



E9 Impulsive Legislation: Adverse Consequences of Excluding Appropriately Qualified Experts From the Lawmaking Process

John R. Nixon, MBA, Athena Research & Consulting, PO Box 66, Bippus, IN 46713*

After attending this presentation, attendees will learn that not all laws are well drafted, what the adverse consequences of this are, and what can be done to improve the situation.

There is increasing concern among criminal justice professionals and society at large that poorly drafted laws result in prosecution of non-target groups, and a waste of law enforcement and prosecutorial resources that could be better utilized in the arrest and prosecution of hardened criminals who genuinely pose a legitimate threat to society. This presentation will impact the forensic science community by seeking to raise awareness of this problem, and provide impetus for change.

Lawmakers draft laws that are frequently riddled with technical inaccuracies, vague and ambiguous language. This paper presents examples, and proposes that greater involvement of suitably qualified experts at the drafting stage would result in more accurately targeted legislation and a smoother running justice system.

Congress is the Legislative Branch of the U.S. Government, responsible for the formulation of new laws that are intended to, among other things; protect the U.S. populace from physical and financial harm. Despite the fact that many new laws contain a plethora of technical information and definitions, new legislation is drafted by elected officials and their staff, very few of whom have a scientific or technical education. It is often assumed that those who draft the proposed new legislation have consulted technical and scientific experts in the appropriate fields; however, the abundance of inappropriate, vague, and ambiguous language contained in much of our legislation may cause the rationally minded to question this assumption. Unfortunately, once legislation is enacted, it is very difficult to modify.

It is evident that some legislation is the result of whiplash emotional reaction and media pressure in the aftermath of catastrophic events, and it is argued that this approach is not conducive to reasoned and effective legislation.

The net result of these legislative shortfalls is that the lawmakers intended targets will not be dissuaded from participating in undesirable behaviour and, more importantly, otherwise legitimate law abiding citizens are inconvenienced and/or convicted. In extreme cases harmless citizens may receive long custodial sentences and hefty fines because they inadvertently and/or unintentionally violated a piece of legislation that was intended to curtail the actions of hardened criminals or terrorists.

This phenomenon is particularly prevalent in the federal system. Many over zealous prosecutors feel obliged to prosecute each and every case aggressively, irrespective of mitigating circumstances. Where bench trials are concerned, judges, often sympathetic to defendants whom they consider pose no threat to society, feel that they have no choice but to follow the letter of the law and convict defendants of the charges against them. Fortunately, judges often have a great degree of latitude in the sentence that they impose; however, a lenient sentence does not mean that the convict avoids a felony conviction record. Juries often have difficulty interpreting confusing and illogical legislation, and the conflicting "expert" testimony that is often presented in court.

This paper explores the adverse political & social consequences of poorly drafted legislation, and examines how technical experts may be better utilized by lawmakers during the legislation drafting process. It is postulated that, with better communication between the legislative and scientific communities, far less ambiguous legislation could be formulated. Case studies are used to illustrate key points.

Experts, Legislation, Congress