Handbook on Research and Drafting of Legislation, A; A Handbook on Research and Drafting of Legislation

Dennis J. Owens

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A HANDBOOK
ON RESEARCH AND DRAFTING
OF LEGISLATION

by

Dennis J. Owens
Notre Dame Law School

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The views expressed in this publication do not necessarily represent the views of the Editor or Staff.

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An Introduction

This handbook attempts to serve as a guide to the person who is researching and drafting a legislative bill. By its nature, it refers the reader to other books frequently. Generally, it does not attempt to reproduce these sources.

Research and drafting are hard work. They should not be made even more difficult by confusion. This book directs the reader to a panoply of tools, authorities, and resources which can minimize the confusion. The military maxim, "Energy should be expended grappling with the objective, not with the terrain," can apply to this work as well.

"How to Write a Law" by Reed Dickerson was originally published by the NOTRE DAME LAWYER in Volume XXXI (1955). It is reprinted here with the kind permission of the Editor-in-Chief of the LAWYER. Dr. Dickerson is Associate Dean and Professor of Law at Indiana University in Bloomington. This article was an address delivered at the Legislation Institute held at the University of Notre Dame, March 30, 1955. This material, which is presented in several portions, is in a slightly different order than originally published.

Citations and bibliographies in this handbook conform to the M.L.A. Style Sheet (revised edition), New York: M.L.A. 1954, except when cited in their original publication in a different manner.
HOW TO WRITE A LAW
by Reed Dickerson*

At the outset I confess a sense of embarrassment that I feel whenever I talk or write about the problems of drafting. This comes from the fact that, unlike most legal topics, discussions of legislative drafting have to be conducted on a kindergarten level. Since the art of legal drafting in general, and of legislative drafting in particular, is only crudely developed, I can only talk about the most elementary matters to a sophisticated audience that is expecting me to be profound. This leaves me feeling like a man who is trying to explain the alphabet to a group of Ph.D's.

One reason why it is hard to teach people how to draft is that like all writing looks easy. There is one thing upon which almost everyone prides himself, and that is his writing. This is especially true of lawyers. Not only do they underestimate the difficulties of writing but they tend to think of themselves as individually accomplished. It is hard to sell a man a new suit when he considers himself already well accoutered.

This poses a dilemma. If I am to make this subject clear to you, I must oversimplify it to the point of confirming your natural prejudices. On the other hand, if I am to paint a true impression, I must frighten or confuse you with a bewildering mass of principles, approaches, and details. I will do my best to take a middle course.

Another trouble with teaching drafting is that the instructor can't do it just by talking about it any more than he can teach you, just by talking, how to box or play the violin. There is no substitute for doing it yourself with the right kind of guidance. But, even with this reservation, there are some useful things we can talk about.

I don't think that I am exaggerating when I say that legal drafting is the most difficult thing a lawyer is called upon to do. Unfortunately, it is the one for which most lawyers are the least prepared. By "legal drafting," of course, I do not mean to include the more diffuse and less rigorous kinds of legal writing like the preparation of briefs and pleadings.

I think that it is also accurate to say that legislative drafting is the most difficult form of legal drafting. The basic problems are the same, but legislative problems are technically more complicated and socially more important. Middleton Beaman, late Legislative Counsel of the House of Representatives, went so far as to say, on one occasion, that "...the number of contingencies that a lawyer has to guard against in the case of a will or contract, while sometimes they are very numerous, are mere flyspecks compared with the contingencies that must be considered in the case of a statute..." 1

In this discussion I don't want to dwell on the rather obvious fact that in general the job of legislative drafting is being done very poorly.

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I mention the point only for the purpose of saying that one of the most important reasons why this is so is that lawyers in general do not understand the role of the draftsman and that many draftsmen don’t understand it either. It is very important to know clearly what that role is.

The first idea that I want to plant, and I hope to plant it deeply, is that legislative drafting is much more than chasing a lot of written ideas around on a piece of paper. The writing stage is merely the last stage of drafting and it is sometimes the easiest, although I would be the last one to underestimate the difficulties of putting ideas into exact words. The draftsman’s problems begin with the substantive ideas that he is called on to express, ideas that in more cases than not are imperfectly formed when he first makes contact with them. Briefly, the draftsman’s job is to help his client do legislatively exactly what the client wants to do in fact and to help him do it in a way that will work as smoothly as possible.

How many of you have ever had anything to do with an architect? If you have not hired one yourselves, maybe you have watched one in action. If you have, you will have seen several things. The most important is the fact that the architect was called in at an early stage. Long before he got to the point of preparing his blueprint he was up to his neck in the substantive needs and problems of his client. An architect doesn’t design a house for a client until he knows exactly what his client is trying to accomplish.

Similarly, the legal draftsman must be brought into the picture long before he picks up his pencil, and he must find out as much as possible about what his client’s particular problem is and then help the client bring about the desired result. He leads the client, but where the client wants to go. Although the draftsman is not himself a policy maker, he can help educate the client so that the client can make informed decisions. In doing this the draftsman must avoid two extremes. On the one hand, he must avoid being a mere legal stenographer or short order cook. On the other, he must not be an officious meddler in policy. Mr. Beaman, to whom I have referred, once remarked that the legislative draftsman must be an “intellectual eunuch.” I would like to add that he must also be an emotional oyster. However deeply he may feel about the wisdom of the policy he is called on to express, he must submerge his own feelings and act with scrupulous objectivity. He will do his utmost to carry out his client’s purpose even when he strongly disagrees with it.

It ought to go without saying that the draftsman should make his legislative message as clear as possible and that he should stay out of “hidden ball” plays. Deception is good football, but it is mighty poor drafting. It would be unnecessary to say this but for the fact that experience has shown that some lawyers in the executive branch of the government have seen fit to mislead members of Congress into enacting legislation that they don’t fully grasp or that actively subverts their known will. The lawyer who tries this is usurping the functions of the legislature and the fact that he is motivated by what he fancies to be the public welfare is no excuse.
BEGINNING A PROJECT
Dickerson, "How To Write A Law":

We come now to the basic steps in drafting. At this point, I should warn you that the things I am about to tell you are neither very new nor very startling. Most of them have been thoroughly tested in practice and, where practiced, they materially improve the end-product. Unfortunately, they have not been practiced as widely as they should be.

I want to take these steps in two parts, divided by a basic distinction. This is the distinction between the substantive and the stylistic. These things can't be separated functionally, but for understanding and emphasis it is useful to distinguish the "think" part from the "write" part.

On the substantive side, there are three basic steps. The first step I have already mentioned: You find out what the client wants to accomplish and what specific problems it involves. This entails exploring the detailed possibilities with the client and helping him think the problem through. The main emphasis here is on analysis of the problem.

At this stage, you pump the client dry with questions. You find out specifically what he wants and how much he wants to leave to the draftsman's discretion. You point out any substantive inconsistencies you think you see in his idea, including any constitutional problems that occur to you. You point out also any administrative or other practical problems, or any drafting problems that you think he ought to know about. You tell him how much time is involved in whipping together a professionally adequate bill. But in the end you defer to the client's judgment.

To give you an idea of what is involved in developing the substantive basis for a relatively simple bill, here are some of the questions I asked a Congressman who wanted me to draft a bill emancipating Indians who could establish their general competency. I also include the answers that discussion with him and with the Bureau of Indian Affairs ultimately developed.

Q: Do you want to limit the bill to Indians of any particular age?
A: Yes, to those 21 or above.

Q: Who should determine the question of competency?
A: The local naturalization court.

Q: Should the court's jurisdiction depend on the applicant's domicile or on his residence?
A: His residence.

Q: Who should be notified of the hearing?
A: The head of the local governmental unit, the local welfare department, the Superintendent of the applicant's tribe, the head of its governing body, and any other persons the court considers appropriate.

Q: How much notice should be given?
A: 30 to 60 days.
Q: What factors should the court consider in determining competency?
A: The applicant's moral and mental qualifications and his ability to manage his own affairs.

Q: After a writ of competency is issued, what further steps, if any, need to be taken to assure full emancipation?
A: The Secretary of the Interior should be required to give the applicant all money and property that has been held in trust for him and to issue any necessary land patents.

Q: At what point should the applicant's tribal connection be severed?
A: When he and his tribe have fully settled all claims against each other.

If you don’t build a solid base at this stage you will probably wind up with a flimsy structure.

Dickerson speaks of leading the client, but where the client wants to go. The first phase of a project is finding out where the client wants to go. Read the project request. Is the client clear as to his desires? Does he state his request in terms of the problem to be solved? An interest in possible solutions, or a specific solution? You will take it up in his terms.

Call (or write) the client, indicate your interest, and arrange for a personal interview (or long distance telephone call). Before this meeting, prepare. Do not think “no use working until I know exactly what he wants.” More truthfully, there is no use having the meeting if you know nothing about the field.

First, check popular journalism in the Index to Periodical Literature (in general libraries) if you really know little about the subject and it might be of wide interest (pornography, yes; future interests in real property, no). Second, look in a standard encyclopedia. We recommend the Britannica 3 and Collier’s. Third, dip into a legal encyclopedia: Am. Jur. 2d., or C.J.S. Do not attempt to read everything in these. Attempt to see the legal problems involved and the shape of some approaches to them. Fourth, read one law on the matter. If you know of one in force, which has been challenged and upheld, so much the better. If the U.S. Supreme Court has overturned a law in this area, read the decision, including all concurring and dissenting opinions. (Note the voting alignment.) If the American Law Institute has produced an appropriate Model Law, read it. The purpose now is not to do all your research. It is to familiarize yourself with the framework of the problem.

If you are well-schooled in the area, you can skip steps one and two. No one can skip steps three and four. When you are prepared, hold your meeting. You now know what questions to ask. In the meeting, make use of your notes. If you wish, write out your questions. Be prepared for the situation of a client who does not know how he wants to approach the problem, yet wants a bill to be introduced tomorrow. You may give him the benefit of your homework, but if he wants a bill, he will have to make some decisions. Make sure that he knows exactly what he must decide and that he knows that your work will not progress until he does decide. End the meeting with a summary of your understandings (or a listing of matters to be decided by the client.)

Afterwards, promptly write a letter to the client, reviewing this summary (or this listing). Keep a copy, of course. You will avoid misunderstandings by doing this.
This is the time of year when law students are interviewed for possible employment as research assistants in our university legislative drafting service. Invariably, each student candidate's first question is the simple-appearing, "Just what is involved in legislative drafting, anyway?" Try as I may, I have never been able to arrive at a satisfactory general answer to that question. Draftsmen with far greater experience and competence than mine have had the same difficulty in describing the working realities of the drafting process to laymen and even, on occasion, to experienced private practitioners of the law. Perhaps this brief account of the progress of one reasonably typical, legislative drafting assignment will suggest something of the flavor of the draftsman's work.

Early last June, a letter came to our office from a reform-minded organization of impeccable standing and impressive sponsorship. The letter read, in substance: "A technical committee of our association would like to consult with you briefly about a piece of urgently needed legislation which we are putting into final shape for introduction at the next session of the Legislature." As an experiment, and for possible use in this department of the JOURNAL, I resolve to keep track of the time which would be required to put into acceptable bill form a statutory proposal on which a distinguished and qualified study committee had already reached, as the letter phrased it, "agreement in principle."

The drafting job has now been completed, and the technical committee appears, at least temporarily, to be satisfied with the draft bill in its present form. The actual text of the proposed statute runs four and one-half double-spaced pages. The time sheet, before me as this is being written, contains the following entries:

- Research time: 58 hours
- Conference time: 18 hours
- Actual writing time: 4 hours

This record adds up to 80 hours of hard work to develop a statutory provision approximately 1,200 words in length. Whatever legislative drafting may be, it is not principally a form of creative writing or a branch of applied English composition.

What were the practical reasons which, in this not un-typical instance, brought about a $1\frac{1}{2}$ to 1 ratio between legislative writing and a ratio of $4\frac{1}{2}$ to 1 between conference time and actual writing time? For one thing, the legislation which was to be drafted proposes a change in only one phase of a general subject of regulation which has been dealt with by New York statutes dating back to 1931. The drafting of an amendatory provision acceptably adjusted to the pattern of existing law could not be undertaken without painstaking analysis of existing statutes, court decisions interpreting them, and administrative practice pursuant to their authority. In addition, it would

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*A.B., 1934, LL.B., 1934, Washington University, St. Louis; LL.M., 1939, Columbia. Cardozo Professor of Jurisprudence, Columbia University. Author of several books on law. Professor Jones wrote this article while the Editor of the A.B.A. Journal's Department of Legislation.
have been reckless and unprofessional to proceed to a drafting stage without finding out whether other states than New York had made recent regulatory attempts in the field at hand. Research disclosed that there were, in fact, statutes in four other states, and an analysis and appraisal of regulatory experience in those states contributed significantly to the total research time. Add to this the research made necessary by the unexpected appearance of a nice little question of constitutional law, and the 58 hour research figure becomes vastly more understandable.

"But," the doubter will insist, "your technical committee knew exactly what it wanted, and you should have cast their legislative wishes into bill form without all the book work." One member of the technical committee felt that way about it, too, and made no effort to conceal his exasperation at "lawyers and their love of technicalities." Unfortunately for him, and for all the rest of us, it was perfectly clear at the first conference that the committee's "agreement in principle" amounted simply to a unanimous opinion of the committee's members that the problem before them was an important one and that there ought to be a law to do something constructive about it. It is a long and rocky road from a layman's bright idea to a matured and workable statutory provision.

Our drafting conferences proceeded smoothly so long as the discussion centered on the broad general objectives to be accomplished by the new legislation. But, as always, there were subordinate policy issues of which the committee had not thought until the draftsman raised them and requested the committee's instructions. Which of two possible administrative bodies should be entrusted with enforcement of the statute, or should an entirely new authority be created to carry the policy into execution? How severe should the sanctions be, and what procedural rights could be guaranteed to persons affected by the statute without interfering too much with its administration? Unanimity disappeared at this point. Irreconcilable differences on subordinate policy issues caused one member of the committee to withdraw altogether. On one issue, a technical matter entirely beyond a lawyer's competence, it took almost an hour to convince the committee that it had to tell the draftsman more than "We'll leave that to you."

The story could go on indefinitely if space limits did not forbid a full narrative. There were esoteric, quasi-professional terms, which had to be defined to safeguard the statute from challenge for indefinite-ness, and it soon became apparent that the terms to be defined had no common meaning, even among the experts. Twelve drafts of one definition were required before the draftsman heard the committee's welcome, "That's it!"

In all fairness, this account of the growth of one modest statutory proposal should be ended on an optimistic note. The lawyer who tries his hand at legislative drafting must be ready to bear impatience from his clients, searching interrogation from alert legislative committees, and, a long time after the event, judicial denunciation of his handiwork as fumbling, ambiguous and ill considered. But there are compensations. The chairman of my erstwhile committee client called up the other day and said, in quite friendly fashion, "We have another legislative problem on which we would appreciate a few minutes of your time."
RESEARCH

Dickerson, “How to Write a Law”:
The next important step is to explore the existing legal situation. An architect wouldn’t dream of remodeling a house without first taking a good look at it. As a draftsman, you must closely examine the existing law to see what to repeal, what to amend, and what to supplement. Failure to do this results in implied repeals, overlaps, and inconsistent terminology; in a word—confusion. Once I was asked to prepare a bill requiring brewers of beer to show the ingredients of their product on the label, but a check showed that there was already such a statutory requirement. The real problem was one of enforcement, not of legislation. More often there is a statute already in effect and it needs to be amended. In other cases, the legislative field is wide open. The emphasis here is on research.

Of course, there is much more to be done in the library that just looking to see “what to repeal . . .”, etc. Let us take an example of a state senator who wishes to require the licensing of the members of some trade, say, auto body and fender repairment. Following Dickerson (above), we would look to see what legislation this state has had and has today concerning this trade. Next, what regulation does it have in related fields, such as auto mechanics, and garage or service station operators? (Dig to see who supported this legislation. One can imagine the differences between bills offered by oil companies, the dealers themselves, a consumer group, the state technical-vocational school, the proprietary vocational schools and the auto insurance companies.) Find out if this regulation has been a success. For instance, do industry members sit on the regulatory board and effectively protect the members of the trade from consumer criticism? Do the practicing members of the trade close off entrance to their profession by quotas, discriminatory testing or a father-son nomination system? Does the union control? If you want some aspect of the regulation of this other trade, you’ll have to create some appropriate new structure or impose some explicit limitation (for instance) as to eligibility for board membership.

You can obtain this kind of information by (1) reading the “legislative history” and (2) calling on a party in the community who has an interest in the business or is a leader in the trade. Explore the case law on the matter. Utilize Shepard’s Citations on the statutes as well as cases. Check the law review articles on the decision. If you find a suitable model statute from A.L.I. or the National Commissioners on Uniform laws, be sure to read the critical analyses published on it.

A Short Bibliography for Research
Cohen, Morris L. Legal Research in a Nutshell. St. Paul, Minn.: West, 1971. Cohen is the master of the greatest of all law libraries, Havard’s. This book is very basic. One should be familiar with it in order to study in law school, let alone work in legislative research. Begin here.
Price, Miles O., and Harry Bitner. Effective Legal Research. Boston: Little, Brown, 1969. It is the editor’s opinion that this is the best book in the field. It is intelligent, beautifully organized, and very useful. If possible, use this book.
Roalfe, William R. How to Find the Law (5th Ed.). St. Paul, Minn.: West, 1957. This is the weakest of these four books. If the others are checked out of the Legislative Research Service’s Staff Library, well, you may discover this to be practical enough.
Dickerson, "How to Write a Law":

The last step is to polish the result for the greatest readability and clarity. And this brings us to a matter that has received a great deal of attention in recent years.

Form and style are important to a bill because they have an important bearing on its success as a vehicle of communication, which you may be sure is as necessary to adequate legislation as it is to any other human endeavor.

Style, as you all know, is a matter for which the law has taken severely to task. Recalling the frequent jibes of exasperated laymen, some of you may remember one that floated around during the days of federal price control. A business man was charged with violating a complicated regulation settling ceiling prices on the articles he sold. When he betrayed some unfamiliarity with the regulation, the judge asked him whether he had ever read it. The defendant replied indignantly, "Read it, Judge? I can't even lift it!"

The following excerpt from a magazine article is even more devastating:

One sure way of making an American audience laugh is to use the language of the United States Government. Just say "Notwithstanding the exceptions hereinafter provided" and people start grinning, all prepared to enjoy a fresh piece of genuine Washington Gobbledygook.

Why is Federales so funny? Simply because nobody can understand it and nobody talks that way. It's a kind of speech disorder; it's comical in the same way as stammering or a "Rooshan" accent. In other words, we laugh at Washington bureaucrats because those poor people can't talk like the rest of us.

Over the years the lawyers have built up an immunity to this sort of thing. They have consoled themselves with the thought that, since definitive legal documents have to pin down more contingencies than more casual writings do, they are necessarily more complicated. This is perfectly true. But the lawyers have gone even further. They have also persuade themselves that all legal complications are of this kind and that it betrays a gross disregard of the legal proprieties to suggest that many of the complications that ornament the typical statute, will, contract, or lease are at best unnecessary or, in some instances, downright silly.

Who is right? Is it the public, which says that the legal profession is unnecessarily confusing them, or is it the legal profession, which says that the public doesn't appreciate the necessity of dealing with all significant contingencies?

The answer, I think, lies well within the extremes. It is certainly true, as the lawyers contend, that there is an irreducible minimum of substantive considerations that no amount of simplification of style can remove. On the other hand, it is no real heresy to say that today there are ways of writing statutes and other legal documents that eliminate a large number of unnecessary complexities without violating the substance of the legal message. The possibility of this is suggested by the
fact that our present legislative style was largely inherited from an Old English system in which statutes were at one time drafted by conveyancers.

Here are some of the rules for writing that will help to make your bill more understandable. They won't guarantee that the result will make sense, but they will make whatever sense there is in the idea you are trying to express a lot clearer. I'm assuming at this point that you have thought out your ideas and have got them adequately organized.

Taken by itself, one of these rules doesn't amount to much. Certainly, a single application of one of them will have only a slight effect. How much does a grain of sand weigh? Very little. But a sand pile can be pretty heavy. Similarly, these rules are valuable for their cumulative effect; and their cumulative effect, I assure you, can be considerable.

The cardinal rule of all drafting, sometimes called "the draftsman's golden rule," can be stated in four words: Use your terms consistently. For one thing, don't vary your terminology when referring to the same thing. For example, don't refer to an automobile as an "automobile" in one place and as a "motor car" in another. That's what Fowler calls "elegant variation." And don't do the converse. Don't use the same term to refer to different things. For example, don't use the term "military" to mean just the land forces in one section and then use the same term to include the naval forces in another section. Consistency is a sine qua non of all effective communication.

Another good rule: Keep your sentences from getting longer than necessary. The old reasons for paragraph-long sentences no longer exist.

Use the present tense. The fact that a statute speaks constantly allows you to avoid all sorts of complicated verb forms. Taking the present as your base line, you hardly ever have to refer to the future, and the past tense can be confined largely to conditions precedent.

Use the indicative mood in preference to the subjunctive and use the imperative only where you have a true command; that is, where the statute directs somebody to do something. This will avoid what Driedger calls the "false imperative." For instance, don't say, "The term 'synthetic fiber' shall mean . . ."; say, "The term 'synthetic fiber' means . . ." A statute makes such a fact true in the very act of declaring the legal result.

By preferring the active voice to the passive, preferring the singular (where appropriate) to the plural, and stating matters positively rather than negatively, you can further clarify and simplify your presentation.

Another device that will improve your legislative style is to use active verbs instead of their noun equivalents. I can explain this best by a couple of examples. For instance, don't say "make a determination"; say "determine." Don't say "give consideration to"; say "consider."

Then there is the very fundamental matter of definitions. First of all, don't define a word unless you have to. Draftsmen are prone to define a word in one sense and then, without realizing it, use it in a very different one.
The second thing to remember about definitions, and this is one of the most important things in the whole field of legal drafting, is that you shouldn't define a word in a sense significantly different from the way it is normally understood by the persons to whom the legislation is primarily addressed. This is a fundamental principle of communication and it is one of the shames of the legal profession that draftsmen so flagrantly violate it.

While it may be true, as the philosophers of language like to emphasize, that words have no inherently correct meanings, the communicant who ignores established usage is setting up unnecessary barriers between himself and his audience. This is true even where he gives advance warning, in the form of a specific definition, that he is using his word in a special sense. The lawyer who defines "wheat" as including "rye" is laying a trap not only for his readers but also for himself. This is because of a psychological law that even a legislature is powerless to repeal. Like ghosts returning to a haunted house, established connotations return to haunt the user who attempts to banish them. I have seen many cases where a draftsman, having resorted to this slovenly device, has later forgotten his special definition and reverted unconsciously to the established sense, thereby introducing either an unintended result or an intended result disguised as something else.

The third thing to remember about definitions is that you should not stuff them with substantive rules of law. The purpose of a definition is to identify or clarify the term defined, not to give its history or a full list of its ingredients, or to tell how to bring it into existence.

* * * *
NOTRE DAME JOURNAL OF LEGISLATION

A Short Bibliography for Clear Writing

Reference

Oxford English Dictionary. 13 vols. London: Oxford, 1933. Be in awe when you use this set of books. Our language is here. Always use this when you are studying any particular word on a scholarly basis. You will find its life history. “Likely to remain forever the final court of appeal for the English language” — Christopher Booker. The forthcoming two volume supplement will ensure that. The shorter Oxford English Dictionary, one volume of 2,515 pages, is current, the third edition revised and corrected last in 1964.

In 1934, the G. & C. Merriam Co. published the Second Edition of the Merriam-Webster New International Dictionary of the English Language. This volume is the authority for usage, spelling, and italicization. It prescribes the proper. The abridged version of this is known as the Merriam-Webster New Collegiate Dictionary, last published in 1960. Use the Staff Library copy. (If you ever see one at a used bookstore, buy one for yourself.) In 1961, the Third Edition was published. The abridged version is the Merriam-Webster Seventh New Collegiate Dictionary. These are not authorities; they are called the “ain’t” dictionaries.” They are “reporting,” or descriptive dictionaries. They record the popular, current usage (including “ain’t,”) rather than provide the authority of propriety in communication. Avoid them if you can.

Fowler, H. W. A Dictionary of Modern English Usage (2d ed., revised by Sir Ernest Gowers). London: Oxford, 1965. This book has several competitors, but we can’t imagine why. It is so authoritative, exhaustive, logical and readable, that there seems no sense to entering the field with another work. Flip through the copies in the Staff Library and familiarize yourself with it. Then, use it whenever any awkwardness or doubt arises as to the usage of a word.


Bernstein, Theodore M. The Careful Writer. New York: Atheneum, 1964. Although organized as a reference tool, this book is only masquerading. It is sheer fun to read. It always tempts us to keep on reading the next item and the next item . . . .

Other Guides

Reference books are to be consulted as the need arises, of course. The books listed below are to be read through. Pick one and make it yours.


A HANDBOOK ON RESEARCH AND DRAFTING OF LEGISLATION


DRAFTING LEGISLATION

Dickerson, "How to Write a Law":

Develop a concrete plan of organization and arrangement. The thing must jell. This is the stage at which the legal architect develops what the real architect calls a "sketch." It's a sort of blueprint without all the details. This is the stage of synthesis.

The job of fitting all the pieces together is unquestionably the hardest part of drafting. The specific pieces should cover the intended area, and they shouldn't leave any gaps, they shouldn't duplicate each other or overlap, and they shouldn't contradict each other.

How do you plan a machine shop? You get the right machinery and then arrange it to minimize the steps, effort, and expense required. Instead of a good, efficiently made product, the legislative draftsman tries for clarity and findability when he is putting the statutory pieces together. Unfortunately, the problem is so elusive that it is impossible for him to do a perfect job. Those of you who have studied calculus will find a helpful parallel in the problems of maxima and minima. It is too bad that no one has yet invented a calculus for drafting. You have to fall back on informed judgment. Incidentally, the time you spend developing and perfecting an outline will be time well spent.

After you have the substance of your legislative message well in hand, you gradually move into the field of form and style. And thus you come, at long last, to the writing stage of drafting. The transition is not abrupt and the two phases blend almost imperceptibly, since substance and form cannot be functionally divorced. The shift is mainly one of emphasis because you continue to be interested in substance up to the last minute. With this fact clearly in mind, perhaps it is safe to go ahead and talk about form.

Altogether there are about five separate steps in establishing the final form of a statute. First you prepare a draft of the proposed bill, paying general attention to the accepted rules of form, checking doubtful questions of substance, and handling new problems as they arise, finding your answers by asking questions or by doing individual research. At this early stage you are still interested in the broad essentials - the substance of your message and the problems of general arrangement. You don't worry much about details and polish. Speaking of my own experience, I am always embarrassed to have anyone see a first draft. It is usually wooden and awkward. But don't let this sort of thing bother you. Remember, it's the last draft that people are going to read.

Next you revise your draft as many times as it takes you to produce the desired result. And let me give you a little tip that will help you get over a hurdle that pride puts in the path of most people: It's no disgrace to revise a draft a dozen times. Somehow the idea has gotten around that if you don't have it right by the third try, either you are beyond your depth or that's the best anyone could do with it. Nonsense. Some of the best draftsmen in the business take 15 to 20 revisions to iron out an extremely difficult provision. The important thing to remember is that you should keep on revising until you have the thing 99+\% right.
The third step is not usually recognized as a separate operation, since for small bills it is usually taken as an incident of one of the other steps. However, with the longer bills it is well worth special attention. I refer to the making of those specialized across-the-board checks that are necessary to tying the bill together, to having internal consistency of treatment, and to having real clarity. Here the draftsman gives the bill a specialized "horizontal" treatment. He checks his definitions one by one to see that he has followed each throughout the bill. He checks his citations separately, and then his cross references, and such other elements as recur and need to be treated uniformly. Each of these checks is a specialized testing of the bill as a whole.

One very important step that is frequently overlooked, and sometimes impossible under the circumstances, is cross-checking with others. I'll admit that if the bill is simple enough and covers familiar territory you may be safe in skipping this step. At the same time this is like saying that if you let your fire insurance lapse your house may not burn down. "He travels the fastest who travels alone," said Kipling, but if my edition is correct he wasn't talking about legislative draftsmen. Unless the bill you are drafting is really simple, you are on safer ground if you have someone check your work.

As a general rule, therefore, it is wholesome to approach the broad drafting problem on a team basis. In a well run legislative drafting group individual draftsmen are apt to cross-check each other, certainly on complicated bills. I think it is safe to say that a large part of drafting involves complications too treacherous to be conquered single-handed. I am not contradicting this when I say that the composition of every bill should be the ultimate responsibility of one person.

For adequate testing there are several available devices. The most usual is individual checking with fellow draftsmen or outside experts, or both. A second one, which is sometimes useful, is to submit the tentative results to a panel of critics, not much larger than a half dozen if the group is to move faster than a slow tortoise. A third device is to reproduce the bill and circulate it for suggestion and comment to a carefully selected sampling of the kinds of persons who are going to have to live with the law in case it is enacted. You can use these devices separately or in combination, as circumstances suggest.

But I must warn you not to confuse getting other people's help, which is very fruitful, with writing by conference, which wastes time and talent. Groups can chew over ideas, they can criticize, and they can give or withhold approval. But they simply cannot compose concisely, consistently, or clearly.

How long does it take to draft a statute? How long will it take to complete your work?

Abraham Lincoln's answer is as good as any. When asked how long a man's legs should be, he answered, "Long enough to reach the ground." For the legislative draftsman this means, "As long as it takes the particular draftsman to do the particular job." Unfortunately, the draftsman is often under time limitations that he can't control and he has to compromise accordingly. The practical answer therefore is,
“Longer than you have time for.” There will even be times when you have to draft right off the cuff, as they say. At times like that, when you have to get it right the first time or not at all, you cross your fingers and hope that your past experience and a little luck will keep you from getting too far off the track. Even so, you can often reduce the time problem if you take the trouble to educate your client on what is involved in turning out a professionally adequate product.

In closing, I would like to say that conscientious effort in drafting pays rich rewards. If the bill turns out well, the draftsman will share the credit with many others. If it turns out badly, he will have the credit all to himself. Seriously, there are rich rewards in legislative drafting and the biggest one in the deep satisfaction that comes from wrestling with man-sized problems whose satisfactory solutions are a necessary phase of the art of government and a buttress of the public good.
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STYLE

Chapters VI and VII of Dickerson’s Legislative Drafting serve as excellent guides for clear writing of legislation. Chapter VI, “Legislative Style and Grammar” restates in detail the items covered by the portion of Dickerson’s article reprinted in the section of this handbook on “Writing.”

Chapter VII is titled “Suggestions on Specific Wording.” Every writer of legislation should be familiar with § 7.3 Preferred expressions. (This section is to be emblazoned on the heart of every Legislative Research Service editor.)

These guides are not just common sense, although they are certainly that, too. They also are a product of a fine sense of precision and a consciousness of language. Work to develop these.

The “Drafting Rules” which follow are also an excellent guide.

DRAFTING RULES

Prepared by the Committee on Legislative Drafting of the Conference of Commissioners on Uniform State Laws, Adopted by the Conference in 1953 and Amended in 1954.

1. Introduction

The essentials of good bill drafting are accuracy, brevity, clearness and simplicity. The purpose and effect of a statute should be evident from its language; the language should convey one meaning only.

If a statute is of universal application, this objective is not difficult to attain; but most statutes are subject to conditions, qualifications, limitations or exceptions. The clearness and precision of a statute depend mainly on the plain and orderly expression of these details. If the law is intended to operate only in certain circumstances, those circumstances should be described before any other part of the enactment is expressed. If the circumstances are numerous, it may be preferable to give notice of their existence at the beginning of the act and to set them forth in separate clauses later. If this rule is observed, doubt cannot arise except through faulty choice of words used to describe the occasions where the law is intended to apply.

The choice of words is important. They should be plain and well understood. No unnecessary word should be used.

A statute is regarded as constantly speaking. It speaks as of the time when it is read or applied. It must, therefore, be written in the present tense, except for stating a condition precedent to its operation, which should be phrased in the perfect tense if it is required to be completed before the statute applies.

The principal functions of a statute are (1) to create, (2) to impose a duty of obligation, (3) to prohibit, and (4) to confer a power or privilege. A duty, obligation or prohibition is best expressed by “shall” or “shall not”; a power or privilege by “may.” As so used, these words are auxiliary verbs qualifying other verbs, giving to them the above special meanings. “Shall,” in such cases, does not denote the future tense, any more than “may” does.

The following drafting rules will serve as a guide in the preparation of uniform and model acts. It must always be borne in mind that a good preliminary draft is essential as a starting point for consideration by the drafting committee and the Section of which it is a part.
2. Specific Rules

Rule 1. Language. Use correct English. Use language so clear that it conveys the same meaning to every intelligent reader.

Comment

"Language" is used in its broadest sense. The details that go to make up language are treated separately in other rules.

Rule 2. Tense and Mood. Use the present tense and the indicative mood. State conditions precedent in the perfect tense if their happening is required to be completed. Avoid use of passive voice.

Comment

The law is regarded as speaking in the present and continuously. The use of the word "shall" in imposing a duty or prohibition does not indicate the future tense. Even where an action is required on a specified future date, the form of expression is not in the future tense.

In speaking in the present, a circumstance which puts a provision of an act in operation, if continuing to exist is in the present tense, if completed is in the perfect tense, but is never in the future or future perfect.

The subjunctive mood has no place in an act. Statutes deal with facts, not with hypothetical cases.

The passive voice is used in the uniformity of interpretation section of all uniform laws. It should be limited to this use.

Rule 3. Consistency. Use the same arrangement and form of expression throughout, unless the meaning requires variations.

Comment

Consistency helps to avoid having different constructions placed on similar provisions.

Rule 4. Choice of Words and Phrases. (a) Select short, familiar words and phrases that best express the intended meaning according to common and approved usage.

(b) Do not use synonyms and do not use the same word in different senses.

(c) Use pronouns only if their antecedents are unmistakable.

(d) Make free yet careful use of possessive nouns and pronouns.

(e) Do not use the words "said," "aforesaid," "hereinabove," "before-mentioned," "whatsoever," or similar words of reference or emphasis.

(f) Avoid using the word "such" where an article may be used.

(g) Do not use the expression "and/or."

Rule 5. Brevity. (a) Omit every needless word.

(b) If a word has the same meaning as a phrase, use the word.

(c) Use the shortest sentences which bring out the meaning intended.
Comment

In construing statutes, courts consider each word and endeavor to give it meaning. Unnecessary language is more likely to mislead than to help.

Rule 6. Punctuation. Punctuate carefully. Recast the sentence if a change in punctuation might change its meaning.

Comment

In Conference drafts brackets have a special significance (See Rule 16 below). Therefore they should never be used as punctuation.


Rule 7. Definitions.

(a) Use definitions only:
   (1) When a word is used in a sense other than its dictionary meaning, or is used in the sense of one of several dictionary meanings; or
   (2) To avoid repetition of a phrase; or
   (3) To limit or extend the provisions of the act.

(b) Do not write substantive provisions or artificial concepts into definitions.

(c) Place definitions at the beginning of the act.

(d) Use the defined word, not the definition.

Comment

There may be some question whether an act should ever use a word other than in its proper dictionary meaning. There are, however, instances where this is justified, as for example “municipality,” which properly includes only incorporated places, can be well defined to include enumerated unincorporated political subdivisions as well. This differs widely from the artificial concept prohibited by subsection (b), using a word in a sense wholly foreign to any dictionary meaning which inevitably leads to confusion.

Rule 8. Expressions of Limitation.

(a) If a provision is limited in its application or is subject to an exception or condition, it will frequently promote clarity to begin the sentence with the limitation, exception or condition or with an expression calling attention to any limitation that follows.

(b) For conditions use “if,” not “when” or “where.”

Comment

It is important at the outset to know the scope of the coverage of the act and the conditions placed on its application.

Rule 9. Provisos. Use provisos only for taking special cases out of a general enactment and providing specially for them.
Comment

“Provided, That” and “Provided, however, That” are much abused phrases. They are meaningless when used to introduce an additional provision that should be expressed by direct statement.

Rule 10. Numbering Sections. Number sections by arabic figures consecutively throughout the act.

Comment

The rule applies as well where the act is divided into parts, chapters or articles, and does not prevent a distinctive numbering for each division, as long as the numbering is uniform and progressive throughout the act.

Rule 11. Length of Sections. Do not use long sections.

Rule 12. Section Breakdown.

(a) If a section covers a number of contingencies, alternatives, requirements or conditions, break it down into subsections designated by small letters in parentheses. If a further breakdown is unavoidable, break down subsections into paragraphs designated by figures in parentheses. Do not further break down a section or subsection.

(b) Use separate sections for separable provisions.

Rule 13. Reference to Other Provisions. Avoid references to other sections or subdivisions. Do not refer to another section or subdivision by its number or letter without descriptive language to identify it further.

Comment

Section and subdivision numbers and letters are frequently changed without changing references to them.

Rule 14. Section Headings. Where section headings are used, enclose them in brackets. Do not place them in parentheses.

Comment

Some states have rules against section headings. Brackets should serve to make Conference draftsmen aware of this fact, and warn them that the sense of the section must be complete without considering the heading.

Rule 15. Parts, Chapters and Articles. A lengthy act may be divided into parts, chapters or articles.

Comment

This has been done in the case of the Uniform Commercial Code.

Rule 16. Use of Brackets. If a choice between two or more expressions, or a choice of adopting or omitting any language is given, bracket the language affected by the choice so that each state adopting the act may adapt the choice to its own usages or requirement.

Rule 17. Purpose Clauses. Do not include language stating the purpose of an act or a recital of facts upon which the act is predicated.
Comment

A well drafted act requires no extraneous statement within itself of what it seeks to accomplish nor the reasons prompting its enactment. Comments and annotations supply this in detail to aid in its passage and interpretation.

The use of the preamble of a bygone day with its numberless “Whereas” clauses has long since fallen into disrepute. The practice of resorting to “Purpose Clauses” is but a revival of the tried and convicted preamble.

Rule 18. Severability Clause. Do not use a severability clause unless there is a possibility of a partial invalidity. If used, it is to be in the following language:

If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Rule 19. Title to Acts.

(a) Provide a descriptive short title for every uniform act, beginning with the word “Uniform” and ending with the word “Act.”

(b) If a comprehensive title to precede the act is suggested, use the form “An act concerning (or relating to) . . . and to make uniform the law with reference thereto.” Write the title after the text of the act is completed. Place all suggested titles within brackets to indicate that they should be revised to conform to the requirements of the adopting state.

Comment

It is the practice on Conference drafts to prescribe the short title at the end of the act. Immediately preceding the repeal section.

Each state has its own standards and practices as to what titles require, many of them prescribed by the state constitution. Due to this, there is a growing tendency on the part of Conference draftsmen to suggest only short titles of the acts they prepare. If a full title is suggested, great care is necessary to be accurate and precise in describing exactly what the statute purports to do.

Rule 20. Revision. When the draft of an act has been completed revise it carefully and critically. Lay the revision aside for a time. Then revise the revision.

Comment

There is no substitute for time and thoroughness.
STATUTORY CONSTRUCTION

A newspaper feature, the “Grin and Bear It” cartoon, once showed Senator Snort speaking to his Senate Committee, an obviously perplexed and confounded group struggling with a proposed statute. Quote, Snort: “Must we concern ourselves with meaning of the bills we pass, gentlemen? . . . I understand it is the duty of the Supreme Court to interpret them!”

The drafter must know the rules of statutory construction so he can say what he means, so he can communicate his ideas. Here follow the general rules. (Consult the Short Bibliography for Drafting.)

The Statute itself usually contains answers to most questions on how it should be applied. Draftsmen intend their documents to be read, not interpreted and they are usually successful. With most laws, there is no case history. The message here is to very carefully read what you have written.

Legislative history provides guidelines as to the intentions of the legislature. Usually, a law is written by a lawyer in the executive branch of the government or one working for a lobby. Sometimes, as in some federal tax law, the Senator Snort situation is very real! In other words, be wary of this rule.

Stare decisis. For instance, what is a “person” to whom Constitutional protection is due? Consult Words and phrases in the law library. This will give you the court interpretations with citations.

Expressio unis est exclusio alterius. “The inclusion of one (or some) is the exclusion of all others.” Silence as to some “includible” item carries the “negative implication” that it will not be included in operation. Note that the context must be one causing us to conclude that the legislative intended to be exhaustive. This maxim is merely a presumption.

Ejusdem generis. “Of the same kind.” When specific things are enumerated, followed by a general phrase, such as “and other ------------------ things,” the general words should be construed as limited to things of the same kind as those enumerated. Professor Robert E. Rodes gives an example from the “Mann Act” which forbids interstate transportation of women for prostitution, debauchery, licentiousness, “or other immoral purposes.” But one who takes his girlfriend across the state line in order to rob a bank with her is not violating this Act, even though armed robbery is generally considered “immoral.” This principal limits the meaning to sexual immorality.

This maxim does not apply when only one term is enumerated or when the list is of vastly dissimilar character. This maxim is a “lesser included” part of noscitur a sociis.

Noscitur a sociis. “Associated words take color from each other.” For example, the Constitutional grounds for impeachment are “Treason, Bribery, and other high Crimes and Misdemeanors.” The maxims ejusdem generis and noscitur a sociis indicate that those “high crimes and misdemeanors” are political offenses, the failures of trust by one who holds government office.

Statutes in pari materia (“related statutes dealing with the same subject matter”) may be resorted to as aids to the construing of a particular statute. “Courts will regard all statues upon the same general subject matter as part of one system.” Thorne v. Jones, 335 Michigan 658, 57 N.W. 2d 40 (1953).
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Statutes adopted from other jurisdictions may be construed in light of prior decisions thereon by the highest court of the state of origin. This is especially important in light of the acceptance of the Uniform Codes and Model Statutes.

Llewellyn gave us the following set of matched maxims in his *Remarks on the Theory of Appellate Decisions and Rules or Canons About How Statutes Are to Be Constructed*, 3 Vdn. L. R. 395 (1950).

**HOW TO INTERPRET STATUTES**

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<th>THRUST</th>
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<td>A statute cannot go beyond its text.</td>
<td>To effect its purpose a statute may be implemented beyond its text.</td>
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<td>Statutes in derogation of the common law will not be extended by construction.</td>
<td>Such acts will be liberally construed if their nature is remedial.</td>
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<td>Statutes are to be read in the light of the common law and a statute affirming a common law rule is to be construed in accordance with the common law.</td>
<td>The common law gives way to a statute which is inconsistent with it and when a statute is designed as a revision of a whole body of law applicable to a given subject it supersedes the common law.</td>
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<td>Words and phrases which have received judicial construction before enactment are to be understood according to that construction.</td>
<td>Not if the statute clearly requires them to have a different meaning.</td>
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<td>Words are to be interpreted according to the proper grammatical effect of their arrangement within the statute.</td>
<td>Rules of grammar will be disregarded where strict adherence would defeat purpose.</td>
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<td>Expression of one thing excludes another.</td>
<td>The language may fairly comprehend many different cases where some only are expressly mentioned by way of example.</td>
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<td>It is a general rule of construction that where general words follow an enumeration they are to be held as applying only to persons and things of the same general kind or class specifically mentioned (<em>ejusdem generis</em>).</td>
<td>General words must operate on something. Further, <em>ejusdem generis</em> is only an aid in getting the meaning and does not warrant confining the operations of a statute within narrower limits than were intended.</td>
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<td>There is a distinction between words of permission and mandatory words.</td>
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<td>Words imparting permission may be read as mandatory and words imparting command may be read as permissive when such construction is made necessary by evident intention or by the rights of the public.</td>
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BLUE, J. This is an appeal by the Crown by way of a stated case from a decision of the magistrate acquitting the accused of a charge under the Small Birds Act, R.S.O., 1960, c. 724 § 2. The facts are not in dispute. Fred Ojibway, an Indian, was riding his pony through Queen's Park on January 2, 1965. Being impoverished, and having been forced to pledge his saddle, he substituted a downy pillow in lieu of the said saddle. On this particular day the accused's misfortune was further heightened by the circumstance of his pony breaking its right foreleg. In accord with Indian custom, the accused then shot the pony to relieve it of its awkwardness.

The accused was then charged with having breached the Small Birds Act, § 2 of which states:

2. Anyone maiming, injuring or killing small birds is guilty of an offence and subject to a fine not in excess of two hundred dollars.

The learned magistrate acquitted the accused holding, in fact, that he had killed his horse and not a small bird. With respect, I cannot agree.

In light of the definition section my course is quite clear. Section 1 defines “bird” as “a two legged animal covered with feathers.” There can be no doubt that this case is covered by this section.

Counsel for the accused made several ingenious arguments to which, in fairness, I must address myself. He submitted that the evidence of the expert clearly concluded that the animal in question was a pony and not a bird, but this is not the issue. We are not interested in whether the animal in question is a bird or not in fact, but whether it is one in law. Statutory interpretation has forced many a horse to eat birdseed for the rest of its life.

Counsel also contended that the neighing noise emitted by the animal could not possibly be produced by a bird. With respect, the sounds emitted by an animal are irrelevant to its nature, for a bird is no less a bird because it is silent.

Counsel for the accused also argues that since there was evidence to show accused had ridden the animal, this pointed to the fact that it could not be a bird but was actually a pony. Obviously, this avoids the issue. The issue is not whether the animal was ridden or not, but whether it was shot or not, for to ride a pony or a bird is of no offence at all. I believe counsel now sees his mistake.

Counsel contends that the iron shoes found on the animal decisively disqualify it from being a bird. I must inform counsel, however, that how an animal dresses is of no concern to this court.

Counsel relied on the decision in Re Chicadee, where he contends that in similar circumstances the accused was acquitted. However, this is a horse of a different colour. A close reading of that case indicates that the animal in question there was not a small bird, but, in fact, a midget of a much larger species. Therefore, that case is inapplicable to our facts.

Counsel finally submits that the word “small” in the title Small Birds Act refers not to “Birds” but to “Act”, making it The Small Act relating to Birds.
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With respect, counsel did not do his homework very well, for the Large Birds Act, R.S.O. 1960, c. 725, is just as small. If pressed, I need only refer to the Small Loans Act R.S.O., 1960, c. 727, which is twice as large as the Large Birds Act.

It remains then to state my reason for judgment which, simply, is as follows: Different things may take on the same meaning for different purposes. For the purpose of the Small Birds Act, all two legged, feather-covered animals are birds. This, of course, does not imply that only two-legged animals qualify, for the legislative intent is to make two legs merely the minimum requirement. The statute therefore contemplated multi-legged animals with feathers as well. Counsel submits that having regard to the purpose of the statute only small animals "naturally covered" with feathers could have been contemplated. However, had this been the intention of the legislature, I am certain that the phrase "naturally covered" would have been expressly inserted just as "Long" was inserted in the Longshoreman's Act.

Therefore, a horse with feathers on its back must be deemed for the purposes of this Act to be a bird, and a fortiori, a pony with feather on its back is a small bird.

Counsel posed the following rhetorical question: If the pillow had been removed prior to the shooting, would the animal still be a bird? To this let me answer rhetorically: Is a bird any less of a bird without its feathers?

Appeal allowed.

Reported by: H. Pomerantz
S. Breslin
NOTRE DAME JOURNAL OF LEGISLATION

A SHORT BIBLIOGRAPHY FOR DRAFTING

Dickerson, Reed. *Legislative Drafting*. Boston: Little, Brown, 1954. Dickerson's credentials are sketched at the beginning of "How to Write a Law." This is the book of its field. It has approximately one hundred pages of text. Read them all. Learn what he has to say. You will be using it any time you are working in this area.

Nutting, Charles B., Sheldon D. Elliott and Reed Dickerson. *Legislation, Cases and Materials* (4th ed.). St. Paul: West, 1969. Of specific interest to us are Chapters 5 and 6, "Interpretation" and "Drafting," respectively. Our view is that the case method is particularly inappropriate to a course in Legislation. You may agree if you delve into these chapters. Fortunately, most of the material is not cases.


A NOTE ON THE POLITICAL PROCESS

We will focus on state and local governments. States are sovereign, local governments are not. Cities, counties, water districts, etc., receive their charters from state legislatures, not from the people directly. Therefore, when researching any matter for local units, remember that state statutes (and court decisions) will prevail.

States have differing processes for amending their constitutions. For instance, Minnesota requires only a simple majority for amendments proposed by the legislature, but a three-fourths majority for those proposed by state conventions. Rhode Island has a system exactly opposite. New Hampshire requires a two-thirds majority of those voting in annual town meetings. In forty-three states, there is some provision for calling constitutional conventions at specified intervals.

Most state legislatures were modeled after the U.S. Congress. All but Nebraska's have two houses. In only nineteen states do they meet annually and frequently they meet for only a few weeks. Most legislators keep up their regular occupations. A New York Assemblyman earns $25,000 biennially, while each of the four hundred state representatives in New Hampshire earns $200, meeting every other year. (When salaries are too low, many worthwhile persons choose to stay out of politics). More legislators are lawyers than members of any other business or profession.

In a survey of four state legislatures, the following interest groups were the most mentioned by members (i.e., most evident as lobbyists). Education Association (teachers), Farm Bureau (not a government agency, but a co-op of sorts), A.F.L.-C.I.O., Chamber of Commerce, League of Cities, Medical Associa-
tion, Retail Merchants Association, PTA, Grange (farmers), Manufacturers Association, League of Women Voters, and a Taxpayers Association.

Each year 20,000 bills are introduced into the U.S. Congress; less than 2,000 will become law—ever. This reduction of numbers is not simply a product of a logjam situation. It also reflects the process of selection and the triviality of some bills. The selection goes on in the committees.

Your bill will have to meet the approval of a majority of the responsible committee. The houses usually accept the decision of the committees. So, testimony and evidence presented to the committee can be crucial. See Congressman Bolling’s article “Does Congress Have a Future?” in 1 N.D.J. Leg. In the U.S. Congress, subcommittees do this investigative work.

“A Short Bibliography on Legislation and Politics


Barone, Michael, Grant Ujifusa, and Douglas Matthews. The Almanac of American Politics. Published annually. Boston: Gambit, Inc., 1972. Over 1200 pages long, this book is a bargain at $6.95. It is a highly readable, perceptive and informative book about the people in the United States Congress and the 50 governor’s mansions. When we get a request from a Member of the U.S. Congress, we consult this to learn something about the Member, his history and his district.


Bolling, Richard. House Out of Order. New York, 1965. Suggests specific reforms in the proceedings, organizations and committee activities of Congress. Case studies from labor and civil rights are presented to illustrate his point.

Brossard, Eugene E. Punctuation of Statutes.


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Crawford, Earl T. Construction of Statutes. St. Louis, Mo.: Thomas, 1940.

Fellmuth, Robert. The Interstate Commerce Omission. New York:

1970. (The Ralph Nader Study Group Report on the I.C.C.) An example of how thorough research on an institution can be. Their answer comes down to abolishing the I.C.C., not remedial legislation. But, the documentation of the problems may be valuable if you are called on to draft legislation in this field.


Stern, Phillip M. The Rape of the Taxpayer. New York, 1973. (Vintage paperback, $1.95) We include this book because it is our favorite example of a layman discovering the political truth: law (in this case, tax law) is written for those most deeply interested (in this case, that is those with the most to be taxed). This may be your education in political realities. Do not be frightened off if tax is not your field: this book is written for laymen, too.

