Florida Law Review

Volume 3 | Issue 2 Article 21

July 1950

Florida Statutes 1949 (Statutory Revision Department, 1950)

George John Miller
University of Florida

Busch are well annotated. These two chapters alone, in the reviewer's opinion, justify the price of the book.

Law and Tactics in Jury Trials is a "must" for the trial attorney.

LOUIS LEIBOVIT
Assistant Attorney General, State of Florida
Member of the West Palm Beach Bar

FLORIDA STATUTES 1949. By the Statutory Revision Department. Tallahassee: State of Florida. 1950. 1 Vol. in 2 books: pp. xxiii, 3495. $12.50.

As Florida approached her second century of statehood she took a long stride toward maturity, culminating in the publication in 1950 of Florida Statutes 1949.

The lowest form of government is the stage of arbitrary governmental action without rules; this is but one step removed from arbitrary action without any government at all. The next phase is the formulation of rules, whether in the very general and therefore vague medium of a constitution, or in the somewhat more specific form of statutes, or in the detailed and voluminous method of expression known as administrative regulations, or in the judicial manner of case plus stare decisis familiar to us as the common law. This last, in Anglo-American jurisprudence, stood to the fore over several centuries; and indeed was itself not without precedent in the *iurisconsultus* of Roman law, typified by Gaius, Papinian, Ulpian, Paulus and Modestinus, or in the older Hebraic commentator on the *Torah* and compilator of the *Talmud*, exemplified by Nehemiah, Hillel I and Jehudah.

Undoubtedly this method constitutes the safest approach to formal expression of community standards; but it is also the slowest. Although judge-made law is still a potent factor in our government, and although intersticial legislation by the judiciary necessarily remains with us, the spotlight is today shifting from the bench as the primary creator of rules of law to the legislatures and administrative agencies. A study of the reports, both state and federal, demonstrates this trend. Whether functionally desirable or not—and this review does not attempt to join the fray on that hotly debated question—it is a fact. As such, it must be faced.

Those complex multilateral contracts called statutes are enacted

by the Florida Legislature every two years at the rate of over one thousand per session.[1] They far exceed the opinions of our Supreme Court—in number, at least.[2] No individual, even in Florida, is familiar with all of them; and yet, until we find an escape from the apparently inevitable maxim *ignorantia iuris haud excusat*, the layman's expositor, the lawyer, must discover and interpret rapidly all of their provisions relevant to the practical problem that he is employed to solve. From his viewpoint, then, the matter of accessibility stands uppermost. Whether these legal gems be engraved on tablets posted too high to be read, a la Caligula, or printed and retained "for public inspection" in the office of some government functionary, a la most administrative regulations, or buried in a maze of verbiage costing several hundred dollars to obtain and years of time to peruse, a la Florida Session Laws, the practical result is the same: conduct by guess. The only remedy is thorough organization and wide dissemination of this material.

Compilation in Florida began with Duval in territorial days,[3] and proceeded spasmodically until in 1937 two leaders of our Junior Bar, E. Dixie Beggs of Pensacola and J. Lance Lazonby of Gainesville, persuaded the bar and ultimately the Legislature that over $200 per set for the 1927 compilation—not even a revision—was too much.[4] An able revision committee was appointed; Florida Statutes 1941 were the outcome. But World War II interrupted. The familiar supplements, with their inherent delay and confusion, reappeared.

The seed had been sown, however; and, with the insistent prodding of the founders of the movement, interest was rekindled. Charles Tom Henderson was appointed Statutory Revisor by Attorney General Ervin, who immediately estimated this work at its true worth, with the result that for once Florida has actually set forth upon a definite course of continuous statutory revision.

Three volumes are contemplated: the first containing the statutes themselves, the second covering annotations, and the third consisting of helpful collateral material. Volume I has been available since April. Detailed analysis of it has already appeared in these pages,[5] and the

[1] *Cf.* Henderson, *Report to the Florida Bar Association*, delivered at the 1950 Annual Convention and scheduled for publication in a fall issue of FLA. L. J.

[2] *Cf.* Thomas, *Justice Without Delay*, 2 U. OF FLA. L. REV. 1, 4 (1949).

[3] COMPILATION OF THE PUBLIC ACTS OF THE LEGISLATIVE COUNCIL OF THE TERRITORY OF FLORIDA (1839). The evolution of Florida statute law is traced in Legis., 3 U. OF FLA. L. REV. 74, 77-80 (1950).

[4] See FLA. STAT. 1949 v; Henderson, *supra* note 1.

[5] Legis., 3 U. OF FLA. L. REV. 74, 79-80 (1950); see, in general, Ervin, *Florida*

concise Introduction to Florida Statutes 1949 also explains the contents and arrangements. Accordingly, the critique attempted here is a broad one.

In any publication of statutes, routine considerations become important. In the first place, Volume I consists of two books that can readily be placed in a briefcase. Our weighty tomes of yore required brawn as well as brains in the handling. Probably the very simplicity of Henderson's present solution accounts for the failure to discover it throughout several decades. The type-face used is attractive and easily read. Admittedly the page set-up is box-like; but statutory compilations are not expected to be things of beauty. Space condensation must override niceties of format. The paper is of good quality, without being bulky. Inking is even, and typographical errors[6] are at a minimum. The minor grammatical slips[7] common to every publication of this sort are surprisingly few; the major mistakes are the product of hasty and inexperienced bill-drafting, and cannot be corrected in a year.

There is the comical type of faux pas, such as placing a second "Section 32" in Article XVI of our Constitution. There is the statute that uses several hundred words to effect virtually no change.[8] There are those provisions that are intended sincerely to convey a distinct meaning, and that are nevertheless beclouded by serious ambiguities.[9] Even the new Florida Common Law Rules exhibit patchwork drafting.[10] Our Statutory Revisor is powerless to remedy these ills

Statutes of 1949, 23 FLA. L.J. 272 (1949); Henderson, *The New Florida Statutes – What – When – and How Much*, 23 FLA. L.J. 348 (1949).

[6]*E.g.*, the comma appearing in "25,123" in line 8 of the second paragraph on p. viii; a decimal point is intended.

[7]*E.g.*, the lack of an apostrophe after "days" in line 6, or the misplaced "only" in line 2, of FLA. STAT. §16.44(10)(b) (1949).

[8]*E.g.*, FLA. STAT. §708.08 (1949), which gave rise to the epic opinion of Thomas, J., in Miller v. Phillips, 157 Fla. 175, 25 So.2d 194 (1946).

[9]*E.g.*, FLA. STAT. §§199.02, 199.04, 199.11 (1949), analyzed *supra*, 3 U. OF FLA. L. REV. 250 (1950).

[10]*E.g.*. FLA. C.L.R. 35(b), tacking on non-suit as an afterthought in the wrong paragraph; it contradicts FLA. C.L.R. 35(a)(1), and obviously belongs there – if anywhere. It was not in the final draft proposed by the Florida State Bar Association, 41 So.2d No. 4 Advance Sheets (Aug. 25, 1949); see Rule 34 thereof. Contrast also the clearcut draft of Rule 13 proposed by the Bar with the phraseology ultimately appearing as FLA. C.L.R. 13, resulting from the expression of one concept at the start and the virtual nullification of it by exceptions hastily engrafted at the last minute. *Cf.* the analysis of this in Wigginton, *New Florida Common Law Rules* 3 U. OF FLA. L. REV. 1, 7-9 (1950), and the criticism in

by himself, however; he is not a panacea.[11] He cannot alter substantive law. He can neither delete a statute rendered meaningless by a later act that somehow fails to repeal it, nor square logical inconsistencies, however glaring, nor even change the words so that they say what the Supreme Court authoritatively says they really mean.[12]

He can, nevertheless, group related enactments, correct typographical errors and misspellings, and delete statutes either repealed or rendered obsolete. All of this painstaking work is preliminary to intelligent consideration of the needed legislative changes. Furthermore, he can analyze scattered existing provisions and submit to the Legislature bills designed to effectuate consolidation, repeal, amendment or clarification, thereby promoting maximum utility of our legislators during their biennial sixty-day sessions.

Perhaps the outstanding single feature of Florida Statutes 1949 is the index, 643 pages based on the "logical" or topical-group system of presentation. It is not perfect, even in the eye of its creators; they are earnestly soliciting suggestions from the bar.[13] Here is one. I began with the question as to whether a Florida father may without restriction disinherit his child today. The practical answer is that he may not, as a Legislative Note in this issue explains.[14] I first looked for "disinheritance," but found nothing. Turning to "inheritance," I was referred to "probate law" and "executors and administrators." The latter gives nothing in point; neither does the former in its subheads on "descent and distribution," "children," "heirs," and "wills." The main heading "infants" was of no assistance. Recalling that support of widows was also involved in the statute that I was searching for, I eventually discovered Section 733.20 listed under "support" under "widows" under "probate law." A stranger to our General Session Laws 1949 would probably have failed to find the correct answer, however.

I hasten to add that this is intended as constructive criticism. In several other trial runs on various provisions I had no difficulties at

---

Poe, *Comments on the New Florida Rules*, 24 FLA. L.J. 169, 170 (1950).

[11]His duties are prescribed in FLA. STAT. §§16.19-16.51 (1949).

[12]*E.g.*, he cannot change Rules 2 or 36 of the Supreme Court Rules of Practice, although these are in need of accurate wording; see the criticism in Legis., 1 U. OF FLA. L. REV. 441 (1948).

[13]See FLA. STAT. 1949 x, 1796, 2742, 2846; Henderson, *supra* note 1.

[14]3 U. OF FLA. L. REV. 232 (1950).

all. The index is on the whole a credit to the authors.

Another feature of Volume I is its surprisingly low price: $12.50 for both books. This places all the current general statute law of Florida well within the reach of even the newest practitioner. And by careful saving of plates, linotyping of which constitutes the major item in printing costs, future revisions should be equally inexpensive.

Florida Statutes 1949 do not profess to be the best compilation of laws in the United States. Nevertheless, the progress made within a scant year and a half is remarkable. The Statutory Revisor and his small but able staff, as well as the printers, deserve hearty congratulations. A vital complementary step, of course, is to see that new bills are drafted properly in the first place, and that comprehensive revisions and condensations are prepared for submission to the Legislature—without, moreover, attempting to dictate the policy to be expressed therein.

Clarity, brevity, currency, topical completeness and accessibility are the goals of compilators and revisors. Conceding the impossibility of expressing a concept fully in mere words—a problem recognized by Bacon, Hobbes and most law students—we can nonetheless come as close as any community to formulating accurately the rules by which Floridians choose to live together. But the Statutory Revisor cannot do this alone. He specifically requests suggestions and criticisms—not mere bouquets. Every student of the law in Florida, whatever his field of activity, should take the time to note at least one specific flaw, and to inform the Statutory Revisor of it, along with a suggested remedy if conceived.[15] Only in this manner will our new policy of continuous revision achieve its full fruition.

GEORGE JOHN MILLER
Professor of Law, University of Florida

[15]An example is submitted, namely, to change "three mills" to "two mills" in FLA. STAT. §199.11(3) (1949), as directed by §199.11(5), in the light of the current 1944 amendment to FLA. CONST. Art. IX. §1. This is analyzed *supra*, 3 U. OF FLA. REV. 250 (1950).