Digital Commons @ LMU and LLS

Loyola Marymount University and Loyola Law School
Digital Commons at Loyola Marymount University and Loyola Law School

Loyola of Los Angeles Law Review | Law Reviews

11-1-1994

Foreword

Amelia H. Boss

Recommended Citation
Amelia H. Boss, *Foreword*, 28 Loy. L.A. L. Rev. 89 (1994).
Available at: http://digitalcommons.lmu.edu/llr/vol28/iss1/4

This Symposium is brought to you for free and open access by the Law Reviews at Digital Commons at Loyola Marymount University and Loyola Law School. It has been accepted for inclusion in Loyola of Los Angeles Law Review by an authorized administrator of Digital Commons at Loyola Marymount University and Loyola Law School. For more information, please contact digitalcommons@lmu.edu.

FOREWORD: "IS THE UCC DEAD, OR ALIVE AND WELL? AN INTRODUCTION TO THE PRACTITIONERS' PERSPECTIVES"

*Amelia H. Boss**

Half a century ago the proposed enactment of the Uniform Commercial Code (UCC or the Code), produced through the joint effort of the National Conference of Commissioners on Uniform State Laws (NCCUSL) and the American Law Institute (ALI), was the subject of heated debate. Over fifty years later, in the midst of extensive revisions to virtually every article of the Code, as well as expansion of the scope of the Code's coverage, the UCC's provisions and revisions are again the subject of vigorous discussion. Many of the arguments raised at the beginning are being raised again: the viability of a commercial code, federal versus state enactment, the role of consumers, the impact of both large commercial interest groups and the banking industry.

What are we to make of the continued debate half a century later? Is it merely a demonstration that life moves in cycles and that we have simply come full circle to confront the same unanswerable questions posed years ago? Or does it demonstrate that the arguments made fifty years ago were never successfully rejoined and that objections made then to the Code are equally valid today? Does the repetition establish that we have made no progress over these fifty years? Or have the unavoidable changes in commercial practice and society, brought about by the passage of fifty years, required understandable revision and refinement, opening the door for reiteration of the arguments that today will prove no more successful than they were fifty years ago?

This Symposium is not the first to confront the ever-changing face of the UCC. For the past eight years, the revision of the UCC has sparked intense interest in its provisions and its future. The formula-

* Professor of Law, Temple University School of Law, Philadelphia, Pennsylvania. Professor Boss is the chair of the Uniform Commercial Code Committee of the American Bar Association's Section of Business Law. She is a member of the Permanent Editorial Board (PEB) of the Uniform Commercial Code and of the PEB's Executive Committee. She serves as the American Law Institute member of the Article 2 Drafting Committee and has been an active participant in the revision of other articles as well.

tion of new articles on leasing (Article 2A) and electronic funds transfers (Article 4A) have spawned symposia dedicated to these new commercial practices.[1] The completed revisions to the negotiable instruments and bank collections provisions (Articles 3 and 4), as well as the repeal, or for some, the revision of the bulk transfers laws (Article 6) have similarly been the topic of symposia treatment.[2] The recently completed revision of the investment security provisions (Article 8); the pending revisions of the sales and secured transactions provisions (Articles 2 and 9); and the proposed treatment of software contracting, have already earned attention in the pages of scholarly law review symposia,[3] and the outpouring of probing analysis and lively debate about those provisions will undoubtedly continue well into the future.

The *Loyola of Los Angeles Law Review* has recognized that these developments are aspects of a much larger picture—the global future of the UCC. In a prior Symposium, the *Loyola of Los Angeles Law Review* posed the question: Is the UCC Dead, or Alive and Well?[4] In a series of articles, twenty-two well-known academics responded to this question. Their answers, as might be expected, were not unanimous.

In this Symposium, the debate continues, but this time from the viewpoint of the practitioner. Rather than viewing the Code from the ivory tower perspective of the academic, these authors use it on a daily basis to counsel their clients, draft documents, and litigate cases. They see firsthand when the Code works and when it does not. Thus, one might anticipate that these practitioners may raise radically different issues and have radically different opinions from those expressed by the contributors to the past Symposium. Yet nothing can be further from the truth. In many respects, the themes that emerged

1. *Symposium: Article 2A of the Uniform Commercial Code*, 39 ALA. L. REV. 559 (1988); *Special Issue on the Uniform Commercial Code*, 45 BUS. LAW. 1389 (1990) (commenting on new Article 4A).

2. *See, e.g.*, *Symposium: Revised U.C.C. Articles 3 & 4 and New Article 4A*, 42 ALA. L. REV. 367 (1991); *Symposium: Article 6 of the Uniform Commercial Code*, 41 ALA. L. REV. 549 (1990).

3. *See, e.g.*, *Symposium: Uniform Commercial Code Article 2*, 27 IDAHO L. REV. 409 (1990-1991) (devoted to Article 2); *1993 Symposium Issue*, 29 IDAHO L. REV. 561 (1992-1993) (devoted to Article 9); *Ending the "Battle of the Forms": A Symposium on the Revision of Section 2-207 of the Uniform Commercial Code*, 49 BUS. LAW. 1019 (1994); *Symposium: The Revision of Article 2 of the Uniform Commercial Code*, 35 WM. & MARY L. REV. 1299 (1994).

4. *Symposium: Is the UCC Dead, or Alive and Well?*, 26 LOY. L.A. L. REV. 535 (1993).

from the last *Loyola of Los Angeles Law Review* Symposium continue here. Moreover, as in the past Symposium, there is rarely consensus on the major issues.

The practitioners represented by this Symposium are drawn from all over the country, from many different types of practices. More importantly, the contributors participating in this Symposium are all well-known and highly-regarded in their respective fields. The authors all have devoted countless hours to the commercial law revision process, whether as members of the various drafting committees, as chairs of national, state, and local bar association commercial law committees active in the process, as members of or liaisons to the Permanent Editorial Board (PEB) of the UCC, as advisors or observers to the various drafting committees, or, in one case, as the chair of several drafting committees. Thus, these authors are familiar not only with the practice of law, but also with the process of uniform law revision.

As with any such symposium, each contributor brings an orientation that differs from the next, and those differing orientations must be factored into any attempt to synthesize their views and form a conclusion as to the viability and success of the Code. Those involved in the electronic funds transfers field and those involved in the revisions to the sales or secured transaction provisions may see different sets of issues, or different aspects of the same issues confronting the Code. Those involved in technical areas such as letters of credit or investment securities may see a completely different set of issues. One is reminded of the story of four blind men asked to describe an elephant: One felt the trunk; another the foot; the third a side; and the fourth the tail. Each described something different. Yet, to get the true picture, all those impressions must be combined.

I. THE CONTRIBUTIONS OF THE CODE

Working with the Code on a daily basis, a practitioner has the opportunity to see and assess its adaptability to a myriad of factual situations. As a result, each Symposium participant has seen areas where improvement might be needed, and each undoubtedly has a wish list or a set of pet peeves that they would like addressed in future revisions. Yet these same practitioners are also in the position to evaluate the overall contribution the Code has made to the practice of commercial law.

Howard Ruda focuses on Article 9 as an example of how the Code works well in the commercial context.[5] He identifies five reasons for the success of Article 9: (1) it facilitates the grant of credit on favorable terms; (2) it gives maximum security to lenders; (3) it minimizes transaction costs; (4) it minimizes risk to third parties dealing with the debtor; and (5) it exposes no one to unfair but unavoidable consequences. Ruda attributes that success to the fact that, while Article 9 and the UCC may not be internally uniform and their structure and phrasing may be neither clear nor elegant, Article 9 is "well attuned to the commercial logic of the transactions to which it applies."[6] Indeed, "the logic of the rules is to be found in the transactions, and not within Article 9 itself."[7] One might infer, then, that Ruda would prefer the law revision effort to focus on external application of the provisions to achieve commercially defensible results rather than on achieving internal cohesion.

Maury B. Poscover also points to Article 9 as a demonstration of the benefits the Code has provided to non-Code law, particularly in the area of foreclosure sales and disposition.[8] He observes that the Article 9 foreclosure procedures, while not without room for improvement, generally work to the advantage of all involved. The key to the success of the provisions, its "single greatest advantage,"[9] is its flexibility. Even its standard of commercial reasonableness, which has been criticized by many as introducing an element of uncertainty in the foreclosure process, is described by Poscover as "easily accomplished and fair to a lender."[10] This proposition is, however, disputed by two other Symposium contributors, Gail Hillebrand and Donald J. Rapson, particularly in the context of deficiency actions. Hillebrand finds that the foreclosure procedures are unfair to consumers,[11] while Rapson argues that the procedures are not sufficiently certain in their application to give adequate guidance to repossessing lenders.[12]

---

5. Howard Ruda, *Article 9 Works—How Come?*, 28 LOY. L.A. L. REV. 311 (1994).

6. *Id.* at 314.

7. *Id.* at 316.

8. Maury B. Poscover, *A Commercially Reasonable Sale Under Article 9: Commercial, Reasonable, and Fair to All Involved*, 28 LOY. L.A. L. REV. 237 (1994).

9. *Id.* at 243.

10. *Id.*

11. Gail Hillebrand, *The Redrafting of UCC Articles 2 and 9: Model Codes or Model Dinosaurs?*, 28 LOY. L.A. L. REV. 193 (1994).

12. Donald J. Rapson, *Who is Looking Out for the Public Interest? Thoughts About the UCC Revision Process in the Light (and Shadows) of Professor Rubin's Observations*, 28 LOY. L.A. L. REV. 251 (1994).

II. THE CODE REVISION PROCESS

The UCC drafting process continues to be the subject of both praise and criticism in this Symposium, as it was in the last Symposium and in other recent law review articles of note.[13] Three contributors point to the UCC treatment of electronic funds transfers as evidence of the continued viability and importance of the Code.

Paul S. Turner notes that the unparalleled swift enactment of Article 4A demonstrates its universal acceptance and "the general public perception of its fundamental fairness to both banks and bank customers."[14] Turner observes that in the drafting process, even when primarily commercial interests are present, the representation accorded opposing interests may not be balanced. As a result, "the members of the drafting committee must elevate themselves above the interests and perspectives of their employers and any particular interest group."[15] Turner compliments the Article 4A Drafting Committee members on their ability to do so. A defender of the system and its product, Turner nonetheless feels free to criticize Article 4A in six areas where he suggests revision is needed.

Carlyle C. Ring, Jr., who chaired the Article 4A Drafting Committee, uses that experience to describe the current approach of drafting committees: (1) identify the problem; (2) achieve balance in the drafting process; (3) obtain scholarly participation; and (4) promote in-depth direct dialogue from those affected by the substance of the proposed statute.[16] In his view, the NCCUSL and the ALI still have a significant and important role in improving commercial law.

Thomas C. Baxter, Jr., counsel for the Federal Reserve Bank of New York, attributes the success of the UCC in the banking operations area to two factors: (1) the uniformity of the law; and (2) the meticulousness and soundness of the law drafting process.[17] Baxter points out, however, that the time-consuming, labor-intensive process

---

13. *See, e.g.*, Marianne B. Culhane, *The UCC Revision Process: Legislation You Should See in the Making*, 26 CREIGHTON L. REV. 29 (1992); Kathleen Patchel, *Interest Group Politics, Federalism, and the Uniform Laws Process: Some Lessons from the Uniform Commercial Code*, 78 MINN. L. REV. 83 (1993).

14. Paul S. Turner, *The UCC Drafting Process and Six Questions About Article 4A: Is There Need for Revisions to the Uniform Funds Transfers Law?*, 28 LOY. L.A. L. REV. 353 (1994).

15. *Id.* at 355.

16. Carlyle C. Ring, Jr., *The UCC Process—Consensus and Balance*, 28 LOY. L.A. L. REV. 289 (1994).

17. Thomas C. Baxter, Jr., *The UCC Thrives in the Law of Commercial Payment*, 28 LOY. L.A. L. REV. 113 (1994).

that accounts for the success of Article 4A may also account for the shortcomings of Articles 3 and 4: The cost and burden of participating in the drafting process may discourage or foreclose participation by consumer representatives, which may result in the failure of the Code to adequately address consumer issues in some areas. Indeed, Baxter notes that consumer interests may be more successful on the federal level. Nonetheless, in Baxter's words, "While the meticulous process that yields uniform state law tends inadvertently to discourage consumer participation, nearly all commentators agree that the NCCUSL 'process' tends to make for a better quality product."[18]

III. CONSUMERS AND THE "PUBLIC INTEREST"

The role of consumer representation in the drafting process, an issue addressed by Professor Edward L. Rubin and others in the first Symposium,[19] continues to be a topic of debate in this Symposium. Richard A. Elbrecht, supervising attorney with the Department of Consumer Affairs of the State of California, cites the large volume of non-UCC consumer statutes and regulations that effectively supplement the Code's provisions as evidence that the Code is not meeting current needs.[20] As a result, the Code is ineffective in helping to guide and structure business transactions to facilitate fair exchanges and avoid disputes. Elbrecht argues vehemently that the UCC should address consumer protection issues directly, and that its failure to address these difficult consumer policy issues is the result of, and demonstrates, the drafters' "attempt to achieve consensus in its work products."[21]

Gail Hillebrand of the National Consumer's Union was a participant in the drafting processes involving Articles 3 and 4, as well as the present Article 2 and Article 9 drafting efforts. Hillebrand's article addresses the need for the sales and secured transaction revisions to adequately accommodate consumer transactions.[22] Hillebrand argues that drafting a model law that is limited to purely commercial transactions, with no standards or rules governing transactions between consumers and commercial parties, will be equivalent to creating a model

18. *Id.* at 127.

19. Edward L. Rubin, *Thinking Like a Lawyer, Acting Like a Lobbyist: Some Notes on the Process of Revising UCC Articles 3 and 4*, 26 LOY. L.A. L. REV. 743 (1993).

20. Richard A. Elbrecht, *The NCCUSL Should Abandon Its Search for Consensus and Address More Difficult and Controversial Issues Applying "Process" Concepts*, 28 LOY. L.A. L. REV. 147 (1994).

21. *Id.* at 152.

22. Hillebrand, *supra* note 11.

"dinosaur" that will not be enacted by all states. Her article contains a wish list of items for both Articles 2 and 9, including an overhaul of the commercial reasonableness standard for foreclosure sales in Article 9 and provisions dealing with nonprivity sales in Article 2, attorney's fees provisions in the unconscionability section, a right to notice and opportunity to cure default, and notice of deficiency calculations. Her article will undoubtedly be read with great care by both the Article 2 and Article 9 Drafting Committees. Indeed, her discussion of current drafting efforts illustrates present attempts to accommodate consumer concerns in the drafting process.

The issues surrounding the involvement of consumers in the drafting process are, of course, a subset of the question of whether the public interest is being served. Donald J. Rapson addresses the question of defining "the public interest" and expresses a concern that banking interests may be over-represented in the present effort to revise Article 5 on letters of credit.[23] His concern arises from several provisions in the current draft that he finds troublesome: the article's deference to the Uniform Customs and Practices for Documentary Credits, a product of the International Chamber of Commerce; the retention of "honesty in fact," the subjective standard of good faith; the refusal to adopt "reasonable commercial standards of fair dealing" as a component of good faith; and its inconsistency with Articles 3 and 4A in excluding recovery of consequential damages for wrongful dishonor. Rapson argues that modifications are required in the drafting process to protect it against undue influence by vested interest groups.

James G. Barnes joins issue with Rapson's characterization of what is in the public interest in the context of the definition of "good faith."[24] According to Barnes it is impossible to comment on the propriety of defining good faith in an objective or subjective way until one has examined the implications for the definition in specific letter-of-credit contexts. Turning to several specific areas, including bad faith demand for payment by a beneficiary, bad faith honor by an issuer, and bad faith dishonor by an issuer, Barnes demonstrates how an expanded definition of good faith, while internally consistent with other articles of the Code, "would confuse and conflict with existing domestic and foreign letter of credit law and practice."[25]

---

23. Rapson, *supra* note 12.

24. James G. Barnes, *Defining Good Faith Letter of Credit Practices*, 28 LOY. L.A. L. REV. 101 (1994).

25. *Id.* at 104.

C. Edward Dobbs provides a different slant on the "interests" being served by the Code in his article on junior and senior secured parties under Article 9 of the Code.[26] The tension between junior and senior creditors existed at the time of the original enactment of Article 9, yet according to Dobbs the balance struck between their competing interests overwhelmingly favors the junior secured party over the senior. Dobbs carefully analyzes several areas where the rights of junior and senior secured parties are in opposition: (1) collection rights of the junior party; (2) the junior's right to foreclose; (3) the junior's right to receive and retain foreclosure proceeds; (4) the effect on the junior of the senior's strict foreclosure; and (5) the junior's waiver of the senior's duty of commercial reasonableness. In each instance Dobbs finds present Article 9 wanting and suggests needed revisions to right the balance which has been struck.

IV. Suggestions for Revision to the Process

This Symposium contains a number of thoughtful critiques of the revision process and suggestions for its improvement. Harry C. Sigman, who notes the importance of obtaining greater involvement in the drafting process—by bar committees and academics—proposes two changes which would allow for meaningful input.[27] The first proposal is for an official, six-month "public comment" period following the "final reading" by the Code's sponsors but preceding the revision's formal promulgation as an official text and its introduction in state legislatures. This six-month period would allow for deliberative review of the final act by those not actively involved in the process and would afford the drafters the ability to accommodate any issues that are presented during that comment period. The second proposal is for the use of a uniform effective date for each piece of legislation. Utilizing that suggestion, different states might adopt the legislation at different times, but the act would come into effect in all enacting states on the same date. Such a proposal would have the effect of limiting the current nonuniformity which exists when states enact Code revisions at different times.

Donald J. Rapson, as noted above, makes additional suggestions for reform of the process to minimize the impact of vested interest groups. His two main suggestions are: (1) to have drafting commit-

26. C. Edward Dobbs, *Enforcement of Article 9 Security Interests—Why So Much Deference to the Junior Secured Party?*, 28 Loy. L.A. L. Rev. 131 (1994).

27. Harry C. Sigman, *Improving the UCC Revision Process: Two Specific Proposals*, 28 Loy. L.A. L. Rev. 327 (1994).

tees meet in closed sessions, outside the presence of interest groups, in addition to the current open sessions; and (2) a "cooling off" period of not less than six months following publication of a final draft so that comments may be received and evaluated.[28]

These suggestions will undoubtedly not fall on deaf ears. Already, the NCCUSL is considering these and other suggestions made for the improvement of the process which will undoubtedly yield a better product in the long run. This responsiveness is to be encouraged and commended.

V. FEDERALISM

As in the past Symposium, the contributors to this Symposium address the issue of whether federalism, the adoption of the Code on a federal rather than state-by-state basis, is the answer to the achievement of a uniform commercial code. In this instance the overwhelming response is "no."

George A. Hisert argues that the UCC, by creating the ability to balance the competing needs for uniformity and local flexibility, maintains a strong substantive advantage over encroaching federal legislation.[29] According to Hisert, state amendments to the Code are often desirable because states may adapt the Code to local needs and devise new solutions in areas where uniformity is not crucial. Hisert proposes three criteria to distinguish amendments to the UCC that threaten the uniformity of the Code from those that do not. The criteria he identifies: (1) Is the impact of the amendment primarily local?; (2) Does the variation affect the formation, validity, operation, or enforcement of the contract, as these variations may deprive the out-of-state actor from easily determining the validity or enforceability of its deal?; and (3) Does the variation grant the parties more flexibility, as out-of-state residents are hurt primarily by local laws which restrict their actions rather than those which give them flexibility? In the absence of a showing that the local variation is permissible, there should be a presumption in favor of uniformity.

Similarly, Carlyle C. Ring, Jr. addresses federalism issues.[30] While he acknowledges that a significant number of topics are best addressed on the federal level, he nonetheless articulates a series of factors favoring uniform state legislation. These factors include the

28. Rapson, *supra* note 12, at 286.

29. George A. Hisert, *Uniform Commercial Code: Does One Size Fit All?*, 28 LOY. L.A. L. REV. 221 (1994).

30. Ring, *supra* note 16, at 308-09.

difficulty in achieving federal enactment; the tendency of federal legislation to be interest legislation rather than the "result of a deliberative and careful assessment";[31] the failure of members of Congress to become involved in the legislative drafting process; the lack of knowledgeable people in the drafting process; and the large role of politics and interest group lobbying efforts in the federal arena.

Thomas C. Baxter, Jr., an attorney with the Federal Reserve Bank of New York who was active in the drafting process that led to Article 4A, points to Article 4A as demonstrating the ability of the Code to succeed despite the factors which might militate toward federal involvement.[32] The author notes that although structural factors inherent in the banking industry tend to work to favor federal law over state law as the governing source, the UCC's success in overcoming those structural obstacles demonstrates the Code's dominance of commercial payment law.

VI. Changes in Commercial Practices

One theme in the prior Symposium was the need for the Code to be responsive to, and embrace, changes in commercial practices, whether they be the increased use of electronic technologies in the conduct of new transactions, the development of new forms of structuring business transactions, or the evolution of an international commercial marketplace. That theme, the development of new commercial practices, is continued in this Symposium.

Edwin E. Smith emphasizes the need to be sensitive to areas where the economy, on which the text of the old Code was based, has changed.[33] He examines how the commercial phenomena of secured "cash flow" credit facilitates obtaining money from institutional lenders who are not concerned with exercising foreclosure and sale rights against collateral in the event of default, but would like to claim the value of the debtor's assets in the event of a voluntary transfer by the debtor, or, in the case of bankruptcy, an involuntary transfer. In the case of cash flow credit facilities, the primary "asset" may in fact be a general intangible—perhaps a license or permit—which is nonassignable. According to Smith, the drafters must find a way to recognize a security interest in such property without prejudicing the rights of other third parties for whose benefit or at whose insistence the prop-

31. Ring, *supra* note 16, at 308.

32. Baxter, *supra* note 17, at 118-21.

33. Edwin E. Smith, *Article 9 in Revision: A Proposal for Permitting Security Interests in Nonassignable Contracts and Permits*, 28 Loy. L.A. L. Rev. 337 (1994).

erty is made nonassignable. Smith ultimately advocates that a security interest in nonassignable property be recognized, but that enforcement be permitted only if (1) the consent of the third party is not required to the transfer, as in the case of bankruptcy, or (2) the third party in fact consents to any assignment effected by enforcement of the security interest.

Robert A. Zadek also looks at changes in commercial practices within the context of secured financing and argues that the original rationale behind recognizing possession as a means of perfection is no longer valid.[34] Moreover, in the context of inventory and equipment, he argues that perfection by possession is "wholly unnecessary for commerce," "anachronistic," and a "trap for the secured lender."[35] Zadek argues for simplifying and streamlining the law of commercial secured transactions by eliminating possession as a means of perfection.

Daniel A. Gecker and Kevin R. Huennekens, in their provocative article on "waiving goodbye to the UCC," takes what some might deem an extremely controversial position by questioning the concept of freedom of contract in the UCC.[36] Gecker and Huennekens delve into the history behind the Code's recognition of the parties' power to deviate from its terms, noting that the position was highly controversial when proposed and was viewed by many as a sellout to commercial banking interests. The authors point out that virtually all commercial agreements deviate from the Code in many respects; the Code, therefore, is not the source of most important commercial standards, and courts called upon to determine the enforceability of these contract provisions are left without guidelines for judging their enforceability. "Consequently the uniform enforcement of the Code's provisions has been eliminated."[37] Moreover, since in most situations involving such contract provisions, there is inequality of bargaining power and the costs occasioned by disparity are disproportionate, these "waivers" represent a potential danger to the substantive rights of those without sufficient bargaining power to protect themselves by consensual contract. Gecker and Huennekens argue that bright-line tests can be incorporated into the Code to provide the standard by

34. Robert A. Zadek, *The Uniform Commercial Code's Misplaced Emphasis on Possession*, 28 LOY. L.A. L. REV. 393 (1994).

35. *Id.* at 394-95.

36. Daniel A. Gecker & Kevin R. Huennekens, *Waiving Goodbye to the UCC: A Proposal to Restrict the Continuing Erosion of Rights Under an Imperfect Code*, 28 LOY. L.A. L. REV. 175 (1994).

37. *Id.* at 176.

which meaningful waiver can be determined without constant litigation. Using the merchantability provisions of Article 2 as an example, they advocate that the Code should be revised to make its provisions mandatory absent a showing of separate value for an extracted waiver.

VII. Use of the Code

In the prior Symposium, Professor Kerry Macintosh noted the need to educate law students, practitioners, and academics on the importance of the UCC.[38] Likewise, in this Symposium, Harry Sigman notes that the revision process would be strengthened if academia would recognize the important contributions professors can and arguably should make to that process. Steven Weise, by contrast, argues that the Code will be "set free" when lawyers who draft commercial agreements learn to use plain English.[39] His article, which could equally be viewed as a call for plain English in the drafting of statutes and in the instruction of law students, is instructive to all, whatever their orientation.

VIII. Conclusion?

It is difficult to write a conclusion to an introduction to a Symposium that raises issues that will undoubtedly be debated for years, if not decades, to come. Open debate on these issues is crucial, but to be meaningful that debate should be had now, while the Code and the drafting process itself are undergoing reexamination and revision. Those who fail to speak now may find that their next opportunity for any significant, meaningful input is another fifty years away. Indeed, the conclusion is yet to be written.

38. Kerry L. Macintosh, *"We Have Met the Enemy and He Is Us."*, 26 Loy. L.A. L. Rev. 673 (1993).

39. Steven O. Weise, *"Plain English" Will Set the UCC Free*, 28 Loy. L.A. L. Rev. 373 (1994).