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The Problem of Communication in Meeting the Information Requirements of the Courts

by

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My remarks are addressed to one aspect of the general problem of communication involved in meeting the information requirements of the courts. It transcends merely the court; however, it is a problem throughout the legal decision-making system. The efficiency of courts in processing information is just one part of a larger picture of effective communication within the legal system. Phrased broadly, the question involves discerning the optimum man-machine mix in the processing of information. Nobody can reasonably quarrel with the goal of taking the fullest possible advantage of the benefits of emerging technology, as long as objectives of greater importance are not sacrificed in the process.

What can we do to begin to achieve this goal? I would like to direct your attention for a moment to one crucial spot in the legal system's information-processing network. This is the untidy, chaotic, disorderly organization of the statement of legal norms at the pinnacle of the legal information-processing system. I refer to the way that we lawyers draft the statutes that courts must reckon with in adjudicating disputes. This is an area where substantial benefits may be achieved without any discernible loss. If we really want to take fullest advantage of the assistance that computers can provide, greater care in the organization of the expression of legal norms will be necessary. One might, also, add that improved organization in the expansion of statutes would facilitate the necessary human handling of statutory materials. Techniques for accomplishing this are relatively well known and understood, but the legal profession is comparatively innocent and unblemished by any significant contact with them to date. This should be remedied.

As statutes are made more orderly, the foundation will be laid for more orderly and effective storage and retrieval of all of the legal literature and other written matter associated with those statutes. Perhaps more significantly, the order introduced will permit the current burgeoning efforts at document retrieval by computer in law to blossom into full-fledged information retrieval by machine.

Widespread understanding among statutory draftsmen of what mathematical logicians call a *normal form* could revolutionize legal drafting. The weak link in most current statutes is disorderly syntax. Specifying an appropriate normal form and expressing statutes in such form would help avoid the undue complexity and ambiguity that is frequently evident through lack of control of syntax. Standardization in stating an idea is clearly desirable. There is an extreme lack of uniformity in the syntax of statements within a single statute, or for that matter, within sections of most statutes. If choice of language in legal drafting were like choice of syntax, we would find one sentence of a statute in English, the next one in German, the next in Chinese, and those that followed in Spanish, Norwegian, and Hindustani. If the choice of numeral system by statutory draftsmen were like the choice of syntax, we might find *five* denoted by the ordinary arabic numeral *5* in a decimal numeral system in one statutory sentence, by the Roman numeral *V* in the next, and by the binary expression *101* and the base-3 expression *12* in subsequent passages. It might take a little longer to figure out the message if numbers and languages were selected by statutory draftsmen, but lawyers and judges would manage to cope with even such a bizarre practice as this, were it the custom.

However, we find that it is advantageous to introduce uniformity by using just one language and just one numeral system to make communication of ideas more efficient. The same kind of advantage could be achieved by introducing a bit of uniformity into the syntax of sentences used to express statutory norms. If syntax were more orderly, the courts would be able to receive help from computers in coping with their information-handling problems. In addition, orderly syntax may help reduce the magnitude of these problems by helping to minimize litigation.

Syntax improvement is a variation on the theme of Dr. Duhl's (Department of Housing and Urban Development) discussion. This might be entitled "The Possibilities of Minimizing Crime-Inducing Factors by the Design and Construction of Criminal Statutes." To the extent that a statute with criminal penalties is

syntactically ambiguous, there is also some question as to whether an alleged violator had adequate notice of the kind of behavior that is intended to be prohibited.

There is an example of this kind of inadvertent syntactic ambiguity in the California statute that makes pimping a crime. It reads:

> SEC. 266h: *Any male person who, knowing a female person is a prostitute . . . solicits or receives compensation for soliciting for her, is guilty of pimping, a felony, ...*

The syntactically ambiguous part of this sentence is *solicits or receives compensation for soliciting for her.* Was this passage intended to be an abbreviated way of saying merely *solicits compensation for soliciting for her* or *receives compensation for soliciting for her*? The syntactic interpretation will be crucial for the defendant who acknowledges that he solicited for his friend, but denies that he solicited compensation for soliciting for her. One might reasonably ask with respect to an example such as this (and there are many such examples), does it appear to be a situation in which the ambiguity was deliberately incorporated in the course of the legislative process? If one answers *yes,* then one must ask why the ambiguity was introduced. Revising the drafting process so that statutes are expressed in normal form would make such ambiguities so visible that they would most likely be detected and a deliberate decision made as to the desirability of including them in the statutory provision. I predict that in most cases the decision would be to eliminate the ambiguity and to select which of the various alternatives was deemed most appropriate.

When drafted by the customary methods employed today, such syntactic ambiguities creep into even the most carefully drawn documents of high importance. A classic example occurs in the General Purposes section of the Model Penal Code. It reads:

> *Section 1.02 Purposes; Principles of Construction.*
>
> *(1) The general purpose of the provisions governing the definition of offenses are:*
>
> *(a) to forbid and prevent conduct that unjustifiably and inexcusably inflicts or threatens substantial harm to individual and public interests; . . . .*

The passage may seem deceptively clear and simple on first blush, but when experts are asked what it means, the provision turns out to be astonishingly ambiguous and complex. Six members of the

Yale Law School faculty specializing in criminal law and 6 members of the American Law Institute's Criminal Law Advisory Committee who participated in the formulation of the code responded to a questionnaire consisting of a series of questions designed to elicit which syntactic interpretation of this section of the Model Penal Code the respondents regard as appropriate. From this distinguished sample of 12 criminal law experts the answers indicated exactly 12 materially different interpretations regarded as appropriate by these interpretors. Not one single pair of this group interpreted the passage with the same syntax. There is no hint in the commentary to this section that the draftsmen deliberately intended it to be ambiguous. I would hazard a guess that they would be surprised to discover that their informed colleagues so read this passage.

The by-product of organizing statutes so that computers can deal with them extensively will be that humans will be able to handle them more effectively. The main benefit to be derived is the fuller exploitation of computers in the man-machine information-processing network in the administration of criminal justice.

Now is the time to make the necessary institutional adjustments necessary to putting statutes into a normal form in order that the corpus of legal literature will become more and more amenable to handling by automatic data-processing equipment. Some public acknowledgment is overdue that we lawyers should not be allowed to remain so proudly innocent of communications techniques that are in some instances more than a century old. Some lag is inevitable; but how much lag is reasonable? In this respect, we could use some help in becoming civilized. I will conclude by reminding you that a great judge once said that reform in the law is not a job for the shortwinded. As you undertake the task of enlightening us, you may find some comfort in remembering his wisdom.