleg.state.nj.us/media/archive_audio2.asp?KEY=AJU&SESSION=2014.

¹⁰⁸ See CAL. HEALTH AND SAFETY CODE § 12505(g) (“Dangerous fireworks” are defined as “[a]ll fireworks designed and intended by the manufacturer to create the element of surprise upon the user. These items include, but are not limited to, auto-foolers, cigarette loads, *exploding golf balls*, and trick matches.”) (Emphasis added).

¹⁰⁹ Michael T. Cahill, *Attempt, Reckless Homicide, and the Design of Criminal Law*, 78 U. COLO. L. REV. 879, 936 n.171 (2007).

¹¹⁰ Mike Stachura, *Crimes and Misdemeanors*, GOLF DIGEST 1, 16 (1994).

weight and resiliency, but most golf balls do not have a harmful substance in the core. Golf clubs all over the country realize the danger of using golf balls containing an acid or other corrosive and steps are being taken to prohibit their use.¹¹¹

Other non-legal sources reveal that the incident involving Judge Carey's son was not an isolated one.¹¹² Between 1912 and 1917, there were dozens of additional incidents of curious children being injured or killed by cutting open or otherwise penetrating the liquid center of a golf ball in New Jersey, including incidents in Orange,¹¹³ Englewood,¹¹⁴ Blairstown,¹¹⁵ Atlantic City,¹¹⁶ Bloomfield,¹¹⁷ Delawanna (Clifton),¹¹⁸ and Spring Lake.¹¹⁹ Other non-legal sources from this period studied and documented the dangers and harmful effects of liquid-center golf balls, particularly medical journals and medical society proceedings.¹²⁰ In

¹¹¹ See *Judge Carey's Bill Aimed at Acid-Filled Golf Balls*, JERSEY J., Jan. 16, 1913, at p. 5. It is important to note that Judge Carey and Assemblyman Egan were prominent residents of Hudson County of which Jersey City is the most populated municipality. That one of the only newspapers which identified both men and the level of detail surrounding the bill's introduction was published in Jersey City's Jersey Journal indicates the importance of knowing not only the date of introduction but also the district represented by the bill's sponsor, when conducting legislative archaeology. This enables a legislative researcher to pinpoint a time and geographic area in which to focus before consulting a newspaper archive.

¹¹² *Legislature May Quit April 3*, WOODBURY TIMES, Mar. 13, 1913, at 4 (available at <https://www.genealogybank.com>) ("Several reports from various parts of the State showed that accidents of a serious nature have developed by the use of such balls. It was noted that the son of John O'Toole, [Commissioner] of the Public Service Corporation, had his eyes ruined by clipping such a ball, which exploded."). Genealogybank's historical newspaper database contains articles from more than 9,000 selective newspapers from all 50 US states as early as the late 18th century. Other newspaper archives in electronic and microfilm format are available at local public libraries throughout the US.

¹¹³ *Hurt as Golf Ball Bursts: Acid in the Centre of One Endangers Jersey Boy's Sight*, N.Y. TIMES, Dec. 8, 1912, at 8.

¹¹⁴ *Exploding Golf Ball Puts Eyes in Danger*, GREENSBORO DAILY NEWS, Dec. 11, 1912, at 6.

¹¹⁵ *Golf Ball Acid Blinds Young Student*, N.Y. EVENING WORLD, Jan. 29, 1913, at 17.

¹¹⁶ *Golf Ball Explodes*, HIGHLAND RECORDER, July 11, 1913, at 2; *Wenonah*, WOODBURY TIMES, Sept. 12, 1913, at 5.

¹¹⁷ *Acid from Golf Ball Burns Four Curious Boys*, WASH. TIMES, May 13, 1915, at 13.

¹¹⁸ *Golf Ball Core Kills Babe*, TRENTON EVENING TIMES, Aug. 2, 1916, at 10; *Baby Killed by Golf Ball Core*, JERSEY J., Aug. 2, 1916, at 7.

¹¹⁹ *Boy Bites Golf Ball, Acid Causes Death*, TRENTON EVENING TIMES, Apr. 3, 1917, at 4.

¹²⁰ Casey A. Wood, *Burns of the Eyeball from the Contents of So-called "Water-Core" Golf Balls*, THE NEW ENGLAND MED. GAZETTE, November 1912, at 799-800; L. W. Crigler, *Burn of Eyeball Due to Caustic Contents of Golf-Ball*, J. OF THE AM. MED. ASS'N, Apr. 1913, at 1297; H. E. Thomason, *Golf-Ball Burn of the Eye*, J. OF

April 1913, the United States Golf Association issued a warning, republished in newspapers nationwide, to help prevent further incidents.¹²¹ Periodicals of the time spread the word regarding the dangers of cutting open golf balls.¹²² Although medical literature continued to report incidents as recently as 1985,¹²³ the last reported incident of a New Jersey child injured by an exploding liquid-center golf ball appears to have been in the early 1970s.¹²⁴

The passage of time (like the accumulation of soil, using the metaphor of archaeology), had entirely concealed the original intent of the 1913 golf ball statute. Over the years, the 1913 law was codified and re-codified into several official compilations, before its final allocation to a subsection of 2C:12-2 by virtue of the 1978 revision to Title 2C. Although the text changed slightly over the course of several recom compilations, it had been contained in its own statutory section prior to the 1978 revision. In 1978, the text of the 1913 law was commingled with other laws regarding reckless endangerment, taking the law out of its spatial-temporal context.¹²⁵

THE AM. MEDICATION ASS'N, Sept. 1913, at 935; Holbrook Lowell, *Burn of Eyes from Contents of Golf-Ball Core*, J. OF THE AM. MED. ASS'N, Dec. 1913, at 2302-03; George F. Suker, *Oxalic Acid Burn of the Eyeball – Golf-Ball Injury*, J. OF OPHTHALMOLOGY AND OTO-LARYNGOLOGY, Feb. 1914, at 52-54; Walter H. H. Jessop, *Case of Severe Injury to an Eye from the Contents of a Golf Ball*, THE LANCET, July 18, 1914, at 158; R. H. Elliot and W.S. Inman, *Serious Injury to an Eye from a Bursting Golf Ball*, BRITISH MED. J., Mar. 20, 1915, at 501-02; Edward J. Bernstein, *Injury to Eye from Explosion of Golf Ball*, J. OF THE AM. MED. ASS'N, Apr. 1916, at 1304; W.D. Rowland, *Golf Ball Rupture in Mouth with Acid Burns to the Larynx – Trachea – Bronchi – Esophagus – Stomach, and Death in Thirty Hours from Bronco-Pneumonia*, J. OF OPHTHALMOLOGY, OTOTOLOGY AND LARYNGOLOGY, Oct. 1917, at 678-688 (incident occurred in Asbury Park, NJ).

¹²¹ *The Pith of Opinion: Water-Core Golf Balls*, BOSTON HERALD, Apr. 30, 1913, at 14 (the warning read: “[o]wing to the facts that serious accidents have occurred in the past few years due to cutting open certain makes of golf balls containing acid and other sight-destroying compounds, the association warns all persons to refrain from this dangerous practice.”).

¹²² See, e.g., *Do Not Open a Golf Ball*, YOUTH'S COMPANION, June 5, 1913, at 295; *Explosive Golf Balls*, SCIENTIFIC AM. SUPPLEMENT, Sept. 27, 1913, at 205; *Explosive Golf Balls Menace to Sight*, POPULAR MECHANICS, Mar. 1914, at 421.

¹²³ K. G. Farley, *Ocular Trauma Resulting from the Explosive Rupture of a Liquid Center Golf Ball*, J. AM. OPHTHALMOLOGY ASSOC., Apr. 1985, at 310-14; W. Morton Grant & Joel S. Schuman, TOXICOLOGY OF THE EYE 754-56 (Charles C. Thomas 4th ed. 1993).

¹²⁴ *Kempes v. Dunlop Tire & Rubber Corp.*, 548 N.E.2d 644, 645 (Ill. App. Ct. 1989).

¹²⁵ *Introduction to Archaeology—glossary entry for “Context,”* ARCHAEOLOGICAL INSTITUTE OF AMERICA <https://www.archaeological.org/education/glossary> (last visited Feb. 2, 2019) (“Context: The position and associations of an artifact, feature, or archaeological find in space and time. Noting where the artifact was found and what was around it assists archaeologists in

Recodification, then, can conceal the original chapter law source of statutory text. The text of the original 1913 law was initially codified in the First Supplement to the Compiled Statutes of New Jersey, 1911-1915, under “Crimes, Miscellaneous Acts Subsequent to 1910.”¹²⁶ In 1924, the text was re-codified in the Compiled Statutes of New Jersey, 1924 Supplement, under “Crimes, Miscellaneous,” but the unamended text remained a self-contained provision. In 1937, the text was re-codified to N.J.S. 2:149-1 in the 1937 official Revised Statutes of New Jersey, under “Crimes, Manufacture, Sale, Etc. of Certain Articles.”¹²⁷ In 1951, the text was re-codified yet again to N.J.S. 2A:123-1.¹²⁸ In 1978, the text was re-codified a final time to N.J.S. 2C:12-2(b)(1), under “Recklessly Endangering Another Person” and combined with other discrete laws related to reckless endangerment.¹²⁹ Thus, a researcher might consult the comprehensive official legislative history for the 1978 revision to Title 2C (P.L. 1978, c. 95), compiled and available online at the New Jersey State Library’s legislative history page, without finding any clue regarding the origins of the golf ball statute, and erroneously conclude that no explanatory information exists.¹³⁰ Legislative archaeology often calls for tracing back the statutory text to its original source law before the search for pre-introduction history may begin.

The search for and use of extrinsic aids to interpretation, such as pre-introduction newspaper articles, can support and enhance thoughtful, well-reasoned decisions about whether to modify or repeal statutory provisions. Also, to assess the value of using historical newspapers and other non-legal sources to gain insight into statutes, consider there is only one nationally reported case specifically concerning the liability of a manufacturer of golf balls when a child cuts open a golf ball and is injured by the explosive force of the contents under pressure.¹³¹

In 1979, eight-year-old Matthew Kempes cut open a liquid- or paste-

determining chronology and interpreting function and significance. Loss of context strips an artifact of meaning and makes it more difficult (sometimes, impossible) to determine function.”).

¹²⁶ First Supplement to the Compiled Statutes of New Jersey [1910], 1911-1915, “Crimes, Miscellaneous Acts Subsequent to 1910,” section 71, at 451.

¹²⁷ Crimes, Manufacture, Sale, Etc. of Certain Articles, N.J.S.A. 2:149-1, § 465 (1937).

¹²⁸ L.1951, 1st Sp. Sess., at c. 344 (N.J. 1952).

¹²⁹ P.L. 1978, c. 95 at 544. The 1978 revision of N.J.S.A. 2C:12-2 was probably influenced by commentary in a 1971 Report that suggested to consolidate various ad hoc reckless conduct statutes, including the golf ball statute, into one statutory section. See, New Jersey Penal Code: Final Report at 178-179 (1971).

¹³⁰ *New Jersey Legislative Histories*, https://repo.njstatelib.org/advanced_search.html (last visited Feb. 2, 2019).

¹³¹ *Kempes v. Dunlop Tire & Rubber Corp.*, 548 N.E.2d 644 (Ill. App. Ct. 1989).

center type of golf ball manufactured by the defendant and injured his eye severely.¹³² The manufacturer in *Kempes* avoided liability because the company had no knowledge that children cut open golf balls *at the time they were manufactured*.¹³³ The court explained that “the fact that defendant gained knowledge that children were being and could be injured by cutting into paste center golf balls after it stopped making such balls proves nothing insofar as the foreseeability of that risk at the time of manufacture.”¹³⁴ Hundreds of national and international incidents, documented and reported in newspapers and medical literature, had occurred beginning as early as 1912 and continuing up to and after the *Kempes* trial.¹³⁵ Had the information uncovered through legislative archaeology been available to the *Kempes* court, it may have reached a different result.¹³⁶

¹³² *Id.* at 645.

¹³³ *Id.* at 648.

¹³⁴ *Id.*

¹³⁵ Frank B. Johnson & Lorenz E. Zimmerman, *Barium Sulfate and Zinc Sulfide Deposits Resulting from Golf-Ball Injury to the Conjunctive and Eyelid*, AM. J. CLINICAL PATHOLOGY, Nov. 1965, at 533-538; Robert Penner, *The Liquid Center Golf Ball: A Potential Ocular Hazard*, ARCH. OPHTHALMOLOGY, Jan. 1966, at 68-71; M. M. Slusher et al., *Liquid Center Golf Balls and Ocular Injury*, AM. J. OF OPHTHALMOLOGY, 1967, at 736-740; J. N. Taylor & C. H. Greer, *Ocular Injuries by Explosion of the Liquid Centers of Golf Balls*, THE MED. J. OF AUSTRALIA, March 1969, at 632-633; C. Nelson, *Eye Injury from Exploding Golf Balls*, BRITISH J. OF OPHTHALMOLOGY, Oct. 1970, at 670-71; Richard O’Grady & David Shoch, *Golf Ball Granuloma of the Eyelids and Conjunctiva*, AM. J. OF OPHTHALMOLOGY, July 1973, 148-51; K. H. Lim, *Eye Injury from and Exploding Golf Ball*, SINGAPORE MED. J., Vol. 16, 78-80; D. R. Lucas et al., *Ocular Injuries from Liquid Golf Ball Cores*, BRITISH J. OF OPHTHALMOLOGY, 1976, 740-47; *Eye Injuries from Disrupted Golf Balls*, THE LANCET, Jan. 22, 1977, at 181; K. Yamaki et al., *Eye Injury from Exploding Golf Balls*, FOLIA OPHTHALMOLOGY JPN, 1978, at 1538; N. Berkman et al., *Accidents Oculaires Par Balle de Golf*, BULLETIN DES SOCIETES D’OPHTHALMOLOGIE DE FRANCE, Feb. 1980, at 139-43; K. G. Farley, *Ocular Trauma Resulting from the Explosive Rupture of a Liquid Center Golf Ball*, J. AM. OPHTHALMOLOGY ASSOC., Apr. 1985, 310-14; W. MORTON GRANT & JOEL S. SCHUMAN, TOXICOLOGY OF THE EYE 754-56 (Charles C. Thomas 4th ed. 1993).

¹³⁶ Leonard E. Murphy, *Injury to Children?*, PROFESSIONAL SAFETY, Mar. 1998, at 24-28 (“[A] golf ball manufacturer escaped liability in a case involving an eight-year-old who suffered a serious eye injury while disassembling a golf ball (*Kempes v. Dunlop Tire and Rubber Corp.*). The boy cut into the ball with a pair of scissors, causing the paste center to squirt into his right eye. The accident occurred in 1979. The manufacturer had discontinued production and distribution of paste-center balls in 1967. Prior to this, the manufacturer had no knowledge that children cut open golf balls or suffered eye injuries from the paste. Consequently, the firm was not held liable for the boy’s injury. However, had the golf balls been distributed during the mid- or late-1970s, the verdict may have been different. By this time, the firm’s technical manager had learned of similar eye injuries to children in New Jersey (1970/71), Massachusetts (1975) and New York (late-1970s). If the paste-center balls had been distributed after the manufacturer knew of these prior incidents, the

The repeal of 2C:12-2 demonstrates that legislative archaeology can be of assistance not only with archaic laws, but with recent legislation as well. No traditional legislative history sources referenced the events surrounding the introduction of the 2015 law that repealed the reckless endangerment section. Pre-introduction newspapers, however, provided details of the event that led the Legislature to re-examine the statute. Prior to the repeal of 2C:12-2, two adults engaged in conduct that placed an individual with autism, Parker Drake, at severe risk of bodily harm, and could have resulted in his death.¹³⁷ The two men told Drake that if he could stay in frigid ocean water for one minute, they would give him twenty dollars and two packs of cigarettes.¹³⁸ After Drake jumped into the water from a jetty, his insulin pump froze, he could not touch the seafloor, and he struggled to swim back to shore.¹³⁹ A newspaper article about the incident, published in March 2015, described both the incident and the challenges the victim's mother faced when trying to file charges against the two men.¹⁴⁰ Since the men did not intend to harm Drake, and Drake was an adult and thus not covered under the reckless endangerment laws pertaining to children, the men could not be prosecuted.¹⁴¹ The newspaper article ended with a recommendation that the Legislature "pass better laws" regarding reckless endangerment.¹⁴²

Although not mentioned anywhere in the language of the statute or in any extrinsic legislative documents, this event seems to have prompted the change in the law. Several months after the incident, S2940 was introduced in May 2015, to "[c]reate new criminal offenses concerning endangering another person," and address crimes against people with developmental disabilities. The enactment of this law resulted in 2C:24-7.1, a new section of the criminal code, and the repeal of prior reckless endangerment laws that were codified at 2C:12-2.

ii. Doll Clothing Statute: N.J.S. 34:6-131

Identified by the New Jersey Law Revision Commission as potentially anachronistic and appropriate for repeal, Title 34, Chapter 6,

court may have ruled that the loss history provided sufficient knowledge to place the manufacturer 'on notice.'").

¹³⁷ Kathleen Hopkins, *Pair Encouraged Autistic Man to Plunge in Icy Ocean*, ASBURY PARK PRESS, (Mar. 25, 2015 11:30 AM), <https://www.app.com/story/news/local/monmouth-county/hot-topic/2015/03/25/autistic-howell-teen-dared-plunge-manasquan-jetty>.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

Article 12 of the New Jersey statutes contains a number of provisions, enacted in 1930 and 1941, that regulate the manufacture of items such as doll clothing in tenement houses and in homes, called home work.¹⁴³ “Traditional” legislative history did not identify the impetus for the doll-clothing provision, so it was not immediately clear whether repealing the law would cause unanticipated harm. Research into the law’s history led to newspaper accounts comprising a capsule history lesson concerning tenement living in both New York and New Jersey.

In 1902, one-third of New York City’s population lived in tenement houses.¹⁴⁴ Tenements created a number of dangers resulting from a lack of fire exits, cramped quarters inhibiting escape, unsafe conditions causing sudden fires,¹⁴⁵ gas escaping from poorly-regulated furnaces,¹⁴⁶ and the dangerous spread of infectious diseases from dirty conditions.¹⁴⁷ Living spaces were cramped, grimy, and dark.¹⁴⁸ By 1902, New York City had 20,000 tuberculosis cases due to tenement conditions,¹⁴⁹ and by 1908 the childhood death rate in some tenement districts was as “high as 204 per 1,000.”¹⁵⁰ Tenement home work proliferated during this time, and the government sought to regulate and control it with a licensing system that required home work to comply with health and safety laws and to be performed only if the home was clear of disease.¹⁵¹ After the

¹⁴³ See N.J. STAT. ANN. § 34:6-131 (2019); N.J. STAT. ANN. § 34:6-132 (2019); N.J. STAT. ANN. § 34:6-133 (2019); N.J. STAT. ANN. § 34:6-136.3 (2019); N.J. STAT. ANN. § 34:6-136.10 (2019).

¹⁴⁴ *How the Poor Live*, NEW YORK DAILY TRIB., Jan. 15, 1902, at 2.

¹⁴⁵ *A New York Holocaust*, BISMARCK TRIBUNE, Oct. 7, 1891; *Tenement Fire Dangers*, NEW YORK DAILY TRIB., Dec. 14, 1900, at 8; *Twenty Firemen Are Overcome*, EVENING WORLD, Dec. 17, 1903, at 10; *House Was a Fire Trap*, NEW YORK DAILY TRIB., Nov. 21, 1904, at 13; *500 Flee From Sea of Smoke*, EVENING WORLD, Dec. 23, 1904, at 12; *\$1,000,000 Blaze Drives Hundreds From Their Homes*, EVENING WORLD, Dec. 4, 1911, at 21; *Girls in Panic Saved in Second Jersey City Fire*, EVENING WORLD, Dec. 4, 1911, at 21.

¹⁴⁶ *27 Overcome by Gas in Home*, EVENING WORLD, Dec. 23, 1904, at 12; *Lives Endangered by Escaping Gas*, EVENING WORLD, Dec. 17, 1903, at 10.

¹⁴⁷ *Dr. Koch’s Experiments*, NEW YORK DAILY TRIB., Aug. 3, 1901, at 5; *Some Plague Spots in New-York*, NEW YORK DAILY TRIB., Sept. 13, 1903, at 18; *How the Poor Live*, NEW YORK DAILY TRIB., Jan. 15, 1902, at 2; *Some Plague Spots in New-York*, NEW YORK DAILY TRIB., Sept. 13, 1903, at 18 (in a single room on this block five people died from the same disease in seven years, due to the germs permeating the room); *The White Plague*, DAILY PEOPLE, Feb. 8, 1904, at 3.

¹⁴⁸ *Some Plague Spots in New-York*, NEW YORK DAILY TRIB., Sept. 13, 1903, at 18; *The White Plague*, DAILY PEOPLE, Feb. 8, 1904, at 3. It was not uncommon for a family to live in “sick, dirty, dark closets”.

¹⁴⁹ *How the Poor Live*, *supra* note 147, at 2; *see also The White Plague*, *supra* note 147, at 3 (as reported in “A Handbook on the Prevention of Tuberculosis”).

¹⁵⁰ *Needless Deaths*, DAILY PEOPLE, June 10, 1908, at 2.

¹⁵¹ JOHN R. COMMONS & JOHN B. ANDREWS, PRINCIPLES OF LABOR LEGISLATION 367 (1920); Ruth Crawford, *Development and Control of Industrial*

deadly 1911 fire in the Triangle Shirtwaist Factory, an investigation by a specially appointed factory commission found that manufacturers avoided state factory regulations by using home workers, home work burdened the community by endangering the lives and health of children and mothers, and home work was not economically justified.¹⁵²

During the same period, three children of a wealthy Brooklyn family contracted smallpox, and the National Consumers League believed this was directly connected to sweatshop labor.¹⁵³ The League reported seeing “food and clothing in the process of manufacture in rooms in which there were persons ill of [contagious diseases],” and helped prepare a bill for introduction to the New York Legislature that would impose fines if goods were found in an unlicensed or dirty tenement.¹⁵⁴ In addition, the National Child Labor Committee found vast amounts of home work in unlicensed homes during an investigation with the aim of combatting child labor.¹⁵⁵ The investigation results rallied support against child labor after members of the Committee testified before the New York State Factory Investigating Commission.¹⁵⁶ Committee investigator Elizabeth C. Watson testified “that dark, ill ventilated tenement houses occupied by scores of . . . families constitute the ‘factories’ where the nut picking is

Homework, 58 MONTHLY LAB. REV. 1145 (1944) (finding that around this time, union power was increasing, and in the 1910 cloak-and-suit strike in New York City, unions demanded homework be abolished due to its “continual threat to factory wage standards.” Despite union agreements with manufacturers, tenement home work continued). It is noted that a direct prohibition against home work, the prohibition against manufacturing cigars and other tobacco products in tenements where rooms were occupied as sleeping quarters, was determined to be unconstitutional in *In re Jacobs*, 98 N.Y. 98 (1885), which may explain why laws enacted in its aftermath attempted to control home work using alternatives to a blanket prohibition.

¹⁵² Ruth Crawford, *supra* note 151, at 1148.

¹⁵³ *Sweatshop Labor*, NEW YORK DAILY TRIB., Dec. 13, 1907, at 5.

¹⁵⁴ *Id.* The bill was stronger than a similar bill that had been on the New York books for years. The bill also made the owner responsible for his goods and the air, space, light, cleanliness, ventilation and sanitation of any room into which his goods were taken, and prohibited workrooms from being used as sleeping rooms.

¹⁵⁵ *Table Tidbits Prepared Under Revolting Conditions*, NEW YORK DAILY TRIB., May 11, 1913, at 65 (out of 41 families that were engaged in picking nuts, 22 lived in licensed and 19 in unlicensed houses. In other home industries, such as brush making, out of 124 families investigated, 10 lived in licensed and 114 in unlicensed houses); see also *Home Work's Horrors Shock New Yorkers*, NEW YORK DAILY TRIB., Dec. 9, 1912, at 7; *Wants Child Labor Ended*, NEW YORK DAILY TRIB., Dec. 21, 1911, at 10.

¹⁵⁶ *Little Folk Toil Making Dolls for Luckier Children*, EVENING WORLD, Dec. 5, 1912, at 3; *Home Work's Horrors Shock New Yorkers*, *supra* note 159 (“New York has thought of child labor many times before this- as a vague and unpleasant theory- but yesterday it was quite real, due to the startling testimony of the State Factory Investigating Committee”).

done by children”, and that children left school to spend long hours over piles of cracked nuts.¹⁵⁷ In these tenement rooms, children as young as four performed sixty-five percent of the work of picking meat from nuts for the city.¹⁵⁸ Many of these nuts, later packaged neatly on clean store shelves, were actually “cracked between slum dwellers’ teeth.”¹⁵⁹

A Committee investigator also testified that she found children as young as “four and five years old kept at home from school to help their mothers make dolls.”¹⁶⁰ Children’s small hands and fingers were able to complete doll-making tasks that larger hands could not.¹⁶¹ Another story described a mother “sewing on the end of a long garment which was spread over a sick child in the bed” later discovered to have smallpox.¹⁶² Although working on garments in a room with contagious disease was illegal, the practice was common.¹⁶³

After the Factory Commission’s findings and the testimony from the National Child Labor Committee, New York enacted the law in 1913 forbidding work in tenement homes on food products, dolls or dolls’ clothing, and children’s or infants’ wearing-apparel.¹⁶⁴ With the law’s enactment, understanding the threat to consumers posed by home work grew nationwide.¹⁶⁵ New Jersey newspapers covered testimony in support of the law, since New Jersey suffered from similar issues.¹⁶⁶ In

¹⁵⁷ *Id.* at 3.

¹⁵⁸ *Id.*

¹⁵⁹ *Table Tidbits Prepared Under Revolting Conditions*, *supra* note 155, at 65.

¹⁶⁰ *Home Work’s Horrors Shock New Yorkers*, *supra* note 156, at 7.

¹⁶¹ *Id.* (Children could turn the arms and legs of fine kid dolls, which came “from the factories all stitched, but not yet turned right side out.” Larger hands were unable to do this work, “so the mother works on the body of the doll and hands the little arms and legs over to her children” and “[i]n that way several cents are added to the daily income.”)

¹⁶² *Id.* (One example is of “one mother whose child had infantile paralysis, and she dared not stop working to let the child die in her arms. Mothers with little children dependent on them often worked up to the very moment of death”).

¹⁶³ *Id.* (The Board of Health was typically unable to discover these, and workers were unaware of the symptoms of many deadly diseases. Of the employers testifying during the meeting, only one testified that he asked during the hiring process about the “conditions of the homes where he sent goods.” He said this was only because his child had died from a disease carried by a tenement-made garment. Even so, he still advertised and accepted applicants if they “look[ed] all right.”). *See also Little Folk Toil Making Dolls for Luckier Children*, *supra* note 159.

¹⁶⁴ COMMONS & ANDREWS, *supra* note 154, at 367-68 (citing N.Y. LAWS c. 260 (1913)). These specific articles were noted to be involved “first because of their close relation to public health, especially the health of children.”

¹⁶⁵ *New York Stops Work of Children Under Fourteen in Tenements and Canneries*, LEXINGTON HERALD (Kentucky), May 25, 1913, at 4 (highlighting the understanding that the law was aimed at child labor and health concerns).

¹⁶⁶ *Tell of Babies Forced to Work*, PERTH AMBOY, Dec. 6, 1912; *Mrs. Florence Kelley’s War On Evil of Child Labor*, TRENTON EVENING TIMES, May 4, 1913.

response, the state created the New Jersey Tenement House Commission.¹⁶⁷ Articles dating from 1915 revealed that New Jersey was struggling with its laws regarding tenement conditions.¹⁶⁸ One New Jersey resident, Mrs. G.W.B. Cushing of the New Jersey Consumers League, was likely the force behind the introduction of New Jersey's "doll" bill. Cushing advocated for humane labor laws and improvement of working conditions in New Jersey. She discovered that, after the enactment of New York's law in 1913, unscrupulous New York City manufacturers evaded the law by sending unfinished materials over the Hudson River to New Jersey tenements in Essex and Hudson counties, where the work was still legal.¹⁶⁹ Through Cushing's leadership, an investigation of home work in Essex County revealed disease-causing infantile paralysis transmitted from powder puffs produced by tenement workers, including children,¹⁷⁰ in what is known as the "Powder Puff Scandal" by newspapers around the country.¹⁷¹

Pre-introduction newspaper articles reveal that in February 1917, the Consumers' League of New Jersey met in Trenton to discuss legislative

¹⁶⁷ *Housing Problem is Not Peculiar to New York*, TRENTON EVENING TIMES, Sep. 4, 1911.

¹⁶⁸ *Many Violations of Tenement Law*, TRENTON EVENING TIMES, Nov. 7, 1915, at 31 (describing unsatisfactory living conditions in Hoboken and Jersey City tenements); *Tenement House Bills Attacked*, TRENTON EVENING TIMES, Feb. 15, 1915, at 1; *The Tenement House Law*, JERSEY J., Jan. 28, 1915, at 12.

¹⁶⁹ WOMEN'S PROJECT OF NEW JERSEY, INC., PAST AND PROMISE: LIVES OF NEW JERSEY WOMEN 120 (Syracuse Univ. Press 1997) ("Under [Cushing's] leadership, the [New Jersey] Consumer's League discovered what came to be known as the 'powder puff' scandal. New York factories were sending supplies to New Jersey for the manufacture of "sanitary" puffs, which were produced under unsatisfactory conditions. Young slum children from slum families in the Orange area were discovered producing the puffs on the streets and in dirty homes. A careful survey persuaded the state legislature in 1917 to pass a league-approved industrial home work bill.").

¹⁷⁰ *Id.*; *Inventory to the Consumers League of New Jersey Records, 1896-1988*, RUTGERS UNIVERSITY LIBRARIES, http://www2.scc.rutgers.edu/ead/manuscripts/consumers_leaguef.html (last visited Feb. 2, 2019) (citing Susanna P. Zwemer, *History of Consumers League of New Jersey* 12-14 (1950) (unpublished manuscript)); *Cause of Infantile Paralysis a Germ*, TRENTON EVENING TIMES, Mar. 20, 1911, at 7; *see also Infantile Paralysis: Nearly 25,000 Cases at Present in Country*, DAILY PEOPLE (New York), Apr. 21, 1911, at 3; *Infant Paralysis Leads Death Roll: State Health Department Reports 597 Fatalities and 2,114 Cases in August*, TRENTON EVENING TIMES, Oct. 25, 1916, at 9; *Germs in Powder Puff*, SPRINGFIELD REPUBLICAN (Massachusetts), May 26, 1914, at 20.

¹⁷¹ *Inventory to the Consumers League of New Jersey Records, 1896-1988*, *supra* note 170. *See, e.g., Plague Fighters Seize Powder Puffs: Orange Health Officers Find Paralysis in Makers' Homes*, WASH. TIMES, Aug. 29, 1916 at 3; *Paralysis in Powder Puffs*, KANSAS CITY STAR, Aug. 29, 1916, at 4; *Expects Epidemic to End by September 15*, N.Y. TIMES, Aug. 29, 1916, at 20.

issues and elected Mrs. Cushing as its President.¹⁷² An article announcing her election stated that “[i]t is proposed to introduce a bill to authorize the labor department in New Jersey to inspect workshops that are maintained in homes and in which buttons are carded and garments of all kinds made, toys, painted and artificial flowers made, and like work carried on.”¹⁷³ The League asked the Legislature to pass a law with language identical to the New York law that prohibited the manufacture of certain items.¹⁷⁴ It does not appear to be a coincidence that, within a week, A525—drafted according to the recommendations of the League—was introduced in New Jersey and enacted later that year.¹⁷⁵ This 1917 New Jersey statute used language identical to the 1913 New York statute and cited a report from a 1913 New York investigation commission.¹⁷⁶

In the 1930s, evidence mounted that home work, although minimized by the Fair Labor Standards Act’s record requirement and targeted by the 1917 law,¹⁷⁷ “still remained as a threat to the maintenance of wage and hour standards in those industries.”¹⁷⁸ An estimate from the

¹⁷² *Consumer League Officers Elected*, TRENTON EVENING TIMES, Feb. 16, 1917.

¹⁷³ *Id.* at 3.

¹⁷⁴ *Inventory to the Consumers League of New Jersey Records, 1896-1988*, *supra* note 170.

¹⁷⁵ P.L. 1917, c. 229, s. 3; Additionally, New Jersey passed other laws that year making landlords more responsible for cleanliness in tenements, and restricting tenement occupancy to three families per building. *See Butte Aided by New Building Law*, TRENTON EVENING TIMES, Aug. 5, 1917, at 12; *Three-Family “Tenements,”* JERSEY J., Dec. 12, 1917, at 12; *Making Over the Neighborhood*, JERSEY J., May 4, 1918, at 19.

¹⁷⁶ NEW YORK FACTORY INVESTIGATION COMMISSION, SECOND REPORT, vol. 1 at 120 (1913) (“We recommend the immediate prohibition of the manufacture in tenement houses of food products, dolls and dolls’ clothes and of infants’ and children’s wearing apparel. The investigations we conducted show that such restriction is plainly called for in the interests of public health. The classification is reasonable and one that may, under the decisions, properly be made by the legislature. Food products are much more liable to contamination than any others and their preparation under entirely sanitary and hygienic conditions is a matter absolutely necessary to the public health. Infants and children are more susceptible than adults to contagious diseases and it is intolerable that the manufacture of garments and other articles to be worn by them, or which they play with, should be permitted under circumstances that may tend to spread disease. The many reports of work done in homes in which there were cases of scarlet fever, diphtheria, and measles prove that this danger to children is a serious one. We therefore recommend the following amendment to the labor law: [reproduces the verbatim text of the 1913 New York Law which was identical to the text of A525 (1917), section 3]”).

¹⁷⁷ P.L. 1917, c. 229, s. 3 (“No articles of food, no dolls, dolls’ clothing and no article of children’s or infants wearing apparel shall be manufactured, altered, repaired or finished in whole or in part for a factory, either directly or through the instrumentality of one or more contractors or third person in a tenement house, in any portion of an apartment, any part of which is used for living purposes”).

¹⁷⁸ Ruth Crawford, *supra* note 151, 1150-53 (finding “violations of the Wage and

Wage and Hour Division in 1940, based on home worker records called “handbooks,” shows that over seventy-one percent of licensed work was done by garment industry home workers around New York City and New Jersey, with over eighteen percent in New Jersey alone.¹⁷⁹ This resulted in the enactment of a second set of bills in 1941 seeking to further curtail the practice.¹⁸⁰

iii. Bicycle Bell Statute: N.J.S. 39:4-11

The New Jersey Law Revision Commission identified the bicycle bell statute, found at N.J.S. 39:4-11, as potentially anachronistic and appropriate for repeal.¹⁸¹ A review of the history of this statute to determine its appropriateness for repeal highlighted the divergence between the historic background of the law and its current practical application.

Bicycles became hugely popular in the late 1800s due to improvements in bicycle design that made bicycling safer and more comfortable.¹⁸² Early bicycles caught the public’s imagination despite being made of stiff, unforgiving materials, with one of the earliest incarnations, the velocipede, known as the “boneshaker.”¹⁸³ The ordinary, or “penny farthing” bicycle, introduced in 1870, had solid rubber tires, which made it more comfortable to ride than the velocipede, its immediate predecessor.¹⁸⁴ However, the penny farthing enjoyed only limited popularity due to its dangerousness; the seat sat atop its very large

Hour Law were common” and that “[b]oth the Second and Fourth National Conferences on Labor Legislation, meeting in 1935 and 1937, respectively, urged the abolition of homework and sought Federal control. Meanwhile, through the operation of the Public Contracts Act, passed in 1936, Federal abolition of homework was provided for, but only as regards work performed on certain Government contracts. The Fair Labor Standards Act followed, and control of homework was implicit, for the law set wage and hour standards for all workers engaged in the production of goods for interstate commerce, [. . .] and penalties were fixed.”).

¹⁷⁹ *Id.* (“140,116 handbooks were received by 1,474 establishments in 1940. Of these, 52.57 percent, or 73,675, were received in New York- State and 18.69 percent, or 26,206, in New Jersey; in other words, 71.26 percent of the total was concentrated in the garment industries around New York City.”).

¹⁸⁰ N.J. STAT. ANN. § 34:6-136.3 (1941) (amended 1991); N.J. STAT. ANN. § 34:6-136.10 (1941).

¹⁸¹ *Tentative Report Relating to Repeal of Anachronistic Statutes*, N.J. L. REVISION COMM’N (January 8, 2018), <http://www.lawrev.state.nj.us/newprojects/anachronstatsDTR010818r.pdf> (last visited Feb. 2, 2019).

¹⁸² Yasmeeen Mughal, *Bicycles in America*, LIBRARY OF CONGRESS (Aug. 18, 2017), www.loc.gov/rr/program/bib/bikes/index.html.

¹⁸³ *History of the Bicycle*, BICYCLE HISTORY, <http://www.bicyclehistory.net/bicycle-history/history-of-bicycle> (last visited Feb. 2, 2019).

¹⁸⁴ *Id.*

front tire, and if the rider needed to stop suddenly, the entire bike would rotate on its front axle and drop the rider on his head.¹⁸⁵ The invention of the crank, sprocket, and chain system allowed small pedal movements to create large rotations of the rear wheel, resulting in the introduction of the safety bicycle in 1886.¹⁸⁶ The safety bicycle was lighter and had wheels of the same size, and the rider's feet were within reach of the ground.¹⁸⁷ Additionally, the pneumatic tire was invented around this time.¹⁸⁸ This development increased production from 40,000 bicycles in 1890 to about 1.2 million bicycles in 1896.¹⁸⁹

As bicycle use skyrocketed, New Jersey responded. In its 1888 Session, the Legislature passed an act pertaining to bicycle rights and responsibilities.¹⁹⁰ Even with the legislation, and despite having the same legal status as other users of the road, bicyclists—or wheelmen as they were called at this time—faced considerable antagonism from horsemen, wagon drivers, and pedestrians.¹⁹¹ Municipalities responded by passing their own ordinances regulating bicycles. Many of these ordinances required lights, when a bicycle was operated at night, and bells, intended to give sufficient warning to prevent collisions with pedestrians and other vehicles.¹⁹² Ordinances varied from town to town. Trenton required a bell audible at least thirty feet away.¹⁹³ Morristown required both lights and bells.¹⁹⁴ Wayne Township required a bell but did not provide

¹⁸⁵ David Mozer, *Bicycle History*, INT'L BICYCLE FUND, <http://www.ibike.org/library/history-timeline.htm> (last visited Feb. 2, 2019).

¹⁸⁶ Natalie Angier, *A Ride Towards Freedom*, N.Y. TIMES, July 13, 2015, <https://www.nytimes.com/2015/07/14/science/the-bicycle-and-the-ride-to-modern-america.html>.

¹⁸⁷ Mary Mancone, *The History of Bicycles*, INTERACTIVE MEDIA LAB AT THE U. OF FLA., <http://iml.jou.ufl.edu/projects/Fall08/Mancone/history.html> (last visited Feb. 2, 2019).

¹⁸⁸ Mozer, *supra* note 185.

¹⁸⁹ Gary Allan Tobin, *The Bicycle Boom of the 1890's*, J. OF POPULAR CULTURE, http://assets.theatlantic.com/static/mt/assets/science/j.0022-3840.1974.0704_838.x.pdf; SHARON BISAHA, IN THE BEACON LIGHT: LAMBERTVILLE, NJ 1860 TO 1900 66 (lulu.com eds., 2013).

¹⁹⁰ See P.L. 1888, c. 157 ("An act in relation to the use of bicycles and tricycles," codified in the General Statutes of 1709-1895 in Roads, sections 570-573. It declared bicycles to be "carriages" with the same rights and restrictions as other vehicles on the road. It allowed regulations, rules, and ordinances that would govern their use, including requiring – or prohibiting – the use of bells.).

¹⁹¹ *Busy Jersey Cyclists*. N.Y. TIMES, July 30, 1894, at 3.

¹⁹² *The Bell Ordinance All Right*. THE COURIER-NEWS (BRIDGEWATER, NEW JERSEY), June 10, 1892, at 3; THE DAILY TIMES (New Brunswick, New Jersey), July 7, 1893, at 2.

¹⁹³ *Bicycles Must Have Gongs*, THE TRENTON TIMES, Aug. 9, 1894.

¹⁹⁴ *A Series of Bicycle Accidents*, N.Y. DAILY TRIB., Apr. 30, 1896, at 16.

specifics.¹⁹⁵ Jersey City required bicyclists on its Boulevard to have a bell during the day and a lamp at night.¹⁹⁶ Jersey City cyclists embraced the bell requirement, seeking the largest bells they could find and ringing them enthusiastically, so much so that regulations were considered regarding the size of bells used.¹⁹⁷ Newark regulated riding speeds within city limits and required a light for riding after sunset, but made no mention of a bell.¹⁹⁸ Hoboken required riders to ring their bells before reaching a street corner, to the apparent distress of many Hoboken citizens.¹⁹⁹ In Mercer County, a bicycling organization itself endorsed an ordinance requiring a bell audible from thirty feet.²⁰⁰ By contrast, Elizabeth's bicycling community objected to an ordinance as discriminatory against bicyclists, which imposed a fine or ten days imprisonment for anyone riding at night without a lantern and bell.²⁰¹

Due to the variety of local ordinances, the State Legislature considered a bill regulating lamps and bells in its 1895 session.²⁰² Section II of P.L. 1896, clause 8 read: "To require all such bicycles, tricycles or similar vehicles to carry a suitable alarm bell, attached to the handle-bar of such machine, which when rung may be heard one hundred feet distant."²⁰³ Despite early attempts to regulate street traffic, bicyclists continued to compete with other users of the roadways.²⁰⁴ Newspapers of the time reported on frequent incidents involving bicyclists and pedestrians.²⁰⁵ Even with the new legislation, questions regarding the rights and responsibilities of bicyclists were increasingly resolved through the courts.²⁰⁶ Bicycling continued to thrive until the end of the

¹⁹⁵ *Tacks and Tires*, THE JERSEY CITY NEWS, Aug. 17, 1895, at 4.

¹⁹⁶ *County Road Rules*, THE JERSEY CITY NEWS, May 8, 1896, at 4.

¹⁹⁷ *Silly Meddling*, THE JERSEY CITY NEWS, Oct. 14, 1896, at 1.

¹⁹⁸ *Newark's New Cycle Ordinance*, N.Y. TIMES, Nov. 2, 1895, at 6.

¹⁹⁹ THE JERSEY CITY NEWS, July 27, 1896, at 1.

²⁰⁰ *Changes Suggested in the Bicycle Ordinance*, THE TRENTON TIMES, July 7, 1894, at 5.

²⁰¹ *City Notes*, THE TRENTON TIMES, July 3, 1895, at 5.

²⁰² *Turn of the Wheel*, THE JERSEY CITY NEWS, Aug. 30, 1894, at 3.

²⁰³ See P.L. 1896, c. 8 ("An Act to regulate the use of bicycles, tricycles and similar vehicles and to require uniformity of ordinances affecting the same."); see also N.J. STAT. ANN. § 39:4-11; P.L. 1896, c. 8, at 21.

²⁰⁴ Jay Young, *Infrastructure: Mass Transit in 19th- and 20th-Century Urban America*, OXFORD RESEARCH ENCYCLOPEDIA OF AM. HISTORY (Mar. 2015), americanhistory.oxfordre.com/view/10.1093/acrefore/9780199329175.001.0001/acrefore-9780199329175-e-28.

²⁰⁵ *A New Fiend*, THE JERSEY CITY NEWS, July 27, 1896, at 2; see also *Cyclists Must Have Bells*, PERTH AMBOY EVENING NEWS, May 11, 1907, at 1.

²⁰⁶ See *Gloucester & Salem Turnpike Co. v. Leppee*, 40 A. 681 (1898); *String v. Camden & Blackwoodtown Turnpike Co.*, 40 A. 774 (1898) (finding that bicyclists were not among the class of turnpike users required to pay tolls); see also *Sonn v.*

century.²⁰⁷ The mid 1800s through the early 1900s, however, saw tremendous development of new and varied transportation technologies.²⁰⁸ By the early 1900s, the bicycle craze slowed markedly with the advent of the automobile.²⁰⁹ As cars began to proliferate on New Jersey roads, the State Legislature saw the need for consistent ordinances throughout the state, rather than the patchwork that existed from one county to the next.²¹⁰ In 1915, the Legislature passed a supplement to the 1895 ordinances which revised the entire traffic code, and the bicycle bell ordinance was modified to require a bell audible at two hundred feet, instead of the original one hundred.²¹¹

The bicycle bell statute would remain unchanged until 1951, when the traffic code was again revised, to make it consistent with the laws of New York, Pennsylvania, and Connecticut.²¹² This revision reverted the audible distance requirement for a bell back to its original one hundred feet, requiring a bell or audible device capable of giving a signal audible at that distance, and prohibiting sirens and whistles.²¹³ The current text of N.J.S. 39:4-11 is unamended from the 1951 law.

The bicycle bell statute originated in response to concerns over traffic safety; however, it snared unsuspecting violators from the early days of its enactment, resulting in a warning on the first violation and a fine for subsequent offenses.²¹⁴ Current extrinsic sources suggest that what might first appear to be a quaint relic of an earlier time seems to have continuing viability. In April 2015, Trenton police stopped a man for riding a bicycle without an audible device, which led to his arrest for drug possession.²¹⁵ While neutral on its face, enforcement of the statute

Erie R. Co., 49 A. 458 (1901) (a railroad's duty to the public lawfully using the highway extended to bicyclists).

²⁰⁷ Joseph Stromberg, *Roads Were Not Built For Cars*, VOX (Mar. 19, 2015) (noting that overproduction and the resulting decrease in the price of a bicycle would make it affordable to more of the public, and ironically hasten its decline as the upper classes did not want to be seen engaging in a proletariat activity) (last visited Feb. 2, 2019) <https://www.vox.com/2015/3/19/8253035/roads-cyclists-cars-history>; see also FED. HIGHWAY ADMIN., *THE BICYCLE REVOLUTION* (2017), <https://www.fhwa.dot.gov/infrastructure/bicycle.cfm>. (last visited Feb. 2, 2019).

²⁰⁸ Young, *supra* note 204.

²⁰⁹ FEDERAL HIGHWAY ADMINISTRATION, *THE BICYCLE REVOLUTION*, *supra* note 207.

²¹⁰ *Traffic Rules Chaotic; Seek New Law Here*, THE TRENTON EVENING TIMES, Feb. 1, 1915, at 1.

²¹¹ P. L. 1915, c. 156, Part II, section 3 at 289.

²¹² *New Traffic Bill Orders Fines, Jail*, JERSEY J., Jan. 16, 1951, at 8.

²¹³ P.L. 1951, c. 23, s. 12 at 70.

²¹⁴ *Bicyclists Often Victims of Borough's Regulations*, THE DAILY PRINCETONIAN, Sept. 29, 1927, at 2.

²¹⁵ Penny Ray, *Trenton Man on Bike With No Bell Busted With Heroin*, THE

has raised concerns about racial profiling; one newspaper opinion piece likened the statute's enforcement to stop and frisk.²¹⁶ Police in Seaside Heights observed a cyclist behaving suspiciously in September 2018, and the cyclist's lack of a bell served as probable cause for a stop and an arrest.²¹⁷ A news website referred to the bicycle bell law in that case as a pretext for stopping the cyclist.²¹⁸ Opinions on the propriety of the more current use of the bicycle bell statute may differ, but news accounts suggest that this old statute continues to be used, although perhaps not for the purpose for which it was originally intended.

d. Seatbelts and Public Safety: N.J.S. 2C:40-18

N.J.S. 2C:40-18 makes it a criminal offense to “knowingly violate a law intended to protect the public health and safety or knowingly fail [] to perform a duty imposed by a law intended to protect the public health and safety.”²¹⁹ This statutory provision came to the attention of the New Jersey Law Revision Commission after the New Jersey Supreme Court decided *State v. Lenihan* in 2014.²²⁰ In *Lenihan*, the Court considered whether New Jersey's Mandatory Seat Belt Law was a “law intended to protect the public health and safety” and could therefore serve as a predicate offense triggering liability under N.J.S. 2C:40-18.²²¹ The defendant in *Lenihan*, an eighteen-year-old driver, veered off the road, hitting both a guardrail and a nearby road sign.²²² At the scene, police discovered two aerosol cans with their caps and nozzles missing, which suggested the defendant and her passenger used them to get high.²²³ The defendant's passenger later died at the hospital from injuries sustained in the crash.²²⁴

Prosecutors charged the defendant, under N.J.S. 2C:40-18a, with

TRENTONIAN (Apr. 2, 2015), https://www.trentonian.com/news/trenton-man-on-bike-with-no-bell-busted-with-heroin/article_e77550d9-eeff-51e0-883f-250ca8507f76.html.

²¹⁶ L.A. Parker, *Split Decision: Parker Says Trenton Police Should Call Audible on Bicycle Stops*, THE TRENTONIAN (Apr. 7, 2015), https://www.trentonian.com/opinion/split-decision-parker-says-trenton-police-should-call-audible-on/article_e569038c-128a-57b5-ba3a-26c06a5f410d.html.

²¹⁷ Matt Gray, *He Was Stopped by Cops for Not Having a Bell on His Bike. Then He Was Arrested*, NJ.COM (Sept. 17, 2018), https://www.nj.com/ocean/index.ssf/2018/09/watch_bicyclist_cited_for_no_bell_on_bike_in_seasi.html.

²¹⁸ Randy Bergman, *Riding a Bike Without a Bell's Illegal?*, ASBURY PARK PRESS (Sept. 18, 2018), <https://www.app.com/story/opinion/columnists/2018/09/18/riding-bike-without-bells-illegal-bergmann/1347211002/>.

²¹⁹ N.J. STAT. ANN. § 2C:40-18(b) (2019).

²²⁰ *State v. Lenihan*, 98 A.3d 533, 536 (2014).

²²¹ *Id.*

²²² *Id.*

²²³ *Id.*

²²⁴ *Id.*

second-degree violation of a law intended to protect public health and safety which recklessly caused the death of another.²²⁵ The defendant's violation of New Jersey's Seat Belt Law was identified as the predicate offense triggering application of the public health statute's application, since neither the defendant nor the passenger were wearing seatbelts at the time of the crash.²²⁶

Ultimately, the defendant contended that a violation of the Seat Belt Law could not be a predicate offense under N.J.S. 2C:40-18 because such conduct threatens only private individuals rather than the public at large.²²⁷ The defendant asserted that offenses which may serve as the basis for liability under this statute in question include violations of the fire and building codes, pollution controls, or "other laws whose violation risks harm to the community at large."²²⁸ The defendant also argued that the phrase "a law intended to protect public safety" was unconstitutionally vague because it provided no notice that violating the Seat Belt Law would subject an individual to criminal prosecution.²²⁹ She further alleged that:

the ambiguity of *N.J.S.A. 2C:40-18* "places in the prosecutor's arsenal an unconstitutional ability to overreach into the legislative domain and raise virtually any" regulatory or local ordinance violation "to the serious level of an indictable crime" . . . [and directed] . . . the Court's attention to a municipality's "leash law" requiring dog owners to restrain their pets. Defendant notes that such a law clearly protects public health and safety. Defendant suggests, therefore, that "an owner of a dog which runs across the street and bites the mailman could be criminally prosecuted" under *N.J.S.A. 2C:40-18*.²³⁰

The State claimed that the Seat Belt Law protected public safety, the definition of public safety should not be construed as narrowly as the defendant suggested, and the statute fairly apprised individuals of the conduct which subjects them to liability.²³¹

According to the Court, nothing in the text of N.J.S. 2C:40-18b suggested that the Legislature wanted to limit the phrase "law intended to

²²⁵ *Id.*

²²⁶ *Lenihan*, 98 A.3d at 536.

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ *Id.* at 538.

²³¹ *Id.* at 538 (noting that "that "[h]ad the Legislature intended to limit the statute's reach to those offenders risking widespread injury or damage, they could have easily made that statement" and pointing to N.J.S. 2C:2-1, amended in the same bill that created the statute in question, and containing similar language imposing liability on those who violate "any other law intended to protect the public safety.").

protect the public health and safety.”²³² The Court presumed the phrase carried “its ordinary and well-understood meaning” and agreed with the Attorney General of New Jersey, as amicus curiae, that if the Legislature wanted to restrict the statute to laws targeting offenses impacting the public at large, it would have explicitly stated so.²³³ The Court determined that one of the Seat Belt Law’s purposes was to require seat belts for every passenger vehicle traveling on New Jersey roads and highways.²³⁴ The Court also called attention to legislative statements accompanying the law, which noted that the bill sought to reduce injuries, fatalities, health care costs, and insurance rates.²³⁵ In light of these considerations, the Court held that the Seat Belt Law was incorporated into N.J.S. 2C:40-18 as “a law intended to protect public health and safety.”²³⁶ The Court rejected the argument that the statute was unconstitutionally vague on the basis that a person of common intelligence should understand that a knowing violation of the Seat Belt Law would trigger liability under N.J.S. 2C:40-18, as it is a “law intended to protect the public health and safety.”²³⁷

In 2015, the New Jersey Law Revision Commission began examining the statutes underlying this case.²³⁸ The Commission found limited guidance in the traditional legislative history about the scope of the Seat Belt statute.²³⁹ The sponsor’s statement accompanying the bill that later became N.J.S. 2C:40-18 simply reiterated the bill’s text and provided no information on what precipitated its introduction.²⁴⁰ Commission staff thus sought newspaper articles contemporaneous with the statute’s enactment.²⁴¹ A January 1995 *Star-Ledger* article discussed legislation introduced in response to a trampling incident at a night club in Elizabeth that claimed the lives of four teenagers.²⁴² The *Star-Ledger* later confirmed that the owner of the night club violated the Uniform Fire Safety Act and the Uniform Construction Code by having an insufficient

²³² *Lenihan*, 98 A.3d at 536.

²³³ *Id.* at 540 (quoting *State v. Bunch*, 853 A.2d 238, 243 (2004)).

²³⁴ *Id.*

²³⁵ *Id.* at 540.

²³⁶ *Id.* at 541.

²³⁷ *Id.* at 543.

²³⁸ Memorandum from Timothy J. Prol, Counsel, on Public Health and Safety (N.J. STAT. ANN. 2C:40-18) (September 11, 2017), [http://www.lawrev.state.nj.us/seatbelt%20use%20\(Lenihan\)/publicsafetyM091117.pdf](http://www.lawrev.state.nj.us/seatbelt%20use%20(Lenihan)/publicsafetyM091117.pdf) (last visited Feb. 2, 2019).

²³⁹ *Id.*

²⁴⁰ S. 187, 207th Leg., Reg. Sess. (N.J. 1997).

²⁴¹ Memorandum from Timothy J. Prol, *supra* note 238.

²⁴² Maryann Spoto, *Legislation Targets Dance Hall Building Code Violations, Lack of Insurance: Measures Spurred by Trampling Deaths in Elizabeth*, THE STAR-LEDGER, Jan. 18, 1995.

number of emergency exits and obstructing existing exits.²⁴³ Other articles published after the incident further illuminated the law's purpose.²⁴⁴ In addition, Senator Raymond J. Lesniak, sponsor of S187, which gave rise to N.J.S. 2C:40-18, wrote an editorial for the Asbury Park Press, discussing the incident at the nightclub and the bills that he introduced to prevent similar tragedies in the future.²⁴⁵

Legislative documents discussing S187 confirm that the bill was introduced in the 1994-1995 legislative session as two separate pieces of legislation.²⁴⁶ The first document proposed an amendment to the manslaughter statute (N.J.S. 2C:11-4) to include violations of the Uniform Fire Safety Code or the State Uniform Construction Code.²⁴⁷ The second document amended N.J.S. 2C:2-1b(2), the provision imposing criminal liability based on an omission, to include duties imposed in "laws such as" the Uniform Fire Safety Act and the State Uniform Construction Code Act.²⁴⁸ The Legislature eventually combined the two bills, removing the proposed amendment to the manslaughter statute.²⁴⁹ In its place, the law created a new offense under what eventually became N.J.S. 2C:40-18.²⁵⁰ The Legislature removed specific language referring to the Uniform Fire Safety Act and the State Uniform Construction Code Act, and the law instead imposed criminal liability on those who "knowingly violate[] a law intended to protect the public health and safety or knowingly fail[] to perform a duty imposed by a law intended to protect the public health and safety."²⁵¹ Although there was no reference to either the building or fire codes in S187, these references remained in the part of the bill amending N.J.S. 2C:2-1.²⁵²

A review of the legislative history and contemporaneous newspaper articles suggests that the Legislature did not contemplate that N.J.S.

²⁴³ Robert E. Misseck, *Elizabeth Club Owner Cited for Manslaughter in Trample-Deaths*, THE STAR-LEDGER, Mar. 3, 1995.

²⁴⁴ Spoto, *supra* note 242; *Bill Targets Unsafe Clubs*, TRENTON TIMES, Nov. 8, 1996; *Panel Advances Bill on Safety-Code Violations*, THE HOME NEWS & TRIB., Nov. 8 1996; *Bill Would Impose Jail if Club Patrons are Hurt*, THE BERGEN REC., Apr. 22, 1997; *Safer Clubs Law Enacted*, THE TRENTONIAN, Apr. 22, 1997; Sandy Lovell, *Manslaughter Bill Aims at Dance Club Owners*, THE STAR-LEDGER, Apr. 23, 1997.

²⁴⁵ Senator Raymond J. Lesniak, *Overcoming Greedy Indifference*, ASBURY PARK PRESS, Feb. 21, 1995.

²⁴⁶ S. 1730, 206th Leg., Reg. Sess. (N.J. 1995).

²⁴⁷ *Id.*

²⁴⁸ N.J. STAT. ANN. § 2C:11-4 (2019).

²⁴⁹ S. 187, 207th Leg., Reg. Sess. (N.J. 1997).

²⁵⁰ *Id.*

²⁵¹ *Id.*

²⁵² See N.J. STAT. ANN. § 2C:2-1 (2019); N.J. STAT. ANN. § 2C:40-18 (2019).

2C:40-18 would be applied to violations of the Seat Belt Law, speeding, driving with a non-functioning taillight, or failing to shovel a front walkway in a timely manner. It is not clear whether the pre-enactment newspaper articles would have impacted the Court's decision in *Lenihan*, but those articles raise questions about whether the recent application of the law exceeds the scope of the law that the Legislature envisioned, and whether that body may wish to revisit the law's provisions in response.

IV. CONCLUSION

Pre-introduction newspaper articles have an inherent trustworthiness since pre-legislation publication may remove the incentive or opportunity to mischaracterize original intent. They provide a deeper understanding of a statute's language and the circumstances leading to the introduction of a bill. The fact that they are contemporaneous with the underlying events preceding a bill's introduction may decrease the likelihood that subsequent accounts obscure the original motivations for a statute. Additionally, since recollections of legislators and stakeholders may diminish over time, articles written before enactment provide the best chance for an accurate reconstruction of the environment in which a bill was introduced. Finally, their consideration may serve the interests of justice by allowing us to discern the true nature of our laws and ensure those laws are producing their intended results.