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I. INTRODUCTION

My objective in this Essay is to discuss briefly the method of UCC drafting and how that method affects the UCC's message. It has been my experience that many law teachers, most lawyers and, of course, all law students are largely unaware of how uniform laws like the UCC are written. Were they more familiar with this process, I believe they would have a deeper understanding of the UCC, its strengths and its weaknesses.[1] In the following pages I draw on my own experience in working on uniform state laws.

I always wanted to work on the UCC. In a provincial sort of way, I was given the opportunity to do so in the early 1960s when the Code's proponents confidently brought it to California, expecting dutiful enactment. California was, at that time, on its way to becoming the largest state in the Union, and it found itself being presented with an elaborate recodification of its commercial laws, drafted almost entirely by eastern establishment lawyers and academics. California reacted to this alien code by launching a fusillade of amendments, hundreds in number. Some were born of ignorance; others were hopelessly provincial; still others were clearly improvements over the uniform text.

The California Legislature formed a UCC advisory committee to evaluate these proposed amendments and to make recommendations to the California Legislature. This group adopted the same approach that the New York study committee had chosen: They hired academics to do the work. But the scale of the two projects differed. While the New York Legislature appropriated enough money to complete the study and enrich most of the commercial law academics on the eastern seaboard, the Golden State sprung for a meager $1500 to be split between Harold Marsh, Jr., then a member of the UCLA faculty, and his junior colleague, the author. Harold's seniority entitled him to $800, and the re-

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1. A more extensive treatment of this subject, emphasizing the influence of history on the Article 3, 4 and 4A project, is found in Fred H. Miller, *U.C.C. Articles 3, 4 and 4A: A Study in Process and Scope*, 42 ALA. L. REV. 405 (1991). Professor Miller was a stalwart member of the Articles 3, 4 and 4A project drafting committee and is now Executive Director of the National Conference of Commissioners on Uniform State Laws (NCCUSL).

maining $700 went to me. The task lasted for years and culminated in a report that was largely successful in persuading the committee and, through it, the legislature to reject most of the proposed amendments. In the end the legislature enacted a respectable version of the UCC, but the message went out that henceforth California would have to be reckoned with in the matter of uniform laws.

My next brush with the UCC came in the mid 1960s. My colleague, Robert Jordan, and I were appointed co-reporters for the Uniform Consumer Credit Code (UCCC).[2] The UCCC was intended, in part, to remedy an omission in the UCC. Professor Gilmore noted that a 1949 draft of the UCC contained a part on consumer-goods financing that included disclosure requirements for credit contracts and abolition of the holder-in-due-course rule for consumer paper, among a number of other consumer protection provisions.[3] It is important to note, for the tale I have to tell in this Essay, that the drafters soon gave up on consumer protection: "The controversy over the consumer question was one of the most violent in the history of the Code's drafting. The decision to abandon the field was no doubt wise in view of the demonstrated impossibility of arriving at a satisfactory solution."[4] The UCCC project was conceived to arrive at that "satisfactory solution" that Gilmore found impossible. Gilmore proved right.

Although most observers conceded that the UCCC was a sensible approach to the regulation of consumer credit, only eleven states adopted it.[5] Proponents, working the state legislatures for the UCCC, finally concluded that consumerism, like politics, is basically local. A consumer agenda that might delight an activist group in Massachusetts could find rejection with a similar group in Texas, which, of course, had its own agenda. Legislatures in the 1960s and 1970s delighted in passing laws that addressed the latest creditor outrage that was featured in the media. Consumer protection statutes usually cost the state nothing and, whether effective or not, are invariably popular with constituents. Legislatures had no wish to give up this pursuit in the interest of uniformity. Consumer frauds, though universal, are not uniform.

2. UNIF. CONSUMER CREDIT CODE, 1968 ACT, 7 U.L.A. 580 (1985).

3. GRANT GILMORE, SECURITY INTERESTS IN PERSONAL PROPERTY § 9.2, at 292 (1965).

4. *Id.* at 293.

5. Seven states and Guam enacted the 1968 version of the UCCC. UNIF. CONSUMER CREDIT CODE, 1968 ACT, 7 U.L.A. 208 (Supp. 1992). Four states enacted the 1974 version. UNIF. CONSUMER CREDIT CODE, 1974 ACT, 7A U.L.A. 1 (Supp. 1992).

II. The UCC Consensus Approach

My call to duty finally came in 1985, when Robert Jordan and I were invited to serve as co-reporters for a project to revise UCC Articles 3 and 4 and to draft a new Article 4A on wire transfers. The New Payments Code (NPC)[6] had proved too visionary to gain support outside the academy. As a reaction to what was seen as the overly expansive reach of the NPC,[7] we were charged with doing only simple repairs on Articles 3 and 4 and coming up with something in the area of wire transfers that would find a middle ground between the corporate users and the major electronic funds transfer systems, Fedwire and CHIPS.[8] These modest goals were thought to be attainable in two years, three years at most.

Different parts of the UCC and its revisions have been drafted in somewhat different manners. Our Article 3, 4 and 4A project, though co-sponsored by both the National Conference of Commissioners on Uniform State Laws (NCCUSL) and the American Law Institute (ALI), was drafted under the NCCUSL rules. A drafting committee was appointed from members of the NCCUSL and the ALI; some committee members were extremely expert in our field of inquiry, but others were less so.

A number of consultants and advisors were appointed to meet regularly with the drafting committee. They represented the American Bar Association, the American Bankers Association, the Association of the Bar of the City of New York, the Federal Reserve Board and various Federal Reserve banks, the New York Clearing House Association, the National Automated Clearing House Association, elements of the banking industry and various groups representing consumers of banking serv-

6. For a good account of the history of the NPC's various draft incarnations, see Roland E. Brandel & Anne Geary, *Electronic Funds Transfers and the New Payments Code*, 37 Bus. Law. 1065, 1072-78 (1982) and Fred H. Miller, *A Report on the New Payments Code*, 39 Bus. Law. 1215 (1984). Despite repeated attempts to "fix" the NPC, the project was finally abandoned and the project to revise Articles 3 and 4 began in its stead. *See* Miller, *supra* note 1, at 409.

7. The case for the limiting influence of the NPC experience on the Articles 3, 4 and 4A project is made by Professor Fred H. Miller, an active participant in both projects. Miller, *supra* note 1, at 410-16.

8. "Fedwire is a communication and settlement system owned and operated by the twelve Federal Reserve Banks .... Thus, the Fed participates directly in the settlement of interbank obligations and provides settlement sources as well as communication services." Hal S. Scott, *Corporate Wire Transfers and the Uniform New Payments Code*, 83 Colum. L. Rev. 1664, 1671 (1983) (footnotes omitted).

CHIPS "is owned and operated by the New York Clearing House Association, an organization composed of the twelve major New York City banks. CHIPS is a communications and net settlement system for payments made by and to ... participant banks located in New York City ...." *Id.*

ices. The meetings of the drafting committee were open to the public, and a number of academics, lawyers and other interested parties participated in these meetings at various times during the project. As soon as the drafting committee got under way, the American Bar Association appointed an Ad Hoc Committee on Payment Systems, which met semiannually with the reporters to review the work of the drafting committee. Membership on this committee was open to all members of the Section on Business Law, and a large group of banking and user representatives, as well as interested lawyers and academics, attended these meetings. The ALI-UCC Consultative Group also met with the reporters as a review group. My best estimate is that twenty-eight academics participated in the project in different capacities and at different times. Beginning in 1987, drafts of the three articles were considered at the annual meetings of the NCCUSL, the ALI and the ALI Council.

The drafting procedure called for the reporters to prepare issues papers, then solution papers and, finally, drafts of provisions. The drafting committee received the drafts before meetings and commented on them during meetings held three or four times each year. The drafts were available to the interested public, and publication of each draft was followed by a flood of written commentary from experts in the field. Some advisors and consultants prepared voluminous memoranda on each draft. The reporters considered all of this information in preparing further drafts; each was greeted by the same volume of critical response from the many participants in this enterprise. Drafts were read, word for word, at each of the annual meetings of the NCCUSL, with discussion following each section. ALI review was less detailed and concentrated more on major policy issues. The ABA Ad Hoc Committee was almost as thorough in its examination of the drafts as the drafting committee.

I recount these tedious details because I think the method by which the UCC was drafted greatly affects its message. Our project seemed interminable. The original two-to-three year estimate proved unrealistic; we were at the project for five years, and even then some wanted it to continue. Article 3 had to be completely redrafted, and Article 4 was materially altered. As the preceding paragraphs indicate, many people were involved in the project. At a crucial point in the consideration of Article 4A, there may have been 100 people in attendance. All affected interests were given an opportunity to be heard, and most of them appeared. My claim in this Essay is that one of the principal reasons that the original UCC and, for the most part, its revisions constitute the best commercial legislation being drafted is that many people who know a great deal about the subject were given ample time to sit around a table and talk to each other about the problems to be solved. The NCCUSL and ALI format of concentrating on the specific proposals in a draft mercifully avoids speech making by the participants. People with diverse and conflicting interests get to know one another over time and in most instances come to respect each other's views. Professor Miller contends that the NPC would have been more acceptable if more people affected by its provisions had been allowed to participate in its formulation.[9]

This process worked at its best in the deliberations on Article 4A. At first, the differences among the three principal players—the Fed, CHIPS and the large corporate users—seemed intractable. The problems were exacerbated by the Fed's dual role as both a regulator and a participant in its operation of Fedwire. Initially, these three groups seemed to enjoy bashing each other at our meetings. But over the years, owing in no small measure to the intelligence, judgment and firmness of Robert Jordan, who drafted Article 4A, differences were narrowed and a reasonable degree of consensus was achieved. A leading financial services lawyer and a veteran of many legislative projects noted that never before had so many people knowledgeable about the legal and operational problems of wholesale wire transfers spent so much time together going over legislative proposals in such exhausting detail. He likened it to peeling the layers of an onion. In the end it worked. Article 4A has been enacted in approximately forty states in just three years and has been adopted by the Fed as the governing regulation for Fedwire.[10]

Although the regulation of wholesale wire transfers was arguably a national concern deserving congressional action, the NCCUSL and ALI undertook the task because of the silent assumption that no one (including the Fed) trusted Congress to do the job. This is understandable. In Congress the bill would have been the province of a subcommittee, having life or death control over the measure, with a chair and staff that might have been quite unfamiliar with the complexities of wire transfers or, worse still, who may have harbored hostility toward some participants in the field. Hearings would have been held that, typically, would have consisted of representatives of interest groups making speeches to the subcommittee, whose members might or might not have been in attendance. Roles would have been played; voices would have been raised. But no one would have listened because everyone would have understood that the real work was being done in private. Access to the subcommit-

9. Miller, *supra* note 1, at 410. According to Professor Miller, the NPC was drafted by a Permanent Editorial Board committee whose proceedings were less public than those of NCCUSL drafting committees. *See id.* at 408 & n.5.

10. 12 C.F.R. §§ 210.25-.32 (1991).

tee members and the staff would determine the shape that the final legislation would take. The issues would have been publicly aired but privately brokered. Congress's best work is done after it has convened a commission to study the field—the Bankruptcy Code and the Electronic Fund Transfer Act[11] are examples—but this practice is fairly rare.

The Japanese are known for their consensus approach to decision making—private, informal and nonlitigious—as compared to the American way which is seen as public, confrontational and highly litigious.[12] The UCC drafters seek consensus. After all, they have to present their work to fifty legislatures for approval. But they do so in a very public way, both in the conduct of their meetings and in the dissemination of their interim drafts. One might assert that the likelihood of states accepting the revisions of the Code could be predicted by the measure of consensus that the drafting committee achieved in the end product. The first version of Article 2A had not attained sufficient consensus for widespread enactment and underwent a substantial revision before it was accepted. Article 4A, on the other hand, did attain a high measure of consensus, as its nationwide enactment attests.

III. Limitations on the UCC Drafting Process

The shortcomings of a consensus approach are obvious. Compromise reigns; bold initiatives are frustrated. The reporters' great ideas are rejected, sometimes scorned.[13] Problems that should have been addressed are sometimes left unresolved because agreement cannot be reached. An example is found in the revision of Article 4. This article has no scope provision. Its text reveals that it applies to "banks" that handle "items."[14] But before the revision of Article 4, there was no very satisfactory definition of either the term "bank" or "item." Section 1-201(4) defines a bank as meaning "any person engaged in the business of

11. 15 U.S.C.A. § 1693 (1982 & Supp. 1992).

12. In David G. Litt et al., *Politics, Bureaucracies, and Financial Markets: Bank Entry into Commercial Paper Underwriting in the United States and Japan*, 139 U. PA. L. REV. 369 (1990), the authors compare decision making in Japan and the United States. They conclude that with respect to bank entry into commercial paper underwriting, the decisional process in Japan was "private, informal, non-litigious and not publicly confrontational," but in the United States "the process was public, formalized, litigious and confrontational." *Id.* at 452.

13. My advice to young academics who are approached by the NCCUSL or ALI to work on a uniform law or model code is to be prepared to abjure pride and embrace humility. The views that wowed your admiring students may find rough going before real world lawyers and judges. If your mission is to see your own ideas, unadulterated by the views of the Philistines, brought to the public eye, stick to writing law review articles or, better yet, poetry.

14. U.C.C. § 4-102 (1990).

banking."[15] There is, of course, no definition of the business of banking. One of our first initiatives in the revision of Article 4 was to produce a definition of bank that would give the courts guidance as to what kinds of institutions were covered by its provisions. At least we could make clear that the term was not intended to apply to brokerage houses or mutual funds.

After five years and innumerable drafts, we admitted defeat and settled for revised section 4-105(l), which uses the same business-of-banking language and lamely adds "including a savings bank, savings and loan association, credit union, or trust company."[16] But what about Merrill Lynch, which issues check books and credit cards? Revised section 4-403(c), which applies to the burden of establishing the fact and amount of loss resulting from a payment over a stop order,[17] was another provision deserving of clarification, but, despite much effort, agreement on a new formulation eluded us.

Drafting the UCC or any uniform law is inherently difficult because fifty states must approve any revision or amendment—a process that usually takes a decade or two at best. Because the UCC is so hard to amend in any uniform fashion, it has only limited utility in areas in which rapid change is anticipated. This difficulty was apparent in dealing with the area of truncation or "electronic presentment" of checks under revised Article 4.[18]

Our present system of check collection is paper-based. Several billion checks each year are hauled around in airplanes and trucks so that they can be physically presented to the banks on which they are drawn. The expense of the transportation and security involved in such a process is high, and the costs to the payees of the delay in funds availability are evident. In view of the fact that payor banks make no visual examination of the vast bulk of checks but rely solely on information contained in the machine-readable information encoded on the checks, it is certain that great economies could be achieved by having the bank in which a check is deposited relay the encoded information electronically to the payor bank on which the check is drawn. This is commonly called truncation, or in the words of revised Article 4, "electronic presentment."[19]

15. *Id.* § 1-201(4).

16. *Id.* § 4-105. We did very little better in our new definition of "item," which provides broadly that an item is any promise or order that a bank chooses to handle for collection or payment. *Id.* § 4-104(9).

17. *Id.* § 4-403(c).

18. *See id.* § 4-110.

19. *Id.*

Because the desirability of truncation seemed manifest and its eventual implementation inevitable, what could be done about it in revised Article 4? Very little. We could hardly mandate a regime of truncation at a time when the necessary banking technology was not in place and when we had no reliable means of foreseeing what a fully realized truncation plan would look like. Truncation must come from interbank agreements or from the Fed, which can deal with the changing needs of such a program with administrative provisions flexible enough to keep up with the changing technology. We had to content ourselves with authorizing banks to enter into agreements providing for electronic presentment[20] and drafting provisions that permit presentment to be made by electronic means.[21]

The UCC's limitations in dealing with technological change led to the most divisive issue in the redraft of Article 4, the "safe harbor" provision in section 4-406(a).[22] The redraft of section 4-406 was designed to accommodate three possible arrangements between customers and banks with respect to canceled checks: (1) The payor bank returns the canceled checks to its customer; (2) it retains the customer's checks and provides the customer with a statement of account identifying the checks paid; and (3) a collecting bank retains the checks, and the customer is provided with a statement of account by the payor bank. The latter case is what we have referred to as truncation. The divisive issue was how much information the statement of account was required to give the customer in cases (2) and (3) above, in which the customer does not receive the canceled checks.

The safe harbor provision of section 4-406(a) states that the bank need give its customer only the number, amount and date of payment of the check.[23] This information was chosen because it is cheaply available to the payor bank through electronic data retrieval. Admittedly, it would be easier for the customer to identify checks if the customer knew the payee's name and the date of the check. However, in order for this information to be provided with existing technology, banks would incur substantial labor costs paying employees to decipher the names of the payees on the customers' checks. In payor bank retention plans, such a requirement would impose costs that banks would have to pass on to

20. *Id.*

21. *Id.* § 3-501(b)(1).

22. The safe harbor provision provides that "[t]he statement of account provides sufficient information if the item is described by item number, amount, and date of payment." *Id.* § 4-406; *see also id.* § 4-406 cmt. 1 ("[A] safe harbor rule is provided. If the item is described by item number, amount, and date of payment, the bank does comply.").

23. *Id.* § 4-406(a).

customers. Additionally, this requirement would make collecting bank retention plans of doubtful feasibility. Because the present trend is toward payor-bank retention plans, and the future probably lies with a nationwide collecting bank truncation regime, isn't the drafting committee's decision on this issue clearly in the best interests of bank customers? Customers protest because technology already exists which would allow banks to electronically send an image of checks. American Express, which has high balance of account limits, has utilized imaging for years. Nevertheless, image technology is not currently installed throughout the banking system and may not be for several years. The best the drafting committee could do in this matter was to promise that the Permanent Editorial Board would review the safe harbor provision in the light of future technological advances.[24]

IV. Consumer Issues

The UCC was drafted in the 1950s, before the consumer movement had become a force to be reckoned with in state legislatures. By the time revision of the UCC got underway in the 1980s, consumer interests were well represented in the state legislatures by lawyers who were often as well qualified and informed as those representing creditor groups. Consumers, in the popular sense of the term, were not much concerned with Article 4A, which expressly excluded consumer transactions, because consumer transactions were already dealt with by the Electronic Fund Transfer Act.[25] Nor was there much consumer interest in Article 3. The major issues concerning consumer paper had already been dealt with either by state laws, like the UCCC, or by federal laws, such as the Truth in Lending Act,[26] the Fair Credit Billing Act[27] or the FTC regulation abolishing the holder-in-due-course doctrine.[28]

A few issues attracted consumer attention. The prairie populist strain that runs through the NCCUSL overrode the drafting committee's proposal to abolish the practice of allowing an accord and satisfaction to be effectuated by a full satisfaction notation on a check. The consumer view was that accord and satisfaction by notations on checks was the little person's means of dispute resolution. This may have been true, but the practice was probably more commonly used by insurance companies

24. *Id.* § 4-406 cmt. 1.
25. 15 U.S.C. §§ 1693-1693r (1988 & Supp. III 1991).
26. *Id.* §§ 1601-1665b (1988 & Supp. II 1990).
27. *Id.* §§ 1666-1666j (1988).
28. 16 C.F.R. §§ 433-433.3 (1992).

on settlement checks.[29] A solid consumer gain was achieved by revised section 3-312, which offers a rather imaginative solution for the owner of a cashier's check that has been lost or stolen.[30] Now the owners of such a check may obtain a refund or replacement check within a reasonable period of time after the loss, without bearing the expense of posting a bond. The bank obligated on the check also has full protection.

Throughout the project, most of the consumer attention was directed at Article 4. Here, consumer representatives urged the drafting committee to make a major change in the approach taken by old Article 4. The old Code set out some basic protection for customers—such as the right to stop payment, the power to collect consequential damages for wrongful dishonor, the liability of banks on unauthorized signatures, etc.—and left the remaining aspects of the bank-customer relationship to bank-customer deposit agreements, acts of Congress, regulations of the Fed and other non-Code sources.[31] The consumer critique, which was developed quite late in the drafting process and which did not flower until after promulgation of Articles 3 and 4, called for Article 4 to regulate in greater detail the bank-customer relationship.[32] Under the consumer perspective, the revision would have expressly subjected the bank-customer agreement to unconscionability scrutiny; charges for bank services would have been limited or (as in the case of stop order charges) eliminated entirely; time limits would have been fixed for the performance by banks of certain duties, and penalties would be set for failure to perform; and disclosure of deposit account costs would have been mandated.

The drafting committee, undoubtedly influenced by previous failures to gain consensus on consumer concerns in the UCC and related uniform legislation, decided not to rework Article 4 from the consumer perspective.[33] The drafting committee was reluctant to prescribe additional dis-

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29. A workable compromise, reached after long deliberation, is found in U.C.C. § 3-311.

30. *Id.* § 3-312.

31. *Id.* § 4-103(1)-(2) (1987) (superseded by U.C.C. § 4-103(a)-(b) (1990)).

32. This critique is ably set forth in Gail K. Hillebrand, *Revised Articles 3 and 4 of the Uniform Commercial Code: A Consumer Perspective*, 42 ALA. L. REV. 679, 719 (1991). Although Ms. Hillebrand attended some sessions of the drafting committee and voiced concerns then and in correspondence, my recollection is that she did not state her full case until after Article 4 was promulgated. Her work was instrumental in making some important changes in the official comments and in persuading the California Legislature to enact some non-Code provisions to deal with issues raised by the enactment of revised Article 4.

33. *See* Miller, *supra* note 1, at 412-16 (detailing impact of NPC experience on drafting committee's decision not to expand consumer protection aspects of Article 4). Professor Miller's article offers efficiency concerns as a justification for this policy decision. *Id.* at 414-16.

closure requirements, though a good case could be made that some were needed, because, throughout the pendency of the Articles 3, 4 and 4A project, Congress had been working on the Truth in Savings Act,[34] which finally appeared in late 1991. This law mandated that banks make copious disclosures to their depositors about fee schedules, charges, interest rates and terms and conditions of deposit accounts.

Though the drafting committee had several influential members who consistently saw issues from a consumer protection viewpoint, it despaired of finding agreement on the bulk of the consumer agenda. The membership of the NCCUSL and the ALI, both of which have strong consumer voices, did not push the issue during their annual reviews of the Article 4 drafts. Bank-customer agreements had been policed with reasonable success by courts using the doctrines of unconscionability and of good faith and fair dealing.[35] Then, too, banks were exceedingly gun-shy about provisions that would set them up for a wave of class-action attacks, which they tended to view rather emotionally as legalized extortion.[36] Old Article 4 had worked reasonably well, and, without more convincing evidence that customers were being harmed, the committee decided to leave further customer protection to extra-Code law.

Without attempting to assess the merits of the consumer proposals, it is my view that the NCCUSL-ALI consensual approach to uniform state laws does not function well in dealing with controversial consumer issues; consumers probably must look to Congress and non-Code state laws for validation of their claims for greater protection in the payments and credit areas. The failure of the drafters of original Article 9 in attempting to successfully address consumer concerns was repeated in the UCCC and the NPC. During the period when uniform state laws were largely ineffective in producing consumer credit legislation, Congress enacted a series of landmark laws: the Truth in Lending Act,[37] the Fair

34. Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. No. 102-242, 105 Stat. 2334 (codified at 12 U.S.C. §§ 4301-4313 (Supp. III 1991)).

35. In Perdue v. Crocker Nat'l Bank, 38 Cal. 3d 913, 702 P.2d 503, 216 Cal. Rptr. 345 (1985), *appeal dismissed*, 475 U.S. 1001 (1986), the California Supreme Court approved use of the doctrine of unconscionability to allow a challenge of a $6 NSF charge. *Id.* at 928-29, 702 P.2d at 513-14, 216 Cal. Rptr. at 355-56. In Best v. United States Nat'l Bank, 739 P.2d 554 (Or. 1987), the court relied on the doctrine of good faith and fair dealing to sustain a class-action suit challenging the validity of NSF service charges. *Id.* at 563.

36. While the project was proceeding, California banks were attempting to settle the numerous class actions over the validity of their service charges spawned by the *Perdue* case. *See generally Attorney Warns* Perdue *Case only First of Upcoming Challenges to Bank Fees*, 46 Wash. Fin. Rep. (BNA) No. 15, at 594 (Apr. 14, 1986) (describing expanding litigation against banks and financial institutions following *Perdue*).

37. 15 U.S.C. §§ 1601-1677 (1988 & Supp. II 1990).

Credit Reporting Act,[38] the Electronic Fund Transfers Act[39] and the Truth in Savings Act.[40] One can only conclude that the patient, conciliatory, consensus-building approach that has produced so much good commercial law is not the approach to enhanced consumer protection. Whether greater consumer protection-oriented regulation of the payments system is desirable is an issue that will be endlessly debated. The fact that it is extremely difficult to reach consensus on consumer initiatives does not deter Congress; for Congress, after all, need not seek consensus. With a few key subcommittee members, a dedicated staff and a sympathetic leadership, Congress can act decisively in the face of considerable opposition.

V. CONCLUSION

After some fifteen years of service as a reporter on NCCUSL projects, I have gained great respect for both its drafting process and, for the most part, its legislative product. In an era rife with allegations of influence for sale in Congress and state legislative bodies, the NCCUSL is incorruptible. It refuses to take contributions from groups affected by its laws, and its members do not run for office. The Commissioners serve without pay, and some of them make huge contributions of their time to conference affairs. The ALI is an equally high-minded group. I think the UCC is alive and well and will continue in that state into the next century because the NCCUSL-ALI procedure for drafting commercial laws with all its weaknesses and limitations is still the best that has been conceived.[41]

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38. *Id.* §§ 1681-1681t (1988 & Supp. II 1990).
39. *Id.* §§ 1693-1693r (1988 & Supp. II 1990).
40. 12 U.S.C. §§ 4301-4313 (Supp. III 1991).
41. All this having been said, I am compelled to add a frivolous footnote to point out that the NCCUSL process is not particularly reporter-friendly. Although the reporter holds the pen, his or her ideas must compete for support with those of the other participants to make the final draft. This is as it should be. Moreover, a NCCUSL reporter must take the vow of deep anonymity. After Llewellyn and Gilmore, how many UCC reporters can you name? One usually must penetrate the central repository of uniform state laws, West's *Uniform Laws Annotated*, before discovering the names of reporters. When, for promotion purposes, your school asks what you have been publishing lately, it's a little disconcerting to show them the product of five years' work that prints out in relatively few pages and, if it has any names on it at all, bears the names of one hundred or so people. Scholarship by committee is not a concept readily embraced by academic gate-keepers. But if the reporters are largely invisible, so are all the other participants as well, particularly the members of the drafting committees who loyally fly off to hotels that all look alike several times a year for numbing Friday-through-Sunday meetings, poring over drafts. This is volunteerism at its best: a thousand points of law.