# The Role and Efficacy of Legislative Drafting in the United States: An Update on the American Drafting Process

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Abstract:

*This paper considers how bills are drafted at the federal level in the United States of America and the role that drafting plays in terms not only of the final text of legislation, but also the process for enacting that text. The efficacy of drafting thus involves their role in bringing together the wide variety of often divergent ideas and interests that characterize highly politicized US legislative processes. The author offers his observations on how recent changes in these processes, particularly the changing role of non-drafting staff members, are affecting legislative drafting. He concludes with some observations on the influence that legislative drafting developments in other countries is having on US drafting.*

## The Dual Role of Drafting in the United States

Legislative drafting, at least in the United States at the Federal level, has two roles, and its efficacy must be judged in each of two very different contexts. Multiple

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drafts are used as tokens in the negotiating process at arriving at a consensus that can obtain a majority vote to pass in whatever body is then currently considering the measure. When at last the various drafts are molded into a final law, Federal judges, who are usually the ultimate arbiters of a draft's effect, analyze the end product as if it had emerged from a black box and are usually completely unaware of, and mostly uninterested in, the details of the political compromises that gave rise to its text. Their concern is to use the text to decide details of the case that is before them. These types of details quite likely received little or no attention during the hurly burley of the bill's consideration in Congress. What seems to a member of Congress like a huge political success may seem to the courts like an inexplicable hodgepodge. My comments today are directed toward how the drafting process in the United States fits into its political context and the extent to which it serves the practical public interest as well as the sometimes rather different political needs of politicians.

Like the classic Puritan, the legislative counsel must be in this world, that is the world of politics, and yet not of it, in order to be effective. The legislative counsel must also focus on the needs of the ultimate users of a text, mostly the judges but sometimes the public or others, in order to meet both the needs of the legislative counsel's immediate clients, the politicians, and the needs of the legislative counsel's ultimate clients, the public. So the legislative counsel is outside of the political process, and as scrupulously neutral as humanly possible, yet acutely aware of the political concerns of the politicians the legislative counsel works with. To participate in what one American lawyer and sometime participant in the work of Congress, Eric Redman, called the dance of legislation,[2] we as legislative counsel must hear the beat and know the steps even though we are neither the dancers nor even the musicians. Sometimes the dance is a minuet, at other times a tarantella. The dance is ever changing and so the focus of our attention must constantly change with it. In a way that is not shared by many other participants, we must also give some thought to what will happen when the dance is over. Who then will go home with whom?

### What has happened since Dublin?

Perhaps a couple of decades ago at a conference on emerging trends in legislative drafting in Dublin, Ireland, I gave a talk on drafting in the United States Congress, which outlined how the somewhat unusual political framework of the United

[2] Eric Redman, *The Dance of Legislation* (University of Washington Press: 2000).

States created constraints on the drafting process in that country. Some here today might well have been in Dublin and heard that talk. The talk was subsequently memorialized as an article in the Statute Law Review.[3] Enough time has passed, and perhaps I have learned enough, now to present an appraisal of whether those trends actually did emerge, and to provide an update on the changes that have occurred in the American context since then.

The changes are mostly subtle ones, but cumulatively, the drafting experience at the Federal level in the United States is now rather different than it was in those days, though it may be on the cusp of another change, at least in the House of Representatives, which in the elections just past changed majority party. There has also been a continued, but slow, movement toward an internationalization of drafting norms. More legislative counsel, not only in the English speaking world, are becoming aware of, and perhaps providing a mutual influence on, one another's work.

### The United States Congress is something of an anachronism

To set the context, let's look at what I think are some of the differences between the legislative framework in the United States and a generalized framework we can perhaps attribute in greater or lesser degree to most other countries. Of course the other countries are actually a rather diverse lot, but for our purposes we can say that, generally, they fit into two broad categories – which roughly correspond to the common law countries and the civil law countries. While quite different among themselves, as contrasted with the United States, these two types of countries, whichever legal tradition they may have, also have a number of striking similarities among themselves. You may wonder if such a comparison is just another purported example of an American exceptionalism that at root does not really exist. Perhaps, but it serves as a useful analytic tool, so we'll use it.

In both Commonwealth countries and civil law countries, what Americans call the executive branch of the government (which indeed in most places is called the government) has the primary legislative initiative in the country's parliamentary body. The policy development behind that initiative is typically done by the personnel of the country's ministries guided by the political decisions of the ministers. Once the policy is arrived at, separate drafting services usually have a central role in placing those policies into legislative language. These drafting services may even be attached to the civil service of the executive rather than to the

[3] (2001), 22 *Statute Law Review* 38-44.

parliament per se. In most cases, the parliament is not thought of as a body completely independent and isolated from all other parts of the governmental structure, as is the case in the United States.

The drafting service therefore may be under an attorney general or within a ministry of justice. It is primarily tasked with rendering the legislative proposals of the government (which for the moment I will use to mean what in the United States would be called the executive branch) into formal language for presentation to parliament. Once presented, it is quite likely that the proposals will pass into law, though perhaps with some modifications along the way, but usually not major modifications involving fundamental policy shifts.

The opposition in many parliaments does not formally present bills or have the legislative initiative. Its amendments, if offered, are rarely accepted, unless by previous agreement with the government. Individual members, often called back-benchers, even those of the majority party, have little hope of seeing any bills they introduce, sometimes called "private members bills", being enacted into law, unless those bills are taken up by the government and perhaps at that point redrafted or at least reviewed by the drafting service. They do not seem to be much involved as individuals in the amendment process, either.

In the United States the situation is far different. This is mostly owing to the fact that our Constitution is frozen in time, in the 18th, or perhaps in some respects in the 17th century. It is based on the English constitution as in effect during those centuries and as seen through the eyes of the French Enlightenment, especially the eyes of Montesquieu, and further filtered through the English Whig experience of those times. There the balance of power among the branches, each separated in function from the others, and their relative independence from each other were paramount. The withering power of the monarch in Britain during the late 18th and on into the 19th century gave rise to a new model for parliamentary systems, one which has strongly influenced later developments in countries other than the United States.

All of this was further adjusted by the experience of the early American statesmen in colonial legislatures, where, to say the least, English ministries had little effect on legislation, whatever may be said of their 18th century role in Britain. Also, there were no American ministries at that time. Members of the legislature, aided by the clerks, did their own drafting. The executive in general was not only theoretically distinct in derivation of power, but practically an alien intrusion. Such an executive was not influential, much less dispositive of legislation, much to the frustration of English, and later British, colonial governors in that part of North America that became the United States.

After independence, this situation might have changed, but our Constitution was a written one, so there is less room for informal change through custom than there would be in a country with an unwritten constitution. The method for amending the American Constitution is designed to be cumbersome and rarely used. That, combined with the somewhat anarchic political culture of the United States, has resulted in a perpetuation of the independence of the legislature in matters of legislation, indeed, of each house from the other as well. Consequently, each of the two houses of Congress has their own legislative counsel, imbedded within that house and responsible only to the house in which it resides.

The government, to the extent embodied in the executive (for in the United States the executive is only seen as a part of the government rather than the government itself – the independent Congress and even more independent court system are also considered co-equal parts of the government) is therefore an outsider when it comes to legislation. That is not to say the executive is without influence, though it is influence to persuade rather than direct, and it is, much like the influence of other outsiders, primarily political in nature. The executive does indeed have one formal means of persuasion, and that is through the threat of the veto. Yet the veto is a power only to prevent the passage of any bill at all, not to require the passage of one in the face of Congressional opposition. So it is simply an invitation to negotiations, negotiations that take place on the backdrop of public opinion and the proximity of the next Congressional or Presidential election. As the political weight of public opinion becomes known or changes, the language of draft bills also change, sometimes quite radically.

It is the two Houses themselves who keep custody of the various drafts and who supervise and implement those changes in draft language, now normally through their respective legislative counsel.

### Late development of Offices of Legislative Counsel

As I mentioned in Dublin, the offices of legislative counsel did not exist until perhaps a century and a half after the adoption of the current American Constitution. They have no formal place in it. They were intended by their creator, a professor named Chamberlain, to be a slavish imitation of the British parliamentary counsel's office of that time,[4] so far as that might be possible. Consequently, the conceptual division between policy-making and "instructing" the legislative counsel was a founding premise. But that division came to be

[4] Approximately 1913 through 1919.

interpreted in practice very differently than it appears to me to be interpreted elsewhere, including in modern Britain itself.

Members of Congress, while in a loose sense often lawyers, actually come from all walks of life and few have ever practiced the sort of law that would equip them to be legislative counsel of Federal statutes. Moreover, most have little interest in drafting as an art, and less time to devote to the minutia of the legislative process. Their focus is on re-election, their own personal re-election, which does not much depend on their skill in drafting or policy development, or even their political party affiliation.

Each would-be member of Congress is elected individually and often makes a personal choice to run (in America they run, not stand) for office. They typically seek, as individuals who have decided to run, whichever party nomination they think more popular in their own district. The nomination is normally determined through a State-run party primary election among either the entire population of the district, or that portion of it that denoted a party preference for the party in question, rather than by party leaders. Therefore the members of Congress from a given political party, while for other reasons possibly having some semblance of a common ideology or views, actually are quite diverse. They see political party affiliation as a convenience for personal election and as a means of organizing the house of Congress to which they are elected (and so a means of possible further political advancement) rather than as fonts of policy and political ideas.

### Incivil partisanship and gridlock?

Much has recently been made of the growing partisanship in the United States and the consequent gridlock in legislation. Last November's election, widely regarded (including by the President himself) as a repudiation of the President, has given the Republican Party the majority in the House of Representatives. The Senate majority, though smaller, is still in the hands of the Democratic Party, the party to which the President also belongs. To the extent that there was sometime of an ill-tempered gridlock between the political parties before, one might have expected it to increase with the new Congress.

As I mentioned in my Dublin talk many years ago, gridlock is not necessarily considered a bad thing by the public, nor it gridlock a stranger to the United States. There is in our country a long tradition of divided government, with one party controlling one or both houses of Congress, and another controlling the presidency. Perhaps oddly, the greater bargaining power the election gave to the Republicans may in fact ease the compromises needed to pass significant legislation rather than

exacerbate them. We saw a hint of this in the lame duck session of Congress after the election.

Of the two major parties, the Democratic Party has for the last century or so often been identified with a more direct and vigorous intervention by the Federal Government to influence economic developments and to provide more direct assistance to the poor. The Republican Party has during that same period often been identified with skepticism over the effectiveness of government intervention in social and economic policy and with support for the concerns of the business community. But individual members of each party can and do frequently depart from these generalizations. The formal machinery of a political party has little say in who will be the candidate of that party for election to Congress. So the candidate does not fear being dropped from the ballot because of a failure to hew to any party line.

Yet policy debate in Congress and on television talk shows may be shrill, and often filled with partisan invective. Much of that is a Kabuki show for the public aimed at influencing subsequent elections. It may not influence drafting as much as one would expect. This is because arrival at a sufficient consensus to achieve a majority usually requires at least some compromise with some members of the other political party (for there are historically only two political parties at any one time). That much was true when I spoke in Dublin, and still is.

It has become even truer in the Senate, where it now takes at least 60 of the 100 Senators to assure the passage of any measure because of the evolution of a Senate process, imbedded in its internal rules, called the filibuster. In recent years, the ease of invoking a filibuster, and the willingness to do so, have both increased markedly. Since it is rare for either of the major political parties to have as many as 60 sure votes to overcome a filibuster, a supermajority is pretty much required for all legislation. Add to this the power of each individual Senator to put a "hold" on many matters before the Senate, and you have some very complicated negotiations required, often on completely unrelated matter, in order to achieve any result.

In Dublin I noted, as I note here, that party affiliation is not in general as important in Congress as it would be in most parliaments in the world. There is one place where party identity is important, though. It is in the selection of the leaders of the houses and the chairs of that house's committees. The principal political officers of each house are elected by the members of that house. That normally means they are elected by the majority party. They will control which issues come up for legislative action in that house, but they will usually not drive the language, or even the policy that agenda will lead to. What does drive the language is where the rubber hits the road for the drafting of American legislation.

### What really drives the language of bills

And what drives the language starts with the individual members of the two houses of Congress. Each member of Congress, whether a senator or representative, has their own quite distinct political philosophy and their own wish-list for legislation. Each has a co-equal formal, and indeed, practical right to introduce legislation. Each piece of introduced legislation has a reasonable chance of being enacted into law, either in the form in which the member introduced it, or more likely, when pieced together with the legislative ideas of enough other individual members sufficient to achieve an agreed upon bargain of legislation that can achieve a majority in the house or committee in which it is being considered.

Because legislation is result of the negotiations of individual members of each house based on their own personal preferences, there is a natural rhythm to the legislative process in the United States that probably differs from that in most countries. Each two years the entire House of Representatives and one-third of the Senate is up for election. Every two years, all the pending legislation that has not been enacted lapses, and the number of introduced measures returns to zero.

Each Senator and Representative introduces those bills that represent their own individual wish list at the beginning of the 2 year cycle (or at any time during it if they decide to support an idea they had not considered before). Consequently the legislative counsel must draft all these proposals, though most of them will not, in their original form at least, ever see the light of day. This is a particularly busy time for the legislative counsel, but is alleviated somewhat by the fact that many Senators and Representatives are re-elected, and most of what they will want is already in bill form in bills they introduced previously. So these may simply be reintroduced, with a few updates based on whether any laws they amend might have changed since their former introduction.

At this stage, the committees, acting through their chairs, also introduce bills that represent, for the most part, the policy views of the chairs involved. These bills have exactly the same status as others and probably equally little likelihood of being passed in the form in which they are introduced. But since the chair of a committee has a fair amount of influence in setting the agenda of that committee, the bills the chair introduces indicate what topics the committee is likely to deal with during that 2-year period.

### Drafts as Tokens in the Negotiation Process

The introduced bills are used as tokens in an informal ongoing policy debate that takes place during negotiations among Senators and Representatives over legislative priorities. They, or parts of them, are constantly being redrafted as a part

of those negotiations, though these drafts normally have no formal status before either house. Needless to say, this greatly expands the workload of the legislative counsel.

When a chair feels that a sufficient consensus has arisen that a general policy the chair wants is likely to find a majority, the chair will set a "mark-up" for that bill. The mark-up is a formal committee meeting, usually open to the public and sometimes telecast, at which the bill will be read for amendment.

When a mark-up is scheduled, the minority party will immediately seek to amend the bill, either to undo its effect altogether, or to push it in the direction favoured by the minority. Even members of the majority party that have been unable to get their way in earlier negotiations will attempt to reopen issues by way of amendment, or add sometimes rather unrelated matters to the draft bill by proposing amendments in committee. These amendments are often circulated informally before the mark-up and often are in effect disposed of in those informal negotiations. Members will often offer amendments they know will be defeated in order to make a political point. Again, the legislative counsel must draft all these amendments, often on a close to real time basis, to facilitate the negotiations.

Thus the mark-ups can be quite fluid. The bill probably will emerge from the mark-up bearing little resemblance to the bill that entered it, unless the bill was already negotiated out in detail and in private by the various members of the committee before the chair decided to mark it up. Such a bill would probably be introduced in its finally negotiated form and so is non-controversial. Even in controversial bills, ongoing negotiations might well lead to an agreed text in the form a single amendment, an amendment that substitutes a complete new text embodying all the agreements that have been made elsewhere and combining pieces of earlier drafts.

### Open meetings: boon for transparency or ineffective symbolism?

So the actual debate takes place behind closed doors and may not include all the committee members or any of the minority party members. This is a change since my talk in Dublin. Ironically the change is probably the result of requiring most mark-ups to be open to the public, something that happened about the time of my Dublin talk and of which the consequences then were not so clear. Many of the negotiations needed to get a majority in favour of a bill involve quite delicate political give and take, and do not lend themselves to open sessions. Consequently the Senators and Representatives simply confer privately. This is true both in regard to bills in committee and on the floor, and also in regard to bills between the two houses.

At the time of the Dublin meeting, the House and Senate normally dealt with different versions of the same bill at a conference between the two houses, in which a committee formed of members of both houses would propose a compromise disposition of the differences to their respective houses.

Now, the formal House-Senate conference seems to be falling into disuse. Instead the negotiations are increasingly done through staff intermediaries and not in person, and not as a single group at the meetings of the members at a conference. Ostensibly on behalf of the whole, the chair of a committee involved in the legislation in one house will negotiate with the chair of the parallel committee in the other. Sometimes the ranking minority members might be drawn into such negotiations, but not usually at their beginning. The presentation of *faits accomplis* to the minority, and indeed to other members of the majority, has led to frustration for all involved.

So the same trends affecting mark-ups are also affecting conferences. As I have mentioned, they greatly multiply the number of drafts being circulated at a given time, and greatly reduce the time that can be allotted to each. The end-product must also be produced hastily, while the agreement still holds.

As I mentioned, the negotiations at whatever stage do not always involve all the members of the committee in question, and so do not provide the airing for all views that used to occur in the closed mark-ups. The presentation of *faits accomplis* to the minority, and indeed to other members of the majority might explain some of lack of civility that is often noted and complained about currently. Senators and representatives have fewer and fewer opportunities to confront and discuss strongly held positions with those who do not hold them. Each side is left to doubt the motives of the other and does not hear what might have been convincing rationales either for changing their mind or at least for accommodating to some degree the views of the other side of the issue. This is a change since the Dublin meeting.

### Effects on Drafting

This also makes the drafting quite hasty when a consensus seems to be arrived at, because the Senators and Representatives want to pass the bill while they are sure of a majority to do so, a majority that can easily be lost when public opinion or lobbying efforts change the political background on which it was based. As soon as outside interests become aware of losing their positions (and some almost always will) they will start up a relentless pressure on senators and representatives to reopen the issues involved and so change the draft further. This sometimes

contributes to a garbled or simply not fully thought-out policy. Legislative counsel may be reduced to document-assembly in place of legal analysis.

As in committees, the free offering of amendments on the floor of the House of Representative has declined. An "open rule" used to be the "normal" way in which a bill might be considered on the floor of the House. Such a rule allowed anyone to offer whatever amendments they might like. A legislative counsel always was on the floor during a debate on such a bill to draft amendments on the fly. Now the Rules Committee, the gatekeeper for the consideration of legislation on the floor of the House, rarely gives such open rules. Instead it considers in committee each proposed amendment a day or so in advance, and decides whether or not to allow it to be offered.

This in effect means that the majority party can prevent the minority party from offering its favoured scheme if the majority leadership fears enough of its members would vote for that amendment to allow it to pass. If an amendment is allowed, it may only be offered in the form presented to the Rules Committee. Most such amendments are not approved on the floor. While this process of vetting by the Rules Committee might be thought to be a help to legislative counsel by lessening the number of amendments, it is not. What it actually means is that all the proposed amendments (most of which will be rejected) must be drafted on short notice for presentation to the Rules Committee and without any certainty about the order in which those approved might be taken up or whether they might be adopted. Technical problems in execution and consistency of provisions can arise from this procedure.

Another unexpected consequence of this development relating to the Rules Committee is that many more bills and other measures are brought to the floor on suspension of the rules, a procedure that allows bypassing the Rules Committee but requires a 2/3 vote for passage and also does not allow for any amendments, other than those proposed by the offeror of the motion to suspend the rules. These amendments may not be very clear on the face of the document offered, but often are the result of negations of the sort already described. To the extent members of the House were not a part of those negations, if there were any (and in most cases where there were not), the possibility of this sort of amendment can inflame mutual distrust.

### Judicial feedback: a means for improving the law

After the laws are passed, is there any means of seeing if they have worked and if the drafting is effective? In the United States, the ultimate test is litigation. Private parties in litigation among themselves and against the United States are constantly

testing and trying in some cases to evade the meaning of legislation. The courts, in trying to untangle these disputes, are a valuable feedback mechanism for testing how effective a given drafting method has been. But in the United States, there are so many Federal courts and so many judicial decisions that finding those of interest to legislative counsel, other than at the Supreme Court level, is hit and miss.

To address this point, some years ago, Congress and the Federal courts set up a system through which the relatively limited number of Federal appeals courts could send directly to Congress copies of their opinions in difficult cases where drafting issues seemed to be presented. For those interested in more details, Judge Katzmann, a prime mover in creating this program during his incarnation as a university professor, has described the program and its effects in his Yale Law Journal article.[5]

In essence, the various courts of appeals send copies of opinions they think may be of interest to Congress, mostly those where they are unsure of Congressional intent, to the Offices of the Legislative Counsels without further comment because of the separation of powers among our branches of government and the unseemliness of any appearance of one trying to influence the other outside the normal course of its constitutional duties. The Legislative Counsels read the opinions and then transmit them to the relevant committee staff-members for the majority and minority political party members of that committee. Sometimes these opinions result in later corrections or modifications of the law. In all cases, they help inform the legislative counsel of problem areas to be avoided in the future.

**Summary of trends in the United States since Dublin.**

Since Dublin, then, the informal process of legislative development, and consequently the number of different drafts and differing policy sources for drafts that will be seriously considered if only transiently, has greatly increased, but the formal process of legislation, in the form of mark-ups and floor action, has become much more rigidly controlled by the respective leaderships of the two houses. Members of Congress, whether representatives or senators, engage in direct negotiations far less frequently.

Negotiations on behalf of members by staffers occur among smaller, less formal, and less diverse groups. The role of non-drafting staff in the negotiations has been greatly increased, at the expense of the role of the members themselves. A staffer is

[5] Robert A. Katzmann & Russell R. Wheeler, "Interbranch Communication: A Note on Article III En Banc," 117 Yale L.J. Pocket Part 110 (2007), http://thepocketpart.org/2007/10/17/katzmannwheeler.html.

not as free to compromise as a member would be and a member, isolated from the actual conversation, is less likely to be persuaded by another member's views, or at least respect their sincerity. The overall result is that members are more disconnected from the legislative process and more likely to feel that their views are not being seriously considered. This contributes to incivility and intransigence. It may well play a larger role in any supposed gridlock than party differences.

The tendency to bundle legislation into large omnibus mega-bills has if anything increased since Dublin. It is easier to pass larger bills that have something for everyone, and that often are considered before there has been much time for all the members, not to mention the public, to study the many details. While giving the executive branch power to flesh out the details of legislation by rule-making can make large, sketchy legislation practical, it may also result in reduced power for Congress and less predictability results from bills that become laws.

An example of this that caused some excitement in the United States was the adoption in December 2011 of a rule to carry out the new healthcare legislation. The legislation had originally included a provision for the payment to a doctor for giving a terminal patient "end of life" counselling, including advice on how to create an advance order to the termination of treatment when the condition of the patient prevented obtaining the patient's views. This was attacked as allowing death committees and perhaps involuntary euthanasia. It was hastily withdrawn from the bill. But the final law, as drafted, left vague what sorts of things might be provided by rule, and the executive branch has now proposed by rule to provide those very same payments. Arguably the proponents of the bill intended precisely this result, though the opponents of the bill probably thought the bill in its final form did not allow for it. The haste in which mega-bills are considered may be conducive to this sort of result. Such results do not increase the level of trust among members of Congress, however.

There is some movement toward stemming the tide of these trends. Perhaps the House of Representatives will go back to having more bills under an open rule. But the overall trends, responding as they do the political imperatives of running for office in today's world, will be very hard to resist. If negotiations are the key to successful legislation and to avoiding gridlock, it may be necessary to find new ways to open participation in those negotiations to the senators and representatives. The legislative counsel will have to find new ways to increase their opportunity to understand and make consistent the end products of this participation.

### What about the internationalization of drafting?

The other trend I spoke about in Ireland was not as parochial. That trend is one toward greater international attention to the art and science of drafting and the development of international norms for what constitutes effective drafting. There is as yet no internationally recognized paradigm for all legislative counsel to follow. But I would have been surprised to say the least had one emerged so soon.

What has happened, I think, is that legislative counsel are much more frequently exposed in some depth to the work of their counterparts in other parts of the world. About a year ago, and for the first time in the history of my Office, we hosted a member of the British Office of Parliamentary Counsel for several months. This year we expect to host a member of the South Korean Office of Legislative Counseling for a few months. While such formal exchanges have been common elsewhere for a long time, our Office is pleased now to be engaging in them. Members of our Office while in other countries in their personal capacities often visit our counterparts abroad. So we are at last, at least to some degree, joining the rest of the world.

Meanwhile, thanks to transnational organizations like the European Union, the United Nations Development Programme, the World Trade Organization, and the World Bank, legislative counsel throughout the world are engaging in both practical efforts to create sound transnational documents and in mutual training and discussions about drafting. This process must increasingly lead to mutual understanding of differing cultural and legal norms and to a greater consensus on how to accommodate them in drafting laws. Some countries, such as Canada, already draft their laws in more than one authoritative language. Their experience in doing surely must have much that is useful to all of us internationally.

Even given the diversities of the world linguistically and legally, I expect we will continue to see a consensus grow for the use of short and direct sentences in legislative drafting, using common words that make the intent clearly accessible to the law's intended audience, including the general public when dealing with matters that may be of concern to them as individuals. I expect that we will continue to see a trend away from multiple and complex subdivisioning of legal texts.

### Future drafting trends: opportunities and possible surprises

We may however see some unexpected trends because of the growing use by courts, students, and the public, of computers to search and retrieve legal materials. Ironically, the attention we have formerly given to the organization of texts and to the interrelation of various laws may become less important. The computer does

not care what sorts of typeface or paragraphing we use, or whether rules touching upon related matters are close to each other in the law books. The use of diagrams, formulae, and even perhaps pictures, may increase. Perhaps we may even see the use of video. While much of the computer linking of laws with sources and other useful materials may continue to be a project for private enterprise, the possibilities computers give us suggest we should try to anticipate these developments and perhaps as legislative counsel participate in defining their appropriate parameters and pace.

At conferences such as this one, we have occasion to reflect on the possibilities for the future of legislative drafting and its impact on the growth the rule of law as a foundation for the greater security and prosperity of all the people on earth. Let us take a moment to celebrate them, and rededicate ourselves to achieving them.

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