

Being a Drafter

Chapter

1

1.00 Introduction

1.10 The Essence of Drafting

1.11 The Drafter and the Policymaker

1.12 How Policy Can Influence Drafting

1.13 How Drafting Can Influence Policy

1.20 The Drafting Process

1.30 Professional Obligations

1.31 Drafting by Attorneys and by Non-Attorneys

1.40 Attributes Important to Drafting

1.41 Knowledge

1.42 Skills

1.43 The “Legislative Counsel Type”

1.50 Resources Important to Drafting

Drafting is not just a technical job; it requires foreseeing every possible question that may arise and eliminating every ambiguity.

This I really learned in the winter of 1935 from a great and unsung teacher. He was Middleton Beaman, legislative counsel of the House of Representatives. A tense, caustic, redheaded Yankee, he reminded me of a Vermont schoolmarm; and it was this role that he played when he and I appeared, day after day, at the executive sessions of the Ways and Means Committee. The committee's procedure was to read the bill, paragraph by paragraph. No sooner was a sentence read, however, than Mr. Beaman was on his feet asking questions: Where the bill said that employees should receive old age benefits, did it mean to include American employees stationed abroad? If the committee members said No, then Mr. Beaman, terrierlike, would ask: What about a contractor in Detroit who sent his regular crew on to a job for a few days in Windsor, Ontario? What about seamen on the Great Lakes? A cook on a ship that went from Seattle to Alaska, through Canadian waters? He insisted on answers, and the committee members generally complied.

Not always did they comply quickly. . . .

**Thomas H. Eliot, "The Social Security Bill:
25 Years After," 206 *The Atlantic* 72 (August 1960)**

Intellectually, the draftsman's skills are the highest in the practice of law. Judges at bottom need merely reach decisions . . . ; negotiators and advocates need understand only as much of a situation as will gain a victory for their clients; counselors can be bags of wind But the documents survive, and to draw them up well requires an extraordinary understanding of everything they are supposed to accomplish. . . . Probably the greatest compliment a lawyer can receive from his profession (a compliment never publicized) is an assignment to draft a major law.

Martin Mayer, *The Lawyers* 50-51 (1966)

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Chapter

1

§ 1.00 Introduction

Legislative drafting is—to the extent it is writing at all—the form of writing used for legislative measures, a category that covers original bills and resolutions as well as amendments. Ultimately, legislative drafting is the form of writing used for enacted law. The focus of this book is on legislative drafting for the Congress of the United States, but many of the principles described here apply just as well to drafting for other legislatures.

Within the profession, legislative drafting is known simply as drafting, so this book prefers that simpler term throughout. Likewise, this book uses “drafter” to mean one who drafts, “client” to mean one for whom the drafter drafts, and “draft” (as a noun) to mean the text prepared by the drafter for the client.

As forms of writing go, drafting is not freewheeling like poetry, nor showy like rhetoric, nor personal like a novel. Drafting is disciplined, rigorous, and analytical. Done well, drafting can also be creative, elegant, and clever. (Unfortunately, drafting is not always done well.)

Drafting is done by a wide variety of people with a wide variety of qualifications. Some drafters specialize in drafting, some do not. Some are full-time drafters, some not; some are in public service, some not. A drafter may or may not be a lawyer, though for some of the more advanced tasks, being a lawyer may be useful or even required.

The purpose of this book is to provide practical advice on drafting to anyone who does, or may, engage in drafting, and indirectly to provide insight into the drafting process to other interested people. For example, this book is for people who are more interested in policy than in drafting, but want to under-

stand why drafters operate the way they do. It is also for people who are more interested in reading and interpreting the law than in drafting, but want to understand why laws are drafted the way they are. It is hoped that this book will be accessible to beginners while remaining valuable to veterans.

The traditional method of training drafters is to train them on the job; the consensus is that drafting is best learned holistically, on a case-by-case basis. For that reason this book is best used as a resource, not a course. It is a supplement to, not a substitute for, the learning that comes from experience.

The author has nearly twenty years' experience in writing and the law, first as a journalist, then as a trial and appellate lawyer, and finally as an assistant counsel in the Office of the Legislative Counsel of the United States House of Representatives. (The views expressed here are solely his own.) Based on his experiences, the author designed this book to answer the variety of questions about drafting that arise daily in the work of individuals with a professional interest in how bills, resolutions, and laws are drafted. The approach used here is pragmatic: You will find no linguistic theories or esoteric conundrums discussed here. What you will find is solid advice for everyday drafting projects.

§ 1.10 The Essence of Drafting

The great misconception about drafting is that it has very much to do with writing. The truth is, the actual task of writing—choosing the words and putting them into effective form—is only a small piece of the drafter's task. The draft is merely the output, not the essence, of the drafter's work.

The process of drafting is, more than anything else, a process of spotting, presenting, and resolving issues. Every drafting assignment has issues; some are policy issues, some are technical issues, but all require judgment and decision. Policy issues are for the client to resolve, but the client can't resolve an issue without first being aware of it.

And so, the most fundamental part of a drafter's job is to spot issues, present them to the client, and help the client think through them in an informed way.

Of course, the writing is important, too. Thinking and writing do, in large part, go hand in hand. But at the end of the day, if the policy is thought through properly, great writing isn't needed—and if not thought through properly, great writing won't help.

The essence of drafting is to be, as Thomas H. Eliot put it in the quotation at the beginning of this chapter, a “Vermont schoolmarm.” You do not need to be tense, caustic, redheaded, or a Yankee, but you do need to foresee every doubt and difficulty and to point them out, “terrierlike,” so that there is no risk that they will be overlooked.

§ 1.11 The Drafter and the Policymaker

Although some policymakers do their own drafting, the policymaking function is best kept distinct from the drafting function.

A policy is, more or less, a proposed change in the way the government operates with respect to people. Making policy requires judgments about substantive merit (“Would Policy A be good for the country?”) and political consequences (“Would Policy A help me get re-elected?”).

A draft is the written expression of a policy—ideally, expressed in a manner that accurately reflects the policy and effectively carries out the policy. Drafting requires judgments about substantive accuracy (“Does this draft carry out Policy A, no more and no less?”) and practical consequences (“What problems or misunderstandings might arise once this is set in motion?”).

The relationship between drafter and client is one of agent to principal. If the drafter is an attorney, the relationship is also one of attorney to client. The drafter performs a service for the client and has a duty to do so faithfully. A court would probably characterize the drafter (whether or not an attorney) as a fiduciary with respect to the client, standing in a special position of trust and confidence and having special, heightened obligations. It is not a two-way street: The client is probably not a fiduciary with respect to the drafter, though the client may well have a general duty of good faith and fair dealing and, depending on the particulars of the arrangement, a duty to provide compensation.

As a fiduciary, a drafter has a duty is not merely to provide an accurate and effective draft. The drafter is not a scrivener in an arm’s-length transaction, but an advisor in a relationship of trust. The drafter must look out for the client’s best interest and, in doing so, must be thorough and candid. In a sense, the drafter is in the “client protection business.”

As a drafter, you have a duty to warn the client when a proposal is sloppy or problematic or unconstitutional. You should also be alert for things that might make the client look bad. For example, if you notice that the client’s

short title forms an unfortunate or embarrassing acronym, you should find a gentle way to let the client know.

You may have an interest in promoting “good government,” respecting the institution of Congress, keeping existing laws tidy, and similar considerations. Indeed, some who write about drafting assert that a drafter has a duty directly to the legislature or the public, or both, to further these interests. Be careful; the assertion may go too far—the duty asserted more likely applies to a legislator than to a drafter. (But see § 9.70, “Avoiding Damage to the Statute Book.”) Regardless, if a legislator has a duty to further these interests, then surely it is appropriate for a drafter, as a fiduciary, to make sure the client does not overlook them.

Having described all those duties, bear in mind that your duties are moderated by a rule of reasonableness—that is, what is reasonable under the circumstances.

§ 1.12 How Policy Can Influence Drafting

Ultimately, the drafting project belongs not to the drafter, but to the client. The client supplies the policy, and the client decides whether and how to use the draft. Accordingly, all decisions, even technical decisions, are ultimately for the client to make.

Many decisions are substantive—they will have an effect on people if enacted. The client may stick with a policy even though it is ambiguous, unworkable, or unconstitutional. Making policy is the client’s responsibility.

Some decisions are not substantive. And yet, in a real sense, every decision is a policy decision. For example, many clients want a catchy short title. Many want findings with zing and flair. Some want words that are politically charged. A very few want to divert attention from substance by using a heading or title that twists or disguises the truth. Some refer to this as “spin” or “optics.” By any name, this is politics, and making politics, like making policy, is the client’s prerogative and the client’s responsibility.

Whether the client is making policy or politics, the drafter’s fundamental task is not to write, but to advise. Whatever the decision is, the drafter should help it to be fully informed. If you advise that certain words are ambiguous and possibly unconstitutional, and the client says, “so be it,” nod and move on; you have done your duty.

§ 1.13 How Drafting Can Influence Policy

For a client to dabble in drafting is one thing; for a drafter to dabble in policy is something else entirely. A drafter should not initiate or recommend policy: Doing so probably violates the immediate drafter-client relationship. It also undermines your effectiveness in at least two ways.

First, as a drafter, your livelihood depends on credibility and trust. If you do not give objective advice—or even if you are perceived as one who does not give objective advice—soon enough you will not be asked for advice at all.

Second, your ability to spot and analyze issues depends on your ability to consider a draft from a clinically detached distance. If you are trying to influence a policy, you are more likely to fail, by accident or by design, to spot an issue or to bring it to the attention of the client. This holds true whether you are for the client's policy or against it.

This is not to say that, as a drafter, you cannot have strong feelings about the merits of particular policies. Of course you can, and no doubt you will.

You must, however, take pains to separate your personal feelings from your professional duties. (If you are an attorney, you probably already have experience at this; it comes with the territory.) Do not advocate a policy; do not do so directly or indirectly; do not give the appearance that you are doing so. Do not give your opinion about the merits of a policy if asked—even if pressed. There are ways to deflect the question: “I am not a policy person.” “That’s a policy issue for others to decide.” “I have no dog in this fight.” Say it with words if warranted, but say it implicitly by your demeanor at all times. When you decline to say how you feel, you are being professional. When your client can’t even guess how you feel, you probably have it about right.

The fact is, every interaction you have with the client has some policy effect at some level—usually minimal, occasionally significant. The issues you choose to raise, the way you choose to raise them, and even the order in which you raise them, will prompt the client to reassess some aspect of the policy. As a drafter, you need to be aware that each statement or question inevitably has some suggestive effect. You can’t eliminate this effect; the best you can do is minimize it. Educate but do not lecture; counsel but do not urge.

When you make a choice to discuss certain options with the client and not others, that choice has a policy effect. When you choose whether to draft a law freestanding or as an amendment to some other law, that choice has a policy effect. When you draft a long title, a section heading, or a subsection heading—

matters typically left to a drafter's discretion—the words you use have a policy effect. Again, these effects are usually minimal, and you should take pains to make sure they are.

The path here is narrow, but it is well-marked. One colleague said: "It's absolutely correct that a drafter should not advocate or initiate a policy. However, it's not unusual in the course of our work that we find ourselves making suggestions to help lead clients out of 'dead ends,' especially during meetings with clients from different offices who are working together to try to resolve their own differences on a bill. Sometimes, because we do approach things from an objective perspective, we are able to see common ground between competing drafts and even competing policies, and the clients appreciate it when we bring these kinds of ideas to their attention. In fact, they often expect us to do so, especially during negotiations between members of different parties or different chambers. That doesn't mean that we are advocating for these policies (at least not in the public policy sense), and it doesn't mean that we shouldn't subject the ideas that we suggest to the same analysis as the ideas brought to us by the client."

In sum, policy can and does influence drafting, and drafting can and does influence policy. That said, in the ideal drafting relationship, the drafting function is left to the drafter's discretion and the policymaking function is left to the client's discretion, with neither influencing, nor attempting to influence, the other. For the most part, this book assumes that to be the case. (But see § 10.01, "Drafters Who Are 'More Than Drafters.'")

§ 1.20 The Drafting Process

The purpose of a drafting project is to produce a draft that has two features: first, the draft accurately reflects the client's policy, and second, the draft is legally sufficient to carry out that policy.

The legislative process being what it is, there is rarely enough time to achieve an ideal draft. In the real world, clients often have policies that are complicated or less than fully formed, and need them reduced to writing not in weeks or days but in hours or minutes—as one client put it, "in real time."

Urgency is not the only obstacle, just the most common. The policy may not be fully developed; the policy may be based on factual or legal assumptions that either are not confirmable or are not in fact correct; the client may insist

on using words that are politically useful rather than words that are clear. There are many reasons why an ideal draft cannot be achieved.

In many cases all you can do is add as much value as you can under the circumstances. Learn as much about the problem, the context, and the proposed solution as you can. Review various approaches where you can. Spot as many issues as you can. Discuss them with the client as best you can. Deliver a draft that, under the circumstances, is as faithful and effective as you can make it. To the extent you have concerns about whether the draft is faithful and effective, articulate those concerns.

In microcosm, those are the steps in the drafting process. In a legislative emergency, you may cycle through those steps only once, and only fleetingly. When not in a crisis, you may cycle through those steps a dozen times or more.

§1.30 Professional Obligations

Although serving the client is your primary responsibility, it is not your only responsibility. As a drafter, you must be aware of the various legal and ethical issues that may affect your relationship with your client.

Of course, any drafter has certain other responsibilities that may override the responsibility to the client. If you are an employee, you have responsibilities to your employer. If you are a public servant, you may be subject to a code of ethics. If you are an attorney, you probably are subject to a code of professional responsibility. You almost certainly have a duty—though whether it is legal, ethical, or moral likely depends on your particular circumstances—not to assist a client in conduct you know to be criminal or fraudulent. (Generally, to be considered fraudulent, conduct must be done with a purpose to deceive, not merely a negligent misrepresentation or a failure to provide complete and accurate information.)

If nothing else, you are subject to general laws. For the most part, these matters are beyond the scope of this book. The focus here is on issues inherent in the drafting function.

§1.31 Drafting by Attorneys and by Non-Attorneys

Some general observations are in order on the differences between drafters who are attorneys and those who are not. The differences are considerable.

An attorney differs from a non-attorney in at least four important ways:

1. Legal knowledge and skills. Although law school is certainly not the only place to acquire and hone the attributes important to drafting, the fact remains that many of those attributes are taught in law school, and in few other places. In particular, an attorney is more likely than a non-attorney to excel at critical thinking and at spotting and handling legal issues. In many jurisdictions, an attorney not only must pass a rigorous bar exam, but also must engage in regular continuing legal education. On the other hand, it is sad but fair to say that for many a new lawyer, the experience of law school has wrung out the ability to write clearly. An attorney who has internalized the stuffy, puffy, convoluted style too often used in legal writing may be less likely than a non-attorney to write clearly.

2. Attorney-client privilege. When the drafter is an attorney, the communications between the client and drafter are generally protected by the attorney-client privilege. Not only is the attorney legally bound to keep these communications confidential, but tribunals are legally bound to honor that confidentiality. The attorney generally can't betray those confidences at any time to any person, and the attorney generally can't be compelled by any tribunal to do so. When the drafter is not an attorney, the client does not have this protection, and is perpetually at risk of being politically embarrassed or otherwise hurt by having sensitive communications disclosed, whether accidentally (if the drafter is not cautious), voluntarily (if the drafter is disaffected), or involuntarily (if the drafter is compelled by a tribunal to testify).

3. Professional standards. In most jurisdictions, an attorney is subject to a code of professional responsibility, designed to protect clients—and the public—from shoddy or dishonest service. The code typically requires the attorney to refrain from activities that might conflict with the client's interests, to be candid with the client, and to provide as much information and advice to the client as is reasonably possible. An attorney who fails to meet the standards is subject to discipline by an oversight board, and in most jurisdictions the board is reasonably diligent and responsive to client complaints. When the drafter is not an attorney, and therefore not subject to the code, the drafter does not have the same incentive to meet those standards, and the client does not have the option to complain to the board.

4. Malpractice. Perish the thought, but if a drafter provides service of such poor quality that the client contemplates bringing a lawsuit, the client's remedies against an attorney are more generous than against a non-attorney. A non-

attorney can probably be sued only for contract damages (breach of contract), while an attorney can be sued not only for contract damages, but also for tort damages (legal malpractice). In general, this probably will result in a greater award of damages against an attorney than against a non-attorney. Also, an attorney can probably be held to a higher standard than a non-attorney, making liability easier to prove. (In addition, an attorney probably has malpractice insurance, which makes it more likely that the client can actually recover an award of damages.)

In addition to the above considerations, a drafter who is not an attorney is prohibited by law from providing the same level of service as an attorney. There is some outer boundary at which a non-attorney's drafting activities become the unauthorized practice of law.

Exactly where that boundary lies, however, is an open and vexing question. What constitutes legal information (which a non-attorney may provide), as opposed to legal advice (which only an attorney may provide)? The question is important not only to legislative drafting, but also to tax preparation, estate planning, real estate transactions, and other fields. Indeed, if any clear guidance on the question is forthcoming, it will probably come from one of those other fields.

The definition of unauthorized practice of law varies from jurisdiction to jurisdiction and in most cases is vague or even circular. One test used is whether the activity is one that has traditionally been performed by a lawyer. Other tests used are whether the activity involves the application of legal knowledge to the individual client's specific situation; whether the activity affects the individual client's legal rights; whether an attorney-client relationship exists; and whether the client believes an attorney-client relationship exists.

Taken together, these various tests seem to suggest that writing clearly and discussing factual issues do not involve the practice of law and can be performed by a non-attorney. On the other hand, discussing legal issues—providing advice to a particular client about the legal and constitutional issues in a particular draft—may well involve the practice of law. Take those suggestions, however, with a considerable grain of salt. Let it suffice to say that if you are not an attorney, tread this path with care.

In conclusion, this book does not have a solution to the quandary of whether a non-attorney should draft. Instead, it simply does what any drafter would do—spot the issue and bring it to the attention of those who must decide for themselves.

§1.40 Attributes Important to Drafting

At this point, there is a temptation to quote Middleton Beaman and Reed Dickerson. Beaman, the original “Vermont schoolmarm,” was the first person to head the Office of the Legislative Counsel of the United States House of Representatives (a topic covered in more detail in § 2.16, “Offices of Legislative Counsel”). Dickerson worked as a drafter (for two years in Beaman’s office and for many years elsewhere), taught drafting (primarily at Indiana University), and wrote several influential books on drafting.

Beaman is widely alleged to have said that a drafter must be an “intellectual eunuch.” Dickerson is widely alleged to have written that a drafter must also be an “emotional oyster.” Dickerson’s phrase is verifiable (it appears, among other places, at page 11 of Reed Dickerson, *The Fundamentals of Legal Drafting* (2d ed., 1986)). Beaman’s phrase is not, or at least not in the source usually cited; the citation given in several sources is to his testimony in 1945 before the Joint Committee on the Organization of Congress, but—alas!—the transcript of that testimony (Hearings on H. Con. Res. 18, 79th Congress, 1st Session, 413–430) does not support the story.

Regardless, drafting is certainly not for everyone. Drafting is about words and ideas, semantics, and subtle shades of meaning. It is also about organization, rules, and logic. In its own way, each draft is a form of puzzle; it should be no surprise that many drafters enjoy crossword puzzles. A colleague suggested that most drafters are—he meant this only in the most positive way—“word weenies.” While that may overstate the case, it does carry the ring of truth.

As explained by one observer:

“In the eighteenth century a Russian nobleman named Alexander Radishchev wrote a book called *Journey from St. Petersburg to Moscow*. In it he criticised bureaucracy and serfdom. Catherine the Great had him arrested, condemned to death and sent to Siberia. Having endured all that, after Catherine’s death he was freed and took to drafting legislation. But a fit of melancholia soon descended on him and he committed suicide. Perhaps this should be a lesson to anyone who seeks to become a drafter.

“In fact I do not know whether his melancholia was brought about by his drafting. But it might have been. There is all the difference in the world between writing a book with a passionate political motive and

writing legislation. For we all know that legislation has a very precise and narrow object. This can make the job seem to some people cabin'd, cribb'd and confined, and perhaps tending towards depression. At the same time I think it presents the draftsman with a challenge, and it is part of the reason for its fascination.”

Geoffrey Bowman

“Legislation and Explanation,” *The Loophole* (June 2000)

§ 1.41 Knowledge

To draft at the federal level, or at least to do so well, requires a certain amount of specialized knowledge. At the outset, you must have a mastery of American English.

You must also have a working knowledge of the substance of the Constitution and laws of the United States. This is not to suggest, of course, that you must know every clause of the Constitution and every volume of the United States Code. You must, however, understand their general structure, scope, and contents, and how to navigate and use them.

You must understand the legal and political processes that govern how laws are made. This does not require a mastery of these processes, but it does require a familiarity with them. For a straightforward summary, see Chapter Two, “Understanding How Laws Are Made.” For an in-depth discussion, see the *Congressional Deskbook* by Judy Schneider and Michael Koempel (updated every two years).

You must also be familiar with the generally applicable federal management laws and other laws and procedures that govern how laws are administered by federal agencies.

Last, but by no means least, you must understand how a court—and, in particular, the Supreme Court of the United States—goes about interpreting a statute. For more on this subject, see Chapter Three, “Considering the Courts: Statutory Interpretation.”

§ 1.42 Skills

Drafting requires not only specialized knowledge, but also specialized skills.

You must be a “people person,” because it takes two to draft (unless, as the saying goes, you have a fool for a client). You must be able to engage your client, ask tough questions, and hear and appreciate the answers. Ultimately,

you must be able to yield gracefully when the drafter-client relationship requires you to do so. You must be tactful, candid, sensible, humble, patient, and pragmatic.

You must also be an “idea person,” because drafting is nothing less than the capture of ideas. You must be able to master the policy and understand its boundaries and limitations. You must be able to foresee situations that, though unlikely, might cause the policy to break down. You must be alert, flexible, creative, inquisitive, and skeptical.

And you must be a “legislative person.” You must be sensitive to the client’s political and parliamentary needs and concerns, and you must be able to research legal and legislative issues and find the answers quickly and effectively.

§ 1.43 The “Legislative Counsel Type”

A case study of the professional drafters of Congress, carried out in the 1950s, remains relevant today. The study found that the drafters in the Offices of Legislative Counsel of the House and Senate (for more on these offices, see § 2.16) had “almost a corporate personality”:

“Through the process of selection and training, similar personal qualities were shaped by indoctrinated attitudes into a ‘legislative counsel type.’ The legislative counsel and their assistants were highly articulate and in conversation readily divined what information was sought. They were imbued with an attitude of helpfulness and possessed a marked enthusiasm for their work. Awareness of the heavy responsibility devolved upon them was tempered by a widespread sense of humor. Their modesty and desire for anonymity were balanced by self-confidence, initiative, and adaptability. With a profound insight into the legislative process, they realistically appraised the various considerations they should take into account in their work. In brief, the personnel of the Office of the Legislative Counsel were the best explanation of the high regard in which it was held by the members of Congress and their staffs during the period covered.”

Kenneth Theodore Kofmehl

Professional Staffs of Congress 187 (1962)

The “legislative counsel type” is, apparently, a fairly rare breed. Drafting offices often find that recruiting and retaining good drafters is hard to do. In

1931, Sir William Graham-Harrison, the head of the Office of Parliamentary Counsel in London, was asked whether his office could add more drafters to its staff.

He replied: “I should like to say that nothing is more difficult in the world than to get people to come to my office. It is highly specialized and extremely unpopular.”

Why so unpopular? “Because it is slavery.”

(As quoted in A.G. Donaldson, “The High Priests of the Mystery: A Note on Two Centuries of Parliamentary Draftsmen,” in Finnie, W., et al. [ed.], *Edinburgh Essays In Public Law* 99, 112 (1991).)

§1.50 Resources Important to Drafting

A drafter should have the best equipment possible for producing documents. These days, that means a functional computer with a good word processing system and a reliable printer. That said, there are still times, especially in the frenzied days at the end of a Congress, when a pencil and the back of an envelope are called upon to do the trick. At all times, keep something to write with, and something to write on, close at hand.

For a useful commentary on how computers have, for better or worse, changed how drafting is done, see Appendix One. Notably, that commentary was written not by an American drafter, but by a Canadian one. It is useful not only as a commentary, but also as a reminder that drafting is more or less the same from jurisdiction to jurisdiction. The particulars may change—a British drafter does not need to know American constitutional law, for example, and an Alaskan drafter does not need to know New York law—but the task, by and large, does not. When looking for resources on drafting, do not ignore resources from elsewhere.

A drafter should have regular, reliable access to a wide variety of important documents. You need a general dictionary, a legal dictionary, and a thesaurus. It may help to have a style manual, in particular the Government Printing Office Style Manual, <www.gpoaccess.gov/stylemanual/>. You should have access to the text of the Constitution, <www.gpoaccess.gov/constitution/> (and see Appendix Eleven), and of the United States Code, <www.gpoaccess.gov/uscode/>. You should also have access to compilations (see § 2.70), slip laws (see § 2.62), and other update services to keep your legal library accurate and current.

Fortunately, many of these important documents are available online and at no charge. For a table of useful web sites, see Appendix Three.

Your personal library should include materials on writing, on legal writing, and on drafting. No single guide is complete or authoritative, and no single guide is best for everyone. One guide may treat a topic more fully or with more insight than another; one may simply “work” for you in a way that another does not. For a list of suggestions for further reading, including not only notable guides but also notable articles, see Appendix Two.

Understanding How Laws Are Made

- 2.00 Introduction**
- 2.10 Organization and Operation of Congress**
 - 2.11 Congress from Term to Term
 - 2.12 Functions of Congress
 - 2.13 Committees
 - 2.14 Clerks
 - 2.15 Parliamentarians
 - 2.16 Offices of Legislative Counsel
 - 2.17 Law Revision Counsel
- 2.20 The Legislative Process in Congress**
 - 2.21 Introducing a Bill
 - 2.22 Number, Referral, and First Print
 - 2.23 Hearings and Markups: Overview
 - 2.24 Subcommittee Action
 - 2.25 Full Committee Action
 - 2.26 Floor Proceedings
- 2.30 Actions in Other Chamber**
 - 2.31 Resolving Differences by Amendment or Conference
- 2.40 Enrollment**
 - 2.41 Last-Minute Corrections
- 2.50 Executive Action**
 - 2.51 Presentment to the President
 - 2.52 Approval (or Disapproval)
- 2.60 Publishing the Law**
 - 2.61 Public Law Number
 - 2.62 Slip Law
 - 2.63 Statutes at Large
- 2.70 Compilations**
- 2.80 The United States Code**
 - 2.81 The Revised Statutes of 1873
 - 2.82 The Revised Statutes of 1878
 - 2.83 Positive Law and Non-Positive Law
 - 2.84 Origin of the Code as Non-Positive Law
 - 2.85 Editorial Changes
 - 2.86 General and Permanent Law
 - 2.87 Organization into Titles
 - 2.88 Enactment of Titles into Positive Law
 - 2.89 Codification and Classification of New Laws
- 2.90 Resolving Conflicts among Published Versions of Law**



Laws are like sausages, it is better not to see them being made.

**Attributed by some to Otto von Bismarck,
by others to Mark Twain**

As if from a rubbish cart, a continuously increasing and ever shapeless mass of law is from time to time shot down upon the heads of people, and out of this rubbish, and at his peril, is each man left to pick out what belongs to him.

Jeremy Bentham

I don't mind what Congress does, as long as they don't do it in the streets and frighten the horses.

Victor Hugo