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I. INTRODUCTION

When, as often happens, settlement of a legal dispute depends upon the interpretation of vague language in public law, courts often delve into legislative history to discover what the legislative body had in its collective mind as it formulated and approved the language. However, the courts normally have available only the official written records of the deliberative body, perhaps buttressed by written critiques from various interested parties. But the *real* history is rarely ever written and what the collective legislative intent was is seldom reflected in the subcommittee, full committee, legislative body, and conference reports which comprise the standard legislative history. In fact, as one jurist has noted, "[i]n most cases, '[l]egislative history . . . is more vague than the statute [the courts] are called upon to interpret.' "[1]

The general inadequacy of legislative history as a tool for interpreting statutory law can be demonstrated by comparing the forces and intentions behind the Job Training Partnership Act of 1982 (JTPA)[2] as perceived by a participant/observor with what one would glean from a study of the official House and Senate documents. This Article describes the historical context

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1. United Steelworkers of Am. v. Weber, 443 U.S. 193, 229-30 (1979) (Rehnquist, J., dissenting) (quoting United States v. Public Utils. Comm'n, 345 U.S. 295, 320 (1953) (Jackson, J., concurring)).

2. Pub. L. No. 97-300, 96 Stat. 1322 (1982).

and political milieu into which JTPA emerged, follows JTPA step by step through the events which led to its passage, identifies the deciding partners and their positions, and contrasts the realities of the forces and events behind the enactment of JTPA to the sketchy record available to a court as legislative history.

II. Historical Context of JTPA

A. *Genealogy of Employment and Training Programs*

To understand the congressional thinking behind the passage of JTPA, it is necessary to understand a few facts of its genealogy. Training to improve the employability of competitively disadvantaged individuals began with the Manpower Development and Training Act of 1962 (MDTA).[3] That act, which prevailed from March 1962 to December 1973, was generally popular and moderately successful.[4] It was introduced to provide retraining to experienced workers displaced by technological and other labor market changes but was soon drafted into Lyndon Johnson's "War on Poverty" where the emphasis was shifted to providing job skills for those who were simultaneously poor and unable to obtain satisfactory employment because of their age, race, education, or handicap.[5] This shift in emphasis provided MDTA with a more difficult clientele to serve. Nonetheless, the program proved its ability to elevate the average enrolee from low in the ranks of the poor to the upper edges of poverty.[6]

For the first decade of MDTA's life, every amendment or extension was supported by an overwhelming majority of both houses of Congress.[7] Toward the end of that first decade, however, concern arose that the "Made in Washington" prescriptions for MDTA training did not necessarily fit differences among labor market areas and target groups.[8] Therefore, late in 1973 Congress replaced MDTA with the Comprehensive Employment and Training Act (CETA)[9] The watchwords of CETA were decentralization and decategorization. Broadly representative local committees acting under the direction of a governor,

3. Pub. L. No. 87-415, 76 Stat. 23 (1962) (repealed 1973).

4. G. Mangum & J. Walsh, A Decade of Manpower Development and Training 17-48 (1973).

5. *See* S. Levitan, The Great Society's Poor Law (1966).

6. G. Mangum & J. Walsh, *supra* note 4, at 34-35.

7. *Id.* at 5-14.

8. G. Mangum, The Emergence of Manpower Policy 86-93 (1969).

9. Pub. L. No. 93-203, 87 Stat. 839 (1973) (repealed 1982).

mayor, or county official were created and assigned the task of developing plans for the delivery of employment and training services tailored to the realities of the local labor markets and the particular target groups facing competitive disadvantage in that community.

That system might have worked well had not the beginning of the, until then, deepest postwar recession been simultaneous with the Act's passage. MDTA had been blessed with a rising economic trend throughout its history. Now new planning bodies were being assembled to cope with immediate crises. To the training functions which CETA had inherited from MDTA, Congress added a discretionary public service employment program which could trigger in a state as its unemployment reached and stayed at levels previously considered excessive.[10] But those triggers commenced firing almost immediately in every state. In response, during the early days of the Carter administration, Congress added another mandatory public service employment title[11] and increased the number of enrollees by 250 percent within nine months.[12] Any enterprising investigative reporter anxious to become another Woodward or Bernstein could find a public official somewhere who had put an unemployed relative on the CETA payroll or had laid off public employees only to rehire them under CETA auspices, thus relieving local budget pressures.[13]

All of this occurred in a milieu increasingly hostile to social welfare programs. Employment and training programs seemed part and parcel of the welfare, equal employment opportunity, women's rights, gay rights, and other social crusades which were generating political backlash.[14] Factually, CETA could be shown to have essentially the same results as MDTA.[15] Every dollar spent on classroom training was returning $1.14 in increased in-

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10. 29 U.S.C. §§ 841-851 (1976) (repealed 1982).

11. *Id.* §§ 961-969.

12. G. MANGUM, J. MORLOCK, M. PINES & D. SNEDEKER, JOB MARKET FUTURITY: PLANNING AND MANAGING LOCAL MANPOWER PROGRAMS 47 (1979).

13. *See, e.g.*, R.K. Bennett, *CETA, the $11 Billion Boondoggle*, READER'S DIGEST, Aug. 1978, at 72.

14. Mangum, *Twenty Years of Employment and Training Programs: Whatever Happened to the Consensus?*, 32 LAB. L.J. 508 (1981).

15. Taggart, *A Review of CETA Training*, in THE T IN CETA 93, 111-13 (1981) [hereinafter cited as Taggart, *A Review*]; R. TAGGART, A FISHERMAN'S GUIDE: AN ASSESSMENT OF TRAINING AND REMEDIATION STRATEGIES 76-95 (1981) [hereinafter cited as R. TAGGART, A FISHERMAN'S GUIDE].

comes for poor recipients.[16] Those fortunate enough to enroll in on-the-job training were gaining $2.18 for every dollar of public investment.[17] The Job Corps, which was funded under the Act, was returning $1.39 on the dollar invested in terms of increases in enrollee earnings and reduction in their propensity to commit crime.[18] Even public service employment was accomplishing transition to permanent jobs, mostly with public agencies.[19] However, these facts were not politically visible and CETA was proving unable to do much for central city minority youth (except for those who went into Job Corps) and welfare mothers—two groups which were becoming increasingly visible as the impact of the low birth rates of the 1960s caused a decline in the number of white teenagers, while divorce, desertion, and illegitimacy multiplied the numbers of female-headed families.[20]

All of these factors played a role in the 1980 elections, and CETA, which had been modified and extended in 1978, had the misfortune to expire on September 30, 1982.

B. The Political Milieu of JTPA

By 1981, the consensus which had protected employment and training programs had dissipated. At the same time, the fate of the programs was suddenly thrust into inexperienced hands in both the legislative and executive branches of the federal government.

With the Senate in Republican hands for the first time in nearly 30 years, chairmanship of the Senate Committee on Labor and Human Resources was thrust upon the junior senator from Utah, Orrin Hatch, who had only four years of political experience, all as a minority opposition senator. Most of the subcommittees of the Labor and Human Resources Committee were placed in the hands of novices elected to the Senate for the first time in November 1980. Several key Democratic senators experienced with those programs went down to defeat or retirement, and those who remained were totally unfamiliar with their new minority role. The House of Representatives remained in Democratic hands and the leadership of the Education and Labor

16. Taggart, *A Review*, *supra* note 15, at 111.
17. *Id.*
18. *Id.* at 111-12.
19. R. TAGGART, A FISHERMAN'S GUIDE, *supra* note 15, at 57.
20. S. LEVITAN, G. MANGUM & R. MARSHALL, HUMAN RESOURCES AND LABOR MARKETS 275-301 (1981).

Committee was largely undisturbed. However, they were constrained by the need for conference agreement with the Senate and were conscious of a veto-wielding president in the background.

In the executive branch, past practice had been continuity at the technical and programatic level regardless of the party in control of the White House. In the past Cabinet members, although required to sport the appropriate party colors, were generally experts in the fields in which their departments did business, had lifelong professional relationships with their predecessors and successors, and had commitments to their constituent groups. Each department was served by a corps of civil servants and consultants who were essentially political enunchs whose loyalty was to the professional field rather than to the party or administration.

The Reagan administration broke tradition. If one is dedicated to slashing social programs, one does not want to assign that task to demonstrated friends of the designated targets. The new Secretary of Labor was a construction industry executive who had served as the state chairman of the President's campaign committee. He brought to the chair of Assistant Secretary for Employment and Training a young banker with no previous exposure to any social or labor market policy or program. Civil servants were downgraded and replaced in their roles; consultants were ignored or discouraged by cutoff from access to research, demonstration, and evaulation funds. The public service employment funds for CETA were eliminated by administrative action and drastic reductions in training funds were recommended in the President's budget.[21]

The stage was set for the expiration of CETA.

III. The Politics of Passage of JTPA

What, if anything, should replace CETA was the subject of an even greater than usual diversity of opinion. There were sharp divisions between the Republican-dominated Senate and the Democrat-controlled House; between party members within each branch of the Congress; among conservatives, moderates, and liberals in each party; and between all of them and the administration. Looking on and kibitzing were a variety of interest

21. Office of Management & Budget, Budget of the United States Government, Fiscal Year 1983, at 5-109.

groups. The resulting legislation is the result of iterative compromises among them all.

A. The Senate's Role

In the new administration and the Senate there was a commitment to reduce drastically or eliminate social programs, but there was no one in authority familiar with those programs. The House commitment was to protect the status quo. Senator Dan Quayle, the youthful conservative who had successfully unseated liberal Senator Birch Bayh of Indiana, became chairman of the Employment and Productivity Subcommittee of the Committee on Labor and Human Resources. He was a neophyte, but an activist one, and soon became interested in carrying forward the legislative process. He hired for his subcommittee director a politically-neutral legislative draftsman with twenty-five years experience in the Department of Labor and Library of Congress. Then recognizing the looming expiration of CETA as priority subcommittee business, Quayle began pressuring the administration to propose a replacement.

The administration was immersed in its efforts to simultaneously reduce or phase out unfamiliar social programs, sell history's largest tax cut, win new moneys for defense, and balance the budget. The political appointees in the Labor Department were unfamiliar with CETA and distrusted those within the permanent bureaucracy who knew the Act and its history. Outside consultants and academics familiar with the Act were considered advocates. Thus 1981 passed with no administration decisions or initiatives.

Late in the year, Senator Quayle resolved to move ahead with his own bill. With no assistance forthcoming from the administration, he turned inward to the subcommittee's ranking minority member and veteran of nearly twenty years, Senator Edward Kennedy. The Quayle staff and Kennedy staff together touched all of the appropriate bases among constituent groups, gathered suggestions, and produced the Quayle-Kennedy Training for Jobs Act.[22] The bill contained much of the vague langauge one would expect in the product of a compromise between a conservative Republican and a liberal Democrat. Substantively, Kennedy was for and Quayle against public service employment. Therefore, the bill encompassed training only and

22. S. 2036, 97th Cong., 2d Sess., 128 CONG. REC. S247-55 (daily ed. Feb. 2, 1982).

Senator Kennedy submitted his own employment bill.

The rule of the day in the Senate was diversity of opinion. Major areas of conflict concerning the appropriate provisions for the new employment and training act included: the amount of money to be appropriated, the number of prime sponsors to be created, the appropriate extent of private sector involvement, the groups to be targeted for service, the appropriateness of training stipends, and the preferred distribution formulas.

1. Money issues

CETA had peaked with expenditures of over $12 billion a year during the Carter administration, but that included public service employment. The House Democrats were advocating $5 billion or more for their CETA replacement while the administration wanted to keep the figure below $2 billion. Quayle and Kennedy compromised on $3.8 billion.[23]

2. The number of prime sponsors

Besides budget issues, there were contradictory positions on cures for some of the perceived shortcomings of CETA. Under CETA, any unit of local government with at least 100,000 population had been given the option to run its own federally funded employment and training program, independent of state government.[24] Services for the balance of the state, not included in the population centers, were a gubernatorial responsibility. As a result, the governors complained that the mayors and county officials served the people while the governors served the jackrabbits.[25] However, the combination resulted in direct grant relationships between some 480 "prime sponsors" and the U.S. Department of Labor, which proved incapable of handling that extensive span of control. The Republicans wanted to reduce the number of entities reporting directly to the Labor Department by substituting a federal-to-state-to-local government hierarchy with the governor authorized, but not required, to divide the state into service delivery areas.[26] The Democrats were under pressure from the League of Cities, Conference of Mayors, and

23. *Id.* § 301(a), 128 CONG. REC. S251 (daily ed. Feb. 2, 1982).

24. 29 U.S.C. § 812(a)(2) (1976) (repealed 1982).

25. G. MANGUM, J. MORLOCK, M. PINES & D. SNEDEKER, *supra* note 12, at 56.

26. *See* S. 2184, 97th Cong., 2d Sess. § 102, 128 CONG. REC. S1810 (daily ed. Mar. 9, 1982).

National Association of Counties to maintain the independence of those with 100,000 population. The Quayle-Kennedy compromise required the federal government to deal directly with the governors, who were in turn required to delegate independent service delivery status to local governments of 250,000 or more population.[27]

3. Private sector involvement

Because the overuse of public service employment and growing taxpayer revolts tainted the government's image, it had become conventional wisdom in the late 1970s that private employers owned most of the jobs, knew their labor markets best, and should be major decisionmakers in employment and training programs.[28] Congress in the 1978 CETA amendments added Title VII which established local "private industry councils" and allotted them a relatively small amount of money to run their own semi-independent programs.[29] The generally poor marks given these efforts by evaluators through 1980 were not visible enough to dispel the aura cast over the private business sector in the election of that year and its aftermath.[30] The Republicans advocated turning the entire employment and training responsibility over to private employers. The Democrats were willing to compromise at some form of equal partnership between local elected officials and private business.

4. Whom to serve?

The Carter administration emphasized youth as a target group, as evidenced by its Youth Employment Demonstration Projects Act of 1977, despite the fact that the number of teenagers was just beginning to decline.[31] The Carter administration's major effort in that area, a proposed permanent and large-scale

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27. S. 2036, 97th Cong., 2d Sess. § 102(b)(5), 128 CONG. REC. S248 (daily ed. Feb. 2, 1982).

28. U.S. DEP'T. OF LABOR, EMPLOYMENT AND TRAINING ADMINISTRATION, INVOLVING PRIVATE EMPLOYERS IN CETA PROGRAMS (1979); NATIONAL COMMISSION FOR MANPOWER POLICY, INCREASING JOB OPPORTUNITIES IN THE PRIVATE SECTOR (1978).

29. 29 U.S.C. §§ 981-996 (Supp. III 1979) (repealed 1982).

30. *See generally* U.J. SMITH, PRIVATE SECTOR INITIATIVE PROGRAM (1981); RIPLEY, A FORMATIVE EVALUATION OF THE PRIVATE SECTOR INITIATIVES PROGRAM (1980).

31. A.V. ADAMS, G. MANGUM, W. STEVENSON, S. SENINGER, & S. MANGUM, THE LINGERING CRISIS OF YOUTH UNEMPLOYMENT (1978).

youth program,[32] narrowly missed passage as Congress closed its doors in 1980. However, a bipartisan consensus still existed in 1980 and 1981 that youth unemployment should be a primary target of any new legislation and that the new act, like the old, should be primarily concerned with the employment needs of the poor.[33]

5. *The stipend issue*

Quayle and Kennedy agreed that emphasis should be given to training, but job creation programs were not forbidden in their bill. Stipends, which were paid at the level of the federal minimum wage for all hours spent in training or employment programs, had comprised over one-half of all of the program costs under CETA.[34] Even friendly observors of CETA had alleged that these training stipends had a disincentive effect because many youth would receive more compensation for training than they could earn in employment, thus encouraging them to enroll for the wrong reasons.[35] The Republicans wanted to minimize stipends, but the Democrats were under pressure from the labor movement for sanctity of the minimum wage and from antipoverty groups for income maintenance. The Quayle-Kennedy compromise was to pay costs of program participation and an incentive award upon completion rather than a fixed stipend or allowance.[36]

6. *Distribution formulas*

Quayle and Kennedy and practically all of the committee except its Chairman were from large industrial states. Therefore the formulas in Quayle-Kennedy for distribution of funds favored such states over the small and rural ones. And, even

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32. Youth Act of 1980, H.R. 6711, 96th Cong., 2d Sess., *Youth Employment Act of 1979: Hearings on H.R. 4465, 4534, 5876, 6208, & 6711 Before the Subcomm. on Employment Opportunities of the House Comm. on Educ. & Labor*, 96th Cong., 2d Sess., pt. 4, at 71-163 (1980).

33. R. TAGGART, YOUTH EMPLOYMENT POLICIES AND PROGRAMS FOR THE 1980S—BACKGROUND ANALYSIS FOR THE EMPLOYMENT AND TRAINING COMPONENTS OF THE YOUTH ACT OF 1980, at 1 (1980).

34. *See* Levitan & Mangum, *Summary of Findings and Recommendations*, in THE T IN CETA 1, 35-36 (1981).

35. THE NATIONAL COUNCIL ON EMPLOYMENT POLICY, CETA: RESULTS AND REDESIGNS 185 (G. Mangum ed. 1981).

36. S. 2036, 97th Cong., 2d Sess. § 105(a)(5), 128 CONG. REC. S249 (daily ed. Feb. 2, 1982).

though the Committee Chairman was from a small state, the final Senate bill also favored large industrial states. The pre-JTPA formula had a major performance component. Utah, though a small population state, was consistently number one in the Labor Department's ranking of state employment services. Therefore, Senator Hatch's state was profiting handsomely from the performance provision. Nevertheless, that was deleted from the bill and replaced with a straight population base,[37] drastically restricting the funding available to the Utah Department of Employment Security. There was also a clear bias against the public employment service and a desire to make it subservient to the private industry councils and local officials in the service delivery areas, even though the Chairman-elect of the Interstate Conference of Employment Security Agencies was from Committee Chairman Hatch's home state.[38]

B. The Administration's Role

The Quayle-Kennedy bill was anathema to the Reagan administration. Though Quayle had warned that if no administration proposals were forthcoming he would move unilaterally, apparently no one had expected a joint effort with the archenemy. This seemed like desertion and apostacy on the part of a supposedly loyal Reagan conservative. However, the Quayle-Kennedy bill did spark a response in the form of a draft administration bill which would have:

> 1. Limited independent service delivery area status to local governments of 500,000 or more population.
> 2. Limited services to disadvantaged youth and welfare recipients.
> 3. Placed an absolute prohibition on any type of public employment, including on-the-job training by public employers.
> 4. Prohibited any form of stipend or allowance (the Assistant Secretary of Labor being of the delusion that all poor people received AFDC payments, even though less than one-half of the poor receive any form of public assistance).
> 5. Limited administrative costs to fifteen percent and costs of supportive services to make training participation possible (e.g., day care for dependent children) to another fifteen percent.

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37. *Id.* § 6(a), 128 CONG. REC. S254 (daily ed. Feb. 2, 1982).
38. *Id.* § 7, 128 CONG. REC. S254 (daily ed. Feb. 2, 1982).

Administration officials were adamant that they could not support the Quayle-Kennedy bill, with the Assistant Secretary for Employment and Training serving as point man of the opposition. As a courtesy, Senators Hatch and Quayle introduced the administration's proposals as S. 2184.[39] The Senators and top White House and Labor Department officials met without staff present to agree upon compromises between S. 2036 and S. 2184; all believed they had accomplished that objective. However, the compromise fell apart a few days later when it became apparent that each interpreted the agreement differently. The legislative and executive participants each felt double-crossed by the other, and the issues were irresolvable because nothing had been written down. Hence the Subcommittee on Employment and Productivity went ahead on S. 2036 as its mark-up bill fully aware of the administration's opposition.

The Secretary and Assistant Secretary of Labor opposed the mark-up bill vigorously. Though they had a number of objections, they focused on the following issues, all of which they considered to be violated in the mark-up proposal:[40]

—There must be no wages, stipends, allowances, or income support of any kind under any name or subterfuge.
—The total of all administrative and supportive costs must not exceed 25 percent of the expenditures so that 75 percent could be spent on actual training.
—The program must be funded through a "block grant" to the states with the governor clearly in charge.
—The automatic designation as a service delivery area must be limited to jurisdictions of no less than 400,000 population.
—No public employment of any kind must be allowed, including on-the-job training with public employers.
—The final funding authorization must not exceed $2.4 billion.

C. Resolution of the Senate/Administration Conflicts

Senator Hatch attempted to mediate between his committee members and the administration but was in a difficult position. His political career had been successfully launched in 1976 when he was endorsed for the Republican nomination in Utah by Ronald Reagan in preference to better known alternative candidates.

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39. S. 2184, 97th Cong., 2d Sess., 128 CONG. REC. S1809-15 (daily ed. Mar. 9, 1982).

40. Letter from Assistant Secretary of Labor Albert Angrisani to Senator Orrin G. Hatch (April 22, 1982); Letter from Secretary of Labor Raymond J. Donovan to Senators Orrin G. Hatch and Dan Quayle (April 20, 1982).

His ties to the administration involved both loyalty and philosophy. On the other hand, there were among the Republican majority on his committee two liberal members who were more closely tied, both philosophically and geographically, to Senator Kennedy than to their Republican colleagues. In addition, Senator Quayle felt bound by his agreements with Senator Kennedy on S. 2036 and was becoming increasingly alienated by the administration's adamancy. In fact, the bill as passed by the subcommittee chaired by Senator Quayle was less, not more, acceptable to the administration than the original Quayle-Kennedy Bill.

The subcommittee bill avoided the budget issue by authorizing "such sums" as should be required to carry out the Act.[41] However, while that compromise was being pursued, the Senate Budget Committee, upon which several of the Labor and Human Resource Committee members sat, had endorsed $3.8 billion as the preferred figure for the new program. The subcommittee attempted to finesse the service delivery area size by requiring the governor to designate as a service delivery area any local jurisdiction with 500,000 population so requesting *or* any area of 250,000 population wherein the local elected officials and the local business community jointly requested.[42] The term "supportive services" was defined to include "necessary cash assistance payments to individuals to enable them to participate in training."[43] A ceiling of 30 percent was set for the combination of supportive services and administrative costs, though states could allow for variations at the local service delivery area level as long as absorbed within the state's total allotment. Public service employment was expressly forbidden[44] but public sector on-the-job training was allowed. But most abhorrent of all to the administration was an agreement among the subcommittee members to add later at the full committee level a new separate title authorizing continuation of the summer youth program which had always consisted almost totally of work experience in public agencies.[45]

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41. STAFF OF SENATE COMM. ON LABOR & HUMAN RESOURCES, 97TH CONG., 2D SESS., S. 2036 AS REPORTED BY THE SUBCOMM. ON EMPLOYMENT AND PRODUCTIVITY § 301(a) (Comm. Print 1982).

42. *Id.* § 102(a)(5).

43. *Id.* § 3(14).

44. *Id.* § 105(b).

45. S. 2036, 97th Cong., 2d Sess. (1982).

At the full committee level a few weeks later Senator Hatch was at least in control of the proceedings. However, he had also lobbied at "the highest levels in the Administration" and warned that continued adamancy from the Labor Department would drive a decisive number of his Republican colleagues into voting with the Democrats, reporting out an even more distasteful bill. Senator Hatch was successful in receiving the administration's commitment that they would endorse the bill if:

1. It specified that at least 70 percent of the funds had to be spent on training.
2. Specific language was included prohibiting any use of funds for "wages, allowances or stipends."
3. The ratio between on-the-job training slots with public agencies and with private employers did not exceed the ratio between public and private employment in the service delivery area.

The Administration simply ignored the Summer Youth Title. With that compromise in place, the bill passed the Committee unanimously and the Senate with only two opposing votes.[46]

D. The House of Representatives

The process in the House was much less divisive but no less complex. While the Senate was handicapped by the fact that most of the key actors—principals, staff, and administration kibitzers—were unfamiliar with previous experience, most on the House side were old hands with close ties to program operators and evaluators.

Two positions emerged among the House members which might be characterized as the political and the substantive. The political position, dominated by Congressman Augustus Hawkins, Chairman of the Subcommittee on Employment Opportunities, was essentially to extend CETA with as little change in size or shape as possible. The existing prime sponsors would be preserved at the 100,000 population level. The governors' responsibility would continue to be limited to the balance of the state not in such population centers. A private industry council would be required, separate from but parallel to the prime sponsorship. The council would have only a joint approval role vis-a-vis plans for service in the years ahead. All of the previous

46. S. REP. No. 469, 97th Cong., 2d Sess., *reprinted in* 1982 U.S. CODE CONG. & AD. NEWS 2636-704; 128 CONG. REC. S7853-65 (daily ed. July 1, 1982).

CETA services including public service employment and work experience would be continued and temporary wage subsidy payments to employers of disadvantaged youth would be added. Training allowances were to remain at the federal minimum wage level. Administrative costs were limited to fifteen percent. The bill's title was the Community Partnership for Employment and Training—its price tag $5 billion.[47]

Republican Congressman James Jeffords from Vermont followed a very different tack with his Productivity and Human Investment Act.[48] The Jeffords Bill, in essence, was largely a reintroduction, under a different name, of the Youth Act which narrowly missed passage in 1980.[49] That proposal, authored by Robert Taggart, the former director of the Labor Department's Office of Youth Programs, reflected careful consideration of all of the known results from fifteen years of youth employment programs.[50] Because longer term training programs had proven more cost effective than shorter ones, strong incentives were provided in that direction.[51] Because occupational training had not worked well for most youth, it was to be available only to those who proved themselves in the preemployment program.[52] Because work experience, other than a few carefully structured versions, had proven generally ineffective, the proven versions were mandated.[53] Because on-the-job training had the highest ratio of benefits to cost and past experience suggested that private employers would resist accepting youth, strengthened incentives were provided.[54]

The essential difference between the Jeffords bill and all of the others was its prescriptiveness.[55] Each of the others provided

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47. H.R. 5320, 97th Cong., 2d Sess. (1982).

48. H.R. 5461, 97th Cong., 2d Sess. (1982).

49. The 1980 Youth Act might well have passed in the final hours of the 96th Congress had its proponents been willing to make some substantial, but not unreasonable, compromises with the minority Republicans. Instead, the decision was to "hang tough" for passage in January 1981, not realizing that the political world would turn upside down on election day.

50. R. TAGGART, *supra* note 34.

51. R. Taggart, Labor Force Investment Act 17-21 (undated and unpublished manuscript) (available from author).

52. *Id.* at 15-18.

53. *Id.* at 15-17.

54. *Id.* at 21-22.

55. Congressional Research Service, The Library of Congress, Side-By-Side Comparison of Proposed Employment and Training Legislation 10 (Mar. 12, 1982) (unpublished manuscript) (available from Congressional Research Service).

a "laundry list" of potential services but left to the state and local decisionmakers the choices of who among the eligible to serve, what services to provide, and which institutions to use to deliver the services. The Jeffords Bill mandated (1) a Preemployment Skills Training Program for fourteen to sixteen year-olds from low income families falling below established levels of academic achievement and thus likely to enter the labor market directly upon or before high school completion; (2) an Education for Employment program for all out-of-school persons below the age of twenty without a high school diploma or with educational deficiencies despite the diploma; and (3) an Entry Employment Experience Program for sixteen to nineteen year-old graduates of the preemployment component.[56] Each of the three programs had quite specific offerings. Economically disadvantaged adults were eligible for unspecified services. Incentives were provided for longer term training programs and for on-the-job training.[57] Multiple tiers in the training sequence allowed the successful trainees in the entry programs to continue on to more advanced programs.[58] Work experience was carefully structured.[59]

The population threshold for independent program status was 200,000. Each local service delivery area was to have a Labor Market Investment Board of industry, labor, and government, and each state was to create a State Labor Force Investment Board to formulate the prescribed plans. There were to be three types of allowances: (1) a subsistence allowance, consisting of the difference between the family's income and seventy percent of the Lower Living Standard Budget estimated by the Bureau of Labor Statistics; (2) a participation cost allowance to cover the out-of-pocket costs of participation; and (3) an incentive allowance to reward successful completion. The price tag was to start at $3.6 billion for the first year and rise to $4.4 billion. The funds were carefully earmarked for each of the designated activities. Administrative costs were limited to ten percent.[60]

The House approach to resolving the differences between the two proposals was to incorporate into the Hawkins Bill the Jeffords three-step youth program on an authorized but not mandated basis and to adopt the first two of the Jeffords allow-

56. *Id.* at 10-11, 23.
57. *Id.* at 10-11.
58. *Id.* at 11.
59. *Id.* at 13.
60. *Id.* at 1.

ance provisions. Most of the rest of the Jeffords provisions were dropped.[61]

E. The Conference

The modified House Community Partnership for Employment and Training Act and the Senate Training for Jobs Act met in House/Senate conference late in the final session of the 97th Congress on the eve of CETA's expiration. Over the protests of the Labor Department leadership, Senator Hatch had persuaded the White House to accept the Senate-passed bill. It was assumed by most participants that extensive departure from the Senate version would result in a veto. The House conferees could work on minor modifications of the Senate version and get a bill, or hang tough and get an election issue. They chose to compromise extensively but had more impact on the final product than might have been expected.

The Job Training Partnership Act which emerged from conference avoided budget confrontation by leaving the funding level unspecified—to be filled in by budget and appropriations committees.[62] The effective date of the new act was set at October 1, 1983, with the CETA structure in place until then.[63] The population threshold for automatic autonomy was set at 200,000.[64] Chief elected officials could appoint members of the Private Industry Councils which became autonomous and self-perpetuating once appointed.[65] However, joint agreement between the Private Industry Council and the local chief elected officials was necessary for submission of local job training plans.[66] The private industry councils were to report to the governor who in turn would report to the Labor Department,[67] in contrast to the direct prime sponsor-Labor Department relationship of CETA and the House bill. The Act limited administrative costs to fifteen percent, but costs of program support, curriculum development, or any cost attributable to training

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61. STAFF OF HOUSE COMM. ON EDUC. & LABOR, 97TH CONG., 2D SESS., AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 5320 ADOPTED BY THE SUBCOMMITTEE ON EMPLOYMENT OPPORTUNITY (Comm. Print 1982).

62. Job Training Partnership Act of 1982, Pub. L. No. 97-300, § 3, 96 Stat. 1322, 1324 (1982) (to be codified at 29 U.S.C. § 1502).

63. *Id.* § 181, 96 Stat. 1322, 1354-57 (1982) (to be codified at 29 U.S.C. § 1591).

64. *Id.* § 101(a)(4), 96 Stat. 1322, 1328 (1982) (to be codified at 29 U.S.C. § 1511).

65. *Id.* § 102, 96 Stat. 1322, 1328-30 (1982) (to be codified at 29 U.S.C. § 1512).

66. *Id.* § 103(d), 96 Stat. 1322, 1330-31 (1982) (to be codified at 29 U.S.C. § 1513).

67. *Id.* § 105, 96 Stat. 1322, 1332-33 (1982) (to be codified at 29 U.S.C. § 1515).

functions were not counted as administrative. The total of administrative costs and supportive services was fixed at thirty percent.[68] The Senate prohibition on allowances and stipends was removed. Meals and temporary shelter were included within the definition of supportive services and "needs-based payments necessary to participation in accordance with a locally developed formula or procedure" were among the allowable costs. However, these "needs-based payments," as supportive services, must be constrained within the thirty percent allocated to nontraining costs.[69] The generous, income gap filling House allowance approach was also dropped, leaving the Act essentially silent as to authorization of such support.

The final product of the conference differed in many significant ways from CETA. The Jeffords three-stage youth program was included on a permissive basis.[70] Work experience was authorized with some restrictions.[71] The compromise ratio restricting public sector on-the-job training in relation to that in the private sector was included.[72] Youth were to constitute forty percent of the total enrollees and AFDC recipients were to be served on an equitable basis in relation to their proportions within the population.[73] A "hold-harmless" clause phased in the new distribution formulas over a five-year period, but ultimately the more rural states would suffer in relation to the more industrial ones as funds were distributed by population and labor force with no performance component.[74]

F. The Signing of JTPA

The Labor Department leadership urged the President to veto the bill because of extensive departures from principles that they considered nonnegotiable, especially the smaller populations for service delivery area designation, the absence of a specific prohibition against allowances, and the authorization, even though restricted, of work experience. JTPA reached the

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68. *Id.* § 108, 96 Stat. 1322, 1336-37 (1982) (to be codified at 29 U.S.C. § 1518).

69. *Id.*

70. *Id.* § 205, 96 Stat. 1322, 1362-63 (1982) (to be codified at 29 U.S.C. § 1605).

71. *Id.* §§ 108(b)(3), 204-205, 251-254, 96 Stat. 1322, 1336, 1361-64 (1982) (to be codified at 29 U.S.C. §§ 1518, 1604-1605, 1631-1634).

72. *Id.* § 203(b)(4), 96 Stat. 1322, 1360-61 (1982) (to be codified at 42 U.S.C. §§ 601-602).

73. *Id.* § 203(b)(1)-(3), 96 Stat. 1322, 1360 (1982) (to be codified at 29 U.S.C. § 1603; 42 U.S.C. §§ 601-602).

74. *Id.* § 201, 96 Stat. 1322, 1358-59 (1982) (to be codified at 29 U.S.C. § 1601).

President's desk in late September with Congress already gone home to campaign and with unemployment above ten percent for the first time in forty years. Instead of rejecting the compromise bill, the President endorsed it as "my bill" in answer to the unemployment problem.[75] Instead of inviting the typical entourage of congressional and Labor Department officials to witness the signing of the bill in front of national TV cameras, the President was surrounded by a group of disadvantaged minority youth—representing those to be aided by "his" new act.

But that was not the final scene of the JTPA play, nor has it yet been acted out. Once Congress has enacted and the President has signed legislation, the administering agency must promulgate the regulations under which it is to be administered. Initial fear that the Labor Department might use the regulation writing process to restrict the states and localities to a greater degree than Congress had intended soon gave way to a concern that the Department was not going to provide sufficient guidance on interpretation of much of the vague language of the Act. The Labor Department did provide guidance in at least one area—its preliminary policy guidance statement specifies that allowances are to be granted only in "exceptional circumstances."[76]

III. The Adequacy of JTPA's Legislative History

The possibility of legal disputes arising under the new Act leads full circle back to the basic issue of this Article: From the available legislative history could a court divine the intent of Congress if such interpretation were essential to deciding relative rights in litigation?

A. Potential Sources of Legislative History

Should a legal issue arise under JTPA to which the courts could find no answer in the wording of the statute, what documentation of legislative history exists from which the intent of the Congress might be determined? The subcommittee and committee files contain preintroduction drafts of bills, correspondence, and the unpublished transcriptions of formal meetings such as the subcommittee and full committee mark-ups. There

75. N.Y. Times, Oct. 14, 198, at Al, B15.

76. Angrisani, Job Training Partnership Act Preliminary Policy Guidance 7 (Oct. 12, 1982) (unpublished draft manuscript) (available from author). *See also id.* at 2, 6-7.

are no written records of the unannounced private meetings and conversations between staff and principals, Republicans and Democrats, House and Senate, Congress and administration, individuals and small groups where the real compromises were made. The published documentation includes:

1) The four bills as introduced and the various versions of S. 2036 and H.R. 5320.[77]
2) The transcripts of hearings and written submissions[78]
3) The full committee reports forwarding the approved bills for recommended floor action[79]
4) The *Congressional Record* transcriptions of the discussions and actions on the floor of the two houses[80]
5) The Conference report[81]

The various versions of the bills show only the transition in language, not the mind of Congress concerning the changes. The hearings illustrate the positions of various interested parties in relation to the proposals but not what Congress thought of those proposals.

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77. S. 2036, 97th Cong., 2d Sess., 128 CONG. REC. S247-55 (daily ed. Feb. 2, 1982); STAFF OF SENATE COMM. ON LABOR & HUMAN RESOURCES, 97TH CONG., 2D SESS., S. 2036 AS REPORTED BY THE SUBCOMM. ON EMPLOYMENT & PRODUCTIVITY (Comm. Print 1982); S. 2184, 97th Cong., 2d Sess., 128 CONG. REC. S1809-15 (daily ed. Mar. 9, 1982); H.R. 5461, 97th Cong., 2d Sess. (1982); H.R. 5320, 97th Cong., 2d Sess. (1982); STAFF OF HOUSE COMM. ON EDUC. & LABOR, 97TH CONG., 2D SESS., AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 5320 ADOPTED BY THE SUBCOMM. ON EMPLOYMENT OPPORTUNITIES (Comm. Print 1982).

78. *Employment and Training Policy, 1982: Joint Hearings Before the Subcomm. on Employment and Productivity of the Senate Comm. on Labor and Human Resources and the Subcomm. on Employment and Productivity of the House Comm. on Education and Labor,* 97th Cong., 2d Sess. (1982); *Employment and the American Automobile Industry, 1982: Hearings Before the Subcomm. on Employment and Productivity of the Senate Comm. on Labor & Human Resources,* 97th Cong., 1st Sess., 1982; *Evaluation of Comprehensive Employment and Training Programs, 1981: Hearings Before the Senate Comm. on Labor and Human Resources,* 97th Cong., 1st Sess. (1981); *Oversight Hearing on Full Employment: Hearings Before the Subcomm. on Employment Opportunities of the House Comm. on Education and Labor,* 97th Cong., 1st Sess. (1981); *Oversight of the Comprehensive Employment and Training Programs: Hearings Before the Subcomm. on Employment and Productivity of the Senate Comm. on Labor and Human Resources,* 97th Cong., 1st Sess. (1981); *Employment and Training Programs in the United States, 1981: Hearings Before the Subcomm. on Employment and Productivity of the Senate Comm. on Labor and Human Resources,* 97th Cong., 1st Sess. (1981).

79. S. REP. No. 469, 97th Cong., 2d Sess., *reprinted in* 1982 U.S. CODE CONG. & AD. NEWS 2636-704; H.R. REP. No. 537, 97th Cong., 2d Sess. (1982).

80. 128 CONG. REC. S7853-65 (daily ed. July 1, 1982); 128 CONG. REC. H5061-180 (daily ed. Aug. 4, 1982).

81. H.R. REP. No. 889, 97th Cong., 2d Sess., *reprinted in* 1982 U.S. CODE CONG. & AD. NEWS 2705-62.

The Committee reports may be more accurately described as justifications to the various supporters than as explanations of congressional intent. For instance, the Senate Committee report appears to have been written to placate the administration, reassuring the White House that the Republican majority had indeed "hung tough" on the spirit if not the wording of the administration positions.[82] The Democratic Senate members, on the other hand, filed a minority report explaining to their constituencies what they considered to be the strengths and weaknesses of the final Senate bill and why they had concluded that the former exceeded the latter sufficiently to justify their favorable votes.[83] The House Committee report attempts to explain the reasons for compromises between the Democratic Hawkins bill and the Republican Jeffords bill. In addition, the report provides a forum for the House Democrats to justify dropping public service employment and compromising the CETA local government prime sponsorships by requiring partnerships with private industry councils.[84] Neither report supplies a line-by-line, section-by-section, or even title-by-title exegesis of the meaning and intentions of the statutory language.

The *Congressional Record* does not contain precisely what was said on the floor of the two houses but what the members either let stand or modified when permitted to revise and extend their remarks. Neither the Senate nor the House debate on JTPA involved a detailed explanation of the meaning and intent of specific language.[85] Instead, the discussion was dominated by (1) explanations why, under the economic circumstances, a replacement for CETA was necessary and why the replacement was superior to CETA; (2) descriptions of the various proposals; and (3) praise for each others' wisdom and diligence in bringing the legislation to that point.

Of course, the importance of the meaning and intent of either of the two bills as passed by the respective houses is greatly diminished because of the significant changes that took place at the conference. The two bills were markedly different in both philosophy and content. The House had encompassed major

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82. *See* S. REP. No. 469, 97th Cong., 2d Sess., *reprinted in* 1982 U.S. CODE CONG. & AD. NEWS 2636-704.

83. *Id.* at 2702-04.

84. *See* H.R. REP. No. 537, 97th Cong., 2d Sess. (1982).

85. *See* 128 CONG. REC. S7853-65 (daily ed. July 1, 1982); 128 CONG. REC. H5061-180 (daily ed. Aug. 4, 1982).

points of the Jeffords bill without giving up any of the substance of the Hawkins bill, except for separating out public service employment. There had been no real effort in the House to placate the administration and it was generally understood that the bill as passed would be vetoed if it came to the President in that form. The Senate, on the other hand, passed its bill with a careful eye to the need to keep the more liberal Republican members of the committee behind the bill and simultaneously placate both the more conservative Republicans on the floor and the President.

The final Job Training Partnership Act as compromised in conference might well be described as seventy-five percent Senate and twenty-five percent House. It did not meet the approval of the Secretary and Assistant Secretary of Labor but did get the acquiescence of White House staff and ultimately won the enthusiastic endorsement of the President. Yet the searchers for legislative history will find in the conference report not one bit of explanation of the reasons for or intent behind the conference compromises. The document merely lists the differences that existed between the two bills and identifies which acceded to the other on the various points with no explanation why the concession was made or the particular language was chosen.[86]

B. Training Stipends: An Illustrative Case on the Inadequacy of JTPA's Legislative History

Space does not justify description of all of the various points of language which might become at issue in some future court case, nor can all of the possibilities be anticipated. One example will have to suffice. Throughout the twenty-year history of job training programs for the disadvantaged it had been assumed that it was necessary to pay stipends or allowances to make it possible for members of low income families to survive while in training. Some of the enrollees would be from families receiving Aid to Families with Dependent Children payments; more would not be. Most would not be eligible for unemployment compensation, but, even if they were, unemployment compensation recipients are generally not allowed to receive benefits if training rather than looking for work. As noted earlier both MDTA and CETA provided allowances—MDTA at the unem-

86. H.R. REP. No. 889, 97th Cong., 2d Sess., *reprinted in* 1982 U.S. CODE CONG. & AD. NEWS 2705-62.

ployment compensation level for adults and $20 a week for youth,[87] CETA at the federal minimum wage.[88] Most experts on training programs would probably agree that some form of subsistence payment is necessary if persons not eligible for some other income maintenance are to participate in the programs and, as a result, attain self-sufficiency.[89] But are such allowances authorized by JTPA?

Section 204 of the Act specifies twenty-eight categories of service to eligible persons for which funds appropriated under the Act can be used. The twenty-seventh of these authorizes "needs-based payments necessary to participation in accordance with a locally developed formula or procedure."[90] Section 4(24) defines "supportive services" as services which are necessary to enable an eligible person to participate in training, including "transportation, health care, . . . child care, meals, temporary shelter, financial counseling, and other reasonable expenses."[91] Nevertheless, the Act is silent concerning whether allowances can be paid to support trainees and their families during the training period as was explicitly authorized under MDTA and CETA. The Conference Report acknowledges that the Senate bill had an explicit prohibition on wages, stipends, and allowances.[92] That prohibition does not appear in the Act as passed; yet, no explanation is given for its deletion. However, the Conference Report states that the "costs of administration, supportive services, subsistence wages and allowances," along with specified other items, cannot exceed thirty percent of the costs.[93] Is that statement in the Conference Report sufficient to justify a training allowance even though the Act itself includes no authorization or prohibition?

The Assistant Secretary of Labor responsible for administering the new Act has been, as noted, adamantly opposed to any form of allowance payment. The elimination of the explicit prohibitory language he had insisted on in the Senate bill was

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87. Manpower Development & Training Act of 1962, Pub. L. No. 87-415, § 203(a)(c), 76 Stat. 23, 26-27 (1962) (repealed 1973).

88. 29 U.S.C. § 826(a)(1) (Supp. V 1981) (repealed 1982).

89. THE NATIONAL COUNCIL ON EMPLOYMENT POLICY, *supra* note 36, at 189.

90. Job Training Partnership Act of 1982, Pub. L. No. 97-300, § 204(27), 96 Stat. 1322, 1362 (1982) (to be codified at 29 U.S.C. § 1604).

91. *Id.* § 4(24), 96 Stat. 1322, 1327 (1982) (to be codified at 20 U.S.C. § 2461).

92. H.R. REP. No. 889, 97th Cong., 2d Sess. 98, *reprinted in* 1982 U.S. CODE CONG. & AD. NEWS 2720.

93. *Id.*

probably one of the major reasons why he urged the President to veto the bill. The proposed regulations for JTPA published for comment in the *Federal Register* classify allowable costs as separable into the categories of "training; administration; and participant support" and specify that the latter two combined cannot exceed thirty percent of the total.[94] The proposed rules do not explain whether the term "participant support" is synonymous with supportive services as defined under section 4(24) of the Act, but neither is any alternative definition provided.

Suppose a local private industry council chose to use JTPA funds to pay an allowance to an eligible head of household sufficient to provide essential food, shelter, clothing, and other living costs to the family during the training period. Given the views of its leadership, it is not unlikely that the Labor Department would choose to challenge that practice in court. Assuming this scenario, the court would be called upon the determine whether congressional silence equates with a grant of discretion or a denial of authorization.

Reading the above-mentioned provisions of JTPA the court would find that meals and temporary shelter are authorized as supportive services if necessary to make participation in training possible.[95] Is that meals for the participant or for the participant's family? Does rent on a family's permanent residence qualify? Can an allowance of a fixed weekly or monthly amount be paid or must payments to trainees be limited to reimbursement of the direct cost of the enumerated meals, temporary shelter, and other items? Section 204(27) provides that "needs-based payments necessary to participation"[96] are allowable, but what needs and whose needs? Does "in accordance with a locally developed formula or procedure"[97] grant discretion to the local decisionmakers or only clothe them with a procedural function in exercising a narrowly restricted authority?

The court upon reading the Conference Report would find that, without explanation, the conferees had dropped both the Senate prohibition on "wages, allowances, and stipends" and the House provision for needs-based, income gap filling allowances.

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94. 48 Fed. Reg. 2298-99 (1983) (to be codified at 20 C.F.R. §§ 629.38, 629.39 (proposed Jan. 18, 1983).

95. Job Training Partnership Act of 1982, Pub. L. No. 97-300, § 4(24), 96 Stat. 1322, 1327 (1982) (to be codified at 20 U.S.C. § 2461).

96. *Id.* § 204(27), 96 Stat. 1322, 1362 (1982) (to be codified at 29 U.S.C. § 1604).

97. *Id.*

In discussing the nontraining costs, the Conference Report includes "costs of administration, supportive services, subsistence wages and allowances."[98] Since subsistence wages and allowances are nowhere mentioned in the statute, is this phrase in the report sufficient basis to assume authorization?

If the legal analyst steps back to the Senate and House committee reports and floor action minutes, he learns only that the Senate prohibited and the House authorized allowances. Which of these views prevailed in conference? Or did the conferees merely choose silence because they didn't agree? And what shall the court do to resolve a dispute upon which Congress gave no guidance?

IV. Conclusion

This short examination of the legislative and political processes which led to the passage of the Job Training Partnership Act of 1982 adequately demonstrates the inadequacy of printed legislative history. Legislative history is often—perhaps almost always—a weak reed to lean upon in deciding the meaning of ambiguous statutory language. The legislature may never have recognized the issue or may have "fuzzed over" its inability to agree. In either case the court citing legislative history may only be disguising the necessity of resolving the ambiguity in the legislation by making law itself.

98. H.R. Rep. No. 889, 97th Cong., 2d Sess. 98, *reprinted in* 1982 U.S. Code Cong. & Ad. News 2720.