



PennState
Dickinson Law

DICKINSON LAW REVIEW
PUBLISHED SINCE 1897

Volume 105
Issue 2 *Dickinson Law Review - Volume 105,*
2000-2001

1-1-2001

The American Law Institute Simplification Experience

Michael Greenwald

Follow this and additional works at: <https://ideas.dickinsonlaw.psu.edu/dlra>

Recommended Citation

Michael Greenwald, *The American Law Institute Simplification Experience*, 105 DICK. L. REV. 225 (2001).
Available at: <https://ideas.dickinsonlaw.psu.edu/dlra/vol105/iss2/7>

This Article is brought to you for free and open access by the Law Reviews at Dickinson Law IDEAS. It has been accepted for inclusion in Dickinson Law Review by an authorized editor of Dickinson Law IDEAS. For more information, please contact lja10@psu.edu.

Symposium on Federal Government Simplification Experiences

The American Law Institute Simplification Experience

Michael Greenwald*

I. Simplification and Clarification Purposes in the ALI 1923 Certificate of Incorporation

I wish, like my predecessors, that I had a finished project to report. I should say, however, that as far as the American Law Institute (Institute) goes, we are anything but Johnny-come-latelys to the process of simplification of the law. In fact, the Institute's very Certificate of Incorporation back in 1923 talks about the purpose of the Institute to promote the clarification and simplification of the law and its better adaptation to social needs.

II. Clarity and Simplicity Response to Uncertainty and Complexity

Simplification of the law was on the Institute's agenda right from the very beginning. Of course, the focus is on substantive law. However, in their document that led to the development of the Institute, the founders argued that the two chief defects in law that called for its simplification and improvement were its uncertainty and its complexity. Those are, of course, both related to language. The response then to uncertainty and complexity would have to be clarity and simplicity. The founders recognized right from the beginning that form and content were closely connected. In fact, the founding document contains a statement that sounds like it could have been written today about plain English. They said, "[w]e here also desire to call attention to addressing the

* Deputy Director, American Law Institute, Philadelphia, Pennsylvania.

restatement in clear and simple English, avoiding so far as possible the use of technical and unusual terms. The restatement should be understandable by an intelligent, educated person who is not a trained lawyer.” Now there’s a revolutionary concept stated back in 1923.

III. Diversification of Restatements and ALI Products—Need for a Style Committee Set of Principles of Drafting

For more than 75 years, the Institute has been restating the law and drafting model and uniform legislation, and doing other kinds of projects. During all that period the Institute never felt any need or compulsion to develop a style committee to get its principles of drafting down on paper. Why this is, I am not sure. I guess the Institute and its drafters were an organization that had a great deal of continuity. They knew each other. They started with a concept of a single restatement, a unified restatement. But as the years passed, this has become less and less the case and now we talk about restatements. We have a first series, second series, third series and the various components are becoming more and more separate. Where once you had Prosser who wrote the entire Restatement of Torts, now you have several different reporters doing different parts of the Restatement of Torts.

So the situation, I think, has become somewhat like the original situation of the Institute in 1923 when they were trying to clarify the common law. There was this feeling that the law had splintered into so many different threads and into so many different directions that an organization like the Institute was needed to bring it all together and show the inner coherence of the law. Maybe now, with a whole variety of reporters and different restatements (and not only just restatements but other kinds of projects) it is becoming clear that something has to be done to make things more uniform, particularly because the Institute authors its own work.

Various people come together to work on an Institute project, but when it is finished and approved, it has the imprimatur of the Institute. So the Institute is the author and to have credibility, it is important that the product is coherent and consistent. We have had increasing complaints, I have to confess, that the drafting of the Institute’s projects is not as clear and precise as it should be. People have even pointed out such horrors as the fact that sometimes we divide the black letter into a, b, c and d and sometimes we start off 1, 2, 3 and 4. And what is the logic behind

that? So, that may sound trivial. However, to the extent that we can try to be uniform and speak for the organization as a whole, it becomes important that we do it. It becomes important that there is not just an oral tradition of how these things should be done, but that we make some effort to get it set down in words so that not only the reporters will be working off the same base, but also the people who review the reporters' work will have a better understanding of what the reporters are trying to do.

IV. Appointment of Style Committee in 1998

We have really just started on this. The President of the Institute, Charlie Wright, appointed a committee near the end of 1998. The mission of the committee was initially to decide whether the Institute needed a style manual. And surprise, after some deliberation, it decided that it did. It is very rare, I suppose, that a committee ever looks into these things and decides they are not needed. But I think the feeling was very strong that this would be a very useful exercise.

V. ALI Handbook for Reporters

At first, I was asked to prepare a kind of working plan and then moved from there to some actual writing. We have a preliminary draft, and I emphasize "a preliminary draft," of a first chapter of this Handbook. The working title is, "Capture the Voice of the American Law Institute, A Handbook for ALI Reporters." The second chapter will focus on language and structure. This is the real heart of things I suppose. This chapter will cover diction, how the text should be organized, how there needs to be overall coherence, how black letters and comments should be written, and all sorts of things like that.

VI. Distinctive Guidelines for Particular Kinds of ALI Projects— Restatements, Model Legislation and "Principles"

The first chapter is one in which (aside from introductory items about the role of the reporter, a description of the drafting process and the reporter's role in it) we are trying to focus on things that are distinctive about particular kinds of ALI projects. In other words, you cannot simply say that all ALI projects should be written exactly the same way. We have restatements. We have model legislation. We also have a new form (which I think is a very promising one and may actually be the way more and more of our projects are going to come out) called "principles." This is a hybrid

approach that enables us to not worry so much about whether we are writing a restatement of the common law or model legislation. Instead, we are trying to get the underlying concepts down and let others worry about whether it should be translated into legislation, court decisions or administrative regulations.