ABSTRACT
In Nigeria, with the friction between the executive and legislative arms of government being a recurring decimal, the true import of the extent of legislative oversight over executive, once again, came into question with the claim of Governor Suntai of Taraba State (the Governor) against the Taraba State House of Assembly and the Speaker of the house, (the legislature) wherein the Governor alleged that the legislature has no right to interpret his (Governor's) declaration sent to the legislature. In contemplation of this, the construction of relevant constitutional provisions become imperative. The corpus of text for analysis in this research was obtained by purposive selection from newspapers circulating nationally which contained the substance of the executive claim against the legislature and from provisions of the Constitution of the Federal Republic of Nigeria, 1999, (As Amended) over which dichotomy of construction has arisen. This paper argues that the principles inherent in legislative oversight call for a teleological approach to constitutional construction. Based on this premise, this paper examined whether, how and to what extent the legislature applied those principles in the construction of particular laws to establish the extent of the power s, oversight functions of the legislature in giving provisions of law their true meaning and import. The paper recommends a continued look beyond the letters of the law and applying also the spirit of the law where necessary in the oversight functions of the legislature in giving provisions of law their true meaning and import.

Keywords: legislative oversight, construction of statutes, letter of the law, spirit of the law

1.1 INTRODUCTION
Repeatedly, the friction between the executive and legislative arms of government in Nigeria is displayed; often times calling for interpretation of certain provisions of particular laws to establish the extent of the powers, rights or sphere of influence of each. This friction has yet been observed from the facts in a suit instituted by Governor DanbabaDanfulani Suntai (Suntai) against the Taraba State House of Assembly and the Speaker of the house to that effect in compliance with Section 190(1) & (2)1of the Constitution of the Federal Republic of Nigeria, 1999, As Amended (the constitution). These provisions read as follows:

190(1) Whenever the Governor transmits to the Speaker of the House of Assembly a written declaration that he is proceeding on vacation or that he is otherwise unable to discharge the functions of his office, until he transmits to the Speaker of the House of Assembly a written declaration to the contrary, such function shall be discharged by the Deputy Governor as Acting Governor.

(2) “In the event that the Governor is unable or fails to transmit the written declaration mentioned in (1) of this section within 21 days, the House of Assembly shall, by a resolution mandate the Deputy Governor as Acting Governor, until the Governor transmit a letter to the Speaker that he is now available to resume his functions as Governor.

From these facts and particularly from the above prayer sought is a friction about how much powers the house and the Speaker (the legislature) have over the executive which Suntai represents. The claim of Suntai in essence does two things. Firstly, it challenges the existence of oversight function by the legislature over the executive and secondly it challenges the application of a teleological interpretative approach, by the defendants, in exercise of the allegedly nonexistent oversight function in the
construction of Section 190(2) of the constitution. The
exemplum of the former as contained in the prayer is
depicted by the words “...the declaration) cannot be
debated...” and the latter from the words “...defendants
lack discretion on the matter.”

Using the principles contained in the exercise of
legislative oversight and of occasions for adoption of
“spirit of the law” interpretative approaches yardstick for
analysis, this paper examines whether, how and to what
extent the House applied those principles in the
construction of Section 190(2) of the Constitution; and if
they did, whether they did so correctly. This paper does
not purport to pre-empt, influence, over-rule or in any way
affect the decision of the court but only serves an
academic purpose of importing two principles of law into
construction of statute to analyse their impact with a view
that the two principles can be moved from the realm of
to that of functional utility in the construction of
statutes in future. It also serves to enrich literature in
jurisprudence generally by provoking thoughts on the
nature of law and how it is adapted to practical situations
and also to enrich constitutional and administrative law
and the principles of construction of statutes. This study
becomes necessary against the fact that although this
scenario had earlier played out in the Yar’Adua saga,
counsel representing the legislature in Suntai’s suit still
claimed that the issues raised in the construction of
Section 190 of the constitution are “novel and had no
previous judicial precedent” (Sule 2013).

2.0 Literature Review

2.1 Construction of Statutes

Statutes, being commands of legislature that must be
complied with at all-time must first of all be capable of
being construed. A person reading a statute or a court
faced with a duty of construction of a piece of statute must
be able to decipher the words of the statute to elicit its
meaning. Construction of Statutes or “constructionism” as
discussed by Garner (2009), relates to the approaches to
interpreting “…the text of statutes, regulations, constructing a statute to analyses their impact with a view
to their literal content. “It uses other words such as the
meaning” would entail interpreting the provisions of a
statute as “the law is and not (as)…” the law ought to be.”
11 The supreme court of Nigeria in Uwagba v Federal Republic of Nigeria
and the Legislative Process, New York, Aspen Publishers
(1997) opine that the main characteristic feature of
textualism is its abhorrence for reference to legislative
history. In textualism, only the text of the provision of the
law is to be considered to elicit meaning. Mikva and lane
(1997) posit that the main characteristic feature of

States of America, West Publishing Co
7 (2009)Voi. 41 WRN 1at 38
8 The supreme court of Nigeria in Uwagba v Federal Republic of Nigeria
(2010) Vol. 3 WRN 26 at5
Forbes.com/site...bill-gates-argues-for-the –letter... assessed on 22/09/13

2.1.1 The letter interpretative approach of
construction

Black’s law dictionary (2009)6 defines “letter of the
law” as “The strict literal meaning of the law, rather
than the intention or policy behind it.” This definition
resonates with Gordon (undated) who says applying
literal interpretation or plain meaning to words of a statute is what is described to be “…the law as it is
written...”

Mikva and Lane (1997) opine that in a search for
meaning of a statute, the first thing to do is to consider
the language of the statute and if found to be clear, then there
is no more to the issue than to apply and implement the
plain language. The Supreme Court of Nigeria has held in a
number of cases including the case of Kabirikum v
Emofer4 that it is the law that where the words of a statute
are plain and unambiguous, they must be given their
literal meaning. Being given their “literal grammatical
meaning” would entail interpreting the provisions of a
statute as “the law is and not (as)…” the law ought to be.”
10 Gates (2013)11 made his choice for adoption of the letter of the
law approach to the interpretation of statutes when,while responding to issues of corporate taxation he said, “...If someone wants those companies to pay more tax
they should change the rules.” And on why only the literal
interpretation of the law should be applied, he said, “…in a
system of laws, it is very important that you follow the
laws, you do not have some second standard” and that the
letter of the law should not be ignored “...by appealing to some nebulous spirit”.

The advocates of the letter of the law interpretative approach exhibit a textualist interpretative
attitude. In textualism, only the text of the provision of the
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discussed by Garner (2009), relates to the approaches to
interpreting “…the text of statutes, regulations, constitutions and the like. “He posits that when alternate
constructions are possible, it is better to adopt that which
“...would achieve the manifest purpose of the document...” (rather than the construction that) would
reduce it to futility or absurdity...” This opinion does two things. Firstly, it confirms a choice of interpretative
options in the construction of statutes and secondly, in
the exercise of such choice, advocates for an approach that is
teleological in nature rather than one that is textualist
oriented.

In line with this contention, Aluko (2001)6 on
construction of documents posits that if courts observe
that documents are not to be construed by the documents
alone, then reference must be made to other documents or
sources that are relevant to a proper construction.

Mikva and Lane (1997),7 while considering the
need to give interpretation or meaning to statutes,

6 Contemplated in Section 190 of the constitution, where an executive
officer is unable to discharge the functions of his office
7 Where Yar’Adua, the president of Nigeria was unable to discharge the
functions of his office and later died as president
8 Aluko, O. (2001), Lawyers Companion on Law, Ibadan, Brighter Star
Publishers Nigeria Limited
9 Mikva, A.J & Lane, E (1997), An Introduction to Statutory Interpretation
and the Legislative Process, New York, Aspen Publishers
10 The words “interpretation” and “meaning” will be used interchangeably in
this paper

Forbes.com/site...bill-gates-argues-for-the –letter... assessed on 22/09/13
"liberal", "broad" or "loose" to this approach of construction of statute to elicit meaning.

While in some cases the letter of the law is clear and the provisions of the law can stand on their own with their meaning and import inherent in the provisions, in other cases, the provisions of the law can only derive their true meaning, substance and import when the law is construed in the context in which it is used. This would require that certain other matters need to be considered before the import of the law is achieved. Mikva and Lane (1997) posit that in such situations, the intent or purpose of the drafters of the law is considered to arrive at the import of the law. Obtaining a teleological result would be the aim of such construction.

Gordon (undated) posits that the spirit of the law is unwritten and consists of the “…social and moral consensus…” which is needed and which if inputted into the interpretation of the letter of the law would give the law its true import. Such spirit interpretative outcome can be realised by contemplating what the intent of the drafters of the letter of the law is. The factor thus necessary for a spirit based or teleological outcome which looks at the law in relation to their end or utility would be the purpose for which the law is made, the implications contemplated and the dynamism of situations (Mikva and Lane 1997)

The spirit interpretative approach would be used in construction of provisions of statutes when either the language of the statute is unclear or when the language is clear but when, if interpreted according and in line with its letter, will produce results that are sometimes unintended, sometimes absurd or at other times futile. Mikva and Lane (1997), citing Farber (1989), gave an illustration of a provision that prohibits “letting blood in the streets” and asserted that although the meaning of the words are clear, applying the plain, letter interpretative approach would result in absurdity if it were taken to exclude emergency surgery. In such instances, even with clear words, the plain language or letter interpretative approach will not be used to elicit meaning. Under such circumstance, the spirit of the provision will be sought and applied.

2.1.3 Factors to be considered in application of the spirit interpretative approach

Since it is now obvious that a spirit interpretative approach will be used to elicit meaning where the wordings of provisions of a law are unclear and also where the wordings are clear but where a letter interpretative approach to achieving meaning would lead to absurd or undesired results, and since it is agreed that the spirit of the law is unwritten, the next issue to contemplate is how then is spirit of the law determined? Again, the teleological results intended must be contemplated. This has many components. Garner (2009) advocates that the person interpreting must seek out the “evil” or the “mischief” that the law was intended to remedy and apply the law to achieve the result of eliminating that “evil” or “mischief”.

2.1.3. (i) Purposivism

Mikva and Lane (1997) explain that recourse to purpose of enactment of a piece of statute is what is referred to as purposivism. Such recourse to the purpose of a statute becomes necessary when the text of the statute itself requires further elucidation. This raises the question as to the intent of the provisions of the law. Such reference to the purpose or intent of the statute must be “evident from the thing (statute) itself” (Mikva and Lane 1997:8). Implicit from this is the question as to why the legislators drafted the provisions of the statute at all. The concept of purposivism is also graphically conveyed in the case of University of Ibadan v Governor Kwara State when the court stated,

...in construing a statute, the whole of the provisions should be taken into consideration so as not to defeat its evident purpose. Furthermore every statute should be interpreted according to its tenor and the mischief it aims to address and redress, and in so doing the courts are enjoined to focus their attention on the objective behind the enactment of a given legislation...

2.1.3. (ii) Implication

This papers draws from recent research in the United States to draw on the implications of resorting to purposivism. Richard H. Fallon Jr places the central ambition of most theories of statutory interpretation within their duty to ensure judges act as faithful agents of the legislature—a role that requires courts to subordinate their own values to those of their principals. "Purposivist" theories demand that judges do so by deciding statutory cases in accordance with the purpose or intent of the legislature. "Textualist" theories agree, and sometimes affirm even more ardently, that judges should strive to exclude their own values from the...
of assumptions that individuals incorrectly perceive that the attitudes or behaviors of others are different from their own, when in reality they are similar. This phenomenon is known as ignorance. It is largely because individuals assume the most memorable and salient, often extreme, behavior is representative of the behavior of the majority. This may lead individuals to adjust their behavior to that of the presumed majority by adhering to the pseudo-norms created by observing such memorable behavior. These exaggerated perceptions, or rather misperceptions, of peer behavior will continue to influence the habits of the majority, if they are unchallenged (Scalia & A. Scalia, 2012).

A phenomenon known as false consensus is closely related to the idea of pluralistic ignorance, and refers to the incorrect belief that others are similar, when in reality they are not. For example, heavy drinkers will think that most others consume as much as they do, and will use this belief to justify their behavior. Berkowitz, an independent consultant who works full-time to promote these ideas, describes false consensus and pluralistic ignorance as “mutually reinforcing and self-perpetuating…the majority is silent because it thinks it is a minority, and the minority is vocal because it believes that it represents the majority” (p. 194).

2.2 The principle of legislature oversight function over the executive

The responsibility of legislature to investigate and oversee executive is known as legislative oversight Baker (2009). Thus legislative oversight is the concept by which a legislative house oversees the executive arm of government inclusive of offices through whom the executive acts. Legislative oversight consists of monitoring, reviewing, supervising, and investigating executive bodies, agencies and corporations. Although legislative oversight functions are not enumerated in the Nigerian constitution, they are implied in a number of sections in the constitution. Section 4 (7) for instance, vests in a state house of assembly powers “…to make laws for the…order and good governance...” of a state. A common feature of this that will resonate with most Nigeria is demonstrated when the executive delivers its appropriation bill to the house for consideration and subsequent passing into law. It is then the duty of the legislative to oversee how the executive intends to spend resources for the people that the legislature represents. This then means that the legislative house, being a representative assembly is to watch and monitor the executive and ensure that there is “order and good governance” in as far as application of state resources are concerned. Legislative oversight functions can then only be said to be inherent and part of the very nature of legislative function.

Furthermore, Lieberman (2009) explains legislative to be the practice of checks and balances which essential for the “diffusion of powers” and for creating “mutual accountability” between the various arms of government.
with the result that one arm of government does not dominate another and by implication, dominate the political system.

The manner in which legislative oversight is carried out are numerous with the most common in Nigeria being by legislative hearings whether by standing committees of the house or committee of the whole. Also some sections of the constitution provide for means by which a governor may be "investigated".

### 3.1 Discussion and Conclusion

Milva and Lane (1997) posit that “Statutory interpretation is a search for legislative meaning” To be considered in this discourse is the meaning of Section 190 of the constitution. It is a consideration as to whether the language of Section 190 of the constitution is clear enough to attract a textualist or letter interpretative approach or whether the provision of law has some latent purpose to be discerned from a teleological or spirit interpretative approach. In other words, is it true, as argued by Suntai, that by the wordings of the provision in question, only a letter/declaration is required to be transmitted to the speaker of the house with neither the house nor the speaker possessing any right or discretion in the matter to react the way they did?

It is trite that one of the canonical rules of interpretation of statute is that the letter of the law (the literal interpretation) should be considered if such construction will provide the true import of the law by reflecting the purpose for which the law is made, will not result in absurdity and will not render the law futile. The relevant question then is, how can it be determined if or when the true import of the law is met and/or if an absurdity has arisen when only a literal interpretation is adopted in interpreting the Section under reference?

The import of the claim of Suntai that the house lacks any discretion to analyse the declaration transmitted to the house is effectively, a claim that the house has no legislative oversight function over him (Suntai) in this particular instance. Inherent in this argument is a call that only the “letter of the law” should be considered and acted upon to the exclusion of the spirit of the law. Suntai’s claim insists that only the literal meaning of the words without reference to the intention of those who drafted, or the purpose of the law should be considered.

The question is, could this be true? Put differently, when does legislative oversight over executive arise and does it apply in this case and secondly, what did the law seek to achieve by the provisions of section 190.

If going by Suntai’s claim and without the right, as claimed by Suntai to interpret the letter/declaration he sent to the House, what purpose then, does the provision of Section 190 serve? In other words, why deliver the letter at all? Why does Suntai not just return to his office and resume his functions as Governor? Why does the constitution require that a declaration be transmitted to the speaker and by implication, to the house and what does the constitution require the speaker and the house to do about the letter/declaration transmitted to them? Most importantly, it will be wondered whether the provisions of section 190 are merely redundant and serve no purpose at all. This will be against the cardinal principle of interpretation that statutes must be construed in a manner that will give them “effective result...rather than to make the law futile”

If going by Suntai’s argument, the letter interpretative approach is applied, there would be no need for the provisions of section 190 in the constitution. The provision would be redundant and as a result, the legislature would lose it oversight function of the executive.

Clearly, the provision was written and included for a purpose and must have intended to achieve something not stated in its wordings but implied. As discussed above, the house has oversight responsibilities over the governor being the executive head in Taraba State. It can only be that the constitution requires the house to use its inherent powers to supervise the return of the governor to the discharge of the functions of his office. It must then be implied and read into the words of the constitution that the House was to ascertain if the governor, in this case Suntai, was indeed capable of performing the functions of his office especially considering the fact that he had had an air accident, the length of time that he had been hospitalised and his composure (which the whole country took notice of) upon his return in August 2013. Therefore there must have been the intention and implication behind the wording of Section 190 that the House oversees the return of the governor to the performance of the functions of his office.

In essence therefore, the inherent powers of legislative oversight over the executive combined with the spirit approach, vested in the Speaker and the house, not only the right but also the duty to interpret and analyze the letter/declaration in relation to the facts on the ground. As put more succinctly, Mc Barnett (2002) said in aiming to construct the culture of compliance (with the law), “...the aim must be not just a culture of compliance as opposed to non-compliance, but a culture of compliance with the spirit of the law, rather than the creative compliance with it letter.

The claim of Suntai can only be said, at best to be such “creative compliance” with the letter of the law and if adopted, would result in the law losing not only both its purpose and intent, but also its relevance.

Advocates of the “letter of the law” like Gates (2013) recently said that the law should say exactly what it means and should not leave people guessing at the intent of the law. Clearly, the concision and precision involved in drafting of laws will not allow this. The bulk which will result from such inclusion of everything intended will be mind boggling. Not to mention that every eventuality cannot be contemplated by the drafters of laws.

Also, a law is always made to serve a purpose. No law is made without a rationale. So when a piece of statute is read and the rationale is not obvious from the words alone, then it behooves those seeking to interpret it to look for the latent purpose and implications underlying the letters of the provision of law.

It can then only be construed that the constitutional provision under reference was drafted for a purpose and that the legislature had to apply its implied powers to achieve its oversight functions. To achieve these a look

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18 Section 188 (3)-(6)
19 See Mikva and Lane (1997), ibid, for a list of some of the canonical rules of interpretation of statute.
20 Shelim v Gobang (2009) Vol. 37, 32
21 In the person of Suntai
Beyond the letter of the law and into the spirit of the law becomes necessary and expedient.

**Conclusion**

A call for construction of statutory provisions is a call for application of the statute to a practical question. The provisions of the law will no doubt be the most important element in such construction of statute. The point of divergence in construction of statute is whether only the wordings of the law are to apply or whether the wordings are to be placed side by side some other underlying considerations like the purpose of the legislation, the implications that have arisen or other prevailing circumstances. When construction is based on the former consideration, it is textualist in orientation, and if based on the latter, it is teleological in orientation.

At the times when the letter of the law is clear and the provisions of the law can stand on their own with their meaning and purport inherent in the provisions then a letter of the law or textualist approach must be adopted. On the other hand, in some cases, the provisions of the law can only derive their true meaning, substance and import when the purpose or implication of the law is read into them to make them efficacious. In such cases the spirit of the law or teleological approach must be adopted. The ability to distinguish the two must be the hallmark of lawyers or those saddled with the responsibility of interpreting the law. To adopt the ideology of either the letter or spirit approach to interpretation of the law is to over simplify the issues. Different situations and different pieces of legislation demand different approaches. So while a letter oriented approach may suffice at one instance, another instance may demand a spirit oriented approach. Clearly, the case under study is one of such instances where the true import of a provision of law cannot be deduced from the combined meaning of its constituent words.

Application of the principles of legislative oversight over executive create room for and enable the true import to be realised, namely achieving good governance, for government and the governed. For the reason of attaining this purpose, a spirit oriented interpretative strategy is advocated because no law is written without a rationale. And since it might be too cumbersome to reduce the reasons or all the reasons for the legislation into writing and also impossible to capture completely or exhaustively in legislation, all exigencies that might give rise to the application of the law, the “spirit of the law” must always also be considered. In the words of Devos (2012)“The integrity of overarching principles which aim to bring about compliance with the spirit of the law as opposed to the letter of the law needs to be defended”It was a good thing that the legislature did not act in accordance with Suntai’s argument which urged them to technically stay within the bounds of the law while actually, at best, avoiding a duty inherent in a legislative body.

Although Suntai’s claim and argument is not altogether without basis, it overlooks the fact and significance of spirit involvement in the construction of law and the contemplation of legislative oversight in the interpretation of Section 190 (2) of the constitution. The departure from letter interpretative approach has substantial positive social consequences and is compatible with long established principles of legislative oversight over executive.

Finally, in a country like Nigeria which seeks to acquire a democratic pedigree, the oversight function of the legislature over executive actions must be allowed to prevail rather than be stifled by letter interpretation of laws where a spirit interpretation could give live to such objective.

**Recommendations**

1. The spirit of the law must always be contemplated in construction in addition to the letter of the law
2. All judicial officers and those who have the duty and responsibility of construction of the law must do so in a manner that will make the provisions of the law most efficacious.
3. Legislative oversight of executive need be constitutionally guaranteed to ensure that the right and duty is not only emphasised but also not overreached under the guise of textual or interpretative construction of statutes.
4. The oversight function of the legislature over executive must always be effected and not stifled.

**Reference**